**TENANCY LAWS AS ONE OF THE TOOLS FOR AGRARIAN REFORMS WITH SPECIAL REFERENCE TO ASSAM TENANCY ACT, 1971**

**(*Vis-a-vis* provision for protection of rights of cultivator tenants).**

**By**

**Sri Utpal Hazarika, ACS**

**Director of Land Requisition Acquisition & Reforms, Assam,**

**Roopnagar, Guwahati-32**

**Introduction:** The problem of tenancy reforms is concerned with the following aspects- fixation of rents, fixation of tenure and security of tenant cultivator, freedom from arbitrary ejectment of the tenant cultivator. State has enacted laws for regulating rent payable by cultivating tenants. Land reforms is meant such institutional changes as to make property relation favourable to the tillers of the soil and which raise the size of units/holdings of cultivators to make them operationally viable. Institutional factors such as Land reforms have been recognised to constitute a vital element both in terms of the anti-poverty strategy and for modernization as well as increase of productivity and efficiency.

**Following specific steps would be taken:-**

i) ALRR,1886 would be extended to the erstwhile permanently settled areas of Goalpara, Karimganj.

ii) The Goalpara Tenancy Act and Sylhet Tenancy Act will be repealed.

iii) The rates of rent paid by the tenants in Goalpara would be incorporated as revenue payable under ALRR, 1886 for a period of 25 years.

iv) All the persons designated as tenants in the erstwhile permanently settled areas would, therefore, be governed as Settlement-holders under ALRR, 1886.

v) The under-tenants, adhiar in these areas would, thereafter, be governed by the provision of Assam Temporarily settled Districts Tenancy Act which will be renamed as Assam Tenancy Act.

vi) The records-of-rights of tenants ( including adhiars ) in Goalpara, Kamrup, Sibsagar and Cachar will be updated so as to facilitate the tenants of these areas to avail the benefit of the provisions of Assam( Temporarily Settled Areas ) Tenancy Act,1971.

**CONTD....**

Land Reforms assumed great significance in conferment of tenancy rights to Rayats which bring them in direct relationship with the State instead of leaving the tenants at the mercy of the landed aristocracy. While the rest of Assam where, temporary settled estates existed, the intensive Tenancy reforms were carried out under Assam (T.S.A.) Tenancy Act, 1971, the Government of Assam felt the necessity to introduce the same pattern of tenancy and revenue administration in the permanently settled districts of erstwhile Goalpara & Karimganj. As a result of the Assam Land Holding ACT,1974 ( Adoption of Relationship under ALRR, 1886 in the acquired permanently settled estates) was brought into being, it now assumes considerable significance for the State in as much as this professes to bring the tenant and other intermediaries in direct relationship with State Government.

With this Act coming into force, not only on 18th Century legacy is sought to be put on end but the whole of Assam would be ushered into a single system of Land holders i.e. Settlement holders under which every owner of Land will be under contract with the State as

that the rent payable by such tenant shall not exceed that maximum fixed as per Tenancy Act.

Provided further nothing in this section shall be deemed to affect any right already acquired by such tenant to his disadvantage.

Assam( Temporarily Settled Areas ) Tenancy Act, 1971 heralded a new era of progressive Land reforms in the State covering following aspects- (a) Fixation of tenure and security of the tenant-cultivators (b) Fixation of rents i.e. fixation of fair and equitable rent (c) Freedom of the tenant from arbitrary ejectment. State has enacted Laws for regulating rent payable by the cultivating tenants. Land Reforms is meant such institutional changes so as to make property relation favourable to the tillers of the soil and which raise the size of units/holdings of cultivator to make them operationally viable. Institutional factors such as Land Reforms have constituted a vital element both in terms of anti-poverty strategy and for modernisation as well as for increase of productivity and efficiency. Following specific steps have been taken in respect of tenancy reforms:-

1. **ALRR,1866 (Provisions of Assam Land Revenue Regulation)** have been extended to the erstwhile permanently settled areas of the districts – Goalpara, Karimganj. Goalpara Tenancy Act, 1929 and Sylhet Tenancy Act, the old Assam (Temporarily settled District) Tenancy Act, 1935, Adhiar Protection and Regulation Act, 1948 were repealed consequent upon introduction of Assam Tenancy(Temporarily Settled Area ) Act,1971. Adhiar was given the status of a tenant under the Assam Tenancy Act, 1971. The Districts where temporary settled estates existed, the intensive tenancy reforms were carried out under the new Act. Government of Assam felt the necessity to introduce the uniform pattern of tenancy and revenue administration for the whole of Assam ( covering permanently settled areas as well as temporarily settled areas in Assam). So, Assam Land Holding( Adoption of Relationship under Assam Land and Revenue Regulation Act, 1886 in the acquired permanently settled estates) Act, 1974 was brought into being to bring the tenants in direct relationship with the State Government. The State now gets uniform land tenure system in which all rayats will enjoy equal rights and privileges without any discrimination. All owners of Land Holding ( including Tenants ) are now settlement holders who will be under contract with State directly to pay Land revenue.
2. The rates of rent paid by the tenants in Goalpara would be incorporated as revenue payable under Assam Land & Revenue Regulation Act, 1886 for a period of 25 years. All the persons designated as tenants in erstwhile permanently settled areas would thereafter be governed as settlement holders under Assam Land & Revenue Regulation Act, 1886.
3. The under tenants, adhiars in Goalpara, Karimganj i.e. erstwhile Goalpara, Karimganj and all other districts (permanently settled and temporarily settled areas would be governed by the provision of Assam Tenancy Act, 1971.

