

- Study Material for LL.B.III.

Subject: Land Laws II (Semester II)

Module 01

Historical Background of Land Revenue System.

Since earlier times Indian villages were self-sufficient. These were the base of Indian economy which was based on agriculture.

Land Revenue was the main source of State Income. Collection of land revenue necessitated maintenance of some records relating to cultivation.

In the 16th century Sher Shah initiated land settlement operations for assessment and collection of land revenue. This was the first systematic attempt. He converted share of crops in value

Later during the reign of Akbar, Todar Mal reorganised the entire land revenue system by pioneering survey of land. And land revenue was paid in one bigha for a gaz that is 43 inches long

In 1605 this system was introduced with some changes by Malik Ambar who was minister in Adilshahi. He provided secured tenure and recognised right of cultivator against revenue.

During Maratha empire innovative revenue system was introduced by Chhatrapati Shivaji Maharaj in the form of Annewari. Revenue was based on classification of soil.

When British came in India they introduced changed revenue system with a view to further improve the land revenue system. This land revenue system was brought in Bengal and the adjacent areas.

This was called Zamindari System wherein private landlords were created as intermediaries between the Government and the actual cultivators.

Zamindari System was introduced by Cornwallis in 1793 through Permanent Settlement Act. It was introduced in provinces of Bengal, Bihar, Orissa and Varanasi. Also known as Permanent Settlement System.

Zamindars were recognized as owner of the lands. Zamindars were given the rights to collect the rent from the peasants.

The realized amount would be divided into 11 parts. 1/11 of the share belongs to Zamindars and 10/11 of the share belongs to East India Company.

In Bombay and Madras, an entirely different land revenue system was developed. In this system, the Government directly dealt with the cultivators or ryots. This system came to be known as Ryotwari system.

Ryotwari System was introduced by Thomas Munro in 1820. Major areas of introduction include Madras, Bombay, parts of Assam and Coorgh provinces of British India.

In Ryotwari System the ownership rights were handed over to the peasants. British Government collected taxes directly from the peasants.

The revenue rates of Ryotwari System were 50% where the lands were dry and 60% in irrigated land.

Mahalwari system was introduced in 1833 during the period of William Bentick. It was introduced in Central Province, North-West Frontier, Agra, Punjab, Gangetic Valley, etc of British India.

The Mahalwari system had many provisions of both the Zamindari System and Ryotwari System.

In this system, the land was divided into Mahals. Each Mahal comprises one or more villages. Ownership rights were vested with the peasants.

And the village committee was held responsible for collection of the taxes.

After the attainment of Independence the land laws brought the peasant/farmers and State into direct contact.

New laws abolished intermediaries from Zamindari System. Where Ryotwari system prevailed the laws provided protection to the tenants of the land.

Land Reforms in India After Independence

After the attainment of Independence Constitution of India compelled Government to adopt the concept of social justice and welfare State. This required Government to enact laws which will serve twin purposes recovery of land revenue and protection of holder of land.

Accordingly State Legislature enacted various land laws. For example Bombay Tenancy and Agricultural Lands Act 1948 which consisted of Tiller's Day whereon tenant is deemed to have purchased land from landlord. The land laws brought the peasant/farmers and State into direct contact.

Later Land Ceilings Act was passed by different States, it fixed an upper limit for private land holdings by person.

Maharashtra Land Revenue Code 1966 is major law on the subject of administration of

revenue and recovery of land revenue at the same time it confers land rights to holder.
All land laws punishes person making contravention of laws.

Maharashtra Land Revenue Code 1966.

•Object And Application of Code.

Maharashtra Land Revenue Code has been enacted by Legislature of Maharashtra with a view -

I.to unify the law relating to land revenue in state of Maharashtra.

II.to recover land revenue.

III.to regulate use of land.

In Jilubhai Nanbhai v State of Gujarat AIR 1995 S.C. COURT held that object of Maharashtra Land Revenue Code is administration of land revenue and recovery of land revenue.

Maharashtra Land Revenue Code is applicable to entire State of Maharashtra. Code lays down important provisions relating to assessment and settlement of land revenue, its recovery.

•Important Denitions• (Section 2)

(1)“agricultural year” means the year commencing on such date as the State Government may, by notification in the Official Gazette, appoint.

Agricultural year is significant from the point of view of revenue account and for calculating rate(Annewari or Paisewari) of crops.Holder/owner of land shall pay annual revenue.

Agricultural year means year commencing from 1st April.

(2)“alienated” means transferred in so far as the rights of the State Government to payment of rent or land revenue are concerned, wholly or partially to the ownership of any person.

Definitions clarifies alienated means transferred either-

to payment of rent or land revenue or

to ownership of any person. But definition may be invoked in context of right of State Government to payment of rent or land revenue.

(3) "boundary mark" means any erection whether of earth, stone, or other material, and also any hedge unploughed ridge, or strip of ground, or other object whether natural or artificial, set up, employed, or specified by a survey officer or revenue officer having authority in that behalf in order to designate the boundary of any division of land.

Boundary mark is used to designate /demarcate boundary of division of land. It is set up or specified by Survey officers or revenue officer.

Maharashtra Land Revenue Code lays down provisions relating to boundary marks under sections 131-146.

(8) "estate" means any interest in lands and the aggregate of such interests vested in a person or aggregate of persons capable of holding the same;

(9) "farm building" means a structure erected on land assessed or held for the purpose of agriculture

for all or any of the following purposes connected with such land or any other land belonging to or cultivated by the holder

(a) for the storage of agricultural implements, manure or fodder,

(b) for the storage of agricultural produce, (c) for sheltering cattle,

(d) for residence of members of the family, servants or tenants of the holder,

or (e) for any other purpose which is an integral part of his cultivating arrangement.

Farm building is structure erected /created by holder of land for purposes specified in clauses (a to e) which are connected with agriculture or cultivation.

(10) "gaathan" or "village site" means the land included within the site of a village, town or city as determined by Section 122;

(11) "Government lessee" means a person holding land from Government under a lease as provided by Section 38;

(12) "to hold land" or "to be a landholder or holder of land" means to be lawfully in possession

of land, whether such possession is actual or not;

13. Holdings means a portion of land held by a holder.

Holding may be of any size or it may be separate plot held by holder in land. It indicates lawful possession or right of holder.

(14)"improvement" in relation to a holding means

any work which adds materially

to the value of the holding which is suitable thereto and consistent with the purpose for which it is held and which, if not executed on the holding, is either executed directly for its benefit or is, after execution, made directly beneficial to it;

and, subject to the foregoing provisions, includes-

(a) the construction of tanks, wells, water channels, embankments and other works for storage, supply or distribution of water for agricultural purposes;

(b) the construction of works for the drainage of land

or for the protection of land from floods, or from erosion or other damage from water;

(c) the planting of trees and the reclaiming, clearing, enclosing, levelling or terracing of land,

(d). the erection of buildings on or in the vicinity of the holding, elsewhere than in the goathan required for the convenient or profitable use or occupation of the holdings; and

(e), the renewal or reconstruction of any of the foregoing works, or alterations therein or additions thereto; but does not include

(i) temporary wells and such water-channels; embankments, levellings, enclosures or other works,

or petty alterations in or repairs to such works, as are commonly made by cultivators of the locality in the ordinary course, of agriculture ; or

(ii) any work which substantially diminishes the value of any land wherever situated, in the occupation of any other person, whether as occupant or tenant;

(16.) "land" includes benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth, and also shares in, or charges on, the revenue or rent of villages, or other defined portions of territory;

(17).Landlord : means a lessor.

((18) "land records" means records maintained under the provisions of, or for the purposes of

this Code and includes a copy of maps and

plans of a final town planning scheme, improvement scheme or a scheme of consolidation of holdings which has come into force in any area under any law in force in the State & forwarded to any revenue or survey officer under such law or otherwise;

(19) "land revenue" means all sums and payments, in money received or legally claimable by or on behalf of the State Government from any person on account of any land or interest in or right exercisable over land held by or vested in him, under whatever designation such sum may be payable and any cess or rate authorised by the State Government under the provisions of any law for the time being in force; and includes premium, rent, lease money, quit rent, judgment payable by a Inamdar or any other payment provided under any Act, rule, contract or deed on account of any land;

(21) "non-agricultural assessment" means the assessment fixed on any land under the provisions of this Code or rules thereunder with reference to the use of the land for a non-agricultural purpose;

(25) "to occupy land" means to possess or to take possession of land;

39) Survey officer means officer appointed under or in the manner provided by section 8

40) "tenant" means a lessee, whether holding under instrument, or under an oral agreement,

and includes a mortgagee of a tenant's rights with possession; but does not include a lessee

holding directly under the State Government;

(41) "unoccupied land" means the land in a village other than the land held by an occupant, a

tenant or a Government lessee.

Encroachment on land . Section 50.

Encroachment on Government land, foreshore and waste land may be made . Maharashtra Land Revenue Code made provision for removal or abatement of encroachment.

According to section 50

If any encroachment is made on any land or foreshore vested in the State Government land is used for the purpose of hawking or selling articles without the sanction of the competent authority, Collector is authorised to summarily abate or remove any such encroachment

or cause any article whatsoever hawked or exposed for sale to be removed

and the expenses incurred for it shall be leviable from the person in occupation of the land encroached.

According to clause (2) the person who made such encroachment or who is in unauthorised occupation of the land so encroached upon, shall pay,

if the land encroached upon forms part of an assessed survey number,

assessment for the entire number for the whole period of the encroachment

and if the land has not been assessed,

such amount of assessment which would be leviable for the said period in the same village on the same extent of similar land used for the same purpose. Such person shall also pay fine which shall be not less than five rupees but not more than one thousand rupees if the land is used for an agricultural purpose,

and if used for a purpose other than agriculture such fine not exceeding two thousand rupees.

The person caught hawking or selling any articles shall be liable to pay fine of a sum not exceeding fifty rupees as the Collector may determine.

Clause (3) lays down that the Collector may

prohibit or require the abatement or removal of encroachments on any such lands, by serving notice.

And shall fix in such notice a date, which shall be a reasonable time after such notice, on which the same shall take effect.

Every person who makes, causes, permits or continues any encroachment on any land referred to in a notice issued under sub-section (3) shall,

in addition to the penalties specified in sub-section (2)

be liable at the discretion of the Collector to a fine not exceeding twenty-five rupees in

the case of encroachment for agricultural purposes

and fifty rupees in other cases for every day during any portion of which the encroachment continues after the date fixed for the notice to take effect.

An order passed by the Collector under this section shall be subject to appeal and revision in accordance with the provisions of this Code.

According to section 51 the Collector, may regularise encroachment if the person making the encroachment so desires to regularise.

The Collector may charge the said person a sum not exceeding five times the value of the land so encroached upon and to fix an assessment not exceeding five times the ordinary annual land revenue thereon and to grant the land to the encroacher on such terms and conditions as the Collector may impose.

And then to cause the said land to be entered in land records in the name of the said person.

However no land shall be granted as aforesaid, unless the Collector gives public notice of his intention so to do.

And he will have consider any objections or suggestions which may be received by him before granting the land as aforesaid.

The expenses incurred in giving such public notice shall be paid by the person making the encroachment and on his failure to do so on demand within a reasonable time expenses shall be recovered from him as, an arrear of land revenue.

Relinquishment And Surrender of Land. Section: 55

Relinquishment means surrendering or resigning rights in land. It also means release of caiman or portion of land.

Maharashtra Land Revenue Code lays down provision relating to relinquishment.

An occupant may relinquish his land, that is, resign, in favour of the State Government.

But subject to any rights, tenures, encumbrances or equities lawfully subsisting in favour of any person other than the Government or the occupant,.

Relinquishment may be effected by giving notice in writing to the Tahsildar not less

than thirty days before the date of commencement of the agricultural year.

And he shall cease to be an occupant from the agricultural year next following such date.

However portion of land which is less in extent than a whole survey number or subdivision of a survey number may not be relinquished.

In *Kadappa v Lingappa* 51. Bom.L.R.173 . Court held that form of notice is not material only desire to relinquish land is vital which can be stated in application and confirmed by Tahsildar.

•Right of way to relinquished land:

According to section 57 If any person relinquishes land, the way to which ,lies through other land which he retains, the right of way through the land so retained shall continue to the future holder of the land relinquished.

Module 02

This module consists of total five heads which are-

1.Land Revenue:This head includes liability and assessment of land revenue. Provisions of Sections 64- 78 of Maharashtra Land Revenue Code 1966 deal with this.

Introduction

India is agrarian State. Land revenue is important source of income for State. Land Revenue System was existing in India even before British rule . Previously king was regarded owner of land and so cultivator was responsible to pay share of crops as revenue to king.

When currency system came in to existence attempt was made to recover revenue in the form of money in proportion to value of crops. Chhatrapati Shivaji Maharaj during Maratha empire established innovative revenue system by abolishing system of jahagirdari.

During British rule in India British Government maintained rayatwari system of land revenue where in cultivator was directly responsible for payment of revenue.

After independence Maharashtra State Government enacted Maharashtra Land Revenue Code 1966 by exercising power granted by Constitution of India. The main

purpose of Code is collection of revenue. Preamble of Code clarifies it's object.

Supreme Court of India in *Jilubhai Nanbhai v State of Gujarat* AIR 1995 clarified this and held that recovery of land revenue is object of Code in pith and substance.

Provisions Relating to Land Revenue :

1. All lands liable to pay revenue unless specially exempted. Section 64.

According to section 64 all lands to pay land revenue to State Government.

It lays down that all land, whether applied to agricultural or other purposes, and wherever situate, is liable to the payment of land revenue to the State Government as provided by or under this Code.

Code shall not affect the power of the Legislature of the State to direct the levy of revenue on all land under whatever title they may be held and so long as the exigencies of the State may render such levy necessary.

According to section 169 claim of land revenue is paramount charge on the land than all unsecured claims against any land or holder thereof. Case on the point is *Thane Janta Sahakari Bank v Commissioner of Sale Tax* (2006)

2. Liability of alluvial lands to the land revenue. Section 65

Section 65 lays down liability of alluvial land for revenue. According to section 65 all alluvial lands, newly-formed islands, or abandoned river-beds which vest under any law for the time being in force in any holder of alienated land, shall be subject to the payment of land, and subject to the same privileges, conditions, or restrictions as are applicable to the original holding in virtue of which such lands, islands, or river-beds so vest in the said holder.

But no land revenue shall be leviable in respect of any such lands, islands or river-beds until or unless the area of the same exceeds one acre and also exceeds one-tenth of the area of the said original holding.

3. Assessment of land revenue in cases of diluvion. Section 66.

According to section 66 every holder of land paying land revenue in respect thereof shall be entitled to a decrease of assessment if any portion thereof not being less than half an acre in extent, is lost by diluvion. And the holder shall be liable for payment of

land revenue on reappearance of the land so lost by diluvion not less than half an acre in extent.

4. Manner of assessment land alteration .Section 67.

Section 67 lays down manner in which land revenue is assessed. According to section 67 the land revenue leviable on any land under the provisions of this Code shall be assessed, or shall be deemed to have been assessed with reference to the use of the land,—

- (a)for the purpose of agriculture,
- (b)for the purpose of residence,
- (c)for the purpose of industry,
- (d)for the purpose of commerce,
- (e)for any other purpose.

Where land assessed to agriculture is used for non-agricultural purposes or vice versa or

Land assessed to one non-agricultural use is used for another non-agricultural purpose, then the assessment fixed under the provisions of this Code shall be liable to be altered and assessed at a rate in accordance with the purpose for which it is used or is permitted to be used.

Where land held free of assessment on condition of being used for any purpose is used at any time for any other purpose, it shall be liable to assessment.

•Assessment by whom to be fixed.

According to section 68 assessment of land for revenue payment shall be fixed by Collector for the period of ninety-nine years.

Section 68 lays down that lands which are not wholly exempt from the payment of land revenue and

on which the assessment has not been fixed or deemed to fixed be fixed under the provisions of this Code,

the assessment of the amount to be paid as land revenue shall, be fixed by the Collector, for such period not exceeding ninety-nine years .

This assessment is subject to State Governments' general or special orders made in that behalf, and the amounts due according to such assessment shall be levied on all such lands.

However in the case of lands partially exempt from land revenue or the liability of which is subject to special conditions or restrictions, in fixing the assessment and levy of land revenue, all rights legally subsisting, shall be considered.

where any land which was wholly or partially exempt from payment of land revenue has ceased to be so exempt,

Collector may fix the assessment of the amount to be paid as land revenue on such land with effect from the date on which such land ceased to be so exempt or any subsequent date as he may deem fit.

After the expiry of the period for which the assessment of any land is fixed under subsection (1), the Collector may, from time to time, revise the same.

The assessment so revised shall be fixed each time for such period not exceeding ninety-nine years as the State Government may, by general or special order, specify.

Collector is permitted under clause 3 of present section for determining and registering the proper full assessment on lands wholly exempt from the payment of land revenue.

The assessment so determined and registered shall be leviable as soon as the exemption is withdrawn and shall be deemed as assessment fixed under this section.

According to section 69 the settlement of the assessment of each portion of land, or survey number, to land revenue, shall be made with the person who is primarily responsible to the State Government for the same.

Section 70 is on the rate of water vested in State Government and which may be permitted for use by landholders.

Such rate shall be determined by law relating to irrigation in force in any part of the State.

Such rates shall be liable to revision at such period as the State Government shall from time to time determine, and shall be recoverable as land revenue.

The rate for use of water for agricultural purposes shall be one rupee or such amount as may be prescribed, whichever is higher per year per holder.

According to section 71 fixing of the assessment under the provisions of this Code shall be strictly limited to the assessment of the ordinary land revenue.

And there is no bar to the levy of any cess which may be levied lawfully by the State Government for purposes of local improvement, such as schools, village and district roads, bridges, tanks, wells, accommodation for travellers.

Section 72 is important. It gives priority to land revenue. It lays down that arrears of land revenue due on account of land by any landholder shall be a paramount charge on the holding and every part thereof.

So failure in payment shall make the occupancy or alienated holding together with all rights of the occupant or holder over all trees, crops, buildings

and things attached to the land or permanently fastened to anything attached to the land,

liable to forfeiture.

The Collector may levy all sums in arrears by sale of the occupancy or alienated holding.

or

may otherwise dispose of such occupancy or alienated holding.

and such occupancy or alienated holding when disposed of, whether by sale as aforesaid, or in any manner other than that provided by sub-sections (2) and (3) shall,

unless the Collector otherwise directs,

be deemed to be freed from all tenures, rights, encumbrances and equities theretofore created in favour of any person other than the Government in respect of such occupancy or holding.

Where any occupancy or alienated holding is forfeited under the provisions of sub-section (1), the Collector shall take possession.

And may lease it to the former occupant or superior holder thereof, or to any other person for a period of one year at a time.

However the total holding of such holder or, as the case may be, the person does not

exceed the ceiling fixed in that behalf under any law for the time being in force.

If, within three years of the date on which the Collector takes possession of the occupancy or alienated holding under sub-section (2) the former occupant or superior holder thereof, applies for restoration of the occupancy or alienated holding, the Collector may restore the occupancy or alienated holding to the occupant.

or

to the superior holder

on the occupant or superior holder paying arrears due from him as land revenue and a penalty equal to three times the assessment or such times the assessment as may be prescribed, whichever is higher.

If the occupant or superior holder fails to get the occupancy or alienated holding restored to him within the period aforesaid, the occupancy or alienated holding or part thereof shall be disposed of by the Collector in the manner provided in sub-section (1).

According to section 73 the Collector, in the event of the forfeiture of a holding through any default in payment or other failure

to take immediate possession of such holding and to dispose of the same by placing it in the possession of the purchaser or other person entitled to hold it.

Section 74 lays down that forfeiture of any occupancy through non-payment of the land revenue may be prevented by paying land revenue by certain persons interested to pay on behalf of such person all sums due on account of land revenue.

Section 75 lays down that register shall be kept, by the Collector, of all lands the alienation of which has been established or recognized under the provisions of any law for the time being in force.

And when it shall be shown to the satisfaction of the Collector that any sanad is granted in relation to any such alienated lands has been permanently lost or destroyed, he may

subject to the rules and the payment of the fees prescribed by the State Government,

grant to any person whom he may deem entitled to the same a certified extract from the said register, which shall be endorsed by the Collector to the effect that it has been issued in lieu of the sanad said to have been lost or destroyed and shall be deemed to be as valid a proof of title as the said sanad.

Section 76 lays down that every revenue officer and every Talathi receiving payment of land revenue shall give a written receipt for the same.

Every superior holder who is entitled to recover direct from an inferior holder any sum due on account of rent or land revenue shall give to such inferior holder a written receipt for the same.

According to section 77 If any person fails to give a receipt as required by section 76, he shall be liable to a penalty not exceeding double the amount paid.

Section 78 lays down grounds for reduction, suspension or remission in whole or in part of land revenue. It may be granted due to failure of crops, floods, or any other natural calamity or for any reason.

2 . Assessment and Settlement of Land Revenue of Agricultural Lands. (Section 90-107.)

Introduction.

Maharashtra Land Revenue Code is enacted with a view to recover land revenue. Present Code is common code on the subject of land revenue . Code is applicable to entire State of Maharashtra.

Present code consists of many important provisions relating to land revenue, persons responsible to pay and assessment of land revenue. Code has prescribed authorities for its administration.

Land revenue is important source of income for State Government. So code has given priority to the claim of state Government for revenue over other claims.

Following are important provisions relating to assessment and settlement of land revenue of agricultural land-

1 . Assessment how determined section 94.

According to section 94 the assessment of land revenue is made-

by dividing land in to groups and

by fixing standard rate for each group.

Section 94 lays down that all lands in respect of which a settlement has been directed

under section 92 and

which are not wholly exempt from the payment of land revenue shall

subject to the limitations contained in the first proviso to sub-section (1) of section 68

be determined

- by dividing the lands to be settled into groups and

- by fixing the standard rates for each group in accordance with the rules made by the State Government in this behalf.

According to clause (2) for this purpose matters specified in clause (a) of this sub-section shall be taken into consideration in forming groups :—

(a)(i)physical configuration ,

(ii)climate and rainfall,

(iii)prices, and

(iv)yield of principal crops ;

(b)(i)markets,

(ii)communications,

(iii)standard of husbandry,

(iv)population and supply of labour,

(v)agricultural resources,

(vi)variations in the area of occupied and cultivated lands during the last thirty years,

(vii)wages,

(viii)ordinary expenses of cultivating principal crops, including the value of the labour in cultivating the land in terms of wages.

Clause 3) of Code states that land revenue assessment of individual survey numbers and sub- divisions shall be fixed by the Settlement Officer on the basis of their classification value in the prescribed manner.

Section 90 (d) defined group means

all lands in a zone,

which in the opinion of the State Government or an officer authorised by it in this behalf,

are sufficiently homogeneous in respect of matters enumerated in sub-section (2) of section 94 for the purpose of assessment of land revenue .

And 90 (e) defines settlement which means the result of the operations conducted in a zone to determine the land revenue assessment therein.

According to clause (f) "standard rate" means

with reference to any particular class of land,

the value not exceeding one-twenty-fifth of the average yield of crops per acre for that class of land of sixteen annas classification.

zone means a local area comprising a taluka or a group of talukas or one or more districts

which in the opinion of the State Government or an officer authorised by it, in this behalf

is contiguous and homogeneous in respect of—

(i) physical configuration,

(ii) climate and rainfall,

(iii) principal crops grown in the local area, and

(iv) soil characteristics.

According to 91 before directing a settlement or

fresh settlement of any land under settlement section 92

the State Government shall cause a forecast of the probable results of the settlement to be prepared.

And notice of the intention of the State Government to make the settlement together with proposals based on the said forecast for the determination or revision

of land revenue and the term for which the settlement is to be made shall be published for objections.

Such forecast and proposals shall be despatched to every member of each of the two houses of the State Legislature not less than twenty-one days before the commencement of a session thereof.

Any member of the State Legislature desiring to make any modification in the proposals shall give notice of motion not later than the opening day of the session and the State Government shall arrange for discussion of such motion in each House.

The State Government shall accept any resolution concerning the said forecast and proposals in which both the Houses concur and shall take into consideration any objections which may be received from the persons concerned, before directing the settlement.

The State Government may at Government any time direct a settlement of land revenue of any land as an "original settlement" or a fresh settlement.

settlement of has been made under section 79 : land revenue of any lands.

However, no enhancement of assessment shall take effect before the expiration of the settlement for the time being in force.

According to section 93 settlement shall remain in force for a period of thirty years and the expiry of such period, the settlement shall continue to remain in force until the commencement of the term of a fresh settlement.

According to section 96 in making a settlement

Settlement Officer -

1. shall divide the lands to be settled into groups as provided by section proceed for making settlement.

2. He shall ascertain in the prescribed manner the average yield of crops of lands for the purposes of the settlement ;

3. He shall then fix standard rates for each class of land in each groups on a consideration of the relevant matters as provided in sub-section (2) of section 94;

4. He shall hold an enquiry in the manner prescribed by rules made under this Code for the purpose of this section.

5. He shall submit to the Collector in the prescribed manner a report (settlement report) containing his proposals for the settlement.

According to 90 on submission of a settlement report, the Collector shall cause report to be published in the prescribed manner.

According to clause (2) a notice in Marathi stating for each class of land in the village- the existing standard rate and the extent of any increase or decrease proposed therein by the Settlement Officer

The notice shall also state that any person may submit to the Collector his objections in writing to the proposals contained in the settlement report within three months from the date of such notice.

Section 98 lays down that after taking into consideration such objections as may have been Government received by him, the Collector shall forward to the State Government settlement report with report with his remarks thereon.

According to section 99 any person aggrieved by the report published by the Collector under section 97 may

within two months from the date of notice under sub-section

apply to the State Government for reference to the Maharashtra Revenue Tribunal.

On depositing amount of costs as may be prescribed, the State Government shall direct the report to be sent to the Revenue Tribunal for inquiry. The Revenue Tribunal after making an inquiry in the manner prescribed shall submit its own opinion on the objections raised and on such other matters as may be referred to it by the State Government.

The State Government may make rules for the refund of the whole or any portion of the cost in such cases as it deems fit.

Section 100 states that settlement report, together with the objections, if any, received thereon and the opinion of the Revenue Tribunal on a reference, , made to it under section 99 shall be considered by the State

Government, which may pass such order thereon as it may deem fit.

However no increase in the standard rate proposed in the settlement report shall be made by the State Government

unless a fresh notice as provided in section 97 has been published in each village affected by such rates and objections received, if any, have been considered by the State Government.

The settlement report, together with objections, if any, received thereon and the opinion of the Revenue Tribunal on a reference, if any, made to it under section 99 and the orders passed by the State Government under sub-section (1) shall also be laid on the Table of each House of the State Legislature

The orders passed by the State Government shall be final and shall not be called in question in any Court.

According to section 102 after the State Government has passed orders under section 100 and notice of the same has been given in the prescribed manner, the settlement shall be deemed to have been introduced and the land revenue according to such settlement shall be levied from such date as the State Government may direct.

However the difference between the old and the new assessment of all lands shall be remitted and the revised assessment shall be levied only from the next following year.

Any occupant who may be dissatisfied with the increased rate imposed by such new assessment on any of the survey numbers or sub-divisions of survey numbers held by him shall receive a remission of the increase so imposed.

Section 103 states that any person claiming to hold wholly or partly free of land revenue as against the State Government any land shall be bound to prove his title thereto to the satisfaction of the Settlement Officer.

If he proves his title, the case shall be reported for the orders of the State Government.

However Settlement Officer is not prevented from determining and registering the proper full assessment on lands wholly exempt from the payment of land revenue.

And assessment determined and registered shall be leviable as soon as the exemption is withdrawn.

Section 105 lays down that State Government may direct at the time of passing orders under section 100

that any land in respect of which a settlement is made under this Chapter shall be liable to be assessed to additional land revenue during the term of the settlement

for additional advantages accruing to it from water received on account of irrigation works or improvements on existing irrigation works completed

after the State Government has directed the settlement under section 92 and not effected by or at the expense of the holder of the land,

and

only when no rate in respect of such additional advantages is levied under any law relating to irrigation in force in any part of the State.

Section 106 confers power to Collector to correct errors.

The Collector may, at any time during the term of settlement, after giving notice to the holder correct any error in the area or assessment of his holding due to mistake of survey or arithmetical miscalculation.

However no arrears of land revenue shall become payable by reason of such correction but excess payment as land revenue made, if any, shall be adjusted against the payment of land revenue which may become due.

Section 107 lays down that all settlement of land revenue made before now and in operation made before at the date of the commencement of this Code, shall be deemed to have been made and introduced in accordance with the provisions of this Chapter. And shall be deemed to continue to remain in operation until the introduction of revision settlement under provision of this Code.

Mallepudi v State of A.P. 2008 (7)S.C.C. 618. Is on the point that settlement report under section 98 to be given weightage.

Assessment of Settlement land revenue of lands used for Non-agricultural purposes.(sections 108-120)

Introduction

Maharashtra Land Revenue Code recognised possession of land as occupant and holder of land.They are permitted to use land either for agricultural purposes or non agricultural purposes . However land to be used for agricultural purposes shall not be used for non-agricultural purposes and also vice versa.

Collector and Survey officer subject to State Government regulate use of land. Code prescribed penalty for using land for other purposes without permission from Collector.

Land revenue is fixed on the basis of the use of land. Recovery of land revenue is main objective of Code as specified in its Preamble.

Land revenue is assessed and settled on the basis of agricultural or non-agricultural purposes of land. Code consists of many important provisions relating to assessment and settlement of land revenue.

Provisions Relating to assessment and settlement of land revenue of lands used for non-agricultural purposes.

Following are important provisions :

1 Non-agricultural assessment of lands to be determined on the basis of their nonagricultural use and having regard to urban and non-urban areas section 109.

Section 109 lays down that subject to any exemption and to any limitations contained in the section 68, the non-agricultural assessment of lands shall be determined -

with reference to the use of the land for non-agricultural purposes and

having regard to urban and non-urban areas in which the lands are situated and shall be determined and levied in accordance with provisions of this Chapter.

2. Procedure for determining non-agricultural assessment of lands in non-urban areas . Sections 110.

According to section 110 the Collector shall

subject to the approval of the Commissioner, by notification in the Official Gazette,

divide the village in non-urban areas into two Classes- Class I and Class II—on the basis of the market values of lands. Section 108 defined the term market value. It means amount equal to market value of that land plus the amount representing the capitalised assessment for the time being in force.

However for this type of assessment due regard to be given to -

situation of the lands,

the non-agricultural purpose for which they are used, and the advantages and disadvantages attaching thereto.

Urban area mentioned in Amendment Act 2003 and shall be deemed to be Class I village the purposes of assessment of non-agricultural assessment of such village

However this amendment does not affect the liability of an assessee for payment of any tax which has already been assessed and accrued prior to the said date in respect of such notified urban area.

Any tax already levied and paid before the said date, in respect of such notified urban area, shall not be refunded.

According to clause (2) Collector shall,

subject to the general or special orders of the State Government,

assess lands falling in Class I according to the non-agricultural purpose for which they are used at a rate not exceeding ten paise

or such amount as may be prescribed, whichever is higher per square metre per year

and those falling in Class II at a rate not exceeding five paise or such amount as may be prescribed, whichever is higher per square metre per year.

The market value of lands used for the non-agricultural purpose to be considered so that the assessment so fixed is not less than the agricultural assessment which may be leviable on such land.

3 . Procedure for determining non-agricultural assessment in urban areas. Section 111.

