Historical Background and Objectives of Non-Agricultural Tenancy Act, 1949

Course Name: Land Law

Course Code: 203

Submitted by

Legal Brotherhood

Submitted to

Mohammad Azharul Islam

Lecturer

Deparment of Law

University of Dhaka

Group Name: Legal Brotherhood

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Prologue:

In all countries there are mainly two classes of lands. These are agricultural land and non-agricultural land. Agricultural land generally means land used for agricultural and horticultural purpose. Non-agricultural land means land used for purposes other than agriculture and horticulture.

The incidents of tenancies of agricultural land were provided in the Bengal Tenancy Act, 1885 and on its repeal in the State Acquisition and Tenancy Act 1950. The incidents of tenancies of non-agricultural land were first governed by the Transfer of Property Act, 1882 and then exclusively by the Non-Agricultural Tenancy Act, 1949.

S. C. Mitra has discussed- `there are no legislative provision as to non-agricultural lands, except such as are contained in the Transfer of Property Act, 1882, the Indian Contract Act and stray sections in the Revenue and Rent Laws. When Act VIII of 1885 was in course of preparation, an unsuccessful attempt was made to have a comprehensive code for

agricultural lands as well as non-agricultural. Trained in England, trained in thoughts peculiar to the English people, many of the Judges and the lawyers in this country believe the English rule of land law to be the most equitable and they are tempted to apply them to tenancy in this country. Whenever they have to decide cases according to justice, equity and good consciences.

According to the ancient stages and at the early period of the British rule in India, the technical rule of English Law ***quidquid plantatur solo solo cedit***[1] was not applicable. The Hidaya also says,

`if a person hires unoccupied land, for the purpose of building or planting, ___it is incumbent on the lessee to remove the buildings or trees.[2]*'*

No distinction was made between substantial and unsubstantial structures. The question arose early as to the applicability in India of the English Law as to fixtures, and the Sudder Dewany Adwalat held that it did not prevail in this country. The custom and usages of the country and law as laid down by the sages were given effect to, even where the relationship of landlord and tenant didn't exist between the parties.[3]

In the Permanent Settlement Act of 1793, public or customary rights were not sufficiently protected, though their existence must be traced to a very early stage of civilization. In ancient time, if a forest is reserved, the taking of wood without permission is punishable. In such state of affirms first step was taken by enacting the Bengal Non-Agricultural Assessment Act, 1936 (Bengal Act XIX of 1936) providing merely the rules for assessment of non-agricultural lands in temporarily settled estates and government estates. We have observed that in the absence of any law in respect of non-agricultural lands, the right of non-agricultural tenants was regulated by the terms of their contracts with the landlords.

The provision of the Transfer of Property Act, 1882 afforded them little protection against arbitrary eviction and enhancement of rent. To meet such a situation the government of Bengal set up a Committee of Enquiry in 1938 called Non-Agricultural Land Enquiry in 1938 called Non-Agricultural Enquiry Committee (commonly known as the Chandina Committee) to investigate the existing rights and obligations of the non-agricultural tenants and to recommend necessary measures for safeguarding the interests of both the landlords and tenants. The appointment of the committee was a signal for a large scale eviction of tenants by the landlords.

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1. The maxim is not now strictly observed in England. Elliot vs. Bishop (1854) 10 EXCH. 496 (507).

2. Hamilton's Hidaya, Vol. III, P 404 2nd.

3. Tankee vs. Buknooree (1856) S.D.A 761.

Matters come to ahead and Government had to pass the Bengal Non-Agricultural Tenancy (temporary provisions) Act, 1940 (Bengal Act IX of 1940) stopping such eviction in all municipal areas other than Calcutta. The life of Act IX of 1940 was extended from time to time until it was repealed and replaced by section-90 of the Non-Agricultural Tenancy Act, 1949. After considering the report submitted by the said non-agricultural Land Enquiry Committee, the government of Bengal framed the Bengal Non-Agricultural Tenancy Bill, 1946 regulating the rights and liabilities of landlords and tenants in respect of non-agricultural lands.

The bill was introduced in the Bengal Legislative assembly in 1946 and referred to a select committee. The bill as reported by the select committee was passed by that Assembly but it couldn't become law as it was not considered and passed by the Bengal Legislative Council owing to the constitutional changes.

The administration was handed over the Government of India and Pakistan in August, 1947. The new Government of East Bengal had re-examined the whole matter and were of the option that non-agricultural tenants were in urgent need of better security and that necessary legislation should be undertaken immediately in this province. It was also considered that the provision made in the Bengal Non-Agricultural Tenancy Bill 1946 as passed by the Bengal Legislative Assembly will meet the requirement of the situation.

