

THE NON-AGRICULTURAL TENANCY ACT, 1949

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THE NON-AGRICULTURAL TENANCY ACT, 1949

ACT NO. XXIII OF 1949

[20th October, 1949]

An Act to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in Bangladesh.*

WHEREAS it is expedient to make better provision relating to the law of landlord and tenant in respect of certain non-agricultural tenancies in Bangladesh;

It is hereby enacted as follows:-

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the ¹[* * *] Non-Agricultural Tenancy Act, 1949. Short title,
extent and
commencement

(2) It extends to the whole of Bangladesh.

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

2. In this Act, unless there is anything repugnant in the subject or context- Definitions

(1) "Bengali year" means a year ending on the last day of the Bengali month of *Chaitra*;

(2) "Deputy Commissioner" includes any officer appointed by the Government to perform all or any of the functions of a Deputy Commissioner under this Act;

* Throughout this Act, unless otherwise provided, the words "Bangladesh" and "Government" were substituted for the words "East Pakistan" and "Provincial Government" respectively by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

¹ The words "East Bengal" were omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

- (3) “Landlord” means a person immediately under whom a non-agricultural tenant holds;
- (4) “Non-agricultural land” means land which is used for purposes not connected with agriculture or horticulture and includes any land which is held on lease for purposes not connected with agriculture or horticulture irrespective of whether it is used for any such purposes or not, but does not include-

¹[* * *]

- (b) land which was originally leased for agricultural or horticultural purposes but is being used for purposes not connected with agriculture or horticulture without the consent either express or implied of the landlord, if the period for which such land has been so used is less than twelve years; and
- (c) land which is held for purposes connected with the cultivation or manufacture of tea:

Provided that where an order has been made under section 72 converting a parcel of land which is not non-agricultural land into a tenancy to which the provisions of this Act apply such land shall be deemed to be non-agricultural land;

- (5) “Non-agricultural tenant” means a person who holds non-agricultural land under another person with the consent of that person and is, or but for a special contract would be liable to pay rent to such person for that land and also includes the successors-in-interest of the former but does not include any person who holds any such land on which any premises occupied by such person are situated if such premises have been erected, or are owned, by the person to whom such occupier is, or but for a special contract would be, liable to pay rent for such occupation;

Explanation.- In this clause “premises” mean any building such as a house, manufactory, warehouse, stable, shop or hut whether constructed of masonry, bricks, concrete, wood, mud, metal or any other material whatsoever and includes any land appertaining to such building;

¹ Sub-clause (a) was omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

- (6) “prescribed” means prescribed by rules made under this Act;
- (7) “*pucca* structure” means any structure constructed mainly of brick, stone or concrete or any combination of these materials;
- (8) all words and expressions used but not defined in this Act and used in¹[* * *] the Transfer of Property Act, 1882, have the same meanings as in those Acts.

CHAPTER II

CLASSES OF NON-AGRICULTURAL TENANTS

3. (1) There shall be, for the purposes of this Act, the following classes of non-agricultural tenants, namely:-

Classes of non-agricultural tenants

- (a) tenants; and
- (b) under-tenants.

(2) “Tenant” means a person who has acquired from a proprietor or a tenure-holder a right to hold non-agricultural land for any of the purposes provided in this Act, and includes also the successors-in-interest of persons who have acquired such a right.

(3) “Under-tenant” means a person who has acquired a right to hold non-agricultural land for any of the purposes provided in this Act either immediately or mediately under a tenant and includes also the successors-in-interest of persons who have acquired such a right.

4. A non-agricultural tenant may hold non-agricultural land for-

Purposes for which non-agricultural tenant may hold non-agricultural land

- (a) homestead or residential purposes;
- (b) manufacturing or business purposes; or
- (c) religious or other purposes.

¹ The words, commas and figure “Bengal Tenancy Act, 1885, or” were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Tenancies held
by a non-
agricultural
tenant

5. A non-agricultural tenant shall be deemed to hold any non-agricultural land-

- (a) for homestead or residential purposes if such tenant is entitled, under the terms of any agreement between himself and the landlord to use or is actually using such land for homestead or residential purposes;
- (b) for manufacturing or business purposes if such tenant is entitled, under the terms of any agreement between himself and landlord, to use or is actually using such land for carrying on therein any commercial or industrial enterprise or any trade or business; and
- (c) for religious or other purposes if such tenant is entitled, under the terms of any agreement between himself and landlord, to use or is actually using such land for a religious purpose or for any purpose not connected with agriculture or horticulture other than-
 - (i) the purposes specified in clauses (a) and (b), and
 - (ii) the exercise of any forest-rights or rights over fisheries or rights to minerals in such land.

