

Appendix-XVI

A Brief Note on the H.P. Tenancy and Land Reforms Act, 1972

The H.P. Tenancy and Land Reforms Act 1972 is an Act to unify amend and consolidate the laws, relating to tenancies of agricultural lands and to provide for certain measures of land reforms in Himachal Pradesh.

Statement of objects and reasons for the Bill

The statement of objects and reasons for the Bill says that:

1. "As a result of the re-organisation of the erstwhile State of Punjab in November, 1966, some areas were integrated in Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966. There are different enactments regarding tenancy and agrarian reforms in force in new and old areas of the Pradesh. In the areas as comprised in Himachal Pradesh immediately before 1st November, 1966, the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act, 1953 is in force which is a progressive legislation about the security of tenures of tenants and their other rights. In the areas added to Himachal Pradesh under section 5 of the Punjab Re-organisation Act, 1966, however, occupancy tenants have been vested with proprietary rights under two Acts on the subject namely, the Punjab Occupancy Tenants (Vesting of Proprietary Rights) Act, 1953, and the Pepsu Occupancy Tenants (Vesting of Proprietary Rights) Act, 1954. In the old areas the occupancy tenants have to apply for ownership under section 11 of the Himachal Pradesh Abolition of Big Landed Estates and Land Reforms Act.

It has, therefore, considered necessary to unify the various laws relating to tenancies as in force in the Pradesh and to provide for a measure of land reforms to remove disparities.

Restrictions have been imposed to purchase land by the non-agriculturists to avoid concentration of wealth in the hands of non-agriculturists moneyed class.

The Bill is to achieve the above objects."

Aims to the Act

2. The Act, thus, aims at bringing about measures of land-reforms, apart from consolidating law relating to tenancies. It is one of the Acts included in the Ninth Schedule of the Constitution. The relevant provisions of the Act reveal that the object was to ensure that land goes to the actual tiller. The interpretation of its provisions must, therefore, ensure fulfillment of this object. They must bear their contextual meaning. The adoption of a purposive approach, while interpreting the provisions, is a legitimate rule of interpretation available in the case of a statute.

Definition of 'Tenant' and 'Tenancy'

3. The Act defines 'Tenant' and 'Tenancy' under sections 2(17) and 2 (18) as under:-

"tenant" means a person who holds land under a landowner, and is, or but for a contract to the contrary would be liable to pay rent for that land to that landowner and includes-

- (ii) the predecessors or successors in interest of a tenant or a subtenant, as the case may be, but it does not include-
 - (a) a [mere] mortgagee of the rights of landowner, or
 - (b) a person to whom a holding has been transferred or an estate or a holding has been let in farm under the Himachal Pradesh Land Revenue Act, 1954 (6 of 1954), or the Punjab Land

Revenue Act, 1887 (17 of 1887), as the case may be, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear (;

(c) [****]

“tenancy” means a parcel of land held by a tenant of a landowner under one lease or one set of conditions; and

Types of Tenants

4. There are two types of tenants recognized in the Act.

1. Occupancy Tenants; (2) The tenants other than occupancy tenants i.e. non occupancy tenants.

Definition of Occupancy Tenant.

5. Occupancy tenant has been defined under section 92(b)-as under:-

“Occupancy tenant” means a tenant who, immediately before the commencement of this Act, is recorded as an occupancy tenant in the revenue records, and includes a Kismi tenant and a tenant who, after such commencement obtains a right of occupancy in respect of the land held by him whether by agreement with the landowner or through a Court of competent jurisdiction or otherwise, and includes also the predecessors and successors in interest of an occupancy tenant.

Non Occupancy Tenant

6. A Non Occupancy tenant has not been defined in the Act. But a tenant other than a occupancy tenant is a non-occupancy tenant.

Vesting of proprietary rights in occupancy tenants and extinguishment of corresponding rights of land-owners u/s 94 of the Act.

7. Occupancy tenants have become land owners of the land possessed by them by paying an amount equal to 48 times of the land revenue and rates and cesses chargeable in respect of the land.

Subject to sub-section (2) of section 99, chapter (IX) of the Act shall not apply to evacuee property and the composite property or the property vested in the Central Govt. u/s 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954.

Rights of Occupancy

8. Chapter-II deals with the rights of occupancy of a tenant in respect of land occupied and broken up by him for cultivation or taken in exchange of him for other land belonging to the same land owners.

