THE
ASSAM NON-AGRICULTURAL URBAN AREAS TENANCY ACT, 1955.

(Act XII of 1955)

WITH A FOREWORD BY

Hon'ble Mr. Justice S. K. Dutta, JUDGE,
High Court of Assam & Nagaland.

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Preface

The Assam non-Agricultural Urban Areas Tenancy Act, 1955 is an important tenancy legislation enacted during the recent years. This Act has assumed much importance in view of the fact that a large number of ejectment suits, which involve the question of protection of tenants from eviction under the provisions of this Act frequently arise in the Courts. The necessity of a book on this statute is felt by many members of the Bar as well by the law students and it is with this humble object of assisting the legal profession and the students of law that I endeavoured to write this small book. I have tried to explain the provisions of the Act in the light of the decisions, both reported and unreported, of our High Court. However, appropriate decisions of the Supreme Court and other High Courts which may have bearing on the interpretation of this Act have also been quoted.

In the cases. under this Act the Chapter V of the Transfer of Property Act, which deals with leases frequently comes into play and therefore, for ready reference it will be convenient to include that chapter in this book. I have added that chapter as Appendix II and I hope it will be helpful to the readers.

I shall consider my humble effort amply rewarded if this small book be of some use to the legal profession as well as to the students of law.

I feel it my duty to express my gratitude to Hon'ble Mr. Justice S. K. Dutta for sparing his valuable time in going through the book and writing the foreword.

I am grateful to Sri Dharma Kanta Sarma, Advocate of the Gauhati University Law College who took the pains of reading the book in manuscript and giving valuable suggestions. My thanks are also due to my friend Sri M. N. Dutta Barua M. A. of Dutta Barua & Co. for publishing the book.

Gauhati,
5th. *March*, 1966.

Bishnu Kinkor Goswami

FOREWORD

There have been rapid social, cultural and economic changes in India after independence and these changes have naturally affected our laws and legal concepts. Our Constitution debars confiscation of private property but in a Welfare State some restrictions have to be put on the enjoyment of the same. The question of reasonableness of such restrictions are justiciable. The Assam Non-Agricultural Urban Areas Tenancy Act, 1955 gives protection under certain circumstances to tenants against eviction from urban lands taken on rent. This is a very drastic piece of legislation under which a landlord may practically be deprived of his land. Hence suits under this Act are often bitterly contested and its various provisions have been subjected to judicial interpretations. Subsequent amendments of some of the provisions have led to further controversies. Shri Goswami has exhaustively collected the various judicial pronouncements and tried to apply them in support of the legal principles explained by him. A commentary on such an Act will undoubtedly be very useful to all concerned.

S. K. Dutta

(S. K. DUTTA)
Judge,
High Court of Assam & Nagaland
Gauhati.

Dated Gauhati,
the 2nd March, 1966

THE ASSAM NON-AGRICULTURAL URBAN AREAS TENANCY ACT, 1955

(Assam Act XII of 1955)

AN

Act to regulate in certain respects the relationship between landlord and tenant in respect of the non-agricultural lands in the urban areas of the State of Assam.

Preamble: WHEREAS it is expedient to regulate in certain respects the relationship between landlord and tenant in respect of non-agricultural lands in the urban areas of the State of Assam.

It is hereby enacted in the Sixth Year of the Republic of India as follows:–

Notes

1. STATEMENT OF OBJECTS
2. LEGISLATIVE HISTORY
3. SCOPE
4. INTERPRETATION

1. Statement of Objects : For statement of objects and reasons see Assam Gazette dated 4th March, 1953

2. Legislative History :—Before partition of India the Sylhet non-Agricultural Urban Areas Tenancy Act, 1947 (Act X of 1947) was enacted and that Act was applicable only to the district of Sylhet. Under the provisions of the said Act notwithstanding any contract to the contrary, a tenant who had possessed continuously for twelve

years any land within the urban areas for residential or business purposes or for purposes incidental thereto, was deemed to have acquired at the expiration of the period, a permanent, heritable and transferable right of use and occupation in the land, subject to payment of rent. That Act was in force in the whole of Sylhet district. After partition of India in 1947, the district of Sylhet except Karimgunj sub-division fell within Pakistan and the sub-division of Karimgunj which remained in India was tacked to Cachar District. The Act X of 1947, which was in force in Karimgunj sub-division continued to be in force even after partition. There were demands from the Cachar district for repeal of that Act and for substitution of the same by another legislation. There were also demands from other parts for legislation to regulate the relationship between landlord and tenant in respect of non-agricultural tenancies within the urban areas. The Government, with a view to meet the demands introduced the Assam non-Agricultural Urban Areas Tenancy Bill, 1950. The Bill made similar provisions as in the Sylhet non-Agricultural Urban Areas Tenancy Act, 1947 for conferring permanent, heritable and transferable rights on the tenants. The Bill was passed by the Assembly and it was reserved by the Governor for assent of the President of India. The President withheld the assent to the Bill on the ground that the provisions conferring heritable and transferable rights on the tenant conflicted with the landlord's right to 'hold' property and was therefore hit by Art. 19(1)(f) of the Constitution of India. The Bill was consequently dropped.

In 1952 another Bill was drafted and forwarded to the Government of India for previous approval. This was also turned down on the ground that it was not materially different from the previous Bill. The Government of India however, forwarded a copy of the opinion of the Attorney General of India on the subject. The Attorney General opined that the imposition of restriction on the landlord's right to eject the tenant and to enhance rent

of the holding would be reasonable restriction in the interest of general public.

Thereafter, the present bill,the Assam non-Agricultural Urban Areas Tenancy Bill, 1953 was introduced. It was referred to a Select Committee which suggested many amendment. For report of the Select Committee see Assam Gazette Extraordinary dt. 19th August, 1953 (pages 133-138).

3. Scope : This Act is meant for regulating the relationship between landlord and tenant in certain respects only within the urban areas of the State of Assam. The relationship between landlord and tenant is dealt with in many other enactments-Central as well as State e. g. -Transfer of Property Act, Assam (Temporarily Settled Districts) Tenancy Act, 1935, Goalpara Tenancy Act, 1929, Sylhet Tenancy Act, 1936 etc. This Act is confined to the tenancies in respect of lands within the urban areas only and that too for residential and business purposes only. This Act gives additional protection to a tenant in addition to those given by the Transfer of Property Act.

4. Interpretation : This Act is a social legislation and the Legislature intends to give protection to or confer a privilege on a class of persons which it otherwise did not possess. Such a legislation should be taken to apply ordinarily to the entire class by the terms of the legislation itself. ....All rules of interpretation are meant to bring out and give effect to the dominant purpose or intention of the legislation and to advance the remedy which it seeks to offer. There should, therefore, be no academic or rigid interpretation of its provisions. The law is not something static. It reflects and registers the growing needs of the people and their varying moods. Its language has, therefore, to be interpreted not as dead letters in black and white printed

on the pages of the statute, but as the voice of a representative Legislature speaking through those pages, which it is always the privilege of the judiciary to interpret. (Per Sarjoo Prasad C. J. in A. I. R. 1957 Assam 22— *Harsukh Sarawgi Vs. Mashulal Khemani*) ; Social legislation should receive a liberal or beneficient construction from the Courts. If the words used in the sections are capable of two interpretations one of which is shown patently to assist the achievement of the object of the Act, Courts should be justified in preferring that construction to the other which may not be able to further the object of the Act (*A. I. R.* 1964 *S. C.* 1272-*Buckingham Carnatic Co. Ltd. Vs. Venkatia*) See also *A. I. R.* 1962 *S. C.* 547 *Magati Sasmal Vs. Pandal Bissori* ; If the relevant words are capable of two constructions preference may be given to that construction which helps to sustain the validity of the impugned notification ; but it is obvious that an occassion for showing preference for one construction rather than the other can legitimately arise only when two constructions are reasonably possible not otherwise (*A. I. R.* 1960 *S. C.* 1068 *M.P. Mineral Industries Association Vs. Regional Labour Commissioner*)

In A. I. R. 1957 Ass. 22 the Assam High Court held that the Act has retrospective effect. So, in a suit instituted before the Act came into force, at whatever stage the litigation remained, the tenant can invoke the protection of S. 5 of the Act if he can show that the conditions of S. 5 were fulfilled to give him protection. In that case Ram Labhaya J. observed-"An executing Court cannot go behind the decree. Nor can it reopen the matter at that stage. There is no express provision conferring power on the executing Court to entertain a plea by which liability to eject could be disputed on the ground of the provisions contained in S. 5 of the Act. ....These observations are made merely to indicate

that though the Act may apply to pending actions, it does not necessarily follow that it applies to pending executions also." These observations of Ram Labhaya J., though obiter, were followed in A. I. R. 1960 Ass 24-*Suresh Chandra Datta Vs. Ashutosh Dutta* and it was held in the case that the Act does not apply to execution cases. The decision of the Assam High Court reported in A. I. R. 1957 Ass 22 was approved by the Supreme Court in another case, which also arose out of the Assam non-Agricultural Urban Areas Tenancy Act (*A. I. R.* 1964 *S. C.* 1511 *Rafiquennessa Vs. Lal Bahadur Chetri*)

The amendment of the definition of "permanent structure in S. 3 (d) was held to have retrospective effect (*A. I. R.* 1959 *Ass* 174-*Ramdhari Sarma Vs. Jogendra Kumar*).

1. Short title, extent and commencement:—

(1) This Act may be called the Assam non-Agricultural Urban Areas Tenancy Act, 1955.

(2) It extends

(a) to the urban areas in the State of Assam ; and

(b) to any other areas which have been or may hereafter be declared town lands under clause (a) of Rule 64 of the Settlement Rules made under the Assam Land and Revenue Regulation, 1886 (Regulation I of 1886) or the Assam Land Revenue Reassessment Act, 1936 (Assam Act VIII of 1936).

(3) It shall come into force on such date as the State Government may, by notification in the official Gazette appoint.

Notes

1. Sub-S. (2) (a)
2. Sub-S. (2) (b)
3 Commencement

1. **Sub-S.(2) (a) :** "Urban Area" is defined in S. 3 (h) infra. See notes under S. 3.

2. Sub-S. (2) (b) : Apart from the "urban areas" the Act extends to other areas which have or may have been hereafter declared "town land" under the Assam Land and Revenue Regulation. Rule 64 (a) of the Settlement Rules framed under the Assam Land and Revenue Regulation runs as follows :

> "Town land" means any land within an area declared or deemed to be a municipality or notified area under the Assam Municipal Act, 1923 (Act I of 1923) and any other land which the provincial Government may declare, under the Assam Land and Revenue Regulation or in accordance with the provisions of the Land Revenue Re-assessment Act (Assam Act VIII of 1936), to be town land."

The relevant provision of the Assam Land Revenue Re-assessment Act, 1936 is follows :

> "S. 3 (1) The State Gevernment may at any time, by notification, signify its intention to declare any specified area which is not already town land to be town land for the purposes of this Act ;
>
> (2) A copy of the notification under sub-section (1) shall be published in such places within the area concerned or elsewhere, as the State Government, may by general or special order direct ;
>
> (3) Any person affected by the proposed declaration may, within six weeks from the date of publication of the notification submit any objection in writing to the State Government through the Deputy Co-

mmissioner and the State Government shall take his objection into consideration ;

(4) After considering all the objections received under sub-Section (3), the State Government may by notification, declare the area or any part thereof to be town land for the purposes of this Act."

