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Bombay Tenancy and Agricultural
Lands Act, 1948.

Difficulties in implementation of—
vis-a-vis the Bombay Preven-
tion of Fragmentation and
Consolidation of Holdings Act,
1947.

GOVERNMENT OF BOMBAY.

REVENUE DEPARTMENT.

Circular Memorandum No. TNC. 6758/110468-M.

Sachivalaya, Bombay, 28th January 1959.

CIRCULAR MEMORANDUM.

In implementing the provisions of the Bombay Tenancy and Agricultural Lands Act, 1948, in villages in which consolidation proceedings are in progress under the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, or where such proceedings have already taken place and the consolidation schemes have been enforced before the 1st April 1957, various legal and practical difficulties arise. These can be broadly classified under the following three heads:—

(i) Difficulties arising in the disposal of applications filed by landlords under section 31 of the Tenancy Act.

(ii) Difficulties arising in implementing the provisions of sections 32 to 32R of the Tenancy Act.

(iii) Difficulties in implementing the provisions of sections 84A, 84B or 84C of the Act.

2. The difficulties which come under the first head, are as follows:—

(a) Whether in villages in which consolidation proceedings have commenced after 1st August 1956, an application filed by a landlord, as required by section 31 of the Bombay Tenancy and Agricultural Lands Act, 1948, to the Mamlatdar, can be disposed of by the Mamlatdar.

(b) Whether in view of the provisions contained in clause (b) of section 27 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, in villages in which consolidation proceedings are in progress, it would be legally feasible to transfer land from the tenant to the landlord even if the application under section 31 is allowed.

(c) Whether in villages in which consolidation schemes have been enforced after 31st December 1956, the applications of landlords under section 31 for possession of land from their old tenants after having served on them notices as required by section 31, can be entertained by the Mamlatdar if in the consolidation scheme the landlords are given new holdings with new tenants.

(d) Whether in villages in which consolidation schemes have been enforced prior to 31st December 1956, the condition in clause (d) of section 31A, of the Tenancy Act will debar a landlord from getting back his land from the tenant on the new allotted holding.

3. Government is pleased to issue the following clarification on each of these points :—

(a) The effect of sub-section (1) of section 26 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, is that the Mamlatdar qua Mamlatdar is debarred from disposing of any application, including an application under section 31, under the Tenancy Act, in respect of land situated in a village where consolidation proceedings have commenced. By virtue of section 26(2) of the Consolidation Act, the jurisdiction to dispose of such applications is conferred on the Consolidation Officer. However, under Government Notification, Revenue Department, No. CON/3554(i), dated 25th November 1954, Government has authorised the Mamlatdars and Mahalkaris to perform the functions of a Consolidation Officer under section 26 of the Consolidation Act. Consequently, it would be competent for a Mamlatdar as *Consolidation Officer* to dispose of applications under section 31 of the Tenancy Act, which were pending with him on the date of the commencement of the consolidation proceedings. Clause (b) of sub-section (2) of section 26 of the Consolidation Act provides for inviting applications by the Consolidation Officer from persons entitled to possession under the Tenancy Act for being put in possession of land. Therefore the Mamlatdar as a *Consolidation Officer* would be competent to dispose of the applications under section 31 of the Tenancy Act which are made after the date of the commencement of the consolidation proceedings but within 21 days from the date of the proclamation issued by the Consolidation Officer under section 26(2)(b) of the Consolidation Act. Applications under section 31, which are made after the expiry of the 21 days period referred to above, would have to be dismissed by the Mamlatdar-cum-Consolidation Officer as the applications are barred under clause (b) of sub-section (2) of section 26 of the Consolidation Act. Such landlords would also have no chance of making such application to the Mamlatdar after the coming into force of the consolidation scheme as the time limit of 31st March 1957, laid down in section 31 of the Tenancy Act for filing such applications will have by then passed. It is only the landlords coming within the purview of sub-section (3) of section 31 of the Tenancy Act, who would be competent to file applications under section 31, after the scheme has come into force.

(b) In the case of applications under section 31, which the Mamlatdar as Consolidation Officer, would be competent to dispose of, there would be no question of transfer of land by *any person*. The transfer, if any, takes place by virtue of law and consequently, such transfer will not come within the purview of section 27(b). In fact in such cases the question of putting the landlord into possession of land in accordance with the decision of the Mamlatdar-cum-Consolidation Officer does not arise. The position regarding the change of rights as a result of the Mamlatdar's decision as Consolidation Officer is taken into account in correcting the Record of Rights and in framing the consolidation scheme. The landlord gets possession of the land or the allotted holding in accordance with the provisions of the scheme after it is confirmed and enforced.

(c) The notice given by the landlord in such cases under section 31 to the old tenant on or before 31st December 1956, when the Consolidation scheme was in progress, would not be operative against the new tenant on the holding allotted under the consolidation scheme. Consequently, it would not be competent for the landlord to proceed against the new tenant under section 31.