A tenant can acquire right of occupancy under chapter-2 of the Act by filing a revenue suit to the competent revenue court. Mostly suits for rights of occupancy are not instituted by a non occupancy tenant as all the non-occupancy tenant, of the land owners other than protected land-owners under the Act, have become land-owners under section 104 of the Act, and if a tenancy is created after the commencement of Tenancy Act, the provisions of sub section (3) of section 104 shall apply immediately after the creation of such tenancy.

Rents

9. Chapter-III deals with the rents. The rent for the time being payable in respect of a tenancy shall be the first charge on the produce thereof. A tenant shall be entitled to tend, cut and harvest the produce without any interference on the part of his land-owner. Except where rent is taken by the division of the produce, the tenant shall be entitled to the exclusive possession of the produce.

Maximum limit for rent

10. The maximum rent payable by a tenant for any land held by him shall not exceed on 1/4 of the crops of such land or of the value of such produce. Ghas, Bhusa, shall not be included in the produce. No land owner shall have right to enhance the rent payable merely on the grounds that it is less than the limit prescribed under the law.

Lease, Relinquishment And Ejectment

11. Chapter IV deals with lease, relinquishment and ejectment. Section 30, occurring in Chapter IV, enables a landowner, who is a minor, or an unmarried woman, or if married, divorced or separated from husband or a widow or who is permanently incapable of cultivating land by reason of any physical or mental infirmity or is a serving member of the Armed Forces and is prevented by sufficient cause from cultivating land to lease land owned by him for such period during which his inability or disability to cultivate in person lasts. It permits the landowner to apply to get back the possession of the land from the lessee within the prescribed period after cessation of his inability or disability. Where he fails to make an application for the resumption of land within the period prescribed, the lessee can claim the benefit accruing to him under Chapter X. Section 31 prohibits relinquishment of a tenancy by a tenant. It says that where a tenant wants to make a voluntary surrender of his tenancy land, the same shall be in a favour of the State Government which shall have right to induct any suitable tenant or landless agricultural labourer to the relinquished land. Section 35 then provides that if land comprising the tenancy of a tenant is mortgaged to him with possession by the landowner and such land is subsequently redeemed by the landowner, the tenant shall be deemed to be a tenant of the landowner in respect thereof notwithstanding such redemption. If such a tenant has been dispossessed by the landowner in execution of a decree or order of resumption, he shall be entitled to be restored to his tenancy on an application made by him to an Assistant Collector of the first grade within a period of one year from the commencement of the Act. The tenant is not to be ejected except in execution of a decree for ejectment but when the decree for arrears of rent in respect of land has been passed and remains unsatisfied, he will have option to save his ejectment by payment of the arrears of rent within a period of one year from the commencement of the Act. In a suit for his ejectment on the grounds mentioned in section 34, the Court may relieve him from ejectment by directing him to remedy the injury for which his ejectment is sought within a period to be fixed in the order or direct him to pay into Court such compensation as it considers fit.

Succession:

12. Under section-45 of the Act, when a tenant in any land dies the right shall devolve-

- (a) on his male lineal descendants, if any, in the male line of descent; and
- (b) failing such descendants, on his widow, if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom; and
- (c) failing such descendants and widow, on his widowed mother, if any, until she dies or remarries or abandons the land or is under the provisions of this Act ejected therefrom; and
- (d) failing such descendants and widow or widowed mother of, if the deceased tenant left a widow or widowed mother, then when her interest terminates under clause (b) or (c) of this section, on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives.

Improvement and Compensation

13. A tenant may at any time apply in writing to the land-owner for permission to make improvement at his own expense on the land leased to him. He has a right to make improvement on land under the provisions of section 46 of the Act.

Under Section 50 of the Act, a tenant who has cleared and brought under cultivation waste land, shall, if objected from that land be entitled to receive from the land owner as compensation for disturbance in addition to any compensation for improvement a sum to be determined by the revenue court or revenue officer.

