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ASSAM ACT X OF 1947

THE SYLHET NON-AGRICULTURAL URBAN AREAS TENANCY
ACT, 1947

[Passed by the Assam Legislature.]

[Received the assent of the Governor-General on the 25th April, 1947.]

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An Act to make better provisions relating to the law of landlord and tenant in respect of non-agricultural tenancies in the urban areas of the District of Sylhet.

Preamble.

WHEREAS it is expedient to make better provisions relating to the law of landlord and tenant in respect of non-agricultural tenancies in the urban areas of the District of Sylhet ;

AND WHEREAS the previous sanction of the Governor under section 299(3) of the Government of India Act, 1935, has been obtained to the introduction of this Bill ;

It is hereby enacted as follows :—

Short title.

1. (1) This Act may be called the Sylhet Non-Agricultural Urban Areas Tenancy Act, 1947.

Extent.

(2) It extends to all urban areas in the District of Sylhet.

Commence-
ment.

(3) It shall come into force at once.

Applicat-
ion.

2. Notwithstanding anything contained in any contract or in any law for the time being in force, the provisions of this Act shall apply to all non-agricultural tenancies whether created before or after the date on which this Act comes into force :

(i) Provided that the provisions of this Act shall not apply to—

(a) Temporarily-settled Government land, or

(b) Land owned by the Central or Provincial Government or by any Local Authority, or

(c) A holding which contains one or more buildings owned by the landlord with or without any land appurtenant thereto, and which has been let out to any person, or

(d) Lands used for residence of the landlord or reserved for being used for such purpose in its vicinity and let out to persons or let out in lieu of service or merely in consideration of relationship or affection.

(ii) Provided further that nothing in this Act shall affect the permanent, heritable and transferable rights acquired under any existing law or contract or otherwise.

Definitions.

3. In this Act, unless there is anything repugnant in the subject-matter or context :—

Building.

(a) 'Building' includes a house, outhouse, stable, latrine, shed, hut and any other structure whether made of masonry, bricks, wood, mud, metal, bamboo, sungrass or any other material whatsoever, but does not include the land on which it stands.

Holding.

(b) 'Holding' means a parcel or parcels of land or an undivided share thereof held by a tenant, and forming the subject-matter of one and the same tenancy.

[Price 2 annas or 2d.]

- Land.** (c) 'Land' means land which is let or occupied for residential or business purposes or for purposes incidental thereto, and includes sites for buildings, water, waterways, drains, ditches, canals and tanks appertaining to such land.
- Landlord.** (d) 'Landlord' means a person immediately under whom a tenant holds.
- Occupancy tenant.** (e) 'Occupancy tenant' is a tenant who has acquired a permanent, heritable and transferable right of use and occupation in his holding under the provisions of section 4 of this Act.
- Prescribed.** (f) 'Prescribed' means prescribed by a rule made under this Act.
- Rent.** (g) 'Rent' means whatever is lawfully payable in money or in kind by a tenant to his landlord on account of the use and occupation of his holding under such landlord.
- Tenant.** (h) 'Tenant' means a person who holds land under another person, and who is, but for a special contract, liable to pay rent for that land to the latter, and includes a person who derives his title from a tenant, and a person who continues in possession of any land after termination of his tenancy in respect of that land.
- Urban area.** (i) 'Urban area' means any area declared to be included in a Municipality under the provisions of clauses (a) and (b) of sub-section (2) of section 5, or declared to be a notified area under the provisions of sub-section (4) of section 328, or deemed to be such under the proviso to that sub-section, of the Assam Municipal Act, 1923.
- Acquisition of occupancy right.** 4. (1) Notwithstanding any contract to the contrary, every person who has possessed any land as a tenant continuously for a period of twelve years, either wholly before, or wholly after, or partly before and partly after, the commencement of this Act, shall be deemed to have acquired at the expiration of that period, a permanent, heritable and transferable right of use and occupation in that land subject to the payment of rent, if any, to his landlord.
- (2) In computing the period of twelve years, a tenant shall be entitled to tack to the length of his possession any periods during which his predecessors-in-interest were in possession of the land, provided that there is no break between the periods to be tacked.
- (3) For the purpose of this section, a person will be deemed to have been in possession of any land during any particular period if he was legally entitled to possess such land physically, although he may not have actually possessed the same physically during such period.
- Ejectment of occupancy tenant.** 5. A person who has acquired the status of an occupancy tenant under the provision of section 4 shall not be ejected from his holding except in accordance with the provisions of this Act.
- Ejectment for non-payment of rent.** 6. When an arrear of rent remains due from an occupancy tenant for more than one year after such arrear fell due, such tenant shall be liable to be ejected from the holding in respect of which the arrear is due; provided that no such tenant shall be ejected otherwise than in execution of a decree for ejectment passed by a competent Civil Court on the ground of non-payment of such arrears; provided further that no such decree shall be executed if the tenant, or any other person having an interest in the tenancy, pays into the Court the full amount of the decree including the costs of execution, if any, within such time

as the Court may specify in the decree, or when no such time has been specified by the Court, within thirty days from the date of the signing of the decree.

