

to have been made by the Municipal Commissioner on behalf of the Municipality concerned in exercise of the powers conferred on him by this Act and shall continue in operation accordingly.

(2) All proceedings pending before the said Chief Officers or the standing or other executive committees of the Municipality or the Municipality on the said date which under the provisions of this Act have to be instituted before or undertaken by the Municipal Commissioner shall be transferred to and continued by the Municipal Commissioner.

(3) All appeals against orders or decisions of the said Chief Officers or the standing or other executive committees of the Municipality pending on the said date shall be disposed of as if this Act had not come into operation.

(4) All prosecutions instituted by the said Chief Officers and all suits and other legal proceedings instituted by or against the said Chief Officers pending on the said date shall be continued by or against the Municipal Commissioner.

(5) Any appointment, notice, order, license or permission made, issued or given in respect of the Poona City Municipal Borough or the Poona Suburban Municipal Borough which, under the provisions of this Act, has to be made, issued or given by the Municipal Commissioner shall continue in force and be deemed to have been made, issued or given under the provisions of this Act by the Municipal Commissioner until it is legally terminated, cancelled or superseded.

20. *This Act to override principal Act and other enactments*—Notwithstanding anything contained in the principal Act, the provisions of this Act shall apply to the Poona City Borough Municipality and the Poona Suburban Borough Municipality and shall prevail over anything inconsistent in the principal Act or any other law for the time being in force in its application to the said Municipalities and boroughs respectively.

21. *Removal of difficulties*—If any difficulty arises in giving effect to the provisions of this Act, or by reason of anything contained in this Act, to the provisions of the principal Act or any other law for the time being in force, the Provincial Government may, as occasion requires, by order do anything which appears to it necessary for the purpose of removing the difficulty.

### **The Bombay Animal Preservation Act, 1948.**

Received the assent of the Governor-General on the 30th January 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 8th February 1949.

#### **Bombay Act No. LXXXI of 1948.**

*An Act to provide for the preservation of animals suitable for milch, breeding or for agricultural purposes.*

WHEREAS it is expedient to provide for the preservation of animals suitable for milch, breeding or for agricultural purposes; It is hereby enacted as follows :—

1. *Short title, extent and operation.*—(1) This Act may be called the **Bombay Animal Preservation Act, 1948.**

(2) It extends to the whole of the Province of Bombay.

(3) This section shall come into force at once. The Provincial Government may, by notification in the *Official Gazette*, direct that the

rest of this Act shall come into force in such area and on such date as may be specified in the notification.

2. *Application of Act.*—(1) This Act applies, in the first instance, to the animals specified in the Schedule

(2) The Provincial Government may, by notification in the *Official Gazette*, apply the provisions of this Act to any other animal, which in its opinion, it is desirable to preserve.

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

(1) "Veterinary Officer" means an officer or person appointed or invested with powers under section 4 of this Act ;

(2) "prescribed" means prescribed by rules made under this Act.

4. *Appointment of Veterinary Officer.*—The Provincial Government may, by notification in the *Official Gazette*, appoint any officer to be a Veterinary Officer for any particular area and assign to him such powers and duties under this Act or the rules made thereunder, as it may deem fit.

5. *Prohibition against slaughter without certificate from Veterinary Officer.*—(1) Notwithstanding any law for the time being in force or any usage to the contrary, no person shall slaughter, attempt to slaughter or cause to be slaughtered any animal, unless he has obtained in respect of such animal a certificate in writing from a Veterinary Officer appointed for the area that the animal is fit for slaughter :

Provided that an animal shall not be deemed to be fit for slaughter, if, in the opinion of the Veterinary Officer appointed for the area,—

(a) such animal, whether male or female, is or likely to become useful for the purpose of draught or any kind of agricultural operations ;

(b) such animal, if male, is useful or likely to become useful for the purpose of breeding ;

(c) such animal, if female, is useful or likely to become useful for the purpose of giving milk or bearing offspring.

(2) Nothing in this section shall apply to the slaughter of any animal above the age of fifteen years for *bona fide* religious purposes :

Provided that a certificate in writing for such slaughter has been obtained from a Veterinary Officer.

(3) Any person aggrieved by the opinion of a Veterinary Officer that the animal is not fit for slaughter for any of the reasons specified in clauses (a), (b) and (c) of the proviso to sub-section (1) may, within fifteen days from the date of the communication of such opinion, prefer an application to the Provincial Government and the Provincial Government may pass such order on the application as it thinks fit.

(4) The Provincial Government may also at any time for the purpose of satisfying itself as to the legality or propriety of any order passed by a Veterinary Officer under sub-section (1) call for and examine the records of the case and may pass such order in reference thereto as it thinks fit.

(5) A certificate under this section shall be granted in such form and on payment of such fee as may be prescribed.

6. *Power of Veterinary Officer or officer, authorised by him to enter premises or place and inspect premises.*—(1) For the purposes of this Act, a Veterinary Officer or a person authorised by him in this behalf shall have power to enter and inspect any premises or other place whereat he has

reason to believe that an offence under this Act has been or is likely to be committed.

(2) Every person on the premises or the other place shall allow the Veterinary Officer or the person authorised access to and to inspect, the premises or the other place and answer truthfully any question asked of him.

7. *Penalties.*—Whoever does any act in contravention of section 5 or 6 shall be punishable with imprisonment for a term which may extend to six months, or with fine which may extend to one thousand rupees, or with both.

8. *Offences under this Act cognisable.*—Offences under this Act shall be cognisable.

9. *Veterinary Officer to be public servant.*—Every Veterinary Officer shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

10. *Protection of persons acting in good faith under the Act or rules*—No suit, prosecution or other legal proceedings shall be instituted against any person for anything which is in good faith done or intended to be done under this Act or rules thereunder.

11. *Power of Government to make rules.*—(1) The Provincial Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing provision, such rules may provide for—

(a) the powers and duties of Veterinary Officers, in addition to those provided in this Act ;

(b) the form of the certificate under section 5 ;

(c) the amount of the fee to be paid under section 5 ;

(d) any other matter which is or may be prescribed.

(3) The rules made under this section shall be subject to the condition of previous publication in the *Official Gazette*.

12. *Delegation of powers and functions of Provincial Government to local authority or officer of Government.*—The Provincial Government may, by notification in the *Official Gazette*, delegate—

(i) to any local authority, its powers and functions under section 4 within the local area subject to the jurisdiction of the local authority.

(ii) to any officer of the Provincial Government its powers and functions under sub-sections (3) and (4) of section 5.

13. *Saving.*—This Act shall not apply to the slaughter of any animal operated upon for vaccine lymph, serum, or for any experimental purposes at an institution established, conducted or recognised by the Provincial Government

14. *Opinion of Veterinary Officer as to age final.*—Where any question arises whether an animal has or has not attained the age of fifteen years for the purpose of sub-section (2) of section 5, the opinion of the Veterinary Officer for the area shall be final and shall not be called in question in any Court.

#### SCHEDULE.

[Section 2 (1).]

Bovines (bulls, bullocks, cows, calves, male and female buffaloes and buffalo-calves).

**The Bombay Sales Tax (Amendment) Act, 1949.**

Received the assent of the Governor on the 18th March 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 24th March 1949.

**Bombay Act No. I of 1949.***An Act to amend the Bombay Sales Tax Act, 1946.*

WHEREAS it is expedient to amend the Bombay Sales Tax Act, 1946 (Bom. V of 1946), for the purposes hereinafter appearing; It is hereby enacted as follows :—

1. *Short title and commencement.*—(1) This Act may be called the Bombay Sales Tax (Amendment) Act, 1949.

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

2. *Amendment of section 5 of Bom. V of 1946.*—In section 5 of the Bombay Sales Tax Act, 1946 (Bom. V of 1946) (hereinafter called the said Act),—

(i) in clause (a) of sub-section (1),—

(a) after the word “Bombay” the words “from any territory other than that notified by the Provincial Government in the *Official Gazette*” shall be inserted;

(b) for the words “his gross turnover in respect of” the words “the value of” shall be substituted;

(ii) in sub-section (2),—

(a) for the words, figure and letters “the date of expiry of two months after the month up to the end of which from the 1st April preceding thereto” the words, figure and letters “the 1st April of the year during which” shall be substituted, and

(b) the following proviso shall be added at the end, namely :—

“Provided that such dealer shall not be liable to pay the tax under this Act during such year in respect of his turnover upto the limits specified in sub-section (1)”;

(iii) in sub-section (4),—

(a) for the words “date of expiry of three months after the commencement of the year immediately following that during which” the figure, letters and words “1st April of the year during which” shall be substituted; and

(b) the following proviso shall be added at the end, namely :—

“Provided that such dealer shall not be liable to pay the tax under this Act during such year in respect of his turnover upto the limits specified in sub-section (1)”.

3. *Amendment of section 6 of Bom. V of 1946.*—In section 6 of the said Act,—

(a) to sub-section (1) the following proviso shall be added, namely :—

“Provided that the general or special tax payable by a dealer on his taxable turnover in respect of sales or supplies of goods which are despatched or removed by him or on his behalf or by the purchaser of such goods to such place outside the Province as may be notified by the Provincial Government in the *Official Gazette* within such period and subject to such terms and conditions as may be prescribed shall be levied at such rate not exceeding half the rate of the tax leviable under this section as the Provincial Government may by notification in the *Official Gazette* specify.”

(b) in sub-section (1),—

(i) clause (iii) of Rule I shall be deleted ;

(ii) after Rule III, the following proviso shall be added, namely :—

“Provided that the deductions under Rules II and III in respect of sales and supplies of goods referred to in the proviso to sub-section (1) shall be made at such rate as may be prescribed.”

4. *Amendment of section 8 of Bom. V of 1946.*—In section 8 of the said Act,—

(i) in the proviso to sub-section (1) for the brackets and figure “(2)” the brackets and figure “(3)” shall be substituted ;

(ii) in clause (b) of sub-section (6) after the figure “5” the words “and the dealer has applied in the prescribed manner for cancellation of his registration” shall be inserted.

5. *Amendment of section 11 of Bom. V of 1946* —In sub-section (5) of section 11 of the said Act,—

(i) for the words “and has nevertheless wilfully” the words “but has” shall be substituted ; and

(ii) after the words “subsequent periods and” the words “in cases where such dealer has wilfully failed to apply for registration” shall be inserted.

6. *Insertion of new section 11A in Bom. V of 1946.*—After section 11 of the said Act, the following new section shall be inserted, namely :—

“11A. *Turnover escaping assessment*—If in consequence of any information which has come into his possession, the Commissioner is satisfied that any turnover in respect of sales or supplies of any goods chargeable to tax under this Act has escaped assessment in any year or has been under assessed or assessed at a lower rate or any deductions have been wrongly made therefrom the Commissioner may, in any case where he has reason to believe that the dealer has concealed the particulars of such sales or supplies or deliberately furnished incorrect returns, at any time within five years, and in any other case, at any time within three years, of the end of that year, serve on the dealer liable to pay the tax in respect of such turnover a notice containing all or any of the requirements which may be included in a notice under sub-section (2) of section 11 and may proceed to assess or re-assess the amount of tax from such dealer and the provisions of this Act shall apply accordingly as if the notice were a notice served under that sub-section :

Provided that the amount of tax shall be assessed after making the deductions permitted under this Act at the rate at which it would have been assessed had the turnover not escaped assessment or full assessment, as the case may be.”

7. *Amendment of section 12 of Bom. V of 1946.*—In section 12 of the said Act,—

(a) after sub-section (3), the following new sub-section shall be inserted, namely :—

“(3A). If the tax payable under this Act is not paid by any dealer within the prescribed time, the dealer shall pay, by way of penalty in addition to the amount of tax a sum not exceeding three-fourth per cent. of the amount of tax for every month after the expiry of the prescribed period during which he continues to make default in the payment of the tax. The penalty so levied shall be without prejudice to any prosecution instituted for an offence under this Act.”

(b) sub-section (4) shall be renumbered as sub-section (4) (i) and after

clause (c) of sub-section (4) (i) so renumbered the following shall be inserted, namely :—

“and

(ii) the amount of the penalty payable under sub-section (3A)”.

8. *Insertion of new section 12A in Bom. V of 1946.*—After section 12 of the said Act, the following new section shall be inserted, namely :—

“12A. *Prohibition against collection of tax in certain cases.*—(1) No person shall collect any amount by way of tax under this Act in respect of sales or supplies of any goods which are declared, from time to time, under section 7 as sales or supplies on which the tax is not payable.

(2) No person who is not a registered dealer shall in respect of sales or supplies of any goods collect from the purchaser any amount by way of tax under this Act except in cases where he is required to do so in order to comply with the conditions and restrictions imposed on him under the provisions of any law for the time being in force.

(3) Every registered dealer whose gross turnover exceeds Rs. 60,000 a year shall issue a bill or cash memorandum signed and dated by him or his servant, manager or agent to the purchaser in respect of the goods sold or supplied by him showing the particulars of the goods and the price at which the goods are sold or supplied and shall keep the counterfoil or duplicate of such bill or cash memorandum duly signed and dated and preserve it for a period of not less than two years from such date.

(4) If any person collects any amount by way of tax in contravention of the provisions of sub-section (1) or (2) or if any registered dealer collects any amount by way of tax in excess of the amount payable by him under this Act, the amount so collected shall, without prejudice to any prosecution that may be instituted against such person or dealer for an offence under this Act, be forfeited to the Provincial Government and such person or dealer, as the case may be, shall within the prescribed period, pay such amount into a Government treasury and in default of such payment, the amount shall be recovered as an arrear of land revenue.”

9. *Amendment of section 14 of Bom. V of 1946.*—Section 14 of the said Act shall be renumbered as section 14 (1) and after section 14 (1) so renumbered, the following new sub-section shall be added, namely :—

“(2) The Commissioner may, subject to such conditions or restrictions as may be prescribed in this behalf, by notice in writing direct any dealer or by notification in the *Official Gazette* direct any class of dealers to maintain accounts and records showing the details regarding their purchases, sales or deliveries of goods in such form and in such manner as may be specified by him.”

10. *Amendment of section 15 of Bom. V of 1946.*—In sub-section (1) of section 15 of the said Act, after the words “the dealer” the words “or any other information relating to his business” shall be inserted.

11. *Insertion of new section 16A in Bom. V of 1946.*—After section 16 of the said Act, the following new section shall be inserted, namely :—

“16A. *Dealer to declare name of manager of his business.*—Every dealer who is liable to pay the tax under this Act and who is a Hindu undivided family, an association or a club, society, firm or company or who carries on business as the guardian or trustee or otherwise on behalf of another person shall within the prescribed period send to the prescribed authority a declaration in the prescribed manner stating the name of the person who shall be deemed to be the manager of such dealer's business for the purposes of this Act. Such declaration may be revised from time to time.”

12. *Amendment of section 18 of Bom. V of 1946.*—In sub-section (1) of section 18 of the said Act,—

(i) for the words “a registered dealer” the words “a dealer liable to pay tax under this Act” shall be substituted ;

(ii) for the words “the registered dealer” the words “the dealer liable to pay such tax” shall be substituted ; and

(iii) after the figure “8” the words, figure and letter “or 8A, as the case may be, unless he already holds a certificate of registration” shall be added.

13. *Amendment of section 18A, of Bom. V of 1946.*—In section 18A of the said Act, after the word “firm” the words “or entire transfer of the business of a dealer” shall be inserted.

14. *Amendment of section 20 of Bom. V of 1946.*—In section 20 of the said Act, for the word and figures “section 21” the words and figures “sections 21 and 22” shall be substituted.

15. *Amendment of section 22 of Bom. V of 1946.*—In the first proviso to section 22 of the said Act, for the words “sixty days” the words “four months” shall be substituted.

16. *Amendment of section 22A of Bom. V of 1946.*—In section 22A of the said Act, the words “of sixty days” shall be deleted.

17. *Insertion of section 22B in Bom. V of 1946.*—After section 22A of the said Act, the following new section shall be inserted, namely :—

“22B. *Extension of period of limitation in certain cases.*—The prescribed authority may admit any appeal under section 21 and the Tribunal may admit an application under section 22 after the period of limitation laid down in the said sections, if the appellant or the applicant, as the case may be, satisfies the prescribed authority or the Tribunal that he had sufficient cause for not preferring the appeal or making the application within such period.”

18. *Insertion of new section 23A in Bom. V of 1946.*—After section 23 of the said Act, the following new section shall be inserted, namely :—

“23A. *Rectification of mistake.*—(1) The Commissioner may at any time within two years from the date of any order passed by him, on his own motion, rectify any mistake apparent from the record and shall within a like period rectify any such mistake which has been brought to his notice by a dealer :

Provided that no such rectification shall be made if it has the effect of enhancing the tax or reducing the amount of a refund unless the Commissioner has given notice in writing to the dealer of his intention so to do and has allowed the dealer a reasonable opportunity of being heard.

(2) The provisions of sub-section (1) shall apply to the rectification of a mistake by the Tribunal as they apply to the rectification of a mistake by the Commissioner.

(3) Where any such rectification has the effect of reducing the amount of the tax, the Commissioner shall in the prescribed manner refund any amount due to the dealer.

(4) Where any such rectification has the effect of enhancing the amount of the tax or reducing the amount of the refund, the Commissioner shall recover the amount due from the dealer in the manner provided for in section 12.”

19. *Amendment of section 24 of Bom. V of 1946.*—After clause (d) of sub-section (1) of section 24 of the said Act, the following new clause shall be inserted, namely :—

"(dd) contravenes the provisions of sub-section (1), (2) or (3) of section 12A ; or ".

**20. Amendment of section 28 of Bom. V of 1948.**—In section 28 of the said Act, in sub-section (3),—

(a) after the brackets and figure "(1)" the brackets and letter "(a)" shall be inserted, and

(b) after the words "under this Act" the following shall be inserted, namely :—

"or (b) to any authority acting in exercise of the powers conferred by the Indian Income-tax Act, 1922 (XI of 1922), where it is necessary to disclose the same to such authority for the purposes of the said Act."

**21. Amendment of section 29 of Bom. V of 1948.**—In sub-section (2) of section 29 of the said Act,—

(i) in clause (cc)—

(a) before the words "the circumstances" the following shall be inserted, namely :—

"the period within which and the terms and conditions subject to which the goods are despatched or removed under the proviso to sub-section (1) of section 6, and";

(b) for the words and figure "of section 6" the words and figure "of the said section 6" shall be substituted ;

(ii) clause (cca) shall be deleted ;

(iii) after clause (dd), the following new clause shall be inserted, namely :—

"(ddd) the rate at which deductions shall be made under the proviso after Rule III in sub-section (4) of section 6 ;"

(iv) in clause (f), for the portion beginning with the words "and the date" and ending with the words "shall take effect" the following shall be substituted, namely :—

"and the manner in which applications for cancellation of registration shall be made, and the date from which cancellation of registration shall take effect, under sub-section (6) of that section ;"

(v) after clause (j) the following new clause shall be inserted namely :—

"(jj) the period within which a person or a dealer shall pay the amount of tax collected by him into a Government treasury under sub-section (4) of section 12A ;"

(vi) in clause (l)—

(a) after the word "under" the words, brackets and figure "sub-section (1) of" shall be inserted ; and

(b) the following shall be added at the end, namely :—

"and the conditions or restrictions subject to which the accounts shall be maintained under sub-section (2) of the said section 14 ;"

(iv) after clause (m), the following new clause shall be inserted, namely :—

"(mm) the period within which, the authority to which and the manner in which a declaration shall be sent under section 16A ;".

**22. Amendment of Schedule I to Bom. V of 1948.**—In Schedule I to the said Act—

(i) in entry 2, the words "and parts thereof" shall be inserted at the end,

(ii) in entry 11, after the word "radio-gramophones", the words "and component parts thereof", shall be inserted, and

(iii) the following new entries shall be added, namely:—

"(14) Upholstered furniture.

(15) Articles made of ivory, sandal wood or blackwood or inlaid therewith, ornamental metalware with enamelled or carved designs and gold and silver filigree.

(16) Iron and steel safes, almirahs and furniture.

(17) Glassware, chinaware and domestic pottery excluding earthenware pottery.

(18) Table cutlery, including knives, forks and spoons.

(19) Tabulating, calculating, indexing or card punching machines and Adrema machines.

(20) Dictaphone and other similar apparatus for recording or reproducing sound and parts and accessories thereof

(21) Domestic electrical appliances other than torches, torch cells, filament lighting bulbs and fans.

(22) All fabrics containing any material of gold, silver or gilded metal whether knitted, woven or embroidered; and thread, *sari*, or other embroidery materials of gold, silver or gilded metal.

(23) All fabrics and articles for personal wear in which the combined weight of silk, artificial silk and synthetic fibre used is more than 50 per cent.

(24) Woollen goods except those exempted.

(25) Furs and skins (other than those of cattle, sheep and goats) and articles of personal or domestic use made therefrom.

(26) Ladies' handbags and vanity bags.

(27) Shoes and footwear sold at a rate not less than rupees fifteen per pair.

(28) Spirits of wine, rectified spirit, brandy, whisky, rum, gin, ginger-ale, grape liquor and malt liquor, whether manufactured in India or imported into India from outside.

(29) Cigarette cases and lighters.

(30) Fireworks."

23. *Amendment of Schedule II to Bom. V of 1946.*—In Schedule II to the said Act,—

(a) for entries 7, 8, 9 and 10, the following shall be substituted, namely:—

"7. Cattle, sheep and goats .....

8. Fresh vegetables .....

9. Fresh fruits .....

10. Food and non-alcoholic drink consumed at a hotel, restaurant, refreshment room, eating house, or other place where such food and drinks are served.

Except when the cost of such food and drinks consumed at one time exceeds Rupee one."

(b) in entry 11, the words "sugar and molasses" shall be deleted;

(c) entries 15, 24 and 29 shall be deleted;

(d) for entry 44, the following shall be substituted, namely:—

"44. Hides and skins of cattle, sheep and goats and leather (whether tanned or untanned)."

(e) entries 48 and 51 shall be deleted.

**The Bombay Finance (Amendment) Act, 1949.**

Received the assent of the Governor-General on the 30th March 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 31st March 1949.

**Bombay Act No. II of 1949.**

*An Act to amend the Bombay Finance Act, 1932.*

WHEREAS it is expedient to amend the Bombay Finance Act, 1932 (Bom. II of 1932), for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Bombay Finance (Amendment) Act, 1949.

(2) It shall come into force on the 1st day of April 1949.

2. *Amendment of long title and preamble of Bom. II of 1932.*—In the long title and preamble of the Bombay Finance Act, 1932 (Bom. II of 1932) (hereinafter called the said Act),—

(1) the words “for the purpose of lights and fans” shall be deleted; and

(2) after the words “urban areas” the words “, to provide for the levy of a tax on advertisements in newspapers” shall be inserted.

3. *Amendment of section 5 of Bom. II of 1932.*—In section 5 of the said Act,—

(1) the words “for the purpose of lights and fans” shall be deleted; and

(2) in the proviso, the words “industrial undertaking” shall be deleted.

4. *Amendment of First Schedule to Part II of Bom. II of 1932.*—In the First Schedule to Part II of the said Act, the following shall be added at the end, namely:—

“For any other purpose.

For every two units of energy or fraction thereof consumed for any purpose other than lights and fans. } anna.”

5. *Amendment of Second Schedule to Part II of Bom. II of 1932.*—In the Second Schedule to Part II of the said Act,—

(1) entry (5) shall be deleted; and

(2) the *Explanation* shall be deleted.

6. *Amendment of section 14 of Bom. II of 1932.*—In section 14 of the said Act, in Schedule II, in Article 21, for the words and figures “the Parsee Marriage and Divorce Act, 1865 (XV of 1865)” the words and figures “the Parsi Marriage and Divorce Act, 1936 (III of 1936), or the Bombay Hindu Divorce Act, 1947 (Bom. XXII of 1947)” shall be substituted.

7. *Amendment of section 15 of Bom. II of 1932.*—In section 15 of the said Act,—

(1) after the words “following amendments shall be made, namely:—”, the following sub-section shall be inserted, namely:—

“(AI) *Amendment of section 2 of Act II of 1899.*—In section 2,—

(a) after the words “in the subject or context—” the following clause shall be inserted, namely:—

“(AI) ‘association’ means any association, exchange, organization or body of individuals, whether incorporated or not, established for the purpose of regulating and controlling business of the sale or purchase of, or other transactions relating to, any goods or marketable securities;”

(b) after clause (7), the following clause shall be inserted, namely:—

"(8) 'clearance list' means a list of transactions relating to contracts required to be submitted to the clearing house of an association in accordance with the rules or by-laws of the association :

Provided that no instrument shall for the purposes of this Act, be deemed to be a clearance list, unless it contains the following declaration signed by the person dealing in such transactions or on his behalf by a properly constituted attorney, namely :—

"I/We hereby solemnly declare that the above list contains a complete and true statement of my/our transactions, and that it includes all the transactions required to be submitted to the clearing house in accordance with the rules/by-laws of the association. I/We further declare that no transaction relating to the purchase or sale on my/our own behalf or on behalf of a principal for which an exemption is claimed under Article 5 or Article 43 in Schedule I to the Indian Stamp Act, 1899 (II of 1899), in its application to the Province of Bombay, as the case may be, is omitted."

(c) after clause (12A), the following clause shall be inserted, namely :—

"(12B) 'Government securities' means a Government security as defined in the Indian Securities Act, 1920 (X of 1920) ;"

(2) After sub-section (4), the following sub-section shall be inserted, namely :—

"(4A) Insertion of new section 62A in Act II of 1899.—After section 62, the following section shall be inserted, namely :—

"62A. Penalty for making false declaration on clearance list.—Any person who in a clearance list makes a declaration which is false or which he either knows or believes to be false, shall, on conviction, be punished with imprisonment for a term which may extend to six months or with fine which may extend to five hundred rupees or with both." ; and

(3) In sub-section (5),—

(a) in clause (c),—

(i) in Article 5 relating to "Agreement or Memorandum of an Agreement",

(A) after entry (bb), the following entry shall be inserted, namely :—

"(bc) if relating to the purchase or sale of bullion or specie ;

(a) Two annas for every unit of 2,800 tolas of silver or part thereof ;

(b) Eight annas for every unit of 250 tolas of gold or part thereof ;

(c) Five annas for every unit of 250 sovereigns or part thereof." ;

(B) in entry (a) under "Exemptions", after the word, brackets and letters "entry (bb)" the words, brackets and letters "or entry (bc)" shall be inserted ;

(C) in entry (d) under "Exemptions", for the words, figures and letter "an entry relating to which is required to be made in a clearance list described in Article 20A" the words, figures and letters "or of cotton, or of bullion or specie, an entry relating to which is required to be made in a clearance list described in Article 20A, 20B or 20C, as the case may be" shall be substituted ;

(ii) in Article 43 relating to "Note or Memorandum sent by a Broker or Agent to his principal",—

(A) after entry (aa), the following entry shall be inserted, namely :—

"(ab) of bullion or specie ; (a) Two annas for every unit of 2,800 tolas of silver or part thereof ;

- (b) Eight annas for every unit of 250 tolas of gold or part thereof ;
- (c) Five annas for every unit of 250 sovereigns or part thereof." ;

(B) after entry (1) under "Exemptions", the following entry shall be inserted, namely :—

"(1A) Note or Memorandum sent by a Broker or Agent to his principal intimating the purchase or sale of bullion or specie on account of such principal, an entry relating to which is required to be made in a clearance list described in Article 20C." ;

(b) in clause (dd),—

(i) for the words "the following Article" the words "the following Articles" shall be substituted ;

(ii) the Explanations below Articles 20A and 20B shall be deleted ;

(iii) after Article 20B the following Article shall be inserted, namely :—

"20C. Clearance list relating to the transaction for the purchase or sale of bullion or specie submitted to the clearing house of a Bullion Association ;

The sum of duties payable under Article 5 or 43, as the case may be, in respect of each of the entries in such list on the units of transactions or parts thereof "

8. *Amendment of section 22 of Bom. II of 1932.*—In section 22 of the said Act,—

(1) for the figure and words "7 per cent. of the annual letting value of such buildings or lands" the words "such rate not exceeding seven per cent. of the annual letting value of the buildings or lands in such area or areas as may be notified by the Provincial Government in the *Official Gazette*" shall be substituted ; and

(2) in the first proviso, for the words and figures "at the rate of  $3\frac{1}{2}$  per cent. of the annual letting value" the words "at such rate not exceeding three and half per cent. of the annual letting value of the buildings, or lands in such area or areas as may be notified by the Provincial Government in the *Official Gazette*" shall be substituted.

9. *Insertion of new Part VII in Bom. II of 1932.*—Part VII and sections 30 and 31 of the said Act shall be renumbered as Part VIII and sections 41 and 42, respectively, and after Part VI the following new Part shall be inserted, namely :—

#### "PART VII.

##### *Newspaper Advertisements Tax.*

30. *Extent of Part VII.*—This Part extends to the whole of the Province of Bombay.

31. *Definitions.*—In this Part, unless there is anything repugnant in the subject or context,—

(a) "advertisement" means a public notice or announcement in a newspaper, whether by means of written matter or illustration, in connection with any business, trade, industry, calling, profession or employment and shall include any notice or announcement—

(i) declaring the sale, purchase, exchange, lease, hire or any other kind of transfer of any tangible or intangible, moveable or immovable property or any other kind of property whatsoever.

(ii) containing or inviting offers for the sale, purchase, exchange, lease, hire or any other kind of transfer of any property referred to in sub-clause (i).

(iii) containing a prospectus issued by a company allotting or agreeing to allot its shares or debentures with a view to their being offered to the public,

(iv) containing or inviting offers for service, employment, work or labour,

(v) relating to a prize competition as defined in the Bombay Lotteries and Prize Competitions Control and Tax Act, 1948 (Bom. LIV of 1948),

(vi) relating to the holding of any horse-race as defined in the Bombay Race-courses Licensing Act, 1912 (Bom. III of 1912),

(vii) relating to entertainments or amusements,

(viii) containing or inviting offers for the purpose of advancing or obtaining loans,

(ix) of such other kind as may be specified by the Provincial Government by notification in the *Official Gazette* relating to any matter from which profits or gains are expected to accrue to, or be received personally by, or for the personal benefit of, any person on whose behalf the notice or announcement is published in a newspaper ;

(b) "manager" includes editor, publisher, managing director or any other person in whatever capacity responsible for the publication of a newspaper ;

(c) "newspaper" includes any journal, magazine or other periodical publication ;

(d) "prescribed" means prescribed by rules made under this Part.

**32. Levy of advertisement tax.**—There shall from the 1st day of April 1949 be levied and paid to the Government of Bombay a tax at the rate of one anna in the rupee paid or payable in respect of any advertisement appearing in any newspaper published in the Province of Bombay.

**33. Returns.**—(1) Every manager shall furnish to the prescribed authority, before the tenth of each month, a return stating the total receipts from the advertisements appearing in his newspaper during the preceding month together with such further information in regard thereto as may be prescribed.

(2) Every such return shall be made in such form and shall be verified in such manner as may be prescribed.

**34. Collection of tax.**—(1) On receiving any return under section 33, the prescribed authority shall assess the amount of tax payable in respect of the period to which the return relates, and if the amount has not already been paid shall cause a notice to be served upon the manager requiring him to make payment of the amount assessed, within ten days of the service of the notice.

(2) If the manager fails to furnish in due time the return referred to in section 33 or furnishes a return which in the opinion of the prescribed authority is incorrect or defective, the prescribed authority shall assess the amount payable by him in such manner as may be prescribed and the provisions of sub-section (1) shall apply as if such assessment has been made on the basis of a return furnished by the manager :

Provided that, in the case of a return which the prescribed authority has reason to believe is incorrect or defective, the prescribed authority shall not assess at an amount higher than that at which it is assessable on the basis of the return without giving to the manager a reasonable opportunity of proving the correctness or completeness of the return.

(3) A notice under sub-section (1) may be served on the manager by post or by delivering it or tendering it to the manager or his agent.

**35. Finality of assessment and recovery of unpaid tax.**—(1) An assessment made in accordance with the provisions of section 34 shall not be questioned in any Court.

(2) Any manager aggrieved by an assessment made under section 34 may, within three months of service of the notice referred to in sub-section (1) of that section, apply to the prescribed appellate authority for the cancellation or modification of the assessment and, on such application the prescribed appellate authority may cancel or modify the assessment and order the refund to such manager of the whole or part, as the case may be, of any amount paid thereunder.

(3) Any amount recoverable under section 34 may be recovered as an arrear of land revenue.

**36. Exemptions.**—The Provincial Government may, by notification in the *Official Gazette*, exempt, either totally or partially, any advertisement or class of advertisements from the payment of the tax.

**37. Power to inspect and to take copies of records and accounts of newspapers.**—(1) The prescribed authority shall have free access at all reasonable times during working hours to any premises in which a newspaper is published or printed.

(2) Such authority may at any time, with or without notice to the manager, examine the records and accounts kept in respect of any newspaper and take copies of or extracts from all or any of the said records or accounts for purposes of testing the accuracy of any return or of informing himself as to the particulars regarding which information is required for the purposes of this Part or any rules made thereunder.

**38. Information acquired to be confidential.**—(1) All such copies and extracts and all information acquired by the prescribed authority from an inspection of any premises or from any return submitted under this Part shall be treated as confidential.

(2) If, save as provided in sub-section (3), the prescribed authority discloses to any person any such information as aforesaid without the previous sanction of the Provincial Government, he shall, on conviction, be punished with imprisonment which may extend to six months or with fine or with both.

(3) Nothing in this section shall apply to the disclosure of such information in respect of the making of a false return under this Part.

**39. Penalties**—If any person liable under section 33 to submit a return—

(a) fails, without sufficient cause, to submit the same within the time specified in the said section or in the prescribed manner or submits a false return, or

(b) obstructs any person duly authorised in this behalf in the exercise of his powers and duties under this Part or the rules made thereunder, he shall, on conviction, be punished with fine which may extend to one thousand rupees.

**40. Power to make rules.**—(1) The Provincial Government may make rules for the purpose of carrying into effect the provisions of this Part.

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

(a) the further information to be furnished under section 33, the authority to which and the form in which such return shall be furnished and the manner in which it shall be verified ;

(b) the manner in which the amount payable under section 34 shall be assessed ;

(c) the appellate authority to whom an application for cancellation or modification of the assessment shall be made under section 35 ;

(d) any other matter which is to be or may be prescribed.

(3) In making a rule under this section, the Provincial Government may provide that a breach thereof shall be punishable with fine which may extend to fifty rupees.

(4) The rules made under this section shall, subject to the condition of previous publication, be published in the *Official Gazette*."

### **The Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1949.**

Received the assent of the Governor-General on the 31st March 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 31st March 1949.

#### **Bombay Act No. III of 1949.**

*An Act to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947.*

WHEREAS it is expedient to amend the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947), for the purposes hereinafter appearing ; It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Act, 1949.

2. *Insertion of new section 10A in Bom. LVII of 1947.*—After section 10 of the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 (Bom. LVII of 1947), (hereinafter called the said Act), the following section shall be inserted, namely :—

"10A. *Increase in rent on account of payment of increased rates etc. after 31st March 1949 not permitted in certain areas.*—Notwithstanding anything contained in section 10,—

(1) if in the City of Bombay the general tax levied under section 143 of the City of Bombay Municipal Act, 1888 (Bom. III of 1888), or in any other area specified in Schedule III to this Act a rate or tax on buildings, houses or lands or a rate or tax in the form of such rate or tax on buildings, houses or lands levied under the Bombay Municipal Boroughs Act, 1925 (Bom. XVIII of 1925), or the Bombay District Municipal Act, 1901 (Bom. III of 1901), or the Cantonments Act, 1924 (II of 1924), or the Bombay Village Panchayats Act, 1933 (Bom. VI of 1933), as the case may be, is increased after the 31st day of March 1940, a landlord shall not, in respect of any premises situated in the City of Bombay or in any of the areas specified in the said Schedule, as the case may be, and let on or before the said date, be entitled to make any further increase in the rent of the said premises on account of the payment by him of such increase in the rate or tax :

(2) a landlord shall not be entitled to make any increase in the rent of any premises situated in the City of Bombay or in any of the areas specified in the said Schedule and let after the 31st day of March 1949 on account of the payment by him of any increase in such rate or tax ;

(3) the Provincial Government may, by notification published in the *Official Gazette*, direct that in any area other than the City of Bombay or those specified in Schedule III, a landlord shall not be entitled to make any increase in rent in respect of any premises situate in such area on account of the payment by him of an increase in the rate or tax imposed or levied by any local authority for its own purpose on buildings, houses or lands, after such date, as may be specified in the notification."

3. *Amendment of section 13 of Bom. LVII of 1947.*—In section 13 of the said Act, after the words "contained in this Act," the words and figures "but subject to the provisions of section 15" shall be inserted.

4. *Amendment of section 33 of Bom. LVII of 1947.*—In section 33 of the said Act,—

(1) at the end of sub-section (1), the following shall be added, namely :—

"The Controller may also fix the percentage of accommodation for daily and monthly lodgers, respectively, in a hotel or lodging house."

(2) after sub-section (4), the following Explanation shall be inserted, namely :—

"*Explanation.*—For the purposes of this Part, a lodger who agrees to reserve accommodation in a hotel or lodging house for a period of less than a month shall be deemed to be a daily lodger."

(3) in the marginal note to the said section, after the words "fair rates" the words "percentage of accommodation" shall be inserted.

5. *Amendment of section 34 of Bom. LVII of 1947.*—In section 34 of the said Act,—

(1) after the words "fair rates" the words "the percentage of accommodation" shall be inserted ;

(2) in the marginal note to the said section, after the words "fair rates" the words "percentage of accommodation" shall be inserted.

6. *Amendment of section 36 of Bom. LVII of 1947.*—In section 36 of the said Act,—

(1) after the words "fair rate" where they occur for the first and second times, the words "the percentage of accommodation" shall be inserted ;

(2) in the marginal note to the said section, after the words "fair rate" the words "percentage of accommodation" shall be inserted.

7. *Amendment of section 38 of Bom. LVII of 1947.*—To section 38 of the said Act, the following proviso shall be added, namely :—

"Provided that where under section 33 or section 34 the Controller has fixed or revised the percentage of accommodation for daily and monthly lodgers respectively, the manager of a hotel or owner of a lodging house may refuse accommodation to any daily or monthly lodger, as the case may be, if the accommodation in respect of such class of lodgers is fully occupied."

8. *Amendment of section 39 of Bom. LVII of 1947.*—In section 39 of the said Act,—

(1) in clause (a), the word "or" occurring at the end shall be deleted;

(2) in clause (b), the word "or" shall be added at the end ;

(3) after clause (b), the following clause shall be added, namely :—

"(c) the lodger has failed to vacate the accommodation on the termination of the period of the agreement in respect thereof."

Provided that before issuing a certificate under this clause the Controller shall take into consideration the vacancies, if any, in the accommo-

dation for daily and monthly lodgers the percentage of which has been fixed or revised under section 33 or section 34 and the circumstances under which the lodger did not vacate on the termination of the period of the agreement."

9. *Amendment of section 43 of Bom. LVII of 1947.*—(1) Section 43 of the said Act shall be renumbered as sub-section (1) of that section and in sub-section (1) as so renumbered after the word "shall" the words, brackets and figure "subject to the provisions of sub-section (2)," shall be inserted.

(2) After sub-section (1) of section 43 as so renumbered, the following sub-section shall be inserted, namely :—

"(2) Pending the final decision of the suit for recovery of charges for the accommodation provided in a hotel or lodging house, the manager of the hotel or the owner of the lodging house may make an application to the Court requiring the lodger to deposit in Court the amount of such charges. On such application, the Court shall forthwith make an order directing the lodger to deposit in Court such amount of charges within such period as it thinks fit and shall serve a copy of such order upon the manager of the hotel or the owner of the lodging house. If the lodger fails to deposit such amount within the period specified in the order the Court may at any time thereafter pass an order for the eviction of the lodger."

10. *Amendment of section 50 of Bom. LVII of 1947*—In section 50 of the said Act, in the first proviso,—

(1) the brackets and words "(other than execution proceedings and appeals)" shall be deleted ;

(2) after the words "under this Act" the words "or shall be continued in such Courts, as the case may be," shall be inserted ;

(3) the word "thereupon" shall be deleted ;

(4) after the words "all such suits and proceedings" the following shall be inserted, namely :—

"Nothing in this proviso shall apply to execution proceedings and appeals arising out of decrees or orders passed before the coming into operation of this Act and such execution proceedings and appeals shall be decided and disposed of as if this Act had not been passed."

11. *Insertion of new section 51 in Bom. LVII of 1947.*—After section 50 of the said Act, the following section shall be added, namely :—

"51. *Removal of doubt as regards proceedings under Chapter VII of the Presidency Small Cause Courts Act, 1882.*—For the removal of doubt, it is hereby declared that, unless there is anything repugnant in the subject or context, references to suits or proceedings in this Act shall include references to proceedings under Chapter VII of the Presidency Small Cause Courts Act, 1882 (XV of 1882), and references to decrees in this Act shall include references to final orders in such proceedings."

12. *Insertion of new Schedule III in Bom. LVII of 1947.*—After Schedule II to the said Act, the following Schedule shall be added, namely :—

"Schedule III.

(See section 10A.)

(a) *Bombay Suburban District—*

(1) Kurla Municipal Borough,

(2) Bandra Municipal Borough,

(3) Parle-Andheri Municipal Borough,

(4) Ghatkoti-Kirori Municipal Borough,

(5) Juhu Municipal District,

- (6) Chembur Village.
- (b) *Thana District*—
- (1) Thana Municipal Borough,
- (2) Malad Notified Area,
- (3) Kandivali Notified Area,
- (4) Borivali Notified Area,
- (5) Mulund Village,
- (6) Bhayandar Village.
- (c) *Ahmedabad District*—
- (1) Ahmedabad Municipal Borough,
- (2) Ahmedabad Cantonment.
- (d) *Poona District*—
- (1) Poona City Municipal Borough,
- (2) Poona Suburban Municipal Borough,
- (3) Poona Cantonment,
- (4) Kirkee Cantonment."

13. *Sections 10 and 11 to have retrospective effect.*—The amendments made by sections 10 and 11 of this Act shall be deemed to have been made and come into force on the date on which the said Act came into force and shall always be deemed to have been made and in force from such date ;

Provided that the validity of any decree or order passed in any suit or proceeding referred to in section 50 of the said Act between the 13th day of February 1948 and the 3rd day of February 1949 shall not be questioned only on the ground that such suit or proceeding should have been decided and disposed of in accordance with the provisions of the said Act and not in accordance with the provisions of any of the enactments repealed by the said Act or *vice versa* and any execution proceedings or appeals arising out of such decree or order shall be decided and disposed of in accordance with the provisions of the said Act or the enactments repealed in accordance with which, as the case may be, such decree or order was passed.

14. *Repeal of Bom. Ordinance No. 1 of 1949.*—The Bombay Rents, Hotel and Lodging House Rates Control (Amendment) Ordinance, 1949 (Bom. Ordinance No. 1 of 1949), is hereby repealed.

#### **The Bombay Village Panchayats (Amendment) Act, 1949.**

Received the assent of the Governor on the 31st March 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 7th April 1949.

#### **Bombay Act No. IV of 1949.**

*An Act to amend the Bombay Village Panchayats Act, 1933.*

WHEREAS it is expedient to amend the Bombay Village Panchayats Act, 1933 (Bom. VI of 1933), for the purposes hereinafter appearing ; It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Bombay Village Panchayats (Amendment) Act, 1949.

2. *Amendment of section 11 of Bombay VI of 1933.*—In section 11 of the Bombay Village Panchayats Act, 1933 (Bom. VI of 1933) (hereinafter called the said Act), in sub-section (2), for the words "one year" the words "in the aggregate five years" shall be substituted.

3. *Amendment of section 23 of Bom. VI of 1933.*—In section 23 of the said Act, to sub-section (1) of the following further proviso shall be added, namely :—

"Provided further that notwithstanding anything contained in section 6, if the vacancy be of an elected member and occurs within four months preceding the date on which the term of office of the members of the panchayat expires under section 11, the vacancy shall not be filled."

4. *Insertion of new section 28A in Bom. VI of 1933.*—Section 28A of the said Act shall be renumbered as section 28B and after section 28, the following new section shall be inserted, namely :—

"28A. *Joint Committees of two or more local bodies*—(1) A panchayat may, from time to time, concur with any other panchayat or with any municipality, district local board or cantonment authority or committee appointed for a notified area or with more than one such panchayat, municipality, district local board, authority or committee,—

(a) in appointing out of their respective bodies a joint committee for any purpose in which they are jointly interested and in appointing a chairman of such committee ;

(b) in delegating to any such committee power to frame terms binding on each such body as to the construction and future maintenance of any joint work and any power which might be exercised by either or any of such bodies ; and

(c) in framing and modifying rules for regulating the proceedings of any such committee and the conduct of correspondence, relating to the purpose for which the committee is appointed.

(2) A panchayat may, from time to time enter, subject to the sanction of the Provincial Government into an agreement with any other panchayat, or with any municipality, district local board, cantonment authority or committee appointed for a notified area or with a combination of any such bodies, for the levy of octroi duty whereby the octroi duties respectively leviable by the bodies so contracting may be levied together instead of separately within the limits of the area subject to the control of the said bodies.

(3) Where a panchayat has requested the concurrence of any other local authority under the provisions of sub-section (1) or (2) in respect of any matter and such other local authority has refused to concur, the Commissioner may pass such orders as he may deem fit requiring the concurrence of such other local authority, not being a cantonment authority, in the matter aforesaid and such other local authority shall comply with such orders.

(4) If any difference of opinion arises between local bodies acting under this section, the decision thereupon of the Provincial Government or of such officer as it appoints in this behalf shall be final :

Provided that, where one of the local bodies is a cantonment authority, the decision of the Provincial Government, or of the officer, shall be subject to the concurrence of the Central Government."

5. *Amendment of section 92A of Bom. VI of 1933.*—In section 92A of the said Act, for the words "that year" the words "the previous year" shall be substituted.