Section 111 lays down that the Collector shall divide urban areas into blocks on the basis of the market value of lands.

Due regard to be given to the situation of the lands,

the non-agricultural purposes for which they are used,

and the advantages and disadvantages attaching thereto.

Section 112 lays down that the non-agricultural assessment on lands in each block in an urban area shall not exceed three per cent. of the full market value thereof when used as a building site.

Section 113 lays down that Subject to the provisions of section 112, the the State Government shall

, or if so authorised by the State Government,

by notification in the Official Gazette,

the Collector shall fix the rate of non- agricultural assessment per square metre of land in each block in an urban area .

And this will be called the standard rate of non- agricultural assessment at such percentage of the full market value of such land as may be prescribed.

The full market value shall be estimated in the prescribed manner on the basis of the land rates as determined and issued in the form of Annual Statement of rates, by the Chief Controlling Revenue Authority.

under the Bombay Stamp (Determination of True Market Value of Property) Rules, 1995 framed under the Bombay Stamp Act, 1958,

immediately preceding the year in which the standard rate of . non- agricultural assessment is to be fixed.

The standard rate of non- agricultural assessment shall remain in force for a period of five years and shall be liable to be revised in accordance with the provisions of this Chapter.

Where the standard rate of non- agricultural assessment in any block in any urban area has been fixed or revised before the 1st day of August 1979

, such standard rate shall be deemed to be due for revision at any time on and after 5[the 1st day of August 1979

and then such standard rate if so revised

shall be deemed to have come into force with effect from the 1st day of August 1979 on which date the first guaranteed period commenced and would remain in force upto the 31st July 1991

and would be subject to further revision under sub-section (2B), from time to time.

Where the standard rate of non- agricultural assessment is fixed or revised for any guaranteed period, the same shall be revised as soon as possible after the commencement of the next guaranteed period and such revised rate shall be deemed

to have come into force with effect from the commencement of such next guaranteed period.

The rates of non-agricultural assessment for every guaranteed period of five years after the 1st August 2001 shall not be less than the rate prevailing on the day immediately preceding the beginning of such guaranteed period. and shall not exceed,—

a) three times the non-agricultural assessment rate prevailing on the reference day in a Municipal Corporation area and two times of such rate

in the area of the rest of the State, for the cases which are already assessed for non-agricultural purposes; and

(b) six times the non-agricultural assessment rate prevailing on the reference day in a Municipal Corporation area and four times of such rate in the area of the rest of the State, for the cases to be assessed for non-agricultural purposes.

(3) The standard rate of non-agricultural assessment fixed or revised as aforesaid shall be published in the Official Gazette, and in such other manner as may be prescribed before they are brought into force.

4. Rate of Assessment of lands used for Non-agricultural purposes. Section 114.

According to section 114 the rate of assessment in respect of lands in urban areas—

(a) used for purposes of residential building, shall be the standard rate of non-agricultural assessment;

(b) used for the purpose of industry, shall be one and one-half times the standard rate of non-agricultural assessment.

(c) used for purposes of commerce,

shall be thrice the standard rate of non-agricultural assessment in the areas within the limits of all the other municipal corporations,

excluding the area of the Mumbai City District in the Mumbai Municipal Corporation area,

and twice the standard rate of non-agricultural assessment in the remaining urban areas of the State.

(d) used for any other non-agricultural purpose,

shall be fixed by the Collector, at a rate not less than the standard rate of non-agricultural assessment,

and not exceeding one and one-half times that standard rate, regard to be given to the situation, and special advantages or disadvantages attaching to such lands.

Where any land is used for any non-agricultural purpose for a period of six months or less,

the non-agricultural assessment shall be

half of that fixed for land used for that non-agricultural purpose.

Collector may in respect of any land in a block fix the non-agricultural assessment for that land at a rate not less than seventy-five per cent. of the rate fixed in sub-section (1) but not exceeding by twenty-five per cent. the rate so fixed for the particular use.

regard to be given to the situation, and special advantages or disadvantages attaching to such land.

According to section 115 the State Government

in the case of co-operative societies and housing boards established under any law for the time being in force in this State,

the non-agricultural assessment shall be levied with effect from the date on which any land is actually used for non-agricultural purpose.

5. Lands Exempt from payment of non-agricultural assessment Section 117.

According to section 117 lands used for the following purposes shall be exempt from the payment of the non-agricultural assessment :—

(1) lands used by an agriculturist for an occupation subsidiary or ancillary to agriculture

such as the erection of sheds for hand-looms, poultry farming, or gardening or

such other occupations as the State Government may specify in rules made in that behalf.

(2) lands used for purposes connected with the disposal of the dead

(3)lands solely occupied and used for public worship and which were exempt from payment of land revenue by custom, grant or otherwise before the commencement of this Code

(4)lands used for an educational or a charitable purpose the benefit of which is open to all citizens without distinction of religion, race, caste, place of birth or any of them

(5)lands used for any other public purpose which the State Government may by rules made under this Code declare to be exempt, for such period and subject to such conditions as may be specified therein

agricultural lands in non-urban area used for personal bona fide residential purpose under sub-section (2) of section 42

(6)such agricultural lands outside a gaathan, if any, in a non-urban area, converted to non-agricultural use for purposes of residential building

as the State Government may, by notification in the Official Gazette, specify.

According to section 118 It shall be lawful for the State Government to direct that any land which is exempt under the provisions of section 117 from payment of non-agricultural assessment of lands wholly exempt from payment of land revenue.

Non-agricultural assessment fixed before commencement of Code to continue in force until agricultural assessment shall cease to be so exempt if the land is used for any purpose other than that for which the exemption is provided; and thereupon the land shall be liable to payment of the assessment according to the provisions of this Chapter, and in addition, to such fine as the Collector may, subject to the general orders of the State Government, direct.

Section 119 lays down that the Collector is not prevented from determining and registering the proper full non-agricultural assessment on lands wholly exempt from payment of such assessment.

According to section 120 the non-agricultural assessment fixed on lands

and in force in any part of the State

immediately before the commencement of this Code

shall be deemed to have been fixed under the provisions of this Chapter

and shall be deemed to continue to remain in force during the whole of the period for

which the assessment was fixed, and thereafter, until such assessment is revised under this Code.

In *Ispat Industbins v Collector Raigad*.2009(3)Bom.C.R.

High Court held that Collector is only authority to decide and pass orders under section 110 of Code.

Revenue Surveys. (Sections79- 88)

Introduction

Maharashtra Land Revenue Code is State enacted legislation. According to Preamble main purpose of Code is collection of land revenue. Apex Court in *Jilubhai Nanbhai v State of Gujarat* AIR 1995 S.C. held that revenue administration and recovery of land revenue is object of Code.

Survey of land land is directed by State Government with a view to assess land revenue. Code has made provision for conducting survey and survey officer is deputed for conducting survey.

•Important Provisions Relating to Revenue Survey.

Maharashtra Land Revenue Code lays down various provisions relating to revenue survey. These provisions are-

1.Revenue Survey may be introduced by State Government into any part of State. Section 79.

Survey extended to lands of any village, town or city is called revenue survey. Whenever it expedient survey of any land is directed by State Government.

Section 79 lays down that it shall be lawful for the State Government whenever it may deem expedient to direct the survey of any land in any part of the State

with a view to assessment or settlement of the land revenue

and to the record and preservation of rights connected therewith

or for any other similar purpose and such survey shall be called a revenue survey.

Such survey may extend

to the lands of any village, town or city generally or
to such land only as the State Government may direct.

It shall be lawful for the Officers conducting any such survey to except from the survey any land to which it may not seem expedient that such survey should be applied.

Clause (2) lays down that the control of every revenue survey shall vest in and shall be exercised by the State Government.

2. Survey Official may require by general notice or by summons suitable service from holders of land . Section 80.

According to section 80 it shall be lawful for a survey officer deputed to conduct or take part in any such survey or a survey under section 86 or 87

to require by general notice or by summons the attendance of holders of land and of all persons interested therein

in person or by legally constituted agent who is duly instructed and able to answer all material questions,

and the presence of taluka and village officers

and to require from them such assistance in the operations of the survey and such service in connection therewith.

Section 81 lays down that it shall be lawful for a survey officer,

while conducting surveys mentioned in the preceding section

to call upon all holders of land and other persons interested therein to assist in the measurement or classification of the lands to which the survey extends

by furnishing flag-holders;

and in the event of a necessity for employing hired labour for this or other similar object incidental to survey operations.

It shall also be lawful to assess the cost thereof, with all contingent expenses on the land surveyed, for collection as a revenue demand.

3. Survey Numbers Not to be of less than certain extent . Section 82.

According to section 82 no survey number comprising land used for purposes of

agriculture only shall be made of less extent than the minimum to be fixed from time to time for the several classes of land in each district by the Director of Land Records, with the sanction of the State Government.

4. Power State Government to direct fresh Survey and Revision of Assessment .Section 83.

According to section 83 State Government may direct fresh survey or any operation subsidiary thereto.

However a general classification of the soil of any area and revision been made a second time

or where any original classification of the soil of any area has been approved by the State Government as final

no classification shall be again made with a view to the revision of the assessment of such area .

Except when the State Government considers that owing to

changes in the condition of the soil of such area or

any errors in classification, such reclassification is necessary.

Section 84 lays down that the area and assessment of survey numbers and subdivisions of Entry of survey numbers shall be entered in such records as may be maintained under survey under the rules made by the State Government in that .

5. Partition Section 85.

Section 85 lays down that subject to Bombay Prevention of Partition Fragmentation and Consolidation of Holdings Act, 1947,

a holding may partitioned on the decree of a civil court or

On application any of co-holders in the manner as under-

i) If in any holding there are more than one co-holder,

any such co-holder may apply to the Collector for a partition of his share in the holding.

However where any question as to title is raised, no such partition shall be made until such question has been decided by a civil suit.

ii) The Collector may, after hearing the co-holder divide the holding and apportion the assessment of the holding in accordance with the rules made by the State Government under this Code.

According to Clause (5) expenses properly incurred in making partition of a holding paying revenue to the State Government shall be recoverable

as a revenue demand in such proportion as the Collector may think fit

from the co-holders at whose request the partition is made,

or from the persons interested in the partition.

In *kalyani v Narayan* AIR1980 S.C Court held that to constitute partition all that is necessary is a dignity and unequivocal indication of intention to separate must be to the knowledge of the persons affected by such declaration.

6 . Division of Survey Number into New Survey Number Section 86.

According to section 86 Where any portion of cultivable land is permitted to be used for any non- agricultural purpose or

when any numbers into portion of land is specially assigned under section 22, or

when any assessment new survey is altered or levied or

any portion of land under sub-section (2) or sub-section (3)of section 67

such portion may, with the sanction of the Collector, be made into a separate survey number at any time.

7.Division of Survey Numbers into Sub-divisions. Section 87.

Section 87 lays down that subject to the provisions of the Bombay Prevention of survey Fragmentation and Consolidation of Holdings Act, 1947 survey numbers may be divided into so many sub-divisions as may be required in view of the acquisition of rights in land or for any other reason

The division of survey numbers into sub-divisions and the fixing of the assessment of the sub-divisions shall be carried out and revised in accordance with the rules made by the State Government in this behalf.

However the total amount of the assessment of any survey number or sub-division shall not be enhanced during any term for which such assessment may have been fixed under the provisions of this Code,

unless such assessment is liable to alteration under section 67 .

(c)the area and assessment of such sub-divisions shall be entered in such land records as the State Government may prescribe in this behalf.

Clause (2) lays down that where a holding consists of several khasra numbers in any area in the State, the Settlement Officer shall assess the land revenue payable for each khasra number and record them as

separate survey numbers.

8 . Privilege of Title- deeds. Section 88.

According to section 88 when the original survey of any land has been once completed, approved and confirmed,

under the authority of the State Government,

no person shall

for the purposes of subsequent surveys of the said land undertaken under the provisions of this Code

be compelled to produce his title deeds to such land or to disclose their contents.

5. Boundary And Boundary Marks. (Section 132-146)

Introduction

Object of Maharashtra Land Revenue Code is to recover land revenue . Boundary and boundary marks play vital role in this regard . Similarly provisions relating to boundary and boundary marks are maintained for better cultivation of lands.

Survey Officer and Collector are empowered by Code to deal with matters connected with boundary and boundary marks.

Provisions Relating to Boundary and boundary marks.

Maharashtra Land Revenue Code lays down important provisions relating to boundary

and boundary marks, which are as under-

1 fixation and Demarcation of Boundaries.

Section 132 of Code lays down that boundaries of all villages in the State and of all survey numbers in villages therein shall be fixed and demarcated by boundary marks.

In *Mango v Narayan* AIR 1920.Bom.

Court held that in fixing boundaries question of ownership does not arise. But Collector has to inquire position of boundaries

2. Determination of Village Boundaries Section 133.

Section 133 lays down that boundaries of villages shall be fixed,

and all disputes relating thereto shall be determined

by survey officers, or

by such other officers as may be appointed by the State Government for the purpose after holding a formal inquiry at which the village officers and all persons interested have an opportunity of appearing and producing evidence.

In *Kawasji v Hormusji* (1904) Court held that unless fraud or confusion Court has no power to fix boundary.

3 . Determination of Field Boundaries . Section 134.

According to section 134 If at the time of a survey, the boundary of a field or holding is undisputed, and its correctness is affirmed by the village officers then present,

it may be laid down as pointed out by the holder or person in occupation and,

if disputed, or if the said holder or person in occupation be not present, it shall be fixed

by the survey officer according to the land records

and according to occupation as ascertained from the village officers and the holders of adjoining lands,

or on such other evidence or information as the survey officer may be able to procure.

4. Disputes regarding boundaries between villages survey numbers and sub-divisions.

Section 135.

Section 135 lays down that If any dispute arises concerning the boundary of a village or a field or a holding which has not been surveyed,

or if at any time after the completion of a survey,

a dispute arises concerning the boundary of any village or boundary or area of any survey number or sub-division of a survey number,

it shall be decided by the Collector after holding a formal inquiry at which the concerned officers and all persons interested shall have an opportunity of appearing and producing evidence.

The Collector may, while deciding such dispute or, otherwise

after giving an opportunity of being heard to all the concerned persons and officer,

also correct any error in the area or assessment of a survey number or sub-division of a survey number due to mistake of survey or arithmetical miscalculation :

However no arrears of land revenue shall become payable by reason of such correction;

but excess payment as land revenue made, if any, shall be adjusted against the payment of land revenue which may become due.

In Mallikarjunappa v Anandrao .31 Bom. Court held that dispute means dispute between two neighbouring owners and not between Collector and owner.

5.Demarcation of Boundaries of survey number or subdivision .Section 136.

According to section 136 Collector may, on the application of a party interested, demarcate the boundaries of a survey number or of a sub-division and construct boundary marks thereon.

Clause (2) lays down that the State Government may make rules for regulating the procedure of the Collector in demarcating the boundaries of a survey number or of a sub-division,

and prescribing the nature of the boundary marks to be used,

and authorising the levy of fees from the holders of land in a demarcated survey number or sub-division.

Clause (3) lays down that survey numbers and sub-divisions demarcated under the provisions of this section shall be deemed to be survey numbers for purposes of sections 132, 135, 139 and 140.

In Secretary of State v Javerchand AIR 1933 Bom.

Court held that dispute in respect of field already surveyed arises on account of accidental intentional obliteration of boundary marks and power of determining the boundary has been given to revenue authorities.

6. Straightening out crooked boundaries. Section 137.

According to section 137 when any person (that is applicant) desires to regularise or straighten out the boundaries of any of his fields or boundaries. holdings in a village, he may make an application in that behalf to the Survey Officer.

The application shall be accompanied

- by a sketch showing the boundaries of his field or holding
- and the names of holders adjoining thereto.

According to Clause (2) If on receipt of the application, the Survey Officer in the interest of better cultivation of the field or holding and easier maintenance of boundary marks, deems it expedient to regularise or straighten out the boundaries of the field or holding as desired by the applicant, he may,

subject to the provisions of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947,

prepare a plan- to revise the boundaries of such field or holding and- for payment of compensation by the applicant to persons who would suffer loss of land on account of such revision.

And publish the same in village in such manner as may be prescribed by rules.

In revising the boundaries, the survey officer shall be guided by such rules as may be made by the State Government in this behalf.

The amount of compensation shall be determined by him, so far as practicable, in accordance with the provisions of section 23 of the Land Acquisition Act, 1894.

Clause (3) lays down that If the applicant and the persons who suffer loss of land

agree to the plan prepared by the Survey Officer, the Survey Officer shall record their agreement and revise the boundaries and fix them accordingly

.Such agreement shall be binding on the applicant and such persons and the amount of compensation payable by any person thereunder shall be recoverable from him as an arrear of land revenue.

In the absence of mutual agreement, the Survey Officer shall refer the question of the amount of compensation to be paid or recovered by each person concerned under the plan for decision—

(i) to a village committee consisting of such number and elected by the applicant and persons suffering loss of land in such manner as may be prescribed by rules ;

(ii) on the failure to elect such village committee, to a committee consisting of three persons nominated by the Survey Officer not below the rank of the District Inspector of Land Records with the approval of the Superintendent of Land Records.

The decision of the village committee or the committee nominated by the Survey Officer of the rank of District Inspector of Land Records, as the case may be, shall be final and binding on all the parties concerned.

The amount of compensation payable by the applicant thereunder shall be recoverable from him as an arrear of land revenue.

When such decision is given, the plan prepared by the Survey Officer, so far as it relates to revision of boundaries, shall also become final and the boundaries shall be deemed to be fixed accordingly.

According to clause (5) when the boundary is so fixed under this section, it shall be deemed to be a settlement of boundary for the purposes of section 138.

Object of this provision is better cultivation of lands and easier maintenance of boundary marks.

7. Effect of Settlement of Boundary . Section 138.

According to section 138 the settlement of a boundary under any of the foregoing provisions of this Chapter shall be determinative—

(a) of the proper position of the boundary line or boundary marks, and

(b) of the rights of the landholders on either side of the boundary fixed in respect of

the land adjudged to appertain, or not to appertain, to their respective holdings.

Clause (2) lays down that where a boundary has been settled as aforesaid,

the Collector may at any time summarily evict any land holder who is wrongfully in possession of any land which has been adjudged in the settlement of a boundary not to appertain to his holding or to the holding of any person through or under whom he claims.

According to clause (3) order of ejectment under sub-section (2) shall,

subject to the provisions of sub-sections (4) and (5),

be subject to appeal and revision in accordance with the provisions of this Code.

According to clause (4) where any person has been ejected or is about to be ejected from any land under the provisions of sub-section (2),

he may, within a period of one year from the date of the ejectment or the settlement of the boundary,

institute a civil suit to establish his title thereto

However the State Government or the Collector, or any Revenue or Survey Officer shall not be made a party to such suit.

According to Clause (5) where a civil suit has been instituted under sub-section (4) against any order of ejectment, such order shall not be subject to appeal or revision.

According to clause (6) the Collector may at any time make an order for redistribution of land revenue which, in his opinion, should be made as a result of the decision of the appeal or revision, or as the case may be, the suit, and such redistribution shall take effect from the beginning of the revenue year following the date of the order.

8. Construction and repairs of boundary marks and survey numbers and villages .

Section 139

According to section 139 any Survey Officer authorised by a Superintendent of Land Records, or Settlement Officer, to specify or cause to be constructed, laid out maintained or repaired boundary marks and survey marks of villages or survey numbers or sub-divisions of survey numbers- whether cultivated or uncultivated

and to assess all charges incurred on the holders or others having an interest therein.

Clause 2 states that Such officer may

by notice in writing

require landholders to construct, layout, maintain or repair within a specified time, the boundary marks or survey marks of their respective survey numbers or sub divisions and on their failure to do so the Survey Officer shall construct, lay-out or repair them and assess all charges incurred.

According to clause (3) boundary marks and survey marks shall be of such description and shall be constructed, laid out, maintained or repaired in such manner

and shall be of such dimensions and materials

as may, subject to rules made by the State Government in this behalf, be determined by the Superintendent of Land Records, according to the requirement of soil, climate, durability and cheapness of materials.

9 . Responsibility For maintenance of boundary marks and survey marks . Section 140.

According to section 140 every landholder shall be responsible for the maintenance and good

repair of the boundary marks and survey marks of his holding, and for any boundary charges reasonably incurred on account of the same by the Revenue or Survey Officers in cases of alteration, removal or disrepair.

It shall be duty of Village Officers and servants to prevent the destruction or unauthorised alteration of the village boundary marks or survey marks.

.Section 149 lays down that where survey is introduced into a district, the charge of boundary marks and survey marks shall devolve on the Collector, and it shall be his duty to take measures for their construction, laying out marks and survey marks maintenance and repair, and for this purpose the power conferred on Survey Officers by section 139 shall vest in him.

10. Demarcation and maintenance of boundary marks between holding and village road. Section 142.

According to section 142 unless the boundaries of his land are demarcated and fixed under any of the foregoing provisions of this Chapter,

every holder of the land adjoining a village road

shall at his own cost and in the manner prescribed,—

(a) demarcate the boundary between his land and village road adjoining it by boundary marks; and

(b) repair and renew such boundary marks from time to time.

According to clause (2) if the holder fails to demarcate the boundary or to repair or renew the boundary marks as required by sub-section (1)

the Collector may,

after such notice as he deems fit, cause the boundary to be demarcated or the boundary marks to be repaired or renewed

and may recover the cost incurred as an arrear of land revenue.

According to clause (3) in the event of any dispute regarding the demarcation of the boundary or the maintenance of the boundary marks in proper state of repair, the matter shall be decided by the Collector whose decision shall be final.

11. Right of way over boundaries Section 143.

According to section 143 Tahsildar may inquire into and decide claims by persons holding land in a survey number to a right of way over boundaries of other survey numbers.

Clause (2) lays down that in deciding such claims, the Tahsildar shall have regard to the needs of cultivators for reasonable access to their fields.

According to clause (3) the Tahsildar's decision under this section shall, subject to the provisions of sub-sections (4) and (5), be subject to appeal and revision in accordance with the provisions of this Code.

According to clause (4) any person who is aggrieved by a decision of the Tahsildar under this section may, within a period of one year from the date of such decision, institute a civil suit to have it set aside or modified.

Cause (5) states that where a civil suit has been instituted under sub-section (4) against the Tahsildar's decision, such decision shall not be subject to appeal or revision.

12. Demarcation of boundaries in the area under town planning scheme or

improvement scheme or consolidation scheme. Section 144.

According to section 144 as soon as possible after a final town planning scheme or improvement scheme or

a scheme for the consolidation of holdings has come into force in any area under any law in force in the State,

Collector is to alter the boundaries fixed and demarcated under the provisions of this Chapter, so as to accord with the plots, reconstituted or laid out or consolidated under such scheme,

And for that purpose, he may cause to be erected, constructed and laid out boundary marks of such plots on it.

the provisions of this Chapter for the recoveries of charges shall apply to each plots as they apply in relation to the construction, maintenance and repair of boundary marks.

According to section 145 any person who,

after a summary inquiry before the Collector, or before Survey Officer, Tahsildar or Naib-Tahsildar,

is proved to have wilfully erased, removed or injured a boundary mark or survey mark shall be liable to a fine not exceeding one hundred rupees for each mark so erased, removed or injured.

Harichanda Pundalik v State of Maharashtra . 2013(6)ALL M R.

Is on the point of right of way over boundary under section 143 of Code.

Court held that right of passage to agricultural lands is independent of easementary right and can be claimed under section 143 of Code.

Modul 03

1. Record of Rights (Section 147-149.)

Introduction

Ownership and use of land can be ascertained and guaranteed, if the land records are kept. And the laws governing land relationships are published.

The land records are ascertaining the state of ownership and property rights. In land deals and investigation land records is essential to ascertain who the actual owner is.

Over time the Law which developed to regulate land relationships has come to focus on classifying the persons using land according to ownership categories and the purpose for which they are using land.

Record of Right is land record where all sorts of right and liabilities in respect of every piece of land are registered.

Subject of Record of Right was discussed in the year 1897 for the purpose of settlement. Settlement is the process which determines amount of land payable to the Government.

A first code was prepared on this subject in the year 1903. This code was replaced and incorporated as chapter 10-A in the Bombay Land Revenue Code, 1913.

The responsibility for payment of revenue is fixed on the basis of the Record of Rights. Later on the statutory provisions of the Record of Rights are incorporated in chapter 10-A of the Maharashtra Land Revenue code 1966.

Importance of record of right:-

The provisions made in the Maharashtra Land Revenue Code, 1966 are revenue-oriented. Although recent time land revenue is not important source of income of the state, this record remained important because this is registered of rights and liabilities.

After independence rapid development in industry and commerce took place, area under urbanization is also increased. With the result prices of land soared. People found real estate a reliable place for investment. Record of Right became one of the most important documents for investigation of title.

Register of Record of Right and Register of crops is prepared and maintained by Talathi in the combined village form VII-XII and Registered of Mutation in village form VI.

Information available in record of rights:-

A record of rights shall be maintained in every village and such record shall include the following particulars:-

a) the names of all persons (other than tenants) who are holders, occupants, owners or mortgages of the land or assignees of the rent or revenue .

- b) the names of all persons who are holding as Government lessees or tenants including tenants within the meaning of the relevant tenancy law
- c) the nature and extent of the respective interests of such persons and the conditions or liabilities, if any, attaching thereto
- d) the rent or revenue, if any, payable by or to any of such persons
- e) such order particulars as the State Government may prescribe, by rules, in this behalf.

In State of Andhra Pradesh v Star Bone Mill 2013. Supreme Court of India held that revenue record is not document of title. It merely raises presumption regarding possession.

Section 149 is the provision relating to reporting acquisition of right in any manner as prescribed in section itself to Talathi.

person may acquire right by succession, survivorship, inheritance, partition purchase, mortgage, gift, lease or

otherwise, right as holder, occupant, owner, mortgagee, landlord, Government lessee or tenant of the land situated in any part of the State or assignee of the rent or revenue.

On acquisition person shall report orally or in writing his acquisition of such right to the Talathi within three months from the date of such acquisition.

And the said Talathi shall at once give a written acknowledgement of the receipt of such report to the person making it. Provided that, where the person acquiring the right is a minor or otherwise disqualified, his guardian or other person having charge of his property shall make the report to the Talathi.

Provided further that, any person acquiring a right with the permission of the Collector or by virtue of a registered document shall be exempted from the obligation to report to the Talathi.

where a person claims to have acquired a right with the permission of the Collector and such permission is required under the provisions of this Code or any law for the time being in force, such person shall not be required by the Talathi to produce such evidence of the order by which such permission is given.

Explanation I clarifies that rights mentioned above include a mortgage without possession. But do not include an easement or a charge not amounting to a mortgage of the kind specified in section 100 of the Transfer of Property Act, 1882

.Explanation II. Clarifies that person in whose favour a mortgage is discharged or extinguished or lease determined, acquires a right within the meaning of this section.

Explanation III. Clarifies that the term Talathi includes any person appointed by the Collector to perform the duties of a Talathi under this Chapter.

Register of Mutations and Disputed cases (section 150)

This is another provision relating to record of rights. According to section 150 acquisition of right under section 149 when it is reported to Talathi he shall enter it in register of mutations. He shall also enter any intimation of acquisition or transfer under section 154 or from any Collector. The register in which acquisition of rights as mentioned in section 149 is entered is called Register of Mutations.

Mutation is process of whereby right is entered or changed. And it is continuous process.

In Mahila Bajrangi v Badribai (2003)S.C.C. Supreme Court held that mutation proceedings before revenue authority is not judicial proceedings. Questions of title to immovable property are not decided under it.

Whenever a Talathi makes an entry in the register of mutations, he shall at the same time post up a complete copy of the entry in a conspicuous place in the Chavdi, and shall give written intimation to all persons appearing from the record of rights or register of mutations as interested in the mutation, and to any other person whom he has reason to believe to be interested therein.

Display of written intimation is mandatory. Case on the point is Marzban v State of Maharashtra (2004)MLJ.

objection to any entry made under sub-section (1) in the register of mutations is permitted either orally or in writing.

Disputed cases:

Objections to mutation entry is called disputed cases.

Objections may be made to the Talathi. It is the duty of the Talathi to enter the particulars of the objections in a register of disputed cases.

The Talathi gives a written acknowledgement for the objection to the person making it.

Objections / disputes entered in the register of disputed cases shall as far as possible be disposed of within one year by a revenue or survey officer not below the rank of an Aval Karkun.

Orders disposing of objections entered in such register shall be recorded in the register of mutations.

The transfer to entries from the register of mutations to the record of rights shall be effected subject to such rules as may be made by the State Government in this behalf. Provided that, an entry in the register of mutations shall not be transferred to the record of rights until such entry has been duly certified

Entries in the register of mutations shall be tested and if found correct, or after correction, as the case may be, shall be certified by any revenue or survey officer not below the rank of an Aval Karkun.

(Provided that, entries in respect of which there is no dispute may be tested and certified by a Circle Inspector.)

(Provided further that) no such entries shall be certified unless notice in that behalf is served on the parties concerned.

SECTION 151 states that any person whose rights, interests or liabilities are required to be, or have been entered in any record or register, on the requisition of any revenue officer or Talathi engaged in compiling or revising the record or register is bound to furnish or produce, for his inspection, within one month from the date of such requisition all information or documents needed for the correct compilation or revision.

A revenue officer or a Talathi to whom any information is furnished or before whom any document is produced in accordance with the requisition under sub-section (1), shall at once give a written acknowledgement and shall endorse on any document a note under his signature stating the fact of its production and the date thereof.

Every holder of agricultural land (including a tenant if he is primarily liable to pay land

revenue therefor), on making an application in that behalf in writing, may be supplied by the Talathi with a booklet containing a copy of the record of rights pertaining to such land.

The booklet shall also contain information regarding the payment of land revenue in respect of land and other Government dues by the holder or, as the case may be, the tenant and also information as respects the cultivation of his land and the areas of crops sown in it as shown in the village accounts and such other matters as may be prescribed.

Every such booklet shall be prepared, issued and maintained in accordance with the rules made by the State Government in that behalf. Such rules may provide for fees to be charged for preparing, issuing and maintaining the booklet. 1(The fees so charged may, subject to the orders of the State Government, if any, be retained by revenue officer preparing, issuing and maintaining the booklet)

Where any booklet is prepared, issued or maintained immediately before the coming into force of this Act, such booklet shall be deemed to have been prepared, issued and maintained in accordance with the provisions of this Act and the rules made thereunder until provision is made for preparing, issuing and maintaining the booklet in any other form or manner under the rules made in that behalf by the State Government.

Every information in so far as it relates to the record of rights, contained in the booklet prepared, issued or maintained or deemed to have been prepared issued or maintained in accordance with the provisions of this Code and the rules made thereunder shall be presumed to be true until the contrary is proved or until such information is duly modified under this Code.)

Section 154 is about intimation to be given by registering officers. It states that When any document purporting to create, assign or extinguish any title to, or any, charge on, land used for agricultural purposes, or in respect of which a record of rights has been prepared is registered under the Indian Registration Act, 1908, the officer registering the document shall send intimation to the Talathi of the village in which the land is situate and to the Tahsildar of the taluka.

Section 156.Is provision in respect of other land records.It lays down that in addition to the map, the registers and the record of rights there shall be prepared for each village such other land records as may be prescribed.

Section 157 is about presumption of correctness of entry in record of rights and

register of mutations. It states that entry in the record of rights, and a certified entry in the register of mutations shall be presumed to be true until the contrary is proved or a new entry is lawfully substituted.

