

POST INDEPENDENCE TENANCY REFORMS IN RAJASTHAN

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ABSTRACT

At the time of formation of Rajasthan, the various erstwhile princely States that were unified varied in agricultural development. In these states the rulers had assigned most part of the land to various classes of persons (e.g. Zamidar, Malik, Biswadar, Jagirdar or Thekedar etc.) and religious institutions, about only 40 per cent of the land being held directly by tenants.

Keyword: formation, princely, states, agricultural, zamidar, malik, biswadar, jagirdar

1. INTRODUCTION

At the time of formation of Rajasthan the various erstwhile princely States that were unified varied in agricultural development. In these states the rulers had assigned most part of the land to various classes of persons (e.g., Zamidar, Malik, Biswadar, Jagirdar or Thekedar etc.) and religious institutions, about only 40 per cent of the land being held directly by tenants.

With the formation of Rajasthan, the first problem was to abolish the various types of intermediaries and resume the land other than khudkast land and the second was to bring uniformity in the tenancy legislation. To achieve the first objective various legislations were passed, including: - (i) The Rajasthan Land Reforms and Jagir Resumption Act, 1952 and (ii) The Rajasthan Zamindari and Biswadari Abolition Act, 1959 under which the various types of intermediaries were abolished.

To achieve the second objective, various ordinances were issued, and enactments passed in piecemeal. A comprehensive legislation was passed in 1955, which is known as the Rajasthan Tenancy Act 1955. It absorbed in it all earlier enactments on the subject defining classes of tenants, conferring rights on tenants, providing for devolution, transfer and diversion of holdings, laying down conditions for ejectment from Government land etc. This Act has been amended a number of times to provide for new ideas about agricultural tenancies that sprang up as a result of abolition/resumption of intermediaries and to provide for the charges reflecting the progressive outlook on land reforms.

Another piece of legislation enacted is the Rajasthan Land Revenue Act 1956. It came into force with effect from 1st July 1956. It deals with the establishment of all grades of revenue courts and officers, their powers and procedure,

survey and records and settlement operations partition of estates and collection of land revenue.

Tenancy reforms aim to regulation of rent, provide security of tenure and conferring ownership to tenants. The tenancy reforms laws provide the provisions for registration of tenants, or giving ownership rights to the former tenants to bring them directly under the state.

2. THE ZAMINDARI SYSTEM

The term 'zamindar' has passed into the historical vocabulary of medieval India to signify the superior landed interest. Zamindars during the Mughal period came to denote all rent receivers above the actual cultivators. They were merely possessors of proprietary right in the collection of rent but not in land. The holders of land on the other hand were the raiyats (peasants) in whose names jamabandis or rent-rolls were prepared. In this sense Zamindars were mere farmers of revenue - intermediaries between the government and the inferior revenue farmers, excluding the huzuri (independent) talukdars who paid revenues straight to the khalsa (exchequer) and the peasants.

2.1. MUGHAL

In the Mughal Era, the Zamindari system was begun to ensure proper collection of taxes during a period when the power and influence of the Mughal emperors was in decline. With the Mughal conquest of Bengal, "zamindar" became a generic title embracing people with different kinds of landholdings, rights and responsibilities ranging from the autonomous or semi-independent chieftains to the peasant-proprietors. All categories of Zamindars under the Mughals were required to perform certain police, judicial and military duties. Zamindars under the Mughals were, in fact, more the public functionaries than revenue collecting agents. Although Zamindars were

allowed to be held hereditarily, the holders were not considered to be the proprietors of their estates.

2.2. BRITISH ERA

Zamindar was the name of landlords in colonial India. The Zamindari system was a way of collecting taxes from peasants. The zamindar was considered a lord, and would collect all taxes on his lands and then hand over the collected taxes to the British authorities (keeping a portion for himself). The similarities to medieval feudalism are evident.

