

## Balochistan Tenancy Ordinance, 1978

### Ordinance XXIV of 1978

*An Ordinance to regulate the rights and liabilities of tenants and landlords in the Province of Balochistan.*

[Gazette of Balochistan, Extraordinary, 27th December 1978,]

**No. Legis. 1-47/Laws/71-VIII.**—The following Ordinance made by the Governor of Balochistan on the 22nd May, 1978, is hereby published for general information.

**Preamble.**—WHEREAS it is necessary to provide a law to govern the rights and liabilities of tenants and the landlords in lands in the Province of Balochistan and matters connected therewith;

AND WHEREAS, the Governor is satisfied that circumstances exist which render it necessary to take immediate action.

NOW, THEREFORE, in pursuance of the Proclamation of the fifth day of July, 1977, read with the Laws (Continuance in Force) Order, 1977 (C.M.L.A. Order No. 1 of 1977) and in exercise of all powers enabling him in that behalf, the Governor of Balochistan is pleased to make and promulgate the following Ordinance.

#### Chapter 1

#### Preliminary

**1. Short title, extent and commencement.**—(1) This Ordinance may be called the Balochistan Tenancy Ordinance, 1978.

(2) It extends to the whole of Balochistan except the Tribal Areas.

**2. Definitions.**—In this Ordinance unless there is something repugnant in the subject or context.

(1) "land" means land which is not occupied as the site of any building, in a town or village and is occupied or has been let for agricultural purposes or for purposes subservient to agriculture, or for pasture, and includes the sites of buildings and other structures on such land.

#### Comments

Ejectment petition. In said petition it was averred that respondents were inducted as tenants/bazgers in land of appellant but they failed to vacate houses in their possession. Inquiry. Report of Tehsildar indicated that houses were situated in 'Abadi Deh' and as such did not fall within meaning of land as defined in said Ordinance. However, respondents were ordered to vacate the premises in their possession by the Revenue. For a Writ petition was allowed by High Court. Controversy regarding jurisdiction. Consent of parties. Whether respondents were liable to be ejected from houses in dispute under the Ordinance after they ceased to be tenant on lands owned by appellant? Question of. **Held:** In instant case, houses in question were not situated in land which was let for tenancy to respondents or occupied by them under tenancy but were situated in 'Abadi Deh' thus could not be termed as part and parcel of tenancy giving jurisdiction to Revenue Court to initiate ejectment proceedings under the said Ordinance. When a Court suffers jurisdiction, no amount of consent or acquiescence in proceeding can invest such Court with such jurisdiction. No question of estoppel was attracted in such circumstances. Neither any misreading or non-reading of evidence on record nor any infirmity legal or factual, in the impugned judgment. Civil appeal dismissed.

**Key Terms:**— Tenancy. [Site situated in the 'Abadi Deh' does not fall in tenancy under the Balochistan Tenancy Ordinance, 1978].

Ejectment of occupants was sought from the houses situated in Abadi Deh. Jurisdiction. Where the houses in question were not situated in the land which was let for Tenancy to the tenants or occupied by them under the Tenancy but were situated in "Abadi Deh", such land could not be termed as "part and parcel of the Tenancy" giving jurisdiction to Revenue Court to initiate ejectment proceedings under the Balochistan Tenancy Ordinance, 1978. In the present case, with consent of the parties, case was sent for adjudication to the Revenue Court. Such consent did not confer jurisdiction on the Revenue Court, which otherwise had no jurisdiction in the matter. In view of the admitted position that the houses in question were situated in

place in a village which was not a site of building occupied on the land of Tenancy let for agricultural purposes. When court suffered from want of jurisdiction, no amount of consent or acquiescence in the proceedings could invest such court with the jurisdiction and principle of estoppel was not attracted in such circumstances. Principles.<sup>1</sup>

*Land Connotation.*--- Land has been defined to mean, land which was not occupied as the site of any building, in a town or village and was occupied or had been let for agricultural purposes or for purposes subservient to agriculture, or for pasture and included the sites of buildings or other structures on such land. Brick kiln would not fall within such definition nor would the Ghair Mumkin Gaudi. Land in question being not within the definition of land as described in Balochistan Tenancy Ordinance, 1978, dispute relating thereto, could not be taken to Revenue Court.<sup>2</sup>

(2) "pay" with its grammatical variations and cognate expressions, includes, when used with reference to rent "deliver", and "render", with their grammatical variations and cognate expressions;

(3) "rent" means whatever is payable to a landlord in money, kind or service by a tenant on account of the use or occupation of land held by him; but it shall not include any cess, village cess or other contribution or due or any free personal service;

(4) "arrears of rent" means rent which remains unpaid after the date on which become payable.

(5) "Tenant" means a person who holds land under another person and is or, but for a special contract, would be liable to pay rent for that land to that other person, but it does not include:

(a) a mortgage of the rights of a land-owner, or

(b) a person to whom a holding has been transferred or an estate or holding has been let in farm, under the Balochistan Land Revenue Act, 1967, for the recovery of an arrear of land revenue or of a sum recoverable as such an arrear; or

(c) A person who takes from the Government a lease of unoccupied land for the purpose of subletting it;

(6) "landlord" means a person under whom a tenant hold land, and to whom the tenant is, or but for a special contract would be liable to pay rent for that land;

(7) "Tenant" and "landlord" include the predecessors and successors-in-interest of a tenant and landlord, respectively;

(8) "Tenancy" means a parcel of land held by a tenant of

landlord under lease of one set of conditions.

(9) "estate", land-owner" and "holding" have the meanings respectively assigned to those words in the Balochistan Land Revenue Act, 1967.

(10) "land revenue" means revenue assessed under any law for the time being in force or assessable under the Balochistan Law Revenue Act, 1967 and includes:-

(a) any rate imposed in respect of the increased value of land due to irrigation, and

(b) any sum payable in respect of land by way of quit rent or of commutation for service, to the Government or to a person to whom the Government has assigned the right to receive the payment.

(11) "Rate and cess" means rates and cesses which are primarily payable by land-owners, and includes;

(a) The local rate, if any, payable under Article 59, of the Basic Democracies Order of 1959, from land-owners for the use of or benefits derived from such works.

(b) Any annual rate chargeable on owners of land under Section 59 of the Canal and Drainage Act, 1873;

(c) The village officers cesses; and

(d) Sums payable on account of village expenses.

(12) "Village cess" means any cess, contribution of due which is customarily leviable, from land-owners and non-land-owners alike within neither a payment for the use of any private property or for personal service, nor imposed by or under any enactment for the time being in force, and does not mean any cess, contribution or due leviable, for the benefit of any individual residents or class of residents in the estate, or in relation to any property which is not meant for the common use of all the residence.

Explanation.- if any question arises whether any cess, contribution or due is or is not a village cess, the decision of the Provincial Government shall be conclusive and shall not be liable to be questioned in any Court.

(13) "Village Officer means a Chief headman, headman or Patwari.

(14) "Revenue Officer" or "Revenue Court", in any provision of this Ordinance means a Revenue officer or Revenue Court having authority under this Ordinance to discharge the functions of a Revenue Officer, or Revenue Court as the case may be, under that provision.

(15) "Legal practitioner" means any legal practitioner within the meaning of the Legal Practitioners Act, 1879, except a mukhtar.

(16) "Agricultural year" means the year commencing on the sixteenth day of June or on such other date as the Provincial Government may by notification appoint for any local area.

(17) "Notification" means a notification published by the authority of the Provincial Government in the Official Gazette; and

(18) "Improvement" means, with reference to a tenancy, any work which is suitable to the tenancy and consistent with the conditions on which it is held, by which the value of the tenancy has been and continues to be increased, and which, if not executed on the tenancy, is either executed directly for its benefit, or is, after execution made directly beneficial to it.

*Explanation.*—It includes, among other things.

- (a) The construction of wells and other works for the storage or supply of water for agricultural purposes.
- (b) The construction of work for drainage and for protection against floods.
- (c) The planting of trees, the reclaiming, enclosing, levelling and terracing of land for agricultural purposes and other works of a like nature.
- (d) The erection of building required for the more convenient or profitable cultivation of a tenancy; and
- (e) The renewal or reconstruction of any of the foregoing works, or such alterations therein, or additions thereto, as are not of the nature of mere repairs and as durably increase their value.

But it does not include such clearances, embankments, levellings, enclosures, temporary wells and water channels as are made by tenants in the ordinary course of cultivations and without any special expenditure, or any other benefit accruing to land from the ordinary operations of husbandary.

*Explanation.* II. A work which benefits several tenancies may be deemed to be with respect to each of them, and improvement.

*Explanation.* III. A work executed by a tenant is not an improvement if it substantially diminishes the value of any other part of his landlord's property.

## Chapter II

### Classes of Tenants

There shall be for the purposes of this Ordinance the

following classes of tenants only, namely.

(a) Occupancy tenants.

(b) Lath band tenants; and

(c) Tenants-at-will.

3. Tenants having rights of occupancy.— (1) A tenant.—

(a) Who at the commencement of this Ordinance has been entered as hereditary (Mauroos) tenant in the record-of-rights prepared at the time of settlement; or

(b) Who at the commencement of this Ordinance has for more than two generations in the male line of descent through a grand-father, or grand-uncle and for a period of not less twenty years, been occupying land paying no rent therefor, beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon, or

(c) Who has permanent and hereditary rights of tenancy in the land subject to payment of rent and other such conditions as are prevalent of in the area either in the modified form or in the form of "riwaj" has a right of occupancy in the land so occupied.

(2) If a tenant proves that he has continuously occupied land for thirty years and paid no rent therefor beyond the amount of the land revenue thereof and the rates and cesses for the time being chargeable thereon, it may be presumed that he has fulfilled the conditions of clause (c) of sub-section (1).

(3) The words in clause (c) denoting natural relationship denote also relationship by adoption, including therein the customary appointment of an heir and successor.

by the usage of religious community.

#### Comments

Respondents were record in Revenue Record ad occupancy tenants. Petitioners claim that respondents were inducted into land as tenants-at-will, was neither believed by Appellate Court nor by High Court in revision. Petitioner had led sketchy evidence as to status of tenants being tenants-at-will which was disbelieved by two Courts below. Findings against appellants being concurrent, no ground existed or made out for interference, petition for leave to appeal was dismissed in circumstances.

#### 4. Right of occupancy in land taken in exchange.—

If the tenant has voluntarily exchanged the land, or any portion of the land, formerly occupied by him for other land belonging to the same landlord the land taken in exchange shall be held to be subject to the same right of occupancy as that to which the land given in exchange would have been subject if the exchange had not taken place.

5. Establishment of right of occupancy on grounds other than expressly stated in Ordinance.—Nothing in the foregoing Sections of this Chapter shall preclude any person from establishing a right of occupancy on any ground other than the grounds specified in those sections.

6. Right of occupancy not to be acquired by mere lapse of time.—No tenant shall acquire a right of occupancy by mere lapse of time.

7. Right of occupancy not to be acquired by joint owner in land held in joint ownership.—In the absence of a custom to the contrary no one of several joint owners of land shall acquire a right of occupancy under this Chapter in land jointly owned by them.

