The Dhaka University Studies, Part-F Vol. XVI (2) : 203—246 December 2005

THE DEVELOPMENT OF LAND LAWS AND LAND ADMINISTRATION IN BANGLADESH: ANCIENT PERIOD TO MODERN TIMES

Mohammad Towhidul Islam

1. Introduction to Land Law

The expression 'Land law' in typical sense denotes the law of real property meaning estates and interests in land. It relates to land, rights in and over land and the processes whereby those rights and interests are created, transferred and extinguished.[1] So land law is nothing but the law concerned with land.

People can differentiate land law from other subjects of law as most of its language is at first unknown and a bit different in the second place but different does not necessarily mean complicated. Similarly, there is a widespread conviction that land law is boring, not fascinating or unpopular. Compared to other legal disciplines, this belief is too mislaid as land law, for its importance and relevancy, remains in the heart of every legal system and is the only law that highly concerns our everyday lives both at home and work.

Land law is a subject based on principles of ownership of land,[2] extinction of land,[3] acquisition and requisition of land,[4] compensation,[5] alluvion and diluvion of land,[6] easement and prescription,[7] settlement of *khas*

---

1. Dixon, Martin, *Principles of Land Law*, Cavendish Publishing Limited, Fourth Edition, London, 2002, pp 1-4
2. Articles 13, 42, 143 and 144 of the Constitution of the People's Republic of Bangladesh, Section 92 of the State Acquisition and Tenancy Act 1950 (Act No. XVIII of 1951), commonly known as the SAT Act 1950.
3. Section 92 of the SAT Act 1950.
4. The SAT Act 1950 and the Acquisition and Requisition of Immovable Property Ordinance (Ordinance No. II of 1982.
5. Sections 37 and 39 of SAT Act 1950, the Land Reform Ordinance (Ordinance No. X of 1984) and the Acquisition and Requisition of Immovable Property Ordinance 1982.
6. Sections 86 and 87 of the SAT Act 1950.
7. Section 26 of the Limitation Act (Act No. IX of 1908) and the Easement Act (Act No. V of 1882).

land,[8] sub-letting,[9] *waqf* or trust,[10] transfer of land,[11] pre-emption,[12] registration of land,[13] mutation,[14] preparation and revision of the Record-of-Rights (*Khatiyan*),[15] abandoned and enemy property,[16] land taxes, certificates etc.[17] These issues in land law can be as demanding as any that any other subject of law has to offer.

In a developing country like ours land distribution system is often alleged to foster inequality which goes against the fundamental right ensuring equality and fundamental principles of the State policies stated in the Constitution promising to establish economic and social justice. Here some people are having hundreds of *bighas* of land and some haven't got any. Again some people have been occupying lands for ages illegally or without due compliance of any procedure; using the lacunae of the existing land law, some people have been selling the same land to different persons. To make the system effective, the task of land reform has to be undertaken, *khas* lands have to be identified and settled properly, existing flawed laws have to be amended or new laws have to be enacted, land administration and land revenue system have to be updated keeping pace with time. Without having profound knowledge in land law, nothing can be achieved.

---

8. Section 76 of the SAT Act 1950 and the Non-Agricultural *Khas* Lands Management and Settlement Policy 1995 and the Agricultural *Khas* Lands Management and Settlement Policy 1997.
9. Sections 75A, 93 and 81A of the SAT Act 1950.
10. The *Waqfs* Ordinance (Ordinance No I of 1962) and the Trust Act (Act No. II of 1882).
11. Sections 88, 89, 90, 96 and 97 of the SAT Act 1950 and the Transfer of Property Act (Act No. IV of 1882) commonly known as the TP Act 1882.
12. Section 96 of the SAT Act 1950, Section 24 of the Non-Agricultural Tenancy Act (Act No. XXIII of 1949) commonly known as the NAT Act 1950, Section 4 of the Partition Act (Act No. IV of 1893), Section 13 of the Land Reform Ordinance 1984, Section 27 of the Restoration of Vested Properties Act (Act No. XVI of 2001), Section 53D of the of the TP Act 1882.
13. The Registration Act (Act No. XVI of 1908).
14. Section 143 of the SAT Act 1950.
15. Sections 145, 17-19 of the SAT Act 1950.
16. The Abandoned Property (Control, Management and Disposal) Order (Order No. XVI of 1972), the Enemy Property (Continuance of Emergency Provisions) (Repeal) (Amendment) Ordinance (Ordinance No. XCIII of 1976) and the Restoration of Vested Property Act of 2001.
17. The SAT Act 1950, the Land Development Tax Ordinance (Ordinance No. XLII of 1976) and the Public Demands Recovery Act (Act No. III of 1913).

It is open secret that almost eighty percent of the civil or criminal litigations in the country relate to land.[18] So the study of land law is required not only to flourish one's business, but also to help the legislature or the policy-makers in enacting proper laws or formulating policies with the aim of making awareness among the people regarding land and other land related issues. This endeavour can create fewer grievances among people over land issues.

To understand land law, it seems necessary to know what the term 'land' means. Land has been defined in the Osborn's Concise Law Dictionary as any ground, soil or earth whatsoever. It legally includes also all castles, houses and other buildings; also water. It includes land of any tenure, mines and minerals, whether or not held apart from the surface, buildings or parts of buildings (whether the division is horizontal, vertical or made in any other way) and other corporeal hereditaments; also a manor, an advowson and a rent and other incorporeal hereditaments and an easement, right, privilege or benefit in, or over or derived from land; but not an undivided share in land.[19] This definition is extensive and has included anything, which is connected with land. It can be simplified in the words of Blackstone that the term 'land' includes both 'corporeal hereditaments i.e. physical and tangible characteristics of land (substantial and permanent objects) affecting the senses and incorporeal hereditaments i.e. intangible rights enjoyed over or in respect of land'.[20] The definition of land provided in Section 2(16) of State Acquisition and Tenancy Act 1950 has got the same signification with the dual characteristics of corporeal and incorporeal hereditaments when it says: 'land means land which is cultivated, uncultivated or covered with water, at any time of the year and includes benefit to arise of land, houses of buildings and also things attached to the earth or permanently fastened to anything attached to the earth.' Here in the definition 'corporeal hereditaments' is meant land, which is cultivated, uncultivated or covered with water, at any time of the year and 'incorporeal hereditaments' is meant benefit to arise of land, houses or buildings.' To exemplify the expression 'benefit to arise of land, houses or buildings' some judicial decisions can be taken into consideration in this regard. Firstly, in 1959 the High Court held that the right of fishery in navigable

---

18. Hoque, Kazi Ebadul, *Gradual Development of Land L... ...Land Administration*, Bangla Academy, Dhaka, 2000, pp 255.

19. Bird, Roger, *Osborn's Concise Law Dictionary*, (ed.), Universal Law Publishing Co. Pvt. Ltd, Seventh Edition, Delhi, 1983, p 195.

20. Gray, Kevin, *Elements of Land Law*, Butterworths, Second Edition, London, 1993, p 1.

river is not acquirable within the meaning of Sections 20 and 39 where no compensation was mentioned to be payable for the acquisition and as such it is not a benefit arising out of land.[21] By Ordinance No. XII of 1960, Section 20 (2a) was inserted in the SAT Act 1950 where right to fishery in water irrespective of its being several or territorial other any fishery constructed solely in the process of excavation was made acquirable and consequently this decision has been made inoperative when it says that the definition of land includes all fisheries, several or territorial.[22] Secondly, in another decision in 1961 the High Court held that the right to collect rent or profits from a hat is acquirable for compensation as it is a benefit arising out of land.[23] So what can be acquired or transferred for consideration or compensation can be termed as land.

Nowhere in the statute land is classified. For the purpose of land law, land can be divided into Agricultural land and Non-Agricultural land. Agricultural land can be defined as land, which is used for purposes connected with agriculture or horticulture. Section 2(4) of the Non-Agricultural Tenancy Act 1949 (commonly known as the NAT Act) defines non-agricultural land as land which is used for purposes not connected with agriculture or horticulture and includes any land which is held on lease for purposes not connected with horticulture irrespective of whether it is used for any such purposes or not and a parcel of agricultural land converted into a tenancy by the order of the Collector[24] to which the NAT Act applies and but does not include-

(a) a homestead to which the provisions of Section 182 of the Bengal Tenancy Act 1885 (commonly known as the BT Act) apply,

(b) land which was originally leased for agriculture or horticultural purposes but is being used for purposes not connected with agriculture or horticulture without the consent either express or implied of the landlord, if the period for which such land has been so used is less than twelve years, and

(c) land which held for purposes connected with cultivation or manufacture of tea.

With the introduction of the SAT Act, of which Section 80 has repealed the B T Act 1885 and equalled the status of the *raiyats* as *maliks*, homestead

---

21. *Tozammel Hossain v. Province of East Pakistan* 11 DLR 145.

22. Section 16(a) of the SAT Act 1950.

23. *Abdul Aziz v. Province of East Pakistan* 13 DLR 873.

24. Kabir, Lutful, *Land Laws of Bangladesh*, Vol. IV, Law House, Dhaka, 1982, pp 38-47.

of a *malik* is now governed by the SAT Act and excluded from the operation of the NAT Act 1949.

Non-agricultural land does not include lease of structures with land but the cases of tenants of non-agricultural land, who have erected structures thereon, are governed by the provisions of the NAT Act 1949.

In 1970 the Supreme Court held in a decision[25] that 'A non-agricultural lease, according to the provisions of the Act is a lease in respect of non-agricultural land alone, but does not include any building or hut occupied by a tenant if such building or hut has been erected or is owned by the lessor. A non-agricultural lease in respect of both land and huts standing thereon is clearly outside the ambit of the Act.' If this decision is read with an earlier decision[26] given by the High Court by in 1960 it can be said that a user can play very important role in determining whether a land will be identified as non-agricultural land or not. Moreover, under Sections 5(c)(ii) and 85 of the NAT Act, non-agricultural land does not include the lands held for the exercise of rights over forests or rights over fisheries or rights to minerals.

2. Ownership of Land

Who owns the land? Is it the Government (as in England the Crown i.e. King or Queen[27]) or the people? This question poses controversy not only in the Sub-Continent but also in the other parts of the world. Modern writers appear inclined to take sides, sometimes rather forcibly; on the question whether the King or the peasant owned the land. Some regard the king as the sole proprietor of lands as happened in ancient period, while others look upon the whole village collectively or individual cultivator as the real owner.

There are three types of opinions given by the jurists regarding ownership of land in Bengal[28]:

a) First category of viewers says that land ownership belonged to the King and they got support from the writings of Manu, Kautilya and others. *Arthashastra* says: 'The King is the lord of the land and water in his kingdom'. Daodoras says: 'the people pay a land tribute to the King, because all India is the property of the Crown. ...No private

25. *Abdul Mutaleb v. Mst. Rezia Begum* 22 DLR (SC) 134.

26. *Moulana Hafez Athar Ali v. Abdul Taher Bhuiyan* 12 DLR 758.