Under the British, they resembled landed gentry (although they lived similarly privileged lives under the Mughals) and sometimes styled themselves as little kings, or rajas. Some new Zamindars were old Rajas. Many descended from eighteenth century revenue speculators and military adventurers. Several families are of very ancient lineage, like those claiming Gujjar ancestry and had always been independent rulers at earlier periods of Indian history. They frequently intermarried with the ruling families of the princely states. Their tenants numbered from dozens to many thousands, and under imperial law, had to pay rent to Zamindars to retain rights to their land. By the Zamindari system all the public lands were brought under the Zamindar's control.

The Zamindari system was mostly abolished in India soon after its independence. The term is usually associated with the aristocracy as Zamindars are still considered to be of the landed gentry.

2.3. ABOLITION OF ZAMINDARI SYSTEM

The British rule in India introduced permanent land revenue system which, over time, became widely known as Zamindari system. Under this system of land settlement, those who agreed to pay a fixed sum of land revenue regularly to the British government were made the owners of demarcated lands. They, in turn, collected whatever land revenue they wanted from the actual tillers who were their tenants. There was also a practice of sub-letting, which involved middle-level landlords in between the Zamindars and the tenants. The Zamindari system created one of the worst exploitative land relations in India and strengthened the feudal socio-economic system. Zamindars became staunch supporters of British rule in India.

This annoyed the Congress party, which was mobilising the Indian masses against British rule. So the Congress party declared in one of its annual sessions that after independence it would support abolition of the Zamindari

system. In pursuance of this resolution, the Congress Agrarian Reforms Committee was appointed under the chairmanship of J.C. Kumarappa, which recommended a wide range of reforms in 1949. After independence the Congress government, under the leadership of Jawaharlal Nehru, abolished the Zamindari system. But since the Constitution had guaranteed the right to property under Article 19, the Zamindars approached the Supreme Court, which ruled that the policy of abolition of the Zamindari system violated the right to property and was hence ultra vires of the Constitution. The Congress government amended the Constitution to limit the scope of the right to property. Thus, a major institutional /structural was achieved by abolishing the Zamindari system of land relations. This policy helped the farming community in general and tenants of the Zamindars in particular. Nobody shed tears over the demise of the Zamindari system in India.

2.4. CEILINGS ON HOLDINGS: REVISITED

Land distribution at the time of Independence was extremely skewed. Fifty-three percent of the land was held by 7 percent of the landowners, whereas 28 percent of landowners with sub marginal and marginal holdings owned about 6 percent. Central policy-makers felt that ceilings on landholdings were essential because of three economic compulsions:

1. there was strong evidence indicating an inverse size - productivity relationship, hinting that the aggregate production efficiency is hampered when land is held in large holdings;
2. there was some evidence that large holders of land left large areas fallow thereby perpetuating uneconomic land use;
3. a large proportion of the population were land-based poor who wanted land as an economic resource for their livelihood. It was thought that surplus land could be distributed to such poor people. The general position in favour of land ceilings was based largely on providing social justice and equity and not on the grounds of increasing production and developing agriculture.

2.5. IMPACT OF THE ABOLITION LEGISLATION IN RAJASTHAN

The Rajasthan Government came up with the legislation named Rajasthan Zamindari and Biswedari Abolition Act, 1959 under Sec. 5 of the Act the Zamindari system was being abolished from the state.

The Act came into force in year 1959, the delay in enactment of the Act was because of the dominance of the Zamindars and Rajas in the assembly and even after delay the Act was successfully implemented, and the tenancy was also governed by this Act approx. 0.18 lakh tenants were benefited by the Act till 2001.