A crash programme was launched for preparation of record of rights of tenants (all over Assam) as a consequence of introduction of AssamTenancy Act (Temporarily Settled Areas) Act, 1971 along with a Resettlement Operation i.e. for preparation of Khatians starting from the stage of survey, demarcation, record writing etc. Tenants who had obtained final khatian during the Resettlement Operation in respect of Tenancy Settlement can now produce conclusive proof of acquiring right over land and enjoy all rights and privileges as rayats. Record of rights of tenant is generally prepared during Resettlement Operation. But where no such operation is in progress, record of rights of tenants may be prepared under Section 55 of Assam Tenancy (Temporarily Settled Areas) Act, 1971. A Notification ordering such preparation is to be issued in the Gazette. The particulars to be recorded include (1) Name of the tenant (2) The class of tenant (3) The area and the situation of the Land (4) Name of the Landlord (5) The rent payable (6) Whether the rent has been fixed by contract or Order of a Court (7) If the rent is gradually increasing, the time at which it increases (8) The special conditions and incident, if any of the tenancy (9) Any right of way or other Easement right attaching to the Land. It may be mentioned that during Tenancy Settlement Operation, Certificates were distributed to the tillers who had been found cultivating land as tenant at the time of survey, demarcation and preliminary record writing stage. Provisional Certificates of Land Holding obtained by the tenants till the finalization of Khatian had helped them to prevent harassment from Landlord or any vested circle. Tenants include Adhiar and Share Croppers.

**The basic features of the Assam( Temporarily Settled Areas ) Tenancy Act,1971** **are as follows:**

1. Share croppers will be treated as tenants (2) Right of occupancy will accrue on occupation for 3 years against 12 years prescribed in earlier Laws (3) There will be only two classes of tenants as against 5 classes under the previous Law. (4) Maximum of rent both cash and in kind has been provided. (5) Govt. have been given the power to acquire the right of ownership and the intermediary rights for an occupancy tenant to acquire such right by depositing compensation.(6) Occupancy tenants are protected against eviction whereas non-occupancy tenants can be evicted on breach of specified condition through due process.(7) Unauthorized eviction in the form of voluntary surrender has been prohibited. (8) Eviction without the orders from the Court has been barred. (9) Illegally ejected tenants will be restored. (10) A limited right of mortgage has been given to non-occupancy tenants to obtain credit from recognized financial institutions for agriculture.

**Distinction between Occupancy Tenant and Non-Occupancy Tenant**:-

Section 4 (1) (i) of the Tenancy Act, 1971, continuous possession of three years is sufficient for acquiring right of Occupancy as tenant.

Section 4 (1) (ii) of the Tenancy Act, 1971 defines non-occupancy tenants as such – “ A non-occupancy tenant” is tenant holding land immediately under the land holder or settlement holder but without having the right of occupancy i. e. possession for less than three years. An Occupancy tenant has permanent, heritable and transferable right of use and occupation of his holding. Right of a occupancy tenant to transfer his holding to a non-agriculturalist is restricted. As per Section 8 of the Tenancy Act, 1971 occupancy tenant cannot transfer his holding to a non-agriculturalist and that too with prior permission of the Govt.

The Non-Occupancy tenant has no right to transfer his holding. But he has been given a limited right to mortgage to obtain credit from the State, Union Govt., a Co-operative society or an authorized bank for the purpose of agriculture only.

Sub-letting is prohibited in respect of the holding of an occupancy tenant as well as non-occupancy tenant both (U/S 9 & U/S 16 of the Tenancy Act, 1971).

Neither occupancy tenant nor non-occupancy tenant can allow to hold land by an under tenant w.e.f. the date of commencement of the new Tenancy Act, 1971. This is in conformity of prohibition of sub-letting by the occupancy or non-occupancy tenant (U/S 20 of the Act).

But those under-tenants existing before the commencement of the Tenancy Act, 1971 could continue to hold the Land i.e. exercise lawfully their right of acquiring the interests of their landlords as per the Act and also the intermediary and the ownership right. Both occupancy and non-occupancy tenant are under obligation to pay to the landlord as follows:-

1) In case of cash rent, not exceeding 3 times of the Land revenue payable for such land and (2) In case of crop rent, a rate of rent not exceeding one-fifth of the produce of the principal crop grown in each agricultural year ( under section 28 of the Tenancy Act, 1971). When the circumstances are beyond the control of the tenant to get production of the crop (i.e. due to natural calamities or payment of crop share is not possible), a sum equal to double annual land revenue payable by his immediate landlord shall be fair rent.