Ejectment
for impairing
value or for
breach of
covenant.

7. An occupancy tenant shall also be liable to be ejected from his holding in execution of a decree for ejectment passed by a competent Civil Court on the ground that he has used the land or any portion of it in a manner which has materially impaired its value or rendered it unfit for the purposes of the tenancy, or on the ground that the tenant has incurred forfeiture of the holding by the terms of his contract as a penalty for the breach of an express covenant in such contract, such covenant not being inconsistent with the provisions of this Act.

Damages to
plaintiff in
rent suits.

8. In any suit brought by a landlord for the recovery of arrears of rent from his tenant, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages as it thinks fit, if it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay such rent.

Transfer.

9. (1) The holding of an occupancy tenant together with his right, title and interest therein shall, subject to the provisions of this Act, be capable of being transferred in the same manner and to the same extent as any other immoveable property.

Transfer fee

(2) When a holding or part thereof is transferred by sale or otherwise, the transferee, unless he be the sole landlord of such holding, shall within one month of such transfer give notice thereof to the landlord in the prescribed form and in the prescribed manner, and shall pay or tender to the landlord within one month of such transfer a transfer fee equivalent to ten per cent. of the value of the land. If the transfer takes place through a Court sale or in execution of the decree of a Court, such sale shall not be confirmed nor the transfer be made final and effective in the execution case, as the case may be, until and unless the auction purchaser or other transferee has within the aforementioned period of one month issued through the Court upon the landlord the aforesaid notice of such transfer and also deposited in Court the entire amount of transfer fee payable to the landlord under the provisions of this section:

Provided that nothing in this sub-section shall apply to a case of transfer by gift in favour of a presumptive heir of a tenant or to a case of devolution by inheritance or bequest by will in favour of any heir of a deceased tenant or by deed of endowment for religious or charitable purposes.

Payment of
transfer fee
to landlord.

(3) In case of a transfer by gift or by testamentary bequest in favour of a person other than an heir, or of any other transfer in respect of which no consideration has passed or the amount of consideration cannot be satisfactorily assessed, the transfer fee shall amount to ten per cent. of the value of the land transferred calculated as on the date when such transfer takes effect.

(4) No transfer in respect of which transfer fee is payable under sub-section (2) or (3) but has not been paid or tendered to the landlord by the transferee in accordance with sub-section (2) or deposited in Court in accordance with sub-section (5) shall be binding on the landlord, who will be entitled to treat such transferee as a trespasser, and the land transferred to have been surrendered by the tenant who made the transfer, and the landlord shall be further entitled to sue such transferee for ejectment from such land and for obtaining khas possession of such land through the Court:

Provided that a decree for khas possession so obtained shall not be subject to execution if the transferee deposits in Court the proper transfer fee with such compensation as the Court directs, and the costs of the suit, within 30 days of the date of the decree.

Deposit of transfer fee in Court.

(5) When the landlord refuses to accept the transfer fee tendered to him by the transferee, the latter shall, within a period of three months from the date of such refusal, make a deposit of the amount in the Court and serve a notice of such deposit upon the landlord through the Court.

Rights of the transferee.

(6) On payment of the transfer fee in accordance with sub-section (2) or on deposit thereof in Court in accordance with sub-section (5) the transferee shall acquire all the rights of the transferor in the land transferred to him.

Landlord's right of pre-emption.

(7) In all cases of transfers by sale, except to presumptive heirs or co-sharers of the tenant, the landlord shall have the right of pre-emption on payment to the transferee an amount equal to the total consideration for the transfer or the market value of the property transferred, whichever be the less, and may apply to the Court for the determination of such market value:

Provided that if the Court shall find the market value as aforesaid to be less than the consideration for the transfer, the transferee shall be entitled to recover the difference from the transferor.

Provided further that the landlord shall be precluded from exercising the right of pre-emption if he accepts the transfer fee or fails to exercise the right of pre-emption within two months of the service on him of the notice referred to in sub-section (2) or, if no such notice has been served upon him, within two months of the date of his knowledge of the sale.

Provided further that an application for pre-emption under this sub-section shall be dismissed unless the applicant, at the time of making it, deposits in Court an amount equal to the total consideration for the transfer.