With this object in view the East Bengal Non-Agricultural Tenancy Bill, 1949 was published in the Dhaka Gazette on 14th January, 1949, and introduced in the East Bengal Legislative Assembly on 12th March, 1949.[4]

The bill was passed on the Non-Agricultural Tenancy Act, 1949(East Bengal Act XXIII of 1949) on 10th April, 1949.[5] This new Act regulates the rights and obligations of the landlords and the tenants in respect of non-agricultural lands. It came into force from 20th October, 1949.[6]

It may be noted that Bengal Non-Agricultural Tenancy Bill of 1946 is the source of both the Non-Agricultural Tenancy Act, 1949 as well as the West Bengal Non-Agricultural Tenancy Act, 1949. The West Bengal Act XX of 1949 came into force from 15th May 1949. The preamble of both acts is the same. The provisions are more or less similar. In the view of similarity of the provisions in the two Acts, the decisions of the Calcutta High Court and The Supreme Court of India have been referred to the appropriate places.

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4. East Bengal Legislative Assembly Proceedings 1949.

5. ibid, page 213

6. Notification number 4995 L.R. Date 19th October, 1949.

Historical Background of Land Law:

The expression "Land Law" in typical sense denotes the law of real property meaning estates and interests in land. It relates to land, rights in and over land and the processes whereby those rights and interests are created, transferred and extinguished.[7]

Definition of Land Law:

The term "Land" has been defined in the **Osborn's Concise Law Dictionary** as any ground, soil or earth whatsoever. It legally includes also all castles, houses and other buildings, also water. It includes land of any tenure, mines and minerals, whether or not held apart from the surface, buildings or parts of the buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments, also a manor, an advowson and a rent and other incorporeal hereditaments and an easement, right, privilege or benefit in or over or derived from land, but not an undivided share in land.[8]

Classification of Land Law:

For the purpose of land law, land can be divided into,

1. Agricultural Land
2. Non-Agricultural Land

Agricultural Land:

Agricultural land can be defined as land, which is used for purposes connected with agriculture or horticulture.

Non-Agricultural land:

Section 2(4) of the Non-agricultural Act, 1949 (commonly known as NAT Act) defines "non-agricultural land" as land which is used for purposes not connected with agriculture or

7. Dixon, Martin, Principles of Land Law, Cavendish publishing Limited, fourth ed. London, 2002, pp 1-4.

8. Bird, Roger, Osborn's Concise Law Dictionary, (ed), Universal Law Publishing Co. Pvt. Ltd. Seventh edition, Delhi, 1983, p- 195.

horticulture and includes any land which is held on lease for purposes not connected with horticulture irrespective whether it is used for any such purposes or not and a parcel of agricultural land converted into a tenancy by the order of the Collector[9] to which the NAT Act applies and but does not include:

(a) A homestead to which the provisions of **section 182** of the **Bengal Tenancy Act**, **1885** (commonly known as the BT Act) apply;

(b) Land which was originally leased for agriculture or horticulture 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 then twelve years; and

(c) Land which held for purposes connected with cultivation or manufacture of tea.

With the introduction of SAT Act, of which section 180 has repealed the BT Act 1885 and equal the status of the "raiyats as maliks", homestead of a malik is now governed by the SAT Act and excluded from the operation of the NAT Act 1949.

Non-Agricultural land does not include lease of structures with land but the cases of tenants of non-agricultural land, who have recited structures therein, are governed by the provisions of the NAT Act 1949.

In 1970, the Supreme Court held in a decision[10] that, a non agricultural lease, according to the provisions of the Act is a lease ion respect of non-agricultural land alone; but does not include any building or hut occupied by a tenant if such building or hut has been erected or is own by the lesser. A non-agricultural lease in respect of both land and huts standing thereon is clearly outside the ambit of the Act. If this decision is read with an earlier decision[11] given by the High Court in 1960 it can be said that a user can play very important role in determining whether a land will be identified as non-agricultural land or not. Moreover, under section 5(c) (II) and 85 of the NAT Act, a non-agricultural land does not include the lands held for the exercise of rights over forests or rights over fisheries or rights over minerals.

Land Administration in Bengal during Ancient Period:

9. Kabir, Lutful, Land Laws of Bangladesh, Vol IV, Law House, Dhaka, 1982, PP: 38-47.

10. Abdul Mutaleb vs. Mst. Rezia Begum 22 DLR (SC) 134.

11. Moulana Hafez Athar Ali vs. Abdul Taher Bhuiyan, 12 DLR, 758.

Land law as a subject is rooled in history. Many of the most fundamental concepts and principles of land law emerged from the economic and social changes that began earlier in the society. This also applies in the case of sub-continent, particularly in Bengal, Bihar and Orissa.[12]

The most ancient land laws, i.e., the land laws prevailing in the Hindu period in Bangladesh can be traced to the practices of aboriginal communities involving payment of a share of the produce of the land to the head of the "panchayat" (clan) named as the "grampradhans" (village heads).

Both **Kautilya** in his "Arthashastra" and **Manu,** the lawgiver of the "Aryans" in his Code, note that whoever clears the jungle and makes them it for cultivation, acquires the right to own the same, subject to payment of rent or revenue to the King.

