

ASSAM (TEMPORARILY SETTLED DISTRICTS) TENANCY ACT, 1935

ie ASSAM ACT MI OF 1935 THE ASSAM (TEMPORARILY-SETTLED DISTRICTS) ACT, 1935* [As Modified up to 13th September, 1963] [Published in the Assam of the 2nd October 1935] CONTENTS CHAPTER Sections 1 2 3 4 6 7 9 10 11 12 Short title. Commencement. Local extent. Definitions. CLASSES OF TENANTS Classes of tenants

CHAPTER III PRIVILEGED Raiyats Raiyats entitled to hold at 2 rate rent not exceeding rate revenue rate. Commutation of Chhoga or service. Rights in respect of use land and in trees. Obligation to pay rent. Protection from eviction Devolution on death. Right of transfer. Right of subletting. *For Siote; nnt of Oli. - . ts and Reason, see . fssamU Gazette. 1034, Part V, page 48 ; for Proceedings in Council; stc . tf. ftvn Go- _ tte, i93 . t. Part V r, pages 931. 1193—1198, Assam Gazette, 1935, vr, 717-710. 1130-1166, 1189-1206 for Repovt9 Of Select CotnnOtee, Agsmn Gā. :ette, 1935, P; crt V, pages 62—112, pages 138-139, 150, nP. or 11 d.] 2 CHAPTER IV OCCUPANCY Raiyats Secgions 13 Acquisition of occupancy rights. INCIDENTS OF OCCUPANCY RIGHT 14 Rights in respect of use of land. 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 Right in trees. Obligation to pay rent. Protection from eviction. Devolution on death. Right of transfer. Right of subletting. Restriction on enhancement of rent. Enhancement by contract. Enhancement by application to Court. Rules as to enhancement on ground that rent is much below the maximum rate. Rules as to enhancement on ground of landlord's improvement. Rules as to enhancement on ground of increase in productive powers due to fluvial action. Enhancement to be fair and equitable. Power to order progressive enhancement. Limitation of right to file successive applications

CHAPTER V NON-OCCUPANCY Raiyats Application Of chapter. Initial rent. Condition of enhancement of rent. Grounds on which a non-occupancy raiyat may be ejected. S tions 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 3 Power to order progressive enhancement and ejectment refusal to agree to enhancement ordered. Application for restitution. Incidents of holding. Subletting

CHAPTER VI UNDER-Raiyats Liability to pay rent. Grounds on which under-raiyat may be ejectea. Power to order progressive enhancement. Application for restitution. Incidents of holding. Subletting

CHAPTER VII GENERAL PROVISIONS AS TO RENT Limitation of rent. Presumption as to amount of rent and conditions of holding. Alteration of rent on alteration of revenue rate. Reduction of rent of holdings in temporarily-settled otates. Reduction of rent of holdings in estates other than temporarily settled. Alteration of rent on alteration of area. Instalments of rent. Rent receipts. Penalty for withholding rent receipts by landlord and for frivolous applications by tenants. Effect of receipt of registered proprietor, landholder, Imanager or mortgagee. DEPOSIT 54 Application to deposit rent in court. 55 Receipt granted by court for rent deposited to be a valid acquit- tance. 56 Procedure for payment to the landlord of rent deposited. ARREARS OF RENT 57 Liability to sale for arrears of privileged raiyat's or occupancy raiyat's holding. 58 Ejectment for arrears in other cases. 59 Interest on arrears. 60 Power to award damarrs on rent withheld without reason able cause, or to defendant improperly sued for rent LIABILITY FOR RENT ON CHANGE OF LANDLORDS OR AFTER TRANSFER OF HOLDING 61 Tenant not liable to transferee of landlord's interest for rent paid to former landlord without notice of the transfer. MERGER 62 Effect of acquisition of privileged raiyat's or occupanzy raiyat's right by landlord. IRREGULAR TRANSFER OF HOLDINGS 63 Transfer in contravention of the Act to be voidable and forfeiture of offending tenant's interest. ILLEGAL CESSSES, ETC. 64 Penalty fot exaction of sum in excess of the rent lawfully payable

CHAPTER VIII MISCELLANEOUS PROVISION' AS TO LANDLORDS AND TENANTS EJECTMENT 65 Ejectment in execution of a decree. IMPROVEMENTS 66 Definition of "improvement". 67 Right to make improvements. 5 Sections 68 Registration of landlord's improvements. 69 Compensation for tenant's improvements. 70 Principle on which compensation is to be estimated. 71 72 73 74 75 76 77 78 79 80 81 82 ACQUISITION OF HOLDING LANDLORD Acquisition of land by landlord. SURRENDER AND ABANDONMENT Surrender. Abandonment, Dlvls10N Division of tenancy not binding on co-sharer without consen t. MEASUREMENT Landlord's right to measure land. tenants oc on

landlord Power of Revenue Court to order tenant to attend and point out boundaries. Tenant's right to have the land measured in certain circumstances. Standard of measurement

CHAPTER IX PREPARATION AND MAINTENANCE OF RECORD-OF-RIGHTS Power to order preparation of record-of-rights for tenants. Particulars to be recorded. Preliminary publication, amendment and final publication of record - of-rights. Certificate of, and presumption as to final publication, and presumption as to correctness, of record-of-rights. 83 Appeal to, and revision by, superior authorities. 6 Sections 84 Expenses of proceedings under this Chapter. 85 Power to direct maintenance of record-of-rights. 86 Procedure on application for registration or on information received otherwise. 87 Application to set aside order directing the registration

CHAPTER X JUDICIAL PROCEDURE 88 Matters exempted from cognizance of Civil Court. 89 Date from which order fixing or altering rent takes effect. 90 Jurisdiction of the Civil Court. 91 Power to modify Civil Procedure Code in its application to landlord and tenant suits- 92 Procedure in rent suits. 93 Set-off in suits for arrears of rent. 94 Payment into court of money admitted to be due to third person. 95 Payment into court of money admitted to be due to landlord. 96 Provision as to payment of portion of money. 97 Court to grant receipt. 98 Appeals. 99 Limitation of appeal. 100 Procedure of Appellate Court on appeal. 101 Suspension of orders appealed against. 102 Power to call for proceedings of subordinate officers. 103 Appeals in rent suits. 104 Deposit on application to set aside ex-parte decree 105 Relief against forfeitures. 106 Rights of ejected tenants in respect of crops and land prepared for sowing

CHAPTER XI SUMMARY PROCEDURE FOR THE RECOVERY OF RENTS UNDER BENGAL PUBLIC DEMANDS RECOVERY ACT, 1913 THE Sections 107 108 109 110 111 112 113 114 115 116 Recovery of arrears of rent under the certificate procedure in certain areas. Passing of holding sold in execution of certificate

CHAPTER XII SALE FOR ARREARS UNDER Sale of holding of a privileged raiyat or arrears of rent. DECREE of an occupancy raiyat in 'for General powers of purchaser as to avoidance of incumbrances. Protected interests. Meaning of "incumbrance" and "arrears" and "arrear of rent". Application for sale Of holding. Combined order of attachment and proclamation of sale to be issued. Sale of holding with power to avoid all incumbrances and effect thereof. Procedure for annulling incumbrances under this chapter or under the Public Demands Recovery Act. 117 Rules for disposal of the sale proceeds. 118 Holding to be released from attachment only on payment into court of amount of decree with costs, or on confession of satisfaction by decree-holder. 119 Inferior tenant paying into court may deduct from rent. 120 Decree-holder may bid at sale: judgment-debtor may not. 121 Application to set aside sale. 122 Sale when to become absolute or be set aside, and return Of purchase money in certain cases. 8 CHAPTER. CONTRACT AND CUSTOM Sections 123 Restrictions on exclusion of Act by agreement. 124 Saving of custom. CHAPTER xiv LIMITATION 125 Limitation in suits, appeals and applications in Schedule I. 126 Portions of the Indian Limitation Act not applicable to such suits etc., mentioned in Schedule I

CHAPTER XV SUPPLEMENTAL 127 Penalties for illegal interference with produce. 128 Power to make rules. 129 Power to invest officers with special powers. 130 Revenue Officer or Revenue Officer may transfer applications or other proceeding for disposal to any Revenue Court or officer subordinate to it or him. 131 Sale of holding of privileged or occupancy raiyat for recovery of loan granted under Land Improvement Loans Act, 1883, etc. Schedule I, Part I—Suits. Part II—Appeals. Part III—Applications. THE 9 ASSAM (TEMPORARILY-SETTLED DISTRICTS) TENANCY ACT, 1935 5 and 6 Geo. 5 Ch. 61 ; 6 and 7 Geo. 5. Ch. 37 ; and 10 Geo. 5, Ch., 101. 1 of 1894. An Act to regulate the relations of Landlord and Tenant in the temporarily-settled districts of the Province of Assam Whereas it is expedient to regulate by law the rights and liabilities of agricultural tenants and their landlords in certain lands in the province of Assam not included in any permanently-settled estate ; And whereas the previous sanction of the Government-General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act : It is hereby enacted as follows CHAPTER I PRELIMINARY 1. (1) This Act may be called the Assam (Temporarily-settled Districts) Tenancy Act, 1935. Preamble. Short title (2) It shall come into force on such date as the Government [State Government] may, by notification, appoint in writing in this behalf. 2.(1) (a) (b) The Act does not apply to— Local extent lands included in any Reserved Forest constituted under the law for the time being in force ; lands acquired under the Land Acquisition Act, 1894, for [any Government] or any Local Authority or for a Railway or other Company, when and

for so long as such lands are utilised for the purposes for which they were acquired or for purposes incidental or ancillary thereto ; 1. Substituted by the A.O. 1950 for "Provincial Government"

2. Substituted by the A.O. '937 for "the Government". 10 (c) land owned by [the Government] or by any Local Authority which is used for any public work, such as road, canal, drain or embankment or is set aside for the repair or maintenance of the same ; (d) lands expressly reserved from settlement, by [any Government]? or by officers of [the Government], duly empowered in that behalf, for military purposes or for professional graziers or for a public purpose, such as grazing grounds, recreation grounds, burial or cremation grounds ; (e) lands included in a civil station ; (f) lands—other than agricultural lands—situated within any area outside civil stations ; (g) lands comprised within estates settled for special cultivation when, and for so long as, such lands are used for the purposes of special cultivation or for purposes ancillary thereto Explanation.—This sub-clause includes lands settled for the cultivation of tea under the rules in force from time to time such as fee simple grants, revenue redeemed grants, 30 years' grants under the New Lease Rules [though now assessed with full revenue] 3 and lease for special cultivation under settlement rules framed from time to time under the Assam Land and Revenue Regulation. (h) lands settled for ordinary cultivation but utilised for special cultivation or for purposes ancillary thereto, when, and for so long as, they are so utilised ; (i) lands settled on annual leases. 1. substituted by the A.O. 1950 for "the Crown". 2' Substituted by the A.O. 1937 for "the Government"

3. Inserted by the Assam (Temporary-Settled Districts) Tenancy Act, 1953 (Assam Act xxvii of 1953.) I Amendment) of 1886, 11 (2) Subject to the above mentioned exceptions, the Act extends to :— (a) The districts of Kamrup.— Nowgong. Sibsagar. Darrang. Lakhimpur. (b) The Sadr and Hailakandi subdivisions of the district of Cachar. (3) The [State Government] 2 may, by notification, extend the whole or any part of the Act to any [other] 3 temporarily-settled area in other districts : Provided that no such notification shall be issued unless— a notice, intimating the proposed extension of the Act or part thereof, has been previously published in the area concerned or part thereof in the prescribed manner