27. Burn, E. H., *Maudsley and Burn's Land Law*, (ed) Butterworths, Seventh Edition, London, 1998, p 3.

28. Islam, Kabedul, *The Land System of Bangladesh*, Mowla Brothers, Dhaka, 2002, pp 17-102.

individual is permitted to own it.' Fa-Hien and Yuan-Chuang wrote: 'land was the property of the King.'[29]

b) The second category of viewers amongst whom Sir Henry Maine is the prominent say: 'the village-corporations were practically the absolute proprietors of the village lands, including the fresh clearings and were responsible for the total amount of rent to the Government. In case the owner of a plot of land failed to pay his share it became the property of the corporation, which had a right to dispose of it to realise the dues. ...The ownership in land was regarded as vested in the whole community. ...The ownership of the cultivable land vested in private individuals or families, and not in the State'.[30]

c) The third category of viewers say: 'in Bengal proper the land belonged without dispute to the original cultivators, and even when village communities found it necessary to strengthen their organisation for the sake of protection against outsiders, all that community, as distinct from the individuals it governed could do, was to take a part of the produce from each family cultivating land for the maintenance of the village officials and the cost of administration.' John Stuart Mill says: ' land throughout India is generally private property, subject to the payment of revenue, the mode and system of assessment differing materially in various parts.' The Report of the Indian Taxation Enquiry Committee says: 'private ownership of land was an established institution among the Indo-Aryans in the most ancient times to which their society can be traced.'[31]

Though it can not be said quite undoubtedly which category of views prevailed in the ancient Bengal, from the information received and documents discovered relating to land sale or land administration, so far it is apparent that from the 5th century to 13th century the King was the whole proprietor and real owner of the land. Though some writers wrote about the second category, writers like Baden Powell and Dr. Bikram Sarkar said that in Bengal there was no community or joint holdings in villages. They may have been subject to overlord tenures, with their connected fiefs and subordinate holdings. There the land belongs to the original cultivators. In other words, the village was based on individual tenure of land. It meant tenure by a family rather than an individual. One village was aggregate of families called *Kula*. Again, some writings of

29. Ibid.
30. Ibid.
31. Ibid.

Manu showed reliance of the third category when it says that the land belonged to the person who cleared the jungles and brought it under cultivation as like as the wild deer of the forests become the property of the man who first pierces them with arrows. Some commentators find support in favour of the third category from practise prevailing in Hindu and Muslim period which continued till later part of the 18th century.[32]

However, it needs to be examined now whether the private ownership exists in land in the modern period in Bengal, currently in the country of Bangladesh. The answer must be in the negative when we look closely at Section 92 of the State Acquisition and Tenancy Act, 1950 read together with Rule 6 of the Tenancy Rules 1954, as the Section speaks of the extinguishment of interest of the *raiyats* in the land in the following ways-

(a) when he dies intestate leaving no heir entitled to inherit under the law of inheritance to which he is subject;

(b) when he surrenders his holding at the end of any agricultural year by giving notice in the prescribed form and in the prescribed manner and within the prescribed period to the Revenue Officer,

(c) when he voluntarily abandons his residence without making any arrangement for payment of the rent as it falls due and ceases to cultivate his holding either by himself or by members of his family or by, or with the aid of, servants or labourer with the aid of partners or *bargadars* for a period of three years; or

(d) when such interest has devolved by inheritance, under the law of inheritance to which such *raiyat* is subject, on a person who is not a *bona fide* cultivator and such person has not cultivated the land comprised in the holding either by himself or by members of his family or by, or with the aid of, servants or labourer with the aid of partners or *bargadars* during the period of five years from the date on which such interest has so devolved on him and there is no sufficient cause why he has not so cultivated the land.

That means in Bangladesh, even in the modern period the *raiyat* is not the real owner of the land within the spirit of the SAT Act 1950, as he cannot leave his land at will and is thus getting deprived of his right of leaving the land at will in the fear that his right to land will extinguish. Even if, he does not pay rent to the land, his right to land will extinguish as well.

Again, under the provisions of Sections 75A, 93 and 81A of the SAT, sub-letting (also known as sub-lease) has been prohibited keeping in mind

32. Ibid.

that if it was allowed, it could have created sub-tenancy further and hampered the object of the SAT Act 1950. It can be inferred from these provisions that as the *raiyats* though they are called *maliks* now[33], are tenants of the State, they are debarred from creating another tenancy under them.

Again, when we look at the constitutional provision contained in Article 13 we find the principles of ownership when it says that the people shall own or control the instruments and means of production and distribution, and with this end in view ownership shall assume the following forms-

(a) state ownership, that is ownership by the State on behalf of the people through the creation of an efficient and dynamic nationalised public sector embracing the key sectors of the economy;

(b) co-operative ownership, that is ownership by co-operatives on behalf of their members within such limits as may be prescribed by law; and

(c) private ownership, that is ownership by individuals within such limits as may be prescribed by law.

That means three types of ownership is recognised in a way that the individuals can own property alike the cooperative or the State but they have to pay rent and other taxes as the State ensures security and protection to the individuals.

If we look at Article 42, we find that each and every citizen can exercise his right to property within some qualified ambit, when it says that -

(1) subject to any restrictions imposed by law, every citizen shall have the right to acquire, hold, transfer or otherwise dispose of property, and no property shall be compulsorily acquired, nationalised or requisitioned save by authority of law.

(2) a law made under clause (1) shall provide for the acquisition, nationalisation requisition with compensation and shall either fix the amount of compensation or specify the principles on which, and the manner in which, the compensation is to be assessed and paid; but no such law shall be called in question in any Court on the ground that any provision in respect of such compensation is adequate.

(3) nothing in this Article shall affect the operation of any law made before the commencement of the Proclamations (Amendment) Order (Proclamations Order No. 1 of 1977), in so far as it relates to

---

33. Section 82(8) of the SAT Act 1950.

the acquisition, nationalisation and requisition of any property without compensation.

That means that the citizen can exercise his right to property but this right is not unfettered as he got to conform to certain guidelines framed by the State from time to time.

When we look at Article 143, we find the list of the property of the Republic, when it says that -

(1) there shall vest in the Republic, in addition to any other land or property lawfully vested-

   (a) all minerals and other things of value underlying any land of Bangladesh;

   (b) all lands, minerals and other things of value underlying the ocean within the territorial waters, or the ocean over the continental shelf, of Bangladesh; and

   (c) any property located in Bangladesh that has no rightful owner.

(2) the Parliament may from time to time by law provide for the determination of the boundaries of the territory of Bangladesh and of the territorial waters and the continental shelf of Bangladesh.

That means a citizen can own and enjoy his property but if there is anything underlying his property, he does not own or enjoy it; it belongs to the State.

When we look at Article 144, we find that the Executive Authority can interfere in relation to property, trade etc. of the citizen, when it says that the executive authority of the Republic shall extend to the acquisition, sale, transfer, mortgage and disposal of property, the carrying on of any trade or business and the making of any contract.

That means the Executive Authority if it feels necessary for public purposes or public interests, can make interference with the ownership or enjoyment of the property of the citizen by exercising *eminens dominium* meaning States' power of taking or interfering private property without the consent of its owner.[34]

Where no individual is entitled to own, the State owns the property by its prior right for providing security and protection of the property.

So the debate as to the ownership of land can be concluded with the saying that property can be owned by the individual, the cooperative

---

34. Munim, F. K. M. A., *Rights of the Citizens under the Constitution and Law*, 1st Edition, BILIA, Dhaka, 1975, p 320.

and the State but the individual and the cooperative got to pay taxes or perform other duties to the State as the State is providing security and protection of the property. Again, though the State can make interference with the ownership or enjoyment of the property of the private individual or cooperative, it does not mean that the State owns the private property. It can interfere by way of acquisition or requisition, only when it provides compensation to the individual or the cooperative.

3. Land Administration in Bengal during Ancient Period

Land law as a subject is rooted in history. Many of the most fundamental concepts and principles of land law emerged from the economic and social changes that began earlier in the society. This also applies in the case of the Sub-Continent, particularly Bengal, Bihar and Orissa.[35]

The most ancient land laws i.e. the land laws prevailing in Hindu period in Bangladesh can be traced to the practices of aboriginal communities involving payment of a share of the produce of the land to the head of the *panchayet* (clan) named as the *grampradhans* (village heads), the right of the family to cultivate the land in its possession, and the power of the head of a clan to distribute land of the community to its families, and to settle land disputes. This system of land administration has been referred to as clan system in the community. Though this clan system of administration of the community in course of time gave rise to the kingship system, the laws regarding land did not change very much except in the payment of the share of the produce to the king or his representatives and the king's right to distribute unused lands to others without disturbing the existing possessions of cultivators. Both Kautilya in his *Arthashastra* and Manu, the lawgiver of the Aryans in his Code, note that whoever clears the jungles and makes them fit for cultivation, acquires the right to own the same, subject to payment of rent or revenue to the king.

There has been controversy in the writings of the ancient writers as to the payment of the share of the produce to the king or his representatives. Manu states that a king took a sixth or an eighth or a twelfth part of the crops depending on the obligations shared to each other. But other *Dharmasutrakars* such as Baudhayana, Yagnavalka, Apasthamba, Vasishtha, and Vishnu lays down the king's share as annual tax from his subjects to the tune of a sixth of the produce of the land. Kautilya, however, writes that the land revenue could be assessed at one-third or one-fourth of the produce, depending on the facilities provided for irrigation. But where there was no arrangement for irrigation, land

35. *Land Reform in Bangladesh,* Ministry of Land, Dhaka, 1989, pp 1-13.

revenue was assessed as one-sixth of the produce and this is the mostly agreed view by the jurists.

Majority in the jurists' opinions follow that land was the common property of the community and belonged to settlers of the villages, who cultivated the land. In course of time, they divided the land equally amongst the families. Hereditary cultivators could not be evicted from their land if they cultivated it and paid revenue. The right to partition the common land of the family amongst the members was recognised in course of time. A settler family could transfer its land but the transfer of its land to any outsider without the consent of other permanent co-settlers or their heirs was not possible. This means that transfer of land to a stranger was subject to what is called pre-emption.[36] After defeating the non-Aryan or aboriginal people of this country, Aryans appropriated their land. The aboriginal men who surrendered to Aryans were engaged in domestic and agricultural work as slaves (*shudras*). In course of time, the right of the *shudras* in the land was recognised and they were allowed to cultivate the land under the system of *barga* by sharing half of the crop produced in such land and giving the other half to the owners of the land.