(d) In view of section 28 and sub-section (3) of section 29 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, the provisions of clause (d) of section 31A, of the Bombay Tenancy and Agricultural Lands Act, 1948 would not come in the way of a landlord if he satisfies the condition in clause (d) of section 31A in respect of his original holdings.

4. The difficulties which arise under head (ii) mentioned in paragraph 1, are as follows :—

(a) In villages in which consolidation proceedings have commenced whether in view sub-section (1) of section 26 of the Consolidation Act it would be competent for the Mamlatdars and the Mahalkaris exercising the powers of the Tribunal under the Tenancy Act to conduct the inquiries under section 32G and other related sections for implementing the provisions of sections 32 to 32R.

(b) How is the implementation of the provisions of sections 32 to 32R to be co-ordinated with the implementation of the "Consolidation" part of the Consolidation Act?

(c) How are Land Registers and Registers of Holdings to be complied in villages in which consolidation proceedings are in progress?

5. Government is pleased to issue the following clarification and instructions in respect of these difficulties :—

(a) Under section 26 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947, a Revenue Officer under the Bombay Tenancy and Agricultural Lands Act, 1948. The implementation of the provisions of sections 32 to 32R is made by the Agricultural Lands Tribunals. Under section 67 of the Bombay Tenancy and Agricultural Lands Act, 1948, Government have authorised some Deputy Collectors, Additional Mamlatdars, Additional Mahalkaris, to exercise the powers and perform the duties of the Tribunal. In implementing the provisions of sections 32 to 32R these officers function as Tribunals and not as Revenue Officers. Consequently such Deputy Collectors, Mamlatdars and Mahalkaris are not Revenue Officers within the meaning of section 26 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act. The bar against the exercising of the powers under the Tenancy Act mentioned in section 26 will not apply to these officers in performing the functions of the Tribunal. In implementing sections 32 to 32R, certain functions (e.g. determining how much land from the land the purchase of which is ineffective shall be retained by the landlord—section 32E read with section 15, disposal of surplus land under section 32P) have to be done by a Mamlatdar or Collector as Revenue Officer. The bar in section 26 would apply to the exercising of this function by the Mamlatdar and Collector. However, in view of Government Notification, No. CON. 3554(1), dated 25th November 1954, the Mamlatdars and Mahalkaris would be competent to perform these functions as Consolidation Officers.

(b) Anticipating the difficulties in the implementation of the two Acts simultaneously, Government has issued instructions in Government Resolution No. CON. 3556, dated 13th November 1956, as modified by Government Resolution No. CON. 3557-M, dated 1st August 1957 and Government Resolution, No. CON. 3557/182300-M, dated 3rd January 1958, that in the case of consolidation schemes already introduced, the schemes should be completed only in those villages in which the percentage of the area held by tenants in the

is debarred from exercising and discharging the functions of a Revenue Officer

village is not more than 20 and that fresh consolidation schemes should be undertaken only in those villages in which the percentage of the area held by the tenants in the village does not exceed 20. In other words, the instructions of Government are that no consolidation schemes should be undertaken or consolidation schemes which are incomplete or unenforced should be proceeded with in those villages where the area of the land held by tenants is more than 20 per cent. Therefore the question of co-ordination of the consolidation work and work of implementation of section 32 to 32R will obviously arise only in those villages where the area of the tenanted land is less than 20 per cent. In these villages, the following types of cases are likely to occur—

1. Villages in which consolidation schemes have been confirmed and enforced before 1st April 1957 ;
- ✓ 2. Villages in which consolidation schemes have been confirmed and enforced after 1st April 1957 ;
3. Villages in which consolidation schemes have been confirmed but not enforced or neither confirmed nor enforced ;
4. Villages in which consolidation proceedings have yet to be commenced.

In the case of villages covered by (1), there would be no difficulty in implementing sections 32 to 32R as the tenants would be deemed to have purchased lands which are in their possession on 1st April 1957 according to the enforced consolidation schemes.

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Consequently In the case of villages covered by (2), the legal position is that under section 32 of the Tenancy Act, the tenant, subject to certain conditions is deemed to have purchased the land which he held on 1st April 1957. Subsequently, in the consolidation scheme it would be necessary to incorporate this fact. The landlord of the land, which is deemed to have been purchased by the tenant, would only have the right to get the purchase price as fixed by the Tribunal. His right would thus be an encumbrance on the land and it will have to be treated as such in the scheme by the Consolidation Officer as provided in section 29 of the Consolidation Act. In view of this legal position, the Tribunal will have to implement the provisions of section 32 on the basis of the Record of Rights as it stood on 1st April 1957 and not on the basis of the Record of Rights as it stood revised by the consolidation scheme. In the light of the decisions of the Tribunals in the inquiries conducted by them under section 32G of the Tenancy Act, the consolidation schemes in respect of such villages will have to be varied under section 32 of the Consolidation Act.

In the case of villages covered by (3), the position would be the same as in (2). Hence the Tribunal will have first to implement sections 32 to 32R and in the light of that decision the consolidation scheme already confirmed or to be confirmed will have to be varied or revised, as the case may be.