Enhancement of rent (U/S 29)- Grounds for enhancement of rent:-

1) Fluvial action makes productive powers of the agricultural land increase or

2) When improvement of the land holding is effected at the landlords’ cost or

3) When the area of tenant holding has increased by alluvium or

4) The Govt. revenue rate for the land has increased.

The landlord may apply to D.C. for sending instruction to the tenant to pay rent in terms of the improvement of the holding caused by the owner (i.e. landlord). Improvement means construction of well, tanks, water channels, supply of water for agriculture, reclamation of land from rivers, protective measure against flood, erosion, erection of dwelling house for tenant etc.

Under Section 11 of the Tenancy Act, 1971, tenant can claim for reduction of rent (a) if the soil becomes infertile permanently due to the cause beyond his control (b) if area of his holding decreases due diluvium or due to acquisition for public purposes (c) if the Govt. revenue rate payable by the land holder/ settlement holder has decreased, Deputy Commissioner can pass Order on enquiry declaring enhancement or reduction of rent.

**Freedom enjoyed by the tenant from arbitrary ejectment:**

Section 51 (i) of the Tenancy Act, specifically states the grounds for ejectment of the tenant. Occupancy tenant cannot be ejected from his holding by the landlord without obtaining the ejectment decree passed by the Competent Civil Court and as per procedure under Civil Procedure Code, 1908. The ground for ejectment of the occupancy tenant is that is that he has used the land in manner which renders it unfit for tenancy.

**Section 51(2) of the Tenancy Act, 1971 states the ground for ejection of a non-occupancy tenant-** (a) That he has failed to pay the arrear of rent (b) that terms and conditions of the agreement with the landlord for use of the tenancy have been violated by the tenant (c) That he has failed to follow the conditions consistent with the provisions of the Act (d) That he has used the holding in such a manner which impairs the value of land and renders also unfit for tenancy.

**Resumption of land from tenants:** 1) Landlord cannot eject a tenant, if he has become unejectable under any tenancy law in force. (2) The owner cannot eject even non-occupancy tenant from his land on ground of mere requirement for resumption for personal cultivation except agriculture is the principal source of income. (3) The owner must keep at least 10 bighas with each tenant unless such tenant has got lands elsewhere or has been provided with equivalent lands in the locality. This provision will not be applicable in respect of the owner who is widow, disabled, the military personnel or a student. (4) No suit for ejectment on the ground of requirement for personal cultivation shall be entertained before the expiry of 12 months or after the expiry of 15 months from the date of creation of tenancy. (5) If the landlord does not cultivate the land personally within one year of the date of ejection of the tenant then the tenant shall be restored to possession.

**Right of ejected tenant to cost of improvement:** Ejected tenant is entitled to get compensation from the owner if the tenant lawfully made improvement of the holding at his own cost. Court’s Order for ejectment will be conditional on payment of compensation.

Following factors should be taken into consideration to estimate the compensation (1)The amount by which the value or the produce of the holding has increased due to improvement.

(2)Labour’s capital invested in the improvement.

(3) Advantage given by the landlord e.g. remission of rent in consideration of improvement.

(4) In case of reclamation of land or irrigation, duration for which the tenant had the benefit of unenhanced rate (U/S 52 of the Tenancy Act, 1971).

**Rights of the tenant against ejectment:** The landlord is required to pay the ejected tenant the value as estimated by the Govt. for the cost of preparing the field and for sowing crops (before the date of ejectment). A tenant should be given an option to purchase the dwelling site and also the dwelling house (as constructed at landlord’s cost) at the prevailing market value (U/S 53 of the Tenancy Act, 1971).

**Procedure for ejectment:** Court will not entertain any suit for ejectment of the tenant unless landlord serves notice of one month to him for taking steps to remedy or to pay compensation for misuse of land or breach of contract. Landlord cannot file a case in the Court if the tenant has not been given an opportunity of adopting proper remedial measures. Court will also not entertain any suit for favour of the ejectment of tenants even for non payment of rent unless a decree at first has been obtained.

**Restoration of possession of land to the tenant or under-tenant ejected or whose cultivation is prevented:**

Tenant cannot be evicted without following the rules as per the Tenancy Act, 1971 except of a decree passed by the Civil Court- Right of a tenant for cultivation cannot be terminated or caused to be terminated. The tenant may apply to the Revenue Officer within 90 days of such ejectment or termination in order to get his right restored provided such ejectment or termination has taken place after coming into force of Assam (Temporarily Settled Areas) Tenancy Act, 1971 but before coming into force of Assam (Temporarily Settled Areas) Tenancy (Amendment) Act, 1974. Revenue Officer may direct the landlord or the person preventing the cultivation of land by tenant or pass order after proper enquiry that possession of the agricultural holding in respect of the tenant is restored (U/S 54 A of the Tenancy Act, 1971). If the order for restoration for possession of the tenant is complied with by landlord within 7 days from the date of the order becoming final, Revenue Officer himself take possession of the holding and deliver it to the tenant on receipt of the application (from the aggrieved tenant).

