



## The West Bengal Non-Agricultural Tenancy Act, 1949

Act 20 of 1949

**Keyword(s):**

**Bengali Year, Collector, Landlord, Non-agricultural Land, Non-agricultural Tenant, Pucca Structure**

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**West Bengal Act XX of 1949**  
**THE WEST BENGAL NON-AGRICULTURAL**  
**TENANCY ACT, 1949.**

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# West Bengal Act XX of 1949\*

## THE WEST BENGAL NON-AGRICULTURAL TENANCY ACT, 1949.<sup>1</sup>

AMENDED

West Ben. Act XXIV of 1953.  
West Ben. Act VIII of 1974.  
West Ben. Act LIII of 1976.  
West Ben. Act XXII of 1986.

ADAPTED

The Adaptation of Laws Order, 1950.

[5th May, 1949.]

*An Act to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in West Bengal.*

WHEREAS it is expedient to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in West Bengal;

It is hereby enacted as follows:—

### CHAPTER I.

#### Preliminary.

1. (1) This Act may be called the West Bengal Non-Agricultural Tenancy Act, 1949.

Short title, extent and commencement.

(2) It extends to the whole of West Bengal except the area to which the provisions of the Calcutta *Thika* Tenancy Act, 1949<sup>2</sup> apply but not excepting the area to which such provisions may have ceased or may hereafter cease to apply by virtue of any law for the time being in force.

(3) It shall come into force on such date<sup>3</sup> as the [State] Government may, by notification in the *Official Gazette*, appoint.

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

Definitions.

(1) "Bengali year" means a year ending on the last day of the Bengali month of *Chaitra*;

\*This Act extended to Chandernagore with effect from the appointed day under section 8 of the Chandernagore (Assimilation of Laws) Act, 1955 (West Ben. Act IV of 1955).

<sup>1</sup>For the Statement of Objects and Reasons, see the *Calcutta Gazette, Extraordinary*, of 1948, Part IV, page 342; and for the Proceedings of the West Bengal Legislative Assembly, see the Proceedings of the meetings of the West Bengal Legislative Assembly held on the 18th and the 19th January, 1949.

<sup>2</sup>Sub-section (2) was first substituted by s. 2 of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1974 (West Ben. Act VIII of 1974). Thereafter, the same was re-substituted by s. 2 of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1986 (West Ben. Act XXII of 1986).

<sup>3</sup>The Calcutta *Thika* Tenancy Act, 1949 (West Ben. Act II of 1949) was repealed and re-enacted by the Calcutta *Thika* Tenancy (Acquisition and Regulation) Act, 1981 (West Ben. Act XXXVII of 1981).

<sup>4</sup>This Act came into force on the 15th May, 1949, vide Notification No. 3688L. Ref., dated the 6th May, 1949, published in the *Calcutta Gazette*, dated the 12th May, 1949, Part I, page 800.

<sup>5</sup>This word within the square brackets was substituted for the word "Provincial"

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1949.

## (Chapter I.—Preliminary.—Section 2.)

- (2) "Collector" includes any officer appointed by the <sup>1</sup>[State] Government to perform all or any of the functions of a Collector under this Act;
- (3) "landlord" means a person immediately under whom a non-agricultural tenant holds and includes the Government;
- (4) "non-agricultural land" means land which is used for purposes not connected with agriculture or horticulture, and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes or not, but does not include—
- (a) a homestead to which the provisions of <sup>2</sup>[the West Bengal Land Reforms Act, 1955,] apply,
- (b) land which was originally leased for agricultural or horticultural purposes but is being used for purposes not connected with agriculture or horticulture without the consent either express or implied of the landlord, if the period for which such land has been so used is less than twelve years, <sup>3\*</sup>
- (c) land in the districts of Darjeeling or Jalpaiguri which is held for purposes connected with the cultivation or manufacture of tea, <sup>4</sup>[and]
- <sup>5</sup>(d) land vested in, or in the possession of, the State Government in respect of which any license has been granted by the State Government:

<sup>2</sup>[West Ben. Act X of 1956.]

Provided that where an order has been made under section 72 converting a parcel of land which is not non-agricultural land into a tenancy to which the provisions of this Act apply such land shall be deemed to be non-agricultural land;

- (5) "non-agricultural tenant" means a person who holds non-agricultural land under another person and is, or but for a special contract would be, liable to pay rent to such person for that land but does not include <sup>6</sup>[a person who holds any premises or part of any premises, situated on non-agricultural

<sup>1</sup>See foot-note 5 on page 121, *ante*.

<sup>2</sup>These words and figures and the marginal reference within the square brackets were substituted for the words and figures "section 182 of the Bengal Tenancy Act, 1885," and the marginal reference "VIII of 1885," by s. 3(1) of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1974 (West Ben. Act VIII of 1974).

<sup>3</sup>The word "and" was omitted by s. 2(a)(i) of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1953 (West Ben. Act XXIV of 1953).

<sup>4</sup>The word "and" was added by s.2 (a)(ii), *ibid*.

<sup>5</sup>The sub-clause (d) was added by s. 2(a)(iii), *ibid*.

<sup>6</sup>These words within the square brackets were substituted for the words "any person who holds any such land on which any premises occupied by such person are situated if such premises have been erected, or are owned, by the person to whom such rent is, or

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(Chapter II.—Classes of non-agricultural tenants.—Sections 3, 4.)

land and erected or owned by another person, and who is, or but for a special contract would be, liable to pay rent for such premises or such part of the premises to such person.]

*Explanation.*—In this clause “premises” means any building, such as a house, manufactory, warehouse, stable, shop or hut whether constructed of masonry, bricks, concrete, wood, mud, metal or any other material whatsoever and includes any land appertaining to such building;

- (6) “prescribed” means prescribed by rules made under this Act;
- (7) “*pucca* structure” means any structure constructed mainly of brick, stone or concrete or any combination of these materials;
- (8) all words and expressions used but not defined in this Act and used in <sup>1</sup>[the West Bengal Land Reforms Act, 1955,] or the Transfer of Property Act, 1882, have the same meanings as in those Acts.

<sup>1</sup>[West Ben. Act X of 1956.]  
IV of 1882.

## CHAPTER II.

### Classes of non-agricultural tenants.

3. (1) There shall be, for the purposes of this Act, the following classes of non-agricultural tenants, namely:—
- (a) tenants, and
  - (b) under-tenants.

Classes of non-agricultural tenants.

(2) “Tenant” means a person who has acquired <sup>2</sup>[a right to hold non-agricultural land directly under the State] for any of the purposes provided in this Act, and includes also the successors in interest of persons who have acquired such a right.

(3) “Under-tenant” means a person, who has acquired a right to hold non-agricultural land for any of the purposes provided in this Act either immediately or mediately under a tenant and includes also the successors in interest of persons who have acquired such a right.

4. A non-agricultural tenant may hold non-agricultural land for—
- (a) homestead or residential purposes;
  - (b) manufacturing or business purposes; or
  - (c) other purposes.

Purposes for which non-agricultural tenant may hold non-agricultural land.

<sup>1</sup>These words and figures and the marginal reference were substituted for the words and figures “the Bengal Tenancy Act, 1885,” and the marginal reference “VIII of 1885,” by s. 3(2) of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1974 (West Ben. Act VIII of 1974).

<sup>2</sup>The words within the square brackets were substituted for the words “from a proprietor or a tenant-holder a right to hold non-agricultural land” by s. 4 *ibid*.



(Chapter II.—Classes of non-agricultural tenants.—Section 5.—  
Chapter III.—Tenants.—Section 6.)

Tenancies  
held by a  
non-  
agricultural  
tenant.

5. A non-agricultural tenant shall be deemed to hold any non-agricultural land—

- (a) for homestead or residential purposes if such tenant is entitled, under the terms of any agreement between himself and the landlord, to use or is actually using such land for homestead or residential purposes;
- (b) for manufacturing or business purposes if such tenant is entitled, under the terms of any agreement between himself and the landlord, to use or is actually using such land for carrying on therein any commercial or industrial enterprise or any trade or business; and
- (c) for other purposes if such tenant is entitled, under the terms of any agreement between himself and the landlord, to use or is actually using such land for any purpose not connected with agriculture or horticulture other than—
  - (i) the purposes specified in clauses (a) and (b),
  - (ii) the exercise of any forest-rights or rights over fisheries or rights to minerals in such land.

### CHAPTER III.

#### Tenants.

Manner of  
use of non-  
agricultural  
lands.

6. (1) A tenant holding non-agricultural land may use such land in any manner which is not inconsistent with the purposes of the tenancy and which does not materially impair the value of such land.

(2) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 7 or section 8 apply shall be entitled—

- (a) to erect any structure including any *pucca* structure;
- (b) to dig any tank; and
- (c) to plant, enjoy the flowers, fruits and other products of, and fell and utilize or dispose of the timber of, any tree

on such land:

Provided that he shall not be entitled to convert any such land into a place of religious worship without the previous consent of the landlord.

(3) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 9 apply shall be entitled—

- (a) to erect any structure other than a *pucca* structure;
- (b) to plant, and enjoy the flowers, fruits and other products of, any tree, and
- (c) to fell, and utilize or dispose of the timber of, any tree planted by him

on such land:

Provided that he shall not be entitled to convert any such land into a place of religious worship without the previous consent of the landlord.

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(Chapter III.—Tenants.—Section 7.)

7. Notwithstanding anything contained in any other law for the time being in force or in any contract—

Incidents of certain tenancies.

IV of 1882.