3. TENANCY REFORMS IN RAJASTHAN AFTER INDEPENDENCE

The major planks of tenancy reform included security of tenure, termination of tenancy, resumption for personal cultivation by the landlord, regulation of rent and confirmation of ownership rights. Various state laws were enacted between 1960 and 1972. These differed across the states and territories. Owing to the diverse and complicated nature of social and agrarian structure in the countryside, no uniform guidelines could be formulated for the whole country. However, some broad guidelines were given in addition to the directives in the successive plan documents. The consensus on the policy of tenancy reforms favoured neither complete expropriation of landlordism nor the interests of the tenants. In the national guidelines the following measures were communicated to the state governments for incorporation in the state legislation:

1. security of the tenancy to be conferred on the actual cultivator;
2. fair rent to be fixed between 20 and 25 percent of the gross produce;
3. landowners may be permitted to cultivate land for their personal use;
4. the surrender of the tenancy rights with mutual consent;
5. in respect of some of the area, the landlord - tenant relationship to be ended and the tenant cultivator be brought directly into contact with the state;
6. disabled persons, defence personnel and other such exemptions to be allowed to lease their land;
7. the term "personal cultivation" should be clearly defined if landlords are allowed to remove tenants in order to resume cultivation;
8. tenancy records should be corrected and oral tenancies should be abolished.

The Rajasthan Tenancy Act 1955 came into force with effect from 15th October 1955. In Tehsils Abu, Amer and Sunel This Act was implemented w.e.f. 15th June 1958. Under this Act the intermediaries have been totally abolished and all the tenants in Rajasthan now hold land

directly under the State. The state is deemed to be owner of all lands. In other words, the State is de jure owner and the tenant is de facto owner of the land. The term tenant in the layman language means any person practicing cultivation. This implies that every individual who is practicing cultivation is a tenant of Rajasthan government. The act was brought into force with the following objectives:

1. To bring uniformity into the tenancy legislation.
2. To consolidate and amend the laws relating to tenancies of agricultural lands.
3. To provide measures for land reforms.

After the abolition of Zamindari system in India, the Zamindars were awarded only that portion of land on which they themselves cultivated. These people were named as Khudkast where khud refers to self and kasht means cultivation or cultivator. Also, the name of these people was added in the Khatedari account maintained by the State government and now they had rights only on the limited land.

Section 5(23) of the act states "Khudkast" shall mean land in any part of the State cultivated personally by in estate holder and shall include:

- (i) land recorded as Khudkast, Sir, Havala, Niji-jot, Gharkhed in settlement records at the commencement of this Act in accordance with law in force at the time when such record was made, and
- (ii) land allotted after such commencement as Khudkast under any law for the time-being in force in any part of the State.

3.1. SECTION 14 OF THE RAJASTHAN TENANCY ACT, 1955 DIVIDES THE CLASSES OF TENANTS INTO 4 CATEGORIES AS:

- A. Khatedar tenants,
- B. Maliks, and
- C. Tenants of Khudkast, and
- D. Gair Khatedar tenants.

A. KHATEDAR TENANTS

Section 15 of the act discusses about Khatedar tenants. It states that subject to the provisions of section 16 and clause (d) of Sub-section (1) of section 180 every person who, at the commencement of this Act, is a tenant of land otherwise than as a sub-tenant or a tenant of Khudkast or who is, after the commencement of this Act, admitted as a tenant otherwise than a sub-tenant or tenant of

Khudkast or an allottee of land under, and in accordance with, rules made under section 101 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956) or who acquires Khatedari rights in accordance with provisions of this Act or of the Rajasthan Land Reforms and Resumption of Jagir Act, 1952 (Rajasthan Act VI of 1952) or of any other law for the time being in force shall be a Khatedar tenant and shall, subject to the provision of this Act be entitled to all the rights conferred; and be subject to all the liabilities imposed on Khatedar tenants by this Act.

B. SECTION 16A. TENANTS OF KHUDKASHT— Every person to whom at the commencement of this Act or at any time thereafter, Khudkast has been or is let out lawfully by an estate holder in any part of the State shall be the tenant of such Khudkast:

Provided that, upon the estate holder becoming a Khatedar tenant of his Khudkast land under section 13, the tenant (4 such Khudkast shall become a sub-tenant holding under and from such Khatedar tennee.

C. SECTION 17. GHAIR KHATEDARI TENANT—

Every tenant of land in any part of the State other than a Khatedar tenant, a tenant of Khudkast or sub-tenant shall be a Gair Khatedar tenant.