Land Administration in Bengal during Middle Period:

Middle period in terms of land administration in Bengal, which may be termed as Muslim period as well, commenced when Bakhtiar Khilji conquered Bengal at the beginning of the 13th century, i.e., in 1204.[13]

Then the rulers merely changed the rate of land revenue from one-sixth to one-fifth or one-fourth of the produce, payable either in cash or by the delivery of the produce.

In the course of time, when the power of the "grampradhans" (village heads) was substantially curtailed, many of them were turned into local "talukdars". These "talukdars" used to collect revenue from the cultivators at the rate assessed by the government and paid the same to superior landlords known as "Zamindars", although they got a share of the collection as their remuneration.

During Mughal rule, the land revenue system get systemized and consolidated when the land revenue of the entire country was assessed at the rate of one-third of the produce. The government officers known as,

Amins, assessed revenue and also settled land disputes.

Kanungo, who knew the customs and regulations regarding land used to help such officers to assess revenue.

Karkuns, preserved records regarding land surveys and land revenue assessment.

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12. Land Reform in Bangladesh, Ministry of Land, Dhaka, 1989, pp(1-13).

13. Op. cit. Hoque, (2000), PP 24-37.

Chowdhurys, represented the inhabitants of the "pargana" also called "mahal" or "mukaddam".

Patwaris, or village accountants and other survey officers surveyed each and every plot of land on basis of average production and market price of the produce for the previous ten years.

Cultivators known as raiyats could pay revenue either in cash or by delivery of produce but cash payment was preferred.

Land Administration in Bengal during Modern Period:

Modern period in terms of land administration in Bengal, which includes British, Pakistan and Bangladesh period commenced on 12 August 1765when the East India Company was granted "diwani" rights. Mughal Emperor Shah Alam of Delhi for only Rs.26 lakhs to collect revenue from Bengal, Bihar and Orissa.[14]

Gradually is started to concrete the right of revenue to the highest bidders under the "Quiquennial Settlement Regulation"[15], which continued for years from 1712- 1777 and the "Annual Settlement Regulation"[16] which continued for years from 1777- 1790, leaving the old "zamindars" and "talukdars" only with the task of the collection of the higher revenue.[17]

On 22 March, 1793, Lord Cornwalis, Governor General of the East India Company, declared the decemial settlement as the permanent settlement by Permanent Settlement Regulation (regulation no. I of 1793), which made "zamindars" and "talukdars" permanent proprietors of the land under their respective control. As a result government revenue agents turned into landowners overnight. Landlords are allowed to own their property subject to regular payment of revenue to the Government, for the default of which their right was liable to be sold in auction.

Though the govt. in British India was trying to change the condition of the Indian raiyats with certain enactments aiming of curtailing the oppressive powers of zamindars, bridging the gap between zamindars and the raiyats and entrusting the raiyats with some rights, in most cases these efforts proved to be unworkable, and which at least led to the constitution of the "Rent Law Commission" in April 1879. The commission submitted the

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14. Hussain, T., Land Rights in Bangladesh, University Press Ltd., Dhaka, 1995, P- 15.

15. Fixing the revenue for five years, Islam Kabedul (2003), P- 99.

16. Fixing the revenue for one year after one year, Islam Kabedul (2003), P- 65.

17. Op. cit. Hossain (1995), PP 16-17.

report in May, 1880. After consideration of the report a bill for enacting the Bengal Governor, it became the law on 14th march 1885, entitled as the Bengal Tenancy Act and it came into operation since 1st November 1885.

Constitution of NAT Act:

As there was no provision in the Bengal Tenancy Act about the rights and obligations of non –agricultural tenants, they were regulated by the provisions of the Contract Act and the Transfer of Property Act. As a result, non-agricultural tenants could be evicted after the expiry of the period of their lease and landlords could also arbitrarily increase their tenants at the time of renewal of the lease. The "Non-Agricultural Land Rent Assessment Act" of 1936, being applicable only in respect of temporarily settled and government khas mahal lands, couldn't relieve the miseries of a large number of non-agricultural tenants under the private landlords. In 1938, the non-agricultural Land Enquiry Committee was constituted. When landlords start evicting non-agricultural tenants after the formation of this committee, the Bengal Non-Agricultural Tenancy Act 1940 was enacted by the govt. as a temporary measure to prevent such evictions.

On the basis of the recommendations of this committee, the East Bengal Non-Agricultural Tenancy Act was enacted to give relief of non-agricultural tenants.

According to **section 1 of NAT Act,**

1. This Act may be called the Non-Agricultural Tenancy Act, 1949.
2. It extends to the whole of Bangladesh.
3. It shall come into force on such date[18], as the govt. may, by notification in the official gazette appoint.

According to this law,

a. Any land used for purposes other than agriculture or horticulture was non-agricultural.
b. Non-agricultural tenants were of two classes: tenants and under tenants.