3. In this Act, unless there is anything repugnant Definitions. in the subject or context, civil station, (1) The words "estate, land revenue," "proprietor," "temporarily-settled estate," "landholder" and "settlement-holder" have the meanings assigned to them in the Assam Land and Revenue Regulation, 1886 lease, "periodic lease," "special cultivation" and "ordinary cultivation" shall have the same meaning as is assigned to them in the rules framed under the aforesaid Regulation. ' 'Revenue Officer," "Settlement Officer" and "Assistant Settlement Officer" denote the officers described as such in, or appointed under, the Assam Land and Revenue Regulation ; (2) "Revenue Court" means the Court of the Deputy Commissioner, Settlement Officer, or of such other officer as the [State Government] 2 may invest with the powers of Revenue Court for the purposes of this Act ; I. Omitted by the Assam (Temporarily-Settled Districts) Tenancy (Amendment) Act. 1953 (Assam Act XXVII of 1953)

2. Substituted by the AO 1950 for "Provincial Government." 3. Inserted by Assam Act, xxvii of 1953

4. Number (i) and item (ii) deleted by Assam Act, XXVII of 1953. (3) "tenant" means a person who holds land under another person, and is, or but for a special contract—express or implied—would be, liable to 'pay rent for that land to that other person : Provided that a person who holds land immediately under the [Government] is not a tenant within the meaning of this definition ; Explanation :—A person who holds land on condition of service to a temple or religious institution shall be deemed to be the tenant of the manager of such temple or religious institution. (4) "landlord" means a person immediately under whom a tenant holds but does not include [any Government] (5) "rent" means whatever is lawfully payable or deliverable in money or kind or partly in money and partly in kind by a tenant to his landlord on account of the use or occupation of land held by the tenant ; (6) "Cthoe" means articles of food required by custom to be offered to a deity ; (7) "pay", "payable" and "payment" used with reference to rent, include "deliver" "deliverable" and "delivery" ; (8) "holding" means a parcel or parcels of land or an undivided share thereof, held by a tenant and



forming the subject of a separate tenancy ; (9) "Agriculture" includes horticulture ; (IO) C 'agricultural land" means land used for agricultural purposes ; NOTE.—Land under homesteads occupied for residential purposes in connection with an agricultural holding is included in "agricultural land." (11) The term "settled" used with reference to a land or an estate means leased by, or on behalf of, the [Government.] 1. Substituted by the A. O. 1950 for "Crown"

2. Substituted by the A.O. 1937 for 'the Government' 13 (12) "agricultural year" means the year beginning on the first day of Bysakh and ending with the last day of Chaitra. "revenue rate" means in respect of every (13) (a) parcel of land in an estate settled temporarily at full rates, the rate at which revenue is for the year actually payable to Government upon that parcel of land ; (b) In the case of land in an estate settled other- wise than at full rates, it means the rate at which revenue would for the year be actually payable to Government on land of similar quality and advantages in an estate temporarily settled at full rates under the rules for the time being in force ; (14) "Notification" means a notification published in the [Official Gazette] L (15) "Village" means the area surveyed as a village at the last resettlement of the district or the part thereof in which the area lies ; (16) "Prescribed" means prescribed by rules framed under this Act ; [(17) CMaximum rent or rate of rent' of agricul- tural holdings or part thereof, held on cash rent means a sum representing three times the revenue rate. Where agricultural holdings or part thereof are held on produce rent, "maximum rent" means one-fourth of the actual produce thereof E

CHAPTER 11 CLASSES OF TENANTS 4. There shall be, for the purposes of this Act, Classes of the following classes of tenants, (namely) tenant S. (1) Raiyats, that is to say, tenants holding immediately under a proprietor, land- holder or settlement-holder, and (2) Under-raiyats, that is to say, tenants holding under raiyats ; 1. Substituted by the A. O. 1937 for "Assam Gazette." 2. Substituted by Assam Act XXVII of 1953. 14 and the following classes of raiyats (namely) :— (a) Privileged raiyats, that is to say, raiyats entitled to hold at rates of rent not exceed- ing the revenue ra tes, (b) Occupancy raiyats, that is to say, raiyats having a right of occupancy in the land held by them, and (c) Non occupancy raiyats, that is to say, raiyats not having such a right of occupancy

CHAPTER 111 PRIVILEGED Raiyats Raiyats era- 5. (t) Subject to the Drovision of sub-section (2), titled to ho- a raiyat who has held land for a continuous period of ld rit a rate Of rent not not less than [12] years— exceeding the revenue rate. on a rate of rent never exceeding the revenue rate, or (ii) at half the revenue rate in addition to service to be rendered by him, or (iii) on payment of "bhog" shall be deemed be raiyat entitled to hold that land at a rate of rent never exceeding the revenue rate. (2) Notwithstanding the provisions of sub-section (1), no person holding land under a concern engaged in special cultivation shall acquire, or be deemed to have acquired, the status of a privileged raiyat in respect of such land, if it was first leased to him or to his predecessors in interest at a time when he or they formed part of the labour force of the concern in question. (3) For the purposes of this section the period o [121E years may be wholly or partly before or after the commencement of [the Assam (Temporary-Settled Districts) Tenancy (Amendment) Act, 1953]2

1. Substituted by Agam Act XXVII of 1953 for "20" 2. Substituted by ibid for "this Act". (4) For the purposes of this section a person shall be deemed to have held as a raiyat any land held as a raiyat at a rate of rent never exceeding the revenue rate by a person whose heir or successor in interest he is. 6. (1) A privileged raiyat holding land on pay- Commuta- ment of "bhog" or render;ng service in addition to tion of bhog paying cnsh rent at f the revenue rate or, if the or service• raiyat has habitua ily defaulted in the payment of his customary rent or the vrdering oc cust •mary service, the I•mnd lord of such raiyat, may apply to the Re- venue Court to have the payment of "bhoo" or the combined cash rent and service commuted to rent at the revenue rate. The Court shall, on receipt of such application, issue notice on the landlord or the raiyat (as the case may be) and, on hearing what he has to say, pass orders allowing or rejecting the application. (2) Before allowing or rejecting such applications the Court shall have regard to— (i) the purpose for which the tenancy was ori- ginally granted, (ii) the extent to which that purpose has been achieved under existing conditions, (iii) the period for which the tenancy has been in existence, (iv) the extent to which the proposed commu- tation will interfere with the purpose for which ! he tenancy was created, (v) whether in respect of any land in the estate concerned the landlord has accepted corn- mutation of rent in the past anj if so un• der what circumstances, and (vi) any other circumstance which, in the opin- ion of the Court, is calculated to affect adversely or favourably the interests of the landlord or of

the tenant in respect of such land. 7. (1) A privileged raiyat may use the land in Rights his holding in any manner which does not materially respect of use impair the value of the land or render it unfit for the Of land and in trees, purposes of t.he tenancy. (2) Subject to the provisions of sub-section (1), a privileged raiyat shall be entitled— (i) to plant, 16 (ii) to enjoy the flowers, fruits and other pro- ducts of, (iii) to fell, and (iv) to utilise and dispose of the timber of, any tree on such land; provided that in doing so he does not contravene the provisions of any law: Provided further that he shall not be entitled without the landlord's consent in writing to fell, utilise or dispose or the timber of any tree which stood on the holding before the creation of the tenancy. When the tenancy is over 20 years old, all trees standing on the land shay be presumed, until the contrary is proved, to have been planted or to have begun to grow during the tenancy. Obligation 8. A privileged raiyat shall pay rent for his holding to pay rent. at the customary rate and if the service, if any, to be rendered by him or payment of CCbhog" to be made by him, be commuted, then at the revenue rate

9. A privileged raiyat shall not be ejected by his Protection from evic- landlord from his holding except in execution of a tion.decreed for ejectment passed on the ground that he has used the land comprised in his holding in a man- ner which renders it unfit for the purposes of the ten- ancy

10. If a privileged raiyat dies intestate in respect of Devolution on death.his holding, it shall, subject to any custom to the contrary, descend in the same manner as other im- movable property provided that in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the [Government] l, his right in the "holding shall be extinguished

11. A privileged taiyat shall have an unrestricted Right of transfer.right of transfer in respect of his holding, but no transfer shall be binding on the landlord until a writ- ten notice thereof has been given to the landlord : Provided that the right of a privileged raiyat hold- ing under a religious institution such as a temple, Satra or mosque shall be restricted to transfer to per- sons belonging to the same religion as the institution in which the ownership of the land is vested.] 2 12. A privileged raiyat shall have a right of sublet• Right of . subletting. tmg his holding or any part of it to persons to whom he could validly transfer it under section 11. I. Substituted by A. O. 1950 for "Crown"

2. Substituted by Assam Act XXVII of 1953.17 CHAPTER OCCUPANCY 13. (1) A person, who— Acq uisition Of occupancy nghts (b) for a period of 12 years * * has continuously held land as a raiyat, shall have a right of occupancy in that land. (2) The period of * 12 years referred to in sub-section (1) may be wholly or partly before or after the commencement of I the Assam (Temporary-Settled Districts) Tenancy (Amendment) Act, 195312. (3) A person shall be deemed, for the purposes of this section, to have continuously held land under a landlord notwithstanding that the particular land- lords under whom he held the land were different at different times provided the land held by him was the same. (4) A person shall be deemed, for the purposes of this section, to have held as a raiyat any land held as a raiyat by a per: on whose heir he is. (5) Ifa taiyat recoves possession of his holding under the provisions of section ' 35 or oi' any other law in force, any period during which he may have been out of possession shalt count Towards the periods specified in sub-section (I). (6) For the purposes of this section, a person who, under the system generally known as C' adhi", "barga" and bhag," cultivates the land of another person, on condition of delivering a propor- tion of the crop to that person, is not a raiyat : Provided that the holding of the land under such a systetn shall not be deemed to break the continuity of the period for which thc said cultivator, or his heir or the person whose heir the cultivator is, holds or held the land otherwise than under such a system. [Illulstration .—When a per:on holds land as a raiyat, say, for seven years, then under the system mentioned in this sub clause for four years, and there- after again for a further term as a raiyat, occupancy right shall not accrue unless such further term extends to a period of not less than five years.] g

1. Ommitted by Assam Act XXVII of 1953

2. Substiuted by ibid for "this Act", 3.Substituted by Assam Act, XXVII of 1953. INCIDENTS Ot OdctiÉÅNc± RIGHT 14. When raijât has a right of ocCupancy in Rights in respect of use respect of any land he may use the land in any of land. manner which does not materially impair the value Of the land or render it unfit for the purposes of the tenancy. Right in 15. Subject to the provisions of section 14, when trees. a rabat has a right of occupancy in respect of any land he shall be entitled— (i) to plant, (ii) to enjoy the flowers, fruits and other Products of, (iii) to fell, and (iv) to utilise and dispose Of the timber Of, any tree on such land : Provided that in doing so he does not contravene the provisions of any law: Provided

further that he shall not be entitled without the landlord's consent in writing to fell or utilise or dispose of the timber of any tree which stood on the holding before the creation of the tenancy. When the tenancy is over 20 years old all trees standing on the land shall be presumed until the contrary is proved, to have been planted or to have begun to grow during the tenancy. Obligation 16. An occupancy raiyat shall pay rent for his holding at fair and equitable rates: Provided that in case of dispute the rate previously paid by a raiyat shall be deemed to be fair and equitable unless the contrary be shown in a Court of Law

17. An occupancy raiyat shall not be ejected by Protection from eviction- his landlord from his holding, except in execution of a decree for ejectment passed on the ground:—(a) that he has used the land comprised in his holding in a manner which renders it unfit for the purposes of the tenancy or (b) that he has broken a condition of his tenancy consistent with the provisions of this Act, and on the breach of which he is, under the terms of a contract between himself and his landlord, liable to be ejected: provided that no occupancy raiyat shall be liable to ejectment under sub-clause (b) if the contract has been entered into after the passing of this Act, and has not been registered

18. If a raiyat dies intestate in respect of a right Devolution on death. of occupancy it shall, subject to any custom to the contrary, descend in the same manner as other immovable property: •Provided that in any case in which under the law of inheritance to which the raiyat is subject his other property goes to the [Government] I, his right of occupancy shall be extinguished. [19. An occupancy raiyat shall have unrestricted right of transfer in respect of his holding but no transfer shall be binding on the landlord until a written notice thereof has been given to the landlord: Provided that the right of an occupancy raiyat holding under a religious institution such as temple, Satra or mosque shall be restricted to transfer to persons belonging to the same religion as the institution in which the ownership of the land is vested