#### 8. Lathband tenants: (1) A tenant.

(a) who at the commencement of this Ordinance has been recorded in the record-of-right as a Lathband tenant; or

(b) Who converts culturable or Khushaba lands into

4

Sailaba lands by constructing embankments and Bundat; or

(c) Who with the consent of his landlord owner of the land installs a tubewell open surface well, Persian wheel or manages to irrigate the land by a pumping machine or by any other mechanism,

Has a right of occupancy in the land as long as he keeps the embankments in repairs and cultivates the land whenever opportunity is offered by the rainfall.

#### Comments

Suit for declaration and possession. Non-payment of share in agricultural produce by defendant-tenant. Defendant denied relationship of landlord and tenant between parties and claimed ownership over suit land for being in possession thereof for a considerable long period. Defendant's plea that plaintiff could claim possession of suit through Revenue Court, but not civil court. Validity. Had there been any relationship of landlord and tenant between the parties, then remedy under Balochistan Tenancy Ordinance, 1978 could have been filed. Cause of Action under S. 42 of Specific Relief Act, 1877 accrued to plaintiff on denial of his title to suit land by defendant. Such suit was competent in circumstances.<sup>1</sup>

9. Tenants - at - will.-- All other tenants except those mentioned in section 3 to 8 shall be tenants-at-will provided that a tenant-at-will shall acquire the status of an occupancy tenant or Lathband tenant if he obtains a decree of the Court of competent jurisdiction.

#### Comments

Respondents were recorded in Revenue Record as occupancy tenants. Petitioner's claim that respondents were inducted into land as tenants-at-will, was neither believed by Appellate Court nor by High Court in revision. Petitioner had led sketchy evidence as to status of tenants being tenants-at-will which was disbelieved by two Courts below. Findings against appellants being concurrent, no ground existed or made out for interference. Petition for leave to appeal was dismissed in circumstances.<sup>2</sup>

## Chapter III - Rent

## Rents Generally

10. **Rights and liabilities regarding and Government dues.**—(1) The rent of any land payable by the Tenant by division of the produce shall remain on the same as it existed at the time of coming into force of this Ordinance. ~~6~~

(2) Land Revenue and other taxes, cesses, surcharges and levies on land shall be payable by the owner;

(3) The liability for payment of water rate and providing seed for any land shall be that of the owner or other person in possession thereof other than the tenant.

(4) The cost of Fertilizers and Pesticides requires for the land comprised in a tenancy shall be shared equally between the owner and the tenant.

(5) No owner or person in possession of any land shall levy any cess on or take any labour from any of his tenant.

(6) Any dispute between the landlord and a tenant in respect of the rent payable by the latter to the former shall be treated as a matter falling under section 63 of this Ordinance.

(7) Nothing in this section shall apply to the case of a tenant holding any land under the Provincial or the Federal Government or under any Municipal Committee or any other authority as may be notified by the Provincial Government in this behalf, or to a tenant of any land, which under the provisions of this Ordinance or any other law for the time being in force, has been reserved by the landlord for personal cultivation.

11. **Commutation and alteration of rent.**—(1) where rent is taken by any of the following methods, namely;

(a) by division or appraisement of the produce.

(b) By rates fixed with reference to the nature of the

crops grown.

(c) By a rate on a recognized measure of area;

(d) By a rent in gross on the tenancy; or

(e) Partly by one of the methods specified in clauses (a), (b) and (c) of this sub-section, and by another party or others of them.

(f) One of them methods shall not be commuted in whole or in part into another without the consent of both landlord and tenant.

(2) In the absence of a contract or a decree or order of competent authority to the contrary, a tenant, whose rent is taken by any of the methods specified in clauses (a), (b) and (c) of sub-section (1), or by the method specified in clause (d) of the sub-section, shall not be liable to pay for a tenancy rent at any higher rate, or of a higher amount, as the tenancy for the preceding agricultural year.

12. **Payment for land occupied without consent of landlord.**—Any person in possession of land occupied without the consent of the landlord shall be liable to pay for the use or occupation of that land at the rate of rent payable in the preceding agricultural year, or if rent was not payable in that year, at such rate as the Court may determine to be fair and equitable.

*Appeal Jurisdiction.*—Inherent lack of jurisdiction found from pleadings by appellate Civil Court. Appellate Civil Court, held, rightly directed case to be tried by Revenue Court. Appellate Civil Court was justified in entertaining plea lack of jurisdiction and no further fact was required to be established.<sup>1</sup>

13. **Collection of rent of undivided property.**—When two or more persons are landlords of a tenant in respect of the same tenancy the tenant shall not be bound to pay part of the

rent of his tenancy to one of those persons and part to another.

14. **Presumption with respect of produce removed before division.**—Where rent is taken by division of the produce, if the tenant removes any portion of the produce at such time or in such a manner as to prevent the due division thereof, or deals therewith in a manner contrary to established usage, the produce may be deemed to have been as full as the fullest crop of the same description on similar land in the neighbourhood for that harvest.

15. **Finality of the decision of the officer conducting the division.**—If either the landlord or tenant neglects after a notice of the time and place at which the division will be made is given to him, to attend either personally or through agent at the proper time for making the division of the produce, or if there is a dispute about the decision of the officer conducting the division shall be final.

16. **Cost of division.**—The result of the division shall be recorded and signed by the officer conducting the division who shall also make order as to the costs of division as he thinks fit.

17. **Enhancement of produce rents of occupancy tenants and Lathbands tenants.**—Where the rent of a tenant having a right of occupancy and that of Lathband tenants in any land is a share of the produce or of the appraised value thereof, with or without an addition nature of the crops grown, or is a rent in gross payable in kind, the tenant shall be entitled to occupy the land at that rent:

Provided that, when the land or any part thereof previously not irrigated or flooded becomes irrigated or flooded the rent payable in respect of the land or part may, subject to the provisions of this Ordinance be enhanced to the share or rates, or with reference to the rent in, gross, as the case may be, paid by tenant, having similar right, of occupancy, for irrigated or flooded land of a similar description and with similar

advantages.

18. **Reduction of rents referred to in the last foregoing Section.**—When the land, or any part of the land held by a tenant having a right of occupancy to whom the last foregoing Section applies, ceases to be irrigated or flooded, the rent payable in respect of the land or part may be reduced to the share of rates, or with reference to the rent in gross, as the case may be, paid by tenants, having a similar right of occupancy, for unirrigated or unflooded land of similar description and with similar advantages.

19. **Enhancement and reduction of rent by suit.**—(1) A Revenue Court on the suit of either landlord or tenant, may, subject other provisions of this and other sections of this Ordinance, enhance or reduce the rent of any tenant having a right of occupancy.

(2) Where a decree for the enhancement of the rent of such a tenant has been passed under this Ordinance, a suit for a further enhancement of his rent shall not lie till the expiration of five years from the date of the decree unless in the meantime the local areas in which the land comprised in the decree is situate, has been generally reassessed and the revenue payable in respect of that land has been increased.

(3) Subject to the provisions of sub-section (2), a suit instituted for the enhancement of the rent of a tenant having a right of occupancy shall not be entertained in either of the following cases, namely.

- (a) If within the ten year next preceding its institution his rent has been commuted under section 11 or enhanced under this section.
- (b) If within that period a decree has been passed under this Ordinance dismissing on the merits a suit for the enhancement of this rent.

tenancy not having been irrigated or flooded at the time of such commutation, enhancement or decree, has become irrigated or flooded.

**20. Discretion as to extent or enhancement or reduction.**—In enhancing or reducing the rent of any land under the foregoing provisions of this Chapter, the Court shall, within the limits prescribed by those provisions, enhance or reduce the rent to such an amount as it considers fair and equitable, but shall not in any case fix the rent at the sum less than the amount of the land revenue of the land the rates and cesses chargeable thereon.

**21. Time for enhancement or reduction to take effect.**—(1) Unless the Court decreeing an enhancement of rent otherwise directs, the enhancement shall take effect from the commencement of the agricultural year next following the date of the decree.

(2) A Court decreeing a reduction of rent shall specify in the decree the date on and from which the reduction is to take effect.

**22. Alteration of rent on alteration of area.**—(1) Every tenant shall:

- (a) be liable to pay additional rent for the land proved to be in excess of the areas for which rent has been previously paid by him, unless it is proved that the excess is due to the addition to his tenancy of land which, having previously belonged to the tenancy, was lost by diluvion or otherwise without any reduction of the rent being made; and.
- (b) be entitled to an abatement of rent in respect of any deficiency proved, to exist in the area of his tenancy as compared with the area for which rent has been previously paid by him, unless it is

proved that the deficiency is due to the loss of land which was added to the area of the tenancy by alluvion or otherwise, and that an addition has not been made to the rent in respect of the addition to the area.

(2) In determining the area for which rent has been previously paid, the Court shall have regard to the following, among other matters, namely:

- (a) the origin and conditions of the tenant's occupancy, for instance, whether the rent was a rent in gross for the entire tenancy.
- (b) Whether the tenant has been allowed to hold additional land in consideration of an addition to his total rent or otherwise with the knowledge and consent of the landlord, and
- (c) The length of time during which has been no dispute as to rent or area.

(3) In adding to or abating rent under this section, the Court shall add to or alter the rent to such an amount as it deems to be fair and equitable, and shall specify in its decree the date on and from which addition or abatement is to take effect.

(4) An addition or abatement of rent under this section shall not be deemed an enhancement or reduction of rent within the meaning of this Ordinance.

**23. Remission of rent by Courts decreeing arrears.**—notwithstanding anything in the foregoing Sections of this Chapter, if it appears to a Court making a decree for an arrear of rent that the area of a tenancy has been so diminished by diluvion or otherwise, or that the produce thereof, has been so diminished by drought, hail, deposit of sand or other like calamity, that the full amount of rent payable by the tenant cannot be equitably decreed, the Court may, with the previous sanction of Collector, allow such remission from the rent

payable by the tenant as may appear to it to be just.

**24. Power to deposit rent in certain cases with Revenue Officer.**—In either of the following cases, namely.

- (a) When a landlord refuses to receive, or grant of receipt for, any rent payable in money when tendered to him by a tenancy;
- (b) When a tenant is in doubt as to the person entitled to receive rent payable in money, the tenant may apply to Revenue Officer for leave to deposit the rent in his office, and the Revenue Officer shall receive the deposit if, after examining the applicant, he is satisfied that there is sufficient ground for the application and if the applicant pays the fee, if any, chargeable for the issue of the notice next hereinafter referred to.

**25. Effect of depositing rent.**—(1) When a deposit has been so received, it shall be deemed to be a payment made by the tenant to his landlord in respect of rent due.

(2) The Revenue Officer receiving the deposit shall give notice of the receipt thereof, to every person whom he has reason to believe claims or is entitled to the deposit, and may pay the amount thereof to any person appearing to him to be entitled thereof, or may if he thinks fit, retain the deposit pending the decision of a competent Court as to the person so entitled.

(3) No suit or other proceeding shall be instituted against the Government or against any officer of the Government, in respect of anything done by a Revenue Officer under this section, but nothing in this sub-section shall prevent any person entitled to receive the amount of any such deposit from recovering it from a person to whom it has been paid by a Revenue Officer.

**26. Recovery of rent from attached produce.**—(1) If

an order is made by any Court for the attachment of the produce of a tenancy, or of any part of a tenancy, the landlord may apply to the Revenue Officer by whom the attachment is to be or has been made to sell the produce and pay to him out of the proceeds of the sale thereof the amount or value of.

- (a) any rent which has fallen due to him in respect of the tenancy within the year immediately preceding the application, and
- (b) The rent which will be falling due after the harvesting of the produce and is chargeable against it.