- (1) if any non-agricultural land has been held with or without any lease having been entered into by the landlord and the tenant from before the commencement of the Transfer of Property Act, 1882, or if the origin of any tenancy is unknown, or
- (2) if the non-agricultural land comprised in any tenancy which has been or is created after the commencement of the Transfer of Property Act, 1882, has been held for a term of not less than twelve years without any lease in writing, or
- (3) if any non-agricultural land has been held for a term of not less than twelve years under a lease in writing but no term is specified in such lease, or
- (4) if any non-agricultural land held under a lease in writing for a period specified therein continues to be held with the express or implied consent of the landlord after the expiration of the time limited by such lease and the total period for which such land is so held is less than twelve years, or
- (5) if the landlord has allowed *pucca* structures to be erected on any non-agricultural land held under a lease in writing for a period specified therein, whether such structures have been erected,—
  - (a) before the expiration of the said period, or
  - (b) where such non-agricultural land continues to be held with the express or implied consent of the landlord after the expiration of the said period, during the period such non-agricultural land so continues to be held,

then—

- (i) the tenant holding the non-agricultural land comprised in such tenancy shall not be ejected by his landlord from such land except on the ground that he has used such land in a manner which renders it unfit for use for the purposes of the tenancy,
- (ii) the interest of the tenant in the non-agricultural land comprised in such tenancy shall, in the case where such tenant dies intestate in respect of such interest, be transmitted by inheritance in the same manner as his other immovable property:

## (Chapter III.—Tenants.—Section 8.)

Provided that in any case in which under the law of inheritance to which such tenant is subject, his other property goes to the [Government], his interest in such land shall be extinguished, and

- (iii) the non-agricultural land comprised in such tenancy or a share or a portion thereof together with the interest of the tenant therein shall, subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner, and to the same extent as his other immovable property.

Renewals of lease of tenancies held for not less than twelve years and succession to, and transfer of, such tenancies.

8. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any non-agricultural land is held under a lease in writing for a term of not less than twelve years specified in such lease, the tenant holding such land shall, on the expiration of the period so specified, be entitled to the option of successive renewals of such lease on such fair and reasonable conditions as to rent as may be agreed upon between the landlord and such tenant:

Provided that no premium or *safami* be payable in respect of such renewal.

(2) If there is any dispute as to whether any condition for the renewal of a lease under sub-section (1) is fair and reasonable, the landlord or the tenant may apply in the prescribed manner to the Court, and the Court shall thereupon determine the conditions for renewal of the lease which it considers fair and reasonable in the circumstances of the case.

(3) A tenant holding non-agricultural land comprised in a tenancy to which the provisions of sub-section (1) apply shall not be ejected by his landlord from such land during the term specified in the lease, nor after the tenant has on any occasion exercised his option of renewal, during the term of such renewal except on the ground that he has used such land in a manner which renders it unfit for use for the purposes of the tenancy.

(4) The interest of the tenant in any non-agricultural land held under a lease to which the provisions of sub-section (1) apply shall, during the term specified in the lease, or where the tenant has exercised his option of renewal, during the term of such renewal—

- (i) in the case where such tenant dies intestate in respect of such interest, be transmitted by inheritance in the same manner as his other immovable property:

<sup>1</sup>This word within the square brackets was substituted for the word "Crown" by para. 4(1) of the Adaptation of Laws Order, 1950.

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(Chapter III.—Tenants.—Section 9.)

Provided that in any case in which, under the law of inheritance to which such tenant is subject, his other property goes to the <sup>1</sup>{Government}, his interest in such land shall be extinguished; and

- (ii) subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

9. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, if any non-agricultural land has been held for a term of more than one year but less than twelve years—

Incidents of non-agricultural tenancies held for less than twelve years.

- (a) under a lease in writing for a term of more than one year but less than twelve years to which the provisions of clause (5) of section 7 do not apply, or
- (b) without a lease in writing, or
- (c) under a lease in writing but no term is specified in such lease,

then the tenant holding such non-agricultural land shall be liable to ejection on one or more of the following grounds and not otherwise, namely:—

- (i) on the ground that he has used such land in a manner which renders it unfit for use for the purposes of the tenancy;
- (ii) on the ground that the term of the lease has expired in the case of tenancies of the class specified in clause (a);
- (iii) on the ground that the tenancy has been terminated by the landlord by six months' notice in writing expiring with the end of a year of the tenancy served on the tenant in the prescribed manner in the case of tenancies of the class specified in clause (b):

Provided that tenant shall not be liable to ejection on the ground specified in clause (iii) except on payment of such reasonable compensation as may be agreed upon between the landlord and the tenant or if they do not agree, as may be determined by the Court on the application of the landlord or such tenant.

<sup>1</sup>See foot-note 1 on page 126, ante.

## (Chapter III.—Tenants.—Section 9A.)

2. (2) The interest of the tenant in any non-agricultural land to which the provisions of sub-section (1) apply shall,—

- (i) in the case where such tenant dies intestate in respect of such interest, be transmitted by inheritance in the same manner as his other immovable property:

Provided that in any case in which under the law of inheritance to which such tenant is subject his other property goes to the <sup>1</sup>[Government], his interest in such land shall be extinguished; and

- (ii) subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

Restriction  
on transfer.

<sup>2</sup>9A. (1) Notwithstanding anything contained elsewhere in this Act or in any law for the time being in force or in any contract, express or implied or in any custom or usage, to the contrary, no person with whom any land is or has been settled by or on behalf of the State Government for the purpose of constructing a dwelling house thereon without any premium or *selami* being charged for such settlement, shall be entitled to transfer such land except by way of a simple mortgage or a mortgage by deposit of title-deed in favour of a bank, or a co-operative society or a local or statutory authority or the Life Insurance Corporation of India:

Provided that any person who seeks to exchange his land with some other land on the ground that the other land serves his purpose better for constructing a dwelling house thereon, may apply to the Collector, in such manner as may be prescribed, for permission to do so and the Collector may, upon such enquiry as he considers necessary, either grant or refuse to grant the permission sought for by him.

(2) If the Collector, on his own motion or on application made to him in that behalf, after giving the parties concerned an opportunity of being heard and after making such enquiry as may be considered necessary is satisfied that a transfer of any land has been made in contravention of the provisions of sub-section (1), he may, by order in writing, annul the transfer or both the settlement and the transfer, as may be deemed necessary.

*Explanation.*—For the purposes of this section, 'bank' means a banking company as defined in clause (c) of section 5 of the Banking Regulation Act, 1949 and includes the State Bank of India constituted

10 of 1949.

<sup>1</sup> See foot-note 1 on page 126. *ante*.

<sup>2</sup> Section 9A was inserted by s. 2 of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1976 (West Ben. Act LIII of 1976).

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(Chapter III.—Tenants.—Sections 10, 11.)

23 of 1955, under the State Bank of India Act, 1955, a subsidiary bank as defined in  
38 of 1959<sup>2</sup>, the State Bank of India (Subsidiary Banks) Act, 1959, a corresponding  
5 of 1970, new bank as defined in clause (d) of section 2 of the Banking Companies  
(Acquisition and Transfer of Undertakings) Act, 1970, a Regional Rural  
21 of 1976, Bank established under the Regional Rural Banks Act, 1976, a banking  
institution notified by the Central Government under section 51  
of the Banking Regulation Act, 1949 and also includes any other  
financial institution which may be notified in this behalf by the State  
Government.

10. Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force or in any contract where any non-agricultural land held by a non-agricultural tenant or any share or portion thereof is used—

- (a) for any immoral, illegal or unsocial purpose, or
- (b) in any manner so as to become a source of grave danger to the public peace or public safety,

Special incidents in case of misuse of non-agricultural land.

a co-sharer tenant or the landlord of the non-agricultural tenant may, if such land or share or portion is contiguous to any land in the actual possession of such co-sharer tenant or landlord, as the case may be, apply to the Court for such land or share or portion to be transferred to himself on payment of such consideration as may be determined by the Court:

Provided that if two or more persons apply under this section for such transfer, the Court shall determine the priority of the rights of the respective applicants to purchase under this section.

11. (1) The rent payable by a tenant in respect of any non-agricultural land shall, except in the case where such land is held on a fixed rent or free of rent either under a contract or under a decree or order passed by a competent Court or authority, be liable to enhancement as provided by this Act, and not otherwise.

Enhancement of rent.

(2) The rent payable by a tenant may be enhanced up to such limit as the Court thinks fair and equitable in the circumstances of the case:

Provided that the rent shall not be enhanced so as to exceed the rent previously payable by the tenant by more than twelve and a half per centum.

(3) In determining a fair and equitable rent under sub-section (2), the Court shall, subject to such further provisions as may be prescribed in this behalf, take into consideration—

- (a) the existing rent and the period during which it has remained without enhancement;
- (b) as far as can expediently be ascertained, the rent paid to other landlords for non-agricultural lands in the vicinity with similar advantages or of a similar description;

## (Chapter III.—Tenants.—Sections 12-14.)

- (c) the market value of the non-agricultural land and the rent which would be payable if the rate were fixed at not more than four *per centum* of such market value;
- (d) the special conditions and incidents, if any, of the tenancy; and
- (e) any cost incurred in making any improvement to or on the non-agricultural land or in converting such land for the purpose for which it is being used according to the conditions of the tenancy.

Provisions as to enhancement on ground of landlord's improvement.

12. (1) When an enhancement is claimed on the ground of a landlord's improvement,—

- (a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with the provisions of this Act; and
- (b) in determining the amount of enhancement the Court shall have regard to,—
  - (i) the increase in the value of the non-agricultural land caused or likely to be caused by the improvement,
  - (ii) the cost of the improvement,
  - (iii) the expenditure (if any), required for utilising the improvement, and
  - (iv) the existing rent and the ability of the non-agricultural land to bear a higher rent.