20. An occupancy raiyat shall have right of Right Of his holding or any part of it to persons to subletting. whom he could validly transfer it under section 19.] 21. Where the occupancy raiyat pays his rent in money, the rent shall not be enhanced except as on enhancement of provided by this Act. rent. Enhancement- 22. The money rent of an occupancy raiyat may be enhanced by contract subject to the following conditions:— (a) the contract must be in writing and registered, (b) the rent must not be enhanced so as to exceed by more than [three annas] 3 in the rupee the rent previously payable by the raiyat, and (c) the rent fixed by the contract shall not be liable to enhancement during a term of 15 years from the date of the contract provided as follows (i) Nothing in clause (a) shall prevent a landlord from recovering rent at a rate at which it has been actually paid for a continuous period of not less than three years immediately preceding the period for which the rent is claimed, 1. Substituted by A. O. 1950 for "Crown"

2. Substituted by Assam Act, XXVII of 1953. 3, Substituted by ibid for 'four annas', 20 (ii) Nothing in clause (b) shall apply to a contract by which an occupancy raiyat binds himself to pay an enhanced rent in consideration of an improvement which has been or is to be effected in respect of the holding by or at the expense of his landlord and to the benefit of which the raiyat is not otherwise entitled but an enhancement fixed by such a contract shall be payable only when the improvement has been effected, and except when the raiyat is charged with default in respect of the improvement only-so long as the improvement exists and substantially produces its estimated effect in respect of the holding

23. The landlord of a holding held at a money Enhancement- by rent by an occupancy raiyat may, subject to the provisions of this Act, apply to the Revenue Court for the Court. the enhancement of the rent on one or more of the following grounds, namely (a) that the rate of rent paid by the raiyat is much below the maximum rate of rent for the lands comprised in the holding and that there is no sufficient reason for his holding at so low a rate; (b) that the productive powers of the land held by the raiyat have been increased by an improvement effected by or at the expense of the landlord during the currency of the present rent; (c) that the productive powers of the land held by the raiyat have been increased by fluvial action. Rules 24. When an enhancement is claimed on the enhancement ground mentioned in section 23(a), in determining whether there is sufficient reason for the raiyat holding rent much at the existing low rate of rent the Court shall have regard to the general level of rents paid by occupancy raiyats for lands of similar description and With similar rate. advantages in the neighbourhood and all the circumstances of the case such as the origin of the

tenancy, the amount of land held under the landlord on produce rent, the incidental benefits or advantages, if any, derived from the raiyat by the landlord and any special circumstance to which the existing low rate of rent may be due. The Court shall not decree an enhancement unless there is substantial difference between the rate paid by the raiyat and the maximum rate of rent. 21 25. (1) Where an enhancement is claimed on the Rules as to enhance—ground of a landlord's improvement—ment ground of (a) the Court shall not grant an enhancement landlord's unless the improvement has been registered mente in accordance with this Act ; (b) in determining the amount Of enhancement the C mrt shall have regard to— (i) the increase in the productive powers of the land caused or likely to be caused by the improvement, (ii) the cost Of the improvement, (iii) the cost of the cultivation required for util- ising the improvement, and (iv) the existing rent and the ability of the land to bear a higher rent. (2) he Court my enhance the rate of rent but not go as to exceed the maximum rate of rent calcu- lated on the revenue rate assessable on the land had the improvement taken place before the last resettle- ment of the village and affected its classification for the purpose of assessment. (3) An order under this section shall, on the appli- cation of the tenant or his successor in interest, be sub- ject to reconsideration in the event of the improvement not producing or ceasing to produce the estimated effect

26. Where an enhancement is claimed on the Rules as to ground of an increase in produc;ive powers due to flu- enhancement on ground vial action—of increase in produc- (a) the Court shall not take into account any due to fluiat increase which is merely temporary or action, casual ; (b) the Court may enhance the rate of rent but not so as to exceed the maximum rate of rent calculated on the revenue rate assess- able on the land had the improvement due to fluvial action taken place before the last resettlement of the village

27. Notwithstanding anything in sections 24—26 the Court shall not in any case order any enhancement which is, under the circumstances of the case, unfair or inequitable. Enhancb. ment to be fair and equitable 22 Power 28. If the Court ordering an enhancement consi- order pro- ders that the immediate enforcement of the order to its g' essive eu— full extent will be attended with hardship to the raiyat, hanqement. it may direct that the enhancement shall take effect gradually at such times and by such instalments over a period not exceeding IO years as Court may fix in this behalf. For the purposes of section 29, however, the full .rent shall be deemed to have come force from the date of the order

29. An application filed for the enhancement of Limitati G n of right to the rent of a holding on the ground that the rent paid file succes- is below the maximum rate of rent shall not be enter- Sive enhance.tained if, within the fifteen years next preceding the ment appli- filing of the application, the rent of the holding has cations. been enhanced by a contract made after the year 1934 or an order has Keen passed under this Act enhancing the rent on the ground aforesaid, or on any ground corresponding thereto or dismissing the application on the merits

CHAPTER V NON OCCUPANCY RAIYATS [30. This Chapter applies to raiyats who have not Application of Chapter. acquired the fights either of a privileged raiyat or of an occupancy raiyat and who are in this Act referred to as non-occupancy ratyats.]] 31. When a non-occupancy raiyat is admitted to Initial rent. the -ccupation of land, he shall become liable to pay such rent as may be agreed on between himself and his landlord at the time of his admission. -32. The rent of a non-occupancy raiyat shall not CQpdition of be enhanced except by a written agreement. sof 33. A non-occupancy raiyat shall, subject to the Grounds on ,which a non-provisions of this Act, be liable to ejectment on one or occupan c y more of the following grounds, and not otherwise, raiyat may namely be ejected. (a) On the ground that he has used the land in a manner which renders it unfit for the purposes of the enancy or that he has bro- ken a condition consistent with this Act and on the breach of which he is, under tbe terms, of the contract between himself and his landlord, lia to be ejected ; Substituted by Assam Act XXVIIpf 1553, 23 (by on the ground that he has failed to pay an arrear of rent ; (c) On the ground that he refuses to agree to a fair and equitable enhancement of rent ; (d) when he holds the land under a written lease on the ground that the term of the lease has expired ; (e) when he holds the land otherwise than under a written lease, on the ground that the tenancy has been terminated by his landlord by six months notice in writing .expiring at the end of the agricultural year : Provided that a non-occupancy raiyat who has at the commencement of [the Assam (Temporary-Settled Districts) Tenancy (Amendment) Act, 1953]1 held the land continuously for not less than [five years] e shall not be liable to ejectment on the ground specified in clause (t) unless the landlord has satisfied the Court that he requires the land for his homestead or for cul- tivation by himself or

by members of his family or by hired servants or labourers. Power to 34. (1) In a suit for ejectment on the ground of order pro- refusal to agree to enhanced rent, the Court may, if it considers that the immediate enforcement of the enhancement proposed by the landlord will be attended with hardship to the non-occupancy raiyat, refuse to direct that the enhancement shall take effect gradually agree to at such times and by such instalments as the Court may fix in this behalf. (2) If the plaintiff does not agree to the mode of enhancement as directed by the Court the suit shall be dismissed. If on the other hand he agrees to it, he shall within a week tender in the prescribed manner to the raiyat a draft of an agreement to pay the enhanced rent as determined by the Court. If the raiyat fails to execute the agreement as tendered and file it in the Court within one month from the date of its tender; the Court shall grant a decree for ejectment

35. Where a non-occupancy raiyat has been ejected Application for restitution in the circumstances mentioned in proviso to section 33. he may apply to the Court by which the order for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within [two years] of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after enquiry that the landlord did not use the land for his homestead or for cultivation by himself or by members of his family or by hired servants or labourers, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just. By Assam Act XXVII of 1953 for this Act" 2 Substituted by ibid for "ten years" 3 Substituted by ibid for "three years" 24 Incidents of 36. A non-occupancy holding shall descend in the same manner as other immovable property but shall not be transferable without the consent in writing of the landlord. Subletting, 37. In the absence of a lease conferring on him the right of subletting, a non-occupancy raiyat shall have no right to sublet without the consent in writing of the landlord

CHAPTER VI UNDER-RAIYATS 38. Subject to the provisions of this Act an under-tenant is liable to pay such rent as may be agreed on from time to time between himself and his landlord [but it shall not exceed, in any case, the rent paid by his immediate landlord to the latter's landlord by more than 50 per cent.] 39. An under-raiyat 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 land in a manner which renders it unfit for the purposes of the tenancy or that he has broken a condition consistent with this Act and on the breach of which he is, under the terms of the contract between himself and his landlord, liable to be ejected; (b) on the ground that he has to pay an arrear of rent; on the ground that he refuses to agree to a fair and equitable enhancement of rent; (c) on the ground, when he holds the land under a written lease, that the term of his lease has expired; (d) on the ground, when he holds the land otherwise than under a written lease, that the tenancy has been terminated by his landlord by six months' notice expiring at the end of the agricultural year: Provided that an under-raiyat, who at the commencement of [the Assam (Temporary-Settled Districts) Tenancy (Amendment) Act, 1953] held land continuously for not less than [five years], shall not be liable to ejectment on the ground specified in clause (c) unless the landlord has satisfied the Court that he requires the land for his homestead or for cultivation by himself or by members of his family or by hired servants or labourers

40. In a suit for ejectment on the ground of refusal to agree to enhancement, the Court may, if it considers that the immediate enforcement of the enhancement proposed by the landlord in its full extent will be attended with hardship to the under-raiyat, dismiss the suit unless the plaintiff agrees to such progressive enhancement as the Court may consider equitable

41. Where an under-raiyat has been ejected in the circumstances mentioned in the proviso to section 39, he may apply to the Court by which the order for ejectment was passed to be put in possession of the holding from which he was ejected by way of restitution if, within three years of the ejectment, the landlord sublets the holding or any portion thereof; and thereupon the Court may, if satisfied after enquiry that the landlord did not use the land for his homestead or for cultivation by himself or by members of his family or by hired servants or labourers, order a recovery of possession on such terms, if any, with respect to compensation to the persons injured as to the Court may seem just. Substituted by Assam Act of 1953 for "this Act". 2 The words "under a privileged raiyat" by ibid. 32!

Substituted W. *ibid* for 'ten years' • 26 42. The holding of an under-raiyat shall descend Incidents of in the same manner as other immovable property but holding. shall not be transferable : Provided that the holding of an under-raiyat [shall be transferable to a co-sharer in the holding or to a person who, if he survived the under- raiyat, would inherit his right. Subletting. Limitation 43. An under-raiyat has no right of subletting

CHAPTER VII GENERAL PROVISIONS AS TO RENT 44. Except as provided (or in sections 25 and 26 of rent. no rent agreed on between landiord and tenant or enhanced by Court shall exceed the maximum rent in respect of the land ; nor shall any such amount which is in excess of the maximum rent be lawfully payable

45. If a question arises as to the amount of a tenant's rent or the conditions under which he holds in amount of any agricultural year, he shall be presumed, until the rent and contrary is shown, to hold at the same rent and under conditions of holding.the same condition as in the last preceding agricultural year

46. In all cases where (a) revenue rates are for the first time made payable in respect of the land covered of rent on alteration of by a holding or (b) the revenue rates payable in respect of the land covered by a holding are diminished revenue rate or increased whether by remission or by alteration of previous rates, the tenant's rent shall be liable to be altered fairly and equitably with reference to such rates.Notwithstanding anything in the contract between the parties, a Revenue Court acting on the application of the landlord or the tenant filed before the end of the agricultural year in the course of which revenue rates become for the first time payable or are altered and the Court of the Deputy Commissioner or Settlement Officer acting of its own motion, may order remission for the period for which the landlord receives the benefit of remission or alter the rates of rent (as the case may be) accordingly. I The words "held under a privileged raiyat" omitted Assam Act xxvrr of 1953. 27 47. (i) Any tenant holding land in a temporarily- Reduction of rent of settled estate to which this Act applies may apply to holdings in the Court of the Deputy Commissioner for the reduction of his rent, on the ground— settled estates. (i) that the soil of the holding has, during the tenancy on the present rent, become permanently deteriorated without the fault of the tenant, and (ii) that his landlord has obtained, or is entitled to obtain, on that account a reduction in the revenue payable in respect of the land covered by the holding. (2) On receipt of such an application, the Court shall, in the manner prescribed, make a local enquiry or have a local enquiry made by the Sub-Deputy Collector in charge of the area, wherein the land in question lies, to determine whether the tenant is entitled to a reduction. (3) When, after such enquiry, the Court holds that the tenant is entitled to a reduction of his rent, the Court may—notwithstanding anything in any contract between the parties—direct such reduction of rent as it thinks fair and equitable.