5. Land Administration in Bengal during Middle Period

Middle period in terms of land administration in Bengal, which may be termed as Muslim period as well, commenced when Bakhtiar Khilji conquered Bengal at the beginning of the 13th century i.e. in 1204.[37] Then the rulers merely changed the rate of land revenue from one-sixth to one-fifth or one fourth of the produce, payable either in cash or by the delivery of the produce. The customary rights of landowners to transfer the land in any manner they liked were not interfered with in case of those tenants who used to pay rent in cash. The land of those tenants was heritable by the heirs of such tenants. Such tenants were personally liable for the same and could be sued for the recovery of arrears of dues but could not be evicted from their land for non-payment of revenue. But those who paid a share of the produce of the land cultivated by them as rent or revenue had no such right to transfer the land. However, such land was heritable by the heirs of such tenants and could be cultivated by such heirs on the same terms and conditions as their predecessors enjoyed. Such tenants could be evicted from their land for non-payment

36. Pre-emption means purchasing property before or in preference to other persons.

37. Op. cit., Hoque, (2000), pp 24-57.

of revenue. Only wastelands were given as *ayma*[38] to religious and royal officers in lieu of their salary and *jagir*[39] to learned persons engaged in teaching for their maintenance. Whoever brought under cultivation any wasteland became owner of the same, subject to payment of rent or revenue assessed.[40]

In course of time, when the power of the *granipradhans* (village heads) was substantially curtailed, many of them were turned into local *talukdars*. These *talukdars* used to collect revenue from the cultivators at the rate assessed by the Government and paid the same to superior landlords known as *zamindars*, although they got a share of the collection as their remuneration. The Government could lease out the *khas* lands (lands recorded in the *Khatiyan* No. 1 and remaining under direct and exclusive control and management of the Government) on fixed revenue to others. The lessees of such lands could themselves cultivate the same or get the same cultivated through *bargadars* (sharecroppers) who had no rights to the land beyond getting half of the produce. The Government lessees such as *jagirdars* (learned persons engaged in teaching) and *aymadars* (religious and royal officers) could, in their turn, also lease out their land to others on a rental basis.[41]

During Mughal rule, the land revenue system got systematised and consolidated when the land revenue of the entire country was assessed at the rate of one-third of the produce. The Government officers known as *amins* then assessed revenue and also settled land disputes. *Kanungo*, who knew the customs and regulations regarding land used to help such officers to assess revenue. *Karkuns* preserved records regarding land surveys and land revenue assessment and *chowdhurys* represented the inhabitants of the *pargana*, also called *mahal* or *mukaddam*. *Patwaris* or village accountants and other survey officers surveyed each and every plot of land on the basis of average production and market price of the produce for the previous ten years.[42]

Cultivators known as *raiyats* could pay revenue either in cash or by delivery of produce but cash payment was preferred. *Zamindars*, *jagirdars*

---

38. Special grant at reduced rate. See Chowdhury, Obaidul Haque, 'Glossary of Certain Settlement and Vernacular Terms in Common Use', *The State Acquisition and Tenancy Act*, DLR, 2001, p 381.

39. Special grant at reduced rate. See Islam Kabedul, *Glossary of Land and Land Revenue Affairs*, Mowla Brothers, Dhaka, 2003, p 65.

40. Op. cit., Hoque, (2000), pp 24-57.

41. Ibid.

42. Ibid.

or Government rent collectors such as *amils, sikdars, amalguzars* or *crories* were prohibited from realising any additional amount known as *abwab* other than the assessed revenue from the *raiyats*. *Zamindars, jagirdars* (lessee) or Government rent collectors such as *amils, sikdars, amalguzars* or *crories* and *aymadars*, could neither evict the *raiyats* from their land nor bring the land to their *khas* possession or let it out to others. Only when *raiyats* went elsewhere leaving their land, or when there was no male person in the family to cultivate the land, could the land be settled with others. *Zamindars, jagirdars* or *aymadars* were not proprietors of the land under their control. They could only collect revenue from the cultivating *raiyats* at the Government assessed rates. *Zamindari* right was hereditary and transferable but *ijaradari, jagirdari* or *aymadari* rights were neither hereditary nor transferable. Later, *aymadari* was made heritable. *Zamindars* or *ijaradars* got a share of their collection of land revenue as their remuneration and collection cost.[43]

Permanent settlers of villages who themselves cultivated lands of their own village or through others were known as *khudkast raiyats*. They had to pay revenue at the customary rate of their *pargana* called *nirikh*, or at the rate mentioned in the *patta* or lease deed executed in their favour. If they paid the revenue fixed for their land, they could not be evicted from their land and could possess their lands from generation to generation. They also could not abandon their land at their sweet will. Those who cultivated the land of the village where they did not live were known as *paikast raiyats* and could pay rent on a contract basis. But they had no right to continue in possession and were merely tenants-at-will, and they could be denied the right to cultivate the land any time after harvesting was over. Such *raiyats* could also abandon such land at their sweet will.

Zamindars, jagirdars, chowdhuries and *talukdars* could cultivate land in their *khas* possession through *bargadars* or agricultural labourers who had no rights on such land except to get a half share of the produce or wages for their labour.[44]

6. Land Administration in Bengal during Modern Period

Modern period in terms of land administration in Bengal, which includes British, Pakistan and Bangladesh period commenced on 12 August 1765, when the East India Company was granted *diwani* rights by the titular Mughal Emperor Shah Alam of Delhi for only RS 26 *lakhs* to collect

43. Ibid.
44. Ibid.

revenue from Bengal, Bihar and Orissa.[45] The company did not initially disturb the system of revenue collection prevalent in the country because of their inexperience in revenue administration and because of there having no system of written rules and plain principles in the country, by which they could learn the revenue administration by careful application.[46] Gradually it started to concrete the right of collection of revenue to the highest bidders under the Quinquennial Settlement Regulation,[47] which continued for years from 1772-1777 and the Annual Settlement Regulation[48] which continued for years from 1777-1790, leaving the old *zamindars* and *talukdars* only with the task of the collection of the higher revenue.[49]

Under quinquennial and annual settlements neither the *raiyats* nor the *zamindars* nor the *talukdars* had any inducement to improve the lands as any increase in their value had only the effect of increasing the Government assessment. Subsequently the Company came to realise that such settlements were injurious to the landholders and their tenants as it did not encourage any improvement in agriculture and consequently these settlements were proved to be disadvantageous to the general prosperity of the country.

Moreover, the *zamindars* and *talukdars* were given the task of the collecting the higher revenue despite the *raiyats* having been affected with famine, drought or floods. The property in the soil was never formally declared to be vested in them. They were not allowed to transfer such rights and could not raise money upon the credit of their tenure without the prior sanction of the Government. Again, the rate of the collection of revenue was liable to frequent variation at the discretion of the Government. Refusal to pay the sum required of him was followed by his removal from the management of his lands.

Given the situation many of the existing *zaminders* were ousted and afterwards they drew attention of the Home Authorities by making complaints to the House of Commons. Consequently in 1784, the Pitt's India Act was passed in the House of Commons ordering an enquiry into

---

45. Hussain, T., *Land Rights in Bangladesh*, University Press Limited, Dhaka, 1995, p 15.
46. Kabir, Lutful, *Land Laws in East Pakistan*, Vol. II, Law House, Dhaka, 1969, pp 1-18.
47. Fixing the revenue for five years. See Islam Kabedul (2003), p 99.
48. Fixing the revenue for one year after one year. See Islam Kabedul, (2003), p 65.
49. Op. cit., Hossain, (1995), pp 16-17.

the complaints of the dispossessed *zaminders*.[50] The Company was also directed to enquire into the conditions of landholders and for the establishment of permanent rules for the collection of revenue based on local laws and usages of the country. In accordance with the directions, the Company restructured the land administration in 1786 keeping the hierarchy from bottom to top as *Naeb* (*Tahshildar*) charged with task of collecting revenue, Assistant Collector (currently known as Assistant Commissioner-Land) charged with settling disputes, Collector charged with settling disputes and hearing appeals, Divisional Collector charged with hearing appeals, Board of Revenue, the highest authority in terms of collecting revenue and the Company Government burdened with the overall land and revenue administration. Then came the experimental Decennial Settlement Regulation[51], which continued for years from 1790-1793 leaving the old *zamindars* and *talukdars* again with the task of the collection of the higher revenue. This settlement fixed the revenue for ten years and was made with the aim of turning it as permanent on its success.[52]

On 22 March 1793, Lord Charles Cornwallis, Governor General of the East India Company, declared the decennial settlement as the permanent settlement by Permanent Settlement Regulation (Regulation No. I of 1793), which made *zamindars* and *talukdars* permanent proprietors of the land under their respective control. As a result, Government revenue agents turned into landowners overnight. Landlords were allowed to own their property subject to regular payment of revenue to the Government, for the default of which their right was liable to be sold in auction. Their right was made both heritable and transferable. No restraint was imposed on the landlords on the increase of the rent of the *raiyat*s. The customary right of the *raiyat*s to pay rent at *pargana* rate was denied. Instead, an increased rent was demanded from them, in spite of the provision of the Regulation No. VIII of 1793, which directed landlords not to increase rent of *raiyat*s paying fixed rent for more than 12 years and to grant *patta* to other tenants at *pargana* rates.

The Regulation No. XVII of 1793 provided that on the failure of the *raiyat*s to pay increased rent, all their movables, including standing crops were made liable to attachment and sale by the landlords without the intervention of the Court. Refusal of the *raiyat*s to pay increased rent and

---

50. Op. cit., Hussain, (1995), p 16.

51. There were several Decennial Settlement Regulations and the last one was the Bengal Decennial Settlement Regulation (Regulation VIII of 1793), see the Bengal Code, vol. I, pp 29-39 and Op. cit., Kabir, vol. I, pp 34-43.

52. Ibid, p 1.

their organised resistance to attachment and sale compelled the Government to make Regulation No. VII of 1799, which authorised landlords to arrest recalcitrant *raiyats* refusing to pay rent and also to attach and sell their properties. Regulation No.V of 1812 amended that black law, by taking away the power of landlords to arrest the *raiyats*. It also entrusted the *raiyats* with the right of getting *patta* (undertaking with favourable conditions or rent).

By Bengal *Patni Taluk* Regulation (Regulation No.VIII of 1793) the *patni taluk* meaning a dependent tenure settled in perpetuity at the fixed rate got a new dimension especially in the case of the *patni taluks* of Hoogly, Burdwan, Bankura, Nadia and Purnea. This Regulation afforded means to the *zaminders* of recovering arrears of rent from their *patnidars* (persons holding dependent tenure) almost identical with those by which the demands of the Government were enforced against themselves.

Revenue-free lands known as *lakhiraj* were partly recognised under *Badshahi* and Non-*Badshahi Lakhiraj* Regulations of 1793 (Regulations No.XXXVII and XIX of 1793). Most of such lands were either assessed to revenue or resumed by the Government. The Government reserved the right to settle lands treated as *khas* mahal outside the area of permanent settlement.

Under the provisions of Regulation No. XIV of 1793 defaulting *zamindars* could be arrested and imprisoned and *amins* could be appointed to realise rent or revenue from their *zamindaris*. But Regulation No. III of 1794 abolished such power of arrest and detention. Provision was now made to sell on auction the *zamindari* for realisation of arrears of revenue with interest.