(2) The Revenue Officer shall give the person at whose instance the attachment was made an opportunity of showing cause why the application of the landlord should not be granted, and, if he finds the landlord's claim to the whole or any part of the rent to be proved he shall cause the produce of such portion thereof as he may deem necessary to be sold, and shall apply the proceeds of the sale in the first instance to satisfy the claim.

(3) The finding of the Revenue Officer under sub-section (2) shall have the force of a decree in a suit between the landlord and the tenant.

#### Chapter IV

#### Relinquishment, abandonment and ejection

##### Relinquishment

**27. Relinquishment by tenant for a fixed term.**—A tenant holding for a fixed term under a contract or a decree or order of competent authority may relinquish his tenancy without notice at the end of that term.

**28. Relinquishment by any other tenant.**—(1) Any other tenant may relinquish his tenancy by giving verbally or in writing to his landlord, or to his landlord's agent on or before

the fifteenth day of January in any year, notice of his intention to relinquish the tenancy at the end of the agricultural year tenant current.

(2) The tenant may, instead of, or in addition to, giving the notice in the manner mentioned in sub-section (1), apply to a Revenue Officer on or before the date aforesaid to cause the notice to be served on the landlord, and the Revenue Officer, on receiving the cost of service from the tenant, shall cause notice to be served as may be.

(3) If the tenant does not give motive in the manner prescribed in this Section, shall be liable to pay the rent of his tenancy for any part of the ensuing agricultural year during which the tenancy is not landlord himself.

**29. Relinquishment of part only of a tenancy.**— A tenant cannot, without the consent of his landlord, relinquish a part only of his tenancy.

**30. Abandonment of tenancy by occupancy tenant.**— if a tenant having a right of occupancy fails for more than one year without sufficient cause to cultivate his tenancy either by himself or through some other person, and to arrange for the rent thereof as if falls due, the right of occupancy shall be extinguished from the end of that year.

**31. Grounds of ejectment of occupancy tenant.**— A tenant having a right of occupancy shall be liable to be ejected from his tenancy on any of the following grounds, namely.

- (a) that he has failed to pay the rent in accordance with the terms of his tenancy.
- (b) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it.
- (c) that he has failed to cultivate or arrange for the cultivation of the land comprised in the tenancy in accordance with the terms thereof, or if there are

no express terms in this cultivation in the locality.

- (d) that a decree for an arrear of rent in respect of the tenancy has been passed against him and remains unsatisfied.

**32. Grounds of ejectment of lathband tenant.**— A lathband tenant shall be liable to be ejected from his tenancy on any of the following grounds, namely;

- (a) that he has failed to pay the rent in accordance with the terms of his tenancy.
- (b) that he has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it;
- (c) Cultivation of the land comprised in the tenancy in accordance with the terms thereof, or if there are no express terms in this behalf, in accordance with the customary manner of cultivation in the locality.

**33. Cognizance of ejectment suit.**— A suit of ejectment by a landlord against his tenant shall be filed in a Revenue Court of an Assistant Collector of I grade, hereinafter referred to as the Court.

#### Comments

Ejectment petition. In said petition it was averred that respondents were inducted as tenants/bazgers in land of appellant but they failed to vacate houses in their possession. Inquiry. Report of Tehsildar indicated that houses were situated in 'Abadi Deh' and as such did not fall within meaning of land as defined in said Ordinance. However, respondents were ordered to vacate the premises in their possession by the Revenue. For a Writ petition was allowed by High Court. Controversy regarding jurisdiction. Consent of parties. Whether respondents were liable to be ejected from houses in dispute under the Ordinance after they ceased to be tenant on lands owned by appellant? Question of. **Held:** In instant case, houses in question were not situated in land which was let for tenancy to respondents or occupied by them under tenancy but were situated in 'Abadi Deh' thus could not be termed as part and parcel of tenancy giving jurisdiction to Revenue Court to initiate ejectment proceedings under the said Ordinance. When a Court

suffers jurisdiction, no amount of consent or acquiescence in proceedings can invest such Court with such jurisdiction. No question of estoppel was attracted in such circumstances. Neither any misreading or non-reading of evidence on record nor any infirmity legal or factual, in the impugned judgment. Civil appeal dismissed.

**Key Terms:-** Tenancy. [Site situated in the 'Abadi Deh' does not fall in tenancy under the Balochistan Tenancy Ordinance, 1978].<sup>1</sup>

Ejectment of occupants was sought from the houses situated in Abadi Deh. Jurisdiction. Where the houses in question were not situated in the land which was let for Tenancy to the tenants or occupied by them under the Tenancy but were situated in "Abadi Deh", such land could not be termed as "part and parcel of the Tenancy" giving jurisdiction to Revenue Court to initiate ejectment proceedings under the Balochistan Tenancy Ordinance, 1978. In the present case, with consent of the parties, case was sent for adjudication to the Revenue Court. Such consent did not confer jurisdiction on the Revenue Court, which otherwise had no jurisdiction in the matter in view of the admitted position that the houses in question were situated at a place in a village which was not a site of building occupied on the land of Tenancy let for agricultural purposes. When court suffered from want of jurisdiction, no amount of consent or acquiescence in the proceedings could invest such court with the jurisdiction and principle of estoppel was not attracted in such circumstances. Principles.<sup>2</sup>

**34. Application for ejectment of tenant.—(1)** Landlord may make an application with as many copies as the number of tenants to be ejected for the ejectment of the tenant on any one or more of the grounds mentioned in sections 30, 31 and 32 of the Ordinance.

(2) The application under sub-section (1) shall be accompanied by:

- (a) an attested copy of latest entry in the Register Haqdarani Zamin relating to land mentioned in the application if such a Register has been prepared for the mauza concerned and;
- (b) an attested copy of the latest entry in the Jamabandi, if such a record has been prepared for the mauza concerned; and

(c) an attested copy of entries in the Register Girdawari relating to last two harvests, if such a Register is maintained for the mauza concerned.

(3) Every application shall be presented to the Court on any working day during office hours by the applicant personally or through an authorized agent.

(4) The statement and pleadings made by or on behalf of the landlord shall be as brief as the nature of the case admits and shall not be argumentative, but shall be confined, as much as possible, to simple and concise narration of the facts.

**35. Rule of Procedure.—(1)** On receipt of the application of a landlord, the Court shall if the application is in order and not open to objection, cause a notice, with a copy of the application, to be served from his tenancy or such portion thereof, as is mentioned in the application.

(2) The notice shall specify the name of the landlord on whose application it has been issued and shall give description of the land to which it relates.

(3) The Court, after hearing the parties, on a date fixed for the purpose, and after making such enquiries as it may consider necessary, shall pass an order directing the tenant to be ejected or the notice to be discharged, as the case may be.

**36. Contents of order of the Court.—**In every proceeding in which an order is passed on merits, the Court making the order shall also record a brief statement of the reasons on which it is based.

**37. Execution of order of ejectment.—(1)** In no case shall a tenant be ejected without paying such compensation to him, as he may be entitled to, for the crop, if any, or for preparing the land for sowing, if it has been so prepared, and for improvement, if any, his tenancy, as may be determined by the Court.

(2) The order for the ejection of tenant shall be executed within such dates as may be specified by the Court in his order and those dates shall be the dates as prescribed in the tenancy Law, and if there be no such law, the Court shall be guided by the custom and usage of the locality in this behalf.

38. **Time for ejection.** No order for the ejection of a tenant shall be executed before the Rabi crop has been harvested and after the Kharif sowing has started, unless the Court for reasons to be recorded, otherwise directs.

39. **Notice of ejection.** Before the execution of order of ejection a notice shall be served upon the tenant calling upon him to deliver the possession of the land to the landlord within a period not exceeding 30 days and if he fails to do so the Court shall issue a warrant of ejection which shall be executed by an official not below the rank of Kanungo with or without the assistance of Police as may be directed by the Court according to the circumstances of the case.

40. **Relief against forfeiture.**—(1) If in a suit for the ejection of a tenant on either of the grounds mentioned in section 30 and clauses (a), (b) and (c) of sections 31, 32 and 33 it appears to the Court that the injury caused by the Ordinance or omission on which the suit is based is capable of being remedied, or that an award of compensation will be sufficient satisfaction to the landlord therefore, the Court may, instead of making a decree for the ejection of the tenant, order him to remedy the injury within a period to be fixed in the order or order him to pay into Court, within such a period, such compensation as the Court thinks fit.

(2) The Court may, from time to time, for special reasons, extend a period fixed by it under sub-section.(1).

(3) If within the period, or extended period, as the case may be, fixed by the Court under this section, the injury is remedied or the compensation is paid a decree for the ejection of the tenant shall not be made.

41. **Relief for wrongful dispossession or ejection.**—(1) A tenant who has been ejected or dispossessed in an unauthorized manner may apply complaint in writing to the Revenue Officer with powers of an Assistant Collector of 1st Grade.

(2) On receipt of an application under sub-section (1) above, the Revenue Officer shall hear the complaint and also afford the defendant an opportunity of being heard; and after making such other enquiries as he may deem fit, shall pass an order.

(3) If the Assistant Collector of the 1st Grade or the Revenue Officer decides the case in favour of the tenant, he shall ensure that the tenancy is restored to him within 30 days of the date of order, but if an appeal or revision is preferred against that order, the Collector of the District shall ensure that it is restored within 30 days of the order of the appellate/revisional Court.

(4) In addition to restoration of tenancy, the Revenue Officer deciding the case or the Appellate or the Revisional Court may order that the landlord shall pay to the tenant such compensation as her or it, as the case may be, may deem fit for the hardship caused to the tenant due to the unlawful ejection and any damages done to the crops or lands involved in the tenancy during the period the tenant remained so ejected. This compensation shall be recovered from the landlord as arrears of land revenue. The landlord shall not be entitled to any compensation whatsoever, even if he has made any improvements on the land during the period of ejection in question and shall not be entitled to remove anything from the land after the date of first order against him.

(5) If the case is decided by the Assistant Collector of the 1st Grade, appeal shall lie to the Collector of the District and should be preferred within 15 days of the 1st Grade.

(6) The Commissioner may, at any time, on his own

action, or on an application made to him by the tenant within 15 days of passing of any order by the Assistant Collector of 1st Grade or Collector of the District, as the case may be, call for the record of any case pending before, or disposed of, by any of the above two Revenue Officers, and pass such order as he thinks fit:

Provided that no order shall be passed by the Commissioner revising or modifying any preceding order of a subordinate Revenue Officer affecting any person without giving such person an opportunity of being heard.

**42. Bar of relief by suit under section 9, Act 1 of 1877.**—Possession of a tenant or of any land comprised in a tenancy shall not be recoverable under section 9 of the Specific Relief Act, 1887, by a tenant dispossessed thereof.

#### Comments

Suit for declaration and possession. Non-payment of share in agricultural produce by defendant-tenant. Defendant denied relationship of landlord and tenant between parties and claimed ownership over suit land for being in possession thereof for a considerable long period. Defendant's plea that plaintiff could claim possession of suit through Revenue Court, but not civil court. Validity. Had there been any relationship of landlord and tenant between the parties, then remedy under Balochistan Tenancy Ordinance, 1978 could have been filed. Cause of action under S. 42 of Specific Relief Act, 1877 accrued to plaintiff on denial of his title to suit land by defendant. Such suit was competent in circumstances.