In *Mango Fakira Koli v Thagubai* 2014 MCR 778

Court held that mutation entry is for revenue /fiscal purpose it does not create any right or title which can only be decided by civil courts.

2. Rights in unoccupied land. Sections 160- 167.

These rights are enumerated in Nistar Patrak, Wazib-ul- arz and fishing in Government tanks.

Nistar patrak :is register wherein rights created for community in Government land are recorded.It is prepared by Collector.

According to section 161 the Collector shall prepare a Nistar Patrak consisting of a scheme of management of all unoccupied land in a village and all matters incidental to, it and more particularly the matters specified in section 162.

(2)A draft of the Nistar Patrak shall be published in the village and after ascertaining the wishes of the residents of the village in the manner determined by the Collector, it shall be finalised by the Collector.

(3)On a request made by the village panchayat, or where there is no village panchayat, on the application of not less than one-fourth of the adult residents of a village, the Collector may, at any time, modify any entry in the Nistar Patrak after such enquiry as he deems fit.

Section 162 of Code lays down matters to be provided in a Nistar Patrak –

(a)the terms and conditions on which grazing of cattle in the village will be permitted

(b)the terms and conditions on which and the extent to which any resident of the village may obtain–

(i)wood, timber, fuel or any other forest produce

(ii) moram, kankar, sand, earth, clay, stones or any other minor minerals

c)instructions regulating generally the grazing of cattle and removal of articles

mentioned in paragraph (b)

(d) any other matter required to be recorded in the Nistar Patrak by or under this Code.

According to 163 while preparing a Nistar Patrak the Collector shall make provision for following matters :

(a) free grazing of the cattle used for agriculture ;

(b) removal free of charge by the residents of the village for their bona fide domestic consumption of any—

(i) forest product ;

(ii) minor minerals ;

(c) the concessions to be granted to the village craftsmen for the removal of articles specified in clause (b) for the purpose of their craft.

Section 164 permits Collector to create rights of Nistar for neighbouring village.

It lays down that -

Where the Collector is of the opinion that waste land of any land of village is insufficient and it is in the public interest to proceed under this section, he may after such enquiry as he deems fit, order that the residents village. of the village shall have a right of Nistar or a right of grazing cattle, as the case may be, in the neighbouring village to the extent specified in the order.

The residents of a village having a right of grazing cattle in the neighbouring village under sub-section (1), or government forest may make an application to the Collector for recording their right of passage for the purpose of exercising the rights.

If, on enquiry into an application made under sub-section (2), the Collector finds that the right of passage is reasonably necessary to enable such residents to exercise a right to graze their cattle in any other village or in a Government forest, he shall pass an order declaring that such right of passage exists and shall state the conditions upon which it shall be exercised.

The Collector shall, thereupon, determine the route of passage through unoccupied land and shall restrict such route in such manner as to cause minimum inconvenience to the residents of the village through which it passes.

The Collector may, if he thinks fit, demarcate such route.

(6)Orders passed by the Collector under this section shall be recorded in the Nistar Patrak.

(7)Where the village mentioned in sub-section (1) lie in different districts, the following provisions shall apply, namely :—

(a)the orders specifying the right of Nistar or the right of grazing cattle shall be passed by the Collector in whose district the village over which such right is claimed lies ;

(b)any orders regarding route of passages shall be passed by the Collector in whose respective jurisdiction the area over which passage is allowed lies ;

(c)the Collector passing an order in accordance with clauses (a) and

(b) shall consult in writing the other Collector concerned.

Section 165 : Wajib-ul- arz.

It is register in which Collector record customs in village. These customs are in the form of rights which are enumerated in clauses a, b of section 165.

Wajib-ul- arz is prima facie evidence of existence of custom.

Section 165 lays down that the Collector shall, according to any general or special order made by the State Government in that behalf, ascertain and record the customs in each village in regard to—

(a)the right to irrigation or right of way or other easements ;

(b)the right to fishing ;

in any land or water belonging to or controlled or managed by the State Government or a local authority, and such record shall be known as the Wajib-ul- arz of the village.

The record made in pursuance of sub-section (1) shall be published by the Collector in such manner as he may deem fit and it shall, subject to the decision of a Civil Court in the suit instituted under sub-section (3), be final and conclusive.

Any person aggrieved by any entry made in such record may, within one year from the date of the publication of such record under sub-section (2), institute a suit in a Civil Court to have such entry cancelled or modified.

Wajib-ul- arz may be modified on following grounds :

- (a) that, all persons interested in such entry wish to have it modified ; or
- (b) that, by a decree in a civil suit, it has been declared to be erroneous ; or
- (c) that, being founded on a decree or order of a Civil Court or on the order of a revenue officer, it is not in accordance with such decree or order ; or
- (d) that, being so founded, such decree or order has subsequently been varied on appeal, revision or review ; or
- (e) that, the Civil Court has by a decree determined any custom existing in the village.

Section 166 is about regulation of fishing right which is part of Wajib-ul-arz.

It lays down that the State Government may make rules for regulating,—

- (a) fishing in Government tanks ;
- (b) the removal of any materials from lands belonging to the State Government.

(2) Such rules may provide for the issue of permits, the conditions attaching to such permits and the imposition of fees therefor and other incidental matters.

Section 167 prescribed punishment for making contravention of sections 161-166 of Code.

It lays down that any person who acts in contravention of the provisions in sections 161 to 166 or rules made under section 166 or who contravenes or fails to observe any rules or custom entered in the Wajib-ul-arz or commits a breach of any entry entered in the Nistar Patrak shall be liable to such penalty not exceeding rupees one thousand as the Collector may, after giving such person an opportunity to be heard, deem fit ; and the Collector may further order confiscation of any produce, or any other produce which such person may have appropriated or removed from lands belonging to the State Government.

(2) Where the Collector passes an order imposing a penalty under this section, he may direct that the whole or any part of the penalty may be applied to meeting the cost of such measures as may be necessary to prevent loss or injury to the public owing to such contravention, breach or non-observance.

3. Realisation of land Revenue and other Revenue demands (sections 168-184).

Liability for Land Revenue: Section 168.

This provision clarifies who are liable to pay land revenue and in respect of which land. This provision classifies persons as persons primarily liable to pay land revenue and person in possession in case default is made by former persons.

According to 168 in case of—

(a)unalienated land, the occupant or the lessee of the State Government ;

(b)alienated land, the superior holder ; and

(c)land in the possession of tenant, such tenant if he is liable to pay land revenue therefor under the relevant tenancy law,

shall be primarily liable to the State Government for the payment of the land revenue and all arrears of land revenue, due in respect of the land

Joint occupants and joint holders who are primarily liable under this section shall be jointly and severally liable.

In case of default by any person who is primarily liable under this section the land revenue, including arrears as aforesaid, shall be recoverable from any person in possession of the land.

However if such person is a tenant, the amount recoverable from him shall not exceed the demands of the year in which the recovery is made.

when land revenue is recovered under this section from any person who is not primarily liable for the same, such person shall be allowed credit for any payments which he may have duly made to the person who is primarily liable, and shall be entitled to credit, for the amount recovered from him, in account with the person who is primarily liable.

Priority of Claim of State Government all others. Section 169

This provision makes claim of State Government in respect of arrears of land revenue as paramount charge on land. And do it has priority over all unsecured claims against any land or holder thereof.

According to section 169 the arrears of land revenue due on account of land shall be a paramount charge on the land and on every part thereof and shall have precedence over any other debt, demand or claim whatsoever, whether in precedence respect of

mortgage, judgment-decree, execution or attachment, or otherwise over all others. howsoever, against any land or the holder thereof.

Thane Janta Sahakari Bank v Commissioner of Sale Tax .2006(6)Bom C R.

Is on the point. In this case bank's right to recover amount by way of mortgage was not upheld. But Government claim was given priority.

Time for Payment of Land Revenue section 170.

This provision clarifies time/dates on which land revenue falls due and payable. It is payable on first day of revenue year

Section 170 lays down that the land revenue payable on account of a revenue year shall fall due on the first day of that year. But except when temporary attachment and management of a village or share of a village is deemed necessary under due under the provisions of section 171, payment will be required only on the dates to be fixed as provided under sub-section (2).

The State Government may make rules providing for the payment of land revenue in instalments and on dates (hereinafter referred to as the "prescribed dates") subsequent to the first day of the revenue year, and such rules may prescribe the persons to whom and the places where at such instalments shall be paid.

The payment of land revenue to the person prescribed under sub-section (2) may be made in cash or may, at the cost of the remitter, be remitted by money order.

Any period intervening between the first day of the revenue year and any date fixed for the payment of land revenue by such rules shall be deemed to be a period of grace, and shall not affect the provisions of sub-section (1).

State Government is authorised under clause 2 of this section you make rules for payment of land revenue and the person to whom and places where at it is to be made.

Section 171 permits Collector attachment of village or share of village and management of village if he apprehends that revenue shall not be paid.

It lays down that If owing to disputes amongst the shares or for other cause, the Collector deems that the land revenue payable in respect of any holding consisting of an entire village or of a share of a village will not be paid as it falls due, he may cause

the village or share of village to be attached and taken under the management of himself, or any agent whom he appoints for that purpose.

The provisions of section 186 shall apply to any village or share of a village so attached and all surplus profits of the land attached, beyond the cost of such attachment and management, including the payments of the land revenue and the cost of the introduction of a revenue survey, if the same be introduced under the provisions of section 187 shall be kept in deposit for the eventual benefit of the person or persons entitled to the same, or paid to the said person or persons from time to time as the Collector may direct.

According to 173 any land revenue due and not paid on or before the prescribed dates becomes an arrear, and the persons responsible for it under the provisions of section 168 or otherwise become defaulters.

Section 174 prescribed penalty for default of payment of land revenue. It lays down that If any instalment of land revenue or any part thereof is not paid within one month after the prescribed date, the Collector may in the case of a wilful defaulter impose a penalty not exceeding [twenty-five per cent. of the amount not so paid or such amount as may be prescribed, whichever is higher.

Process of Recovery of land Revenue Enforcement :Section 176-184.

According to 176 an arrears of land revenue may be recovered as under-

- (a)by serving a written notice of demand on the defaulter under section 178;
- (b)by forfeiture of the occupancy or alienated holding in respect of which the arrear is due under section 179 ;
- (c)by distraint and sale of the defaulter's movable property under section 180 ;
- (d)by attachment and sale of the defaulter's immovable property under section 181 ;
- (e)by attachment of the defaulter's immovable property under section 182 ;
- (f)by arrest and imprisonment of the defaulter under sections 183 and 184 ;
- (g)in the case of alienated holding consisting of entire villages, or shares of villages, by attachment of the said villages or shares of villages under sections 185 to 190.

However the processes specified in clauses (c), (d) and (e) shall not permit the

attachment of -

(i) the necessary wearing apparel, cooking vessels, beds and bedding of the defaulter, his wife and children, and such personal ornaments as, in accordance with the religious usage cannot be parted with by any woman ;

(ii) tools of artisans and, if the defaulter is an agriculturist, his implements of husbandry.

(iii) articles set aside exclusively for the use of religious endowments ;

(iv) houses and other buildings (with the materials and sites thereof and the land immediately appurtenant thereto and necessary for their enjoyment), belonging to an agriculturist and occupied by him.

According to section 178 a notice of demand may be issued on or after the day on which the arrear accrues.

The Commissioner may from time to time make orders for the issue of such notices. And with the sanction of the State Government shall fix the costs recoverable from the defaulter as an arrear of revenue, and direct by what officer such notices shall be issued.

Section 179 permits the Collector to forfeit holding. It lays down that the Collector may declare the occupancy or alienated holding in respect of which an arrear of land revenue is due, to be forfeited to the State Government,.

However the Collector shall not declare any such occupancy or alienated holding to be forfeited—

(a) unless previously issued a proclamation and written notices of the intended declaration in the manner provided by sections 192 and 193 for sales of immovable property, and

(b) until after the expiration of at least fifteen days from the latest date on which any of the said notices shall have been affixed as required by section 193.

According to section 180 the Collector may also cause the defaulter's movable property to be distrained and sold by such officers or class of officers as the Collector under the orders of the State Government may from time to time direct.

Section 181 permits Collector to cause the right, title and interest of the defaulter (not being a person belonging to a Scheduled Tribes) in any immovable property other than

the land on which the arrear is due to be attached and sold.

According to section 182 If the Collector deems it inexpedient to adopt any of the processes specified in the above provisions for recovery of arrears [he shall, in case where the immovable property belongs to a person belonging to a Scheduled Tribe, and in any other case, he may,] cause the immovable property of a defaulter to be attached and taken under the management of himself or any agent whom he may appoint for that purpose.

The Collector or the agent so appointed shall be entitled to manage the lands attached and to receive all rents and profits accruing therefrom until the Collector restores the defaulter to the management thereof.

All surplus profits of the land attached, beyond the cost of such attachment and management, including the payment of the current revenue, shall apply in defraying the arrears due in respect of such lands.

The land so attached shall be released from attachment and restored to the defaulter on his making an application to the Collector for that purpose at any time within twelve years from the date of attachment—

(a)if at the time that such application is made it appears that the arrear has been liquidated ; or

(b)if the defaulter is willing to pay the balance, if any, still due by him, and shall do so within such period as the Collector may specify in that behalf.

According to section 181 Collector may sale defaulter's immovbale property.

According to section 183 defaulter may be arrested.It lays down that at any time after any arrear becomes due, the defaulter (not detention of being an argiculturist from whom such arrear in respect of his occupancy is defaulter due) may be arrested and detained in custody for ten days in the office of the Collector or of a Tahsildar.

However no such arrest shall be made unless the default is wilful and the defaulter is given an oportunity to show cause against his arrest and detention.

If, on the expiry of ten days the amount due by the defaulter is not paid then or

if the Collector deems fit on any earlier day, he may be sent by the Collector to imprisonment in the civil jail of the district.

However no defaulter shall be detained in imprisonment for a longer period than the

time limited by law in the case of the execution of a decree.

According to section 184 the State Government may, from time to time, declare by what officers or class of officers, the powers of arrest conferred by section 183 may be exercised, and also fix the costs of arrest and the amount of subsistence money to be paid by the State Government to any defaulter under detention or imprisonment.

Module 04

Revenue Officers :Their Powers and Duties. (Sections 5-19)

Introduction

Maharashtra Land Revenue Code has been enacted by Legislature of Maharashtra.Object of Code as stated in its Preamble is to administer revenue and to recover land revenue.

The Code has made provisions for administration of revenue and recovery of land revenue . Revenue officers discharge various functions and also perform duties relating to land revenue as prescribed under code.

Who are Revenue officer? Section 2 (31) defined revenue officer . According to it officer who is appointed under Code and employed for business of land revenue or in business of survey, assessment, accounts or records connected with it is called revenue officer.

Commissioner in division ,Collector, Survey Officers of various ranks are appointed by State Government in this regard. So they are revenue officers.

Provisions Relating to Revenue Officers.

Maharashtra Land Revenue Code lays down following important provisions relating to revenue officers

1. Chief Controlling Authority in revenue matters. (Section 5)

According to section 5 the chief controlling authority in all matters connected with the land

revenue in his division is vested in the Commissioner,.He is subject to superintendence, direction and control of the State Government matters.

He performs certain powers and discharge functions as stated in Code.

In *Saddruddin v Patwardhan* 1965 Mah.L J. Power of Commissioner was questioned Court held conferment of power under Code valid.

2.Revenu Officers in Divisions. (Section 6.)

The State Government shall appoint a Commissioner for each division Revenue and may appoint in a division an Additional Commissioner and so many officers in Assistant Commissioners as may be expedient, to assist the Commissioner.

3.Revenue Officer in Districts. (Section 7.)

The State Government shall appoint a Collector for each district who shall be in charge of the revenue administration of district.

Tahsildar for each taluka shall be the chief officer entrusted with the local revenue administration of a taluka.

Cause (2) states that State Government may appoint one or more Additional Collectors and in each district.

And also Assistant Collectors and Deputy Collectors, one or more Naib-Tahsildars in a taluka, and one or more Additional Tahsildars or Naib-Tahsildars and such other persons to assist the revenue officers.

Clause (3) lays down that the Collector may place any Assistant or Deputy Collector in charge of one or more sub- divisions of a district,

or may himself retain charge thereof.

Such Assistant or Deputy Collector may also be called a Sub-Divisional Officer.

According to clause (4) the Collector may appoint to each district Circle Officers and Circle Inspectors to be in charge of a Circle,

and one or more Talathis for a saza,

and one or more Kotwals or other village servants for each village or group of villages.

4.Survey Officers. (Section 8)

According to section 8 the State Government may appoint "Settlement Commissioner", "Director of Land Records", "Deputy Director of Land Records", "Superintendents of Land Records", "Settlement Officers", "District Inspectors of

Land Records” and “Survey Tahsildars. The purpose of their appointment has been specified in chapters relating to revenue survey, assessment and settlement of land revenue of agricultural land and non-agricultural land and boundary and boundary marks.

However according to section 9 the State Government is permitted to appoint one and the same person to any two or more of the offices for discharging functions stated in Code.

And to confer upon an officer of one denomination all or any of the powers or duties of any other officer or officers within certain local limits.

According to section 9A the State Government may direct that the powers of the State Government to make appointments under section 7, section 8 or section 9 in respect of such revenue or survey Officers and subject to such conditions, may be exercisable by Officer not below the rank of the Collector, or Superintendent of Land Records.

According to section 11 All revenue officers shall be subordinate to the State Government.

According to clause (2) all revenue officers in a division shall be subordinate to the Commissioner, and all revenue officers in a district shall be subordinate to the Collector.

Clause (3) lays down that all other revenue officers including survey officers shall be subordinated, the one to the other.

Section 12 Code lays down that the appointment of all officers of and above the rank of Tahsildar, District Inspector of Land Records made under 6, 7, 8 and 9 shall be duly notified. But the appointment shall take effect from the date on which an officer assumes charge of his office.

5. Powers and duties of revenue officers (section 13)

According to section 13 revenue officers of and above the rank of a Tahsildar (not being Additional Commissioner, Assistant Commissioner, Additional Collector or Additional Tahsildar) shall exercise the powers and discharge officers the duties and functions conferred and imposed on them under this Code or under any law for the time being in force.

Also other powers, duties and functions of appeal, superintendence and control

within their respective jurisdiction and over the officers subordinate to them prescribed by the State Government.

The Collector may also exercise throughout his district all the powers and discharge all the duties and functions conferred or imposed on an Assistant or Deputy Collector under this Code or under any law for the time being in force.

And a Tahsildar shall also exercise such powers as may be delegated to him by the Collectors under the general or special orders of the State Government.

Clause (2) lays down that revenue officers aforesaid shall also, exercise such powers and discharge such duties and functions, as the State Government may confer or impose on them for the purpose of carrying out the provisions of Code or any law for the time being in-force.

The Additional Commissioner and the Assistant Commissioner, and the Additional Collector and the Additional Tahsildar shall exercise within his jurisdiction such powers and discharge such duties and functions of the Commissioner, the Collector or, , the Tahsildar under the provisions of this Code or under any law for the time being in force.

The Sub-Divisional Officer shall

perform all the duties and functions and exercise all the powers conferred upon a Collector in relation to the sub-division in his charge.

However the Collector may direct any such Sub-Divisional Officer not to perform certain duties or exercise certain powers and may reserve the same to himself or assign them to any Assistant or Deputy Collector subordinate to the Collector.

Assistant or Deputy Collector who is not placed in charge of a sub-division, the Collector shall assign duties and powers as he may from time to time deem fit.

The Collector may assign to a Naib- Tahsildar within his local limits such duties, functions and powers of a Tahsildar as he may time to time deem fit.

Tahsildar or Naib- Tahsildar may employ any of his subordinates to perform any portion of his ministerial duties.

However all acts and orders of his subordinates when so employed shall be liable to revision and confirmation by such Tahsildar or Naib- Tahsildar.

According to clause (7) the revenue officers shall act according to the instructions of

the State Government.

6. Powers and Duties of Survey Officer, Circle Officers (Section 14)

According to section 14 the survey officers are vested with the cognisance of all matters connected with the survey, settlement and record of right

and shall exercise all such powers and perform all such duties as may be provided by this Code or any law for the time being in force.

However Deputy Director of Land Records shall exercise such powers and discharge such duties and functions, as are exercised or discharged by the Director of Land Records under this Code or under any law for the time being in force in such cases or classes of cases, as the State Government or Director of Land Records may direct.

Clause (2) lays down that the Circle Officer and the Circle Inspector in charge of a circle shall exercise such powers over the Talathi in his circle and perform such duties and functions as may from time to time be prescribed.

The Talathi shall be responsible for the collection of land revenue and all amounts recoverable as arrears of land revenue

and for the maintenance of the record of rights

and shall perform all such duties and functions as are provided

by this Code or any law for the time being in force

or by order of the State Government.

The Collector shall determine from time to time what registers, accounts and other records shall be kept by a Talathi.

According to clause (5) it is duty of a Talathi to prepare, whenever called upon by any superior revenue or police officer of the taluka or district to do so

all writings connected with the concerns of a village which are required for the use of the Central or State Government or the public, as notices, reports of inquests, and depositions and examinations in criminal matters.

All other revenue officers shall discharge such duties and functions as the State Government may direct.

Sections 17 and 18 are relating to recovery of money, papers or other government

property.

The Collector or the Superintendent of Land Records or any other Demands for officer deputed by the Collector or the Superintendent shall

where he has claim on any revenue officer or on any person formerly employed as such in his department or district for public money or papers or other property of the State Government

, by writing under signature and his official seal,

require the money, or particular papers or property detained to be delivered either immediately

to the person bearing the said writing, or

to such person on such date and at such place as the writing may specify.

If the officer or other person aforesaid does not discharge the money, or deliver up the papers or property as directed, the Collector, Superintendent or such other officer may cause him to be apprehended,

and may send him to be confined in a civil jail till he discharges the sums or delivers up the papers or property demanded from him.

However no person shall be detained in confinement by for a longer period than one calendar month.

Some Important Functions of Revenue Officers.

Revenue officers are appointed by State Government with a view discharge functions relating to land revenue, surveys, assessment account or record connected with it . Following are important functions -

- 1.To administer functions of land revenue.
- 2.To maintain land record .
- 3.To direct survey of land.
- 4.To fix and demarcate boundary and to settle boundary dispute.
- 5.To fix revenue liability.
- 6.To assess and settle land revenue of agricultural and nonagricultural lands.

7.To grant permission for use of land for agricultural or non-agricultural purposes and for change of use of land.

8.To recover land revenue and other revenue demands.

Procedure of Revenue Officers (section 224-244)

Following are important provisions relating to Procedure of revenue officers -

1 . subordination of revenue officers.(Section 224)

According to section 224 all official acts and proceedings of revenue officer shall be subject to direction and control of the officer to whom he is subordinate for place time and manner of performing duties.

According to section 225 the State Government, for the ends of justice may direct that any

particular case be transferred from one revenue officer to another revenue officer of an equal or superior rank in the same district or any other district.

According to section 226 Commissioner, a Collector, a Sub Divisional Officer or a Tahsildar may make over any case or class of cases, arising under provisions of this Code or any other enactment for the time being in force, for decision from his own file to any revenue officer subordinate to him competent to decide such case or class of cases

or may withdraw any case or class of cases from any such revenue officer and may deal with such case or class of cases himself

or refer the same for disposal to any other revenue officer competent to decide such case or class of cases.

Commissioner, a Collector, a sub-Divisional Officer, or a Tahsildar may make over for inquiry and report

any case or class of cases arising under the provisions of this Code or any other enactment for the time being in force

from his own file to any revenue officer subordinate to him.

2.Power to summon persons to give evidence and produce documents. (Section 227)

According to section 227 every revenue or survey officer not below the rank of an Aval

Karkun or a District Inspector of Land Records in their respective persons to departments shall have power to summon any person whose attendance he give considers necessary either to be examined as a party

or to give evidence as and produce a witness,

or to produce documents for the purposes of any inquiry in which such officer is legally empowered to make.

A summons to produce documents may be for the production of certain specified documents or the production of all documents of a certain description in the possession of the person summoned.

All persons so summoned shall be bound to attend, either in person or by an authorised agent, as such officer may direct.

All persons summoned as aforesaid shall be bound to state the truth upon any subject respecting which they are examined or make statements and to produce such documents and other things as may be required.

According to section 228 every summons shall be in writing and shall state the purpose for which it is issued and shall be signed by the officer issuing it and if he has a seal shall also bear his seal.

The summons shall be served by tendering or delivering a copy of it to the person summoned

or, if he cannot be found, by affixing a copy of it to some conspicuous part of his usual residence.

If his usual residence be in another district, the summons may be sent by post to the Collector of that district, who shall cause it to be served in accordance with the provisions of sub-section (2).

3. Compelling attendance of witnesses. (Section 229).

If any person on whom a summons to attend as witness or to produce any documents has been served fails to comply with the summons, the officer by whom the summons is issued under section 227 may,—

(a) issues a bailable warrant of arrest ;

(b) order him to furnish security for appearance ; or

(c) impose upon him a fine not exceeding fifty rupees or such amount as may be prescribed, whichever is higher.

4. Mode of Serving Notice. (Sections 230)

According to section 230 mode of every notice under this Code may be served either by tendering serving notice.

or delivering a copy thereof,

or sending such copy by post to the person on whom it is to be served or his authorised agent,

or if service in the manner aforesaid cannot be made

by affixing a copy thereof at his last known place of residence or at some place of public resort in the village in which the land to which the notice relates is situated or from which the land is cultivated.

Clause (2) lays down that such notice shall not be deemed void on account of any error in the name or designation of any person, or in the description of any land unless such error has produced substantial injustice.

4. Procedure for producing attendance of witnesses (Section 231)

According to section 231 in any formal or summary inquiry if any party desires the attendance of witnesses he shall follow the procedure prescribed by the Code of Civil Procedure, 1908, for parties applying for summons for witnesses.

5. Hearing in absence of a Party. (Section 232) If on the date fixed for hearing a case or proceeding,

Revenue officer or survey officer finds that summons or notice was not served on party due to the failure of the opposite party to pay the requisite process fees for such service, the case or proceeding may be dismissed in default of payment of such process fees.

If any party to a case or proceeding before the revenue officer or survey officer does not appear on the date fixed for hearing, the case may be heard and determined in his absence or may be dismissed in default.

The party against whom any order is passed under sub-section (1) or (2) may apply within thirty days from the date of such order to have it set aside on the ground that

he was prevented by any sufficient cause from paying the requisite 'process fees' for service of a summons or notice on the opposite party

or from appearing at the hearing and the revenue officer or survey officer may,

after notice to the opposite party which was present on the date on which such order was passed and after making such inquiry as he considers necessary

set aside the order passed.

Where an application filed under sub-section (3) is rejected, the party aggrieved may file an appeal to the authority to whom an appeal lies from an original order passed by such officer.

Except as provided in sub-section (4) or except where a case or proceeding before any such officer has been decided on merits,

no appeal shall lie from an order passed under this section.

According to section 233 revenue or survey officer may, from time to time for reasons to be recorded, adjourn the hearing of a case or proceeding before him.

6. Mod of taking evidence in formal inquiry.(Section 234)

According to section 234 in all formal inquiries evidence shall be taken in writing, in Marathi, by or in the presence and direction of, the officer making the formal investigation or inquiry, and shall be signed by him.

The officer shall read out inquiries or cause to be read out the evidence so taken to the witness

and obtain his signature in token of its correctness.

According to clause (2) in cases in which the evidence is not taken down in writing by the officer making the inquiry, he shall make a memorandum of the substance of what such witness deposes; and such memorandum shall be written and signed by such officer and it shall be part of the record.

If such officer is prevented from making a memorandum as required he shall record the reason of his inability to do so.

According to clause (4) when the evidence is given in English, such officer shall make authenticated translation of the same in Marathi.

According to section 235 every decision, after a formal inquiry, shall be in writing signed by the officer passing the same and shall contain a full statement of grounds(explanation) on which it is passed.

7.Summary Inquiry How to be conducted.(Section 236)

In summary inquiries, the revenue officer or survey officer shall record a minute of the proceedings in his own hand to in English or in Marathi embracing -

the material averments made by the parties interested,

the material parts of the evidence, the decision,

and the reasons for the same.

However an inquiry directed by this Code to be conducted under rules applicable to a formal inquiry.

According to section 237 formal or summary inquiry under this Code shall be deemed to be a judicial proceeding within the meaning of sections 193, 219 and 228 Indian Penal Code

and the officer of authority holding a formal or summary inquiry shall be deemed a civil court for the purposes of such judicial inquiry.

Clause (2) lays down that every hearing and decision in a formal or summary inquiry shall be in public and the parties or their authorised agents shall have due notice to attend.

Ordinary Inquiries how to be conducted . (Section 238)

An inquiry which this Code does not require to be either formal or summary,

or which any revenue or survey officer may, on any occasion, deem to be necessary to make, shall be conducted according to such rules prescribed by the State Government or by an authority superior to the officer conducting such inquiry.

and, according to the discretion of the officer and for the ascertainment of all essential facts and the furtherance of the public good.

8.Power to enter upon and survey land.(Section 241) all revenue and survey officers and

their servants and workmen , may enter upon and survey land and demarcate

boundaries and do other acts relating to land revenue .

However consent of the occupier and at least twenty-four hours notice, is necessary.

And in making such entry due regard shall be paid to the social and religious sentiments of the occupier.

9. Collector how proceed in order to evict any person wrongfully in possession of land. (Section 242)

Collector may evict any person wrongfully in possession of land, such eviction shall be made in the following manner—

(a) by serving a notice on the person or persons in possession requiring them to vacate the land.

(b) if such notice is not obeyed, by removing, or deputing a subordinate to remove person not vacating or vacate the same.

Clause (c) provides punishment for resistance or obstruction created to prevent eviction.

According to section 243 revenue or survey officer may give and apportion costs incurred in any case or proceeding arising under this Code or any other law for the time being in force.

According to section 244 all appearances before any revenue or survey officer under this Code or any other law for the time being in force may be made or done by the parties themselves or by their recognised agents or by any legal practitioner.

Damodar Laxman Navare v State of Maharashtra. 2010(6) Bom C.R.

Is on the point that Government may agitate construction on its land before appropriate forum.

Appeals, Revision and Review. (Section 246- 258)

Introduction

Maharashtra Land Revenue Code has been enacted by Legislature of Maharashtra with a view to administer and recover land revenue .For this purpose Code has appointed revenue officer and survey officer. However their decision may give rise to disputes

between revenue authorities and holder of land.

Provisions Relating to appeal provide remedy to correct decision or decide legality of any order passed by revenue authorities.

In *Gorai Machhimar Sahakari Sansta v State of Maharashtra* 2006 (2) AIR Bom 184. High Court of Bombay held that appellate authority who is required to hear appeal is discharging quasi judicial function. Deciding appeal is not empty formality. Appeal is to be decided in objective and impartial manner.

Appeal

Following are important provisions relating to appeal -

1. Appeal and Appellate Authorities (Section 247)

According to section 247 appeal shall lie from any decision or order passed by a revenue or survey officer specified in column 1 of the Schedule E under this Code to the officer specified in column 2 of that Schedule.

whether or not such decision or order may itself have been passed on appeal from the decision or order of the officer specified in column 1 of the said Schedule.

However in no case the number of appeals shall exceed two.

Clause (2) lays down that if on account of promotion or change of designation an appeal against any decision or order lies to the same officer who has passed the decision or order appealed against, the appeal shall lie to such other officer competent to decide the appeal to whom it may be transferred under the provisions of this Code.