3. Commencement : The Act came into force with effect from Ist. August, 1955 (vide notification No. RT.7/50-p/168 dated 19th, July, 1955 published in Assam Gazette dated 27th. July, 1955)

2. **Application :** 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) Government land held under an 'annual' or 'short lease' as defined in the rules made under the Assam Land and Revenue Regulation, 1886 (Regulation I of 1886), or

(b) Land held by the Government of India or by any Local Authority or by the State Government ; or

(c) any holding which contains one or more buildings owned by the landlord and which has been let out to any person, or

(d) Land 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 or the rights of the Government as against the landlord and the tenant.

Notes

1. SCOPE
2. "ANNUAL LEASE" & "SHORT LEASE"
3. CLAUSE (d)
4. LOCAL AUTHORITY
5. PROVISO (ii)

1. Scope : The Act takes away or impairs the rights of the landlord. S.2 (1) has retrospective effect. It applies to tenancies which came into existence before the Act came into force ; the result is that the existing agreements of tenancies stood amended by reason of the provisions contained in S.5 of the Act. Something which the agreements did not contain has to be read into them with the result that the tenants became non-evictable except on non-payment of rent. The provisons of S.5 have to be deemed to have been incorporated in the agreement of the specified description. The mandate of the section is that the tenant shall not be evicted except on the ground of non-payment of rent if his case falls under S.5 (1) (a). A higher status is conferred on the tenants regardless of the terms of the contract or the provisions of any existiong law to the contrary. The modification of the contract has to take effect from the date of agreement itself. .....Both Ss.2 and 5 have an overriding effect of drastic character. They apply to leases or tenancies

notwithstanding to the contrary in any agreement or law for the time being in force. The provisions of the law creating a liability to eviction on termination of tenancy has been made subject to operation of S.2 and S.5 of the Act (*A. I. R.* 1957 *Ass* 22 *Harsukh Sarawgi Vs. Mashulal Khemani*).

2. Annual Lease & Short lease : "Annual Lease" is defined in Rule 1 (c) of the Settlement Rules framed under the Assam Land and Revenue Regulation. It is defined as follows :

> "An annual lease means a lease granted for one year only and confers no right on the soil beyond a right of user for the year for which it is given. It confers no right of transfer or of inheritence beyond the year of issue or of the sub-tenant"

> Short lease is defined in Rule 64 (b) as follows:
> "Short lease means a lease which is granted for a period not exceeding three years, which confers on the lessee no right in the soil beyond a right of user for the period and in particular which confers no right of inheritence beyond the priod of lease or of transfer."

3. "Local Authority" : S.4(34) of the Assam General Clauses Act defines "Local Authority". It is defined as "a body of municipal or station commissioners, local board or other authority entrusted by the Government with, or legally entitled to, the control or management of a municipal or local fund". For each Municipal Board a fund called the 'Municipal Fund' is formed as provided in S.58 of the Assam Municipal Act, 1956. For the meaning of 'local fund' see S.33 of the Assam Local Self Government Act, 1953 and S.2 (4) of the Assam Local Funds (Account & Audit) Act, 1953.

S.2 (19) of the Assam Panchayat Act, 1959 provides that the term "Local Authority" includes Gaon Sabhas, Gaon Panchayats, Anchalik Panchayats, Municipal Boards and Town Committees.

A Port-Trust is a local authority (*A. I. R.* 1936 *Mad.* 789 *Official Assignee Vs. Trustees of Port Trust*)

4. Land used for residence or reserved etc. Clause (d) :
On the interpretation of the expressions "lands used for the residence of the landlord" and "reserved for being used for such purpose ...." the Assam High Court in (1960) *I. L. R.* 12 *Ass.* 431—*Amina Khatun Vs. Shahabuddin Ahmed*, held as follows :

> "If the words 'land used for residence' means that the land is already occupied by the landlord himself then there would be no question of letting out. Therefore, in our opinion this clause would only mean that the land let out must be in contiguity or near the landlord's residence and that even though it is not actually covered by the residence, it must be in such vicinity that the intention of the landlord may be gathered as to the land being used in future for the purpose of residence. .....'Land used for residence of the landlord' would mean any land covered by the holding in which the landlord resides and does not set apart for any avowed purpose.
>
> "The word 'reserved' does not necessarily mean that it should be so reserved in writing. The intention has to be gathered as to whether the landlord means to use the land in future for his or her residence."

5. Proviso (ii) : This proviso only means that this Act will not affect any permanent, heritable and transferable rights acquired by third party against land-

lord and tenant or the right of the Government against the landlord and tenant. Obviously, an Act which has been designed to regulate the relationship between the landlord and tenant cannot affect the rights of a third party against either of them. Moreover, rights, if any, which the plaintiff got in this case to file a suit for ejectment on the termination of the tenancy cannot be said to be a permanent or heritable right nor one acquired under any law within the meaning of this Proviso. (*S. A.* 130 *of* 1957 *Gaya Ram Mistry Vs. Kanayalal Tulsian*).

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

(a) '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 ;

(b) 'land' means land which is let or occupied for residential or business purposes or for purposes incidental thereto, and includes sites for buildings, water, water-ways, drains, ditches, canals, tanks and wells appertaining to such land ;

(c) 'landlord' means a person immediately under whom a tenant holds but does not include the Government ;

(d) ['Permanent structure' means a structure made of cement-concrete, stone brick, iron, aluminium, asbestos or wood or any combination of these materials ;

Provided that a building with bamboo or lkra walls and thatched roof shall also be regarded as a permanent structure, if its frame is constructed of any of the materials mentioned above] ;*

(e) 'prescribed' means prescribed by a rule made under this Act ;

(f) '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 ;

(g) 'tenant' means a person who holds land under another person, other than Government 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 ;

(h) 'urban area' means any area declarred 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 proviso to that sub-section, of the Assam Municipal Act, 1923 (Assam Act I of 1923).

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* Substituted by S. 2 of the Assam Non-agricultural Urban Areas Tenancy (Amendment) Act. 1958 (Act XXI of 1958).

Notes

1. SUB-S.(d)—PERMANENT STRUCTURE
2. RENT
3. TENANT
4. URBAN AREA
5. SUBSEQUENT INCLUSION IN URBAN AREA—HOW FAR AFFECTS HIS RIGHTS ACQUIRED

1. Sub-S. (d)—permanent structure: This sub-section is substituted by Assam Act XXI of 1958. The original sub-section was—'permanent structure means a structure which is regarded as permanent in that locality'. This definition was somewhat vague and so by the amendment it was particularised. The amendment came into force from 26th. July, 1958.

The amendment of the definition has retrospective effect like the Act itself (*A. I. R.* 1959 *Ass* 174 *Ramdhari Sarma Vs. Jogendra Kumar*)

2. Sub-S.(f)—Rent: The definition of rent given in this Act is similar to that in the Assam (Temporarily Settled Districts) Tenancy Act, 1935. In S. 105 of the Transfer of Property Act rent is defined as "money, share of crops, services or any other thing of value, to be rendered periodically, or on specified occassions" to the lessor by the lessee. Though the wordings in S. 105 of Transfer of Property Act and sub-s. (f) of this Act are not same, they do not differ in essential particulars. However, 'service' is not included in the definition of this Act.

The word 'rent' in its wider sense means any payment made for the use of land or building and thus includes payment by a licensee in respect of use and occupation of any land or building. In its narrower sense it means payment made by a tenant to the landlord for the property demised to him. (*A. I. R.* 1963 *S. C.* 1459 *State of Punjab Vs. British India Corporation Ltd.*)

The following are some of the elements of rent:—

(a) It must be a consideration for use and occupation of the holding ;

(b) It must be money or any other thing in kind lawfully payable ;

(c) It must be rendered periodically or on specified occassions (*A. I. R.* 1952 *Cal.* 391-*Harimohan Dutt Vs. C. K. Sen & Co. Ltd.*)

(d) the rendering should be to the landlord by the tenant.

Amount of rent not fixed ; but the method of fixing the same is certain. The contract is binding (*A. I. R.* 1944 *Mad* 518 *Vizianagaram Gajapathiraj Vs. Vikramdeo Varma*) Rent does not include electric charge (*A. I. R.* 1955 *Mad* 93 *Abdul Ghafoor Vs. Abdul Salam*)

3. Sub-S. (g)—tenant : The word 'tenant' not only means a person whose tenancy subsists at the time of the suit but also includes a person who continues in possession even after the termination of his tenancy. The use of the word "includes" in the sub-section enlarges the ambit of the definition to embrace the tenants whose tenancies have been terminated but continue in possession. In an unreported case (S. A. 130 of 1957) of the Assam High Court it was held -"The only two requirements of the definition are that the person claiming to be a tenant must have in fact been a tenant at some stage, and secondly, after termination of his tenancy he must have continued in possession. The fact that he has repudiated the tenanacy will not make any difference." In that case it was contended that the use of the word 'termination' in the definition indicates that only the tenant whose tenancy has been terminated by a notice by the landlord is covered by the sub-section

and not those whose tenancy stands determined by their own conduct. Repelling that argument the Court held—"The words used are not 'after the tenancy has been terminated' but are 'after the termination of his tenancy'. It therefore, appears on the plain reading of the sub-section that no distinction can be drawn between cases where tenancy has been terminated by conduct of the tenant and those where it is terminated by a notice. In either case the tenant continues in possession after temination of his tenancy whatever may be the process by which the tenancy has come to an end. It is not correct to say that in cases of forfeiture by denial of tittle, the tenancy is terminated by a unilateral act."

The tenant has a liability to pay rent to the landlord ; however, by special contract tenancy may be created without the liability of payment of rent. The defendant, a petition writer, who used to do work of the plaintiff in connection with the plaintiff's cases pending in Courts was allowed to occupy agricultural land free of rent,in lieu of service rendered by him to the plaintiff : Held that the definition in the Assam (Temporarily Settled Districts) Tenancy Act does not require that tenant must pay rent, all that it requires is that he would be liable, but for special contract, express or implied. So the defendant was a tenant and was entitled to reasonable notice (*A. I. R.* 1951 *Ass.* 86 *Rudra Narayan Deb Vs. Chintaram Das*). Though this case was in relation to a tenant within the definition of the Assam Tenancy Act, 1935 this decision will hold good in a case under this Act inasmuch as the definition of 'tenant' so far as concerning the liability to pay rent, in both the Acts are couched in similar language.