48. (I) Any tenant holding land in an estate other Reduction than a temporarily-settled estate may apply to the Court of the Deputy Commissioner for reduction of his holdings in rent on the ground— estates other than temporarily-settled. (i) that the soil of that land has during the tenancy on the present rent become permanently deteriorated without the fault of the tenant, and (ii) that the tenant would have been entitled to relief under section 47 had the estate in which his holding lies been a temporarily- settled estate. (2) On receipt of such application the Court shall proceed as if an application under section 47 had been received and the Court shall make a local enquiry or have a local enquiry made by the Sub-Deputy Collector in charge of the local area wherein the land in question lies in order to determine whether the tenant is entitled to a reduction of rent. 28 (3) When after such an enquiry the Court holds that the tenant is entitled to a reduction of rent, it may, notwithstanding anything in the contract between the parties, direct such reduction of rent as it thinks fair and equitable. Alteration of rent on alteration Of 49. (I) Every tenant shall— (d) be liable to pay additional rent for all land proved by measurement to be in excess of the area for which rent has been previously paid by him ; and (b) be entitled to a reduction of rent in respect of any deficiency proved by measurement to exist in the area of his holding as compared with the holding which rent has been previously paid by him, (2) Where a landlord or tenant is able to indicate any particular land as being in excess or in deficit, the rent to be added or abated (as the case may be) may be calculated with reference to the rates payable by a tenant of the same class for land of similar description and with similar advantages in the vicinity. Where on the other hand, a landlord or tenant is unable to indicate any particular land as being in excess or in deficit, the rent to be added or abated (as the case may be) may be calculated at the average rate of rent paid on all the lands of the holding exclusive of

such excess area. 50. (1) Subject to agreement or established usage Instalments money rent shall be payable in instalments similar to •f rent. those prescribed or ordered from time to time for the payment of r 'venue of the parent estate except that an instalment of rent shall be payable a fortnight earlier than the corresponding instalment payable by his landlord : Provided that the tenant may pay or tender the rent payable for the year at any time during the year before it falls due. (2) An instalment or part of an instalment of rent not duly paid when it falls due shall be deemed to be an arrear. 29 51. (1) Every tenant who makes a payment on Rent account of rent to his landlord shall be entitled to receipts. Obtain forthwith from the landlord a written receipt signed by the landlord or his authorised agent. (2) The [State Government] may, by notification, prescribe the form of the receipt to be given and require a landlord or any particular class of landlords to prepare and retain a counterfoil of the receipt. (3) In the absence of a notification under the last preceding clause, it will be sufficient for the receipt to show (a) (d) (e) the tenant's name ; the annual rent of the holding • the amount_ paid ; the year or years on account of which payment made ; the name of the persons making the payment and the date of payment ; (f) a description of the holding sufficient for its identification. (4) If the receipt does not contain substantially the particulars required by this section it shall be presumed, until the contrary is shown, (o be an acquittance in full of all demands for rent up to the date on which the receipt was given. 52. (1) A landlord who, without reasonable Penalty for cause, refuses or neglects to grant a receipt for the withholding rent receipts amount of rent paid by his tenant may, on the application of the tenant to the Revenue Court within three and for three months of the date of such payment, be ordered by the Revenue Court to pay as compensation to the tenant such sum payable by tenants. not exceeding double the amount or value of the rent paid as the Court thinks fit

1. Substituted by the A.O., 1950 for "Provincial Government" 30 (2) If, in the course of the enquiry, it appears to the Court that the tenant has made an application under this section frivolously or without reasonable cause, the Court may award to the landlord by way of damages such sum not exceeding double the amount or value of the rent paid or alleged to have been paid as the Court thinks fit. (3) Any sum awarded as compensation or damages under this section shall be recoverable as an arrear of land revenue

53. Where rent is due to the proprietor, land- Effec of holder, manager or mortgagee of an estate, the receipt of registered receipt of the person whose name has been registered proprietor, in the general registers maintained under Chapter IV landholder' of the Assam Land and Revenue Regulation as provided of 1886, manager or proprietor, landholder, manager or mortgagee of that mortgagee. estate, or of his agent authorised in that behalf, shall be a sufficient discharge for the rent due to such proprietor, landholder, manager or mortgagee, and the person 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 ; but nothing in this section shall affect any remedy which any such third person may have against the registered proprietor, landholder, manager or mortgagee. Application to deposit of rent in court DEPOSIT OF RENT 54. In any of the following cases, namely— (a) When the landlord refuses to accept any instalment of rent payable in cash when tendered to him by a tenant, or when the tenant entertains a bona fide doubt as to who is entitled to receive the rent payable in cash, the tenant may apply, in the manner prescribed, to the Revenue Court for permission to deposit in the Court a sum not less than the amount then due and the Court shall receive the deposit if it appears after examining the applicant that the application is made in good faith and on reasonable grounds and if the applicant pays in case (a)—the prescribed cost of transmission of the money deposited to the landlord and in case (b)—the fee chargeable for the issue of the notice referred to in section 56 in addition to the prescribed cost of transmission of the rent deposited. 31 55. The Court receiving the deposit shall give a Receipt for it under its seal. The receipt so given shall be granted by the Court and shall operate as an acquittance of the amount of rent payable by the tenant and deposited as aforesaid in the same valid manner and to the same extent as if that amount acquittance of rent had been received by his landlord. 56. (1) The Court receiving the deposit shall in Procedure case (a) of section 54 forthwith forward the same by post to the landlord • postal money order to the address of the landlord ; in case (b) of that section it shall forthwith cause to be deposited affixed in a conspicuous place at the court house a notification of the receipt thereof and shall cause notice to be served on every person who, the Court has reason to believe, claims or is entitled to the deposit ; the Court may pay the amount deposited as rent to any person appearing to the Court to be so entitled or may retain it pending the decision of the Civil Court

or to the person so entitled. (2) If no payment is made 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 the Civil Court to the contrary, be repaid to the depositor upon his application, and on his returning the receipt given by the Court when the rent was deposited. (3) No suit or other proceeding shall be instituted against the [Government] or against any officer of the [Government] in respect of anything done by a court receiving a deposit under section 54, 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. **ARREARS OF RENT** Liability 57. When a tenant is a privileged raiyat or an occupancy raiyat: he shall not be liable to ejectment for arrears of rent, but his holding shall be liable to privileged sale in execution of a decree for the rent thereof and the rent shall be the first charge thereon.

1. Substituted by the A.O. 1950 occupancy raiyat's hold— 32 Ejectment 58. (1) When an arrear of rent remains due from a tenant not being a privileged raiyat or an occupancy tenant in other cases. raiyat, at the end of the agricultural year the landlord may decide whether he has obtained a decree for the recovery of the arrear or not and whether he is entitled by the terms of any contract to eject the tenant for arrears or not, institute a suit to eject the tenant. (2) In a suit for ejectment for an arrear of rent, a decree passed in favour of the plaintiff shall specify the amount of the arrears and of the interest (if any) due thereon; and the decree shall not be executed if that amount and the cost of the suit are paid into Court within thirty days from the date of the decree or, if the Court is closed on the thirtieth day, on the day on which the Court reopens. The Court may for special reasons extend the period of thirty days mentioned in this section.

59. An arrear of rent shall bear simple interest at the rate of 91 per cent per annum from the expiration of that quarter of the agricultural year in which the instalment falls due to the date of payment or of the institution of the suit for the recovery of the arrear, whichever date is earlier.

60. If in any suit brought for the recovery of Power to award the 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 the rent and costs, such damages not exceeding 25 per cent of the amount of improperly decreed rent as it thinks fit: provided that interest shall not be decreed when damages are awarded under this section and provided 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. 33 (2) If, in any suit brought for the recovery of arrear 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 25 per cent on the whole amount claimed by the plaintiff as it thinks fit. **LIABILITY FOR RENT ON CHANGE OF LANDLORDS** OK AFTER TRANSFER OF HOLDING Tenant no 61. (1) A tenant shall not, when his landlord's interest is validly transferred, be liable to the transferee landlord for rent which became due after the transfer and landlord's interest for rent paid to the landlord whose interest was so transferred, unless the transferee has, before the payment, given notice of the transfer to the tenant without notice of the transfer. (2) When a privileged raiyat or an occupancy raiyat validly transfers his holding, the transferor and the transferee shall be jointly and severally liable to the landlord for arrears of rent due before the transfer. **MERGER** 62. When the landlord of an occupancy or privileged raiyat's holding is a proprietor, landholder or settlement-holder and the entire interests of the landlord of privileged raiyat's or the raiyat in the holding become united in the occupancy same person by transfer, succession or otherwise, such raiyat's right person shall have no right to hold the land as a raiyat by landlord but shall hold it as a proprietor, landholder or settlement-holder, as the case may be; but nothing in this sub-section shall prejudicially affect the rights of any third person. **IRREGULAR TRANSFERS OF HOLDINGS** Transfer in 63. If any holding or part of a holding be transferred in contravention of the provisions of this Act the transfer shall be voidable at the option of the Act to be 34 Voidable and landlord and the offending tenant's entire interests in the holding shall be liable to be forfeited; and the offending landlord may within 3 years of the transfer bring a tenant's suit for recovery of possession of the

entire interests of tenants. such tenant in the holding and shall be entitled to a decree for ejectment of such tenant or his transferee and any person claiming under either of them : Provided that when the Court is satisfied that the transfer * was made in good faith, the Court may, in lieu of ejectment, grant such other relief as may with due regard to the landlord's interests to it seem suitable. ILLEGAL CESSSES, ETC

64. Every tenant from whom, except under any Penalty for exaction of special enactment for the time being in force, any sum of money or any portion of the produce of his land is in excess of the exacted by or on behalf of his landlord in excess of the rent lawfully rent or interest lawfully payable and every tenant payable. whose holding is assessed at maximum rates of rent and from whom service is exacted by or on behalf of 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 or value of what is so exacted, such sum by way of penalty, as the Court thinks fit, not exceeding Rs