In *Gopinath Ganpatrao v State of Maharashtra*. 2006 (6) AIR Bom

Court held that this section does not create bar in entertaining the suit relating to action of revenue officer if he acts without jurisdiction.

2. Appeal when lie to State Government (Section 248)

An appeal shall lie to the State Government from any decision or order passed by a Commissioner

or by a Settlement Commissioner

or by Director of Land Record,

or by a Deputy Director of Land Records invested with power of Director of Land Record.

Except in the case of any decision or order passed by such officer on appeal from a decision or order itself recorded in appeal by any officer subordinate to him.

3. Appeal against review or revision. (Section 249)

According to section 249 order passed in review varying or reversing any order shall be appealable in the like manner as an original decision or order. revision.

An order passed in revision varying or reversing any order shall be appealable as if it were an order passed by the revisional authority in appeal.

In *Arun Bhanudas v Additional Commissioner Amravati*, 2015(5)Mh.L.J Court held that Appeal can be preferred against order passed in revision if it varies or reverses order passed by lower authority in terms of sub section 2 of 249.

4. Period within which appeals must be brought. (Section 250)

appeal shall not be brought after the expiration of sixty days if the decision or order complained of have been passed by an officer inferior in rank to a Collector or a Superintendent of Land Records and also

not after the expiration of ninety days in any other case

.The period of sixty and ninety days shall be counted from the date on which the decision or order is received by the appellant.

In computing the above periods, the time required to obtain a copy of the decision or order appealed against shall be excluded.

According to section 251 appeal or an application for review may be admitted after the period of limitation prescribed for it when the appellant or the applicant, satisfies the officer or the State Government to whom or to which he appeals or applies

that he had sufficient cause for not presenting the appeal or application within such period.

According to section 252 No appeal shall lie from an order—

(a) admitting an appeal or an application for review under section 251 ;

(b) rejecting an application for revision or review ; or

(c)granting or rejecting an application for stay.

According section 252 when the last day of any period provided in for presentation of an appeal or an application for review falls on a Sunday or other holiday recognised by the State Government the day next following the close of the holiday shall be deemed to be such last day.

5.Power of Appellate authority . (Section 255)

According to section 255 the appellate authority may admit the appeal or may summarily reject it.

However the appellate authority shall not be bound to call for the record where the appeal is time barred or does not lie.

If the appeal is admitted, a date shall be fixed for hearing and notice thereof shall be served on the respondent.

After hearing the parties, if they appear, the appellate authority may either annul, confirm, modify, or reverse the order appealed

or may direct such further investigation to be made,

or such additional evidence to be taken

or may itself take such additional evidence ;

or may remand the case for disposal with such directions as it thinks fit.

Any appeal filed before any revenue or survey officer shall be disposed of within a period of one year from the date on which such appeal is filed however further by six months may be extended by the State Government or an officer not below the rank of Collector designated in this behalf who is superior to the appellate authority.

also where the appellate authority fails to dispose of any such proceeding within the period specified in this sub-section, the State Government alone shall be competent to grant such further extension of time for disposing of any such proceeding as it may deem fit, after recording reasons therefor in writing.

If the appellate authority fails without sufficient cause, to dispose of any appeal within the period specified in sub-section (4), he shall be liable for disciplinary action in accordance with the concerned disciplinary rules applicable to him.

6.Stay of execution Orders (Section 256)

A revenue or survey officer who has passed any order or of successor in office may direct the execution of such order to be stayed for such time as he thinks fit, provided no appeal has been filed.

The appellate authority may, at any time, direct the execution of the order appealed from, to be stayed for such time as it may think fit.

The authority exercising the powers of revision or review may direct the execution of the order under revision or review, as the case may be, to be stayed for such time as it may think fit.

The authority exercising the powers of revision or review may set aside or modify direction made under sub section 1

Clause 5 lays down that conditions imposed or security may be demanded.

Order directing the stay of execution of any order shall be passed, in accordance with the provisions of this section.

7. Power of State Government and of certain revenue and survey officers to call for and examine records and proceedings of subordinate officers. (Section 257)

The State Government and any revenue or survey officer,

not inferior in rank to an Assistant or Deputy Collector or a Superintendent of Land Records, in their respective departments,

may call for and examine the record of any inquiry or the proceedings of any subordinate revenue or survey officer, for the purpose of satisfying itself or himself, as the case may be, as to the legality or propriety of any decision or order passed, and the regularity of the proceedings of such officer.

However no such proceedings under this sub-section or sub-section(2) shall be initiated by any revenue or survey officer after expiry of a period of five years from the date of decision or order of the sub-ordinate officer except with the previous permission of the State Government.

A Tahsildar, a Naib-Tahsildar, and a District Inspector of Land Records may in the same manner call for and examine the proceedings of any officer sub-ordinate to them in any matter in which neither a formal nor a summary inquiry has been held.

If it shall appear to the State Government, or to any officer referred to in sub-section (1) or sub-section (2) that any decision or order or proceedings so called for should be

modified, annulled or reversed, it or he may pass such order thereon as it or he deems fit

Any proceeding brought before any revenue or survey officer shall be disposed of within a period of one year from the date on which such proceeding is filed. where the revisional authority fails to dispose of any such proceeding within the period specified in this sub-section, the State Government alone shall be competent to grant such further extension of time for disposing of any such proceeding as it may deem fit, after recording reasons therefor in writing.

The period for disposing of any such proceeding may be extended further by six months by the State Government or an officer not below the rank of Collector designated in this behalf who is superior to the revisional authority.

The State Government or such officer shall not vary or reverse any order affecting any question of right between private persons without having given to the parties interested notice to appear and to be heard in support of such order.

Assistant or Deputy Collector shall not himself pass such order in any matter in which a formal inquiry has been held, but shall submit the record with his opinion to the Collector, who shall pass such order thereon as he may deem fit.

Revision of an order issued under sub-section (1) or (2) by any officer referred to therein shall not be permissible but State Government alone to modify, annul or reverse any such order issued under sub-section (1) or (2)

8. Review of Orders (Section 258)

The State Government and every revenue or survey officer may, either on its or his own motion

or on the application of any party interested, review any order passed by itself or himself or any of its or his predecessors in office

and pass such orders as it or he thinks fit. However -

(i) if the Collector or Settlement Officer thinks it necessary to review any order which he has not himself passed, on the ground other than that of clerical mistake,

he shall first obtain the sanction of the Commissioner or the Settlement Commissioner,

and if an officer subordinate to a Collector or Settlement Officer proposes to review

any order on the ground other than that of clerical mistake,
whether such order is passed by himself or his predecessor,

he shall first obtain the sanction of the authority to whom he is immediately subordinate.

(ii)no order shall be varied or reversed unless notice has been given to the parties interested to appear and be heard in support of such order ;

(iii)no order from which an appeal has been made, or which is the subject of any revision proceedings shall,

so long as such appeal or proceedings are pending
be reviewed;

(iv)no order affecting any question of right between private persons shall be reviewed except on an application of a party to the proceedings,

and no such application of review of such order shall be entertained unless it is made within ninety days from the passing of the order.

Order shall be reviewed on the following grounds—

(i)discovery of new and important matter or evidence ;

(ii)some mistake or error apparent on the face of the record ;

(iii)any other sufficient reason.

Collector shall be deemed to be the successor in office of any revenue or survey officer who has left the district

or who has ceased to exercise powers as a revenue or survey officer and to whom there is no successor in the district.

An order which has been dealt with in appeal or on revision shall not be reviewed by any revenue or survey officer subordinate to the appellate or revisional authority.

Clause (5) lays down that orders passed in review shall not be reviewed.

In *Hukumchand Shankarlal Gandhi v State of Maharashtra* .AIR 2007 (3) Court held that power of review can be invoked only if circumstances mentioned in Section 258

are satisfied.

Maharashtra Revenue Tribunal

Introduction

Maharashtra Revenue Tribunal was constituted by State Government of Maharashtra. It is appellate as well as revisional authority for cases arising under enactments specified in Schedule J of Code.

It consists of President and members as are appointed by State Government. Its headquarter is at Mumbai, Pune, Aurangabad. However it can sit at other place which may be convenient for transaction.

Following are important provisions relating to Maharashtra Revenue Tribunal

1. Jurisdiction of Tribunal. (Section 315) According to section 150 tribunal has jurisdiction in cases arising under the provisions of the enactments specified in the Schedule J. And -

(a) an appeal shall lie to the Tribunal from original orders or decisions made or passed by the Collector; and

(b) an application for revision shall lie to the Tribunal from an order or decision made or passed by any subordinate officer or authority.

Clause (2) lays down that application for revision under clause (b) of sub-section (1) shall lie on the following grounds only

(i) that the order or decision of the Collector was contrary to law

(ii) that the Collector failed to determine some material issue of law; and

(iii) that there was a substantial defect in following the procedure laid down by law which has resulted in the miscarriage of justice.

The State Government may direct that the Tribunal shall also have jurisdiction to entertain and decide appeals and revise decisions and orders of such persons, officers and authority in such other cases as the State Government may determine.

For that purpose the State Government may add to, amend or omit, any of the entries in Schedule J. And Tribunal shall have jurisdiction in such matter.

The State Government may omit any entry from Schedule J and resume to itself such jurisdiction.

when the Tribunal has jurisdiction to entertain and decide appeals from, and revise decisions and orders of any person, officer or authority in any matter aforesaid, no other person, officer or authority shall have jurisdiction to entertain and decide appeals from and revise decisions or orders of, such person, officer or authority in that matter.

Every appeal or application for revision made under this section

shall be filed within a period of sixty days from the day of the order or decision of the Collector.

The provisions of sections 4, 5, 12 and 14 of the Limitation Act, 1963, shall apply to the filing of such appeal or application for revision.

According to section 316 Tribunal shall have no jurisdiction in any matter which is sub-judice in a Court of law.

The Tribunal shall also have no jurisdiction in respect of a matter which in its opinion involves a question as to the validity of any Act, Ordinance or Regulation, or any provision contained in an Act, Ordinance or Regulation, the determination of the invalidity of which in its opinion is necessary to the disposal of that matter.

According to section 317 functions may be conferred on it, by under other or under any other law for the time being in force to entertain and decide any appeals, applications for revision, or other proceedings.

2. Tribunal to have power of civil court. (317).

According to section 318 in exercising the jurisdiction conferred upon it by this Chapter,

the Tribunal shall have all the powers of a civil court, for the purpose of taking evidence on oath, affirmation or affidavit, or summoning and enforcing the attendance of witnesses,

compelling discovery and the production of documents and material objects,

requisitioning any public record or any copy thereof from any Court or office

issuing commissions for the examination of witnesses or documents.

3. Practice And Procedure. (Section 319)

According to section 319 with the previous Practice and approval of the State Government, the President may make regulations for practice and procedure of the Tribunal, including -

the award of costs by the Tribunal,

- the levy of any process fee

- the right of audience before the Tribunal,

- the sittings of the members either singly, or in benches constituted by the President

- the disposal, by the Tribunal, of any proceedings before it

and generally for the effective exercise of its powers and discharge of its functions under this Chapter.

Where any members sit singly or where any benches are constituted, such members or bench shall exercise and discharge all the powers and functions of the Tribunal.

The regulations made under this section shall be published in the Official Gazette.

According to section 320 If at any stage in any proceeding before the Tribunal it appears to the Tribunal that

the proceedings raise a question as to the interpretation of law, which is of such a nature and of such public importance that, it is in expedient to issue notice to the State Government,

the Tribunal shall issue notice to that Government, and that Government may, appear. And the Tribunal shall then hear the State Government before deciding the question.

If it appears to the State Government that in its opinion the interpretation of a provision of law in any proceedings before the Tribunal, is of such nature and of such public importance that it is expedient that the State Government be heard before decision of the question, it may apply to the Tribunal in such proceedings to be heard.

And the Tribunal shall not decide the question without hearing the State Government.

According to section 321 every order or decision of tribunal is final and ninety appeal against it to State Government.

4. Review of orders of Tribunal(section 322)

According to section 322 the Tribunal may, on its own motion or on the application of party interested, review its own order.

And where the State Government is heard, under orders of section 320 on the application by that Government, review its own decision or order and pass in reference it order as it thinks just and proper.

However no such application made by any party shall be entertained, unless the Tribunal is satisfied -

that there has been the discovery of new and important matter or evidence which after the exercise of due diligence, was not within the knowledge of such party

or could not be produced by him at the time when its decision was made,

or that there has been some mistake or error apparent on the face of the record,

or for any other sufficient reason.

No such decision or order shall be varied or revised, unless notice has been given to the parties interested to appear and be heard in support of such order.

An application for review under sub-section (1) by any party or by the State Government shall be made within ninety days from the date of the decision or order of the Tribunal.

In computing the period of limitation, the provisions of the Limitation Act, 1963 apply to applications for review.

5 .Manner of executing order passed by tribunal.(Section323)

According to 323 All orders passed by the Tribunal shall be executed in the same executing manner in which similar orders, if passed by the State Government or other orders passed competent authority, as the case may be, could have been executed. by Tribunal.

According to 324 every appeal or application made to the Tribunal shall bear a court-fee stamp of one hundred rupees or such amount as may be prescribed, whichever is higher if the value of the suit property is ten thousand rupees or less and of five hundred rupees or such amount as may be prescribed, whichever is higher if such value exceeds ten thousand rupees.

where the Tribunal exercises any powers or functions under any relevant tenancy law or other special law and that law provided for the levy of court-fee on any appeal or application to the Tribunal, nothing contained in this section shall affect the provisions for levy of such fee.

Raghunath Narayan v Vithal Sawala.AIR .2007 is on the point that power of review may be exercised for functions under section 315 and also for cases of review.

Module 05

Maharashtra Tenancy and Agricultural Lands Act 1948.

Introduction /Historical Background of Act.

Maharashtra Tenancy and Agricultural Lands Act formerly known as Bombay Tenancy and Agricultural Lands Act 1948. However State Legislature amended it's title in 2012 and now Act is called as Maharashtra Tenancy and Agricultural Lands Act .

Amendment was given retrospective effect from 1960.

Act is law on the subject of tenancy of agricultural lands . Accordingly it governs relationships between landlord and tenants of agricultural lands.

Land was seriously affected because of neglect of land holder and also by dispute between landlord and tenant.This resulted in non cultivation of land, inefficient use of land land and decrease in social and economic conditions of peasants /farmers.

Consequently it became essential to assume management of land held by landholders for improving social and economic conditions and for better cultivation of lands.

Considering this background Legislature enacted Bombay Agricultural Lands Act 1948 dealing with tenancy of agricultural land.

Object And Application of Act.

Act was enacted with a view -

I) to improve social and economic conditions of peasants / farmers.

II) to ensure full and efficient use of land for agricultural purposes.

III) to impose restrictions on transfer of agricultural land.

In Sakurai Jadhav v Chandrakant Agnihotri AIR 1987 S.C. 637

Supreme Court of India held that Act was enacted with a view of transferring land to tillers of soil.

In *Kothuni v State of Madras* AIR 1960 S.C.1080

Court held that legislative history of Act is admissible for limited purpose of ascertaining prevailing conditions which actuated Bill and urgency.

Act is enacted by Legislature of Maharashtra and is applied to State of Maharashtra. Land is subject included in Common List of Constitution. Accordingly State is competent to make law.

In *Sri Ramnarain v State of Maharashtra* AIR 1959 S.C.459. Validity of Act was challenged. Court held it as constitutional on the basis of Articles 31A.

-----'Concepts Covered by Act.

1. Deemed Tenants:

Deemed Tenant is person /tenant mentioned in Section 4 of Act. He is person who is lawfully cultivating land belonging another if not cultivated by owner of land personally.

Section lays down that 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 the personal supervision of the owner or any member of the owner's family, or

(c) a mortgagee in possession.

However Explanation I – lays down that person shall not be deemed to be a tenant under this section if such person has been declared, by a competent authority, not to be a tenant under Bombay Tenancy Act 1939.

Explanation II.— Where any land is cultivated -by a widow or minor

or a person who is subject to physical or mental disability

or a serving member of the armed forces through a tenant he shall be deemed tenant.

According to Clause 2

where any land in the Ratnagiri and Sindhudurg districts is being cultivated by a person for not less than 12 years, such person shall be deemed to be a tenant for the purposes of this section

if there is circumstantial evidence that-

he has been uninterruptedly cultivating the land personally,

and the Sarpanch or Police Patil or the Chairman of Vividh Karyakari Sahakari Society, and the cultivator of the adjoining land state on affidavit that, the said land is in the possession of such person and is cultivated uninterruptedly for not less than 12 years.

Land includes the warkas land

Jaswantrai v Bai jiwi (1957) 59 Bom.L.R. is on the point that Section 4 is legal fiction . Before person can be tenant he must lawfully cultivate land and this is condition.

2. Protected tenants. Sec.4A. person shall be recognized to be a protected tenant, if such person has been deemed to be a protected tenant under sections 3, 3A and 4 of the Bombay Tenancy Act, 1939, referred to in Schedule I to this Act.

Section 4A was inserted in 1956 to recognise person to be deemed as protected tenant under Bombay Tenancy Act 1939. Protected tenant is status to which privileges are attached in relation to land. Sec 4A is not applicable to cases in which exemption certificates have been granted under section 88 B.

Member of landlord 's family is protected tenant . Similarly husband can not be tenant of his wife as she is landlady. Case on the point is Appalal v Shaba Shirakawa (1999)101.Bom L.R.

3. Ceiling Area :Section 5.

According to section 5 the ceiling area of lands shall be—

- (a) 48 acres of jirayat land, or
- (b) 24 acres of seasonally irrigated land or paddy or rice land, or
- (c) 12 acres of perennially irrigated land.

Where the land held by a person consists of two or more kinds of land specified in sub

-section (1),

the ceiling area of such holding shall be determined on the basis of one acre of perennially irrigated land being equal to two acres of seasonally irrigated land or paddy or rice land, or four acres of jirayat land.

Explanation.— In calculating the ceiling area, warkas land shall be excluded.

Object of Fixing Ceiling Area-

I)to give fair amount of means of subsistence

II)to arrive at economic unit of cultivation

III)to enable person, who can cultivate large area personally and can give more production of per unit than small holders,to have these lands to the extent which will create inroad for Government's policy of equal distribution of land.

In Janmbu Rao v Neminath AIR 1968 S.C. Supreme Court held that contract to purchase land in excess of ceiling area is not void.

Economic Holding

According to section 6 an economic holding shall be,—

(a) 16 acres of jirayat land, or

(b) 8 acres of seasonally irrigated land, or paddy or rice land, or

(c) 4 acres of perennially irrigated land.

Where the land held by a person consists of two or more kinds of land specified in sub-section (1), an economic holding shall be determined on the basis applicable to the ceiling area under sub-section (2) of section 5.

In calculating an economic holding, warkas land shall be excluded.

Object of this provision is to reduce pressure of population on land and to see that family of 4/5 members maintain itself on that land.At the same time to give to cultivators to give enough to maintain themselves in proper standard of living.

4. Irrigated Land Section 6A.

Irrigated land is agricultural land which is supplied with supplemental water. However according to Section 6A of Act irrigated land does not include land irrigated by other sources or by lift irrigation system maintained or constructed by State Government.

Section 6A lays down that

(a) irrigated land, whether perennially or seasonally irrigated, shall not include land irrigated by sources other than canals or bundharas within the meaning of the Bombay Irrigation Act, 1879, or any lift irrigation system constructed or maintained by the State Government

(b) seasonally irrigated land shall include alluvial land and land situated in the bed of a river and seasonally flooded by the water of such river.

5. Maximum and minimum rent Section. 8

Maximum and minimum rent means the rent prescribed under this section. Maximum rent is rent not exceeding five times assessment of land or twenty rupees whichever is less.

And minimum rent is rent not less than twice of assessment of land.

Section 8 lays down as under

Subject to the provisions of this Act but

notwithstanding any law, custom, usage, agreement or the decree or order of a court,

the rent payable shall be paid annually, and in cash. And such rent shall not exceed five times the assessment payable in respect of the land or twenty rupees per acre, whichever is less

and shall not be less than twice such assessment.

where the amount equal to twice the assessment exceeds the sum of twenty rupees per acre

the rent shall be twice the assessment.

Assessment means —

(i) in areas in which a settlement has been made under Chapter VIII-A of the Bombay Land Revenue Code, 1879, or in which the assessment has been fixed under section 52 of the said Code

the assessment so settled or fixed

(ii) in areas to which rule 19N of the Land Revenue Rules, 1921 applies

such assessment as may be leviable under that rule

(iii) in areas to which the Bombay Merged Territories and Areas (Jagirs Abolition) Act, 1953, applies

the assessment fixed under section 7 of that Act

(iv) in areas in which the assessment is payable in crop share or produce

such assessment as may be fixed by the State Government in accordance with the Land Revenue Rules.

If by custom, usage, agreement or the decree or order of a court, the amount of rent payable is less than the maximum or minimum specified in sub-section

(1) the amount so payable shall be the rent in respect of the land.

In respect of any land which is partially or wholly exempt from the payment of land revenue

the full amount of assessment leviable in respect of such land shall be deemed to be the assessment.

In *Joraver v State of Bombay* AIR 1954 Bom. Court held that maximum rent once fixed under section 6 (2) may be lowered by the Court under Section 8 (2).

6. Certificated Landlord (Section 33A)

Certificated Landlord means a person to whom a certificate is issued under section 88C by Mamlatdar.

Section 33A defines Certificated Landlord as under sections 33 A

("certificated landlord" means a person who holds a certificate issued to him under sub-section (4) of section 88C but does not include a landlord within the meaning of

Chapter III-AA holding a similar certificate.

A certificated landlord may, after giving notice and making an application for possession as provided in sub-section (3), terminate the tenancy of an excluded tenant, if the landlord bona-fide requires such land for cultivating it personally.

In Baban v Narayan Godase AIR 1972 Bom. Court held that date of certificate is material to decide the issue whether landlord is minor.

Object is to give choice to landlords who are under disability like minor, widow etc. to terminate tenancy by giving notice before 31 December 1962 or by making application to Mamlatdar.

Rights and liabilities of landlord.

Introduction

Maharashtra Tenancy and Agricultural Lands Act has been enacted by Legislature of Maharashtra with a view to improve social and economic conditions of peasants / farmers and to impose restrictions on transfer of agricultural land. Act defines landlord and tenant and regulates their relationship by creating provisions relating to rights, liabilities of parties of tenancy.

Following are important provisions relating to rights of landlord -

1. Termination of tenancy for default of tenant (section 14)

Tenancy may be terminated on following grounds - unless the tenant

(i) has failed to pay the rent for any revenue year, before the 31st day of May thereof;

(ii) has done any act which is destructive or permanently injurious to the land;

(iii) has sub-divided, sub-let or assigned the land in contravention of section 27;

(iv) has failed to cultivate it personally; or

(v) has used such land for a purpose other than agriculture or allied pursuits; and

Three months' notice in writing informing the tenant of his decision to terminate the tenancy and the ground for such termination is given and within that period the tenant has failed to remedy the breach for which the tenancy is liable to be terminated.

In *Dhan Singh v Laxmi Narayan* AIR 1974 S.C. Court held that if tenant fails to pay part of rent in any year within period specified in this section it means he is defaulter.

2. Landlord's right to terminate tenancy for personal cultivation and non-agricultural purpose. (Section 31).

Landlord may after giving notice and making an application for possession as provided in sub-section (2), terminate the tenancy of any land except a permanent tenancy if the landlord bona-fide requires the land for any of the following purposes :—

- (a) for cultivating personally, or
- (b) for any non-agricultural purpose.

The notice required to be given under sub-section (1) shall be in writing and shall state the purpose for which the landlord requires the land and shall be served on the tenant on or before the 31st day of December 1956.

A copy of such notice shall, at the same time, be sent to the Mamlatdar. An application for possession under section 29 shall be made to the Mamlatdar on or before the 31st day of March 1957.

Where a landlord is a minor, or a widow, or a person subject to mental or physical disability application for possession under section 29 may be made

- (i) by the minor within one year from the date on which he attains majority;
- (ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist
- (iii) within one year from the date on which mental or physical disability ceases to exist

Conditions for Termination of Tenancy.

According to section 31A. right of a landlord to terminate a tenancy for cultivating the land personally under section 31 shall be subject to the following conditions :—

- (a) If the landlord,
 - at the date on which the notice is given and on the date on which it expires ,
 - has no other land of his own or has not been cultivating personally any other land, he

shall be entitled to take possession of the land leased to the extent of a ceiling area.

(b) If the land cultivated by him personally is less than a ceiling area, the landlord shall be entitled to take possession of so much area of the land leased as will be sufficient to make up the area in his possession to the extent of a ceiling area.

(c) The income by the cultivation of the land of which he is entitled to take possession is the principal source of income for his maintenance.

d) The land leased stands in the record of rights

or in any public record or similar revenue record on the 1st day of January 1952

and thereafter during the period between the said date and the appointed day stands in the name of the landlord himself,

or in the name of any of his ancestors but not of any person from whom title is derived, whether by assignment or Court sale or otherwise

or if the landlord is a member of a joint family, in the name of a member of such family

e) If more tenancies than one are held under the same landlord, then the landlord shall be competent to terminate only the tenancy or tenancies which are the shortest in point of duration.

3. Landlord is entitled to retain land on surrender of tenancy (section 15)

When tenant terminates tenancy by surrendering his interest in favour of landlord he (landlord) is entitled to retain land.

In Ramachandra Adake v Govind AIR 1975 S.C. Court held that surrender to be valid must be in writing and must be verified by Mamlatdar.

4. Landlord's right Where any purchase of land becomes ineffective (Section 32-N).

The former landlord shall be entitled to recover from his former tenant compensation for use and occupation of the land equal to the rent.

Compensation due may be recovered from the former tenant as an arrear of land revenue, and paid to the former landlord.

The amount so recoverable shall be deducted from the amount, if any, to be refunded to the former tenant.

5. Special right of certificated landlord to terminate tenancy for personal

cultivation.(Section 33B)

A certificated landlord may, after giving notice and making an application for possession as provided in sub-section (3),

terminate the tenancy of an excluded tenant,

if the landlord bona-fide requires such land for cultivating it personally.

The notice may be given and an application made by a certificated landlord under sub-section (3) in accordance with sub-section (2) of section 31.

6.Right of landlord to terminate the tenancy(Sction 43-1B.)

landlord can,

at any time after the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1964,

terminate the tenancy of any land and obtain possession of land which will be sufficient to make up the total land in his actual possession equal to the ceiling area and

where the landlord is a member of joint family, only to the extent of his share in the land (not exceeding the ceiling area) held by the joint family.

However Mamlatdar is to be satisfied that share has been separated by metes and bounds in the same proportion as his share in the entire joint family property and not in a larger proportion.

No tenancy of any land shall be terminated under sub-section (1), unless a notice in writing is given to the tenant, and an application for possession under sub-section (3-A) of section 29 is made to the Collector.

In case of a landlord who has ceased to be serving member of the armed forces, such notice shall be given and application made within two years from the date of such ceaser.

And if he dies before the expiry of these two years without giving such notice or making such application, then within two years from the date of his death.

7.lanslord's right to recover rent when purchase becomes ineffective .(Section 32N)

Where any purchase of land becomes ineffective, the former landlord shall be entitled

to recover from his former tenant compensation for use and occupation of the land equal to the rent thereof and any such compensation due may be recovered from the former tenant as an arrear of land revenue, and paid to the former landlord. The amount so recoverable shall be deducted from the amount, if any, to be refunded to the former tenant.

Liabilities And disabilities of Landlord.

1 Landlord is not liable to make contribution towards the cost of cultivation .(Section 9B)

In case of land in respect of which the rent has been fixed under section 9 a landlord shall not be liable to make any contribution towards the cultivation of the land, in the possession of his tenant.

And until the rent is fixed in accordance with the provisions of the preceding sections, a tenant shall be liable to pay to the landlord the rent at the rate at which it was payable immediately before the commencement of the amending Act, 1955.

2. Refund of rent recovered in contravention of the provisions of the Act and other Penalties . Section 10.

If any landlord recovers rent from, any tenant in contravention of the provisions of sections 8, 9, 9A or 9C he shall forthwith refund the excess amount recovered to the tenant and shall be liable to pay such compensation to the tenant as may be determined by the Mamlatdar in this behalf

And shall also be liable to such penalty as may be prescribed by rules made under this Act.

In *Subramanian Ram v Pyara Krishna*. AIR 1956 Bom.69.

Court held that for involving section 10 reasonable rent should have been fixed.

3. Landlord is not entitled to terminate tenancy for personal cultivation.(Section 31C)

The tenancy of any land left with the tenant after the termination of the tenancy under section 31 shall not at any time afterwards be liable to termination again on the ground that the landlord bona fide requires that land for personal cultivation.

Rights of Tenant :

Maharashtra Tenancy and Agricultural Lands Act lays down important provisions relating to rights of tenant -

1. Tenant's rights to purchase sites referred to in section 16. (Section 17, 17A)

According to section 17 Tenant is given first option of purchasing site on which he has built a dwelling house at his or his predecessor in title expenses. Similarly According to section 17A he has right to purchase the same site on which he has built dwelling house.

If a landlord to whom the site referred to in section 16 belongs intends to sell such site, the tenant shall be given, in the manner provided in sub section (2), the first option of purchasing the site at a value determined by the Tribunal.

The landlord intending to sell such site shall give notice in writing to the tenant requiring him to state, within three months from the date of service of such notice, whether he is willing to purchase the site. If he intimates in writing to the landlord that he is willing to purchase the site, the landlord shall make an application to the Tribunal for the determination of the value of the site.

On receipt of such application the Tribunal shall determine the value of the site which shall not exceed 20 times the annual rent.

The Tribunal may, require tenant to deposit the amount of value of such site within one year from the date of such order. And on the deposit of such amount the site shall be deemed to have been transferred to the tenant and the amount deposited shall be paid to the landlord.

The Tribunal shall grant a certificate in the prescribed form to such tenant specifying therein the site so transferred and the name of such tenant.

If the tenant fails to intimate his willingness to purchase the site within the time specified in sub-section (2) or fails to deposit the amount of the value within the time specified in sub-section (3), the tenant shall be deemed to have relinquished his right of first option to purchase the site and the landlord shall then be entitled to evict the tenant.

But compensation for the value of the structure of such dwelling house as may be determined by the Tribunal to be paid or he may allow the tenant at his option to remove the material of the structure.

Any sale of a site held in contravention of this section shall be null and void.

According to 17A. If a tenant intends to purchase the site on which a dwelling house is built, he shall give notice in writing to landlord to that effect. If the landlord refuses, or fails to accept the offer and to execute the sale-deed within three months from the date notice the tenant may apply to the Tribunal for the determination of the reasonable price of the land. It shall not exceed 20 times the annual rent.

2.Tenant's right to trees planted by him(Sectio19.)

If a tenant has planted or plants any trees on any land leased to him, he shall be entitled to the produce and the wood of such trees during the continuance of his tenancy and shall on the termination of his tenancy be entitled to such compensation for the said trees as may be determined by the Mamlatdar.

However a tenant shall not be entitled to compensation under this section if the tenancy is terminated by surrender on the part of the tenant.

3.Right to produce of naturally growing tree20.

According to section 20 tenant shall be entitled to two-thirds of the total produce of trees naturally growing on the land.

And the landlord to one-third of the produce of such trees.

If there is any dispute regarding the right to the produce of such trees or the apportionment of such produce as provided under sub-section (1), the tenant or the landlord may apply to the Mamlatdar who shall, after holding an inquiry, pass such order as he deems fit.