(8) Every transfer made under this section shall be effected by a registered instrument, which shall show the value of the land and the value of the buildings thereon, if any, separately, unless such transfer takes place in course of proceedings in Court; and all notices required to be served by this Act shall be served by registered post.

Explanation.—For the purpose of this section, the word 'transfer' shall not include any lease or mortgage for a definite term of twelve years or less, but shall include all other leases and mortgages. The consideration for a lease shall be computed to be the sum of the amount of the premium or salami paid as consideration by the lessee for the grant of the lease in his favour and fifteen times the amount of the annual rent reserved. The consideration for a mortgage shall be taken to be the amount advanced to the tenant by the mortgagee in consideration of the mortgage in his favour.

Enhancement of rent.

10. The rent of a holding shall not be enhanced except in accordance with the provisions of this section.

(i) The rent may be enhanced by a contract provided such contract is reduced into writing and is registered;

A landlord may make an application to the Court having jurisdiction to entertain a suit for ejection in respect of the holding, for fixing a fair and equitable rate of rent for the holding, and thereupon the Court shall issue notice of such application upon the tenant and after considering such evidence as the parties may produce before it, pass an order fixing the amount of rent payable for the holding, and such order shall, subject to appeal, be binding on both the landlord and the tenant with effect from the date of the application filed by the landlord :

Provided always—

(a) that the rent previously payable for the holding shall not be enhanced by more than three annas in the rupee,

(b) that no enhancement shall be made within a period of ten years from the date of the next previous enhancement by contract or by order of the Court, and

(c) that the Court may in any case refuse to grant an enhancement for sufficient reasons to be recorded by it.

(ii) The order passed by the Court on an application made under this section shall have the effect of a decree and shall be appealable.

Compensation on ejection.

11. (1) Every occupancy tenant shall, on being ejected from a holding, be entitled to be paid by the landlord compensation amounting to the value of any building which may have been erected on the holding by him or by his predecessors-in-interest.

(2) He shall also be entitled to be paid compensation for any improvement to the land effected as also for any trees planted on the holding by him or by his predecessors-in-interest.

Ascertainment and payment of compensation.

12 (1) In a suit for ejection against an occupancy tenant in which the landlord succeeds, the Court shall ascertain the amount of compensation, if any, payable under section 11, and the decree pronounced in the suit shall state such amount and it shall be directed therein that on payment thereof into Court by the landlord within three months from the date of the decree the tenant shall put the landlord in possession of the land with the buildings and the trees thereon, and that in default thereof by the tenant the landlord will be entitled to obtain delivery of such possession through Court.

Landlord's dues to be set off.

(2) If in any such suit, the Court finds that any sum of money is due by the tenant to the landlord for rent or otherwise in respect of the holding, the Court shall set off in the decree such sum against the sum found due under sub-section (1).

Consequence of non-payment.

(3) If the amount due is not paid into Court by the landlord within the time provided in sub-section (1), his suit for ejection shall stand dismissed.

Basis of calculation of compensation.

13. If, as a result of any act or negligence on the part of the tenant, the building improvement or trees in respect of which compensation has been assessed under section 12 have ceased to exist or have deteriorated in value between the date of the decree and the date of the delivery of possession of the land to the landlord, the Court shall, on application by the landlord, issue a notice of such application upon the tenant and consider such evidence as the parties may produce before it, and may thereafter amend the decree already passed by it by reducing the amount of compensation awarded in such decree to the tenant by such amount as it thinks fit or by disallowing any compensation whatever to the tenant.

Pending suits.

14. The provisions of this Act shall have effect in respect of all suits or proceedings, including proceedings in execution, for ejection of a person, who would under the provisions of this Act be an occupancy tenant, which are pending at the date of commencement of this Act.

Notice on ejection suit.

15. No suit for ejection except for arrears of rent shall be instituted until after the expiration of one month from the date of the receipt by the tenant of a notice in writing by the landlord requiring the tenant to surrender possession of the land in favour of the landlord.

Rights not to be taken away or limited by contract. Rights of occupancy tenants.

16. Nothing in any contract made by a tenant shall take away or in any way limit or affect his rights under this Act.

17. An occupancy tenant shall be entitled—

- (a) to erect any pucca structure,
- (b) to dig any tank, and
- (c) to plant, enjoy the flowers fruits and other products of, fell and utilise or dispose of the timber of, any tree on the land comprised in his tenancy.

Power to make rules.

18. The Provincial Government may, from time to time, by notification in the official Gazette, make rules consistent with the provisions of this Act for carrying out the purposes of this Act.