**Acquisition of ownership right and intermediary right by tenants:** An occupancy tenant personally cultivating the land of his tenancy may apply for acquiring right of his landlord. Compensation as payable to the Landlord is determined by D.C. under section 25 of the Tenancy Act, 1971. On receipt of an application from the occupancy tenant, D.C. shall declare the occupancy tenant to have acquired the ownership rights free from all encumbrances but subject to the payment of compensation ( as per section 25 of the Tenancy act, 1935). Any under-tenant (as defined in Assam Temporarily Settled District Tenancy Act, 1935) cultivating the holding of an occupancy tenant or non-occupancy tenant from the date prior to the commencement of the Tenancy Act, 1971 may submit application to the Deputy Commissioner for acquiring intermediary rights of the landlord (tenant-landlord) and ownership right of the land owner. Deputy Commissioner can determine the amount of compensation required to be paid by the under-tenant as per provision of section 24 of the Tenancy Act, 1971.

\*The total compensation payable acquiring the ownership right as well as intermediary right if any, of any holding shall be an amount to 50 times the full rate of annual land revenue payable for such kind (U/S of the Tenancy Act, 1971). The whole amount will go to owner if there is no under-tenant in the land and rights of the landlord are vested in the occupancy tenant.

\* The total amount of compensation shall be apportioned if under-tenant is cultivating from the date prior to the commencement of the Tenancy Act, 1971. 75% of the total compensation is to be paid for acquisition of ownership right and 25% for intermediary right (U/S 25 of the Tenancy Act, 1971). If there is under tenant then on payment of due compensation the ownership right of landlord and intermediary right of occupancy tenant of non-occupancy tenant are vested in under-tenant.

There are two methods of acquiring ownership and intermediary right- (1) 1st  initiative will have to come from the tenant- The tenant may apply to the Deputy Commissioner for vesting the rights, titles and interest of any land holder in respect of any holding held and personally cultivated by occupancy tenant. Deputy Commissioner may serve notice to the landlord, tenants and other persons having interest on land and call for hearing. He will pass necessary orders after due enquiry if no objection comes from the party. Under-tenant (existed before the commencement of Tenancy Act, 1971) who is cultivating the holding of the occupancy tenant or non-occupancy tenant shall continue to remain so. They may also apply for acquisition of intermediary right, tittles and interest of the tenant and ownership rights of the owner-landlords, proprietor, landholder or settlement holder of the same land.

2nd method of acquisition of ownership rights for the tenant on Govt. initiative, Govt. may by Notification declare that the rights of any landlord, in any land held and personally cultivated by an occupancy tenant shall stand transferred to the said tenant and vesting him free from all encumbrances created by the landlord. Such declaration may be made only in case of land under personal cultivation of the occupancy tenant. Non-Occupancy tenant is excluded from this benefit (U/S 22 (1) of the Tenancy Act, 1971). Personal cultivation means cultivation by the person himself or by any member of his family or by hired labourers or fixed remuneration payable in cash or kind but not in crop-share, under personal supervision of the person himself or any members of his family. U/S 22(ii) of the Tenancy Act, 1971, the State Government may by notification declare that the ownership rights of the landlord and the intermediary rights of the occupancy or non-occupancy tenant in any land cultivated by an under tenant shall stand transferred to and vest in the under tenant free from all encumbrances created by landlord.

**Section 26 of the Tenancy Act, 1971:** Deputy Commissioner can direct the occupancy tenant, if the acquisition of the land is made under the provisions of U/S 23 of the Tenancy Act, to deposit the compensation amount (as determined by him) within a period of one month from the date of passing his order and pay the same within period of 3 months from the date of the said order.

In all cases of acquisition U/S 22, the occupancy tenant or under-tenant (existed prior to the Tenancy Act, 1971) shall pay the Govt. in 5 equal annual instalments, the compensation as determined by the Deputy Commissioner, the first instalment payable being due on the expiry of 3 months from the date of his order.

If no amount for 1st instalment is deposited in the Treasury within 30 days from the date of its becoming due, the Deputy Commissioner shall proceed to recover the instalments as if it were an arrear of land revenue. Deputy Commissioner may also pay the amount to the person entitled to receive it as compensation as determined by him from the fund placed by the State Government at his disposal and payment must be made within a period of 3 months from the date of passing order.

**Example:-** A, a period lease holder, owns 30 bighas of land, rate of annual land revenue is at Rs. 5/- per bigha. B is an occupancy tenant under him. C is an under-tenant under B. Compensation per bigha will be at Rs. 250/- . The total compensation will be Rs. 7500/-, out of which Rs. 5625/- will go to A, Rs. 1825/- to B. If these 30 bighas are acquired for ownership right of tenant on Govt. initiative (for tenants), Govt. will have to pay the compensation within 3 months of acquisition from its own pocket but will realized it from under tenant C. C will get the ownership certificate on payment of the 1st instalment Rs. 2500/- only. If the lands are acquired by the initiative of under-tenant then the under-tenant C will have to deposit with Deputy Commissioner the full amount of Rs. 12,500/- in one single instalment within 30 days of the acquisition. Govt. will then pay Rs. 5625/- to A and Rs. 1825/- to the occupancy tenant B within 3 months.

