

## **JAMMU AND KASHMIR AGRARIAN REFORMS ACT 1976**

**General:-** With the end of Dogra rule in the year 1947, a new era of democratic and constitutional government came to prevail in the state. A historical legislation called the Jammu and Kashmir Big Landed Estate Abolition act 2007 (samvat) was passed. The Act abolished the big landed estates by fixing the ceiling area. The Act declared that no proprietor shall at any time hold more than 182 kanals of land in ownership. Similarly it provided ceiling for tiller by declaring that no tiller to whom land has been transferred shall at any time hold more than 160 kanals of land in ownership rights. The rights and interests in the land exceeding the ceiling area extinguished and goes to state.

The object of the above Act was not to abolish landlordism altogether, as the Act allowed the landlords to cultivate the land through the tenants provided the land is within ceiling area. in the year 1972, The Jammu and Kashmir Agrarian Reforms Act 1972 was enacted to provide for comprehensive legislation relating to further land reforms in the state. The object of the Act was to abolish the system of the absentee landlordism, to make tillers the owner and to set a ceiling on land holding.

In *TaramaniBadial v Thakur Dass&ors* the J&K High Court held that the fundamental purpose of the Act was the abolition of ownership of land which were not held in personal cultivation by the owner but were held by the tenants.

This Act however instead of introducing reforms in agricultural estates gave arise to unnecessary litigations, created chaos and confusion and caused hardships to landlord as well as to the tenants and the main reason behind this was its bad drafting. The J&K High Court in the above cited case while dealing with this aspect observed, " ...the new Act is not well drafted and this appears to me to be one of the main reason which has made its underlining scheme obscure and rendered it difficult for most of the people to comprehend its scope and content. I apprehend that the imperfections in drafting might even lead to unnecessary litigation. The government will be well advised to have the Act examined from the drafting point of view and take steps to remove the drafting errors and imperfections, if any, detected as a result of such examination."

In order to remove the defects and to review it with a view to provide for more equitable distribution and better utilization of the land suited to the circumstances of the state, The J&K agrarian Reforms Act 1972 was kept in suspension from 25<sup>th</sup> of March 1975 by means of The J&K Agrarian Reforms(Suspension of Operation) Act 1975 and a new Act was passed in 1976 Known as J&K agrarian Reforms Act 1976.

### **OBJECT OF THE J&K AGRARIAN REFORMS ACT 1976**

The following are some of the main objects of the Act:-

1. Transfer ownership rights in land to tiller thereof except in case of land belonging to places of worship including Gumpas of Ladakh district, public trusts or institution of a charitable nature.
2. Fixes ceiling on land

3. Ensure that with a few exceptions which are in general public interest ownership follows personal cultivation.
4. Provide rehabilitation facilities for parties expropriated from land by permitting resumption in certain cases.
5. Provide surplus land to the landless and poor persons.

## CONSTITUTIONAL VALIDITY OF THE J&K AGRARIAN REFORMS ACT 1976

The constitutional validity of the Act was challenged before the Supreme Court in ***Premnath Raina v State of J&K*** on the ground that it is violative of Art. 14, 19 and 31 of the Constitution. The Supreme Court while holding its constitutional validity observed that,

“In our case the dominant purpose of the statute is to bring about a just and equitable redistribution of the land, which is achieved by making the tiller of the soil the owner of the land which he cultivates and by imposing a ceiling on the extent of land which any person, whether landlord or tenant can hold. Considering the scheme and purpose of the Act, we can’t but hold that the act is a measure of agrarian reforms and is saved by article 31A of the Constitution from the challenge under article 14, 19, 31.

## MEASUREMENT OF LAND IN KASHMIR

The peasants in the valley usually referred his area of land in terms of ***Trakh, Kanal*** and ***Mannut***.

- One ***Mannut*** of land is equal to 10 ***marlas*** of land.
- One ***kanal*** is equal to two ***mannuts*** or 20 ***marlas***.
- One ***trakh*** is equal to two ***kanals*** or four ***mannut*** or 40 ***marlas***.

Nowadays the land is measured in square feet and in terms of such measurement one ***marla*** is equal to 272 ¼ square feet and one ***kanal*** of land which constitutes 20 ***marlas*** is equal to 5445 square feet.

## DEFINITIONS (SECTION 2-3)

Under section 2 of the Act certain terms, which are used in the Act has been defined and section 3 is a sort of exceptions to the whole scheme of the Act. Some of the important terms which are defined under section 2 of the Act are as under:

**CEILING AREA:-**section 2(1) of the Act defines the ceiling area. the provision reads as under,

In this Act, unless the context otherwise requires:

“ceiling area” meansthe extent of land measuring twelve and a half standard acres;

Category II	110 kanals
Category III	140 kanals

Category IV

171 kanals.

The definition of the ceiling area is to be read with the definition of “standard Acre” which is given under clause 16 of section 2. According to clause 16 “standard acre” means a measure of an area convertible into an ordinary acre of land in accordance with the provisions of schedule I. According to Schedule I of the Act, the value of one standard acre is equivalent to one rupee. Therefore the ceiling area i.e., 12 and half acre of land when reckoned according to schedule I come to rupees 12.50. One standard acre is equal to 5 kanals and 14 Marlas as per schedule. Therefore on calculation 12.5 standard acres comes to 71 kanals and 9 Marlas. Where the entire land falls in the category II, III and IV of the schedule I, the ceiling area shall not exceed 110 kanals, 140 kanals and 171 kanals respectively.

**FAMILY:-**section 2 (6) defines family as, family means husband, his wife and their children’s excluding;

- a) A married daughter and
- b) A major son separated from his father on or before the first day of September, 1971 and holding land separately in his name.

**INTERMEDIARY:-** under section 2 (8) intermediary means a tenant not cultivating land personally and includes a person claiming through him.

**LAND:-**Under section 2 (9) land is defined as under;

Land means land which was under occupied or was let for agricultural purpose or for purposes subservient to agriculture or for pasture in Kharif, 1971 and includes;

- a) Structures on such land used for purposes connected with the agriculture;
- b) Area covered by or fields floating over water;
- c) Forest land and wooded wastes and
- d) Trees standing on land.

But does not include an orchard or site of a building or a structure within Municipal area, town area, notified area or village abadi or any land appurtenant to such building or structure.

On its plain terms, land as defined in section 2 (9) of the Act, means land which is used for agricultural purposes or for purposes subservient to agriculture or for pasture. So “**Banger Qadam**” and “**gairmumkin**” land is not included in the definition of land. **Banger Qadam** means a land which has not been cultivated for five consecutive years and **GairMumkin** land means a land which has for any reason become uncultivable such as land under road, canal, tanks etc.. Similarly **AbadiDeh land** and **kahcharari** land is excluded from the definition of land. **AbadiDeh** land means a land which is reserved for the constructions of residential houses in the villages and the **Kahcharari** land means a land which is reserved for grazing purposes in villages.

**OWNER:-**Under section 2 (11) owner means a land holder, as defined in the J&K Land Revenue Act, samvat 1996 and includes a person claiming through him.

So the Act adopts the definition of land holder as defined in the Land Revenue Act for owner. Section 2(3) of the Land Revenue Act defined land holder as;

Land holder does not include a tenant or an assignee of land revenue, but includes land owner, Chakdar and a person to whom holding has been transferred or an estate or holding has been let in farm under this Act for the recovery of an arrear of land revenue or of a sum recoverable as such arrear and every other person not hereinbefore in this clause mentioned who is in possession of an estate or any share or portion thereof or in the enjoyment of any part of the profits of an estate.

**PERSONAL CULTIVATION:-** Section 2(12)says that personal cultivation by a person means cultivation by;

- a) By the person himself or
- b) By any member of the family, if any, to which he belongs or
- c) By a khana-nishin daughter or khana-damad or a parent of the person or
- d) By a son, adopted son or pisarpawardah not included in the family, if any, to which he belongs or
- e) By brother or sister of the person
- f) In case of religious or charitable institutions of public nature as are notified by the government by a member of the management or on behalf of the management by a servant or hired labourer on payment of wages otherwise than as a share of crop or
- g) In case of a person who is minor, insane, physically disabled or incapacitated by old age or infirmity, widow or serving in defense force or in detention or prison by a servant or hired labourer under the personal supervision of the guardian or any agent of such person provided that such person or hired labourer or guardian or agent does not bear the risk cost of the cultivation nor receives wages or remuneration as a share of crop.

Provided that in case of land-

- a) Which cannot thus be deemed to be in the personal cultivation of any person; or
- b) Covered by section 24 of The Jammu and Kashmir Big Landed Estates Abolition Act, Samvat 2007; or
- c) Rights wherein have been transferred against the provisions of any law for the time being in force;

Personal cultivation shall be deemed to be that of the state.

Where any land has been exchanged in lieu of any other land as a result of consolidation proceedings under the Jammu and Kashmir Consolidation of Proceedings Act 1962, any person who was personally cultivating the land, so exchanged, in Kharif 1971 shall be deemed to have been personally cultivating in that harvest, the land acquired in lieu of that land. Where any land has been left fallow during Kharif 1971 in normal course of agricultural husbandry, personal cultivation of such land in Kharif 1971 shall be deemed to be of the person who personally cultivated it for three consecutive harvests prior to Kharif 1971. Land under Kah-i-Krisham, pichi, bedzar, or safedzar, land growing fuel or fodder and unculturable or banjer land situated outside demarcated, undemarcated shall be deemed in the personal cultivation

of the owner. Gair-Mumkin land and Zeri-Sayeh (under the shade of trees) land existing in a survey number shall be deemed in personal cultivation of the person cultivating the rest of the land in such survey number personally in Kharif 1971. Where possession of land has been obtained temporarily on bilateral or trilateral basis or in lieu of payment of rent for purpose of transplanting saffron bulbs, in accordance with the custom known locally as "kara-korh" or "kadawar" in saffron growing areas of Kashmir Valley, personal cultivation of such land shall be deemed to be that person who would, but for such custom, have been cultivating it personally.

Personal cultivation by a person shall not cease to be so merely because of engagement of hired labour provided that the labour supplemental to, and not in substitution of the labor of such person and that such labor is paid wages in cash or kind but not in crop share and for determining that the person is personally cultivating the land in Kharif 1971, the entries in the khasraGirdaware shall be presumed to be true unless contrary is proved.

According to the definition of the personal cultivation unauthorized cultivation can't be deemed to be personal cultivation. In **HarichandBehra v Garbhoo Singh** the court held that the expression personal cultivation as not merely bodily cultivating the land but constructively also and also the right to possess against the trespasser. If a wrong doer takes possession, steps to exclude him can certainly be taken and cultivation by trespasser in such case is deemed to be on behalf the true owner.

**TILLER:-** Section 2(17) says that the tiller means , "tenant cultivating land personally and shall mean and include a person who was tiller in Kharif 1971 or his legal heirs or his transferee in the case of any valid transfer of land made between 1<sup>st</sup> of September 1971 and 1<sup>st</sup> May 1973subjected to the competent Revenue Officer being satisfied about the existence of a bona fide transfer to this effect.

Explanation added to this sub-section says that a person who migratedfrom his place of residence during 1965 due to unavoidable circumstances shall be deemed to be a tiller of the land thus abandoned by him if such land was in occupation of somebody else as super-dar under orders of a competent authority.

**KHASRA GIRDAWARI:-**The **KhasraGirdaware** is a register prepared by a public servant in the discharge of his official duties furnishing a piece of evidence on the question of possession. The word "**khasra**" means register of fields and the "**girdaware**" means harvest inspection made by the **Patware** in one agricultural year. The object of the **KhasraGirdaware** is to collect accurate information regarding:

- 1) Condition of crop
- 2) Changes in rights, rents and possession of the land
- 3) Change in the kind of soil due to nature and other causes
- 4) Amendments required in the village map i.e. **shajraKishtwar** during the agricultural year

**KHARIF:-**Means autumn crops such as paddy, maize, pea and are sown in May/June and are harvested in September/October.

**RABI**:-Means spring crops such as wheat, pulses and are sown in October/November and harvested in April/May

**EXCEPTIONS (SECTION 3)**:-section 3 of the Act provides some categories of land to which the provisions of this Act will not apply and as such the categories of land mentioned thereunder are exempted from the operation of the Act. Following categories of land are mentioned under section 3:

- 1) Evacuees land along with certain exceptions;
- 2) Land owned or acquired by the government of Jammu and Kashmir or the government of India, land vested or deemed to have been vested in the state by or under the Act and land described in the Schedule II;
- 3) Land owned by any industrial or commercial undertaking or set apart or acquired by the government for use for industrial or commercial purposes
- 4) Land owned, held or acquired by such educational and other public institutions as may be notified by the government;
- 5) Land owned, held or acquired by the universities of the state established by law and Municipalities, town area Committees, Notified Area Committees, Cantonment Boards and other Local bodies and Panchayats of the State;
- 6) Land outside the district of Ladakh, which is uncultivable or in the form of arak, kap or kah-i-kriisham or which grows fuel or fodder and belongs to such class as is notified by the government, not exceeding 4 standard acres per family;
- 7) Such land in the district of Ladakh as are used for raising fuel or fodder or timber e.g. olthange, bedzar, safedzar;
- 8) Land, requisitioned under any law for the time being in force or situate in depopulated villages of Poonch and Rajouri district and notified as such by the government or lying in such border area as are declared by the government to be insecure for cultivation;
- 9) Private spring, wells and village roads;
- 10) Such land as is reserved by the government for grazing ground or for any public purpose or land reserved for residential purposes;
- 11) Cemeteries and burning or burial ground and land under places of worship and appurtenant thereto;
- 12) Land held by a co-operative farming society.