By Regulation No.V of 1796, provision was made to auction a *zamindari* in parts for realisation of arrears of revenue. By Regulation No.V of 1812, the Board of Revenue was authorised to give permission to sell an entire *zamindari*. Regulation No. XI of 1822 authorised the Board of Revenue to set aside auction sale of any *zamindari* for irregularity or any other reasonable ground. Act No. XII of 1841 provided for sale of *zamindari* if the *zamindar* failed to pay arrears of revenue before the sunset of the day previous to the day fixed for auction in the proclamation for auction sale. The auction purchaser was also debarred from evicting certain types of *raiyats* having permanent right in their land and from increasing their rent. Act No. I of 1845 was enacted by amending and re-enacting the provisions of the aforesaid laws including the Act No. XII of 1841, which was known as the revenue sale law (Sunset Law).[53]

---

53. Op. cit., Hoque, (2000), pp 81-84.

By Regulation No. VII of 1799 when the *zamindari* right of the landlord was sold in auction, the auction purchaser could evict *khudkast raiyats* and also lease out their lands to others at an increased rent. Through Regulation No. XI of 1822 such auction purchasers were prohibited from evicting the class of *khudkast raiyats* known as *kayemi* (permanent) *raiyats* but the power of such auction purchasers to evict other kinds of *raiyats* particularly the *paikast raiyats* for arrears of rent continued.

Several Regulations were also implemented for regulating the work of village *patwaris* and *pargana kanungos* who were paid salaries. The rent-free land enjoyed by them previously in lieu of salary was assessed to revenue. On the other hand, by Bengal *Patwaris* Regulation (Regulation No .XII of 1817) *patwaris* were allowed rent-free land or allowances.

By the provisions of Bengal Alluvion and Diluvion Regulation (Regulation No. XI of 1825) the land gained by the gradual accession from the recess of the river or sea was to be considered an increment to the tenure of the person to whose estate it might be annexed and again the land suddenly cut off by the river or sea, without any gradual encroachment and joined to another estate without its identity being destroyed was to remain the property of the original owner. This reappeared land has been termed as the reformation-in-situ in the celebrated case of *Lopez v. Madan Mohan Thakur*[54]. The right of fishery in non-navigable rivers depends on the ownership of the adjacent soil. The right of fishery in navigable rivers is granted by the Government and will not be extinguished even though the river may change its course. This principle has been evolved in the distinguished case of *Srinath v. Dinbandhu Sen*[55] basing on the truth in the saying: 'The fish follows the river and the fisherman follows the fish'.

Since the East India Company failed to take adequate measures for protecting the interest of the Indian *raiyats*, after assuming power of the British India in 1858, the British Government enacted the Rent Act (Act No. X of 1859) and the Bengal Land Revenue Sales Act (Act No. XI of 1859) for ameliorating the conditions of the Indian *raiyats*.

Act No. XI of 1859 was contained the following provisions-

I) affording reasonable security to persons especially the mortgagee who have liens upon estates and who pay the money necessary to protect such estates from sale for arrears of revenue;

---

54. 13 MIA 467.

55. 42 Cal. 489 PC.

II) affording sharers in estates, who duly pay their proportion of the revenue, easy means of protecting their estates from sale by reason of the default of their co-sharers;

III) affording landholders, particularly the absentees, facilities in guarding against the accidental sale of their estates by reason of the neglect or fraud of their agents and

IV) protecting the holders of under-tenures created since the settlement, who voluntarily registered their tenures.[56]

Act No. X of 1859 obliterated the difference between *khudkast* and *paikast raiyats*. It provided that a *raiyat* possessing any land continuously for 12 years or more shall acquire occupancy right in that land and shall not be evicted therefrom if he paid the rent for that land. But that provision was not applicable to annual or *thika* tenants cultivating *khas* lands of *zamindars*, *talukdars* and occupancy *raiyats*. It further provided that rent of *raiyats* possessing land at a fixed rent should not be increased. But there was no bar on increasing the rent of other classes of *raiyats*. The Collector had the power to decide all suits between landlord and tenants under provisions of that Act.

Some *zamindars* were allowed to enter into agreements with their tenants contrary to other provisions of the Rent Act of 1859, which made other statutory provisions nugatory and encouraged other *zamindars* to force the *raiyats* to enter into agreements against their own interest and to increase rent and avoid acquiring occupancy rights over the land.

The Bengal Rent Act (Act No. VI of 1862) provided for allowing tenants to deposit rent with the Collector on the refusal of the landlord to amicably accept the same and empowered the Collector to decree compensation up to 25% of the claim of the rent suit against tenants or landlords found to have failed to pay or accept rent without any reasonable cause. Provision was made in the said Act allowing landlords to measure and survey the land of tenants. The Rent Act (Act No. VIII of 1869) re-enacted almost identical provisions of the Rent Act of 1859 and for the first time recognised the limited customary right of occupancy tenants to transfer their lands. The Act also empowered Civil Courts to dispose of all suits between the landlords and the tenants instead of the Collector.

By Permanent Settlement Regulation and other Regulations followed thereafter the conditions of the Government and of *zaminders* stood firm as it made the Government income secured and permanent and made

56. Op. cit., Kabir, Vol. I, (1961), pp 102-146.

the *zaminders* permanent owners of land and helped them to collect revenue indiscreetly so as to turn them landed aristocrat in Bengal.

In spite of the provisions contained in Rent Acts of 1859, 1862 and 1869 that the *raiyats* who were in possession of a tenancy for twelve or more years and paid revenue regularly would not be liable to eviction and increased rate of revenue by the landlords and that the disputes between landlords and tenants regarding rent would be disposed of by the Civil Courts, not by the Collector, the *raiyats* were made liable to eviction and increased rate of revenue by the landlords. In order to redress the *raiyats*, the Survey Act (Act No. V of 1875) was enacted to determine the boundary of a village and to prepare a *mouza* or village map showing therein every plot of land with its area and to record the name of the tenant and the superior landlord, the nature of tenancy, share, possession, revenue, or rent payable for the same.[57] This Act was not made in effect by making surveys till the enactment of Bengal Tenancy Act (Act No. VIII of 1885). The BT Act, which was subsequently repealed by the SAT Act 1950 (Act No. XXVIII of 1951) containing provisions for the preparation and revision of the Record-of-Rights (*Khatiyan*)[58] has made the Survey Act operative. Rent Assessment Settlement Act (Act No. VIII of 1879) authorised the Settlement Officer to assess increased rents for occupancy on the grounds that the previous assessment was based on facts, which improved since then, or the previous assessment was wrong. If any *raiyat* got aggrieved of the assessment made by the Settlement Officer, he could challenge it to the Civil Court and pay revenue at the rate fixed by the Court.

Seen in the context, the Government of British India was trying to improve the conditions of the *raiyats* on the one hand and at the same time, it was trying to expedite the process of revenue collection on the other hand, through which they claimed, the conditions of the *raiyats* would be ameliorated. In fact, the Government depends mostly on the revenue to carry on the business of the country. Now if the decision of the Revenue Authorities in matters relating to the collection of public revenue were to be referred to regular litigation in the Civil Court, the Government will be put acute hardship. So in most countries the Government has reserved to itself a special, speedy and peculiar procedure

---

57. Malek, Abdul, *Law on Khatiyan*, published by Mrs. Khohitur Nahar Rozy, Chittagong, 1996, pp 83-84.

58. The Record-of-Rights records on a piece of paper the rights and liabilities of the *raiyat*. It bears its own number i.e. *khatiyan* number, plot numbers, area, *mouza*, *touzi*, J.L. number i.e. jurisdiction list number, names and shares of the possessors, description of their rights and superior interest etc.

to enforce its own demands, instead of resorting to time-consuming Civil Court unless any question as to the right of recovery of dues arises. Keeping this in view, the Public Demands Recovery Act (Act No. III of 1913) was introduced with provisions as to the definition of public demands and how they are to be realised through the intervention of the Settlement Officer, instead of the Civil Court.

By the provisions of the Public Demands Recovery Act (Act No. III of 1913) public demand is meant any arrear or money payable to the Collector by a person holding any interest in the land[59]: e.g.

1. any arrear of revenue which remains due by operation of the Bengal Land-Revenue Sales Act (Act No. XI of 1859) or the Bengal Land-Revenue Sales Act (Act No. VII of 1868) or any other law for the time being in force or
2. any arrear of revenue which is due from a farmer on account of an estate held by him in farm and is not paid on the latest day of payment fixed under Section 3 of the Act No. XI of 1859 or
3. any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or
4. any money which is declared by any enactment for the time being in force to be a demand or a public demand or
5. any money due from the sureties of a farmer in respect of an estate held by him or
6. any money awarded as fees or costs by a revenue authority or
7. any demand payable to the Collector by a person holding any interest in land, pasturage, forest-rights, fisheries or the like.[60]

By the provisions of the Easement Act (Act V of 1882) for recovering the conditions of the Indian *raiyats*, the owner or occupier of certain land was vested with the right of easement, which authorised him to take benefits either by way of doing something (including the taking of profits e.g. right of way over the land of another person) or by preventing something being done in or upon or in respect of certain other land, not his own.

---

59. Ahmad, Sultan and Malik Syed Ahmad, *The Public Demands Recovery Act, 1913*, Anupam Gyan Bhandar, Second Edition, Dhaka, 1991, p 392.
60. Islam, Serajul, *Public Demands Recovery Acts*, S. C. Sarkar & Sons, Seventh Edition, Calcutta, 1989, pp 11-18.

The term 'easement' in its wide and literal sense means a definite right acquired for the ease, conveniences or accommodation of the person entitled to exercise the same.[61]

Each and every person has got certain rights (natural and legal) over his own land. In addition to these rights, he may acquire certain other rights over his neighbour's land for the beneficial enjoyment of his land by virtue of the ownership of his own land. These rights may be termed as easement.[62]

Section 4 of the Act No. V of 1882 has defined an easement as 'a right which the owner or occupier of certain land possesses as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon or in respect of certain other land, not his own'.

The Section has also termed the land for the beneficial enjoyment of which the right exists as the dominant heritage, the owner or occupier thereof as the dominant owner, the land on which the liability is imposed as the servient heritage and the owner or occupier thereof as the servient owner.

The easement is thus a benefit to the dominant heritage and a burden to the servient heritage.

