

West Bengal Act XVIII of 1965

THE WEST BENGAL LAND REFORMS (AMENDMENT) ACT, 1965.

[Passed by the West Bengal Legislature.]

[Assent of the President was first published in the *Calcutta Gazette, Extraordinary*, of the 31st July, 1965.]

[31st July, 1965.]

An Act to amend the West Bengal Land Reforms Act, 1955.

West Ben.
Act X of
1956.

WHEREAS it is expedient to amend the West Bengal Land Reforms Act, 1955, for the purposes and in the manner herein-after appearing;

It is hereby enacted in the Sixteenth Year of the Republic of India, by the Legislature of West Bengal, as follows:—

1. This Act may be called the West Bengal Land Reforms (Amendment) Act, 1965. Short title.

2. In section 2 of the West Bengal Land Reforms Act, 1955 (hereinafter referred to as the said Act),— Amend-
ment of
section 2
of West
Ben. Act
X of 1956.

(1) after clause (6), the following clause shall be inserted and shall be deemed always to have been inserted, namely:—

“(6A) “incumbrance” means any lien, easement or other right or interest created by a *raiyyat* on his holding or in limitation of his own interest therein, but does not include the right of the *bargadar* to cultivate the land of the holding;”

(2) in clause (7), for the words “and includes homesteads”, the words, brackets and figures “other than land comprised in a tea-garden which is retained under sub-section (3) of section 6 of the West Bengal Estates Acquisition Act, 1953, and includes homesteads” shall be substituted and shall be deemed always to have been substituted.

West Ben.
Act I of
1954.

3. In section 4 of the said Act,—

Amend-
ment of
section 4¹

(1) after sub-section (2), the following sub-sections shall be inserted, namely:—

“(2A) No *raiyyat* shall dig or use, or permit any person to dig or use, earth or clay of his holding for the manufacture of bricks or tiles for any purpose, other than his own use, except with the previous permission in writing of the State Government and in accordance with the terms and conditions, if any, of such permission.

(Section 4.)

(2B) If any *raiyat* commits a breach of the provisions of sub-section (2A), the prescribed authority may, after giving in the prescribed manner an opportunity to the *raiyat* to show cause against the action proposed to be taken, impose upon him a fine not exceeding three hundred rupees and, where the breach is a continuing one, a further fine not exceeding fifty rupees for each day during which the breach continues. Such fine, if not duly paid, shall be recoverable as a public demand.

(2C) An appeal shall lie from any order made under sub-section (2A) in accordance with the provisions of sections 54 and 55.”;

(2) in clause (b) of the proviso to sub-section (3), after the words “persons who have retained lands under”, the words “clause (f) in so far as it relates to orchards or under” shall be inserted.

**Addition
of new
section 4A:**

4. After section 4 of the said Act, the following new section shall be added, namely:—

“Certain restrictions on rights of *raiyats* in Sadar, Kalimpong and Kurseong sub-divisions of Darjeeling district.

4A. (1) In the Sadar sub-division, Kalimpong sub-division and Kurseong sub-division of the district of Darjeeling, the Deputy Commissioner of the district may, from time to time, give directions regarding the form of cultivation to be adopted by a *raiyat* in respect of his holding or prohibiting a *raiyat* from cutting more than one tree from his holding except with the previous permission in writing of the Deputy Commissioner or such other officer as may be authorised by the State Government in this behalf.

(2) For contravention of any of the directions given under sub-section (1), the Deputy Commissioner may, after giving the defaulting *raiyat* an opportunity to show cause against the action proposed to be taken, impose upon him, by order, a fine not exceeding one hundred rupees which, if not duly paid, shall be recoverable as a public demand.

(3) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Commissioner against any order passed by the Deputy Commissioner under sub-section (2) and the decision of the Commissioner shall be final.”.

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(Sections 5—7.)

5. For section 12 of the said Act, the following section shall be substituted, namely:—

Substitution of new section for section 12.

“Land gained by recess of river or sea.