6. *Amendment of section 108 of Bom. VI of 1933.*—In section 108 of the said Act, after clause (x) of sub-section (1) the following new clause shall be inserted, namely :—

"(xx) authorising the payment of contributions, at such rates and subject to such conditions as may be prescribed in such rules, to any provident fund which may be established by a panchayat, or with the approval of the panchayat, by the officers and servants of the panchayat ;"

### **The Bombay Motor Vehicles Tax (Amendment) Act, 1949.**

Received the assent of the Governor on the 1st April 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 11th April 1949.

#### **Bombay Act No. V of 1949.**

*An Act to amend the Bombay Motor Vehicles Tax Act, 1935.*

WHEREAS it is expedient to amend the Bombay Motor Vehicles Tax Act, 1935 (Bom. XXXIV of 1935), for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Bombay Motor Vehicles Tax (Amendment) Act, 1949.

2. *Insertion of new section 7A in Bom. XXXIV of 1935*—After section 7 of the Bombay Motor Vehicles Tax Act, 1935 (Bom. XXXI of 1935) (hereinafter called the “said Act”), the following new section shall be inserted, namely:—

“7A. *Liability to pay arrears of tax of persons succeeding to the ownership, possession or control of motor vehicles.*—(1) If the tax leviable in respect of any motor vehicle remains unpaid by any person liable for the payment thereof and such person before having paid the tax has transferred the ownership of such vehicle or has ceased to be in possession or control of such vehicle, the person to whom the ownership of the vehicle has been transferred or the person who has possession or control of such vehicle shall be liable to pay the said tax to the registering authority.

(2) Nothing contained in this section shall be deemed to affect the liability to pay the said tax of the person who has transferred the ownership or has ceased to be in possession or control of such vehicle.

3. *Insertion of new section 19A in Bom. XXXIV of 1935*—After section 19 of the said Act, the following new section shall be inserted, namely:—

“19A. *Appeal.*—Any person, who is aggrieved by any order of a registering authority made under this Act, may, within the prescribed time and in the prescribed manner, appeal to the prescribed authority.”

4. *Amendment of section 20 of Bom. XXXIV of 1935.*—In sub-section (2) of section 20 of the said Act, after clause (f), the following new clause shall be inserted, namely:—

“(g) the time within which, the manner in which and the authority to which an appeal may be made under section 19A”.

### **The Agriculturists' Loans and the Bombay Non-agriculturists' Loans (Amendment) Act, 1949.**

Received the assent of the Governor on the 1st April 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 11th April 1949.

#### **Bombay Act No. VI of 1949.**

*An Act to amend the Agriculturists' Loans Act, 1884, in its application to the Province of Bombay and the Bombay Non-Agriculturists' Loans Act, 1928.*

WHEREAS it is expedient to amend the Agriculturists' Loans Act, 1884 (XII of 1884), in its application to the Province of Bombay and the Bombay Non-Agriculturists' Loans Act, 1928 (Bom. III of 1928), for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Agriculturists' Loans and the Bombay Non-Agriculturists' Loans (Amendment) Act, 1949.

2. *Amendment of section 4 of Act XII of 1884.*—In section 4 of the

Agriculturists' Loans Act, 1884 (XII of 1884), in sub-section (1) after the word "objects" the following words shall be added, namely :—

"or for erecting, rebuilding or repairing houses".

3. *Amendment of long title and preamble of Bom. III of 1928.*—In the long title and preamble of the Bombay Non-Agriculturists' Loans Act, 1928 (Bom. III of 1928), hereinafter called the said Act, for the words beginning with the words "for the relief" and ending with the words "other calamities" the words "for certain purposes" shall be substituted.

4. *Amendment of section 3 of Bom. III of 1928.*—In section 3 of the said Act, for the words "for rebuilding or repairing houses" the words "for erecting, rebuilding or repairing houses, for building or repairing boats" shall be substituted.

### The Prisoners (Bombay Amendment) Act, 1949.

Received the assent of the Governor on the 2nd April 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 11th April 1949.

#### Bombay Act No. VII of 1949.

*An Act to amend the Prisoners Act, 1900, in its application to the Province of Bombay.*

WHEREAS it is expedient to amend the Prisoners Act, 1900 (III of 1900), in its application to the Province of Bombay, for the purposes hereafter appearing; It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Prisoners (Bombay Amendment) Act, 1949.

2. *Amendment of heading to Part III of Act III of 1900.*—In the heading to Part III of the Prisoners Act, 1900 (hereinafter called the said Act), for the words "the Presidency-towns" the words "Greater Bombay" shall be substituted.

3. *Amendment of section 5 of Act III of 1900.*—In section 5 of the said Act,—

(a) after the words "criminal jurisdiction" the words "or by the Court of Session for Greater Bombay" shall be inserted;

(b) after the words "such jurisdiction" the words "or within the limits of Greater Bombay, as the case may" shall be added.

4. *Amendment of section 7 of Act III of 1900.*—In section 7 of the said Act,—

(a) for the words "criminal jurisdiction" the words "or appellate criminal jurisdiction or by the Court of Session for Greater Bombay" shall be substituted;

(b) for the words "the Court" the words "the High Court or the Sessions Court, as the case may be," shall be substituted;

(c) for the words "returned by him to the High Court when executed" the words "when executed returned by him to the High Court or the Sessions Court, as the case may be" shall be substituted;

(d) in the marginal note to the said section, after the words "High Court" the words "or Sessions Court" shall be added.

5. *Amendment of section 8 of Act III of 1900.*—In section 8 of the said Act,—

(a) for the words "criminal jurisdiction" the words "or appellate criminal jurisdiction or by the Court of Session for Greater Bombay" shall be substituted;

(b) for the words "the Court" the words "the High Court or the Sessions Court, as the case may be," shall be substituted ;

(c) in the marginal note to the said section, after the words "High Court" the words "or Sessions Court" shall be added.

6. *Amendment of section 9 of Act III of 1900.*—In section 9 of the said Act,—

(a) after the words "High Court," the words "the Bombay City Civil Court or the Court of Session for Greater Bombay," shall be inserted ;

(b) for the words "the Court" the words "the High Court, the City Court or the Sessions Court, as the case may be," shall be substituted ;

(c) in the marginal note to the said section, after the words "High Court" the words "City Court or Sessions Court" shall be inserted.

7. *Amendment of section 11 of Act III of 1900.*—In section 11 of the said Act,—

(a) after the words "criminal jurisdiction" the words "or by the Court of Session for Greater Bombay" shall be inserted ;

(b) for the words "the Court", at both the places where they occur the words "the High Court or the Sessions Court, as the case may be," shall be substituted ;

(c) in the marginal note to the said section, after the words "High Court" the words "or Sessions Court" shall be added.

8. *Amendment of section 13 of Act III of 1900.*—In section 13 of the said Act,—

(a) in sub-section (1), for the words "a Presidency-town" the words "Greater Bombay" shall be substituted ;

(b) in the marginal note to the said section, for the word "Presidency-town" the words "Greater Bombay" shall be substituted.

9. *Amendment of heading to Part IV of Act III of 1900.*—In the heading to Part IV of the said Act, for the words "the Presidency-towns" the words "Greater Bombay" shall be substituted.

10. *Amendment of section 15 of Act III of 1900.*—In section 15 of the said Act, in sub-section (1), for the words "the Presidency-towns" the words "Greater Bombay" shall be substituted.

### **The Bombay Primary Education (Amendment) Act, 1949.**

Received the assent of the Governor on the 11th April 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 12th April 1949.

### **Bombay Act No. VIII of 1949.**

*An Act to amend the Bombay Primary Education Act, 1947.*

WHEREAS it is expedient to amend the Bombay Primary Education Act, 1947 (Bom. LXI of 1947), for the purposes hereinafter appearing ; It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the *Bombay Primary Education (Amendment) Act, 1949.*

2. *Amendment of section 4 of Bom. LXI of 1947.*—In section 4 of the Bombay Primary Education Act, 1947 (Bom. LXI of 1947), hereinafter called the said Act,—

(1) in sub-section (5), after clause (b) the following clause shall be inserted, namely :—

"(c) Notwithstanding anything contained in this sub-section, in the case of a district local board or authorized municipality the term of office of the members or councillors of which expires on or before the 31st day

of July 1949, the election of the members of the school board shall not be held by such district local board or authorized municipality, as the case may be, until after the new district local board or the authorized municipality, has been constituted.”;

(2) to sub-section (13), the following proviso shall be added, namely:—

“Provided that no election shall be held to fill up a vacancy of a member occurring within four months of the date on which the term of office of the members of the school board expires.”;

(3) after sub-section (13), the following sub-section shall be added, namely:—

“(14) During any vacancy the continuing members may act as if no vacancy had occurred.”

3. *Amendment of section 12 of Bom. LXI of 1947.*—In section 12 of the said Act,—

(1) in sub-section (1)—

(a) for the words and figure “on the constitution of a district school board under section 4” the words and brackets “on the date of the coming into force of this Act (hereinafter in this section referred to as ‘the said date’)” shall be substituted;

(b) for the words “the district local board” where they occur for the first time the words “a district local board” shall be substituted;

(c) for the words “the date on which the school board was constituted” the words “the said date” shall be substituted;

( ) for the words “such date” the words “the said date” shall be substituted;

(2) in sub-section (2)—

(a) for the words “On a date notified by the Provincial Government in this behalf” the words “On the said date” shall be substituted;

(b) for the words “such date” the words “the said date” shall be substituted;

(3) in sub-section (3), for the words, brackets and figure “the date notified under sub section (2)” the words “the said date” shall be substituted.

### **The Bombay City Land Revenue (Amendment) Act, 1949.**

Received the assent of the Governor on the 11th April 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 14th April 1949.

### **Bombay Act No. IX of 1949.**

*An Act to amend the Bombay City Land Revenue Act, 1876.*

WHEREAS it is expedient to amend the Bombay City Land Revenue Act, 1876 (Bom. II of 1876), for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. *Short title.*—This Act may be called the Bombay City Land Revenue (Amendment) Act, 1949

2. *Amendment of section 25 of Bom. II of 1876.*—In section 25 of the Bombay City Land Revenue Act, 1876 (Bom. II of 1876), hereinafter called the said Act, after the words “may deem fit” the following shall be added, namely:—

“and in any such case, the land or foreshore so disposed of shall be held only in the manner, for the period and subject to the conditions so prescribed”.

3. *Insertion of new sections 29A, 29B and 29C in Bom. II of 1876.*—

After section 29 of the said Act, the following sections shall be inserted, namely :—

**“29A. Summary eviction of person unauthorizedly occupying, etc., land or foreshore vested in the Crown**—(1) If in the opinion of the Collector any person is unauthorizedly occupying or wrongfully in possession of, any land or foreshore vesting in the Crown for the purposes of the Province or is not entitled or has ceased to be entitled, to continue the use, occupation or possession of any such land or foreshore by reason of the expiry of the period of lease or tenancy or termination of the lease or tenancy or breach of any of the conditions annexed to the tenure, it shall be lawful for the Collector with the previous sanction of the Provincial Government to summarily evict such person in the manner provided in subsection (2).

(2) The Collector shall serve a notice on such person requiring him within such time as may appear reasonable after receipt of the said notice to vacate the land or foreshore, as the case may be, and if such notice is not obeyed the Collector may remove or depute a subordinate to remove him from such land or foreshore.

**29B Forfeiture and removal of property left over after summary eviction.**—(1) After summary eviction of any person under section 29A, any building or other construction erected on the land or foreshore or any crop raised in the land shall, if not removed by such person after such written notice as the Collector may deem reasonable, be liable to forfeiture or to summary removal.

(2) Forfeitures under this section shall be adjudged by the Collector and any property so forfeited shall be disposed of as the Collector may direct and the cost of the removal of any property under this section shall be recoverable as an arrear of land revenue.

**29C. Penalty for resisting or obstructing any officer removing any person or property.**—If the officer removing any person or property under section 29A or 29B, as the case may be, shall be resisted or obstructed by any person, the Collector shall hold a summary inquiry into the facts of the case, and if satisfied that the resistance or obstruction was without any just cause and that such resistance or obstruction still continues, may, without prejudice to any proceedings to which such person may be liable under any law for the time being in force for punishment of such resistance or obstruction, issue a warrant for the arrest of the said person, and on his appearance send him with a warrant, in the form of Schedule A-A, for imprisonment in the civil jail for such period not exceeding thirty days, as may be necessary to prevent the continuance of such obstruction or resistance.”

**4. Insertion of new Schedule A-A in Bom. II of 1876.**—After Schedule A to the said Act, the following Schedule shall be inserted, namely :—

**“SCHEDULE A-A.**

*Form of warrant to be issued by the Collector under section 29C.*

**Seal.**

**To**

The Officer in charge of the Civil Jail at ... ..,

Bombay.

**WHEREAS** A. B. of ... .. has resisted (or obstructed) C. D. in removing E. F. (or himself, that is, the said A. B. or the property, to be described) from the land (or foreshore) situated at ... .. and whereas it

is necessary, in order to prevent the continuance of such resistance (or obstruction), to commit the said A. B. to close custody ; You are hereby required under the provisions of section 29C of the Bombay City Land Revenue Act, 1876 (Bom. II of 1876), to receive the said A. B. into the Jail under your charge and there to keep him in safe custody for days.

Dated this                      day of                      194 .  
(Signature of the Collector)."

**The Bombay Local Boards (Amendment) Act, 1949.**

Received the assent of the Governor on the 12th April 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 19th April 1949.

**Bombay Act No. X of 1949.**

*An Act to amend the Bombay Local Boards Act, 1923.*

WHEREAS it is expedient to amend the Bombay Local Boards Act, 1923 (Bom. VI of 1923), for the purposes hereinafter appearing ; It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Bombay Local Boards (Amendment) Act, 1949.

2. *Amendment of section 3 of Bom. VI of 1923*—In section 3 of the Bombay Local Boards Act, 1923 (Bom. VI of 1923), (hereinafter called the said Act), after clause (ff) the following new clause shall be inserted, namely :—

"(gg) 'ccitroi' means a tax by way of cess on the entry of goods into a district for consumption, use or sale therein ;"

3. *Amendment of section 9 of Bom. VI of 1923.*—In section 9 of the said Act, to sub-section (1) the following shall be added, namely :—

"or

(f) has directly or indirectly by himself or his partner any share or interest in any transaction of loan of money advanced to or borrowed from any officer or servant of the local board."

4. *Amendment of section 19 of Bom. VI of 1923.*—In sub-section (3) of section 19 of the said Act, to clause (b), the following proviso shall be added, namely :—

"Provided further that after such computation if an equality of votes is found to exist between any candidates and the addition of one vote will entitle any of the candidates to be declared elected, one additional vote shall be added to the total number of valid voter found to have been received in favour of such candidate, or candidates, as the case may be, selected by lot drawn in the presence of the Judge in such manner as he may determine."

5. *Amendment of section 26 of Bom. VI of 1923.*—In section 26 of the said Act—

(a) to sub-section (1) the following shall be added, namely :—

"and a president or vice-president so removed shall not be eligible for re-election or appointment during the remainder of the term of office of the local board." ;

(b) in sub-section (2)—

(i) after the words "vacancy shall" the words, brackets and figure "subject to the provisions of sub-section (1)" shall be inserted, and

(ii) for the words "some other member" the words "a member" shall be substituted.

6. *Amendment of section 30 of Bom. VI of 1923.*—To sub-section (1) of section 30 of the said Act, the following shall be added, namely :—

"Provided that where an application is made by a member of the local board for leave to absent himself under clause (c) and the Board fails to inform the applicant of its decision on the application within a period of three months from the date of the application, the leave applied for shall be deemed to have been granted by the Board."

7. *Amendment of section 72 of Bom. VI of 1923.*—In section 72 of the said Act, for the words "In lieu of proceeding by distress and sale, or in case of failure to realise by so proceeding" the words "In lieu of any process of recovery allowed by or under this Act or in case of failure to realise by such process" shall be substituted.

8. *Insertion of new section 80B in Bom. VI of 1923.*—After section 80A of the said Act, the following new section shall be inserted, namely :—

"80B. *District Local Boards to spend 75 per cent. of grant of land revenue in talukas.*—Every district local-board shall, out of the grant of land revenue made by the Provincial Government under section 118A, spend for the benefit of each taluka at least seventy-five per cent. of the amount of the grant of such revenue realised in the taluka."

9. *Amendment of section 104 of Bom. VI of 1923.*—In section 104 of the said Act, in clause (b) of sub-section (1), the words "an octroi or" shall be deleted and after the words "any tax", the brackets and words "(including an octroi)" shall be inserted.

10. *Insertion of new section 106A in Bom. VI of 1923.*—After section 106 of the said Act, the following new section shall be inserted, namely :—

"106A. *Octroi on goods in vessels in river, creek, etc.*—Where an officer of a district local board has reasons to suspect that any goods on which an octroi is leviable are on board a vessel and such vessel has entered any river, stream, creek or an arm of the sea, the limits of which shall be specified by the Provincial Government as being within the district for the purposes of this section, such officer may board the vessel and may take steps for the recovery of octroi due in the manner provided by this Act."

11. *Amendment of marginal note to section 116 of Bom. VI of 1923.*—For the marginal note to section 116 of the said Act, the following shall be substituted, namely :—

"Power to seize animals, goods or vehicles on non-payment of octroi or toll."

12. *Amendment of section 116A of Bom. VI of 1923.*—In section 116A of the said Act—

(i) for the word and figures "Chapter VIII" the words "this chapter" and

(ii) for the words "under the said chapter" the word "thereunder", shall be substituted.

13. *Insertion of new Chapter VIII in Bom. VI of 1923.*—After section 118 of the said Act, the following shall be inserted, namely :—

#### "CHAPTER VIIIA.

##### FINANCIAL ASSISTANCE TO DISTRICT LOCAL BOARDS.

118A. *Grant of 15 per cent. of land revenue to district local boards.*—The Provincial Government shall make every year a grant to every district local board equivalent in amount to fifteen per cent. of the ordinary land revenue including non-agricultural assessment realised during the previous revenue year from lands within the limits of the district excluding lands

within municipal boroughs, municipal districts or villages within the meaning of the Bombay Village Panchayats Act, 1933 (Bom. VI of 1933)."

14. *Substitution of new section for section 136 of Bom. VI of 1923.*—For section 136 of the said Act, the following shall be substituted, namely :—

"136. *Limitation of suits, etc.*—(1) No suit shall be commenced against any local board, or against any officer or servant of a local board, or any person acting under the orders of a local board, for anything done, or purporting to have been done, in pursuance of this Act, without giving to such local board, officer, servant, or person one month's previous notice in writing of the intended suit and of the cause thereof, nor after three months from the date of the act complained of.

(2) In the case of any such suit for damages, if tender of sufficient amends shall have been made before the action was brought, the plaintiff shall not recover more than the amount so tendered, and shall pay all costs incurred by the defendant after such tender."

### The Bombay Anatomy Act, 1949.

Received the assent of the Governor on the 13th April 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 22nd April 1949.

### Bombay Act No. XI of 1949.

*An Act to provide for the supply of unclaimed bodies of deceased persons to hospitals and medical and teaching institutions for the purpose of anatomical examination and dissection.*

WHEREAS it is expedient to provide for the supply of unclaimed bodies of deceased persons to hospitals and medical and teaching institutions for the purpose of anatomical examination and dissection ; It is hereby enacted as follows :—

1. *Short title, extent and commencement*—(1) This Act may be called the Bombay Anatomy Act, 1949.

(2) It extends to the whole of the Province of Bombay.

(3) This section shall come into force at once.

(4) The Provincial Government may, by notification in the *Official Gazette*, direct that the remaining provisions of this Act shall come into force on such date and in such area as may be specified in the notification.

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

(1) "approved institution" means a hospital or a medical or teaching institution approved by the Provincial Government to carry on anatomical examination and dissection ;

(2) "authorised officer" means an officer authorised to act under section 5 ;

(3) "near relative" means any of the following relatives of the deceased, namely, a wife, husband, parent, son, daughter, brother and sister and includes any other person who is related to the deceased (a) by lineal or collateral consanguinity within three degrees in lineal relationship and six degrees in collateral relationship, or (b) by marriage either with the deceased or with any relative specifically mentioned in this clause or with any other relative within the aforesaid degrees.

*Explanation.*—The expressions "lineal and collateral consanguinity" shall have the meanings assigned to them in the Indian Succession Act, 1925 (XXXIX of 1925) ;

(4) "prescribed" means prescribed by rules made under this Act ;

(5) "unclaimed body" means the body of a deceased person who has no near relative or whose body has not been claimed by any of his near relatives within such period as may be prescribed.

3. *Doubt or dispute as to near relative to be referred to Coroner or authorised officer.*—If any doubt or dispute arises whether a person is a near relative of the deceased, the matter shall be referred in the Greater Bombay to the Coroner or an Additional Coroner appointed under the Coroners Act, 1871 (IV of 1871), and elsewhere, to such officer as may be appointed in this behalf by the Provincial Government, and his decision shall be final and conclusive.

4. *Power of Provincial Government to authorise officers to act under section 5.*—The Provincial Government may, by notification in the Official Gazette, authorise for the area in which this Act comes into force or any part thereof, one or more officers to whom a report shall be made under section 5 and who shall be competent to act under the said section.

5. *Unclaimed dead bodies to be used for anatomical examination.*—(1) Where a person under treatment in a hospital whether established by, or vesting in, or maintained by, the Provincial Government or any local authority, dies in such hospital and his body is unclaimed, the authorities in charge of such hospital shall with the least practicable delay report the fact to the authorised officer and such officer shall then hand over the unclaimed body to the authorities in charge of an approved institution for the purpose of conducting anatomical examination and dissection.

(2) Where a person dies at a hospital other than a hospital referred to in sub-section (1) or in a prison and his body is unclaimed, the authorities in charge of such hospital or prison shall with the least practicable delay report the fact to the authorised officer, and the said officer shall hand over the unclaimed body to the authorities in charge of an approved institution for the purpose specified in sub-section (1).

(3) Where a person having no permanent place of residence in the area where his death has taken place dies in any public place in such area and his body is unclaimed, the authorised officer shall take possession of the body and shall hand it over to the authorities in charge of an approved institution for the purpose specified in sub-section (1).

6. *Penalty.*—Whoever disposes of, or abets the disposal of, an unclaimed body save as permitted by this Act, or obstructs any authority in charge of an approved institution or an authorised officer from handing over, taking possession of, removing or using, such dead body for the purpose specified in the Act, shall, on conviction, be punished with fine which may extend to five hundred rupees.

7. *Duty of Police and other officers to assist in obtaining possession of unclaimed bodies.* All officers of the Departments of Police and Public Health and all officers in the employ of a local authority and all village officers shall be bound to take all reasonable measures to assist any authority or officer authorised under this Act to obtain the possession of an unclaimed body.

8. *Protection of persons acting under the Act.*—No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

9. *Officers to be public servants.*—All officers appointed or authorised to act under this Act shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

10. *Rules.*—(1) The Provincial Government may, by notification in the *Official Gazette*, make rules for carrying out the purposes of this Act.

(2) Without prejudice to the generality of the provisions of sub-section (1) such rules may prescribe the period within which a near relative shall claim the body of a deceased person.

### **The Bombay Shops and Establishments (Amendment) Act, 1949.**

Received the assent of the Governor on the 1st May 1949 and is published in the *Bombay Government Gazette*, Part IV, dated the 9th May 1949.

### **Bombay Act No. XVII of 1949.**

*An Act to amend the Bombay Shops and Establishments Act, 1948.*

WHEREAS it is expedient to amend the Bombay Shops and Establishments Act, 1948 (Bom. LXXIX of 1948), for the purpose hereinafter appearing; It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Bombay Shops and Establishments (Amendment) Act, 1949.

2. *Amendment of section 2 of Bom. LXXIX of 1948*—In clause (g) of section 2 of the Bombay Shops and Establishments Act, 1948 (Bom. LXXIX of 1948) (hereinafter called the said Act), for the words beginning with the word, brackets and letter “clause (j)” and ending with the words “the said Act”, the following shall be substituted, namely :—

“clause (m) of section 2 of the Factories Act, 1948 (LXIII of 1948), or which is deemed to be a factory under section 85 of the said Act;”.

3. *Amendment of section 64 of Bom. LXXIX of 1948.*—In section 64 of the said Act,—

(i) in sub-section (2), for the words “registered medical practitioner” the words “qualified medical practitioner” shall be substituted;

(ii) in the *Explanation*—

(a) for the words “registered medical practitioner” the words “qualified medical practitioner”, and

(b) for the figures “1934” the figures “1948” shall be substituted.

4. *Amendment of section 70 of Bom. LXXIX of 1948.*—In section 70 of the said Act, for the figures “1934” the figures “1948” shall be substituted.

## PART VI

# ORISSA ACTS

### **The Orissa Muhammadan Marriages and Divorces Registration Act, 1949.**

In pursuance of rule 90 of the Orissa Legislative Assembly Rules, 1937, the following Act of the Orissa Legislative Assembly having been assented to in His Majesty's name by the Governor on the 8th June 1949, is published in the *Orissa Gazette*, Part X, dated the 24th June 1949 [Vide Notification No. 4322-11B-19 of 1948-L, dated the 21st June 1949].

#### **Orissa Act VII of 1949.**

*An Act to provide for the Voluntary Registration of Muhammadan Marriages and Divorces in the Province of Orissa.*

WHEREAS it is expedient to provide for the voluntary registration of marriages and divorces among Muhammadans in the Province of Orissa ;

It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the Orissa Muhammadan Marriages and Divorces Registration Act, 1949.

(2) It extends to the whole of the Province of Orissa.

(3) It shall come into force at once.

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

(a) “district” means a district formed under the provisions of the Indian Registration Act, 1908 (XVI of 1908) ;

(b) “Inspector-General of Registration” and “Registrar” respectively mean the officers so designated and appointed under the Indian Registration Act, 1908 (XVI of 1908), or any other law for the time being in force for the registration of documents ;

“Muhammadan Registrar” means any person who is duly authorised under this Act to register marriages and divorces ;

(b) “Pardanashin” means a woman who, according to the custom of the country, might reasonably object to appear in a public office.

3. *Provincial Government may grant licenses to register.*—It shall be lawful for the Provincial Government to grant a license to any person, being a Muhammadan, authorising him to register Muhammadan marriages and divorces which have been effected within certain specified limits, on application being made to him for such registration ; and in like manner it shall be lawful for the Provincial Government to revoke or suspend such licence :

Provided that not more than two persons shall be licensed to exercise the said functions within the same limits ;

Provided further that, when two persons are so licensed to act within the same limits, the one shall be a member of the Sunni, and the other of the Shia, sect

4. *Muhammadan Registrars to use seals.*—Every Muhammadan Registrar shall use a seal bearing the inscription, ‘The seal of the Muhammadan Registrar of \_\_\_\_\_’ in Persian character.

5. *Provincial Government to provide seal and books.*—(1) The Provincial Government shall provide for the office of every Muhammadan Registrar the seal and the books necessary for the purposes of this Act.

(2) The pages of such books shall be consecutively numbered in print and the number of pages in each book shall be certified on the title-page by the officer by whom such books are issued.

6. *Muhammadan Registrar to keep registers.*—Every Muhammadan Registrar shall keep up the following books of register, namely :—

Book I—Register of marriages in the Form A contained in the Schedule.

Book II—Register of divorces other than those of the kind known as Khula, in the Form B contained in the Schedule.

Book III—Register of divorces of the kind known as Khula, in the Form C contained in the Schedule.

7. *Entries to be numbered.*—The necessary entries in each register specified in section 6 shall be numbered in a consecutive series, which shall commence and terminate with the year, a fresh series being commenced at the beginning of each year.

8. *Applications by whom to be made.*—Every application for registration of a marriage or divorce under this Act shall be made to the Muhammadan Registrar orally as follows :—

- (i) if the application be for the registration of a marriage—  
by the parties to the marriage jointly :

Provided that if the man, or the woman or both, be minors such application shall be made on their behalf by their respective lawful guardians :

Provided further that, if the woman be a pardanashin, such application may be made on her behalf by her duly authorised agent ;

(ii) (a) if the application be for the registration of a divorce other than of the kind known as Khula by the man who has effected the divorce ;

(b) if the application be for the registration of a divorce of the kind known as Khula—

by the parties to the divorce jointly :

Provided that if the woman be a pardanashin, such application may be made on her behalf by her duly authorised agent.

9. *Duties of Muhammadan Registrar on application.*—(1) Every application for registration under section 8 shall be made within one month from the date of marriage or divorce and on payment to him of a fee of one rupee, the Muhammadan Registrar shall—

(a) satisfy himself whether or not such marriage or divorce was effected by the person or persons by whom it is represented to have been effected ;

(b) satisfy himself as to the identity of the persons appearing before him and alleging that the marriage or divorce has been effected ;

(c) in the case of any person appearing as representative of the man or woman (whether he appears as guardian or agent) satisfy himself of the right of such person to appear.

(2) If the Muhammadan Registrar is satisfied on the aforesaid points he shall make an entry of the marriage or divorce in the proper register ;

Provided that no such entry shall be made otherwise than in the presence of every person who, under the provisions of section 11 is required to sign such entry.

(3) The Muhammadan Registrar shall not register—

(a) a marriage of a woman who has effected a divorce of the kind known as Talaq-i-tafweez—

(i) except on the production of a document registered under the Indian Registration Act, 1908 (XVI of 1908), or under any other law for the time being in force for the registration of documents, or of a certified copy of such document, or of a certified copy of the order of the District Judge or any Court of competent jurisdiction, showing that such divorce has been effected or of an attested copy of an entry of the divorce in the register of divorces of the kind known as Talaq-i-tafweez (Book IV);

(ii) notwithstanding anything contained in section 9, within six months of the date of divorce of the previous husband of the woman;

(iii) without giving to the previous husband of the woman by registered post one month's notice in such form containing such particulars as may be prescribed by rules made under section 24;

(b) a divorce of the kind known as Talaq-i-tafweez except on the production of a document registered under the Indian Registration Act, 1908, (XVI of 1908) or under any law for the time being in force for the registration of documents, by which the husband delegated the powers of divorce to the wife or of an attested copy of an entry in the register of marriages (Book I) showing that such delegation has been made.

10. *Muhammadan Registrar may receive gratuity.*—Nothing in the preceding section shall be held to prohibit a Muhammadan Registrar from receiving a gratuity in excess of the fee provided in sub-section (1) of section 9 when such gratuity is voluntarily tendered.

11. *Entries by whom to be signed.*—Every entry in a register kept under this Act shall be signed as follows:—

(a) if the entry be of a marriage, in a register in the Form A contained in the Schedule.—

(1) by the parties to the marriage, or if either or, both of them be minors, by their lawful guardians respectively; provided that, if the woman be a pardanashin the entry may be signed on her behalf by her duly authorised agent;

(2) by two witnesses who were present at the marriage-ceremony;

(3) in cases in which the woman is represented by an agent by two witnesses to the fact of the agent having been duly authorised to represent her; and

(4) by the Muhammadan Registrar.

(b) (i) if the entry be of a divorce other than the kind known as Khula in a register in the form B contained in the Schedule—

(1) by the man who has effected the divorce;

(2) by the witness who identifies the man who has effected the divorce;

(3) if the man be of the Shia sect—by two witnesses to the divorce being effected; and

(4) by the Muhammadan Registrar.

(ii) if the entry be of a divorce of the kind known as Khula in a register in the Form C contained in the Schedule—

(1) by the parties to the Khula; provided that, if the woman be a Pardanashin the entry may be signed on her behalf by her duly authorised agent;

(2) by the person who identifies the man;

(3) by the person who identifies the woman;

(4) if the application for registration has been made by an agent on behalf of the woman by two witnesses to the fact of the agent having been duly authorised to represent her;

(5) if the man be of the Shia sect—by two witnesses to the divorce being effected; and

(6) by the Muhammadan Registrar.

12. *Copies of entry to be given to parties.*—On completion of the registration of any marriage, or divorce, the Muhammadan Registrar shall deliver to each of the applicants for registration an attested copy of the entry for which no charge shall be made.

18. *Index to be kept.*—In every office in which any register hereinbefore mentioned is kept, there shall be prepared a current index of the contents of such register and every entry in such index shall be made, so far as practicable, immediately after the Muhammadan Registrar has made an entry in any such register.

14. *Particulars to be shown in index.*—The index provided in section 13 shall contain the name, place of residence and father's name of each party to every marriage or divorce, and the date of registration and it shall contain such other particulars and shall be prepared in such form, as the Provincial Government may from time to time direct.

15. *Index may be inspected and copies of entries in registers taken.*—

(1) Subject to the previous payment of the fees provided in section 16 the index, whether it be in the office of the Muhammadan Registrar or of the Registrar of the district, and the copies of entries in such index, which are filed in the office of the Registrar of the district under the provisions of section 22 shall at all times be open to inspection by any person applying to inspect the same.

(2) Copies of entries in any of the registers and of the certified copies of such entries which are filed in the office of the Registrar of the district under section 22 shall be given to all persons applying for such copies.

(3) Such copies shall be signed and sealed by the Registrar of the district or by the Muhammadan Registrar, as the case may be.

16. *Fees for inspection and copies.*—Every Registrar of a district and every Muhammadan Registrar shall, for the purposes of this Act, be entitled to levy the following fees :—

(a) for every inspection or permission to inspect any index or register under his charge—Four annas ;

(b) for every certified copy of any entry in a register other than the first copy referred to in section 12—one rupee.

17. *Muhammadan Registrar to be subject to control of District Registrar.*—(1) Every Muhammadan Registrar shall perform the duties of his office under the superintendence and control of the Registrar under whose jurisdiction the office of such Muhammadan Registrar is situate.

(2) Every Registrar shall have authority to issue (whether on complaint or otherwise) any order consistent with this Act, which he considers necessary in respect of any act or omission of any Muhammadan Registrar subordinate to him.

18. *Inspector-General of Registration to exercise general superintendence.*—The Inspector-General of Registration shall exercise general superintendence over the offices of all Muhammadan Registrars and shall have power from time to time to make regulations for the guidance of the said Muhammadan Registrars and the regulation of their offices generally.

19. *Rules to be approved by Provincial Government and published in Gazette.*—All regulations made under section 18 shall be submitted to the Provincial Government for approval, and after they have been approved shall be published in the Gazette, and shall have effect from the date of such publication.

20. *Refusal to register to be recorded.*—Every Muhammadan Registrar refusing to register a marriage or divorce shall make an order of refusal,

and record his reasons for such order in a book to be kept for that purpose.

21. *Appeal against refusal to register*—An appeal shall lie against an order of a Muhammadan Registrar refusing to register a marriage or divorce, to the Registrar to whom such Muhammadan Registrar is subordinate, if presented to such Registrar within twenty days from the date of the order, and the Registrar may reverse or alter such order; and the order passed by the Registrar on appeal shall be final.

22. *Copies of entries to be sent monthly to Registrar of district*.—Every Muhammadan Registrar shall, at the expiration of every month, send certified copies of all entries made by him during the month in the registers mentioned in section 6, and also of the entries which have been made in the index referred to in section 13 to the Registrar of the district within which such Muhammadan Registrar has been authorised to act and the Registrar, on receiving such copies, shall file them in his office.

23. *Registers to be made over*—Every Muhammadan Registrar shall keep safely each register until the same shall be filed, and shall thereupon or earlier if he shall leave the district or cease to hold a license, make over the same to the Registrar of the district for safe custody, or to such other person as the Registrar may direct.

24. *Provincial Government may prescribe rules*.—(1) The Provincial Government may from time to time make rules for carrying into effect the purposes of this Act.

(2) Without prejudice to the generality of the foregoing power such rules may provide for—

(a) determining the qualifications to be required from persons to whom licenses under section 3 may be granted;

(b) regulating the attendance of Muhammadan Registrars at the celebration of marriages, and their remuneration for such attendance;

(c) regulating the grant of copies by Registrars and Muhammadan Registrars;

(d) regulating the payment by the Muhammadan Registrars of the cost of the seals, forms of registers, stationery and any other articles which may be supplied to them by the Government;

(e) regulating the application of the fees levied by Registrars of districts and Muhammadan Registrars under this Act; and

(f) regulating such other matters for which no provision or inadequate provision is made in this Act and for which provision is in the opinion of the Provincial Government necessary.

25. *Muhammadan Registrar a public officer*—Every Muhammadan Registrar shall be, and be deemed to be, a public servant and his duties under this Act shall be deemed to be public duties.

26. *Savings*—Nothing in this Act contained shall be construed to—

(a) render invalid, merely by reason of non-registration, any muhammadan marriage or divorce which would otherwise be valid;

(b) render valid, by reason of registration any muhammadan marriage or divorce which would otherwise be invalid;

(c) authorize the attendance of any Muhammadan Registrar at the celebration of a marriage, except at the request of all the parties concerned;

(d) affect the religion or religious rites and usages of any of His Majesty's subjects in the Dominion of India.

27. *Repeal and savings*.—(i) The Bengal Muhammadan Marriages and Divorce Registrations Act, 1876 (Bengal Act of 1876) is hereby repealed.

(ii) All orders issued, appointments made, licenses granted or anything done under the said Act and in force immediately before the commencement of this Act shall continue in force and be deemed to have been issued, made, granted or done under the corresponding provisions of this Act.

### SCHEDULE

(See sections 6 and 11)

#### Form A. Book I

Register of marriages (as provided in section 6 of the Act for the voluntary registration of Muhammadan marriages and divorces).

1. Consecutive number.
2. Name of the bridegroom and that of his father, with their respective residences.
3. Name of the bride and that of her father, with their respective residences.
4. Whether the bride is a spinster, a widow or divorced by a former husband, and whether she is adult or otherwise.
5. Name of the guardian of the bridegroom (if the bridegroom be a minor) and that of the guardian's father, with specification of the guardian's residence, and of the relationship in which he stands to the bridegroom.
6. Name of the guardian of the bride (if she be a minor) and that of his father, with specification of his residences, and the relationship in which he stands to the bride.
7. Name of the bride's agent and of his father, and their residences, with specification of the relationship in which the agent stands to the bride.
8. Names of the witnesses to the due authorization of the bride's agent, with names of their fathers and residences, and specification of the relationship in which they stand to the bride.
9. Date on which the marriage was contracted, to be given according to the British calendar and according to the era current in the district.
10. Amount of dower.
11. How much of the dower is mu'ajjal (prompt) and how much mu'wajja (deferred).
12. Whether any portion of the dower was paid at the moment. If so, how much.
13. Whether any property was given in lieu of the whole or any portion of the dower, with specification of the same.
14. Special conditions, if any.
15. Names of village or town, police-jurisdiction and district in which the marriage took place.
16. Name of the person in whose house the marriage ceremony took place, and that of his father.
17. Date of registration, to be given according to the British calendar.

#### Form B. Book II

Register of Divorces, other than those of the kind known as Khula (provided in section 6 of the Act for the voluntary registration of Muhammadan Marriages and Divorces.)

1. Consecutive number.
2. Names of the husband and of his father, and their residences.
3. Names of the wife and of her father, and their residences.

4. Date of the divorce according to the British calendar and according to the era current in the district.
5. Description of divorce.
6. Manner in which the divorce was effected.
7. Names of the village or town, police-jurisdiction and district in which the divorce took place.
8. Name of the party in whose house the divorce took place, and of his father.
9. Names of the witnesses to the divorce, if any, the names of their fathers, and their respective residences.
10. Name of party identifying the husband before the Muhammadan Registrar and that of his father, and their residences.
11. Date of registration—to be given according to the British calendar.

---

Form C. Book III

Register of Divorces of the kind known as Khula (provided in section 6 of the Act for the voluntary registration of Muhammadan Marriages and Divorces).

1. Consecutive number.
  2. Name of the husband and that of his father, and their residences.
  3. Name of the wife and that of her father, and their residences.
  4. Date of Khula—according to the British calendar and according to the era current in the district.
  5. Amount of dower.
  6. Whether Khula was acknowledged by the wife in person before the Muhammadan Registrar.
  7. If so, name of the party identifying her before the Muhammadan Registrar, and that of his father and their residences, with specification of the relationship which he bears to her, if any.
  8. If the Khula be acknowledged before the Muhammadan Registrar by the wife's agent, his name and that of his father and their residences, with specification of the relationship which the agent bears to the wife, if any.
  9. Names of the two witnesses to the due authorization of the wife's agent, and those of their fathers, with their residences.
  10. Name of the village or town, police-jurisdiction and district where the Khula took place.
  11. Name of the person in whose house the Khula took place, and that of his father.
  12. Names of the witnesses, if any, to the divorce being effected, the names of their fathers, and their residences.
  13. Name of person identifying the husband and that of his father, and their residences.
  14. Date of registration—to be given in the British calendar.
-

## PART IX

---

# WEST BENGAL ACTS

---

### The West Bengal Land Development and Planning Act, 1948.

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [Vide Notification No. 1641L. of the judicial and Legislative (Legislative) Department, dated the 7th October 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 7th October 1948.]

### West Bengal Act XXI of 1948.

[ *Passed by the West Bengal Legislature.* ]

[ Assent of the Governor was first published in the *Calcutta Gazette*, Extraordinary, of the 7th October, 1948. ]

*An Act to provide for the acquisition and development of land for public purposes.*

WHEREAS it is expedient to provide for the acquisition and development of land for public purposes ;

It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the West Bengal Land Development and Planning Act, 1948

(2) It extends to the whole of West Bengal ; but it shall not apply to the Calcutta Municipality as defined in clause (b) of section 2 of the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), or to any area to which that Act has been extended under sub-section (3) of section 1 thereof before the commencement of this Act.

(3) It shall come into force on the date on which the West Bengal Land Development and Planning Ordinance, 1948 (West Ben. Ord. 11 of 1948), ceases to operate.

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

(a) the expressions “land”, “Collector” and “Company” respectively have the same meanings as in the Land Acquisition Act, 1894 (I of 1894) ;

(b) “development scheme” means a scheme for the development of land for any public purpose ;

(c) “notified area” means an area declared under sub-section (1) of section 4 to be a notified area ;

(d) “public purpose” includes—

(i) the settlement of immigrants who have migrated into the Province of West Bengal on account of circumstances beyond their control,

(ii) the establishment of towns, model villages and agricultural colonies,

(iii) the creation of better living conditions in urban and rural areas, and

(iv) the improvement and development of agriculture, forestry, fisheries and industries ;

(c) "rules" means rules made under this Act.

3. *Appointment of the prescribed authority.*—The Provincial Government may appoint, in accordance with the rules, an authority (hereinafter referred to as the prescribed authority) for carrying out the purposes of this Act.

4. *Declaration of notified area.*—(1) The Provincial Government may, by notification in the *Official Gazette*, declare any area specified in the notification to be a notified area if it is satisfied that any land in such area is needed or is likely to be needed for any public purpose and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the locality in such manner as he may think fit.

(2) Thereupon it shall be lawful for any person either generally or specially authorised by such Government in this behalf and for his servants and workmen,—

to enter upon and survey and take levels of any land in such area ;

to dig or bore into the subsoil ;

to do all other acts necessary to ascertain whether the land is suitable for such purpose ,

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;

to mark such levels, boundaries and line by placing marks and cutting trenches , and

where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle :

Provided that the person so authorised shall, at the time of such entry, pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

5. *Preparation and sanctioning of development scheme.*—(1) The Provincial Government may direct the prescribed authority, or, if it so thinks fit in any case, authorise any Company or local authority, to prepare, in accordance with the rules, a development scheme in respect of any notified area and thereupon such scheme shall be prepared accordingly and submitted, together with such particulars as may be prescribed by the rules, to the Provincial Government for its sanction.

(2) A development scheme submitted to the Provincial Government under sub-section (1) may be sanctioned by it either without any modification or subject to such modifications as it may deem fit.

6. *Declarations for acquisition of land needed for development scheme.*—(1) When a development scheme is sanctioned under sub-section (2) of section 5 and the Provincial Government is satisfied that any land in the notified area for which such scheme has been sanctioned is needed for the purpose of executing such scheme, a declaration to the effect that such land is needed for a public purpose shall, unless already made in pursuance of section 7, be made by the Provincial Government.

(2) The declaration shall be published in the *Official Gazette*, and shall state the district or other territorial division in which the land is situate, the purpose for, which it is needed, its approximate area, and, where a plan shall have been made of the land, the place where such plan may be inspected.

7. *Special provision in cases of urgency.*—In cases of urgency, if in respect of any notified area the Provincial Government is satisfied that the preparation of a development scheme is likely to be delayed, the Provincial Government may, at any time, make a declaration under section 6, in respect of such notified area or any part thereof though no development scheme has either been prepared or sanctioned under section 5.

8. *Application of Act I of 1894 subject to special provision for compensation.*—A declaration under section 6 shall be conclusive evidence that the land in respect of which the declaration is made is needed for a public purpose and, after making such declaration, the Provincial Government may acquire the land and thereupon the provisions of the Land Acquisition Act, 1894 (I of 1894) (hereinafter in this section referred to as the said Act), shall, so far as may be, apply :

Provided that—

(a) if in any case the Provincial Government so directs, the Collector may, at any time after a declaration is made under section 6, take possession, in accordance with the rules, of any *beel baor*, tank or other watery area, or any other waste or arable land in respect of which the declaration is made and thereupon such land shall vest absolutely in the Crown free from all encumbrances ;

*Explanation*—For the purposes of this clause the decision of the Provincial Government as to whether any land is or is not waste or arable land shall be final ;

(b) in determining the amount of compensation to be awarded for land acquired in pursuance of this Act the market value referred to in clause first of sub-section (1) of section 23 of the said Act shall be deemed to be the market value of the land on the date of publication of the notification under sub-section (1) of section 4 for the notified area in which the land is included subject to the following conditions, that is to say,—

if such market value exceeds by any amount the market value of the land on the 31st day of December, 1946, on the assumption that the land had been at that date in the state in which it in fact was on the date of publication of the said notification, the amount of such excess shall not be taken into consideration.