4.Relief Against termination of tenancy in certain cases. (Section 24)

Where tenancy of any land held by any tenant is terminated on the ground that the tenant has done any act which is destructive or permanently injurious to the land

no proceeding for ejection against such tenant shall lie, unless and until, the landlord has served on the tenant a notice in writing specifying the act of destruction or injury complained of

and the tenant fails within a period of one year from the service of notice to restore the land to the condition in which it was before such destruction or injury.

In Smt.Tarabai v Tribunal Chindhu 1965 Mah.L.J.167

High Court held that notice under section 24 is mandatory and is condition precedent.

5. Relief Against termination of tenancy for non-payment of rent. (Section 25)

Where any tenancy of any land held by any tenant is terminated for non-payment of rent and the landlord files any proceeding to eject the tenant,

the Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding, within three months from the date of order and if the tenant complies with such order, the Mamlatdar shall pass an order directing that the tenancy had not been terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated.

6. Right of tenant whose tenancy is created after tillers' day to purchase land. (Section 32-O)

In respect of any tenancy created after the tillers' day by a landlord (not being a serving member of the armed forces)

a tenant cultivating personally shall be entitled within one year from the commencement of such tenancy to purchase from the landlord the land held by him or such part thereof as will raise the holding of the tenant to the ceiling area.

A tenant exercising the right conferred on him under sub-section (1) shall give an intimation in that behalf to the landlord and the Tribunal in the prescribed manner within the period specified in that sub-section.

In *Pandurang Dnyanoba v Dada Rama* AIR 1976.S.C.910.

Supreme Court of India held that Section 32-O of the Act applies only to tenancy created after tiller's day. And tenant desirous to purchase land must give intimation to landlord and to Tribunal within one year from commencement of his tenancy.

7. Right of tenant to purchase where landlord is minor (Section 32-F)

where the landlord is a minor, or a widow, or a person subject to any mental or physical disability

the tenant shall have the right to purchase such land under section 32 within one year from the expiry of the period during which such landlord is entitled to terminate the tenancy under section 31

and for enabling the tenant to exercise the right of purchase, the landlord shall send an intimation to the tenant of the fact that he has attained majority, before the expiry of the period during which such landlord is entitled to terminate the tenancy under

section 31

However where a person of such category is outside the categories mentioned in this sub-section, the share of such person in the joint family is to be separated by metes and bounds

and the Mamlatdar on inquiry is to be satisfied that the share of such person in the land is separated, having regard to the area, assessment, classification and value of the land, in the same proportion as the share of that person in the entire joint family property and not in a larger proportion.

where the tenant is a minor, or a widow, or a person subject to any mental or physical disability or a serving member of the armed forces, the right to purchase land under section 32 may be exercised—

- (i) by the minor within one year from the date on which he attains majority;
- (ii) by the successor-in-title of the widow within one year from the date on which her interest in the land ceases to exist
- (iii) within one year from the date on which the mental or physical disability of the tenant ceases to exist;
- (iv) within one year from the date on which the tenant ceases to be a serving member of the armed forces

if a tenant holding land from a landlord (who was a minor and has attained majority before the commencement of the Tenancy and Agricultural Lands Laws (Amendment) Act, 1969) has not given intimation as required by this sub-section but being in possession of the land on such commencement is desirous of exercising the right conferred upon him under sub-section (1), he may give such intimation within a period of two years from the commencement of that Act.

In *Appalal Narsappa v Akubai* (1999)101 (2)L.R.730 (S.C.)

Court held that right to purchase land should be exercised within one year.

8.Right of tenant to purchase land land from landlord(Section 43-1D)

A tenant holding land from a landlord shall, subject to the provisions of section 32A, be entitled to purchase from the landlord—

- (a) where the landlord fails to make an application as required by section 43-1B, the

entire land so held by him, and

(b) in any other case, such part of the land held by the tenant as is left with him after the termination of tenancy under section 43- 1B.

The right to purchase land under sub-section (1) shall be exercised within one year from the date on which possession of the land is obtained by the landlord in pursuance of the provisions of section 43- 1B Or

after the expiry of the period referred to in the proviso to the sub-section (2) of section 43- 1B.

And intimation of exercise of the right shall be sent to the landlord and the Tribunal in the prescribed manner within the period aforesaid.

Liabilities of Tenant

Following are important provisions relating to liabilities of tenant :

1. Rate of rent payable by tenant to his landlord (Section 9).

Subject to the maximum and minimum limits of rent fixed under section 8, the Mamlatdar shall for each village, or group of villages, or for any area in such village or group, within his jurisdiction, fix the rate of rent and tenant is to pay the same for the lease of different classes of land situate in such village or group of villages, or area, as the case may be.

2. Liability of tenant to payment until rent is fixed under section 9 (Section 9c)

Until the rent is fixed in accordance with the provisions of the preceding sections, a tenant shall, subject to the maximum provided under section 8, be liable to pay to the landlord the rent at the rate at which it was payable immediately before the commencement of the amending Act, 1955, and if such rent was payable in crop share or produce, either partly or wholly, the value of such crop share or produce shall be determined in the prescribed manner.

3. Liability of tenant to pay land revenue and certain other cesses.

Every tenant shall be liable to pay in respect of the land held by him as a tenant-

(a) the land revenue in accordance with the provisions of the Bombay Land Revenue Code, 1879.

(b) the irrigation cess in accordance with the provisions of the Bombay Irrigation Act, 1879.

(c) the cess levied under section 93 of the Bombay Local Boards Act, 1923.

(d) the cess levied under section 89-B of Bombay Village Panchayats Act, 1933.

However If the aggregate amount of—

(i) the land revenue payable by a tenant under clause (a) of sub-section (1)

and (ii) the cess payable by him under 6 clauses (c) and (d) of sub-section (1)

(iii) the rent payable by him to the landlord under section 9 or 9C, for any year, exceeds the value of one-sixth of the produce of such land in that year,

the tenant shall be entitled to deduct from the rent for that year the amount so in excess and the quantum of rent payable by the tenant to his landlord for that year shall be deemed to have been reduced to the extent of such deduction.

4. Tenant's Responsibility for maintenance of boundary marks (Section 22)

The responsibility for the maintenance and good repair of the boundary marks of the land held by him

and any charges reasonably incurred on account of service by revenue officers in case of alternation, removal or disrepair of such boundary marks

shall be upon the tenant.

According to section 30

The rights or privileges of any tenant,

under usage or for the time being in force,

or arising out of any contract, grant, decree or order of a court

or otherwise shall not be limited or abridged.

Restriction On Transfer of agricultural Land.(Section 63-66)

Maharashtra Tenancy and Agricultural Lands Act lays down important provisions relating to restrictions on transfer of agricultural land. These provisions are as under -

According to section 63

(a) no sale (including sales in execution of a decree of a Civil Court or for recovery of arrears of land revenue or for sums recoverable as arrears of land revenue), gift, exchange or lease of any land or interest therein, or

(b) no mortgage of any land or interest therein, in which the possession of the mortgaged property is delivered to the mortgagee,

shall be valid in favour of a person who is not an agriculturist

or who being an agriculturist will after such sale, gift, exchange, lease or mortgage, hold land exceeding two third of the ceiling area determined under the Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961

or who is not an agricultural labourer.

However the Collector or an officer authorised by the State Government in this behalf, may grant permission for such sale, gift, exchange, lease or mortgage, on such conditions as may be prescribed.

The expression agriculturist shall include any person and his heirs whose land has been acquired for a public purpose and who as a result of such acquisition has been rendered landless from the date of such acquisition.

Where any condition, subject to which permission to transfer was granted, is contravened then the land in respect of which such permission was granted shall be liable to be forfeited in accordance with the provisions of section 84CC.

However sub-section (1) shall not apply to the land situated within the limits of a Municipal Corporation or a Municipal Council, or within the jurisdiction of a Special Planning Authority or a New Town Development Authority appointed or constituted under the provisions of the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force.

And also to any land allocated to residential, commercial, industrial or any other non-agricultural use in the draft or final Regional plan or Town Planning Scheme prepared under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force.

Any transfer of land

in favour of a person who is not an agriculturist for any non-agricultural use such as

residential, commercial, industrial or any other non-agricultural use

shall be subject to the condition that such land shall be put to such non-agricultural use within a period of five years from the date of transfer.

And due entry of such condition shall be made in the Record of Rights of such land.

Land transferred for any non-agricultural use permissible in the draft or final Development plan or Regional plan or Town Planning Scheme, after the expiry of the aforesaid period of five years,

an extension of time not exceeding further five years may be granted by the Collector on payment of non-utilization charges which will be two per cent of the market value of such land per annum.

If the transferee, including subsequent transferee, fails to put the land to non-agricultural use permissible in the draft or final Development plan or Regional plan or Town Planning Scheme within a period of five years

or where non-utilization charges as aforesaid have been paid, within the total period of ten years, then

the Collector shall resume such land after giving one month's notice to the said defaulting transferee, and the land so resumed by the Collector shall vest in the Government free from all encumbrances.

And shall first be offered to the original land holder by way of grant and with price.

if the original land holder fails to accept the offer to purchase the said land within a period of ninety days from the date of receipt of such offer from the Collector

or having accepted such offer, fails to deposit with the Collector the required amount within a further period of ninety days,

such land shall be auctioned for any use consistent with and permissible under the draft or final Development plan or Regional plan or Town Planning Scheme.

The defaulting transferee shall only be entitled to compensation equal to the price at which such land had been purchased by him and the Collector shall remit such compensation to the defaulting transferee within a period of ninety days from the date of receipt of payment under the said auction

If a person who is not an agriculturist fails to utilize the said land for the non-

agricultural use permissible in the draft or final Development plan or Regional plan or Town Planning Scheme

and wants to sell the same subsequently before the expiry of the total specified period of ten years,

he may, subject to the payment of non-utilization charges specified in the second proviso, be permitted by the Collector to do so for any non-agricultural use permissible in the draft or final Development plan or Regional plan or Town Planning Scheme, for the remaining period out of the specified period of ten years.

However the sale, gift, exchange or lease of a dwelling house or the site thereof or any land appurtenant to it in favour of an agricultural labourer or an artisan or a person carrying on any allied pursuit is not prohibited.

2. Transfer to non agriculturist for bona fide industrial use. (Section 63-1A)

According to section 63-1A a person is permitted to sell land, without permission of the Collector, to any person who is or is not an agriculturist and who intends to convert the same to a bona fide industrial use

or for Integrated Township Projects, as the case may be

where such land is located within,—

(i) the agricultural zone of a draft or final Regional Plan or draft or final Town Planning Scheme, as the case may be, prepared under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force, and plans or schemes and the development control regulations or rules framed under such Act or any of such laws for the time being in force permit industrial use of land.

(ii) the area where no such plan or scheme as aforesaid exists or

(iii) the area taken over by a private developer for development of an Integrated Township Project.

where such purchase of land is for bona fide industrial use, it shall be subject to the condition that such land shall be put to bona fide industrial use within a period of five years from the date of purchase.

After the expiry of the aforesaid period of five years, an extension of time not exceeding further five years may be granted by the Collector on payment of non-utilization charges at the rate of two per cent of the market value of such land per

annum.

If the original land holder fails to accept the offer to purchase the said land within a period of ninety days from the date of receipt of such offer from the Collector

or having accepted such offer, fails to deposit with the Collector the required amount within a further period of ninety days, such land shall be auctioned for any use consistent with and permissible under the Development plan or Regional plan or Town Planning Scheme.

And in both the cases, the defaulting purchaser shall only be entitled to compensation equal to the price at which such land had been purchased by him, and the Collector shall remit such compensation to the defaulting purchaser within a period of ninety days from the date of receipt of payment under the said auction.

The purchaser who fails to put the land to bona-fide industrial use within five years from the date of the purchase, and is

on the date of coming into force of the Maharashtra Tenancy and Agricultural Lands Laws (Amendment) Act, 2004

holding such land without having been put to the bona-fide industrial use,

shall be permitted to put such land to the bona-fide industrial use within the remaining period from the total period of fifteen years, subject to the condition that,

(a) In the land purchased under sub-section (1) was held by the seller as the Occupant Class-II, such purchaser land holder shall pay an additional amount equal to 48 per cent. of the price for which it was originally purchased and three times of an annual assessment of non-agricultural tax payable under the Maharashtra Land Revenue Code, 1966 as a non-utilisation tax per year

(b) if the land purchased under sub-section (1) was held by the seller as the Occupant Class-I, such purchaser land holder shall pay an amount equal to three times of an annual-assessment of the non-agricultural tax payable under the Maharashtra Land Revenue Code, 1966 as a non-utilisation tax per year.

where the land being sold is owned by a person belonging to the Scheduled Tribe, such sale of land shall be subject to

the provisions of sections 36 and 36A of the Maharashtra Land Revenue Code, 1966

and of the Maharashtra Restoration of Lands to Scheduled Tribes Act, 1974.

If, the land being purchased under sub-section (1) is held by Occupant- Class II, the purchaser shall pay to the Collector, an amount equal to two per cent. of the purchase price,

And in case the purchase of land is for bona-fide industrial use and fifty per cent. of the purchase if the purchase of land is for for Integrated Township Project within one month of the execution of the sale-deed irrespective of the tenure of such land.

This payment shall be in lieu of any nazarana or such other charges which may otherwise be payable by such Occupant-Class II by or under the provisions of the Maharashtra Land Revenue Code, 1966

. In addition, the purchaser of such land shall pay the non-agricultural assessment as may be levied by the Collector under sections 67 and 115 of the Maharashtra Land Revenue Code, 1966.

If such purchaser fails to deposit such amount within one month, then such purchaser shall pay to the Government an amount equal to seventy- five per cent. of the purchase price or the market value of the land as per the Annual Statement of Rates of that year, whichever is higher.

The person purchasing the land under sub-section (1) for conversion thereof for a bona fide industrial use, or for Integrated Township Project,

gives intimation of the date, on which the change of user of the land commenced, within thirty days from such date, to the collector.

If the person fails to inform the Collector within the period specified in sub-section (3), he shall be liable to pay in addition to the non-agricultural assessment which may be leviable by or under the provisions of the Maharashtra Land Revenue Code, 1966 such penalty not exceeding twenty times the amount of non-agricultural assessment as the Collector may direct.

If the person purchasing the land under sub-section (1) for conversion thereof for a bona fide industrial use, fails to utilize the said land for bona fide industrial use, fully or partly, and wants to sell the same before the expiry of the total specified period of ten years, he may

subject to the payment of non-utilization charges specified in the second proviso to sub-section (1)

be permitted by the Collector to do so for the remaining period out of the specified

period of ten years from the date of original purchase, subject to the following conditions-

(i) where the said land is to be sold for bona fide industrial use

the transferor shall have to deposit with the Collector the transfer charges at the rate of twenty-five per cent. of the market value of such land as per the current Annual Statement of Rates;

(ii) where the said land is to be sold for any non-agricultural purpose other than the bona fide industrial use, which is consistent with the draft or final Development plan or Regional plan or Town Planning Scheme, if any, made under the Maharashtra Regional and Town Planning Act, 1966 or any other law for the time being in force

the transferor shall have to deposit with the Collector conversion charges equal to fifty per cent. of the market value of such land as per the current Annual Statement of Rates

and in case of Occupant Class-II land, an additional amount equal to forty-eight per cent. of the price at which such land was originally purchased, in lieu of the nazarana.

3. Reasonable Price of land for the purpose of sale and purchase (section 63-A)

According to section 63A the price of any land sold or purchased under the provisions of this Act shall consist of the following amounts,

(a) an amount not being less than 20 times the assessment levied or leviable in respect of the land and not being more than 200 times such assessment excluding,

the amount of water rate, if any, levied under section 55 of the Bombay Land Revenue Code, 1879 and included in such assessment

(b) the value of any structures, wells and embankments, constructed, permanent fixtures made and trees planted on the land.

Where under the provisions of this Act any land is sold or purchased by mutual agreement,

such agreement shall be registered before the Mamlatdar, and the price of the land shall, be mutually agreed upon by the parties.

In the case of disagreement between the parties,
the price shall be determined by the Tribunal having regard to the factors mentioned
in this section.

Where in the case of a sale or purchase of any land under this Act,
the Tribunal or the Mamlatdar has to fix the price of such land under this Act,
the Tribunal or the Mamlatdar shall, subject to the quantum specified in sub- section
(1), fix the price having regard to the following factors,

- (a) the rental values of lands used for similar purposes in the locality;
- (b) the structures and wells constructed and permanent fixtures made and trees
planted, on the land by the landlord or tenant;
- (c) the profits of agriculture of similar lands in the locality;
- (d) the prices of crops and commodities in the locality;
- (e) the improvements made in the land by the landlord or the tenant;
- (f) the assessment payable in respect of the land; and
- (g) such other factors as may be prescribed].

4. Sale of agricultural land to particular person (section 64)

According to section 64

Where a landlord intends to sell any land, he shall apply to the Tribunal for
determining the reasonable price thereof. The Tribunal shall thereupon determine the
reasonable price of the land in accordance with the provisions of section 63A. The
Tribunal shall also direct that the price shall be payable either in lump sum or in annual
instalments not exceeding six carrying simple interest at 4 1/2 per cent. per annum :

However in the case of sale of the land in favour of a permanent tenant when he is in
possession thereof, the price shall be at six times the annual rent.

After the Tribunal has determined the reasonable price, the landlord shall
simultaneously in the prescribed manner make an offer—

- (a) in the case of agricultural land,—

(i) to the tenant in actual possession thereof, notwithstanding the fact that such land is a fragment; and

(ii) to all persons and bodies mentioned in the priority list;

In the case of a dwelling house, or a site of a dwelling house or land appurtenant to such house when such dwelling house, site or land is not used or is not necessary to carry on agricultural operations in the adjoining lands—

(i) to the tenant thereof;

(ii) to the person residing in the village who is not in possession of any dwelling house :

If there are more than one such person the offer shall be made to such person or persons and in such order of priority as the Collector may determine in this behalf having regard to the needs of the following persons, namely :—

(i) an agricultural labourer,

(ii) a artisan,

(iii) a person carrying on an allied pursuit,

(iv) any other person in the village.

The persons to whom such offers are made shall intimate to the landlord within one month from the date of receipt of the offer whether they are willing to purchase the land at the price fixed by the Tribunal.

If only one person intimates to the landlord under sub-section (3) his willingness to accept the offer made to him by the landlord under sub-section (2),

the landlord shall call upon such person by a notice in writing in the prescribed form to pay him amount of the reasonable price determined by the Tribunal or to deposit the same with the Tribunal within one month or such further period as the landlord may consider reasonable from the date of receipt of the notice by such person.

If more than one person intimate to the landlord under sub-section (3) their willingness to accept the offers made to them by the landlord under sub-section (2),

the landlord shall call upon by a notice in writing in the prescribed form the person having the highest priority in the order of priority given in sub-section (2) to pay him the amount of the reasonable price determined by the Tribunal or to deposit the same with the Tribunal within one month or such further period as the landlord may

consider reasonable from the date of receipt of the notice by such person.

If the person to whom a notice is given by the landlord under sub-section (4) fails to pay the amount of the reasonable price to the landlord or to deposit the same with the Tribunal within the period referred to in sub-section (4)

such person shall be deemed to be not willing to purchase the land and the landlord shall call upon in the manner provided in sub-section (4) the person who stands next highest in the order of priority and who has intimated his willingness to the landlord under sub-section (3).

If any dispute arises under this section regarding—

- (a) the offer made by the landlord under sub-section (2), or
- (b) the notice given by the landlord under sub-sections (4) or (5), or
- (c) the payment or deposit of the reasonable price, or
- (d) the execution of the sale-deed, such dispute shall be decided by the Tribunal

. Any sale made in contravention of this section shall be invalid.

If a tenant refuses or fails to purchase the land or a dwelling house offered to him under this section, and the land or the dwelling house, as the case may be, is sold to any other person under this section

, the landlord shall be entitled to evict such tenant and put the purchaser in possession.

5 . Assumption of management land which remained uncultivated (section 65)

According to section 65 State Government that for any two consecutive years, any land has remained uncultivated or the full and efficient use of the land has not been made for the purpose of agriculture, through the default of the holder or any other cause whatsoever not beyond his control

the State Government may after making such inquiry as it thinks fit, declare that the management of such land shall be assumed.

The declaration so made shall be conclusive.

On the assumption of the management, such land shall vest in the State Government during the continuance of the management.

Acquisition of estate or land under management or interest therein.

The Manager may in suitable cases give such land on lease at rent even equal to the amount of its assessment :

However if the management of the land has been assumed under sub-section (1) on account of the default of the tenant,

such tenant shall cease to have any right or privilege.

6. Acquisition of estate or land under management or interest therein. (Section 66)

If at any time it appears to the State Government that any estate or land, the management of which has been assumed under the provisions of this Act

or the interest of any other person in such estate or land should, in the public interest, be compulsorily acquired,

State Government is permitted to acquire land by publishing a notification to that effect in the Official Gazette.

The notification so published shall be conclusive that the estate, land or interest is needed to be acquired in public interest.

On the publication of the notification, the Collector shall cause publicity to be given to it at convenient places in the locality and also give notices to the holder of the estate, land or interest and to all persons known or believed to be interested therein.

The Collector shall then make an inquiry to determine the value of the estate, land or interest which has been acquired.

For the said purpose the Collector shall have the same powers as are vested in courts

In determining the value the Collector shall take into consideration—

- (a) the assessment payable in respect of the estate or land;
- (b) the profits of agriculture and cultivation of the estate or land and of similar estates and lands in the locality;
- (c) the price of crops and commodities in the locality;
- (d) exemption from assessment and other privileges enjoyed by the holder and other persons interested in respect of the land, estate and interest;
- (e) any other matter which may be prescribed.

After determining the value of the estate, land or interest the Collector shall make an award which shall contain—

- (a) the particulars of the estate, land or interest,
- (b) the compensation which in his opinion should be allowed for the land,
- (c) the apportionment of the compensation among all persons known, or believed to be interested.

Such award shall be filed in the Collector's office and shall, be final and conclusive evidence as between the Collector and persons interested whether they have respectively appeared before the Collector or not

And of all the particulars including area and value of the estate, land or interest and the apportionment of compensation.

When the Collector has made an award, the estate, land or interest therein shall vest in Government free from all incumbrances.

In Rajenbhai v Baldevbhai Shah AIR 2010 433 Guj.

Court held that Will can not be made in contravention of section 63.

Module 06

Termination of Tenancy

Maharashtra Tenancy and Agricultural Lands is enactments on the subject of tenancy of agricultural lands between landlord and tenants.It regulates relation between landlord and tenant.Act ensures efficient use of land as cultivation of land suffered seriously because of neglect of landholder or disputes between landlord and tenant.

Act lays down important provisions relating to termination of tenancy. Tenancy may be terminated by Parties that is by landholder and tenant . Following are ways by which tenancy is terminated -

1.By Landlord : landlord can terminate tenancy for personal cultivation and non-agricultural purpose.

According to section 31 landlord,

(not landlord within the meaning of Chapter III-AA) may after giving notice and

making an application for possession as provided in sub-section (2),

terminate the tenancy of any land (except a permanent tenancy), if the landlord bona-fide requires the land for any of the following purposes :—

- (a) for cultivating personally, or
- (b) for any non-agricultural purpose.

The notice required to be given under sub-section (1) shall be

in writing,

shall state the purpose for which the landlord requires the land

and shall be served on the tenant on or before the 31st day of December 1956.

A copy of such notice shall, at the same time, be sent to the Mamlatdar

. An application for possession under section 29 shall be made to the Mamlatdar on or before the 31st day of March 1957.

Where a landlord is a minor, or a widow, or a person subject to mental or physical disability then such notice may be given and an application for possession under section 29 may be made,

- (i) by the minor within one year from the date on which he attains majority;
 - (ii) by the successor-in-title of a widow within one year from the date on which her interest in the land ceases to exist;
 - (iii) within one year from the date on which mental or physical disability ceases to exist;
- and

where a person of such category is a member of a joint family, the provisions of this sub-section shall not apply if at least one member of the joint family is outside the categories mentioned in the sub-section.

Conditions of termination of tenancy (Section 31A.)

The right of a landlord to terminate a tenancy for cultivating the land personally under section 31 shall be subject to the following conditions :—

- (a) If the landlord,

at the date on which the notice is given and on the date on which it expires,

has no other land of his own

or has not been cultivating personally any other land

, he shall be entitled to take possession of the land leased to the extent of a ceiling area.

(b) If the land cultivated by him personally is less than a ceiling area, the landlord shall be entitled to take possession of so much area of the land leased as will be sufficient to make up the area in his possession to the extent of a ceiling area.

(c) The income by the cultivation of the land of which he is entitled to take possession is the principal source of income for his maintenance.

(d) The land leased stands in the record of rights or in any public record or similar revenue record on the 1st day of January 1952

and thereafter during the period between the said date and the appointed day in the name of the landlord himself, or of any of his ancestors

but not of any person from whom title is derived, whether by assignment or Court sale or otherwise

, or if the landlord is a member of a joint family, in the name of a member of such family.

(e) If more tenancies than one are held under the same landlord, then the landlord shall be competent to terminate only the tenancy or tenancies which are the shortest in point of duration.

Appointed day means 15 June 1955.

2. Termination by default by tenant and by surrender (section 14, 15)

According to section 14

A tenancy of any land shall be terminated—on the ground—that

(a) the tenant—

(i) has failed to pay the rent for any revenue year, before the 31st day of May thereof;

(ii) has done any act which is destructive or permanently injurious to the land;

(iii) has sub-divided, sub-let or assigned the land in contravention of section 27;

(iv) has failed to cultivate it personally; or

(v) has used such land for a purpose other than agriculture or allied pursuits; and

(b) the landlord has given three months' notice in writing informing the tenant of his decision to terminate the tenancy and the ground for such termination

, and within that period the tenant has failed to remedy the breach for which the tenancy is liable to be terminated.

According to section 15 tenant may terminate the tenancy in respect of any land at any time by surrendering his interest therein in favour of the landlords.

Such surrender shall be in writing and verified before the Mamlatdar in the prescribed manner.

Where a tenant surrenders his tenancy, the landlord shall be entitled to retain the land so surrendered

for the like purposes,

and to the like extent.

The Mamlatdar shall, in respect of the surrender hold an inquiry. And decide whether the landlord is entitled under sub-section (2) to retain the whole or any portion of the land so surrendered and specify the extent and particulars in that behalf.

The land, or any portion thereof, which the landlord is not entitled to retain under sub-section (2), shall be liable to be disposed of in the manner provided under clause (c) of sub-section (2) of section 32-P.

In Ramachandra v Govind Joti

AIR 1975 S.C. Court held that surrender to be valid must be in writing and must be verified by Mamlatdar.

3.Termination by certificated landlord.

According to section 33A

certificated landlord means a person who holds a certificate issued to him under sub-section (4) of section 88C.

But does not include a landlord within the meaning of Chapter III-AA holding a similar certificate.

Excluded tenant means a tenant of land to which sections 32 to 32R (both inclusive) do not apply by virtue of sub-section (1) of section 88C.

Certificated landlord may, after giving notice
and making an application
for possession as provided in sub-section (3),

terminate the tenancy of an excluded tenant, if the landlord bona-fide requires such land for cultivating it personally.

The notice may be given
and an application made

by a certificated landlord under sub-section (3), notwithstanding that in respect of the same tenancy an application of the landlord made in accordance with sub-section (2) of section 31 (i) is pending

before the Mamlatdar

or in appeal before the Collector

, or in revision before the Maharashtra Revenue Tribunal, on the date of the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act, 1960
or

(ii) has been rejected by any authority before the commencement date.

The notice required to be given under sub-section (1) shall be in writing, and shall be served on the tenant—

(a) before the first day of January 1962, but

(b) if an application under section 88C is undisposed of and pending on that date then within three months of his receiving such certificate,

and a copy of the notice shall, at the same time, be sent to the Mamlatdar

. An application for possession of the land shall be made thereafter under section 29 to the Mamlatdar before the 1st day of April 1962, in the case falling under (a) and

within three months of his receiving the certificate in the case falling under (b).

Where the certificated landlord belongs to any of the following categories, namely :—

(a) a minor,

(b) a widow,

(d) a person subject to any physical or mental disability,

then, if he has not given notice and not made an application as required by sub-sections (1) and (3), such notice may be given and such application made —

(A) by the landlord within one year from the date on which he, attains majority;

(iii) in the case of category (d), ceases to be subject to such physical or mental disability; and

(B) in the case of a widow, by the successor-in-title within one year from the date on which widow's interest in the land ceases.

where a person belonging to any category is a member of a joint family, the provisions of this sub-section shall not apply if any one member of the joint family does not belong to any of the categories mentioned in this sub-section, unless the share of such person in the joint family has been separated by metes and bounds before the 31st day of March 1958 and the Mamlatdar on inquiry is satisfied that the share of such person in the land is separated (having regard to the area, assessment, classification and value of the land) in the same proportion as the share of that person in the entire joint family property, and not in a larger proportion.

The right of a certificated landlord to terminate a tenancy under this section shall be subject to the following conditions—

(a) If any land is left over from a tenancy in respect of which other land has already been resumed by the landlord or his predecessor-in-title, on the ground that other land was required for cultivating it personally under section 31 (or under any earlier law relating to tenancies then in force), the tenancy in respect of any land so left over shall not be liable to be terminated under sub-section (1).

(b) The landlord shall be entitled to terminate a tenancy and take possession of the land leased but to the extent only of so much thereof as would result in both the landlord and the tenant holding thereafter in the total an equal area for personal cultivation the area resumed or the area left with the tenant being a fragment.

(c) The land leased stands in the Record of Rights (or in any public record or similar revenue record) on the 1st day of January 1952 and thereafter until the commencement date in the name of the landlord himself, of any of his ancestors (but not of any person from whom title is derived by assignment or Court sale or otherwise),

or if the landlord is a member of a joint family, in the name of a member of such family.

If, in consequence of the termination of the tenancy under this section, any part of the land leased is left with In the tenant, the rent shall be apportioned in the prescribed manner in proportion to the area of the land so left with the tenant.

In Dinar Maruti v Nivrutti Gangaram. 2008(3)Mh.L.J.

Court held that tenant can oppose application made for possession of land on the ground that there is no bona-fide requirement.

Relief Against Termination of tenancy.(Section 24, 25).

Relief against termination of tenancy is available in following two case-

1. When tenancy is terminated on the ground that tenant has done any act which is destructive or permanently injurious to the land.(section 24)
- 2.Where tenancy is terminated on the ground of non payment of rent by tenant. (Section 25)

In former case no proceeding for ejection against such tenant shall lie

unless and until

the landlord has served, on the tenant .a notice in writing specifying the act of destruction or injury complained of

and the tenant fails within a period of one year from the service of notice

to restore the land to the condition in which it was before such destruction or injury.

In latter case Mamlatdar shall call upon the tenant to tender to the landlord the rent in arrears together with the cost of the proceeding, within three months from the date of order, and if the tenant complies with such order, the Mamlatdar shall, in lieu of making an order for ejection, pass an order directing that the tenancy had not been

terminated, and thereupon the tenant shall hold the land as if the tenancy had not been terminated.

If the Mamlatdar is satisfied that

in consequence of total or partial failure of crops or similar calamity, the tenant has been unable to pay the rent due,

the Mamlatdar may

, direct that the arrears of rent together with costs of the proceeding if awarded, shall be paid within one year from the date of the order

and that

if before the expiry of the said period the tenant fails to pay the said arrears of rent and costs, the tenancy shall be deemed to be terminated and the tenant shall be liable to be evicted.