CHAPTER III

TENANTS

Manner of use
of non-
agricultural
lands

6. (1) A tenant holding non-agricultural land may use such land in any manner which is not inconsistent with any of the purposes for which non-agricultural land may be held under this Act and which does not materially impair the value of such land.

(2) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 7 or section 8 apply shall be entitled-

- (a) to erect any structure including any *pucca* structure;
- (b) to erect a mosque, a temple or any other place of worship;
- (c) to dig any tank; and
- (d) to plant, enjoy the flowers, fruits and other products of, and fell and utilise or dispose of the timber of, any tree on such land.

(3) A tenant holding non-agricultural land comprised in any tenancy to which the provisions of section 9 apply shall be entitled-

- (a) to erect any structure other than a *pucca* structure;
- (b) to plant, and enjoy the flowers, fruits and other products of, any tree; and
- (c) to fell, and utilise or dispose of the timber of, any tree planted by him on such land.

7. Notwithstanding anything contained in any other law for the time being in force or in any contract-

Incidents of
certain
tenancies

- (1) if any non-agricultural land has been held with or without any lease having been entered into by the landlord and the tenant from before the commencement of the Transfer of Property Act, 1882, or if the origin of any tenancy is unknown; or
- (2) if the non-agricultural land comprised in any tenancy which has been or is created after the commencement of the Transfer of Property Act, 1882, has been held for a period of not less than twelve years without any lease in writing; or
- (3) if any non-agricultural land has been held under a lease in writing for a period of not less than twelve years but no term is specified in such lease; or
- (4) if any non-agricultural land held under a lease in writing for a period specified therein continues to be held after the expiration of the time limited by such lease and the total period for which such land is so held is not less than twelve years; or
- (5) if the landlord has allowed *pucca* structures to be erected on any non-agricultural land held under a lease in writing for a period specified therein, whether such structures have been erected-
 - (a) before the expiration of the said period; or
 - (b) where such non-agricultural land continues to be held with the express or implied consent of the landlord after the expiration of the said period, during the period such non-agricultural land so continues to be held,

then-

- (i) the tenant holding the non-agricultural land comprised in such tenancy shall not be ejected by his landlord from such land except on the ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4;
- (ii) subject to the provisions of section 91 of the ¹[* * *] State Acquisition and Tenancy Act, 1950, the interest of the tenant in the non-agricultural land comprised in such tenancy shall, in the case where such tenant dies intestate in respect of such interest, be transmitted by inheritance in the same manner as his other immovable property:

Provided that in any case in which under the law of inheritance to which such tenant is subject, his other property goes to the State, his interest in such land shall be extinguished; and

- (iii) the non-agricultural land comprised in such tenancy or a share or a portion thereof together with the interest of the tenant therein shall, subject to the provisions of this Act and of section 90 of the ²[* * *] State Acquisition and Tenancy Act, 1950, be capable of being transferred and bequeathed in the same manner, and to the same extent as his other immovable property.

Renewals of lease of tenancies held for not less than twelve years and succession to, and transfer of, such tenancies

8. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any non-agricultural land is held under a lease in writing for a term of not less than twelve years specified in such lease, the tenant holding such land shall, on the expiration of the period so specified, be entitled to the renewal of such lease for perpetuity on such fair and reasonable rent as may be determined under Chapter XIV of the ³[* * *] State Acquisition and Tenancy Act, 1950:

¹ The words "East Bengal" were omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

² The words "East Bengal" were omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

³ The words "East Bengal" were omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

Provided that no premium or *salami* shall be payable in respect of such renewal.

(2) *Omitted by section 5 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*

(3) A tenant holding non-agricultural land comprised in a tenancy to which the provisions of sub-section (1) apply shall not be ejected by his landlord from such land during the term specified in the lease, nor at any time after the tenant has exercised his right of renewal, except on the ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4.