A tenant inducted by the Receiver is not entitled to claim protection under S.5 of the Orissa Tenants Protection Act and the title of the true owner cannot be affected either by appointment of a Receiver or by termination

of his office (*A. I. R.* 1963 *Orissa* 142 *Karri Ramaya Vs. Karri Chillakkaya Naidu*)

Use of the word 'rent' in the receipts granted by the Delhi Municipality to the occupiers of the shops in the market constructed by it (the Municipality) is not conclusive of the matter that relationship of landlord and tenant is created.....Use of the word 'rent' cannot preclude the landlord from pleading that there was no relationship of landlord and tenant (*A. I. R.* 1962 *S. C.* 554 *Dr. Rikhy Vs. New Delhi Municipality*)

A sub-tenant cannot be regarded as a person deriving title from a tenant. A tenant who continues in possession after termination of the tenancy continues to be a tenant for the purposes of this Act ; but it cannot therefore, be said that a sub-tenant also, if he continues beyond the expiry of his term of sub-lease is a person who continues in possession after the termination of his tenancy. Such a sub-tenant connot be regarded as a tenant within the definition of 'tenant' in this Act and so he is not entitled to protection under S.5 of the Act. (*A. I. R.* 1960 *Ass.* 35 *Digambar Kalita Vs. Sibnath Chakravarty*)

The general law is that no person can transfer property so as to confer on the transferee a title better than what he possesses. Therefore, any transfer including settlement of land with tenant must come to an end with the extinction of the mortgage by redemption. But S.76 (a) of the Transfer of Property Act is an exception to this rule. If the lease is one which could have been made by the owner in course of prudent management, it would be binding on the mortgagor notwithstanding that the mortgage has been redeemed. But in such a case of exception, it is for the person who claims the benefit thereof, to strictly establish. (*A. I. R.* 1958 *S. C.* 183 *Asaram Vs. Mt. Ram Kali.* (See also *A. I. R.* 1956 *S. C.* 305 *Harihar Prasad Singh Vs. Deonarayan Singh ; A. I. R.*

1952 *S. C.* 205 *Mahabir Gope Vs. Harbans Narayan Singh ; A. I. R.* 1963 *Pat* 26 *Ram Kailash Singh Vs. Baliram Singh.* In a case under the Bombay Tenancy and Agricultural Lands Act the Supreme Court in *A. I. R.* 1964 *S. C.* 1320 *Dahya Lala Vs. Rasul Mahammed Abdul Rahim*, held that a tenant inducted by the mortgagee is protected and cannot be evicted upon redemption. The Bombay Tenancy and Agricultural Lands Act, 1948, however, provided that a tenant included a person who is deemed to be a tenant under that Act. S.4 of that Act in so far as it is material provided—"A person lawfully cultivating any land belonging to another person shall be deemed to be a tenant if such land is not cultivated personally by the owner and if such person is not—(a) a member of the owner's family, or (b) a servant on wages payable in cash or kind but not in crop share or a hired labourer cultivating the land under personal supervision of the owner or any member of the owner's family or (c) a mortgagee with possession." The Supreme Court in that decision held that a person who is deemed a tenant is menifestly in a class apart from the tenant who holds lands on lease from owner. Such a person is invested with full status of a tenant if three conditions are fulfilled—(a) that he is cultivating the land lawfully, (b) that land belongs to another person, (c) that he is not within the exceptions mentioned in S.4. Thus a tenant inducted by the mortagee was held to be a 'deemed tenant' and so to be entitled to the protection under that Act. In another case under the same Act the Bombay High Court in A. I. R. 1957 Bom 195 (F. B.) *Jeswantrai Tricumlal Vyas Vs. Bai Jiwi* held that though under the provisions of S.111 (c) of the Transfer of Property Act the termination of tenancy brings about the termination of the sub-tenancy, yet by reason of S.4 of the Bombay Tenancy & Agricultural Lands Act a statutory tenancy would come into existence after the termination of the contractual sub-tenancy and the sub-tenant could therefore look to the statute for protection when their

contracts were terminated under the ordinary law. It was also observed in that case that a tenant of mortgagee is also protected. This Full Bench case was referred to by the Supreme Court in A. I. R. 1964 S. C. 1320 (*Supra*) though the question regarding protection of sub-tenant was not specifically the subject matter of that decision of the Supreme Court.

A person remaining in occupation of the premises let out to him after the determination or expiry of the period of tenancy, commonly, though in law not accurately, called a 'statutory tenant'. Such a person is not a tenant at all ; he has no estate or interest in the premises occupied by him. He has merely the protection of the statute, in that he cannot be turned out so long as he pays the standard rent and permitted increases, if any, and performs the other conditions of the tenancy. His right to remain in possession after the determination of the contractual tenancy is personal : it is not capable of being transferred or assigned and on his death devolves only in the manner provided by the statute. The right of a lessee from a landlord, on the other hand is an estate or interest in the premises and in the absence of a contract to the contrary is transferable and the premises may be sublet by him. But with the determination of the lease, unless the tenant acquires the right of a tenant holding over the terms and conditions of the lease are extinguished and the rights of such person remaining in possession are governed by the statute alone. (A. I. R. 1965 S. C. 414 *Anand Nibas Private Ltd. Vs. Anandji* -per majority, Sarkar J. contra). The Supreme Court in another case under the West Bengal Premises Rent Control Act, 1950, in A. I. R. 1961 S. C. 1067 *Gangadutt Murarka Vs. Kartick. Ch. Dey* held that the acceptance of rent by the landlord from the statutory tenant after the expiration or determination of the contractual tenancy will not afford ground for holding that the landlord has assented to a new tenancy. It was further held that there

is however, no prohibition against a landlord entering into a fresh contract of tenancy with a tenant whose right of occupation is determined and who remains in occupation by virtue of the statutory immunity. The Assam High Court in a case under the Assam Non-Agricultural Urban Areas Tenancy Act, reported in *A. I. R.* 1963 *Ass* 137 *Bhagaban Das Vs. Dhananjoy Paul*, following *A. I. R.* 1961 *S. C.* 1067 *Gangadutt Murarka Vs. Kartick Ch. Dey* and *AIR* 1949 *F. C.* 124 *Kai Khusroo Bezonjee Capadia Vs. Bai Jerbai Hirjibhoy Warden & another*, held that after determination of the lease if the tenant remains in possession and if his lessor or representative either accepts rent or otherwise assents to his continuing in possession then S. 116 of the Transfer of Property Act comes into play and a new tenancy may be created and such a tenancy is a contractual tenancy ; and there is no bar to the applicability of S.5 of this Act to such a case.

4. Sub-s.(h)—Urban area: By 'urban area' is meant (1) any area included within a municipality and (2) any area included within a 'notified area' which is also called 'small town' . S.3 (h) has reference to the Assam Municipal Act, 1923 ; but this Act was repealed by the Assam Municipal Act 1956 (Act XV of 1957). S.5 (2)(a) and S.5 (2)(b) of Act XV of 1957 correspond to S.5 (2)(a) and S.5 (2)(b) respectively of Act I of 1923 and the wordings are also same. S.328 of Act I of 1923 corresponds to S.334 of Act XV of 1957 but the proviso to S.328 of Act I of 1923 does not find place in the corresponding section of Act XV of 1957.

It appears that Sub-S. (h) requires amendment in view of the repeal of the Assam Municipal Act, 1923 (Act I of 1923). The definition of 'urban area' given in the sub-section means an area included either in a Municipality or a notified area, which are declared or deemed to be such notified area under the provisions of the Assam Municipal Act, 1923. So, a question may

arise—whether this Act is applicable in areas included in any municipality or notified area, which are declared under the Assam Municipal Act, 1956. In order to remove any possible doubt it is desirable that the sub-section should be amended accordingly.

5. Subsequent inclusion in a municipality-effect on tenant's right already acquired: Once a tenant acquires right of occupancy under the Assam (Temporarily Settled Districts) Tenancy Act, that right cannot be extinguished by inclusion of the land in a muinicipality (1954) *I. L. R.* (6) *Assam* 10 *Mahendralal Barua Vs. Ramprasad*)

4. Obligation to pay rent : A tenant shall pay rent for his holding at fair and equitable rates :

Provided that in case of dispute the rate at which rent has been previously paid by tenant immediately before the dispute shall be deemed to be fair and equitable unless the contrary be proved in a competent Civil court.

Notes

1. OBLIGATION TO PAY RENT
2. APPORTIONMENT OF RENT-RIGHT TO SUE
3. SUSPENSION OF RENT
4. COMPETENT CIVIL COURT

1. Obligation to pay rent : Under S.108(1) of the Transfer of Property Act there is an implied covenant by the lessee to pay rent. A tenant is not entitled, under the Transfer of Property Act to claim assessment of fair and equitable rent (A. I. R. 1951 Pat 508 -*Bansi Sah Vs. Krishna Ch. Das*). But under the Assam non-Agricultural Urban Areas Tenancy Act provisions have

been made for asessment of fair and equitable rent. (See S.9 of the Act). On the question whether Ss.6 and 8 of the Rajasthan Premises (Control of Rent and Eviction) Act, 1950, which provide for scaling down the agreed rent are repugnant to S. 108 (1) of the T. P. Act, the Rajasthan High Court in A. I. R. 1954 Raj 252-*Milap Chand Vs. Dwarka Das* held that Cl. (1) of S.108 of the Transfer of Property Act emphasises on time and place and it has nothing to do with fixation of rent and so, Ss. 6 and 8 of the Rajasthan (Control of Rent and Eviction) Act cannot be said to be repugnant to S.108 (1) of T. P. Act ; but they are only supplementary to it. The word 'rent' does not include interest A. I. R. 1919 Cal 391 *Mani Lal Seal Vs. Bhola Nath Basu*) ; Stipulation for interest on arrear rent is enforceable and interest can be recoverd (30 Cal 213 *Raj Narain Vs. Panna Chand ;* 17 Suth W. R. 173 *Bhyrab Chunder Banerjee Vs. Meer Ameerooddeen*) ; Interest can also be claimed as damages on arrears of rent in absence of stipulation for interest (14 I. C. 713 *Jatadhari Vs. Shah Samsul Bari ;* but see A. I. R. 1934 All. 115 *Madan Mohan Garg Vs. Bohra Ram Lal*, where it was held that in absence of a contract or usage, interest on rent was not allowed).

A tenant does not absolve himself from the obligations of his tenancy by merely intimating the landlord that as from a particular date he will cease to be in occupation and that some one else whom the landlord is not willing to accept will be his tenant. It is one of the obligations of a contract of tenancy that the tenant will, on determination of the tenancy put the landlord in possession of the property demised (See S.108 (q) T. P. Act). Therefore, merely assigning the rights the tenancy does not come to an end. (A. I. R. 1961 S. C. 1554 *Pandit Kishan Lal Vs. Ganpat Ram Khosla*). There is clear distinction between an assignment of tenancy on the one hand and a relinquishment or surrender on the other. Regarding the distinction the Supreme Court observed in A. I. R. 1952

S. C. 156—*W. H. King Vs. Republic of India* as follows: "In the case of an assignment, the assignor continues to be liable to the landlord for performance of his obligations under the tenancy and this liability is contractual, while the assignee becomes liable by reason of privity of estate. The consent of the landlord to an assignment is not necessary, in absence of a contract or local usage to the contrary. But in the case of relinquishment it cannot be a unilateral transaction ; it can only be in favour of the lessor by mutual agreement between them. Relinquishment of possession must be to the lessor or one holds his interest : and surrender or relinquishment terminates the lessee's rights and lets in the lessor."