Smt. Tarabai v Trimbak Chindhu. 1965 Mh.L.J is on the point that notice under section 24 is mandatory.

Termination of Tenancy by operation of law /Tiller's Day.(Sections 32)

Introduction

Section 32 confers statutory right to tenant to purchase land after time set for landlord to file his claim is expired on 31 March 1957.

Tenant, who is holding land on lease if not claimed by landlord, is deemed to have purchased land on 1 April 1957, the day designed as Tiller's Day.

According to section 32 every tenant shall, be deemed to have purchased from his landlord, free of all encumbrances subsisting on it on the said day, the land held by him as tenant,

if—

(a) such tenant is a permanent tenant thereof and cultivates land personally;

(b) such tenant is not a permanent tenant but cultivates the land leased personally;
and

- (i) the landlord has not given notice of termination of his tenancy under section 31; or
- (ii) notice has been given under section 31, but the landlord has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the land; or
- (iii) the landlord has not terminated his tenancy on any of the grounds specified in section 14, or has so terminated the tenancy but has not applied to the Mamlatdar on or before the 31st day of March 1957 under section 29 for obtaining possession of the lands.

However if an application made by the landlord under section 29 for obtaining possession of the land has been rejected by the Mamlatdar

or by the Collector in appeal

or in revision by the Maharashtra Revenue Tribunal under the

provisions of this Act

, the tenant shall be deemed to have purchased the land on the date on which the final order of rejection is passed.

The tenant of a landlord who is entitled to the benefit of the proviso to sub-section (3) of section 31 shall be deemed to have purchased the land on the 1st day of April 1958, if no separation of his share has been effected before the date mentioned in that proviso.

Where a tenant,

on account of his eviction from the land by the landlord, before the 1st day of April 1957,

is not in possession of the land on the said date but has made or makes an application for possession of the land under sub-section (1) of section 29 within the period specified in that sub-section, then

if the application is allowed by the Mamlatdar

or in appeal by the Collector or in revision by the Maharashtra Revenue Tribunal

he shall be deemed to have purchased the land on the date on which the final order allowing the application is passed.

Where such tenant has not made an application for possession within the period specified in sub-section (1) of section 29

or the application made by him is finally rejected under this Act, and the land is held by any other person as tenant on the expiry of the said period

or on the date of the final rejection of the application, such other person shall be deemed to have purchased the land on the date of the expiry of the said period or on the date of the final rejection of the application.

Where a tenant who was in possession on the appointed day and who on account of his being dispossessed before the 1st day of April 1957 otherwise than in the manner and by an order of the Tahsildar as provided in section 29, is not in possession of the land on the said date

and the land is in the possession of the landlord or his successor-in-interest on the 31st day of July 1969

and the land is not put to a non-agricultural use on or before the last mentioned date,

then, the Tahsildar shall, either suo motu or on the application of the tenant, hold an inquiry and direct that such land shall be taken from the possession of the landlord or, his successor-in-interest,

and shall be restored to the tenant; and thereafter, the provisions of this section and sections 32A to 32R shall apply. And the tenant shall be deemed to have purchased the land on the date on which the land is restored to him.

However the tenant shall be entitled to restoration of the land under this sub-section only

if he undertakes to cultivate the land personally

and land together with the other land held by him as owner or tenant shall not exceed the ceiling area.

Where by custom, usage or agreement or order of a Court, any warkas land belonging to the landlord is used by the tenant for the purpose of rab manure in connection with rice cultivation in the land held by him as tenant,—

(a) the whole of such warkas land, or

(b) such part thereof

as the Tribunal may determine, in cases where such warkas land is jointly used by more persons than one for the purpose of rab manure,

shall be included in the land to be deemed to have been purchased by the tenant under sub-section (1).

The Tribunal may determine that such warkas land shall be jointly held by persons entitled to use the same,

if in the opinion of the Tribunal, the partition of such warkas land by metes and bounds is neither practicable nor expedient in the interest of such persons.

In respect of the land deemed to have been purchased by a tenant under sub-section (1)

a) the tenant-purchaser shall be liable to pay to the former landlord compensation for the use and occupation of the land, a sum equal to the rent of such land every year

and

(b) the former landlord shall continue to be liable to pay to the State Government the dues, referred to in clauses (a), (b), (c) and (d) of sub-section (1) of section 10A, where the tenant-purchaser is not liable to pay such dues under sub-section (3) of that section,

until the amount of the purchase price payable by tenant purchaser to the former landlord is determined under section 32H.

Where any land held by a tenant is wholly or partially, exempt from the payment of land revenue and is deemed to have been purchased by him under sub-section (1) or under section 32F, section 32O or section 33C then—

(a) the tenant-purchaser shall in respect of such land, be liable to pay the full land revenue leviable, and

(b) the State Government shall,

with effect from the date on which the tenant is deemed to have purchased the land, but so long only as the tenure on which the land was held by the landlord continues and is not abolished,

pay annually to the former landlord,

(i) where such land is wholly exempt from the payment of land revenue,

a cash allowance of an amount equal to the full land revenue leviable on such land and
(ii) in other cases,

an amount equal to the difference between the full land revenue leviable on such land and the land revenue payable thereon immediately before the said date.

According to section 32A tenant shall be deemed to have purchased land under section 32—

(1) in the case of a tenant who does not hold any land as owner but holds land as tenant in excess of the ceiling area,

upto the ceiling area;

(2) in the case of a tenant who holds land as owner below the ceiling area,

such part of the land only as will raise his holding to the extent of the ceiling area.

According to section 32B If a tenant holds land partly as owner and partly as tenant but the area of the land held as owner is equal to or exceeds the ceiling area, he shall not be deemed to have purchased the land held by him as a tenant under section 32.

According to section 32C If a tenant holds land separately from more than one landlord, the tenant shall, subject to the rules made by the State Government in this behalf, be entitled to choose the area and the location of the land to be purchased from each of such landlords.

In *Ambadas v Murlidhar Digambar*.AIR 2005 S.C. 3048

Supreme Court held that tenant is not entitled to hold land in excess of ceiling area.

Right of Tenant to exchange land(Section 33)

The tenants holdings lands may agree and may make an application to the Mamlatdar for the exchange of their tenancies in respect of the lands held by them as tenants.

On receipt of the application, the Mamlatdar

after giving notice to the landlords concerned

and after making an inquiry may sanction the exchange on such terms and conditions as may be prescribed and may issue certificates in the prescribed form to the

applicants.

The certificates so issued shall be conclusive of the fact of such exchange against the landlords and all persons interested in the lands exchanged.

Each of the two tenants shall on exchange hold the land on the same terms and conditions on which it was held by the original tenant immediately before the exchange subject to such modifications as may have been sanctioned by the Mamlatdar.

Object of Exchange.

Tenant is permitted to exchange land land In the interest of improved agricultural agriculture. However application is for exchange is to be made to Mamlatdar, who shall make inquiries to determine whether exchange is necessary.

Exchange has same meaning as defined in 128 of Transfer of Property Act.

Powers And Functions of Collector.

Collector exercises Following powers-

1. Power of Collector to transfer Proceedings. (Section 72A)

The Collector may, after due notice to the parties, by order in writing

transfer any proceeding under this Act pending before a Mamlatdar in his district from such Mamlatdar to any other Mamlatdar in his district and the Mamlatdar to whom the proceeding is so transferred shall thereupon exercise jurisdiction under this Act.

However any order issued to village officers under sub-section (2) of section 73 shall be issued by the Mamlatdar to whom such village officers are subordinate.

If in the course of the hearing of an application for possession of any land made by a landlord under section 29, the Mamlatdar of one area finds that the landlord had made a similar application to the Mamlatdar of another area for possession of other land held by him in that area, then the Mamlatdar shall refer the case to the Collector if the other land is in the same district, and to the Divisional Officer if the other land is in another district, and to the State Government if the other land is in another division.

On receipt of the reference, the Collector or the Divisional Officer or the State Government, as the case may be, shall—

- (a) call for the proceedings of the other application from the Mamlatdar concerned;
- (b) having regard, among other matters to the extent of the land of which possession is sought under the different applications, transfer all the applications and proceedings to one of the Mamlatdars for hearing and disposal; and
- (c) give an intimation of the transfer to the Mamlatdars, the landlord and the tenants concerned.

The Mamlatdar to whom the applications are so transferred shall exercise jurisdiction in respect thereof under this Act.

However any order to be issued to village officers under sub-section (2) of section 73 shall be issued by or through the Mamlatdar to whom such village officers are subordinate.

2. Power of Collector in inquiries under section 29 (3A) (Section 73A)

For the purposes of an inquiry under sub-section (3A) of section 29, the Collector shall have the same powers as are vested in courts in respect of the following matters under the Code of Civil Procedure, 1908, in trying a suit,

- (a) proof of facts by affidavits,
- (b) summoning and enforcing attendance of any person and examining him on oath, and
- (c) compelling the production of documents.

(2) The order of the Collector under sub-section (3A) of section 29 shall, subject to revision under sub-section (3), be final.

The State Government may, suo motu or on an application from any person interested in the land, call for the record of any such inquiry for the purpose of satisfying itself as to the legality or propriety of the order passed by the Collector and pass such order thereon as it deems fit.

Order shall be modified, annulled or reversed by furnishing opportunity has b to the interested parties to appear and to be heard.

Every such order of the Collector or of the State Government in revision awarding possession of any land shall be executed in the manner provided for the execution of the orders of the Mamlatdar or Tribunal under section 73.

3. Power of Collector to transfer and withdraw appeal (Section 74A)

The Collector may, after due notice to the parties, by order in writing—

- (a) transfer any appeal pending before him or before any Assistant or Deputy Collector subordinate to him to any Assistant or Deputy collector specified in such order, performing the duties and exercising the powers of a Collector and upon such transfer the shall have power to hear and decide the appeal as if it was originally filed to him or
- (b) withdraw any appeal pending before any Assistant or Deputy Collector and himself hear and decide the same.

4. Revisional Power of Collectors (section 76A)

Where no appeal has been filed within the period provided for it,

the Collector may, suo motu or on a reference made in this behalf by the Divisional Officer or the State Government

- (a) call for the record of any inquiry or the proceedings of any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal, and
- (b) pass such order thereon as he deems fit.

However no such record shall be called for

after the expiry of one year from the date of such order

and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.

Powers And Functions of Mamlatdar.

1 . Duties of Mamlatdar (section 70)

According to section 70 following are the duties and functions of Mamlatdar :—

- (a) to decide whether a person is an agriculturist;
- (b) to decide whether a person is, or was a tenant or a protected tenant or a permanent tenant

- (c) to determine the rates of rent under section 9;
- (d) to decide dispute regarding class of land under section 9A
- (f) to determine the amount of compensation under section 10 for the contravention of sections 8, 9, 9A and 9C
- (h) to determine the amount to be refunded to a tenant under section 13(5);
- (i) to determine the amount of compensation for trees to which a tenant is entitled under section 19;
- (j) to determine any dispute regarding the right to produce of trees naturally growing under section 20;
- (k) to determine the cost of repairing protective bunds under section 23;
- (kk) to hold an inquiry and restore possession of land under sub- section (1B) of section 32
- (l) to sanction exchange of tenancies under section 33;
- (m) to determine the amount of compensation payable to tenant for any improvement under section 41
- (ma) to determine what is reasonable rent under section 43B;
- (mb) to issue a certificate under section 84A,
and to decide under section 84B or 84C
whether a transfer or acquisition of land is invalid
and to dispose of land as provided in section 84C.

2.Distribution of business amongst Mamlatdar

Where in any taluka or mahal, in addition to the Mamlatdar appointed under section 12 of the Bombay Land Revenue Code, 1879

in addition to the Mahalkari appointed under section 13 of the said Code ,one or more officers are appointed by the State Government

to perform the duties of a Mamlatdar under this Act in such taluka or mahal,

each such officer shall dispose of such inquires or proceedings commenced under

section 71 as the Mamlatdar or the Mahalkari, subject to the control of the Collector may by general or special order, refer to him.

3. Application for possession of land made to different Mamlatdar to be heard by designated Mamlatdar (section 72B)

If in the course of the hearing of an application for possession of any land made by a landlord under section 29,

the Mamlatdar of one area finds that the landlord had made a similar application to the Mamlatdar of another area for possession of other land held by him in that area, then the Mamlatdar shall refer the case to the Collector if the other land is in the same district, and

to the Divisional Officer if the other land is in another district, and

to the State Government if the other land is in another division.

On receipt of the reference, the Collector or the Divisional Officer or the State Government shall—

(a) call for the proceedings of the other application from the Mamlatdar concerned;

(b) having regard to the extent of the land of which possession is sought under the different applications,

transfer all the applications and proceedings to one of the Mamlatdars for hearing and disposal; and

(c) give an intimation of the transfer to the Mamlatdars, the landlord and the tenants concerned.

The Mamlatdar to whom the applications are so transferred shall exercise jurisdiction in respect thereof under this Act.

Provided that any order to be issued to village officers under sub-section (2) of section 73 shall be issued by or through the Mamlatdar to whom such village officers are subordinate.

Tribunal : Powers and Duties (section 67-69)

Maharashtra Tenancy and Agricultural Lands Act lays down following provisions -

1 Tribunal (jurisdiction) (Section 67)

According to section 67 there shall be a Tribunal, called the Agricultural Lands Tribunal for each taluka or mahal or for such area as the State Government may think fit.

State Government can

alter the local limits of the jurisdiction of the Tribunal

or abolish the Tribunal so constituted or reconstitute the Tribunal.

Proceeding pending before any Tribunal on the date of such alteration or reconstitution shall be transferred.

The State Government may appoint an officer not below the rank of a Mamlatdar to be the Tribunal

and to exercise the powers and perform the duties and functions of the Tribunal under this Act in taluka or mahal or any other area referred to in sub-section (1)

The State Government may constitute a Tribunal consisting of not less than three members of whom—

(a) at least one shall be a person who is holding or has held a judicial office not lower in rank than that of a civil judge under the Bombay Civil Courts Act, 1869,

or who is qualified to practise as a lawyer in the State of Maharashtra and

(b) one shall be appointed to be the President of the Tribunal

and the Tribunal so constituted shall exercise the powers and perform the duties and functions of the Tribunal under this Act.

2. Duties of Tribunal (section 68)

According to Section 68 it shall be the duty of the Tribunal—

(a) to determine the value of the site of a dwelling house under section 17;

(b) to determine the purchase price of land under section 32G, 63A or 64;

(c) to decide any dispute under sections 32 to 32R

(cc) to dispose of land under section 32P

(d) to perform such other functions in carrying out the provisions of this Act, as may

be prescribed or as may be directed by the State Government.

3.Powers of Tribunal(section 69)

The Tribunal shall have the some powers in making inquiries under this Act as are vested in Courts in respect of the following matters under the Code of Civil Procedure, 1908, in trying a suit :—

(a) proof of facts by affidavits;

(b) summoning and enforcing the attendance of any person and examining him on oath; and

(c) compelling the production of documents.

The Tribunal shall have also such other powers as may be prescribed. The Tribunal shall have powers to award costs.

The orders of the Tribunal shall be given effect to in the manner provided in section 73.

4.Bar of jurisdiction(Section 85)

According to section 85 Civil Court shall have no jurisdiction to settle, decide or deal with any question (including a question, whether a person is or was at any time in the past, a tenant

and whether any such tenant is or should be deemed to have purchased ,from his landlord ,the land held by him) ,which is by or under this Act required to be settled, decided or dealt with by the Mamlatdar or Tribunal, a Manager, the Collector or the Maharashtra Revenue Tribunal in appeal or revision or the State Government in exercise of their powers of control.

No order of the Mamlatdar, the Tribunal, the Collector or the Maharashtra Revenue Tribunal] or the State Government made under this Act shall be questioned in any Civil or Criminal Court.

According to explanation Civil Court shall include a Mamalatdar's Court constituted under the Mamlatdars Courts Act, 1906.

Sarwatibai v Damodar 2005 (5) Bom.C.R. S.C.

Court held that civil court has no jurisdiction to decide the issue to be determined by tribunal.Even if it raised in proceeding,civil court would refer the issue to authority

under Act.

Appeal and Revision(section 74- 78)

Maharashtra Tenancy and Agricultural Lands Act lays down following provisions relating to appeal and revision --

1 Appeal Against orders of Mamlatdar(section 74)

According to section 74 appeal against the orders of the Mamlatdar and the Tribunal may be filed to the Collector in the following cases—

- (a) an order under section 4
- (d) an order under section 9,
- (da) an order under section 9A;]
- (e) an order under section 10
- (g) an order under section 13,
- (ga) an order under section 15
- (h) an order under section 17,
- (i) an order under section 19,
- (j) an order under section 20,
- (k) an order under section 23,
- (l) an order under section 25,
- (m) an order under section 29,
- (m-1) an order under sub-section (1B) of section 32,
- (ma) an order under sub-section (2) of section 32
- (mb) an order under sections 31, 32F, 32G or 32P,
- (n) an order under section 32K, 32M, 32MM or 32Q,
- (na) an order under section 33B,]

- (o) an order under section 33,
- (oo) an order under sub-section (5) of section 34,
- (p) an order under section 37,
- (q) an order under section 39,
- (r) an order under section 4
- (rr) an order made pursuant to a notification issued under sub-section (3) of section 43A,
- (ra) an order under section 43B,
- (s) an order under section 64, (u) an order made under section 84A, 84B or 84C,
- (v) an order under section 85A,
- (w) an order under section 88C,

The provisions of Chapter XIII of the Bombay Land Revenue Code, 1879, shall apply to appeals to the Collector under this Act.

The Collector in appeal shall have power to award costs.

2. Power of Collector to transfer or withdraw appeal

According to section 74A the Collector may, after due notice to the parties, by order in writing—

(a) transfer any appeal pending before him

or before any Assistant or Deputy Collector subordinate to him

to any Assistant or Deputy collector specified in such order, performing the duties and exercising the powers of a Collector

and upon such transfer the Assistant Collector or the Deputy Collector, shall have power to hear and decide the appeal as if it was originally filed to him;

or

(b) withdraw any appeal pending before any Assistant or Deputy Collector and himself hear and decide the same.

3 .An appeal against the award of the Collector.

Appeal against award of Collector made under section 66 may be filed to the Maharashtra Revenue Tribunal.

In deciding appeals under sub-section (1) Maharashtra Revenue Tribunal shall exercise all the powers which a court has under the Bombay Revenue Tribunal Act, 1939 and shall follow the same procedure which a court follows in deciding appeals from the decree or order of an original court under the Code of Civil Procedure, 1908.

4.Revision (section 76)

Application for revision may be made to the Maharashtra

Revenue Tribunal constituted under the said Act against any order of the Collector on the following grounds only :—

(a) that the order of the Collector was contrary to law;

(b) that the Collector failed to determine some material issue of law; or

(c) that there was a substantial defect in following the procedure provided by this Act, which has resulted in the miscarriage of justice.

In deciding applications under this section the Maharashtra Revenue

Tribunal shall follow the procedure which may be prescribed by rules made under this Act after consultation with the Maharashtra Revenue Tribunal.

5 .Revisional power of Collector(section 76A)

Where no appeal has been filed within the period provided for it,

the Collector may

, suo motu or on a reference made in this behalf by the Divisional Officer or the State Government,

(a) call for the record of any inquiry or the proceedings of any Mamlatdar or Tribunal for the purpose of satisfying himself as to the legality or propriety of any order passed by, and as to the regularity of the proceedings of such Mamlatdar or Tribunal.

and

(b) pass such order thereon as he deems fit.

However no such record shall be called for after the expiry of one year from the date of such order

and no order of such Mamlatdar or Tribunal shall be modified, annulled or reversed unless opportunity has been given to the interested parties to appear and be heard.

According to section 77

every application or appeal made under this Act to the Mamlatdar, Tribunal, Collector or Maharashtra Revenue Tribunal shall bear a court-fee stamp of such value as may be prescribed.

5.Orders in appeal or Revision.

(Section 78)

The Collector in appeal and the Maharashtra Revenue Tribunal in appeal under section 75 and in revision under section 76

may confirm, modify or rescind the order in appeal or revision

or its execution

or may pass such other order as may seem legal and just in accordance with the provisions of this Act.

The orders of the Collector in appeal or of the Maharashtra Revenue Tribunal in appeal or revision shall be executed in the manner provided for the execution of the orders of the Mamlatdar and Tribunal under section 73.

6.Limitation(Period) (Section 79)

According to section 79 every appeal or application for revision under this Act shall be filed within a period of sixty days from the date of the order of the Mamlatdar, Tribunal or Collector.

The provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908, shall apply to the filing of such appeal or application for revision.

However appeal against an order passed by the Mamlatdar under section 31 or 32F

or an order passed by the Tribunal under section 32G before the date of the commencement of the Bombay Tenancy and Agricultural Lands (Amendment) Act,

1960, may be filed within a period of six months from the date of such commencement.

According to section 80 all inquiries and proceedings before the Mamlatdar, the Tribunal, the Collector and the Maharashtra Revenue Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193, 219 and 228 of the Indian Penal Code.

Appeal or revision may be filed after period of limitation according to section 5 of limitation Act.

In *Dinkar v Pandurang Bendre* 2002 (4)Mah.L.J.

Court held that court has to take broader view and consider realities of life.

Module 09

Mamlatdar's Court Act 1906.

1. Historical Background / Introduction.

The office of Mamlatdar has assumed important status from ancient times. The word "Mamlatdar" is derived from original Arabic World MUAMLA (Mamla) means complicated matter or case and the officer who solves such matters or issues is Mamlatdar.

The Mamlatdar is the Head of revenue administration consisting of average 50 or more groups of villages.

The state government appoints Mamlatdar under section-12 of Land Revenue Code. Mamlatdar is also an executive magistrate under section-20 of the Indian Criminal Procedure Code 1973.

The Mamlatdar is a gazetted officer of the State Government. As the collector is the head of the district so Mamlatdar plays role of head of Taluka. He is responsible to Prant officer and collector and he solves problems of people by coming in direct contact of the people.

Thus the Mamlatdar has a multipurpose role to play at Taluka level.

State Government determines functions of Mamlatdar. Previously functions of Mamlatdar were regulated by Mamlatdar's Court Act 1876. But present Act repealed the

same.

In *Gulabbhai v Kasanji* (1897) Court held that jurisdiction of Mamlatdar is purely statutory creation and for his guidance he must look statute.

2.Object And Application of Act.

Mamlatdar's Court Act is applied to State of Maharashtra. Act is enacted to regulate power and proceedings of Mamlatdar's Courts.

Preamble of Act lays down that Act is enacted to consolidate and amend law relating to powers and proceedings of Mamlatdar's Courts.

3.Some important Definitions.

(a) Mamlatdar : shall include any Revenue-officer exercising powers of a Mamlatdar, or of a Mahalkari

and any other person who may be specially authorised by the State Government to exercise the powers of a Mamlatdar under this Act; and

(b) plaintiff and defendant shall include

(i) a pleader duly appointed to act on behalf of such plaintiff or defendant, and

(ii) the recognised agent of a plaintiff or defendant as defined in section 37 of the Code of Civil Procedure

Important Provisions.

1.Mamlatdar and Joint Mamlatdar(sections 3- 4)

Mamlatdar is revenue officer authorised by State Government to exercise powers under this Act.

State Government may, by notification in the Official Gazette, appoint in any taluka a Joint Mamlatdar under this Act who shall be invested with co-extensive powers and a concurrent jurisdiction with the Mamlatdar.

According to clause (2) the Mamlatdar is empowered to transfer to the Joint Mamlatdar for disposal any suit under this Act, the plaint in which has been presented to the Mamlatdar under section 7,

and to re-transfer to his own file any such suits, of which the Joint Mamlatdar is,

owing to death, sickness or any other cause unable to dispose.

2. Powers of Mamlatdar's Courts (section 5)

Mamlatdar's Court, subject to the provisions of sections 6 and 26, have power, within territorial limits fixed by the State Government ,

(a) to remove or cause to be removed any impediment, erected otherwise than under due authority of law, to the natural flow in a defined channel or otherwise of any surface water naturally rising in or falling on any land used for agriculture, grazing, trees or crops, on to any adjacent land, where such impediment causes or is likely to cause damage to the land used for such purpose or to any such grazing, trees or crops.

(b) to give immediate possession of any lands or premises used for agriculture or grazing, or trees, or crops, or fisheries,

or to restore the use of water from any well, tank, canal or water-course, whether natural or artificial used for agricultural purposes to any person who has been dispossessed or deprived thereof otherwise than by due course of law, or who has become entitled to the possession or restoration thereof by reason of the determination of any tenancy or other right of any other person,

not being a person who has been a former owner or part-owner, within a period of twelve years before the institution of the suit of the property or use claimed,

or who is the legal representative of such former owner or part-owner.

However if in any case the Mamlatdar considers it inequitable or unduly harsh to remove or cause to be removed any such impediment or to give possession of any such property or to restore any such use to a person who has become entitled thereto merely by reason of the determination of any such tenancy or other right,

or if it appears to him that such case can be more suitably dealt with by a Civil Court, he may in his discretion refuse to exercise the power aforesaid, but shall record in writing his reasons for such refusal.

The said Court shall also, have power within the said limits, where any impediment referred to in sub-section (1) is erected, or an attempt has been made to erect it,

or, when any person is otherwise than by due course of law disturbed or obstructed,

or when an attempt has been made so to disturb or obstruct any person, in the possession of any lands or premises used for agriculture or grazing or trees, or crops,

or fisheries, or in the use of water from any well, tank, canal or water-course, whether natural or artificial, used for agricultural purposes, or in the use of roads or customary ways thereto, to issue an injunction to the person erecting or who has attempted to erect such impediment, or causing, or who has attempted to cause, such disturbance or obstruction, requiring him to refrain from erecting or attempting to erect any such impediment or from causing or attempting to cause any further such disturbance or obstruction.

Suit shall not be entertained by a Mamlatdar's Court unless it is brought within six months from the date on which the cause of action arose.

3.Cause of action limitation (section 5(4))

According to section 5 (4) the cause of action shall be deemed to have arisen on the date on which the impediment to the natural flow of surface water or the dispossession deprivation or determination, of tenancy or other right occurred, or on which the impediment, disturbance or obstruction, or the attempted impediment or disturbance or obstruction, first commenced.

Suit to be filed within six months.

4.Injunction it's disobedience :

Mamlatdar's Court is empowered to issue injunction to person who creates impediment laid down in clause 1 (a).And court can require such person to refrain from erecting impediment.

Disobedience is punishable according to Indian Penal Code.

5.Power/Functions of Collector (section6)

According to section 6 the Collector may

after due notice to the parties, by order in writing

transfer any suit from any Mamlatdar's Court in his district to any other Mamlatdar's Court in his district, and the Mamlatdar's Court, to which the suit is so transferred, shall exercise jurisdiction in such suit

but any order issued to village-officers under section 21 shall be issued by the Mamlatdar to whom such village-officers are subordinate.

In State of Bombay v Mulji Jetha AIR 1955 S.C.

Court held that Collector is different from State Government.

Procedure from filing of plaint til enforcement of its order(sections 7-25)

Following stages are involved in procedure of plaint-

1 aa suits under this Act shall be commenced by a plaint. It shall be presented to the Mamlatdar in open Court by the plaintiff.

And it shall contain the following particulars :-

(a) the name age, religion, caste, profession and place of abode of the plaintiff.

(b) the name, age, religion, caste, profession and place of abode of the defendant;

(bb) the nature and situation of the impediment erected and the situation of the lands which are adjacent to each other, and the nature of the relief sought

(c) the nature and situation of the property of which possession for use sought, or the nature of the injunction to be granted

(d) the date on which the cause of action arose:

(e) the circumstances out of which the cause of action arose; and

(f) a list of the plaintiff's documents, if any, and of his witnesses, if any, showing what evidence is required from each witness, and whether such witnesses are to be summoned to attend, or whether the plaintiff will produce them on the day and at the place to be fixed under section 14.

2.Examination of witnesses (Section 7) :

Where the plaint does not contain the particulars specified in section 7

or is unnecessarily prolix,

the Mamlatdar shall forthwith examine the plaintiff upon oath and ascertain from him the particulars specified in section 7 as are not clearly and correctly stated in the plaint.

And shall reduce the examination to writing in the form of an endoresment on or annexure to the plaint which shall thereupon be deemed to be part of the plaint.

Where the plaintiff requires time to obtain any of the particulars specified in section 7,

the Mamlatdar shall grant him such time as may under all the circumstances appear reasonable.

3. According to section 10 when the plaint is presented the Mamlatdar shall require the plaintiff to subscribe and verify the plaint in his presence, in open Court in the manner prescribed. And shall be endorsed by him that plaint is verified (section 11)

4. Rejection of plaint (12 section)

The Mamlatdar shall reject the plaint—

- (a) where the plaintiff declines to make a statement on oath under section 9; or
- (b) where the plaintiff is willing to make or has made a statement on oath under section 9, but fails to furnish the particulars specified in section 7 within the time fixed under section 9 or altogether; or
- (c) where it appears upon the face of the plaint,
 - (i) that the property or use claimed is not one of the kind specified in section 5; or
 - (ii) that the cause of action arose more than six months before the plaint was presented; or
- (d) where the plaintiff declines to subscribe or verify the plaint as required by sections 10 and 11.

According to section 13 where it appears to the Mamlatdar that the subject of the plaint is not within his jurisdiction, he shall, return the plaint to be presented in the proper Court.

5. Procedure where plaint is admitted (section 14):

Where a plaint is admissible, the Mamlatdar shall receive and file it. He shall then fix a convenient day and place for the trial of the case, and shall issue, at the expense of the plaintiff, notice in the form of Schedule A to the defendant. He shall then require the plaintiff to appear with his documents, if any, and witnesses, if any, on the day and at the place fixed.

The date to be fixed for the trial of the case shall not be earlier than ten days, nor later than fifteen days, from the day on which the notice is issued.

The place to be fixed for the trial of the case may be in the Mamlatdar's office

or at or near the scene of dispute,

or at any other spot that the Mamlatdar considers convenient to the parties.

6. Attendance of witnesses.

According to section 15 where either party requires any witness to be summoned to appear on the day and at the place fixed, the Mamlatdar shall issue a summons for that purpose.

(The Mamlatdar may issue a warrant for the arrest of any such witness if at such time he fails to appear and the summons is proved to have been duly served in time of his appearing and no reasonable excuse is offered for such failure.

7. According to section 16 where the plaintiff fails to attend, or to produce his documents, if any, or to adopt measures to procure the attendance of his witnesses, if any, on the day and at the place fixed, the Mamlatdar shall reject the plaint with costs, whether the defendant appears or not, unless the defendant admits the claim.

Where the plaintiff attends as required by section 14, sub-section (1), but the defendant fails to attend and the Mamlatdar is satisfied from the evidence before him that the notice has been duly served on the defendant and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall proceed to hear and decide the plaint ex-parte.

8. According to section 17 where, in the case mentioned in sub-section (2) of section 16, the Mamlatdar is not satisfied from the evidence before him that the notice has been duly served on the defendant, and in sufficient time to enable the defendant to appear and answer on the day fixed in the notice, he shall adjourn the trial of the case and issue a fresh notice under section 14, sub-section (1) to the defendant.

Where any witness who has been duly summoned, or for whose arrest a warrant has been issued under sub-section (2) of section 15, fails to attend on the day and at the place fixed, the Mamlatdar may, if he considers there is sufficient reason, after taking the evidence of those present, adjourn the hearing of the suit from time to time till the attendance of such witness can be enforced.