D. SECTION 17A. MALIKS—

Every Zamindar of Biswedari whose estate is vested in the State Government under the Rajasthan Zamindari and Biswedari Abolition Act, 1959 shall be a Malik within the meaning of section 29 of that Act in respect of any Khudkast land in his occupation at the date of such vesting.

3.2. PRIMARY RIGHTS OF TENANTS

1. Right to residential house (S. 31): Subject to any rules, that may be made by the State Government in this behalf, a tenant shall have the right, free of charge to possess in the abadi of the village in which he holds land a site for a residential house:

Provided that, if he holds land in more than one village, he may choose the village in which he wishes to enjoy his concession and shall not be entitled to this concession in more than one village:

Provided further that he shall have to make an application to the Tehsildar, if he has no residential house, for allotment of a suitable site for the purpose.

Explanation—A residential house shall mean an enclosure or shed for cattle as well as accommodation for stocking seed fodder and agricultural implements and also land required for the construction of reservoir or Tanka.

2. Right to written lease and counterparts (S. 32): (1) Every tenant shall be entitled to receive from his land holder a written lease consistent with the provisions of this Act in the prescribed form and containing the prescribed particulars.

- Upon delivering or tendering to a tenant such a lease as is mentioned in sub-section (1), the land-holder shall be entitled to receive from the tenant a counterpart thereof.
- If a lease or counterpart is not received by the person entitled to receive it under this section, he may bring a suit for obtaining such lease or counterpart, as the case may be.

3. Prohibition of premium or Forced Labour (S. 34): Subject to any other provisions of this Act, no land holder shall accept a premium for the grant or a lease or make a tenant liable to render any service of the land-holder whether for wages or otherwise and such condition shall be void, notwithstanding any law or custom to the contrary.

4. Prohibition of payment other than rent (S. 35): Notwithstanding any custom or contract to the contrary, no payment by whatever name called or known, shall in addition to the rent of the holding, or any other charge imposed by law or approved by the- State Government, be levied on or recovered from a tenant.

5. Use of materials (S. 36): Notwithstanding anything contained in this Act or any other law for the time being in force, the tenant shall have the right to remove and utilise for any work in connection with his holding or residential house, stones or other materials lying on, or under the surface of his holding or obtained by digging during the course of making an improvement:

3.3. TRANSFER OF TENANCIES (S. 41-47A)

1. The interest of Khatedar tenant shall be transferable by way of sub- lease. (S. 41)

2. The sale, gift or bequest by a Khatedar tenants of his interest in the whole or part of his holding shall be void such sale, gift or bequest is by a number of Scheduled Caste in favour of a person who is not a member of the Scheduled Caste, or by a member of a Scheduled Tribe in favour of a person who in not a member of the Scheduled

Tribe. (S. 42). But under section 42B it may be declared valid by the collector or any officer or authority on an application made to him.

3. A Khatedar tenant may transfer his interest in the whole or part of his holding in the form of usufructuary mortgage to any person but such mortgage must provide that the mortgage amount shall be deemed to be paid off by the usufruct of the property within a specified time not exceeding five years.

3.4. EXCHANGE OF TENANCIES (S. 48-52)

1. Tenants of the same class may exchange land which they hold from the same landholder with the written consent of such landholder or which they hold from different landholders with written consent of all such land holders. (S. 48)

2. Exchange for consolidation: A Khatedar tenant who wishes to consolidate the area which he cultivates may supply to the Assistant Collector to exchange any portion of the land which he cultivates for land cultivated by another Khatedar tenant. (S. 49)

Right of tenants on exchange (S. 50): On exchange of land under section 48 or section 49, a tenant shall have the same right in the land received in exchange as he had in the land given in exchange.