According to **section 3 of NAT Act,**

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

18. The Act came into force with effect from 20th October, 1949.

2. Tenant means a person who has acquired a proprietor or a tenure holder a right to hold non-agricultural land for any of the purposes provided in this Act, and includes also the succession 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 under a tenant and includes also the successors in interest of persons who have acquired such a right.
4. Non-agricultural tenants having possession for 12 years or more had rights similar to those of perpetual tenants and could not be evicted. But other tenants and under tenants had no such rights and could be evicted under the provisions of the said Act.
5. Rights of non-agricultural tenants or under tenants could be inherited by their heirs after their intestate death and was also transferable by registered instruments.
6. The immediate superior landlords of such tenants or their co-sharers had right of pre-emption under certain circumstances.
7. The govt. could direct preparation of khatiyans and assessment of rents of non-agricultural lands by revenue officers.
8. The rents of non-agricultural tenants could not be increased within 15 years and that of under tenants within 5 years of such assessment, except on the ground of improvement of the land, or increase of the area of the holding.
9. Non-agricultural tenants could deposit rents in Court on the refusal of landlords to amicably accept the same.
10. Landlords could recover arrears of rents by filing suits in Civil Courts and could sell in auction non-agricultural lands of defaulting tenants in execution of a decree for arrears of land.
11. Under certain circumstances landlord could evict non-agricultural tenants or under tenants execution by filing suits in Civil Courts.
12. The provisions of the Act were and still are not applicable in respect of land held by any port, railway or local authority, or land leased out for gathering forest, or mineral products, or for exercise of fishery right or land acquired by the govt. for use by any of its departments or any waqf of trust land.

Since final publications of khatiyans prepared or revised and compensation assessment rolls and payment of compensation to the rent receivers after acquisition of their interests in non-agricultural land and imposition of prohibition of sub-lease of non-agricultural land and repeal of many provisions of the Act by the ordinance number IX of 1967, the said Act was lost its importance. Except exercising right of pre-emption by a co-sharer of non-agricultural land after transfer of share by another co-sharer in such land, other unrepealed provisions of the Act have virtually become inoperative.

- **Object of non agriecultural tenancy act:**

The object of the Non-agricultural Tenancy Act,1949 as its preamble shows, is "**To make better provisions relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in Bangladesh.**"

In **Haji AkhtaruzzamanvsJaduNath Pal**[19]C.J **Murshed**said

"This Act was brought into existence with the object of conferring a wide range of rights on non-agricultural tenants whom it intended to protect by raising a barrage of massive statutory rights"

With regard to the West Bengal Non-Agricultural Tenancy Act, 1949, **SubbaRao C.J** of the Supreme Court of India observed :**"The scheme of the Act clearly is to afford security of tenure to tenants and under tenants even to the extent of making their rights transferable and heritable"**[20]

In **Indian Iron & Steel Co. Ltd vsBishwanath Sonar**[21]Justice Hidayatulla (later C.J of the same court) **"the act was passed to make comprehensive provisions relating to the law of land lord and tenant in aspect of non agricultural tenancies in West Bengal and is a part of protection given in modern times by law to tenancies of various kinds of which the Rent control acts and Acts relating to agricultural tenancies represent some other aspects"**

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[19] PLD 1967,Dhaka 546,17 DLR 384; DLR 1966 Dhaka 213 F.B.

[20] Shib Shankar Nandy vs PrabartakSangha, AIR 1967(S.C) 940.

[21] AIR 1967(SC) 77

Again in the case of **Mahadeb Ram KaharvsTinkary Roy**[22] justice **Mookerjee**observed**"Broadly speaking, the scheme and intent of the ACT is to give protection to tenants holding non-agricultural lands for more than one year, the extent of the protection varying according as the period is less than 12 years or more"**

In **Sarat Chandra Mondal VS Satis Chandra Baidya**According to justice **Chunder "it is not merely an act for regulating ejectment and incidental proceedings thereto but it is intended to deal with the general law on the subjevt as far as it goes"**[23]

The purpose for which the land was leased outwhether it is the determining factor it is agricultural or nonagricultural land.[24]

- ***<u>Contents of chapter I and II</u>***

There are 12 chapters in the Non-Agricultural Tenancy Act,1949 providing 91 sections **Chapter I** is preliminary; it contains two sections- first of which contains the accessibility of this act throughout the whole Bangladesh. The second section contains a number of definitions, of these definitions two call for attention, namely **"non-agricultural land"** and **"non-agricultural tenant"** subsection (4) of section 2 defines non-agricultural land to mean land used for the purposes not connected with agriculture or horticulture and includes any land held so on lease but it dose not include the homestead and some other lands as indicated in that sub-section. Subsection(5) of section 2 defines non-agricultural tenant as well. With all the definitions section 2 clarifies the meaning of some important word used in this act.

