

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 25th 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 1st of September 1971 and 1st 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 1st 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 1st 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 1st 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 1st 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 1st 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 vests 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 1st 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 1st 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 1st 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 1st 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 1st 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.