Easements are of different kinds:

1. Affirmative and Negative Easement- Affirmative easement is an easement in which the dominant owner has got the right to make some active use of the servient heritage e.g. the right of way, right of water. This is also termed as Positive easement. Negative easement which also termed as Private easement is an easement in which the dominant owner has got the right to restrain the servient owner from exercising full rights of ownership over his land e.g. rights of air and light.[63]
2. Easement for Limited time or on Condition- An easement may be permanent or for a term of years or other limited period or subject to periodical interruption or exercisable only at a certain place, or at certain times, or between certain hours, or for a particular purpose,

---

61. Ahmed, Mozaharuddin, *Land Laws of East Bengal*, published by the author, Dhaka, 1963, pp 69-79.
62. Ashraf, Hamid, *Land Laws of East Pakistan*, published by Mr. Salman Usmani, Dhaka, pp 75-120.
63. Section 7 of the Easement Act (Act No. V of 1882).

or on condition that it shall commence or become void or voidable on the happening of a specified event or the performance or non-performance of a specified act e.g. right to sullage water, fetched for irrigation from Municipal Corporation, through channel over land owned by the servient owner.[64]

3. Principal and Accessory easement-The primary right of the dominant owner over the servient heritage is called Principal easement. It may be termed as Primary easement e.g. right of A to support from B's wall. The right of the dominant owner to do certain acts necessary for enjoyment of the easement proper is called accessory or secondary easement e.g. the right of A to enter B's land to repair the wall of A when it is out of order.
4. Apparent and Non-apparent easement- Apparent easements are those, the existence of which is shown by some visible sign or external work e.g. a window, sewer or a drain. In Non-apparent easement there is no visible sign e.g. the right to prevent the servient owner from building above a certain height.[65]
5. Continuous and Discontinuous easement- In Continuous easement the enjoyment is continual without any interference of another e.g. rights of air and light. In Discontinuous easement the enjoyment is occasioned by a fresh act on each occasion e.g. right of way, which requires for its enjoyment the exercise of locomotion.[66]
6. Easement of Necessity and Quasi-easement- Severance of two or more properties gives rise to Easement of Necessity. A man may, by general right of property make one part of his property dependant to another and grants it with this dependence to another person. Where property is conveyed which is so situated relatively to that from which it has been severed so that it cannot at all be enjoyed without a particular privilege in or over the land of the grantor, the privilege is called an Easement of Necessity and the grant is implied and passes without any express words. When the owner of two adjoining properties sells one and retains the other, he is considered to have impliedly granted also with the sale all those continuous easements over the land he has retained which are necessary for the convenient and advantageous use and enjoyment of the land sold. These easements are termed as Quasi-Easements.[67]

---

64. Section 6, ibid.
65. Section 5, ibid.
66. Ibid.
67. Section 13, ibid.

The following are modes of acquiring easement-

1. By Express Grant- This grant is made by the servient owner in favour of the dominant heritage. It may be either *inter vivos* or by testament.
2. By Implied Grant- Easements of necessity or Quasi easements are presumed to have been granted by the servient owner.
3. By Local Custom- An easement may be acquired by virtue of a local custom.
4. By Estoppel- If a person without any title, professes to impose, an easement in favour of another and subsequently acquires title to the servient heritage, he will be estopped from denying the right of the dominant owner to such easement.
5. By Prescription- Easements are acquired by long continued enjoyment for this statutory period of 20 years or 60 years in the case of Government property.[68]

The Limitation Act (Act No. IX of 1908) has contained only one mode of acquisition of easement *viz* acquisition of easement right by prescription under Section 26. Given the modes of acquiring easement discussed earlier it can be said that the provision of the Limitation Act relating to the mode of acquisition is not exhaustive.[69]

Section 26 provides that the right to access and use of light or air, way, watercourse, use of water, or other easement shall be absolute-

a) where the access and use of light or air to and for any building have been peaceably enjoyed therewith as an easement, and as of right, without interruption and for twenty years; or

b) where any way or watercourse or the use of any water, or any other easement (whether affirmative or negative), has been peaceably and openly enjoyed by any person claiming title thereto as an easement and as of right, without interruption and for twenty years;

The following requirements have to be fulfilled for the acquisition of the right to easement:

a) in the case of the access and use of light or air to and for any building; that they have been enjoyed therewith-
    1. peaceably,
    2. as an easement,

---

68. Section 15, ibid.
69. Khan, Raja Said Akbar, *The Limitation A*[illegible] PLD Publishers, Lahore, pp 47-49.

3. as of right,
4. without interruption and
5. for twenty years or in the case of Government property 60 years.

b) in the case of any way or watercourse or the use of any water, or any other easement (whether affirmative or negative); that it has been enjoyed therewith-

1. peaceably,
2. openly,
3. by any person claiming title thereto,
4. as an easement,
5. as of right,
6. without interruption and
7. for twenty years or in the case of Government property 60 years.

By the provisions of the Specific Relief Act (Act No. I of 1877) the owner or occupier of the property was vested with the right of claiming specific relief as opposed to ordinary relief if his right to property is denied by any person[70] e.g. relief for recovering possession if dispossessed or declaration of title etc.[71]

By the provisions of the Trust Act (Act No. II of 1882) the owner of the property was vested with the right of making trust of his property for private purposes i.e. for the benefit of persons only.[72]

By the provisions of the Transfer of Property Act (Act No. IV of 1882) the owner of the property was vested with the right of making transfer of his property to himself or to one or more living persons e.g. transfer of property by way of sale, mortgage, lease, gift, will or exchange to any living persons including the artificial persons having legal entity.[73]

---

70. Khan, Raja Said Akbar, *The Specific Relief Act*, PLD Publishers, Lahore, pp 87-96.
71. Sections 9 and 42 of the Specific Relief Act (Act No. I of 1877).
72. Khan, Sardar Muhammad Iqbal, *The Trusts Act, 1882*, All Pakistan Legal Decisions, Lahore, pp I-X.
73. Shukla, S. N., *Transfer of Property Act*, Allahabad Law Agency, 12th Edition, Allahabad, 1991, pp 1-4.

The provisions of the Partition Act (Act No. IV of 1893) vested the owners of the undivided property with the right of making partition of the property among the members of the joint family and in the case of transfer to an outsider, the members of the family can apply for pre-emption.[74]

By the provisions of the Registration Act (Act No. XVI of 1908) if the owner of the property exercised the right of making transfer of his property including the transfer made through partition, he is burdened with task of getting it registered.[75]

Though the Government in British India was trying to change the condition of the Indian *raiyats* with certain enactments aiming at curtailing the oppressive powers of *zaminders*, bridging the gap between *zaminders* and the *raiysts* and entrusting the *raiyats* with some rights, in most cases those efforts proved to be unworkable. The period from 1870 onwards had been marked, on the one hand, by incessant attempts of *zamindars* to increase rent of the *raiyats* and illegal *abwabs* and on the other hand, by a determined oppositions of the tenants to fight against the demands which they considered unjust.

In addition to these, short measurements, illegal cesses, the forced delivery of agreements to pay enhanced rents fuelled them to make resistance and consequently the Peasant Revolt of Pabna took place in 1873. To meet emergencies caused by agrarian revolt the Agrarian Disputes Act 1876 was passed on temporary basis designed to be supplemented later by a permanent legislation. But it came across several bargains, which at last led to the constitution of the Rent Law Commission in April 1879. The Commission submitted its report in May 1880. After consideration of the report a bill for enacting the Bengal Tenancy Act was placed before the Legislative Council on 2 March 1883. The Council passed the bill after amendments. After assent of the Governor, it became the law on 14 March 1885 entitled as the Bengal Tenancy Act (Act No. VIII of 1885) and it came into operation since 1 November 1885. This law made detailed provisions about the title, rights and liabilities of *zamindars*, *talukdars*, rent receivers and *mokarrari raiyats* (*raiyats* paying fixed rents), occupancy *raiyats* (having possession for twelve or more years), settled *raiyats*, non-occupancy *raiyats*, and under *raiyats*.

---

74. *Law on Partition*, Third Edition, DLR, Dhaka, 1986, pp 1-38.

75. Dhamija, D. R., *Registration Act*, Third Edition, The Law Book Company (P) Ltd, Allahabad, 1988, pp 1-62.

The following are the main features of the Bengal Tenancy Act –

1. initially, this law did not recognise the tenant's right to transfer other than to *kayemi* (permanent) *talukdars* and *mokarrari raiyats*, unless allowed by local custom or usage,
2. also it did not abolish the provision for attachment and sale of standing crops of the tenants for recovery of arrears of rents and such provision was retained.
3. this law empowered revenue officers to assess just and equitable rent at the time of preparation and revision of Records-of-Rights (*khatiyans*)[76] by measurement of land by actual field survey.[77]
4. by this law landlords could not increase rents except on certain grounds such as improvement of land or increase of area.
5. tenants were allowed right to reduction of rents on some grounds such as decrease of area or the failure of landlords to maintain irrigation facilities.
6. under this law once rent was increased, it could not be increased again in the next fifteen years.
7. *kayemi talukdars, mokarrari raiyats* and occupancy *raiyats* could not be evicted for arrears of rent but they could be evicted from their land in execution of a decree for arrears of rent through the Civil Court. *Bekayemi* (non-permanent) *talukdars*, non-occupancy *raiyats* and under *raiyats* could be evicted from their lands if they failed to pay rent falling into arrears at the appointed time.

By Act No. I amendments were made in the Act of 1894 substituting the provision regarding preparation of *khatiyans* by survey operation and assessment of rent.

Then by Act No. III of 1898 provisions regarding increase of rent, preparation of *khatiyan*, and assessment of rent were substantially altered.

By Act No. I of 1907 and Act No. I of 1908 the said Act was further amended -

a) providing for presuming the entries in the finally published *khatiyans* to be correct unless the contrary was proved, and

---

76. The C.S. Record-of-Rights (*Khatiyan*) was prepared basing on the Cadastral Survey conducted under the provisions of Section 101 of the Bengal Tenancy Act 1885 and the R.S. Record-of-Rights (*Khatiyan*) was prepared basing on the Revisional Survey conducted under the provisions of Section 101 of the SAT Act 1950.

77. Section 101 of the Bengal Tenancy Act 1885.

b) containing provisions to file *khatiyan* in a Court in a suit for recovery of arrears of rent to prove the claim,

c) authorising revenue officers to reduce the rent increased more than that recorded in the *khatiyan*, and

d) containing provisions to file certificate cases for realisation of arrears of rent by the landlords to local revenue officers.

By Act No. IV of 1928, the Bengal Tenancy Act was drastically amended-

a) to allow occupancy *raiyats* to transfer their land on condition of payment of one fourth of the price as premium to his superior landlord,

b) to allow exercising the right of pre-emption of such land by the landlord,[78]

c) not to recognise *bargadar* as a tenant unless he was so recognised by the landowner under whom he was a *bargadar* or declared to enjoy occupancy right if he acquired the same under any custom or law;

d) to abolish the provisions for attachment and sale of standing crop and moveable properties of the tenants.

e) to allow occupancy tenants to plant trees in their lands, enjoy their products, fell the same and use and sell timber, and

f) to allow the occupancy *raiyats* and under *raiyats* to give usufructuary mortgage of their land for fifteen years.

By Act No. VI of 1938 the said Act was further amended -

a) deleting the provision for payment of premiums to landlords by occupancy tenants for transfer of their lands,

b) taking away the right of landlords to pre-empt such land,

c) giving such right of pre-emption to the other co-sharers of the transferor or occupancy *raiyats* if the transfer was made to a stranger or strangers,

d) containing provisions for treating mortgage of occupancy land as usufructuary mortgage for fifteen years and for recovery of possession of the same through a Court.

e) allowing *talukdars* and under *raiyats* to surrender their rights in favour of their superior landlords.

Act No. XIII of 1939 amended the provisions of Section 52 of the said Act and prohibited the Court from passing any decree for increasing the rent

---

78. Section 26F, ibid.

of the tenant even if on measurement the area of land in possession of the tenant was found to be more than the area settled with him.

Act No. XXXVIII of 1940 further amended the provisions of Section 26 of the said Act and provided for treating all mortgages of occupancy lands including mortgage by conditional sale as usufructuary mortgage for fifteen years and for recovery of possession of such land through a Court. Moreover, the Act prohibited sale of any property of the tenant other than a *taluk*, or holding in execution of a decree or certificate for arrears of rent of such a *taluk* or holding. The amended provisions of the Bengal Tenancy Act restored almost all the rights of the tenants taken away from them by the Permanent Settlement Regulation of 1773. For that reason the Bengal Tenancy Act is termed as the Magna Carta of tenant rights in Bengal.