## VESTING OF RIGHTS IN STATE (SECTION 4-8)

### VESTING OF THE RIGHTS IN STATE OF LAND NOT HELD IN PERSONAL CULTIVATION (SECTION 4):-

Section 4(1) of the Act deals with one of the most important purposes of the act that is to abolish absentee landlordism. The section has extinguished all rights and interests of such land lords who were not cultivating the land personally and by virtue of this section these landlords shall not have any claim, interest or title over their land after the Act came into force.

Section 4(1) says that notwithstanding anything contained in any law for the time being into force, but subjected to the provisions of this chapter, all rights, titles and interests in land of any person not cultivating it personally in Kharif 1971, shall be deemed to have extinguished and vested in the state, free from all encumbrances, with effect from the 1<sup>st</sup> day of May 1973.

Sub-section 2 of section 4 makes certain exceptions with this regard and declare that nothing in sub-section 1 shall apply to;

- 1) Land held by gumpas of Ladakh District provided that the rights of the tenants thereof shall be heritable according to the law of succession applicable to occupancy tenants and no tenant or his successor shall be subjected to payment of rent exceeding the prevailing rent whether in cash or in kind.
- 2) Unit of land not exceeding 182 kanals including residential sites, bedzars and safedzars.
- 3) Land held by such places of worship, Wakfs or Dharamshallas, as are recorded in the revenue records or notified by the government from time to time or donated for the purpose of Wakfs by any person professing Islam or used as a wakf property, provided that the rights of the tenants shall be heritable according to the law of succession applicable to occupancy tenants.
- 4) Land mentioned in schedule II allotted to a displaced person provided that such land is situated in more than one village and such displaced person is cultivating personally the land in at least one village in Kharif 1971.

The first pre-requisite for the application of section 4 is that the land which shall vest in the state due to non-cultivation of the land by the owner must be **“land”** as defined under section 2 (9) of the Act. This implies that the extinction of ownership rights will not apply with regard to those categories of land which are exempted from the operation of the Act e.g. Banger qadam, sites of residential sites etc..Thus it is the agricultural land or land subservient to agricultural which will be subject matter of extinguishment of rights and vesting in the state under section 4. The second condition to be proved for the application of the section 4 is that the owner must not be in personal cultivation of the land in Kharif 1971 as defined under section 2(12) of the Act.

In another words we can say that in order to save the ownership rights of the land from extinction and from vesting the land in the state, the person affected has to prove that he has been cultivating the land personally and has further to prove that he was in cultivating possession of the said land in Kharif 1971as per revenue records. Both these conditions are essential in order to save the land from vesting in the state.

### **VESTING OF PERSONALLY CULTIVATED LAND IN EXCESS OF CEILING AREA IN THE STATE(SECTION 5):**

One of the main objects of the Act was that no person should hold land in ownership or as tenant in excess of ceiling area even though the person is cultivating the land personally. The vesting of excess land in state than in ceiling area is applicable to both individual owner or tenant and members of family whether jointly or severally. Accordingly section 5 (1) of the Act explicitly states that land held in excess of ceiling area by any person shall vest in the state. Section 5 (1) says that:

Notwithstanding anything contained in any law for the time being in force but subjected to the provisions of this chapter-

- a) Where any land, held by an individual in personal cultivation whether as owner or as tenant or otherwise, was in excess of the ceiling area on the 1<sup>st</sup> day of September 1971, the rights, title and interests of such individual in the excess land shall be deemed to have vested in the state, free from all encumbrances on the 1<sup>st</sup> day of May 1973.
- b) Where aggregate land held in personal cultivation by the members of a family, whether jointly or severally, as owners or as tenants or otherwise, was in excess of the ceiling area on the 1<sup>st</sup> day of September 1971, the rights, titles and interests of such members in the excess land shall be deemed to have vested in the state, free from all encumbrances, on the 1<sup>st</sup> day of May 1973.

Under sub-section 2 of section 5 the owner or the tenant who is personally cultivating the land in excess of the ceiling area shall have the option of selecting the land which he desires to retain for himself or for his family within the ceiling area subjected to such conditions as may be prescribed. Sub-Section 2 of section 5 says that;

Such individual or the head of such family, as the case may be, shall have the option of selecting, in the manner and subjected to such condition, as may be prescribed, the land such individual or family desires to retain with himself or itself, as the case may be, within the limits provided for by this Act, but no land in a demarcated forest shall be so selected, provided that the selection made from the holding of different members of a family shall be proportionate to the area of land held by each member of the family unless the wife and husband agree otherwise.

Section 4 and 5 of the Act deals with the two different aspects. Land if not cultivated personally by the owner in Kharif 1971, the said land will vest with the state and all rights, titles and interests in the land which is not personally cultivated will extinguish by virtue of section 4 of the Act. Whereas section 5 of the Act prescribes the ceiling area as prescribed by the Act and in case the owner or the tenant held the land in personal cultivation but the same is in excess of the ceiling area then the rights, title and interests of such owner or tenant will extinguish and the land will vest in the state with regard to the land in excess of ceiling area.

### **VESTING OF DWELLING HOUSES IN THE STATE(SECTION 6)**

The Agrarian Reforms Act is not applicable to residential buildings or structures along with sites thereunder and land appurtenant thereto under section 3(J). The residential houses cannot vest in the

state under section 4 if it is not in possession of the owner. However, under section 6 of the Act the ownership rights of a dwelling house stand extinguished under the circumstances mentioned thereunder and vested in the state under section 6 of the Act. Section 6 (1) of the Act says that notwithstanding anything contained in any other law for the time being in force or in any contract, instrument, custom or usage or in any judgment, decree or order of a court, but subjected to the provisions of this chapter where;

- a) A dwelling house was, on the first day of September 1971, occupied by a person who is a tiller or is a member of schedule caste, or is a landless agricultural labourer or is a Gujjar or a Bakarwal or Giddi or is a landless labourer engaged in occupation ancillary to agriculture; and
- b) The site of such dwelling house and the land appurtenant thereto is not owned by such person;

the rights, title and interests in such dwelling house and the site thereunder and land appurtenant thereto shall be deemed to have extinguished and vested in the state on the 1<sup>st</sup> day of May 1973 provided that rights, title and interest in such dwelling house shall not vest in the state where it has been built at the expense of such person or any of his predecessor-in-interest, provided further that where such person has been in occupation of such dwelling house for a continuous period of ten years on the date of commencement of this Act, he shall be deemed to have acquired ownership of such dwelling house in lieu of service rendered by him to the owner of the land under and appurtenant to such dwelling house.

For the application of this provision two conditions are necessary. The first condition is that the dwelling house is occupied by a tiller, schedule caste, gujjaretc. and secondly the site of such dwelling house and the land appurtenant thereto is not owned by such tiller, schedule caste, gujjar etc. if these two conditions are fulfilled the rights, title and interest in such dwelling house, site thereunder and the land appurtenant thereto shall be deemed to vest in the state.

There are two exceptions to this general rule with regard to the dwelling house. Firstly the rights, title and interests in such dwelling house shall not vest in the state where the dwelling house has been built at the expenses of such tiller, schedule caste member, gujjar etc. secondly the rights, title and interest of dwelling house shall not vest in the state where the above named person has been in occupation of such dwelling house for a continuous period of ten years on the date of commencement of this Act.

This right is subjected to the condition that the area under and appurtenant to such dwelling house shall not exceed in four kanals for such person and all the members of his family as provided by the sub-section 2 of section 6.

Thus under section 4 and 6 all rights, titles and interests in land and dwelling houses not in personal cultivation or occupation of its owner in Kharif 1971 shall extinguish and shall vest in state retrospectively with effect from 1<sup>st</sup> day of May, 1973, unless said land or dwelling house is saved by any exceptional clause as provided by the Act.

## **RESUMPTION FOR BONA FIDE PERSONAL CULTIVATION BY EX-LANDLORD (SECTION 7)**

Section 4 of the Act declares that any person who was not personally cultivating the land in Kharif 1971 shall cease to be its owner and all rights, title and interests in such land vests in the state. Under section 7 of the Act a statutory right has been given to such landlords whose ownership has been extinguished under section 4 of the Act to claim and resume land for bona fide personal cultivation. The section 7(1) reads as under;

Subjected to the provisions of this section

- a) An individual whose rights in land have been extinguished by section 4 and who was entitled to recover rent in Kharif 1971 directly from the tiller, may resume land outside demarcated forests for purpose of bona-fide personal cultivation
- b) Where rights in land of one or more than one member of a family have been extinguished by section 4 and such member or members were entitled to recover rent in Kharif 1971 directly from the tiller, such member or members may resume land for bona-fide personal cultivation;
- c) A displaced person allotted evacuees land or land included in schedule II, who is not cultivating such land personally, may resume such land for bona-fide personal cultivation.

Sub-section 2 of section 7 puts some conditions for the resumption which are as under;

- 1) The application for the resumption shall be made in the prescribed form within one year from the commencement of this Act
- 2) The applicant for resumption shall take normal residence within six months of the commencement of this Act, for the purpose of cultivating such land personally in the village in which the land sought to be resumed is situated or in an adjoining village. The persons serving in the defence force is exempted from this condition until they cease to be the member of such force. Where the land is situated in an uninhabited area or near the border such residence shall be taken within the prescribed period in nearest inhabited or adjoining village. Persons who are minor or insane shall take up such residence within six months of the date on which he attains majority or sanity.
- 3) An applicant cannot resume land if he or any member of his family pays income tax;
- 4) If a person has transferred his land by sale, gift, bequest on or after 1st day of September, 1971 shall not be eligible to resume land if the land so transferred was personally cultivated by him prior to such transfer;
- 5) Where the tiller of the land was paying rent at village rate with or without *malikana* or by a tiller who is an occupancy tenant, the landlord of such land cannot resume land.

## **EXTENT OF LAND THAT MAY BE RESUMED**

Clause (f) of subsection 2 of section 7 deals with the extent of resumption of land by the ex-landlord. It says that, ' the extent of land that may be resumed shall subjected to the provisions of the sub-section 3 be determined in the following manner:-

- i. Where a person was entitled, as according to records, to rent in kind, from the tiller during Kharif 1971, the extant of land that may be resumed shall bear the same proportion to the total land comprising the tenancy as the rest in kind bears to the total produce;
- ii. Where a person was entitled, as according to records, to rent in cash, during Kharif 1971, the extant of land that may be resumed shall be regulated by the extant of rent in kind to which such rent in cash can be commuted in accordance with the provisions of sub-section 3 and 8 of section 9;
- iii. A person serving in defence force on or after the 1<sup>st</sup> day of April 1965, an ex-serviceman of the defence force or a widow or an orphan who is minor or a lunatic or an imbecile or an insane person who is crippled or incapacitated by old age or infirmity, shall be permitted to resume land 20% in excess of the land otherwise resumable under sub clause I & II.

Sub-section 3 of section 7 says that the aggregate land that a person resuming land shall hold in personal cultivation, after resumption shall not exceed five standard acres and 6.50 standard acre in case of persons mentioned in sub-clause III of clause (f) of sub-section 2 of section 7. So this sub-section provides a ceiling on the area of land which can be resumed. This sub section is subjected to exception with regard to the persons who are ex-serviceman of the defence or persons serving in the defence force shall be allowed to hold one more standard acre over and above the ceiling provided by this sub-section.

#### **Illustration;**

**A, an ex-land lord was holding 80 kanals of agricultural land of Rs 1.40 value as per schedule in kharif 1971 undertenancy other than an occupancy tenant or tenant who was paying rent at village rates ; and was entitled to ½ share of total produce in kind. He can resume 28 kanals & 10 Marlas of land. If instead of ½ of share of total produce in kind such landlord was entitled to ¼ of share he can resume 20 kanals of land. In former case, ordinarily he could have resumed 40 kanals but as the resumed land shall in no case shall exceed 5 standard acres the extent of resumed land comes to 28 kanals and 10 Marlas.**

According to sub- section 7 no resumption by the agreement or consent of the parties is permissible if as a result of such agreement or consent the ex-landlord is able to resume more land than he is entitled to resume according to the provisions of this Act.

No person, who or any member of his family holds an orchard exceeding one hundred kanals shall be eligible to resume land (clause (g) of sub section 2 of section 7). So according to general rule any person who is holding orchard land exceeding one hundred kanals is in entitled to further resumption, but if a person is holding orchard land below one hundred kanals he will be entitled to resume land, but the aggregate land including the orchard land shall not exceed one hundred kanals.

Where any person resuming land under this section fails to cultivate the land personally within one year of entering into possession, such land shall vest in the state, except where such failure is due to circumstances beyond his control.

According to sub-section 4 the person resuming the land under this section shall be vested with the ownership rights in such land and he shall be placed in possession thereof, after the tiller removes the crop if any standing on such land and where no crop is standing but the land has been prepared for sowing, after such tiller is paid the cost of preparation in the prescribed manner.