9. *Power to dispose of land without development.*—Notwithstanding anything elsewhere contained in this Act or in any rule or order made thereunder, the Provincial Government may, if it so considers expedient, retain, let on hire, lease, sell, exchange or otherwise dispose of any land acquired in pursuance of this Act :

Provided that—

(a) where the Provincial Government decides to lease or sell any land acquired in pursuance of this Act, the person or persons from whom the land was so acquired shall, in such manner as the Provincial Government may direct, be offered a prior right to take on lease or to purchase the land on such terms and conditions as may be determined by the Provincial Government ;

(b) if, in any case, two or more persons claim to exercise a right offered under clause (a), the right shall be exercisable by such of the claimants as the Provincial Government may determine.

10. *Execution of development scheme and disposal of land.*—(1) The Provincial Government may direct the prescribed authority to execute any development scheme sanctioned under sub-section (2) of section 5 or cause it to be executed in accordance with the rules and upon the execution of the

scheme as so directed the lands comprised therein shall be disposed of by the Collector in such manner as may be directed by the Provincial Government.

(2) If the Provincial Government so thinks fit, it may also empower a Company or a local authority to execute, at its own cost, any such development scheme and to dispose of the lands comprised therein on such terms and conditions including conditions relating to the manner of disposal of land as may be settled by the Provincial Government and embodied in an agreement to be entered into by the Provincial Government and the Company or local authority, as the case may be.

11. *Withdrawal of power from Company or local authority to execute development scheme or to dispose of land.*—It, at any time, the Provincial Government is satisfied that any of the terms or conditions contained in an agreement referred to in sub-section (2) of section 10 is not being complied with, it may, by order served in accordance with the rules on the Company or local authority, as the case may be, withdraw the power conferred on it to execute any development scheme or to dispose of the lands comprised therein or both and may thereafter make such arrangement in that behalf as it may deem fit and proper.

12. *Protection of action taken under this Act.*—No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

13. *Delegation of powers.*—The Provincial Government may, by notification in the *Official Gazette*, direct that any or all of the powers conferred upon it by this Act shall be exercisable also by such authority subject to such conditions, if any, as may be specified in the notification.

14. *Power to make rules.*—(1) The Provincial Government may make rules for carrying out the purposes of this Act.

(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 :

(a) the designation, constitution and manner of appointment of the prescribed authority ;

(b) the preparation of development scheme and the particulars to be submitted with development scheme referred to in sub-section (1) of section 5 ;

(c) the manner of taking possession of land referred to in clause (a) of the proviso to section 8 ;

(d) the execution of development schemes referred to in section 10 ;

(e) the manner of service of orders referred to in section 11.

15. *Continuance of action taken under West Bengal Ordinance II of 1948.*—Any appointment or rules made or any notification issued or anything done or any action taken or any proceeding commenced in exercise of any power conferred by or under the West Bengal Land Development and Planning Ordinance, 1948 (West Ben. Ord. II of 1948) shall, on the said Ordinance ceasing to operate, be deemed to have been made, issued, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on the 27th day of April, 1948.

### The West Bengal Black Marketing Act, 1948.

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor-General [ Vide Notification No. 1652L. of the Judicial and Legislative (Legislative) Department, dated the 17th October 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 17th October 1948. ]

### West Bengal Act XXXII of 1948.

[ Passed by the West Bengal Legislature. ]

[ Assent of the Governor-General was first published in the *Calcutta Gazette*, Extraordinary, of the 17th October, 1948. ]

*An Act to make special provision for checking black marketing.*

WHEREAS it is expedient to make special provision for checking black marketing ;

It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the West Bengal Black Marketing Act, 1948.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on the date on which the West Bengal Black Marketing Ordinance, 1948 (West Ben. Ord. VI of 1948) ceases to operate.

2. *Definition.*—In this Act, the expression “Black Marketing” means,—

(a) selling or purchasing for purposes of trade any goods at a greater price than the maximum price fixed, by or under any law, notification or order for the time being in force, for the sale of such goods ;

(a) otherwise than in accordance with any law, notification or order for the time being in force, selling or disposing of, or supplying articles declared to be rationed articles or otherwise rationed by or under any law, notification or order in force ;

(c) in contravention of any law, notification or order for the time being in force, supplying, distributing, selling, disposing of, or parting with the possession or custody of, or offering to supply, distribute, sell, dispose of or part with the possession or custody of, or acquiring or taking into possession goods or anything whatsoever, the supply, distribution, sale, disposal, parting with the possession or custody, acquiring or taking into possession of which is prohibited or subject to restrictions, or conditions (including conditions as to price) by or under any law, notification or order for the time being in force ;

(d) storing, taking, causing, permitting or suffering delivery of goods upon any premises delivery upon which is prohibited by or under any law, notification or order for the time being in force ;

(e) otherwise than in accordance with any law, notification or order for the time being in force, producing, manufacturing, or treating any goods or thing the production, manufacture or treating of which is subject to restrictions or conditions by or under any law, notification or order for the time being in force ;

(f) otherwise than in accordance with any law, notification or order for the time being in force, moving or purporting to sell or supply or purporting to acquire or take into possession for purposes of trade any goods or any thing whatsoever vested in His Majesty by or under any law, notification or order for the time being in force ;

(g) otherwise than in accordance with any law, notification or order for the time being in force, using, or dealing with any licence, permit,

ration card, ration document, or ration coupon issued under any law, notification or order for the time being in force ;

(b) in contravention of any law, notification or order for the time being in force, making or uttering any counterfeit or forged licence, permit, ration card, ration document or ration coupon or doing any other act or thing in relation to any licence, permit, ration card, ration document or ration coupon issued under any law, notification or order for the time being in force, or in relation to any counterfeit or forged licence, permit, ration card, ration document or ration coupon ;

(1) withholding from sale any article which has been prohibited from being so withheld by or under any law, notification or order for the time being in force.

3. *Offence of black marketing and penalty.*—(1) Whoever commits black marketing shall be punishable with imprisonment which may extend to seven years but shall not, except for reasons to be recorded in writing, be less than six months and shall also be liable to a fine.

(2) The offence of black marketing under this Act shall not be prosecuted without the sanction of the Provincial Government.

(3) In addition to any other punishment, the Court before which a person is convicted of the offence of black marketing shall order the forfeiture to His Majesty of the goods or things (if any) in respect of which the offence of black marketing was committed or an equivalent quantity of the same or like goods or things belonging to the convicted person, or of a sum of money representing their value at the time of the order of forfeiture.

4. *Prohibition of carrying on business in certain cases.*—(1) On the third or any subsequent occasion on which a person is found guilty of an offence of black marketing the Provincial Government may make such order, having effect during such period as the Provincial Government thinks fit, for preventing the offender from carrying on or being concerned in any manner directly or indirectly with the carrying on of the business in the course of which the transaction constituting the offence of black marketing was effected, or any branch of that business or any business or branch of business of a similar character.

(2) If any person contravenes an order made under this section he shall be punishable with imprisonment of either description for a term which may extend to six months and shall also be liable to fine.

(3) No Court shall take cognizance of an offence under sub-section (1) unless upon a complaint made by order of or under authority from the Provincial Government.

5. *Vicarious liability.*—(1) Where a person guilty of the offence of black marketing is a body corporate, every person who, at the time of the commission of the offence, was a director, officer or servant actively concerned in the conduct of the business of the body corporate shall be deemed to be guilty of the offence, unless he proves that the offence was committed without his knowledge and that he used all due diligence to prevent the commission of the offence or of offences of the same character.

(2) Where the offence of black marketing is committed by a firm, each partner, secretary or principal officer or agent thereof shall, unless the contravention took place without his knowledge and he exercised all due diligence to prevent such contravention, be deemed to be guilty.

6. *Attempts and abetments.*—Any person who attempts or abets the commission of an offence of black marketing shall be deemed to have committed the offence of black marketing :

Provided, however, that the purchase of any goods for a purpose other than that of trade shall not by itself amount to abetment of black marketing.

7. *Abetment by public servants.*—Any public servant as defined in the Indian Penal Code (Act XLV of 1860) who by any dereliction of duty facilitates the commission of the offence of black marketing by any person shall be deemed to have abetted the commission of the said offence within the meaning of section 6 unless he proves his innocence.

8. *Bond by convicted person.*—(1) Where a person is convicted of an offence punishable under this Act, the Court before which he is convicted may, in addition to any punishment provided for the offence, order him to execute a bond for a sum or continue to his means with or without sureties to observe the provisions of the law, as in force in relation to which the offence was committed, for a period not exceeding three years.

(2) If any person fails to comply with an order of the Court requiring him to execute a bond, the Court may order him to be put in prison for any term not exceeding twelve months to commence at the expiration of any term of imprisonment to which he was sentenced on his conviction.

(3) If any person who has executed a bond under sub-section (1) commits a breach of the condition specified in the bond his bond shall be forfeited and any person bound thereby shall pay the penalty thereof or show cause to the satisfaction of the Court concerned why such penalty should not be paid.

9. *Security for good behaviour in certain cases.*—Whenever a Chief Presidency Magistrate or District Magistrate or a Presidency Magistrate or Magistrate of the first class specially empowered by the Provincial Government in this behalf, has information that there is within the limits of his jurisdiction any person who within or without such limits transports food-stuff in contravention of an order made or deemed to have been made under the Essential Supplies (Temporary Powers) Act, 1946 (XXIV of 1946), such Magistrate if in his opinion there is such sufficient ground for proceeding may require such person to show cause why he should not be ordered to execute a bond with or without sureties for his good behaviour for such period not exceeding one year as the Magistrate thinks fit to fix and thereafter the provisions of Chapters VIII and XLII of the Code of Criminal Procedure, 1898 (Act V of 1898), shall apply in such cases.

Any contravention of the order under the Essential Supplies (Temporary Powers) Act, 1946, committed after the execution of such bond shall be deemed to constitute a forfeiture of the bond.

10. *Offences under the Act to be cognizable and non-bailable.*—Any offence punishable under this Act shall be cognizable and non-bailable.

11. *Special provision regarding bail.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1898, no person accused in a trial before or convicted and sentenced to imprisonment by a Tribunal constituted under this Act of an offence shall be released on bail or on his own bond unless—

(a) the prosecution has been given an opportunity to oppose the application for such release, and

(b) where the prosecution opposes the application, the Tribunal is satisfied that there are reasonable grounds for believing that he is not guilty of the offence.

12. *Cases triable by Special Tribunals.*—(1) The Provincial Government may, from time to time by notification in the *Official Gazette*, allot cases for trial to each Special Tribunal, and may also from time to time

by like notification transfer any case from one Special Tribunal to another or withdraw any case from the jurisdiction of a Special Tribunal or make such modifications in the description of a case (whether in the names of the accused or in the charges preferred or in any other manner) as may be considered necessary.

(2) The Special Tribunals shall have jurisdiction to try the cases for the time being respectively allotted to them under sub-section (1) in respect of such of the charges as may be preferred against the several accused and any such case which is at the commencement of this Act or at the time of such allotment pending before any Court or another Special Tribunal shall be deemed to be transferred to the Special Tribunal to which it is so allotted.

**13. Constitution of Special Tribunals.**—(1) The Special Tribunal constituted under this Act shall consist of three persons each of whom shall be a person who—

(a) is or has been a Judge of a High Court or a Sessions Judge or an Additional Sessions Judge ; or

(b) is qualified for appointment as a Judge of a High Court :

Provided that the appointment to a Special Tribunal of any person not qualified under clause (a) shall be made in consultation with the High Court.

(2) The Provincial Government shall appoint one of the members to be the President of the Special Tribunal.

**14. Procedure and powers of Special Tribunals.**—(1) A Special Tribunal may take cognizance of offences without the accused being committed to it for trial, and in trying accused persons shall follow the procedure prescribed by the Code of Criminal Procedure, 1898 (Act V of 1898), for the trial of warrant cases by Magistrates :

Provided that a Special Tribunal may, for reasons to be recorded in writing, refuse to summon any witness if satisfied after examination of the accused that the evidence of such witness will not be material, and shall not be bound to adjourn any trial for any purpose, unless such adjournment is in its opinion necessary in the interest of justice :

Provided further that for the purpose of sub-section (1) of section 356 of the said Code, English shall be deemed to be the language of the Court and the Tribunal may decide by which one, if any, of its members the evidence of any or all of the witnesses shall be taken down in writing, and where under the provisions of that sub section the evidence of witnesses is taken down under the direction and superintendence of the Tribunal but not by a member thereof, the provisions of sub section (3) of section 356 shall not apply.

(2) Notwithstanding anything contained in section 13 any two members of a Special Tribunal may proceed with the trial of a case during the temporary and unavoidable absence of the third member :

Provided that all three members shall be present when after the evidence has been concluded the prosecutor or the accused or his pleader is addressing the Special Tribunal and when the judgment in the case is delivered.

(3) Save as provided in sub section (1), the provisions of the Code of Criminal Procedure, 1898, except the provision of section 196A and of Chapter XXXIII, shall, so far as they are not inconsistent with this Act, apply to proceedings of a Special Tribunal ; and for the purposes of the said provisions the Special Tribunal shall be deemed to be a Court of Session, trying cases without a jury, and a person conducting a prosecution before a Special Tribunal shall be deemed to be a Public Prosecutor.

(4) A Special Tribunal shall not, merely by reason of a change in its members, be bound to recall and rehear any witness who has given evidence, and it may act on the evidence already recorded by or produced before it.

(5) In the event of any difference of opinion among the members of a Special Tribunal the opinion of the majority shall prevail.

(6) A Special Tribunal may pass any sentence authorised by law.

15. *Appeal and revision.*—The High Court may, subject to the provisions of section 16 regarding the transfer of cases, exercise, so far as they may be applicable, all the powers conferred by Chapters XXXI and XXXII of the Code of Criminal Procedure, 1898 (Act V of 1898), on a High Court, as if the Special Tribunal were a Court of Session trying cases without a jury within the local limits of the High Court's jurisdiction.

16. *Bar of certain jurisdiction.*—No Court shall have authority to transfer any case from a Special Tribunal, or, save as provided in section 15, have any jurisdiction of any kind in respect of any proceedings of a Special Tribunal.

17. *Burden of proof in certain cases.*—When any person is prosecuted for an offence of black marketing, in respect of an act or being in possession of a thing without lawful authority or without a permit, licence or other document, the burden of proving that he had such authority, permit, licence or other document, shall be on him.

18. *Accused person to be competent witness.*—Any person charged with an offence of black marketing shall be a competent witness, for the defence, and may give evidence on oath in disproof of the charges made against him or any person charged together with him at the same trial :

Provided that—

(a) he shall not be called as a witness except on his own request ;

(b) his failure to give evidence shall not be made the subject of any comment by the prosecution or give rise to any presumption against himself or any person charged together with him at the same trial ;

(c) he shall not be asked, and if asked shall not be required to answer any question tending to show that he has committed or been convicted of any offence other than the offence with which he is charged, or is of bad character, unless—

(i) the proof that he has committed or been convicted of such offence is admissible evidence to show that he is guilty of the offence with which he is charged, or

(ii) he has personally or by his pleader asked questions of any witness for the prosecution with a view to establish his own good character, or has given evidence of his good character, or the nature or conduct of the defence is such as to involve imputations on the character of the prosecutor or of any witness for the prosecution, or

(iii) he has given evidence against any other person charged with the same offence.

19. *Special procedure for trial in the absence of accused persons.*—(1) Where any accused, in a trial before a Court under this Act, is, for any reason incapable of appearing or fails to appear before the Court, or resists his production before the Court, or behaves before the Court in a persistently disorderly manner, the Court may, for reasons to be recorded in writing, at any stage of the trial, by order in writing made after such inquiry as it thinks fit, dispense with the attendance of such accused for such periods as it may think fit, and proceed with the trial in the absence of the accused.

(2) Where a plea is required in answer to a charge from an accused whose attendance has been dispensed with under sub-section (1), such accused shall be deemed not to plead guilty.

(3) An order under sub-section (1) dispensing with the attendance of an accused shall not affect his right of being represented by a pleader at any stage of the trial, or of being present in person if he has become capable of appearing, or appears before the Court and undertakes to behave in an orderly manner.

(4) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), no finding, sentence or order passed in such trial shall be held to be illegal by any Court by reason of any omission or irregularity whatsoever arising from the absence of any or all of the accused whose attendance has been dispensed with under sub-section (1).

20. *Notice of conviction to be displayed in or outside shops*—(1) Upon the conviction of any person for the offence of black marketing the Provincial Government may require that person to exhibit in or outside or both in and outside his place of business (if any), notices of such number, size and lettering, in such positions and containing such particulars relating to the conviction as the Provincial Government determines and to keep them so exhibited continuously for a period of not less than three months from the date of conviction; and the person shall comply fully with that requirement; and if he fails to do so, shall again be guilty of the offence of black marketing.

(2) If any such person refuses or fails to comply with any such requirement, any officer authorised in that behalf by an order in writing passed by the Provincial Government may, without prejudice to any proceedings arising out of any such refusal or failure, affix the notices in or outside or both in and outside the place of business in accordance with the requirement of the Provincial Government in pursuance of the last preceding sub-section.

(3) Any person who obstructs any such officer in exercise of any power conferred by this section shall be deemed to have committed an offence under section 353 of the Indian Penal Code (Act XLV of 1860).

(4) The notices shall be headed with the words "Black Marketing Act, 1948" in bold letters and shall be prepared in such a manner as to be easily legible to persons contemplating making any purchases or conducting any business at the place of business where they are affixed.

(5) If the Provincial Government is satisfied that the exhibition of notices in accordance with the requirements of the foregoing provisions of this section would not be effective to bring the fact of the conviction to the notice of persons dealing with the convicted person, the Provincial Government may, in lieu of or in addition to making any such requirement, require the convicted person to print or cause to be printed on the letter-heads to be used by him in connection with his business during a period of not less than three months from the date of the conviction, a notice headed "Black Marketing Act, 1948" in bold type and of such size and lettering, in such position and containing such particulars relating to the conviction as the Provincial Government determines; and the convicted person shall comply fully with that requirement, and if he fails to do so, shall again be guilty of the offence of black marketing.

21. *Particulars of conviction to be published in the Gazette, etc.*—(1) Particulars relating to the conviction of any person for an offence against this Act shall be published in the *Official Gazette*.

(2) If the Provincial Government is satisfied that it is necessary so to

do, in order to give adequate publicity to the offence of black marketing committed by any person, it may issue a press note containing as full and adequate an account of the trial and conviction of any such person as is reasonable in all the circumstances ; and it shall be the duty of every Editor, Printer and Publisher of such newspaper in West Bengal as the Provincial Government may direct to publish the full text of such press note.

If any Editor, Printer or Publisher of such a newspaper contravenes the provisions of sub section (2), he shall, on a complaint made by order of or under authority from the Provincial Government, be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees or with both.

**22. Offences under section 20 or section 21 triable by a Presidency Magistrate or a Magistrate of the first class.**—Offences under section 20 or section 21 shall be triable by a Presidency Magistrate or a Magistrate of the first class.

**23 Extermment of persons convicted.**—Where any person is convicted of the offence of black marketing the Provincial Government may, if it thinks fit, by an order in writing duly served upon such person, direct that such person after the expiry of his sentence shall remove himself from such area and within such time and by such route as may be specified in the order and not to return thereto for a period to be specified in the order without written permission of the Provincial Government :

Provided that a person who and whose father were born in the Province of West Bengal or who is a member of a family which has definitely settled in that province and is himself so settled shall not be directed to remove beyond the boundaries of the Province of West Bengal.

**24 Failure to comply with the order of externment.**—Any person who having been directed by an order made and served on him under section 23,—

(a) fails to remove himself from any area directed by such order, or  
(b) having removed himself from such area returns thereto in contravention of such order  
may be arrested without a warrant by any police officer, and —

(i) may be removed in police custody outside such area, or  
(ii) on conviction before a Magistrate shall be punished with imprisonment for a term which may extend to two years or with fine or with both.

**25. Indemnity** — No suit, prosecution or legal proceedings whatever shall lie against any person in respect of anything which is, in good faith, done or intended to be done under this Act.

**26 Continuance of action taken under West Bengal Ordinance VI of 1948.**— Any rule, order or appointment made or any notification issued or anything done or any penalty, forfeiture or punishment incurred or imposed or any action taken or any proceedings commenced in exercise of any power conferred by the West Bengal Black Marketing Ordinance, 1948 (West Ben. Ord. VI of 1948), shall, on the said Ordinance ceasing to be in operation, be deemed to have been made, issued, done, incurred, imposed, taken or commenced in exercise of the powers conferred by this Act as if this Act had commenced on the 1st day of January, 1948.

**27. Rule making power.**—The Provincial Government may make rules for carrying out the purposes of this Act.

### The Calcutta Improvement (Amendment) Act, 1948.

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [Vide Notification No. 1642L. of the Judicial and Legislative (Legislative) Department, dated the 7th October, 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 7th October, 1948].

### West Bengal Act XXII of 1948.

[ Passed by the West Bengal Legislature. ]

[Assent of the Governor was first published in the *Calcutta Gazette*, Extraordinary, of the 7th October, 1948.]

*An Act further to amend the Calcutta Improvement Act 1911.*

WHEREAS it is expedient further to amend the Calcutta Improvement Act, 1911 (Ben. Act V of 1911), for the purposes and in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. *Short title, commencement and duration.*—(1) This Act may be called the Calcutta Improvement (Amendment) Act, 1948.

(2) It shall come into force on the date on which the Calcutta Improvement (Amendment) Ordinance, 1948 (West Ben. Ord. IV of 1948), ceases to operate.

(3) Section 2 shall remain in force only up to the 31st day of March, 1949.

2. *Insertion of new section 4A in Bengal Act V of 1911.*—After section 4 of the Calcutta Improvement Act, 1911 (hereinafter referred to as the said Act), the following section shall be inserted, namely :—

“4A. *Appointment of Trustees while the Corporation is superseded.*—

(1) Notwithstanding anything contained in section 4, sub-section (1) of section 7, section 8, section 15, section 16 and section 17, the three other members of the Corporation referred to in clause (c) of section 4 who were elected or appointed as Trustees but who have ceased to be members of the Corporation on the supersession of the Corporation under section 3 of the Corporation of Calcutta (Temporary Supersession) Act, 1948 (West Ben. Act VIII of 1948), shall vacate their offices as such Trustees and the Provincial Government shall appoint three persons as Trustees in place of the three other members of the Corporation referred to in clause (c) of section 4 and the persons so appointed shall hold office as such Trustees from the date of their appointment till the date of expiry of the period of supersession of the Corporation under section 3 of the Corporation of Calcutta (Temporary Supersession) Act, 1948.

(2) If any vacancy occurs in the office of a Trustee appointed under sub-section (1), the vacancy shall be filled by the Provincial Government by appointment to another person within one month and the person so appointed shall hold office for the residue of the term of office of the Trustee in whose stead he is appointed.

(3) On the expiry of the term of office of the Trustees appointed under sub-section (1) or under sub-section (2), the vacancies shall be deemed to be casual vacancies in the seats for the three other members of the Corporation referred to in clause (c) of section 4 and shall be filled in accordance with the provisions of section 16.”

3. *Substitution of new section for section 10.*—For section 10 of the said Act, the following section shall be substituted, namely :—

“10. *The Chairman to be a wholetime officer ordinarily.*—While any person is holding the office of Chairman, he shall not hold any other salaried office and shall devote his whole time and attention to his duties under this Act :

Provided that the Provincial Government may require him to hold some other salaried office in addition to the office of Chairman or may permit him to perform any honorary duties which in the opinion of the Provincial Government will not interfere with the performance of his duties under this Act."

4. *Amendment of section 11.*—After sub-section (3) of section 11 of the said Act, the following sub section shall be added, namely :—

"(4) If under section 10, the Provincial Government requires the Chairman to hold any salaried office in addition to the office of Chairman, the salary and allowances (if any) payable to the Chairman for his holding the office, other than the office of Chairman, or such portion thereof, as the Provincial Government may decide, shall, instead of being paid to the Chairman, be payable to the Board for credit to the Revenue Account of the Board."

5. *Continuance of action taken under West Bengal Ordinance IV of 1948.*—Any notification issued or any appointment made or anything done or any action taken in exercise of any power conferred by the Calcutta Improvement (Amendment) Ordinance, 1948 (West Ben. Ord. IV of 1948), shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, made, done or taken in exercise of the powers conferred by this Act as if this Act had commenced on the 25th day of May, 1948.

### **The West Bengal Premises Rent Control (Temporary Provisions) Act, 1948.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor-General [ Vide Notification No. 1936L., of the Judicial and Legislative (Legislative) Department, dated the 15th November 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 16th November 1948 ].

### **West Bengal Act XXXVIII of 1948.**

### **CONTENTS.**

### **Chapter I—Preliminary.**

#### **Section.**

1. Short title, commencement, extent and duration.
2. Definitions.

### **Chapter II—Provisions regarding rent and *salami*.**

3. Restriction on the increase of rents.
4. Premium, *salami* or fine not to be claimed, received or asked for or advance of more than one month's rent not to be claimed or received.
5. Exception in the case of long leases for purposes of development.
6. Restriction on the sale of furniture in any premises let to a tenant.
7. Refund of rent, premium, *salami*, etc., not recoverable under the

#### **Act.**

8. Grant of certificate of standard rent by the Controller.
9. Cases in which standard rent shall be fixed by the Controller.
10. Date on which standard rent fixed by the Controller takes effect

### **Chapter III—Suits and proceedings for eviction.**

11. No order for ejectment ordinarily to be made if rent paid at allowable rate.
12. When a tenant can get the benefit of protection against eviction.
13. Special provision for tenancies for not less than seven years.
14. Meaning of allowable rent.
15. When a tenant is entitled to restoration of possession and compensation.

**14 THE WEST BENGAL PREMISES RENT CONTROL (TEMPORARY PROVISIONS) [ 1949  
ACT, 1948.**

---

**Section.**

16. Special provisions regarding certain suits or proceedings triable by Court of Small Causes of Calcutta.

17. Special procedure for suits and proceedings for eviction of tenants.

18. Power of Court to rescind or vary decrees and orders in certain cases.

**Chapter IV—Deposit of rent.**

19. Deposit of rent by the tenant.

20. Penalty for giving incorrect name or address of the landlord.

21. Saving as to acceptance of rent.

**Chapter V—Hotels and lodging houses.**

22. Fixation of fair rate and number of lodgers.

23. Revision of fair rate and number of lodgers.

24. Notice of fair rate and number of lodgers to be displayed.

25. Agreement for payment of charges in excess of fair rate.

26. No eviction if fair rate paid.

27. Punishment.

**Chapter VI—Appointment of the Controller and other officers, their powers and functions.**

28. Appointment of Controller and Additional and Deputy Controllers.

29. Final hearing of certain applications.

30. Notice to landlords and tenants before exercising powers under the Act.

31. Power to enter and inspect premises, to require information and to summon witnesses.

**Chapter VII—Appeal, Review, Jurisdiction and penalty.**

32. Appeal and review.

33. Penalty for recovering rent in excess of the standard rent.

34. Penalty for disturbance of easements, etc.

35. Payment and recovery of fine.

36. Limitation for complaints.

37. Issue of distress warrants and other processes barred in certain cases.

**Chapter VIII—Miscellaneous.**

38. Making of repairs and taking of measures for the maintenance of essential services by the tenant on the failure or neglect of the landlord to do so.

39. Taking of measures by the tenant in case of emergency.

40. Criminal liability and refund of the consideration paid in addition to the standard rent.

41. Cutting off or withholding essential supply or service.

42. Tenant may get supply of electricity to the premises without the permission of the landlord.

43. Supply of certified copies of the order of the Controller.

44. Controller to be a public servant.

45. Appeal and saving.

46. Bar of proceedings.

47. Power to make rules.

**The Schedule**

Part A.

Part B.

## The West Bengal Premises Rent Control (Temporary Provisions) Act, 1948.

### West Bengal Act XXXVIII of 1948.

[ Passed by the West Bengal Legislature. ]

[ Assent of the Governor-General was first published in the *Calcutta Gazette, Extraordinary*, of the 16th November, 1948. ]

*An Act to make better provision for the control of rents of premises in Calcutta and in certain other areas in West Bengal.*

WHEREAS it is expedient to make better provision for the control of rents of premises in Calcutta and in certain other areas in West Bengal ;

It is hereby enacted as follows :—

### CHAPTER I.

#### PRELIMINARY.

1. *Short title, commencement, extent and duration.*—(1) This Act may be called the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948.

(2) It shall come into force on such date as the Provincial Government may, by notification, appoint.

(3) It extends to the whole of Calcutta and to all areas which have been or may hereafter be constituted municipalities under the provisions of the Bengal Municipal Act, 1932 (Ben. Act XV of 1932) :

Provided that the Provincial Government may, by notification, extend this Act or any specified part thereof to any other area specified in the notification if the Provincial Government is satisfied that the area contains a number of inhabitants not less than the number required under clause (i) of the proviso to sub-section (1) of section 6 of the Bengal Municipal Act, 1932, for the area to be declared a municipality and that three-fourths of the adult male population of the area are chiefly employed in pursuits other than agriculture :

Provided further that the Provincial Government may, by notification, direct that this Act or any specified part thereof shall not apply to any such area or to any such class of premises as may be specified in such notification and if any question arises as to whether, or not, any premises come within such area or class, the decision of the Provincial Government thereon shall be final.

(4) It shall, in the first instance, remain in force up to the 31st day of March, 1950, but if, and so often as, a resolution approving its continuance for any further period is passed by the Provincial Legislature, it shall continue in force for such further period, so, however, that it shall not, in any case, continue in force after the 31st day of March, 1953 :

Provided that the expiration of this Act shall not render recoverable any sum which during the continuance thereof was irrecoverable or affect the right of a tenant to recover any sum which during the continuance of this Act was recoverable by him thereunder.

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

(1) "Calcutta" has the same meaning as in clause (1) of section 3 of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923) ;

(2) "Controller" means a Controller appointed under sub-section (1) of section 28 and includes an Additional Controller and a Deputy Controller appointed under sub-section (2) of that section ;

(3) "hotel or lodging house" means an establishment where lodging with or without board or other service is provided for a monetary consideration ;

(4) "landlord" means any person who for the time being is receiving, or is entitled to receive, the rent of any premises whether on his own account or on account, or on behalf, or for the benefit, of any other person, or as a trustee, guardian or receiver for any other person or who would so receive the rent or be entitled to receive the rent if the premises were let to a tenant and includes a legal representative, as defined in the Code of Civil Procedure, 1908 (Act V of 1908), of the landlord ;

(5) "manager of a hotel" includes any person in charge of the management of a hotel ;

(6) "notification" means a notification published in the *Official Gazette* ;

(7) "owner of a lodging house" includes any person who receives, or is entitled to receive, whether on his own account, or on account, or on behalf, or for the benefit of himself and others, or as an agent, trustee, guardian or receiver for any other person, any monetary consideration from any person on account of board or lodging or other service ;

(8) "premises" means any building or part of a building or any hut or part of a hut let separately and includes

(a) the gardens, grounds and out houses (if any) appertaining to such building or part of a building or hut or part of a hut.

(b) any furniture supplied or any fittings affixed by the landlord for use in such building or part of a building or hut or part of a hut,

but does not include a room or part of a room or other accommodation in a hotel or lodging house or a stall in a municipal market as defined in clause (44) of section 3 of the Calcutta Municipal Act, 1923 (Ben Act III of 1923), or in any other market maintained by or belonging to a local authority or a stall let at variable rents at different seasons of the year for the retail sale of goods in any other market as defined in clause (39) of section 3 of the Calcutta Municipal Act, 1923, or clause (20) of section 3 of the Bengal Municipal Act, 1932 (Ben. Act XV of 1932) ;

(9) "prescribed" means prescribed by rules made under this Act ;

(10) "standard rent" in relation to any premises means—

(a) where the rent of any premises has been fixed under section 4, the rent so fixed ;

(b) where the rent has not been so fixed, the standard rent determined in accordance with the provisions of the Schedule ;

(11) "tenant" means any person by whom, or on whose account, rent is, or but for a special contract would be, payable for any premises and includes a legal representative as defined in the Code of Civil Procedure, 1908 (Act V of 1908), of the tenant and a person continuing in possession after the termination of a tenancy in his favour.

## CHAPTER II.

### Provisions regarding rent and *salami*.

3. *Restriction on the increase of rents.*—(1) Subject to the provisions of this Act, where the rent of any premises has been or is hereafter during the continuance of this Act, increased so as to exceed the standard rent, the amount of such excess shall, notwithstanding any agreement to the contrary, be irrecoverable :

Provided that nothing in this sub-section shall apply to any periodical increment of rent accrued due under any written agreement entered into before the first day of December, 1941.

(2) For the purposes of sub-section (1), the rent shall be deemed to have accrued from day to day.

4. *Premium, salami or fine not to be claimed, received or asked for or*

*advance of more than one month's rent not to be claimed or received.*—No person shall, in consideration of the grant, renewal or continuance of a tenancy of any premises,—

(a) claim, receive, or invite offers or ask for the payment of, any premium, *salami*, fine or any other like imposition in addition to the rent, or

(b) except with the previous written consent of the Controller, claim or receive the payment of any sum exceeding one month's rent of such premises as rent in advance.

5. *Exception in the case of long leases for purposes of development.*—

Notwithstanding anything contained in section 4, a landlord may receive a premium or *salami* or other like sum in addition to the rent in respect of any premises which are let on a lease for a period of not less than twenty years for the purposes of development by the lessee either by building or rebuilding if the period limited by the lease is not expressed to be terminable at the option either of the landlord or of the tenant at any time within a period of five years from the date of commencement of the period so limited :

Provided that the rent payable for the premises during the continuance of this Act shall not exceed the standard rent.

6. *Restriction on the sale of furniture in any premises let to a tenant.*

—(1) No person shall make the purchase of any furniture in any premises a condition of the grant, renewal or continuance of a tenancy of such premises and no person shall sell the furniture in any premises of which he is the landlord to the tenant of such premises or to any person to whom the premises are afterwards let except under a permit in the prescribed form from the Controller.

(2) No landlord shall be entitled to recover as the price of any furniture in any premises on sale of such furniture to the tenant of such premises or to any person to whom the premises are afterwards let, any sum in excess of the market-value of such furniture ; and the Controller may, on application made to him by any person interested and on payment of the prescribed fee, determine the market-value of such furniture recoverable under this sub-section.

7. *Refund of rent premium, salami, etc., not recoverable under the Act*—(1) Where any sum has been paid or deposited on or after the date of the commencement of this Act or within a period of six months before such date in respect of the occupation of any premises,—

(a) on account of rent, being a sum which is by reason of the provisions of this Act irrecoverable, or

(b) as premium, *salami*, fine or other like imposition in addition to the rent or as rent in advance, the claiming or the receiving of which is prohibited under this Act, or

(c) on account of price of any furniture in such premises, being a sum which is in excess of the market value of such furniture and the recovery of which is prohibited under this Act,

the Controller may on application made to him in this behalf at any time within a period of six months from the date of such payment or deposit by the tenant by whom such payment or deposit was made, order the landlord by whom such payment was received or to whose credit such deposit was made, to refund such sum to such tenant or, at the option of such tenant, order the adjustment of any sum so paid or deposited in any other manner.

(2) An order of refund passed by the Controller under sub-section (1) shall be executed by the Court having jurisdiction to entertain a

suit for the recovery of arrears of rent in respect of the premises in relation to which the sum ordered to be refunded was paid or deposited, as if such order of refund were a decree of that Court.

8. *Grant of certificate of standard rent by the Controller.*—The Controller shall, on application made to him by any landlord or tenant, grant a certificate stating the standard rent referred to in sub-clause (b) of clause (10) of section 2, of any premises let or rented by such landlord or tenant, as the case may be.

9. *Cases in which standard rent shall be fixed by the Controller.*—In any of the following cases, the Controller shall, on application made to him by any landlord or tenant, fix the standard rent of the premises at such amount as, having regard to the provisions of this Act and the circumstances of the case including the municipal rates, taxes or cesses payable in respect of the premises, he deems just—

(a) where any premises have been or are erected after the first day of October, 1946 ;

(b) where by reason of any premises having been let at one time as a whole, and at another time in parts, or where for any other reason, any difficulty arises in giving effect to this Act;

(c) where any premises have been or are let rent-free, or at a nominal rent, or for some consideration in addition to rent;

(d) where some addition, improvement or alteration not included in necessary repairs or repairs which are usually made to premises in the locality, has been made at any time after the first day of October 1946, to any premises at the landlord's expense ;

(e) where any furniture has been supplied on or after the first day of October, 1946, by the landlord for use in any premises or where any premises which were let without any furniture on or after the said date are subsequently let furnished ;

(f) where there has been an increase in the municipal rates, taxes or cesses in respect of any premises ;

(g) where for any other sufficient cause the rent at which the premises were let on the first day of October, 1946, or at which the premises are for the time being let is not, in the opinion of the Controller, just and fair ; or

(h) where the provisions of sub-section (3) of section 11 or of section 13 apply and there is a dispute about the rent or the apportionment of rent ;

Provided that in fixing the standard rent,—

(i) under clause (a), the Controller shall take into account the prevailing rate of rent in the locality for similar accommodation with similar advantages and amenities ;

(ii) under clause (d), the Controller shall not increase the rent by more than 10 per centum per annum of the amount expended on the addition, improvement or alteration made to the premises ; and

(iii) under clause (e), the Controller shall take into consideration the market-value on the date on which the standard rent is so fixed of the furniture supplied.

10. *Date on which standard rent fixed by the Controller takes effect.*—In every case in which the Controller fixes the standard rent, or in fixing the standard rent allows any increase in the rate of rent payable, in respect of any premises, he shall appoint a date from which the standard rent so

fixed or the increase so allowed shall be deemed to have effect and such date may be any date anterior to the date of any order of the Controller under this section if the Controller deems such anterior fixation of the date just and proper in the circumstances of the case but shall not be subsequent to the date on which the application under section 9 is made :

Provided that where the standard rent is fixed under clause (f) of section 9, such standard rent shall be deemed to have effect from the date on which the increase in the municipal rates, taxes or cesses came into force.

### CHAPTER III.

#### SUITS AND PROCEEDINGS FOR EVICTION.

11. *No order for ejectment ordinarily to be made if rent paid at allowable rate.*—(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (IV of 1882), the Presidency Small Cause Courts Act, 1882 (XV of 1882), or the Indian Contract Act, 1872 (IX of 1872), no order or decree for the recovery of possession of any premises shall be made as long as the tenant pays to the full extent the rent allowable by this Act and performs the conditions of the tenancy :

Provided that nothing in this sub-section shall apply,—

(a) where the tenant has done any act contrary to the provisions of clause (m), clause (o) or clause (p) of section 108 of the Transfer of Property Act, 1882, or

(b) where the tenant has sublet, or otherwise transferred his interest in, the premises—

(i) for more than six consecutive months and to the extent either of the whole or a major portion of the premises, in the absence of any contract or other authority in writing expressly permitting such subletting or transfer, or

(ii) in any manner in contravention of the terms of a contract in writing expressly prohibiting such subletting or transfer ; or

(c) where the tenant has been using the premises or allowing the premises to be used for immoral or illegal purposes, or

(d) where the condition of the premises has materially deteriorated, owing to acts of waste by, or negligence or default of, the tenant or any person residing with the tenant, or

(e) where the tenant has been guilty of conduct which is a nuisance or an annoyance to occupiers of adjoining or neighbouring premises, or

(f) where the premises are *bona fide* required by the landlord either for purposes of building or rebuilding, or for his own occupation or for the occupation of any person for whose benefit the premises are held.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, it shall not be lawful after the commencement of this Act, for a tenant inferior to a tenant of the first degree to let in whole or in part the premises let to him except with the consent of the landlord and of the tenants of a superior degree above him.

*Explanation.*—In this sub-section—

(a) “a tenant of the first degree” means a tenant who does not hold under any other tenant ;

(b) “a tenant inferior to a tenant of the first degree” means a tenant holding immediately or mediately under a tenant of the first degree ;

(c) “landlord” means the landlord of a tenant of the first degree.

(3) Any person to whom any premises or any part thereof have been or has been lawfully sublet by a tenant shall, where the interest of the

tenant in such premises or part is lawfully determined otherwise than by virtue of a decree or order obtained by the landlord on any of the grounds specified in clause (f) of the proviso to sub-section (1), be deemed to be a tenant in respect of such premises or part, as the case may be, holding directly under the landlord on the terms and conditions on which such person would have held under the tenant if the interest of the tenant had not been so determined :

Provided that it shall be competent for the landlord, or any person deemed under this sub-section to be a tenant holding directly under the landlord, to make an application under section 9 to the Controller for fixing the standard rent of the premises or part thereof in respect of which such person is so deemed to be a tenant and until any standard rent is fixed by the Controller on such application such person shall be liable to pay to the landlord the same rent as was payable by him in respect of the premises or part thereof, as the case may be, to the tenant before the interest of the tenant therein had been determined.

12. *When a tenant can get the benefit of protection against eviction.—*

(1) No tenant shall be entitled to the benefit of section 11 in respect of any premises unless—

(a) he pays the rent allowable by this Act and due by him in respect of such premises to the full extent within the time fixed in the contract, with his landlord or, in the absence of such contract, by the fifteenth day of the month next following that for which the rent is payable, and

(b) in the case where any rent has accrued due before the commencement of this Act, he also pay within one month after the date of such commencement all arrears of rent allowable by this Act and due by him in respect of such premises to the full extent together with, where the arrears are already the subject-matter of a suit or proceeding before a Court or of any decree or order of Court, interest thereon at the rate of six and a quarter per cent. per annum and such costs as the Court may award, and

(c) in the case where the Controller has, in fixing the standard rent, allowed any increase in the rate of rent payable in respect of such premises with effect from any date earlier than the date of the order, he pays also the amount that has become payable by him on account of such increase, for any period preceding the date of such order, to the full extent and within the time specified in this behalf by the Controller or, in the absence of any such specification, within one month of the date of such order, or

where the landlord refuses to accept any rent referred to in clause (a), clause (b) or clause (c), or where there is a *bona fide* doubt or dispute as to the person who is entitled to receive such rent, unless the tenant deposits such rent and all subsequent rent allowable by this Act which becomes due in respect of such premises as provided in section 19 together with, in the case mentioned in clause (b) of sub-section (1) of that section, the cost of transmission referred to in that clause within the time specified in that section.

*Explanation.*—A landlord shall not for the purposes of this section be deemed to have refused to accept any rent unless the rent is remitted within the period referred to in clause (a) or clause (b) or clause (c), as the case may be, of this section by postal money order to the address of the landlord and the rent so remitted is returned to the tenant by the postal authorities

as undelivered either on account of the landlord having refused to accept payment thereof or for any other cause.

(2) Subject to the provisions of sub-section (3), no suit or proceeding instituted against a tenant after the commencement of this Act for the recovery of possession of any premises on the ground of default in making any payment or deposit referred to in sub-section (1) shall be further proceeded with if, within one month from the date of service of process on the tenant, he pays through the Court all arrears of rent allowable by this Act up to date together with interest thereon at the rate of six and a quarter *per cent. per annum* and such costs as the Court may award.

(3) Notwithstanding anything contained in this Act or in any other law for the time being in force, if a tenant fails for three consecutive months to pay or deposit in accordance with the provisions of this Act any rent payable by him in respect of any premises which has accrued due after the commencement of this Act, the interest of the tenant in such premises shall on such failure be *ipso facto* determined and he shall no longer be deemed to be a tenant.

13. *Special provision for tenancies for not less than seven years.*—Notwithstanding anything contained in this Act or in any other law for the time being in force, where a tenant has sublet in whole or in part any premises let to him for a period of not less than seven years, and such period expires on or after the 1st day of October, 1946, the tenant shall not be entitled to the benefit of section 11 in respect of such premises to the extent to which they have been so sublet and in such case the person to whom the premises have been sublet shall be deemed to be a tenant holding directly under the landlord on the terms and conditions on which he held under the tenant in so far as such terms and conditions are consistent with the circumstances of the case and with the provisions of this Act and thereupon the provisions of the proviso to sub-section (3) of section 11 shall apply.

14. *Meaning of allowable rent.*—For the purposes of sections 11 and 12, the rent allowable by this Act in relation to any premises, means—

(a) where a certificate has been granted by the Controller under section 8, the standard rent stated in such certificate, or

(b) where the standard rent has been fixed under section 9, the standard rent so fixed, or

(c) where no certificate has been granted under section 8 and no standard rent has been fixed under section 9, the rent agreed upon between the landlord and the tenant omitting the excess, if any, over the standard rent.

15. *When a tenant is entitled to restoration of possession and compensation.*—Where the landlord recovers possession on the ground that the premises are *bona fide* required by him for purposes of building or re-building or for his own occupation or for the occupation of any person for whose benefit the premises are held, and the building or the re-building of the premises is not commenced, or the premises are not occupied by the landlord or such person, within two months of the date of vacation of the premises by the previous tenant, or the premises, having been so occupied, are relet within six months of the said date to any person other than the previous tenant without the permission of the Controller obtained in the prescribed manner, the Controller may, on the application of the previous tenant made within seven months of his vacating the premises, by order, direct the landlord to put the previous tenant in possession of the pre-

mises or to pay him such compensation as may be fixed by the Controller, or both :

Provided that the Controller may, on the application of the landlord, extend the period within which the building or the rebuilding of the premises is to be commenced, by two months at a time and six months in all.

16. *Special provisions regarding certain suits or proceedings triable by Court of Small Causes of Calcutta*—(1) Notwithstanding anything contained in any other law for the time being in force, no suit or proceeding by a landlord against a tenant for the recovery of rent or possession of any premises which the Court of Small Causes of Calcutta is competent to try shall be instituted in, or tried by, any Court other than the said Court of Small Causes of Calcutta.

(2) Notwithstanding anything contained in the Presidency Small Cause Courts Act, 1882 (XV of 1882), or in any rule made thereunder, an appeal from a decree or order of the Court of Small Causes of Calcutta in a suit or proceeding referred to in sub-section (1) shall, if presented within thirty days from the date of the decree or order, as the case may be, lie to a bench of three Judges of the said Court which shall not include the Judge who made such decree or order.