100

CHAPTER VIII Miscellaneous Provisions as to landlords and tenants EJECTMENT Ejectment 65. No tenant shall be ejected from his holding in execution of a decree. except in execution of a decree. 1. The words 'Cofa privileged raiyat's right' Assam Act xxvii of 1953. omitted by 3S IMPROVEMENTS 66. (1) For the purposes of this Act, the term Definition C Cimprovement" used with reference to a holding of "improve- shall mean any work which adds to the value of the ment"• holding, which is suitable to the holding and consistent with the purpose for which it was let, and which, if not executed on the holding, is either executed directly for its benefit, or is, after the execution, made directly beneficial to it. (2) Until the contrary is shown, the following shall be presumed to be improvements within the meaning of this section (a) The construction Of wells, tanks, water channels or other works for the storage, supply or distribution of water for the purpose of agriculture or for drinking or for the use of men and cattle employed in agriculture. Explanation.—Such construction on agricultural land shall not be deemed to impair the value of the land or to render it unfit for the purposes Of tenancy. (b) The drainage; reclamation from rivers or other waters or protection from floods, or from erosion or other damage by water, of land used for agricultural purposes or waste land which is cultivable. (t) The erection of a dwelling house for the tenant and his family together with all necessary out offices. (3) But no work executed by the tenant of a holding shall be deemed to be an improvement for the purposes of this Act if it substantially diminishes the value of his landlord's property. 67. (1) Neither the tenant nor his landlord shall, Right to make im- as such, be entitled to prevent the other from making improvements. an improvement in respect of the holding except on the ground that he is willing to make it himself. (2) If both the tenant and his landlord Wish to make the same improvement, the tenant shall have a prior right to make it unless it effects another holding or other holdings under the same landlord, 36 Registration 68. (i) A landlord may, by application to such of land lord's revenue officer as the [State Government] may Imp r o v e• appoint for a particular area, register any improve- ments. ment which he has lawfully made or which has been lawfully made at his expense. (2) The application shall be in such form, shall contain such information and shall be verified in such manner as the [State Government] may from time to time prescribes. (3) The 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, (b) in the case of improvements made after the commencement of this Act from the date of the completion of the work. (4) If the application is not rejected under the foregoing clause the officer shall issue notice on the tenant concerned, take such evidence as may be adduced by the landlord and the tenant, and make a local inquiry. (5) Improvements effected before the commencement of this Act shall be deemed to be improvements made in accordance with this Act and such of them as pertain to holdings lying in estates settled for ordinary or special cultivation otherwise than at full rates of revenue shall, until the contrary is proved, be presumed to have been made by tenants. (6) The officer shall refuse to register the improvement unless it is proved that the improvement was effected by, or at the expense of the landlord. 69. (1) Every tenant who is ejected from his Compenn• tion for te— holding shall be entitled to compensation for improve- nant's im- ments which have been made in respect thereof in improvements. accordance with this Act by him, or by his predecessors in interest, and for which compensation has not already been paid. JSubstituted by the A.O. 1950 for "Provincial Government", 37 (2) Whenever a Court makes a decree or order for the ejectment of a tenant it shall determine the amount of compensation (if any) due under this section to the tenant for improvements,

and shall make the decree or order of ejectment conditional on the payment of that amount to the tenant.

(3) No compensation under this section for an improvement shall be claimable where the tenant has made the improvement in pursuance of a contract or under a lease binding him, in consideration of some substantial advantage to be obtained by him to make the improvement without compensation, and he has obtained that advantage.

70. (1) In estimating the compensation to be awarded under section 69 for an improvement, regard shall be had— (a) to the amount by which the value, or the produce, of the holding or the value of that produce is increased by the improvement; (b) to the condition of the improvement and the probable duration of its effects; (c) to the labour and capital required for the making of such an improvement; (d) to any reduction or remission of rent or any other advantage given by the landlord to the tenant in consideration of the improvement; and (e) in the case of a reclamation or of conversion of unirrigated into irrigated land, to the length of time during which the tenant has had the benefit of the improvement at an unenhanced rent.

(2) When the amount of the compensation has been assessed, the Court may, if the landlord and the tenant agree, direct that, instead of being paid wholly in money, it shall be paid wholly or partly in some other way.

38 ACQUISITION OF HOLDING LANDLORD 71. (1) The Court of a Deputy Commissioner Acquisition of land by may on the application of the landlord of a holding, landlord, and on being satisfied that he is desirous of acquiring the holding or part thereof for some reasonable and sufficient purpose having relation to the good of the holding or of the estate in which it is comprised, or for any religious, educational or charitable purpose, authorise the acquisition thereof by the landlord upon such conditions as the Court may think fit, and require the tenant to sell his interest in the whole or such part of the holding to the landlord upon such terms as may be approved by the Court including full compensation to the tenant.

(2) An appeal shall lie to the District Judge against any order passed by the Deputy Commissioner under this section.

SURRENDER AND ABANDONMENT 72. (1) A raiyat not bound by a lease or other Surrender. agreement for a fixed period may, at the end of the agricultural year, surrender his entire holding. (2) But notwithstanding the surrender, the raiyat shall be liable to indemnify the landlord against any loss of the rent of holding for the agricultural year next following the date of the surrender unless he gives to his landlord at least three months before his surrender, notice of his intention to surrender.

(3) The raiyat may, if he thinks fit, cause the notice to be served through the Revenue Court. (4) When a raiyat has surrendered his holding, the landlord may enter on the holding and either let it to another tenant or take it into cultivation himself.

(5) When a holding is subject to an incumbrance or when there is an under-taiya/ on the holding or part thereof, the surrender of the holding shall not be valid unless it is made with the consent of the landlord and the incumbrancer or the under-raiyat as the case may be, 39 (6) Save as provided in sub-section (5) nothing in this section shall affect any arrangement by which a raiyat and his landlord may arrange for the surrender of the whole or a part of the holding.

73. (1) If a raiyat or under-raiyat voluntarily abandons his usual residence in the village or the neighbourhood without notice to his landlord and, without arranging for payment of his rent as it falls due, ceases to cultivate his holding, either by himself or by some other person, the landlord may, at any time after the expiration of the agricultural year in which the raiyat or under-raiyat so abandons and ceases to cultivate, enter on the holding and let it to another tenant or take it into cultivation himself.

(2) Where the whole or a part of a holding has been sublet, the landlord shall, before entering under this section on the holding, offer the whole holding to the sub-lessee for the remainder of the term of the sub-lease at the rent paid by the raiyat who has ceased to cultivate the holding, and on condition of the sub-lessee paying up all arrears due from that raiyat. If the sublessee refuses or neglects within two months to accept the offer, the landlord may avoid the sub-lease and may enter on the holding and let it to another tenant or cultivate it himself.

DIVISION Abandonment

74. A division of a holding or distribution of the Division of tenancy not rent payable in respect thereof, shall not be binding on the co-sharer tenants unless it is made with their co-sharer consent or on the landlord unless it is made with his tenants or on landlord express consent in writing. without consent.

MEASUREMENTS 75. Every tenant shall be bound to attend and Landlord's point out the boundaries of all lands held by him right to measure under his landlord and the landlord may subject to land. the provisions of this section and any contract, personally or by agent, enter on and measure all such lands

40 Provided that such measurements shall not, without a written order or the Revenue Court, take place oftener than once in five years except in the following cases, namely (a) Where the landlord is a purchaser otherwise than by a voluntary transfer and not more than two years have

elapsed since the date of his entry under the purchase, or (b) where the area of the tenancy is liable by reason of alluvion, diluvion or any other cause, to vary from year to year. (2) The five years shall be computed from the date of the last measurement, whether made before or after the commencement of this Act. 76. (1) When a landlord decides to measure any portion of land which he is entitled to measure under section 75, Revenue Court to him may, if he finds that any person occupying the order tenant land obstructs him in so doing or any tenant bound to attend and point out the boundaries refuses or neglects to do so, apply to the Revenue Court to make an order directing such person to permit the measurement, or such tenant to attend and point out the boundaries, as the case may be; (2) The Court may cause a notice to be served on such person or tenant requiring him to show cause why the order applied for should not be made and if the person or tenant (as the case may be) fails to show cause or if the cause shown is in the opinion of the Court, unsatisfactory, the Court may make the order. (3) If the tenant refuses or neglects to comply with the order, a map or other record of the boundaries and measurements of the land prepared under the direction of the landlord at time when the tenant was directed to attend, shall be presumed to be correct until the contrary is shown. 41 77. A tenant may apply to the Revenue Court for the correct measurement or such portion of his holding to (he having as does not form entire cadastral plots in the land measurement village map and land records prepared and maintained under the authority of the [State Government in circumstances. ment])• The Court on the deposits of prescribed fees and after notice to the landlord, shall arrange for the correct measurement of the area by a Revenue Officer not below the rank of a Sub-Deputy Collector. The correct measurement shall thereupon be entered in the raiyat's record-of-rights (if any) maintained

78. Every measurement of land made under the Standard provisions of this Act shall be made by the standard of measurement—bigha adopted by the Government in the cadastral measurement survey of the [State] 2

CHAPTER IX PREPARATION (WHERE A SETTLEMENT OF LAND REVENUE IS NOT MADE) AND MAINTENANCE OF RECORD OF RIGHTS OF [TENANTS] g 79. (1) The [State Government]

may, where a settlement of land revenue is not being made, at any order preparation of re—
time make an order in the case of any local area cord-of- estates or part thereof directing that record-of-rights for —with or without Survey—for [all or any class or tenants. classes of tenants]13 be prepared by a Revenue Officer. / 2) A notification in the official Gazette of an order under this section shall be conclusive evidence that the order has been duly made. (3) The survey shall be made and the record of- rights prepared in accordance with rules made in this behalf by the [State Government]i 80. SY' here an order is made under section 79, 'Particular the particulars to be recorded shall be specified in the to be record- ed. order and may include either without or in addition some or all of the following, to other particulars, namely [(a) the name of each tenant] a. 2. 3. 5. (b) the class to which the [tenant] 5 belongs ; (c) the area and situation of the land held by the [tenants] Substituted by the A. O. 1950 for 'Provincial Government' Substituted by A. O. 1950 for "Province". Substituted by Assam Act I of 1943 for "Privileged Raiyats and Occupancy Raiyats". Substituted by 'bid Lr original clause (a' . Substituted by ibid. 42 (d) the name of each [tenant's] landlord ; (e) (i) the rent payable at the time the record-of- rights is being prepared ; the mode in which that rent has been fixed whether by contract, by order of a court, or otherwise ; if the rent is a gradually increasing rent the time at which and the steps by which it increases • the special conditions and incidents, if any, of the tenancy ; any right-of-way or other easement attaching to the land for which the record-of- rights is being prepared : Provided that, if lands are not used for purposes connected with agriculture, it shall be sufficient to record that fact together with such particulars as may be prescribed. 81. (1) Where a draft record-of-rights has been Preliminary publication, prepared the Revenue officer shall publish the draft in amendment the prescribed manner and for the prescribed period, and final publication and shall receive and consider any objections which publication Of record-of- may be made to any entry therein, or to any omission therefrom, during the period of publication. rights. (2) Where such objections have been considered and disposed of according to such rules as the [State Government] 2 may make, the Revenue Officer shall finally frame the record and shall cause it to be finally published in the prescribed manner and the publication shall be conclusive evidence that the record has been duly made under this chapter. 82. (1) Where a record-of-rights has been finally Certificate of and pre- published under section 81, the Revenue Officer shall, sumption as within such time as the (State Government] e may by to final publication general or special order, require, make a certificate publication, and pre- stating the fact of such final publication and the date. sumption as thereof, and shall date and subscribe the same with to correct-

his name and official title. (2) The certificate or final publication, or, in the absence of such certificate, a certificate signed by the Deputy Commissioner of a district in which the estate, or part thereof to which the record-of-rights relates is situate, stating that a record-of-rights has been finally published on a specified date shall be conclusive proof of such publication and of the date thereof. 1. Substituted by Assam Act I of 1943 for "Raiyat's"