**43. Power for local Government to fix dates for certain purpose.**—The Provincial Government may for all or any of the territories under its administration by notification fix for the purposes of sections 28, 35 and 38 or any of those Sections, any other dates instead of those specified therein.

**44. Grounds of ejectment of tenancy-at-will.**—A tenant-at-will shall be liable to be ejected from his tenancy on any of the following grounds, namely:

- (a) That he has failed to pay the rent in accordance

with the terms of his tenancy.

- (b) That he has used the land comprised in the tenancy in a manner which renders it unfit for the purposes for which he held it;
- (c) That he has failed to cultivate or arrange for the cultivation of the land comprised in the tenancy in accordance with the terms thereof, or if there are no express terms in this behalf, in accordance with the customary manner of cultivation in the locality.
- (d) That he has sublet his tenancy.

#### Comments

Ejectment petition. In said petition it was averred that respondents were inducted as tenants/bazgers in land of appellant but they failed to vacate houses in their possession. Inquiry. Report of Tehsildar indicated that houses were situated in 'Abadi Deh' and as such did not fall within meaning of land as defined in said Ordinance. However, respondents were ordered to vacate the premises in their possession by the Revenue. Writ petition was allowed by High Court. Controversy regarding jurisdiction. Consent of parties. Whether respondents were liable to be ejected from houses in dispute under the Ordinance after they ceased to be tenant on lands owned by appellant? Question of. Held: In instant case, houses in question were not situated in land which was let for tenancy to respondents or occupied by them under tenancy but were situated in 'Abadi Deh' thus could not be termed as part and parcel of tenancy giving jurisdiction to Revenue Court to initiate ejectment proceedings under the said Ordinance. When a Court suffers jurisdiction, no amount of consent or acquiescence in proceedings can invest such Court with such jurisdiction. No question of estoppel was attracted in such circumstances. Neither any misreading or non-reading of evidence on record nor any infirmity legal or factual, in the impugned judgment. Civil appeal dismissed.

**Key Terms:**—Tenancy. [Site situated in the 'Abadi Deh' does not fall in tenancy under the Balochistan Tenancy Ordinance, 1978].

Ejectment of occupants was sought from the houses situated in Abadi Deh. Jurisdiction. Where the houses in question were not situated in the land which was let for Tenancy to the tenants or occupied by them under the Tenancy but were situated in "Abadi Deh", such land could not be termed

as "part and parcel of the Tenancy" giving jurisdiction to Revenue Court to initiate ejectment proceedings under the Balochistan Tenancy Ordinance, 1978. In the present case, with consent of the parties, case was sent for adjudication to the Revenue Court. Such consent did not confer jurisdiction on the Revenue Court, which otherwise had no jurisdiction in the matter in view of the admitted position that the houses in question were situated at a place in a village which was not a site of building occupied on the land of Tenancy for agricultural purposes. When court suffered from want of jurisdiction, no amount of consent or acquiescence in the proceedings could invest such court with the jurisdiction and principle of estoppel was not attracted in such circumstances. Principles.<sup>1</sup>

\*\*\*\*\*

## Chapter V

### Alienation and Succession to Right of occupancy

45. **Private transfer of right of occupancy under section 3 by tenant.**—(1) A tenant having a right of occupancy under Section 3 may transfer that right by sale, gift, or mortgage, subject to the condition mentioned in this Section.

(2) If he intends to transfer the right by sale, gift, mortgage, by conditional sale or usufructuary mortgage, he shall cause notice of his intension to be served on his landlord through a Revenue Officer and shall defer proceeding with the transfer for a period of one month from the date on which the notice is served.

(3) Within the period of one month the landlord may claim to purchase the right at such value as a Revenue Officer may, on application made to him in this behalf, fix.

(4) When the application to the Revenue Officer is to fix the value of a right of occupancy which is already mortgaged he shall fix the value of the right as if it were not mortgaged.

(5) The landlord shall be deemed to have purchased the right if he pays the value to the Revenue Officer within such time as that Officer appoints.

(6) On the value being so paid, the right of occupancy shall be extinct, and the Revenue Officer shall, on the application of the landlord, put the landlord in possession of the tenancy.

(7) If the right of occupancy was already mortgaged, the tenancy shall pass to the landlord unencumbered by the mortgage but the mortgage debt shall be a charge on the purchase money.

(8) If there is no such charge as aforesaid, the Revenue Officer shall, subject to any directions which he may receive from any Court, pay purchase money to the tenant.

(9) If there is such a charge, the Revenue Officer shall, subject as aforesaid, either apply in discharge of the mortgage so much of the purchase-money as is required for that purpose and pay the balance, if any, to the tenant, or retain the purchase-money pending the decision of a Civil Court as to the person or person entitled thereto.

(10) Where there are several landlords of a tenancy, any one of them may be deemed to be the landlord for the purpose of this Section.

(11) No suit or other proceedings shall be instituted against the Government or against any officer of the Government in respect of anything done by a Revenue Officer under the two last foregoing sub-section, but nothing in this sub-section shall prevent any person entitled to receive the whole or any part of the purchase money from recovering it from a person to whom it has been paid by a Revenue Officer.

46. **Procedure on foreclosure of mortgage of right of occupancy under Section 3.**—Where a mortgagee of a right of occupancy under section 3 proposed to foreclose his mortgage, or otherwise enforce his lien on the land subject to the right the provisions of the last foregoing Section shall, so far they can be made applicable, apply as if the mortgagee were the tenant.

**47. Sale of right of occupancy under Section 3 in execution of decree.**—(1) A right of occupancy under section 3 may be sold in execution of a decree or order of a Court.

(2) But notice of an intended sale of any such right shall be given by the Court to the landlord, and, if at any time before the close of the day on which the sale takes place the landlord pays to the Court or to the Officer conducting the sale a deposit of twenty-five per centum on the highest bid made at the sale, he shall be declared to be the purchaser instead of the person who made that bid.

**48. Right and liabilities of transferee of right of occupancy.**—When a right of occupancy has been transferred by sale, gift or usufructuary mortgage to a person other than the landlord that person shall, in respect of the land in which the right subsists, have the same rights, and be subject to the same liabilities, as the tenant to whom before the transfer the right belonged, had and was subject to.

**49. Subletting.**—(1) A tenant having a right of occupancy in land may, subject to the provisions of this Ordinance and to the conditions of any written contract between him and his landlord, sublet the land or any part thereof, for any term not exceeding seven years.

(2) A person to whom land is sublet having a right of occupancy therein shall, in respect of that land, and so far as regards the landlord, be jointly with the tenant, subject to all the liabilities of the tenant under this Ordinance.

**50. Succession to right of occupancy.**—(1) When a Muslim tenant having a right of occupancy in any dies, the right shall devolve on his heirs in accordance with the provisions of the Muslim Personal Law (Shariat):

Provided that when the occupancy rights are held by a females as a limited owner under Customary Law, succession shall open out on the termination of her limited interest to all

persons who would have been entitled to inherit the property at the time of death of the last full owner has the Muslim Personal Law (Shariat) been applicable at before the termination of the limited interest mentioned above succession shall devolve on his heirs and successors existing at the time of termination of the limited interest of the female as if the said such person had died at the termination of the limited interest of the female and had been governed by the Muslim personal Law (Shariat);

(3) When a non-Muslim tenant having a right of occupancy dies, the right shall devolve;

(a) on his male lineal descendants, if any, in the male line of descent and.

(b) failing such descendants, on his widow, if any, until she dies or remarries or abandons the land or is under the provisions of this Ordinance ejected therefrom.

(c) failing such descendants and widow on his widowed mother, if any, until she dies or unmarried or abandons the land or is under the provisions of this Ordinance ejected therefrom, and;

(d) failing such descendant and widow, or widowed mother if the deceased tenant left a widow or widowed mother, then when her interest terminates under clauses (b) or (c) of this sub-section on his male collateral relatives in the male line of descent from the common ancestor of the deceased tenant and those relatives:

Provided with respect to clause (d) of this sub-section, that he common ancestor occupied the land.

(3) As among descendants and collateral relatives claiming under sub-section (2) the right shall, subject to the provision of that sub-section, devolve, as if it were land left by,

the deceased in the village in which the land subject to the right is situate.

(4) When the widow of a deceased tenant succeeds to a right to occupancy under sub-section (2), he shall not transfer the right by sale, gift or mortgage or by sub-lease for a term exceeding one year.

(5) If a deceased tenant has left no person on whom his right of occupancy may devolve under sub-section (1) or sub-section (2) as the case may be, the right shall be extinguished.

**51. Irregular transfer of right of occupancy by tenants.**—Any transfer made of a right of occupancy in contravention of the foregoing provisions of this Chapter shall be voidable at the instance of the landlord.

#### Chapter V-A

**52. Transfer of a succession to the right of lathband tenants.**—The provision of Chapter V relating to alienation of a succession to right of occupancy shall be equally applicable to the lathband tenants as defined under section 8 of this Ordinance.

#### Chapter VI

##### Improvements and Compensation

**53. Improvements by landlords in tenancies of occupancy and lathband tenants.**—(1) Without the previous permission of the Collector a landlord shall not make an improvement on the tenancy of a tenant having a right of occupancy and that of a lathband tenant.

(2) If a landlord desires to make such an improvement he may apply to the collector for permission to make it, and the Collector shall, before making an order on the application, hear the objection, if any, of the tenant.

(3) On making an order on an application under sub-

section (2) the Collector shall be guided by such rules, if any, as the Provincial Government, may make in this behalf.

**54. Enhancement of rent in consideration of any improvement made by a landlord on the tenancy of an occupancy tenant and lathband tenant.**—(1) When a landlord has, with the permission mentioned in the last foregoing Section, made an improvement on the tenancy of a tenant having a right of occupancy and that of lathband tenant, he may apply to the collector for an enhancement of the rent of the tenant.

(2) If the tenant is a tenant to whom Section 17 applies the Collector shall enhance his rent to the share or rates, or with reference to rent in gross, as the case may be, paid by tenants, having a similar right of occupancy, for land of a similar description and with similar advantage.

(3) When the improvement ceases to exist, the Collector may, on the application of the tenant, reduce the tenant's rent (a) in the case of a tenant to whom sub-section (2) applies to the share or rents, or with reference to the rent in gross, as the case may be, paid by tenants, having a similar right of occupancy and lathbandi, for land of a similar description and with similar advantages.

(4) Sections 20 and 21 shall be construed as applying to an application under this section, and a suit shall not lie in any Court for any purpose for which an application might be made under this Section.

**55. Title of occupancy tenant to make improvements.**—A tenant having a right of occupancy is entitled to make improvements on his tenancy.

**56. Title of lathband tenant to make improvements.**—The lathband tenant is entitled to make the following improvements on his tenancy in addition to making, embankments (Lath).

- (a) he can plant trees which will be his property.
- (b) He may subject to the contest of his landlord dig a well machinery for the purpose of utilizing the underground water.

**57. Title of tenants-at-will to make improvements.—**

- (a) A tenant-at-will may make improvements on his tenancy with the assent of his landlord.
- (b) If at any time, the question, arises whether or not the landlord assented to be making of an improvement by a tenant-at-will, the assent may be inferred from circumstances.

**58. Improvement made before commencement of the Ordinance.—**Improvements made by a tenant before the commencement of this Ordinance shall be deemed to have been made in accordance with this Ordinance, unless the case of tenant not having a right of occupancy and lathband tenant it is shown that the improvement was made in contravention of a written agreement between him and his landlord.