12. Any land gained by gradual accession to a holding, whether from the recess of a river or of the sea, shall vest in the State Government and the *raiyyat* who owns the holding shall not be entitled to retain such land as an accretion thereto.”

6. Section 13 of the said Act shall be omitted and shall be deemed always to have been omitted.

Omission of section 13.

7. After Chapter II of the said Act, the following Chapter shall be inserted, namely:—

Insertion of new Chapter IIA.

“CHAPTER IIA.

Restrictions on alienation of land by Scheduled Tribes.

Provisions of Chapter IIA to override other provisions of this Act.

14A. The provisions of this Chapter shall have effect notwithstanding anything to the contrary contained elsewhere in this Act.

Restrictions on alienation of land by Scheduled Tribes.

14B. Save as provided in section 14C, any transfer by a *raiyyat* belonging to a Scheduled Tribe of his holding or part thereof shall be void.

Modes of transfer of land by Scheduled Tribes.

14C. (1) A *raiyyat* belonging to a Scheduled Tribe may transfer his holding or part thereof in any one of the following ways, namely:—

- (a) by a complete usufructuary mortgage entered into with a person belonging to the same Scheduled Tribe to which the transferor belongs for a period not exceeding seven years;
- (b) by sale or gift to the Government for a public or charitable purpose;
- (c) by simple mortgage to the Government or to a registered Co-operative Society;
- (d) by gift or will to a person belonging to the same Scheduled Tribe to which the transferor belongs, when such transfer is made with the previous permission, in writing, of the Revenue Officer containing the terms of the transfer;

(Section 7.)

(e) by a complete usufructuary mortgage for a term not exceeding seven years to a person other than a person referred to in clause (a) or by sale or exchange in favour of any person when such transfer is made with the previous permission, in writing, of the Revenue Officer containing the terms of the transfer.

(2) In the case of sale to a person not belonging to the Scheduled Tribe to which the transferor belongs, the Revenue Officer shall not give the permission referred to in clause (e) of sub-section (1) unless he is satisfied that a purchaser belonging to such Scheduled Tribe, who is willing to pay the fair market price for the land is not available. In the case of such a purchaser being available, the Revenue Officer shall, by an order in writing, direct that the holding be sold to such person on payment of the price fixed by him within such time, not exceeding six months, as may be specified in the order. On the failure of such person to tender the price so fixed within the time allowed, the Revenue Officer may, on an application in this behalf, accord written permission for the sale of the holding to any other person at a price not lower than the price so fixed.

(3) A complete usufructuary mortgage referred to in sub-section (1) may be redeemed at any time before the expiry of the term.

(4) A mortgagor under a complete usufructuary mortgage intending to redeem such mortgage before the expiry of its term or any person acting on his behalf, may make an application for redemption in such form and containing such particulars as may be prescribed to the Revenue Officer. On receipt of such application the Revenue Officer shall after service of notice to the mortgagee make an enquiry in the prescribed manner and pass a preliminary order declaring the amount due under such mortgage to the mortgagee at the date of such order and fixing a date for payment of such amount by the mortgagor. If the mortgagor pays such amount by the date so fixed the Revenue Officer shall make a final order directing the mortgagee to restore possession of the mortgaged property and to deliver up the mortgage-deed, to the mortgagor.

(5) A final order made under sub-section (4) shall be executed by the Revenue Officer in such manner as may be prescribed.

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(Section 7.)

Explanation.—In this section “complete usufructuary mortgage” means a transfer by a *raiyat* of the right of possession in any land for the purpose of securing the payment of money or the return of grain advanced or to be advanced by way of loan upon the condition that the loan, with all interest thereon, shall be deemed to be extinguished by the profits arising from the land during the period of the mortgage.

No registration or recognition of transfers in contravention of section 14C.

14D. (1) No transfer by a *raiyat* belonging to a Scheduled Tribe shall be valid unless made by a registered instrument.

(2) No instrument of transfer made in contravention of section 14C shall be registered or in any way recognised as valid in any Court exercising civil, criminal or revenue jurisdiction.