2. Substituted by A.O. 1950 for "Provincial Government". (3) The [State Government] may, by notification, declare, with regard to any estate, that a record-of rights has been finally published in the village in which the estate is situate and such notification shall be conclusive proof of such publication. (4) In any suit or other proceeding in which a record-of-rights prepared and published under this chapter or a duly certified copy thereof, or extract therefrom, is produced, such record-of-rights shall be presumed to have been finally published unless such publication is expressly denied. (5) Every entry in a record-of-rights finally published shall be evidence of the matter referred to in such entry, and shall be presumed to be correct until it is proved by evidence to be incorrect. 83. (1) An appeal, if presented within two months from the date of the order appealed against, shall lie to the Deputy Commissioner from every order passed by a Revenue Officer prior to the final publication of the record-of-rights on any objection made. The orders of the Deputy Commissioner shall, subject to the following sub-section, be final. (2) The [State may in any case, on application or of its own motion, direct the revision of any record-of-rights or any portion of a record-of-rights : Provided that no such direction shall be made until reasonable notice has been given to the parties concerned to appear and be heard in the matter. 1. Substituted by the A.O. 1950 for CCProvincial Govern - ment". Appeal to and revision by , superior authorities. Expenses 84. (1) When the preparation of a record-of-rights of proceedings has been undertaken under this chapter, the expenses incurred under this chapter in carrying out the provisions of this chapter in any estate or part thereof (including expenses that may be incurred at any time, whether before or after the preparation of the record-of-rights, in the maintenance, repair or restoration of boundary marks or other survey marks erected for the purpose of carrying out the provisions of this chapter), or such part of those expenses as the [State Government] may direct, shall be defrayed by landlords, [and tenants] in that estate or part in such proportion and in such instalments (if any) as the [State Government], having regard to all the circumstances, may determine. (2) The portion of the aforesaid expenses which any person is liable to pay shall be recoverable as an arrear of land revenue. (3) The cost of preparing copies of survey maps and record-of-rights under this chapter for distribution to landlords, [and tenants] shall be deemed to be part of the expenses incurred in carrying out the provisions of this chapter

85. The [State Government] may make an order directing that the record-of-rights in any district, tenancy of local area, estate or class of estates prepared under record-of-Rights Chapter III, Part D, of the Assam Land and Revenue Regulation. Regulation or under this chapter shall be maintained, so far as the interests of [tenants of any class or classes] are concerned, by registering all changes in the ownership accompanied by possession of such interests

86. When an order is made under section 85 the Procedure on application- Deputy Commissioner or an officer invested with the powers of Deputy Commissioner under sections 50 to 54 of the Assam Land and Revenue Regulation who on information receives information through an application or otherwise of any change in the ownership and possession of any such interest as is referred to in the foregoing section may make an order directing the registration of the name of the person so entering into ownership and possession : 1. Substituted by the A. O. 1950 for "Provincial Government"

2. Substituted by Assam Act I of 1943 for 'privileged raiyats and Raiyats'

3. Substituted by ibid for 'privileged raiyats and occupancy raiyats'. 1 of 1886 of 1886 occupancy 1 of 1886 1 of 1886 45 Provided that— (a) the information has been verified by local enquiry made by an officer having the powers of Deputy Commissioner under sections 50 to 54 of the Assam Land and Revenue Regulation ; or (b) notice has been published and enquiry held in a manner similar to that prescribed by sections 52 and 53 of the Assam Land and Revenue Regulation

87. Where any person is aggrieved by an order Application to Set aside directing registration under section 86 which has been order directed- made after verification of the information received by the local enquiry only he may apply to the officer passing the order or his successor in

office to set aside the order and on receipt of such application the officer receiving it shall cancel the registration and then proceed to publish the notice and hold the enquiry as in clause (b) of the proviso to section 86

CHAPTER X JUDICIAL PROCEDURE 88. (1) Except where otherwise expressly provided- Matters excluded in this Act or in rules issued thereunder, no Civil Court shall exercise jurisdiction in any of the following matters: (a) Claims to commutation of rent by privileged raiyats. (b) Claims to reduction, enhancement or alteration of rents of holdings. (c) Claims to compensation for withholding proper receipt or damages to landlord under section 52. (d) Claims to deposit rent. (e) Claims to register improvements. (f) Applications for acquisition of holdings by landlords. (g) Applications for permission or order in regard to measurement of land or for correct measurement. (h) Formation of Chapter IX or the preparation, signing or alteration of any document contained therein. (i) Maintenance of record-of-rights referred to in section 85. (j) Application for enhancement of rent under Section 116. (2) In all the above matters, jurisdiction shall, except as provided in sub-section (1), rest with the revenue authorities only. 89. An order of a Revenue Court fixing or altering which order the rent of a holding under this Act shall take effect fixing or altering rent from such date as the Court may fix as being taken effect*

90. Except as provided in section 98, the Civil Jurisdiction of Civil Court shall have jurisdiction in all suits between landlord and tenant as such.

91. (i) The [State Government] may, from time to time, make rules of procedure consistent with this Act declaring that any portion of the Code of Civil Procedure, 1908, shall not apply to suits between landlord and tenants as such or to any and tenant specified classes of such suits or apply to them subject to modifications specified in the rules. (ii) Subject to any rules made under the foregoing section and to the other provisions of this Act, the Code of Civil Procedure, 1908, shall apply to all such suits. 92. In suits between landlord and tenant as such in rent suits, the plaintiff shall, in addition to matters mentioned in rules 1, 2, 4, 5 and 6 and sub-rule (2) of rule 9 of Order VII in the first Schedule to Code of Civil Procedure, 1908, specify the area of the land to which the suit relates and where fields are numbered in the village papers, the number and area of each field and, in suits for arrears, the amount of the yearly rent and the instalments in which it is payable. Where the land to which the suit relates does not form one or more fields numbered in the village papers the plaintiff shall contain a sufficient description of the land and its boundaries. Substituted by the A. O. 1950 for "Provincial Government". A. O.

1937. Act V 1908. Act V 1908. 2. The words "with the approval of the Governor-General in Council" omitted by the 47 of 1933. No set-off shall be allowed in any suit for set-off in for arrears of rent unless the amount claimed as a set-off suit of arrears of has been determined by a decree or order of a competent Court. 94. (1) When a defendant admits that money is due from him on account of rent, but pleads that it is money admitted to be due not to the plaintiff but to a third person, the Court shall refuse to take cognisance of the plea unless the defendant pays into Court the amount so admitted to be due. (2) Where such a payment is made, the Court shall forthwith cause notice of the payment to be served on the third person. (3) Unless the third person within three months from the receipt of the notice institutes a suit against the plaintiff and therein obtains an order restraining payment out of the money, it shall be paid out to the plaintiff on his application. (4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3)

95. When a defendant admits that money is due from him to the plaintiff on account of rent, but pleads to Court of that the amount claimed is in excess of the amount admitted to be due, the Court shall refuse to take cognisance of the plea unless the defendant pays into Court the amount admitted to be due

96. When a defendant is liable to pay money into Court under section 94 or 95, if the Court thinks that to payment there are sufficient reasons for so ordering, it may take of portion of money. cognisance of the defendant's plea on his paying into Court such reasonable portion of the money as the Court directs

97. When a defendant pays money into Court under either of the said sections, the Court shall give grant the defendant a receipt and the receipt so given shall operate as an acquittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be. to re- 48 Appeals

98. In all proceedings under this Act before a Revenue Officer or in a Revenue court except those under section 71 and those in connection with the formation of a record-of-rights under Chapter IX appeals shall lie as follows :—(a) To the Commissioner from orders, original or appellate, passed by a Deputy Commissioner or Settlement Officer. (b) To the Deputy Commissioner or Settlement Officer from orders passed by any Revenue Court or officer subordinate to him even when exercising the powers of a Deputy Commissioner or Settlement Officer: Provided that no appeal shall lie against an appellate order of the Commissioner. **99. (1)** Unless otherwise specially provided in the Limitation of Appeal Act or in the rules issued thereunder no appeal shall lie, to the Deputy Commissioner or Settlement Officer after the expiration of thirty days from the date of the order appealed against and, to the Commissioner after the expiration of six weeks from the date of the order appealed against. **(2)** In computing the period prescribed for an appeal by this section, the day on which the order appealed against was passed and the time requisite for obtaining a copy of such order shall be excluded. **(3)** An appeal may be admitted after the period of limitation prescribed therefor by this section, if the appellant satisfies the Court to which he appeals that he had sufficient cause for not presenting the appeal within that period

100. The Court to which the appeal lies may Procedure either admit or summarily reject the appeal : of Appellate Court on Provided that no appeal shall be summarily re- appeal. jected unless the appellant or his pleader has been given an opportunity of being heard. If the Court admits the appeal, it may, after giving the parties or their pleaders an opportunity of being heard, reverse, modify or confirm the order ; appealed against, or it may direct such further investigation to be made, or such additional evidence to be taken, as it may think necessary, or the Court may itself take such additional evidence. **49 101.** In any case in which an appeal against the Suspension orders of a Revenue Court is admitted, the appellate Court may, pending the result of the appeal, direct the appealed against. order appealed against to be suspended

102. The [State Government]4, the Commissioner Power to Of the Division, the Deputy Commissioner of the call for pro- District or the Settlement Officer may call for the ceeding: of proceedings held by any Court or officer subordinate subordinate officers.to him and pass such orders thereon as he thinks fit

103. An appeal shall not lie from any decree Appeals in or order passed, whether in the first instance or on rent suits. appeal, in any suit instituted by a landlord for the recovery of rent Where— (a) the decree or order is passed by a District Judge, Additional Judge or Subordinate Judge, and the amount claimed in the suit does not exceed one hundred rupees, or (b) the decree or order is passed by any other judicial officer specially empowered by the [State to exercise final jurisdiction under this section, and the amount claimed in the suit does not exceed 50 rupees ; unless in either case the decree or order has decided a question relating to the title to land or to some interest in land as between parties having conflicting claims thereto : Provided that the District Judge may call for the record of any case in-which the judicial officer as afore- said has passed a decree or order to which this section applies, If it appears that the judicial officer has exercised a jurisdiction not vested in him by law, or has failed to exercise a jurisdiction so vested, or has acted in the exercise of his jurisdiction illegally or with material irregularity, and may pass such order as the District judge thinks fit

104. Every application for an order under rule Deposit on 13 of Order IX in Schedule I to the Code of Civil application Act V of Procedure, 1908, to set aside a decree passed ex parte, 10 set aside or for a review of judgment under section 114 read ex-parte dec- 1908.ree. with rule I of Order XLVII in Schedule I to the said Code in a snit between a landlord and tenant as such, shall contain a statement of the injury sustained by the 1. Substituted by the A.O. 1950 for "Provincial Government". -S 50 applicant by reason of the decree or judgment ; and no such application shall be admitted— (a) (b) Relief **105.** against for •ground— (a) (b) unless the applicant has, at or before the time when the applicaton is admitted, deposited in the Court to which the appli- cation is presented the amount, if any, which he admits to be due from him to the decree holder, or such amount as the Court may, for reasons to be recorded by it in

writing, direct ; or unless the Court, after considering the state ment of injury, is satisfied, for reasons to be recorded by it in writing, that no such deposit is necessary. (1) A suit for the ejectment of tenant on the that he has used the land in a manner which renders it unfit for the purposes of the tenancy, or that he has broken a condition on the breach of which he is, under the term of the con- tract between him and the landlord, liable to ejectment, shall not be entertained unless the landlord has served in the prescribed manner a notice on the tenant speci- fying the particular misuse or breach complained of, and, where the misuse or breach is capable of remedy, requiring the tenant to remedy the same, and in any case, to pay a reasonable compensation for the misuse or breach, and the tenant has failed to comply within a reasonable time with that request. (2) A decree passed in favour of a landlord in any such suit shall declare the amount of compensation which would be reasonably payable to the plaintiff for the misuse or breach, and whether, in the opinion of the Court, the misuse or breach is capable of remedy, and shall fix a period during which it shall be open to the defendant to pay the amount to the plaintiff, and, where the misuse or breach is declared to be capable of remedy, to remedy the same. (3) The Court may from time to time for special reasons extend the period fixed by it under sub-sec- tion (2). 51 (4) If the defendant, within the period or exten- ded period (as the case may be) fixed by the Court under the section, pays the compensation mentioned in the decree, and, where the misuse or breach is dec- Jared by the Court to be capable of remedy, remedies the misuse or breach to the satisfaction of the Court, the decree shall not be executed