(2) A decree under this section shall, on the application of the tenant, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

Power to order progressive enhancement.

13. If it thinks that an immediate increase of rent will cause hardship, the Court may direct that the enhancement shall take effect gradually at such intervals and by such increments extending over a period not exceeding five years as the Court may fix in this behalf.

Limitation of right to enhancement.

14. (1) When a tenant is admitted to the occupation of any non-agricultural land, the rent payable by such tenant in respect of such land shall not, except on the ground of the landlord's improvement, be enhanced during the fifteen years next following the date on which the tenant has been so admitted to the occupation of such land.

(2) When the rent of a tenant has been enhanced by the Court or in pursuance of the conditions of a contract, it shall not be further enhanced during the fifteen years next following the date on which it has been last so enhanced and for the purposes of this section if an order of gradual

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(Chapter III.—Tenants.—Section 15.—Chapter IV.—Under-tenants.—  
Sections 16-18.)

enhancement of such rent has been made by a Court in accordance with the provisions of section 13, the full rent fixed by such order shall be deemed to have come into effect from the date of such order:

Provided that the landlord of such tenant may institute a suit for the enhancement of the rent of such tenancy during the said period of fifteen years on the ground of any improvement effected to the non-agricultural land comprised in such tenancy by, or wholly or partly at the expense of, such landlord during such period.

15. The rent of a tenant may be reduced by the Court if the Court considers that the rate of rent payable by such tenant is unfair and inequitable, and in determining what rent is fair and equitable under this section the Court shall have regard to the provisions of sub-section (3) of section 11.

Reduction of rent.

#### CHAPTER IV.

##### Under-tenants.

16. The provisions of this Chapter shall apply to all under-tenants whether their tenancies were created before or after the commencement of this Act.

Application of Chapter.

17. An under-tenant may be admitted to the occupation of any non-agricultural land on such terms and conditions consistent with the provisions of this Act as may be agreed upon between himself and his landlord.

Terms on which an under-tenant may be admitted to occupation of non-agricultural land.

18. An under-tenant shall be liable to pay such rate of rent for the non-agricultural land comprised in his tenancy as has been agreed upon between himself and his landlord at the time of his admission to the occupation of such land:

Rate of rent payable by an under-tenant.

Provided that the rate of rent payable in respect of the non-agricultural land comprised in any tenancy by an under-tenant who has been admitted to occupation of such land after the commencement of this Act shall not, except in the case where such land is held on a fixed rent or free of rent by the tenant under whom such under-tenant holds, exceed one and a half times the rate of rent payable by such tenant in respect of such land.



*(Chapter IV.—Under-tenants.—Sections 19, 20.)*

Enhancement  
of rent.

19. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, the rent of an under-tenant shall be liable to enhancement up to a limit not exceeding one and a half times the rent for the time being payable in respect of the non-agricultural land comprised in the tenancy of such under-tenant by the tenant under whom such under-tenant holds in the case where such tenant does not hold such land at a fixed rent or free of rent, and up to such limit as the Court may, subject to such provisions as may be prescribed in this behalf, think fair and equitable in other cases.

(2) For the purposes of sub-section (1) the rent for the time being payable in respect of the non-agricultural land comprised in the tenancy of an under-tenant by the tenant under whom such under-tenant holds shall, in the case where such under-tenant has been admitted to the occupation of only a portion of the land comprised in the tenancy of such tenant, be determined in such manner as may be prescribed.

Ejection  
of an under-  
tenant.

20. Notwithstanding anything contained in any other law for the time being in force or in any contract, an under-tenant shall, subject to the provisions of this Act, be liable to ejection on one or more of the following grounds, and not otherwise, namely:—

- (a) on the ground that he has used the non-agricultural land comprised in his tenancy in a manner which renders it unfit for use for the purposes of the tenancy;
- (b) on the ground that the term of his lease has expired when he holds the non-agricultural land under a written lease:

Provided that in the case where any non-agricultural land is held by an under-tenant without a lease in writing or under a lease in writing but no term is specified in such lease, it shall be also lawful for his landlord to eject him from such land after having given him six months' notice in writing expiring with the end of a year of the tenancy, and on payment of such reasonable compensation as may be agreed upon between the landlord and the under-tenant, or in the case where they do not agree, as may be determined by the Court on the application of the landlord or such under-tenant.

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(Chapter IV.—Under-tenants.—Sections 21, 22.—Chapter V.—  
Provisions as to transfer of non-agricultural land.—Section 23.)

21. The interest of an under-tenant in any non-agricultural land shall,—

Other incidents of tenancies of under-tenants.

- (a) in the case where such under-tenant dies intestate in respect of such interest, be transmitted by inheritance in the same manner as his other immovable property:

Provided that in any case in which under the law of inheritance to which such under-tenant is subject his other property goes to the <sup>1</sup>[Government], his interest in such land shall be extinguished; and

- (b) subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

22. Notwithstanding anything contained in any other law for the time being in force or in any contract, in the case of the tenancy of an under-tenant—

Special incidents of tenancies of under-tenants.

- (a) the provisions of section 10 shall apply; and
- (b) where—
  - (i) the conditions referred to in clauses (1), (2), (3), (4) or (5) of section 7 are fulfilled, or
  - (ii) the tenancy is held under a lease in writing for a term of not less than twelve years specified in such lease,

the under-tenant shall have all the rights and liabilities of a tenant as set forth in section 7 or section 8, as the case may be, and the provisions of sections 6, and 11 to 15 shall, and the provisions of sections 18, 19 and 20, in so far as they are inconsistent with the provisions of this section shall not, apply.

### CHAPTER V.

#### Provisions as to transfer of non-agricultural land.

23. (1) Every transfer of non-agricultural land held by a non-agricultural tenant or of any portion or share thereof shall, except in the case of a bequest or a sale in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, be made by registered instrument, and a Registering Officer shall not accept for registration any such instrument unless the sale

Manner of transfer of non-agricultural land and notices to landlords.

Ben. Act III of 1913.

<sup>1</sup>See foot-note 1 on page 126. *ante*.

*(Chapter V.—Provisions as to transfer of non-agricultural land.—  
Section 24.)*

price or, where there is no sale price, the value of the land or portion or share thereof transferred is stated therein, and unless it is accompanied by—

- (a) a notice giving the particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord who is not a party to the transfer, and
- (b) such notices and process fees as may be required by sub-section (4).

(2) In the case of a bequest of such land or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files a notice similar to, and deposits a process fee of the same amount as, that referred to in clause (a) of sub-section (1).

(3) A Court or Revenue-officer shall not confirm the sale of such land or portion or share thereof put to sale in execution of a decree or a certificate signed under the Bengal Public Demands Recovery Act, 1913, and no Court shall make a decree or order absolute for foreclosure of a mortgage of such land or portion or share thereof until the purchaser or the mortgagee, as the case may be, files a notice similar to and deposits a process fee of the same amount as, that referred to in sub-section (1).

Ben. Act III  
of 1913.

(4) If the transfer of a portion or share of such land be one to which the provisions of section 24 apply there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all co-sharer tenants of such land who are not parties to the transfer.

(5) The Court, Revenue-officer or Registering Officer, as the case may be, shall in the prescribed manner serve the notices for which this section provides and after service of such notice the landlord shall not refuse to recognise the transferee as the tenant in respect of the land or portion or share thereof transferred nor omit to enter the name of the transferee in the rent-roll of the landlord in place of that of the transferor or, where only a portion or share of the interest of the transferor has been transferred, along with the name of the transferor.

Power of the  
co-sharer or  
the imme-  
diate land-  
lord of  
transferor  
to purchase

24. (1) If the entire non-agricultural land in a non-agricultural tenancy is transferred, the immediate landlord, or if a portion or share of such land is transferred, the immediate landlord or one or more co-sharer tenants of such land may, within four months of the service of notice

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(Chapter V.—Provisions as to transfer of non-agricultural land.—  
Section 24.)

issued under section 23, apply to the Court for such land or portion or share thereof to be transferred to himself or themselves, as the case may be:

Provided that—

- (a) of both a co-sharer tenant and the landlord apply under this section and comply with the provisions herein contained the co-sharer tenant shall have the prior right to purchase under this section;
- (b) the immediate landlord of the non-agricultural tenant shall not have any right to purchase under this section unless the non-agricultural land or the share or portion thereof so transferred is contiguous to any land in the actual possession of the landlord and the Court is satisfied that such use by such landlord for any of the purposes specified in section 4; and
- (c) in the case of transfer in execution of a decree or certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the immediate landlord of the non-agricultural tenant shall not have any right to purchase under this section.

Ben. Act III  
of 1913.

(2) The application under sub-section (1) shall be dismissed unless the applicant at the time of making it deposits in Court the amount of the consideration money or the value of the property or the portion or share thereof transferred as stated in the notice served on the applicant under section 23 together with compensation at the rate of five *per centum* of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as it may fix and to state what other sums he has paid in respect of rent for the period after the date of transfer or in annulling encumbrances on the property. The Court shall then direct the applicant, including any person whose application under sub-section (4) is granted, to deposit within such period as the Court thinks reasonable such amount as the transferee has paid on this account together with interest at the rate of six and quarter *per centum per annum* with effect from the date on which the transferee made such payments.