There is difference of opinion on the question whether payment of rent to one of the co-lessors is valid discharge. According to one view it is not (25 Cal 324 *Azim Sirdar Vs. Ram Lal*). The contrary view is taken in some other cases (See A. I. R. 1957 M. P. 5—*Hiralal Neksi Vs. Ram Lal Saha ;* 22 Bom 794 *Sambhu Vs. Kamalrao* ; 2 Suth. W.R. (Act X Ruling) 15—*Oodit Narain Vs. Mr. H. Hudson*). Conversely, payment by one of the joint lessees is payment by all (2 Suth. W. R. 94 *Nillumber Mustophy Vs. Doorgachurn*).

2. Apportionment of rent—Right to sue : An *inter se* partition of mokarrari interest among the mokarraridars cannot affect their liability qua the lessor for the payment of the whole rent, as several tenants of a tenancy in law constitute but a single tenant and qua the landlord they constitute one person each constituent part of which possesses certain common right in the whole and is liable to discharge common obligations in its entirety. In law, therefore, an *inter se* partition of the mokarrari interest could not affect the integrity of the lease. Such partition among several lessees *inter se* are usually made for convenience of enjoyment of the leasehold but does not make each holder of an interest in it as a separate holder of a

different tenancy (A. I. R. 1951 S. C. 186—*Badri Narayan Vs. Rameswar Dayal*). Similarly allegation of partition *inter se* among several owners of a lakhraj holding subject to mokarrari interest cannot, in any way, affect the integrity of the lease in absence of an allegation of fresh contract between the split up owners of the holding and the different owners of the mokarrari interest (A. I. R. 1951 S. C. 186 *Supra*).

As a general rule one of the several landlords cannot sue for his share of rent in the absence of a special agreement between the lessee and the lessors for payment to them of their shares respectively (A. I. R. 1934 P. C. 58 = 61 Cal 313 = 38 C. W. N. 326 (P. C.) *Baraboni Coal Concern Ltd. Vs. Gokulanand*). A sharer whose other sharers refuse to join him as plaintiffs can sue for the entire rent of the tenure by bringing the other sharers as defendants in the suit (35 Cal 331 *Pramadanath Vs. Ramani ; A. I. R.* 1927 Cal 79 *Durga Mohan Vs. Ali Buksha*). One of the several lessors can sue the tenant for the purpose of having the rent apportioned making all other lessors parties to the suit (5 Cal 902 = 6 C. L. J. 421 (F.B.) *Iswar Chunder Vs. Ram Krishna*).

3. Suspension of rent :—The question whether a tenant is entitled to abatement or suspension of rent on the ground that the landlord has not either at the inception of the tenancy put the tenant in possession of the entire demised property or that he has been responsible for the subsequent eviction of the tenant from a part of the tenancy, has given rise to conflicting decisions. Sir Barnes Peacock C. J. in 12 Suth. W. R. 109 *Gopanund Jha Vs. Lala Gobind Pershad* introduced the English doctrine of suspension of rent in India and held that it seems to be the settled law that the tenant is discharged from the payment of the whole rent till he is restored to whole possession. The Calcutta High Court applied the doctrine of suspension not only to the cases of eviction by the lessor

of the lessee but also to the cases of non-delivery of possession by the lessor (See A. I. R. 1919 Cal 379 *Manindra Chandra Vs. Narendra Chandra ;* 13 W. R. 338 *Kadumbini Vs. Kasheenath Biswas*). But the Madras High Court held the view that the doctrine of suspension as applicable in England does not apply to this country, and that if the tenant continues in possession of part of the property, he will be liable to an abated share of the rent (A. I. R. 1923 Mad 459 *Suryanarayanraju Garu Vs. Raja of Tekkali ;* A. I. R. 1928 Mad 380 *Hanumantha Vs. Doraiswami Pillai*). The Judicial Committee, however, in A. I. R. 1925 P.C. 97=52 I. A. 160= *Katyayani Debi Vs. Uday Kumar* fromulated the principle as follows : "The doctrine of suspention of rent ....has been applied where rent was lump rent for the whole land leased. It has no application to a case where the stipulated rent is so much per bigha or acre." The observations of their Lordships in Katyayani's case added to the perplexity and had given rise to conflict of decisions. In this state of law the Judicial Committee had the occassion, in another case (A. I. R. 1943 P. C. 24= 70 I. A.18 *Ramlal Dutta Vs. Dhirendra Nath*) to consider the question of suspension of rent in case of the lessor's failure to deliver possession of a part of the demised land. It was observed in that case—"The observations on Katyayani's case 52 I. A. 160 at p.166 have only added to the perplexity, since they have in some cases been wrongly taken to lay down that if the rent is lump sum rent, then in all cases of failure to give possession of any part, there must be suspension of entire rent. They were intended as showing that on its facts that case raised no question of suspension...." Their Lordships, however, declined to express any opinion as to what would be the legal position in case of eviction of the lessee by the lessor.

In a recent case the Calcutta High Court in A. I. R. 1951 Cal 338 *Nilakantha Pati Vs. Kshitish Chandra* after reviewing the cases on the subject, observed that the doctine

of suspension involves a rule of equity and "that rule should not be attracted as a matter of course in all cases. The Court has to consider whether the act of the landlord in dispossessing the tenant was a tortuous or *mala fide* one or an inadvertent one." It was further observed :

> "A contract which is entered into between the landlord and the tenant should be held to be sacred one and the Court is required to protect the weak and the poor from the high-handed, improper and illegal act on the part of the rich and infuential. ....The mere fact that the area dispossessed is a small one is not of an over-riding importance so as to dissuade the Court from applying the principle of justice, equity and good conscience if the Court finds that the act of the landlord was definitely tortuous one. ....If and when the landlord chooses to put the tenant again in possession of the portion from which the later had been dispossessed, he will be entitled to the rent and not till then."

That decision of the Calcutta High Court (A. I. R. 1951 Cal 338) was followed by the Assam High Court in A. I. R. 1961 Ass 52 *Jatindra Kumar Seal Vs. Raimohan Rai.* This case related to a suit for rent, where the defence plea was that the plaintiff dispossessed him from a room in the house by keeping the plaintiff's logs and caused serious inconvenience to him in his use and occupation of the premises. It was held by Sarjoo Prasad C. J. "the eviction of a tenant from a part of the demised premises entails suspension of rent so long as the eviction lasts, irrespective of the fact that the tenant may be in possession of the residue. The test is whether there has been an actual physical expulsion with the intention of depriving the tenant of the enjoyment of the demised premises or from a part thereof. The Allahabad High Court also, following A. I. R. 1951 Cal 338 and A. I. R. 1961 Ass 52 held the same view (A. I. R. 1964 All 343 *Hajira Bibi Vs. Abrar Hussain*).

4. Competent Civil Court: Competent civil Court means the Court having jurisdiction to entertain a suit for ejectment of the tenant in respect of the holding (See S.9 (I) infra). Jurisdiction has reference to (a) subject matter, (b) parties, (c) particular question which calls for decision and (4) pecuniary value. The Court in which a suit is to be institututed is to be decided keeping in view the provisions of Sections 15, 16, 17, 18, 19 and 20 of the Civil Procedure Code. In a suit for ejectment *ad-valorem* court-fee is chargeable on the amount of rent of the property to which the suit relates, payable for the year next before the date of presenting the plaint. (See S.7 (xi) of the Court-Fee Act) ; and the value of the suit for the purpose of jurisdiction in such a suit is the same as the value for the purpose of Court-fee i. e. the amount of rent for the year next before the date of presenting the plaint. In this connection see S. 8 of the Suit Valuation Act.

5. Protection from eviction :—

(1) Notwithstanding anything in any contract or in any law for the time being in force—

(a) Where under the terms of a contract entered into between a landlord and his tenant whether before or after the commencement of this Act, a tenant is entitled to build, and has in pursuance of such terms actually built within the period of five years from the date of such contract, a permanent structure on the land of the tenancy for residential or business purposes, or where a tenant not being so entitled to build, has actually built any such structure on the land of the tenancy for any of the purposes aforesaid with the knowledge and acquiescence of the landlord, the tenant shall not be ejected

by the landlord from the tenancy except on the ground of non-payment of rent ;

(b) where a tenant has effected improvements on the land of the tenancy under the terms whereof he is not entitled to effect such improvements, the tenant shall not be ejected by the landlord from the land of the tenancy unless compensation for reasonable improvements has been paid to the tenant.

(2) No tenant shall be ejected by his landlord from the land of the tenancy except in execution of a decree for ejectment passed by a competent civil court.

(3) No decree for ejectment passed on the ground of non-payment of rent shall be executed within a period of thirty days from the date of decree and if the tenant pays into the Court whose duty it is to execute the decree the entire amount payable under the decree within the aforesaid period, the Court shall record the decree as satisfied.

Notes.

1. SCOPE.
2. WITHIN A PERIOD OF FIVE YEARS.
3. PERSONS ENTITLED TO PROTECTION.
4. KNOWLEDGE AND ACQUIESCENCE.
5. RESIDENTIAL OR BUSINESS PURPOSES.
6. IMPROVEMENT.
7. SUB-SECTION (3).

1. Scope :—This Act takes away or impairs some rights of the landlord and gives additional protection to a tenant in addition to what he possesses under the

Transfer of Property Act. The landlord now cannot eject a tenant who has, in pursuance of a contract actually built permanent structure within five years of the contract, except on the ground of non-payment of rent. Though the Act does not, in express terms, repeal any provision of the Transfer of Property Act, the language used in Sections 2 and 5 of this Act has the effect of superseding the provisions of the T. P. Act in so far as they are in conflict with this Act ; as this Act is a special Act but the Transfer of property Act is a general one. Thus the provisions of sections 108, 111, 114 etc. of the Transfer of Property Act so far as they are inconsistent with this Act should be treated as superseded to the extent of inconsistency. The other provisions of the Transfer of Property Act which are not inconsistent remain in force and have full effect.

This Section gives protection to the tenant from eviction if he fulfills the conditions laid down in section 5(I) of the Act. A tenant cannot be evicted except in execution of a decree for ejectment passed by a competent Civil Court notwithstanding any contract or any provision in any other law for the time being in force.