The Mamlatdar may, for any other sufficient reason to be recorded in writing, adjourn the trial of the case for such time as he thinks fit, but not ordinarily exceeding ten days.

9. Points to be decided by Mamlatdar at hearing (section 19)

According to section 19 on the day fixed, or on any day to which the proceedings may have been adjourned, the Mamlatdar shall, proceed to hear all the evidence and shall try following issues namely:-

(aa) If the plaintiff avers that the natural flow of surface water from his land has been impeded by any erection raised by the defendant causing damage or likelihood of damage to the plaintiff's land or to any grazing, trees or crops thereon-

(1) whether surface water flowed, in a defined channel or otherwise naturally from plaintiff's land on to defendant's land:

(2) whether the defendant erected any impediment to such flow. otherwise than under due authority of law;

(3) whether such erection impeded such natural flow of water within six months before the suit was filed;

(4) whether such impediment has caused or is likely to cause damage to plaintiff's land or to any grazing, trees or crops thereon

(a) If the plaintiff avers that he has been unlawfully disposed of any property or deprived of any use-

(1) whether the plaintiff or any person on his behalf or through whom he claims was in possession or enjoyment of the property or use claimed up to any time within six months before the suit was filed ;

(2) whether the defendant is in possession at the time of the suit and, if so, whether he obtained possession otherwise than by due course of law;

(b) if the plaintiff avers that he is entitled to possession of any property or restoration of any use by reason of the determination of any tenure or other right of the defendant in respect thereof-

(1) whether the defendant is in possession of the property or in the enjoyment of the use by a right derived from the plaintiff or from any person through whom he claims;

(2) whether such right has determined at any time within six months before the suit was filed;

(3) whether the defendant is other than a person who has been a former owner or part-owner within a period of twelve years before the institution of the suit of the property or use claimed, and other than the legal representative of such former owner

or part-owner;

(c) If the plaintiff avers that he is still in possession of the property or in the enjoyment of the use, but that the defendant disturbs or obstructs, or has attempted to disturb or obstruct, him in his possession or use –

(1) whether the plaintiff or any person in his behalf is actually in possession or enjoyment of the property or use claimed;

(2) whether the defendant is disturbing or, obstructing, or has attempted to disturb or obstruct, him in such possession or enjoyment;

(3) whether such disturbance or obstruction, or such attempted disturbance or obstruction, first commenced within six months before the suit was filed.

According to clause (2) the Mamlatdar may, after due notice to the parties, summon and examine as a witness any person who has not been summoned or produced,

and may call any document not produced, by either of the parties, where he considers it expedient in the interests of justice.

And may, make a personal inspection of the property in dispute after due notice to the parties.

He shall, without delay record a memorandum after hearing the parties on the spot, of any relevant facts observed at such inspection. The memorandum shall form part of the record of the case.

Where the Mamlatdar's finding upon the issues is in favour of the plaintiff, he shall make such order as may require him to make.

And where his finding is in favour of the defendant, he shall dismiss the suit.

In either case the costs of the suit, including the costs of execution, shall follow the decision.

According to section 20 every order of the Mamlatdar, whether for rejecting or returning a plaint or whether for allowing or disallowing a claim, shall be endorsed by the Mamlatdar on the plaint and shall be read out by him in open Court and brief reasons for the order shall be placed by him on record.

10. Mamlatdar's decision how executed. (section 21)

According to section 21 where the Mamlatdar's decision is for removal of an

impediment

or for awarding possession

or restoring a use, he shall give effect by issuing such orders to the village officers, or to any subordinate under his control or otherwise as he thinks fit.

when a decision is recorded by the Mamlatdar for removal of the impediment erected on any land or for awarding possession of any land there is a crop on such land which has been sown by or at the expense of the defendant, and the Mamlatdar is satisfied that it has been so sown in good faith,

the Mamlatdar may,

and if the defendant makes an application for the purpose and furnishes sufficient security, or deposits in Court a sufficient sum, for the payment of the costs of the suit, shall

pass an order staying delivery of possession of such land to the plaintiff seeking possession — (a) until the plaintiff agrees to take the crop at a valuation to be made under the orders of the Mamlatdar, according to the value of the crop at such time, including any instalments of the Government assessment which the defendant may have paid for the current year or

(b) where the plaintiff is unwilling to take the crop at such valuation until after the expiration of sufficient time for the crop to be gathered by the defendant.

The amount of any valuation made under clause (a) of the proviso to this sub-section shall be paid to the defendant through the Mamlatdar, and shall be recoverable from the plaintiff as an arrear of land-revenue.

Where the Mamlatdar's decision is for granting an injunction, he shall cause the same to be prepared in the form of Scheduled BB or C, and shall deliver or tender the same to the defendant, if present, or if the defendant is not present, shall send it

to the village-officers

or to any subordinate under his control, to be served upon the defendant.

Where the Mamlatdar awards costs, such costs, together with costs of execution, shall be recoverable from the party ordered to pay them as an arrear of land-revenue.

Any person disobeying an injunction granted under sub-section (2) shall be punishable

under section 188 of the Indian Penal Code.

Subject to the provisions of section 23 sub-section (2), the party in favour of whom the Mamlatdar issues an order for removal of an impediment or the party to whom the Mamlatdar gives possession or restores a use, or in whose favour an injunction is granted, shall continue to have the surface water upon his land flow unimpeded on to adjacent land or continue in possession or use, as the case may be, until otherwise decreed or ordered, or until ousted, by competent Civil Court

According to section 23 there shall be no appeal from any order passed by a Mamlatdar under this Act.

But the Collector may call for and examine the record of any suit under this Act.

And if he considers that any proceeding, finding or order in such suit is illegal or improper may, after due notice to the parties, pass order not inconsistent with this Act.

In Sadashiv Mahadev v Balkrishna Walimbe 2002 (4)Bom.C.R.

Court held that entire structure of Mamlatdar's Court's Act shows that provisions of C.P.C. are to govern procedure which are governed by Mamlatdar's Court Act. And Mamlatdar's Court is empowered to set aside ex parte order

Module 08

The Maharashtra Agricultural Lands (Ceiling on Holdings) Act, 1961.

Historical Background/ Introduction

Agricultural land is the main source of livelihood of persons in India. Indian Constitution has adopted the concept of social justice and doctrine of equality. These require State to reduce unequal distribution of land and distribute excess agricultural land to needy people for their livelihood.

Second Year Planning Commission of India recommend distribution of surplus land. Previous tenancy laws were not uniform and not contained provisions for limitations on holding.

Accordingly uniform law on the subject of ceiling on agricultural land was felt as essential to impose ceiling on holding agricultural land and to provide equal

distribution of land to landless persons, small holders etc. for personal cultivation.

* Objects and Application of Act.

Maharashtra Agricultural Lands (Ceiling on Holdings) Act has been enacted by Legislature of Maharashtra with a view -

- i) to impose maximum ceiling / limit on holding of agricultural land in State
- ii) to acquire and distribute surplus / excess land to landless persons for personal cultivation.
- iii) to ensure equal distribution of agricultural land among peasantry of state.

In *Dattatray Govind v State of Maharashtra* AIR 1975 Mh.L.J.404

Supreme Court of India held that Act has created artificial concept of family unit and aggregated land held by each member of family unit for the purpose of applying limitations of ceiling area.

Act applies to the whole the State of Maharashtra.

* Important Definitions Under Act. (Section 2)

(1) "agriculture" includes—

- (a) horticulture,
- (b) the raising of crops, grass or garden produce or singhare (*trapa bispinosa*),
- (c) the use by an agriculturist of land held by him, or part thereof, for grazing,
- (d) the use of any land, whether or not an appanage to rice or paddy land, for the purpose of rab-manure,
- (e) dairy farming,
- (f) poultry farming,
- (g) breeding of live-stock,

but, does not include the cutting of wood only;

In *N . G. Desailly v State of Bombay* (1954)57 Bom L.R.

Court held that agriculture means any operation which has something to do with

land, any operation which helps land to yield its fruits or crops, any operation which improves the natural produce of land may come within expression.

(4) "appointed day" means the day on which this Act comes into force;

(5) "class of land" means land falling under any one of the following categories –

(a) land with an assured supply of water for irrigation and capable of yielding at least two crops in a year, that is to say, –

(i) land irrigated seasonally as well as perennially by flow irrigation from any source constructed or maintained by the State Government or by any Zilla Parishad or from any other natural source of water ; or

(ii) land irrigated perennially by a Government owned and managed lift from any source constructed or maintained by the State Government or by any Zilla Parishad or from any other natural source of water ;

(b) land (other than land falling in clause (c)) which has no assured perennial supply of water for irrigation, but has an assured supply of water for only one crop in a year , land irrigated –

(i) seasonally by flow irrigation from any source constructed or maintained by the State Government or by any Zilla Parishad or from any other natural source of water ; or

(ii) perennially by a lift (other than a lift referred to in item (ii) of clause (a)) from any source constructed or maintained by the State Government or by any Zilla Parishad or from any other natural source of water ; or

(iii) perennially from a privately-owned well situated on land within the irrigable command of any irrigation project, or in the bed of a river, stream or natural collection of water or drainage channel (being a river, stream, natural collection of water or drainage channel which is a perennial source of water) ;

(c) land irrigated seasonally by flow irrigation from any source constructed or maintained by the State Government or by any Zilla Parishad or from any other natural source of water with unassured water supply, that is, where supply is given under water sanctions, which are temporary, or where such sanctions are regulated on the basis of availability of water in the storage ;

(d) dry crop land, that is to say, land

other than land falling under sub-clause (a), (b), or (c) of this clause

situated in the Bombay Suburban District and Districts of Thana, Kolaba, Ratnagiri and Bhandara and in the Brahmapuri, Gadchiroli and Sironcha Talukas of the Chandrapur District

and which is under paddy cultivation for a continuous period of three years immediately preceding the commencement date ;

(e) dry crop land, that is to say, land other than land falling under sub-clause (a), (b), (c) or (d) of this clause.

land which is irrigated from any source of irrigation specified in sub-clause (a), (b) or (c)

and which was used for horticulture (other than the land used for growing of coconut, arecanut, bananas, guava or for vineyards) on or before the 26th day of September, 1970

shall be deemed to be land falling under sub-clause (e) until the 4th day of August, 1979;

land which is irrigated from any source of irrigation specified in sub-clause (b) shall not be deemed to be land falling under the said sub-clause (b)

if the irrigation is provided by a private lift irrigation work operated by diesel or electric power or operated by both methods and constructed after the 15th day of August 1972.

(8) "to cultivate" with its grammatical variations and cognate expressions,

means to till or husband land for the purpose of raising or improving agricultural produce, whether by manual labour or with the use of cattle or by machinery,

or to carry on any agricultural operation thereon.

(9) "to cultivate personally" means to cultivate land on a person's own account—

(i) by his own labour, or

(ii) by the labour of any member of his family, or

(iii) by hired labour, or by servants on wages, payable in cash or kind (but not in crop share) under the personal supervision of himself or any member of his family;

Explanation I.—A person under disability shall be deemed to cultivate personally, if he cultivates through his servants, or by hired labour ;

Explanation II.—In the case of joint family, land shall be deemed to be cultivated personally, if it is so cultivated by any member of such family ;

(11)“family” includes, a Hindu undivided family, and in the case of other persons, a group or unit the members of which by custom or usage, are joint in estate or possession or residence ;

(11A)“family unit” means a family unit as explained in section 4

(13) “fragment” has the meaning assigned to it in section 2 of the Bombay Prevention Bom. of Fragmentation and Consolidation of Holdings Act, 1947

(14) “to hold land”, with its grammatical variations and cognate expressions, means to be lawfully in actual possession of land as owner or as tenant ; and “holding” shall be construed accordingly

(16)“land” means land which is used, or capable of being used, for purposes of agriculture, and includes—

(a)the sites of farm buildings on, or appurtenant to such land;

(b)land on which grass grows naturally ;

(c)trees and standing crops on such land ;

(d)canals, channels, wells, pipes or reservoirs or other works constructed or maintained on such land of the supply or storage of water for the purpose of agriculture;

(e) drainage-works, embankments, bandharas or any other works appurtenant to such land, or constructed or maintained thereon for the purposes of agriculture; and all structures and permanent fixtures on such land;]

(17) "landless person" means a person who does not hold any land or who holds land for the purpose of agriculture not in excess of one hectare of dry crop land (or irrigated land proportionately converted in the manner provided in section 5) and earns his livelihood principally by manual labour on agricultural land in either case

(21) "owner", in relation to any land, includes the person holding the land as occupant, or superior holder as defined in the Code

or as lessee of Government, a mortgagee-in-possession, and a person holding land for his maintenance;

(23) "person under disability" means—

(a) a widow, or

(b) a minor, or

(c) a woman, who is unmarried, or who if married is divorced or judicially separated from her husband, or whose husband is a person who is a serving member of the Armed Forces or falls under item (d), or

(d) a person who by reason of some mental or physical disability is incapable of cultivating land either by personal labour or under supervision, and includes a serving member of the Armed Forces;

*Ceiling on Holding of land.

Act lays down following important provisions -

1. Prohibition on holding land in excess of ceiling area and area of ceiling to surplus lands (section 3)

According to section 3 no person or family unit shall, after the commencement date, hold land in excess of the ceiling area, as in determined in the manner provided in this provision.

According to clause 2 all land held by a person, or a family unit

whether in this State or any other part of India

in excess of the ceiling area

shall be deemed to be surplus land and shall be dealt in that manner provided

hereinafter.

In determining surplus land from the holding of a person, of a family unit,

the fact that the person or any member of the family unit has died (on or after commencement date or any date subsequent to the date on which the holding exceeds the ceiling area, but before the declaration of surplus land is made in respect of that holding)

shall be ignored; and accordingly, the surplus land shall be determined as if that person, the member of a family unit had not died.

Explanation.—In calculating the ceiling area to be held in this State, and determining surplus land the area of land in any other part of India (being land which a person or family unit is entitled to hold in such other part of India under any law relating to ceiling on land) shall be taken into consideration.

Only land held in this State may be declared as surplus.

(3) Where any land—

(a) is held by a family of which a person is a member,

(b) is held in or operated by a co-operative society of which a person is a member,

and the holding of such person or of a family unit of which such person is a member including the extent of share of such person, if any, in the land answering to any of the descriptions in clauses (a), (b), (c) or (d) above exceeds the ceiling area on or before the commencement date or on any date thereafter (hereinafter referred to as the relevant date),

then for the purpose of determining the ceiling area and the surplus land in respect of that holding, the share of such person in the land aforesaid shall be calculated in the following manner :—

(i) in the land held by a family of which the person is a member, the share of each member of the family shall be determined so that each member who is entitled to a share on partition, shall be taken to be holding separately land to the extent of his share, as if the land had been so divided and separately held on the relevant date ;

(ii) in the land held in or operated by a co-operative society or held jointly with others or held by a firm, the share of the person shall be taken to be the extent of land such person would hold in proportion of his share in the co-operative society, or his share

in the joint holding or his share as partner in the firm, as if the land had been so divided and separately held on the relevant date.

No land shall be taken into consideration more than once in calculating the ceiling area for the holding of any person, or as the case may be, of family unit.

Shankarrao v State of Maharashtra 1980 Mah.L J.is unique case wherein court discussed section 3 (2) of present Act and doctrine of precedent.

In this case full bench of Bombay High Court held that portion of section 3 (2) is extra territorial units operation and is unlawful and inoperative and beyond competence of State Legislature.

2.Land held by family unit (Section 4)

All land held by each member of a family unit, whether jointly or separately shall , for the purposes of determining the ceiling area , be deemed to be held by family unit.

A "family unit" means,–

(a) a person and his spouse (or more than one spouse) and their minor sons and minor unmarried daughters, if any; or

(b)where any spouse is dead, the surviving spouse or spouses, and the minor sons and minor unmarried daughters; or

(c)where the spouses are dead, the minor sons and minor unmarried daughters of such deceased spouses.

Clause (2) states that-

all declarations of dissolution of marriage made by a Court after the 26th day of September, 1970,

and all dissolutions of marriage by custom, or duly made, pronounced or declared on or after that date

shall, for the purposes of determining the ceiling area to be held by a family unit, be ignored;

and accordingly, the land held by each spouse shall be taken into consideration for that purpose, as if no dissolution had taken place.

But, if a proceeding for dissolution of marriage has commenced before any Court before the aforesaid date

, then the dissolution of marriage shall have full effect (whether the marriage is dissolved before or after that date),

and shall be taken into consideration in determining the ceiling area of family unit.

3. Ceiling Area (section 5)

(1) In each of the districts and talukas specified in column 1 of the First Schedule, for class of land described in columns 2, 3, 4, 5 and 6 thereof,

the ceiling area shall be the area mentioned under each such class of land against such district or taluka.

(2) If a person, or a family unit, holds land of only one class, the ceiling area for his or its holding shall be the ceiling area for that class of land.

(3) Where a person or a family unit holds different classes of land, then,

for calculating whether the holding is equal to or in excess of the ceiling area,

the total area of the holding shall be calculated in the following manner :-

The area of each class of land falling under sub-clauses (a), (b) or (c) of clause (5) of section 2 shall be converted into dry crop land falling under sub-clause (d)

or sub-clause (e) of clause (5) of the section

on the basis of the proportion which the ceiling area for the class of land to be converted, bears to the ceiling area for dry crop land, aforesaid.

Where a person or family unit holds dry crop land falling under sub-clauses (d) and (e) of clause (5), then the conversion shall be made into land falling under sub-clause (e).

If the area in terms of dry crop land so arrived at, together with the area of such dry crop land, if any, in his or its holding, is equal to the ceiling area for dry crop land falling under sub-clause (d), or as the case may be, sub-clause (e), aforesaid, the holding shall be deemed to be equal to the ceiling area.

If it exceeds the ceiling area, the holding shall be deemed to be in excess of the ceiling area.

4. Land held in excess of ceiling deemed to be within ceiling area (section 6)

According to section 6 where a family unit, consists of members which exceed five in number, the Lands held family unit shall be entitled to hold land exceeding the ceiling area to the extent of one- fifth of the ceiling area for each member in excess of five, so however that the total deemed to holding shall not exceed twice the ceiling area, and in such case, in relation to the be within ceiling area holding of such family unit, such area shall be deemed to be the ceiling area in certain circumstances.

5. Persons holding both exempted land and other land (Section 7)

where a person or family unit holds both exempted land and other land (that is land which is not exempted land) then

(a) if the area of exempted land is less than the ceiling area, he or it shall be entitled to hold so much only of other land as together with the area of exempted land, equals the ceiling area

and in such case, in relation to the holding of that person, or family unit, such area shall be deemed to be the ceiling area;

(b) in any other case, he or it shall not be entitled to hold any land which is not exempted land.

Restriction On Transfers and Acquisition And consequences (section 8-11)

Maharashtra Agricultural Lands (Ceiling on Holdings) Act prohibits transfer and acquisition of surplus land. Following are provisions relating to prohibition of transfer and acquisition-

1. Restriction on Transfer (section 8)

Where a person, or a family unit holds land in excess of the ceiling area, on or after the commencement date,

such person, or member of the family unit shall not transfer any land, until the land in excess of the ceiling area is determined under this Act.

Explanation.-transfer means transfer, whether by way of sale, gift, mortgage with possession, exchange, lease, assignment of land for maintenance, surrender of a tenancy or resumption of land by a landlord or any other disposition, whether by act of parties made inter vivos or by decree or order of a court, tribunal or authority.

(except where such decree or order is passed in a proceeding which is instituted in such court, tribunal or before such authority before the 26th day of September 1970),

But does not include-

transfer by way of sale or otherwise of land for the recovery of land revenue or for sums recoverable as arrears of land revenue,

or acquisition of land for a public purpose under any law for the time being in force.

In *Suhas Pralhad v State of Maharashtra* 2007 (4) All.MR.

Court held that ban on transfer under section 8 is absolute and purchaser can not acquire right by sale which violates section 8 of Act.

2.Restriction on acquisition of land in excess of ceiling area(section 9)

Person or a member of a family unit shall not acquire by transfer any land if he or the family unit already holds land

in excess of the ceiling area or land which together with any of land in other land already held by such person, or the family unit, will exceed in the total the ceiling area.

5.Consequences of certain transfers and acquisitions of land(section 10)

According to section 10

a) any person or family unit after 26 September 1970 but before commencement of date transfers any land

in anticipation of or in order to avoid or defeat the object of the Amending Act, 1972, or

(b) any land is transferred in contravention of section 8,

then in calculating the ceiling area which that person, or as the case may be, the family unit, is entitled to hold,

the land so transferred shall be taken into consideration, and the land exceeding the ceiling area so calculated shall be deemed to be in excess of the ceiling area for that holding.

If, by reason of such transfer, the holding of a person, of the family unit is less than the area so calculated to be in excess of the ceiling area,

then all the land of the person, or as the case may be, the family unit shall be deemed to be surplus land;

and out of the land so transferred and in possession of the transferee unless such land is liable to forfeiture under the provisions of sub-section (3) land to the extent of such deficiency shall,

subject to rules made in that behalf,

also be deemed to be surplus land, notwithstanding that the holding of the transferee may not in fact be in excess of the ceiling area.

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All transfers made after the 26th day of September 1970 but before the commencement date, shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the Amendment Act, 1972.

Explanation.—For the purposes of this sub-section, a transfer shall not be regarded as made on or before 26th September 1970 if the document evidencing the transfer is not registered on or before that date or where it is registered after that date, it is not presented for registration on or before the said date.

(2) If any land is possessed on or after the commencement date by a person, or as the case may be, a family unit in excess of the ceiling area, or if as a result of acquisition (by testamentary disposition or devolution on death or by operation of law) of any land on or after that date,

the total area of land held by any person, or as the case may be, a family unit, exceeds the ceiling area, the land so in excess shall be surplus land.

(3) Where land is acquired in wilful contravention of section 9, then as a penalty therefor, the right, title and interest of the person, or as the case may be, the family unit or any member thereof in the land so acquired or obtained shall be forfeited, and shall vest without any further assurance in the State Government.

Provided that, where such land is burdened with an encumbrance, the Collector may, after holding such inquiry as he thinks fit and after hearing the holder and the person in whose favour the encumbrance is made by him, direct that the right, title and interest of the holder in some other land of the holder equal in extent to the land acquired in wilful contravention of section 9, shall be forfeited to Government.

In Dada Rao v State of Maharashtra 1969 Mah.L.J.813

Court held that in calculating ceiling area the area transferred or partitioned shall be taken in to consideration and and land exceeding the ceiling area shall be deemed to be in excess of ceiling area.

6.Restriction on partition(section 11)

According to section 11 where any land held by a family is partitioned after the 26th day of September 1970

the partition so made shall be deemed (unless the contrary is proved) to have been made in anticipation of or in order to avoid or defeat the object of the Amending Act , and shall accordingly be ignored.

And any land covered by such partition shall, for the purposes of this Act, be deemed to be the land held by the family

And the extent of share of each person in the land held by the family shall be taken into consideration for calculating the ceiling area in accordance with the provisions of section 3.

(a) any person or a member of a family unit, after the 26th day of September 1970

Consequences of certain

but before the commencement date, transfers any land in anticipation of or in order transfers and acquisitions of land.

According to section 11-A. If any land held by a person, or family unit is converted into any class of land described in sub-clause (a), (b) or (c) of clause (5) of section 2,

and the holding of the person or the family unit exceeds the ceiling area, the land so in excess shall be deemed to be surplus land with effect from the date of conversion and accordingly the foregoing provisions of this Chapter shall apply to the holding.

Surplus Land

Maharashtra Agricultural Lands (Ceiling on Holdings) Act prohibits holding of land in excess of ceiling limit. Surplus land is for distribution to landless persons. Act lays

down following provisions :

1 . Submission of Returns(Section 12)

If any person or family unit-

(a) has at any time after the 26th day of September 1970 but before the Submission commencement date held, or

(b) on or after the commencement date acquires, hold or comes into possession of, any land (including any exempted land), in excess of the ceiling area, or

(b) whose land is converted into another class of land in the circumstances described in section 11-A

(c) thereby causing his or its holding to exceed the ceiling area, then, -

(i) in the case under sub-clause (a) of clause (1), within one month from commencement date and

(ii) in the case under sub-clause (b) of clause (1), within one month from the date of taking possession of any land in excess of the ceiling area, and

(iv) in the case under sub-clause (b) of clause (2), within three months from the date of such conversion (being the date notified under section 11-A)

he or any member of the family units shall furnish to each of the Collectors within whose jurisdiction any land in his holding or the holding of the family unit is situate a return, in the form prescribed, containing the particulars of all land held by him or by the family unit. Where a person or a member of a family unit holds a share in the land held by a family, the return shall also contain information regarding the total number of members of the family, the extent of land falling to the share of each of the

Power of Collector to hold inquiry(section 13)

The Collector shall, hold inquiry whether a return had been filed or not, suo moto or on the basis of the returns submitted to him hold an enquiry in respect of every person or family unit holding land in excess of the ceiling area,

and shall, subject to the provisions of this Chapter, determine the surplus land held by such person or family unit.

Where a person or family unit holds land in two or more talukas of the same district, the enquiry shall be held by such officer or authority exercising the powers of the

Collector whom the Collector-in-charge of the district may by order in writing designate.

Where a person or family unit holds land in two more districts of the same division, the enquiry shall be held by the Collector whom the Commissioner may, by order in writing, designate.

(Where a person or family unit holds lands in different divisions, the enquiry shall be held by the Collector whom the State Government may, by order in writing, designate.

(4A)Where a person holding land in an industrial undertaking,

the enquiry may be held by the Collector whom the State Government may, by order in writing, designate.

The Collector so designated, shall for the purposes of the enquiry, be competent to exercise jurisdiction under this Act in respect of such person [or family unit] and the lands held by him or it.

Division of Survey Number or sub-division in determining area of surplus land (Section 15)

Where, in delimiting the actual area of surplus land, a survey number or a Division of sub-division of a survey number, is required to be divided, then

(a) if the portion of such survey number or sub-division to be included in the surplus land, is a fragment, the whole of such survey number or sub-division shall be excluded from the surplus land,

(b) if the portion of such survey number or sub-division to be excluded from the surplus land, is a fragment, the whole of such survey number or sub-division shall be included in the surplus land,

(c) if on dividing such survey number or sub-division into two parts, each part is a fragment, the whole of such survey number or sub-division shall be included in the surplus land, and

(d) in any other case, the survey number or sub-division may be divided.

Where any survey number, or sub-division of a survey number, is excluded under clause (a) of sub-section (1), the person or family unit holding it shall be entitled to hold it, notwithstanding that his or its holding exceeds the ceiling area

and accordingly, the holding so retained shall be deemed to be the ceiling area.

Selection of land for retention of ceiling area (section 16)

Where a person or a family unit holds land in excess of the ceiling area

and the whole or part of such land

(a) is subject to an encumbrance, or

(b) answers to the description of clause (bb) of section 18,

then, subject to the provisions of sub-section (1) of section 10 and section 15,

such person or the family unit shall retain such land (whether that land is held as owner or as tenant) up to the extent of the ceiling area.

Person or family unit shall be entitled to select the lands he or it wishes to retain with himself or itself, up to the ceiling area.

In the case of a family unit, where land is held by each spouse separately, then each spouse shall subject to the provisions of sub-section (2), be entitled to select land the spouse wishes to retain with himself or herself, so that the lands to be retained bear the same proportion in which the lands are held by each spouse before the declaration.

Procedure of determining surplus land

1. Notice to the person Affected by enquiry under section 14.

According to section 17 Collector shall cause public notice, in the prescribed form, to be given at convenient places in the village or villages in which the land comprised in the holding is situate, specifying in the notice the land in respect of which enquiry is to be held to ascertain the surplus land held by the person or family unit and calling upon all persons interested in the land to submit to the Collector their objections within a period of fifteen days from the date of publication of the notice.

Where a public notice has been given as provided in this sub-section, then the holder and all persons who are interested in the land shall be deemed to have been duly informed of the contents of such notice.

If in the course of any proceedings a question arises whether a person was duly informed of the contents of the notice given in pursuance of this sub-section, the

publication of the notice in the manner provided in this sub-section shall be conclusive proof that he was so informed of the contents of such notice.

The Collector shall serve notices to the same effect on the holder, and all other persons who are known or believed to be interested in the land, calling upon them to appear before him personally or through an agent on a date and at a time and place (such date not being earlier than fifteen days after the issue of notice), to be stated in the notice.

(3) The notices under sub-section (2) may also call upon the holder—

(a) to state any objections or suggestions to the particulars given in the notice;

(b) to show cause, where necessary, why,—

(i) any land transferred in contravention of the provisions of section 8, or any land transferred during the period specified in clause (a) of sub-section (1) of section 10, or any land partitioned in contravention of the provisions of section 11, should not be taken into consideration in calculating the ceiling area, as provided in sub-section (1) of section 10 or section 11,

(ii) any land acquired in wilful contravention of section 9 should not be forfeited, as provided by sub-section (3) of section 10

(iii) any land held in excess of the ceiling area should not be forfeited to the State Government as provided by sub-section (3) of section 13,

(iv) any land referred to in sub-section (2) of section 10 or in section 11A, held by him should not be deemed to be surplus land

(k) which particular lands out of the total land held by the holder] should be entitled as delimited as surplus land ?

(l) any other matter which, in the opinion of the Collector, is necessary to be considered for the purpose of calculating the ceiling area, and delimiting any surplus land.

Power of Collector to restore land to landlord in certain cases (section 19)

Where during an enquiry into holding of any person, or as the case may be, family unit

under it appears that-

(a) the whole or any part of the surplus land, delimited under the foregoing provisions, restore land to landlord is held by that person or family unit or is deemed to be held by that person or family unit from a landlord; and

(b) the landlord has a right of resumption for personal cultivation in respect of that land (or part thereof) under the relevant tenancy law applicable to such land, the Collector shall (unless that right is subject to proceedings instituted before the 26th day of September 1970 before any court, tribunal or other authority and pending at the time of such inquiry), restore possession to the landlord of so much only of the surplus land, as he is entitled to resume,

and which together with any other land held by him, or as the case may be, the family unit shall not exceed the ceiling area under this Act.

The balance, if any, shall be declared as surplus land.

Manner of considering claim of landlord (Section 20)

For the purpose of deciding the extent of land which should be restored to the possession of the landlord under section 19, the Collector shall issue a notice calling upon the landlord, -

(a) to state his claim for restoration of possession of such surplus land for the purpose of that section;

(b) to show cause why the balance of such land should not be deemed to be surplus land.

Such notice shall require the landlord to appear personally or by agent before the Collector on the date, and at the time and place therein mentioned (such date not being earlier than fifteen days after the issue of the notice.)

On the date fixed under sub-section (2), or on any other day or days to which the inquiry is adjourned,

the Collector shall, after hearing the landlord or his agent and any other person interested in the surplus land and who are present,

and after considering any evidence adduced, ascertain -

(a) whether the landlord is entitled to restoration of the possession of the whole or any

part of such surplus land, and if so, the area and other particulars of such land; and

(b) whether the balance of any such land shall be surplus land, and if so, the extent and particulars of such land.

Collector to make declaration regarding surplus land and consequences thereof (section 21)

As soon as may be after the Collector has considered the matters referred to in section 18 and the questions, if any, under sub-section (3) of section 20,

he shall make declaration stating therein his decision on

(a) the total area of land which the person 1 [or family unit] is entitled to hold as the ceiling area;

(b) the total area of land which is in excess of the ceiling area;

(c) the name of the landlord to whom possession of land is to be restored under section 19, and area and particulars of such land;

(d) the area, description and full particulars of the land which is delimited as surplus land;

(e) the area and 4 [particulars of land out of surplus land, in respect of which the right, title and interest of person or family unit] holding it is to be forfeited to the State Government.