#### **VESTING OF OWNERSHIP RIGHTS IN PROSPECTIVE OWNER (SECTION 8)**

The landlord who was not cultivating his land personally in Kharif 1971 is deprived from all the rights, titles and interests in the land under section 4 of the Act and vests with the state. The tiller who has been cultivating the land in Kharif 1971 assumes the status of "prospective owner" of the land. Prospective owner means a person who is eligible under the Act to be vested with the rights of an owner. Section 8 of the Act deals with the vesting of ownership rights of land in prospective owner. Section 8 under sub-section 1 provides:

Notwithstanding anything contained in any law for the time being in force, but subjected to the provisions of section 5 and 14, where ex-landlord resumes land under section 7, the tiller, from whom land is so resumed or his legal heirs shall be vested with the ownership rights in land left with him or his heirs, as the case may be, after resumption in the following manner;

- a) Where the ex-landlord resumes the entire land permissible under clause (f) of sub-section 2 of section 7 without payment of any levy and as soon as the ex-landlord is given the possession of resumed land; and
- b) Where the ex-landlord does not resume the entire land permitted by clause (f) of sub-section 2 of section 7 because of the provisions of sub-section 3 of section 7:-
  - i. After payment of such levy in such manner as is provided for in schedule III for the portion of such land which, though resumable by such ex-landlord under clause (f) of sub-section 2 of section 7, is not resumed because of the provisions of sub-section (3) of section 7; and
  - ii. Without payment of levy and after the ex-landlord is given possession of the resumed land, for the portion of such land left with such tiller other than that mentioned in sub-section (i).

The analysis of the sub-section 1 of section 8 shows that where the ex-landlord resumes the entire land permissible under section 7(2) (f), the tiller of the land has to pay no levy for the land left with him or his heirs, as the case may be. Such a tiller is entitled to be conferred for ownership rights for such land as soon as the ex-landlord is given the possession of resumed land. But where ex-landlord does not resume the entire land as permitted by section 7 (2) (f) because of the ceiling put in by sub-section (3) of section 7, the tiller has to make payment of such levy as prescribed in schedule III for the portion of land which though resumable by such ex-landlord is not resumed because of the ceiling limit put in section 7(3).

#### **ILLUSTRATION:**

**The extant of land resumable by ex-landlord and the payment of levy payable by prospective owner of vesting of ownership rights in land may be explained by an illustration. A, is an ex-landlord who owned land 6 standard acres and held it through tiller B. the ex-landlord A was receiving rent in kind equal to half of the produce prior to 1<sup>st</sup> May 1973 from his tiller B. the ex-landlord A, can resume**

**entire land permissible under section 7 (2) (f) to the extent of one half of the total land. That is, the ex-landlord is entitled to resume the land from his tiller B to the extent of 3 standard acres and the remaining 3 standard acres of land will be recorded in favour of tiller B as owner, without payment of any levy. However, if the ex-landlord held already in his personal cultivation as owner, or as an allottee or otherwise or partly in one capacity or partly in another capacity land measuring 4 standard acres and was entitled to rent in kind equal to half of the produce prior to 1<sup>st</sup> May 1973. The ex-landlord is entitled to resume only 1 standard acre of land from tiller B and not 3 standard acres from B in view of the ceiling fixed under section 7(3); under which the aggregate land that a person resuming land can held in personal cultivation after resumption, is only upto 5 standard acres and in exceptional cases up to 6.50 acres. The tiller B has to pay levy for two standard acres and for remaining 3 standard acres he will be invested with ownership rights without paying any levy.**

Sub-section 2 of section 8 provides that where an ex-landlord/ex-intermediary does not or cannot resume any land, the tiller of Kharif 1971 holding land under him shall be vested with ownership rights in such land after payment in full of such levy in such manner as is provided for in schedule III.

Sub-section 3 provides that a person mentioned in sub-section (1) of section 6 occupying a dwelling house vested in the state under section 6 shall be subjected to the conditions mentioned in sub-section (2) of section 6 be vested with ownership rights in such dwelling house and the land under and appurtenant to it, on payment of such levy in such manner as is provided for in schedule III.

### **PAYMENT OF RENT BY THE TILLER (SECTION 9)**

The tiller of the land does not acquire the ownership rights ipso facto in the land which he was cultivating in Kharif 1973, merely because the owner of the land had been expropriated and the land had vested in the state under section 4 of the Act on the ground of non-cultivation of land personally by the landlord. According to the Rules the Mutation is to be written up and attested, giving effect to the extinguishment of all rights, interests and titles in the land owned by any person not cultivating it personally in Kharif 1973 and vesting of such rights in the state. Thus it is the state that is to be recorded as owner of such land and as such the state acquires all the rights which the ex-landlord had in such land. The tiller of such land will be recorded in the tenant column of Mutation Register as prospective owner of such land. Such a tiller is entitled to ownership rights in such land only when a Mutation is written up and Attested in his favour as full owner under section 8 of the Act. The Mutation, however, can be written up and attested in his favour as owner only when the concerned Tehsildar, certifies that such a prospective owner had paid entire Levy of the land left with tiller after the ex-landlord has exercised his right of resumption. In other words until such land is resumed by ex-landlord under section 7 or until such tiller acquires ownership rights he is liable to pay rent to the state in the same manner in which it has payable by him to ex-landlord prior to 1st May 1973. Thus the tiller is as a tenant to the state, liable to pay rent, land revenue and other things as he was previously paying. The section 9 of the Act deals with this aspect.

Section 9 (1) says that, **“A tiller shall, in respect of the land vested in the state by section 4, pay to the state rent which was payable by him to the ex-landlord prior to the 1<sup>st</sup> day of May 1973, in such form and in such manner as may be prescribed, until such land is resumed under section 7 or until such tiller acquires ownership rights therein under section 8”**.

The word rent has not been defined in the Agrarian Act but by virtue of section 2(18) of the Agrarian Act the word will have the same meaning as assigned to it in Tenancy Act under section 2(2) of Tenancy Act, “Rent” means;

**“whatever is payable to a landlord in money, kind or service by tenant, on account of the use or occupation of land held by him or on account of the use of water for irrigation”**.

The government shall pay the rent so collected in the prescribed form and manner to the ex-landlord or to the person claiming through him after deducting 10% of the cash equivalent thereof as collection charges.

Under sub-section (4) of the section 9 of the Act an Intermediary holding land prior to 1<sup>st</sup> May 1973, that is tenant who was not cultivating the land personally as defined by section 2 (8) of the Act, is liable to pay rent to the ex-owner as if their rights had not been extinguished by section 4 and provisions of Jammu and Kashmir Tenancy Act relating to recovery of rent will apply. Sub-section 4 of section 9 reads as under:

**“where the ex-landlord mentioned in sub-section (1) was an intermediary holding land, prior to the first day of May, 1973, under an owner, nothing herein shall be deemed to affect the liability of such intermediary to pay rent (after deducting therefrom the share of collection charges calculated on pro-rata basis) to such ex-owner for such land, and such rent shall, after such deduction, be payable by such ex-intermediary to such ex-owner as if their rights had not been extinguished by**

**section 4 and provisions of Jammu and Kashmir Tenancy Act, Samvat 1980 relating to the recovery of rent shall apply thereto.”**

The right of ex-intermediary or ex-owner to recover the rent for land from the state or from such ex-intermediary, as the case may be, shall be a heritable right according to the law of succession that was applicable to him and shall be transferable subjected to the provisions of section 31.

Sub-section 6 of section 9 provides that during the period, the ex-owner is entitled to recover the rent from the government in respect of the land vested in state by section 4, he is liable to pay land revenue together with cesses and dues payable under any law and for this purpose he is deemed to be a landholder under Land Revenue Act.

In terms of section 9 read with Agrarian Rules, the rent payable by tenant is recoverable:-

- a) In kind, where it was recoverable prior to 1<sup>st</sup> May 1973 in kind, in respect of the produce procured by the government during the year in which the rent falls due
- b) In cash, in respect of the produce not procured by the government during the year in which rent falls due;
- c) Where the rent was recoverable in cash prior to May 1973 the rent will be recovered in cash
- d) Arrears of rent accrued due from 1<sup>st</sup> May 1973 up to the commencement of this Act will be recovered in cash.

The rent so recovered by the government shall be paid to the ex-landlord in the form in which it was collected from the tenant in the above mentioned manner.

Section 9(8) of the Act provides that where the rent was recoverable in kind prior to the 1<sup>st</sup> May 1973, the following rates of produce has been provided for purposes of calculating rent recoverable from the prospective owner:-

- a) The rates of produce as agreed by the prospective owner and the ex-owner;
- b) Where there is no such agreement between the parties, **Chakla Rates**.
- c) Where the prospective owner makes a complaint to the Revenue Officer that the **Chakla Rates** are higher than the actual rates, the collector is empowered to determine the rates after summary enquiry;
- d) Where **Chakla Rates** are not available, the rates that will be determined by the government after necessary enquiry.

**Chakla Rates** of produce are the average rates of produce ascertained after a number of experiments during the last settlement.

**LAND WHICH IS SUBJECTED TO THE MORTGAGE WITH POSSESSION  
AND WITHOUT POSSESSION (SECTION 10)**

Section 10 of the Act deals with the rights and liabilities of the mortgagor and mortgagee with respect to both mortgage with or without possession of the land which has been vested in the state by virtue of section 4, 5 or 6 of the Act. The law of mortgage has its foundation in the desire of the creditor to protect against the loss of money owing to the death, failure to pay, insolvency etc. of the debtor. Though section 4 of the Agrarian Act declares that no person can hold land which was not in personal cultivation in Kharif 1971 and such land shall vest in the state free from encumbrances with effect from the 1<sup>st</sup> May 1973. But section 2(12) Explanation (VI) has expressly saved the rights of the

mortgagor from extinguishment and vesting the mortgaged land in the state. The said clause provides that the land which has been mortgaged with possession before and during Kharif 1971 and the said mortgage has not been redeemed before the commencement of the Act, that is, mortgage is subsisting the mortgagor, subjected to section 10 is deemed to be in personal cultivation of such land in Kharif 1971. Section 10 reads as under;

**(1) where land, which had vested or vests in the state by section 4 or 5 or 6, is subjected to the mortgage without possession and the mortgage subsists on the date when, in lieu of extinguishment of rights in such land, payment is to be made in accordance with the provisions of schedule III, the mortgagee shall be paid such amount, in such manner and in accordance with such procedure, as is provided in the aforementioned schedule, anything to the contrary contained in any law, decree, order of a court or any contract notwithstanding.**

**(2) Where land is subjected to mortgage with possession and the mortgage subsists on the date of commencement of this Act, the restitution of such land shall, notwithstanding anything contrary to any law, decree or order of court or a revenue officer or any contract, be effected in the manner and according to the procedure given below, namely;**

**a) The mortgagor may apply for restitution of such land to the collector, having jurisdiction in the area in which it is situated. The collector shall, on receipt of such application give an opportunity to the mortgagor and the mortgagee of being heard and make such enquiry as may be necessary.**

**b) (I) where the collector finds that the value of benefits enjoyed by the mortgagee equals or exceeds the cost of improvements, if any effected by such mortgage, in accordance with the terms of the mortgage deed, plus one and a half times the amount of principal money, he shall, by order in writing, direct that the mortgage be redeemed and shall put the mortgagor in physical possession of the land;**

**(II) where the collector finds that the value of benefits enjoyed by the mortgagee, while in possession, is less than the cost of improvements, if any, effected by such mortgagee in accordance with the terms of the mortgage deed, plus one and a half times the amount of principal money, he shall, by order in writing, direct that the mortgaged land be restored to the mortgagor and he be put in possession thereof, subjected to the payment of money, if any, due to the mortgagee:**

**Provided that, in calculating the amount due, interests shall be charged only on the principal money, at a rate not higher than 5% per annum:**

**Provided further that in no case shall the principal sum plus interests thereon exceed one and a half times the principal money:**

**Provided also that where the mortgage has been in possession of the mortgaged land for a period of ten years or the period during**

which the mortgage was to subsist according to the terms of the mortgage deed, whichever is less, it shall be conclusive proof of the fact that the mortgagee has received one and a half times the amount of principal money as well as the cost of improvements, if any.

- c) Where the collector finds that any sum is due to the mortgagee under clause (b), he may order the deposit of the amount found due from the mortgagor in such annual installments, not exceeding ten, as the collector may with due regard to the paying capacity of the mortgagor, deem fit.
- d) In determining the amount due, the collector shall give credit to the mortgagor for the value of the benefits to be enjoyed by the mortgagee during the period covered by the installments.
- e) The collector may order that in lieu of the deposit of the amount found due, the mortgagee shall enjoy the profits of the mortgaged land for a period to be determined by the collector with due regard to the amount found due and the profits accruing from the land:

Provided that such period shall not exceed ten years or the period during which the mortgage was to subsist, according to the terms of the mortgage deed, whichever is less, reckoned from the date the mortgagee came into possession of the land under the mortgage.

- f) The mortgagor shall be deemed to have complied with the order of the deposit if the whole of the amount found due is deposited within the period covered by installments.