(4) The interest of the tenant in any non-agricultural land held under a lease to which the provisions of sub-section (1) apply shall, during the term specified in the lease, or where the tenant has exercised his right of renewal, at any time thereafter-

- (i) in the case where such tenant dies intestate in respect of such interest, be, subject to the provisions of section 91 of the ¹[* * *] State Acquisition and Tenancy Act, 1950, transmitted by inheritance in the same manner as his other immovable property:

Provided that in any case in which, under the law of inheritance to which such tenant is subject, his other property goes to the State his interest in such land shall be extinguished; and

- (ii) subject to the provisions of this Act and of section 90 of the ²[* * *] State Acquisition and Tenancy Act, 1950, be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

¹ The words "East Bengal" were omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

² The words "East Bengal" were omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

Incidents of non-agricultural tenancies held for less than twelve years

9. (1) Notwithstanding anything contained in any other law for the time being in force or in any contract, if any non-agricultural land has been held for a term of more than one year but less than twelve years-

- (a) without a lease in writing; or
- (b) under a lease in writing for a term of more than one year and less than twelve years to which the provisions of clause (5) of section 7 do not apply; or
- (c) under a lease in writing but no term is specified in such lease,

then the tenant holding such non-agricultural land shall be liable to ejection on one or more of the following grounds and not otherwise, namely:-

- (i) on the ground that he has used such land in a manner which renders it unfit for use for any of the purposes specified in section 4;
- (ii) on the ground that the term of the lease has expired in the case of tenancies of the class specified in clause (b);
- (iii) on the ground that the tenancy has been terminated by the landlord by six months' notice in writing expiring with the end of a year of the tenancy served on the tenant in the prescribed manner in the case of tenancies of the class specified in clause (a):

Provided that a tenant shall not be liable to ejection on the ground specified in clause (iii) except on payment of such reasonable compensation on account of the cost of removal of any structure erected or of any improvement effected on such land at the expense of the tenant or on other accounts not being the value of the land as may be determined by the Deputy Commissioner in the prescribed manner.

(2) The interest of the tenant in any non-agricultural land to which the provisions of sub-section (1) apply shall-

- (i) in the case where such tenant dies intestate in respect of such interest, be, subject to the provisions of section 91

of the ¹[* * *] State Acquisition and Tenancy Act, 1950, transmitted by inheritance in the same manner as his other immovable property:

Provided that in any case in which under the law of inheritance to which such tenant is subject his other property goes to the State, his interest in such land shall be extinguished; and

- (ii) subject to the provisions of this Act and of the provisions of section 90 of the ²[* * *] State Acquisition and Tenancy Act, 1950, be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

9A. In computing under this Chapter the period for which any non-agricultural land has been held by a tenant, he shall be entitled to tack to the length of his possession any periods during which his predecessors-in-interest were in possession of the land, provided that there is no break between the periods to be tacked.

Computation of the period of possession

10. Notwithstanding anything elsewhere contained in this Act or in any other law for the time being in force or in any contract, if the non-agricultural land comprised in any tenancy is held specifically for any religious purpose for any period under a lease in writing in which such purpose is specified, then such tenancy shall be deemed to be a tenancy of the class specified in section 7:

Special provisions applicable to tenancies for specific religious purposes

Provided that the tenant holding such land shall not be ejected by his landlord from such land except on the ground that he has used such land for any purpose other than the said religious purpose or has not used the land for the said religious purpose for more than three years.

¹ The words "East Bengal" were omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

² The words "East Bengal" were omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

11. [*Enhancement of rent.- Omitted by section 7 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

12. [*Provisions as to enhancement on ground of landlord's improvement.- Omitted by section 7 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

13. [*Powers to order progressive enhancement.- Omitted by section 7 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

14. [*Limitation of right to enhancement.- Omitted by section 7 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

15. [*Reduction of rent.- Omitted by section 7 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

CHAPTER IV

UNDER-TENANTS

Application of
Chapter

16. The provisions of this Chapter shall apply to all under-tenants whether their tenancies were created before or after the commencement of this Act.