Calculation should be made for determining total amount of compensation (taking into compensation the interest of landowner and the tenant both). Compensation payable is 50 times of (annual land revenue) X (area of holding). Total amount of compensation apportion as follows :- a) towards acquisition of Ownership right= 75% of the total compensation. b) towards acquisition of intermediary right=25% of total compensation.

Assam State Acquisition of Zamindaries Act, 1951 had saved the way to adopt measures for bringing about revolutionary change in the tenure system in Assam and abolition of Zamindaries existed in the permanently settled areas of Goalpara, undivided Goalpara and undivided Cachar District.

Proprietary rights of Zamindaries had been acquired by the Govt. in the first stage during 1954 to 1957.

Rights and interest of the intermediaries known as Jotedars, Dar Jotedars commonly known as tenure holders had been acquired in Cachar District during 1954 to 1972 and tenants were placed directly under state Govt. The Act aimed at achieving following objectives (a) Reduction of disparities in wealth and income (b) Elimination of intermediaries to prevent chances of exploitation, undue harassment from landed aristocracy. (c) Direct contact of the tenants (Tillers of the Soil) with the Govt. (d) Security of the tenants. (e) Simplification of terms.

The tenants (tillers) on acquisition of the rights of the proprietors and intermediaries shall hold land under the State Govt. as a land holder as in other plain districts of the Brahmaputra Valley and are liable to pay land revenue directly to the State Govt. as per assessment made during Re-Settlement Operation under Assam Land & Revenue Regulation ( Section 18 read with section 4 of the Adoption of Relationship Act,1974 applicable to all over Assam). Payment of compensation to the erstwhile proprietors and intermediaries of the acquired estates and tenures as per the rates prescribed under the Law.

Ceiling on existing holding as per Assam Fixation of Ceiling on Land Holding Act, 1956:- Section 4(1) of the Act lays down that no person shall be entitled to hold as owner or tenant (or mortgagee in possession) land which exceed the limit of 50 bighas in the aggregate and this limit of 50 bigha shall be applicable to the aggregate of the land held individually by the members of a family or jointly by some or all the members of such a family.(Amendment of 1975 and 1996-‘person’ includes family and ‘family’ includes joint family.

Excess of the limit of 50 bigha+ 4 bigha retainable for orchard would be acquired by the Govt. Rights and interest of the landowner as well that of tenant over the holding stand terminated due to acquisition. Govt. has the tendency to lean more towards the interest of cultivating tenant in determining the principles of compensation U/S of the 12(a)(1)(i)-

1) If the acquired land (ceiling surplus land) is fallow, the compensation will be 25 times of revenue. If the land revenue is Rs.1/- per bigha, the total amount of compensation payable to the owner will be Rs. 1/- x 25. If there is no tenant then entire Rs. 25/- will go to the owner. If there is an occupancy tenant, the amount of compensation will be apportioned between the owner and the occupancy tenant, occupancy tenant gets 10 and owner gets 15 but in respect of non-occupancy tenant, he gets only 5 and the owner gets 20.

2) The total interest of the land owner and the cultivating tenant of the agricultural holding will be determined as 50 times of the land revenue (if the land is not fallow). If the owner cultivates it himself (i.e. absence of cultivating tenant), the whole amount of compensation i.e. 50 time of revenue will go to the owner. But if there is cultivating tenant, the total amount of compensation will be apportioned.

a) If the tenant is an occupancy tenant he gets 35 times of land revenue as compensation and the owner gets 15 times only (b) Non-occupancy tenant gets 30 and the owner gets only 20 times of land revenue (u/s 12 (a) (1) (2) of the Ceiling Act.

Manner of disposal of the excess land (Ceiling Surplus Land) U/S 16 of the Assam Fixation of the Ceiling on Land Holding Act., 1956 (as amended):- Where there is cultivating tenant in the excess land acquired from the owner, tiller of the soil i.e. the tenant would be given settlement of the land in payment of due premium to be adjusted against the compensation he is entitled to receive it under the provision of the Act. In case the amount of compensation falls short of the premium due to be paid, the deficiency shall be recovered from him as arrear land revenue as prescribed in ALRR, 1886. Actually after acquisition of the excess land, the right and interest of the owner and also the tenant’s interest have been vested in the State Govt. Therefore, the State Govt. pays compensation for deprivation. By giving settlement, State Govt. now not only reverts his tenancy right back to him but also the owner’s right may also be vested in him subject to the condition of paying back to the Govt. the whole cost of acquisition i.e. (a) the compensation which Govt. paid to him for acquiring his tenancy right, (b) also the compensation which Govt. paid to the owner. So far as (a) is concerned, the tenant is not required to pay directly, the amount which he was entitled to receive from the Govt. for acquiring his tenancy right is simply adjusted against the amount what he is to pay now to Govt. in order to get back his tenancy right. He remains as tenant as before. But if he pays the amount which Govt. paid to the owner, the tenant becomes land holder in terms of ALRR, 1886.