2. Within five years from the date of contract :

If a tenant built permanent structure within five years from the contract of the lease on the expiry of which the suit for ejectment is based the tenant cannot be ejected except on the ground of non-payment of rent. It was held by a Division Bench of the Assam High Court consisting of Deka and Mehrotra JJ. (as they, then were) in an unreported case (Second Appeal No. 130 of 1957 *Gayaram Mistri Vs. Kanayalal Tulsian* judgment dated 31st. March, 1959) that if the constructions are in existence at the date of the lease, then the tenant cannot take advantage of such construction for the purpose of section 5 of the Act. This case was followed in some

other decisions and another Bench consisting of Mehrotra C. J. and Nayudu J. held "The second question would not arise unless the defendants can be allowed to take advantage of the constructions made by them within five years of the earlier lease in the suit based on the lease of 1943. This Court has held in a number of cases that if the structures are in existence at the date of the lease, then the tenant cannot take advantage of such constructions. What is contemplated under section 5 of the Act is that the constructions are made within five years of the contract lease on the expiry of the term of which the present suit is based. When both clauses of section 5(I) are read together, it is abundantly clear that the constructions should be made within five years of the contract of the current lease." (A. I. R. 1964 Ass 70 *Chimanlal Agarwalla-Vs-Anandamalla Barua.*)

In clause (a) of sub-section (I) of section 5 there are two parts : in the first, there is term in the lease itself which authorises the tenant to make constructions ; whereas in the other, there is no such term in the contract itself, but in fact the tenant makes constructions. In the first part, the period of five years is mentioned but in the second part, there is no mention of the period. From this one might argue that a tenant was not entitled to build, but actually has built a structure sometime later with the knowledge and acquiescence of the landlord—why should he not be entitled to protection, because this is all that has been laid down in the second part. This argument has been answered and the law has been finally settled by the Assam High Court in a number of cases. Deka J. (as he, then was) in S. A. 130 of 1957—Observed as follows :—

> "The doubt, however, has been set at rest to a great extent as to the intention of the Legislature by what is stated in the Explanation to section 6, which deals with compensation for improvements (Explanation

quoted).....Having referred to the explanation above quoted we find that any tenant building under terms of a contract but beyond five years thereof, is not entitled to protection from eviction under section 5(I)(a) : but is only entitled to protection under section 5(I)(b).....In cases, therefore, where there is neither any contract to build nor is the building or permanent structure constructed within five years of the creation of the tenancy or from the date of such contract, we must view that the tenant is not entitled to protection under section 5(I) (a) of the Act."

3. Persons entitled to protection from eviction :

For discussion regarding tenants who are entitled to claim protection under section 5(I), see notes under sub-section (g) of Section 3.

A tenant, whose contractual tenancy is determined, but a new tenancy comes into existence under section 116 of the Transfer of Property Act, is entitled to protection under section 5 if he can prove that he built constructions within five years of the new tenancy (A. I. R. 1963 Ass 137 *Bhagaban Das-Vs. Dhananjoy Paul*).

Protection under section 5(I) cannot be refused merely on the ground that the permanent constructions which were made within five years of the lease and which were in existence at the time of the suit, have subsequently fallen down (A. I. R. 1963 Ass 137 Supra).

A trespasser is not entitled to protection under the Act. Plaintiff settled the land by a registered lease for ten years from 17.9.36 to 16.9.46 ; sometime in 1941 the defendant company in exceution of a decree acquired *Jote* right over the land with the hutment and began to occupy the same without coming into arrangement with

the plaintiff and exercising the right of renewal—defendant's possession being that of a trespasser the provisions of this Act are not applicable (A. I. R. 1956 Ass 116 *Jitendralal Dutta Roy Vs. Bharat Loan Co. Ltd.*)

4. Knowledge and acquiescence:

In the second part of clause (a) of section 5(I) protection is extended to tenants who construct permanent structures with the knowledge and acquiescence of the landlord. Mere knowledge will not be sufficient the landlord must have acquiesced in the act of construction of the structures. If a person having right and seeing another person about to commit or in the course of committing an act infringing upon that right, stands by in such a manner as really to induce the person who commits the act, who might otherwise have abstained from it to believe that he assents to its being committed, he cannot afterwards be heard to complain of the act. This is called the doctrine of acquiescence (A. I. R. 1925 Oudh 258 *Rafiq Husain Vs. Bhaya Bishnath* ; A. I. R. 1958 A-P. 586 *Neti Gopalkrishna Gokhle Vs. Brahmandam Narsimham*, A. I. R. 1952 Mys 117 *Sidde Gowda Vs. Nadakala Sidda Naika*). The doctrine of acquiescence is one phase of the doctrine of estoppel, which is dealt with in section 115 of the Evidence Act. Mere silence, mere inaction cannot be construed to be representation. In order to support a case of acquiescence there must be something more than mere silence or inaction. Inaction or silence in circumstances which require a duty to speak is the foundation of the doctrine (A. I. R. 1925 Cal 993 *Umaram Gogoi Vs. Puruk Chand*) ; In a case where the doctrine of estoppel under section 51 of the Transfer of Property Act was pleaded Nasim Ali J.(40 C·W.N 52 *Chandi Charan-Vs. Ashutosh Lahiri*) observed as follows :—

> "The equitable doctrine of estoppel by acquiescence also cannot be invoked by the defendants in the present case. The lessee made no mistake about his rights.

He knew full well that the lease was not a lease in perpetuity. He did not raise the structure in the faith of any mistaken belief. From the acts and conduct of the lessee, the lessor could not and did not know that the lessee had made any mistake as to the nature of his right and that he was raising the structures under a mistaken belief that the demise was permanent....The question of the lessor encouraging the lessee to spend money by raising costly structures, either directly or by abstaining from asserting his right, cannot possibly arise in view of the facts and circumstances of the case."

When the party pleading acquiescence was himself aware of his limited right it is not enough for him to show abstinence from interference by the lessor, but he should show something more viz. that by implication the lessor granted superior right claimed by him (A. I. R. 1942 Nag 59 *Nand Kishore Vs. Damodar Balaji*) ; Doctrine of acquiescence is one phase of doctrine of estoppel(1925 Cal 993 *Supra*). The Assam High Court in an unreported case (S. A. 33 of 1961 *Nandakishore Paul Vs Khubchand* ; date of order- 9.5.63), which involved the question of protection under S. 5 of this Act, following A. I. R. 1926 All 324 *Jainarain Vs. Jafar Beg*, observed :—"If a landlord, knowing his right to eject a tenant does not exercise that right, he can be said to have acquiesced in the construction."

5. Residential or business purposes :—

This Act gives protection to tenancies for residential or business purposes. The words "residential or business purposes" were interpreted by Deka J.(as he, then was) sitting singly in S. A. 32 of 1958 of the Assam High Court, as follows :—

"I have paid attention to the arguments advanced by the learned Advocates and I am inclined to hold

that the words "for residential or business purposes" should be interpreted to hold that the structure should be utilised by the tenant himself for his own use as residence or for carrying on business. Even though the word 'own' or 'tenant's' is not there, the purpose of the Act seems to be to protect only those tenants who are living in a permanent structure on a rented plot of land or is carrying on business in the house itself."

A Division Bench of the High Court consisting of Nayudu J. and Dutta J. in L. P. A. 7 of 1961—*Sristiram Boro Vs. Prasanna Narayan Dutta Barua* differed from the above decision and held :—

"The construction, in our opinion, considerably restricts the scope of the section and the restriction, in our opinion, cannot be read in the section, when the plain language of it does not justify it ..... Another argument that could possibly be advanced in this connection is that the 'business purpose' that is meant by the section may include also the business of constructing houses and letting them on rent. We feel that having regard to the wide scope of the meaning generally attributed to the expression 'business' the various transactions entered into by a tenant with third parties for the purpose of letting out the permanent structure constructed by him on the land on lease would fall within the category of 'business.'"

6. Improvement :—

The expression "improvement" is not defined in the Act and so the general legal meaning attributed to the word should be given in interpreting the section. The word "improvement" is not defined in the Transfer of Property Act also ; but it is defined in section 66 of the Assam (Temporarily Settled Districts) Tenancy Act as—

"for the purposes of this Act the term 'Improvement' used with reference to a holding, shall mean any work which adds to the value of the holding which is suitable to the holding and consistent with the purpose for which it was let, and which if not executed on the holding, is either executed directly for its benefit, or is, after the execution made directly beneficial to it." Then the section goes on to enumerate several kinds of improvements which will be presumed to be improvements within the meaning of the section, unless the contrary is shown.

Improvement means any work which adds to the market value of the holding consistent with the purpose for which it is let out ; in other words enhances the value of the property as a marketable subject and not the amount of expenditure incurred by the transferee (I. L. R. 40 Cal 555 (PC)—*Kidar Nath Vs. Mathu Mal*) ; Removing of stone from a waste land or levelling it so as to make it fit for cultivation is an improvement (A. I. R. 1925 Mad 1226) *M. Rama Rao Vs. Appu*

The Supreme Court in A. I. R. 1956 S. C. 727 *Narayan Rao Vs. Basavarayappa*, laid down the principle to be applied in ascertaining the value of improvement under section 51 of the Transfer of Property Act. It was held in that case :—"Section 51 of the Transfer of Property Act lays down an equitable principle and enables a Court to determine the equities between the parties..... It (Court) should assess the valuation of the improvement as at a date as near as possible to the date of actual eviction ; rather than the date of election as has been done in this case." It was further held that the Court has to know exactly how much the transferee had spent on improvements and thus to arrive at the conclusion as to what was the saleable value of the improved property.

Section 51 of the Transfer of Property Act which deals with improvements made by bonafide holder

under defective title, does not apply in terms to improvements made by tenants. (A. I. R. 1939 Mad 247. *Shanmugha Desika Vs. Anantakrishnaswami.* ; A. I. R. 1960 Pat 344 *Bastacolla Colliery Co. Vs. Bandhu Beldar ;* A. I. R. 1952 Nag 398 *Subhan Vs. Madhorao Narainrao*). But some Courts have held that though the section does not apply in terms, the equitable principle of the section could be applied in proper cases of improvements by tenants (See A. I. R. 1960 Punj 172 *Sadhu Singh-Vs. District Board, Gurdaspur* ; A. I. R. 1961 Mad 293 *Alagarswami Kone Vs. T. J. Andhoni*). In case of improvements by tenants governed by Assam non-Agricultural Urban Areas Tenancy Act, the Act itself has provided for compensation payable for the improvements. The principle laid down by the Supreme Court in 1956 S. C. 727 for ascertaining the valuation of the improvements, may be applied in a case under this Act for assessing the compensation to be paid to a tenant.

Clause (b) of sub-section (1) of section 5 does not bar a decree for ejectment in a case where the tenant has effected improvements on the land of tenancy under the terms whereof he is not entitled to effect improvements ; but in such a case the tenant will be entitled to compensation for "reasonable improvement". What is "reasonable inprovement" is to be decided having regard to the facts and circumstances of each case.

In clause (b) it is provided that the tenant who effected "improvement" on the land shall not be ejected unless he has been paid compensation for "reasonable improvements". By using the terms "reasonable improvements" instead of "such improvement" the legislature appears to have intended that the Court in granting compensation shall consider whether the entire improvement effected by the tenant was reasonable, and if it finds that the entire improvements were not reasonable, then it will award compensation for so much of the improvements as is found to be reasonable by the Court.

The word "Improvement" would also include permanent structures and but for a limited class of cases coming under clause (a) of sub-section (1) of section 5 all other permanent structures will be regarded as improvements and the tenant will be entitled to compensation (S. A. 130 of 1957 *Gayaram Mistri Vs. Kanayalal Tulsian*). Mehrotra J. (as he, then was) further observed in that case—"It cannot be argued by the landlord that the word "improvement" does not include putting up of permanent structures and the scope of clause (b) is different from that of clause (a) and the word 'improvement' in clause (b) means construction other than permanent construction. We do not think that this construction is proper."