#### **PAYMENT IN LIEU OF EXTINGUISHMENT OF RIGHTS IN LAND (SECTION 11)**

Section 11 of the Act says that the land and rights therein which had been taken away or abridged by section 4, 5 or 6 of the Act shall be deemed to have acquired by the state with effect from such date on which such land and rights have vested in it. The section further says that in lieu of such acquisition payment shall be determined and made in accordance with the provisions of schedule III. Proviso to the section 11 provides that where the ex-landlord resumes the land which he is allowed to resume from the tiller, he will not be entitled to any payment in lieu of extinguishment of his rights in land, remaining after such resumption with the tiller except for the area of the land, if any, by which the area actually allowed to be resumed under sub-section 3 of section 7 falls short of the area that was resumable under clause (f) of subsection 2 of section 7.

Proviso second to section 11 affirms constitutional guarantee that where any land is held by any owner or tiller in personal cultivation, he shall be entitled to compensation for his right in any portion of such land as is within the ceiling area or any building or structure standing thereon or appurtenant thereto at the market value thereof. Under schedule III part B compensation payable for such land shall be assessed by the collector and shall be the market value prevailing on the 1<sup>st</sup> of May 1973 or the date of commencement of this Act, whichever is less. If the compensation so assessed exceeds twenty five thousand, the collector shall submit the case to the Commissioner and he shall pass the order of

compensation, if the amount of compensation does not exceed rupees fifty thousand. If the amount exceeds fifty thousand, the Commissioner will submit the case to the Revenue Minister.

The amount payable in lieu of extinguishment of rights, titles and interests in land is to be determined in accordance with schedule III of the Act. The schedule shows that the land in the state has been divided into six categories for payment of amount and the value assigned to one ordinary acre under schedule I is to be taken into consideration.

### **ILLUSTRATION**

For the land falling in the first category, the price of one Kanal of land has been fixed at Rupees one thousand when its value for one ordinary acre of land is rupees 1.40 fixed by schedule I.

Where ex-owner held 20 kanals of land under his tillers and was receiving rent half of the produce such an ex-owner is entitled to receive an amount in lieu of his extinguishment of rights in land to the extent of rupees  $1000 \times 20 \times \text{one half} = \text{RS } 10000$  for 20 kanals of land.

For second category of land one kanal is valued at rupees 650 when ordinary acre is valued at rupees 1 under schedule I and the ex-owner was receiving rent at one fourth of the produce. In such case ex-owner will get an amount for 20 kanals of land to the extent of rupees  $650 \times 20 \times \text{one fourth} = \text{Rs } 3250$  and so on.

### **VALIDITY OF PRIVATE AGREEMENT BETWEEN EX-LANDLORD AND TILLER (SECTION 12)**

With regard to determination and payment of compensation and amount in lieu of extinguishment of rights in land, the section 12 of the Agrarian Act encourages parties to mutually settle the issues. In this regard the section gives the statutory right to the ex-landlord and prospective owner of the land to resolve by an agreement in writing two contentious issues, namely first payment of amount and second apportionment of land between themselves. Section 12 provides

**“where an ex-owner of land, or if such ex-owner had an intermediary under him prior to the 1<sup>st</sup> of May 1973 such ex-owner and such ex-intermediary jointly and the prospective owner of such land by an agreement in writing, duly registered under the Jammu and Kashmir Registration Act 1977, or authenticated by a revenue officer of a class not lower than a Tehsildar;**

- a) Respectively acknowledge receipt and payment of an agreed amount;**
- b) Admit having apportioned such land as between themselves in an agreed manner and having entered into possession of their respective shares in accordance therewith;**

**such payment or apportionment of land or both, as the case may be, shall be given effect and shall relieve the state of its liability to make payment to such person and also relieve the prospective owner of his liability to pay levy to the state:**

**Provided that in case of apportionment of land the ex-landlord shall not have in his share more land than could be resumed by him under clause (f) of sub-section 2 of section 7, if he were otherwise eligible to resume land.**

For a valid agreement under the section following conditions must be fulfilled;

- i. The agreement must be in writing

- ii. It must be duly registered under J & K Registered Act or authenticated by a Revenue Officer not lower than a Tehsildar
- iii. It must acknowledge receipt and payment of an agreed amount or admit having apportioned the land between the parties in an agreed manner and having entered into possession of their agreed share in accordance with the terms
- iv. In case of apportionment of land, ex-landlord shall not have in his share more land than could be resumed by him under section 7(2)(f) , if he was eligible to resume.

**RESTRICTIONS ON UTILIZATION OF LAND HELD BY ANY PERSON  
AFTER THE COMMENCEMENT OF THE ACT, (SECTION 13)**

The fundamental object of the Agrarians Act is to ensure that the person holding the land should personally cultivate it and not through any kind of tenancy not permitted by the Act. In this regard the section 13 of the Act declares that after the commencement of the Act, i.e. 13<sup>th</sup> July, 1978 a person can not possess or hold land which is not in his personal cultivation. Section 13 reads as under

**(1)“after the commencement of this Act no person shall hold land, otherwise than for personal cultivation (except where tenancy is permitted by this Act), or for residential purposes upto two kanals per family or subjected to the provisions of the Jammu and Kashmir Prohibition on Conversion of Land and Alienation of Orchard Act, 1975 for horticultural purposes or with the previous permission of the Revenue Minister or any officer nominated by him in this behalf, for industrial or commercial purposes:**

**Provided that land recorded as orchard, arak, kap, kahi-i-krishm or of a class notified under clause (f) of section 3 shall not be put to any use other than such orchard or arak or kap or kahi-i-krishm or for growing fodder or fuel, as the case may be, subject to the second proviso to sub-section 1 of section 15 in the case of orchard.**

**Provided further that where land, not exceeding half a kanal in area, is used as Gharat, Chakki or shop or for such other purpose relating to rural economy, no permission shall be needed;**

**(2) except as otherwise provided in this Act, no tenancy created or continued after the 1<sup>st</sup> day of May 1973 in respect of any land shall be valid**

**(3) rights, titles and interests in land of any person who, except for reasons beyond his control, fails to utilize the land in accordance with or utilize land in contravention of the provisions of sub-section 1 or lets land to a tenant in contraventions of the provisions of sub-section 2 shall, after such enquiry as may be prescribed, vest in the state.**

The section 13 in its plain language places emphasis on two aspects of agrarian reforms. First it prohibits that after the commencement of this Act no person can hold land in his possession unless the land is in his personal cultivation within the meaning of this Act. In case a person does not cultivate the land personally, it shall vest in the state. Consequently the second prohibition follows from the first one and under sub-section 2 no person can create tenancy in respect of any land after 1<sup>st</sup> May 1973 except as permitted under the Act.

Besides the land held in personal cultivation, a person can hold land up to 2 kanals per family for residential purposes. Again land can be held, subjected to the provisions of

J&K Prohibition on Conversion of Land and Alienation of Orchard Act 1975 for horticultural purposes and lastly land can be held for industrial or commercial purposes with the previous permission of Revenue Minister or officer nominated by him.

**AGGREGATE LAND HELD IN OWNERSHIP NOT TO EXCEED CEILING  
AREA (SECTION 14)**

**(OR)**

**OPTIMUM RETAINABLE AREA OF LAND**

The Agrarian Reforms Act has specifically declared that after the commencement of the Act, no person can held land except for personal cultivation and if he does not cultivate the land personally, the land will vest in the state. The land held by any person whether in ownership or as tenant or an allottee or otherwise must not exceed the ceiling area. Ceiling area means the extent of land measuring 12 and a half standard acre. In this regard section 14 of the Act prescribes the optimum retainable area of land, which reads as under:-

- 1) **save as provided in clause (a) of sub-section 2 of section 4 of this Act, aggregate land held in ownership or as tenant or otherwise by, or vested under this Act in an individual or all members of a family shall not exceed the ceiling area.**
- 2) **Where after the first day of September, 1971, any land has been or is acquired by any such place of worship or Wakf or dharamshala or public trust or institutions or individuals or member as mentioned in sub-section 1 by purchase, gift, bequest, inheritance, mortgage, family settlement, decree or order of court or by any other mode whatsoever and, in consequences thereof, the total extant of land owned by such place of worship, wakf, dharamshala, public trust, institution, individual or family exceeds the limit provided under sub-section 1, the retention or possession of such land, as may be in excess, shall be invalid and all rights, titles and interests shall extinguish and vest in the state.**

Thus according to section 14 of the Act, after 1<sup>st</sup> May, 1973 any person or members of family or places of worship, wakfs, dharamshalas etc. can acquire land by way of purchase, gift, inheritance etc. whatsoever within the ceiling area of 12.50 standard acre. However if in consequences of such acquisition of land by any above mentioned means the total extant of land owned by such person or members of family or places of worship, wakfs, dharamshalas etc. exceeds the ceiling area, the retention or possession of excess land so acquired shall be invalid and the land will go to the state.

## **DISPOSAL OF SURPLUS LAND (SECTION 15)**

The land which vests in the state by the operation of the different provision of the Act is to be distributed among the eligible persons in the manner provided by the section 15 of the Act. The Supreme Court in **Kh. Fida Ali** case observed, “The Act makes effective provisions for creating granary of land at the disposal of the state for equitable distribution.” Section 15 reads as under:

**(1) the government shall be competent, subjected to the provisions of the sub-section (2) and (3) to dispose land, vested or which may vest in the state under this Act and became surplus and land, which is available under sub-section (2) of section 6 of the Jammu and Kashmir Big Land Estate Abolition Act, Samvat 2007, in consideration of such levy as is provided for in schedule III and subjected to such terms and conditions (including those relating to reservation of adequate land for Kahcharai) and in such manner, as may be prescribed, anything in any law for the time being in force notwithstanding:**

**Provided that arak, kap, kah-i-krishan and such areas growing fuel or fodder as are notified under clause (f) of section 3 shall continue to be used as such arak, kap, kah-i-krishan or for growing fuel or fodder as the case may be:**

**Provided further that where the government is satisfied that any land under use as an orchard has ceased to be fit for such continued use, government may permit alternative use of such land subjected to the condition that any excess area allowed beyond the normal ceiling area of 12.5 standard acre on the consideration of the land being used as an orchard, shall vests in the state and be subjected to disposal by the state in the manner provided under this Act.**

The land which has been acquired or vests in the state by the operation of the provisions of this Act is to be distributed among the tillers as prospective owners of such land which they were actually cultivating subjected to the condition that such prospective owners has to pay full amount of levy as prescribed by the III schedule of the Act. However, such tillers will be recorded as its prospective owners only if such land is within their ceiling area. After conferring land to the prospective owners whatever land remains with the state, that land becomes surplus land and that land is to be distributed among the eligible persons in accordance with the provisions of the

sections 15 of the Act. Under sub-section 2 of section 15 persons eligible to acquire surplus land has been provided according to the priority. Sub-section 2 reads as under:

**(2) the land becoming surplus under this Act shall be allotted according to the priorities given below:-**

- a) first priority shall be given to the tiller having less than basic area of 2.5 standard acre;**
- b) second priority shall be given to ex-owners having less than the basic area of 2.5 standard acre;**
- c) third priority shall be given to the refugees of 1947 having less than 2.5 standard acre and having no other source of income;**
- d) fourth priority shall be given to the landless agricultural laborers provided that the landless persons of the same locality shall have priority of claim over those residing outside locality;**
- e) fifth priority shall be given to the refugees of the 1947 having more than 2.5 standard acre, but less than 5 standard acre, provided that all the members of the family of such refugees are actually engaged in agriculture and reside in the village in which the land is situated.**

With respect to above mentioned eligible allottees, sub-section 3 of section 15 gives further preference to each such category of allottees, when, everything else being equal. It says that;

**(3) in each category of eligible allottees mentioned in sub-section (2) everything else being equal;**

- a) First preference shall be given to persons serving in defence force;**
- b) Second preference shall be given to the persons who were serving in the defence force on or after the first day of April, 1965;**
- c) Third preference shall be given to the gujjar and bakarwals;**
- d) Last preference shall be given to other applicants.**

Sub-section 4 provides limit of surplus land which can be allotted to the eligible persons under this section. It provides that:

**(4) only so much of surplus land shall be allotted to any eligible allottee which along with the basic area already held by such allottee, adds up to 2.5 standard acre in the case of allottees failing under clause (a), (b), (c) and (d) of sub-section 2 and 5 standard acre in the case of allottees falling under clause (e) of the aforementioned sub-section.**

However the government is not bound to follow the priorities fixed for the allotment of surplus land in favour of refugees of 1947. government is competent to give them first priority under sub-section 4-A Of section 15, which reads as under:

**(4-A) notwithstanding anything contained in the foregoing provisions of the section, the government shall be competent to give first priority to the refugees of 1947 in the allotment of surplus land for making up deficiencies in the unit of land prescribed under any of the orders issued by it in this behalf; provided that the aggregate land shall not exceed the ceiling area.**

The persons allotted land under this section shall be entitled to acquire ownership rights of such land on payment of such levy in such manner as is mentioned in Part C of schedule III (sub-section 5).

**Basic area:-** has been explained in explanation to section 15 to mean the aggregate area of land, held as owner or as tenant or otherwise by a person or his members of family, if any, as it existed in respect of refugees of 1947 in the year of allotment in each individual case subjected to such date being not later than the first day of September 1950 and in case of others as on first day of May, 1973.