3.5. SURRENDER OF TENANCIES (S. 55-59)

1. A tenant may on or before he 1st May surrender his holding by giving up possession, thereof accompanied with a writing attested by the Tehsildar having jurisdiction or by the Chairman of a Municipal Board. (S. 55)

2. The tenant so surrendering shall send to his landholder a registered notice of his intention to do so at least thirty days before the 1st May of any year and unless such notice is sent the tenant shall be liable to the landholder for the rent of the holding for the agricultural year next following the date of the surrender. (S. 56)

3. Surrender on enhancement (S. 57): When a decree or order for the enhancement of the rent of any holding is passed. the tenant thereof may after sending the landholder. within thirty days of the date of such decree or order a registered notice of his desire to surrender such holding at the date on which such enhancement takes effect surrender such holding accordingly and in every such case the tenant shall not be liable for the rent payable for such holding in respect of any subsequent to such surrender.

3.6. ABANDONMENT OF TENANCIES (S. 60-62)

1. A tenant who ceases to cultivate and leaves the neighbourhood shall not lose his interest in his holding if he leaves in charge thereof a person responsible for payment of rent as it falls due and gives written notice to the landholder of such arrangement. (S. 60)

2. The right of a tenant ceasing to cultivate and leaving the neighbourhood on account of some widespread calamity such as drought, famine epidemic or the like or for some other reasonable cause shall not be deemed abandoned. (S. 62)

3.7. EXTINGUISHMENT OF TENANCIES (S. 63-64)

The interest of tenant in his holding or a part thereof as the case may be shall be extinguished:

- i. When he dies leaving no heir entitled to merit
- ii. when he surrenders or abandons it
- iii. when his land has been acquired under the Land Acquisition Act, 1894
- iv. when he has been deprived of possession and his right to recover possession is barred by limitation
- v. when he has been ejected therefrom
- vi. when he acquires or succeeds to all the rights therein of a landholder or the landholder inherits or otherwise acquires the same
- vii. when he sells or makes a gift
- viii. if he migrates from India to a foreign -country without obtaining a valid passport or without lawful authority
- ix. if the allotment of land is cancelled or the land is ordered to be resumed under the provisions of the Rajasthan Land Revenue Act, 1956.

3.8. GENERAL PROVISIONS RELATING TO RENT

1. Every tenant shall be liable to pay rent in accordance with the provisions of this Act. (S. 93)
2. A tenant on being admitted to the occupation of land is liable to pay such rent as may be agreed upon between him and his landholder. (S. 94)
3. Presumption as to rent (S. 95)- The rent or rate of rent or rate payable by a tenant shall be presumed to be the rent or rate of rent payable by him under section 94.

3.9. MAXIMUM LIMITS OF RENT

Section 96 of the act provides that the maximum amount recoverable as cash rent from a tenant holding any land directly from the State Government shall not exceed -

- A. Where rent in respect of such land has been settled, the rent-rate sanctioned therefor during the last settlement, and
- B. Where rent in respect of such land has not been settled, the rent-rate sanctioned during the last settlement for similar land in neighbourhood.

Section 97 of the act provides for the authority to prescribe maximum cash rents— Notwithstanding any custom, usage or practice to the contrary, or anything contained in any law, enactment, rule, decree or order for the time being in force, the State Government may prescribe the maximum extent of cash rents that may be recovered by an estate-holder from a tenant or by a tenant from a sub-tenant in accordance with the provisions of sections 98, 99 and 100.

Section 98 of the act provides for the maximum rent allowed where land revenue is settled— In areas where land revenue has been settled and rent is payable by tenants in cash, the maximum rent recoverable by an estate-holder shall be prescribed by the State Government keeping in view the amount of land revenue and other agricultural conditions and shall not be more than three times the amount of such land revenue.

Section 99 of the act provides for the maximum rent allowed in areas where rent has been settled— In areas where rent has been settled and sub-tenant pay rent in cash, the maximum rent recoverable by a tenant from his sub-tenant shall be prescribed by the State Government so that it does not exceed twice the amount payable by such tenant.