Chapter II deals with classes of non-agricultural tenants. This chapter contains 3 sections:- section 3 to 5.

Section 3(1) classifies non-agricultural tenants for the purpose of this Act into tenants and under tenants. section 3(2) defines tenants and section 3(3) defines under-tenants. Section 4 declares the purposes for which a non-agricultural tenant may hold Non-agricultural land.

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22 AIR 1954 CAL. 539:58 CWN 651

23 (1954)59 CWN 434:8 DLR 18

24 MstLutfunahar vs SyeedHasmatAra(1969) 21 DLR 633.

Objects of chapter I and II

1. **To avoid ambiguity:** The act clearly provided the meaning of various words relating to land laws for the betterment of clear concepts relating land laws.
2. **Defining non-agricultural land:** by classifying non-agricultural tenant and by providing with their purposes to hold non-agricultural land it creates a clear concept about the differences between agricultural land and non-agricultural land as well as their tenants. These also clear the necessity of different laws for the two different types of tenancies.
3. **Defining two types of tenancies:** this act meet the necessity of making difference between the two types of tenancies and providing different laws for those two.
4. **Solve difficulties related to land:** one of the object of this Act is to solve the difficulties arising from the two types of tenancies. as a result the act was provided with the laws related to non-agricultural tenancy.

CHAPTER III & IV

- In the absence of any law in respect of non-agricultural lands the rights of the non-agricultural tenants were regulated by the tenants of their contracts with the landlord. The provisions of the transfer of property act,1882 afforded them little protection against arbitrary evection and enhancement of rent. To meet up such a situation NAT Act came into force through a lengthy procedure.

- The relationship between the landlord and tenant may, however, be complicated by substantial structures being raised on the land, from the object making such a position clear under **Section 7(5)** of the act a non-agricultural tenant enjoys a large measure of protection against evection in the case of having made some substantial comments in his holding in the shape of PUCCA structures with the assent of the landlord. On principle, there is no difference between the case of such a tenant and the case of a tenant who has first taken settlement of the land and then purchased the existing PUCCA structures from the landlord because in the latter case, the

landlord's assent to the continuance of the PUCCA structures on the tenants holding is clear and unequivocal.[25]

For the application to sec7(5) of the act, the erection or the existence and continuance of the Pucca structures must at least be shown to have been with the knowledge of the landlord even though it was or might have been against the will of the landlord.[26]

Erection of Pucca structures was one of the elements in finding the permanency of the tenancy[27],where the origin of the tenancy was unknown.[28]

- NAT Act has the object of regulating ejectment and incidental proceedings thereto. The various sections provides for elements necessary for ejectment:-

  i. When the tenant has used the land in a mannerwhich renders it unfit for use for any of the purposes specified in sec 4.
  ii. Notice under sec 75 to be served.
  iii. There must a decree for ejectment under sec 70.
  iv. The right of ejectment must be exercised in respect of the entire holding.

- The scheme and extent of the Act is to give protection to the tenancies of various kind of which the rent control Acts and Acts relating to tenancies represents some other aspects.

  For fulfilling this object sec 70 of the Act has given protection to the tenant who continues to posses a non-agricultural land continuously for twelve years. Sec 7 enumerates some conditions on being fulfilled creates no liability of being ejected except on the solitary ground that such non-agricultural land have been used in such a manner which renders it unfit for use of any of the purposes specified in sec4.

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25 ML. Dalmiya& CO vs. Chinta Haran Mukharjee. (1958)62 CWN 505.

26 Dip Narayan sing vs kanailalGwasami. (1959), 64 CWN 293.

27 DebendraNathvsPasupatiNath, 35 CWN 1047.

28 Probhas Chandra vs DebandraNath, 43 CWN 828.

Non-agricultural tenants having possession for 12 or more years, has similar rights to those of perpetual tenants and could not be evicted. But other tenants or under tenants have no such rights and can be evicted under the provisions of this act.

- One of the objects of NAT Act is to confer a wide range of rights on non-agricultural tenants. Where the tenancy is not less than 12 years , sec 8 confers on the tenants on the expire of such period the option of successive renewal of such lease on fair and reasonable rent. The tenant is not required to pay any salami or premium for renewal of his lease.

- Sec 22 confers certain privileges of tenants on a class of under-tenants of not less than 12 years standing or having other attributes. By virtue of this section an under-tenant can acquire all rights and liabilities of a tenant set-forth in sec 7 or 8.further he can elevates himself to be a tenant governed by sec 6.

- The scheme of the Act clearly is to afford security of tenure to tenants and under-tenants even to the extent of making their rights transferable and heritable.