In the case of villages covered by (4), the ideal solution would be to implement sections 32 to 32R of the Bombay Tenancy and Agricultural Lands Act, 1948 first and thereafter to commence the consolidation proceedings. But as the implementation of sections 32 to 32R in all the villages would take considerable time it would give a serious set back to the implementation of an important land reform like consolidation of holdings. To overcome this set back, Government is pleased to direct that the following steps should be taken by the officers performing the functions of the Tribunals, and the officers implementing the Consolidation Act.

(20)

The Officers performing the duties and functions of the Tribunals should give priority to the completion of inquiries under section 32G and other relevant sections in those villages having less than 20 per cent. tenanted lands, in the following order:—

(1) Villages in which consolidation schemes are in progress i.e. preliminary inquiries or blocking operations, etc. are in progress;

(2) Villages in which consolidation schemes have been confirmed and enforced or confirmed and not enforced;

(3) Villages in which consolidation proceedings are proposed to be commenced during the current year and the next year;

(4) Villages which have been notified under section 15 and which will be taken up for consolidation in 1960-61;

(5) Other remaining villages.

The Settlement Commissioner and Director of Land Records should furnish to the Collectors taluka-wise lists of villages after arranging them in the above order of priority to enable them to issue necessary instructions to the Tribunals.

Consolidation Officers on the other hand should, in cases where it is feasible, prepare part consolidation schemes in respect of holdings in the village which are not or are not likely to be affected by the implementation of sections 32 to 32R of the Tenancy Act. Such part schemes should be finalised, confirmed and enforced according to the procedure provided in the Act. When the provisions of sections 32 to 32R of the Tenancy Act are implemented in these villages, the scheme can be varied to include the remaining holdings and achieve maximum consolidation of holdings.

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(c) In view of the position explained in paragraph (a) it is obvious that except in the case of villages covered by (1) in paragraph (b), in all other villages the Land Registers and the Registers of Holdings will have to be compiled on the basis of the Record of Rights as it stood on 1st April 1957. In view of this position the Land Registers and the Registers of Holdings should be compiled in accordance with the following instructions:—

(a) In cases in which the consolidation schemes have been enforced and the Record of Rights have been revised and rewritten before 1st April 1957, the Register should be compiled on the basis of revised Record of Rights.

(b) In the case of villages where the consolidation schemes have been already enforced after 1st April 1957 the Record of Rights for those villages may be revised by giving top priority to that and on the basis of the revised Record of Rights, the A and B Registers should be compiled.

(c) In cases in which the consolidation schemes have been confirmed but have not been enforced or where consolidation proceedings are in progress the A and B registers should be compiled on the basis of the existing Record of Rights.

6. The difficulty which cover under head (iii) in paragraph 1' is whether in the case of a transfer which is invalid under the provisions of section 63 or 64 of the Tenancy Act and is also invalid being in contravention of section 27 or section 31 of the Consolidation Act, it

would be competent to levy penalty or take action under section 84-A, 84-B or 84-C of the Tenancy Act and also under section 9 of the Consolidation Act. The provisions under the two Acts are independent and action will have to be taken separately under both the Acts, in respect of the same transfer. The validation of the transfer under sections 84A, 84B or 84C does not in any way validate the transfer for the purpose of the Consolidation Act.

By order and in the name of the Governor of Bombay,

K. G. BADLANI,
Under Secretary to Government.

G. C. M. No. TNC. 6758/110468-M, R. D., dated 28th January 1959.

To

The Settlement Commissioner and Director of Land Records (with reference to his unofficial reference No. CON. LR. 34, dated 24th May 1958, and CON. LR. 34, dated 8th October 1958),

The Commissioner, Bombay Division (with reference to his endorsements No. 226-TNC. 2697, dated 9/10th April 1958, No. 226-TNC. 2725, dated 30th April 1958, No. TNC. 2961, dated 15th May 1958),

The Commissioner, Ahmedabad Division (with reference to his endorsements, No. TNC. 50, dated 10th June 1958 and No. TNC. dated 20th August 1958),

The Commissioner, Poona Division,

The Commissioner, Aurangabad Division,

The Commissioner, Rajkot Division,

The Collector of Kolaba (with reference to his letters No. RB. WS. VII. 564, dated 24th March 1958 and 27th March 1958),

The Collector of Nasik (with reference to his letters No. TNC. 2893, dated 30th April 1958 and No. TNC. 4863, dated 24th July 1958),

The Collector of Ahmedabad (with reference to his letter No. CB. TNC. 106, dated 2nd May 1958),

The Collector of Panchmahals (with reference to his letter No. FRG. TNC. WS., dated 12th May 1958),

The Collector of Baroda (with reference to his letter No. 114/57, dated 12th December 1957),

All other Collectors in Bombay/Poona and Ahmedabad Divisions,

The Collector of Amreli,

The Collector of East Khandesh,

All Prant Officers,

All Mamlatdars,

All Mahalkaris.

} under the above Collectors only.

No. of 1959.

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