



The Bengal Alienation of Agricultural Land (Temporary Provisions) Act, 1944

Act 5 of 1944

Keyword(s):

Agricultural Land, Collector, Complete Usufructuary Mortgage

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Bengal Act V of 1944¹

THE BENGAL ALIENATION OF AGRICULTURAL LAND (TEMPORARY PROVISIONS) ACT, 1944.

ADAPTED

The Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.
The Adaptation of Laws Order, 1950.

[4th January, 1945.]

An Act to provide for the restoration to proprietors, tenure-holders, raiyats and under-raiyats of certain agricultural lands alienated by them during the year 1943 as a result of the prevailing economic distress.

WHEREAS it is expedient to provide for the restoration to proprietors, tenure-holders, *raiya*ts and under-*raiya*ts of certain agricultural lands alienated by them during the year 1943 as a result of the prevailing economic distress;

It is hereby enacted as follows:—

1. (1) This Act may be called the Bengal Alienation of Agricultural Land (Temporary Provisions) Act, 1944. Short title and extent.

(2) It extends to the whole of ²[West Bengal].

2. In this Act unless there is anything repugnant in the subject or context,— Definitions.

(1) "agricultural land"—

(a) when used with reference to a proprietor or tenure-holder, means any land which on the date of the transfer of such land by sale referred to in sub-section (1) of section 4 was comprised in the estate or tenure, as the case may be, of, and held in *khas* by, the proprietor or tenure-holder who made such transfer; and

(b) when used with reference to a *raiya*t or under-*raiya*t means a holding or a part of a holding of such *raiya*t or under-*raiya*t;

¹For Statement of Objects and Reasons, see the *Calcutta Gazette*, dated the 27th January, 1944, Pt. IVB, page 26; for the Proceedings of the Council, see the Proceedings of the meetings of the Bengal Legislative Council held on the 8th, 10th, 15th February, 6th, 7th, 20th, 21st and the 23rd March, 1944; for the Proceedings of the Assembly, see the Proceedings of the meetings of the Bengal Legislative Assembly held on the 20th and the 21st November, 1944.

²The words within square brackets were substituted for the word "Bengal" by para. (2) of An. 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order, 1948.

*The Bengal Alienation of Agricultural Land
(Temporary Provisions) Act, 1944.*

[Ben. Act V

(Sections 3, 4.)

- (2) "Collector" means the Collector of a district or any other officer appointed by the ²[State] Government to discharge the functions of Collector under this Act;
- (3) "complete usufructuary mortgage" means a transfer of the right of possession in any land for the purpose of securing the payment of the mortgage debt upon the condition that the said debt shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage;
- (4) "prescribed" means prescribed by rules made under this Act;
- (5) "proprietor", "tenure-holder", "raiyat", "under-raiyat", "landlord", "estate", "tenure", "holding" and "improvement" have the same meanings as they have in the Bengal Tenancy Act, 1885;
- (6) references to "proprietor", "tenure-holder", "raiyat", "under-raiyat" and "transferee" shall be deemed to include references to their successors in interest.

VIII of
1885.

Effect of provisions of this Act where inconsistent with other law.

3. The provisions of this Act shall have effect notwithstanding anything to the contrary in any other law for the time being in force.

Procedure for effecting restoration of lands alienated by proprietors, tenure-holders, raiyats or under-raiyats in 1943.

4. (1) If on or after the 1st January, 1943, and before the 1st January, 1944, a proprietor, tenure-holder, *raiyat* or under-*raiyat* has transferred any agricultural land by sale for any consideration the amount or value of which does not exceed two hundred and fifty rupees, and if,—

- (a) he applies in the prescribed manner to the Collector at any time before the 25th day of December, 1945, for the restoration of such land to him; and
- (b) he satisfies the Collector that he could not have maintained himself or his family except by making such alienation of such land,

¹For notification—

- (a) appointing all the Additional District Magistrates, the Sub-divisional Magistrates, the Additional Sub-divisional Magistrates and the Special Officers for Aborigines in all the districts *ex-officio* to discharge the functions of a Collector under the Act, see notification No. 388 L.R., dated 16.1.46, published in the *Calcutta Gazette* of 1946, part I, page 232.
- (b) empowering the Sub-divisional Relief and Rehabilitation Officers, and the temporary Sub-Deputy Collectors to discharge the functions of a Collector under the Act, see notification No. 388 L.R., dated 16.1.46, published in the *Calcutta Gazette*, of 1946, part I, page 232.

²This word was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

of 1944.]

(Section 4.)

the Collector shall, after giving the transferee and if such land is in the possession of any person other than the transferee, such other person also an opportunity of being heard, make an order in writing restoring such land to such proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, and directing such proprietor, tenure-holder, *raiyat* or under-*raiyat* in the manner provided in sub-section (2) to pay in ten annual instalments by such dates as may be specified in the order the amount of such consideration or its value together with interest on such amount at the rate of three and one-eighth *per centum per annum* from the date of his receipt of such consideration and the amount of any compensation for improvements effected to such land, allowed by the Collector and determined by him in the manner prescribed, less the amount determined in the manner prescribed of the net income from such land of the person in possession of such land as a result of such alienation:

Provided that the first of such instalments shall be payable on a date not later than the 1st day of *Baisakh* next following the date of the order.