**Ex-proprietor or ex-tiller liable to pay rent to the state during interim period  
(section 16)**

Where any person either owner or tenant or his legal heirs is found in possession of land in excess of the ceiling area, the said person shall be recorded as tenant of the state of the excess land so held by him till the excess land is allotted or possession thereof is transferred to the allottee. During this intervening period such person holding land is liable to pay rent to the state. Section 16 of the Act deals with this aspect, which reads as under:

**Where land is held by a person-**

- a) **under sub-section (2) of section 6 of the Jammu and Kashmir Big Landed Estates Abolition Act, samvat 2007; or**
- b) **in personal cultivation as owner or as tenant or allottee directly under the state whose rights, titles and interests therein have been extinguished by section 5**

**such person shall be liable, in respect of such land from the date of commencement of this Act until the entry into possession of the allottee of such land in pursuance of its disposal under this Act, to payment of rent to the government at the rate of forty times the sum of the land revenue assessed on, and cesses and other charges and dues payable for such land under any law for the time being in force.**

Section 16 deals with the two types of case. Firstly under section 4 of the *Big Landed Estate Act* the rights of ownership in land held by a proprietor exceeding 182 kanals is extinguished and under section 6(1) of the Act, same shall vest in the state where the land had not been transferred to the tiller in terms of section 5 of the said Act. Sub-section 2 of section 6 of the said Act provides that the land so vested in the state may be utilized in such manner as the government may decide and in respect of the land which had not been transferred to the tiller, the government may permit the ex-proprietor to retain possession of the land subjected to such terms and conditions as may be prescribed. Secondly under clause (b) of section 16 of the Agrarain Reforms Act the land held by a person in personal cultivation as owner or as tenant or as allottee directly under the state whose rights therein have been extinguished by section 5 may be allowed to retain the said land until the entry into to possession of the allottee of such land in pursuance of its disposal under the Agrarian Act. But in both the cases such owner, tiller or allottee as the case may be has to make the payment of rent at the rate of forty times the sum of the land revenue assessed on and cesses and other charges.

#### **Prohibition on Transfer or Disposal of Vested Land or Dwelling House (section 17)**

As we know that no person who is not the permanent resident of the state can hold property in the state and any transfer made in favour of a person who is not a permanent resident of the state is void. Section 17 of the Act reiterates the same principle by imposing restriction on the transfer or disposal of land to the persons who are not the permanent residents of the state, but at the same time it protects the welfare of those

tillers who had come from Pakistan in 1947-48 but are not the permanent residents of the state and are in cultivating possession of the land since any date before first September 1950. Section 17 reads as under:

**(1) notwithstanding anything contained in this Act or the rules made thereunder or any other law for the time being in force, but subjected to the provisions of sub-section 2 and 3, no land or dwelling house or structure shall, except as provided under section 140 of the Jammu and Kashmir Transfer of Property Act, samvat 1977, section 4-A of the Jammu and Kashmir Alienation of Land Act, samvat, 1995 and section 69-B of the Jammu and Kashmir Co-operative Societies Act, 1960, be transferred, disposed of or vest under this Act or in execution of any decree or order of the civil court or Revenue Authority or under any other law in favour of any person who is not the permanent resident of the state.**

**(2) Until, the government directs otherwise, nothing in sub-section 1 shall be deemed to interfere with the possession of land of a tiller who is not the permanent resident of the state, where such tiller, as had come from Pakistan in 1947-48, has been in possession of such land since any date before the first day of September 1950.**

The object of section 17 is two fold. Firstly it prohibits the transfer of land to all those, who are not the permanent resident of the state and secondly it protects possession of those who had come from Pakistan in 1947-48 and are not permanent residents of the state.

Sub-section 3 provides that, **“the provisions of section 7, 9 and 11 shall apply to such tillers as is mentioned in sub-section 2 and the ex-owners, ex-intermediary under whom he was holding this land prior to the first day of May 1973, mutatis mutandis, subjected to the following modifications:-**

- a) The installments of rent paid to an ex-landlord shall be deemed to be installments of amount payable to him in lieu of extinguishment of his rights, titles and interests in such land effected by section 4;**

**b) Where such ex-owner had an ex-intermediary under him prior to the first day of May, 1973, the rent recovered from the tenant shall be payable to the ex-intermediary after deducting therefrom:-**

- i. The rent payable by such ex-intermediary to the ex-owner, and**
- ii. The share of collection charges on pro-rata basis.**

**The balance rent, remaining after payment to ex-intermediary shall be payable to ex-owner after deducting therefrom the balance of the collection charges. The payments to both shall be treated as installments of amount payable to them in lieu of the extinguishment of their rights, titles and interests in such land under section 4;**

**c) the amount payable in lieu of extinguishment of rights, titles and interests of such ex-owner or ex- intermediary shall be the amount payable in accordance with the provisions of part a of Schedule III and**

**d) ownership rights shall not vest in the tiller and he shall, until the government directs otherwise, continue to hold the land as tiller under the state subjected to such conditions as may be prescribed.**

Section 17(3) of the Act provides that the section 7, 9 and 11 of the Act will be applicable to non-state subject tillers subjected to certain modifications. Under section 7 a displaced person who has been allotted evacuee land but does not personally cultivate the land so allotted, the land will not vest in the state, but the allottee has been given an opportunity to resume such land for personal cultivation in terms of section 7 of the Act. And under section 9 such a tiller has to pay to the state rent which was payable by him to ex-landlord and the ex-landlord is thereby entitled to payment in lieu of extinguishment of rights in such land which has vested in the state by section 4, 5 or 6 of the Act, with this modification:

- 1) that installments of rent paid to the ex-landlord shall be deemed to be installment of amount payable to him in lieu of extinguishment of his rights, titles and interests in such land by section 4 of the Act.
- 2) Where such ex-owner had an ex-intermediary the rent recovered from the tenant shall be payable to the ex-intermediary after deducting rent payable by such ex-intermediary to the ex-owner, and collection charges. The balance rent, remaining

- after payment to ex-intermediary shall be payable to ex-owner after deducting there from the balance of the collection charges. The payments to both shall be treated as installments of amount payable to them in lieu of the extinguishment of their rights, titles and interests in such land under section 4.
- 3) The amount payable in lieu of extinguishment of rights, titles and interests of such ex-owner or ex- intermediary shall be the amount payable in accordance with the provisions of part a of Schedule III and
  - 4) Lastly clause (d) of section 17 declares that ownership rights shall not vest in the tiller, until the government directs otherwise. Therefore the tiller will continue to hold the land as tiller under the state subjected to such conditions as may be prescribed.

## **(JURISDICTION AND PROCEDURE FOR SETTLEMENT OF DISPUTES**

### **(SECTION 18-25)**

For the purpose of administration, the whole state is divided in three provinces namely Jammu, Kashmir and Ladakh province. Each province is called a Division of the state. A Division is further divided into number of districts and sub-districts. Prior to the Reorganization of Revenue Department Act 2008 samvat, there were following classes of the revenue officers functioning in the state:

- 1) **Revenue Commissioner:-** having jurisdiction over the whole state.
- 2) **Collector, designed as Governors:-** who were the provincial heads, there were however only two governors one for Jammu and the other for the Kashmir province.
- 3) **Assistant Collector of First Class:-** designed as *Wazir Wazarat* who was district officer.
- 4) **Assistant Collector:-** of second class designed as Tehsildar
- 5) **Assistsnt Collector:-** of 3<sup>rd</sup> class designed as Naib Tehsildar

The revenue Minister was also treated as Revenue Officer. The Revenue Department was reorganized in the 2008 samvat and thereafter the classes of Revenue Officers which

functioned in the state were re-designated as mentioned in section 6 of the Land Revenue Act. The section enumerates following five classes of Revenue Officers:-

- 1) The Financial Commissioner
- 2) The Divisional Commissioner
- 3) The Collector, the Deputy Commissioner is the collector by virtue of his office
- 4) The Assistant Collector of the first class, the Assistant Commissioner and a tehsildar are Assistant Collectors of the first class
- 5) The Assistant Collector of the Second Class, the Naib-Tehsildar is the Assistant Collector of the second class.

**Section 18** of the agrarian Act enumerates the class of revenue Officers within the meaning of the Land Revenue Act for the purpose of Agrarian Act to be appointed by the government. The section reads as under:-

**(1) there shall be following class of officers for the purpose of this Act who shall be appointed by the government, by notification in the government Gazette, namely:-**

- a) **Commissioner Agrarian Reforms and joint Commissioner Agrarian Reforms**
- b) **Collector**
- c) **Assistant Commissioner**
- d) **Tehsildar and**
- e) **Naib-Tehsildar**

**Every officer appointed by the government under this sub-section shall be deemed to be a Revenue Officer within the meaning of section 6 of the Jammu and Kashmir Revenue Act samvat, 1996 and shall exercise such powers within such jurisdiction as the government may, by notification in the Government Gazette specify.**

**(2) The general superintendence and control over all Revenue Officers shall vest with the government.**

**(3) Subjected to the control of the Government, the Collectors, Assistant Commissioners, Tehsildars and Naib-Tehsildars shall be subordinate to and under the control of the Commissioner**

- (4) Subjected as aforesaid and to the control of the Commissioner, the Assistant Commissioners, Tehsildars and Naib-Tehsildars shall be subordinate to and under the control of collector.**
- (5) Subjected as aforesaid and to the control of the Collector, Tehsildars and Naib-Tehsildars shall be subordinate to and under the control of the Assistant Commissioners.**
- (6) Subjected as aforesaid and to the control of Assistant Commissioners the Naib-Tehsildar shall be subordinate to and under the control of Tehsildar.**

#### **Powers of the Revenue Officers (section 19)**

Under section 19 of the Act the government has power to determine by notification the functions to be discharged and the powers to be exercised by the any officer. Section 19 of the Act reads as under:-

- (1) unless the class of revenue officers, by whom any function is to be discharged or any power is to be exercised, is specified by or under this Act, the government may, by notification, determine the functions to be discharged or the powers to be exercised under this Act by any class of Revenue Officer.**
- (2) The manner and the procedure for the performance of duties, the exercise and conferment of powers, distribution of business and withdrawal and transfer of cases under this Act shall save as otherwise provided by or under this Act, be regulated by the Jammu and Kashmir Land Revenue Act, samvat, 1996 and the rules made there under.**

So according to sub-section 1 the various officers have to perform the functions which has been assigned to them under the Act and the government has also been given power to determine by notification, the functions to be discharged and the powers to be exercised by the Officers.

Sub-section 3 enumerates various powers and functions of the Collector. It reads as under:-

- (3) the following applications, suits and proceedings shall be disposed by the Collector:**

- a) **proceedings section 56 of the Jammu and Kashmir Tenancy Act samvat, 1980;** (section 56 of Tenancy Act deals with the application for wrongful ejection of tenant by the landlord and restoration of possession of land)
  - b) **proceedings under sub-section (2) of section 68-A of the Jammu and Kashmir Tenancy Act samvat, 1980;** (section 68-A deals with transfer of rights of protected tenants and succession to right to occupancy)
  - c) **proceedings under section 24 of the Jammu and Kashmir Big Landed Estates Abolition Act samvat, 2007;**(section 24 deals with extinction of rights in land)
  - d) **application by an owner or by an intermediary that the person, who claims to be cultivating the land as tenant, is not tenant but a trespasser;**
  - e) **all other cases of disputes including those where the party in possession pleads adverse possession against the recorded owner or intermediary.**
- (4) any application, suit or proceedings of the kind mentioned in sub-section 3, pending at the commencement of this Act before a Revenue Officer subordinate to a collector or any civil or revenue court, shall be transferred to the collector having jurisdiction in the place in which the land is situated.**
- (5) Any application, suit or proceedings relating to cases specified in clause (e) of the sub-section 3 which, immediately before the commencement of Jammu and Kashmir Agrarian Reforms (Amended) Act 1998, where pending before any civil court, shall, on such commencement, stand transferred to the collector having jurisdiction over the area in which land in dispute is situate, and the collector shall in his capacity as the appellant or revisional authority, as the case may be dispose of the same in accordance with the provisions of this Act.**

The applications mentioned in sub-section 3 are exclusive triable by the collector and as such the jurisdiction of the civil court to dispose of and decide applications of such nature are excluded. Where any application, suit or proceedings with respect to these

specified cases are pending at the commencement of the Agrarian Act before any civil court, or revenue court or officer subordinate to the collector, those cases or applications are to be transferred to the collector.

### **Revenue Officers under the Act exercise the powers of civil court (section 20)**

The Revenue Officers appointed under the Act has been given powers of the civil court with respect to certain matters so that they can exercise the powers given to them with out any hindrance. Section 20 of the Act reads as under:-

**The Revenue Officers and the appellant and the revisional authorities, appointed by or under the Act, shall have all the powers of a civil court while trying a suit under Code of Civil Procedure, samvat, 1977 in respect of the following matters, namely:-**

- a) **Summoning and enforcing the attendance of any person and examining him on oath or on solemn affirmation;**
- b) **Production and discovery of documents;**
- c) **Proof of facts by affidavits and**
- d) **Any other matter which may be prescribed;**

**And every such officer or authority shall be deemed to be a civil court within the meaning of section 480 and 482 of the Code of Criminal Procedure samvat 1939.**

According to the first part of the section the authorities have the same powers as the civil courts have with respect to the above four mentioned things. The second part of the section declares that every authority shall be deemed to be civil court within the meaning section 480 and 482 of Cr. P. C. Section 482 of Cr. P. C. prescribes special procedure in certain cases of contempt committed by the person within the meaning of section 175, 178, 179, 180 and 228 of RPC.