**59. Improvement begun in anticipation of ejection.—**A tenant ejected in execution of decree, or in pursuance of a notice of ejection, shall not be entitled to compensation for any improvement begun by him after the institution of the suit, or service of the notice which resulted in his ejection:

**60. Tender of lease for twenty years to tenant to be a bar to right to compensation.—**If a landlord to a tenant a lease of his tenancy for a term of not less than twenty years from the date of tender at the rent then paid by the tenant, or at such other rent as may be agreed upon, the tender, if accepted by the tenants, shall bar any claim by him to compensation in respect of improvements previously made on the tenancy.

**61. Liability to pay compensation for improvements to tenant on ejection or on enhancement of his rent.—**Subject

to the foregoing provisions of this Chapter a tenant who has made an improvement on his tenancy in accordance with this Ordinance shall not be ejected, and the rent payable by him shall not be enhanced, until he has received compensation for the improvement.

\*\*\*\*\*

## Chapter VII

### Jurisdiction and Procedure

**62. Revenue Officer.—**(1) There shall be the same classes of Revenue Officers under this Ordinance as under the Balochistan Land Revenue Act, 1967, and, in the absence of any order of the Provincial Government to the contrary, a Revenue Officer of any class having jurisdiction within any local limits under that Act, shall be a Revenue Officer of the same class having jurisdiction within the same local limits under this Ordinance.

(2) The expressions 'Collector' and 'Board of Revenue' have the same meaning in this Ordinance as in the Balochistan Land Revenue Act, 1967.

**63. Applications and proceedings cognizable by Revenue Officers.—**The following applications and proceedings shall be disposed of by the Revenue Officers as such, and no Court shall take cognizance of any dispute of matter with respect to which any such application or proceeding might be made or had.

#### First Group

- (a) Application under sub-section (1) of section 35, for the ejection of a tenant;
- (b) Application under Section 44 or 45, for the fixing of the value of right of occupancy.
- (c) Application under Section 44 or 45 by landlords for possession of land, the right of occupancy in

which has become extinct.

- (d) Proceeding under Chapter VI with respect of the award of compensation for improvements or disturbance.

#### Second Group

- (e) Application under sub-section (1) of section 34, of the ejection of a tenant.
- (f) Application for the determination, under Section 37 of the rent payable for land occupied by crops uncut or ungathered at the time of an order being made for the ejection of a tenant.

#### Third Group

- (g) Application under section 24 by tenants to deposit rent.
- (h) Applications under section 28 for services of notice of relinquishment.
- (i) Applications under section 44 or 47 for service of notice of intended transfer or of intended foreclosure or other enforcement of lien.
- (2) Except as otherwise provided by this Ordinance or any rule made by the Board of Revenue in this behalf.
- (a) A collector or an Assistant Collector of the first grade may dispose of any of the applications and proceedings mentioned in sub-section (1).
- (b) An Assistant Collector of the second grade, not being a Naib-Tehsildar, may dispose of any of the applications mentioned in the second and third groups of that sub-section, and
- (c) A Naib Tehsildar, when invested with the powers of an Assistant Collector of the Second Grade, may dispose of any of the applications mentioned in

the third Group of that sub-section.

#### Comments

Suit for declaration and parliament injunction. Trial Court, though after having gone through the pleadings of the parties, framed issues but no issue was framed regarding maintainability of the suit in view of S.63 of Balochistan Tenancy Act, 1978. Courts below also fell in error before proceeding with the case to consider the relevant law dealing with the dispute. Contents of the plaint clearly indicated that respondents filed suit on the ground that tenants were not paying them Haq-e-Malkana and sought their eviction from the land on that ground, which exclusively fell within the jurisdiction of Revenue Court constituted under Balochistan Tenancy Act, 1978. Courts below, without considering legal proposition of law, having illegally proceeded with the case, judgments/decrees impugned therein, were without jurisdiction High Court while exercising its revisional jurisdiction, interfered in concurrent findings of Courts below, based on erroneous assumption of Act s, patent error of law and arbitrary exercise of powers and set aside Impugned judgments/decrees; with direction to Qazi to return plaint to respondents for presentation of the same before the Revenue Court having jurisdiction over the matter.<sup>1</sup>

#### 64. Revenue Courts and suits cognizable by them:

Procedure where revenue matter is raised in a Civil Court.—(1) When a Revenue Officer is exercising jurisdiction with respect to any such suit as is described in sub-section (3) or with respect to an appeal or other proceeding arising out of any such suit, he shall be called a Revenue Court.

- (2) There shall be the same classes of Revenue Court as of Revenue Officers under this Ordinance, and in the absence of any order of the Provincial Government to the contrary, a Revenue Officer of any class having jurisdiction within any local limits under this Ordinance shall be Revenue Court of the same class having jurisdiction within the same local limits.
- (3) The following suits shall be instituted in and heard and determined by Revenue Courts, and no other Court shall take cognizance of any such:

dispute or matter with respect to which any suit might be instituted.

-Provided that:

- (i) When in a suit cognizable by and instituted in a Civil Court it becomes necessary to decide any matter which can under this sub-section be heard and determined only by a Revenue Court, Civil Court shall endorse upon the plaint the nature of the matter for decision and the particulars required by Order VII, rule 10, Civil Procedure Code, and return, the plaint for presentation to the Collector.
- (ii) On the plaint being presented to the Collector he shall proceed to hear and determine the suit where the value thereof, exceeds Rs. 1,000 or the matter involved is of the nature mentioned in section 64 (3), First Group of this Tenancy Ordinance and in other cases may send the suit to an Assistant Collector of the 1<sup>st</sup> Grade for decision.

#### First Group

- (a) Suits between landlord and tenant for enhancement or reduction of rent under section 19.
- (b) Suits between landlord and tenant for addition to or abatement of rent under section 22, or for commutation of rent.

#### Second Group

- (c) Suits by a tenant to establish a claim to a right of occupancy, or by landlord to prove that a tenant has not such a right.
- (d) Suits by a landlord to eject a tenant.
- (e) Suits by a tenant under Sections 21 and 22 to

contest liability to ejection, when notice of ejection has been served;

- (f) Suit by a tenant under section 41 for recovery of possession or occupancy for compensation, or for both;
- (g) Suits by a landlord to set aside a transfer made of right of occupancy or to dispose a person to whom such a transfer has been made, or for both purposes.
- (h) Any other suit between landlord and tenant arising out of the lease or conditions on which a tenancy is held.
- (i) Suits for sums payable on account of village expenses;
- (j) Suits by a co-sharer in an estate or holding for a share of the profits thereof or for a settlement of accounts;
- (k) Suits for the recovery of over payment of rent or land revenue or of any other demand for which suit lies in a Revenue Court under this sub-section;
- (l) Suits relating to the emolument of kanungos, Zaildars, inamdars or village officers;

#### Third Group

- (m) Suits by a landlord for arrears of rents or the money equivalent of rent, or for sums recoverable under section 12;
- (n) Suits by a land-owner to recover moneys claimed as due for the enjoyment of rights in or over land or in water including rights of irrigation, right over fisheries, rights of pasturage and forest rights.

- (o) Suits for sums payable on account of land revenue, or of any other demand recoverable as an arrear of land, revenue under any enactment for the time being in force, and by a superior land-owner for other sums due to him as such.
- (4) Except as otherwise provided by any rule made by the Board of Revenue in this behalf:
- (a) A collector may hear and determine any of the suits mentioned in sub-section (3);
- (b) An Assistant Collector of the first Grade may hear and determine any of the suits mentioned in the second and third Groups of that sub-section, and, if he has by name been specially empowered in this behalf by the Provincial Government, any of the suits mentioned in the first Group; and
- (c) An Assistant Collector of the second grade may be heard and determined any of the suits mentioned in the third Group.

### Comments

Suit for declaration and parliament injunction. Trial Court, though after having gone through the pleadings of the parties, framed issues but no issue was framed regarding maintainability of the suit in view of S.63 of Balochistan Tenancy Act, 1978. Courts below also fell in error before proceeding with the case to consider the relevant law dealing with the dispute. Contents of the plaint clearly indicated that respondents filed suit on the ground that tenants were not paying them Haq-e-Malkana and sought their eviction from the land on that ground, which exclusively fell within the jurisdiction of Revenue Court constituted under Balochistan Tenancy Act, 1978. Courts below, without considering legal proposition of law, having illegally proceeded with the case, judgments/decrees impugned therein, were without jurisdiction High Court while exercising its revisional jurisdiction, interfered in concurrent findings of Courts below, based on erroneous assumption of Act s, patent error of law and arbitrary exercise of powers and set aside impugned judgments/decrees; with direction to Qazi to return plaint to respondents for presentation of the same before the Revenue Court having jurisdiction over the matter.<sup>1</sup>

Leave to appeal was granted to examine whether Civil Court had jurisdiction in suit pertaining to the terms of the tenancy and violation thereof.<sup>1</sup>

Plaintiff himself conferring on defendant the tenancy rights in respect of a non-agricultural land for non-agricultural purposes. Plaintiff, thus, could not invoke agricultural aspect of tenancy for avoiding his own, act. Land in question being wholly a Ghairmumkin Gaudi/ Brick-kiln, no part of same was to be deemed to be agricultural. Judgments of High Court and Trial Court were set aside and that of First Appellate Court maintained.<sup>2</sup>

Jurisdiction of Civil Court. Jurisdiction of a Court was to be determined initially by what was recited in the plaint presented before the Court. Where ex facie, without recording any further finding and assuming the facts stated therein to be correct, a case of jurisdiction of Civil Court was made out the suit would become entertainable notwithstanding the defence that was taken. Where defence taken had controverted the jurisdictional fact viz, whether tenancy was agricultural or non-agricultural, whether subject-matter of tenancy was land or industrial concern, enquiry had to be conducted and finding of fact on jurisdictional fact had to be recorded. Plaintiff, however, did not make out a case of jurisdiction of Civil Court, for the plaint itself relied on subject-matter of dispute being agricultural land and tenancy being agricultural, of the violation of terms of tenancy by putting the same in use for non-agricultural purposes. There being no Tenancy Act/Ordinance at the time of institution of suit; same having been enacted in 1978, Civil Court had the jurisdiction to go into the matter.<sup>3</sup>

*Suit for permanent injunction by tenant against landlord.* Maintainability. Jurisdiction of Civil Court, whether barred. Leave to appeal granted to consider whether provisions of first proviso to section 64(3) of the Ordinance covered pending civil proceedings.<sup>4</sup>

65. Superintendence and control of Revenue Officers and Revenue Courts.—(1) The general superintendence and control over all other Revenue Officers and Revenue Courts shall be vested in, and all such officers and Courts shall be subordinate to the Board of Revenue.

(2) Subject to the general superintendence and control of the Board of Revenue, a Commissioner shall control all other Revenue Officers and Revenue Courts in his division.

<sup>1</sup> 1991 SCMR 1944.  
<sup>2</sup> 1991 SCMR 1944.  
<sup>3</sup> 1991 SCMR 1944.  
<sup>4</sup> 1990 SCMR 545.

(3) Subject as aforesaid and to the control of the Commissioner, a Collector shall control all other Revenue Officers and Revenue Courts in his District.