7. Sub section (3)—Date of judgment is the date of decree, no matter when the decree is drawn up. In computing the period of thirty days from the date of decree, the provisions of section 9 of the Assam General Clauses Act, 1915 (which are similarly worded as in section 9 of the General Clauses Act, 1897) should be applied and the first day of the series viz. the date of judgment should be excluded. If the Court is closed on the day when the period of thirty days expires, then the tenant may deposit the money on the next day afterwards on which the Court reopens (Section 10 of the Assam General Clauses Act, 1915) (See AIR 1925 All 687 *Mahamed Hashim Vs. Radha Kishan* ; A.I.R. 1925 Mad 743 *Sankaran Uni Vs. Kummakattil Ezhuvan*).

Where a decree to be executed is passed by an appellate Court, the Court of first instance is the "Court which passed the decree"and in a case covered by sub-section (3) the money payable under the decree should be paid into the Court which passed the decree.

Sub-S. (3) can be utilised not only by the trial Court but it can be well utilised by the appellate Court also. A Division Bench of the Assam High Court in S. A.

1 of 1955 *Hedayatunnessa Vs. Khaliloor Rahman* held that when the order of eviction of the tenant was passed on the ground of non-payment of rent, the defendant was eligible to pay the amount due under the decree within 30 days of the High Court's judgment and on payment of the same the decree will be recorded as satisfied.

Sub-section (3) lays down that if the money payable under the decree is paid into the Court within thirty days then the whole decree shall be recorded as satisfied The sub-section is silent about the payment of the amount made to the decree-holder out of Court. Or 21 r. 1 of the Civil Procedure Code entitles a judgment-debtor to make payment of the decretal amount either into the Court or to the decree-holder out of Court or otherwise, as the decree may direct. So a judgment-debtor is entitled to make payment in either mode namely payment into the Court or payment to the decree holder out of Court ; and it appears, if the tenant-judgment-debtor makes payment to the landlord decree-holder out of Court within the period the requirement of sub-section (3) will be complied with. However in such a case a a duty is imposed on the judgment-debtor under Or. 21 r. 2 C. P. C. to get the payment certified by the decree holder or by the Court. If payment out of Court is not certified in acordance with Or. 21 rule 2 (1) or rule 2 (2) the executing Court will not recognise the payment.

6. Compensation for improvements :—In a suit for ejectment against a tenant if any question arises—

(a) whether the tenant has effected any improvement on the land of the tenancy, or

(b) whether such improvement is reasonable improvement, or

(c) Whether any compensation may be paid for such an improvement, and if so,

how much, the question shall be decided by the Court having regard to the circumstances of each case.

Explanation : Any structure which a tenant is, under the terms of a contract referred to in clause (a) of sub-section (1) of Section 5 entitled to build but has actually built after the expiry of the period of five years referred to in that clause shall be deemed to be a reasonable improvement within the meaning of this section.

(*See discussions in Note* 6 *under Section* 5.)

7. Enhancement of rent by contract : The rent of a tenant may be enhanced only by contract subject to the following conditions :—

(a) the contract must be in writing and registered ;

(b) the rent must not be enhanced so as to to exceed by more than three annas in the rupee the rent previously payable by the tenant, and

(c) the rent fixed by the contract shall not be liable to enhancement during a term of six years from the date of contract :

Provided as follows:—

(i) Nothing in clause (a) shall prevent a landlord from recovering rent at a rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(ii) Nothing in clause (b) shall apply to a contract by which a tenant binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by or at the expense of his landlord and to the benefit of which the tenant is not otherwise entitled ; but an enhancement fixed by such a contract shall be payable only when improvement has been effected ; provided that such enhancement shall also be payable if the tenant is responsible for any default in respect of the improvement.

Notes

This section appears to have been adopted with some modification from the Bengal Tenancy Act, 1885. Section 29 of the Bengal Tenancy Act may be quoted for proper interpretation of section 7 of this Act. It runs as follows :—

"29. The money rent of an occupany raiyat may be enhanced by contract subject to the following condition:

(a) the contract must be in writing and registered ;
(b) the rent must not be enhanced so as to exceed two annas in the rupee the rent, previously payable by the raiyat ;
(c) the rent fixed by the contract shall not be liable to enhancement during a term of fifteen years from the date of the contract ;

Provided as follows :—
(I) Nothing in clause (a) shall prevent a landlord from recovering rent at the rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed.

(II) Nothing in clause (b) shall apply to a contract by which a raiyat binds himself to pay an enhanced

rent in consideration of an improvement which has been or is to be effected in respect of the holding, by or at the expense, of his landlord and to the benefit of which the raiyat is not otherwise entitled but an enhanced rent fixed by such a contract shall be payable only when the improvement has been effected, and except when the raiyat is chargeable with default in respect of the improvement only so long as the improvement exists and substantially produces its estimated effect in respect of the holding.

(III) When a raiyat has held his land at a specially low rate of rent in consideration of cultivating a particular crop for the convenience of the landlord nothing in clause (b) shall prevent a raiyat from agreeing, in consideration of his being released from the obligation of cultivating that crop, to pay such rent as he may deem fair and equitable".

It may be helpful to refer to some cases under section 29 of the Bengal Tenancy Act decided by other Courts, in the matter of interpretation of this section of the Assam non-Agricultural Urban Areas Tenancy Act.

An agreement for enhancement of rent must conform to section 29 of the Bengal Tenancy Act ; In a case where there was no dispute as to what was the rent payable and there was an intention to enhance the rent by an agreement. Held that the matter is governed by section 29 of the Bengal Tenancy Act and if the agreement contravened section 29 the landlord was not entitled to claim the enhanced rent (AIR 1936 Cal 446 *Makhanlal Vs. Khagendra Nath*) The proviso (I) to section 29 only dispenses with the necessity of a contract being in writing and registered but does not affect clause (b) and (c) of the section (AIR 1938 Cal 459 *Gobind Kishore Bal Vs. Jitendra Chandra*) The effect of first proviso to section

29(a) of Bengal Tenancy Act is that the contract for enhancement, if otherwise lawful, will not be defeated merely because it is not in writing and registered if rent has been regularly paid in accordance with it. But, if it is ab initio illegal, that is to say, if it is a contract of the kind prohibited by section 29 (b), then the proviso does nothing to validate it (AIR 1935 Pat 453—*Reaz Ali Vs. Bijoy Prakash*) ; Section 29 of the Bengal Tenancy Act does not apply when the rent is payable in kind (AIR 1914 Cal 766 *Fazul Iman Vs. Sukor Mahton*) ; Proviso to section 29 does not control subsection(3) of that section (9 CWN 265–32 Cal 395 (FB) *Bipin Behari Mandal Vs.Krishna Dhore*). To entitle the plaintiffs to the benefit of the provisos they must establish that the increased rent which they claim has been actually paid for a continuous period of not less than three years immediately preceding the years in suit. The provio does not mean that if the rent has been paid at increased rate for three years or longer, the rent of the holding has become permanently increased, as if there has been an increase by writing registered. The true effect of section 29 is that there is permanent enhancement when there is an attempt to increase rent without writing registered (AIR 1923 Cal 600 (DB)—*Janaki Ballav Roy Vs. Enat Mondal*)

8. Enhancement of rent without contract :—

In the absence of a contract mentioned in section 7, the tenant shall be liable to pay reasonable increment of rent for necessary improvement done by the landlord.

9. Enhancement of rent by application to Court :—

A landlord or a tenant may make an application to the competent Civil Court having

jurisdiction to entertain a suit for ejectment 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 or the landlord, as the case may be, 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 filing the aforesaid application :

Provided always:—

(a) that the rent previously payable for the holding shall not be enhanced by more than three annas in the rupee, but if at any time the land revenue due to Government or the ground rent due to a proprietor is increased, then the tenant shall be liable to pay in addition to the enhanced rent, if any, an amount equal to the total amount of land revenue or ground rent paid by the landlord in excess of the amount paid previously;

(b) that no enhancement shall be made within a period of six years from the date of the last enhancement by contract or by order of the Court, unless the land revenue or ground rent is enhanced during this period ;

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

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

10. Illegal Realisation :—(1) Realisation of any 'salami' from the tenant at the time of initiating a lease shall not exceed an amount equivalent to one year's rent for the land ;

(2) Any realisation of fresh 'salami' at the time of renewal of the lease shall be illegal.

Notes

'Salami' in law corresponds to premium and not justifiably be classed as 'rent'. The Supreme Court in a case reported in 1957 I. L. R. (9) Assam 265 *Member, Agricultural Income-tax Board, Assam Vs. Sindhurani Chaudhurani* observed that "Salami is a payment by the tenant as a present or a price for parting by the landlord with his right under the lease of a holding. It is a lump sum payment as consideration for what the landlord transfers to the tenant"; Realisation of 'Salami' in contravention of Sub-S. (2)—whether it will make the contract of tenancy illegal ? Sub-S. (2) makes realisation of fresh 'Salami' at the time of renewal of lease illegal ; but from this alone it cannot be said that the contract of tenancy becomes illegal. The tenant may have a remedy of recovering the amount so paid from the landlord (See-83 C. L. J. 328—*Surendra Chandra Majumdar Vs. Panchi Bibi*).

11. Notice of ejectment suit :—No suit for ejectment 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.

Notes

1. SCOPE
2. COMPUTATION OF ONE MONTH.
3. WHO CAN GIVE NOTICE TO QUIT.

1. Scope : Under the Transfer of Property Act only a notice to terminate the tenancy is required and not a notice to deliver possession ; because it is the tenant's own duty to deliver possession as soon as the lease is determind (see S. 108 (q) T. P. Act). The modes of determination of a lease are laid down in S. 111 T. P. Act. A notice terminating the tenancy may include a demand for possession ; but a notice only demanding possession cannot be interpreted as a notice terminating the tenancy (A. I. R. 1963 All 581 (F.B.)—*Ahmed Ali Vs. Md. Jamal Uddin*). The rule of construction embodied in S. 106 T. P. Act, applies not only to express leases of uncertain duration but also to leases implied by law, which may be inferred from possession and acceptance of rent and other circumstances. (A. I. R. 1952 S. C. 23 *Ram Kumar Das Vs. Jagadish Ch. Deo*). S. 106 T. P. Act deals with termination of tenancy by notice of ejectment, which is also commonly called a notice to quit. Notice contemplated by S. 11 of this Act is a notice asking the tenant to surrender possession in favour of the landlord. It appears that S. 11 of the Act does not expressly or impliedly affect the provisions of S. 106 T. P. Act ; it does not abrogate S. 106 or S. 111 of the T. P. Act . It merely states that no suit based on any ground other than the ground of non-payment of rent shall be instituted without a notice demanding possession, which shall be in writing. Another bar placed by the section is that the suit cannot be instituted until after the expiration of one month from the date of service of the notice.

Now, a question may arise—whether a notice under S. 11 of this Act is a notice, required in addition to a

notice S. 106 T. P. Act or in lieu or in place of it ? A similar question in relation to a notice under S. 13 (6) of the West Bengal Premises Tenancy Act, 1956 arose in a case reported in A. I. R. 1964 Cal 1 (S.B.). *Surya properties (P) Ltd. Vs. Bimalendu* S.13 (6) of the West Bengal Premises Tenancy Act runs as folows :—

> "Notwithstanding anything in any other law for the time being in force, no suit or proceeding for recovery of possession of any premises on any of the grounds mentioned in sub-section (I) except on the grounds mentioned in clauses (j) and (k) of that sub-section shall be filed by the landlord unless he has given to the tenant one month's notice expiring with a month of the tenancy."