17. [*Terms on which an under-tenant may be admitted to occupation of non-agricultural land.- Omitted by section 8 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

18. [*Rate of rent payable by an under-tenant.- Omitted by section 8 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

19. [*Enhancement of rent.- Omitted by section 8 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

20. Notwithstanding anything contained in any other law for the time being in force or in any contract, an under-tenant shall, subject to the provisions of this Act, be liable to ejection on one or more of the following grounds, and not otherwise, namely:-

Ejection of an under-tenant

- (a) on the ground that he has used the non-agricultural land comprised in his tenancy in a manner which renders it unfit for use for any of the purposes specified in section 4;
- (b) on the ground that the term of his lease has expired when he holds the non-agricultural land under a written lease:

Provided that in the case where any non-agricultural land is held by an under-tenant without a lease in writing or under a lease in writing but no term is specified in such lease, it shall be also lawful for his landlord to eject him from such land after having given him six months' notice in writing expiring with the end of a year of the tenancy, and on payment of such reasonable compensation as may be determined by the Deputy Commissioner in the prescribed manner.

21. The interest of an under-tenant in any non-agricultural land shall-

Other incidents of tenancies of under-tenants

- (a) in the case where such under-tenant dies intestate in respect of such interest, be, subject to the provisions of section 91 of the ¹[* * *] State Acquisition and Tenancy Act, 1950, transmitted by inheritance in the same manner as his other immovable property:

Provided that in any case in which under the law of inheritance to which such under-tenant is subject his other property goes to the State, his interest in such land shall be extinguished; and

¹ The words "East Bengal" were omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

- (b) subject to the provisions of this Act and of the provisions of section 90 of the ¹[* * *] State Acquisition and Tenancy Act, 1950, be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

Special incidents of a permanent tenancy of an under-tenant

22. Notwithstanding anything contained in any other law for the time being in force or in any contract, where the conditions referred to in clauses (1), (2), (3), (4) or (5) of section 7 or section 10 are fulfilled in relation to the tenancy of an under-tenant or where any non-agricultural land is held by an under-tenant under a lease in writing for a term of not less than twelve years specified in such lease, such under-tenant shall have as regards his immediate landlord all the rights and liabilities of a tenant as set forth in section 7, section 8 or section 10, as the case may be, and the provisions of section 6 shall apply, and the provisions of section 20, in so far as they are inconsistent with the provisions of this section, shall not apply, to such under-tenant.

CHAPTER V

PROVISIONS AS TO TRANSFER OF NON-AGRICULTURAL LAND

Manner of transfer of non-agricultural land and notices to landlords

23. (1) Every transfer of non-agricultural land held by a non-agricultural tenant or of any portion or share thereof shall, except in the case of a bequest or a sale in execution of a decree or of a certificate signed under the ²[* * *] Public Demands Recovery Act, 1913, be made by registered instrument, and a Registering officer shall not accept for registration any such instrument unless the sale price or, where there is no sale price, value of the land or portion or share thereof transferred is stated therein, and unless it is accompanied by-

- (a) a notice giving the particulars of the transfer in the prescribed form, together with the process fee prescribed for the service thereof on the landlord who is not a party to the transfer; and

¹ The words "East Bengal" were omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

² The word "Bengal" was omitted section 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

- (b) such notices and process fees as may be required by sub-section (4).

(2) In the case of a bequest of such land or portion or share thereof, no Court shall grant probate or letters of administration until the applicant files a notice similar to, and deposits a process fee of the same amount, as, that referred to in clause (a) of sub-section (1).

(3) A Court or Revenue-officer shall not confirm the sale of such land or portion or share thereof put to sale in execution of a decree or a certificate signed under the ¹[* * *] Public Demands Recovery Act, 1913, and no Court shall make a decree or order absolute for foreclosure of a mortgage of such land or portion or share thereof until the purchaser or the mortgagee, as the case may be, files a notice similar to and deposits a process fee of the same amount as that referred to in sub-section (1).

(4) If the transfer of a portion or share of such land be one to which the provisions of section 24 apply there shall be filed notices giving particulars of the transfer in the prescribed form together with process fees prescribed for the service thereof on all co-sharer tenants of such land who are not parties to the transfer.

(5) The Court, Revenue-officer or Registering Officer, as the case may be, shall serve, in the prescribed manner, the notices referred to in the preceding sub-section:

Provided that the service of such a notice shall not operate as an admission of the amount of rent or the area of such land by the landlord or by any co-sharer tenant of such land on whom such notice is served or be deemed to constitute an express consent of the landlord or such co-sharer tenant to the division of the tenancy or to the distribution of the rent payable in respect thereof:

¹ The word "Bengal" was omitted section 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

Provided further that, if a transfer is subsequently set aside or modified by a competent authority in any suit, appeal or other proceedings to which the landlord was not a party, the authority before whom the appropriate suit or proceedings was first initiated shall transmit a copy of such order to the landlord.