(4) (a) When an application has been made by one or more co-sharer tenants under sub-section (1) any of the remaining co-sharer tenants including the transferee, if one of them, may within the period of four months referred to in the said sub-section or within one month of the notification, whichever is later, apply to join in the said application, and

*(Chapter V.—Provisions as to transfer of non-agricultural land.—  
Section 24.)*

any co-sharer tenant who has not applied under sub-section (1) or has not applied to join under this sub-section, shall not have any further right to purchase under this section.

(b) Such application to join as a co-applicant shall be dismissed unless within such period as the Court may fix, the applicant deposits in Court for payment to the applicant under sub-section (1), such sum, as the Court shall determine as the share to be paid by him for the purposes of sub-section (2). If such deposit is made, the Court shall grant the application to join and thereafter such applicant shall be deemed to be an applicant under sub-section (1).

(5) If the deposits required under sub-section (2) or clause (b) of sub-section (4), as the case may be, and under sub-section (3) are made, and, in the case where the application is made by the immediate landlord, the Court is satisfied that the conditions referred to in sub-section (1) have been fulfilled, the Court shall make an order allowing the application and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such persons as the Court thinks fit:

Provided that if both the immediate landlord and the co-sharer tenant have applied under this section and the application of the co-sharer tenant is allowed under this sub-section, the application of the immediate landlord shall be dismissed.

(6) Notwithstanding anything contained in any other law for the time being in force, the Court shall, if the applicant under sub-section (1) or any person whose application under sub-section (4) is granted disputes the correctness of the amount of the consideration money as stated in the notice issued under section 23, inquire into such dispute before making an order under sub-section (5) and after giving the transferee an opportunity of being heard determine for the purposes of this section the amount of the consideration money which the transferee has actually paid for the transfer of the property or the portion or share thereof, as the case may be, and the amount so determined shall be deemed to be the consideration money referred to in sub-section (2) and where the amount of the consideration money has been so determined the deposit made under that sub-section shall for the purposes of sub-section (5) be the amount so determined together with the compensation at the rate of five *per centum* of such amount.

(7) In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration:

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(Chapter V.—Provisions as to transfer of non-agricultural land.—  
Section 24.)

the Court shall so apportion the said property or portion thereof on the request of any applicant and, in this case, may require the applicant who makes such request to deposit, within such period as the Court may fix, such further sums as the Court considers necessary for equitable distribution among the remaining applicants:

Provided that no apportionment order under this sub-section shall operate as a division of the tenancy.

(8) From the date of the making of the order under sub-section (5)—

- (i) the right, title and interest in the non-agricultural land or portion or share thereof accruing to the transferee from the transfer shall, subject to any orders passed under sub-section (7), be deemed to have vested free from all encumbrances which have been annulled or created after the date of transfer, in the immediate landlord or in the co-sharer tenant, as the case may be, whose application to purchase has been allowed under this section,
- (ii) the liability of the transferee for the rent due from him on account of the transfer shall cease, and
- (iii) the Court, on further application of such applicant, may place him in possession of the property vested in him.

(9) An appeal from any order of a Court under this section shall lie to the Civil Appellate Court having jurisdiction to entertain such appeals.

(10) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammadan Law.

(11) Nothing in this section shall apply to—

- (a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, or
- (b) a transfer by exchange, sub-lease or partition, or
- (c) a transfer by bequest or gift (including *heba* but excluding *heba-bil-ewaz* for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three degrees of the testator or donor, or
- (d) a *wakf* in accordance with the provisions of the Muhammadan Law, or

(Chapter V.—Provisions as to transfer of non-agricultural land.—Sections 25, 26.—Chapter VI.—Record-of-rights and settlement of rents.—Sections 27, 28.)

- (e) a *debutter* or any other dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual.

*Explanation.*—A relation by consanguinity shall, for the purposes of this sub-section, include a son adopted under the Hindu Law.

Saving as to statements in instruments of transfer where landlord is not a party.

25. Notwithstanding anything contained in the Indian Evidence Act, 1872, nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenancy referred to in such instrument.

1 of 1872.

Inter-pretation.

26. (1) In this chapter "transferee", "purchaser" and "mortgagee" include their successors in interest.

(2) In section 23.—

- (a) "transfer" does not include partition or a sub-lease, or, until a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale;
- (b) "transferor" includes a person whose interest in any non-agricultural land or portion of share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section (3) of that section.

## CHAPTER VI.

### Record-of-rights and settlement of rents.

Revision or preparation of record-of-rights.

27. (1) The State Government may, if it so thinks fit, make an order directing that a survey be made and the record-of-rights be revised or prepared by a Revenue-officer in respect of all non-agricultural lands in any district or part thereof in accordance with such rules as may be made by the State Government in this behalf.

(2) When an order is made under sub-section (1), the Revenue-officer shall record, in the record-of-rights to be revised or prepared in pursuance of the order, such particulars as may be prescribed.

Draft and final publication of record-of-rights.

28. (1) When a record-of-rights has been revised or prepared, the Revenue-officer shall publish a draft of the record so revised or prepared in the prescribed manner and for the prescribed period and shall receive and consider any objections which may be made during such period to any entry therein or to any omission therefrom.

<sup>1</sup>Section 27 was substituted for the original section by s. 5 of the West Bengal Non-Agricultural Tenancy, (Amendment) Act, 1974 (West Ben. Act VIII of 1974).

<sup>2</sup>Sections 28 and 28A were substituted for the original section 28 by s. 6. *ibid.*

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(Chapter VI.—Record-of-rights and settlement of rents.—Section 28.)

(2) When all such objections have been considered and disposed of according to such rules as the State Government may make in this behalf, the Revenue-officer shall finally revise or prepare the record and cause such record to be finally published in the prescribed manner and make a certificate stating the fact of such final publication and the date thereof and shall date and subscribe the same under his name and official designation.

(3) Separate publication of different parts of draft or final records may be made under sub-section (1) or sub-section (2) for different local areas.

(4) An officer specially empowered by the State Government may, on application within one year from the date of final publication of the record-of-rights under sub-section (2), revise an entry in the record finally published in accordance with the provisions of sub-section (2) after giving the persons interested an opportunity of being heard and after recording reasons therefor.

(5) Any person aggrieved by an order passed in revision under sub-section (4) may, within such period and on payment of such court-fees as may be prescribed, appeal in the prescribed manner to—

- (a) the Settlement Officer having jurisdiction, where the order is passed by any officer subordinate to him, or
- (b) the Director of Land Records and Surveys, West Bengal, where the order is passed by the Settlement Officer,

and the order passed in appeal by the Settlement Officer or the Director of Land Records and Surveys, West Bengal, as the case may be, shall be final.

(6) The certificate of final publication referred to in sub-section (2), or in the absence of such certificate, a certificate signed by the Collector of any district in which the area to which the record-of-rights relates is wholly or partly situate, stating that a record-of-rights has been finally published on a specified date, shall be conclusive proof of such publication and of the date thereof.

(7) The State Government may, by notification in the *Official Gazette*, declare with regard to any area specified in the notification that the record-of-rights for every village included in such area has been finally published and such notification shall be conclusive proof of such publication.

(8) In any suit or other proceeding in which a record-of-rights revised or prepared and finally published under this Chapter, or a duly certified copy of the record or any extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published.



(Chapter VI.—Record-of-rights and settlement of rents.—  
Sections 28A, 29.)

(9) Every entry in the record-of-rights finally published under sub-section (2) including an entry revised under sub-section (4) or corrected under section 28A shall, subject to any modification by an order on appeal under sub-section (5), be presumed to be correct until it is proved by evidence to be incorrect.

(10) The record-of-rights of non-agricultural lands of a mauza revised or prepared under this section shall form a separate part of the volume of record-of-rights of agricultural lands of the same mauza prepared under the provisions of Chapter VII of the West Bengal Land Reforms Act, 1955.

West Ben  
Act X of  
1956.

Correction  
of entry in  
record-of-  
rights.

**28A.** Any Revenue-officer specially empowered by the State Government in this behalf may, of his own motion at any time or on application within one year from the date of certificate of the final publication of the record-of-rights under sub-section (2) of section 28, correct any entry in such record-of-rights which he is satisfied has been made owing to *bona fide* mistake:

Provided that no such correction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter and if any appeal affecting such entry has been made under sub-section (5) of section 28, until the appeal is finally disposed of.

Order for  
estimate of  
fair and  
equitable  
rents of  
non-agri-  
cultural  
lands and  
preparation  
of a settle-  
ment rent-  
roll.

**29.** When an order has been made under section 27 in respect of any <sup>2</sup>[district] or part thereof of which a settlement of land revenue is being or is about to be made, the <sup>3</sup>[State] Government may make an <sup>4</sup>order directing the Revenue-officer, after recording under <sup>5</sup>[sub-section (2) of section 27] those particulars which are relevant and after publication of the draft of the record-of-rights—

- (a) to estimate fair and equitable rents for non-agricultural tenants of every class in accordance with the provisions of this Act, and
- (b) to estimate the rental value for all or any non-agricultural lands which are held *khas* by a landlord,

<sup>1</sup>See foot-note 2 on page 138, *ante*.

<sup>2</sup>This word within the square brackets was substituted for the words "local area, estate or tenure" by s. 7(i) of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1974 (West Ben. Act VIII of 1974).

<sup>3</sup>See foot-note 5 on page 121, *ante*.

<sup>4</sup>For notification, issued under section 29 of the Act, directing the Revenue Officer to estimate fair and equitable rents, etc. in respect of certain *khas* mahal estates in the district of Jalpaiguri, see notification No. 4930L.R., dated 8.5.50, published in the *Calcutta Gazette* of 1950, Part I, page 944.