The Special Bench consisting of Bose C. J. Bachawat, Sinha, P. N. Mookerjee & G. K. Mitter JJ. held that the notice under S. 13 (6) is essentially a notice of suit. When it is necessary to serve a notice under S. 106 of the T. P. Act, it is still necessary to serve it. Bachawat J. observed as follows :—"The notice under S. 13 (6) must expire with the month of tenancy ; nevertheless this notice is not a notice to quit, it is not a notice in lieu or in place of a notice under S. 106 T. P. Act and where the latter notice is necessary for determination of a lease such notice must still be given. ....S. 13 (6) does not provide for a mode of determination of a contractual tenancy and it has not abrogated Ss. 106 and 111 of the Transfer of property Act. The requirement of special notice under S. 13 (6) is superimposed upon the requirement of the general law that in order to enable the lessor to maintain a suit for recovery of possession of the demised premises the lessor must establish that the lease has been determined by one of the modes prescribed by S. 111. Unless the lease is so determined the possession of the lessee is protected by the subsisting lease, and the lessor has no cause of action for recovery of possession of the

premises..... The notice to quit under S. 106 is required for determination of a contractual tenancy of an indefinite period, whereas the notice of suit under S. 13 (6) is required to enable the landlord to maintain a suit for eviction of all classes of tenants, whether contractual, or statutory or created by statute." It was further held in that Special Bench case that a notice under S. 13-(6) may be combined with a notice under S. 106 T. P. Act.

The Supreme Court in a case reported in A. I. R. 1963 S. C. 120—*Bhaiya Punjalal Bhagawanddin Vs. Dave Bhagatprasad* considered certain provisons of the Bombay Rents Hotel and Lodging House Rates (Control) Act, 1947 regarding the notice of suit. The relevant provisions of that Act are :—

"12 (1) A landlord shall not be entitled to the recovery of possession of any premises so long as the tenant pays or is ready and willing to pay, the amount of standard rent and permitted increases, if any, and observes and performs the other conditions of the tenancy, in so far as they are consistent with the provisons of this Act ;

(2) No suit for recovery of possession shall be instituted by a landlord against a tenant on the ground of non-payment of standard rent or permitted increases due, until the expiration of one month next after notice in writing of the demand of the standard rent or permitted increases has been served upon the tenant in the manner provided in Section 106 of the Transfer of Property Act 1882."

Raghubar Dayal J. who delivered the judgment in A.I.R. 1963 S. C. 120 (at P. 125) laid down the general proposition as follows :—

"The right to possession is to be distinguished from the right to recover possession. The right to posse-

ssion arises when the tenancy is determined. The right to recover possession follows the right to possession, and arises when the person in possession does not make over possession as he is bound to do under the law, and there arises a necessity to recover possession through Court. The cause of action for going to Court to recover possession arises on the refusal of person in possession, with no right to possess, to deliver possession. In this context, it is clear that the provisions of S. 12 deals with the stage of recovery of possession and not with the stage prior to it and that they come into play only when the tenancy is determined and the right to possession has come into existence. Of course, if there was no contractual tenancy and and the person is deemed to be a tenant only on account of the statute giving him right to remain in possession, the right to possession arises on the person in possession acting in a manner which according to the statute, gives the landlord right to recover possession and no question for determination of tenancy arises,as really speaking there was no tenancy in the ordinary sense of expression. It is for the sake of convenience that the right to possession, by virtue of the provisions of a statute, has been referred to as statutory tenancy..... We are therefore of opinion that so long as the contractual tenancy continues a landlord cannot sue for recovery of possession even if S. 12 of the Act does not bar the institution of such a suit and that in order to take advantage of the provisons of the Act he must first determine the tenancy in accordance with the provisons of the Transfer of Property Act."

From the discussions in the cases referred to above, though relate to other enactments, it appears that. S.11 of the Assam Non-agricultural Urban Areas Tenancy Act contemplates a notice of the suit and not a notice to quit and such a notice is a notice in addition to a notice under

S. 106 T. P. Act, where such notice is necessary to determine the lease ; and not in lieu of it. S. 11 comes into play only when the tenancy is determined.

There is no prescribed form of the notice under S. 11. The notice sufficiently complies with the requirement of S. 11, if by express words or necessary intendment it conveys to the tenant that the landlord intends to file a suit for recovery of possession and that surrender of possession by the tenant in favour of the landlord is demanded. The suit can, however, be filed only after the expiration of one month from the date of service of the notice. For interpretation of the words 'one month' see S.4 (39) of the Assam General Clauses Act, which defines 'month' as a month reckoned according to British Calendar.

A combined notice by which the tenancy is determind in accordance with S. 106 T. P. Act and surrender of possession by the tenant to the landlord is demanded, will be in sufficient compliance with the requirements of S. 106 T. P. Act as well as S. 11 of this Act. The Allahabad High Court in interpreting the notice of ejectment in a case governed by the U. P. (Temporary) Rent & Eviction Act, 1947, held that a composite notice or combined notice under S. 3 (I) of that Act and S. 106 of the T. P. Act is a valid and legal notice (A. I. R. 1965 All 291—*Har Sarup Lal Vs. Chiddalal*). The Calcutta High Court also in A. I. R. 1964 Cal 1 (S.B.)—(*supra*) held the view that a notice under S. 13 (6) of the West Bengal Premises Tenancy Act and a notice under S. 106 T. P. Act may be effectively given by a single document.

2. Computation of the period of one month :— S. 11 of this Act and S. 80 of the Civil Procedure code are similarly worded, as both the sections say "No suit ....shall be instituted....until after expiration of....." So, the rule of construction applied in the case of a notice under S. 80 C. P. C. may aptly be applied in a notice

under S. 11 of this Act. It has been consistently held by different Courts that the day on which the notice under S. 80 is served should be excluded in computing the period of two months and the period should be taken as exclusive of the day on which the notice is served(See A. I. R. 1961 Pun 150 *B. L. Chopra Vs. State of Punjab ;* A. I. R. 1941 Mad 446 *Marina Ammayi Vs. Secretary of State ;* A. I. R. 1945 Cal 341 *Province of Bengal Vs. Midnapore Zamindary Co. Ltd.*)

3 Who can give notice to quit :—An ejectment notice should be given by the landlord. Where a tenancy has been created by several landlords all landlords must join in giving notice to the tenant terminating the tenancy. A tenant cannot be ejected at the instance of only one of the joint landlords. (A. 1. R. 1952 Nag 18 *Abdul Hamid Vs. Bhuwaneswar Prashad*) A. 1. R. 1935 Bom 262 *Vagha Vs. Manilal*). Where the defendant No 1 was a tenant under the plaintiff and the defendants No. 2-8 and by amicable partition among the co-lessors some portion of the land fell in the share of the plaintiff : a notice to quit by the plaintiff in respect of the land fallen to his share would be invalid and so the plaintiff could not sue the defandant No. 1 merely from his share. (A. 1 R. 1957 Ass 70 *Arun Ch. Dowerah Vs. Panchu Madak*). But when one of the co-sharers makes contract for the lease, it is not necessary that the other co-sharers should join as plaintiffs in an ejecment suit (A. 1. R. 1952 Ass 27 *Durga Prasad Goenka Vs. Debidutt Saraf*).

12. Notice how to be served :—All notices required to be served under this Act shall be served in the manner prescribed by rules.

(*See Rule* 5 *of the Assam non-Agricultural Urban Areas Tenancy Rules*, 1955 (*Appendix I*).

13. Power to make rules :—The State 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 the same.

14. Repeal :—The Sylhet non-Agricultural Urban Areas Tenancy Act, 1947 (Assam Act X of 1947) is hereby repealed.

———

APPENDIX I

ASSAM NON-AGRICULTURAL URBAN AREA

TENANCY RULES, 1955

(Notification dated 17th. October, 1955, No. RT. 34/55/1 says : "In exercise of the powers conferred by S. 13 of the Assam non-Agricultural Urban Areas Tenancy Act, 1955 (Assam Act XII of 1955), the Governor of Assam is pleased to make the following rules in order to carry out the purposes and objects of this Act.")

1. Short title and commencement (1) These rules may be called the Assam Non-Agricultural Urban Areas Tenancy Rules, 1955.

(2) It shall come into force at once.

2. Definitions : In these rules, unless there is anything repugnant in the subject or context :—

(a) the 'Act' means the Assam Non-Agricultural Urban Areas Tenancy Act, 1955,
(b) 'Section' means a section of the Act,
(c) 'Form' means a form appended to these rules; and
(d) all words and expressions used in these rules and not defined herein but defined in the Act shall respectively have the same meaning as assigned to them in the Act.

3. Receipt for payment of rent—(i) Every tenant on payment of rent under Section 4 of the Act shall forthwith be given a written receipt by the landlord for the rent paid to him by the tenant. The receipt shall be signed by the landlord or by his duly authorised agent. The form of receipt shall be as in Form A of the Appendix.

(ii) The landlord shall retain a counterfoil of the receipt as signed by the person making payment in token of receipt of the outerfoil.

(iii) The receipt and counterfoil shall contain the description of the holding for which the rent is paid, total dues payable by the tenant in respect of such holding, the rent actually paid and the period for which it is paid.

4. Mode of service of notice—(1) The provisions of the Code of Civil Procedure shall apply to the issue, service and return of notices and processes on parties and witnesses for disposal of an application filed under Section 9.

5. Notice of ejectment—The notice referred to in Section 11 shall be served personally or sent by registered post with acknowledgement due.

Appendix

(Form of receipt under rule 3)—Form-A

Counterfoil (To be retained by the landlord	Receipt (outerfoil) (To be given to tenant)
1. Name of the Tenant—	1. Name of the Tenant
2. His father's name and residence	2. His father's name and residence
3. Description of the holding and total area held by the tenant	3. Description of the holding and total area held by the tenant

4. The annual rent of the holding	4. The annual rent of the holding
5. The amount paid and the period on account of which paid	5. The amount paid and the period on account of which paid.
6. Through whom paid	6. Through whom paid.
7. Balance due, if any	7. Balance due, if any.
8. Signature of the person making payment	8. Signature of the landlord or his authorised agent.
9. Date of payment	9. Date of payment.

APPENDIX II

(TRANSFER OF PROPERTY ACT)

CHAPTER V

OF LEASES OF IMMOVABLE PROPERTY

105. "Leases" defined—A lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions, to the transferor by the transferee, who accepts the transfer on such terms.

"Lessor," "lesee" "premium" and "rent" defined.—The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money share, service or other thing to be so rendered is called the rent.

106. Duration of certain leases in absence of written contract or local usage.—In the absence of a contract or local law or usage to the contrary, a lease of immovable property for agricultural or manufacturing purposes shall be deemed to be a lease from year to year, terminable on the part of either lessor or lessee, by six month's notice expiring with the end of a year of the tenancy ; and lease of immovable property for any other purpose shall be deemed to be a lease from month to month, terminable, on the part of either lessor or lessee, by fifteen days' notice expiring with the end of a month of the tenancy.