Power of the co-sharer or the immediate landlord of transferor to purchase

24. (1) If a portion or share of the non-agricultural land held by a non-agricultural tenant is transferred, one or more co-sharer tenants of such land may, within four months of the service of notice issued under section 23 and, in case no notice had been issued or served, then within four months from the date of knowledge of such transfer, apply to the court for such portion or share to be transferred to himself or to themselves, as the case may be.

(2) The application under sub-section (1) shall be dismissed unless the applicant at the time of making it deposits in Court the amount of the consideration money or the value of the portion or share of the property transferred as stated in the notice served on the applicant under section 23 together with compensation at the rate of five *per centum* of such amount.

(3) If such deposit is made, the Court shall give notice to the transferee to appear within such period as it may fix and to state what other sums he has paid in respect of rent for the period after the date of transfer or in annulling encumbrances on the property and also what other amounts, if any, have been spent by him, between the date of the transfer and the date of service of the notice of the application, in erecting any building or structure or in making any other improvement in the portion or share of the property transferred. The Court shall then direct the applicant, including any person whose application under sub-section (4) is granted, to deposit within such period as the Court thinks reasonable such amount as the transferee has paid or spent on these accounts together with interest at the rate of six and a quarter *per centum per annum* with effect from the date on which the transferee made such payments or spent such amounts:

Provided that if the correctness of any amount claimed to have been paid or spent by the transferee on any such account is disputed by any applicant the Court shall enquire into such

dispute and, after giving the transferee an opportunity of being heard, determine the amount actually paid or spent by the transferee on any such account and shall then direct the applicant to deposit the amount so determined with interest at the rate of six and quarter *per centum per annum* as aforesaid within such period as the Court thinks reasonable.

- (4) (a) When an application has been made by one or more co-sharer tenants under sub-section (1) any of the remaining co-sharer tenants including the transferee, if one of them, may within the period of four months referred to in the said sub-section or within one month of the service of notice of the application, whichever is later, apply to join in the said application, and any co-sharer tenant who has not applied under sub-section (1) or has not applied to join under this sub-section, shall not have any further right to purchase under this section;
- (b) Such application to join as a co-applicant shall be dismissed unless within such period as the Court may fix, the applicant deposits in Court for payment to the applicant under sub-section (1), such sum, as the Court shall determine as the share to be paid by him for the purposes of sub-section (2);
- (c) If such deposit is made, the Court shall grant the application to join and thereafter such applicant shall be deemed to be an applicant under sub-section (1).

(5) If the deposits required under sub-section (2) or clause (b) of sub-section (4), as the case may be, and under sub-section (3) are made, the Court shall make an order allowing the application and directing that the deposits made under sub-sections (2) and (3) shall be paid to the transferee or to such persons as the Court thinks fit.

(6) Notwithstanding anything contained in any other law for the time being in force the Court shall, if the applicant under sub-section (1) or any person whose application under sub-section (4) is granted disputes the correctness of the amount of the consideration money as stated in the notice issued under section 23, inquire into such dispute before making an order under sub-section (5) and after giving the transferee an opportunity of being heard determine for the purposes of this

section the amount of the consideration money which the transferee has actually paid for the transfer of the portion or share of the property and the amount so determined shall be deemed to be the consideration money referred to in sub-section (2) and where the amount of the consideration money has been so determined the deposit made under that sub-section shall for the purposes of sub-section (5) be the amount so determined together with the compensation at the rate of five *per centum* of such amount.

(7) In making an order under sub-section (5) in favour of more than one co-sharer tenant, the Court may apportion the property comprised in the portion or share transferred among the applicants in such manner as it deems equitable after taking existing possession into consideration; the Court shall so apportion the said property or portion thereof on the request of any applicant and, in this case, may require the applicant who makes such request to deposit, within such period as the Court may fix, such further sums as the Court considers necessary for equitable distribution among the remaining applicants:

Provided that no apportionment order under this sub-section shall operate as a division of the tenancy.