<sup>5</sup>The words and figures within the square brackets were substituted for the word and figures "section 28" by s. 7(ii) of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1974 (West Ben. Act VIII of 1974).

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(Chapter VI.—Record-of-rights and settlement of rents.—  
Sections 30, 31.)

in such <sup>1</sup>[district] or part thereof, and then to prepare in the prescribed form and manner a settlement rent-roll in which the rents and rental values so estimated together with such other particulars as may be prescribed shall be specified.

30. <sup>2</sup>[When an order] has been made under section 29 directing a Revenue-officer to prepare a settlement rent-roll in respect of non-agricultural lands in any <sup>3</sup>[district] or part thereof—

Procedure where both non-agricultural and other lands are concerned.

\* \* \* \* \*

(b) where any of such non-agricultural lands are comprised in a tenancy which includes lands other than non-agricultural lands, the Revenue-officer shall—

- (i) divide the tenancy so as to constitute separate tenancies for the non-agricultural lands and the other lands;
- (ii) apportion the existing rent between the tenancies so constituted; and
- (iii) estimate fair and equitable rents for the non-agricultural lands in accordance with the provisions of this Act.

31. (1) When an order has been made under section 29 for the preparation of a settlement rent-roll, the Revenue-officer shall prepare such rent-roll in accordance with the provisions of this Chapter and shall cause a draft of it to be published in the prescribed manner and for the prescribed period and shall receive and consider any objections made in regard to any entry therein or omission therefrom during the period of publication and shall dispose of such objections according to such rules as the <sup>5</sup>[State] Government may make.

Publication of settlement rent-roll, hearing of objections and confirmation.

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before a settlement rent-roll is submitted to the confirming authority under section 32, revise any entry therein:

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

<sup>1</sup>See foot-note 2 on page 140, *ante*.

<sup>2</sup>These words within the square brackets were substituted for the words and figures "Notwithstanding anything contained in the Bengal Tenancy Act, 1885, when an order" by s. 8(i), *ibid*.

<sup>3</sup>This word within the square brackets was substituted for the words "local area, estate or tenure" by s. 8(ii), *ibid*.

<sup>4</sup>Clause (a) was omitted by s. 8(iii), *ibid*.

<sup>5</sup>See foot-note 5 on page 121, *ante*.

*(Chapter VI.—Record-of-rights and settlement of rents.—  
Sections 32-34.)*

Final  
revision of  
settlement  
rent-roll and  
its confirma-  
tion by  
prescribed  
Revenue  
authority.

**32.** (1) When all objections have been disposed of under section 31, the Revenue-officer shall submit the settlement rent-roll to the prescribed Revenue authority for confirmation with a full statement of the grounds for his proposals and a summary of the objections (if any) which he has received.

(2) Such authority may confirm the settlement rent-roll with or without amendment or may return it for revision:

Provided that no entry shall be amended or omission supplied until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After confirmation by such authority the Revenue-officer shall cause the date of confirmation to be published in the prescribed manner and thereafter the settlement rent-roll shall be open to inspection at such place and times as may be prescribed.

Appeals.

**33.** (1) Any person who is aggrieved by any entry in or omission from a settlement rent-roll confirmed under section 32 may appeal to the prescribed Revenue authority and from the decision of such authority to the Board of Revenue in the manner and within the period prescribed in this behalf.

(2) No Civil Court shall annul or alter any decision of a Revenue-officer, a Revenue authority or the Board of Revenue under section 30 or section 31 or section 32 or sub-section (1) of this section except as provided in section 34.

Suits.

**34.** (1) Any person who is aggrieved by any entry in or omission from a settlement rent-roll confirmed under section 32 may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(2) Such suit shall be instituted within six months from the date of confirmation of the settlement rent-roll or from the date of the certificate of final publication of the record-of-rights, whichever is later, or, if an appeal has been presented under section 33, within three months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds and on no other ground, namely:—

- (a) that the land is not liable to the payment of rent;
- (b) that the land although entered in the record-of-rights as being held rent-free is liable to the payment of rent;
- (c) that the relation of landlord and tenant does not exist;
- (d) that in the record-of-rights the land has been wrongly recorded as part of a particular estate or tenancy or wrongly omitted from the lands of any estate or tenancy.

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(Chapter VI.—Record-of-rights and settlement of rents.—  
Sections 35-38.)

- (e) that in the record-of-rights there has been any omission of an under-tenant or such under-tenant has been wrongly recorded as holding the land rent-free;
- (f) that in the record-of-rights the special conditions and incidents of the tenancy have not been recorded or have been wrongly recorded;
- (g) that in the record-of-rights any right of way or other easement attached to the land has not been recorded or has been wrongly recorded;
- (h) that the land has been wrongly recorded in the settlement rent-roll as non-agricultural land; and
- (i) that there has been an omission to estimate fair and equitable rents in respect of any land under this Act.

(4) When a Civil Court has passed final orders or a decree under this section it shall notify the same to the Collector.

35. A notification in the *Official Gazette* of an order under section 27 or of an order under section 29 shall be conclusive evidence that the order has been duly made.

Notification of order under section 27 or section 29 to be conclusive evidence.

36. Subject to the provisions of section 34, all rents entered in a settlement rent-roll confirmed under section 32 or settled under section 33 shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

Presumption of rents settled under sections 30 to 33.

37. The Revenue-officer may at any time correct any *bona fide* clerical mistake in or omission from the settlement rent-roll and shall make such alterations in the same as may be necessary to give effect to any decision under sub-section (1) of section 33 or section 34.

Correction of settlement rent-roll.

38. Where an order has been made under section 27 for the preparation of a record-of-rights in respect of all non-agricultural lands in any [district] or part thereof of which a settlement of land revenue is not being made or is not about to be made, the Revenue-officer shall, in settling the rents of such non-agricultural lands \* \* \* \* \* have regard to the provisions of this Act as to the determination of a fair and equitable rent and to such rules as may be made in this behalf under this Act.

Settlement of rents in respect of non-agricultural lands by Revenue-officers in the case where a settlement of land revenue is not being or is not about to be made.

<sup>1</sup>This word within the square brackets was substituted for the words "local area, estate or tenure" by s. 9(a) of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1974 (West Ben. Act VIII of 1974).

<sup>2</sup>The words, figures and letter "under sections 105 and 105A of the Bengal Tenancy Act, 1885." were omitted by s. 9(b), *ibid*.

(Chapter VI.—Record-of-rights and settlement of rents.—  
Sections 39-42.)

Stay of proceedings in Civil Court during preparation of record-of-rights under section 27.

39. When an order has been made under section 27, directing the preparation of a record-of-rights, then, subject to the provisions of section 34, a Civil Court shall not,—

- (a) where a settlement of land revenue is being or is about to be made—until after the final publication of the record-of-rights, and
- (b) where a settlement of land revenue is not being made or is not about to be made—until four months after the final publication of the record-of-rights,

entertain any suit or application for the alteration of the rent or the determination of the status of any non-agricultural tenant in the area to which the record-of-rights applies.

Date from which settled rents take effect.

40. When a rent is settled by a Revenue-officer under this Chapter \* \* \* \* \* after an order under section 27 has been made, such rent shall take effect from such date as may be fixed by the Revenue-officer.

Period for which rents as settled are to remain unaltered.

41. (1) When the rent of the non-agricultural land comprised in a tenancy is settled under this Chapter, \* \* \* \* \* after an order under section 27 has been made, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of such land, be enhanced, in the case where such land is held by a tenant or by an under-tenant having under section 22 the rights and liabilities of a tenant, for fifteen years, and in the case where such land is held by an under-tenant having no such rights and liabilities, for five years; and no such rent shall be reduced within the period aforesaid save on the ground of alteration in the area of the non-agricultural land comprised within the tenancy.

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

Inter-pretation.

42. In this Chapter—

- (a) "Revenue-officer" includes any officer whom the <sup>2</sup>[State] Government may appoint to discharge all or any of the functions of a Revenue-officer under that Chapter;
- (b) the term "settlement of land-revenue" includes a settlement of rent in an estate or tenure which belongs to the <sup>3</sup>[Government].

<sup>1</sup>The words, figures and letter "or under Chapter X of the Bengal Tenancy Act, 1885," were omitted in section 40 and in sub-section (1) of section 41, by ss. 10 and 11, respectively, of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1974 (West Ben. Act VIII of 1974).

<sup>2</sup>See foot-note 5 on page 121, *ante*.

<sup>3</sup>See foot-note 1 on page 126, *ante*.

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(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 43-46.)

CHAPTER VII.

General Provisions as to rent of non-agricultural tenancies.

Payment of rent.

43. Subject to agreement, a money-rent payable by a non-agricultural tenant shall be paid yearly according to the Bengali year and shall fall due on the last day of the Bengali year in respect of which it is paid.

Rent to be paid yearly.

44. (1) Every non-agricultural tenant shall pay or tender the yearly rent before sunset of the day on which it falls due:

Time and place for payment of rent.

Provided that the non-agricultural tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made—

- (i) at the landlord's local office or at such other convenient place as may be appointed in that behalf by the landlord; or
- (ii) by postal money-order in the manner prescribed.

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 51.

(3) Where rent is sent by postal money-order in the manner prescribed, the Court may presume until the contrary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money-order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form.

(5) Any yearly rent or part of any yearly rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

45. (1) When a non-agricultural tenant makes a payment on account of rent, he may declare the year or years in respect of which he wishes the payment to be credited, and the payment shall be credited accordingly.

Appropriation of payments.

(2) If he does not make any such declaration, the payment may be credited to the account of such year or years as the landlord thinks fit.

Receipts and accounts.