The Collector shall announce his declaration in the presence of the holder and other persons interested who are present at the time of such declaration.

After a declaration under sub-section (1) is made the Collector shall prepare a statement in the prescribed form giving details of the area description and full particulars of the land which is delimited as surplus land, and also of the land therefrom, the right, title and interest in which is to be forfeited to the State Government.

The Collector shall affix a copy of the statement at the village chawdi or any other prominent place at the village and shall also despatch a copy of the statement to the person or to the member of the family unit interested in the land delimited as surplus.

On the date of the announcement of the declaration mentioned in the preceding sub-

section the right, title and interest in the land which is liable to

Where possession of any land delimited as surplus is handed over by the holder in pursuance of an undertaking given by him in any court, and the appeal filed by the holder against the declaration of that land as surplus has been subsequently withdrawn or dismissed, the land, notwithstanding anything contained in sub-section (4), shall with effect from the date on which the possession thereof is taken by the Collector, be deemed to be duly acquired by the State Government for the purposes of the Act, and shall accordingly be deemed to have been validly and effectually vested without further assurance and free from all encumbrances in the State Government from the date of taking over possession thereof.

Damages for use and occupation of surplus land (Section 21-A)

A person or a family unit which possesses land in excess of the ceiling area shall be liable to pay to the State Government for the period from the year following the year in which the excess of surplus area so held is declared surplus till the possession of surplus land is taken under section 21, such compensation for the use and occupation of such land as the Collector may fix in the prescribed manner.

Where an enquiry is pending on or after the commencement date for determining the surplus land under this Act

the holder shall be liable to pay to the State Government for the period from the commencement date or the date on which the excess area is declared surplus under section 21, whichever is later, till the date of possession of surplus land is actually taken under that section, compensation for use and occupation of such surplus land as the Collector may fix in the prescribed manner.

Compensation.

Maharashtra Agricultural Lands (Ceiling on Holdings) Act lays down following provisions relating to compensation -

1 payment of compensation (section 22)

Compensation for any land, acquired by the State Government for the purposes of this Act, shall be paid to extent, and in the manner, hereinafter provided.

2 . Quantum of compensation (section 22)

In each of the districts and talukas specified in column 1 of the First Schedule, Quantum of for each class of land described in columns 2, 3, 4, 5 and 6 of that Schedule, the amount of compensation for surplus land acquired by the State Government under section 21 shall consist of—

(a) in case of dry crop land falling under column 5 or 6 the price calculated at the price per hectare specified in column 7 of that Schedule, or

(b) in the case of land falling under columns 2, 3 and 4 of that Schedule, the price calculated at the price per hectare of dry crop land increased by one hundred, by fifty and by twenty-five per cent; respectively.

Explanation.—In the case of land referred to in clause (a), the price shall not in any case exceed one thousand rupees per hectare, and in the case of land referred to in clause (b), the price shall not in any case exceed five thousand rupees per hectare

Provided that in the case of land which is not cultivated for a continuous period of three years immediately before the commencement date the price shall be twenty-five per cent. of the price calculated under clause (a) or (b), as the case may be.

Distribution of surplus land

. Act lays down following provisions relating to distribution of surplus land -

1 . Distribution of surplus land

Land (other than grazing land or tank land or land notified by the State Government as not capable or being disposed of for cultivation)

which is acquired by and vests in the State Government under section 21

shall, be granted by State Government or other officer in the order of priority set out in sub-sections (2), (3), (4), and (5) which are as under-

Where the surplus land belonged to a holder, who at any time before the commencement date, by resuming land from his tenant for personal cultivation under any tenancy law, has rendered that tenant landless,

the surplus land shall first be offered to that tenant.

Where any part of the holding of a person which consist of one or more compact blocks is declared as surplus land under this Act, then such surplus land—

(a) shall first be offered to the landlord who had leased the land to the such person and such landlord has not exercised his right of resumption under the relevant tenancy law or under section 19; and

(b) then to a person, who being previously employed on the compact block as an agricultural labourer or as technical or other staff engaged on or in relation to the agricultural produce raised or grown thereon, has been rendered unemployed as a result of the land of such block being declared surplus land.

Thereafter fifty per cent. of the surplus land (excluding lands referred to in sub-sections (2) and (3) shall be reserved for distribution to landless persons belonging to the Scheduled Castes, Scheduled Tribes (whether residing in the Scheduled area or not)

and landless persons belonging to such nomadic tribes, vimtukta Jatis and backward classes as may be notified by the State Government from time to time,

and land so reserved shall be granted to such persons in accordance with the rules made in this behalf. Such rules may provide for fixing priorities.

Thereafter, all surplus land (including surplus land which has not been granted under sub-sections (2) and (3) shall be offered in the following order of priority,

(i) a person from whom any land has been resumed by his landlord for personal cultivation under any tenancy law, and who in consequence thereof has been rendered landless, provided that such person is a resident of the village in which the surplus land for distribution is situate or within eight kilometers thereof;

(ia) A non-Tribal-transferee whose land (being land of a Tribal transferor transferred to the non-Tribal-transferee) has been restored to the Tribal-transferor under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act,

Government from time to time, and land so reserved shall be granted to such persons in accordance with the rules made in this behalf. Such rules may provide for fixing priorities.

(ia) A non-Tribal-transferee whose land (being land of a Tribal transferor transferred to the non-Tribal-transferee) has been restored to the Tribal-transferor under the provisions of the Maharashtra Restoration of Lands to Scheduled Tribes Act,

Appeal and Maharashtra Revenue Tribunal

Following are important provisions

1. Appeal (to Tribunal section 33)

An appeal against an order or award of the Collector shall lie to the Appeals.

Maharashtra Revenue Tribunal in the following cases :-

(1) an order under sub-sections (2) and (3) of section 13 1 [not being an order under which a true and correct return complete in all particulars is required to be furnished

(2) a declaration or any part thereof under section 21

(2a) an order under section 21-A;

(3) an award under section 25;

(4) an order refusing sanction to transfer or divide land under section 29;

(5) an order of forfeiture under sub-section (3) of section 29;

(6) an amendment of declaration or award under section 37; and

(7) an order of summary eviction under section 40.

(1A) Any respondent, though he may not have appealed from any part of the decision, order, declaration or award, may not only support the decision, order, declaration or award, as the case may be, on any of the grounds decided against him but take cross-objection to the decision, order, declaration or award which he could have taken by way of an appeal :

Provided that, he has filed the objection in the Maharashtra Revenue Tribunal within thirty days from the date of service on him of notice of the day fixed for hearing the appeal, or such further time as the Tribunal may see fit to allow and thereupon, the provisions of Order 41, rule 22 of the First Schedule to the Code of Civil Procedure, 1908, shall apply in relation to the cross-objection as they apply in relation to the cross-objection under that rule.

(2) Every petition of appeal under sub-section (1), shall be accompanied by a copy of the decision, order, declaration or award, as the case may be, against which the appeal is made.

(3) In deciding such appeal the Maharashtra Revenue Tribunal shall exercise all the powers which a court has and follow the same procedure which a court follows, in deciding appeals from the decree or order of an original court, under the Code of Civil

Procedure, 1908.

2. Power of Maharashtra Revenue Tribunal to confirm etc order (section 34)

The Maharashtra Revenue Tribunal, in deciding an appeal under section 33, may confirm, modify or rescind the decision, order, declaration or award or amended declaration.

3. Limitation for Appeal (Section 35)

Every appeal under this Act shall be filed within a period of fifteen days from the date of the decision, order, declaration or award of the Collector. The provisions of sections 4, 5, 12 and 14 of the Indian Limitation Act, 1908, shall apply to the filing of such appeal.

4. Court Fee

Notwithstanding anything contained in the Bombay Court fees Act, 1959

every appeal made under this Act to the Maharashtra Revenue Tribunal shall bear court-fee stamp-

(i) in the case of a declaration of the Collector under section 21 or an amended declaration under section 37 of twenty-five rupees

(ii) in the case of an award of the Collector under section 25 or an amended award under section 37 of an amount equal to five percent of the difference between the amount of compensation awarded to the appellant and that claimed by him in his appeal, or rupees fifteen, whichever is more

and

(iii) in any other case, of five rupees.

In *Newabganj Sugar Mill v Union of India* AIR 1976 S.C. 1152

Court held that every court or tribunal is constituted for doing justice and can exercise necessary powers for that purpose.

Collector: Powers And Functions

Following are provisions relating -

1. Power of Collector to correct clerical etc. mistakes in declaration or award (section 37)

Any clerical or arithmetical mistake in the declaration made under section 21 or in an award made under section 25, or error arising therein from accidental slips or omissions, may be corrected by the Collector, either of his own motion or on the application of a person interested in the declaration or award, and the mistakes in declaration or award as corrected, shall be deemed to have been amended accordingly

However no declaration or award shall be corrected unless an opportunity is given to the person whose interest may be affected as a result of such correction to be heard

2. Sums recoverable as arrears of land revenue (section 38)

Any sum, whether by way of occupancy price, rent, fine, overpayment of compensation payable under section 21A or, otherwise payable by any person to the State Government by or under the provisions of this Act, shall if not paid land by such person, be recoverable as an arrear of land revenue.

3. Mode of putting persons in possession of land (Section 39)

Any order of the Collector, or any other officer authorised under section 27 awarding possession or restoring the possession or use of any land, shall be executed by the Mamlatdar or the Tahsildar within whose jurisdiction the land is situate in the manner provided in section 21 of Mamlatdar's Act.

An order of the Maharashtra Revenue Tribunal in appeal or of the State Government in revision shall be executed in the manner provided for the execution of the order of the Collector under sub-section (1).

4. Summary Eviction (section 40)

Any person, unauthorisedly occupying or wrongfully in possession of, any land—

(a) which vests in the State Government under this Act, or

(b) to the use and occupation of which he is not entitled under the provisions of this Act, may be summarily evicted by the Collector after such inquiry as he deems fit.

According to section 40A If any person or any member of a family unit who is liable to furnish a return as required by section 12 fails to furnish the return within the time specified in Act or furnishes a return which he knows or has reason to believe to be

false he shall in addition to the penalty prescribed in section 13, on conviction, be punished with imprisonment for a term which may extend to two years or with fine which may extend to two thousand rupees or with both.

(No Court shall take cognisance of an offence punishable under this Act except with previous sanction of the Collector, which sanction shall be accorded subject to such rules as may be prescribed.

According to section 41 no civil court shall have jurisdiction to settle, decide or deal with any question Bar of which is by or under this Act required to be settled, decided or dealt with by the jurisdiction. Commissioner, Collector Tribunal the officer authorised under section 27, the Maharashtra Revenue Tribunal or the State Government.

According to section 42 all inquiries and proceedings before the Collector, the Tribunal and the Inquiries of Maharashtra Revenue Tribunal shall be deemed to be judicial proceedings within the proceedings to be judicial proceedings .

Module 07

The Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act 1947.

Object And Application of Act.

Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act has been enacted by Legislature of Maharashtra with a view -

I.to prevent of fragmentation of agricultural holdings.

II.to provide consolidation of agricultural holdings for its better cultivation.

●Important Denitions Under Act Section 2.

(2) consolidation of holdings

means -

the amalgamation ,and where necessary ,

the redistribution of holdings or portions of holdings in any village, mahal or taluka or

any part thereof so as to reduce the number of plots in holdings

(3) Consolidation Officer means an officer appointed as such under section 15 by the State Government

and includes any person authorised by the State Government to perform all or any of the functions of the Consolidation Officer under this Act;

(4) Fragment means a plot of land of less extent than the appropriate standard area determined under this Act:

Provided that no plot of land shall be deemed to be a fragment by reason of any diminution in its area by diluvion;

(5) land means agricultural land whether alienated or unalienated;

10) Standard area in respect of any class of lands which the State Government may from time to time determine under section 5 as the minimum area for profitable cultivation in any particular local area and includes a standard area revised under the said section.

● Important provisions

1. Determination of Local and Standard Areas (section 3)

The State Government may, after such inquiry as it deems fit, by notification in the Official Gazette, specify a village, mahal or taluka or tehsil or any part thereof as a local area for the purposes of this Act.

2. Settlement of standard areas (section 4)

The State Government may after such inquiry as it deems fit and after consultation with the District Advisory Committee or any other body, appointed by it, provisionally settle for any class of land in any local area the minimum area that can be cultivated profitably as a separate plot.

(2) The State Government shall by notification in the Official Gazette, and in such other manner as may be prescribed publish the minimum areas provisionally settled by it under sub-section (1) and invite objections thereto.

3. Determination and revision of standard areas (section 5)

The State Government shall, after considering the objections, if any, received within

three months of the date of publication of the notification under sub-section (2) of section 4 in the village concerned and making further inquiry as it may deem fit, determine the standard area for each class of land in such local area.

(2) The State Government may, at any time if it deems it expedient so to do, revise a standard area determined under sub-section (1). Such revision shall be made in the manner laid down in section 4 and sub-section (1).

(3) The State Government shall, by notification in the Official Gazette, and in such other manner as may be prescribed, give public notice of any standard area determined under sub-section (1) of section 5 or revise.

4. Entry in the Record of Rights (section 6)

On notification of a standard area under sub-section (3) of section 5 for a local area all fragments in the local area shall be entered as such in the Record of Rights or where there is no Record of Rights in such village record as the State Government may prescribe.

(2) Notice of every entry made under sub-section (1) shall be given in the manner prescribed for the giving of notice [in the Hyderabad area of the State, under the Hyderabad Record of Rights in Land Regulation, 1358 Fasli and elsewhere, under the relevant Code,] of an entry in the register of mutations.

Restriction and prohibitions on Transfer .

Act lays down following provisions -

1. Transfer and lease of fragments. (Section 7)

No person shall transfer any fragment in respect of which a notice has been given under sub-section (2) of section (6) except to the owner of a contiguous survey number or recognised sub-division of a survey number:

Provided that the holder of such fragment may mortgage or transfer it to the State Government or a land mortgage bank or any other co-operative society as security for any loan advanced to him by the State Government or such bank or society, as the case may be.

(2) Notwithstanding anything contained in [any law for the time being in force or in any instrument or agreement], no such fragment shall be leased to any person other

than a person cultivating any land which is contiguous to the fragment.

2. Fragmentation prohibited.(Section 8)

No land in any local area shall be transferred or partitioned so as to create a fragment.

3. Restriction on partition of land.(section 8 AA)

Where, by transfer, decree, succession or otherwise, two or more persons are entitled to shares in an undivided agricultural land in any local area for which standard areas have been fixed, and the land has to be partitioned among them, such partition shall be effected so as not to create a fragment.

(2) Where such partition is made by the Court or the Collector, the following procedure shall be adopted:-

(a) If, in effecting a partition among several co-sharers, it is found that a co-sharer is entitled to a specific share in the land and cannot be given that share without creating a fragment, he shall be compensated in money for that share. The amount of compensation shall be determined so far as practicable in accordance with the provisions of section 23 of the Land Acquisition Act, 1894.

4. Penalty for transfer or partition contrary to provisions of Act(section 9)

The transfer or partition of any land contrary to the provisions of this Act shall be void.

(2) The owner of any land so transferred or partitioned shall be liable to pay such fine not exceeding Rs. 250 as the Collector may, subject to the general orders of the State Government, direct. Such fine shall be recoverable as an arrear of land revenue.

(3) Any person unauthorizedly occupying, or wrongfully in possession of, any land the transfer or partition of which, either by the act of parties or by the operation of law, is void under the provisions of this Act, may be summarily evicted by the Collector.

Provided that, save as otherwise provided in section 31, the Collector may, upon an application made in this regard, regularise a transfer or partition of a land contrary to the provisions of this Act made on or after 15th day of November 1965 and before the date of commencement of Maharashtra Prevention of Fragmentation and Consolidation of Holdings (Amendment) Act, 2017, if such land is allocated to residential, commercial, industrial, public or semi-public or any non-agricultural use, in the prevailing draft or final Regional Plan; or is intended to be used for any bona fide non-agricultural user, subject to payment of regularisation premium at such per

centum not exceeding 25 per cent. of the market value of such land as per the Annual Statement of Rates, as the Government may notify, from time to time, in the Official Gazette:

Provided further that, save as otherwise provided in section 31, if a transaction of transfer or partition of land contrary to the provisions of this Act is regularised on the ground that the land would be used for any bona fide non-agricultural use, then failure to start such bona fide non-agricultural use within 5 years from the date of regularisation shall result in forfeiture of such land by the Collector. Such land thereafter shall be first offered to the holder or occupant of a neighbouring contiguous survey number or recognised sub-division of a survey number on payment of 50 per cent. of the market value of such land as per the prevailing Annual Statement of Rates and three-fourth of the amount so collected shall be paid to the defaulting person from whom such land was forfeited to the Government and the remaining one-fourth of the amount so collected shall be credited into the Government account. Where occupant of such neighbouring contiguous survey number or recognised subdivision refuses to purchase the fragment, the fragment shall be auctioned by the State Government and the proceeds thereof shall be divided between the defaulting person and the Government in the ratio of 3:1.0.

●Transfer of fragment to Government. And compensation(Section10,12)

Any owner of a fragment may transfer it to the State Government. on payment by the State Government of such compensation to persons possessing interest therein as the Collector may determine and thereupon the fragment shall vest absolutely in the State Government free from all encumbrances but no such fragment shall be transferred to the State Government unless it is first offered to the owner of a contiguous survey number or recognised sub-division of a survey number on payment of the compensation determined by the Collector as aforesaid and such owner has refused to purchase the fragment on payment of such compensation.

(2) Any such fragment may be disposed of in accordance with the provisions of Section 117B of the Bombay Land Revenue Code, 1879 or section 158 of the Madhya Pradesh Land Revenue Code, 1954, or as the case may be, may be disposed of as unoccupied land under the provisions of the Hyderabad Land Revenue Act,

Section 12 is provision for determination of compensation.

In determining the compensation for the purposes of section 10 the Collector shall

have regard to the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894.

Consolidation and its procedure.

Maharashtra Prevention of Fragmentation and Consolidation of Holdings Act 1947 lays down following provisions -

1. Government may on its own accord

or on application declare its intention to make scheme for consolidation of holdings(section 15)

With the object of consolidating holdings in any village, mahal, taluka or tehsil or any part thereof for the purpose of better cultivation of lands therein, the State Government may [of its own motion or on an application made in that behalf declare by a notification in the Official Gazette and by publication in the prescribed manner in the village or villages concerned its intention to make a scheme for the consolidation of holdings in such village or villages or part thereof as may be specified. On such publication in the village concerned the State Government may appoint a Consolidation Officer who shall proceed to prepare a scheme for the consolidation of holdings in such village or villages or part thereof, as the case may be in the manner hereinafter provided.

2. Preparation of scheme and principles to be followed in its preparation(section 15-A)

The Consolidation Officer shall, after giving due notice to the land owners concerned and the village committee, visit each of the concerned villages

, and shall, in consultation with the village committee, proceed to prepare a scheme for the consolidation of holdings which shall include such statements, records and maps as may be prescribed.

(2) In preparing the scheme, the Consolidation Officer shall have regard to the procedure which the State Government may from time to time prescribe in regard to the number of blocks in which the village lands are to be grouped, the manner of allotting new plots to each owner,

the recommendations of the village committee and such other matters as may be prescribed.

3. Scheme to provide for compensation. (Section 16)

The scheme prepared by the Consolidation Officer shall provide for the payment of compensation to any owner who is allotted a holding of less market value than that of his original holding and for the recovery of compensation from any owner who is allotted a holding of greater market value than that of his original holding.

(2) The amount of compensation shall be determined, so far as practicable, in accordance with the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894.

17. Amalgamation of public roads etc., within scheme for consolidation of holdings. -

(1) Whenever in preparing a scheme for the consolidation of holdings, it appears to the Consolidation Officer that it is necessary to amalgamate any road, street, lane or path with any holding in the scheme, he shall make a declaration to that effect stating in such declaration that it is proposed that the rights of the public as well as of all individuals in or over the said road, street, lane or path shall be extinguished or, as the case may be, transferred to a new road, street, lane or path laid out in the scheme of consolidation. (2) The amount of compensation shall be determined, so far as practicable, in accordance with the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894.

3. Amalgamation of public roads etc., within scheme for consolidation of holdings (section 17)

Whenever in preparing a scheme for the consolidation of holdings, it appears to the Consolidation Officer that it is necessary to amalgamate any road, street, lane or path with any holding in the scheme, he shall make a declaration to that effect stating in such declaration that it is proposed that the rights of the public as well as of all individuals in or over the said road, street, lane or path shall be extinguished or, as the case may be, transferred to a new road, street, lane or path laid out in the scheme of consolidation.

(2) The declaration in sub-section (1) shall be published in the village concerned in the prescribed manner along with the draft scheme referred to in section 19.

(3) Any member of the public or any person having any interest or right, in addition to the right of public highway, in or over the said road, street, lane or path

or having any other interest or right which is likely to be adversely affected by the proposal

may, within thirty days after the publication of the declaration under sub-section (1)

state to the Consolidation Officer in writing his objection to the proposal, the nature of such interest or right and the manner in which it is likely to be adversely affected and the amount and the particulars of his claim to compensation for such interest or right:

However no claim for compensation on account of the extinction or diminution of the right of public highway over such road, street, lane or path shall be entertained.

(4) The Consolidation Officer shall,

after considering the objections made to the proposal,

submit it with such amendments as he may consider necessary,

to the Settlement Commissioner, together with the objections received, his recommendations thereon and a statement of the amounts of compensation, which in his opinion are payable,

and of the persons by whom and the persons to whom such compensation is payable.

The decision of the Settlement Commissioner on the proposal and regarding the amount of compensation and the persons by whom such compensation, is payable, shall,

subject to any modification made by the State Government, be final.

4.Land reserved for public purpose.(Section 18)

(1) Notwithstanding anything contained in any law for the time being In force, it shall be lawful for the Consolidation Officer, in consultation with the village committee,-

(a) to direct that any land specifically assigned for any public purpose shall cease to be so assigned and to assign any other land in its place;

(b) if in any area under consolidation no land is reserved for any public purpose including extension of the village sites, or if the land so reserved is inadequate, to assign other land for such requirements and for that purpose to effect a proportionate cut in all the holdings of the village.

(2) Where a proportionate cut in all the holdings of a village has been effected under sub-section (1), the State Government shall pay to every person affected thereby compensation in respect of the land covered by such cut at the market value of the

land at the date of the publication of the notification under section 15.

(3) Except provided in sub-section (2) the amount of such compensation shall be determined by the Consolidation Officer, so far as practicable in accordance with the provisions of sub-section (1) of section 23 of the Land Acquisition Act, 1894.

5. Publication of draft scheme and of amended draft scheme (section 19)

When a scheme of consolidation is ready for publication, the Consolidation Officer shall publish a draft thereof in the prescribed manner in the village or villages concerned. Any person likely to be affected by such scheme, may, within thirty days of the date of such publication, communicate in writing to the Consolidation Officer any objections relating to the drafts scheme.

(2) If any objections are received and after considering them, the Consolidation Officer considers it necessary to amend the draft scheme, he shall amend the draft scheme and publish the amended draft scheme as provided in sub-section (1). Any person likely to be affected by such amended draft scheme, may, within thirty days of the date of such publication, communicate in writing to the Consolidation Officer, any objections relating to the amended draft scheme.

(3) (a) Where no objections are received to the draft scheme published under sub-section (1) or to the amended draft scheme published under sub-section (2), such draft scheme or amended draft scheme,

(b) where objections are received to the said draft scheme or amended draft scheme but the Consolidation Officer does not consider it necessary to amend the said draft scheme or amended draft scheme, such draft scheme or amended draft scheme, together with the objections and his remarks thereon,

(c) where objections are received to the said amended draft scheme and after considering the objections, the Consolidation Officer considers it necessary to amend further the amended draft scheme, such amended draft scheme as further amended, together with the objections and his remarks thereon, shall be forwarded by the Consolidation Officer to the Settlement Commissioner for confirmation.

6. Confirmation of draft scheme or amended draft scheme. (Section 20)

(1) If on receipt of a draft scheme or an amended draft scheme under sub-section (3) of section 19, the Settlement Commissioner, after considering the objections, if any, and the remarks of the Consolidation Officer thereon and after being otherwise satisfied about the correctness of procedure followed by the Consolidation Officer and

the allotment of holdings and compensation or about there being no clerical or arithmetical mistake or error arising from accidental slip or omission, approves of the draft scheme or, as the case may be, amended draft scheme, he shall confirm it.

(2) If the Settlement Commissioner does not approve of the draft scheme or the amended draft scheme forwarded by the Consolidation Officer and considers it necessary to amend it, he shall further amend it and publish it as amended in the prescribed manner in the village or villages concerned. Any person likely to be affected by the draft scheme as so published may, within thirty days of the date of such publication, communicate his objections in writing to the Settlement Commissioner.

(3) If no objections are received within the period specified in sub-section (2), the Settlement Commissioner shall confirm the draft scheme as published under that sub-section. If any objections are received within the said period, the Settlement Commissioner shall after considering the objections confirm the draft scheme as published under sub-section (2) without any modification therein or with such modifications therein as he may consider necessary.

7.Enforcement of scheme.(section21)

Upon the confirmation of any scheme under section 20, a notification stating that the scheme has been confirmed shall be published by the Settlement Commissioner in the Official Gazette, and the scheme as confirmed shall be published in the prescribed manner in the village or villages concerned.

(2) Within one year from the date of publication of the notification in the Official Gazette under sub-section (1), the owners from whom compensation is recoverable under the scheme shall deposit the amount of compensation in the prescribed manner.

(3) The Consolidation Officer shall, from the commencement of the agricultural year next following the date of publication of the notification in the Official Gazette under sub-section (1) and in the prescribed manner, put the owners in possession of the holdings to which they are entitled under the scheme and for doing so may, in the prescribed manner, evict any person from any land which he is not entitled to occupy under the scheme:

Provided that, if two-thirds or more of the owners affected by the scheme agree to enter into possession of the holdings to which they are entitled under the scheme, the Consolidation Officer may put them in possession of such holdings from such earlier date as may be decided upon by such owners.

(4) If the Consolidation Officer is satisfied that any standing crops, trees, embankments or similar other improvements which were not taken into consideration at the time of determining the compensation payable by owner of any holding under the scheme

are found on such holding at the time of putting the owner in possession of such holding, or that any such standing crops, trees, embankments or similar other improvements which were taken into consideration at the time of determining the compensation payable by an owner of any holding have ceased to exist

or are substantially damaged at the time of putting the owner in possession of such holding, he shall by order determine in the prescribed manner the additional compensation payable by the owner

or, the reduction to be made in the compensation payable to the original owner of such holding.

Where additional compensation is to be paid, it shall be deposited in the prescribed manner by the owner from whom it is recoverable, within one year from the date of order passed by the Consolidation Officer for determining the additional compensation.

(5) If the owner from whom the compensation is recoverable fails to deposit it within the period specified in sub-section (2) or (4)

or within such further period not exceeding one year as may be extended by the Consolidation Officer,

it shall be recovered from him as an arrear of land revenue.

(6) If an owner refuses to accept possession of the holding to which he is entitled under the scheme,

his rights in Such holding may be allotted in the prescribed manner by the Consolidation Officer

to any other person who pays the value of the holding, and in such case the value realised after deducting the expense that is the net value ,shall be paid to the owner and any other person having an interest in the holding.

(7) If no person forthcoming to pay the value of the holding, the State Government may recover from the owner the compensation recoverable from him under the scheme as an arrear of land revenue

or the State Government may itself purchase the holding after paying the net value of the holding to the owner and any other person having an interest in the holding.

8. Coming into force of scheme (section 22) As soon as the persons entitled to possession of holdings under this Act have entered into possession of the holdings respectively allotted to them, the scheme shall be deemed to have come into force.

● Certificate of transfer (section 24)

The Consolidation Officer shall grant

to every owner, to whom a holding has been allotted in pursuance of a scheme of consolidation

and to every person to whom a right is allotted under sub-section (6) of section 21

a certificate in the prescribed form duly registered under the Indian Registration Act, 1908, to the effect that the holding has been transferred to him in pursuance of the scheme.

The Consolidation Officer may cause to be published in new record of rights in respect of the holdings so transferred. And the record of rights so prepared shall be deemed to have been prepared in the Hyderabad area of the State, under the Hyderabad Record of Rights in Land Regulation.

According to Clause (2) Notwithstanding anything contained in any law for the time being in force

no stamp or registration fee shall be payable in respect of such certificate.

In Hemraj v Sirajbai 2008(4) Bom.C.R.669 Court held that duty is cast upon consolidation officer to issue certificates to every owner to whom holding has been allotted in pursuance of scheme of consolidation.

Rights in holdings (section 28)

Every owner, to whom a holding is allotted in pursuance of a scheme of consolidation shall,

save as otherwise provided in section 29A,

have the same rights in such holding as he had in his original holding.

However this section shall not apply to any person to whom a holding has been allotted under the provisions of sub-section (6) of section 21.

Bapusaheb Sahara v Vitthal Patil 2009 (1) Bom.C.R.813 is on the point. In this case right to draw water from well was recognised.

•Transfer of encumbrances.(Section 29)

If the holding of an owner included in a scheme of consolidation ,which has come into force under section 22, is burdened with a mortgage, debt or other encumbrance other than a lease

such mortgage, debt or other encumbrance shall be transferred therefrom and attach itself to the holding allotted to him under the scheme or to such part of it as the Consolidation Officer may, subject to any rules made under section 37, appoin.

And the mortgagee, creditor or other encumbrancer, as the case may be, shall exercise his rights accordingly.29A.

If the holding of an owner included in a scheme of consolidation which has come into force under section 22 is burdened with a lease, the Consolidation Officer shall, by an order in writing ,determine whether such lease shall or shall not be transferred therefrom.

A copy of the order passed by the Consolidation Officer under this sub-section shall be affixed to a place near the holding and shall also be published in the prescribed manner.

According to clause (2) If the Consolidation Officer determines that such lease shall be transferred from the original holding

it shall attach itself to the holding allotted to the owner under the scheme or such part of it as the Consolidation Officer may, subject to any rules made under section 37, appoint and the lessee shall exercise his rights accordingly. The provisions of sub-sections (2) and (3) of section 29 shall apply to such lease as if the lease were a mortgage or other encumbrance.

(3) If the Consolidation Officer determines that such lease shall not be transferred from the original holding

it shall remain attached to it, and the owner to whom such holding is allotted under the scheme shall hold it subject to such lease . The change in the ownership, apply to such lease; and the rights and liabilities of such owner and the lessee shall be governed by the provisions of the said law as between the landlord and his tenant

However owners shall not be entitled to arrears of rent due under such lease immediately before the allotment of the holding as aforesaid.

According to clause (4) an appeal against the decision of the Consolidation Officer under this section shall lie to the Settlement Commissioner within the prescribed time

•Bar of jurisdiction(Section 36A).According to section 36A

Civil Court or Mamlatdar's Court shall have no jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the State Government or any officer or authority.

According to Clause (2) no order of the State Government or any such officer or authority made under this Act shall be questioned in any Civil, Criminal or Mamlatdar's Court.

In Ashok Yeshwant v Shankar Maruti 2001 (3)Bom.C.R. 27.

Court held that in matter of consolidation civil court has no jurisdiction.