Power to Revenue Officer to set aside improper transfers by *raiyat*.

14E. (1) If a transfer of a holding or any portion thereof is made by a *raiyat* belonging to a Scheduled Tribe in contravention of the provisions of section 14C, or if in the case of a

complete usufructuary mortgage referred to in clause (a) or clause (e) of sub-section (1) of section 14C, the transferee has continued or is in possession for more than seven years from the date of the transfer, the Revenue Officer may, of his own motion or on an application made in that behalf, and after giving the transferee an opportunity of being heard, by an order in writing, eject the transferee from such holding or part thereof:

Provided that the transferee whom it is proposed to eject has not been in continuous possession for twelve years under the transfer made in contravention of section 14C, or in the case of a complete usufructuary mortgage referred to in clause (a) or clause (e) of sub-section (1) of section 14C, for twelve years from the expiry of the period of seven years.

(2) When the Revenue Officer has passed any order under sub-section (1), he shall restore the transferred holding or part thereof to the transferor or his successor-in-interest.

Restriction on the sale of *raiyat's* holding or any portion thereof.

14F. No decree or order shall be passed by any court for the sale of the holding or any portion thereof, of a *raiyat* belonging to a Scheduled Tribe nor shall any such holding be sold in execution of any decree or order.

(Section 7.)

Power to the Revenue Officer to settle or sell holding for realization of certificate dues.

14G. (1) When a certificate is filed for the recovery of an arrear of revenue or any other public demand recoverable under the Bengal Public Demands Recovery Act, 1913, in respect of the holding of a *raiyat* belonging to a Scheduled Tribe, the Certificate Officer shall, before a proclamation for sale of the holding is issued in execution of the certificate, refer the case to the Revenue Officer having jurisdiction who may, in his discretion,—

Ben. Act
III of 1913.

- (a) eject the defaulting *raiyat* from his holding and put another person belonging to a Scheduled Tribe in possession of the holding for a period not exceeding seven years on payment of the amount due in respect of the certificate by him; or
- (b) sell the holding to a member of a Scheduled Tribe, if available, and, if not available, to any other person at a fair market price to be fixed by the Revenue Officer, not being less than the amount due in respect of the certificate:

Provided that if the homestead of the defaulting *raiyat* is comprised in the holding, he shall not be ejected from such homestead under clause (a), nor shall such homestead be sold under clause (b).

- (2) (i) If the Revenue Officer puts any person in possession of the holding under clause (a) of sub-section (1) for any period, the amount paid by such person shall, at the end of such period, be deemed to have been satisfied in full, and the Revenue Officer shall then restore the holding to the defaulting *raiyat*;
- (ii) if the Revenue Officer sells the holding under clause (b) of sub-section (1), any amount that may remain out of the sale-proceeds after satisfaction of the amount due in respect of the certificate shall be paid to the defaulting *raiyat*.

Appeal and revision,

14H. An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the Collector of the district from any order made under sub-section (4) of section 14C or section 14G and his order shall be final:

Provided that an application for revision or modification of the order passed by the Collector on appeal shall lie to the Commissioner if made within sixty days from the date of the order:

Provided further that the provisions of section 5 of the Limitation Act, 1963, shall apply to an appeal under this section.

Act 36 of
1963.

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(Section 8.)

Bar to suits.

14I. No suit shall lie in any Civil Court to vary or set aside any order passed by the Revenue Officer in any proceeding under this Chapter except on the ground of fraud or want of jurisdiction.”.

8. In section 18 of the said Act,—

Amend-
ment of
section 18.