**66. Power to distribute business and withdraw and transfer case.—**(1) The Board of revenue or a Commissioner or Collector may by written order distribute, in such manner as he thinks fit, any business cognizable by any Revenue Officer or Revenue Court under his control.

(2) The Board of Revenue or a Commissioner or Collector may withdraw any case pending before any Revenue Officer or Revenue Court under his control, and either dispose of it himself, or by written order it for his disposal to any other Revenue Officer or Revenue Court under his control.

(3) An order under sub-section (1) or sub-section (2) above shall not empower any Revenue Officers or Revenue Courts to exercise any powers or deal with any business which he or it would not be competent to exercise or deal with within the limits of his or its own jurisdiction.

#### APPEAL, REVIEW AND REVISION

**67. Appeals.—** Subject to the provision of this Ordinance and the rules thereunder, an appeal shall lie from an original or appellate order or decree, made under this Ordinance by a Revenue Officer, or Revenue Court, as follows, namely.

- (a) to the Collector when the order or decree is made by an Assistant Collector of either grade.
- (b) To the Commissioner when the order or decree is made by Collector.
- (c) To the Board of Revenue when the order or decree is made by a Commissioner;

Provided that:

- (i) An appeal from an order or decree made by an

Assistant Collector of the first grade especially empowered by name in that behalf by the Provincial Government in a suit mentioned in the first Group of sub-section (3) of Section 65, shall lie to the Commissioner and not to the Collector.

(ii) When an original order or decree is confirmed on the first appeal, a further appeal shall not lie;

(iii) When any such order or decree is modified or reversed on appeal by the Collector, the order or decree made by the Commissioner on further appeal, if any, to him shall be final.

#### Comments

Second appeal is not competent.<sup>1</sup>

*Suit for ejectment from land.* Clash between sub-sections (3) and (4) of section 71, Balochistan Tenancy Ordinance, 1978. High Court taking view that Commissioner had no power to pass orders in cases in which he calls for record from subordinate Revenue Officer or Revenue Court in view of sub-section (3) of section 71 which required Commissioner to record his opinion and submit same for orders of Board of Revenue Provisions of sub-section (4) of section 71, however, give a contrary result and words "it or he" in this sub-section take the matter beyond any ambiguity that both, Board of Revenue as well as Commissioner can pass orders thereunder. Contentions of petitioners on points that Commissioner was competent to pass final order in the case and even if appeal of petitioner was not competent as such, the Commissioner's order as referable to his power under section 71 of Ordinance and thus was not illegal, found to have force. Questions of law raised being of general Public importance, regarding interpretation of provisions of Balochistan Tenancy Ordinance, 1978 required consideration. Leave to appeal granted.<sup>2</sup>

**68. Limitation of appeals.—**The period of limitation for an appeal under the last foregoing Section shall run from the date of order or decree appealed against and shall be as follows, that is to say:

- (a) When the appeal lies to the Collector—Thirty days.

<sup>1</sup> PLD 1990 SC 469.

<sup>2</sup> 1987 SCMR 1797.

- (b) When the appeal lies to the Commissioner-sixty days.
- (c) When the appeal lies to the Board of Revenue-ninety days.

69. **Review by Revenue Officer.**—(1) A Revenue Officer, as such, may either of his own motion or on the application of any party interested, review, and on so reviewing modify, reverse or confirm any order passed by himself or by any of his predecessor-in-office;

Provided as follows;

- (a) When a Commissioner or Collector thinks it necessary to review any order which he has not himself passed and when the Revenue Officer, of a class below that of the Collector proposes to review any order whether passed by himself or by any of his predecessor-in-office, he shall first obtain the sanction of the Revenue Officer to whose control he is immediately subject.
- (b) An application for review of an order shall not be entertained unless it is made within days from the passing of the order, or unless the applicant satisfied the Revenue Officer that he had sufficient cause for not making the application within the period.
- (c) An order shall not be modified or reversed unless reasonable notice has been given to parties affected thereby to appeal and be heard in support of the order.
- (d) An order against which an appeal has been preferred shall not be reviewed.

(2) For the purposes of this section the Collector shall be deemed to be the successor-in-office of any Revenue Officer

of a lower class who has left the District or has ceased to exercise powers as a Revenue Officer, and to whom there is no successor-in-office.

(3) An appeal shall not lie from an order refusing to review, of confirming on review, a previous order.

70. **Computation of period limited for appeal and application for review.**—In the computation of the period for an appeal from or an application for the review of, an order under this Ordinance, the limitation thereof, shall be governed by the Limitation Act, 1908.

71. **Power to call for, examine and revise proceedings of Revenue Officers and Revenue Courts.**—(1) The Board of Revenue may at any time call for the record of any case pending before, or disposed of by, any Revenue Officer or Revenue Court subordinate to him.

(2) A Commissioner or Collector may call for the record of any case pending before or disposed of by, any Revenue Officer or Revenue Court under his control.

(3) If in any case in which a Commissioner or Collector has called for a record he is of opinion that the proceedings taken or the order or decree made should be modified or reversed, he shall submit the record with his opinion on the case for the orders of the Board of Revenue.

(4) If, after examining a record under sub-section (1), or sub-section (2) or submitted under sub-section (3), the Board of Revenue or the Commissioner; as the case may be is of opinion that it is expedient to interfere with the proceedings or the order or decree, it or he, as the case may be, shall pass an order accordingly.

(5) If, after examining the record, the Board of Revenue is of opinion that it is expedient to interfere with the proceedings or the order or decree on any ground on which the High Court in the exercise of its revisional jurisdiction may,

under the law for the time being in force, interfere with proceedings or an order or decree of a Civil Court, it shall fix a day of hearing the case, and may, on that or any subsequent day to which it may adjourn the hearing or which he may appoint in this behalf, pass such order as it thinks fit in the case.

(6) Except when the Board of Revenue fixes day under sub-section (5) for hearing the case, no party has any right to be heard before the Board of Revenue when exercising its powers under this section.

### Comments

*Suit for ejectment from land. Clash between sub-sections (3) and (4) of section 71, Balochistan Tenancy Ordinance, 1978. High Court taking view that Commissioner had no power to pass orders in cases in which he calls for record from subordinate Revenue Officer or Revenue Court in view of sub-section (3) of section 71 which required Commissioner to record his opinion and submit same for orders of Board of Revenue. Provisions of sub-section (4) of section 71, however, give a contrary result and words "it or he" in this sub-section take the matter beyond any ambiguity that both, Board of Revenue as well as Commissioner can pass orders thereunder. Contentions of petitioners on points that Commissioner was competent to pass final order in the case and even if appeal of petitioner was not competent as such, the Commissioner's order was referable to his power under section 71 of Ordinance and thus was not illegal, found to have force. Questions of law raised being of general public importance regarding interpretation of provisions of Balochistan Tenancy Ordinance, 1978 required consideration. Leave to appeal granted.<sup>1</sup>*

*Jurisdiction of Commissioner. Commissioner was not justified to set aside order passed by Collector in appellate jurisdiction as he could convert appeal into revision. Held, it was within the jurisdiction and competence to the Board of Revenue to correct the error. Where the Board of Revenue failed to correct the error, High Court, under its Constitutional jurisdiction could do the needful in this behalf.<sup>2</sup>*

Board of Revenue has jurisdiction, power and competence to assume that order passed by Commissioner was opinion under section 71 (3) and accept or reject the opinion of Commissioner under section 71(4) after observing the other formalities and procedures in accordance with law.<sup>3</sup>

Leave to appeal was granted to examine the point that the

<sup>1</sup> 1987 SCMR 1797.

<sup>2</sup> PLD 1990 SC 459.

PLD 1990 SC 459.

Commissioner was competent to pass the final order in the case and even if the appeal was not competent as such, the Commissioner's order was referable to his power under section 71 of the Ordinance, as such it was not illegal.<sup>1</sup>

*Difference between the end result achieved either under section 71 (3) or 71 (4). When action/proceedings, order or a decree having the character of finality is/ are intended to be modified or reversed, the case will fall under Section 71 (3) and the Commissioner would not be competent to pass final order but will submit the record to the Board of Revenue and the final order will be passed by that forum. Barring the cases covered under section 71 (3) all other cases shall fall under section 71 (4) by virtue of which the Commissioner would be able himself to pass an order without submitting the case to the Board of Revenue if in his opinion it is expedient to interfere with the proceedings, or the order or, decree as the case may be.<sup>2</sup>*

**72. Procedure of Revenue Officers.—**(1) The Provincial Government may make rules consistent with Ordinance for regulating the procedure to be adopted under this Ordinance by revenue Officers under this Ordinance in cases in which a procedure is not prescribed by this Ordinance.

(2) The rules may provide, among other matters, for the mode of enforcing orders of ejectment from and delivery of possession of immovable property, and rules providing for those matters may confer on a Revenue Officer all or any of the powers in regard to contemps, resistance and the like which a Civil Court may exercise in the execution of a decree whereby it has been adjudged ejectment from or delivery of possession of, such property.

(3) The rules may also provide for the mode of executing orders as to costs, and may adopt to proceedings under this Ordinance, all or any of the provisions of the Balochistan Land Revenue Act, 1967, with respect to arbitration.

(4) Subject to the rules under this section a Revenue Officer may refer any case which he is empowered to dispose of under this Ordinance to another Revenue Officer for investigation and report, and may decide the case upon the

report.

**73. Persons by whom appearances may be made before Revenue Officers as such, and not as Revenue Court.—**

(1) Appearances before a Revenue Officer as such, and applications to and acts to be done before him, under this Ordinance may be made or done.

- (a) by the parties themselves, or
- (b) by their recognized agents or a legal practitioner:

Provided that the employment of a recognized agent or legal practitioner shall not excuse the personal attendance of a party to any proceeding in any case in which personal attendance is specially required by an order of the officer.

(2) For the purposes of sub-section (1), recognized agents shall be such persons as the Provincial Government may by notification declare in this behalf.

(3) The fees of a legal practitioner shall not be allowed as costs in any proceedings before a Revenue Officer under this Ordinance unless that Officer considers, for reasons to be recorded by him in writing, that the fees should be allowed.

**74. Costs.—**(1) A Revenue Officer may give and apportion the Cost of any such proceeding under this Ordinance in any manner he thinks fit.

(2) But if he orders that the costs of any such proceedings shall not follow the events, he shall record his reasons for the order.

**75. Procedure of Revenue Courts.—**(1) The Provincial Government may make rules consistent with his Ordinance for regulating the procedure of Revenue Court, in matters under this Ordinance for which a procedure is not prescribed thereby, and may be any such rule direct that any provisions of the Code of Civil Procedure shall apply, with or without modification, to

(2) Until rules are made under sub-section (1) and subject to those rules when made and to the provisions of this Act.

- (a) The Code of Civil Procedure shall so far as it is applicable apply to all proceedings in Revenue Courts whether before or after decree; and
- (b) The Board of Revenue shall, in respect of those proceedings, be deemed to be the High Court within the meaning of that Code, and shall, subject to the provisions of this Ordinance exercise as regards the Courts under its control, all the powers of a High Court under the Code.

**76. Powers of Revenue Officer or Revenue Court to summon persons.—**(1) A Revenue Officer or Revenue Court may summon any person whose attendance he or it considers necessary for the purpose of any application, suit or other business before him or it as a Revenue Officer or Revenue Court.

(2) A person so summoned shall be bound to appear at the time and place mentioned in the summons in person or, if the summons so allows by his recognized agents or a legal practitioner.