The main objective of the Act is the excess lands acquired from holders of large holdings are to be distributed to the holder of smaller holdings in order to reduce inequality.

It is worth mentioning that Agrarian Reforms Committee as constituted in 1949 under the Chairmanship of J.C.Kumarappa made following recommendation (a) elimination of scope of exploitation of poor cultivators by rich land lord (b) to inculcate in the minds of farmers a sense of self assertion (c) Abolition of all intermediaries between the state and the tiller (d) prohibition of subletting of land and transfer of agricultural land to non-agriculturalist (e) the setting up of an administrative machinery with dedicated officers for proper implementation of land reforms measures.

Kumarappa’s recommendation had been given due importance by the State Govt. as all pieces of legislation passed by the State legislature since 1951 for land reforms have reflection of the same. In the light of the recommendation made by the first Agrarians Reforms Committee, the first five year plan had given priority on Agricultural Reforms mainly, (1) Abolition of intermediaries between the State & the tillers,(2) Tenancy Reforms to reduce rent, provide security of tenure and give cultivating tenants an opportunity to purchase the land from the owner.

**LAND REFORMS COMMISSION:** The State Govt. constituted a Land Reforms Commission in 1978 vide Govt. Notification No. RRT.1/84/78/90 dtd 27.5.78. The Commission is of the view that the objective of Land Reforms would be achieved if the duties and responsibilities are entrusted with the band of Officers with a sense of commitment towards successful implementation of the time bound programme. Revenue Officials should be given full scope to pay undivided attention to Land Reforms works. They should be made free to some extent from the heavy load of administration.

The Commission suggested for inclusion of a provision in order to amend section 16 and section 17 of the Ceiling Act, 1956 as land policy of settlement of Ceiling Surplus Land to the cultivating tenant. Amendment of the Ceiling Act, 1956 in respect of the section 16 and section 17 may be made if necessary by incorporating with the provision not to realize the premium from the cultivating tenants( poor, landless and socio-economically backward tenant) who had been existing prior to the acquisition of their agricultural holding and now become eligible to get settlement of land.

Thus, inference can be drawn from my own point of view that all the pieces of Legislation passed by the State Legislature since 1951 have been aiming to ensure social justice, economic equality for all and to bring a revolutionary change in the tenancy system as a part of agrarian reforms in the State for the fullest development of the concept of Welfare State in the spirit of the basic principles of democracy as enshrined in the preamble of the Constitution of India.

**Concept of Tenant, Under- Tenant and Acquisition of Ownership Right in Terms OF Tenancy Laws in Assam:**

**Definition:** Tenant as per Assam (Temporarily settled Estates) Tenancy Act, 1971.

**Tenant** a person who cultivates or holds the land of another person and would be liable to pay rent for that land to that person as per specific contract/ agreement ( expressed or implied). The definition include ‘Adhiar’ who cultivates the land of another person on condition of delivering a share or quantity of the produce of such land to that person.

Adhiar Protection and Regulation Act, 1948 was repealed consequent upon enactment of the new Act, 1971. Adhiar has been given the status of tenant in the Act, 1971 and will be entitled to get same protection as a tenant.

Person who holds land immediately under the Govt. or cultivates land under State Govt. is not a tenant ( e.g. a proprietor, landholder, settlement holder as per ALRR, 1886).

**Under-tenant:** As per Assam (Temporarily Settled Districts) Tenancy Act, 1935: Under-tenant means a person who holds or cultivates land under the tenant on condition of payment of rent or of delivering share of crop to the tenant.

But Section 20 of the Tenancy Act, 1971 lays down that there would be no new under-tenant holding land under an occupancy or non-occupancy tenant. Sub-letting of the holding by the occupancy or non-occupancy tenant is prohibited with effect from the date of commencement of the Tenancy Act, 1971.

However, there may be some under-tenant existing before the commencement of the Tenancy Act, 1971 and they will continue as such under-tenant and may be able to acquire the right and interest of the tenant and also that of the landlord as intermediary right and ultimately ownership right ( as per section 23 of the Tenancy Act, 1971) i.e. Right and interest title of the tenant landlord shall be vested in under-tenant as intermediary right and right of the landowner may be vested in the under-tenant as ownership right. Plan for abolition of any form of landlordism even at tenancy level (with existence of under-tenant) has been designed.

**Acquisition of Intermediary Right and Ownership Right under the Tenancy Act, 1971:-** The Act incorporates provisions for easy methods for the tenants or under-tenants (i.e. under-tenant existed on land prior to the commencement of the new Act, 1971) to become owners of landholding themselves. The new Act, 1971 aimed at abolition of landlordism in temporarily settled Areas. There are two methods- (1) State Govt. may take initiative or (2) The tenants or under-tenant can take initiative by submitting application.

**1**.**Acquisition of ownership rights on Govt. initiative for TENANT:** State Govt. may by Notification declares that the rights of any landlord in any land held and personally cultivated by an occupancy tenant shall stand transferred to the said tenant and vest in him free from all encumbrances created by landlord. Section 22 (1) of the Tenancy Act, 1971 lays down that occupancy tenant who holds lands for personal cultivation only can get the benefit. Personal cultivation means by the person himself or by any member of his family or by hired labourers on fixed remuneration payable in cash or kind but not in crop share, under personal supervision of the person himself or any member of his family. Acquisition of landlord’s right by occupancy tenant is called acquisition of ownership rights.