46. (1) Every non-agricultural tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith a written receipt for such payment either from such landlord, or, where the agent of such landlord has been authorised in writing by such landlord to issue and sign such receipts on behalf of such landlord, from such agent.

Non-agro-cultural tenant making payment to his landlord entitled to a receipt.

(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 47, 48.)

(2) The landlord or such agent, as the case may be, shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall be in such form and shall specify such particulars as may be prescribed either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

Non-agricultural tenant entitled to full discharge or statement of account at close of year.

47. (1) Where a landlord admits that all rent payable by a non-agricultural tenant to the end of the Bengali year has been paid, the non-agricultural tenant shall be entitled to receive free of charge within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, either from the landlord, or, where the agent of such landlord has been authorised in writing to issue and sign such receipts on behalf of such landlord, from such agent.

(2) Where the landlord does not so admit, the non-agricultural tenant shall be entitled, on paying a fee of four *annas*, to receive, within three months after the end of the year, a statement of account in such form and specifying such particulars as may be prescribed either generally or for any particular local area or class of cases.

(3) The landlord or such agent, as the case may be, shall prepare and retain a copy of the statement containing similar particulars.

Penalties and fine for withholding receipts and statements of account and failing to keep counter-parts.

48. (1) If a landlord or his agent without reasonable cause refuses or neglects to deliver to a non-agricultural tenant a receipt in accordance with the provisions of section 46 for any rent paid by the non-agricultural tenant, such tenant may, within three months from the date of payment, institute a suit to recover from such landlord or agent, as the case may be, such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord or his agent without reasonable cause refuses or neglects to deliver to a non-agricultural tenant demanding the same either the receipt in full discharge or, if the non-agricultural tenant is not entitled to such a receipt, the statement of account for any year required by section 47, such tenant may, within the next ensuing Bengali year, institute a suit to recover from such landlord or agent, as the case may be, such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by such tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent, without reasonable cause, fails to deliver to the non-agricultural tenant a receipt or statement or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be,

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*(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Section 49.)*

shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under sub-section (3), either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the non-agricultural tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge, direct the non-agricultural tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section (5); and the order passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

(8) For the purpose of an inquiry under this section the Collector shall have power to summon and enforce the attendance of witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under the Code of Civil Procedure, 1908.

(9) The existence of a dispute as to the rent or area of a tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

- (a) a receipt for any amount actually paid on account of rent, or
- (b) the statement of account required by section 47, and the refusal of the non-agricultural tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by section 46.

49. (1) The [State] Government shall cause to be prepared and kept for sale to landlords at all subdivisional offices forms of receipts with counterfoils and of statements of account suitable for use under sections 46 and 47.

State Government to prepare forms of receipt and account.

<sup>1</sup>See foot-note 5 on page 121, *ante*.

Act V of 1908.



(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 50, 51.)

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the [State] Government thinks fit.

Effect of receipt by registered proprietor, manager or mortgagee.

50. Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876, as proprietor, manager or mortgagee of that estate, or of his agent authorised in that behalf, shall be a sufficient discharge for the rent; and the non-agricultural tenant liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person:

Ben. Act VII of 1876.

Provided that nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

#### Deposit of rent.

Application to deposit rent in Court.

51. (1) In any of the following cases, namely—

- (a) when a non-agricultural tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it;
- (b) when a non-agricultural tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused of a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it;
- (c) when the rent is payable to co-sharers jointly and the non-agricultural tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf; or
- (d) when the non-agricultural tenant entertains a *bona fide* doubt as to who is entitled to receive the rent,

the non-agricultural tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenancy an application in writing for permission to deposit in the Court a sum not less than the amount of the money then due.

(2) The application shall—

- (a) contain a statement of the grounds on which it is made;

<sup>1</sup>See foot-note 5 on page 121. *ante*.

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(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 52, 53.)

(b) state—

- (i) in the cases referred to in clauses (a) and (b) of sub-section (1) the name of the person to whose credit the deposit is to be entered,
  - (ii) in the case referred to in clause (c) of that sub-section, the names of the co-sharers to whom the rent is due, or of so many of them as the non-agricultural tenant may be able to specify, and
  - (iii) in the case referred to in clause (d) of that sub-section, the name of the person to whom the rent was last paid and of the person or persons now claiming it;
- (c) be signed and verified in the manner provided in sub-rules (2) and (3) of rule 15 of Order VI in Schedule I to the Code of Civil Procedure, 1908, by the non-agricultural tenant, or where he is not personally cognizant of the facts of the case, by some person so cognizant; and
- (d) be accompanied, in the cases referred to in clauses (a) and (b) of sub-section (1) by the prescribed cost of transmission of the money deposited to the landlord and in the cases referred to in clauses (c) and (d) of that sub-section by a fee of the prescribed amount.

Act V of  
1908.

52. (1) If it appears to the Court to which an application is made under section 51 that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

Receipt  
granted by  
Court for  
rent  
deposited to  
be a valid  
acquittance.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the non-agricultural tenant and deposited as aforesaid in the same manner and to the same extent as if that amount of rent had been received—

in the cases referred to in clauses (a) and (b) of sub-section (1) of section 51 by the person specified in the application as the person to whose credit the deposit was to be entered;

in the case referred to in clause (c) of that sub-section, by the co-sharers to whom the rent is due; and

in the case referred to in clause (d) of that sub-section, by the person entitled to the rent.

53. The Court receiving a deposit—

- (i) in the case referred to in clause (a) or in clause (b) of sub-section (1) of section 51 shall forthwith forward the same by postal money-order to the address of the landlord; and

Procedure  
of payment  
to the land-  
lord of rent  
deposited.

*(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 54, 55.)*

- (ii) in the case referred to in clause (c) or in clause (d) of that sub-section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under section 54 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in the case referred to in clause (c) of that sub-section cause a notice of the receipt of the deposit to be posted free of charge at the landlord's local office, if any, and in some conspicuous place in the village or town in which the non-agricultural land comprised within the tenancy or any portion thereof is situated, and in the case referred to in clause (d) of that sub-section cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit.

Payment or  
refund of  
deposit.

54. (1) The Court may pay the amount of the deposit notified under section 53 to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) If no payment is made under clause (i) of section 53 or under sub-section (1) before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(3) No suit or other proceeding shall be instituted against the '[Government] or against any officer of the '[Government], in respect of anything done by a Court receiving a deposit under section 52 but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

*Penalty for refusing to receive rent.*

Penalty for  
refusing to  
receive rent  
tendered by  
postal  
money-order  
or deposited.

55. If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering, by suit, interest, costs or damages in respect of the same, and the Court may in addition award to the non-agricultural tenant damages not exceeding twelve and a half *per centum* on the whole amount claimed by the plaintiff.

<sup>1</sup>See foot-note 1 on page 126, *ante*.

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(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 56-58.)

The plea of the existence of any dispute as to the amount of rent of or the area of the land comprised in the tenancy shall not be deemed to be a reasonable cause under this section:

Provided that, when a landlord accepts rent, which has been deposited, or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form.

*Arrears of rent.*

56. A non-agricultural tenant shall not be liable to ejectment for arrears of rent, but his tenancy shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

Liability to sale for arrears.

57. (1) An arrear of rent shall bear simple interest at the rate of six and a quarter *per centum per annum* from the expiration of the Bengali year in which the rent falls due to the date of payment or of the institution of the suit, whichever date is earlier.

Interest on arrears.

(2) Nothing in any contract between a landlord and a non-agricultural tenant made before or after the commencement of this Act shall affect the provisions of sub-section (1) relating to interest payable on arrears of rent.

58. (1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twelve and a half *per centum* on the amount of rent decreed, as it thinks fit:

Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.

Provided that interest shall not be decreed when damages are awarded under this section:

Provided also that where damages are awarded—

- (i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and
- (ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twelve and a half *per centum* on the whole amount claimed by the plaintiff as it thinks fit

(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Sections 59-62.)

*Liability for rent on change of landlord or after transfer of tenancy.*

Non-agricultural tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.

59. (1) A non-agricultural tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the non-agricultural tenant.

(2) Where there is more than one non-agricultural tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the non-agricultural tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

Liability.

60. When a non-agricultural tenant transfers his tenancy in whole or in part, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer:

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.

*Illegal impositions.*

Abwab, etc., illegal.

61. All impositions upon non-agricultural tenants under the denomination of *abwab*, *mathat* or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

Fine for realisation of *abwab*, etc.

62. (1) If a landlord or his agent realises from a non-agricultural tenant any imposition declared under section 61 to be illegal, such landlord or agent, as the case may be, shall be liable to the same fine, to be imposed in the same manner, as in sub-section (3) of section 48, and the provisions of sub-sections (4), (7) and (8) of the said section relating to inquiry, fine and procedure shall, *mutatis mutandis* and so far as may be, apply to proceedings under this section.

(2) An appeal shall lie to the District Judge against an order imposing a fine under this section, and the order passed by the District Judge on such appeal shall be final.

(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 63.

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(Chapter VII.—General Provisions as to rent of non-agricultural tenancies.—Section 63.—Chapter VIII.—Improvements.—Sections 64-66.)

63. Every non-agricultural tenant from whom, except under any special enactment for the time being in force, any sum of money is exacted by his landlord in excess of the rent or interest lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees; or, when double the amount so exacted exceeds two hundred rupees, not exceeding double that amount.

Penalty for exaction by landlord from non-agricultural tenant of sum in excess of the rent payable.