106. The föllowing provisions shall apply in the Rights of ejected te- case of every tenant ejected from a holding—nants (a) when the tenant has, before the date of his respect crops an d ejectment, sown or planted crops in any land prepa- iand comprised in the holding, he shall be red for so- entitled, at the option of the landlord, wmg• either to retain possession of that land and to use it for the purpose of tending and gathering in the crops, or to receive from the landlord the value of the crops as estimated by the Court executing the decree for ejectment ; (b) when the tenant has before the date of his ejectment, prepared for sowing any land comprised in his holding but has not sown or planted crops in that land, he shall be entitled to receive from the land- lord the value of the labour and capital expended by him in so preparing the land, as estimated by the Court executing the decree for ejectment, together with reason- able interest on that value ; (e) but the tenant shall not be entitled to retain possession of any land or to receive any •urn in respect thereof under this section where, after the commencement of procee- dings by the landlord for his ejectment, he has cultivated or prepared the land, con- trary to local usage ; (d) if the landlord elects under this section to allow a tenant to retain possession of the land, the tenant shall pay to the landlord, for the use and occupation of the land during the period for which he is allowed to retain possession of the same, such rent as the Court executing the decree for ejectment may deem reasonable ; in the case of privileged raiyat or an occup- pancy raiyat compensation shall also be payable for trees standing on the land which he is entitled to cut and appro- priate : 52 Provided that no compensation under clause (e) shall be payable when the raivat is being ejected on the ground that he has used the land in a manner which renders it unfit for the purposes of the tenancy

CHAPTER X1 SUMMARY PROCEDURE FOR TAE RECOVERY OF RENTS UNDER THE BENGAL PUBLIC DEMANDS RECOVERY ACT, 1913 107. (1) Any landlord, in respect Of whose estate Recovery Of arrears of a record-of-rights for [all or any class or classes of rent under tenants]] has been prepared may apply to the [State the certi fi- Government] e, through the Deputy Commissioner of cate proce- dure cer- the district in which the estate is situa te, for the tain areas. application of the procedure provided by the Bengal Public Demands Recovery Act, 1913, to the recovery of the arrears Of rent which, he alleges, may accrue or are due to him from such [tenants] (2) •I he [State Government]2 shall specify the terms and conditions on which such applications may be allowed and shall allow any such application, when such terms and conditions are satisfied. Such terms and conditions may be added to or varied by the [State Government]2 from time to time as may be necessary, and . the [State Government]2 may with- draw its allowance of the application if it appears that the terms and conditions are not being complied with

1. Substituted by Assam Act I of 1943 for "privileged raiyat' or occupancy raiyats' 2.Substituted by the O. 1950 for "Provincial Govera• ment"

3. Substituted by Assam Act I of 1943 for aeraiyatJ".33 (3) When any such application has been allowed, the landlord may make a requisition in writing, in the form prescribed by the Revenue officer as the [State Government] may appoint, for the purpose of this section, to perform the functions of a Certificate Bengal Act officer under the Bengal Public Demands Recovery Act, 1913, for the recovery of any arrears of rent which he alleges are due to him from any such [tenants] 2. (4) Every such requisition shall be signed and verified by the landlord making it, in the manner provided by rule I in Schedule 11 of the said Act, as amended for the time being by rules made under section 39 thereof, and shall be chargeable with a fee of the amount which would be payable under the Court- Fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due. (5) On receipt of such requisition, the said Revenue officer may, in accordance, with such rules the [State Government] may make in this behalf, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form, stating that the arrear is due ; and shall include in the certificate the fee paid under sub-section (4), and shall cause the certificate to be filed in his office : Provided that— (a) no certificate shall be signed for the recovery of arrears of rent of a tenancy regarding which an application has been made to a Revenue Court for the alteration of the rent payable by the tenant in respect of the period during which it is alleged in the requisition made under subsection (3) that the arrears of rent sought to be recovered have accrued ; and (b) if, after the signing of a certificate, it is found that such an application was made in a Revenue Court before the certificate was signed, such certificate shall be cancelled

1. Substituted by the A.O. 1950 for "Provincial Government"

2. Substituted by Assam Act I of 1943 for 'raiyaats'.54 (6) The person in whose favour any certificate is signed under sub-section (5) shall be deemed to be the certificate holder for the amount mentioned in the certificate, and the persons against whom the certificate is signed shall be deemed to be the certificate debtor for the said amount ; and all proceedings taken by the Certificate officer for the recovery of such amount shall be taken at the instance of the first-mentioned person, and at his cost and responsibility, and not otherwise. (7) The Bengal Public Demands Recovery Act, Bengal Act 111 of 1913, with such restrictions and modifications (if any) as may be prescribed shall apply to the execution, and to all proceedings arising out of the execution, of certificates filed under sub-section (5). (8) No landlord shall, during the pendency of any proceedings under this section, institute a suit in a Civil Court for the recovery of any arrears of rent in respect of which he has made a requisition under sub-section (3) ; and subject to the provisions of section 34 of the Bengal Public Demands Recovery Act, 1913, no [tenant of any class or classes] shall, after the signing of any certificate against him under sub-section (5) of this section, apply to a Revenue Court for the alteration of the rent payable by him, in respect of the period during which the arrears of rent for which such certificate was signed have accrued. (9) The word "landlord" in this section includes an entire body of landlords, and also one or more co-sharer landlords who collect or collect his or their share or shares of the rent separately ; and where a Revenue officer signs a certificate on the requisition of one or more such co-sharer landlords, he shall at the same time issue to each of the remaining co-sharer landlords a copy of such certificate. Passing of 108. Where a holding is sold in execution of a holding sold certificate for arrears of rent signed under the Bengal Public Demands Recovery Act, 1913, the holding sold certificate shall, subject to the provisions of section 62 of this Act, pass to the purchaser if such certificate was signed on the requisition of or in favour of a sole landlord or the entire body of landlords, and the provisions of Chapter XII shall, so far as may be, apply

1. Substituted by Assam Act I of 1943 for "privileged raiyat or occupancy raiyat".55 CHAPTER XII SALE FOR ARREARS UNDER DECREE 109. (1) If a decree for an arrear of rent is passed against a tenant and remains unsatisfied, the Court having authority to execute the decree shall, or of an order proceed on the application of the occupancy landlord to sell the judgment-debtor's right, title and raiyat for arrears of rent. interest in his holding by public auction : [Provided that in the case of a holding in an estate pertaining to a religious institution, if the highest bid be that of a member of a different religion from the one to which the institution belongs the landlord shall have the option, to be declared in writing to the Court within 30 days of the sale, of purchasing the holding at the highest bid. (2) Notwithstanding anything contained in sub-section (1) above, the Court may, on the application of the landlord, proceed to execute the decree against the person or any other property of the

defaulter.] 2 I it). Where a holding is sold in execution of a General po- wers of pur- decree for arrear due in respect thereof, the purchaser chaser as to shall take subject to the interests defined in this avoidance of Chapter as "protected interests" but with powers to incumbran- annul the interests defined in this Chapter as ces. 'Kincumbrances" : Provided that the power to annul shall be exercisable only in the manner by this Chapter directed

111. The following shall be deemed to be protec- Protected interests.ted•interests within the meaning of this Chapter :— (a) Any lease in respect of land whereon, in accordance with the purpose of the lease granted by the tenant whose interest is being sold, permanent dwelling houses, manufactories or other permanent buildings have been erected, or permanent gardens, tanks or canals, public or plantations, places of worship or public burning or burying grounds have been made : 1. Omitted by Assam Act XXVII of 1953

2. Substituted by ibid.56 Provided that such tenant was under the terms of his engagement with his landlord entitled to grant such lease ; (b) any right or interest, consistent with the provisions of this Act, which the landlord, at whose instance the tenancy is sold, or his predecessor in title, has expressly, and in writing given the tenant for the time being permission to create. 1 12. For the purposes of this Chapter :— Meaning of Inr•um. bra' and (1) The term "incumbrance" used with reference and "arrear to a tenancy, means any lien, sub-tenancy, easement or other right or interest lawiUlly created by the tenant ofr at". on his holding or in limitation oi his own in interest therein, and not being a protected interest as defined in section i 11. and arrear of rent " (2) The terms arrears shall be deemed to include interest decreed under sec- tion 5!) or damages awarded in lieu of interest under sub-section (1) of Section 60

113. When a has been passed for an arrear Appi ication for OT of rent due for a holding and decree- holder applies holding.under rule 11 (2) of Order XXI in Schedule I to the Code of Civil Procedure, 1935, for the attachment and •Ac X" Of sale of the holding in execution of the decree he shall produce a statement G how;ng the estate and the village in which the land comprised in the holding is situate, the yearly rent payable for the same and the total amount recoverable under the decree. 114. (1 Notwithstanding anything contained Combined of in the Code of Civil Procedure, 1908, wt.en the decree- order attachment holder makes the application mentioned in section I i 3 and procta- the Court shall, if it adm its the application under ma t of rule 17 of Order XXI in Schedule I to the said Code, sale to be and orders execution of the decree as applied for, issued. issue a combined order of attachment and proclama- tion the ptescribed form. [(2) Notwithstanding anything contained in sub- rule (2) oc Rule 66 of Order XXI in Schedule I to the said Code it shall not be necessary for the Court to draw up the sale proclamation after notice to the judgment-debtor in the case of lands ordered to be sold for arrears of rent due in respect thereof Ai I. Inset ted by Assam Act XXVII of 1953 and existing sub-sections (2) and (3) remembered as *lb-sections (3) and (4) respec- tively. 1908. 1908. 57 (3) Notwithstanding anything contained in sub. rules (1) and (2) of rule 67 of Order XXI in Schedule I to the said Code, the proclamation shall be publish- ed in the following manner (a) By fixing up a copy thereof in a conspicu- ous place on the land comprised in the holding ordered to be sold, and (b) by affixing a copy thereof in a conspicuous piace at the Court- house of the issuing court [, and] i [(c) by sending in the prescribed form by regis- tered post do the judgment-debtor a con- cise statement of the order of attachment and proclamation at the time of issue of the order of attachment and proclamation.] a (4) Notwithstanding anything contained in rule 68 of Order XXI in Schedule I to the said Code. the sale shall not, without the consent in writing of the judgment-debtor, take place until after the expiration of at least go days cæ.lculated from the date on which the copy of the proclamation has been fixed up on the land comprised in the holding ordered to be sold. 115. (1) When a holding has been advertised Sale of hold- sale under section 114 it shall be put up to auction and ing with sold with power to avoid all incumbrances. power to avoid all in- (2) The purchaser at a sale under this section cumbrances may in the manner provided by section 116, and notand effect otherwise, annul any incumbrance on the holding. thereof. 116. (1) A purchaser having power to annul an Procedure for incumbrance under this Chapter or under the Public annulling in Bengal Act Demands Recovery Act, 1913, desiring to annul cumbrances under this '110-1913. the same, may within one year from the date of confir- Chapter or mation of the sale or the date on which he becomes under the aware of the incumbrance, whichever is later, present Public De- to the Court, which passed the decree for sale of the mands Reco- very Act, property, an application in writing, requesting it to 1913. serve on the incumbrancer a notice declaring that the incumbrance is annulled. (2) Every such application must be accompanied by such fee

for the service of the notice as may be prescribed in this behalf. (3) When an application for service of notice is duly made under this section, the Court shall cause the notice to be served in compliance therewith and the incumbrance shall be deemed to be annulled from the date on which it is so served. 1. Substituted by Assam Act XXVII of 1953 for the full-stop