(8) From the date of making of the order under sub-section (5)-

- (i) the right, title and interest in the share or portion of the non-agricultural land accruing to the transferee from the transfer shall, subject to any order passed under sub-section (7), vest free from all encumbrances, which have been created after the date of transfer, in the co-sharer tenant whose application to purchase has been allowed under sub-section (5);
- (ii) the liability of the transferee for the rent due from him on account of the transfer shall cease; and
- (iii) the Court, on further application of such applicant, may place him in possession of the property vested in him.

(9) An appeal from any order of a Court under this section shall lie to the Civil Appellate Court having jurisdiction to entertain such appeals.

(10) Nothing in this section shall take away the right of pre-emption conferred on any person by Muhammadan Law.

(11) Nothing in this section shall apply to-

- (a) a transfer to a co-sharer in the tenancy whose existing interest has accrued otherwise than by purchase; or
- (b) a transfer by exchange, or partition; or
- (c) a transfer by bequest or gift (including *heba* but excluding *heba-bil-ewaz* for any pecuniary consideration) in favour of the husband or wife of the testator or the donor or of any relation by consanguinity within three *degrees* of the testator or donor; or
- (d) a *wakf* in accordance with the provisions of the Muhammadan Law; or
- (e) a *debottor* or any other dedication for religious or charitable purposes without any reservation of pecuniary benefit for any individual.

Explanation.- A relation by consanguinity shall for the purposes of this sub-section, include a son adopted under the Hindu Law.

25. Notwithstanding anything contained in the Evidence Act, 1872, nothing contained in any instrument of transfer to which the landlord is not a party shall be evidence against the landlord of the permanence, the amount or fixity of rent, the area, the transferability or any incident of any tenancy referred to in such instrument.

Saving as to statements in instruments of transfer where landlord is not a party

26. (1) In this Chapter “transferee”, “purchaser” and “mortgagee” include their successors-in-interest.

Interpretation

(2) In section 23-

- (a) “transfer” does not include partition or until, a decree or order absolute for foreclosure is made, simple or usufructuary mortgage or mortgage by conditional sale;
- (b) “transferor” includes a person whose interest in any non-agricultural land or portion or share thereof has terminated in the circumstances mentioned in sub-section (2) or sub-section (3) of that section.

Bar to sublet

¹[**26A.** (1) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, no non-agricultural tenant shall sublet the whole or any part of his tenancy on any terms or conditions whatsoever.

(2) If any tenancy or any part of a tenancy is sublet, in contravention of the provision of sub-section (1), the interest of the non-agricultural tenant in the tenancy or in that part of the tenancy, as the case may be, shall be extinguished, and the tenancy or the part of the tenancy shall vest in the Provincial Government from the date of such subletting free from all encumbrances.]

CHAPTER VI

RECORD-OF-RIGHTS AND SETTLEMENT OF RENTS

[Omitted by section 16 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).]

CHAPTER VII

GENERAL PROVISIONS AS TO RENT OF NON- AGRICULTURAL TENANCIES PAYMENT OF RENT

[Omitted by section 16 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).]

CHAPTER VIII

IMPROVEMENTS

Definition of
"improvement"

64. For the purposes of this Act the term "improvements" used with reference to a tenancy shall mean any work which adds to the value of the non-agricultural land comprised in the tenancy, which is suitable to such land and consistent with any of the purposes specified in section 4 for which it is being used and which, if not executed on such land, is either executed directly for its benefit, or is, after execution, made directly

¹ Section 26A was inserted by section 15 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).

beneficial to it, and subject to the foregoing provisions, shall include the following, namely:-

- (a) laying out of passages or roads,
- (b) providing open spaces for ventilation,
- (c) providing facilities for taking water,
- (d) laying out drainage connections,

but shall not include any work executed by a non-agricultural tenant if it substantially diminishes the value of his landlord's property.

65. (1) Subject to the provisions of sub-section (2), neither the non-agricultural tenant nor his landlord shall, as such, be entitled to prevent the other from making an improvement in respect of the tenancy.

Rights to make improvements

(2) If both the non-agricultural tenant and his landlord wish to make the same improvement the non-agricultural tenant shall have the prior right to make it, unless it affects another tenancy or other tenancies under the same landlord.