Every notice under this section must be in writing, signed by or on behalf of the person giving it, and either

be sent by post to the party who is intended to be bound by it or be tendered or delivered personally to such party, or to one of his family or servants at his residence or (if, such tender or delivery is not practicable) affixed to a conspicuous part of the property.

107. Leases how made—A lease of immovable property from year to year or for any term exceeding one year or reserving a yearly rent can be made only by a registered instrument.

All other leases of immovable property may be made by a registered instrument or by oral agreement accompanied by delivery of possession.

Where a lease of immovable property is made by a registered instrument such instrument or where there are more instruments than one, each such instrument, shall be executed by both the lessor and the lessee :

Provided that the State Government may, from time to time, by notification in the official *Gazette*, direct that leases of immovable property other than leases from year to year, or for any term exceeding one year, or reserving a yearly rent or any class of such leases, may be made by unregistered instrument or by oral agreement without delivery of possession.

108. Rights and liabilities of lessor and lessees—In the absence of a contract or local usage to the contrary, the lessor and the lessee of immovable property, as against one another, respectively possess the rights and are subject to the liabilities mentioned in the rules next following, or such of them as are applicable to the property leased.

A—Rights and Liabilities of the Lessor

(a) The lessor is bound to disclose to the lessee any material defect in the property, with reference to its in-

tended use, of which the former is, and the latter is not, aware and which the latter could not with ordinary care discover ;

(b) The lessor is bound on the lessee's request to put him in possession of the property ;

(c) The lessor shall be deemed to contract with the lessee that, if the latter pays the rent reserved by the lease and performs the contract binding on the lessee, he may hold the property during the time limited by the lease without interruption.

The benefit or such contract shall be annexed to and go with the lessee's interest as such, and may be enforced by every person in whom that interest is for the whole or any part thereof from time to time vested.

B—Rights and Liabilities of the Lessee

(d) If during the continuance of the lease any accession is made to the property, such accession (subject to the law relating to alluvion for the time being in force), shall be deemed to be comprised in the lease ;

(e) If, by fire, tempest or flood or violence of an army or of a mob, or other irresistible force, any material part of the property be wholly destroyed or rendered substantially and permanently unfit for the purposes for which it was let, the lease shall, at the option of the lessee, be void :

Provided that if the injury be occasioned by the wrongful act or default of the lessee, he shall not be entitled to avail himself of the benefit of this provision ;

(f) If the lessor neglects of make, within a reasonable time after notice, any repairs which he is bound to make

to the property, the lessee may make the same himself, and deduct the expense of such repairs with interest from rent, or otherwise recover it from the lessor.

(g) If the lessor neglects to make any payment which he is bound to make, and which, if not made by him, is recoverable from the lessee or against the property, the lessee may make such payment himself, and deduct it with interest from the rent, or otherwise recover it from the lessor.

(h) The lessee may, even after determination of the lease, remove, at any time whilst he is in possession of the property leased but not afterwards, all things which he has attached to the earth : provided he leaves the property in the state in which he received it ;

(i) When a lease of uncertain duration determines by any means, except the fault of the lessee, he or his legal representative is entitled to all the crops planted or sown by the lessee and growing upon the property when the lease determines, and to free ingress and egress to gather and carry them.

(j) The lessee may transfer absolutely or by way of mortgage or sub-lease the whole or any part of his interest in the property, and any transferee of such interest or part may again transfer it. The lessee shall not, by reason only of such transfer, cease to be subject to any of the liabilities attaching to the lease :

Nothing in this clause shall be deemed to authorise a tenant having an untransferable right of occupancy, the farmer of an estate in respect of which default has been made in paying revenue, or the lessee of an estate under the management of a Court of Wards to assign his interest as such tenant, farmer or lessee.

(k) The lessee is bound to disclose to the lessor any fact as to the nature or extent of the interest which the lessee is about to take, of which the lessee is, and the lessor is not, aware, and which materially increases the value of such interest ;

(l) The lessee is bound to pay or tender, at the proper time and place, the premium or rent to the lessor or his agent in this behalf ;

(m) The lessee is bound to keep, and on the termination of the lease to restore, the property in as good condition as it was in at the time when he was put in possession, subject only to the changes caused by reasonable wear and tear or irresistible force, and to allow the lessor and his agents, at all reasonable times during the term, to enter upon the property and inspect the condition thereof, and give or leave notice of any defect in such condition ; and when such defect has been caused by any act or default on the part of the lessee, his servants or agents, he is bound to make it good within three months after such notice has been given or left ;

(n) If the lessee becomes aware of any proceeding to recover the property or any part thereof, or of any encroachment made upon, or any interference with, the lessor's rights concerning such property, he is bound to give, with reasonable diligence, notice thereof to the lessor;

(o) The lessee may use the property and its products (if any) as a person of ordinary prudence would use them if they were his own; but he must not use, or permit another to use, the property for the purpose other than that for which it was leased, or fell or sell timber, pull down or damage buildings belonging to the lessor ; or work mines or quarries not open when the lease was granted, or commit any other act which is destructive or permanently injurious thereto ;

(p) He must not, without the lessor's consent, erect on the property any permanent structure, except for agricultural purposes ;

(q) On the determination of the lease, the lessee is bound to put the lessor into possession of the property.

109. Rights of lessor's transferee.—If the lessor transfers the property leased, or any part thereof, or any part of his interest therein, the transferee, in the absence of a contact of the contrary, shall possess all the rights, and, if the lessee so elects, be subject to all the liabilities of the lessor as to the property or part transferred so long as he is the owner of it ; but the lessor shall not, by reason only of such transfer, cease to be subject to any of the liabilities imposed upon him by the lease unless the lessee elects to treat the transferee as the person liable to him :

Provided that the transferee is not entitled to arrears of rent due before the transfer, and that, if the lessee, not having reason to believe that such transfer has been made, pays rent to the lessor, and lessee shall not be liable to pay such rent over again to the transferee.

The lessor, the transferee and the lessee may determine what proportion of the premium or rent reserved by the lease is payable in respect of the part so transferred, and in case they disagree, such determination may be made by any Court having jurisdiction to entertain a suit for the possession of the property leased.

110. Exclusion of day on which term commences —Where the time limited by a lease of immovable property is expressed as commencing from a particular day, in computing that time such day shall be excluded. Where no day of commencement is named, the time so limited begins from the making of the lease.

Duration of lease for a year.—Where the time so limited is a year, or a number of years, in the absence of an express agreement to the contrary, the lease shall last during the whole anniversary of the day from which such time commences.

Option to determine lease.—Where the time so limited is expressed to be terminable before its expiration, and the lease omits to mention at whose option it is so terminable, the lessee, and not the lessor, shall have such option.

111. Determination of lease.—A lease of immovable property determines—

(a) by efflux of the time limited thereby ;

(b) where such time is limited conditionally on the happening of some event—by the happening of such event ;

(c) where the interest of the lessor in the property terminates on, or his power to dispose of the same extends only to, the happening of any event—by the happening of such event ;

(d) in case the interests of the lessee and the lessor in the whole of the property become vested at the same time in one person in the same right ;

(e) by express surrender ; that is to say, in case the lessee yields up his interest under the lease to the lessor, by mutual agreement between them ;

(f) by implied surrender ;

(g) by forfeiture ; that is to say, (1) in case the lessee breaks an express condition which provides that on breach

thereof the lessor may re-enter ; or (2) in case the lessee renounces his character as such by setting up a title in a third person or by claiming title in himself ; or (3) the lessee is adjudicated an insolvent and the lease provides that the lessor may re-enter on the happening of such event ; and in any of these cases the lessor or his transferee gives notice in writing to the lessee of his intention to determine the lease ;

(h) on the expiration of a notice to determine the lease, or to quit, or of intention to quit,, the property leased, duly given by one party to the other.

Illustration to Clause (f)

A lessee accepts from his lessor a new lease of the property leased, to take effect during the continuance of the existing lease. This is an implied surrender of the former lease, and such lease determines thereupon.

112. Waiver of forfeiture.—A forfeiture under section 111, clause (g), is waived by acceptance of rent which has become due since the forfeiture, or by distress for such rent, or by any other act on the part of the lessor showing an intention to treat the lease as subsisting :

Provided that the lessor is aware that the forfeiture has been incurred ;

Provided also that, where rent is accepted after the institution of a suit to eject the lessee on the ground of forfeiture, such acceptance is not a waiver.

113. Waiver of notice to quit.—A notice given under section 111 clause (h), is waived with the express or implied consent of the person to whom it is given, by any act on the part of the person giving it showing an intention to treat the lease as subsisting.

Illustrations

(a) A, the lessor, given B, the lessee, notice to quit the property leased. The notice expires. B tenders and A accepts rent which has become due in respect of the property since the expiration of the notice. The notice is waived.

(b) A, the lessor, gives B, the lessee, notice to quit the property leased. The notice expires and B remains in possession. A gives to B as lessee a second notice to quit. The first notice is waived.

114. Relief against forfeiture for non-payment of rent.—Where a lease of immovable property has determined by forfeiture for non-payment of rent, and the lessor sues to eject the lessee, if, at the hearing of the suit, the lessee pays or tenders to the lessor the rent in arrear, together with interest thereon and his full costs of the suit, or gives such security as the Court thinks sufficient for making such payment within fifteen days, the Court may, in lieu of making a decree for ejectment, pass an order relieving the lessee against the forfeiture ; and thereupon the lessee shall hold the property leased as if the forfeiture had not occurred.

114-A. Relief against forfeiture in certain other cases.—Where a lease of immovable property has determined by forfeiture for a breach of an express condition which provides that on breach thereof the lessor may re-enter, no suit for ejectment shall lie unless and until the lessor has served on the lessee a notice in writing—

(a) specifying the particular breach complained of ; and

(b) if the breach is capable of remedy, requiring the lessee to remedy the breach ;

and the lessee fails, within a reasonable time from the date of the service of the notice, to remedy the breach, if it is capable of remedy.

Nothing in this section shall apply to an express condition against the assigning, under-letting, parting with the possession, or disposing, of the property leased, or to an express condition relating to forfeiture in case of non-payment of rent.

115. Effect of surrender and forfeiture on under-leases.—The surrender, express or implied, of a lease of immovable property, does not prejudice an under-lease of the property or any part thereof previously granted by the lessee, on terms and conditions substantially the same (except as regards the amount of rent) as those of the original lease ; but unless the surrender is made for the purpose of obtaining a new lease, the rent payable by, and the contracts binding on the under-lessee, shall be respectively payable to and enforceable by the lessor.

The forfeiture of such a lease annuls all such under-leases, except where such forfeiture has been procured by the lessor in fraud of the under-lessees, or relief against the forfeiture is granted under section 114.

116. Effect of holding over. If a lessee or under-lessee of property remains in possession thereof after the determination of the lease granted to the lessee, and the lessor or his legal representative accepts rent from the lessee or under-lessee, or otherwise assents to his continuing in possession, the lease is, in the absence of an agreement to the contrary, renewed from year to year, or from month to month according to the purpose for which the property is leased, as specified in section 106.