The Acquisition of proprietary rights by tenants other than Occupancy tenant

14. The Acquisition of proprietary rights by non occupancy tenant is dealt with in chapter X of the Act Section 104 of the Act reads as follow:-

"Right of tenant other than occupancy tenant to acquire interests of landowner-(1) Notwithstanding anything to contrary contained in any law, contract, custom or usage for the time being in force, on and from the commencement of this if the whole of the land of the landowner is under non-occupancy tenants, and if such a landowner has not exercised the right resumption of tenancy land at any time since January 26, 1955, under any law as in force:-

- (i) such a landowner shall be entitled to resume before the date to be notified by the State Government in the Official Gazette and in the manner prescribed, either one and a half acres of irrigated land or three acres of un-irrigated land under tenancy from one or more than one tenants for his personal cultivation and the right, title and interest (including contingent interest, if any) of the tenant or tenants, as the case may be, therefrom shall stand extinguished free from all encumbrances created by the tenant or tenants to that extent:

Provided that if the tenant has taken loan from the State Government, a co-operative society or a bank for the improvement of tenancy land which the landowner has resumed under clause (i) or (ii) and has used such loan for the improvement of land, then the landowner shall be liable to repay the outstanding amount of such loan and to the extent actually used for said purpose and interest thereon to the state government or to the cooperative society or a bank as the case may be proportionate to the improved land resumed by him;

Provided further that the landowner shall not be entitled to resume from a tenant more than one half of the tenancy land;

- (ii) in case the landowner holds less than one and a half acres of irrigated land or three acres un-irrigated land in personal cultivation, he shall be entitled to resume tenancy land only to make up the land under his personal cultivation to the extent of one and a half acres of irrigated land or three acres of un-irrigated land, as the case may be, subject to the other conditions laid down in this section;
- (iii) the right, title and interest in the rest of the tenancy land of the landowner, who is entitled to resume land under clause (i) and (ii), shall vest in the tenant free from all encumbrances with effect from the date to be notified by the State Government in the Official Gazette;
- (iv) in case the land under the tenancy is partly irrigated and partly un-irrigated and the landowner intends to resume land of both these classes, he shall be entitled to do so in the ratio and manner to be prescribed;
- (v) in the event of any dispute between the landowner and the tenant with regard to the selection of the land for resumption, the first right of selection of land shall be that of the tenant who may exercise his right in the prescribed manner and before the date to be notified by the State Government in this respect in the Official Gazette;
- (vi) in case the tenant fails to exercise his right of selection of land by the date notified under clause (v), the land Reforms Officer shall determine his share after giving the parties an opportunity of being heard. In such a case also, the tenant shall be given the first choice to select the land.

(2) Where the landowner does not cultivate the land resumed under sub-section (1) personally within one year from taking possession thereof, then such land shall vest in the State Government on payment of an amount at the rate of ninety-six times the land revenue plus rates and cesses and such land shall be disposed of by the State Government in such manner as may be prescribed. In such an event the first right to get such land shall be that of the tenant from whom the land was resumed by the land owner.

(3) All rights, title and interest (including a contingent interest, if any) of a landowner other than a

landowner entitled to resume land under sub-section (1) shall be extinguished and all such rights, title and interest shall with effect from the date to be notified by the State Government in the Official Gazette vest in the tenant free from all encumbrances:

Provided that if a tenancy is created after the commencement of this Act, the provision of this sub-section shall apply immediately after the creation of such tenancy.

(4) Whenever a dispute arises whether a person cultivating the land of a landowner, is a tenant or not, the burden of proving that such a person is not a tenant of the landowner shall be on the latter.

(5) The landowner whose rights, title and interest are extinguished under this section, shall be entitled to receive an amount at the rate of ninety six-times the land revenue plus rates and cesses payable either in lump-sum or in such number of instalments not exceeding ten during a period not exceeding five years as may be prescribed:

Provided that if the tenant makes a default in the payment of any instalment of the amount the same shall be recoverable as an arrear of land revenue:

Provided further if the land for which the amount is to be paid under this section is subject to a mortgage debt from a bank, the mortgage debt will be the first charge on the amount payable for such land;

Provided also that the tenant shall not be liable to pay the amount to the landowner, for the acquisition of ownership rights in the tenancy land which is equal in area to that of his tenancy land resumed by the landowner under clauses (1) and (ii) of sub-section (1) and the extinguishment of rights, title and interest of the tenant in the land resumed by the landowner shall be deemed to be the amount therefor.

(6) Save as otherwise provided in section 114, every decision of the Land Reforms Officer, under this section shall be binding on all persons claiming an interest in a holding notwithstanding the fact that any such person has not appeared or participated in the proceedings before the Land Reforms Officer or any other revenue authority.