(a) to sub-section (1), the following proviso shall be added and shall be deemed always to have been added, namely:—

“Provided that no application for decision of any dispute in respect of delivery of the produce referred to in clause (a) shall be entertained unless such application is presented to the officer or authority within two years from the date on which the delivery of the produce falls due.”;

(b) after sub-section (2), the following sub-section shall be inserted and shall be deemed always to have been inserted, namely:—

“(2A) If in deciding any question referred to in sub-section (2), the officer or authority mentioned in that sub-section finds that any default in the delivery of the share of the produce is due to doubt or uncertainty on the question whether the land in respect of which the share of the produce is claimed has vested in the State or has been retained under the West Bengal Estates Acquisition Act, 1953, by the person claiming the share, such officer or authority shall, instead of terminating cultivation of the land by the *bargadar* on the ground of default, allow him time to deliver the share of the produce due to the person entitled thereto or to pay the price thereof by annual instalments not exceeding four, the first of such instalments being deliverable or payable on a date not later than the first day of *Chaitra* next following the date of the order.”;

West Ben.
Act I of
1954.

(Section 8.)

(c) after sub-section (2A), the following sub-section shall be inserted, namely:—

“(2B) If in deciding any dispute referred to in clause (b) of sub-section (1), the officer or authority mentioned in that sub-section makes any order terminating cultivation by a *bargadar* on the ground of default in the delivery of the share of the produce for one year only, such officer or authority shall, at the time of making such order, direct the *bargadar* to deliver the share of the produce or pay the price thereof to the person whose land he cultivates by the first day of *Chaitra* of the year next following the year in respect of which default was made or, where such order is made after such date, by the first day of *Chaitra* next following the date of such order, and no such order shall be executed if the share of the produce or the price thereof is so delivered or paid by the *bargadar* by such date as so directed.”;

(d) after sub-section (4), the following sub-sections shall be added, namely:—

“(5) If the decision of any dispute referred to in clause (a) of sub-section (1) given before the commencement of the West Bengal Land Reforms (Amendment) Act, 1962, does not specify the money value of the share of the produce to be delivered, the *bargadar* or the person whose land is cultivated by the *bargadar* or the successor-in-interest of such person may, within ninety days from the commencement of the West Bengal Land Reforms (Amendment) Act, 1965, make an application before the officer or authority who decided the dispute or his or its successor for review of the decision for the purpose of specifying the money value of the share of the produce to be delivered payable in default of delivery of such share.

(6) Upon receipt of such application the officer or authority shall, after giving the parties to the dispute an opportunity of being heard and adducing evidence, pass an order specifying the money value of the share of the produce to be delivered, which shall be payable in default of delivery of such share.”.

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(Sections 9—11.)

9. After sub-section (2) of section 19 of the said Act, the following sub-sections shall be added and shall be deemed always to have been added, namely:—

Amendment of section 19.

“(3) The Munsif hearing the appeal may for sufficient cause make an order staying execution of the order appealed against.

(4) When the Munsif makes an order under sub-section (3), a copy of such order shall be sent to the officer or authority before whom an application for execution is pending.”

10. For section 22 of the said Act, the following section shall be substituted, namely:—

Substitution of new section for section 22.

“Liability to pay revenue. 22. (1) A *raiyat* shall be liable to pay revenue for his holding.

(2) Revenue shall be a first charge on the holding.”

11. For section 23 of the said Act, the following sections shall be substituted, namely:—

Substitution of new sections for section 23.

“Determination of revenue. 23. (1) A *raiyat* shall pay as revenue for his holding the same amount which

was payable by him as rent for the lands comprised in such holding immediately before the coming into force of the provisions of this Chapter.

(2) Where no rent was payable in respect of the lands comprised in such holding immediately before the coming into force of the provisions of this Chapter, the *raiyat* shall pay revenue at such rate as the Revenue Officer may determine in the prescribed manner, having regard to the rent that was generally being paid immediately before the coming into force of the provisions of this Chapter for lands of similar description and with similar advantages in the vicinity.

Abatement of revenue in respect of homestead.

23A. Where the holding of a *raiyat* comprises his homestead, the *raiyat* shall be entitled, on an application to the Revenue Officer, to have the revenue of such holding abated by such amount as bears the same proportion to such revenue as the area covered by such homestead or one-third of an acre, whichever is lesser, bears to the area of such holding:

Provided that nothing in this section shall apply where such homestead lies within—

- (a) any area within the local limits of a municipality,
- (b) any area constituted by the State Government as a notified area under section 93A of the Bengal Municipal Act, 1932, or
- (c) any such area in a newly-developing locality as may be specified by the State Government by notification in the *Official Gazette*.”