The under-tenant as defined in Assam (Temporarily Settled District) Tenancy Act, 1935 prior to the commencement of the Tenancy Act, 1971 would get full protection under the new Act, 1971. Intermediary rights of the occupancy or non-occupancy as the case may be shall stand transferred and vested in the under-tenants free form all encumbrances created by the occupancy tenant or non-occupancy tenant provided the said under-tenant personally cultivates the holding of the tenants. Land will be settled with the under-tenant subject to the payment of compensation/ premium. Under-tenant would be able to get intermediary right of tenant- landlords and ownership right of land owner. He will get ownership certificate issued by Deputy Commissioner.

**2. Acquisition of intermediary and ownership rights on Govt. initiative for UNDER-TENANTS :** Landlordism will continue at tenant’s level under-tenant are able to acquire rights of the intermediary tenants i.e. rights of the tenant landlords. Tenancy Act, 1971 provides for acquisition of intermediary right of the tenants by the under-tenants. This is known as acquisition of intermediary rights. The same under-tenant may, further, acquire the right of ownership and interest, title of the owner landlord (i.e. proprietor, land holder or settlement holder). The Tenancy Act, 1971 provides for acquisition by under tenants of both intermediary tenant right of tenant landlord and ownership right of owner landlord.

Intermediary right of occupancy or non-occupancy tenant in any agricultural holding but cultivated by an under-tenant shall stand transferred and vested in the under-tenant free from all encumbrances created by landlord or the occupancy tenant or non-occupancy tenant. State Govt. may issue Notification U/S 22(II) declaring such right as conferred on under-tenant.

**Principles for determining compensation:** U/S 24 of the Tenancy Act, 1971 lays down that all rights and the extent of interest in respect of the holding are taken into account while calculating total amount of the compensation to the owner (i.e. proprietor, landholder, settlement holder). Compensation amount is determined 50 times of the annual land revenue rate. Whole amount so calculated will go to the owner landlord if there is no under-tenant. Rights of the owner landlord shall be vested in the tenant. If there is under-tenant, the total amount of compensation is apportioned between the owner landlord and the intermediary occupancy tenant or non-occupancy tenant. 75% of the total compensation will go to the owner landlord and 25% to the intermediary occupancy tenant or non-occupancy tenant. In such a case, the right of the occupancy tenant or non-occupancy tenant as intermediary tenants right and the ownership right of the land owner are vested in the under-tenant.

**Procedure for determining compensation:** Notice to the landlord and other persons interested in the land acquired must be served by the D.C. He will make enquiry and hear objection, if any. The amount of compensation payable to the owner is determined by him (U/S 26(1) of the Act, 1971.

**Procedure for payment of compensation:** The compensation thus determined is required to be paid initially by the State Govt. itself because the land is acquired by the State Govt. at its own initiative for the interest of the tenant. Fund for payment of such compensation is placed by the Gov. At the disposal of D.C. (U/S 26(2)(a) of the Tenancy Act, 1971), the DC will pay the amount to the person entitled to receive it within 3 months from the date of his determination. As the occupancy tenant or cultivating person (under-tenant) is the actual beneficiary, the total compensation already paid by the D.C.(on behalf of the Govt.) to the land owner on acquisition of the holding will be realized from occupancy tenant or under tenant, of course in 5 equal instalments, the first instalment being due on expiry of 3 months from the date of his order. When any instalment of compensation is not deposited in the Treasury within 30 days from the date of its becoming due, the D.C. shall proceed to recover the instalments as if it were arrear of Land Revenue (U/S 26 (3) ).

**Issue of ownership certificate:** D.C.can issue ownership certificate to the occupancy tenant or the under-tenant as soon as tenant or under-tenant pays the first instalment( U/S 26 (4) (a) ).The tenant or under-tenant is not required to wait till the completion of payment of all instalments.

**Second Method of Acquisition of Ownership Right ( U/S 23 of the Tenancy Act, 1971) i.e. on the initiative of Tenant and Under-Tenant:**

Occupancy tenant may submit application to D.C. for acquiring ownership right of his landlord (i.e. Proprietor, Landholder, and Settlement Holder). But he must be a cultivating tenant eligible to apply for ownership. Similarly any under-tenant (as defined in Assam Temporarily Settled District Tenancy Act, 1935) cultivating the holding of an occupancy tenant or non-occupancy tenant from the date prior to commencement of this Act (i.e. Tenancy Act, 1971) may apply for acquiring intermediary right of his tenant landlord and the ownership right of land owner. Compensation payable to the land owner as determined by D.C. (U/S 24 of the Tenancy Act, 1971) is 50 times of land revenue rate as may be paid by the occupancy tenant in 5 instalments for acquiring the right, interest, title of the owner ( if there is no under-tenant). If there is under-tenant, the total amount of compensation will be apportioned between the owner landlord and tenant landlord. 75% of the total compensation will go to owner-landlord and 25% of the compensation to tenant-landlord. Then right and interest of the owner as well as that of tenant will be vested in under-tenant. Under-tenant will acquire intermediary and ownership right of tenant landlord and that of the ownership right of the land owner both.