(3) The person attending in obedience to the summons shall be bound to state the truth upon any matter respecting which he is examined or makes statements, and to produce such documents and other things, relating to any such matter as the Revenue Officer or Revenue Court may require.

**77. Mode of service of summons.—**(1) A summons issued by a Revenue Officer or Revenue Court shall, if practicable, be served (a) personally on the person to whom it is addressed, or failing him on (b) his recognized agent or (c) as adult male member of his family who is residing with him.

(2) If service cannot be so made, or if acceptance of

service so made is refused, the summons may be served by posting a copy thereof, at the usual or last known place of residence of the person to whom it is addressed, or, if that person does not reside in the District in which the Revenue Officer is employed or the Revenue Court is held, and the case to which the summons relates has reference to land in that district, then by pasting a copy of the summons on some conspicuous place in or near the estate wherein that land is situate.

(3) If the summons relates to a case in which persons having the same interest are so numerous that personal service on all of them is not reasonably practicable, it may, if the Revenue Officer or Revenue Court so directs, be served by delivery of a copy thereof to such of those persons as to Officer or Court nominates in this behalf and by proclamation of the contents thereof, for the information of the other persons interested.

(4) A summons may, if the Revenue Officer or Revenue Court so directs, be served on the person named therein, either in addition to, or substitution for, any other mode of service by forwarding the summons by post in a letter addressed to the person registered under Part III of the Post Office Act, 1856.

(5) When a summons is so forwarded in a letter and it is proved that the letter was properly addressed and duly posted and registered, the Officer or Court may presume that the summons was served at the time when the letter would be delivered in the ordinary course of post.

**78. Mode of service of notice, or proclamation or copy thereof.**—A notice, order or copy of any such document, issued by a Revenue Officer or Revenue Court for service on person shall be served in the manner provided in the last foregoing section for the service of a summons.

**79. Additional mode of publishing proclamation.**—

When a proclamation relating to any land is issued by a Revenue Officer or Revenue Court, it shall in addition to any mode of publication for the time being in force, be made by beat of drum or other customary method, and by the pasting of a copy thereof on a conspicuous place in or near the land to which it relates.

**80. Joinder of tenants as parties to proceedings relating to rent.**—(1) And number of tenants cultivating in the same estate may, in the discretion of the Revenue Officer Court and subject to any rules which the Provincial Government may make in this behalf, be made parties to any proceeding under Chapter III.

(2) But a decree or order shall not be made in any such proceedings unless the Revenue Officer or Revenue Court is satisfied that all the parties thereof, have had an opportunity of appearing and being heard.

(3) A decree or order made in any such proceedings shall specify the extent to which each of the tenants is affected thereby.

**81. Exemption of suit under this Ordinance from operation of certain enactments.**—Nothing in section 424 of the Code of Civil Procedure, shall be construed to apply to a suit of a class mentioned in section 66, of this Ordinance.

**82. Payment of money into Court admitted to be due to a third person.**—(1) When a defendant admits that money is due from him on account of rent, but pleads that it is due not to the plaintiff but to a third person, the Court shall, except for special reasons to be recorded by it, refuse to take cognizance of the plea unless the defendant pays into Court the amount so admitted to be due.

(2) Where such a payment is made the Court shall forthwith cause notice of the payment to be served on the third person.

(3) Unless the third person, within three months from the receipt of the notice, institutes a suit against the plaintiff and therein obtains an order restraining payment of the money, it shall be paid to the plaintiff on his application to the Court therefor.

(4) Nothing in this section shall affect the right of any person to recover from the plaintiff money paid to him under sub-section (3).

(5) When a defendant pays money into Court under this section Court shall give the defendant a receipt so, and the receipt given shall operate as and a quittance in the same manner and to the same extent as if it had been given by the plaintiff or the third person, as the case may be.

**83. Execution of decree for arrears of rent.**—A Court passing a decree for an arrear of rent may, on the oral application of the decree-holder order execution thereof, against the movable property of the tenant, and against any uncut or ungathered crops on the tenancy in respect of which the arrear is decreed.

**84. Prohibition of imprisonment of tenants in execution of decree for arrears or rent.**—A tenant shall not, during the continuance of his occupancy, be liable to imprisonment on the application of his landlord in execution of a decree for an arrear of rent.

**85. Power to refer party to Civil Court.**—If in any proceedings pending before a Revenue Court exercising original, appellate or revisional jurisdiction, it appears to the Court that any question in issue is more proper for decision by a Civil Court, the Revenue Court may, with previous sanction of the Court, if any, to the control of which it is immediately subject, require, by order in writing, any party to the proceeding to institute, within such time as it may fix in this behalf, a suit in the Civil Court for the purpose of obtaining a decision on the question, and, if he fails to comply with the requisition, may

decide the question as it thinks fit.

(2) If the party institutes the suit in compliance with the requisition, the Revenue Court shall dispose of the proceeding pending before it in accordance with the final decision of the Civil Court of first instance or appeal, as the case may be.

**86. Power to refer to High Court question as to jurisdiction.**—(1) If the Presiding Officer of a Civil or Revenue Court in which a suit has been instituted doubts whether he is precluded from taking cognizance of the suit, he may refer the matter through the District Judge or, Commissioner or if he is a (District Judge) or Commissioner, directly to the High Court.

(2) On any such reference being made, the High Court may order the Presiding Officer either to proceed with the suit or to return the plaint for presentation in such other Court as it may in its order declares to be competent to take cognizance of the suit.

(3) The order of the High Court on any such reference shall be conclusive as against persons who are not parties to the suit as well as declare to be competent to take cognizance of the suit.

**87. Power of High Court to validate proceedings held under mistake as to jurisdiction.**—(1) In either of the following cases namely.

- (a) if it appears to a Civil Court that a Court under its control has determined a suit of a class mentioned in section 76, which under the provision of that section should have been heard and determined by a Revenue Court, or.
- (b) If it appears to a Revenue Court that a Court under its control has determined a suit which should have been heard by a Civil Court.

The Civil Court or Revenue Court, as the case may be,

shall submit the record of the suit to the High Court.

(2) If on perusal of the record it appears to the High Court that the suit was so determined in good faith and that the parties have not been prejudiced by the mistake as to jurisdiction, the High Court may order that decree be registered in the Court which had jurisdiction.

(3) If it appears to the High Court, otherwise than on submission of a record under sub-section (1), that a Civil Court under its control had determined a suit of a class mentioned in section 64 which under provisions of that section should have been heard and determined by a Revenue Court, the High Court may pass any order which it might have passed if the record had been submitted to it under that sub-section.

(4) With respect to any proceeding subsequent to decree the High Court may make such order for its registration in a Revenue Court or Civil Court as in the circumstances appears to be just and proper.

(5) An order of the High Court under this section shall be conclusive as against persons who were not parties to the suit or proceedings as well as against persons who were parties thereto, and the decree or proceeding to which the order relates shall have effect as if it had been made or had by the Court in which the order had required it to be registered.

(6) The provisions of this Section shall apply to any suit instituted on or after the first day of 1st May, 1978, and to proceedings arising out of any such suit.

#### Miscellaneous:

88. **Place of sitting.**—(1) An Assistant Collector may exercise his powers under this Ordinance at any place within the limits of the District in which he is employed.

(2) Any other Revenue Officer or Revenue Court may only exercise his or its powers under this Ordinance within the local limits of his or its jurisdictions.

89. **Holidays.**—(1) The Board of Revenue, with the approval of the Provincial Government, shall publish in the local Official Gazette before the commencement of each calendar year a list of days to be observed in that year as holidays by all or any of the Revenue Officers and Revenue Courts.

(2) A proceeding held before a Revenue Officer or Revenue Court on a day specified in the list as a day to be observed by the Officer or a Court as a holiday shall not be invalid reason only of its having been held on that day.

90. **Discharge of duties of Collector dying or being disabled.**—When a Collector dies or is disabled from performing his duties, the officer who succeeds temporarily to the Chief Executive administration of the district under any orders which may be generally or specify issued by the Provincial Government in this behalf shall be deemed to be Collector under this Ordinance.

91. **Retention of powers by Revenue Officers on transfer.**—When a Revenue Officer of any class who, either as such or as a Revenue Court, has under the foregoing provisions of this Ordinance any powers to be exercised in any local area is transferred from that local area to another as a Revenue Officer or Revenue or Revenue Court of the same or a higher class, he shall continue to exercise those powers in that other local area, unless the Provincial Government otherwise directs or has otherwise directed.

92. **Conferment of powers of Revenue Officers or Revenue Court.**—(1) The Provincial Government may by notification confer on any person:

(a) All or any of the powers of a Board of Revenue Commissioner or Collector under this Ordinance, or

(b) All or any of powers with which as Assistant Collector of either grade is or may be, vested there under.

and may by Notification withdraw any powers so conferred.

(2) A person on whom powers are conferred under sub-section (1), shall exercise those powers within such local limits and in such classes of cases as the Provincial Government may direct and except as otherwise directed by the Provincial Government, shall for all purpose connected with the exercise thereof be deemed Member Board of Revenue, Commissioner, Collector, or Assistant Collector, as the case may be.

(3) Before conferring powers on the judge of a Civil Court under sub-section (1) the Provincial Government shall consult the High Court.

(4) If any of the powers of a Collector under sections 65, 66, 67 or Section 81 are conferred on an Assistant collector they shall, unless the Provincial Government by special order otherwise directs, be exercised by him subject to the control of the Collector.

**93. Power of Board of Revenue to make rules.—**(1) The Board of Revenue may in addition to the other rules which may be made by it under this Ordinance, make rules consistent with this Ordinance and any other enactment for the time being in force.

- (a) Determining notwithstanding anything in any record-of-rights, the number and amount of the installments and the time by and at which rent is to be paid.
- (b) For the guidance of Revenue Officers in determining for the purposes of this Ordinance, the amount of the land revenue of any land.
- (c) Prescribing for all or any of the territories to which this Ordinance extends, the periods during which, in proceedings held under this Ordinance, a Revenue Officer or Revenue Court is not, except

for reasons of arrest to be recorded, to issue any process of arrest against a tenant or against a land-owner who cultivates his own land.

- (d) Regulating the procedure in case where persons are entitled to inspect records of Revenue Offices or Revenue Courts, or to obtain copies of the same and prescribing the fees payable for searches and copies.
  - (e) Prescribing forms for such books, entries, statistics and accounts as the board of Revenue thinks necessary to be kept, made or compiled in Revenue Officer or Revenue Courts or submitted to any authority.
  - (f) Declaring what shall be in the language of any of those offices and Courts, and determining in what cases persons practising in those offices and Courts shall be permitted to address the Presiding Officers thereof, in English; and
  - (g) Generally for the guidance of Revenue Officers and others persons in matter connected with the enforcement of this ordinance.
- (2) Until rules are made under clause (a) of sub-section (1) rent shall be payable in instalments and at the times by which it is now payable.
- (3) Rules made by the Board of Revenue under this or any other Section of this Ordinance shall be made subject to the control of the Provincial Government.
- 94. Rules to be made for previous publication.--** All powers conferred by this Ordinance on the board of Revenue may be exercised from time to time as an occasion requires.