(3) In the event of a difference of opinion among the Judges sitting in appeal under sub-section (2), the opinion of the majority of such Judges shall prevail.

17. *Special procedure for suits and proceedings for eviction of tenants.*—(1) Notwithstanding anything contained in any other Law for the time being in force, in every suit or proceeding for the recovery of possession of any premises on one or more of the grounds specified in the proviso to sub-section (1) of section 11 or on the ground of non-compliance with the provisions of this Act regarding payment or deposit of rent, the Court shall at the first hearing of such suit or of the application out of which such proceeding has arisen, or as soon as may be thereafter, after giving the parties an opportunity of being heard and considering any affidavits which they may file, decide first if there is sufficient cause for proceeding with the suit or proceeding :

Provided that the decision made under this sub-section shall form a part of the decree or order finally disposing of the suit or proceeding, as the case may be, and shall not be subject to any separate appeal or revision.

(2) If the decision referred to in sub-section (1) is sufficient for the final disposal of the suit or proceeding the Court may pronounce judgment or pass order accordingly, but if the decision is not sufficient for such final disposal, the Court shall adjourn the further hearing of such suit or proceeding for the production of such further evidence or for such further argument as may be necessary for the final disposal of such suit or proceeding.

*Explanation*—In this section “proceeding” does not include an execution proceeding.

18. *Power of Court to rescind or vary decrees and orders in certain cases.*—Where any decree or order for the recovery of possession of any premises has been made, before the date of commencement of this Act, but the possession of such premises has not been recovered from the tenant by the execution of such decree or order, the Court by

which the decree or order was made may, if it is of opinion that the decree or order would not have been made if this Act had been in operation at the date of the making of the decree or order, rescind or vary the decree or order in such manner as the Court may think fit for the purpose of giving effect to the provisions of this Act.

#### CHAPTER IV.

##### DEPOSIT OF RENT.

19. *Deposit of rent by the tenant*—(1) When a landlord refuses to accept any rent referred to in section 12 remitted by postal money order by a tenant in respect of any premises, the tenant shall, in the prescribed manner,—

(a) deposit such rent within a fortnight of the date on which the rent so remitted is returned to the tenant by the postal authorities as undelivered, and

(b) unless the landlord signifies by notice in writing to the tenant his willingness to accept any subsequent rent which becomes due in respect of such premises, also deposit such rent within a fortnight of the date on which such rent becomes due, or from the expiry of the time within which such rent is required to be paid under clause (a) of section 12 together with the cost of transmission by postal money order of the money deposited to the landlord.

(2) Where any *bona fide* doubt or dispute has arisen as to the person who is entitled to receive any rent in respect of any premises, the tenant,—

(a) may deposit such rent, stating the circumstances under which such deposit is made, and

(b) may continue to deposit every subsequent amount of rent which becomes due in respect of such premises, also stating the circumstances under which such deposit is made, until such doubt has been removed or such dispute has been settled by the decision of any competent Court or by settlement between the parties, within a fortnight of the date on which such rent becomes due or from the expiry of the time within which such rent is required to be paid under clause (a), clause (b), or clause (c) of section 12, as the case may be, in the same manner as has been prescribed for the deposit of rent under sub-section (1).

(3) On any deposit being made under sub-section (1) the Controller shall within fifteen days from the date of such deposit forward the same by postal money order to the address of the landlord.

(4) Where any money has been deposited under clause (a) of sub-section (1) the cost of transmission thereof to the landlord by postal money order shall be recoverable from the landlord and in forwarding the money so deposited to the landlord by postal money order the Controller shall deduct therefrom such cost of such transmission and the cost of serving notice under sub-section (5).

(5) If the money sent by the Controller under sub-section (3) by postal money order to any landlord is returned undelivered, the Controller shall cause a notice of the receipt of the deposit to be served by registered post on the landlord in the prescribed manner and the amount lying in deposit may, subject to such rules as may be made under this Act, be withdrawn by the landlord on application made by him to the Controller in that behalf, and if such amount is not so withdrawn before the expiration of five years from the date of service of such notice, it shall, subject to any order

of any Court, be forfeited to His Majesty, and notwithstanding anything contained in any other law for the time being in force or in any contract, the landlord shall not be entitled to recover the said amount by suit or otherwise from the tenant by way of his dues in respect of the premises on account of which such deposit was made.

(6) When a deposit has been made under sub-section (2), the amount of such deposit shall be held by the Controller pending the removal of the doubt or the settlement of the dispute which has arisen as to the person who is entitled to receive the rent either by the decision of a competent Court or by settlement between the parties and the amount of such deposit may be withdrawn by the person who is declared by such Court to be entitled to it or who is held by the Controller to be entitled to it in accordance with such settlement.

(7) No suit or other legal proceeding shall be instituted against the Crown or against any officer of the Crown in respect of anything done in good faith by the Controller receiving a deposit under this section, but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

20. *Penalty for giving incorrect name or address of the landlord.*— If a tenant while making a deposit of any rent under section 19 wilfully gives an incorrect name or address of his landlord, he shall, on the complaint of the landlord, be liable to a fine which may extend to five hundred rupees to be imposed, after inquiry, by the Controller.

21. *Saving as to acceptance of rent.*— When a landlord accepts rent in respect of any premises sent by postal money order by a tenant under section 12 or by the Controller under sub-section (3) of section 19 or withdraws any rent deposited under section 19, the fact of this acceptance or withdrawal shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money order form or in the application for deposit of such rent or that he has waived any notice to quit given by him to the tenant.

#### CHAPTER V.

##### HOTELS AND LODGING HOUSES.

22. *Fixation of fair rate and number of lodgers.*— The Controller may, on application made by any person interested,

(a) fix a fair rate to be charged for board, lodging or other service provided in a hotel or lodging house and in fixing such fair rate specify separately the rate for lodging, board or other service; or

(b) fix the number of lodgers to be accommodated in each room or specified accommodation in a hotel or lodging house.

23. *Revision of fair rate and number of lodgers.*— The Controller may from time to time revise the fair rate or the number of lodgers fixed under section 22.

24. *Notice of fair rate and number of lodgers to be displayed.*— The manager of a hotel or the owner of a lodging house shall, where the fair rate or the number of lodgers has been fixed under section 22 for a hotel or lodging house, display in a conspicuous part of the hotel or lodging house a notice of the fair rate and the number of lodgers so fixed.

25. *Agreement for payment of charges in excess of fair rate.*— An agreement for the payment of any charge in excess of the fair rate referred to in section 22 shall be null and void in respect of such excess and shall be

construed as if it were an agreement for the payment only of such fair rate.

26. *No eviction if fair rate paid.*—No manager of a hotel or owner of a lodging house shall have any right to evict or refuse board or other service to a lodger as long as he pays or tenders payment of the fair rate fixed under section 22 and observes and performs the other conditions of the agreement in so far as they are not inconsistent with the provisions of this Chapter :

Provided that a lodger shall not be entitled to the benefit of this section—

- (a) if the lodger has been guilty of conduct which is a nuisance or an annoyance to the other lodgers of the hotel or lodging house ; or
- (b) if the lodger has continuously been absent from such hotel or lodging house for a period exceeding two months ; or
- (c) if the lodger having contracted to stay for any specified period stays beyond that period unless the Controller on an application made to him in this behalf extends the period.

27. *Punishment.*—(1) Every manager of a hotel or owner of a lodging house who accommodates lodgers or permits lodgers to be accommodated in a room or specified accommodation in a hotel or lodging house in excess of the number fixed by the Controller under section 22, except with the consent of all the lodgers of such room or specified accommodation, shall on conviction in a Criminal Court be punished with fine which may extend to one thousand rupees.

(2) Every manager of a hotel or owner of a lodging house who fails to display a notice as required under section 24 of the fair rate or the number of lodgers fixed under section 2 shall on conviction in a Criminal Court be punished with fine which may extend to five hundred rupees.

#### CHAPTER VI.

##### APPOINTMENT OF THE CONTROLLER AND OTHER OFFICERS, THEIR POWERS AND FUNCTIONS.

28. *Appointment of Controller and Additional and Deputy Controllers.*—

(1) The Provincial Government may, by notification, appoint a person to be the Controller for any area to which this Act extends to exercise the powers and discharge the duties conferred and imposed upon the Controller by or under this Act in such area.

(2) The Provincial Government may also, by notification, appoint any person to be an Additional Controller or a Deputy Controller for any area to which this Act extends.

(3) An Additional Controller or a Deputy Controller shall exercise such of the functions of the Controller as may, subject to the control of the Provincial Government, be assigned to him by the Controller and in the discharge of these functions an Additional Controller or a Deputy Controller shall exercise the same powers and discharge the same duties as the Controller.

(4) The Controller may—

(a) transfer any case pending before him for disposal to any Additional Controller or Deputy Controller, or

(b) withdraw any case pending before any Additional Controller or Deputy Controller, and

(i) dispose of such case himself, or

(ii) transfer such case for disposal to any other Additional Controller or Deputy Controller.

(5) A Controller, an Additional Controller or a Deputy Controller appointed under this section shall be either,—

- (a) a member—
  - (i) in Calcutta, of the Judicial Branch of the Provincial Civil Service of not less than ten years' standing in such service, and
  - (ii) elsewhere, of the Executive or Judicial Branch of the Provincial Civil Service, or

- (b) a barrister, advocate or attorney of the High Court in Calcutta of not less than ten years' standing, who has practised as such, and has experience of rent values and land acquisition cases in Calcutta.

29. *Final hearing of certain applications.*—(1) The hearing of every application made to the Controller under this Act shall be completed within a period of three months in the case of an application for exercise of the powers conferred on him by sections 8 and 9, and within a period of one month in the case of an application for obtaining his permission under sub-section (2) of section 38, unless, for reasons to be recorded by the Controller in writing, it is not possible for him to complete the hearing within that period.

(2) The hearing of any application referred to in sub-section (1) shall, when it has begun, be continued from day to day unless, for reasons to be recorded by the Controller in writing, it is not possible so to do.

30. *Notice to landlords and tenants before exercising powers under the Act.*—Before exercising any of the powers conferred on him by this Act, the Controller shall give notice by registered post of his intention to do so to the landlord and to the tenant, if any, and shall cause a copy of such notice to be affixed in a conspicuous place at the office of the Controller, and shall duly consider any application received by him within the period specified in the notice from any person having any interest in the premises in respect of which such power is exercised.

31. *Power to enter and inspect premises, to require information and to summon witnesses.*—(1) For the purposes of any inquiry under this Act the Controller may,—

- (a) enter and inspect any premises at any time between sunrise and sunset ;

- (b) authorise any officer subordinate to him to enter and inspect any premises ; or

- (c) by written order require any person to produce for his inspection such accounts, rent receipts, books or other documents relevant to the inquiry, at such time and at such place, as may be specified in the order :

Provided that no premises shall be entered under clause (a) or clause (b), without the consent of the occupier, unless at least twenty-four hours' previous notice in writing has been given.

(2) The Controller shall, subject to any rules made under this Act, and, in so far as such powers are necessary for carrying out the provisions of this Act, have power to summon and enforce the attendance of witnesses, and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a Court by the Code of Civil Procedure, 1908 (Act V of 1908).

#### CHAPTER VII

##### APPEAL, REVIEW, JURISDICTION AND PENALTY.

32. *Appeal and review.*—(1) Any person aggrieved by an order of the Controller may, within thirty days from the date of the order, present an appeal in writing,—

(a) in respect of premises in the Presidency town of Calcutta, to the Chief Judge of the Court of Small Causes of Calcutta, and

(b) in respect of premises elsewhere, to the District Judge of the district in which the premises in respect of which such order is made are situated :

Provided that no appeal shall lie under this sub-section from any order made by the Controller under section 39 :

Provided further that no appeal presented under this sub-section by a tenant shall be entertained unless all arrears of rent payable by such tenant in accordance with the order of the Controller appealed against has been paid or deposited in accordance with the provisions of this Act.

(2) The Provincial Government may, by notification appoint any person who has exercised the powers of a District Judge in West Bengal to hear appeals presented under clause (a) of sub-section (1) to the Chief Judge of the Court of Small Causes of Calcutta and may, by notification, also appoint any person who is a judicial officer not below the rank of a subordinate judge to hear appeals presented under clause (b) of the said sub-section to a District Judge.

(3) The Chief Judge of the Court of Small Causes of Calcutta to whom an appeal is presented under clause (a) of sub-section (1) or a District Judge to whom an appeal is presented under clause (b) of that sub-section may transfer such appeal to any person appointed to hear any such appeal under sub-section (2) and may withdraw any appeal so transferred and either hear and dispose of it himself or transfer it to any other person appointed to hear such appeals under sub-section (2).

(4) The Chief Judge or the District Judge or any person appointed under sub-section (2) to whom an appeal is transferred under sub-section (3), as the case may be, shall then send for the record of the case from the Controller and after perusing such record and, if necessary, taking such evidence himself or personally making such further inquiries as he thinks fit, shall decide the appeal and shall not send it back on remand.

(5) Subject to such rules as may be made under this Act, any order passed under this Act by the Controller, the Chief Judge of the Court of Small Causes of Calcutta or a District Judge or a person appointed under sub-section (2) may be reviewed by the person who passed the order on the ground of the discovery of any new and important matter or evidence or on account of some mistake or error apparent on the face of the record or for any other sufficient cause :

Provided that before any order is passed under this sub-section which is likely to affect any person adversely such person shall be given a reasonable opportunity of being heard.

(6) The High Court, on application made in that behalf by any person aggrieved by an order passed in appeal by the Chief Judge or the District Judge or a person appointed under sub-section (2), either imposing, or confirming any order passed by the Controller imposing, a fine under section 20, section 33 or section 34 may, where the fine is not less than five hundred rupees and such application is made within thirty days of the date of such order, call for and examine the record of such appeal and, after giving the parties an opportunity of being heard, revise the order passed in such appeal.

(7) All decisions of the Chief Judge or the District Judge or a person appointed under sub-section (2), as the case may be, shall, subject to the provisions of sub-section (6), be final.

**33. Penalty for recovering rent in excess of the standard rent.—(1)**  
**Whoever knowingly—**

(a) receives, whether directly or indirectly, any sum on account of the rent of any premises in excess of the standard rent, or

(b) receives, whether directly or indirectly, or invites offers or asks for, any premium, *salami*, fine or any other like imposition in addition to the standard rent except as provided in section 5, or

(c) receives, whether directly or indirectly, any sum as rent in advance in excess of one month's rent without the written consent of the Controller,

shall, on the complaint of the party aggrieved or of the Provincial Government, be liable,—

(i) in the case referred to in clause (a), on the first occasion, to a fine which may extend to five times the amount recovered in excess of the standard rent and on a second or subsequent occasion in regard to the same or any other premises, to a fine which may extend to ten times the amount of such excess ;

(ii) in the case referred to in clause (b), on the first occasion, to a fine which may extend to two thousand rupees, and on a second or subsequent occasion in regard to the same or any other premises, to a fine which may extend to five thousand rupees ; and

(iii) in the case referred to in clause (c), on the first occasion, to a fine which may extend to twice the amount received in excess of one month's rent, and on a second or subsequent occasion in regard to the same or any other premises, to a fine which may extend to four times the amount so received,  
to be imposed, in each case after inquiry, by the Controller.

(2) A person shall be deemed to receive a sum in excess of the standard rent, if he receives any consideration representing a money value in excess of such standard rent as part of such standard rent.

**34. Penalty for disturbance of easements, etc.—**Whoever, in any case in which an order or decree for the recovery of possession of any premises is prohibited under section 11, without the previous written consent of the Controller, or save for the purpose of effecting repairs or complying with any municipal requisition, wilfully disturbs any easement annexed to such premises, or removes, destroys, or renders unserviceable, anything provided for permanent use therewith, or discontinues any supply or service comprised in the tenancy of such premises, shall, on the complaint of the party aggrieved, be liable, on the first occasion, to a fine which may extend to five hundred rupees, and on a second or subsequent occasion in regard to the same or any other premises, to a fine which may extend to one thousand rupees, to be imposed, after inquiry, by the Controller.

**35. Payment and recovery of fine.—**The fine imposed under section 20, section 33 or section 34 shall be paid by the person fined in the prescribed manner within thirty days from the date of the order of the Controller imposing the fine or within such further period as the Controller may allow for such payment for special reasons to be recorded by him in writing and in default of such payment under the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913).

**36. Limitation for complaints.—**No complaint under section 33 or section 34 shall be brought against any person after the expiration of six months from the date of the commission of the act in respect of which the complaint is brought.

37. *Issue of distress warrants and other processes barred in certain cases.*—No distress warrant shall be issued under Chapter VIII of the Presidency Small Cause Courts Act, 1882 (XV of 1882), and no process under the Code of Civil Procedure, 1908 (Act V of 1908), in execution of a decree passed *ex parte* thereunder, shall be issued, either for the attachment of property or for the arrest of any tenant, in connection with the recovery of the rent of any premises situated in any area to which this Act may apply, unless the person applying for execution, when making his application swears or affirms by affidavit or otherwise that none of the rent, in respect of which execution is applied for, is irrecoverable under this Act.

#### CHAPTER VIII.

##### MISCELLANEOUS.

38. *Making of repairs and taking of measures for the maintenance of essential services by the tenant on the failure or neglect of the landlord to do so.*—(1) The Controller shall, on application made to him in this behalf by any tenant in possession of any premises, cause a notice to be served in the prescribed manner on the landlord thereof requiring him to make any repairs which such landlord is bound to make to the premises or to take any measures for the due maintenance of any essential supply or service, such as the maintenance of the supply of water or electricity, the maintenance of conservancy or sanitary service and the maintenance of any lift, which such landlord is bound to maintain in the premises under the conditions of the tenancy or according to local usage.

(2) If after the service of such notice the landlord fails to show proper cause or neglects to make within reasonable time such repairs or to take within reasonable time such measures, as the case may be, the tenant may submit to the Controller an estimate of the cost of such repairs or measures, and may apply to him for permission to make such repairs or to take such measures himself and, thereupon, the Controller may, after giving the landlord an opportunity of being heard and after considering such estimate of cost and making such inquiries as he may consider necessary, by an order in writing, permit the tenant to make such repairs or to take such measures, as the case may be, at a cost not exceeding such amount as may be specified in the order and it shall thereafter be lawful for the tenant to make such repairs or to take such measures himself and to deduct the cost thereof, which shall in no case exceed the amount so specified, from the rent or otherwise recover it from the landlord :

Provided that the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year.

39. *Taking of measures by the tenant in case of emergency.*—Notwithstanding anything contained in section 38, if the necessity for making any repairs or for taking any measures referred to in that section, is so urgent that any delay involved in the procedure referred to therein is likely to subject the tenant to personal loss, damage or serious inconvenience, the tenant may himself cause the notice referred to in section 38 to be served in the prescribed manner on the landlord requiring him to make such repairs or to take such measures within seventy-two hours of the service of such notice and shall in every such case submit, at the same time, a copy of such notice to the Controller together with an estimate of the cost of such repairs or measures to enable the Controller to make such inquiries as he may consider necessary about the necessity of such repairs or measures and the correctness of the estimate so submitted, and if, after the service of such notice, the landlord fails to make such repairs or to take such measures

within the time mentioned in the notice, the tenant may himself make such repairs or take such measures, as the case may be, and, after completion of such repair or measures, submit to the Controller a statement of the costs thereof and thereafter the Controller, after considering such statement and making such further inquiries as he may consider necessary, may, by an order in writing, determine the amount of the costs which the tenant is entitled to recover from the landlord, and the tenant may thereupon deduct the amount so determined from the rent or otherwise recover it from the landlord :

Provided that the amount so deducted or recoverable in any year shall not exceed one-twelfth of the rent payable by the tenant for that year.

40. *Criminal liability and refund of the consideration, and in addition to the standard rent*—(1) Whoever knowingly accepts or obtains or attempts to accept or obtain, whether directly or indirectly, any sum or valuable thing or any pecuniary advantage on account of any premium, *salami* or fine in addition to the standard rent, except as provided in section 5, shall also, on conviction in a Criminal Court, be punished with imprisonment for a term which may extend to two years or with fine or with both and, without prejudice to any other method of recovery, the Court may order the amount paid or the value of the consideration given to be repaid to the person by whom the payment was made or the consideration given.

(2) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), an offence punishable under sub-section (1) shall be cognizable and bailable.

41. *Cutting off or withholding essential supply or service*.—(1) No landlord either himself or through any person purporting to act on his behalf shall without just or sufficient cause cut off or withhold any essential supply or service enjoyed by the tenant in respect of the premises let to him.

(2) Any landlord who contravenes the provisions of sub-section (1) shall, on conviction in a Criminal Court, be punished with imprisonment for a term which may extend to three months or with fine or with both.

*Explanation*.—In this section essential supply or service includes supply of water, electricity, lights in passages and on stair-cases, lifts and conservancy or sanitary service.

42. *Tenant may get supply of electricity to the premises without the permission of the landlord*.—Notwithstanding anything contained in any other law for the time being in force, a tenant may get from a licensee the supply of electricity in the premises occupied by him without the permission of the landlord.

*Explanation*.—In this section ‘licensee’ has the same meaning as in clause (h) of section 2 of the Indian Electricity Act, 1910 (IX of 1910).

43. *Supply of certified copies of the order of the Controller*.—Any person affected by any order of the Controller made under this Act shall be entitled to be furnished with a copy thereof, duly certified by the Controller to be a correct copy, on payment of such fees as may be prescribed, and such copy shall be admissible in evidence in any Court of Law to prove the order of the Controller.

44. *Controller to be a public servant*.—A Controller appointed under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (XLV of 1860).

45. *Repeal and saving*.—(1) The West Bengal Expiring Laws Act, 1948 (West Ben. Act V of 1948), in so far as it enacts and continues in

operation the provisions of the Calcutta Rent Ordinance, 1946 (Ben. Ord. V of 1946), is hereby repealed.

(2) Any rules, orders and appointments made or deemed to have been made or anything done or any action taken or any proceedings commenced or deemed to have been done, taken or commenced under any of the provisions of the said Ordinance shall continue in force in so far as they are consistent with the provisions of this Act and shall be deemed to have been made, done, taken or commenced under the corresponding provision of this Act.

(3) For the removal of doubts it is hereby declared that all proceedings pending before the Controller at the commencement of this Act in connection with applications for permission to institute or prosecute a suit or proceeding, or to execute or proceed with the execution of a decree or order, for the recovery of possession of any premises from a tenant and all appeals preferred against, or applications filed for review of, orders passed on such applications and pending at such commencement, shall abate.

46. *Bar of proceedings*—No suit, prosecution or other legal proceeding shall lie against any officer of the Crown for anything in good faith done or intended to be done under this Act.

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

(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:

(a) the form of permits referred to in sub-section (1) of section 6 and the fee referred to in sub-section (2) of that section;

(b) the manner of obtaining the permission and executing an order referred to in section 15;

(c) the manner of depositing rent under sub-section (1) of section 19;

(d) the method of withdrawal of the deposit of rent by the landlord under sub-section (5) of section 19;

(e) the procedure for summoning and enforcing the attendance of witnesses and compelling the production of documents referred to in sub-section (2) of section 31;

(f) the procedure to be followed in inquiries under this Act by the Controller, the Chief Judge of the Court of Small Causes of Calcutta, the District Judge and any person appointed under sub-section (2) of section 32;

(g) the procedure for review of orders referred to in sub-section (6) of section 32;

(h) the manner of payment of the fine referred to in section 35;

(i) the manner of service of notices issued under this Act;

(j) the charging or remitting of costs and fees and the fixing of a scale of costs and fees.

(3) All rules made under this Act shall, as soon as may be after they have come into force, be laid before the Provincial Legislature.

#### The Schedule.

[ See section 2 (10). ]

#### PART A.

*Provisions for determining the standard rent of premises in Calcutta.*

1. In this part of this Schedule "basic rent" in relation to any premises means—

(a) where the rent of the premises has been fixed by the Controller

under the Calcutta House Rent Control Order, 1943, or the Calcutta Rent Ordinance, 1946 (Ben. Ord. V of 1946), the rent so fixed.

(b) where the rent of the premises has not been so fixed the rent which would, in the opinion of the Controller, have been fixed under the Calcutta Rent Ordinance, 1946.

2. Where the premises are used for residential purposes or mainly for residential purposes, the standard rent shall be the basic rent increased by—

(a)  $6\frac{1}{2}$  per cent., if the basic rent *per mensem* is not more than Rs. 50,

(b)  $12\frac{1}{2}$  per cent., if the basic rent *per mensem* is more than Rs. 50 but not more than Rs. 150,

(c)  $18\frac{1}{2}$  per cent., if the basic rent *per mensem* is more than Rs. 150 but not more than Rs. 300,

(d) 20 per cent., if the basic rent *per mensem* is more than Rs. 300.

*Explanation.*—In this paragraph and in the next succeeding paragraph of this part of this Schedule, the expression “residential purposes” includes purposes of being used as a hospital, an orphanage, or an educational or charitable institution

3. Where the premises are used otherwise than for residential purposes or mainly for residential purposes, the standard rent shall be the basic rent increased by—

(a)  $12\frac{1}{2}$  per cent., if the basic rent *per mensem* is not more than Rs. 75.

(b) 25 per cent., if the basic rent *per mensem* is more than Rs. 75 but not more than Rs. 150,

(c)  $37\frac{1}{2}$  per cent., if the basic rent *per mensem* is more than Rs. 150 but not more than Rs. 300,

(d) 40 per cent., if the basic rent *per mensem* is more than Rs. 300.

4. Where any premises have been sub-let, the standard rent shall be the rent determined according to paragraph 2 or 3, as the case may be, omitting the excess, if any, beyond  $6\frac{1}{2}$  per cent. over the standard rent or a proportionate part thereof payable by the tenant who sub-lets the premises according as the premises are sub-let in whole or in part.

#### PART B.

*Provisions for determining the standard rent of premises in areas other than Calcutta.*

1. In this part of this Schedule “basic rent” in relation to any premises means—

(a) Where the rent of the premises has been fixed by the Controller under the Bengal House Rent Control Order, 1942, or the Calcutta Rent Ordinance, 1946 (Ben. Ord. V of 1946), the rent so fixed.

(b) Where the rent of the premises has not been so fixed the rent which would, in the opinion of the Controller, have been fixed under the Calcutta Rent Ordinance, 1946.

2. Where the premises are used for residential purposes or mainly for residential purposes, the standard rent shall be the basic rent increased by—

(a) 10 per cent., if the basic rent *per mensem* is not more than Rs. 25,

(b) 20 per cent., if the basic rent *per mensem* is more than Rs. 25 but not more than Rs. 75.

(c) 25 per cent., if the basic rent *per mensem* is more than Rs. 75.

*Explanation.*—In this paragraph and in the next succeeding paragraph of this part of this Schedule, the expression “residential purposes”

includes purposes of being used as a hospital, an orphanage or an educational or charitable institution.

3. Where the premises are used otherwise than for residential purposes or mainly for residential purposes, the standard rent shall be the basic rent increased by—

- (a) 20 per cent., if the basic rent *per mensem* is not more than Rs. 15,
- (b) 40 per cent., if the basic rent *per mensem* is more than Rs. 15, but not more than Rs. 30,
- (c) 50 per cent., if the basic rent *per mensem* is more than Rs. 30.

4. Where any premises have been sub-let, the standard rent shall be the rent determined according to paragraph 2 or 3, as the case may be, omitting the excess, if any beyond 6½ per cent., over the standard rent or a proportionate part thereof payable by the tenant who sub-lets the premises according as the premises are sub-let in whole or in part.

### **The West Bengal Hindu Social Disabilities Removal Act, 1948.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [ Vide Notification No. 1902L, of the Judicial and Legislative (Legislative) Department, dated the 3rd November 1948, published in the Calcutta Gazette, Part III, dated the 11th November 1948 ].

#### **West Bengal Act XXXVII of 1948.**

[ Passed by the West Bengal Legislature. ]

[ Assent of the Governor was first published in the Calcutta Gazette, of the 11th November, 1948. ]

*An Act to provide for the removal of certain social disabilities suffered by some sections of Hindus.*

WHEREAS it is expedient to foster a spirit of unity and harmony amongst all classes of people and, to that end, to provide for the removal of certain social disabilities suffered by some sections of Hindus ;

It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the West Bengal Hindu Social Disabilities Removal Act, 1948.

(2) It extends to the whole of West Bengal.

(3) It shall come into force at once

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

(a) "Hindu" includes a Buddhist, Sikh, Jain, Santal, Adibasi, a follower of Arya or Brahma Samaj or a convert to Hinduism or any other person habitually professing himself to be a Hindu ;

(b) "Local authority" means a local authority as defined in clause (23) of section 3 of the Bengal General Clauses Act, 1899 (Ben. Act I of 1899) other than a cantonment authority or the Commissioners for the Port of Calcutta ;

(c) "place of public amusement" means any place, enclosure, building, tent, booth or other erection, whether permanent or temporary, where music, singing, dancing or any diversion or game, or the means of carrying on the same, is provided and to which the public are admitted either on payment of money or with the intention that money may be collected from those admitted and includes a fair, *mela*, race-course, circus, cinema, theatre, music hall, billiard-room, bagatelle-room, gymnasium or fencing school, and a stadium, stand or gallery from where any game or show is watched ;

(d) "place of public entertainment" means any place, whether enclosed or open, to which the public are admitted, and where any kind of food or

drink is supplied for consumption on the premises for the profit or gain of any person owning or having an interest in or managing such place, and includes a refreshment room, eating house, coffee house, tea shop, boarding house, lodging house and hotel ;

(c) "shop" means any premises where goods are sold either by retail or wholesale or both and includes a laundry, a hair cutting saloon or such other place where services are rendered to customers ;

(f) "temple" means a place, by whatever name known, which is dedicated to, or for the benefit of, or used as of right by, the Hindu community in general as a place of public religious worship, and includes subsidiary shrines and mantapams attached to such place ; and

(g) "worship" means such religious service as the bulk of worshippers at a temple may offer.

3. *Equality of rights of all castes and class of Hindus.*—Notwithstanding anything contained in any instrument or any law, custom or usage to the contrary, no Hindu shall merely on the ground that he belongs to a particular caste or class —

(a) be ineligible for office under any authority constituted under any law, or

(b) be prevented from —

(i) having access to or offering worship at any temple ; or

(ii) having access to or using any river, stream, spring, well, tank, cistern, water-tap or other watering place, or a bathing place burial or cremation ground, any sanitary convenience, any road or pathway which the members of other castes or classes of Hindus generally have a right to use or have access to ; or

(iii) having access to or using any public conveyance licensed by the Provincial Government or any local authority to ply for hire ; or

(iv) having access to or using any building or place used for charitable or public purposes maintained wholly or partially out of the revenues of the Province or the funds of a local authority ; or

(v) having access to a place of public amusement or a place of public entertainment ; or

(vi) having access to a shop to which the members of other caste and classes of Hindus generally are ordinarily admitted ; or

(vii) having access to or using any place set apart or maintained for the use of Hindus generally ; or

(viii) enjoying any benefit under a charitable trust created for the benefit of Hindus generally, or

(c) be denied any service whatsoever whether in connection with civic, social or religious practices or rites, by a Hindu who habitually renders such service in the course of his profession

4. *Discrimination on grounds of caste or class prohibited.*—No person in charge of any of the places referred to in sub-clauses (i), (ii), (iv), (v), (vi) and (vii) or any conveyance referred to in sub-clause (iii) of clause (b) of section 3 shall impose any restriction on any Hindu or act in a manner as to result in discrimination against him merely on the ground that he belongs to a particular caste or class.

5. *Courts not to recognise any custom or usage imposing disability on a Hindu on ground of caste or class.*—Except in matters governed by Hindu Law, no Court shall in adjudicating any matter or executing any order recognise any custom or usage (other than a custom or usage having the force of law) imposing any social disability on any Hindu merely on the ground that he belongs to a particular caste or class.

6. *Local authorities not to recognise any custom or usage imposing disability on ground of caste or class.*—No local authority shall in carrying out the functions and duties entrusted to it under any law recognise any custom or usage imposing any social disability on any Hindu merely on the ground that he belongs to a particular caste or class.

7. *No Hindu to be denied admission to any educational institution on ground of caste or class.*—No Hindu shall be denied admission to any school, college or other educational institution, meant for the public merely on the ground that he belongs to a particular caste or class.

8. *Punishments*—(1) Whoever—

(a) prevents any Hindu by reason of his belonging to a particular caste or class from having access to or using any of the places referred to in sub-clauses (i), (ii), (iv), (v), (vi) and (vii) or any conveyance referred to in sub-clause (iii) of clause (b) of section 3 or from enjoying any benefit under a charitable trust referred to in sub-clause (viii) of clause (b) of the said section or denies to any Hindu any service referred to in clause (c) of that section or abets such prevention or such denial; or

(b) contravenes the provisions of section 4 or section 7 or abets the contravention thereof,

shall, on conviction, be punished with imprisonment for a term which may extend to three months or with fine which may extend to rupees two hundred or with both and if he is the owner or occupier of any place of public amusement or of any place of public entertainment, or of any shop in regard to which the offence is committed, shall, in addition, be liable to have his license or permit, if any, in respect of such place of public amusement or such place of public entertainment or such shop cancelled.

(2) An offence under sub-section (1) shall be deemed to be an offence included under Part A of Schedule IV to the Bengal Village Self-Government Act, 1919 (Ben. Act V of 1919), and shall be tried in accordance with the provisions of that Act.

9. *Offences under the Act to be investigated by a police officer without the order of a Magistrate.*—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), a police officer may investigate an offence punishable under this Act without the order of a Magistrate.

10. *Power to make rules.*—The Provincial Government may make rules for the purpose of carrying out the provisions of this Act.

### **The West Bengal Land-Revenue, Rent and Cess (Apportionment) Act, 1948**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [ Vide Notification No. 1651L., of the Judicial and Legislative (Legislative) Department, dated the 15th October 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 15th October 1948 ].

#### **West Bengal Act XXXI of 1948.**

[ Passed by the West Bengal Legislature ]

[ Assent of the Governor was first published in the *Calcutta Gazette*, Extraordinary, of the 15th October, 1948. ]

*An Act to apportion and fix the land-revenues, rents and cesses in respect of the portions situated within West Bengal of certain estates, Putni and other tenures and holdings.*

WHEREAS certain estates, tenures and holdings in the Province of Bengal as it existed before the date on which the award came into force are comprised of lands situated, after the said date, partly in the Province of West Bengal in the Dominion of India and partly in the Province of East Bengal in the Dominion of Pakistan ;

AND WHEREAS it is expedient to apportion and fix the land-revenues or rents, as the case may be, and the cesses payable in respect of the portions situated in West Bengal of the common estates, tenures or holdings ;

It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the West Bengal Land revenue, Rent and Cess (Apportionment) Act, 1948.

(2) It extends to the whole of West Bengal.

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

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

(1) “award” means the award of the Boundary Commission referred to in section 3 of the Indian Independence Act, 1947 (10 & 11 Geo. VI, c. 30);

(2) the expression “common estates, tenures or holdings” means estates, tenures or holdings which are comprised of lands situated, after the date on which the award came into force, partly in the Province of West Bengal in the Dominion of India and partly in the Province of East Bengal in the Dominion of Pakistan ;

(3) “prescribed” means prescribed by rules made by the Provincial Government under this Act ;

(4) “Revenue-officer” includes any officer whom the Provincial Government may appoint to discharge any of the functions of a Revenue-officer under this Act ; and

(5) “tenure” includes a *Putni* tenure.

3. *Power to order preparation of record of lands in common estates, tenures and holdings.*—The Provincial Government may, by notification in the Official Gazette, make an order directing that a record be prepared in such manner and containing such particulars as may be prescribed or all lands in West Bengal forming part of the common estates, tenures or holdings.

4. *Preparation of record.*—When an order has been made for the preparation of a record under section 3, the Revenue-officer shall prepare such record accordingly containing, in addition to the particulars referred to in section 3, the amounts of land-revenues or rents, as the case may be, and of cesses payable in respect of the portions included in West Bengal of the common estates, tenures or holdings, to be determined by the Revenue-officer in such manner and in accordance with such principles as may be prescribed.

5. *Preliminary publication of record.*—When a record has been prepared under section 4, the Revenue-officer shall cause a draft of it to be published in such manner and for such period as may be prescribed and shall receive, during the period of publication of the record, any objections made in regard to any entry therein or omission therefrom relating of the apportionment of land-revenues, rents or cesses.

6. *Final disposal of objections, and confirmation and final publication of record.*—(1) After the expiry of the period of publication of the record under section 5, the Revenue-officer shall submit the record to the Revenue

authority prescribed with a summary of the objections, if any, which he has received and his report thereon.

(2) Such authority shall finally dispose of the objections submitted to it under sub-section (1) according to such rules as the Provincial Government may make and may confirm the record with or without amendment :

Provided that no entry shall be amended or omission supplied unless notice has been given to the parties concerned for such period and in such manner as may be prescribed to appear and be heard in the matter.

(3) After confirmation by such authority the Revenue officer shall cause the record to be finally published in the manner prescribed and such publication shall be conclusive evidence that the record has been duly prepared under this Act.

7. *Appeal and saving* — (1) Any person who is aggrieved by any entry in, or omission from, the record finally published under section 6 in so far as such record relates to the apportionment and fixation of rents or cesses in respect of tenures or holdings, may appeal to the superior Revenue authority prescribed in such manner and within such period as may be prescribed.

(2) Notwithstanding anything contained in any other law for the time being in force, no Court shall have any jurisdiction in respect of any issue arising out of the proceedings under this Act for the apportionment and fixation of land revenues, rents or cesses or shall annul or alter any decision of a Revenue officer or a Revenue authority under this Act.

8. *Correction of record* — The Revenue officer may at any time, either of his own motion or on application, and after giving notice to the parties concerned for such period and in such manner as may be prescribed to appear and be heard in the matter, correct any clerical or arithmetical mistake in the record finally published under section 6 or any error arising therein from any accidental slip or omission and shall make such alterations therein as may be necessary to give effect to any decision on appeal under sub-section (1) of section 7.

9. *Commencement and effect of the record*. — On the final publication of the record under section 6, —

(a) the apportionment and fixation, thereunder, of land-revenues or rents, as the case may be and of cesses in respect of the portions situated in West Bengal of the common estates, tenures or holdings shall, notwithstanding anything contained in any other law for the time being in force or in any contract, be deemed to have come into force and the common estates, tenures or holdings, as the case may be, shall be deemed to have been and to be partitioned accordingly, on and from the date on which the award came into force (hereinafter referred to as the said date), and

(b) all laws for the time being in force relating to the creation or settlement of estates, tenures or holdings or to the recovery of land-revenue, rent or cesses in respect thereof shall be deemed to have been and to be applicable *mutatis mutandis* to such partitioned estates, tenures or holdings on and from the said date.

10. *Power to make rules*. — (1). — The Provincial Government may make rules for carrying out the purposes of this Act.

(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 : —

(a) the manner of, preparing a record and the particulars to be contained therein referred to in section 3 ;

(b) the manner of, and the principles for, determining the amounts of land-revenues, rents and cesses referred to in section 4 ;

(c) the manner and period of publication of a draft record referred to in section 5 ;

(d) the Revenue authority referred to in sub-section (1) of section 6, and the disposal of objections under sub-section (2) and the manner of final publication of a record under sub-section (4) of that section ;

(e) the period of, and the manner of giving, notice referred to in the proviso to sub-section (2) of section 6 and in section 8 ; and

(f) the superior Revenue authority referred to in sub-section (1) of section 7, the manner of presentation of appeals to such authority and the period within which such appeals shall be presented under the said sub-section.

Published in the *Calcutta Gazette*, Extraordinary, Part III-A, dated the 25th April 1949.

### **The West Bengal Land-Revenue Sales Ordinance, 1949.**

#### **West Bengal Ordinance No. I of 1949.**

WHEREAS it is expedient, pending the enactment of further legislation, to provide for the temporary stay of certain suits, proceedings and appeals in pursuance of the Act ;

AND WHEREAS the West Bengal Legislature is not in session and the Governor is satisfied that circumstances exist which render it necessary for him to take immediate action ;

The Governor is pleased in exercise of the power conferred by sub-section (1) of section 88 of the Government of India Act, 1935 (26 Geo. V. C. 2), to make and promulgate the following Ordinance, namely :—

1. *Short title, extent and commencement.*—(1) This Ordinance may be called the West Bengal Land Revenue Sales Ordinance, 1949.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on the date of its publication in the *official Gazette*.

2. *Definitions.*—In this Ordinance unless there is anything repugnant in the subject or context,—

(a) “the Act” means the Bengal Land Revenue Sales Act, 1859 (XI of 1859) ;

(b) “proceeding” includes an execution proceeding.

3. *Stay of certain suits, proceedings and appeals for ejectment.*—Notwithstanding anything contained in any other law for the time being in force, during the continuance in operation of this Ordinance—

(i) no suit or proceeding for the annulment of any interest in, or the ejectment of any person from, any land in pursuance of the provisions of section 37 or section 52 of the Act shall be instituted and no appeal from any decree or order made in any such suit or proceeding shall be preferred ; and

(ii) all such suits, proceedings and appeals instituted or preferred, as the case may be, prior to, and pending at, the date of commencement of this Ordinance shall be stayed.

4. *Saving of limitation.*—In computing the period of limitation provided by any law for the time being in force for instituting a suit or proceeding for the annulment of any interest in, or the ejectment of any person from, any land in pursuance of the provisions of section 37 or section 52

of the Act or for preferring an appeal from any decree or order made in any such suit or proceeding, the period during which this Ordinance remains in operation shall be excluded.

**The 24-Parganas District Board Dissolution (Temporary Provisions) Act, 1948.**

The following Act of the West Bengal Legislature [has been assented to in His Majesty's name by the Governor [vide Notification No. 1653 L. of the Judicial and Legislative (Legislative) Department, dated the 7th October 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 7th October 1948.]

**West Bengal Act XVIII of 1948.**

[*Passed by the West Bengal Legislature.*]

[Assent of the Governor was first published in the *Calcutta Gazette*, Extraordinary, of the 7th October, 1948.]

*An Act to provide for the dissolution and constitution of the District Board of the 24-Parganas.*

WHEREAS it is expedient to provide for the dissolution and constitution of the District Board of the 24-Parganas in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. *Short title, commencement and duration.*—(1) This Act may be called the 24-Parganas District Board Dissolution (Temporary Provisions) Act, 1948.

(2) It shall come into force on the date on which the 24-Parganas District Board (Dissolution) Ordinance, 1948 (West Ben. Ord. III of 1948), ceases to operate.

(3) It shall remain in force only up to the 9th day of May, 1950.

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

(a) "the Act" means the Bengal Local Self-Government Act of 1885 (Ben. Act III of 1885) ; and

(b) "the District Board" means the District Board of the 24-Parganas.

3. *Dissolution of the District Board.*—The Provincial Government may, if and so often as it so thinks fit, by an order published in the *Official Gazette* dissolve the District Board from such date as may be specified in the order :

Provided that such powers shall not be exercised when the District Board is reconstituted on the result of the election referred to in sub-section (1) of section 7 in accordance with the provisions of the Act.

4. *Consequences of dissolution.*—Notwithstanding anything contained in the Act, all the members constituting the District Board and the Chairman and the Vice-Chairman of the District Board shall, as from the date of dissolution, vacate their offices as such members, Chairman and Vice-Chairman.

5. *Constitution of the District Board.*—Notwithstanding anything contained in the Act, the Provincial Government shall, if the District Board is dissolved by notification in the *Official Gazette*, constitute the District Board as from the date of dissolution in such manner and consisting of such number of members as it may determine in this behalf.

6. *Term of office of members.*—The Provincial Government shall, by notification in the *Official Gazette*, fix the term of office of members of the District Board constituted under section 5 :

Provided that the term of office so fixed shall not exceed the period during which this Act remains in force.

7. *Reconstitution of the District Board in accordance with the provisions of the Bengal Local Self-Government Act of 1885*—(1) Before the expiry of the term of office of the members of the District Board constituted under section 5, there shall be a fresh general election of members of the District Board in conformity with the provisions of the Act and the rules made thereunder and the persons who vacated their offices under section 4 shall not be deemed disqualified for such election if they are otherwise qualified therefor.

(2) On the expiration of the term of office of the members of the District Board constituted under section 5, the District Board shall be reconstituted on the result of election referred to in sub-section (1) in accordance with the provisions of the Act.

8. *Casual vacancies*.—When the place of a member of the District Board constituted under section 5 becomes vacant, the Provincial Government shall, as soon as may be, appoint another person to fill the vacancy and the person so appointed shall hold office for the residue of the term of office of the member in whose stead he is appointed.

9. *Continuance of action taken under West Bengal Ordinance III of 1948*—Any notification issued or anything done or any action taken in exercise of any power conferred by the 24-Parganas District Board (Dissolution) Ordinance, 1948 (West Ben. Ord. III of 1948), shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, done or taken in exercise of the powers conferred by this Act, as if this Act had commenced on the 3rd day of May, 1948.

### **The Bengal Tanks Improvement (West Bengal Amendment) Act, 1948.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [vide Notification No. 1644-L, of the Judicial and Legislative (Legislative) Department dated the 8th October 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 8th October 1948.]

#### **West Bengal Act XXIV of 1948.**

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette*, Extraordinary, of the 8th October, 1948.]

*An Act further to amend the Bengal Tanks Improvement Act, 1939.*

WHEREAS it is expedient further to amend the Bengal Tanks Improvement Act, 1939 (Ben. Act XV of 1939), for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. *Short title and Commencement*.—(1) This Act may be called the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948.

(2) It shall come into force on the date on which the Bengal Tanks Improvement (West Bengal Amendment) Ordinance, 1948 (West Ben. Ord. I of 1948), ceases to operate.