**Procedure for determining Compensation:** The amount of compensation shall be determined by the D.C. and apportionment made on the same principles (if necessary due to the existence of an under-tenant cultivating holding prior to the Tenancy Act, 1971)- as stated in the 1st method.

**Procedure for payment of compensation:** Issue of Ownership Certificate:- U/S 26(2) (b) of the Tenancy Act, 1971, the D.C. can pass order asking the occupancy tenant or the under-tenant to deposit the compensation amount within 30 days from the date of determination of compensation.

D.C. may declare that all right, interest and title of the holdings are transferred to and vested in the occupancy tenant and the said tenant has acquired the right of ownership but subject to the deposit of the full compensation ( as per section 26 of the Tenancy Act, 1971). The under- tenant may also acquire both intermediary right and ownership right free from all encumbrances. D.C. can issue to the tenant or under-tenant a Certificate of ownership right and correct the land records by deleting the name of landlord.

**Illustration:** A land holder owns 30 bigha of land. Rate of annual land revenue is Rs.5/- per bigha. B is a occupancy tenant under him. C is an under-tenant under B. Compensation per bigha will be 50 times of the land revenue i.e. Rs. 5 x 50/- = 250 per bigha. Hence, total compensation for 30 bigha will be Rs. 250x30 bighas = Rs. 7500/-, out of which Rs. 5625/- will go to A and rest Rs. 1875/- to B. If these 30 bighas are acquired on Govt. initiative for tenant, then Govt. will have to pay the compensation within 3 months of acquisition from its own pocket but will realize it from C in 5 years in 5 equal installments i.e. Rs. 1500/- per year. C will get ownership certificate on payment of the 1st instalment. If the ownership right is acquired on the initiative of the under-tenant C, he will have to deposit with the DC, the full amount of Rs. 7500/- in one single instalment within 30 days of the Order. Govt. will then pay to A Rs. 5625/- and to B Rs. 1875 within 3 months.

**Significant aspects of the mode of Acquisition of Ownership rights by the tenant under Tenancy Act, 1971:** The tenant or under-tenant as the case may be, Deputy Commissioner can issue the Ownership Certificate U/S 26 (4) (b) and correct the revenue records by deleting the name of the landlord.

The Deputy Commissioner shall pay the Compensation amount to the person entitled to receive it within 3 months from the date of determination (U/S 26 (3) of the Tenancy Act,1971).

Suppose, if 30 bigha of land are acquired at the initiative of the Govt. then for tenant’s interest and right of ownership, the Govt. will have to pay the compensation within 3 months of acquisition from its own pocket but will realize it later from C.

If the lands are acquired by the Govt. at tenant’s own initiative(on submission of application), C will have to deposit with D.C., the full amount of compensation in one single instalment within 30 days of requisition.

Tenant’s right and interest in the excess land declared as Ceiling Surplus Land under Assam Fixation of Ceiling on Land Holdings Act, 1956 (as amended) as per provision of Section 7 (4) of the Act:- All the interest in acquired lands are vested in the State Govt. so that it can settle the land with the tenants/ under-tenants who have been cultivating the land prior to acquisition and declaration as Ceiling Surplus Land.

Most of the excess lands are likely to be under cultivation of some tenants. The purpose of the Act would be defeated if the cultivating tenants are ejected from excess land and then it is settled with outsiders. Hence, it has been laid down in Section 16 of the Ceiling Act; it should be settled with him subject to the general ceiling of 50 bigha.

The land has been vested in the State Govt. and he (tenant) has been paid compensation for deprivation.

The State Govt. now not only re-vests his tenancy right back in him but offers something more, namely owner’s right may also be vested in him.

For all this, he must pay back to the Govt., the whole cost of acquisition that is (a) the compensation which Govt. paid to him for acquiring his tenancy rights (b) and also the compensation which Govt. paid to the Owner.

So, far, (a) is considered he is not required to pay the amount directly, (i) the amount which he was entitled to receive from Govt. for acquiring his tenancy right is simply adjusted against what he is to pay now to Govt. in order to get back his tenancy right. The compensation thus automatically adjusted, he remains as tenant as before, (ii) also he becomes a full owner with status of a land holder as defined in ALRR, 1886.

He has to submit a petition for such Settlement before D.C. within 6 months. If he does not pay the amount, it can be realized as arrear of revenue.

**CONCLUSION:** In fact, on perusal of the various provisions of Assam (Temporarily Settled Areas) Tenancy Act, 1971 and Assam Fixation of Ceiling on Land Holding Act, 1956(as amended), inference can be drawn that Legislature aims at protection of right and interest of the tenants who cultivate agricultural land i.e. of the tillers of the soil and for the purpose of ensuring justice, socio-economic equality as cardinal principles of democracy.