\*\*\*\*\*

## Chapter VIII

## Effect of this ordinance on record-of-rights and agreements

96. Nullity of certain entries in Record-of-rights.—A entry in any record-of-rights providing.

- (a) That a landlord may prevent a tenant from making or eject him for making, such improvements on his tenancy as he is entitled to make under this Ordinance, or
- (b) That a tenant ejected from his tenancy shall not be entitled to compensation for improvements or for disturbance in any case in which he would under this Ordinance be entitled to compensation therefor, or
- (c) That a landlord may eject a tenant otherwise than in accordance with the provisions of this Ordinance, shall be void to that extent.

97. Nullity of certain agreements contrary to the Act.—(1) Nothing in any agreement made between a landlord and tenant after the passing of this Ordinance shall:

- (a) Override any of the provisions of this Ordinance with respect to the acquisition of a right of occupancy, or the reduction, remission or suspension of rent, or the enhancement of the rent of a tenant having a right of occupancy under section 3, or
- (b) Take away or limit the right of a tenant as determined by this Ordinance to make improvements and claim compensation therefore, or, where compensation for disturbance can be claimed under this Ordinance, to claim such compensation, or
- (c) Entitle landlord to eject to tenant otherwise than in

accordance with the provisions of the Ordinance.

(2) Nothing in clause (a) of sub-section (1) shall apply to an agreement by which a tenant binds himself to pay as enhanced rent in consideration of any improvements which has been, or is to be made in respect of his tenancy, by or at the expense of his landlord, and to the benefit, of which the tenant is not otherwise entitled.

98. Saving of other agreements when in writing.— Save as expressly provided in this Ordinance, nothing in this Ordinance shall affect the operation of any agreements between a landlord and a tenant, when the agreement either is in writing or has been recorded in a record-of-rights before the promulgation of Balochistan Land Revenue Act, 1967, or been entered by order of a Revenue Officer in a record-of-rights or annual record under the provisions of that Ordinance.

99. Effects of certain entries made in record-of-rights before the coming into force of this Ordinance.—Any entry made with respect to any of the following matters before the settlements of an area, and attested by the proper officer, in the record of a regular settlement sanctioned by the Provincial Government, namely;

- (a) The enhancement or abatement of the rent of a tenant having a right of occupancy, or the commutation for rent in kind into rent in money or of rent in money into in kind or the taking of rent in kind by division or appraisalment of the procedure or other procedure of like nature, or
- (b) The letting or under-letting of land in which there is a right of occupancy by the tenant having that right, or the alienation or succession to land in which such a right subsists,

shall be deemed to be in agreement within the meaning of the last foregoing section.

**100. Nothing but rent or seed supplied recoverable.--** Notwithstanding anything to the contrary in this Ordinance or in any other law for the time being in force or any revenue record or agreement or any rule of custom or any decision of a Court or arbitrator, no tenant shall be liable for, and no landlord shall be entitled to anything in the shape of cess, village cess or other contribution or due or any for the land held by the former under the later.

**101. Extinction of occupancy tenancies.—** (1) notwithstanding anything contained in any law for the time being in force including this Ordinance, no person shall, after the coming into force of the Ordinance, acquire or have occupancy rights in any land under enactment or contract or any decree or order of any Court or other authority, and the existing occupancy rights in respect of all lands other than lands owned by Government or by any person who under the law for the time being in force is an evacuee, shall on coming into force of the aforesaid Ordinance, be extinguished, and the land comprised in a tenancy so extinguished shall vest as hereinafter provided.

(2) An occupancy, who at the time of the coming into force of the aforesaid Ordinance occupies any land as such shall become owner as under.

- (a) of the entire land comprised in his tenancy without payment of any compensation where he pays no rent therefor, beyond the amount of the land revenue, and rate and cesses for the time being chargeable therefor;
- (b) of such portion of the land comprised in his tenancy without payment of any compensation as corresponds to his share of the produce, where he pays rent in the form of a share of the produce;
- (c) of the entire land comprised in his tenancy on payment of compensation to the landlord in cash

29

at such rates and within such periods as may be prescribed by the Government by rules framed for the purpose, where he pays rent only in cash;

- (d) of the whole or a portion of the land comprised in his tenancy on payment of such compensation in such form and within such time to the landlord as may be determined by Government by rules framed under this Ordinance, where he pays rent partly in cash and partly in the form of a share of the produce.

(3) So long as Government does not frame rules for purposes of clauses (c) and (d) of sub-section (2), an occupancy tenancy falling under any of these clauses shall, notwithstanding the provisions made in sub-section (1), continue to subsist, and the landlord and the occupancy tenant shall continue to enjoy the same rights, and the subject to the same liabilities, as before.

(4) In a case falling under clause (b) of sub-section (2) the landlord shall, without payment of any compensation, be entitled to the possession of the rest of the land comprised in the tenancy.

(5) An occupancy tenant acquiring land in accordance with the provisions of sub-section (2) shall acquire it free from all encumbrance created in respect of that land by the landlord and if any encumbrance be created by the tenant, the share of the land received by the landlord shall be free from it and notwithstanding any provisions of any law for the time being in force to the contrary each such encumbrance shall become the exclusive liability of the landlord or the occupancy tenant, as the case may be.

(6) Where compensation is to be paid by a tenant in cash under clause (c) of sub-section (2) Government may, with a view to enabling an occupancy tenant to acquire land in accordance with the provisions of this section, advance a loan

which shall be recoverable as arrears of land revenue with interest at such rates and in such instalment as the Government may fix generally or in particular cases.

(7) Government shall frame rules to give effect to the provisions of this section, and while framing rules it may classify lands into different categories and prescribe different principles for assessment of compensation.

**102. Limits of holding for personal cultivation.—**(1) No person owning more than 100 acres of land shall have in his possession for personal cultivation and irrigated culturable land exceeding 50 acres.

*Explanation.*—Where any such person has in his possession any such land jointly or in partnership with any one else, only his own share of the land in such possession shall be taken into consideration in commuting the 50 acres for the purpose of this sub-section.

(2) If a person owning more than 100 acres of land has in possession culturable land in excess of 50 acres he shall within three months of the date on which this Ordinance comes into force, and if such person is in the military service of Pakistan on that date, then within six months of his release from such service, let out the area in excess of 50 acres to tenants on terms permissible under the law:

Provided that if the said land in excess of 50 acres is under crop at the time of the coming into force of this Ordinance it shall be so let out within one month of the removal of the crop.

Provided further that if the land to be let out has been prepared for sowing, the person who has so prepared it shall be entitled to compensation from the person to whom the land is let out, and compensation and the mode of its payment shall, in case of a dispute be assessed and determined by the Revenue Officer referred to in sub-section (4) in accordance with the

provisions of this Ordinance, insofar, as these may be applicable.

(3) Where a person not owning more than 100 acres of land on the date of the coming into force of this Ordinance, acquires by any means more land which along with the land already owned by him totals more than 100 acres, he shall, within three months of such acquisition, let out to tenants so much of the land as is in possession in excess of 50 acres of culturable land, and the proviso to sub section (2) shall insofar as is applicable apply to this case.

(4) If any person who is required by sub-section (2) or sub-section (3) to let out any land fails to find suitable tenants, he shall, before expiry of the period fixed by the relevant sub-section intimate the fact in writing to the Revenue Officer who would be competent under the law to entertain an application for the ejection of a tenant from the land, if such land had been let out to him, and such Revenue Officer shall proceed in accordance with such rules as may be framed by Government to find suitable tenant for the land.

(5) When a person acts under sub-section (4) he shall let out the land to tenants recommended by the Revenue Officer, and in case he fails to do so, he shall be deemed to have contravened the provisions of this section, and besides any other penalty which may be imposed on him under the law, the Revenue Officer, referred to the sub-section (4), shall have the power to settle tenants on the land which such person is keeping in excess of limits prescribed by this section:

Provided that if the Revenue Officer fails to find tenants for land and in consequence there of such person continues to occupy any land in excess of the prescribed limit, he will not be deemed have contravened the provisions of this Section.

Provided further that in case covered by the first proviso the Revenue Officer will have the power to settle tenants on the land at proper time, whenever, he is able to find suitable

persons for this purpose.

(6) Where a person has in accordance with the provisions of sub-section (2) or sub-section (3) made a choice with respect to the land which he is to keep for his personal cultivation he shall not thereafter, the right to claim any other land in lieu of the whole or part of that land, even though he may have lost that land through alienation:

Provided that he shall have the right of exchanging the said area of 50 per acres or any part thereof with any land in which he may acquire proprietary rights, by inheritance after having made the said choice.

Provided further that if the land reserved by a person for personal cultivation or any portion thereof, is compulsorily acquired by the Provincial or the Central Government, or is rendered daryaburd, or if 50 centum or more of such land is rendered totally unculturable on account of the much additional area, as with the area, as with the area, if any, still in his possession and in the last mentioned case, the area fit for cultivation will make up 50 acres.

(7) Land attached to and used for the purpose of a cattle-farm or a stud farm recognized by Government shall be exempt from the provisions of the section. But an owner, of any such from shall not be the land attached to such farm is less than 50 acres.

*Explanation.*—For purposes of this sub-section a cattle farm means a farm of agricultural land which is exclusively reserved for the purpose of breeding cattle, and a stud-farm means a farm of such land exclusively reserved for breeding of horses or mules.

(8) A person who owns 25 acres of land or more shall not be selected or given any land as a tenant under sub-section (2), (3), (4) or (5), and no tenant shall be allowed more than 2 acres as such.

(9) Government may by notification in the official Gazette, exempt any person or class of persons owning land or any land or class of land from the operation of this section.

*Explanation I.*—For the purposes of computing the area for personal cultivation an acre of unirrigated culturable land shall be counted as half an acre and the terms irrigated and unirrigated shall be defined by rules framed by Government under this Ordinance and if there is in the opinion of the Government any land which does not fall under these two categories, the rules shall prescribe a separate category for it, and shall fix the ratio which such land shall bear in relation to irrigated land for purposes of such computation.

*Explanation II.*—For the purposes of this section land under a garden which is in existence on the date of the coming in force of this Ordinance, and which according to the nature of the trees planted is deemed fully covered, shall not be treated as culturable, even though any portion thereof, may be fit or actually used for purpose of cultivation. But if a garden is planted in any land after the coming into force the aforesaid Ordinance, the land there under shall be treated as culturable.

*Explanation III.*—For the purposes of this section, if land, which according to the provisions of the revenue law for the time being in force is banjar qadam and is shown in revenue records as such is brought under cultivation or garden is planted therein shall continue to be treated as not culturable.

*Explanation IV.*—For the purpose of this section cultivation through with possession descendant of the person land or his wife or servant or hired labour shall be treated as personal cultivation by the said person.

*Explanation V.*—For the purpose of this section mortgage of land with possession, a tenant o Government land under the Colonization of Government Lands (Punjab) Act, 1912, who has not acquired proprietary rights, a lessee other than a lessee of Government land, and an allottee whether provisional or

permanent, of land under the law for the rehabilitation of refugees for the time being in force shall be deemed to be a person owning such land.

103. Offence.-- (a) If any landlord.

(i) recovers from any tenant anything in the shape of a cess, village cess or other contribution or dues any other free service in addition to the rent payable in respect of the land held by the latter under the former; or

(ii) Recovers from the tenant in lieu of the seed supplied to him anything in excess of the seed actually supplied formerly; or

(iii) Ejects a tenant forcibly or against the provisions of law; or

(b) If any person owning land contravenes the provisions of Section 102, he shall be guilty of an offence punished with imprisonment of either description which may extend to one year or fine or with both.

---