2. *Amendment of section 2 of Bengal Act XV of 1939*.—In section 2 of the Bengal Tanks Improvement Act, 1939 (hereinafter referred to as the said Act),—

(a) before clause (1) the following clause shall be inserted, namely:—

“(a1) ‘agricultural land’ includes land used for the growing of vegetables and the like and also waste land which is capable of cultivation but

does not include a fruit garden, an orchard, any temple, mosque or home-  
stead land"; and

(b) after clause (5) the following clause shall be inserted, namely :—

"(5a) 'person having control over a tank' does not include a person by whom the tank is held for a limited time and whose interest in the tank is not transferable ;".

3. *Amendment of section 3.*—In section 3 of the said Act, for the words "requiring him" the words "requiring such person to intimate to him with-  
in a period specified in the notice if such person is willing to carry out and  
in case such person is so willing then," shall be substituted.

4. *Amendment of section 4.*—In section 4 of the said Act,—

(a) in sub-section (1),—

(i) for the words and figure "If the improvements referred to in sec-  
tion 3 are not carried out" the following words and figure shall be substi-  
tuted, namely :—

"If the person having control over the tank does not send any intima-  
tion or sends any intimation to the Collector within the period fixed under  
section 3 that he is not willing to carry out the improvements referred to  
in that section or if such person sends any intimation to the Collector with-  
in such period that he is willing to carry out the improvements but fails to  
carry out the improvements", and

(ii) for the words "by a notice to" the words "by a notice served in  
the prescribed manner on" shall be substituted ;

(b) to sub-section (2) the following words and figures shall be added,  
namely :—

"or the number entered in the record-of-rights finally published under  
Chapter X of the Bengal Tenancy Act, 1885 (VIII of 1885), of the survey  
plot comprising such tank"; and

(c) in sub-section (3), for the word "issue" the word "confirmation"  
shall be substituted.

5. *Amendment of section 6.*—In sub-section (2) of section 6 of the said  
Act, after the words "give preference to" the words "the sole owner or"  
shall be inserted.

6. *Insertion of new section 6A.*—After section 6 of the said Act, the  
following section shall be inserted, namely :—

"6A. *Order for possession of lands adjoining a derelict tank for carrying  
out improvements in such tank*—(1) If any authorised person considers it  
necessary for the purpose of carrying out the improvements in a derelict  
tank to take possession of any land adjoining such tank, he may,—

(a) if he is the Collector, take possession of such land by order in writ-  
ting, and

(b) if he is not the Collector, apply in the prescribed manner to the  
Collector to be empowered to take possession of such land and the  
Collector may, if he is satisfied after considering the application that  
such land is required for carrying out the improvements, empower the  
authorised person by order in writing to take possession of such land :

Provided that the Collector shall not take possession or empower any  
authorised person to take possession of such land without giving in the  
prescribed manner the person in possession of such land reasonable oppor-  
tunity of making any representation he may like to make and without  
considering any representation so made.

(2) Every order made under sub-section (1) shall specify the bounda-  
ries of the land to which it relates or the number entered in the record-of-

rights finally published under Chapter X of the Bengal Tenancy Act, 1885, of the survey plot comprising such land and shall be in such form as may be prescribed."

7. *Amendment of section 7.*—In section 7 of the said Act,—

(1) in sub-section (1),—

(a) for the words "If any authorised person—" the words "If any authorised person other than the Collector—" shall be substituted,

(b) for clause (a) the following clause shall be substituted, namely :—

"(a) fails to carry out the improvements to the satisfaction of the Collector in accordance with the conditions referred to in sub-section (3) of section 6",

(c) after the words and figure "made under section 6" the words, figures, letters and brackets "as well as any order made under clause (b) of sub-section (1) of section 6A" shall be inserted,

(d) after the words "in respect of the tank" the words, figures, letters and brackets "and in respect of any land of which possession is taken as a result of an order made under clause (b) of sub-section (1) of section 6A" shall be inserted, and

(e) after the words "shall take possession of the tank" the words "and such land" shall be added ; and

(2) in sub-section (2), after the word "tank" the words "and such land" shall be inserted.

8. *Substitution of new section for section 8.*—For section 8 of the said Act, the following section shall be substituted, namely :—

"8. *Authorised person to retain possession of a derelict tank for a period not exceeding twenty-five years.*—Subject to the provisions of this Act, the Collector or an authorised person shall be entitled to remain in possession of a derelict tank of which possession has been taken under the provisions of this Act for such period not exceeding twenty-five years from the date on which possession of the derelict tank was taken under section 5 or section 6 as may, in the opinion of the Collector, be necessary to recover the amount referred to in sub-section (4) of section 17 :

Provided that the Collector, may, after considering the views of the authorised person, if any, and for reasons to be recorded in writing, vary such period from time to time subject to the maximum limit of twenty-five years".

9. *Amendment of section 9.*—For clause (a) of section 9 of the said Act, the following clause shall be substituted, namely :—

"(a) such person pays to the Collector so much of the costs incurred up to that time both by the authorised person in carrying out the required improvements in the tank and by the Collector in carrying out the purposes of this Act in respect of the tank as remains unrecovered after realisation by the authorised person under this Act of the fees referred to in section 17 or of any sum under any lease referred to in section 18, together with interest on the costs so remaining unrecovered at a rate not exceeding six and a quarter per centum per annum, and".

10. *Insertion of new sections 9A, 9B and 9C.*—After section 9 of the said Act, the following sections shall be inserted, namely :—

"9A. *Authorised person to retain possession of land adjoining a tank during the period of possession of such tank.*—An authorised person shall be entitled to remain in possession of any land adjoining a derelict tank of

which possession is taken under section 6A as long as such person remains in possession of such derelict tank under section 8.

**9B. Restoration of possession of land adjoining a derelict tank and the retaking of possession of such land.**—(1) Notwithstanding anything contained in section 9A, if the person recorded as entitled to possession of any land adjoining a derelict tank in the record-of-rights referred to in section 22 or his successor in interest is not the person recorded as entitled to possession of such derelict tank in the record-of-rights referred to in the said section or his successor in interest, then the Collector may, at the request of the person so recorded as entitled to possession of such land or his successor in interest or of the authorised person at any time after the required improvements in the tank have been completed, by an order in writing, restore the possession of such land to the person so recorded as entitled to possession of such land or to his successor in interest, although the possession of the tank by the authorised person has not terminated, and when the possession of such land is so restored all rights in the land which existed prior to the time when possession was taken of the land under section 6A shall be revived :

Provided that before the Collector takes any action under this sub-section at the request of any person other than the authorised person, the Collector shall give the authorised person a reasonable opportunity of making any representation he may like to make and the Collector shall consider any representation so made

(2) The person to whom the possession of such land has been restored under sub-section (1) shall not use it in such manner as may cause damage to the banks of the derelict tank or may affect the use of the tank for the purposes of irrigation.

(3) If the person referred to in sub-section (2) fails, in the opinion of the Collector, to comply with the provisions of that sub-section, the Collector may,—

(a) again empower the authorised person by an order in writing to take possession of such land whereupon the authorised person shall forthwith take possession thereof, or

(b) if he is the authorised person, himself again take possession of such land by order in writing, and the authorised person so taking possession of such land again shall retain such possession as long as he remains in possession of the tank.

(4) Every order made under sub-section (3) shall specify the boundaries of the land to which it relates or the number entered in the record-of-rights finally published under Chapter X of the Bengal Tenancy Act, 1885 (VIII of 1885), of the survey plot comprising such land and shall be in such form as may be prescribed.

**9C. Restoration of possession of land adjoining a derelict tank on the restoration of possession of such tank under section 9.**—When the possession of a derelict tank is restored by the Collector under section 9, the Collector shall at the same time restore the possession of any land adjoining such tank of which possession was taken under section 6A and has not already been restored under sub-section (1) of section 9B or of which possession was retaken under sub-section (3) of section 9B to the person recorded as entitled to possession of such land in the record-of-rights referred to in section 22 or to his successor in interest :

Provided that where the person to whom the possession of the tank is restored under section 9 is not the person recorded as entitled to pos-

session of such land in the said record-of-rights or his successor in interest the possession of such land shall not be so restored until the improvements, if any, required to be carried out in the tank under clause (b) of the proviso to section 9 have been completed if the person to whom the possession of the tank is so restored agrees to pay the person so recorded as entitled to possession of such land the compensation which would have been payable by the authorised person under sub-section (1) of section 14A if such authorised person had continued to be in possession of such land."

11. *Amendment of section 10.*—In section 10 of the said Act, after the words "derelict tank" the words, figures, letters and brackets "or any land of which possession is taken under section 6A or is retaken under sub-section (3) of section 9B" shall be inserted.

12. *Amendment of section 11.*—In section 11 of the said Act,—

(a) after the words "derelict tank", the words "or of any land adjoining a derelict tank under this Act" shall be inserted ;

(b) after the words "said tank", the words "or land" shall be inserted ; and

(c) in the proviso, after the words "where rent" the words "in respect of the tank" shall be inserted.

13. *Amendment of section 12.*—Section 12 of the said Act shall be re-numbered as sub-section (2) of that section and before the said section, as so renumbered, the following sub-section shall be inserted, namely :—

"(1) Where a derelict tank is, at the time of the taking of possession thereof by an authorised person, in the actual possession of the owner of the tank, the authorised person shall pay, during the period he remains in possession, to such owner at such times and in such manner as may be prescribed, such rent as the Collector, after such inquiry as he thinks fit, may determine :

Provided that where the authorised person is the owner of the tank in actual possession thereof, no such payment of the rent determined by the Collector under this sub-section shall be necessary ; but the amount of such rent shall be included in and form part of the costs incurred or likely to be incurred by the authorised person carrying out the required improvements in the tank."

14. *Amendment of section 14.*—In section 14 of the said Act,—

(a) in sub-section (1), the words "but not less than the *salami* paid by such cultivator for the lease" shall be omitted ; and

(b) to that sub-section, the following provisos shall be added, namely :—

"Provided that the compensation payable to such cultivators shall not be less than an amount which bears to the total amount of *salami*, as determined by the Collector to have been paid for obtaining the lease, the same ratio as the unexpired period of lease bears to the total period of such lease :

Provided further that where no period of lease is expressly mentioned or agreed to between the parties concerned the total period of lease shall be taken as twelve years."

15. *Insertion of new section 14A.*—After section 14 of the said Act, the following section shall be inserted, namely :—

"14A. *Payment of compensation to persons having rights in lands adjoining a tank of which possession is taken under this Act.*—(1) Where the owner of a derelict tank is not the owner of any land adjoining such tank

of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, the authorised person shall, at such times and in such manner as may be prescribed, pay to the person in possession of such land at the time of taking or retaking possession thereof such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent which the person so dispossessed is liable to pay in respect of the land and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of interference with his possession.

(2) Where the owner of a derelict tank is also the owner of any land adjoining such tank of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, the authorised person shall—

(a) in the case where such land is in the actual possession of the owner thereof, pay at such times and in such manner as may be prescribed to such owner such rent as the Collector, after such inquiry as he thinks fit, may determine :

Provided that where the authorised person is the owner of such land in actual possession thereof, no such payment of the rent determined by the Collector under this clause shall be necessary ; but the amount of such rent shall be included in and form part of the costs incurred or likely to be incurred by the authorised person in carrying out the required improvements in the tank ; and

(b) in other cases, pay at such times and in such manner as may be prescribed to any person to whom such land has been leased out and who holds such land as lessee at the time such possession is taken or retaken and to every other person having at that time, on payment of any rent or charge, any right in such land, such compensation as the Collector, after such inquiry as he thinks fit, may determine, and such compensation shall not be less than the amount of the rent or charge which the person to whom the compensation is paid continues to be liable to pay to the owner or the tenant of such land and shall be deemed to be a full and complete satisfaction for all loss suffered by every such person as a result of the interference with the exercise of his right."

**16. Amendment of section 15.**—Section 15 of the said Act shall be renumbered as sub-section (1) of that section and to the said section, as so renumbered, the following sub-section shall be added, namely :—

"(2) During the period any land, of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, remains in the possession of an authorised person, no person shall without the permission of the authorised person use or occupy such land or take fruits from trees on, or other produce from, such land."

**17. Substitution of new sections for sections 16 and 17.**—For sections 16 and 17 of the said Act, the following sections shall be substituted, namely :—

**"16. Rights to use the water of the tank.**—During the period of possession all rights to use the water of the tank for irrigation purposes shall vest in the authorised person and no person shall use the water of the tank for such purposes except with the permission of the authorised person or in so far as he may be permitted to do so by or under the provisions of this Act.

**16A. Maximum irrigation area.**—(1) When the possession of any tank has been taken under section 5 or section 6 the Collector shall determine in the prescribed manner the maximum area of land to the limits of which

irrigation from the said tank may practicably be extended (hereinafter referred to as the maximum irrigation area) and the system and alignment by which and the priority in accordance with which such irrigation can be so extended to the land in that area, and shall publish a notice in the prescribed form and manner defining the limits of the maximum irrigation area and specifying the system, alignment and priority so determined.

(2) Every person possessing agricultural land within the maximum irrigation area shall, subject to the provisions of sub-sections (3) and (4), be liable to pay a fee annually during the period of possession to the authorised person at the rate fixed and in the manner provided under section 17 and such liability shall not cease by reason of such person not using water for irrigation purposes from the tank to which the maximum irrigation area relates.

(3) Any person concerned may, within thirty days of the date of the publishing of the notice referred to in sub-section (1), apply in the prescribed form and manner and on payment of the prescribed fee to the Collector for—

(a) including any land within the maximum irrigation area,

(b) excluding any land from the maximum irrigation area, and

(c) exempting any land or part of any land from liability to pay the fees referred to in sub-section (2) on the ground that such land cannot practicably be irrigated from the tank to which the maximum irrigation area relates, or cannot be benefited by such irrigation or that such land is not agricultural land,

and the Collector after giving the applicant a reasonable opportunity of being heard may pass such order as to such inclusion, exclusion or exemption as he thinks fit.

(4) The Collector may, of his own motion at any time after the expiry of thirty days from the date of publishing of the notice referred to in sub-section (1), include within the maximum irrigation area any land which was not agricultural land at the time of publication of such notice but has subsequently been converted into agricultural land, or otherwise revise the limits of the maximum irrigation area or exempt any land or part of any land within such maximum irrigation area from liability to pay the fees referred to in sub-section (2) and the Collector shall modify the list referred to in sub-section (1) of section 16B accordingly :

Provided that before any order for such inclusion, revision or exemption is passed all persons concerned shall, by notice served or published in the prescribed manner, be given a reasonable opportunity of making any representation which they may like to make and the Collector shall consider such representation.

16B, *Preparation of list.*— (1) As soon as may be after the Collector has disposed of any applications made under sub-section (3) of section 16A, he shall prepare a list in the prescribed form and manner of the persons who are liable to pay the fee referred to in sub-section (2) of that section and such list shall specify the amount of agricultural land within the maximum irrigation area in respect of which each such person is to pay such fee and the amount of such fee which such person is to pay annually to the authorised person.

(2) The Collector shall publish the list referred to in sub-section (1) and every modification of such list in the manner prescribed and shall,

where the authorised person is not the Collector, forward a copy of such list and every modification of such list to the authorised person who shall permit every person whose name is entered in the list or his successor in interest to use the water of the tank for the irrigation of the land of such person as long as the amount of the fee payable by such person is duly paid and not otherwise.

(3) If any dispute arises between persons entered in the list prepared under sub-section (1) as to any matter in respect of the use of water by such persons from the tank for the irrigation of their lands the authorised person or a person authorised in this behalf by the Collector shall decide the dispute and his decision, subject to the provisions of section 26, shall be final.

17. *Payment and rate of fees*—(1) Every person whose name is included in the list referred to in sub-section (1) of section 16B or his successor in interest shall pay annually and in the prescribed manner and on the dates prescribed to the authorised person or to such person as may be authorised by the Collector in this behalf the fees fixed according to the provisions of this section.

(2) If the fees payable under sub-section (1) are not paid within thirty days from the due date fixed for such payment, interest on the amount of the fees so outstanding shall be payable at the rate of six and one quarter *per centum per annum* calculated from the day on which such payment became due until the date on which the amount of the fees so outstanding is paid or recovered, as the case may be.

(3) The Collector shall fix, in respect of any tank of which possession is taken under this Act and for which the maximum irrigation area has been determined by the Collector, the rate or rates at which fees to be paid to the authorised person under sub-section (1) shall be calculated and different rates may be so fixed for classes of agricultural lands of different descriptions or having different advantages or for lands for the irrigation of which any person had at the time when possession was taken of the tank under this Act the prescriptive right to use water for irrigation.

(4) The rate to be fixed under sub-section (3) shall be such that all costs incurred or likely to be incurred—

(i) by the authorised person in carrying out the required improvements in the tank; and

(ii) by the Collector in carrying out the purposes of this Act in respect of the tank;

may be recovered together with interest thereon at a rate, fixed by the Provincial Government, not exceeding six and one quarter *per centum per annum* and together with an amount estimated by the Collector as is likely to be necessary for maintaining the tank in proper condition during the period of possession determined by the Collector under section 8.

(5) The Collector may revise the rate or rates of fees fixed under this section in respect of any tank.

(6) Any sum due to the authorised person under this section shall be recoverable as a public demand.

17A. *Passage of water*.—No person shall obstruct the passage of any water taken for irrigation purposes from any tank in accordance with the system, allotment and priority for taking water as determined by the Collector under sub-section (1) of section 16A."

18. *Amendment of section 18*.—Section 18 of the said Act shall be re-

numbered as sub-section (1) of that section and to the said section, as so renumbered, the following sub-sections shall be added, namely :—

“(2) During the period any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B remains in the possession of an authorised person, such authorised person may, subject to the provisions of this Act and the previous permission of the Collector, lease to any person for a period not extending beyond the said period of possession any part of the said land or any right to take fruits from trees on, or other produce from such land.

(3) Any sum due to the authorised person under any lease granted under this section shall be recoverable as a public demand.

(4) All sums realised or estimated to be realised by the Collector or by the authorised person under any lease granted under this section and any other income derived from the tank including banks thereof and from adjoining lands taken possession of under section 6A and by the sale of silt or otherwise, shall be applied in payment of the costs recoverable under sub-section (4) of section 17.”

19. *Amendment of section 19.*—In section 19 of the said Act, after the words “derelict tank” the words, figures, letters and brackets “or in respect of any land of which possession is taken under section 6A or retaken under sub-section (3) of section 6B” shall be inserted.

20. *Insertion of new section 19A*—After section 19 of the said Act, the following section shall be inserted, namely :—

“19A. *Bar to acquisition of occupancy rights in lands leased out under section 18.*—Notwithstanding anything contained in the Bengal Tenancy Act, 1885 (VIII of 1885), no person shall acquire any occupancy right in any part of the banks of, or in any land adjoining, a tank leased out to such person under section 18 and no person who has held any part of the banks of any tank under a lease under section 18 at any time since the commencement of this Act shall be deemed to have acquired any occupancy right therein.”

21. *Substitution of new section for section 20*—For section 20 of the said Act, the following section shall be substituted, namely :—

“20. *Application of the Act to tank improved as a relief measure*—(1) When any tank has been re-excavated at the expense of the Provincial Government as a relief measure by the system commonly known as Test or Famine Relief, the Collector may, after giving an opportunity to the person having control over the tank to be heard in the matter, direct that possession of such tank should be taken over by the Collector.

(2) When possession of any improved tank is taken over under sub-section (1) such tank shall be deemed for the purposes of this Act to be a tank taken over and improved under the provisions of this Act and the provisions of this Act shall thereupon apply *mutatis mutandis* to such tank accordingly.”

22. *Substitution of new section for section 21.*—For section 21 of the said Act, the following section shall be substituted, namely :—

“21. *Restoration of possession of tank*—(1) When the possession of a derelict tank is terminated in accordance with the provisions of section 8, the tank shall be restored to the possession of the persons who were recorded as entitled to possession thereof in the record-of-rights referred to in section 22, or their successors in interest and any land possession of which was taken under section 6A but has not been previously restored under

section 9B or section 9C or possession of which has been retaken under sub-section (3) of section 9B shall be restored to the possession of the persons who are recorded as entitled to possession thereof in the record-of-rights referred to in section 22 or their successors in interest.

(2) When possession of any tank or land is restored under sub-section (1) or under section 9, all rights in the tank including all rights to use the water for the purposes of irrigation which existed prior to the time when possession was first taken of the tank under section 5 or section 6 and all rights in such land which existed prior to the time when possession of the land was taken under section 6A or retaken under sub-section (3) of section 9B, as the case may be, excepting any rights for which compensation has been paid under section 14, shall be revived."

**23. Amendment of section 22.**—In sub-section (1) of section 22 of the said Act,—

(a) after the words "under this Act", the words, figures, letters and brackets "and a record-of-rights in respect of the lands adjoining such tanks of which possession is taken under section 6A or retaken under sub-section (3) of section 9B" shall be inserted ;

(b) after the words "such tank", the words "or during the period for which any such land remains in the possession of an authorised person" shall be inserted ;

(c) after the words "in the record-of-rights", the words "in respect of such tank or such land" shall be added ; and

(d) after sub-section (1), the following sub-section shall be inserted, namely :—

"(1a) In the record-of-rights prepared under sub-section (1), there shall be shown in addition to any other details that may be prescribed, the following :—

(a) the names of all persons from the actual possessor upwards up to and including the owner having permanent transferable right in the tank and adjoining lands together with their addresses, nature and extent of right and interest in the tank and adjoining lands as existing immediately before possession of such tank or land is taken under the provisions of this Act ;

(b) the revenue or rent and cesses, if any, payable by the different persons referred to in clause (a) in respect of the tank or land or if that be not ascertainable then the revenue or rent and cesses in respect of the estate, tenure or holding in which such tank or land is included ; and

(c) the numbers of cadastral survey plots together with the names and addresses of possessors of such plots who may have immediately before possession of such tank is taken the prescriptive right of taking water from such tank for irrigation purposes."

**24. Substitution of new section for section 23.**—For section 23 of the said Act, the following section shall be substituted, namely :—

"23. *Application of the Act to certain tanks.*—(1) The Provincial Government may, by order published in the Official Gazette, direct that any tank which may have been improved under the provisions of this Act prior to the commencement of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948, shall, with effect from a date to be specified in such order, be deemed to have been improved in accordance with the provisions of this Act as amended by the last mentioned Act.

(2) When an order under sub-section (1) is made in respect of any

tank, the Collector shall, in the prescribed manner, prepare or revise the list of maximum irrigation area, revise the order regarding period of possession and assessment of fees and take such other action as may be deemed necessary to give effect to such order."

25. *Substitution of new section for section 24.*—For section 24 of the said Act, the following section shall be substituted, namely :—

"24. *Costs.*—All costs incurred by the Collector in carrying out the purposes of this Act in respect of a tank of which possession is taken under section 6 or in respect of any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B shall be paid by the authorised person at such times and in such manner as may be prescribed, and on default in payment thereof the same shall be recoverable by the Collector as a public demand."

26. *Amendment of section 25.*—Section 25 of the said Act shall be re-numbered as sub-section (1) of that section, and—

(a) in the said section, as so renumbered, the words, figures and brackets "or among any other persons referred to in sub-section (2) of section 16" shall be omitted; and

(b) to the said section, as so renumbered, the following sub-section shall be added, namely :—

"(2) During the period any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B remains in the possession of an authorised person, all disputes relating to the exercise of any rights in respect of such land shall be decided by the Collector in such manner as may be prescribed."

27. *Amendment of section 26.*—In section 26 of the said Act,—

(a) after the words "any action", the words "or decision" shall be inserted, and

(b) after the words "other than the Collector", the words "or any person authorised by the Collector" shall be inserted.

28. *Amendment of section 29.*—In section 29 of the said Act,—

(a) after the word "tank", the words "or on any land adjoining such tank" shall be inserted; and

(b) after the words "period of possession", the words "of such tank or during the period for which any such land remains in the possession of an authorised person" shall be inserted.

29. *Amendment of section 30.*—Section 30 of the said Act shall be renumbered as sub-section (1) of that section and after sub-section (1), as so renumbered, the following sub-section shall be added, namely :—

"(2) No suit or other proceedings shall lie against the Collector, other authorised person or any officer or worker employed by or under the Collector for anything in good faith done or intended to be done or purporting to be done under the provisions of this Act or any rule made thereunder"

30. *Amendment of section 33.*—In section 33 of the said Act, after the word "tank" the words "or in the land adjoining such tank" shall be inserted.

31. *Amendment of section 34.*—In section 34 of the said Act, after the word and figure "section 5" the words, figures, letters and brackets "or clause (a) of sub-section (1) of section 6A, or clause (b) of sub-section (3) of section 9B" shall be inserted.

32. *Amendment of section 35.*—In section 35 of the said Act, for the words, figures and brackets "or sub-section (1) of section 16" the words, figures and letter "section 16 or section 17A" shall be substituted.

**33. Amendment of section 36.**— In section 36 of the said Act, after the word “tank” the words “or of any land adjoining a tank” shall be inserted.

**34. Amendment of section 37.**— In sub-section (2) of section 37 of the said Act,

(1) in clause (a), for the words, figures and brackets “order under sub-section (1) of section 6” the words, figures, letters and brackets “orders under sub-section (1) of section 6, sub-section (1) of section 6A and sub-section (3) of section 9B” shall be substituted;

(2) in clause (b), after the word and figure “section 3” the words, figures and brackets “sub-section (1) of section 4” shall be inserted;

(3) after clause (c), the following clause shall be inserted, namely:—

“(cc) the manner of making an application under clause (b) of sub-section (1) of section 6A and of giving reasonable opportunity to the person in possession of the land to make any representation under the proviso to the said sub-section;”;

(4) in clause (d), for the words, figures and brackets “and sub-section (2) of section 14” the words, figures, letter and brackets “sub-section (2) of section 14 and sub-sections (1) and (2) of section 14A” shall be substituted;

(5) after clause (d), the following clauses shall be inserted, namely:—

“(dd) the manner of determining the maximum irrigation area and the system, alignment and priority of irrigation in that area, and the form and the manner of publishing the notice defining the limits of the maximum irrigation area and the system, alignment and priority of irrigation in that area, under sub-section (1) of section 16A and the form and manner of the application and the fee payable under sub-section (1) of that section;

(ddd) the manner of service and publication of notice referred to in the proviso to sub-section (4) of section 16A;

(dddd) the form of the list and the manner of its preparation under sub-section (1) of section 16B and the manner of publication of the list and every modification thereof under sub-section (2) of that section;

(ddddd) the manner and the dates of payment of fees under sub-section (1) of section 17;”;

(6) in clause (e), for the word “record-of-rights” the word “records-of-rights” shall be substituted;

(7) after clause (e), the following clause shall be inserted, namely:—

“(ce) the manner of preparation and revision of the list of maximum irrigation area referred to in sub-section (2) of section 23;”;

(8) in clause (f), for the word and figures “section 25” the words, figures and brackets “sub-sections (1) and (2) of section 25” shall be substituted.

**35. Continuance of action taken under West Bengal Ordinance I of 1948.**— Any rules or orders made or anything done or any action taken in exercise of any power conferred by the said Act as amended by the Bengal Tanks Improvement (West Bengal Amendment) Ordinance, 1948 (West Ben. Ord. I of 1948), shall, on the said Ordinance ceasing to be in operation, be deemed to have been made, done or taken under the said Act as amended by this Act as if this Act had commenced on the 23rd day of April, 1948.

**36. Repeal of Ben. Act V of 1946.**— The Bengal Tanks Improvement (Amendment) Act, 1946 (Ben. Act V of 1946), is hereby repealed.

**The West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [Vide Notification No. 248L, of the Judicial and Legislative (Legislative) Department, dated the 25th February 1949, published in the *Calcutta Gazette*, Part IV, dated the 3rd March 1949.]

**West Bengal Act IV of 1949.**

[ Passed by the West Bengal Legislature. ]

[ Assent of the Governor was first published in the *Calcutta Gazette*, of the 3rd March, 1949. ]

*An Act to amend the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947.*

WHEREAS it is expedient to amend the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (West Ben. Act V of 1947), for the purposes and in the manner hereinafter appearing;

It is hereby enacted as follows:—

1. *Short title.*—This Act may be called the West Bengal Premises Requisition and Control (Temporary Provisions) Amendment Act, 1949.

2. *Amendment of section 2 of West Bengal Act V of 1947.*—In section 2 of the West Bengal Premises Requisition and Control (Temporary Provisions) Act, 1947 (hereinafter referred to as the said Act),—

(1) for clause (b), the following clause shall be substituted, namely:—

“(b) ‘Collector’ means—

(i) in Calcutta, the First Land Acquisition Collector, and

(ii) elsewhere, the Collector of a district

and includes any other officer appointed by the Provincial Government to discharge the functions of a Collector under this Act whether in Calcutta or elsewhere.”;

(2) in clause (c), for the words “a tenant who sublets any premises, and every person from time to time deriving title under a landlord” the words “of the landlord” shall be substituted;

(3) for clause (e), the following clause shall be substituted, namely:—

“(e) ‘premises’ means any building or part of a building or any hut or part of a hut and includes the garden, grounds and out-houses (if any) appertaining to such building or part of a building or hut or part of a hut and also includes a room or rooms in an hotel, boarding house or lodging house.”; and

(4) in clause (g), after the words and figures “Code of Civil Procedure, 1908” the words “of the tenant” shall be inserted.

3. *Amendment of section 3.*—In section 3 of the said Act,—

(1) in sub-section (1), after the words “requisition such premises” the words “either with or without any or all of the furniture, if any, in such premises” shall be inserted;

(2) for sub-section (2), the following sub-section shall be substituted, namely:—

“(2) An order under sub-section (1) shall be served in such manner as may be prescribed on the landlord, and where it relates to premises let out to a tenant, also on such tenant.”;

(3) in clause (b) of sub-section (3),—

(a) after the words “the Provincial Government”, the words “or such other authority as may be specified in the order” shall be inserted; and

(b) after the words "alter the premises", the words "or that no person shall without such permission enter into occupation thereof" shall be added; and

(4) in sub-section (4), after the words "in accordance with the provisions of this Act" the words "and to take possession of the premises requisitioned", shall be added.

4 *Amendment of section 4.*—Section 4 of the said Act shall be renumbered as sub-section (1) of that section and,—

(1) in sub-section (1) of the said section, as so renumbered,—

(a) for clause (a), the following clauses shall be substituted, namely:—

"(a) order the person in occupation of the premises, if any, to vacate the premises within a period of ten days from the service of the notice;

(aa) order the landlord or the tenant, as the case may be, to remove the articles belonging to him, if any, and, where the premises are requisitioned without any furniture therein, such furniture, within a period of fifteen days from the service of the notice:

Provided that the Collector may, for reasons to be recorded in writing, extend the said period up to two months"; and

(b) in clause (c), the words "to the landlord" shall be omitted; and

(2) after sub-section (1) of the said section, as so renumbered, the following sub-sections shall be added, namely:—

"(2) Where any person fails to comply with an order under clause (aa) of sub-section (1) directing any furniture or other articles to be removed, the Collector may cause such furniture or other articles to be removed and to be stored or sold by public auction in such manner as the Collector may think fit at the cost and risk of such person :

Provided that no furniture or other articles shall be sold by public auction in pursuance of the provisions of this sub-section without the previous sanction of the Provincial Government or such other authority as may be empowered in this behalf by the Provincial Government

(3) Where any furniture or other articles are removed and are stored or sold by public auction in pursuance of the provisions of sub-section (2), the cost of such removal and of such storage or sale, as the case may be, may, without prejudice to any other mode of recovery, be deducted from the compensation payable or from the sale proceeds, if any, and the balance of the sale proceeds, if any, after such deduction, shall be paid to the owner of such furniture or other articles, as the case may be :

Provided that if any dispute arises as to the person or persons to whom the amount of such balance or any part thereof is payable, the Collector shall keep the amount in revenue deposit till there has been a settlement of the dispute".

5. *Amendment of section 6.*—In section 6 of the said Act, for the words, figures and brackets "the Provincial Government has requisitioned any premises under sub-section (1) of section 3, it" the words, figures and brackets "any premises have been requisitioned under sub-section (1) of section 3, the Provincial Government" shall be substituted.

6. *Amendment of section 7.*—For sub-section (1) of section 7 of the said Act, the following sub-section shall be substituted, namely:—

"(1) Notwithstanding anything contained in any other law for the time being in force, where any person in occupation of any requisitioned premises—

(a) uses the premises or allows the premises to be used wrongfully

or in such manner as, in the opinion of the Collector, deteriorates or is likely to deteriorate the condition of the premises materially ; or

(b) sublets without due authority the whole or any part of the premises ; or

(c) fails or neglects to pay the rent or other sum payable by him for the occupation of the premises or for the use of any furniture therein ; or

(d) otherwise acts in contravention of any of the terms, express or implied, of his tenancy or other like relationship created by the Provincial Government in respect of the premises,

the Collector may, without prejudice to any other action that may lie against such person for the recovery of any rent or other sum referred to in clause (c), which shall be recoverable as a public demand, by notice served in the prescribed manner, order such person or any other person found in occupation of the premises to vacate the premises within fourteen days of the service of the notice."

7. *Amendment of section 9.*— In section 9 of the said Act, after the words "he considers expedient" the following shall be added, namely :—

"and may :—

(a) if he is a Magistrate, enforce the surrender of the premises in respect of which the order has been made to himself, or

(b) if he is not a Magistrate, apply to a Magistrate, or, in Calcutta, to the Commissioner of Police, and such Magistrate or Commissioner, as the case may be, shall enforce the surrender of such premises to him."

8. *Amendment of section 12.*— In section 12 of the said Act,—

(1) the figure and brackets "(1)" at the beginning, shall be omitted ;

(2) to clause (a), the words "including, where the premises are requisitioned with any furniture therein, the charges for the use of such furniture" shall be added ; and

(3) in clause (d).—

(a) after the words "change his residence or place of business", the words "or to remove his furniture or other articles to any other place" shall be inserted ; and

(b) after the words "incidental to such change" the words "or removal" shall be inserted.

9. *Amendment of section 13.*— In section 13 of the said Act, for the words "a tenant may be in occupation of the premises" the words "the premises may have been let out to a tenant" shall be substituted.

10. *Amendment of section 16.*— In section 16 of the said Act,—

(1) for the words "issue of notification", the words "issue of a notification" shall be substituted ;

(2) for the words "his premises" the words "any premises" shall be substituted ; and

(3) after the words "as provided in this chapter" the words "notwithstanding any agreement that may, previous to the date of such notification, have been made with any person for letting out the premises" shall be added.

11. *Substitution of new section for section 17.*— For section 17 of the said Act, the following section shall be substituted, namely :—

"17. *Notice by landlord.*— The landlord of any premises shall, within seven days after such premises fall vacant by reason of his ceasing to occupy such premises or by the termination of a tenancy in respect of such premises, give notice thereof to the Collector in the prescribed form and

manner and shall also give similar notice to the Collector in respect of any vacant premises which have not been let out to tenants and the Collector shall decide whether or not any such premises shall be let out :

Provided that the notice in respect of premises lying vacant at the date of the notification under sub-section (1) of section 15 shall be given within fifteen days of such date."

12. *Validity of orders made under section 3 of West Bengal Act V of 1917.*—For the avoidance of doubt it is hereby declared that all orders heretofore made or purported to have been made under section 3 of the said Act by officers of the Provincial Government shall be deemed always to have been and to be as valid and effective as if made by the Provincial Government and no such order shall be called in question on the ground that the officer making it had no power to make such order.

### The West Bengal Raw Jute Futures Act, 1948.

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [Vide Notification No. 1645, of the Judicial and Legislative (Legislative) Department, dated the 8th October 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 8th October 1948.]

#### West Bengal Act XXV of 1948.

[Passed by the West Bengal Legislature]

[Assent of the Governor was first published in the *Calcutta Gazette* Extraordinary, of the 8th October

*An Act to provide for the prevention of dealing in raw jute futures.*

WHEREAS it is expedient to provide for the prevention of dealing in raw jute futures ;

It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the West Bengal Raw Jute Futures Act, 1948.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on the date on which the West Bengal Raw Jute Futures Ordinance, 1948 (West Ben. Ord. X of 1948), ceases to operate.

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

(1) "contract relating to raw jute future" means a contract relating to the sale or purchase of a screwed bale of raw jute made on a forward basis—

(a) providing for the payment or receipt, as the case may be, of margin in such manner and on such dates as may be specified in the contract, or

(b) by or with any person not being a person who—

(i) habitually deals in the sale or purchase of raw jute involving the actual delivery of possession thereof, or

(ii) possesses, or has control over, a godown and other means and equipments necessary for the storage and supply of raw jute ;

(2) "margin" means the difference between the rate specified in a contract relating to the sale or purchase of a screwed bale of raw jute made on a forward basis and the rate prevailing on such date subsequent to the date of the contract as may be specified in the contract.

**3. Power of Provincial Government to prohibit contracts relating to raw jute futures.**—(1) The Provincial Government may, from time to time, if it so thinks fit, by notification in the *Official Gazette*, prohibit the making of contracts relating to raw jute futures and may, by like notification, withdraw such prohibition :

Provided that the withdrawal of any such prohibition shall not affect the operation of the provisions of sub-section (2) in respect of any contract relating to raw jute futures made prior to the date on which the prohibition is withdrawn.

(2) When the making of contracts relating to raw jute futures is prohibited by a notification under sub-section (1),—

(a) no person shall make any such contract or pay or receive any margin except, in the case of any such contract made prior to the date of the notification, to the extent to which the payment or receipt, as the case may be, of margin is allowable on the basis of the last closing rate in a notified market ;

(b) no owner or occupier of any premises shall knowingly permit such premises to be used for the making of any such contract or for the payment or receipt of margin in contravention of the provisions of clause (a) ; and

(c) notwithstanding anything contained in any other law for the time being in force,—

(i) every such contract made, and every claim in respect of margin, in contravention of the provisions of clause (a), shall be void and unenforceable, and

(ii) every such contract made prior to the date of publication of the notification shall be varied and settled on the basis of the last closing rate in a notified market.

*Explanation.*—In this sub-section,—

(a) “last closing rate” means the rate fixed by the Directors of a notified market to be the closing rate of such market immediately preceding the date of publication of the notification under sub-section (1) prohibiting the making of contracts relating to raw jute futures ; and

(b) “notified market” means a raw jute futures market recognised by the Provincial Government by notification in the *Official Gazette*.

**4. Penalty.**—Whoever, in contravention of the provisions of section 3,—

(a) makes a contract relating to raw jute futures, or pays or receives, as the case may be, margin, or

(b) being the owner or occupier of any premises, knowingly permits such premises to be used for the making of a contract relating to raw jute futures, or for the payment or receipt of margin, shall on conviction, be punishable with imprisonment which may extend to one year or with fine which may extend to one thousand rupees, or with both.

**5. Special procedure.**—Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), an offence punishable under this Act shall be cognisable and non-bailable and shall not be triable by any Magistrate other than a Presidency Magistrate or Magistrate of the First Class.

**6. Continuance of action taken under West Bengal Ordinance X of 1948.**—Any notification issued or anything done or any action taken or any proceedings commenced in exercise of any power conferred by or under the West Bengal Raw Jute Futures Ordinance, 1948 (West Ben. Ord. X

of 1948), shall, on the said Ordinance ceasing to operate, be deemed to have been issued, done, taken or commenced in exercise of powers conferred by or under this Act as if this Act had commenced on the 24th day of August, 1948.

### **The West Bengal Cement Control Act, 1948.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [Vide Notification No. 1646 L, of the Judicial and Legislative (Legislative) Department, dated the 8th October 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 8th October 1948].

### **West Bengal Act XXVI of 1948.**

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette*, Extraordinary, of the 8th October, 1948.]

*An Act to confer powers to control the production, supply and distribution of, and trade and commerce in, cement in West Bengal.*

WHEREAS it is expedient to confer powers to control the production, supply and distribution of, and trade and commerce in, cement in West Bengal ;

It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the West Bengal Cement Control Act, 1948.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on the date on which the West Bengal Cement Control Ordinance, 1948 (West Ben. Ord. IX of 1948), ceases to operate.

2. *Definition.*—In this Act, unless there is anything repugnant in the subject or context, "cement" includes portland cement, any other cementitious product manufactured by intergrinding or intermixing portland cement as defined in the British Standard Specifications of 1940, with any active or inert material, white and coloured cements, high alumina cements, and any product manufactured by direct mixing of some or all oxides constituting normal portland cement.

3. *Power to control production, supply, distribution, etc., of cement.*—(1) The Provincial Government, so far as it appears to it to be necessary or expedient for maintaining or increasing the supply of cement or for securing its equitable distribution and availability at fair prices, may, by order in the *Official Gazette*, provide for regulating or prohibiting the production, supply and distribution thereof and trade and commerce therein within West Bengal.

(2) Without prejudice to the generality of the powers conferred by sub-section (1), an order made thereunder may provide—

(a) for regulating by licenses, permits or otherwise the production or manufacture of cement ;

(b) for regulating or controlling the prices at which cement may be purchased or sold and for prescribing the conditions of sale thereof ;

(c) for regulating by licenses, permits or otherwise, the storage, transport, movement, possession, distribution, disposal, acquisition, use or consumption of cement ;

(d) for prohibiting the withholding from sale of cement ordinarily kept for sale ;

(e) for requiring any person holding stock of cement to sell the whole or specified part of the stock at such prices and to such persons or classes of persons or in such circumstances, as may be specified in the order :—

(f) for collecting any information or statistics with a view to regulating or prohibiting any of the *aforeaid* matters ;

(g) for requiring persons engaged in the production, supply or distribution of, or trade or commerce in, cement to maintain and produce for inspection such books, accounts and records relating to their business and to furnish such information relating thereto, as may be specified in the order ; and

(h) for any incidental and supplementary matters, including in particular the entering and search of premises, vehicles, vessels and aircrafts. the seizure by a person authorised to make such search of cement in respect of which such person has reason to believe that a contravention of the order has been, is being or is about to be committed, the grant or issue of licences, permits or other documents, and the charging of fees therefor.

(3) When any cement is seized under the authority of any order made under sub-section (1), the person seizing the cement shall make a report of such seizure to a Magistrate who may give such directions as to its temporary custody as he thinks fit, so, however, that where no prosecution is instituted for contravention of the order in respect of the cement seized within a period in his opinion reasonable, the Magistrate shall direct its return to the person from whom it was seized ; and the provisions of the Code of Criminal Procedure, 1898 (Act V of 1898), shall, so far as they may be applicable, apply to any search or seizure under any such order as they apply to any search or seizure under Chapter VII of that Code.

4. *Delegation of powers.*—The Provincial Government may, by order in the *Official Gazette*, direct that the power to make orders under section 3 shall, in relation to such matters and subject to such conditions, if any, as may be specified in the direction, be exercisable also by such Officer or authority subordinate to the Provincial Government as may be specified in the direction.

5. *Effect of orders inconsistent with other enactments.*—Any order made under section 3 shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

6. *Penalties.*—If any person contravenes any order made under section 3, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both, and, if the order so provides, any Court, trying such contravention, may direct that any property in respect of which the Court is satisfied that the order has been contravened shall be forfeited to His Majesty.

7. *Attempts and abetments.*—Any person who attempts to contravene or abets a contravention of, any order made under section 3, shall be deemed to have contravened that order.

8. *Offences by corporation.*—If the person contravening an order made under section 3 is a company or other body corporate, every director, manager, secretary or other officer or agent thereof shall, unless he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention, be deemed to be guilty of such contravention.

9. *False statement.*—If any person—

(i) when required by any order made under section 3 to make any

statement or furnish any information, makes any statement or furnishes any information which is false in any material particular and which he knows or has reasonable cause to believe to be false, or does not believe to be true, or

(ii) makes any such statement as aforesaid in any book, account, record, declaration, return or other document which he is required by any such order to maintain or furnish, he shall be punishable with imprisonment for a term which may extend to three years or with fine or with both.

10. *Cognizance of offences.*— No Court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a person who is a public servant as defined in section 21 of the Indian Penal Code (Act XLV of 1860).

11. *Power to try offences summarily.*— Any Magistrate or bench of Magistrates empowered for the time being to try in a summary way the offences specified in sub section (1) of section 260 of the Code of Criminal Procedure, 1898 (Act V of 1898), may, on application in this behalf being made by the prosecution, try in accordance with the provisions contained in sections 261 to 265 of the said Code any offence punishable under this Act.

12. *Special provision regarding fines.*— Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1898, it shall be lawful for any Magistrate of the First Class specially empowered by the Provincial Government in this behalf and for any Presidency Magistrate to pass a sentence of fine exceeding one thousand rupees on any person convicted of contravening an order made under section 3.

13. *Savings.*— No order made in exercise of any power conferred by or under this Act shall be called in question in any Court.

14. *Protection of action taken under the Act.*— (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

(2) No suit or other legal proceeding shall lie against the Crown for any damages caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of any order made under section 3.

15. *Power to exempt certain varieties of cement.*— The Provincial Government may, by notification in the Official Gazette, exempt any variety of cement from all or any of the provisions of this Act.

16. *Continuance of action taken under West Ben. Ord. IX of 1948.*— Any order or direction issued or any action taken or anything done or any penalty, forfeiture or punishment incurred or imposed or any proceeding commenced in exercise of any power conferred by the West Bengal Cement Control Ordinance, 1948 (West Ben. Ord. IX of 1948), shall, on the said Ordinance ceasing to be in operation, be deemed to have been issued, taken, done, incurred, imposed or commenced under the provisions of this Act as if this Act had commenced on the 6th day of August, 1948.

### **The West Bengal National Volunteer Force Act, 1949.**

The following Act of the West Bengal Legislature has been assented to in his Majesty's name by the Governor [Vide Notification No. 216L, of the Judicial and Legislative (Legislative) Department, dated 18th

February 1949, published in the *Calcutta Gazette*, Part III, dated the 24th February 1949.

**West Bengal Act I of 1949.**

*[Passed by the West Bengal Legislature].*

[Assent of the Governor was published in the *Calcutta Gazette*, of the 24th February, 1949].