### **Appeals and Revisions (section 21)**

The Act creates a hierarchy of Revenue Officers with powers and jurisdiction defined and delimited under the Act. They are all executive officers but have been vested with the power of adjudication of revenue disputes. If any person is aggrieved by the any order of the revenue officer, he may file appeal or revision before the proper authority created

under the Act. Section 21 of the Act has lays down the law relating to the appeals and revisions. Section 21 reads as under:-

- (1) Any person aggrieved by a final order of a collector or Revenue Officer of a class lower than that of a collector may prefer an appeal to the Commissioner having jurisdiction in the area to which the appeal relates.**
- (2) The revenue minister may at any time call for the record of any case in which a Tehsildar or an Assistant Commissioner has passed orders in respect of any evacuees land or state land or any case in which commissioner has passed final order and if he finds that a question of law or public interest is involved in the case, he may pass such orders thereon as he thinks fit:**  
**Provided that no order shall be passed against any party without affording the party an opportunity of being heard.**
- (3) No application for review shall lie against any order passed under this Act or the rules made there under, but clerical or arithmetical mistakes in order or errors arising therein from any accidental slip or omission may, at any time, be corrected by the authority which has made such order.**
- (4) First appeal against a final order passed under the Jammu and Kashmir Agrarian Reforms Act, 1972 or the rules framed there under pending at the commencement of this Act shall be transferred to the commissioner having jurisdiction in the area to which such appeal relates and the commissioner shall thereupon dispose off such appeal in accordance with the provisions of this Act.**
- (5) Second appeal against a final order pending before the Financial Commissioner or any revision against a final order pending before a revenue Minister under the Jammu and Kashmir Agrarian Reforms Act, 1972 or the rules framed thereunder shall be disposed off in accordance with the provisions of this act by the Revenue Minister,**

**the second appeal before the Financial Commissioner being treated as an application for revision under this Act.**

- (6) Any appeal or revision against any other order passed under the Jammu and Kashmir Agrarian Reforms Act, 1972 or the rules framed thereunder, pending at the commencement of this Act, shall abate (*ends*) but nothing herein shall deprive any aggrieved party from contesting such order in an appeal or a revision against a final order that may be passed in the proceedings from which such appeal or revision had arisen.**
- (7) (a) Where in an appeal or revision, an application for stay is made, the appellate or revisional authority, as the case may be, shall in all cases, except where it appears that the object of granting stay would be defeated by the delay, before granting the stay, direct notice of the applicatrion for the same to be given to the opposite party.**
- (b) Where the appellant or the revisional authority grants a stay, such stay shall be granted on such terms as to the duration thereof, keeping an account, giving security or otherwise as the authority thinks fit.**
- (8) A stay granted by an appellant or a revisional authority in an appeal or revision shall, in case where such appeal or revision stands transferred by sub-section (4) to the Commissioner or by sub-section (5) to the Revenue Minister, stands vacated after a period of twenty days from the date of such transfer unless such stay is in the meanwhile re-affirmed in accordance with the provisions of sub-section (7).**

The analysis of the section 21 shows that the section gives three types of remedies to the party who is aggrieved of the order passed by the Revenue officer by way of (I) appeal, (II) revision and (III) review. Sub-section (1) of section 21 gives right to appeal to the aggrieved party against a final order, passed by collector or by a Revenue officer subordinate to collector, before the Commissioner having jurisdiction in the area to which the appeal relates. Sub-section (2) of the said section gives a remedy to aggrieved party to test the legality of order passed by Revenue Officer by way of revisional petition before a revisional authority. The revenue minister may at any time call for the record of

any case in which a Tehsildar or an Assistant Commissioner has passed orders in respect of any evacuees land or state land or any case in which commissioner has passed final order and if he finds that a question of law or public interest is involved in the case, he may pass such orders thereon as he thinks fit section 21 (2). Revision under section 21(2) of the Act lies only with respect to the evacuee land and state land. With respect to the other cases revision will lie if the question of law or of public importance is involved. Sub-section 3 of section 21 gives the remedy of review on the ground of clerical mistakes or errors and omissions.

According to sub-section 4 if any appeal is pending under the Agrarian Act 1972 that shall be transferred to the commissioner and who shall dispose the same according to the provisions of the present Act.

#### **Limitation for the Appeals (section 22)**

A time limit has been laid down for filing the appeals and if the appellant fails to file the appeal within the prescribed time, a valuable right accrues in favour of the respondent. According to the section 22 the limitation for appeals is 60 days from the date of order appealed from. The period of limitation relating to the cases in the district of Ladakh, in the sub-division of Gurez, in Machhil Illaqa of Kupwara district and Tehsil Karna in the district of Baramulla, in tehsil Gool Gulabgarh, in Naibat Panchari of tehsil Udampur, in the territorial jurisdiction of police station Dudoo Basantgarh and Bermen and Gobin Illaqa of tehsil Ramnagar and in the Thakra Kote and Nagotee Illaqa of Tehsil reasi in the district Udampur, in tehsil Budhal in the district Rajouri, in Niabat Banni in the district Kathua and in Marew, Waran and Paddar illaqa of Kishtwar in the district of Doda and such other areas as may be notified by the government is 120 days (sub-section 1 of section 22). According to the sub-section 2 the provisions of the Jammu and Kashmir Limitation Act samvat 1995 has been made applicable to the appeals arising under this Act, save as otherwise provided under sub-section 1.

#### **Inquires and proceedings to be judicial proceedings (section 23)**

**All inquires and proceedings before a Revenue Officer or authority appointed by or under this act or the Rules made thereunder, shall be deemed to be judicial proceedings within the meaning of section 193, 219, 228 of the Rambir Penel Code (section 23).**

Where the offence under the section 193, 219 or 228 of the RPC is committed before revenue officer or authority while holding the proceedings, the criminal court can take cognizance of the said offences if the complaint is made by such authority as it will be deemed a court for purpose of section 195 (b) of Cr.P.C.

#### **Appearances by advocates before revenue officers (section 24)**

Section 24 of the Act provides for the persons who may appear before Revenue Officers in proceedings under the Act. It reads as under:-

**Persons by whom appearance may be made before a Revenue Officer:-**

- (1) appearances and applications may be made and acts done before a revenue officer by a person either personally or through an authorized agent;**

**Provided that no legal practitioner shall appear as such as an authorized agent in any proceedings under this Act or rules made thereunder, except before a collector or an appellate or revisional authority.**

- (2) Appearance may be put, applications made and acts done before a revenue officer or any authority acting under this Act, on behalf of the family by the head of such family.**
- (3) When the appellate or revisional authority, as the case may be, is holding office in the province other than the one to which the appeal or revision pertains, the appeal may be preferred or the application for revision may be presented, before a local Revenue Officer not below the rank of Tehsildar for transmission to such appellate or revisional authority.**

**Provided that an appeal or application relating to the district of Ladakh may always be presented before a local revenue officer not below the**

**rank of Tehsildar for transmission to the appellate or revisional authority, as the case may be.**

The section confers a general right to a party to appear, act or make applications before a Revenue officer. The person who is party to proceedings can appear before any revenue Officer either in person or through authorized agent. Authorized agent has not been defined by the Act but Order 3 Rule 2 of the C.P.C. defines authorized agent as persons holding power of attorney, authorizing them to make and do such appearances, applications and act on behalf of such parties. However by way of exception the legal practitioners can not appear before the Revenue Officers on behalf of the parties but they can appear if the proceedings are held before collector and are in appeal or revision.

### **Exclusion of jurisdiction of civil court (section 25)**

The Agrarian Reforms laws uniformly contains provision that no civil court shall have jurisdiction to decide any dispute arising out of the provisions of such legislations, that such disputes shall be decided by the Revenue Authorities and that their decisions shall be final. Section 25 of the Agrarian Reforms Act 1976 deals with this exclusion of the jurisdiction of civil courts and reads as under:-

**Notwithstanding anything contained in any law for the time being in force:**

- a) No civil court shall have jurisdiction to settle, decide or deal with any question or to determine any matter arising under this Act or the Rules made thereunder;**
- b) No order of any officer or authority passed under this Act or the Rule made thereunder shall be called in question in any civil court.**

The settled principle of law is that civil courts are having jurisdiction to hear and decide all suits of civil nature unless the jurisdiction is excluded, expressly or by necessary implication by law. Section 9 of the CPC provides that civil courts shall have jurisdiction to try all suits of civil nature except suits of which cognizance is either expressly or impliedly barred. The full bench of the High Court in **Rahim vs Amma** considered in detail the exclusion of the jurisdiction of the civil court as provided under section 36 of the repealed Agrarian Act of 1972. the High Court held that the section forbids the civil court from dealing with or adjudicating upon any question or matter arising under the act or Rules made thereunder. The High Court further held that, however section 36 does not either on its terms or on principle stands as a bar to the exercise of jurisdiction by the High Court under article 226 of the Constitution. Again an order passed by Revenue Officer under the Act can be challenged before a civil court on merits if it was passed in violation of the fundamental provisions of the Act or of fundamental principles of judicial procedure. The court however pointed out certain legal defects in the Act and as a result the state government kept the operation of the Agrarian Act 1972 in suspension. Thereafter the Agrarian Act of 1972 was repealed and Agrarian Act of 1976 was enacted and made enforceable. Section 19 was inserted in the Act, conferring exclusive jurisdiction to the Collector and section 25 was enacted to exclude the jurisdiction of the civil courts to decide or settle any matter or question arising under the Act. A number of

cases in the nature of appeals, revisions and references pending disposal before the High Court were referred to the full bench in **Jugtu vs Badri** as a common question of law of general importance with regard to the interpretation of section 19 and 25 of the Act. The High Court held that , “the language of section 25 leaves no room for doubt that civil courts shall have no jurisdiction to settle, decide or deal with any question or to determine any matter arising under the Act or rules made there under.” By inserting section 19, which did not find place in old Act, the legislature has gone one step further to deprive the Civil and revenue courts of their jurisdiction to hear the matters specified in section 19 (3) (a) to (e). section 19 makes it obligatory on all civil and revenue courts to transfer all pending applications, suits or proceedings of the land specified therein to the collector having jurisdiction in the matter.

The controversial question for consideration was what are, “*all other cases of dispute*” that are referable to the collector and are decided by him under clause (e) of section 19 of the Act. The full bench of the High Court in the above mentioned case held that the words, “*other cases of dispute*” are of wide amplitude and must cover all cases in which right to possess the land is claimed or disputed. The court held that these words can not be construed in limited sense so as to mean only those disputes as have resemblance to disputes enumerated in categories (a) to (d) of sub-section (3). Clause (e) can not be read ejusdem generis with clause (a) to (d) as there is no common genus. Thus all disputes relating to the possession of land whether principally or collaterally or incidentally involved are required to be decided under the Act. However clause (e) will not apply to the suits or proceedings which merely involve determination of question of title without claiming the possession. The high Court in **Sankokh Singh vs Special Tribunal** held that civil courts has no jurisdiction to settle, decide or deal with any matter which had arisen under the Act or Rules.

### **Land Revenue Act 1996 (samvat) (UNIT-II)**

In the year 1923 (1980 Samvat) an important Act, The Jammu and Kashmir Land Revenue Regulation was passed to regulate the land tenure. The Regulations was made to consolidate, amend and declare the land revenue laws in the state. It was sanctioned by His Highness the

Maharaja in Council under resolution No. 16 dated the 13<sup>th</sup> September 1923. Resolution came into force on and from the 1<sup>st</sup> of Poh 1980 and extended to the whole of Jammu and Kashmir State except the following tracts:

- a) The Illaqa of Poonch
- b) The jagir of Bhadarwah and Langet
- c) The jagir of Cheniani and
- d) The estate under the administration of the private department of His Highness the Maharaja Sahib Bahadur.

In the year 1939 the Regulations were re-enacted to amend and consolidate the law on the subject. Thus Jammu and Kashmir Land Revenue Act 1996(1939) was enacted, which is still in force with certain amendments made from time to time. The Act received assent of the Maharaja on 15<sup>th</sup> July 1939 (31<sup>st</sup> Har 1996) and it was published in government gazette dated 29<sup>th</sup> Bhadon, 1996. The Act was made as it was felt expedient to consolidate, amend and declare the law in force in the Jammu and Kashmir State with respect to the making and maintenance of record-of-rights in land, the assessment and collection of the land revenue and other matters relating to land and liabilities incident thereto. The Act repealed the Jammu and Kashmir Land Revenue Regulation 1980(samvat) but saved the actions taken under such Regulations. The act was amended from time to time.