(7) The provisions of the foregoing sub-section shall apply to evacuee land as defined in the Administration of Evacuee Property Act, 1950 to composite property as defined in the Evacuee interest (Separation) Act, 1951 or the property vested in the Central Government under section 12 of the Displaced Persons (Compensation and Rehabilitation) Act, 1954 with effect from such date as the State Government may by notification in the Official Gazette, specify, (31 of 1950, 65 of 1951 and 44 of 1954).

(8) Save as otherwise provided in sub-section (9), nothing contained in sub-section (1) to (6) shall apply to a tenancy of a landowner during the period mentioned for each category of such landowners in sub-section 9 who-

(a) is a minor or unmarried woman, or if married, divorced or separated from husband or widow;
or

(b) is permanently incapable of cultivating land by reason of any physical or mental infirmity; or

(c) is a serving member of the Armed Forces; or

(d) is the father of the person who is serving in the Armed Forces upto the extent of inheritable share of such a member of the Armed Forces on the date of his joining the Armed Forces, to be declared by his father in the prescribed manner.

(9) In the case of landowners, mentioned in clauses (a) to (d) of sub-section (8), the provisions of sub-section (1) to (6) shall not apply-

- (a) in case of a minor during his minority and in case of other persons mentioned in clauses (a) and (b) of sub-section (8) during the life time;
- (b) in case of persons mentioned in clauses (c) and (d) of sub-section (8) during the period of their service in the Armed Forces subject to resumption of land by such persons to the extent mentioned in first proviso to clauses (d) and (dd) of sub-section (1) of section 34.

provided that nothing contained in this section shall apply to such land which is either owned by or is vested in the Government under any law, whether before or after the commencement of this Act, and is leased out to any person.

Bar of transfer of ownership rights

15. No land in respect of which proprietary rights have been acquired under this Chapter shall be transferred by sale, mortgage, gift or otherwise during a period of ten years by a person from the date he acquires proprietary rights:

Provided that nothing contained in sub-section (1) shall apply to the transfer of land made for a productive purpose with the prior permission of the State Government in a prescribed manner.

Provided further that nothing in this sub-section shall apply to the land mortgaged with the Co-operative Societies established under the Himachal Pradesh Co-operative Societies Act, 1968 or with a [bank]. (3 of 1969).

Any transfer of land made in contravention of sub-section (1) shall be void and no registering authority shall register any document evidencing such transfer under the Indian Registration Act, 1908 (section 113)

Effect of the Act on Records-of-Rights and Agreements

16. Chapter VIII consisting of sections 90 and 91 says that an entry in any record of-right providing for a landowner preventing a tenant from, or ejecting him for, making improvements on his tenancy as he is entitled to make under the Act; or that a tenant ejected from his tenancy shall not be entitled to compensation for the improvement or that the landowner may eject a tenant otherwise than in accordance with the provisions of the Act shall be void and further that nothing in any agreement made between a landowner and a tenant, after the passing of the Act, shall over-ride any of the provisions of the Act with respect to the acquisition of a right of occupancy or take away or limit the right of a tenant as determined under the Act for conferment and vestment of the proprietary rights upon him or entitle a landowner to eject a tenant otherwise than in accordance with the provisions of the Act.

Control on Transfer of Land

17. Chapter-XI of the Act deals with the control on Transfer of Land. Under Section 118 of the Act, transfer of land to non-agriculturists has been barred, except with the permission of the State Govt. and subject to the provisions contained in section 118 of the Act. Section 118 reads as under:-

“(1) Notwithstanding anything to the contrary contained in any law, contract, agreement, custom or usage for the time being in force, but save as otherwise provided in this Chapter, no transfer of land (including sales in execution of a decree of a civil court or for recovery of arrears of land revenue), by way of sale, gift, exchange, lease, mortgage with possession or creation of a tenancy shall be valid in favour of a person who is not an agriculturist.