"In the absence of a contract or local usage to the contrary, the right of a lessee is heritable and is capable of being bequeathed according to the laws of testamentary and intestate succession."[29]

CHAPTER V
Provisions as to transfer of non-agricultural land

Chapter v of the NAT Act deals with the provisions regarding transfer of the non-agricultural land. There are five sections in this chapter. They are **sec- 23, 24,25,26 and 26A**. Provisions regarding registration of transfer of such land, notice, rights of co-sharer for preemption, application for pre-emption, time limit of registration and application for pre-emption, instrument of transfer, some interpretation and bar on sub-let are provided in these sections.

The object of this chapter is to avoid all types of ambiguity regarding transfer of non-agricultural land through proper registration and notice, protect the rights of co-sharers in the case of pre-emption and so on.

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[29] Kishorilal vs Krisnokamini (1910) ILR , 37 cal, 377:11 CLJ 401;

Harilul vs Rupa (1912) 17 CLJ $%(and cases cited in those cases.

Contents of chapter V :

- Sec 23 deals with the **manner of transfer of non-agricultural land and notice to landlords.**

Under sec 23 the transfer of non-agricultural land is compulsorily register able irrespective of the value of such land.

- Under sub section (1) every transfer of non-agricultural land or of any portion or share thereof shall be made by registered instrument except in the case of a bequest or a sale in execution of a decree or of a certificate signed under The Bengal Public Recovery Act, 1913.
  By virtue of the provisions of this section an instrument of transfer of non-agricultural land or a portion or share thereof must contain the sale price in the case of a sale and of the value in the case of exchange or a partition or a gift or bequest of such land.

  It is incumbent on the registration officer to go through the instrument and to see:

  1. Whether it contains the sale price or the value of the property transferred.
  2. Whether the instrument is accompanied by notice containing the particulars of the transfer in the prescribed form for the service of the landlord who is not a party to the transfer.

  In case of transfer of a portion or share of such land it is necessary to serve the notice, upon all the co-sharer tenants of the tenancies who are not parties to the transfer. The object of serving notice to the co-sharer tenants is to give them an opportunity to exercise the right of pre-emption under sec 24.

- Subsection (2) enacts that in the case of a testamentary bequest of a non-agricultural land or a portion or share thereof, no court shall grant the probate or letters of administration until the applicant file similar notice in the prescribed form giving particulars of the bequest together with the
  prescribed process fee for transmission to the landlord.

- Subsection (3) provides that the sale of a non-agricultural land or a portion or a share thereof in execution of a decree or certificate shall not be confirmed by the Court or the Revenue Officer until the purchaser files similar notice and deposits the process fee as that referred in subsection (1).

- Subsection (4) provides that the notice giving the particulars of the transfer together with the process fee is to be filed for the service upon all the co-sharer tenants of such land who are not parties the transfer.

- Subsection (5) requires the court or the revenue authority or registration officer, as the case may be, to serve the notice to the landlord and the co-sharer tenants in the prescribed manners.

Section 24 provides the power of the co-sharer to purchase. This section deals with preemption in respect of non-agricultural land.

- Subsection (1) enacts that if a portion or share of a non-agricultural land is transferred, a co-sharer tenant of such land may apply for transfer of that portion or share of such land to him. The co-sharer tenant must apply within four monthsof the service of notice issued under section 23 of the Act and in case no notice has been issued or served he may apply within four months of the date of the knowledge of the transfer.[30] In the latter case he cannot be allowed to exercise the right of pre-emption beyond three years from the date of sale.

  The special Bench in ***Asmat Ali's*** case[31] it was held that where no notice under section 23 of the Act has been served upon the applicant for pre-emption, the period of limitation for filing an application is three years from the date of sale under Article 181 of the Limitation Act and not four month as section 24 of the act.

  The right of pre-emption conferred by section 24 is confined to the co-sharers in the tenancy.[32]In this regard MURSHED.J. observed**"sharing tenancy itself in relation to the land itself is a crucial test upon which the right of pre-emption is dependent."**

  In the case of**Brindaban Chandra Chowdhury v MusammatRajia Begum,**[33] two points were raised for decision: (a) whether the application for pre-emption is maintainable in view of the provision of the subsection (2) of the section 85 of the

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30 Abdul MalequeLashkar vs Tayabunnessa, 1964, 18 DLR, 618

31 1947, 52 CWN 64.

32 Manindra Chandra Ghos vs Majibul Islam, (1960) 12 DLR 785.

33 1963, 16 DLR, 77

NAT act, and (b) whether the petitioner appellants are co-sharer tenants entitled to pre-empt the disputed transfer within the meaning of section 24 of the Act.

Therefore held that, inasmuch as the petitioners are the co-possessors in a physical sense of the disputed land, they cannot claim a right of preemption under the aforesaid section.

The word land, in the sec24 Of the NAT act,1949 is intended to include structures on the land if it is transferred along with land as part and parcel of the land and not separately from the land and the consideration for the both is one and the same and in that case the right of pre-emption will extend upon on those structures on the land transferred.[34]

Lease of tenancy by a tenant is a sub-lease and is excluded from the purview of sec 24(1) of the NAT Act.[35]

- Section 24(2) requires that an application for pre-emption must be accompanied by a deposit of the entire consideration money or the value of the property transferred as stated in notice served under sec 23, together with the compensation at the rate of five per centum thereon. The d4eposite is a condition precedent to the application being entertained and is non fulfillment will render the application liable to be similarly dismissed.