Section 3 of the act defines certain terms which are used in the body of the Act. Section 3 says that unless there is something repugnant in the subject or context

**(1) "Estate" means any area –**

- (a) For which a separate record –of –rights have been made;**
- (b) Which has been separately assessed to land revenue or would have been so assessed if the land revenue had not been assessed, released or compounded for or redeemed; or**
- (c) Which the Government may, by general rule or by special order, declare to be an estate;**

**(2) "land" means land which is occupied or has been let for agricultural purposes or for the purposes subservient to agriculture or for pasture and includes the sites of buildings and other structures situated in such land and trees standing on such land, as well as areas covered by or fields floating over water, and sites of jandars and gharats but does not include the sites of any building in a town or village or any land appurtenant to such building or sites;**

**(3) “land holders” does not include a tenant or assignee of land revenue, but does not include land-owner, chakdar and a person to whom a holding has been transferred or an estate or holding has been let in farm under this Act for the recovery of an arrear of land revenue, or of a sum recoverable as such arrear, and every other person not herein before in this clause mentioned who is in possession of an estate or any share or portion there of, or in the enjoyment of any part of the profits of an estate;**

**(4) “Holding” means a share or portion of an estate hold by one land holder or jointly by two or more land holders;**

**(5) “rent”, “tenant”, “landlord” and “tenancy” have the meanings respectively assigned to those words in the Jammu and Kashmir Tenancy Act, 1980;**

**Landlord** under section 2(6) of the Tenancy Act means a person under whom a tenant holds land and to whom the tenant is or but for a special contract would be liable to pay rent for that land.

**Tenancy** under section 2(8) of the Tenancy Act means a parcel or parcels of land held by a tenant of a landlord under one lease or engagement or one set of conditions. It may comprise land held by a tenant partly in right of occupancy and partly without such right.

**Rent** under section 2(2) of Tenancy Act is defined as what ever is payable to a landlord in money, kind or services by a tenant, on account of the use or occupation of land held by him or on account of the use of water for irrigation.

**Tenant** under section 2(5) of the Tenancy Act means a person who holds land, under the state or under another person and is or but for a special contract in that behalf would be, liable to pay rent for that land to the state or to that person but it does not include;

- a) An inferior landholder or
- b) A person to whom a holding has been transferred or an estate or holding has been let on farm, for the recovery of an arrear of land revenue or of a sum recoverable as such or
- c) A mortgagee of the rights of a landholder

**(6) “Land revenue” includes assigned land revenue and any sum payable in respect of land by way of quit rent or of commutation for service to the Government or to a person to whom the Government has assigned the right to receive the payment;**

**(7) “Arrears of land revenue” means land revenue which remains unpaid after the date on which it becomes payable;**

**(8) “Defaulter” means a person liable for an arrear of land revenue, and includes a person who is responsible as surety for the payment of the arrear [or is a lambardar or a public servant who recovers the land revenue]**

**(9) “Rates and Cesses” means rates and cesses which are primarily payable at land holders and includes –**

**(a) any annual rate chargeable on holders of land under section 56 of the Jammu and Kashmir State Canal and Drainage Act,1963;**

**(b) the Village Officer’s Cesses;**

**(c) the education and road cesses;**

**(d) sums payable on account of village expenses ; and**

**(e) sanitation cess;**

**(10) “Village Cess” includes any cess, contribution or due which is customarily livable within an estate and is neither a payment for the use of private property or personal service, nor imposed by or under any enactment for the time being in force;**

Under section 128 of the Act it is provided that no village cess which is not sanctioned by the government and the levy of which has not e been established by judicial decision shall be levied in any estate by any landlord over and above the rent payable by a tenant [128(1)]. When a record-of-right is being made or revised for an estate or when the local area in which an estate is situate is being generally reassessed or at any other time when an order is made by the government with respect to any estate, an Assistant Collector of the first class has to prepare a list of the village cesses, if any, levied in the estate, which have been generally or specially approved by the government [128(2)]. The government can impose on the collection of any village cess comprised on the list prepared under sub-section 2 such conditions as to expenditure on Police or other establishments connected with the village market or fair as the government may think fit [128(3)]. The government may declare whether any particular cess, contribution or due levied in an estate is or is not a village cess and the said declaration shall be conclusive and a cess or contribution levied in an estate shall cease to be leviable if it is not included in the list of cesses declared leviable by the government [128(4)].

The term cess is commonly employed to connate a tax with a purpose or a tax allocated to a particular thing. However it also means an assessment or levy. Depending on the context and purpose of levy, cess may not be a tax, it may be a fee.

**(11) “Village Officer” means and includes a lambardar;**

**(12) “Revenue Officer” in any provision of this Act means a revenue officer having authority under this Act , to discharge the functions of a revenue officer under that provision;**

**(13) “Muafidar” includes any person, other than a village servant, to whom the land revenue of any land has been assigned in whole or in part by the Government;**

**(14) “Agricultural Year” means as regards the state except the area of Ladakh and Gilgit , the year commencing on the 15th of August, and as regards the Districts of Ladakh and Gilgit the year commencing on 15th of April;**

**(15) “Notification” means a notification published in the official Gazette by authority of a Government;**

**(16) “incumbrance” means a charge upon or claim against land arising out of a private grant or contract;**

**(17) “survey-marks” includes boundary marks;**

**(18) “date of a Regular Settlement” means as regard any state, the date on which the records of the right of the estate , prepared at such settlement was finally attested.**

#### **Classes of Revenue Officers (section 6)**

**1) There shall be the following classes of Revenue officers, namely:-**

**(a) The Financial Commissioner;**

**(b) The Divisional Commissioner;**

**(c) The Collector;**

**(d) The Assistant Collector of the first class;**

**(e) The Assistant Collector of the second class;**

**2) The Deputy Commissioner of a District shall be the collector there of; and an assistant Commissioner and a Tehsildar shall be an Assistant Collector of the first class and a Naib-Tehsildar, an Assistant Collector of the second class.**

**3) Unless the Government issues a notification to the contrary, the jurisdiction of the Financial Commissioner shall extend to the whole of the state and of Divisional Commissioner to the provinces and of collectors and Assistant Collectors to the Districts and Tehsils respectively in which they are employed.**

**4) The government may by notification confer on any person –**

**(a) All or any of the powers of a Financial Commissioner, Divisional Commissioner or collector under this Act; or**

**(b) All or any power with which an Assistant Collector may be invested there under;**

**5) A person on whom powers are conferred under sub-section (4) shall exercise these powers within such local limits and in such classes of cases as the Government may direct and, except as otherwise directed by the Government, shall, for all purposes connected with the exercise thereof, be declared to be a Financial Commissioner, Collector or the Assistant Collector, as the case may be.**

- (5-A) the government may, by notification in the Government Gazette confer on an Assistant Commissioner or the Assistant Settlement Officer the powers of Collector and such collector shall exercise those powers in respect of such cases under this Act or under any other law for the time being in force as may be transferred to him by the collector from time to time.
- (6) The Divisional Commissioner and the collector shall respectively include the settlement commissioner and settlement officer and the Assistant Collector of the first class shall include the Assistant Settlement Officer and the Settlement Tehsildar and Assistant Collector of the second class shall include the Settlement Naib-Tehsildar:

**Provided that, the jurisdiction of Settlement Commissioner, Settlement Officer, Assistant Settlement Officers, Settlement Tehsildars and Naib Tehsildars shall extend only to the tracts under settlement:**

**Provided further that, the officers other than those specified in the first proviso shall, unless otherwise directed by the government, not exercise jurisdiction in regard to cases arising out of Settlement operation.**

Section 6 of the Revenue Act lays down the class of authorities constituted for the performance of powers under the Act. Following authorities has been constituted:-

**1. Financial Commissioner:-** In year 1965 one post of Financial Commissioner for the state was created. The Financial Commissioner is the head of the Revenue Department and his jurisdiction extends to the whole State.

The government may by notification confer on any person all or any of the powers of Financial Commissioner and a person on whom such powers are conferred shall exercise these powers within such local limits and in such classes of cases as the Government may direct and such a person shall, for all purposes connected with the exercise thereof, be declared to be a Financial Commissioner.

**2. Divisional Commissioner:-** in the year 1965 two posts of divisional Commissioner each for Kashmir and Jammu were created. The jurisdiction of the Divisional Commissioner extends over the division. The government may by notification confer on any person all or any of the powers of Divisional Commissioner and a person on whom such powers are conferred shall exercise these powers within such local limits and in such classes of cases as the Government may direct and such a person shall, for all purposes connected with the exercise thereof, be declared to be a Divisional Commissioner.

**3. Collector:-** the head of the revenue administration in the district is the collector (Deputy Commissioner). The general administration of the district vests with the Deputy Commissioner, who for the administrative purposes is under the Divisional Commissioner. He is the head of the district and acts in different capacities. As Deputy Commissioner he is the executive head of the district with multifarious responsibilities relating to development, civil administration, panchayats, local bodies etc. designated as District Development Commissioner. As District Magistrate, he is responsible for law and order in the district and heads the police agency. As Collector, he is the chief officer of the revenue administration and is responsible for the collection of the revenue. He also acts as Chief Election Officer of the district.

**4. Assistant Collector of the First Class:-** the Assistant Commissioner and the Tehsildar are the Assistant Collectors of the first class. Unless the Government issues a notification to the contrary, the jurisdiction of the Assistant Collector extends to the District and Tehsils respectively in which they are employed. The government may, by notification in the government gazette, confer on an assistant commissioner the power of collector and such collector shall exercise those powers in respect of those cases under the Land Revenue Act or any other law for the time being in force as may be transferred to him by the concerned Collector.

**5. Assistant Collector of the second class:-** the Naib Tehsildar is the Assistant Collector of the second class. The naib tehsildar assists the tehsildar in his functions. In fact tehsildar and naib tehsildar are the key officers in the revenue administration. The tehsildar is in charge of the tehsil for the revenue work and is assisted by the Naib tehsildars in his work.

Besides these authorities the sub-section 6 of section 6 lays speaks about the settlement officers it says that the Divisional Commissioner and the collector shall be the Settlement commissioner and Settlement Officer. The assistant Collector of the first class shall include Assistant settlement Officer and the Settlement Tehsildar and the Assistant Collector of the second class shall include the Settlement Naib Tehsildar.

The settlement officer is a revenue officer charged with the duty of making a general re-assessment. While engaged in his work he is also responsible for the continuance and improvement of the regular work of the village record agency. When a notification directing the special revision of existing record of rights is issued by the government he has to carry out the additional operation which such an order entails.

### **Control (section 8)**

**(1) The general superintendence and control over all revenue officers shall be vested with the Government.**

**(2) The Divisional Commissioner, the collector and the Assistant Collector shall be subordinate to and under the control of a Financial Commissioner.**

**(3) Subject to the control of the Financial commissioner, the collectors shall be subordinate to and under the control of a Divisional Commissioner.**

**(4) Subject as aforesaid and to the control of the Divisional Commissioner, all other Revenue officers in his district, shall be subordinate to and under the control of a Collector.**

**(5) Subject as aforesaid and to the control of collector, an assistant collector of a second class shall be subordinate to and under the control of an assistant Collector of the first class.**

The general control over all the revenue officers shall be with the government and then it is the financial commissioner who shall have control over all other officers, then the divisional commissioner have the control over the officers subordinate to him, then collector shall have control over all the revenue officers subordinate to him in his district, then the assistant collector of the first class shall have control over the assistant collector of the second class.

#### **Power to distribute business (section 9)**

Section 9 of the Act deals with the power of the different revenue officers to distribute business among the other revenue officers which are sub-ordinate to him. The section reads as under:-

**(1) The Financial commissioner, the Divisional Commissioner or the collector may by order in writing distribute in such manner as he may thinks fit any business cognizable by any revenue officer under his control.**

**(2) All revenue officers shall exercise the powers vested in them within the local limits of their jurisdiction. An Assistant Commissioner in a District and a Naib-Tehsildar in a Tehsil shall exercise jurisdiction within the whole of the district, or Tehsil as the case may be, subject to such distribution as may be made by the Deputy Commissioner or Tehsildar respectively.**

The financial commissioner, divisional commissioner and the collector has been given power to distribute the business among the officers subordinate to them by an order in writing. Sub-section 2 says that all revenue officers shall exercise the powers vested in them within the local limits of their jurisdiction. The said sub section further says that the Assistant Commissioner in a district and a Naib Tehsildar in a tehsil shall exercise jurisdiction over whole district or tehsil as the case may be subjected to such distribution as may be made by the deputy Commissioner or tehsildar respectively. So we can say that Assistant commissioner and naib tehsildar shall have jurisdiction over whole district or tehsil as the case may be subjected to the distribution of business.

### **Power to withdraw and Transfer cases (section 10)**

Under section 10 of the Act power has been given to the Financial Commissioner, Divisional Commissioner and to the Collector to withdraw any case which is pending before any officer under his control and will either dispose off himself or transfer it to any other officer under his control for disposal. Section 10 reads as under:-

**The Financial Commissioner or a Divisional Commissioner or a Controller may withdraw any case pending before any Revenue Officer under his Control and either dispose of it himself, or by written order refer it for disposal to any other revenue officer under his control.**

### **APPEALS (section 11)**

As we know that there is no general right of appeal from any decision made by any judicial or quasi-judicial authority. Appeal being a statutory right is available only when it is provided under the statute. Section 11 of the Land Revenue Act deals with this right of appeal and reads as under:-

**Save as otherwise provided by this Act, an appeal shall lie from an original or appellate order of a Revenue Officer as follows :-**

- (a) To the collector when the order is made by an Assistant Collector of either class;**
- (b) To the Divisional commissioner when the order is made by the collector;**
- (c) To the financial Commissioner when the order is made by a Divisional Commissioner :**

**Provided That :-**

- (1) when an original order is confirmed on first appeal, no further appeal shall lie except on the grounds mentioned in clauses (a),(b)and (c) of sub-section(1) of section 100 of the Code of Civil Procedure 1977;**
- (2) where any such order is modified or reversed on appeal by the collector, the order made by the Divisional Commissioner on further appeal, if any, to him shall be final.**
- (3) The Government may especially empower an Assistant Collector of the first class to hear appeals against the orders of an Assistant Collector of the second class.**

The section says that an order made by an Assistant collector of either first class or second class shall be appeal able before the Collector. When an order is made by the collector it can be appealed before the Divisional Commissioner and an order made by the Divisional Commissioner shall be appeal able before the Financial Commissioner. But if an original order is confirmed on first appeal there shall be no further appeal except on the grounds mentioned in clause (a), (b) and

(C) of C.P.C. section 100 of the CPC deals with the second appeal and says that an appeal shall lie from any final decree passed in appeal by any court if there is substantial question of law or the decree has been passed in ex-parte. Subsection 2 says that if any order passed by the Assistant Collector of either class is modified or reversed by the collector on appeal, the order made by the Divisional Commissioner on further appeal if any shall be final. If any order is made by the Assistant Collector of either first class or by the second class the order is appeal able before the Collector but under sub-section 3 the government may empower an Assistant collector of first class to hear the appeals from the orders passed by the Assistant collector of the second class.