The Bengal Tenancy Act applied in the provincial territory of Bengal, not in the territory of Assam. As Sylhet comprised in Assam, the Bengal Tenancy Act did not apply in Sylhet. Afterwards Sylhet was included in the provincial territory of Bengal and there passed a separate tenancy legislation named the Sylhet Tenancy Act (Act No. XI of 1936) for Sylhet containing the same sort of provisions as found in the Bengal Tenancy Act such as preparation and revision of the Record-of-Rights[79], sub-letting etc[80].

Since a demand for abolition of the *zamindari* system was raised during the later part of the British rule in 1939, the Land Revenue Commission was formed with Sir Francis Floud as its chairman. It submitted its report in 1940 recommending acquisition by the Government of all rent receiving interests.[81] Its recommendations led to the passage of the East Bengal State Acquisition and Tenancy Act 1950 (Act No. XXVIII of 1951). It got assent of the Governor on 16 May 1951 and came into effect on 2 April 1956. The main features of the Act are -

1. The Act provided for acquisition of all rent receiving interests in land, acquisition of *khas* lands in excess of 100 *bighas* from each family, acquisition of hats, *bazars*, fisheries, minerals and other

---

79. The C.S. Record-of-Rights (*Khatiyan*) was prepared basing on the Cadastral Survey conducted under the provisions of Section 117 of the Sylhet Tenancy Act 1936 (Act No. XI of 1936). But no C.S. Record-of-Rights was prepared in Sylhet.

80. Sub-letting, in general sense means giving part of a contract, e.g. for building a factory to somebody else on rent and in another sense it means leasing to another person. See Sections 40 and 68 of the Sylhet Tenancy Act 1936.

81. Op. cit., Hussain (1995), p 18.

rights. Thus, after 163 years of the permanent settlement all rent-receiving interests were again placed directly under the Covernment by abolishing the *zamindari* system.[82]

2. The Act contains provisions for payment of compensation for the acquisition on the basis of the total income from rent receiving interest or other interest in land.[83]

3. The Act contains provisions for preparation and revision of *khatiyan*s, reassessment of rent of land of tenants including lands held under service tenures. After completion of the above processes and acquisition of all rent receiving and other interests and final publication of *khatiyan*s and compensation assessment rolls, notifications were published bringing into operation the provisions of Part V of the said Act regarding tenancy laws mentioning rights and liabilities of tenants at first in Patuakhali district in 1954 and lastly in Faridpur district in 1965.[84]

4. With the coming into force of Part V containing tenancy laws in any area, all unrepealed provisions of 14 Acts, including the Bengal Tenancy Act and the Sylhet Tenancy Act and 27 Regulations, including the Permanent Settlement Regulation,[85] which were related either with the summary process of acquisition ordering return of particulars of rent receiving interests and certain other interests in land from 443 *zaminders* or wholesale process of acquisition ordering preparation of Record-of-Rights, stood repealed and only one class of holders of agricultural lands called *maliks* remained. Their rights and liabilities were to be regulated under the provisions of Part V of the Act of 1950. Such *maliks* have no right to minerals and other underground interests. If the Government leased out any land for any fixed period then rights and liabilities under such lease would be regulated by the terms and conditions of such lease.[86]

5. Section 81A of the SAT Act says that if the rights and liabilities of the tenants of non-agricultural land were regulated under the provisions of the Non-Agricultural Tenancy Act of 1949 before the acquisition of rent receiving interest of land whether agricultural or non-agricultural by the SAT Act, such tenants would be regulated by the

---

82. Sections 3 and 20 of the SAT Act 1950.
83. Sections 37 and 39, ibid.
84. Op. cit., Chowdhury Obaidul Haque (2001), p 216.
85. See the Schedule of the SAT Act 1950.
86. Sections 79 and 80, ibid.

provisions of the NAT Act after acquisition of such interest by the Government unless there was anything contrary to the same in Part V. Except assessment of rent, increment and reduction of the same rights and liabilities of other non-agricultural tenants would be regulated by the terms and conditions of the lease deed and provisions of the Transfer of Property Act of 1882.

6. Sub-lease (popularly known as sub-letting) of any agricultural and non-agricultural land as opposed to sub-letting of houses[87], would be void and such land would stand forfeited and vested in the Government.[88]

7. No agricultural or non-agricultural tenancy right would be created in any Government *khas* land by mere payment of any premium or rent unless a lease deed is executed by any authority empowered for the purpose and the same is registered.[89]

8. A *bona fide* cultivator means a person who himself or through members of his family or servants or agricultural or other labourers or partner or *bargadar* cultivates his land.[90]

9. A *raiyat* may use and possess his land in any manner he likes and if he dies intestate, the same is inherited by his heirs in accordance with the provisions of the law of succession applicable to him and he may transfer his land. Such transfer is to be made by a registered instrument.[91] But no one can acquire any land by inheritance or transfer if the same added with other land belonging to members of his family exceeds the limit of land entitled to be held by a family, such excess land vests in the Government.[92] Initially the land ceiling was 100 *bighas* and in exceptional cases it was more than that.[93] By the Ordinance No. XV of 1961, it was increased to 375 *bighas* and again by the Order XCVIII of 1972 it was decreased to 100 *bighas*. By the Land reform Ordinance 1984 it was lowered to 60 *bighas* in case of agricultural land.

---

87. For sub-letting of houses, the provisions of the Premises Rent Control Act (Act No. III of 1991) will come into play.

88. Sections 75A, 93 and 81A, ibid.

89. Sections 76 and 81B, ibid.

90. Sections 2 and 82, ibid.

91. Section 89 of the SAT Act 1950 read with Sections 17 and 18 the Registration Act 1908 and Section 59 of the TP Act 1882.

92. Sections 83-97 of the SAT Act 1950.

93. Section 20, ibid.

10. Transfer of any land by a *raiyat* is liable to pre-emption by his co-sharer or the contiguous *raiyat* of such land subject to certain conditions.[94]
11. No *raiyat* can mortgage his land except by way of usufructuary mortgage for a period of 7years.[95]
12. No aboriginal can transfer his land to any person other than an aboriginal without the permission of the Revenue Officer. Such transfer in violation of the same is illegal and such transferee may be evicted from such land by the Revenue Officer and such land may be restored to the transferor or his heirs.[96] This provision was believed to be made to maintain the difference of the aboriginal.
13. The Act contains provisions for increase or reduction of rents, sub-division and consolidation of holdings and distribution of rents among commercial sharers and for realisation of rents amicably or by issuing certificates and auction sales of holdings.[97]
14. The Act contains provisions for settlement of lands vested in the Government as *khas* lands[98] under the rules and policies framed therein.[99]
15. The Act contains provisions for preparation[100], revision[101] and maintenance i.e. updating (popularly known as mutation i.e. exclusion and inclusion of names of the owner on the ground of transfer either by way of sale, lease, inheritance, gift or will)[102] of *khatiyan*s, leasing out of land acquired by the Government, and abandonment of diluvion or acquisition of holdings. Every entry in

---

94. Section 96, ibid.
95. Section 95 as amended up to date, ibid.
96. Section 97, ibid.
97. Sections 116-134A, ibid.
98. Barkat Abul, et el, *The Political Economy of Khas Land In Bangladesh*, (ed), ALRD, Dhaka, 2001, pp 19-83.
99. Section 76 of the SAT Act 1950.
100. The S.A. Record-of-Rights (*Khatiyan*) was prepared basing on the State Acquisition Survey conducted under the provisions of Section 17 of the SAT Act 1950.
101. The B.S. Record-of-Rights (*Khatiyan*), which may be termed as R.S. Record-of-Rights is being prepared basing on the Bangladesh Survey conducted under the provisions of Section 144 of the SAT Act 1950.
102. Section 143, ibid.

the *khatiyan* prepared and revised under the provisions of sections 144 of the Act is presumed to be correct unless other evidence e.g. deed or rent receipt (*dakhila*) etc. proves the contrary.[103]

16. The Act contains the provisions for appeal, revision or review. An against an order of a Revenue Officer lies with the Collector under whom he works, against an order of a Collector to the Divisional Commissioner of the division in which the district is situated, and against any order of the Divisional Commissioner to the Board of Revenue. Any Revenue Officer may review and change his or his predecessor's order.[104]
17. By the State Acquisition and Tenancy (Amendment) Act 2004, Section 145A-I has been inserted in the SAT Act 1950 under which the order of a Settlement Officer (Revenue Officer) made during survey and settlement of land in an area is made challengable in the Land Survey Tribunal and an appeal can be preferred up to the Appellate Division of the Supreme Court.

As there was no provision in the Bengal Tenancy Act about the rights and obligations of the non-agricultural tenants, they were regulated by the provisions of the Contract Act (Act IX of 1872) and the Transfer of Property Act (Act IV of 1882). As a result, non-agricultural tenants could be evicted after the expiry of the period of their lease and landlords could also arbitrarily increase their rents at the time of renewal of the lease. The Non-agricultural Land Rent Assessment Act of 1936, being applicable only in respect of temporarily settled and Government *khas mahal* lands, could not relieve the miseries of a large number of non-agricultural tenants under the private landlords. In 1938, the Non-agricultural Land Enquiry Committee, popularly known as Chandina Committee, was constituted. When landlords started evicting non-agricultural tenants after the formation of this committee, the Bengal Non-agricultural Tenancy (Temporary Provision) Act 1940 was enacted by the Government as a temporary measure to prevent such evictions.

On the basis of the recommendations of this committee, the East Bengal Non-agricultural Tenancy Act (Act XXIII of 1949) was enacted to give relief to non-agricultural tenants.

1. According to this law, any land used for purposes other than agriculture or horticulture was non-agricultural.

---

103. Section 144A, ibid.
104. Sections 146-151, ibid.

2. Non-agricultural tenants were of two classes: tenants and under tenants.
3. Non-agricultural tenants having possession for 12 years or more had rights similar to those of perpetual tenants and could not be evicted. But other tenants and under tenants had no such rights and could be evicted under the provisions of the said Act.
4. Rights of non-agricultural tenants or under tenants could be inherited by their heirs after their intestate death and was also transferable by registered instruments,
5. The immediate superior landlords of such tenants or their co-sharers had right of pre-emption under certain circumstances.
6. The Government could direct preparation of *khatiyan*s and assessment of rents of non-agricultural lands by Revenue Officers.
7. The rents of non-agricultural tenants could not be increased within 15 years and that of under tenants within 5 years of such assessment, except on the ground of improvement of the land, or increase of the area of the holding.
8. Non-agricultural tenants could deposit rents in Court on the refusal of landlords to amicably accept the same.
9. Landlords could recover arrears of rents by filing suits in Civil Courts and could sell in auction non-agricultural land of defaulting tenants in execution of a decree for arrears of rent.
10. Under certain circumstances landlords could evict non-agricultural tenants or under tenants in execution by filing suits in Civil Courts.
11. The provisions of the Act were and still are not applicable in respect of land held by any port, railway or local authority, or land leased out for gathering forest, or mineral products, or for exercise of fishery right, or land acquired by the Government for use by any of its departments, or any *waqf* or trust land.