- Subsection (3) lays down the procedure to be followed by the court when the deposit as required by subsection(2) is made.it provides that if such deposit is made, the court will give notice to the transferee to appear on a fixed date and to state what other sums he has paid in respect of rent after the date of transfer or in annulling encumbrances on the property and the amount he has spend in erecting any building or structure or in making any improvement in the portionor share of the property between the date of the transfer and date of service of notice of the application. After considering this points the court will direct an applicant or applicants to deposit the amount paid or spent by the transferee within the period allowed by the court together with interest at the rate of 6 ¼ per centum per annum.

- Subsection (4) gives the remaining co-sharer tenants an opportunity to join as co-applicants in the preemption proceeding. It proves that when an application has

[34] Md. Arabullah vs Durga Prasad Tribedu, (1959), 11 DLR, 539.

[35] PareshNathShikdar vs AbdurRahman Jamandar,1963, 15 DLR (SC) 425.

been made under subsection(1) any of the re4maining co-sharer tenants including the transferee, if one of them, may within the period of four months as referred to in subsection (1) or within one month of the service of notice of the application, whichever is later, apply to join in the application for pre-emption. Any co-sharer tenant who will not apply either under subsection (1) or under this subsection shall not have any further right to exercise the right of pre-emption.When the original application for pre-emption under subsection (1) fails on the ground of limitation, the co-applicants prayer for ratable pre-emption (according to their share) under subsection (4), though made in time, cannot be sustained.[36]

- Under subsection (5) if the deposits as required under subsection (2) or subsection (3) or clause (b) of subsection (4) are made, the Court shall make an order allowing the application for preemption and directing payment to the transferee or to such person as the Court thinks fit.

- Subsection (6) provides that if the applicant whose application for preemption is granted, disputes the correctness of the consideration money as stated in the notice under sec 23. The Court shall enquire into such dispute before making an order subsection (5) and determine the amount of consideration money which the transferee has actually paid for the transfer of the property. The amount so determined by the Court shall be determined as the consideration money.

- Subsection (7) applies when more than one co-sharer tenant are applicant for exercising the right of pre-emption.

- Sub-section (8) provides that from the date of the order allowing pre-emption under sub-section (5) the right, title or interest on the share or the portion of the non-agricultural land accruing to the transferee from the transfer shall vest free from all encumbrances, which have been created after the date of transfer, in the co-sharer tenant whose application for pre-emption has been allowed. The liability of the transferee for rent of the property from yhe date of transfer shall cease. On further application the Court may place the application in possession of the property.

- Subsection (9) makes provision for an appeal from an order made on an application for pre-emption. This sub-section provides : ´**an appeal from any order of a court under this section shall lie to the Civil Appellate Courthaving jurisdiction to entertain such appeals.**

[36] BijanBalaChoudhuranivsManiruddinBiswas, 1970, 24 DLR 170.

- Sub-section (10) saves the Muslim law of pre-emption from the operation of this section. If there is any competition between the Muslim law and the provision of this section then the former will prevail.
- According to sub-section (11) the right of pre-emption is not available in the following cases:-
    1. Transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase, i.e. when the transferee is one of the original co-tenants. A co-sharer by gift is a co-sharer whose interest has accured otherwise than by purchase and when such co-sharer makes a subsequent purchase in re4spect of a same portion of the same holding is protected from pre-emption.
    2. Transfer by exchange or partition. Exchange and partition are not transfer within the meaning of section 23 so right of pre-emption is not available here.
    3. ***Heba-bil-ewaj***in consideration of prayer mat is not a pecuniary consideration and a transfer in such case is not pre-emptable.[37]

- Explanation to section 24(11) states that a relation by consanguinity shall, for purposes of this sub-section, including a son adopted under the Hindu Law.

    4. transfer by way of wakf. It must be valid under the provisions of the Muslim Law.

    5. Debuttor or any other dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual e.g. public charitable trust.

- Section 25 deals with the saving as to statements in instruments of transfer where landlord is not a party.

- Section 26 provides some interpretation.

- Sec 26A provides rules which are against sub-let.

Object of NAT Act in chapter V

37 Syed Ali Gazi vs AkhejSardar, 1968, 20 DLR 433

- The object of NAT Act is to make the transfer process of non-agricultural land totally free from ambiguity.
- As a result it made registration compulsory for any kind of transfer.
- The Act want to protect the right of transferor as a result it makes clear provisions relating to the consideration money.
- It includes the revenue officers and registration office in the process of transfer. Here the intention is to register all the transfer and then use them as evidence.
- The Act protects the right of co-sharers.
- The act provides the co-sharers of a tenancy the right of pre-emption.
- The object of sec 24 of the Act is to prevent non-agricultural land from being possessed by a stranger purchaser if the co-sharer tenants have the desire to have same themselves.
- One of the objects of this chapter is to provide compensation to the transferee for any structures erected by him on the land.
- Another object is to protect the right of those co-sharer who have failed to provide an application for pre-emption at first time.
- Protects the right of the co-sharers from sublet.
- Protects the right of the Muslim people under Muslim Law.