#### CHAPTER VIII.

##### Improvements.

64. For the purposes of this Act the term "improvement" used with reference to a tenancy shall mean any work, which adds to the value of the non-agricultural land comprised in the tenancy, which is suitable to such land and consistent with any of the purposes specified in section 4 for which it is being used and which, if not executed on such land, is either executed directly for its benefit, or is, after execution, made directly beneficial to it, and subject to the foregoing provisions, shall include the following, namely—

Definition of "improvement".

- (a) laying out of passages or roads,
- (b) providing open spaces for ventilation,
- (c) providing facilities for taking water,
- (d) laying out drainage connections,

but shall not include any work executed by a non-agricultural tenant if it substantially diminishes the value of his landlord's property.

65. (1) Subject to the provisions of sub-section (2), neither the non-agricultural tenant nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the tenancy.

Rights to make improvements.

(2) If both the non-agricultural tenant and his landlord wish to make the same improvement the non-agricultural tenant shall have the prior right to make it, unless it affects another tenancy or other tenancies under the same landlord.

(3) Any fee realised from a non-agricultural tenant for permission to make any improvement in respect of his tenancy shall be deemed to be an *abwab* and the provisions of section 61 shall apply thereto.

66. (1) If a question arises between the non-agricultural tenant and his landlord—

Collector to decide question as to right to make improvement, etc.

- (a) as to the right to make an improvement, or
- (b) as to whether a particular work is an improvement,

the Collector may, on the application of either party, decide the question.

*(Chapter VIII.—Improvements.—Sections 67, 68.)*

(2) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the District Judge from every order passed by the Collector under sub-section (1) and the order passed by the District Judge on such appeal shall be final.

Registration  
of landlord's  
improvements.

67. (1) A landlord may, by application to such Revenue-officer as the <sup>1</sup>[State] Government may appoint in this behalf, register any improvement which he has lawfully made or which has been lawfully made wholly or partly at his expense or which he has assisted a non-agricultural tenant in making.

(2) Every such application shall be in the prescribed form and shall contain such particulars and shall be verified in such manner, by local inquiry or otherwise, as may be prescribed.

(3) The Revenue-officer receiving the application may reject it if it has not been made within twelve months,—

- (a) in the case of improvements made before the commencement of this Act, from the commencement of this Act; and
- (b) in the case of improvements made after the commencement of this Act, from the date of the completion of the work.

Application  
to record  
evidence  
as to  
improvement.

68. (1) If any non-agricultural tenant holding any non-agricultural land or his landlord desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to the Revenue-officer to whom an application for the registration of such improvement may be made under sub-section (1) of section 67 and such Revenue-officer shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence:

Provided that such Revenue-officer shall not so record the evidence if he considers that there were no reasonable grounds for the making of the application, or if it appears to him that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and the non-agricultural tenant or any persons claiming under them.

<sup>1</sup>See foot-note 5 on page 121. *ante*.

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(Chapter IX.—Other incidents of non-agricultural tenancies.—  
Sections 69-71.—Chapter X.—Conversion of agricultural  
lands into non-agricultural tenancies.—Section 72.)

CHAPTER IX.

Other incidents of non-agricultural tenancies.

69. Where a tenancy is held by a non-agricultural tenant subject to the condition of employment in any industrial concern, such tenant shall, notwithstanding anything elsewhere contained in this Act, be liable to be ejected from the land comprised in such tenancy on the termination of such employment.

Eviction of non-agricultural tenancies conditional upon employment in industrial concerns.

70. No non-agricultural tenant shall be ejected from the tenancy or from any non-agricultural land which he holds except in execution of a decree of a competent Civil Court.

No ejection except in execution of decree.

71. The provisions of the Transfer of Property Act, 1882, and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Act, shall continue to apply to all tenancies to which the provisions of this Act apply.

IV of 1882.

Application of the Transfer of Property Act, 1882, or other law.

CHAPTER X.

Conversion of agricultural lands into non-agricultural tenancies.

72. (1) A tenant holding any land not being non-agricultural land which is situated within any area to which this Act extends or his landlord, may apply to the Collector for the conversion of such land into a tenancy to which the provisions of this Act apply and, on receipt of such application, the Collector shall, by order in writing, direct such conversion subject to payment of such rent not exceeding twice the rent for the time being payable for such land, as the Collector may fix:

Conversion of agricultural lands into non-agricultural tenancies in certain cases.

Provided that no landlord shall be entitled to apply under this sub-section for such conversion of any land except in the case where such land is being used by the tenant by whom it is held for any purpose not connected with agriculture or horticulture without the express or implied consent culture or horticulture without the express or implied consent of the landlord:

Provided further that no order under this sub-section shall be passed without notice, the prescribed process fee for which shall accompany the application,—

- (i) in the case where such application is made by a tenant, to the landlord or the entire body of landlords and to the co-sharer tenants, if any, and



*(Chapter XI.—Judicial Procedure.—Sections 73, 74.)*

- (ii) in the case where such application is made by a landlord, to the co-sharer landlords, if any, and to the tenant or if there be more than one tenant to all such tenants.

(2) Every order passed under sub-section (1) directing the conversion of any land which is not non-agricultural land into a tenancy to which the provisions of this Act apply shall state the date from which such conversion shall have effect and shall specify the rent which shall be payable in respect of the tenancy into which such land is converted and the rent so specified shall not be enhanced during a period of not less than fifteen years from the date of such order.

(3) An appeal shall lie to the Commissioner of the Division from any order of the Collector under this section if it is presented within thirty days from the date of such order and is accompanied by the prescribed fee and the decision of the Commissioner on such appeal shall be final.

(4) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any land which is not non-agricultural land is converted into a tenancy to which the provisions of this Act apply by an order under this section such land shall with effect from the date on which such conversion takes effect become non-agricultural land and the non-agricultural tenant of such land shall for the purposes of this Act be deemed to have held it as such a tenancy with effect from the date on which such tenant or his predecessor in interest was first inducted into the land.

## CHAPTER XI.

## Judicial Procedure.

Regard to be had by Civil Courts to entries in record-of-rights.

73. In all areas for which a record-of-rights has been prepared in pursuance of an order made under section 27 and finally published, a Civil Court shall, in all suits between landlord and non-agricultural tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

Execution of decrees for arrears of rent by assignees of such decrees.

74. Notwithstanding anything contained in rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, an application for the execution of a decree for arrears in respect of any non-agricultural land obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the non-agricultural land has become and is vested in him.

Act V of 1908.

XX of 1949.]

(Chapter XI.—Judicial Procedure.—Sections 75-77.)

75. A suit for the ejectment of a non-agricultural tenant, on the ground that he has used the non-agricultural land in a manner which renders it unfit for use for the purposes of the tenancy shall not be entertained unless the landlord has served in the prescribed manner, a notice in writing on the non-agricultural tenant—

Relief against forfeitures in certain cases.

- (i) specifying the particular misuse complained of; and
- (ii) if the misuse is capable of remedy, requiring the tenant to remedy the same,

and unless the tenant has, where the misuse is capable of remedy, failed within a reasonable time from the date of the service of the notice to remedy the misuse.

76. Where the interest of a non-agricultural tenant in any non-agricultural land is sold in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the purchaser shall take free from all encumbrances which may have been created by such non-agricultural tenant or his predecessor in interest and is subsisting immediately before the purchase takes effect, but subject to the interest of any under-tenant having under section 22 the rights and liabilities of a tenant.

Protection of the interest of an under-tenant having the rights and liabilities of a tenant in case of sale for arrears of rent.

77. Where a non-agricultural tenant or his predecessor in interest has erected any structure on any non-agricultural land held by such tenant and such land is sold in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the purchaser shall be entitled to obtain delivery of possession of the land sold by the removal of such structure:

Delivery of possession of land sold for arrears of rent which has any structure erected on it by a non-agricultural tenant.

Provided that the judgement-debtor shall be allowed reasonable time by the Court to remove such structure from the property sold before the possession of such property is delivered to the purchaser:

Provided further that it shall be open to the purchaser to obtain possession of such land together with such structure on payment of such compensation for the value of such structure to the judgement-debtor as may be agreed upon between the purchaser and the judgement-debtor or, in the case where they do not agree, as may be determined by the Court on application by the purchaser, and, on payment of such compensation, the interest of the judgement-debtor in such structure shall vest absolutely in the purchaser.

*(Chapter XI.—Judicial Procedure.—Sections 78, 79.)*

Purchase of non-agricultural tenancy in execution of a decree for arrears of rent to take effect from the date of confirmation of the sale.

78. Notwithstanding anything contained in the Code of Civil Procedure, 1908, whenever the interest of any non-agricultural tenant in any non-agricultural land is sold in execution of a decree for arrears of rent, and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale.

Act V of 1908.

Rules for disposal of sale proceeds.

79. (1) In disposing of the proceeds of a sale of the interest of a non-agricultural tenant in any non-agricultural land in execution of decree for arrears of rent the following rules instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed, that is to say—

- (a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenancy to sale;
- (b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom the costs of the application made under this section and any rent which may have fallen due to him in respect of the tenancy between the institution of the suit and the date of the confirmation of the sale;
- (d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application unless the Court, for reasons to be recorded in writing, otherwise directs.

(2) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c) of sub-section (1), the Court shall determine the dispute, and the determination shall have the force of a decree.

XX of 1949.]

(Chapter XI.—Judicial Procedure.—Sections 80-82.)

80. (1) The provisions of rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to the interest of any non-agricultural tenant in any non-agricultural land attached in execution of a decree for arrears due thereon.

Release from attachment of non-agricultural tenancies on payment into Court of the amount of decree or on confession of satisfaction by the decree-holder.