Since final publication of *khatiyan*s prepared or revised and compensation assessment rolls and payment of compensation to the rent receivers after acquisition of their interests in non-agricultural land and imposition of prohibition of sub-lease of non-agricultural land and repeal of many provisions of the Act by the Ordinance No. IX of 1967, the said Act has lost its importance. Except exercising right of pre-emption by a co-sharer of non-agricultural land after transfer of share by another co-sharer in such land, other unrepealed provisions of the Act have virtually become inoperative.

Under the provisions of the Land Acquisition Act (Act No. I of 1894) and the (Emergency) Requisition of Property Act (Act No. XIII of 1948), the Government could acquire or requisition any house or land for public purpose or in public interest. After repealing the Land Acquisition Act (Act No. I of 1894) and the (Emergency) Requisition of Property Act (Act XIII of 1948), the Requisition and Acquisition of Immovable Property Ordinance (Ordinance No. II of 1982) was promulgated, re-enacting with necessary modifications the provisions of the repealed laws and providing for releasing unused requisitioned lands to the previous owners or their heirs. But in the case of unused acquired lands the Government is not bound to restore them.[105] The Emergency Requisition of Property Act (Act No. IX of 1989) provided for requisition of property to meet any emergency created by flood, diluvion etc.

The Bangladesh Government and Local Authority Lands and Buildings Ordinance (Ordinance No. XXIV of 1970) was promulgated to evict unauthorised occupiers from the land and buildings of the Government and local authorities.

The Hats and *Bazars* (Establishment and Acquisition) Ordinance (Ordinance No. XIX of 1959) provided for establishment of hats and *bazars* with prior licence from the Collector by the person in any land in his possession, and for forfeiting the land on which such hat and *bazar* is established without such licence, and also to acquire any hat and bazaar established after final publication of compensation assessment rolls and payment of compensation by publication of notice in the Official Gazette.

The *Waqfs* Ordinance (Ordinance No. I of 1962) was promulgated for the administration and management of *waqf* properties meaning properties permanently dedicated by a Muslim for any purpose recognised by Muslim Law as pious, religious or charitable and including any other endowment or grant for the aforesaid purposes after repealing the Bengal *Waqf* Act (Act No. XIII of 1934).[106]

When the ceiling of land to be retained by a family was increased from 100 *bighas* to 375 *bighas* during the Martial Law rule of Pakistan in 1961 by the Ordinance No. XV of 1961, landholding per family substantially went down amongst average peasant families, and the number of landless peasants increased.

By the provisions of the State Acquisition and Tenancy (Third Amendment) Order (President's Order No.96 of 1972) the Government

---

105. *Abul Bashar v. Bangladesh* 50 DLR (AD) 11.

106. Section 2(10) and (12) of the *Waqfs* Ordinance (Ordinance No. I of 1962).

of Bangladesh exempted peasants from paying rent of agricultural lands up to 25 *bighas* per family.

The Bangladesh Land Holding (Limitation) Order (President's Order No. XCVIII of 1972) reduced the ceiling of land per family again up to 100 *bighas*, and provided for vesting the excess land in the Government for distribution along with other Government *khas* lands to landless peasants.

By the State Acquisition and Tenancy (Fourth Amendment) Order (President's Order No.CXXXV of 1972) the provision of reduction of rent of the tenants of the diluviated land was retained, but the right of such tenants to re-enter such land after their reappearance was taken away, giving only preferential claim to such tenants or their heirs to get settlement of those lands under the Government policy for settlement of Government *khas* lands. Similarly, by the State Acquisition and Tenancy (Amendment) Order (President's Order No.LXXII of 1972) the right of a tenant to own accreted land contiguous to his land was taken away, vesting the same in the Government.

By the State Acquisition and Tenancy (Second Amendment) Order (President's Order No. XXIV of 1973) and the State Acquisition and Tenancy (Second Amendment) Order (President's Order No. LXXXVIII of 1972) the definition of usufructuary mortgage was extended to include land transferred with a contemporaneous agreement to repurchase the same within a fixed time. The period of possessing mortgaged land by the mortgagee was reduced to 7 years and the mortgagor was given the right to get back possession of such land through the Revenue Officer along with the Civil Court.[107]

The Bangladesh Laws (Repealing and Amending) Order (President's Order No. XII of 1973) abolished the Board of Revenue, which was constituted in 1786 by the East India Company to control, manage and supervise the land administration. The power of control, management and supervision of all Revenue Officers was vested in the Government. The power to hear appeals from the decision of the Divisional Commissioner was given to the Government in place of the abolished Board of Revenue.

To relieve the Secretary of the Ministry of Land from performing the functions of control, management and supervision of all Revenue Officers and from hearing appeals and revisions against decisions of the Divisional Commissioner on behalf of the Government since the abolition of the Board of Revenue, the Board of Land Administration was constituted in

---

107. Sections 2(6), 95 and 95A of the SAT Act 1950.

1980 with a chairman and at least two members by the Board of Land Administration Act (Act No. XIII of 1981).

By the Land Reform Board Act (Act No. XXIII of 1989) and the Land Appeal Board Act (Act No. XXIV of 1989) the Board of Land Administration was bifurcated in 1989, into-

1. the Land Reforms Board entrusted with the supervision and control of all other Revenue Officers and
2. the Land Appeal Board with the function of deciding quasi-judicial matters. The Act also contains provisions for preferring appeal to the Government against the decision of the Land Appeal Board by an aggrieved person.

Now the hierarchy of the land administration stands from bottom to top such as the Office of *Tahshildar*[108], the Office of Assistant Commissioner (Land), District Collectorate, Collectorate of Divisional Commissioner, the Board of Land administration consisting of the Land Reform Board and the Land Appeal Board and the Ministry of Land.[109] During survey and settlement of land in any area, the work of the Revenue Officer who is designated with the additional duty of Settlement Officer, gets under the control of the Directorate of Land Records and Surveys.[110]

The *Tahshildar* is burdened with the following duties[111]

1. Collection of current and arrear taxes from the land owners
2. Maintaining record of the collected taxes and depositing them with the District treasury
3. Checking annual demand, preparing return and producing, preparing particulars for relief and reduction of taxes and producing, enlisting defaulters
4. Taking possession of *khas* lands, maintaining records and its distribution
5. Maintaining procedural records of the collection of taxes and the demands
6. Instituting certificate cases and other suits as per the defaulters' list
7. Inspection of *khas* lands and taking possession of accreted lands

---

108. Rule 9 of the Government Estate Manual 1958.
109. Siddiqui, Kamal, *Land Management in South Asia: A Comparative Study*, University Press Limited, Dhaka, 1997, p 386.
110. Rule 14 of the Tenancy Rules 1955.
111. Chapter VI of the Tenancy Rules 1955.

8. Sending proposal for mutation and striking off names in accordance with the list
9. Acquiring of lands in cases of void transfer, pre-emption, forfeitures, extinction and voluntary leaving of ownership
10. Regular inspection of Hat Bazaars and other *sairat mahals* and their protection.

Depending on the nature of work performed, the Assistant Commissioner (Land) is sometimes termed as Revenue Officer, Settlement Officer, Circle Officer etc. Basically an A/C (Land) is charged with the duties[112]

1. Maintaining and updating land records of rights[113],
2. Fixation of Land Development Tax etc.,
3. Collecting Land Revenue with the help of *tahshildars,*
4. Mutation and separation of record of rights and updating of records with the transfer of ownership of lands,
5. Settlement of *khas* lands, Reclaimed lands and maintenance of update records,
6. Disposal of rent certificates cases, collection of unrecovered Government revenue and Government dues by instituting certificate cases against the defaulters,
7. Reviewing its decision etc.[114]

The DC is entrusted with the following duties-

1. Maintaining and updating land records of rights,[115]
2. Hearing revenue appeals[116], revisions,[117]
3. Taking necessary steps in recovering khas lands,
4. Settlement of *khas* lands and *sairat mahal,*
5. Fixation of rents, remission and condonation,
6. Interference on illegal transfer, transfer by inheritance and transfer of title,
7. Management of waqf and debotter properties,
8. Management of abandoned and vested properties,

---

112. ibid.
113. Sections 143 and 144 of the SAT Act 1950.
114. Section 150, ibid.
115. Sections 143 and 144, ibid.
116. Sections 147 and 148, ibid.
117. Section 149, ibid.

9. Management of tea gardens and leasing,
10. Management of acquired and requisitioned properties,
11. Ordering Eviction,
12. Cancellation of settlement order,
13. Admitting *Kabuliat*.[118]

The Divisional Commissioner is entrusted with the duties-

1. Departmental,
2. Hearing appeals[119] and revisions,[120]
3. Inspection.[121]

The Land Reform Board performs such duties, which are conferred on them, regarding land reform and land administration and such other duties, which are entrusted with them by other laws.

The Land Appeal Board performs such duties which are conferred on them regarding land administration and such other duties which are entrusted with them by other laws. Normally it hears appeals and revision preferred against the decision of the Divisional Commissioner.[122] Besides, the Land Appeal Board has got the authority of reviewing its own decision if an application is made within 60 days and during the pending of the review application, its earlier decision gets stayed.[123]

The Ministry of Land is the final authority in the land administration. An appeal lies to the Ministry of Land from the decision of the Land Appeal Board within 60 days and until the appeal is disposed of, the decision of the Land Appeal Board gets stayed.[124] Its decision in appeal is final and conclusive.[125]

By the land Appeal Board (Amandment) Act 1990 the Ministry of Land is relieved of its duty to hear appeals preferred against the dicision of the Land Appeal Board.

---

118. Debnath, Narayan Chandra, *Bangladesher Bhumi Bybosthapona, Sahitya Prokash*, Dhaka, 1999, pp 24, 37, 38 and 41.
119. Sections 147 and 148 of the SAT Act 1950.
120. Section 149, ibid.
121. Chowdhury Faikuzzaman, *A Book on the Day to Day Procedure of the Land Administration*, vol.II, published by the author, 2nd Edition, Dhaka, 2003, pp 1461-1596.
122. Sections 147, 148 and 149 of the SAT Act 1950.
123. Section 2 of the Land Appeal Board (Amendment) Act 1990.
124. Section 6 of the Land Appeal Board Act 1989.
125. Rahman, Gazi Shamsur Rahman, *Land Laws of Bangladesh*, Kamrul Book House, Dhaka, 2000, p 670.