(Sections 12—18.)

Omission
of sections
24, 25, 26,
27, 28 and
29.

12. Sections 24, 25, 26, 27, 28 and 29 of the said Act shall be omitted.

Omission
of section
30.

13. Section 30 of the said Act shall be omitted.

Omission
of sections
31 and 32.

14. Sections 31 and 32 of the said Act shall be omitted.

Substitu-
tion of new
section for
section 33.

15. For section 33 of the said Act, the following section shall be substituted, namely:—

“Grounds for alteration of
revenue.

33. The revenue payable by a *raiyat* may be altered, in the manner prescribed, by the Revenue Officer if the holding of the *raiyat* has increased or decreased in area due to amalgamation, purchase, partition, sub-division, acquisition or any other cause whatsoever subsequent to the determination of the revenue.”

Substitu-
tion of new
section for
section 34.

16. For section 34 of the said Act, the following section shall be substituted, namely:—

“Bar to jurisdiction of
Civil Court.

34. No suit or other legal proceedings shall be instituted in any Civil Court in respect of the determination of any revenue or the omission to determine any revenue under this Chapter.”

Amend-
ment of
section 38.

17. To section 38 of the said Act, the following further proviso shall be added, namely:—

“Provided also that whenever a holding is sold in pursuance of this section, the purchaser may annul any incumbrance on the holding in the manner prescribed.”

Substitu-
tion of new
section for
section 51.

18. For section 51 of the said Act, the following section shall be substituted, namely:—

“Revision or preparation
of the record-of-rights.

51. (1) The State Government may, in any case if it so thinks fit, make an order directing that record-of-rights in respect of any district or part of a district be revised or prepared by a Revenue Officer in accordance with the provisions of this Chapter and such rules as may be made by the State Government in this behalf.

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(Section 19.)

- (2) A notification in the *Official Gazette* of an order under sub-section (1) shall be conclusive evidence that the order has been duly made.
- (3) 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 such order, such particulars as may be prescribed.”.

19. After section 51 of the said Act, the following sections shall be inserted, namely:—

Insertion
of new
sections
51A, 51B,
51C and
51D.

“Draft and final publication
of the record-of-rights.

- 51A. (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.
- (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 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 Special Judge appointed under section 51D for the purpose of this section.

(Section 19.)

- (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 an extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied.
- (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 51B 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.

Correction of entry in
record-of-rights.

51B. 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 51A, correct any entry in such record-of-rights which he is satisfied has been made owing to a *bona fide* mistake:

Provided that no such correction shall be made if an appeal affecting such entry has been made under sub-section (5) of section 51A or until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

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(Section 20.)

Bar to jurisdiction of Civil Court in respect of certain matters.

51C. When an order has been made under sub-section (1) of section 51 directing revision or preparation of a record-of-rights, no Civil Court shall entertain any suit or application for the determination of revenue or the incidents of any tenancy to which the record-of-rights relates, and if any suit or application in which any of the aforesaid matters is in issue, is pending before a Civil Court on the date of such order, it shall be stayed and it shall, on the expiry of the period prescribed for an appeal under sub-section (5) of section 51A or when such an appeal has been filed under that sub-section, as the case may be, on the disposal of such appeal, abate so far as it relates to any of the aforesaid matters.

Explanation.—In this section “suit” includes an appeal.

Appointment of Special Judge.

51D. The State Government may appoint a person who is or has been a District Judge or an Additional District Judge to be a Special Judge for the purpose of sub-section (5) of section 51A.”

20. In section 59 of the said Act,—

(i) for the words “The following”, the words “Without prejudice to the provisions of clause (p) of section 2 of the West Bengal Estates Acquisition Act, 1953, the following” shall be substituted, and

Amend-
ment of
section 59.

(ii) the proviso shall be omitted.

West Ben.
Act I of
1964.