2. Inserted by *ibid.* 58 (4) Where a holding is sold in execution of a decree for arrears due in respect thereof and there is on the holding a protected interest of the kind specified in section 111, clause the purchaser may, if he has power under this Chapter to avoid all incumbrances, apply to the Revenue Court to enhance the rent of the land which is the subject of the protected interest. On proof that the land is held at a rent which was not at the time the lease was granted a fair rent, the Court may enhance the rent to such amount as appears to be fair and equitable. 117. (1) In disposing of the proceeds of a sale Rules for disposal Of under this Chapter the following rules instead of those the sale pro- contained in section 73 of the Code of Civil Procedure, 1908, shall be observed that is to say 1908. (a) There shall first be paid to the decree-holder the costs incurred by him in bringing the holding 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 any rent which may have fallen due to him in respect of the holding between the institution of the suit and the date of the confirmation of the sale and the costs of the application for the purpose under this section ; (d) the balance (if any) remaining after the payment of the charges 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. (2) If the judgment-debtor disputes the decree holder's right to receive any sum on account of rent, under clause (c), the Court shall determine the dispute. and the determination shall have the force of a decree Holding to 118. (1) Rules 58 to 63 (both inclusive) Of Order V Of 0 -Z be XXI in Schedule I to the Code of Civil Procedure, Act V from attachment 1908, shall not apply to a holding attached* in execution of a decree for arrears due thereon. into court Of amount of decree with costs, or on 59 (2) When an order for the sale of a holding in execution of such a decree has been made, the holding of satisfaction by decree-holder shall not be released from attachment unless the decree holder. amount of the decree, including the costs decreed together with the costs incurred in bringing the tenancy to sale is paid into Court, or the decree-holder makes an application for the release of the holding 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. (4) The withdrawal of the amount deposited under this section or section 121 by the decree-holder landlord shall not operate as an admission of the transferability of the holding sold in execution of the decree Bengal Act 111 of 1913

119. When a holding is advertised for sale— Inferior tenant paying into Court may deduct (a) under this Chapter in execution of a decree from rent. against a superior tenant defaulting, or (b) in execution of a certificate signed under the Bengal Public Demands Recovery Act, 1913, for arrears of rent due in respect of the holding from a superior tenant defaulting, or when such sale is set aside under section 121, Act V 1908, and an inferior tenant pays money into Court in order to prevent or set aside the sale, as the case may be, such inferior 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. 120. (1) Notwithstanding anything contained in Decree-holder rule 72 of the Order XXI in Schedule I to the Code of Civil Procedure, 1908, the holder of a decree in execution of which a holding is sold under this Chapter debtor may, without the permission of the Court, bid for or not purchase the holding. (2) The judgment-debtor shall not bid for or purchase a holding so sold. 60 (3) When a judgment-debtor purchases by himself or through another person a holding 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. 121. (1) Rules 89 and 90 of Order XXI in Schedule I to the Code of Civil Procedure, 1908, shall not apply in cases where a holding has been sold for sale. arrears of rent due thereon, but in such cases the judgment-debtor or any person whose interests are affected by the sale, may at any time within

thirty days from the date of the sale, apply to the Court to set aside the sale, on his disposing— (a) for payment to the decree-holder the amount recoverable under the decree up to the date when the deposit is made, with costs ; (b) for payment to the auction purchaser, as penalty, a sum equal to five per cent of the purchase money but not less than one rupee. (2) When a person makes an application under sub-section (3) for setting aside the sale of his holding he shall not, unless he withdraws that application, be entitled to make or prosecute an application made under sub-section (1). (3) Where a holding has been sold for arrears of rent due thereon, the decree-holder, the judgment-debtor or any person whose interests are affected by the sale, may, at any time within [ninety days] from the date of the sale, apply to the Court to set aside the sale on the ground of a material irregularity or fraud in publishing or conducting the sale : Provided as follows:— (a) No sale shall be set aside on any such ground unless the Court is satisfied that applicant has sustained substantial injury by reason of such irregularity or fraud ; and Substituted by Assam Act XXVII of 1953 for six months" o 61 no application made by a judgment-debtor or any person whose interests are affected by the sale under this sub-section shall be allowed unless the applicant either deposits the amount recoverable from him in execution of the decree or satisfies the Court, for reasons to be recorded by it in writing, that no such deposit is necessary. (4) Rule 91 of Order XXI in the Schedule to the Act V of Code of Civil Procedure, 1908, shall not apply to any sale under this Chapter. (5) An appeal shall lie against an order setting aside or refusing to set aside a sale. 122. (i) Where an application is made under section 121 or where such application is made and dismissed, to become allowed, the Court shall make an order confirming the absolute or be set aside, sale and thereupon the sale shall become absolute. and return of purchase in money certain cases• (2) Where such application is made and allowed, and where in the case of an application under sub-section (1) of section 121, the deposit required by that sub-section is made within thirty days from the date of sale, the Court shall make an order setting aside the sale : Provided that no order shall be made unless notice of the application with a copy thereof has been given to all persons affected thereby. (3) Where a sale is set aside under this section, the purchaser shall be entitled to an order against any person to whom the purchase money has been paid for its repayment with or without interest as the Court may direct. (4) No suit to set aside an order made under this section shall be brought by any person against whom such order is made. 62 CHAPTER XIII CONTRACT AND CUSTOM Restrictions 123.(1) Nothing in any contract between a landlord and a tenant made before or after the passing of this Act— agreement. (a) shall prevent a raiyat from acquiring the status of a privileged raiyat in respect of land or acquiring an occupancy right in land in accordance with the provisions of this Act, (b) shall take away the status of a privileged raiyat or an occupancy right in existence at the date of the contract, (c) shall take away or limit the rights of privileged raiyats or occupancy raiyats in trees on their holdings as provided in section 7 or 15, or shall increase the rate of interest payable on arrears of rent as laid down in section 59,] I (g) shall entitle the landlord to eject a tenant otherwise than in accordance with the provisions of this Act, or (f) shall take away or limit the right of a tenant as provided by this Act to make improvements and claim compensation for them, or (g) Shall entitle a landlord, where the rent is payable in produce, to recover as rent, produce in excess of [one-fourth] 2 of the gross produce of the land for the year for which the rent is claimed. (2) Nothing in any contract made between a landlord and a tenant after the passing of this Act shall— (n) take away or limit the right of a privileged raiyat and an occupancy raiyat to use land as provided by sections 7 and 14 respectively, x. Substituted by Assam Act XXVII of 1953 for clause (d). t. Substituted by ibid for "half (or in the case of jute, one-third)" (c) 63 take away the right of raiyat to surrender his holding in accordance with section 72, or take away the right of a tenant to apply for reduction of rent under sections 47, 48 and 49

124. Nothing in this Act shall affect any custom, usage or customary right, not inconsistent with, or not expressly or by necessary implication modified or abolished by its provisions

CHAPTER XIV LIMITATION 125. (1) The suits, appeals and the applications Saving of custom Limitation specified in Schedule I annexed to this Act shall be in suits, instituted and made within the time prescribed in that schedule for them respectively ; and every such suit or application in Schedule or appeal instituted, and application made, after the expiry of the period of limitation so provided shall be dismissed although limitation has not been pleaded. (2) Nothing in this section shall revive the right to institute any suit or appeal or make any application which would have been barred by limitation if it had been instituted or made immediately before the commencement of this Act. of 1903

126. Sections 6, 7, 8 and 9 and sub-section (2) Portions of of section 29 of the Indian Limitation Act, 1908, shall the Indian Limitation not and, subject to the provisions of this Chapter, the Act not ap- remaining provisions of that Act shall, apply to all plicable to suits, appeals and applications specified in Schedule I such suits, annexed to this Act.etc., men- ticed in Schedule I

CHAPTER XV SUPPLEMENTAL 127.(1) If any person otherwise than in accordance Penalties for illegal inter- with any enactment for the time being in force— ference with produce. (a) distrains or attempts to distrain the produce of a tenant's holding, or 64 (b) except with the authority or consent of the tenant, prevents or attempts to prevent the reaping, gatherings storing removing or otherwise dealing with any produce of a holding, he shall be deemed to have committed criminal trespass within the meaning of the Indian Act XLV of 1800. Penal Code. (2) Any percon who abets, within the meaning of the Indian Penal Cede, the doing of any act mentioned Act XLV Of 1060. in sub-section (1), shall be deemed to have abetted the commission of a criminal trespass within the meaning of that Code. Power to 128. The [State Government] 1 may, from time make rules. to time, bv notification in 'he official Gazette. make rules, consistent with this Act, to carry out the purposes of the Act, after previous publication

129. The [State Government] 1 may invest, Power to invest officers generally or for special purposes, any Revenue Officer with special or Assistant Settlement Officer with all or any of the powers, powers of Revenue Court, or o? the Court of Deputy Commissioner or Settle. C.)ffcer for the purposes of, and under, this Act, On the application of anv of the parties Revenue ourt and after notice to the partis and after hearing such 0" Revenue its Officer may of them as desire to be heard, or of own motion his ansrer ap- Court plication or without such notice, a Revenue may at any other pro- Officer ceding foc stage— iesoosai to any it.venue Cour t or offcicer so b- ordine te to it or him. (a) transfer any application or other proceeding it for disposal to any pending before hun it Court subordinate to a nd Revenue Officer competent to dispose of the same, or (b) withdraw any application or other proceed_ it ing pending before R venue any him it Court subordinate to — and him Officer i. Substituted by the A , O. 19.50 for "Provincial Govern- ment". (i) (ii) 65 dispose of the same ; or transfer the same for disposal to any it Court subordinate to com- Revenue Offcer petent to dispose of the same; or (iii) re-transfer the same for disposal to the Court which it was withdrawn. öÄærfrom whom (2) Where any application or other proceeding has been transferred or withdrawn under sub-section Court which ' Officer who thereafter proceeds to dispose o (l) the it may, subject to any special directions in the case of an order of transfer, either re-hear it or proceed from the point at which it was transferred or withdrawn

131. Nothing in this Act shall prevent a holding Sale of of a privileged or occupancy raiyat from being sold holding of under orders of Revenue Court for the recovery ofa privileged or occup- XIX of loan granted under Land Improvement Loans Act, ancy raiyat 1883, or Agriculturists' Loans Act, 1884, or otherwise for recovery 1883.XII Of by the [State Government]4. The rent of the holding Of 1 0 a n g ranted 1884, however shall be the first charge on the sale proceeds. under Land I. Substituted by the A.O. Improve- ment Loans Act, 1883 etc. 1950 for "Provincial Government". 66 SCHEDULE 1 PART I Suits vescription of suits 1. To eject any raiyat on account of any breach oc a condition in respect of which there is a contract expressly pro. viding that the ejectment shall be a penalty ot such breach 2. To eject a non-occupancy raiyat under section 33 (d) or (e) and an under-raiyat under section 39 (d) or (e)

3. For the recovery of an arrear of rent—(a) Where the arrear fell due before a deposit was made under section 54 on account of the rent of the same holding. (b) In other cases 4. To recover possession of land claimed by the plaintiff as a raiyat or an under-raiyat otherwise than under sec- dons 35 and 41 respectively. Period Of limitation One year Six months Six months Three years Two years PART 11 Appeals Description of appeals— 5. From any decree or order under Thirty days this Act passed by the Civil Court to the Ceurt of the District Judge, Time from which the period begins to run Date of the breach. Expiration of the term of the lease or of the notice as the case may be. Date of the service of the notice of the deposit or pre- sentation by the postal money order, as the case may be, Last day of the agricultural year in which the arrear fell due. Date of disposes- Sion. Date of the decree or order appealed against. 67 PART 111 Applications Description of suits Description of applications— 6. For the execution of a decree or order made in a suit or proceedings between landlord and tenant to whom the provisions of this Act are applicable and not being a decree for a sum of money exceeding Rs. 200 exclusive of any interest which may have accrued after decree upon the sum decreed but inclusive of the costs of executing

such decree ; except when a judgment-debtor has by fraud or force prevented the execution of the decree, in which case the period of limitation shall be governed by the provisions of the Indian Limitation Act, 1908 ; provided that where a sale in execution of arrears of rent is set aside on application, the proceedings in execution shall continue and the time between the date of such sale and the date of the order setting it aside shall be excluded from the period of limitation provided by this Article. AGP (Leg) No 12/58 Period of limitation Three years Time from which the period begins to run (I) Date of the decree or order, or (2) where there has (3) been an appeal, the date of the final decree or order of the appellate Court, or where there has been a review of judgment , the date of the decision passed on the review.