Though the Government exempted tenants from payment of rent or land revenue up to 25 *bighas* of land per family, payment of development and relief tax and other taxes including primary education cess were not exempted. The Land Development Tax Ordinance (Ordinance No. XLII of 1976) redesigned the rate of revenue and certain other schemes[126]

1. it abolished all the taxes such as development and relief tax and other taxes including primary education cess
2. it imposed graduated rate of land development tax payable annually
   a) at the minimum rate of three *paisa* per decimal of agricultural land held by a family holding up to two acres of land subject to the payment of a minimum tax of TK 1,
   b) at the maximum rate of TK 6 for two acres plus 15 paisa per decimal of agricultural land per family holding land beyond two acres but not exceeding five acres,
   c) at the maximum rate of TK 51 for more than five acres plus 36 paisa per decimal of agricultural land per family holding land beyond five acres but not exceeding ten acres,
   d) at the maximum rate of TK 231 for more than ten acres plus 60 paisa per decimal of agricultural land per family holding land beyond 10 acres but not exceeding fifteen acres,
   e) at the maximum rate of TK 531 for more than fifteen acres plus 95 paisa per decimal of agricultural land per family holding land beyond 15 acres but not exceeding twenty five acres,
   f) at the maximum rate of TK 1481 for twenty five acres plus 1.45 per decimal of agricultural land per family holding land beyond twenty-five acres,
   g) at the rate of TK 60 per decimal of non-agricultural lands in city, or large industrial areas used for commercial or industrial purposes, and at the rate of TK 12 per decimal if used for residential or other purposes.
   h) at the rate or TK 10 per decimal of lands situated at district headquarters or *pourashava* (municipality) area if used for commercial or industrial purposes and at the rate of TK 4 per decimal of land if used for residential or other purposes.[127]

---

126. Section 3 of The Land Development Tax Ordinance (Ordinance No.XLII of 1976).

127. Ibid.

In 1985, the rate of land development tax for non-agricultural land and in 1987 that for agricultural land was increased.

In 1991, the Government exempted agriculturist families holding up to 25 *bighas* of agricultural land from payment of the said tax with effect from the first day of the Bengali year 1398.[128]

In 1993, the rate of the land development tax for lands beyond 25 *bighas* was further increased.

The Land Reforms Ordinance (Ordinance No. X of 1984) has put through drastic reform in the land law and revenue system in the following way:

1. It provides for limitation on acquisition of more than sixty *bighas* of agricultural land whether by way of transfer, inheritance, gift, will or other means and it also provides for its being vested in the Government in excess. But this provision will not affect a person who has already got more than the ceiling herein mentioned before this provision came into effect.
2. It provides for equally sharing cost of seeds, irrigation, manure etc by the owner of the land and the *bargadar,* to equally share the produce of the land cultivated by the labour of the *bargadar.* Otherwise, it provides for giving two-thirds of the produce to the *bargadar* if the owner of the land failed to pay his share of such costs.
3. This law also provides for entering into a written contract between the owner of the land and his *bargadar* and prohibited evicting the *bargadar* without valid reasons.
4. It also provides for self-cultivation of the land by the owner and also allowed heirs of the deceased *bargadar* to *barga* cultivate the land within the *barga* period of such land.
5. This law also prohibits purchasing of agricultural land by any person in *benami* i.e., in the name of another person and provided for treating the apparent transferee of the land as the real owner.
6. This law also provides for exercising the right of pre-emption by the *bargadar* when the owner of the *barga* land transfers it to somebody else.[129]
7. This law also debars the Court or any other authority from attaching, forfeiting or selling any homestead land of an agriculturist and from dispossessing or evicting him from such land.

---

128. No corresponding English date is Available in the Act.
129. Section 13 of the Land Reform Ordinance 1984.

The Land *Khatiyan* (Chittagong Hill Tracts) Ordinance 1984 (Ordinance No. II of 1985) provided for the first time for survey and preparation of *khatiyans* in the name of the owners of land in Chittagong Hill Tracts.

The Bangladesh Debt Settlement Act (Act No. XV of 1989) provided for constituting a Debt Settlement Board in each *thana* for giving relief to the poor peasants who are compelled to transfer their lands to the creditors under different modes including sale up to one acre of land at a price up to TK 30,000 and to restore possession of such land to the transferor treating the same as mortgage or declaring the same as void.

By the provisions of the Bangladesh Abandoned Property (Control, Management and Disposal) Order (Order No. XVI of 1972) the Government is charged with the control, management and disposal of the abandoned property meaning any property owned by any person whether natural or legal, who is not present in Bangladesh or whose whereabouts are not known or who has ceased to occupy, supervise or manage in person his property, including any property owned by any person who is a citizen of a State, which was at war with Bangladesh after 25 March 1971 or any property taken over by the Bangladesh (Taking over of Control and Management of Industrial and Commercial Concerns) (Acting President's Order No.1 of 1972) but excluding any property whose owner is residing outside Bangladesh for any purpose not prejudicial to the interest of Bangladesh or any property which is in possession of the Government under any law for the time being in force.[130]

By the provisions of the Defence of Pakistan Ordinance (Ordinance No. XXIII of 1965) read with the Defence of Pakistan Rules 1965 enemy property has been defined as any property for the time being belonging to or held or managed on behalf of an enemy or any person resident in enemy territory.[131] The enemy property was taken under the control of the Government during the emergency proclaimed in Pakistan but it continued to remain there even after the emergency was lifted under the veil of the Enemy Property (Continuance of Emergency Provisions) Ordinance (Ordinance No. I of 1969). This enemy property law of Pakistan succeeded in Bangladesh, which got its independence through waging war, in the name of the Enemy Property (Continuance of Emergency Provisions) (Repeal) Ordinance (Ordinance No. IV of 1974). Later on it was named as the Enemy Property (Continuance of Emergency

130. Section 2(1) of the Bangladesh (Control, Management and Disposal) Order (Order No. XVI of 1972).

131. Rules 161 and 169 of the Defence of Pakistan Rules 1965.

Provisions) (Repeal) (Amendment) Ordinance (Ordinance No. XCIII of 1976), commonly known as vested property since the property got vested in the Government for its control, management and disposal. This law does not suit to the conditions of Bangladesh-

1. As an enemy property declared in Pakistan as the offspring of the war between Pakistan and India in accordance with its enemy property laws, cannot be an enemy property in Bangladesh in accordance with the enemy property laws of Pakistan since there was no war between Bangladesh and India.[132]
2. Certain rights and obligations of one State automatically succeed to another if the later State succeeds to former State.[133] As Bangladesh was not a successor State to Pakistan, rather it achieved its liberation by waging an all out war against Pakistan, the enemy property laws of Pakistan cannot succeed to Bangladesh.[134]
3. Bangladesh achieved its liberation by waging an all out war against Pakistan with the assistance of India. Again, there was a friendship treaty between Bangladesh and India and as such an Indian property cannot be treated an enemy property in Bangladesh by adopting the Pakistani enemy property laws.[135]
4. The Government of Bangladesh by virtue of the Proclamation of Independence and the Bangladesh Vesting of Property and Assets Order (Order No. XXIX of 1972) continues to retain properties of persons who left for India either being Indians or Pakistanis, getting them vested in the Custodian, later in itself. Sometimes, even the co-sharers of the properties left by persons either being Indians or Pakistanis, were divested of their possession and their properties are declared as vested or enemy properties. Rashed Khan Menon, a veteran politician has said that the divesting of their possession took place, only because of their being minorities, nothing else.[136]

---

132. Rakshit, M. K., *The Law of Vested Properties in Bangladesh*, published by Sree M. K. Rakshit, Chittagong, 1983, pp 1-32.
133. See in details, Starke, J. G., 'Succession to rights and obligations' *Introduction to International Law*, 10th Edition, Aditya Books Private Limited, New,Delhi, 1994, p 321.
134. Bhattacharya, D. C., *Enemy (Vested) Property Laws in Bangladesh*, published by Ms. Chitra Bhattacharya, Dhaka, 1991, pp 1-14.
135. Ibid.
136. Barkat Abul, *An Enquiry into Causes and Consequences of Deprivation of Hindu Minorities in Bangladesh through the Vested Property Act*, (ed.), Prip Trust, Dhaka, 2000, p 2.

Taking those into consideration, the Restoration of Vested Properties Act (Act No. XVI of 2001) was passed to return the properties vested in the Government to the rightful owners or their Bangladeshi successor-in-interest by making lists of restorable properties[137] and causing them to be published.[138]

It is quite interesting to note that the war between Pakistan and India gave rise to the enemy (vested) property law and the war between Bangladesh and Pakistan paved way for the abandoned property. Though those two were termed in two different names, they got the same background and by those laws the properties, abandoned or enemy got vested in the Government for its disposal.[139]

7. Conclusion

Most of the Bangladeshis are predominantly dependent on land for their daily living. Proper management of land can protect the interests of the *bona fide* cultivators and make their lives happier and healthier. To this end in view, the importance of reshuffling and introducing reform in the land management and land administration by making amendment to this existing laws or enacting laws where necessary cannot be exaggerated.

The following suggestions can be tried to fix the weakness remaining in the existing land laws and land administration:

1. The satellite survey can be introduced in the place of ancient, time consuming and nasty corruption leading cadastral survey.[140]
2. The Record-of-Rights can be preserved in computer database namely LIS (Land Information System) and the holders of Record-of-Rights can be given land ownership certificate, which can help detecting fabricated documents and preventing multiplicity of suits.[141]
3. The Office of Sub-Registrar and the Office of the Assistant Commissioner (Land) can be set up in the same place or the same office can be given the works of registering documents for transfer of land and its mutation.[142]

---

137. Section 9 of Restoration of Vested Properties Act (Act XVI of 2001).
138. *Land Administration Manual*, vol. II, Ministry of Land, Dhaka, 2003, pp 323-348.
139. Farooqui, M. I., *Law of Abandoned Property*, published by Mrs. Sultana Suraiya Akhtar, Dhaka, 2000, pp 34-35.
140. Op. cit., Hoque, (2000), p 253.
141. Ibid. pp 253-254.
142. Ibid. pp 254-255.

4. The Revenue Officer can be given power to dispose of suits relating to partition, possession, demarcation of boundary, authenticity of the deed, pre-emption etc. so that the litigants can save their time and money and can thus help taking the burden of the Civil Courts off.[143]
5. Alternative Land Dispute Resolution can be introduced for disposing of suits relating to partition, demarcation of boundary etc. by enabling and empowering Village Courts.[144]
6. Like the taxation cadre, the A C (Land) cadre in the Bangladesh Civil Service can be confined to land issues freeing the Assistant Commissioners from performing other duties. They can be equipped with proper training and logistics so that they can handle the land administration efficiently.[145]
7. To make settlement of *khas* lands, laws can be enacted defining *khas* lands, the landless, who are capable of getting settlement, prohibiting transfer of lands settled in the landless etc.[146]
8. The Land Reform Ordinance 1984 can be amended inserting provisions alike the 'operation *barga*' in West Bengal for making *khatiyan* in the name of the *bargadar* so as to protect the interests of the *bargadar*.[147]
9. Legislation can be enacted for ensuring proper plan and use of land so that agricultural land cannot be used for non-agricultural purposes or vice versa.[148]
10. Laws can be amended squeezing the scope of exercising the right of pre-emption e.g. the owner of the contiguous land can be removed from the list of persons capable of exercising the right of pre-emption or the provision for time limit for exercising the right of pre-emption can be specifically mentioned so that time limit starts from the date of transfer, not from the date of registration.[149]

---

143. Ibid. pp 255-257.
144. Ibid. p 261.
145. Ibid. pp 257-258.
146. Ibid. pp 258-260.
147. Op. cit., Hussain, (2000), p 108.
148. Op. cit., Hoque, (2000), pp 268-269.
149. Ibid. pp 269-270.