3.10. EJECTMENT OF TENANT

1. Ejectment for areas of rent (S. 174):- Whenever rent due from a tenant is in arrear for two years or for a longer period the Tehsildar may suo-moto in case of land held directly from the State Government and on an application by the land holders in other cases issue a notice to such a tenant calling upon him within 30 days of the service of the notice to pay the amount of the arrear or to appear and admit or contest the same, indicating that the tenant would be liable to ejectment from the holding in default of his paying the arrears. If the Tenant does not appear or appears and admits the arrear claimed, the Tehsildar shall pass an order

directing him to pay such arrears. If the tenant fails to pay the amount of the arrears, the Tehsildar or the court executing the decree, as the case may be, shall order that the Tenant be ejected from the whole or part of the holding and he shall be ejected accordingly.

2. Ejectment for illegal transfer or sub-letting (S. 175):- If a tenant transfers or sub-lets the whole or any part of holding otherwise than in accordance with the provisions of the Act and the transferee or sub lessee has entered upon or is in possession of such holding or such part in pursuance of such transfer or sub lessee, both the tenant and any person who may have thus obtained, or may thus be in possession of the whole or any part of the holding shall, on the application of the land holder, be liable to ejectment from the area so transferred or sub-let.
3. Ejectment for detrimental act or breach of condition (S. 177):- A tenant is liable to ejectment from his holding:- (a) on the ground of any act or omission detrimental to the land in that holding or inconsistent with the purpose for which it was let, or (b) on the ground that he or any person holding from him has broken a condition on the breach of which he is liable to be ejected.
4. Ejectment of Khud kasht or Gair Khatedar Tenants or sub tenants (S. 180):-A tenant of khud kasht or Gair Khatedar Tenant or Sub tenant becomes liable on application to ejectment on the ground that the land held by such a tenant or subtenant is in excess of the minimum area prescribed by the State Government for the minimum area prescribed by the State Government for the district or part of the district in which such land is situated and ejectment from the excess area is sought by the land holder for the purpose of his personal cultivations.
5. Ejectment of certain trespassers (S. 183):- A trespasser who has taken or retained possession of any land without lawful authority is liable to ejectment on the suit of the person or persons entitled to eject him as tenant and he becomes liable to pay as penalty for each agricultural year during the whole or any part whereof he has been in such possession a sum which may extend to fifty times (fifteen times up to 14-8.1975) of the annual rent. In case of land held directly from the state Government or to which the State Government acting through Tehsildar is entitled to admit the trespasser as tenant, action will be taken by the Tehsildar in accordance with the provisions of Section 91 of the Rajasthan Land Revenue Act, 1956.

RAJASTHAN LAND REVENUE ACT, 1956

The assessment and collection of land revenue is governed under this act. Land revenue mainly comprises of rent on land, lease rent, premium, conversion charges payable on use of agricultural land for other purposes, receipts from sales of Government land etc. The administrative power is vested in the revenue department of the Government and the overall control relating to revenue matters vests with the Board of Revenue.

4. CONCLUSION

Land problems in India continue to attract equal attention from policy-makers and academics. The renewed interest in land issues stems from the perceived impact of liberalization and opening up the economy. Tenancy, land ceiling and land administration are being revisited with a new perspective. Among the issues under renewed focus, legalizing tenancy, revising the ceiling limits, quality of land, meeting the challenge of miniscule holdings that are a consequence of marginalization and land administration are dominating the debate. The rent paid by the tenants during the pre-independence period was exorbitant. It was anything between the 35 and 75 percent of gross produce throughout India. With the enactment of legislation for regulating the rent payable by the cultivators in the early 1950s, fair rent was fixed at 20 to 25 percent of the gross produce level. Providing security of tenure was the second important reforms brought. Legislation for security of tenure had three essential elements:

- Ejection could not take place except in accordance with the provision of the law;
- Land could be resumed by an owner, but only for personal cultivation;
- And in the event of resumption, the tenant was assured of a prescribed minimum area.

Despite repeated emphasis in the plan documents, some states could not pass legislation to confer rights of ownership to tenants. Few states in India have completely abolished tenancy while other states have given clearly spelt out rights to recognized tenants and sharecroppers. The tenancy reforms led to only a small percentage of tenants acquiring ownership rights, but undoubtedly it has reduced the area under tenancy.