*An Act to provide for the constitution of a National Volunteer Force in West Bengal.*

WHEREAS it is expedient and necessary to provide for the constitution of a National Volunteer Force in West Bengal by enrolment therein of the citizens of the Dominion of India or subjects of an Acceding State or persons having permanent domicile in West Bengal who may offer themselves for such enrolment, for service during a period of emergency and for such other purposes as the Provincial Government may think fit ;

It is hereby enacted as follows :—

1. *Short title, extent and commencement* — (1) This Act may be called the West Bengal National Volunteer Force Act, 1949.

(2) It extends to the whole of West Bengal.

(3) It shall come into force on the date on which the West Bengal National Volunteer Force Ordinance, 1948 (West Ben. Ord. XII of 1948), ceases to operate.

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

(a) "Advisory Committee" means the Provincial Advisory Committee, the District Advisory Committee or the Unit Advisory Committee constituted under section 15 ;

(b) "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866 (Ben. Act IV of 1866), together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866 (Ben. Act II of 1866) ;

(c) "Force" means the West Bengal National Volunteer Force ;

(d) "Officer" means an officer appointed under this Act ;

(e) "prescribed" means prescribed by rules made under this Act ;

(f) "subordinate other ranks" means subordinate other ranks appointed under this Act ; and

(g) "volunteer" means a person enrolled as a member of the West Bengal National Volunteer Force.

3. *Constitution of the National Volunteer Force.*— The Provincial Government may raise and maintain a volunteer force to be called the West Bengal National Volunteer Force and for that purpose enrol persons as volunteers from Calcutta and elsewhere in West Bengal :

Provided that the Provincial Government may establish all or any of the units of the Force as and when necessary.

4. *Functions.*— A volunteer, when called upon for duty, shall discharge such functions in relation to the protection of persons, the security of property and the preservation of the public peace in any area within West Bengal and such other functions as may be assigned to him by or under this Act.

5. *Appointment of officers and subordinate other ranks.*— The Provincial Government or any person empowered in this behalf by the Provincial Government may appoint a Provincial Commandant of the Force and such other officers and such subordinate other ranks for, and for any unit of, the Force as the Provincial Government may consider necessary and may prescribe the powers and duties of such officers and subordinate other ranks

in addition to the powers and duties conferred by this Act. Every officer and subordinate other rank shall have the privileges and protection conferred on an officer or subordinate other rank by or under this Act.

6. *Officers and subordinate other ranks in the Force.*— There shall be the following classes of officers and subordinate other ranks in the Force, namely :—

*Officers.*

- (1) Provincial Commandant,
- (2) Deputy Provincial Commandant,
- (3) District or Unit Commandant,
- (4) Company Commander.

*Subordinate other ranks.*

- (1) Platoon Commander,
- (2) Section Commander.

7. *Constitution of any separate unit of the Force.*— Notwithstanding anything contained elsewhere in this Act, the Provincial Government may, by notification in the *Official Gazette* direct that one or more crops or units of the Force be constituted or formed for any particular region within West Bengal or for any specified purpose.

8. *Enrolment and removal of a member of the Force.*— (1) Any citizen of the Dominion of India or any subject of an Acceding State or any person having a permanent domicile in West Bengal who may offer himself for enrolment in the Force and who satisfies the prescribed conditions may be eligible for enrolment therein by such authority, in such manner and for such period not exceeding five years as may be prescribed.

(2) Every volunteer shall receive a certificate of appointment in the prescribed form and such certificate shall be issued by such authority as may be prescribed and thereupon he shall have the powers, privileges and protection conferred, and shall discharge the duties imposed, on a volunteer by or under this Act.

(3) Every volunteer enrolled under this Act shall undergo such preliminary and periodical training as may be prescribed.

(4) Every person enrolled as a volunteer under this Act shall be entitled to receive a certificate of discharge in the prescribed form on the expiration of the period for which he was enrolled and any such person may, prior to the expiration of that period, be discharged by such authority subject to such conditions as may be prescribed, and shall be so discharged on the recommendation of the Advisory Committee in this behalf.

(5) The prescribed authority may, subject to such conditions as may be prescribed,—

(a) suspend, discharge, dismiss or remove any volunteer from his office and thereupon the certificate referred to in sub-section (2) shall cease to have effect, or

(b) disband any unit constituted under this Act and thereupon every volunteer of such unit shall vacate office.

9. *Posting of a volunteer to a Unit.*— Every person enrolled as a volunteer under this Act may be posted for any period to any unit of the force and thereupon he shall be bound to serve in the said unit for that period.

10. *Calling out of a member of the Force.*— (1) The Commissioner of Police in Calcutta and the District Magistrate elsewhere may at any time call upon, in such manner and through such officer as may be prescribed, any volunteer in their respective jurisdictions, for discharging any functions assigned to him by or under this Act.

(2) Any authority specified in sub-section (1) may at any time call upon the District or Unit Commandant, in such manner as may be prescribed, to mobilise any unit or a detachment of a unit under its jurisdiction for the purpose of maintenance of law and order.

(3) Whenever the services of any volunteer or a unit or the detachment of a unit are requisitioned, the requisitioning authority shall communicate the action taken by it to such authority as may be prescribed.

11. *Powers, privileges and protection of the Force.*—(1) A volunteer, when called upon for duty under sub-section (1) of section 10, shall have the same powers, privileges and protection as a Police Officer appointed under any Act for the time being in force.

(2) No prosecution shall be instituted against an officer or a subordinate other rank or a volunteer in respect of anything done or purported to be done in exercise of his powers or in the discharge of his duties as such, except with the previous sanction of the Commissioner of Police in Calcutta or the District Magistrate elsewhere.

12. *Control by officers of the Police Force.*—A volunteer, when called upon for duty under sub-section (1) of section 10 to aid the Police Force, shall work under the orders of or be under the control of such officers of the Police Force as may be prescribed.

13. *Penalties.*—(1) If a volunteer, without sufficient cause, neglects or refuses to obey the orders of any superior authority or officer whom he is bound to obey, or fails to discharge any duty which he is bound to perform under this Act or any rule or regulation thereunder, or deserts his post, or is guilty of any wilful breach or disobedience of any provisions of this Act or of any rule or regulation thereunder, or lawful order made or issued thereunder by a competent authority, he shall be liable to be punished with simple imprisonment for a term which may extend to three months or with fine which may extend to two hundred rupees or with both.

(2) No prosecution shall be instituted against a volunteer for any offence punishable under sub-section (1), without the previous sanction of the Commissioner of Police in Calcutta or the District Magistrate elsewhere.

(3) Notwithstanding anything contained in the Code of Criminal Procedure, 1898 (Act V of 1898), an offence punishable under sub-section (1) shall be cognizable.

(4) Without prejudice to the foregoing provisions of this section, it shall also be competent for any prescribed authority to deal with the said offences otherwise than under the said provisions and to award one or more of such punishments as may be prescribed.

14. *Members of the Force to be public servants.*—An officer or a subordinate other rank or a volunteer acting in the exercise of his powers or in the discharge of his duties under this Act or rules or regulations thereunder shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

15. *Advisory Committees.*—(1) The Provincial Government may, for the purpose of advising it on all matters of policy connected with the constitution and administration of the Force, constitute a Provincial Advisory Committee, District Advisory Committee and Unit Advisory Committee.

(2) The Committees shall be constituted in such manner and shall perform such functions as may be prescribed.

16. *Rules.*—(1) The Provincial Government may make rules to carry out the purposes of this Act.

(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 :—

(a) the powers and duties of officers and subordinate other ranks referred to in section 5 ;

(b) the manner and conditions of, and the period for, enrolment of a volunteer and the authority by which such enrolment shall be made referred to in sub-section (1) of section 8 ;

(c) the period of preliminary and periodical training referred to in sub-section (3) of section 8 ;

(d) the form of certificate of discharge referred to in sub-section (4) of section 8, and the authority and conditions referred to in that sub-section ;

(e) the manner in which and the officer through whom a volunteer may be called upon for discharging functions assigned to him by or under this Act ;

(f) the manner in which a District Commandant or a Unit Commandant may be called upon to mobilize a unit or a detachment of a unit referred to in sub-section (2) of section 10 and the authority to which intimation of such action referred to in the proviso to that sub-section shall be given ;

(g) the officer of the Police Force under whose order or control a volunteer shall work under section 12 ;

(h) the authority by which and the manner in which offences may be dealt with under sub-section (4) of section 13 ;

(i) the constitution and the functions of the Advisory Committees referred to in section 14 ;

(j) the medical examination of persons offering themselves for enrolment, the organisation, discipline, training, arms, accoutrements and clothings, conditions of service, powers and duties of the volunteers ; and

(k) the remuneration, allowances, gratuities or compensation to be paid to a volunteer or his dependants.

17 *Continuance of action taken under West Bengal Ordinance XII of 1948.*—Any appointment, enrolment or rules made or any Committee constituted or any notification issued or anything done or any action taken or any proceedings commenced in exercise of any power conferred by or under the West Bengal National Volunteer Force Ordinance, 1948 (West Ben. Ord. XII of 1948), shall, on the said Ordinance ceasing to be in operation, be deemed to have been made, constituted, issued, done, taken or commenced in exercise of the powers conferred by or under this Act as if this Act had commenced on the 27th day of November, 1948.

18 *Power to make regulations.*—The Provincial Commandant may make regulations consistent with this Act and the rules made thereunder providing generally for all the details connected with the organisation and personnel of the Force and for the duties, training including courses of training, instructions, clothing, equipment, allowances and leave of persons enrolled.

#### **The Calcutta Thika Tenancy Act, 1949.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor-General [Vide Notification No. 253L, of the Judicial and Legislative (Legislative) Department, dated the

28th February 1949, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 28th February 1949.

West Bengal Act II of 1949.

Contents.

## CHAPTER I.

### PRELIMINARY.

#### Section.

1. Short title, extent and commencement.
2. Definitions.

## CHAPTER II.

### INCIDENTS OF *Thika* TENANCIES.

3. Grounds on which a *thika* tenant may be ejected.
4. Notice before ejection.
5. Proceedings for ejection.
6. Stay of ejection for arrears of rent if the amount of arrears and damages are deposited with the Controller.
7. Restoration of possession where landlord does not use the land for the purpose for which the *thika* tenant was ejected.
8. Surrender.
9. Abandonment.
10. Consequences of the determination of interests of *thika* tenants in certain cases.
11. Devolution or transfer of holding of a *thika* tenant.

## CHAPTER III.

### PROVISIONS AS TO RENT OF *Thika* TENANCIES.

12. Payment of rent.
13. Time and place for payment of rent.
14. Appropriation of payments.
15. *Thika* tenant entitled to receipt for rent.
16. Penalty for withholding receipts.
17. Deposit of rent on refusal of the landlord to accept.
18. Deposit of rent in certain other cases.
19. Receipt granted by the Controller for rent deposited to be a valid acquittance.
20. Disposal of rent deposited under section 17.
21. Disposal of rent deposited under section 18.
22. Saving.
23. Interest on arrears.
24. Restrictions on enhancement of rent.
25. Enhancement of rent.
26. Reduction of rent by the Controller.

## CHAPTER IV.

### APPEALS AND CERTAIN SPECIAL PROCEDURES.

27. Appeal, review and execution.
28. Power of Court to rescind or vary decrees and orders in certain cases.
29. Application of Act to pending suits and proceedings.
30. Bar to application of Act to certain lands.
31. Restriction or exclusion of Act by agreement.
32. Power to enter and inspect premises, to require information and to summon witnesses.
33. Repeal and saving.
34. Rules.

**The Calcutta THIKA Tenancy Act, 1949.****West Bengal Act II of 1949***[Passed by the West Bengal Legislature.]**[Assent of the Governor-General was first published in the Calcutta Gazette, Extraordinary, of the 28th February, 1949.]**An Act to make better provision relating to the law of landlord and tenant in respect of thika tenancies in Calcutta.***WHEREAS** it is expedient to make better provision relating to the law of landlord and tenant in respect of *thika* tenancies in Calcutta;

It is hereby enacted as follows :—

**CHAPTER I.****PRELIMINARY.****1. Short title, extent and commencement.**—(1) This Act may be called the Calcutta *Thika* Tenancy Act, 1949.

(2) It extends to Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1921 (Ben. Act III of 1921), and such suburbs of Calcutta as may have been or may hereafter be notified under section 1 of the Calcutta Suburban Police Act, 1966 (Ben. Act II of 1966) and are not included within Calcutta as so defined and also to the municipality of Howrah.

(3) It shall come into force on the day on which the Calcutta *Thika* Tenancy Ordinance, 1948 (West Ben. Ord. XI of 1948), ceases to operate.**2. Definitions.**—In this Act, unless there is anything repugnant in the subject or context,—(1) "*Bharatia*" means any person by whom, or on whose account, rent is payable for any structure or part of a structure erected by a *thika* tenant in his holding;(2) "*Controller*" means an officer appointed as such by the Provincial Government for an area to which this Act extends and includes any officer appointed by the Provincial Government to perform all or any of the duties imposed, or to exercise all or any of the powers conferred by this Act, on the Controller;(3) "*holding*" means a parcel or parcels of land held by any person as a *thika* tenant under one lease or one set of conditions whether such tenant has held the land before or after the commencement of this Act;(4) "*prescribed*" means prescribed by rules made under this Act;(5) "*thika* tenant" means any person who under the system commonly known as "*thika*", "*thika masik utbandi*", "*thika masik*", "*thika bastu*" or under any other like system holds, whether under a written lease or otherwise, or has been recorded in any record-of-rights as holding, under the title "*dakhal basathar*" or other like appellation, land under another person and is, or but for a special contract would be, liable to pay rent, at a monthly or at any other periodical rate, for that land to such other person and has erected any structure on such land for a residential, manufacturing or business purpose and includes the successors in interest of such person; and

(6) all words and expressions used but not defined in this Act and used in the Transfer of Property Act, 1882 (IV of 1882), or the Bengal Tenancy Act, 1885 (VIII of 1885), have the same meanings as in those Acts.

## CHAPTER II.

INCIDENTS OF *Thika* TENANCIES.

3. *Grounds on which a thika tenant may be ejected.*—Notwithstanding anything contained in any other law for the time being in force or in any contract, a *thika* tenant shall, subject to the provisions of this Act, be liable to ejectment from his holding on one or more of the following grounds and not otherwise, namely :—

(i) on the ground that he has failed to pay an arrear of rent due to the landlord in respect of the holding ;

(ii) on the ground that he has used the land comprised in his holding in a manner which renders it unfit for any of the purposes mentioned in clause (5) of section 2 or that he has broken a condition consistent with this Act on breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected ;

(iii) on the ground that he has refused to agree to pay rent at such enhanced rate as may be determined under section 25 ;

(iv) except during any period limited by a registered lease under which a *thika* tenant may hold the land comprised in the holding, on the ground that the land is required by the landlord for his own occupation or for the purpose of building on the land or otherwise developing the land by discontinuing the system of letting to *thika* tenants ;

(v) on the ground that he has failed himself to use or occupy a major part of the holding for his own residential, manufacturing or business purpose for more than six consecutive months ;

(vi) when he holds the land comprised in the holding under a registered lease, on the ground that the term of the lease has expired.

4. *Notice before ejectment.*—It shall not be competent for a landlord to eject any *thika* tenant from his holding unless the landlord has given the *thika* tenant notice in the manner provided in section 106 of the Transfer of Property Act, 1882 (IV of 1882)—

(a) in the case where he wishes to eject the *thika* tenant on any of the grounds specified in clauses (i), (ii), (iii) and (v) of section 3 at least one month's notice in writing expiring with the end of a month of the tenancy; and

(b) in the case where he wishes to eject the *thika* tenant on the ground specified in clause (iv) of section 3 at least three months' notice in writing expiring with the end of a month of the tenancy :

Provided that—

(i) no *thika* tenant shall be ejected from his holding on the ground specified in clause (i) of section 3 during the period mentioned in sub-section (1) of section 9, and

(ii) save as otherwise provided in any contract in writing, no *thika* tenant shall be ejected from his holding on any of the grounds specified in clauses (iv) and (v) of section 3, except on payment to the *thika* tenant or on dealing with the Controller for payment to the *thika* tenant such compensation as may be agreed upon between the landlord and the *thika* tenant or, in the case where they do not agree, as may be determined in the prescribed manner by the Controller on application by the landlord or the *thika* tenant.

5. *Proceedings for ejectment.*—(1) Notwithstanding anything contained in any other law for the time being in force but subject to the provisions of section 28, a landlord wishing to eject a *thika* tenant on one or more of the grounds specified in section 3 shall apply in the prescribed

manner to the Controller for an order in that behalf and, on receipt of such application, the Controller shall, after giving the *thika* tenant a notice to show cause within thirty days from the date of service of the notice why the application shall not be allowed and after making an inquiry in the prescribed manner either allow the application or reject it after recording the reasons for making such order, and, if he allows the application, shall make an order directing the *thika* tenant to vacate the holding and, subject to the provisions of section 10, to put the landlord in possession thereof.

(2) No order allowing an application under sub-section (1) shall be made in a case where compensation is payable under clause (ii) of the proviso to section 4 unless and until the amount of compensation so payable has been either paid to the *thika* tenant or deposited with the Controller.

6. *Stay of ejectment for arrears of rent if the amount of arrears and damages are deposited with the Controller.*—Every order made under section 5 allowing an application for ejectment of a *thika* tenant on the ground that he has failed to pay an arrear of rent due to the landlord in respect of his holding and directing the *thika* tenant to vacate the holding and put the landlord in possession thereof shall specify the amount of the arrear and of the interest, if any, due thereon, and no such order shall be executed if that amount, the costs of the proceedings arising out of such application and such damages as the Controller may allow, are deposited with the Controller within thirty days from the date of the order.

7. *Restoration of possession where landlord does not use the land for the purpose for which the thika tenant was ejected.*—If an order under section 5 directing a *thika* tenant to vacate any land comprised in a holding on any of the grounds specified in clause (iv) of section 3 is made and the landlord who recovers possession of the land as a result of such order does not within six months from the date on which he recovers such possession occupy the land himself or commence the building on, or the development of, the land or re-lets it within six months of the said date to any *thika* tenant other than the previous *thika* tenant without the permission of the Controller obtained in the prescribed manner, the Controller may on application in writing being made to him in this behalf by the *thika* tenant from whom the landlord has so recovered possession of the land within nine months from the said date, make an order directing the landlord to restore the *thika* tenant to possession of the land from such date and subject to such condition as may be specified in the order, or to pay him such compensation as may be fixed by the Controller.

Provided that the Controller may, on the application of the landlord, extend the period within which the building on, or the development of, the land is to be commenced by two months at a time and six months in all.

8. *Surrender*—(1) A *thika* tenant not bound by any lease or other agreement for a fixed period may, at the end of a month of the tenancy, surrender his holding, provided that he gives to his landlord at least one month before he surrenders, notice of his intention to do so.

(2) When a *thika* tenant has surrendered his holding the landlord may, subject to the provisions of section 10, enter on the holding and either let it to another tenant or occupy it himself or dispose of it in any way he may think fit.

9. *Abandonment.*—(1) When a *thika* tenant voluntarily abandons his holding without notice to the landlord and without arranging for the pay-

ment of his rent as it falls due, the landlord may, at any time after the expiration of a period of two months from the date of such voluntary abandonment, file the notice referred to in sub-section (2) and subject to the provisions of sub-section (3) and of section 10 enter on the holding and let out the same to another tenant or occupy it himself.

(2) A landlord who intends to enter on a holding under this section shall file a notice in the prescribed form with the Controller stating that he has treated the holding as abandoned and intends to enter on it accordingly; and the Controller shall within fifteen days from the date on which the notice is so filed cause such notice to be published in the prescribed manner.

(3) After the publication of the notice under sub-section (2), the *thika* tenant may apply to the Controller at any time not later than the expiration of one month from the date of the publication of such notice for the cancellation of such notice and thereupon the Controller may, on being satisfied after such inquiry as he considers necessary that the *thika* tenant is entitled to continue in possession, cancel the notice and direct that the *thika* tenant shall continue in possession of the holding subject to payment of the arrears of rent due on the date on which the notice is so cancelled. If the *thika* tenant does not make any application under this sub-section or his application under this sub-section is rejected, the landlord may enter on the holding subject to the provisions of section 10.

10. *Consequences of the determination of interests of thika tenants in certain cases*.—(1) Notwithstanding anything to the contrary contained in any contract, on the determination of the interest of a *thika* tenant in the land comprised in a holding as a result of ejection from the holding of, or of surrender or abandonment of the holding by, the *thika* tenant, or otherwise, any structure erected by the *thika* tenant on such land and existing on the date of such determination shall vest in the landlord.

(2) When any structure erected in any holding by a *thika* tenant vests in the landlord under sub-section (1) otherwise than as a result of ejection of the *thika* tenant from the holding on any of the grounds specified in clause (iv) of section 3, any *Bharatia* in possession of such structure shall be entitled to continue in such possession and shall be deemed to be a tenant within the meaning of the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948 (West Bn. Act XXXVIII of 1948), holding under the landlord on the terms and conditions on which such *Bharatia* had been holding immediately before such structures vested in the landlord:

Provided that nothing in this sub-section shall prevent either the landlord or such *Bharatia* so deemed to be a tenant holding under the landlord, from proceeding under the West Bengal Premises Rent Control (Temporary Provisions) Act, 1948, for fixing the standard rent payable in respect of such structure.

11. *Devolution or transfer of holding of a thika tenant*.—The holding of a *thika* tenant shall descend on his death in the same manner as his other immovable property and the person succeeding shall hold the land comprised in the holding under the terms and conditions on which it was held by the *thika* tenant. He shall also give to the landlord notice within one month of the succession in the prescribed manner:

Provided that in any case in which under the law of inheritance to which the *thika* tenant is subject his other property goes to the Crown, his interest in the holding shall be extinguished.

## CHAPTER III.

## PROVISIONS AS TO RENT OF THIKA TENANCIES.

12. *Payment of rent.*— Any rent or instalment of rent payable by a *thika* tenant shall be paid, where there is a contract in writing in this behalf between the landlord and the *thika* tenant, within the time fixed in the contract or, in the absence of any such contract, by the fifteenth day of the month next following the month or period for which the rent is payable.

13. *Time and place for payment of rent.*— (1) Every *thika* tenant shall pay or tender rent or each instalment of rent before sunset of the latest day by which it is payable under the provisions of section 12 :

Provided that a *thika* tenant may pay or tender the rent payable for a month or period at any time during such month or period before it falls due.

(2) The payment or tender of rent may be made—

(i) at the landlord's local office or at such other convenient place as may be appointed in that behalf by the landlord ; or

(ii) by postal money order in the manner prescribed.

A tender may also be made by depositing the rent with the Controller in accordance with the provisions of section 17 or section 18.

(3) Any rent or instalment of rent which is not duly paid within the time referred to in section 12 or is not duly deposited with the Controller within the time referred to in section 17 or section 18 shall be deemed to be an arrear.

14. *Appropriation of payments.*— (1) When a *thika* tenant makes a payment on account of rent, he may declare the month or period in respect of which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such month or period as the landlord thinks fit.

15. *Thika tenant entitled to receipt for rent.*— (1) Every *thika* tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith from the landlord or his authorised agent a written receipt for the amount paid by him, signed by the landlord.

(2) A counterfoil of the receipt shall be prepared and retained by the landlord or his authorised agent.

(3) The receipt and counterfoil shall be in such form and shall contain such particulars as may be prescribed.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

16. *Penalty for withholding receipts.*— If a landlord without reasonable cause refuses or neglects to deliver to a *thika* tenant a receipt containing the particulars required by section 15 for any rent paid by the tenant, the Controller may, on application made in this behalf by the tenant within three months from the date of payment, by order direct the landlord to pay the tenant such penalty not exceeding double the amount of that rent as the Controller thinks fit.

17. *Deposit of rent on refusal of the landlord to accept.*— (1) Where a landlord refuses to accept any rent the *thika* tenant may, by an application in writing containing such particulars as may be prescribed,—

(a) deposit such rent with the Controller, within the period specified in sub-section (2), and

(b) unless the landlord signifies by notice in writing to the *thika* tenant his willingness to accept any subsequent rent which becomes due from such tenant, also deposit such rent with the Controller within the period within which it is payable under the provisions of section 12 together with the cost of transmission by postal money order of such money to the landlord.

*Explanation.*— A landlord shall not for the purposes of this sub-section be deemed to have refused to accept any rent unless the rent is remitted by the *thika* tenant by postal money order within the time specified and in the manner referred to in section 12 and the rent so remitted is returned to the *thika* tenant by the postal authorities as undelivered either on account of the landlord having refused to accept payment thereof or for any other cause.

(2) The deposit referred to in clause (a) of sub-section (1) shall be made within a fortnight of the date on which the rent remitted by postal money order is returned to the *thika* tenant by the postal authorities as undelivered.

18. *Deposit of rent in certain other cases* — (1) In either of the following cases, namely :—

(a) when any rent is payable jointly to two or more co-sharer landlords and the *thika* tenant is unable to obtain a joint receipt from them for the rent and no person has been empowered to receive the rent on their behalf,

(b) when a dispute has arisen as to the person who is entitled to receive the rent, the *thika* tenant may by an application in writing containing such particulars as may be prescribed deposit such rent with the Controller and may continue to deposit with the Controller any subsequent rent which becomes due from such tenant until the *thika* tenant is able to obtain a joint receipt from the co-sharer landlords or a person has been empowered to receive the rent on their behalf, or until such dispute has been settled by the decision of a competent Court or by settlement between the parties, as the case may be.

(2) The deposit of rent referred to in sub-section (1) shall be made within the period within which it is payable under section 12.

19. *Receipt granted by the Controller for rent deposited to be a valid acquittance.*— If it appears to the Controller to whom application for deposit is made under section 17 or section 18 that the applicant is entitled to deposit the rent under any of those sections, he shall receive the rent deposited and give a receipt for it under the seal of the Court and such receipt shall operate as an acquittance for the amount of the rent payable by the *thika* tenant and deposited as aforesaid, in the same manner and to the same extent as if the amount of the rent had been received—

in cases referred to in clauses (a) and (b) of sub-section (1) of section 17, by the person specified in the application as the person to whose credit the deposit was to be entered ;

in cases referred to in clause (a) of sub-section (1) of section 18, by the co-sharers to whom the rent is due ; and

in cases referred to in clause (b) of sub-section (1) of section 18, by the person entitled to the rent.

20. *Disposal of rent deposited under section 17.*— (1) On any deposit

being made under section 17 the Controller shall forthwith forward the same by postal money order to the address of the landlord.

(2) Where any money has been deposited under clause (a) of sub-section (1) of section 17, the cost of transmission thereof to the landlord by postal money order shall be recoverable from the landlord and, in forwarding the money so deposited to the landlord by postal money order, the Controller shall deduct therefrom the cost of such transmission.

(3) If the money sent by the Controller under sub-section (1) by postal money order to any landlord is returned undelivered, the Controller shall cause a notice of the receipt of the deposit to be served on the landlord and the amount lying in deposit may, subject to such rules as may be made under this Act, be withdrawn by the landlord on application made by him to the Controller in that behalf and if such amount is not so withdrawn before the expiration of three years from the date of service of such notice, it may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor on his application and on his returning the receipt given by the Controller with whom the rent was deposited.

21. *Disposal of rent deposited under section 18.*— (1) When the Controller receives a deposit under section 18, he shall forthwith cause to be affixed in a conspicuous place at his office a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under sub-section (2) within the period of fifteen days next following the date on which the notification is so affixed, the Controller shall forthwith in cases referred to in clause (a) of sub-section (1) of section 18 cause a notice of the receipt of the deposit to be posted free of charge at the landlord's local office, if any, and at some conspicuous place in the locality in which the holding is situated, and, in cases referred to in clause (b) of sub-section (1) of the said section, cause a like notice to be served free of charge on every person whom, he has reason to believe claims or is entitled to the deposit.

(2) The Controller may pay the amount of any deposit notified under sub-section (1) to any person who proves to his satisfaction to be entitled to the same or is entitled to the amount as a result of a settlement referred to in sub-section (1) of section 18 or he may, if he thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(3) If no payment is made under sub-section (2) before the expiration of three years from the date of notice issued under sub-section (1) or three months after the decision of the Civil Court, whichever is later, the amount deposited may in the absence of any order of a Civil Court to the contrary be repaid to the depositor upon his application and on his returning the receipt given by the Controller when the rent was deposited.

22. *Saving.*— (1) When a landlord accepts rent in respect of any holding rent by postal money order by a *thika* tenant under clause (ii) of sub-section (2) of section 13 or by the Controller under section 21 or withdraws any rent deposited under section 17 or section 18 the fact of this acceptance or withdrawal shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money order form or in the application for deposit of such rent.

(2) No suit, prosecution or other legal proceeding shall be instituted against the Crown or against any officer of the Crown in respect of anything done by the Controller receiving a deposit under section 17 or section 18; but nothing in this Act shall prevent any person entitled to receive

any amount so deposited from recovering the same from any person to whom it has been paid under section 20 or section 21.

**23. Interest on arrears.**—Any arrear of rent shall bear simple interest at the rate of six and a quarter *per centum per annum* from the expiry of the time within which the rent or the instalment of rent is payable under the provisions of section 12 or is to be deposited under section 17 or section 18, as the case may be, to the date of payment or of the institution of the suit, whichever date is earlier.

**24. Restrictions on enhancement of rent.**—The rent of a *thika* tenant shall not be enhanced except as provided in this Act.

**25. Enhancement of rent.**—(1) The rent payable by a *thika* tenant for his holding may be enhanced by the Controller on application made to the Controller by the landlord in the prescribed manner on either or both of the following grounds, namely:—

(a) that the value of the holding has increased;

(b) that the landlord has effected some improvement to the land at his own cost which has increased the value of the holding:

Provided that no rent shall be enhanced under this sub-section so as to exceed the rent previously payable by the *thika* tenant by more than twelve and a half *per centum*.

(2) The rent fixed under sub-section (1) shall not be further enhanced during three years next following the date on which it has been last so enhanced.

**26. Reduction of rent by the Controller.**—Any rent payable by a *thika* tenant which has been settled within a period of three years immediately before the commencement of this Act, may be reduced by the Controller on application made in that behalf by the *thika* tenant if the Controller considers that the rate of rent so settled is unfair and inequitable having regard to the prevailing rate of rent payable by *thika* tenant of lands of a similar description and with similar advantages in the locality.

## CHAPTER IV.

### APPEALS AND CERTAIN SPECIAL PROCEDURES.

**27. Appeal, review and execution.**—(1) Any person aggrieved by an order of the Controller may, within thirty days from the date of the order, present an appeal in writing—

(a) in respect of any holding in the Presidency towns of Calcutta, to the Chief Judge of the Court of Small Causes of Calcutta; and

(b) in respect of any holding elsewhere, to the District Judge of the district in which the holding concerning which such order is made is situated.

(2) The Provincial Government may, by notification, appoint any person who has exercised the powers of a District Judge to hear appeals presented under clause (a) of sub-section (1) to the Chief Judge of the Court of Small Causes of Calcutta and may, by notification, also appoint any person who is a judicial officer not below the rank of a subordinate judge to hear appeals presented under clause (b) of the said sub-section to a District Judge.

(3) The Chief Judge of the Court of Small Causes of Calcutta to whom an appeal is presented under clause (a) of sub-section (1) or a District Judge to whom an appeal is presented under clause (b) of that sub-section may transfer such appeal to any person appointed to hear any such appeal under sub-section (2) and may withdraw any appeal so trans-

ferred and either hear and dispose of it himself or transfer it to any other person appointed to hear such appeals under sub-section (2).

(4) The Chief Judge or the District Judge or any person appointed under sub-section (2) to whom an appeal is transferred under sub-section (3), as the case may be, shall then send for the record of the case from the Controller and after perusing the record and, if necessary, taking such evidence himself or personally making such further inquiries as he thinks fit, shall make an order deciding the appeal after giving the parties an opportunity of being heard.

(5) Subject to such rules as may be made under this Act, any order passed under this Act by the Controller, the Chief Judge of the Court of Small Causes of Calcutta, or a District Judge or a person appointed under sub-section (2) may be reviewed by the person who passed the order on the ground of the discovery of any new and important matter or evidence or on account of some mistake or error apparent on the face of the record or for any other sufficient cause:

Provided that before any order is passed under this sub-section which is likely to affect any person adversely such person shall be given a reasonable opportunity of being heard.

(6) An order under sub-section (4) made by the Chief Judge or the District Judge or a person appointed under sub-section (2), as the case may be, or, subject to such order, an order made, by the Controller under this Act, shall, subject to the provisions of sub-section (5), be final and may be executed by the Controller in the manner provided in the Code of Civil Procedure, 1908 (Act V of 1908), for the execution of decrees.

28. *Power of Court to rescind or vary decrees and orders in certain cases.*—Where any decree or order for the recovery of possession of any holding from a *thika* tenant has been made before the date of commencement of this Act but the possession of such holding has not been recovered from the *thika* tenant by the execution of such decree or order, the Court by which the decree or order was made may, if it is of opinion that the decree or order is not in conformity with any provision of this Act other than sub-section (1) of section 5 or section 27, rescind or vary the decree or order in such manner as the Court may think fit for the purpose of giving effect to such provision and decree or order so varied by any Court shall be transferred by such Court to the Controller for execution under this Act as if it were an order made under and in accordance with the provisions of this Act.

29. *Application of Act to pending suits and proceedings.*—The provisions of this Act shall apply to all suits and proceedings, including proceedings in execution, for ejectment of a *thika* tenant which are pending at the date of commencement of this Act, and if any such suit or proceeding relates to any matter in respect of which the Controller is competent after the date of such commencement to pass order under this Act, such suit or proceeding shall be transferred to the Controller who shall on such transfer deal with it in accordance with the provisions of this Act as if this Act had been in operation on the date of institution of the suit or proceeding:

Provided that in applying the provisions of this Act to any suit or proceeding instituted for the ejectment of a *thika* tenant so transferred, the provisions regarding notice in section 4 of this Act shall not apply.

30. *Bar to application of Act to certain lands.*—Nothing in this Act shall apply to—

- (a) Crown lands,
- (b) any land vested in or in the possession of—
  - (i) the Provincial Government,
  - (ii) a port authority of a major port, or
  - (iii) a railway administration, or
  - (iv) a local authority, or
- (c) any land which is required for carrying out any of the provisions of the Calcutta Improvement Act, 1911 (Ben. Act V of 1911).

**31. Restriction or exclusion of Act by agreement**—Nothing in any contract between a landlord and a *thika* tenant made 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 made in contravention of or which is inconsistent with any of the provisions of this Act shall be void and without effect to the extent of such contravention or inconsistency.

**32. Power to enter and inspect premises, to require information and to summon witnesses.**—(1) For the purposes of any inquiry under this Act, the Controller and any person deciding an appeal under section 27, may,—

(a) enter and inspect any premises at any time between sunrise and sunset; or

(b) authorise any person subordinate to him to enter and inspect any premises between sunrise and sunset; or

(c) by written order require any person to produce for his inspection such accounts, rent receipts, books or other documents relevant to the inquiry at such time and at such place as may be specified in the order:

Provided that no premises shall be entered under clause (a) or clause (b) without the consent of the occupier, unless at least twenty-four hours' previous notice in writing has been given.

(2) The Controller and any person deciding an appeal under section 27 shall, subject to any rules made under this Act and in so far as such powers are necessary for carrying out the provisions of this Act, have power to summon and enforce the attendance of witnesses, including the parties interested, and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a Court by the Code of Civil Procedure, 1908 (Act V of 1908).

**33. Repeal and saving**—On the expiry of the Calcutta *Thika* Tenancy Ordinance, 1948 (West Ben. Ord. XI of 1948), the provisions of section 8 of the Bengal General Clauses Act, 1899, shall apply as if it were an enactment then repealed by a West Bengal Act.

**34. Rules**—(1) The Provincial Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(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:—

(a) the manner of determination of compensation referred to in the proviso to section 4;

(b) the manner in which a landlord may apply to the Controller and the manner in which the Controller may make inquiries under section 5;

(c) the manner of obtaining permission of the Controller referred to in section 7;

(d) the form of notice and the manner of publication of such notice under sub-section (2) of section 9;

(e) the manner of payment or tender of rent by postal money order referred to in clause (ii) of sub-section (2) of section 13;

(f) the form of receipt and of the counterfoil referred to in sub-section (3) of section 15, and the particulars to be specified in such receipt and counterfoil;

(g) the particulars to be contained in applications for depositing rent under sub-section (1) of section 17 and sub-section (1) of section 18;

(h) the method of withdrawal of the deposit of rent by the landlord under sub-section (3) of section 18;

(i) the manner of making application for enhancement of rent under sub-section (1) of section 25;

(j) the procedure to be followed in inquiries under this Act by the Controller, the Chief Judge of the Court of Small Causes of Calcutta, the District Judge and any person appointed under sub-section (2) of section 27;

(k) the procedure for review of orders referred to in sub-section (5) of section 27;

(l) the procedure for summoning and enforcing the attendance of witnesses and compelling the production of documents referred to in sub-section (2) of section 32;

(m) the manner of service of notices issued under this Act where the mode of such service is not provided in this Act; and

(n) the charging or remitting of costs and fees and the fixing of a scale of costs and fees.

### **The Bengal Motor Spirit Sales Taxation (West Bengal Amendment) Act, 1948.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [Vide Notification No. 1647L of the Judicial and Legislative (Legislative) Department, dated the 15th October 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 15th October 1948.]

#### **West Bengal Act XXVII of 1948.**

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Calcutta Gazette*, Extraordinary, of the 15th October, 1948.]

*An Act further to amend the Bengal Motor Spirit Sales Taxation Act, 1941.*

WHEREAS it is expedient further to amend the Bengal Motor Spirit Sales Taxation Act, 1941 (Ben. Act V of 1941), for the purpose and in the manner hereinafter appearing;

It is hereby enacted as follows :—

1. *Short title*—This Act may be called the Bengal Motor Spirit Sales Taxation (West Bengal Amendment) Act, 1948.

2. *Amendment of section 3 of Bengal Act V of 1941*.—After sub-section (4) of section 3 of the Bengal Motor Spirit Sales Taxation Act, 1941, the following sub-section shall be added, namely :—

“(5) No tax shall be levied under this Act on the sale of any motor spirit to Diplomatic and Consular Officers of such countries as may be specified in this behalf by the Provincial Government by notification in the *Official Gazette*.”

**The Bengal Excise (West Bengal Amendment) Act, 1948.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [Vide Notification No. 1648L, of the Judicial and Legislative (Legislative) Department, dated the 8th October 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 15th October 1948.]

**West Bengal Act XXVIII of 1948.**

[*Passed by the West Bengal Legislature.*]

[Assent of the Governor was first published in the *Calcutta Gazette*, Extraordinary, of the 15th October, 1948.]

*An Act further to amend the Bengal Excise Act, 1909.*

WHEREAS it is expedient further to amend the Bengal Excise Act, 1909 (Ben. Act V of 1909), for the purpose and in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. *Short title*—This Act may be called the Bengal Excise (West Bengal Amendment) Act, 1948.

2. *Amendment of section 2 of Bengal Act V of 1909.*—To clause (18) of section 2 of the Bengal Excise Act, 1909, the following explanation shall be added, namely :—

*“Explanation.*—The supply of liquor by a club, mess, institute, society, lodge, or other similar organisation by whatever name called to its members or their guests whether on payment of price or of any fee or subscription or not shall be deemed to be a sale within the meaning of this clause.”

**The West Bengal Undesirable Advertisements (Control) Act, 1948.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [Vide Notification No. 1649L, of the Judicial and Legislative (Legislative) Department, dated the 8th October 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 15th October 1948.]

**West Bengal Act XXIX of 1948.**

[*Passed by the West Bengal Legislature.*]

[Assent of the Governor was first published in the *Calcutta Gazette*, Extraordinary, of the 15th October 1948.]

*An Act to control the publication of advertisements relating to contraceptives and the medical treatment of certain diseases and disorders.*

WHEREAS it is expedient to control the publication of advertisements relating to contraceptives and the medical treatment of certain diseases and disorders ;

It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the West Bengal Undesirable Advertisements (Control) Act, 1948.

(2) It extends to the whole of West Bengal.

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

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

(1) “advertisement” includes oral advertisement and also includes any notice, sign, announcement, bill, hand-bill, circular, book, newspaper, magazine, periodical, pamphlet or leaflet, whether pictorial or otherwise ;

- (2) "prescribed" means prescribed by rules made under this Act ;  
 (3) "sexual disorder" means any ailment, irregularity, affection or diseased condition of the organs of generation ;  
 (4) "venereal disease" means syphilis, gonorrhœa or soft chancre or any sign, symptom or *sequela* of such disease and includes such other venereal diseases as may be prescribed by the Provincial Government in this behalf.

3. *Prohibition of issue of certain advertisements.*—(1) No person shall by means of any advertisement,—

(a) prescribe or offer to prescribe any medicine or appliance for use as contraceptive, or

(b) offer to treat any person for, or indicate the line of treatment of, any venereal disease, sexual disorder, irregularity of menstruation or any other prescribed disease, infirmity or abnormality or offer to prescribe, any remedy therefor, or give or offer to give any advice in connection with the treatment thereof.

(2) No person shall print or publish, or cause to be printed or published, for distribution or exhibition to the public, or circulate or cause to be circulated or exhibit or cause to be exhibited, to the public or to any person,—

(a) any advertisement referred to in sub-section (1), or

(b) any label or set of instructions, whether pictorial or otherwise, to be affixed to or delivered with, any packet, box, bottle or phial, if such label or set of instructions recommends, asserts or infers that any remedy, medicine, medicinal or herbal preparation or any appliance or charm of any kind, whether for use internally or externally, is a contraceptive or is useful or may be used as a contraceptive, or is a cure, or is useful or may be used, for the prevention, treatment or relief of any venereal disease, sexual disorder, irregularity of menstruation or any other prescribed disease, infirmity or abnormality.

4. *Confiscation of documents, etc., containing advertisement, etc., which contravenes section 3*—(1) Any person prescribed under sub-section (2) who may be authorised in writing in this behalf by the Commissioner of Police in Calcutta and the District Magistrate elsewhere may at any time seize and detain any document or any article or thing which such person has reason to believe contains any advertisement which contravenes any of the provisions of section 3, and the Court trying such contravention may direct that such document or such article or thing and all copies thereof shall be forfeited to His Majesty.

(2) The Provincial Government shall prescribe the persons or classes of persons who may be authorised under sub-section (1) to take the action provided for under that sub-section.

(3) Where in pursuance of sub-section (1) any document or article or thing has been declared to be forfeited to His Majesty, any police officer may seize any copy thereof, wherever found, and any Magistrate may by warrant authorise any police officer not below the rank of Sub-Inspector to enter upon and search any premises whereon or wherein such document or article or thing or any copy thereof is or is reasonably suspected to be.

*Explanation.*—In this section "Calcutta" means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866 (Ben. Act IV of 1866), together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866 (Ben. Act II of 1866).

5. *Penalty.*—Whoever contravenes any of the provisions of section 3 shall, on conviction, be punishable with imprisonment which may extend to one year, or with fine which may extend to one thousand rupees, or with both.

6. *Act not to apply in certain cases.*—Nothing in this Act shall apply to,—

(a) any medical treatise or book, or any treatise or book dealing with the subject from a *bona fide* scientific or social standpoint, or

(b) any advertisement, or any article or thing sent confidentially in the prescribed manner only to a medical practitioner or to a wholesale or retail chemist for the purpose of his business, or

(c) any advertisement made, printed or published with the previous sanction of such person or persons as the Provincial Government may appoint in this behalf, or

(d) any advertisement, label or set of instructions which is permitted under the Drugs Act, 1940 (XXIII of 1940), or any rules made thereunder.

*Explanation.*—“Medical practitioner” in this section includes a person regularly practising either the allopathic, homœopathic, Ayurvedic, Unani or any other system of medicine.

7. *Jurisdiction to try offences.*—No Magistrate other than a Presidency Magistrate or a Magistrate of the First Class shall try an offence punishable under this Act.

8. *Officers to be deemed public servants.*—Any person empowered to act under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Act XLV of 1860).

9. *Indemnity.*—No suit, prosecution or other legal proceeding shall lie against any servant of the Crown for anything which is in good faith done or intended to be done under this Act.

10. *Power to make rules.*—(1) The Provincial Government may make rules for carrying out the purposes of this Act.

(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 :—

(a) the venereal diseases referred to in clause (4) of section 2 ;

(b) the diseases, infirmities or abnormalities referred to in section 3 ;

(c) the persons and classes of persons referred to in sub-section (2) of section 4 ;

(d) the manner of sending confidentially an advertisement, article or thing referred to in clause (b) of section 6.

#### **The West Bengal Maternity Benefit (Tea Estates) Act, 1948.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [Vide Notification No. 1770-L, of the Judicial and Legislative (Legislative) Department, dated the 25th October 1948, published in the Calcutta Gazette, Part III, dated the 28th October 1948.]

#### **West Bengal Act XXXIII of 1948.**

[ Passed by the West Bengal Legislature. ]

[ Assent of the Governor was first published in the Calcutta Gazette, of the 28th October 1948. ]

*An Act to regulate the employment of women in tea factories and plantations for certain periods before and after child-birth and to provide for the payment of maternity benefit to them.*

WHEREAS it is expedient to regulate the employment of women in tea factories and plantations for certain periods before and after child-birth and to provide for the payment of maternity benefit to them ;

It is hereby enacted as follows :—

1. *Short title, extent and commencement.*—(1) This Act may be called the West Bengal Maternity Benefit (Tea Estates) Act, 1948.

(2) It extends to the whole of West Bengal.