(2) When the Collector makes an order for payment by instalments under sub-section (1), he shall direct such instalments to be paid—

- (a) in the case where the agricultural land in respect of which such order is made has been alienated by the transferee before the date of such order by means of a *bona fide* transfer for valuable consideration or a *bona fide* gift by a registered instrument or *heba*, to the person in possession of such land as a result of such alienation;
- (b) in the case where such land has been alienated by the transferee before such date by means of a *bona fide* lease for valuable consideration or a usufructuary mortgage, to the transferee and the person in possession of such land as a result of such alienation in such proportion and in such manner as may be determined by the Collector and specified in the order; and
- (c) in other cases, to the transferee:

Provided that if such land is subject to a *bona fide* mortgage other than a usufructuary mortgage and such mortgage was executed after the transfer of such land referred to in sub-section (1), the Collector shall direct that such instalments shall first be paid to the mortgagee until the amount due under the mortgage as determined by the Collector is paid off and that thereafter any such instalments or part thereof still remaining due shall be paid in the manner provided in clause (a), clause (b) or clause (c) of this sub-section, as the case may be.

*The Bengal Alienation of Agricultural Land
(Temporary Provisions) Act, 1944.*

[Ben. Act V

(Section 5.)

(3) Where an application made under sub-section (1) is accompanied by a statement verified in the manner prescribed that the proprietor, tenure-holder, *raiyat* or *under-raiyat* who made the transfer of the agricultural land by sale referred to in that sub-section could not have maintained himself or his family except by making such alienation of such land, the Collector shall for the purpose of clause (b) of that sub-section presume such statement to be correct until the contrary is proved.

(4) The amount ordered to be paid by instalments by a proprietor, tenure-holder, *raiyat* or *under-raiyat* under sub-section (1) shall be a charge on the agricultural land in respect of which the order under that sub-section has been made.

(5) Where any agricultural land in respect of which an order under sub-section (1) is made, after the date on which such order takes effect under sub-section (1) of section 5, sold in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, other than a certificate for the recovery of any amount payable under such order, the whole of the amount payable under the said order then remaining due shall notwithstanding anything contained in such order at once become due and payable.

Ben. Act III
of 1913.Effect of
order for
restoration
of lands.

5. (1) When the Collector makes an order under sub-section (1) of section 4 restoring any agricultural land to a proprietor, tenure-holder, *raiyat* or *under-raiyat*, such order shall have effect on the 1st day of *Baisakh* next following the date of the order.

(2) From the date on which an order under sub-section (1) of section 4 takes effect under sub-section (1) of this section, the right, title and interest in the agricultural land accruing to the transferee as a result of the transfer referred to in sub-section (1) of section 4 shall, subject to the provisions of sub-section (4) of that section, be deemed to have vested in the proprietor, tenure-holder, *raiyat* or *under-raiyat*, as the case may be, free from all encumbrances, if any, which have been created after the date of such transfer.

(3) If on or before the date on which an order under sub-section (1) of section 4 takes effect under sub-section (1) of this section, the person in possession of the agricultural land as a result of the transfer referred to in sub-section (1) of section 4 has not yielded possession of such land to the proprietor, tenure-holder, *raiyat* or *under-raiyat*, as the case may be, the Collector may of his own motion, and shall on the application of such proprietor, tenure-holder, *raiyat* or *under-raiyat*, eject such person and place such proprietor, tenure-holder, *raiyat* or *under-raiyat*, as the case may be, in possession of such land.

The Bengal Alienation of Agricultural Land
(Temporary Provisions) Act, 1944.

645

of 1944.]

(Sections 6-8.)

6. Any sum payable under an order made under section 4 shall be recoverable as a public demand:

Recovery of sums due under an order under section 4 as a public demand.

Ben. Act III
of 1913.

Provided that the Certificate Officer shall not order the execution of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for the recovery of any amount due under an order made under sub-section (1) of section 4 by the sale of the agricultural land in respect of which the order under that sub-section has been made unless he is satisfied that all the instalments payable under the said order have already become due.

7. (1) A proprietor, tenure-holder, *raiyat* or under-*raiyat* to whom any agricultural land has been restored by an order under sub-section (1) of section 4 shall not as long as there remains unpaid any sum payable by such proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, under the order made under that sub-section, alienate by sale, lease, gift or other form of transfer or create any charge upon such land or any portion thereof and, notwithstanding anything contained in any other law for the time being in force, any alienation or charge so made shall be void and of no effect.

Prohibition of alienation until sums due under an order under section 4 are paid.