Object of the NAT Act in Chapter VIII & IX

Regarding Improvement

64. Definition of "Improvement":

- NAT Act aims to improve the value of the non-agricultural land by adding directly or after execution.
  Section 4 specifies.

65. Rights to make improvements:

- NAT Act enables the non-agricultural tenant having prior right over his landlord to make the tenancy.

66. Collector to decide question as to right to make improvement :

- NAT Act also specify the non-preventive right of tenant and landlord so that they can't prevent other from making an improvement.
- It gives the due priority in case of value of landlord's property.

68.Application to record evidence as to improvement :

- Section 65 enables of both landlord and the non-agricultural tenant to improve the land.
- It settlers the tiny disputes raised between the tenant and landlords though legal aid.

Other incidents of non-agricultural tenancies

70. No ejectment except in execution of decree :

- It fixes the permanency of tenants in his tenancy, unless he has been executed by a competent civil court a decree.

Conversion of Agricultural Lands into Non-Agricultural Tenants:

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 Deputy Commissioner for the conversion of such land into a tenancy to which the provisions this act apply and on receipt of such application, the deputy Commissioner 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. Landlord shall not be entitled to apply under this subsection except in 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 of the landlord.

There are two necessary ingredients for application:

1. Application is made by a tenant or the landlord or the entire body of landlords;
2. Application is made by a landlord, to the co-sharer landlords, if any, and to tenant or if there be more than one tenant to all such tenants.

This conversion apply state the date from which the order passed by the Deputy Commissioner. The tenancy which such land is converted and the rent so specified shall not be enhanced during a period of not less than 15 years from the date of such order. An appeal shall lie to the Commissioner of the division from any order of the Deputy Commissioner presented within thirty days.

Relief against Forfeitures in Certain Cases:

Section-75 of the NAT Act deals with the relief against forfeitures in certain cases. Section-75 governs section 7 and 9 of this Act. Section 7(1) provides that the tenant holding the non-agricultural land comprised in such tenancy shall not be 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 any of the purposes specified in section 4.

The object of the notice under this section is to give the tenant opportunity of avoiding ejectment by remedying the misuse if that is possible. If the tenant fails to comply with the demand within a reasonable time, the landlord can bring a suit for ejectment. If the condition precedent is not complied with the suit for ejectment can't by entertained by the court.

Delivery of Possession of Land Sold for Arrears of Rent:

Where a non-agricultural tenant or his predecessor in- interest has erected any structure on any non-agricultural land if such land is sold. The purchaser shall be entitled to obtain delivery of possession of the land which is sold by the removal of such structure. But the debtor shall be allowed reasonable time by the court to remove such structure from property. 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.

Bar to application of Act to Certain Lands and to Certain Cases:

Section 85 of the NAT Act gives a description of the land to which the Act doesn't apply. Under sub-section (1) the East Bengal Non-Agricultural Tenancy Act, 1949 has no application in respect of any land vested in or in the possession of a port authority, railway administration or a local authority. This Act also excludes from its operation any land held under a public Waqf or a trust for public purpose and any lease in respect of any forest rights or rights over fisheries or rights to minerals in any non-agricultural land.

According to section 85, by the order of the Deputy Commissioner an appeal against the passed order determining compensation under the provisio to sub-section (1) of section 9 or the provision to section 20 shall be presented within thirty days to the Commissioner of the Division.

Certain Contracts not Effect the Provision:

Any contract which is controversial of the provisions of the section 86, or which is inconsistent with. To the extent of such contravention or inconsistency or to the extent if purports to alter such effect be void without effect.

Jurisdiction in Proceeding:

Court is authorized 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.

Saving of Limitation:

The execution of decree for ejectment which was stayed under the Bengal Non-Agricultural Tenancy Act 1940, or for the institution of suit for the ejectment of non-agricultural tenant, the period during which the said Act continued in force shall be excluded.

Conclusion:

The NON-AGRICULTURAL TENANCY ACT, 1949 is one of the historic statues in the Indian subcontinent regarding land. It is a key Act which solves many ambiguities and faults regarding land. When the Act was not in force there was a huge controversies and confusion regarding non-agricultural lands. To meet the public demand and to protect the rights of all the parties regarding non-agricultural land this historic and efficient Act was Provided by the then Govt. After 60 years of enactment it can be easily said that this Act is a cornerstone to provide a proper guideline to all the matters related to non-agricultural land.

The end.