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

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

(a) “child” includes a still-born child ;

(b) “employer” includes the occupier and the manager of a plantation or a factory ;

(c) “expected day of her delivery” means the expected day of delivery of a woman as determined by the medical practitioner referred to in sub-section (1) of section 6 ;

(d) “factory” means—

(i) a factory as defined in clause (j) of section 2 of the Factories Act, 1934 (XXV of 1934), or

(ii) a place declared to be a factory under sub-section (1) of section 5 of that Act ;

in which any process is carried on for the manufacture of tea or in which any process is carried on incidental to or connected with such manufacture ;

(e) “maternity benefit” means the sum of money payable under the provisions of this Act to a woman employed in a plantation or a factory ;

(f) “nurse” includes a midwife or a trained *dhai* ;

(g) “plantation” means any estate which is maintained for the purpose of growing tea [ the plant *Camellia Thea* (Linn) ] and in which twenty or more women are employed, or were employed on any day of the preceding twelve months, for that purpose ;

(h) “prescribed” means prescribed by rules made under this Act ;

(i) “woman” means a woman worker ; and

(j) expressions used, but not defined in this Act, have, where they have been defined in the Factories Act, 1934 (XXV of 1934), the same meaning as in that Act.

3. *Employment of, or work by, women in factories prohibited during certain period* — After this Act comes into force—

(1) no employer shall knowingly employ a woman in any factory or plantation during the six weeks immediately following the day of her delivery ; and

(2) no woman shall work in any factory or plantation during the six weeks immediately following the day of her delivery.

4. *Right to, and liability for, payment of maternity benefit.*—Subject to the provisions of this Act, every woman employed in a factory or a plantation shall be entitled to, and her employer shall be liable for, the payment of maternity benefit in respect of the period of six weeks [preced-

ing the expected day of her delivery and six weeks immediately following the day of her delivery :

Provided that a woman shall not be entitled to such maternity benefit unless she has worked in any factory or plantation of the employer from whom she claims maternity benefit for not less than one hundred and fifty days in the twelve months immediately preceding the expected day of her delivery :

Provided further that a woman shall not be entitled to such maternity benefit if she has not—

(a) permitted herself to be medically examined as required in sub-section (1) of section 6, or

(b) during the period which extends from the commencement of the six weeks immediately preceding the expected day of her delivery to the day of her delivery and during the six weeks immediately following the day of her delivery attended or permitted herself to be treated in any clinic or hospital, or permitted herself to be treated by any medical practitioner or nurse as required in sub-section (2) of section 6 :

Provided further that non-compliance by the woman with the provisions of sub-section (2) of section 6 before the day of her delivery shall not disentitle her to maternity benefit if the medical practitioner referred to in sub-section (3) of section 6 certifies that in his opinion such non-compliance was due to premature delivery or to a *bona fide* miscalculation on the part of the woman as to the state of advancement of her pregnancy.

5. *Amount of maternity benefit*—The maternity benefit which is compulsorily payable under section 4 shall be payable at the rate of five rupees and four annas a week for every week during the period of twelve weeks referred to in that section and such payment shall be made either wholly in cash or partly in cash and partly in kind.

6. *Ante-natal and post-natal care of women*.—(1) Every woman who claims or intends to claim maternity benefit from her employer under this Act shall permit herself to be medically examined by, or under the direction of the medical practitioner referred to in sub-section (3) for the purpose of enabling him to determine the expected day of her delivery and such medical practitioner shall after such examination furnish her with a certificate as to the expected day of her delivery.

(2) Every woman who claims or intends to claim maternity benefit from her employer under this Act shall, during the period which extends from the commencement of the six weeks immediately preceding the expected day of her delivery to the day of her delivery and during the six weeks immediately following the day of her delivery,—

(a) where free ante-natal and post-natal treatment is provided for her in any hospital or clinic approved in this behalf by the prescribed medical authority, attend such hospital or clinic as required by the medical officer-in-charge thereof and permit herself to be treated therein, or

(b) where there is no such hospital or clinic, permit herself to be treated by such medical practitioner or nurse as is provided by her employer under sub-section (3).

(3) Every employer shall arrange that the services of a medical practitioner and a nurse approved in this behalf by the prescribed medical authority are always available in his factory or plantation for the purpose of giving free ante-natal and post-natal treatment or advice to the women of his factory or plantation.

7. *Amount of work which can be undertaken by a woman during ante-natal period.*—Notwithstanding that a woman has given notice under sub-section (1) of section 8 that she expects to be confined within one month and a half next following, she may, during the period which extends from the commencement of the six weeks immediately preceding the expected day of her delivery to the day of her delivery, undertake light work in the factory or plantation of the employer from whom she claims maternity benefit if and for so long as the medical practitioner referred to in sub-section (3) of section 6 certifies that she is physically fit so to do, and for the days that she does such work she shall be paid at the prevailing rate of pay for such work, and such pay shall be paid to her in addition to the maternity benefit which she may be entitled to receive under this Act.

8. *Procedure regarding payment of maternity benefit.*—(1) Any woman who claims or intends to claim maternity benefit under the provisions of this Act shall, on any day, give notice either orally in person or in writing to the employer of the factory or the plantation that she expects to be confined within one month and a half next following and submit at the same time to such employer the certificate referred to in sub-section (1) of section 6 and may nominate in the prescribed form a person for purposes of section 9.

(2) When the notice and the certificate referred to in sub-section (1) are received the employer shall permit the woman who has given the notice to absent herself from work in the factory or plantation on and from the day following that on which such notice and certificate are received until the expiration of six weeks after the day of her delivery.

(3) An employer shall pay the maternity benefit as provided in section 5 to a woman entitled thereto under this Act in twelve equal weekly instalments and the payment of the first instalment thereof shall be made within seven days of the giving of the notice together with the certificate referred to in sub-section (1) by such woman.

(4) If an employer is satisfied on the report of a medical practitioner or medical officer-in-charge of the clinic or hospital referred to in sub-section (2) of section 6 that a woman has ceased according to the provisions of section 4 to be entitled to maternity benefit such employer may discontinue the payment of maternity benefit payable to such woman under sub-section (3).

(5) Any woman who considers herself aggrieved at any cessation of payment of maternity benefit under sub-section (4) may, within thirty days of the date of payment of the last instalment of maternity benefit paid to her under sub-section (3), apply in the prescribed manner to the Inspector of Factories, West Bengal, who after giving both parties an opportunity of being heard may reject the application, or direct the employer to pay to the woman the remaining portion of the maternity benefit, as he deems fit. An appeal from the decision of the Inspector of Factories, West Bengal, shall, within thirty days thereof, lie in the prescribed manner to the Labour Commissioner, West Bengal, whose decision shall be final.

9. *Payment of maternity benefit in case of the death of a woman.*—(1) If a woman entitled to maternity benefit under this Act dies on the day of her delivery or during the period thereafter in respect of which she is entitled to the maternity benefit, the liability of the employer under section 4 shall not, by reason of her death, be discharged, and he shall pay the amount of maternity benefit due, if the newly born child survives her, to the person who undertakes the care of the child; and, if the child does not survive her, to the person nominated by her under sub-section (1) of

section 8 or, if she has made no such nomination, to her next of kin as determined by the employer whose decision shall be final.

(2) If a woman dies during the period in respect of which she is entitled to maternity benefit but before giving birth to a child, the employer shall be liable only for the payment of half the amount of maternity benefit due under section 5. Any amount due at the death of the woman shall be paid to the person nominated by her under sub-section (1) of section 8, or, if she has made no such nomination, to her next of kin as may be determined by the employer whose decision shall be final.

10. *No notice of dismissal to be given to a woman in certain cases.*—(1) When a woman absents herself from work in accordance with the provisions of this Act, it shall not be lawful for her employer to give her notice of dismissal during such absence or on such a day that the notice will expire during such absence.

(2) (a) No notice of dismissal given without sufficient cause by an employer to a woman within a period of six months before her delivery shall have the effect of depriving her of any maternity benefit to which but for such notice she may have become entitled under this Act.

(b) If any question arises as to whether any notice of dismissal is one to which clause (a) applies, such question shall be referred for decision to the Inspector of Factories, West Bengal, in the prescribed manner. An appeal from the decision of the Inspector shall, within sixty days thereof, lie in the prescribed manner to the Labour Commissioner, West Bengal, whose decision shall be final.

11. *Penalty to woman for doing work in contravention of the Act.*—If a woman—

(a) after she has been permitted by her employer under sub-section (2) of section 8 to absent herself from work in a factory or plantation, does any work, other than that provided for under section 7, before the day of her delivery, or

(b) works in a factory or plantation or elsewhere during the four weeks immediately following the day of her delivery, she shall be liable, on conviction, to a fine not exceeding ten rupees.

12. *Penalty for contravention of the Act by an employer and application of fine in payment of compensation.*—(1) If any employer contravenes any provision of this Act, he shall, on conviction, be liable, to a fine which may extend to five hundred rupees.

(2) Whenever a Court imposes a fine under this section or confirms in appeal, revision or otherwise such a sentence, the Court may, when passing judgment, order the whole or any part of the fine recovered to be applied in the payment of compensation to the woman concerned for any loss or damage caused to her by the contravention of a provision of this Act on account of which the fine has been imposed.

13. *Cognizance of offences.*—(1) No prosecution under this Act shall be instituted except by, or with the previous sanction of, the Inspector of Factories, West Bengal, and no such prosecution shall be instituted until the expiry of the period of appeal under sub-section (2) or, if such an appeal is preferred, unless the Labour Commissioner, West Bengal, by his order thereon sanctions a prosecution.

(2) Where the Inspector of Factories, West Bengal decides either to institute a prosecution under this Act or to grant sanction thereto, he shall forthwith communicate his order to the person complained against, who may, within thirty days of the date of the said order, appeal in the

prescribed manner to the Labour Commissioner, West Bengal, against such decision. The decision of the Labour Commissioner, West Bengal, on such appeal shall be final.

(3) No Court inferior to that of a Presidency Magistrate or of a Magistrate of the first Class shall try any offence against this Act or any rules made thereunder.

14. *Appeal against refusal to prosecute or grant sanction thereto.*—Where on an application by an employer or a woman in such behalf, the Inspector of Factories, West Bengal, refuses either to institute a prosecution under this Act or to grant previous sanction thereto, he shall without delay communicate to the applicant his order of refusal and an employer or a woman aggrieved by such order may within thirty days of the date thereof, appeal in the prescribed manner to the Labour Commissioner, West Bengal, against such order. The decision of the Labour Commissioner, West Bengal, on such appeal shall be final.

15. *Limitation of prosecution.*—No Court shall take cognizance of any offence against this Act or any rule made thereunder unless complaint thereof has been made to the Inspector of Factories, West Bengal, within six months of the date on which the offence is alleged to have been committed.

16. *Rules.*—(1) The Provincial Government may make rules for the purpose of carrying in to effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for—

(a) the preparation and maintenance of a muster roll or register or a combined muster roll and register, and the particulars to be entered in such muster roll, register or combined muster roll and register or in the register kept or deemed to have been kept under section 41 of the Factories Act, 1934 (XX of 1934);

(b) the inspection of factories for the purposes of this Act by the Inspector of Factories, West Bengal;

(c) the exercise of powers and the performance of duties by Inspector of Factories, West Bengal, or the medical authority referred to in section 6 for the purposes of this Act;

(d) the method of payment of the maternity benefit in so far as provision has not been made in this Act.

(e) the medical authority referred to in section 6;

(f) the form of nomination referred to in sub-section (1) of section 8; and

(g) the procedure to be observed—

(i) in submitting applications to the Inspector of Factories, West Bengal, and the disposal of appeals under sub-section (5) of section 8,

(ii) in referring questions for decision to the Inspector of Factories, West Bengal, and the disposal of appeals under clause (b) of sub-section (2) of section 10, and

(iii) in the disposal of appeals under sub-section (2) of section 13 or section 14.

(3) Any such rule may provide that a contravention thereof shall be punishable with fine which may extend to fifty rupees.

(4) The power to make rules under this Act shall be subject to the condition of previous publication.

17. *Abstract of this Act and the rules thereunder to be exhibited.*—An abstract of the provisions of this Act and the rules thereunder in the lo-

**84 THE WEST BENGAL DISTRICT SCHOOL BOARDS (AMENDMENT) ACT, 1948 [ 1949  
& THE CALCUTTA AND SUBURBAN POLICE (AMENDMENT) ACT, 1948.**

---

cal vernaculars shall be exhibited in a conspicuous manner by the employer in every part of a tea factory or a plantation in which woman are employed.

**The West Bengal District School Boards (Amendment) Act, 1948.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [Vide Notification No. 186r1, of the Judicial and Legislative (Legislative) Department, dated the 30th October 1948, published in the *Calcutta Gazette*, Part III, dated the 4th November 1948.]

**West Bengal Act XXXIV of 1948.**

*[Passed by the West Bengal Legislature.]*

[Assent of the Governor was first published in the *Calcutta Gazette*, of the 4th November, 1948.]

*An Act to amend the West Bengal District School Boards Act, 1947.*

WHEREAS the district of Navadwip has been renamed as the district of Nadia on and from the 26th day of February, 1948 ;

AND WHEREAS it is expedient to amend the West Bengal District School Boards Act, 1947 (West Ben. Act IV of 1947), in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. *Short title and commencement.*—(1) This Act may be called the West Bengal District School Boards (Amendment) Act, 1948.

(2) It shall be deemed to have come into force on the 26th day of February, 1948.

2. *Amendment of the second preamble to West Bengal Act IV of 1947.*—In the second preamble to the West Bengal District School Boards Act, 1947 (West Ben. Act IV of 1947), (hereinafter referred to as the said Act), for the word "Navadwip" the word "Nadia" shall be substituted.

3. *Amendment of section 4.*—In sub-section (1) of section 4 of the said Act, for the word "Navadwip" the word "Nadia" shall be substituted.

4. *Amendment of section 6.*—In section 6 of the said Act, for the word "Navadwip" the word "Nadia" shall be substituted.

**The Calcutta and Suburban Police (Amendment) Act, 1948.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [Vide Notification No. 1900L, of the Judicial and Legislative (Legislative) Department, dated the 3rd November 1948, published in the *Calcutta Gazette*, Part III, dated the 11th November 1948.]

**West Bengal Act XXXV of 1948.**

*[Passed by the West Bengal Legislature.]*

[Assent of the Governor was first published in the *Calcutta Gazette*, of the 11th November, 1948.]

*An Act further to amend the Calcutta Police Act, 1866, and the Calcutta Suburban Police Act, 1866.*

WHEREAS it is expedient further to amend the Calcutta Police Act, 1866 (Ben. Act IV of 1866), and the Calcutta Suburban Police Act, 1866 (Ben. Act II of 1866), for the purpose and in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Calcutta and Suburban Police (Amendment) Act, 1948.

2. *Insertion of new section 61A in Bengal Act IV of 1866.*—After section 61 of the Calcutta Police Act, 1866, the following section shall be inserted, namely :—

“61A. *Power of Commissioner to prohibit the use or the driving of certain types of vehicles in streets or public places.*—(1) With the previous sanction of the Provincial Government, the Commissioner of Police may, from time to time, by notification in the *Official Gazette*, prescribe the types of vehicles which shall not be driven or used in streets or public places.

(2) Whoever uses or drives in a street or public place a vehicle of a type the use or driving of which has been prohibited under sub-section (1) shall be liable to fine which may extend to five hundred rupees, and the vehicle in respect of which the offence has been committed shall be forfeited to the Crown.”

3. *Insertion of new section 38A in Bengal Act II of 1866.*—After section 38 of the Calcutta Suburban Police Act, 1866, the following section shall be inserted, namely :—

“38A. *Power of Commissioner to prohibit the use or the driving of certain types of vehicles in streets or public places.*—(1) With the previous sanction of the Provincial Government, the Commissioner of Police may, from time to time, by notification in the *Official Gazette*, prescribe the types of vehicles which shall not be driven or used in streets or public places within such limits as may be specified in this behalf by the Commissioner of Police in the said notification.

(2) Whoever uses or drives in a street or public place within the limits specified under sub-section (1), a vehicle of a type the use or driving of which has been prohibited under that sub-section, shall be liable to fine which may extend to five hundred rupees, and the vehicle in respect of which the offence has been committed shall be forfeited to the Crown.”

### The Calcutta Hackney-Carriage (Amendment) Act, 1948.

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [ Vide Notification No. 1901L, of the Judicial and Legislative (Legislative) Department, dated the 3rd November 1948, published in the *Calcutta Gazette*, Part III, dated the 11th November 1948. ]

#### West Bengal Act XXXVI of 1948.

[ Passed by the West Bengal Legislature. ]

[ Assent of the Governor was first published in the *Calcutta Gazette*, of the 11th November, 1948. ]

*An Act further to amend the Calcutta Hackney-carriage Act, 1919.*

WHEREAS it is expedient further to amend the Calcutta Hackney-carriage Act, 1919 (Ben. Act I of 1919), for the purpose and in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Calcutta Hackney-carriage (Amendment) Act, 1948.

2. *Amendment of section 1 of Bengal Act I of 1919.*—To sub-section (3) of section 1 of the Calcutta Hackney-carriage Act, 1919 (hereinafter referred to as the said Act), the following proviso shall be added, namely :—

"Provided that nothing in this Act shall apply in Calcutta to any type of vehicle the driving or use of which has been prohibited with the previous sanction of the Provincial Government by the Commissioner of Police under section 61A of the Calcutta Police Act, 1866 (Ben. Act IV of 1866), and section 38A of the Calcutta Suburban Police Act, 1866 (Ben. Act II of 1866).

*Explanation*—In this proviso,—

(1) 'Calcutta' means the town of Calcutta as defined in section 3 of the Calcutta Police Act, 1866, together with the suburbs of Calcutta as defined by notification under section 1 of the Calcutta Suburban Police Act, 1866; and

(2) 'streets' and 'public places' have the same meanings as in the Calcutta Police Act, 1866 and the Calcutta Suburban Police Act, 1866."

3. *Amendment of section 4.*—In section 4 of the said Act,—

(a) to clause (1), the following words shall be added, namely :—

"or, where the rickshaw is a cycle-rickshaw, any person employed to actuate the cycle-rickshaw";

(b) in clause (2), after the word "means", the words "subject to the provisions of the proviso to sub-section (3) of section 1 and" shall be inserted; and

(c) in clause (8), after the word "men", the following words shall be inserted, namely :—

"and includes a three-wheeled vehicle for the conveyance of passengers, ordinarily known as a cycle-rickshaw, which is actuated by a man by means of a pedal cycle mechanism".

4. *Amendment of section 70.*—To section 70 of the said Act, the following proviso shall be added, namely :—

"Provided that the Registering Officer may cancel, or suspend for such period as he thinks fit, the registration of a rickshaw if in his opinion the type of the rickshaw has been so altered as to render it different from that in respect of which registration was made :

Provided further that in any area included in Calcutta under clause (b) of section 2, the functions of the Registering Officer shall be performed by an Officer appointed by the Commissioners of the Municipality comprising such area and the said officer shall forward to the Deputy Commissioner of Police referred to in sub-section (1) of section 6 all papers relating to registration for record after they have been duly dealt with."

### **The West Bengal Agricultural Income-tax (Amendment) Act, 1949.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor (Vide Notification No. 247-L, of the Judicial and Legislative (Legislative) Department, dated the 25th February 1949, published in the *Calcutta Gazette*, Part III, dated the 3rd March 1949.)

#### **West Bengal Act III of 1949.**

[ Passed by the West Bengal Legislature ]

[ Assent of the Governor was first published in the *Calcutta Gazette*, of the 3rd March 1949. ]

*An Act to amend the Bengal Agricultural Income-tax Act, 1944.*

WHEREAS it is expedient to amend the Bengal Agricultural Income-tax Act, 1944 (Ben. Act IV of 1944), for the purposes and in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the West Bengal Agricultural Income-tax (Amendment) Act, 1949.

2. *Amendment of sections 3, 10, 17, 19, 28, 48, 60 and 61 and the Schedule to Bengal Act IV of 1944.*—In sections 3, 10, 17, 19, 28, 48, 60 and 61 of, and in paragraph B of the Schedule to, the Bengal Agricultural Income-tax Act, 1944 (hereinafter referred to as the said Act), for the words “association of individuals”, wherever they occur, the words “association of persons” shall be substituted.

3. *Amendment of section 3.*—In section 3 of the said Act,—

(a) after the portion preceding the proviso, the following proviso shall be inserted, namely :—

“Provided that where any property from which agricultural income is derived is owned by two or more persons and their respective shares are definite and ascertainable, such persons shall not, in respect of such property, be assessed as an association of persons, but the share of each such person in the agricultural income from the property shall be included in his total agricultural income : ”; and

(b) in the proviso, after the word “Provided” the word “further” be inserted.

4. *Amendment of section 14.*—In section 14 of the said Act, for the words “appointed under a duly executed trust deed” the words “appointed under a trust declared by a duly executed instrument in writing whether testamentary or otherwise” shall be substituted and shall be deemed always to have been substituted.

5. *Amendment of section 24.*—In sub-section (2) of section 24 of the said Act, for the words “total income” the words “total agricultural income” shall be substituted.

6. *Amendment of section 38.*—In section 38 of the said Act,—

(a) in sub-section (1), for the words “at any time within four years” the following shall be substituted, namely :—

“in any case in which the income is partially agricultural income assessable under this Act and partially income chargeable under the Indian Income-tax Act, 1922 (XI of 1922), under the head ‘Business’ or in which he has reason to believe that the assessee has concealed the particulars of his agricultural income or deliberately furnished inaccurate particulars thereof, at any time within six years, and in any other case at any time within four years” ; and

(b) for sub-section (2), the following sub-section shall be substituted, namely :—

“(2) No order of assessment under section 25 or of assessment or re-assessment under sub-section (1) shall be made after the expiry, in any case in which section 8 or clause (c) of sub-section (1) of section 32 applies, of six years and, in other case, of four years from the end of the year in which the agricultural income was first assessable:

Provided that nothing contained in this sub-section shall apply to a re-assessment made in pursuance of an order under section 35, section 36, section 63 or section 64.”

7. *Amendment of section 46.*—In the proviso to sub-section (3) of section 45 of the said Act, the words “in respect of the attachment and sale of debts due to the assessee” and the words “in respect of the attachment and sale of debts due to a judgment-debtor” shall be omitted.

8. *Amendment of section 58.*—In sub-section (2) of section 58 of the

said Act, for clause (iv), the following clause shall be substituted, namely :—

“(iv) ‘agricultural income-tax practitioner’, means any person who has acquired such educational qualifications as may be prescribed and who has, subject to the payment of such fees as may be prescribed, been registered in the manner prescribed as such a practitioner.”

9. *Amendment of the schedule.*—In the schedule to the said Act,—

(1) in paragraph A,—

(a) in the table set out in sub-paragraph (1), for the entries under the heading “rate against items (c), (d), (e) and (f), the following entries shall respectively be substituted, namely :—

“One anna and three pice in the rupee.”

“Two annas in the rupee.”

“Three annas in the rupee.” and

“Four annas in the rupee.”

(b) in sub-paragraph (2), for the figures “3,500”, in both the places where they occur, the figures “3,000” shall be substituted; and

(c) in the proviso,—

(i) for the figures “3,500”, in both the places where they occur, the figures “3,000”, shall be substituted; and

(ii) for the word’s “one hundred” the word “eighty” shall be substituted; and

(2) in paragraph B. for the words “Two annas and six pice” the words “Four anna,” shall be substituted.

### The West Bengal Money-Lenders (Amendment) Act, 1949.

The following Act of the West Bengal Legislature has been assented to in His Majesty’s name by the Governor [ Vide Notification No. 249-L, of the Judicial and Legislative (Legislative) Department, dated the 25th February 1949, published in the *Calcutta Gazette*, Part III, dated the 3rd March 1949. ]

#### West Bengal Act V of 1949.

[ Passed by the West Bengal Legislature. ]

[ Assent of the Governor was first published in the *Calcutta Gazette*, of the 3rd March 1949. ]

*An Act further to amend the Bengal Money-lenders Act, 1940.*

WHEREAS it is expedient further to amend the Bengal Money-lenders Act, 1940 (Ben. Act X of 1940), for the purpose and in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the West Bengal Money-lenders (Amendment) Act, 1949.

2. *Amendment of section 1 of Bengal Act X of 1940.*—In sub-section (2) of section 1 of the Bengal Money-lenders Act, 1940, after the word “Bengal” the words and figures “but it shall not apply to the Reserve Bank of India constituted by the Reserve Bank of India Act, 1934 (II of 1934),” shall be added and shall be deemed always to have been added.

**The Corporation of Calcutta (Temporary Supersession)  
Amendment Act, 1949.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [ Vide Notification No. 250-L, of the Judicial and Legislative (Legislative) Department, dated the 25th February 1949, published in the *Calcutta Gazette*, Part III, dated the 3rd March 1949. ]

**West Bengal Act VI of 1949.**

[ *Passed by the West Bengal Legislature.* ]

[ Assent of the Governor was first published in the *Calcutta Gazette*, of the 3rd March 1949. ]

*An Act to amend the Corporation of Calcutta (Temporary Supersession) Act, 1948.*

WHEREAS it is expedient to amend the Corporation of Calcutta (Temporary Supersession) Act, 1948 (West Ben. Act VIII of 1948), for the purpose and in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the Corporation of Calcutta (Temporary Supersession) Amendment Act, 1949.

2. *Amendment of section 1 of West Bengal Act VIII of 1948.*—In sub-section (3) of section 1 of the Corporation of Calcutta (Temporary Supersession) Act, 1948 (hereinafter referred to as the said Act), for the words and figures “31st day of March 1949” the words and figures “31st day March 1950” shall be substituted.

3. *Amendment of section 3*—At the end of section 3 of the said Act, the words “and may also by like order extend the period of supersession for such further term as it may consider necessary” shall be added.

**The West Bengal Local Self-Government (Amendment) Act, 1949.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [ Vide notification No. 251-L, of the Judicial and Legislative (Legislative) Department, dated the 25th February 1949, published in the *Calcutta Gazette*, Part III, dated the 3rd March 1949. ]

**West Bengal Act VII of 1949.**

[ *Passed by the West Bengal Legislature.* ]

[ Assent of the Governor was first published in the *Calcutta Gazette*, of the 3rd March, 1949. ]

*An Act further to amend the Bengal Local Self-Government Act of 1885.*

WHEREAS it is expedient further to amend the Bengal Local Self-Government Act of 1885 (Ben. Act III of 1885), for the purposes and in the manner hereinafter appearing;—

It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the West Bengal Local Self-Government (Amendment) Act, 1949.

2. *Amendment of section 7 of Ben. Act III of 1885.*—In section 7 of the Bengal Local Self-Government Act of 1885 (hereinafter referred to as the said Act), after the third paragraph, the following paragraph shall be inserted as the fourth paragraph, namely :—

“When no Local Board has been established in any district, the members of the District Board shall be elected by persons entitled to vote under section 7A within such time and in accordance with such rules as may be

prescribed in this behalf by the Provincial Government under clause (a) of section 138."

3. *Insertion of new sections 7A and 7B.*—After section 7 of the said Act, the following sections shall be inserted, namely :—

"7A. *Qualifications of voters of District Boards in areas where no Local Board has been established.*—(1) Every male person of the full age of twenty-one years and having a place of residence in a district referred in the fourth paragraph of section 7 shall, subject to the provisions of section 15A, be qualified to vote at an election of the members of the District Board of such district if such person—

(i) has, during such period of twelve months as may be prescribed by rules made under section 138, paid a sum of not less than eight annas as a cess under the Cess Act, 1880 (Ben. Act IX of 1880) in respect of lands situated wholly or in part in such district, or

(ii) has, during the period aforesaid, been assessed at and paid a sum of not less than six annas for the purposes of the union rate payable under the Bengal Village Self-Government Act, 1919 (Ben. Act V of 1919), or as *chaukidari-tax*, or

(iii) is a member of a joint undivided family, which, during the period aforesaid, has paid a sum of not less than eight annas as such cess or less than six annas as such rate or tax, or

(iv) is a graduate or licentiate of any University, or has passed the Matriculation examination of the Calcutta University, or a corresponding standard of the same or any other University, or the high school examination of the Board of the Intermediate and Secondary Education, Dacca, or the senior or junior madrasah examination under the old or the reformed scheme, or the Sanskrit title examination of the Calcutta Sanskrit Association, or the middle English or the middle vernacular examination, or is a registered medical practitioner under the Bengal Medical Act, 1914 (Ben. Act VI of 1914), or holds a certificate authorising him to practise as a pleader or a *Mukhtar* or as a revenue agent:

Provided that only one member of a joint undivided family qualified under clause (iii) and nominated by the other qualified members of that family shall be entitled to vote on its behalf at any such election.

(2) A person qualified under sub-section (1) shall be entitled to vote at such election if his name is included in the electoral roll prepared for the purpose of such election in accordance with such rules as may be prescribed in this behalf under clause (a) of section 138 but not otherwise.

7B. *Qualifications for election as a member of a District Board in areas where no Local Board has been established.*—A person shall not be qualified for election as a member of a District Board under the fourth paragraph of section 7 unless his name is included in an electoral roll prepared for the purpose of election of members of the said District Board."

4. *Amendment of section 36D*—In section 36D of the said Act,—

(a) in sub-section (1), for the words "the members of the District Board" the following words "such proportion of the members of the District Board as the Provincial Government may, from time to time, direct" shall be substituted; and

(b) to sub-section (1), the following proviso shall be added, namely:—  
"Provided that in any district when all the Local Boards have been

abolished under section 36A, the members of the District Board shall be elected under the provisions of the fourth paragraph of section 7 and the rules referred to therein by persons entitled to vote under section 7A as if no Local Board has been established in the said district."

#### The Calcutta Sheriff's Act, 1948.

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [ Vide Notification No. 1650L of the Judicial and Legislative (Legislative) Department, dated the 15th October 1948, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 15th October 1948 ].

#### West Bengal Act XXX of 1948.

[ Passed by the West Bengal Legislature. ]

[ Assent of the Governor was first published in the *Calcutta Gazette*, Extraordinary, of the 15th October 1948. ]

*An Act to provide for certain matters relating to the office of the Sheriff of Calcutta.*

WHEREAS it is expedient to provide for certain matters relating to the office of the Sheriff of Calcutta;

It is hereby enacted as follows :—

1. *Short title and commencement.*— This Act may be called the Calcutta Sheriff's Act, 1948.

(2) It shall come in to force on such date as the Provincial Government may, by notification in the *Official Gazette*, appoint.

2. *Definition.*—In this Act, unless there is anything repugnant in the subject or context, "prescribed" means prescribed by rules made under this Act.

3. *Appointment of the Sheriff of Calcutta.*—(1) The Sheriff of Calcutta (hereinafter referred to as the Sheriff) shall be appointed annually by the Governor from a panel of three persons to be nominated on the occasion of each vacancy by the High Court in Calcutta.

(2) The Sheriff shall hold office during the pleasure of the Governor and shall be entitled to such allowances as the Governor may determine and no other allowances.

4. *Appointment of the Deputy Sheriff of Calcutta.*—The Deputy Sheriff of Calcutta shall be appointed in such manner and shall be entitled to such allowances as may be prescribed.

5. *Power of the High Court to control certain functions of the Sheriff and other employees.*—Subject to the provisions of this Act, the Sheriff and the Deputy Sheriff and their subordinates shall carry out the orders of the High Court in Calcutta in the manner determined by the said Court.

6. *Posts of officers and servants of the Sheriff to be civil posts under the Crown.*—Notwithstanding anything contained in the Charter establishing the Supreme Court of Judicature at Fort William in Bengal, dated the twenty-sixth day of March 1774, or in any other law, the posts of all such officers and servants (other than employees who are paid by the day) as may be employed for the proper performance of the duties of the Sheriff shall, on the commencement of this Act, be civil posts under the Crown in India.

7. *Indemnity.*—The Sheriff and the Deputy Sheriff and their subordinates shall be exempt from liability in respect of all their acts or defaults

done or committed while exercising or purporting to exercise their functions under this Act or for which they would have been liable but for this Act.

8. *Liability of the Provincial revenues in certain cases.*—(1) The revenues of the Province shall be liable to make good all sums required to discharge the liability mentioned in section 7.

(2) Nothing in sub-section (1) shall be deemed to render liable the revenues of the Province or any Sheriff, or Deputy Sheriff or any of their subordinates appointed after the commencement of this Act for anything done by, or under the authority of, any Sheriff or Deputy Sheriff before the commencement of this Act.

(3) Nothing in sub-section (1) shall prevent the Provincial Government from recovering any sum paid by it under that sub-section from the Sheriff, the Deputy Sheriff or any of their subordinates liable personally to pay such sum.

(4) Sums payable by the Provincial Government under sub-section (1) are hereby declared to be charged on the revenues of the Province.

9. *Credit of fees to Provincial revenues.*—The Sheriff shall transfer and pay to such authority, in such manner and at such times as may be prescribed, all fees realised by him or by any of his officers and servants after the date of the commencement of this Act, together with the balance standing on the said date to the credit of the account known as the "Sheriff's Account Number 11," and such fees and balance shall be carried to the account and credit of the revenues of the Province.

10. *The Sheriff's Pension Fund.*—The Trustees of the fund known as "the Sheriff's Pension Fund" (hereinafter referred to as the Fund), maintained for the provision of pensions for the officers and servants employed by the Sheriff prior to the commencement of this Act, shall transfer and pay to such authority, in such manner and at such times as may be prescribed, the balance standing to the credit of the Fund at the date of the commencement of this Act, and such balance shall be carried to the account and credit of the revenues of the Province.

11. *Pensions.*—(1) All officers and servants previously employed by the Sheriff who, at the date of the commencement of this Act, are in receipt of pensions or entitled to gratuities in accordance with the rules of the Fund, shall be paid such pensions or gratuities out of the revenues of the Province.

(2) All officers and servants of the Sheriff, who are in his employment at the date of the commencement of this Act, shall, in respect of such employment prior to that date, be paid out of the revenues of the Province such pensions, gratuities and compensation as may be determined by the Provincial Government in accordance with the rules of the Fund :

Provided that such compensation, if any, shall not be less than that which, in similar circumstances and in accordance with the rules made in this behalf by the Provincial Government, would be admissible to persons in the service of the Provincial Government.

(3) Any dispute arising in connection with the amount of any pension, gratuity or compensation payable under sub-section (1) or sub-section (2) shall be referred to the West Bengal Public Service Commission, the decision of which shall be final and shall not be the subject-matter of any proceedings in any Court.

(4) All pensions payable under this section out of the revenues of the Province shall be so payable in all respects as pensions payable for service

under the Provincial Government and shall be subject to the rules made in that behalf by the Provincial Government.

(5) If any officer or servant of the Sheriff is permanently re-employed in the service of the Provincial Government, his employment under the Sheriff shall, for the purposes of the rules relating to pay and pensions, be deemed to have been service under the Provincial Government :

Provided that,—

(a) if any such officer or servant desires to elect to refund any gratuity or cease to draw any pension, as the case may be, and to count for future pension his employment under the Sheriff, he shall so elect immediately on being permanently re-employed ; and

(b) if he so elects, any period of temporary service under the Provincial Government intervening between the date of the commencement of this Act and the date of such permanent re-employment shall not be considered as a break in service, but shall not count as service for the purposes of pension.

*Explanation.*—Where such election is made the whole of the pension, both for employment under the Sheriff prior to the commencement of this Act and for service in such permanent re-employment under the Provincial Government, shall be calculated at the rates provided in the rules relating to the pensions of servants of the Provincial Government, and not at the rates provided in the rules of the Fund.

12. *Power to make rules.*—(1) The Provincial Government may make rules for carrying into effect the purposes of this Act in regard to those functions of the Sheriff which are discharged under the administrative control of the Provincial Government.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for,—

(a) the manner of appointment and the allowances of the Deputy Sheriff referred to in section 4 ;

(b) the distribution of work between the Sheriff and the Deputy Sheriff ;

(c) the authority referred to in sections 9 and 10 and the manner in which and the time at which the fees and balances referred to in these sections shall be transferred and paid ;

(d) the safe custody and deposit of all monies, securities and other moveables which come into the hands of the Sheriff ; and

(e) the accounts to be maintained by the Sheriff, and the audit and inspection thereof.

### **The West Bengal Non-Agricultural Tenancy Act, 1949.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor General [Vide Notification No. 677L, of the Judicial and Legislative (Legislative) Department, dated the 30th April 1949, published in the *Calcutta Gazette*, Extraordinary, Part III, dated the 5th May 1949.]

### **West Bengal Act XX of 1949.**

[*Passed by the West Bengal Legislature*]

[Assent of the Governor General was first published in the *Calcutta Gazette*, of the 5th May 1949.]

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

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

It is hereby enacted as follows :—

## CHAPTER I.

### PRELIMINARY

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

(2) It extends to the whole of West Bengal, except—

(a) Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923),

(b) such suburbs of Calcutta as may have been or may hereafter be notified under section 1 of the Calcutta Suburban Police Act, 1866 (Ben. Act II of 1866), and are not included within Calcutta as so defined, and

(c) the Howrah Municipality as constituted under the Bengal Municipal Act, 1932 (Ben. Act XV of 1932).

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

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

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

(2) “Collector” includes any officer appointed by the Provincial Government to perform all or any of the functions of a Collector under this Act ;

(3) “landlord” means a person immediately under whom a non-agricultural tenant holds and includes the Government ;

(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—

(a) a homestead to which the provisions of section 182 of the Bengal Tenancy Act, 1885 (VIII of 1885), apply,

(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 in the districts of Darjeeling or Jalpaiguri 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 and is, or but for a special contract would be, liable to pay rent to such person for that land 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 ;

(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 ;

(3) all words and expressions used but not defined in this Act and used in the Bengal Tenancy Act, 1885 (VIII of 1885), or the Transfer of Property Act, 1882 (IV of 1882), have the same meanings as in those Acts.

#### CHAPTER II.

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

(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. *Purposes for which non-agricultural tenant may hold non-agricultural land.*—A non-agricultural tenant may hold non-agricultural land for—

(a) homestead or residential purposes ;

(b) manufacturing or business purposes ; or

(c) other purposes.

5. *Tenancies held by a non-agricultural tenant.*—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 the 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 other 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 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.

6. *Manner of use of non-agricultural lands.*—(1) A tenant holding non-agricultural land may use such land in any manner which is not inconsistent with the purposes of the tenancy 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 dig any tank ; and
- (c) to plant, enjoy the flowers, fruits and other products of, and fell and utilize or dispose of the timber of, any tree on such land ;

Provided that he shall not be entitled to convert any such land into a place of religious worship without the previous consent of the landlord.

(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 utilize or dispose of the timber of, any tree planted by him on such land ;

Provided that he shall not be entitled to convert any such land into a place of religious worship without the previous consent of the landlord.

7. *Incidents of certain tenancies.*—Notwithstanding anything contained in any other law for the time being in force or in any contract—

(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 (IV of 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 term of not less than twelve years without any lease in writing, or

(3) if any non-agricultural land has been held for a term of not less than twelve years under a lease in writing 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 with the express or implied consent of the landlord 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 the purposes of the tenancy,

(ii) 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 immoveable 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 Crown, 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, be capable of being transferred and bequeathed in the same manner, and to the same extent as his other immovable property.

8. *Renewals of lease of tenancies held for not less than twelve years and succession to, and transfer of, such tenancies.*—(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 option of successive renewals of such lease on such fair and reasonable conditions as to rent as may be agreed upon between the landlord and such tenant :

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

(2) If there is any dispute as to whether any condition for the renewal of a lease under sub-section (1) is fair and reasonable, the landlord or the tenant may apply in the prescribed manner to the Court, and the Court shall thereupon determine the conditions for renewal of the lease which it considers fair and reasonable in the circumstances of the case.

(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 after the tenant has on any occasion exercised his option of renewal, during the term of such renewal except on the ground that he has used such land in a manner which renders it unfit for use for the purposes of the tenancy.

(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 option of renewal, during the term of such renewal—

(i) 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 Crown, his interest in such land shall be extinguished ; and

(ii) subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

9. *Incidents of non-agricultural tenancies held for less than twelve years*—(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) under a lease in writing for a term of more than one year but less than twelve years to which the provisions of clause (5) of section 7 do not apply, or

(b) without a lease in writing, 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 the purposes of the tenancy ;
- (ii) on the ground that the term of the lease has expired in the case of the tenancies of the class specified in clause (a) ;
- (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 (b) :

Provided that a tenant shall not be liable to ejection on the ground specified in clause (iii) except on payment of such reasonable compensation as may be agreed upon between the landlord and the tenant or if they do not agree, as may be determined by the Court on the application of the landlord or such tenant.

(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 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 Crown, his interest in such land shall be extinguished ; and

- (ii) subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

10. *Special incidents in case of misuse of non-agricultural land.*—Notwithstanding anything elsewhere contained in this Act or in any other law for the time being in force or in any contract where any non-agricultural land held by a non-agricultural tenant or any share or portion thereof is used—

- (a) for any immoral, illegal or unsocial purpose, or

(b) in any manner so as to become a source of grave danger to the public peace or public safety,  
a co-sharer tenant or the landlord of the non-agricultural tenant may, if such land or share or portion is contiguous to any land in the actual possession of such co-sharer tenant or landlord, as the case may be, apply to the Court for such land or share or portion to be transferred to himself on payment of such consideration as may be determined by the Court ;

Provided that if two or more persons apply under this section for such transfer, the Court shall determine the priority of the rights of the respective applicants to purchase under this section.

11. *Enhancement of rent.*—(1) The rent payable by a tenant in respect of any non-agricultural land shall, except in the case where such land is held on a fixed rent or free of rent either under a contract or under a decree or order passed by a competent Court or authority, be liable to enhancement as provided by this Act and not otherwise.

(2) The rent payable by a tenant may be enhanced up to such limit as the Court thinks fair and equitable in the circumstances of the case :

Provided that the rent shall not be enhanced so as to exceed the rent

previously payable by the tenant by more than twelve and a half per centum.

(3) In determining a fair and equitable rent under sub-section (2) the Court shall, subject to such further provisions as may be prescribed in this behalf, take into consideration—

(a) the existing rent and the period during which it has remained without enhancement ;

(b) as far as can expediently be ascertained, the rent paid to other landlords for non-agricultural lands in the vicinity with similar advantages or of a similar description ;

(c) the market value of the non-agricultural land and the rent which would be payable if the rate were fixed at not more than four per centum of such market value ;

(d) the special conditions and incidents, if any, of the tenancy ; and

(e) any cost incurred in making any improvement to or on the non-agricultural land or in converting such land for the purpose for which it is being used according to the conditions of the tenancy.

12. *Provisions as to enhancement on ground of landlord's improvement*.—(1) When an enhancement is claimed on the ground of a landlord's improvement,—

(a) the Court shall not grant an enhancement unless the improvement has been registered in accordance with the provisions of this Act ; and

(b) in determining the amount of enhancement the Court shall have regard to,—

(i) the increase in the value of the non-agricultural land caused or likely to be caused by the improvement ;

(ii) the cost of the improvement ;

(iii) the expenditure (if any), required for utilising the improvement, and

(iv) the existing rent and the ability of the non-agricultural land to bear a higher rent.

(2) a decree under this section shall, on application of the tenant, be subject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect.

13. *Power to order progressive enhancement*.—If it thinks that an immediate increase of rent will cause hardship, the Court may direct that the enhancement shall take effect gradually at such intervals and by such increments extending over a period not exceeding five years as the Court may fix in this behalf.

14. *Limitation of right to enhancement*.—(1) When a tenant is admitted to the occupation of any non-agricultural land the rent payable by such tenant in respect of such land shall not, except on the ground of the landlord's improvement, be enhanced during the fifteen years next following the date on which the tenant has been so admitted to the occupation of such land.

(2) When the rent of a tenant has been enhanced by the Court or in pursuance of the conditions of a contract, it shall not be further enhanced during the fifteen years next following the date on which it has been last so enhanced and for the purposes of this section if an order of gradual enhancement of such rent has been made by a Court in accordance with the provisions of section 13, the full rent fixed by such order shall be deemed to have come into effect from the date of such order :

Provided that the landlord of such tenant may institute a suit for the enhancement of the rent of such tenancy during the said period of fifteen years on the ground of any improvement effected to the non-agricultural land comprised in such tenancy by, or wholly or partly at the expense of, such landlord during such period.

15. *Reduction of rent.*—The rent of a tenant may be reduced by the Court if the Court considers that the rate of rent payable by such tenant is unfair and inequitable, and in determining what rent is fair and equitable under this section the Court shall have regard to the provisions of sub-section (3) of section 11.

#### CHAPTER IV.

##### UNDER-TENANTS.

16. *Application of Chapter.*—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.*—An under-tenant may be admitted to the occupation of any non-agricultural land on such terms and conditions consistent with the provisions of this Act as may be agreed upon between himself and his landlord.

18. *Rate of rent payable by an under-tenant.*—An under-tenant shall be liable to pay such rate of rent for the non-agricultural land comprised in his tenancy as has been agreed upon between himself and his landlord at the time of his admission to the occupation of such land :

Provided that the rate of rent payable in respect of the non-agricultural land comprised in any tenancy by an under-tenant who has been admitted to occupation of such land after the commencement of this Act shall not, except in the case where such land is held on a fixed rent or free of rent by the tenant under whom such under-tenant holds, exceed one and a half times the rate of rent payable by such tenant in respect of such land.

19. *Enhancement of rent.*—(1) Notwithstanding anything contained in any other law for the time being in force or in any contract, the rent of under-tenant shall be liable to enhancement up to a limit not exceeding one and a half times the rent for the time being payable in respect of the non-agricultural land comprised in the tenancy of such under-tenant by the tenant under whom such under-tenant holds in the case where such tenant does not hold such land at a fixed rent or free of rent, and up to such limit as the Court may, subject to such provisions as may be prescribed in this behalf, think fair and equitable in other cases.

(2) For the purposes of sub-section (1) the rent for the time being payable in respect of the non-agricultural land comprised in the tenancy of an under-tenant by the tenant under whom such under-tenant holds shall, in the case where such under-tenant has been admitted to the occupation of only a portion of the land comprised in the tenancy of such tenant, be determined in such manner as may be prescribed.