66. (1) If a question arises between the non-agricultural tenant and his landlord-

- (a) as to the right to make an improvement, or
- (b) as to whether a particular work is an improvement,

Deputy Commissioner to decide question as to right to make improvement, etc.

the Deputy Commissioner may, on the application of either party, decide the question.

(2) An appeal, if presented within thirty days from the date of the order appealed against, shall lie to the District Judge from every order passed by the Deputy Commissioner under sub-section (1) and the order passed by the District Judge on such appeal shall be final.

67. [*Registration of landlord's improvements.- Omitted by section 19 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

Application to record evidence as to improvement

68. (1) If any non-agricultural tenant holding any non-agricultural land desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to the prescribed Revenue-officer and such Revenue-officer shall thereupon, at a time and place of which notice shall be given to the parties, record the evidence:

Provided that such Revenue-officer shall not so record the evidence if he considers that there were no reasonable grounds for the making of the application, or if it appears to him that the subject-matter thereof is under inquiry in a Civil Court.

(2) When any matter has been recorded under this section, the record thereof shall be admissible in evidence in every subsequent proceeding between the landlord and the non-agricultural tenant or any persons claiming under them.

CHAPTER IX

OTHER INCIDENTS OF NON-AGRICULTURAL TENANCIES

69. [*Eviction of non-agricultural tenants, holding tenancies conditional upon employment in industrial concern.- Omitted by section 21 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

No ejection except in execution of decree

70. No non-agricultural tenant shall be ejected from the tenancy or from any non-agricultural land which he holds except in execution of a decree of a competent Civil Court.

Application of the Transfer of Property Act, 1882, or other law

71. The provisions of the Transfer of Property Act, 1882, and of any other law for the time being in force, in so far as they may be applicable and in so far as they are not inconsistent with the provisions of this Act shall continue to apply to all tenancies to which the provisions of this Act apply.

CHAPTER X

CONVERSION OF AGRICULTURAL LANDS INTO NON- AGRICULTURAL TENANCIES

[Omitted by section 22 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).]

CHAPTER XI

JUDICIAL PROCEDURE

73. *[Regard to be had by Civil Courts to entries in record-of-rights.- Omitted by section 23 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).]*

74. *[Execution of decrees for arrears of rent by assignees of such decrees.- Omitted by section 23 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).]*

75. A suit for the ejection of a non-agricultural tenant, on the ground that he has used the non-agricultural land in a manner which renders it unfit for use for any of the purposes specified in section 4, shall not be entertained unless the landlord has served in the prescribed manner, a notice in writing on the non-agricultural tenant-

Relief against forfeitures in certain cases

- (i) specifying the particular misuse complained of, and
- (ii) if the misuse is capable of remedy, requiring the tenant to remedy the same,

and the tenant has, where the misuse is capable of remedy, failed within a reasonable time from the date of the service of the notice to remedy the misuse.

76. *[Protection of the interest of an under-tenant having the rights and liabilities of a tenant in case of sale for arrears of rent.- Omitted by section 24 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).]*

Delivery of possession of land sold for arrears of rent which has any structure erected on it by a non-agricultural tenant

77. Where a non-agricultural tenant or his predecessor-in-interest has erected any structure on any non-agricultural land held by such tenant and such land is sold in execution of a certificate signed under the ¹[* * *] Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the purchaser shall be entitled to obtain delivery of possession of the land sold by the removal of such structure:

Provided that the judgment-debtor shall be allowed reasonable time by the Court to remove such structure from the property sold before the possession of such property is delivered to the purchaser:

Provided further that it shall be open to the purchaser to obtain possession of such land together with such structure on payment of such compensation for the value of such structure to the judgment-debtor as may be agreed upon between the purchaser and the judgment-debtor or, in the case where they do not agree, as may be determined by the Court on application by the purchaser, and, on payment of such compensation, the interest of the judgment-debtor in such structure shall vest absolutely in the purchaser.

78. [*Purchase of non-agricultural tenancy in execution of a decree for arrears of rent to take effect from the date of confirmation of the sale.- Omitted by section 26 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

79. [*Rules for disposal of sale-proceeds.- Omitted by section 26 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

80. [*Release from attachment of non-agricultural tenancies on payment into Court of the amount of decree or on confession of satisfaction by the decree-holder.- Omitted by section 26 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

¹ The word "Bengal" was omitted section 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972).