### **Limitation for appeals, revisions and reviews (section 12)**

**(1) Save as otherwise provided in this Act, the period of limitation of an appeal under the last foregoing section shall be as follows:-**

- a) **When the appeal lie to the collector or an Assistant collector of the first class  
.....60days**
- b) **When an appeal lies to the Financial Commissioner or Divisional  
Commissioner.....90 days**

**Provided that in the districts of Ladakh and Gilgit twice the ordinarily period of limitation for appeals under this section shall be allowed.**

**(2) Such provision of the limitation Act as apply to appeals, applications for revision and review in civil suits shall also apply to appeals, applications for revision and review under this Act.**

The period of limitation for filing of appeal is provided under this section. If the appeal is to be filed before the collector the it should be filed within the 60 days from the passing of the order by the officers subordinate to collector and if it is to be filed before the Divisional Commissioner or before the Financial Commissioner then it should be filed within 90 days from the passing of the final order by the authorities which are subordinate to them. If the appeal is to be filed in the district of Ladakh and Gilgit then, the period of limitation is double. The provisions of the Limitation Act have been made applicable to the appeals filed under this Act. Except for the period within which an appeal is to be filed, the Limitation Act applies here also eg. Whether the delay for not filing the appeal within the time period provided under this Act should be condoned or not on the ground of sufficient cause will be dealt under the Limitation Act.

### **Review and Revisions**

Besides the remedy of appeal to the aggrieved party, the remedy of review and revision has also been conferred upon the person who is aggrieved of an order made by any authority under this Act. Review is made by the authority who has passed the order and the revision is made by the higher authority.

### **Review by Revenue Authority (section 13)**

Section 13 of the Act deals with the review and reads as under:-

- (1) **A revenue officer may, either of his own motion or on the application of any party interested, review and on so reviewing modify, reverse or confirm any order passed by himself or any of his predecessor in office;**

**Provided as follows:-**

- a) **When a Divisional Commissioner or Collector thinks it necessary to review any order which he has not himself passed, and when a Revenue Officer of a class below that of the Collector proposes to review any order, whether passed by himself or any of his predecessor in office, he shall first obtain the sanction of the Revenue Officer to whose control he is immediately subject;**
  - b) **An application for review of an order shall not be entertained unless it is made within 90 days from the passing of the order or unless the applicant satisfies the Revenue Officer that he has sufficient cause for not making the application within that period;**
  - c) **An order shall not be modified or reversed unless reasonable notice has been given to the parties affected thereby to appear and be heard in support of the order;**
  - d) **An order against which an appeal has been preferred shall not be reviewed.**
- (2) **for purposes of this section, the collector shall be deemed to be successor in office of any Revenue Officer of a lower class who has left the district or has ceased to exercise powers of a Revenue Officer and to whom there is no successor in office.**
- (3) **An appeal shall not lie from an order refusing review or confirming on review a previous order.**

Any revenue officer either of his own motion or on the application of a party may review any order and may either confirm, reverse or modify the order so reviewed. But if the Divisional Commissioner or the collector wants to review any order which has not been passed by him i.e. if the order had been passed by his predecessor, he can not review the order unless he gets the

sanction from the revenue officer which is superior to him. And if any revenue officer who is inferior to that of a collector wants to review any order whether passed by him or by his predecessor, he can do so only after getting the sanction from the officer who is superior to him. The section further says that an order shall not be reviewed unless the application for review is made within 90 days from the passing of the order but if the applicant shows a reasonable cause to the satisfaction of the revenue officer for not filing the application within the stipulated time the application may be entertained even after the expiry of the stipulated time. Further more no order shall be modified or reversed on review unless the parties affected has been given a reasonable opportunity of being heard and lastly no order can be reviewed against which an appeal has been preferred.

#### **Power to revise orders (section 15)**

Section 15 of the Act deals with the revision of the orders made by the any Revenue Authority and reads as under:-

- (1) The Financial Commissioner may at any time call for the record of any case pending before or disposed of by any Revenue Officer under his control.**
- (2) The Divisional Commissioner may call for the record of any case pending before or disposed of by any Revenue Officer subordinate to him.**
- (3) If in any case in which, the Divisional Commissioner has called for a record he is of the opinion that the proceedings taken or order made should be modified or revised he shall report that case with his opinion thereon for the orders of the Financial Commissioner.**
- (4) The Financial Commissioner may, in any case called for by him under sub-section (1) or reported to him under sub-section (3) pass such orders as he thinks fit.**

**Provided that, he shall not under this section pass an order reversing or modifying any proceedings or order of a subordinate officer affecting any question of right between private persons without giving those persons an opportunity of being heard.**

The power of review has been conferred upon all revenue officers with certain limitations but on the contrary the power of revision has been conferred only upon Financial Commissioner and Divisional Commissioner. The section says that the financial commissioner or the divisional commissioner may at any time call for the records of any case pending before or disposed by any revenue officer subordinate to them. But in case if the Divisional Commissioner has called the record of any case and is of the opinion that any order made should be modified or revised he

shall report that case to the financial commissioner along with his opinion. The financial commissioner may for cases called by him under sub-section (1) or reported to him under sub-section (3) pass such orders as he thinks fit provided he shall not pass an order reversing or modifying any order of a subordinate officer affecting any question of right between private persons without giving those persons an opportunity of being heard.

**Power of revenue Officers to Summon persons (section 15-A)**

- (1) A Revenue Officer may summon any person whose attendance he considers necessary for the purpose of any business before him as a revenue officer.**
- (2) A person so summoned shall be bound to appear at the time and place mentioned in the summon in person or if the summons so allows, by his recognized agent or by a legal practitioner holding authority granted by the High Court to appear and act in civil courts.**
- (3) The person attending in obedience to the summons shall be bound to state the truth upon any matter respecting which he is examined or makes statements, and to produce such documents and other things relating to any such matter as the Revenue Officer may require.**

Under section 15-A power has been conferred upon the revenue officers to summon any person whose presence he considers necessary for the proper conduct of the business before him. The person so summoned shall be bound to appear at the time and place mentioned in the summon either in:-

- a) Person or
- b) If the summon allows by his recognized agent or
- c) By a legal practitioner who is holding authority granted by the High Court to appear and act in civil court.

The person so attending shall be bound to state truth upon any matter with respect to which he is examined and make statements and to produce such documents and other things relating to any such matter as the revenue officer may require.

**Modes of service of summon (section 15-B)**

- (1) A summon issued by Revenue officer shall, if practicable, be served:-**
  - a) Personally on the person to whom it is addressed or failing him;**
  - b) On his recognized agent or;**

- c) **On an adult male member of his family usually residing with him.**
- (2) **If service can not be so made or if acceptance of service so made is refused, the summon may be served by posting a copy thereof at the usual or last known place of residence of the person to whom it is addressed or if that person does not reside in the district in which the revenue officer is employed and the case to which the summon relates has reference to land in that district, then by posting a copy of the summon on some conspicuous place in or near the estate wherein land is situate.**
- (3) **If the summon relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, it may, if the revenue officer so directs, be served by delivery of a copy thereof to such of those persons as the revenue officer nominate in this behalf, and by proclamation of the contents thereof for the information of the other persons interested.**
- (4) **A summon may, if the revenue officer so directs, be served on the person named therein, either in addition to or in substitution for any other mode of service, by forwarding the summon by post in a letter addressed to the person and registered under the Indian Post Office Act 1898.**
- (5) **When a summon is so forwarded in a letter and it is proved that the letter was properly addressed and duly posted and registered, the revenue officer may presume that the summons was served at the time when the letter would be delivered in the ordinary course of post.**

Section 15-B of the Act lays down the procedure for the service of summons. It says that a summons issued by any revenue officer shall be served, if practicable:-

- a) Personally on the person to whom it is addressed or failing him
- b) On his recognized agent or
- c) On an adult male member of his family usually residing with him

If the service can not be so made or the service of summon is refused, the summon may be served by posting a copy at the usual or last known place of residence of the person to whom it is addressed. If the person upon whom the summon is to be served does not reside in the district in which the revenue officer is employed and the case to which the summon relates has reference to land in that district then the service of summon may be made by posting a copy of the summon on some conspicuous place in or near the estate wherein land is situated. If the summon relates to a case in which the persons having interest are so many that personal service is not possible upon all of them, then summon may be served to such persons as the revenue officers directs and for the information of those, upon whom the summon is not served, a proclamation of the contents of

the summon shall be made. Summon may be served by forwarding a copy by post in a letter addressed to the person and registered under the Indian Post Office Act either in addition to or in substitution of above modes stated.

**Mode of service of notice, order or proclamation or copy thereof (section 15-C)**

**A notice, order or proclamation or copy of any such document issued by a Revenue Officer for service on any person shall be served in the manner provided in the last forgoing section for the service of the summon.**

If any notice, order or proclamation or copy of any such document issued by a Revenue Officer is to be served upon any person, it may be made by any manner provided under section 15-B of the Act.

**Mode of making proclamation (section 15-D)**

**When a proclamation relating to any land is issued by a Revenue Officer, it shall in addition to any other mode of publication which may be prescribed in any provision of this Act, be made by beat of drum or any other customary method and by the posting of a copy thereof on a conspicuous place in or near the land to which it relates.**

**Persons by whom appearances and applications may be made before and to Revenue Officers (section 16)**

Section 16 of the Act lays down the categories of persons by whom applications or appearances may be made to any Revenue Officer and reads as under:-

**(1) appearances before a Revenue officer and applications to and acts to be done before him under this Act, may be made or done-**

- a) by parties themselves, or**
- b) by person holding general or special powers of attorney on behalf of such party, or**
- c) by any class of legal practitioners holding authority granted by the High Court to act and appear in civil court**

**Provided that, any revenue officer may, in any case for reasons to be recorded by him, require the personal attendance of any party;**

**Provided also that no pardah-nashin lady or person who is exempted from personal appearance in a civil court shall be required to appear in person;**

**Provided further that when the Financial Commissioner or the settlement commissioner is holding office in a province other than the one to which an appeal, review or revision pertains, such appeal, review or revision may be presented before a local Revenue Officer of the highest rank at the station for transmission to Financial Commissioner or the Settlement Commissioner as the case may be.**

**d) By such class of retired Revenue Officers not below the rank of a Tehsildar who has functioned as such for a period of not less than ten years and is conversant with laws relating to the Revenue Department holding license issued by such authority, in such manner, subjected to such condition and on payment of such fees as may be prescribed by rules made by the Government.**

Section 16 of the Act lays down the categories of persons who may appear or make applications before the revenue officers. Following persons may appear:-

- A. Parties themselves
- B. By person holding general or special power of attorney on behalf of such party
- C. By any legal practitioner having authority

Any revenue officer in any case may require the personal attendance of any party for reasons to be recorded. But the pardha-nashin lady or persons who are exempted from personal appearance in a civil court under CPC are not to appear in person before the revenue authorities. Section 133 of the CPC says that the government may by notification in the government gazette, exempt from personal appearance in the court any person whose rank in the opinion of the government entitles him to the previlage of exemption. The names and residence of the persons so exempted shall be forwarded to the High Court by the government and a list of such persons shall be kept in such court, and a list of such persons as reside within the local limits of the jurisdiction of each court sub-ordinate to the High Court shall be kept in such subordinate court.

#### **Place of sitting (section 17)**

**A revenue officer may for the exercise of his powers under this Act sit at any place within the local limits of his jurisdiction.**

#### **Holidays (section 18)**

**Any proceedings of the revenue officer held on a day declared to be a holiday shall not be invalid by reason only of the fact that it was held on such day.**

#### **Retention of powers by revenue officer on transfer (section 19)**

**When a revenue officer of any class who has been invested under the forgoing provisions of this Act with any powers to be exercised in any local area is transferred from that local area to another as a revenue officer of the same or a higher class, he shall continue to exercise those powers in that other local area unless the government otherwise directs.**

#### **Power to refer for enquiry and report (section 19-A)**

**A revenue officer may refer a case which he is empowered to dispose of under this Act to another revenue officer subordinate to him for enquiry and report and may decide the case upon such enquiry and report.**