(2) Nothing in sub-section (1) shall be deemed to prohibit the transfer of land by any person in favour of-

- (a) a landless labourer; or
- (b) a landless person belonging to a scheduled caste or a scheduled tribe; or
- (c) a village artisan; or

- (d) a landless person carrying on an allied pursuit; or
- (e) the State Government; or
- (f) a co-operative society or a bank; or
- (g) a person who has become non-agriculturist on account of the acquisition of his land for any public purpose under the land Acquisition Act, 1894; or (1 of 1894).
- (h) a non-agriculturist who purchases or intends to purchase land for the construction of a house or shop, or purchases a built up house or shop from the Himachal Pradesh State Housing Board established under the Himachal Pradesh Housing Board Act, 1972. (10 of 1972), or from the Development Authority constituted under the Himachal Pradesh Town and Country Planning Act, 1977 (12 of 1977), or from any other statutory corporation set up under any State or Central enactment; or
- (i) a non-agriculturist with the permission of State Government for the purpose that may be prescribed:

Provided that a person who is a non-agriculturist but purchases land with the permission of the State Government under clause (i) of this sub-section shall, irrespective of such permission, continue to be a non-agriculturist for the purposes of this Act:

Provided further that a non-agriculturist in whose case permission to purchase land is granted by the State Government, shall put the land to such use for which the permission has been granted, within a period of two years or a further such period, not exceeding one year, as may be granted by the State Govt. to be counted from the day on which the deed covering the sale of the land is registered and if he fails to do so, the land so purchased by him shall vest in the State Government free from all, encumbrances.

(3) No Registrar or the Sub-Registrar appointed under the Indian Registration Act, 1908 shall register any document pertaining to a transfer of land, which is in contravention to sub-section (1) and such transfer shall be void ab initio and the land involved in such transfer, if made in contravention of sub-section (1), shall, together with structures, buildings or other attachments, if any, vest in the State Govt. free from all encumbrances: (16 of 1908).

Provided that the Registrar or the Sub-Registrar may register any transfer-

- (i) where the lease is made in relation to a part or whole of a building; or
- (ii) where the mortgage is made for procuring the loans for construction or improvements over the land either from the Government or from any other financial institution constituted or established under any law for the time being in force or recognised by the State Government.

(4) It shall be lawful for the State Government to make use of the land which is vested or may be vested in it under sub-section (2) or sub-section (3) for such purposes as it may deem fit to do so.

Explanation-For the purpose of this section, the expression "land" shall include-

- (i) land, the classification of which has changed or has been caused to be changed to "Gair-mumkin", "Gair-mumkin Makan" or any other Gair-mumkin land by whatever name called, during the past five year countable from the date of entry in the revenue records to this effect;
- (ii) land recorded as "Gair-mumkin " Gair-mumkin Makan" or any other Gair-mumkin land, by whatever name called in the revenue records, except constructed area which is not subservient

to agriculture; and

- (iii) land which is a site of a building in a town or a village and is occupied or let out not for agricultural purposes or purposes subservient to agriculture”.

Definition of Agriculturist

Under section 2(2) of the Act 'Agriculturist' means a person who cultivates land personally in an estate situated in Himachal Pradesh.

Definition of "to cultivate personally"

19. The words to cultivate personally' have been defined under section 2(4) of the Act as under:- "to cultivate personally" with its grammatical variations and cognate expression means-

(i) by one's own account;

(ii) by one's own labour;

(iii) by the labour of any member of one's family; or

(iv) under the personal supervision of one-self or any member of one's family by hired labour or by servant on wages payable in cash.

Bar of Jurisdiction

20. No proceeding or orders taken or made under chapter IX & X respectively shall be called in question by any court or before any officer or authority as laid down under section 101 and 112 of the Act.

Inconsistent law repealed

21. Under section 126(b) so much of any other law as is inconsistent with the provisions of the H.P. Tenancy and Land Reforms Act, 1972 shall be deemed to be and is hereby repealed. Hence any inconsistent law with the provisions of the this Act has no force.

Conferment of proprietary rights

22. All 88000 occupancy tenants in the Pradesh have been conferred proprietary rights under the Act by July 1991, 4.01 lakhs out of 4.43 lakhs non-occupancy tenants have been conferred proprietary rights thus leaving a balance of just 0.42 lakh. The balance of 0.42 lakhs non-occupancy tenants are those who hold land under widows, serving soldiers, minors and physically handicapped persons and whose interests in land are protected by certain safeguards under the Act.

Conclusion:

H.P. Tenancy Act is a progressive land legislation which aims at bringing out land reform measures. The spirit of the Act is that the land must go to the actual tiller. A non-agriculturist cannot acquire land in H.P. This provision has avoided concentration of wealth in the hands of non-agriculturists and saved the poor people from exploitation. As the lands did not pass on to the non-agricultural influential moneyed people, the homogeneity and culture of the village communities remained intact and undisturbed from outside atmosphere.