81. [*Amount paid into Court to prevent sale to be a mortgage-debt on the tenancy in certain cases.- Omitted by section 26 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

82. [*Inferior tenant paying into Court may deduct from rent.- Omitted by section 26 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

83. [*Decree-holder may bid at sale, judgment-debtor may not.- Omitted by section 26 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

84. [*Meaning of “arrears” and “arrears of rent”.- Omitted by section 26 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).*]

CHAPTER XII

MISCELLANEOUS

85. (1) Nothing in this Act shall apply to-

- (a) any land vested in, or in the possession of-
 - (i) a port authority of a port, or
 - (ii) a railway administration, or
 - (iii) any local authority, or
- (b) any lease in respect of any forest-rights or rights over fisheries or rights to minerals in any non-agricultural land, or
- (c) any land acquired under the ¹[Acquisition and Requisition of Immovable Property Ordinance, 1982 (II of 1982)], or under any other law, for the use of any Department of the ²[Government], or

Bar to application of Act to certain lands and to certain cases

¹ The words, comma, figures and brackets “Acquisition and Requisition of Immovable Property Ordinance, 1982 (Ordinance No. II of 1982)” were substituted for the words, comma and figure “Land Acquisition Act, 1894” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The word “Government” was substituted for the words “Central or Provincial Government” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

- (d) any other land in the possession of the ¹[Government],
or
(e) any land held under a public *wakf* or a trust for public purpose.

(2) Nothing in this Act shall apply to any non-agricultural land held by a tenant under the ²[Government]:

Provided that the right vested in a tenant by the provisions of this Act shall not be divested by the acquisition of the superior right only in the land by the Government.

Appeal

³[85A. An appeal against an order passed by the Deputy Commissioner determining compensation under the proviso to sub-section (1) of section 9 or the proviso to section 20 shall, if presented within thirty days of such order, lie to the District Judge.]

Certain contracts not to affect the provisions of the Act

86. Nothing in any contract between a landlord and a non-agricultural tenant made before or after the commencement of this Act shall take away or limit the rights of such tenant as provided for by this Act, and any contract which is in contravention of the provisions of this section or which is inconsistent with, or purports to alter the effect of, any of the provisions of this Act, shall, to the extent of such contravention or inconsistency or to the extent it purports to alter such effect, be void and without effect.

Jurisdiction in proceedings under this Act

87. When under this Act a Court is authorised to make an order on the application of a landlord or a non-agricultural tenant, the application shall be made to the Civil Court which would have jurisdiction to entertain a suit for possession of the non-agricultural land comprised in the tenancy in connection with which the application is made.

¹ The word "Government" was substituted for the words "Central or Provincial Government" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The word "Government" was substituted for the words "Central or Provincial Government" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ Section 85A was inserted by section 27 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).

88. The provisions of this Act shall apply to all suits, appeals and proceedings including proceedings in execution for the ejection of a non-agricultural tenant which are pending at the date of the commencement of this Act and also to all decrees passed for the ejection of a non-agricultural tenant which have not been executed and are not barred by limitation and in respect of which no proceedings in execution are so pending, and the tenants against whom such suits, appeals or proceedings are so pending or such decrees have been passed shall not be liable to be ejected on any ground except under the provisions of this Act.

Application of the provisions of the Act to all pending suits, appeals and proceedings and unexecuted decrees, for ejection

89. [*Saving of limitation.- Omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).*]

89A. [*Calculation of the period of possession.- Omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).*]

90. [*Repeal of Bengal Act IX of 1940 and Assam Act X of 1947.- Omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).*]

91. (1) The Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

Rules

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

¹[* * *]

(c) the manner of determining compensation referred to in the proviso to sub-section (1) of section 9 and in the proviso to section 20;

(d) the forms of the notices referred to in section 23, and the amount of the process-fees referred to in the said section;

²[* * *]

³[(rr) the Revenue-officer referred to in sub-section (1) of section 68;]

(s) the manner of service of notice issued under this Act where the mode of such service is not provided in this Act.

¹ Clauses (a) and (b) were Omitted by section 28 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).

² Clauses (e) to (r) were Omitted by section 28 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).

³ Clause (rr) was inserted by section 28 of the East Bengal Non-Agricultural Tenancy (Amendment) Ordinance, 1967 (East Pakistan Ordinance No. IX of 1967).