(2) When an order for the sale of the interest of any non-agricultural tenant in any non-agricultural land in execution of such a decree has been made, the interest of such non-agricultural tenant in such land shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree including the costs decreed together with the costs incurred in bringing such interest to sale is paid into Court, or the decree-holder makes an application for the release of such interest from such attachment on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person whose interests are affected by the sale may pay money into Court under this section.

81. (1) When any person whose interests are affected by the sale of a tenancy of a non-agricultural tenant advertised for sale in execution of a decree for arrears of rent due in respect thereof or in execution of a certificate for arrears of rent due in respect thereof signed under the Bengal Public Demands Recovery Act, 1913, pays into the Court the amount requisite to prevent the sale—

Amount paid into Court to prevent sale to be a mortgage-debt on the tenancy in certain cases.

- (a) the amount so paid by him shall be deemed to be a debt bearing interest at six and a quarter *per centum per annum* and secured by a mortgage of such tenancy to him;
- (b) his mortgage shall take priority over every other charge on such tenancy other than a charge for arrears of rent; and
- (c) he shall be entitled to possession of the tenancy as mortgagee of the non-agricultural tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

82. When a tenancy to which the provisions of this Act apply is advertised for sale—

- (a) in execution of a decree for arrears of rent due in respect of such tenancy from a superior non-agricultural tenant defaulting, or

Inferior tenant paying into Court may deduct from rent.

Act V of 1908.

Ben. Act III of 1913.

(Chapter XI.—Judicial Procedure.—Sections 83, 84.—Chapter XII.—Miscellaneous.—Section 85.)

- (b) in execution of certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such tenancy from a superior non-agricultural tenant defaulting,

Ben. Act III  
of 1913.

or when such sale is set aside under rule 89 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, and an inferior non-agricultural tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior non-agricultural tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

Act V of  
1908.

Decree-holder may bid at sale, judgment-debtor may not.

83. (1) Notwithstanding anything contained in rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the holder of a decree for arrears of rent in respect of a tenancy of a non-agricultural tenant in execution of which such tenancy is sold may, without the permission of the Court, bid for or purchase the tenancy.

(2) The judgment-debtor shall not bid for or purchase a tenancy so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenancy so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order and any deficiency of price which may happen on the resale, and all expenses attending it shall be paid by the judgment-debtor.

Meaning of "arrears" and "arrears of rent".

84. For the purposes of this Chapter the terms "arrears" and "arrears of rent" shall be deemed to include interest decreed under section 57 or damages awarded in lieu of interest under sub-section (1) of section 58.

## CHAPTER XII.

### Miscellaneous.

Bar to application of Act to certain lands and to certain leases.

85. Nothing in this Act shall apply to—

- (a) any land vested in, or in the possession of—
- (i) a port authority of a major port, or
  - (ii) a railway administration, or
  - (iii) any local authority, or

- (b) any lease in respect of any forest-rights or rights over fisheries or rights to minerals in any non-agricultural land, or

XX of 1949.]

(Chapter XII.—Miscellaneous.—Sections 86-89.)

I of 1894.  
XXXV of  
1939.  
XVII of  
1947.  
West Ben.  
Act II of  
1948.  
West Ben.  
Act XXI of  
1948.  
West Ben.  
Act VIII of  
1951.  
XXX of  
1952.

Ben. Act V of  
1911.

- <sup>1</sup>(c) any land acquired or deemed to have been acquired under the Land Acquisition Act, 1894, or the Defence of India Rules made under the Defence of India Act, 1939, or the Requisitioned Land (Continuance of Powers) Act, 1947, or the West Bengal Land (Requisition and Acquisition) Act, 1948, or the West Bengal Land Development and Planning Act, 1948, or the West Bengal Requisitioned Land (Continuance of Powers) Act, 1951, or the Requisitioning and Acquisition of Immoveable Property Act, 1952, or any other law for the time being in force providing for the compulsory acquisition of land, for Government, while such land remains the property of Government, or
- (d) any land which is required for carrying out any of the provisions of the Calcutta Improvement Act, 1911.

86. Nothing in any contract between a landlord and a non-agricultural tenant made after the commencement of this Act shall take away or limit the rights of such tenant as provided for by this Act, and any contract which is made in contravention of the provisions of this section or which is inconsistent with, or purports to alter the effect of, any of the provisions of this Act, shall, to the extent of such contravention or inconsistency or to the extent it purports to alter such effect, be void and without effect.

Certain contracts not to affect the provisions of the Act.

87. When under this Act a Court is authorised to make an order on the application of a landlord or a non-agricultural tenant, the application shall be made to the Civil Court which would have jurisdiction to entertain a suit for possession of the non-agricultural land comprised in the tenancy in connection with which the application is made.

Jurisdiction in proceedings under this Act.

88. The provisions of this Act shall have effect in respect of all suits, appeals or proceedings including proceedings in execution for ejectment of a non-agricultural tenant which are pending at the date of commencement of this Act.

Application.

89. In computing the period provided by any law for the time being in force for the execution of a decree for ejectment which was stayed under the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940, or for the institution of a suit for the ejectment of a non-agricultural tenant, the period during which the said Act continued in force shall be excluded.

Saving of limitation.

Ben. Act IX of 1940.

<sup>1</sup>This clause (c) was substituted for the original clause (c) by s. 3 of the West Bengal Non-Agricultural Tenancy (Amendment) Act, 1953 (West Ben. Act XXIV of 1953).

## (Chapter XII.—Miscellaneous.—Sections 90-92.)

Computation of the period for which non-agricultural land has been held in certain cases.

90. If any non-agricultural land has been held by a tenant from before the commencement of the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940—

Ben. Act IX of 1940.

- (a) under a lease in writing and the time limited by such lease has expired either before such commencement or at any time during the period the said Act has been in force and the tenant has continued to hold such land during such period, or
- (b) under a lease in writing but no term is specified in such lease, or
- (c) without a lease in writing,

then in calculating for the purposes of sections 7 and 9 the period for which such land has been held by such tenant,—

- (i) in the case where the land has been held under a lease in writing and the time limited by such lease has expired at any time during the continuance in force of the said Act, the period for which such land has been held during such continuance after the expiration of the time limited by such lease, and
- (ii) in other cases, the period for which the said Act has been in force,

shall be excluded.

Repeal of Bengal Act XIX of 1936 and Bengal Act IX of 1940.

91. (1) The Bengal Non-Agricultural Lands Assessment Act, 1936, and the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940, are hereby repealed.

(2) All rents settled, record-of-rights or rent-rolls prepared, orders or notifications issued, suits or other proceedings instituted and other things duly done under the Bengal Non-Agricultural Lands Assessment Act, 1936, shall, in so far as they are consistent with the provisions of this Act, be deemed to have been respectively settled, prepared, issued, instituted or done hereunder.

Rules.

92. (1) The [State] Government may, subject to the condition of previous publication, make rules<sup>2</sup> for carrying out the purposes of this Act.

(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 the landlord or the tenant may apply to the Court under sub-section (2) of section 8;

<sup>1</sup>See foot-note 5 on page 121, *ante*.

<sup>2</sup>For the West Bengal Non-Agricultural Tenancy Rules, 1949, made under section 92 of the Act, see notification No. 10032L. Ref., dated 23.11.49, published in the *Calcutta Gazette*, of 1949, Part I, pages 2109-2120, as subsequently amended from time to time.

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*(Chapter XII.—Miscellaneous.—Section 92.)*

- (b) the determination of a fair and equitable rent referred to in sub-section (3) of section 11;
- (c) the limit of enhancement of rent referred to in sub-section (1) of section 19 and the manner of determination of rent referred to in sub-section (2) of that section;
- (d) the forms of the notices and the amount of the process fees referred to in section 23;
- (e) the manner of making a survey and preparing a record-of-rights in pursuance of an order under section 27 and the procedure to be followed and the powers to be exercised by Revenue-officers when an order under the said section is made;
- (f) the form of a settlement rent-roll referred to in section 29, the manner of preparing the same and the particulars to be specified therein;
- (g) the division of a tenancy and the apportionment of the rent under clause (b) of section 30;
- (h) the manner and period of publication of a draft settlement rent-roll under sub-section (1) of section 31 and the disposal of objections under that sub-section;
- (i) the Revenue authority referred to in sub-section (1) of section 32;
- (j) the publication of the date of confirmation of a settlement rent-roll under sub-section (3) of section 32 and the place and times of inspection of such roll;
- (k) the Revenue authority referred to in sub-section (1) of section 33, the manner of presentation of appeals to such authority and the Board of Revenue and the periods within which such appeals shall be presented under the said sub-section;
- (l) the settlement of rents referred to in section 38;
- (m) the manner of payment or tender of rent by postal money-order under section 44;
- (n) the forms to be used generally or for any particular local area or class of cases for the receipt and counterfoil referred to in section 46 and for the statement of account referred to in sub-section (2) of section 47 and the particulars to be specified in such receipt, counterfoil and statement.



*(Chapter XII.—Miscellaneous.—Section 92.)*

- (o) the cost of transmission of the money deposited in the cases referred to in clauses (a) and (b) of sub-section (1) of section 51 and the amount of the fee referred to in clause (d) of sub-section (2) of that section;
  - (p) the manner of publication of the general notice referred to in sub-section (2) of section 59;
  - (q) the form of, the particulars to be contained in, and the manner of verification of, applications referred to in sub-section (2) of section 67;
  - (r) the amount of process fee referred to in the second proviso to sub-section (1) of section 72 and the amount of fee referred to in sub-section (3) of that section;
  - (s) the manner of service of notice issued under this Act where the mode of such service is not provided in this Act.
-