20. *Ejectment of an under-tenant.*—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 ejectment on one or more of the following grounds, and not otherwise, namely :—

(a) on the ground that he has used the non-agricultural land com-

prised in his tenancy in a manner which renders it unfit for use for the purposes of the tenancy ;

(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 agreed upon between the landlord and the under-tenant, or in the case where they do not agree, as may be determined by the Court on the application of the landlord or such under-tenant.

21. *Other incidents of tenancies of under-tenants.*—The interest of an under-tenant in any non-agricultural land shall,—

(a) in the case where such under-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 under-tenant is subject his other property goes to the Crown, his interest in such land shall be extinguished ; and

(b) subject to the provisions of this Act, be capable of being transferred and bequeathed in the same manner and to the same extent as his other immovable property.

22. *Special incidents of tenancies of under-tenants.*—Notwithstanding anything contained in any other law for the time being in force or in any contract, in the case of the tenancy of an under-tenant—

(a) the provisions of section 10 shall apply ; and

(b) where—

(i) the conditions referred to in clause (1), (2), (3), (4) or (5) of section 7 are fulfilled, or

(ii) the tenancy is held under a lease in writing for a term of not less than twelve years specified in such lease, the under-tenant shall have all the rights and liabilities of a tenant as set forth in section 7 or section 8, as the case may be, and the provisions of sections 6, and 11 to 15 shall, and the provisions of sections 18, 19 and 20, in so far as they are inconsistent with the provisions of this section shall not, apply.

## CHAPTER V.

### PROVISIONS AS TO TRANSFER OF NON-AGRICULTURAL LAND.

23. *Manner of transfer of non-agricultural land and notices to landlords.*—(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 Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 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, the 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

(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 Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 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 in the prescribed manner serve the notices for which this section provides and after service of such notice the landlord shall not refuse to recognise the transferee as the tenant in respect of the land or portion or share thereof transferred nor omit to enter the name of the transferee in the rent-roll of the landlord in place of that of the transferor or, where only a portion or share of the interest of the transferor has been transferred, along with the name of the transferor.

**24. Power of the co-sharer or the immediate landlord of transferor to purchase.**—(1) If the entire non-agricultural land in a non-agricultural tenancy is transferred, the immediate landlord, or if a portion or share of such land is transferred, the immediate landlord or one or more co-sharer tenants of such land may, within four months of the service of notice issued under section 23, apply to the Court for such land or portion or share thereof to be transferred to himself or themselves, as the case may be :

Provided that—

(a) if both a co-sharer tenant and the landlord apply under this section and comply with the provisions herein contained the co-sharer tenant shall have the prior right to purchase under this section ;

(b) the immediate landlord of the non-agricultural tenant shall not have any right to purchase under this section unless the non-agricultural land or the share or portion thereof so transferred is contiguous to any land in the actual possession of the landlord and the Court is satisfied that such land or share or portion thereof is required for use by such landlord for any of the purposes specified in section 4 ; and

(c) in the case of transfer in execution of a decree or certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of such land, the immediate landlord of the non-agricultural tenant shall not have any right to purchase under this section.

(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 property or the portion or share thereof 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. 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 on this account 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.

(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 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). 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, and, in the case where the application is made by the immediate landlord, the Court is satisfied that conditions referred to in sub-section (1) have been fulfilled, 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:

Provided that if both the immediate landlord and the co-sharer tenant have applied under this section and the application of the co-sharer tenant is allowed under this sub-section, the application of the immediate landlord shall be dismissed.

(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 property or the portion or share thereof, as the case may be, 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 the making of the order under sub-section (5) —

(i) the right, title and interest in the non-agricultural land or portion or share thereof accruing to the transferee from the transfer shall, subject to any orders passed under sub-section (7), be deemed to have vested free from all encumbrances which have been annulled or created after the date of transfer, in the immediate landlord or in the co-sharer tenant, as the case may be, whose application to purchase has been allowed under this section.

(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, sub-lease or partition, or

(c) a transfer by bequest or gift (including *hela* but excluding *hela-bilawas* 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 *debutter* 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. *Saving as to statements in instruments of transfer where landlord is not a party.*—Notwithstanding anything contained in the Indian Evidence Act, 1872 (1 of 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.

26. *Interpretation.*—(1) In this chapter “transferee”, “purchaser” and “mortgagee” include their successors in interest.

(2) In section 2:—

(a) “transfer” does not include partition or a sub-lease, 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.

## CHAPTER VI.

## RECORD-OF-RIGHTS AND SETTLEMENTS OF RENTS.

27. *Power to order survey and preparation of record-of-rights.*—The Provincial Government may in any case and in particular, in any of the cases specified in sub-section (2) of section 101 of the Bengal Tenancy Act, 1885 (VIII of 1885), if it thinks fit, make an order directing that a survey be made and a record-of-rights be prepared by a Revenue-officer in respect of all non-agricultural lands in any local area, estate or tenure or part thereof whether or not the said Act extends to such area, estate, tenure or part.

28. *Applicability of the provisions of Chapter X of the Bengal Tenancy Act, 1885.*—When an order under section 27 has been made, —

(a) the particulars to be recorded shall be specified in the order and may include, either without or in addition to other particulars, any of those particulars specified in section 102 of the Bengal Tenancy Act, 1885 (VIII of 1885);

(b) subject to any rules made under this Act, all the provisions of Chapter X of the Bengal Tenancy Act, 1885, and the rules made thereunder shall, in so far as they are not inconsistent with the provisions of this Act, apply as if such order is an order made under section 101 of the said Act in respect of lands used for purposes connected with agriculture or horticulture.

29. *Order for estimate of fair and equitable rents of non-agricultural lands and preparation of a settlement rent-roll.*—When an order has been made under section 27 in respect of any local area, estate or tenure or part thereof of which a settlement of land revenue is being or is about to be made, the Provincial Government may make an order directing the Revenue-officer, after recording under section 28 those particulars which are relevant and after publication of the draft of the record-of-rights—

(a) to estimate fair and equitable rents for non-agricultural tenants of every class in accordance with the provisions of this Act, and

(b) to estimate the rental value for all or any non-agricultural lands which are held *khas* by a landlord, in such local area, estate or tenure or part thereof, and then to prepare in the prescribed form and manner a settlement rent-roll in which the rents and rental values so estimated together with such other particulars as may be prescribed shall be specified

30. *Procedure where both non-agricultural and other lands are concerned.*—Notwithstanding anything contained in the Bengal Tenancy Act, 1885, when an order has been made under section 29 directing a Revenue-officer to prepare a settlement rent-roll in respect of non-agricultural lands in any local area, estate or tenure or part thereof—

(a) the rents of such non-agricultural lands shall not be settled under Part II of Chapter X of the said Act; and

(b) where any of such non-agricultural lands are comprised in a tenancy which includes lands other than non-agricultural lands, the Revenue-officer shall—

(i) divide the tenancy so as to constitute separate tenancies for the non-agricultural lands and the other lands;

(ii) apportion the existing rent between the tenancies so constituted; and

(iii) estimate fair and equitable rents for the non-agricultural lands in accordance with the provisions of this Act.

**31. Publication of settlement rent-roll, hearing of objections and confirmation.**—(1) When an order has been made under section 29 for the preparation of a settlement rent-roll, the Revenue-officer shall prepare such rent-roll in accordance with the provisions of this Chapter and shall cause a draft of it to be published in the prescribed manner and for the prescribed period and shall receive and consider any objections made in regard to any entry therein or omission therefrom during the period of publication and shall dispose of such objections according to such rules as the Provincial Government may make.

(2) The Revenue-officer may, of his own motion or on the application of any party aggrieved, at any time before a settlement rent roll is submitted to the confirming authority under section 32, revise any entry therein :

Provided that no such entry shall be revised until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

**32. Final revision of settlement rent-roll and its confirmation by prescribed Revenue authority.**—(1) When all objections have been disposed of, under section 31, the Revenue-officer shall submit the settlement rent-roll to the prescribed Revenue authority for confirmation with a full statement of the grounds for his proposals and a summary of the objections (if any) which he has received.

(2) Such authority may confirm the settlement rent-roll with or without amendment or may return it for revision :

Provided that no entry shall be amended or omission supplied until reasonable notice has been given to the parties concerned to appear and be heard in the matter.

(3) After confirmation by such authority the Revenue-officer shall cause the date of confirmation to be published in the prescribed manner and thereafter the settlement rent-roll shall be open to inspection at such place and times as may be prescribed.

**33. Appeals.**—(1) Any person who is aggrieved by any entry in or omission from a settlement rent-roll confirmed under section 32 may appeal to the prescribed Revenue authority and from the decision of such authority to the Board of Revenue in the manner and within the period prescribed in this behalf.

(2) No Civil Court shall annul or alter any decision of a Revenue-officer, a Revenue authority or the Board of Revenue under section 30 or section 31 or section 32 or sub-section (1) of this section except as provided in section 34.

**34. Suits.**—(1) Any person who is aggrieved by any entry in or omission from a settlement rent-roll confirmed under section 32 may institute a suit in the Civil Court which would have jurisdiction to entertain a suit for the possession of the land to which the entry relates or in respect of which the omission was made.

(2) Such suit shall be instituted within six months from the date of confirmation of the settlement rent-roll or from the date of the certificate of final publication of the record-of-rights, whichever is later, or, if an appeal has been presented under section 33, within three months from the date of the disposal of such appeal.

(3) Such suit may be instituted on any of the following grounds and on no other ground, namely :—

(a) that the land is not liable to the payment of rent ;

(b) that the land although entered in the record-of-rights as being held rent-free is liable to the payment of rent ;

(c) that the relation of landlord and tenant does not exist ;

(d) that in the record-of-rights the land has been wrongly recorded as part of a particular estate or tenancy or wrongly omitted from the lands of any estate or tenancy ;

(e) that in the record-of-rights there has been any omission of an under-tenant or such under-tenant has been wrongly recorded as holding the land rent-free ;

(f) that in the record-of-rights the special conditions and incidents of the tenancy have not been recorded or have been wrongly recorded ;

(g) that in the record-of-rights any right of way or other easement attached to the land has not been recorded or has been wrongly recorded ;

(h) that the land has been wrongly recorded in the settlement rent-roll as non-agricultural land ; and

(i) that there has been an omission to estimate fair and equitable rents in respect of any land under this Act.

(4) When a Civil Court has passed final orders or a decree under this section it shall notify the same to the Collector.

**35. Notification of order under section 27 or section 29 to be conclusive evidence.**—A notification in the *Official Gazette* of an order under section 27 or of an order under section 29 shall be conclusive evidence that the order has been duly made.

**36. Presumption of rents settled under sections 30 to 33.**—Subject to the provisions of section 34, all rents entered in a settlement rent-roll confirmed under section 32 or settled under section 33 shall be deemed to have been correctly settled and to be fair and equitable rents within the meaning of this Act.

**37. Correction of settlement rent-roll.**—The Revenue-officer may at any time correct any *bona fide* clerical mistake in or omission from the settlement rent-roll and shall make such alterations in the same as may be necessary to give effect to any decision under sub-section (1) of section 33 or section 34.

**38. Settlement of rents in respect of non-agricultural lands by Revenue-officers in the case where a settlement of land revenue is not being or is not about to be made.**—Where an order has been made under section 27 for the preparation of a record-of-rights in respect of all non-agricultural lands in any local area, estate or tenure or part thereof of which a settlement of land revenue is not being made or is not about to be made, the Revenue-officer shall, in settling the rents of such non-agricultural lands under sections 105 and 105A of the Bengal Tenancy Act, 1885 (VIII of 1885), have regard to the provisions of this Act as to the determination of a fair and equitable rent and to such rules as may be made in this behalf under this Act.

**39. Stay of proceedings in Civil Court during preparation of record of-rights under section 27.**—When an order has been made under section 27, directing the preparation of a record-of-rights then, subject to the provisions of section 34, a Civil Court shall not,—

(a) where a settlement of land revenue is being or is about to be made—until after the final publication of the record-of-rights, and

(b) where a settlement of land revenue is not being made or is not about to be made—until four months after the final publication of the record-of-rights,

entertain any suit or application for the alteration of the rent or the determination of the status of any non-agricultural tenant in the area to which the record-of-rights applies.

40. *Date from which settled rents take effect.*—When a rent is settled by a Revenue-officer under this Chapter or under Chapter X of the Bengal Tenancy Act, 1885, after an order under section 27 has been made, such rent shall take effect from such date as may be fixed by the Revenue-officer.

41. *Period for which rents as settled are to remain unaltered.*—(1) When the rent of the non-agricultural land comprised in a tenancy is settled under this Chapter, or under Chapter X of the Bengal Tenancy Act, 1885, after an order under section 27 has been made, it shall not, except on the ground of a landlord's improvement or of a subsequent alteration in the area of such land, be enhanced, in the case where such land is held by a tenant or by an under-tenant having under section 21 the rights and liabilities of a tenant, for fifteen years, and in the case where such land is held by an under-tenant having no such rights and liabilities, for five years; and no such rent shall be reduced within the period aforesaid save on the ground of alteration in the area of the non-agricultural land comprised within the tenancy.

(2) The said periods of fifteen years and five years shall be counted from the date on which the rent settled takes effect under this Chapter.

42. *Interpretation.*—In this Chapter—

(a) "Revenue-officer" includes any officer whom the Provincial Government may appoint to discharge all or any of the functions of a Revenue-officer under that Chapter;

(b) the term "settlement of land-revenue" includes a settlement of rent in an estate or tenure which belongs to the Crown.

## CHAPTER VII.

### GENERAL PROVISIONS AS TO RENT OF NON-AGRICULTURAL TENANCIES.

#### *Payment of rent.*

43. *Rent to be paid yearly.*—Subject to agreement, a money-rent payable by a non-agricultural tenant shall be paid yearly according to the Bengali year and shall fall due on the last day of the Bengali year in respect of which it is paid.

44. *Time and place for payment of rent.*—(1) Every non-agricultural tenant shall pay or tender the yearly rent before sunset of the day on which it falls due:

Provided that the non-agricultural tenant may pay or tender the rent payable for the year at any time during the year before it falls due.

(2) The payment or tender of rent may be made—

(i) at the landlord's local office or at such other convenient place as may be appointed in that behalf by the landlord; or

(ii) by postal money-order in the manner prescribed.

A tender may also be made by depositing the rent in Court in accordance with the provisions of section 51.

(3) Where rent is sent by postal money-order in the manner prescribed, the Court may presume until the contrary is proved that a tender has been made.

(4) When a landlord accepts rent sent by postal money-order, the fact of this acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the postal money-order form.

(5) Any yearly rent or part of any yearly rent not duly paid at or before the time when it falls due shall be deemed to be an arrear.

**45. Appropriation of payments.**—(1) When a non-agricultural tenant makes a payment on account of rent, he may declare the year or years in respect of which he wishes the payment to be credited, and the payment shall be credited accordingly.

(2) If he does not make any such declaration, the payment may be credited to the account of such year or years as the landlord thinks fit.

*Receipts and accounts.*

**46. Non-agricultural tenant making payment to his landlord entitled to a receipt.**—(1) Every non-agricultural tenant who makes a payment on account of rent to his landlord shall be entitled to obtain forthwith a written receipt for such payment either from such landlord, or, where the agent of such landlord has been authorised in writing by such landlord to issue and sign such receipts on behalf of such landlord, from such agent.

(2) The landlord or such agent, as the case may be, shall prepare and retain a counterfoil of the receipt.

(3) The receipt and counterfoil shall be in such form and shall specify such particulars as may be prescribed either generally or for any particular local area or class of cases.

(4) If a receipt does not contain substantially the particulars required by this section, it shall be presumed, until the contrary is shown, to be an acquittance in full of all demands for rent up to the date on which the receipt was given.

**47. Non-agricultural tenant entitled to full discharge or statement of account at close of year.**—(1) Where a landlord admits that all rent payable by a non-agricultural tenant to the end of the Bengali year has been paid, the non-agricultural tenant shall be entitled to receive free of charge, within three months after the end of the year, a receipt in full discharge of all rent falling due to the end of the year, either from the landlord, or, where the agent of such landlord has been authorised in writing to issue and sign such receipts on behalf of such landlord, from such agent.

(2) Where the landlord does not so admit, the non-agricultural tenant shall be entitled, on paying a fee of four annas, to receive, within three months after the end of the year, a statement of account in such form and specifying such particulars as may be prescribed either generally or for any particular local area or class of cases.

(3) The landlord or such agent, as the case may be, shall prepare and retain a copy of the statement containing similar particulars.

**48. Penalties and fine for withholding receipts and statements of account and failing to keep counterparts.**—(1) If a landlord or his agent without reasonable cause refuses or neglects to deliver to a non-agricultural tenant a receipt in accordance with the provisions of section 46 for any rent paid by the non-agricultural tenant, such tenant may, within three months from the date of payment, institute a suit to recover from such landlord or agent, as the case may be, such penalty, not exceeding double the amount or value of that rent, as the Court thinks fit.

(2) If a landlord or his agent without reasonable cause refuses or neglects to deliver to a non-agricultural tenant demanding the same either the receipt in full discharge or, if the non-agricultural tenant is not entitled to such a receipt, the statement of account for any year required by section 47, such tenant may, within the next ensuing Bengali year, institute a suit

to recover from such landlord or agent, as the case may be, such penalty as the Court thinks fit, not exceeding double the aggregate amount or value of all rent paid by such tenant to the landlord during the year for which the receipt or account should have been delivered.

(3) If a landlord or his agent, without reasonable cause, fails to deliver to the non-agricultural tenant a receipt or statement or to prepare and retain a counterfoil or copy of a receipt or statement, as required by either of the said sections, such landlord or agent, as the case may be, shall be liable to a fine not exceeding fifty rupees, to be imposed, after summary inquiry, by the Collector.

(4) The Collector may hold a summary inquiry under sub-section (3), either on information received from a Revenue-officer within one year, or upon complaint of the party aggrieved made within three months, from the date of failure, or upon the report of a Civil Court.

(5) Where, in any case instituted under sub-section (3), the Collector discharges any landlord or agent, and is satisfied that the complaint of the non-agricultural tenant on which the proceedings were instituted is false or vexatious, the Collector may, in his discretion, by his order of discharge direct the non-agricultural tenant to pay to such landlord or agent such compensation, not exceeding fifty rupees, as the Collector thinks fit.

(6) An appeal shall lie to the Commissioner of the Division against any order of the Collector imposing a fine under sub-section (3) or awarding compensation under sub-section (5); and the order passed by the Commissioner on such appeal shall, subject to any order which may be passed on revision by the Board of Revenue, be final.

(7) Any fine imposed or compensation awarded under this section may be recovered in the manner provided by any law for the time being in force for the recovery of a public demand.

(8) For the purpose of an inquiry under this section the Collector shall have power to summon and enforce the attendance of witnesses, and compel the production of documents in the same manner as is provided in the case of a Court under the Code of Civil Procedure, 1908 (Act V of 1908).

(9) The existence of a dispute as to the rent or area of tenancy on account of which rent is paid shall not be deemed to be a reasonable cause for refusing, neglecting or otherwise failing to deliver—

(a) a receipt for any amount actually paid on account of rent, or

(b) the statement of account required by section 47, and the refusal of the non-agricultural tenant to accept the receipt shall not be deemed to be a reasonable cause for failing to prepare and retain a counterfoil of such receipt as required by section 46.

49 *Provincial Government to prepare forms of receipt and account.*—

(1) The Provincial Government shall cause to be prepared and kept for sale to landlords at all subdivisional offices forms of receipts with counterfoils and of statements of account suitable for use under sections 46 and 47.

(2) The forms may be sold in books with the leaves consecutively numbered or otherwise as the Provincial Government thinks fit.

50 *Effect of receipt by registered proprietor, manager or mortgagee.*—

Where rent is due to the proprietor, manager or mortgagee of an estate, the receipt of the person registered under the Land Registration Act, 1876 (Ben. Act VII of 1876), as proprietor, manager or mortgagee of that estate, or of his agent authorised in that behalf, shall be a sufficient discharge for

the rent ; and the non-agricultural tenant liable for the rent shall not be entitled to plead in defence to a claim by the person so registered that the rent is due to any third person :

Provided that nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, manager or mortgagee.

*Deposit of rent.*

**51. Application to deposit rent in Court.**—(1) In any of the following cases, namely :—

(a) when a non-agricultural tenant tenders money on account of rent and the landlord refuses to receive it or refuses to grant a receipt for it ;

(b) when a non-agricultural tenant bound to pay money on account of rent has reason to believe, owing to a tender having been refused or a receipt withheld on a previous occasion, that the person to whom his rent is payable will not be willing to receive it and to grant him a receipt for it ;

(c) when the rent is payable to co-sharers jointly and the non-agricultural tenant is unable to obtain the joint receipt of the co-sharers for the money and no person has been empowered to receive the rent on their behalf ; or

(d) when the non-agricultural tenant entertains a *bona fide* doubt as to who is entitled to receive the rent,

the non-agricultural tenant may present to the Court having jurisdiction to entertain a suit for the rent of his tenancy an application in writing for permission to deposit in the Court a sum not less than the amount of the money then due.

(2) The application shall—

(a) contain a statement of the grounds on which it is made ;

(b) state—

(i) in the cases referred to in clauses (a) and (b) of sub-section (1) the name of the person to whose credit the deposit is to be entered,

(ii) in the case referred to in clause (c) of that sub-section, the names of the co-sharers to whom the rent is due, or of so many of them as the non-agricultural tenant may be able to specify, and

(iii) in the case referred to in clause (d) of that sub-section, the name of the person to whom the rent was last paid and of the person or persons now claiming it ;

(c) be signed and verified in the manner provided in sub-rules (2) and (3) of rule 15 of Order VI in Schedule I to the Code of Civil Procedure, 1908 (Act V of 1908), by the non-agricultural tenant, or, where he is not personally cognizant of the facts of the case, by some person so cognizant ; and

(d) be accompanied, in the cases referred to in clauses (a) and (b) of sub-section (1) by the prescribed cost of transmission of the money deposited to the landlord and in the cases referred to in clauses (c) and (d) of that sub-section by a fee of the prescribed amount.

**52. Receipt granted by Court for rent deposited to be a valid acquittance.**—(1) If it appears to the Court to which an application is made under section 51 that the applicant is entitled under that section to deposit the rent, it shall receive the rent and give a receipt for it under the seal of the Court.

(2) A receipt given under this section shall operate as an acquittance for the amount of the rent payable by the non-agricultural tenant and de-

posited as aforesaid in the same manner and to the same extent as if that amount of rent had been received—

in the cases referred to in clauses (a) and (b) of sub-section (1) of section 51 by the person specified in the application as the person to whose credit the deposit was to be entered ;

in the case referred to in clause (c) of that sub-section, by the co-sharers to whom the rent is due ; and

in the case referred to in clause (d) of that sub-section, by the person entitled to the rent.

**53. Procedure for payment to the landlord of rent deposited.**—The Court receiving a deposit—

(i) in the case referred to in clause (a) or in clause (b) of sub-section (1) of section 51 shall forthwith forward the same by postal money-order to the address of the landlord ; and

(ii) in the case referred to in clause (c) or in clause (d) of that sub-section shall forthwith cause to be affixed in a conspicuous place at the Court-house a notification of the receipt thereof containing a statement of all material particulars, and, if the amount of the deposit is not paid away under section 54 within the period of fifteen days next following the date on which the notification is so affixed, the Court shall forthwith in the case referred to in clause (c) of that sub-section cause a notice of the receipt of the deposit to be posted free of charge at the landlord's local office, if any, and in some conspicuous place in the village or town in which the non-agricultural land comprised within the tenancy or any portion thereof is situated, and in the case referred to in clause (d) of that sub-section cause a like notice to be served free of charge on every person who it has reason to believe claims, or is entitled to, the deposit.

**54. Payment or refund of deposit.**—(1) The Court may pay the amount of the deposit notified under section 53 to any person appearing to it to be entitled to the same, or may, if it thinks fit, retain the amount pending the decision of a Civil Court as to the person so entitled.

(2) If no payment is made under clause (1) of section 53 or under sub-section (1) before the expiration of three years from the date on which a deposit is made, the amount deposited may, in the absence of any order of a Civil Court to the contrary, be repaid to the depositor upon his application and on his returning the receipt given by the Court with which the rent was deposited.

(3) No suit or other proceeding shall be instituted against the Crown or against any officer of the Crown, in respect of anything done by a Court receiving a deposit under section 52 but nothing in this section shall prevent any person entitled to receive the amount of any such deposit from recovering the same from a person to whom it has been paid under this section.

*Penalty for refusing to receive rent.*

**55. Penalty for refusing to receive rent tendered by postal money-order or deposited.**—If a landlord or his agent refuses without reasonable cause to receive payment of rent remitted by postal money-order or deposited in Court, the landlord shall be precluded from recovering, by suit, interest, costs or damages in respect of the same, and the Court may in addition award to the non-agricultural tenant damages not exceeding twelve and a half per centum on the whole amount claimed by the plaintiff.

The plea of the existence of any dispute as to the amount of rent of

or the area of the land comprised in the tenancy shall not be deemed to be a reasonable cause under this section :

Provided that, when a landlord accepts rent, which has been deposited or remitted by postal money-order, the fact of his acceptance shall not be used in any way as evidence that he has admitted as correct any of the particulars set forth in the application for permission to deposit or in the postal money-order form.

*Arrears of rent.*

56. *Liability to sale for arrears.*—A non-agricultural tenant shall not be liable to ejectment for arrears of rent, but his tenancy shall be liable to sale in execution of a decree for the rent thereof, and the rent shall be a first charge thereon.

57. *Interest on arrears.*—(1) An arrear of rent shall bear simple interest at the rate of six and a quarter *per centum per annum* from the expiration of the Bengali year in which the rent falls due to the date of payment or of the institution of the suit, whichever date is earlier.

(2) Nothing in any contract between a landlord and a non-agricultural tenant made before or after the commencement of this Act shall affect the provisions of sub section (1) relating to interest payable on arrears of rent.

58. *Power to award damages on rent withheld without reasonable cause, or to defendant improperly sued for rent.*—(1) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the defendant has, without reasonable or probable cause, neglected or refused to pay the amount of rent due by him, the Court may award to the plaintiff, in addition to the amount decreed for rent and costs, such damages, not exceeding twelve and a half *per centum* on the amount of rent decreed, as it thinks fit :

Provided that interest shall not be decreed when damages are awarded under this section :

Provide also that where damages are awarded—

(i) the amount of such damages shall not be less than the interest accruing up to the date of the institution of the suit, and

(ii) interest on the arrear may be awarded from the date of the institution of the suit up to the date of payment at such rate as the Court directs.

(2) If, in any suit brought for the recovery of arrears of rent, it appears to the Court that the plaintiff has instituted the suit without reasonable or probable cause, the Court may award to the defendant, by way of damages, such sum, not exceeding twelve and a half *per centum* on the whole amount claimed by the plaintiff, as it thinks fit.

*Liability for rent on change of landlord or after transfer of tenancy.*

59. *Non-agricultural tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer.*—(1) A non-agricultural tenant shall not, when his landlord's interest is transferred, be liable to the transferee for rent which became due after the transfer and was paid to the landlord whose interest was so transferred, unless the transferee has before the payment given notice of the transfer to the non-agricultural tenant.

(2) Where there is more than one non-agricultural tenant paying rent to the landlord whose interest is transferred, a general notice from the transferee to the non-agricultural tenants published in the prescribed manner shall be a sufficient notice for the purposes of this section.

60. *Liability for rent before transfer of tenancies.*—When a non-agri-

cultural tenant transfers his tenancy in whole or in part, the transferor and transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer :

Provided that the transferor shall not be liable to the landlord for such arrears of rent if the transferee has agreed to pay such arrears to the landlord and the fact has been mentioned in the instrument of transfer.

*Illegal impositions.*

61. *Abwab, etc., illegal.*—All impositions upon non-agricultural tenants under the denomination of *abwab*, *mathat* or other like appellations, in addition to the actual rent, shall be illegal, and all stipulations and reservations for the payment of such shall be void.

62. *Fine for realisation of abwab, etc.*—(1) If a landlord or his agent realises from a non-agricultural tenant any imposition declared under section 61 to be illegal, such landlord or agent, as the case may be, shall be liable to the same fine, to be imposed in the same manner, as in sub-section (3) of section 48, and the provisions of sub-sections (4), (7) and (8) of the said section relating to inquiry, fine and procedure shall, *mutatis mutandis* and so far as may be, apply to proceedings under this section.

(2) An appeal shall lie to the District Judge against an order imposing a fine under this section, and the order passed by the District Judge on such appeal shall be final.

(3) The imposition of a fine on a landlord or landlord's agent under this section shall not operate as a bar to the institution of a suit under section 63.

63. *Penalty for exaction by landlord from non-agricultural tenant of sum in excess of the rent payable.*—Every non-agricultural tenant from whom, except under any special enactment for the time being in force, any sum of money is exacted by his landlord in excess of the rent or interest lawfully payable, may, within six months from the date of the exaction, institute a suit to recover from the landlord, in addition to the amount so exacted, such sum by way of penalty as the Court thinks fit, not exceeding two hundred rupees ; or, when double the amount so exacted exceeds two hundred rupees, not exceeding double that amount.

## CHAPTER VIII.

### IMPROVEMENTS.

64. *Definition of "improvement".*—For the purposes of this Act the term "improvement" 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 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. *Rights to make improvements.*—(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.

(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.

(3) Any fee realised from a non-agricultural tenant for permission to make any improvement in respect of his tenancy shall be deemed to be an *abwab* and the provisions of sections 61 shall apply thereto.

66. *Collector to decide question as to right to make improvement, etc.—*

(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, the Collector 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 Collector under sub-section (1) and the order passed by the District Judge on such appeal shall be final.

67. *Registration of landlord's improvements.*—(1) A landlord may, by application to such Revenue-officer as the Provincial Government may appoint in this behalf, register any improvement which he has lawfully made or which has been lawfully made wholly or partly at his expense or which he has assisted a non-agricultural tenant in making.

(2) Every such application shall be in the prescribed form and shall contain such particulars and shall be verified in such manner, by local inquiry or otherwise, as may be prescribed.

(3) The Revenue-officer receiving the application may reject it if it has not been made within twelve months,—

(a) in the case of improvements made before the commencement of this Act, from the commencement of this Act; and

(b) in the case of improvements made after the commencement of this Act, from the date of the completion of the work.

68. *Application to record evidence as to improvement.*—(1) If any non-agricultural tenant holding any non-agricultural land or his landlord desires that evidence relating to any improvement made in respect thereof be recorded, he may apply to the Revenue-officer to whom an application for the registration of such improvement may be made under sub-section (1) of section 67 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 concerns*—Where a tenancy is held by a non-agricultural tenant subject to the condition of employment in any industrial concern, such tenant shall, notwithstanding anything elsewhere contained

in this Act, be liable to be ejected from the land comprised in such tenancy on the termination of such employment.

70. *No ejectment except in execution of decree.*—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.

71. *Application of the Transfer of Property Act, 1882, or other law.*—The provisions of the Transfer of Property Act, 1882 (IV of 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.

72. *Conversion of agricultural lands into non-agricultural tenancies in certain cases.*—(1) A tenant holding any land not being non-agricultural land which is situated within any area to which this Act extends or his landlord, may apply to the Collector for the conversion of such land into a tenancy to which the provisions of this Act apply and, on receipt of such application, the Collector shall, by order in writing, direct such conversion subject to payment of such rent not exceeding twice the rent for the time being payable for such land, as the Collector may fix :

Provided that no landlord shall be entitled to apply under this sub-section for such conversion of any land except in the case where such land is being used by the tenant by whom it is held for any purpose not connected with agriculture or horticulture without the express or implied consent of the landlord :

Provided further that no order under this sub-section shall be passed without notice, the prescribed process fee for which shall accompany the application,—

(1) in the case where such application is made by a tenant, to the landlord or the entire body of landlords and to the co-sharer tenants, if any, and

(2) in the case where such application is made by a landlord, to the co-sharer landlords, if any, and to the tenant or if there be more than one tenant to all such tenants.

(3) Every order passed under sub-section (1) directing the conversion of any land which is not non-agricultural land into a tenancy to which the provisions of this Act apply shall state the date from which such conversion shall have effect and shall specify the rent which shall be payable in respect of the tenancy into which such land is converted and the rent so specified shall not be enhanced during a period of not less than fifteen years from the date of such order.

(4) An appeal shall lie to the Commissioner of the Division from any order of the Collector under this section if it is presented within thirty days from the date of such order and is accompanied by the prescribed fee and the decision of the Commissioner on such appeal shall be final.

(5) Notwithstanding anything contained in any other law for the time being in force or in any contract, where any land which is not non-agricultural land is converted into a tenancy to which the provisions of this Act apply by an order under this section such land shall with effect from the date on which such conversion takes effect become non-agricultural land and the non-agricultural tenant of such land shall for the purposes of this Act be deemed to have held it as such a tenancy with effect from the date on which such tenant or his predecessor in interest was first induced into the land.

## CHAPTER XI.

## JUDICIAL PROCEDURE.

**73. *Regard to be had by Civil Courts to entries in record-of-rights.***—In all areas for which a record-of-rights has been prepared in pursuance of an order made under section 27 and finally published, a Civil Court shall, in all suits between landlord and non-agricultural tenant as such, have regard to the entries in such record-of-rights relating to the subject-matter in dispute which may be produced before it, unless such entries have been proved by evidence to be incorrect; and, when a Civil Court passes a decree at variance with such entries, it shall record its reasons for so doing.

**74. *Execution of decrees for arrears of rent by assignees of such decrees.***—Notwithstanding anything contained in rule 16 of Order XXI in Schedule I to the Code of Civil Procedure, 1908 (Act V of 1908), an application for the execution of a decree for arrears in respect of any non-agricultural land obtained by a landlord shall not be made by an assignee of the decree unless the landlord's interest in the non-agricultural land has become and is vested in him.

**75. *Relief against forfeitures in certain cases.***—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 the purposes of the tenancy shall not be entertained unless the landlord has served in the prescribed manner, a notice in writing on the non-agricultural tenant—

- (i) specifying the particular misuse complained of; and
  - (ii) if the misuse is capable of remedy, requiring the tenant to remedy the same,
- and unless 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.***—Where the interest of a non-agricultural tenant in any non-agricultural land is sold in execution of a decree or of a certificate signed under the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), for arrears of rent due in respect of such land, the purchaser shall take free from all encumbrances which may have been created by such non-agricultural tenant or his predecessor in interest and is subsisting immediately before the purchase takes effect, but subject to the interest of any under-tenant having under section 22 the rights and liabilities of a tenant.

**77. *Delivery of possession of land sold for arrears of rent which has any structure erected on it by a non-agricultural tenant.***—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 decree or of a certificate signed under the Bengal 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.**—Notwithstanding anything contained in the Code of Civil Procedure, 1908 (Act V of 1908), whenever the interest of any non-agricultural tenant in any non-agricultural land is sold in execution of a decree for arrears of rent and the sale is confirmed, the purchase shall take effect from the date of confirmation of the sale.

**79. Rules for disposal of sale proceeds.**—(1) In disposing of the proceeds of a sale of the interest of a non-agricultural tenant in any non-agricultural land in execution of a decree for arrears of rent the following rules instead of those contained in section 73 of the Code of Civil Procedure, 1908, shall be observed, that is to say—

(a) there shall first be paid to the decree-holder the costs incurred by him in bringing the tenancy to sale ;

(b) there shall, in the next place, be paid to the decree-holder the amount due to him under the decree in execution of which the sale was made ;

(c) if there remains a balance after these sums have been paid, there shall be paid to the decree-holder therefrom the costs of the application made under this section and any rent which may have fallen due to him in respect of the tenancy between the institution of the suit and the date of the confirmation of the sale ;

(d) the balance (if any) remaining after the payment of the rent mentioned in clause (c) shall, upon the expiration of two months from the confirmation of the sale, be paid to the judgment-debtor upon his application unless the Court, for reasons to be recorded in writing, otherwise directs.

(3) If the judgment-debtor disputes the decree-holder's right to receive any sum on account of rent under clause (c) of sub-section (1), the Court shall determine the dispute, and the determination shall have the force of a decree.

**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.**—(1) The provisions of rules 58 to 63 (both inclusive) of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply to the interest of any non-agricultural tenant in any non-agricultural land attached in execution of a decree for arrears due thereon.

(2) When an order for the sale of the interest of any non-agricultural tenant in any non-agricultural land in execution of such a decree has been made, the interest of such non-agricultural tenant in such land shall not be released from attachment unless, before it is knocked down to the auction-purchaser, the amount of the decree including the costs decreed together with the costs incurred in bringing such interest to sale is paid into Court, or the decree-holder makes an application for the release of such interest from such attachment on the ground that the decree has been satisfied out of Court.

(3) The judgment-debtor or any person whose interests are affected by the sale may pay money into Court under this section.

**81. Amount paid into Court to prevent sale to be a mortgage-debt on the tenancy in certain cases.**—(1) When any person whose interests are affected by the sale of a tenancy of a non-agricultural tenant advertised for sale in execution of a decree for arrears of rent due in respect thereof or in execution of a certificate for arrears of rent due in respect thereof signed under the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), pays into the Court the amount requisite to prevent the sale—

(a) the amount so paid by him shall be deemed to be a debt bearing interest at six and a quarter *per centum per annum* and secured by a mortgage of such tenancy to him;

(b) his mortgage shall take priority over every other charge on such tenancy other than a charge for arrears of rent; and

(c) he shall be entitled to possession of the tenancy as mortgagee of the non-agricultural tenant, and to retain possession of it as such until the debt, with the interest due thereon, has been discharged.

(2) Nothing in this section shall affect any other remedy to which any such person would be entitled.

**82. Inferior tenant paying into Court may deduct from rent.**—When a tenancy to which the provisions of this Act apply is advertised for sale—

(a) in execution of a decree for arrears of rent due in respect of such tenancy from a superior non-agricultural tenant defaulting, or

(b) in execution of a certificate signed under the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), for arrears of rent due in respect of such tenancy from a superior non-agricultural tenant defaulting,

or when such sale is set aside under rule 89 of Order XXI in Schedule I to the Code of Civil Procedure, 1908 (Act V of 1908), and an inferior non-agricultural tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior non-agricultural tenant may, in addition to any other remedy provided for him by law, deduct the whole or any portion of the amount so paid from any rent payable by him to his immediate landlord, and that landlord, if he is not the defaulter, may, in like manner, deduct the amount so deducted from any rent payable by him to his immediate landlord, and so on until the defaulter is reached.

**83. Decree-holder may bid at sale, judgment-debtor may not.**—(1) Notwithstanding anything contained in rule 72 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, the holder of a decree for arrears of rent in respect of a tenancy of a non-agricultural tenant in execution of which such tenancy is sold may, without the permission of the Court, bid for or purchase the tenancy.

(2) The judgment-debtor shall not bid for or purchase a tenancy so sold.

(3) When a judgment-debtor purchases by himself or through another person a tenancy so sold, the Court may, if it thinks fit, on the application of the decree-holder or any other person interested in the sale, by order set aside the sale, and the costs of the application and order and any deficiency of price which may happen on the resale, and all expenses attending it shall be paid by the judgment-debtor.

**84. Meaning of "arrears" and "arrears of rent".**—For the purposes of this Chapter the terms "arrears" and "arrears of rent" shall be deemed to include interest decreed under section 57 or damages awarded in lieu of interest under sub-section (1) of section 58.

## CHAPTER XII.

## MISCELLANEOUS.

85. *Bar to application of Act to certain lands and to certain leases.*—Nothing in this Act shall apply to—

- (a) any land vested in, or in the possession of—
  - (i) a port authority of a major 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 Land Acquisition Act, 1894 (I of 1894), for the use of any Department of Government which is for the time being held by the Revenue Authorities on behalf of that Department, or
- (d) any land which is required for carrying out any of the provisions of the Calcutta Improvement Act, 1911 (Ben. Act V of 1911).

86. *Certain contracts not to affect the provisions of the Act.*—Nothing in any contract between a landlord and a non-agricultural tenant made 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 made 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.

87. *Jurisdiction in proceedings under this Act.*—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.

88. *Application.*—The provisions of this Act shall have effect in respect of all suits, appeals or proceedings including proceedings in execution for ejectment of a non-agricultural tenant which are pending at the date of commencement of this Act.

89. *Saving of limitation.*—In computing the period provided by any law for the time being in force for the execution of a decree for ejectment which was stayed under the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940 (Ben. Act IX of 1940), or for the institution of a suit for the ejectment of a non-agricultural tenant, the period during which the said Act continued in force shall be excluded.

90. *Computation of the period for which non-agricultural land has been held in certain cases.*—If any non-agricultural land has been held by a tenant from before the commencement of the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940—

(a) under a lease in writing and the time limited by such lease has expired either before such commencement or at any time during the period the said Act has been in force and the tenant has continued to hold such land during such period, or

(b) under a lease in writing but no term is specified in such lease, or

(c) without a lease in writing,

then in calculating for the purposes of sections 7 and 9 the period for which such land has been held by such tenant,—

(i) in the case where the land has been held under a lease in writing and the time limited by such lease has expired at any time during the con-

tinuance in force of the said Act, the period for which such land has been held during such continuance after the expiration of the time limited by such lease, and

(ii) in other cases, the period for which the said Act has been in force, shall be excluded.

**91. Repeal of Bengal Act XIX of 1936 and Bengal Act IX of 1940.—**

(1) The Bengal Non-Agricultural Lands Assessment Act, 1936 (Ben. Act XIX of 1936), and the Bengal Non-Agricultural Tenancy (Temporary Provisions) Act, 1940 (Ben. Act IX of 1940), are hereby repealed.

(2) All ~~rights~~ settled, records-of-rights or rent-rolls prepared, orders or notifications issued, suits or other proceedings instituted and other things duly done under the Bengal Non-Agricultural Lands Assessment Act, 1936 shall, in so far as they are consistent with the provisions of this Act, be deemed to have been respectively settled, prepared, issued, instituted or done hereunder.

**92. Rules.—**(1) The Provincial Government may, subject to the condition of previous publication, make rules for carrying out the purposes of this Act.

(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 :—

(a) the manner in which the landlord or the tenant may apply to the Court under sub-section (2) of section 8 ;

(b) the determination of a fair and equitable rent referred to in sub-section (3) of section 11 ;

(c) the limit of enhancement of rent referred to in sub-section (1) of section 19 and the manner of determination of rent referred to in sub-section (2) of that section ;

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

(e) the manner of making a survey and preparing a record-of-rights in pursuance of an order under section 27 and the procedure to be followed and the powers to be exercised by Revenue-officers when an order under the said section is made ;

(f) the form of a settlement rent-roll referred to in section 29, the manner of preparing the same and the particulars to be specified therein ;

(g) the division of a tenancy and the apportionment of the rent under clause (b) of section 20 ;

(h) the manner and period of publication of a draft settlement rent-roll under sub-section (1) of section 31 and the disposal of objections under that sub-section ;

(i) the Revenue authority referred to in sub-section (1) of section 32 ;

(j) the publication of the date of confirmation of a settlement rent-roll under sub-section (3) of section 32 and the place and times of inspection of such roll ;

(k) the Revenue authority referred to in sub-section (1) of section 33, the manner of presentation of appeals to such authority and the Board of Revenue and the periods within which such appeals shall be presented under the said sub-section ;

(l) the settlement of rents referred to in section 38 ;

(m) the manner of payment or tender of rent by postal money-order under section 44 ;

(n) the forms to be used generally or for any particular local area or

class of cases for the receipt and counterfoil referred to in section 46 and for the statement of account referred to in sub-section (2) of section 47 and the particulars to be specified in such receipt, counterfoil and statement ;

(o) the cost of transmission of the money deposited in the cases referred to in clauses (a) and (b) of sub-section (1) of section 51 and the amount of the fee referred to in clause (d) of sub-section (2) of that section ;

(p) the manner of publication of the general notice referred to in sub-section (2) of section 59 ;

(q) the form of, the particulars to be contained in, and the manner of verification of, applications referred to in sub-section (2) of section 97 ;

(r) the amount of process fee referred to in the second proviso to sub-section (1) of section 72 and the amount of fee referred to in sub-section (3) of that section ;

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

### **The West Bengal District Boards (Amendment) Act, 1949.**

The following Act of the West Bengal Legislature has been assented to in His Majesty's name by the Governor [ Vide Notification No. 273 L, of the Judicial and Legislative (Legislative) Department, dated the 3rd March 1949 and is published in the *Calcutta Gazette*, Part III, dated the 10th March 1949 ].

### **West Bengal Act VIII of 1949.**

[ Passed by the West Bengal Legislature. ]

[ Assent of the Governor was first published in the *Calcutta Gazette*, of the 10th March 1949. ]

*An Act further to amend the West Bengal District Boards Act, 1947.*

WHEREAS it is expedient further to amend the West Bengal District Boards Act, 1947 (West Ben. Act III of 1947) for the purposes and in the manner hereinafter appearing ;

It is hereby enacted as follows :—

1. *Short title.*—This Act may be called the West Bengal District Boards (Amendment) Act, 1949.

2. *Amendment of section 5 of West Bengal Act III of 1947.*—In the proviso to section 5 of the West Bengal District Boards Act, 1947 (hereinafter referred to as the said Act), after the words "two years" the words "and six months" shall be inserted.

3. *Insertion of new section 5A.*—After section 5 of the said Act, the following section shall be inserted, namely :—

"5A. *Reconstitution of certain District Boards in accordance with the provisions of the Bengal Local Self-Government Act of 1885.*—On the expiration of the term of office of the members of the District Boards constituted under section 4, the said District Boards shall be reconstituted in accordance with the provisions of the Bengal Local Self-Government Act of 1885 (Ben. Act III of 1885) ; and for the purpose of such reconstitution, the members of the said District Boards shall be elected, before the expiry of the term of office of the members of the District Boards constituted under section 4, in accordance with the provisions of the Bengal Local Self-Government Act of 1885 and the rules framed thereunder and the persons who ceased to hold their offices under section 3 shall not be deemed disqualified for such elections if they are otherwise qualified therefor."