8. (1) A proprietor, tenure-holder, *raiyat* or under-*raiyat* who is entitled to apply for the restoration of any agricultural land under sub-section (1) of section 4 may, instead of applying for such restoration under that sub-section apply at his option for the conversion of the transfer by sale of such land into a complete usufructuary mortgage and in such case if the proprietor, tenure-holder, *raiyat* or under-*raiyat* otherwise complies with the provisions of clauses (a) and (b) of the said sub-section, the Collector shall, first determine the amount which would have been payable by such proprietor, tenure-holder, *raiyat* or under-*raiyat*, as the case may be, under the said sub-section if an order under that sub-section for the restoration of such land had been made and, then make an order in writing converting the said transfer by sale into a complete usufructuary mortgage with—

Optional conversion of transfer by sale of land into complete usufructuary mortgage.

(a) in the case of alienation by any of the means referred to in clause (a) of sub-section (2) of section 4, the person in possession of such land as a result of such alienation as the mortgagee, and

(b) in all other cases, the transferee as the mortgagee,

for a period of ten years or such shorter period as in the circumstances of the particular case is in the opinion of the Collector justified, and the amount so determined by the Collector shall be deemed to be the mortgage debt for the payment of which such mortgage is created.

*The Bengal Alienation of Agricultural Land
(Temporary Provisions) Act, 1944.*

[Ben. Act V

(Sections 9, 10.)

(2) When the Collector makes an order under sub-section (1) converting a transfer by sale into a complete usufructuary mortgage for a period specified by him, the right, title and interest in the agricultural land accruing to the transferee as a result of the transfer shall, with effect from the date of such order, be deemed to have vested in such proprietor, tenure-holder, *raiyat* or *under-raiyat*, as the case may be, subject to such complete usufructuary mortgage and free from all other encumbrances, if any, created after the date of the transfer and the liability for the payment of any amount referred to in sub-section (1) shall be deemed to be extinguished on the expiry of the said period.

(3) When the Collector makes an order under sub-section (1) converting a transfer by sale into a complete usufructuary mortgage for a period specified by him, such complete usufructuary mortgage may notwithstanding anything contained in sub-section (2) be redeemed at any time before the expiry of such period.

(4) On the expiry of the period of the mortgage or on the redemption of the mortgage before the expiry of such period under sub-section (3), if the mortgagee does not yield possession of the mortgaged land to the proprietor, tenure-holder, *raiyat* or *under-raiyat*, as the case may be, the Collector may of his own motion, and shall on the application of such proprietor, tenure-holder, *raiyat* or *under-raiyat*, eject the mortgagee and place, such proprietor, tenure-holder, *raiyat* or *under-raiyat*, as the case may be, in possession of such land.

Notice of restoration of land or of the conversion of the transfer by sale of land into a complete usufructuary mortgage on the landlord.

9. Before making an order under sub-section (1) of section 4 restoring any agricultural land to a tenure-holder, *raiyat* or *under-raiyat* or an order under sub-section (1) of section 8 converting a transfer by sale of any agricultural land of a tenure-holder, *raiyat* or *under-raiyat* into a complete usufructuary mortgage the Collector shall require such tenure-holder, *raiyat* or *under-raiyat* to deposit such fee as may be prescribed for the service of a notice of such order in the prescribed form in the case, where such order relates to any agricultural land of a tenure-holder on the landlord of the tenure in which such land is comprised and, in the case where such order relates to any agricultural land of a *raiyat* or *under-raiyat*, on the landlord under whom such land is held, and the Collector shall as soon as may be after such order is made cause such notice to be served on such landlord in the prescribed manner, and on receipt of such notice the landlord shall cause his rent roll to be corrected accordingly.

Bar of jurisdiction of High Court and

10. Neither the High Court nor any Civil Court shall have jurisdiction in any matter which the Collector is empowered to dispose of under this Act:

of 1944.]

(Section 11.)

Provided that any person who is dissatisfied with any order of the Collector made under section 4 or sub-section (1) of section 8 may within thirty days from the date of such order apply in the prescribed manner to the District Judge for the revision of such order and the decision of the District Judge thereon shall be final.

11. (1) The ¹[State] Government may make rules² for carrying out the purposes of this Act.

Power to
make rules.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—

- (a) the manner in which a proprietor, tenure-holder, *raiyat* or under-*raiyat* is to apply to the Collector under clause (a) of sub-section (1) of section 4;
- (b) the manner in which the Collector is to determine the amount of any compensation allowed under sub-section (1) of section 4;
- (c) the manner in which the net income referred to in sub-section (1) of section 4 is to be determined;
- (d) the manner in which the verification of the statement referred to in sub-section (3) of section 4 is to be made;
- (e) the fee to be deposited for the service of the notice referred to in section 9 and the form and the manner of service of such notice; and
- (f) the manner of application for revision under the proviso to section 10.

¹See foot-note 2 on page 642, *ante*.

²For the Rules under the Act, made under section 11 of the Act, see notification No. 21060 L.R., dated 28.12.44, published in the *Calcutta Gazette* of 1944, Part 1, pages 12-14, as subsequently amended from time to time.