

(The Second Tenancy Ordinance, 1940)

ORDINANCE No. 12 OF 1940.

The 29th October 1940.

No.285.- The Governor of Burma has promulgated the following Ordinance under the powers conferred by section 41 of the Government of Burma Act, 1935:-

WHEREAS it is necessary to take immediate action to regulate agricultural tenancies during the tenancy years 1940-41 and 1941-42:

NOW, THEREFORE, under section 41 of the Government of Burma Act, 1935, the Governor of Burma promulgates the following Ordinance:-

1. (1) This Ordinance may be called **the Second Tenancy Ordinance, 1940.**
 - (2) It extends to those areas in which the Tenancy Act, 1938, is for the time being in operation.
 - (3) It shall come into force at once.
2. In this Ordinance, unless there is anything repugnant in the subject or context;
 - (1) **“Act”** means the Tenancy Act, 1938;
 - (2) **“lease”** means a lease of immoveable property as defined in section 105 of the Transfer of Property Act, whether it is made by a document or by oral agreement;
 - (3) **“normal gross outturn”** means the outturn of the tenancy under normal conditions if cultivated with due diligence;
 - (4) **“rent”** means any fixed payment in money, kind or service payable by a tenant on account of the use or occupation of the land held by him to or on account of the person under whom the said tenant holds the said land;
 - (5) **“sub-tenancy”** means the holding of a sub-tenant under a single sub-lease;
 - (6) **“sub-tenant”** means a person who holds land under a tenant and is liable to pay rent for the said land to the said tenant but does not include an agent or labourer employed by a tenant, or a sub-tenant of Government or of any Department of Government;
 - (7) **“tenant”** means a person who holds land under another person and is liable to pay rent for the said land to or on account of the said person, but does not include a sub-tenant, or mortgagee or an agent or labourer employed by a landlord, or a tenant of the Government or of a Department of Government;
 - (8) any word or expression not expressly defined in this Ordinance has the meaning assigned to it in the Act, except that **“Revenue Officer”** includes also any Assistant Superintendent of Land Records, Extra Assistant Superintendent of Land Records, Myook or Deputy Myook in charge of a township whom the Governor may appoint to be a Revenue Officer under this Ordinance without recording any special reasons as required by the proviso to sub-section (10) of section 3 of the Act.
3. The operation of sections 13, 14, 15, 16, 17, 18, 19, 23, 24, 25, 26, 27, 28, 29, 30, 31, 32, 34, 36, 37, 44 and 45 of the Act is hereby suspended.

4. No person shall be liable to pay any rent in excess of the fair rent of the tenancy.

5. (1) In the following cases the fair rent shall be deemed to be such percentage of the normal gross outturn of the tenancy as the Governor may by notification prescribe:-

- (a) a tenancy in respect of which an interim order has been passed under sub-section (3) of section 13 of the Act;
- (b) a tenancy for which the Revenue Officer has to determine the fair rent on a reference by a Civil Court made under sub-section (2) of section 19 of the Act; and
- (c) a tenancy of which the tenant has been put in possession under clause (a) of sub-section (3) of section 6 of the Tenancy Ordinance, 1940, and in respect of which the rent has not been fixed by amicable settlement under clause (a) of sub-section (5) of section 6 of that Ordinance.

Explanation.-In the case of item (c) the undertaking under proviso (3) to section 5 of the Tenancy Ordinance, 1940, to pay for the tenancy year 1940-41 such fair rent as may be determined by a Revenue Officer or Rent Settlement Officer under the Act shall be deemed to be an undertaking to pay such fair rent for the said tenancy year as may be determined under this Ordinance.

(2) In other cases the rent fixed by express or implied agreement between the landlord and the tenant after the commencement of the Act shall be deemed to be the fair rent.

6. (1) The Revenue Officer shall determine the normal gross outturn of the tenancies referred to in sub-section (1) of section 5.

(2) For the purpose of determining the normal gross outturn, the Revenue Officer shall, after informing the parties and fixing the time of the hearing, proceed to the village-tract where the tenancy is situated and hear the parties and such evidence as they may produce. He may also make such further enquiries or experiments as he may deem necessary:

Provided that the Revenue Officer may determine the normal gross outturn *ex parte* if either or both of the parties fail to attend at the hearing although due information thereof has been given to them.

(3) The Revenue Officer shall then determine the fair rent of the tenancy by applying to the normal gross outturn as determined under sub-section (2) the relevant percentage prescribed under sub-section (1) of section 5:

Provided that before determining either the outturn or the fair rent of the tenancy the Revenue Officer shall give an opportunity to both parties to arrive at an amicable settlement as regards either the outturn or the fair rent of the tenancy and may assist the parties to this end.

(4) The rent so determined shall be stated to the nearest unit of standard weight or measure.

(5) The order shall state the place at which payment shall be made and the standard of weight or measure to be used in the measurement of the rent; and such order shall conform to the existing practice of the tenancy in determining whether the rent shall be paid by weight or measure and in fixing the place at which it shall be paid.

7. An order of a Revenue Officer determining the fair rent of a tenancy under section 6 shall operate from the commencement of the tenancy year 1940-41:

Provided that the order of a Revenue Officer determining the fair rent of a tenancy on a reference made by a Civil Court under sub-section (2) of section 19 of the Act shall operate from the commencement of the tenancy year in respect of which the reference was made.

8. An order of a Revenue Officer determining a fair rent shall be valid for such period not more than three years as shall be specified in the order:

Provided that the Deputy Commissioner may for exceptional reasons terminate the validity of an order by a Revenue Officer:

Provided also that the Governor may for exceptional reasons pass such general order as he may think fit with reference to fair rents determined under this Ordinance:

Provided further that an order determining the fair rent of a tenancy in accordance with the proviso to sub-section (3) of section 6 shall cease to have validity beyond the current tenancy year if a party to the amicable settlement ceases to be the landlord or the tenant.

9. Where a tenant has been put in possession of a tenancy under section 6 of the Tenancy Ordinance, 1940, the fair rent as determined under section 6 of this Ordinance shall be deemed to be the fair rent of the tenancy for the purpose of calculating the difference payable by the tenant for the year 1939-40:

Provided that notwithstanding anything contained in any other law no suit for recovery of such difference shall be instituted except on his failure to pay it-

(i) at the harvest of the tenancy year 1940-41, or

(ii) if such difference exceeds two baskets or two rupees per acre, by annual instalments at the rate of two baskets or two rupees per acre payable at each harvest.

10. If the rent already paid by a tenant to his landlord in respect of a tenancy for the tenancy year 1939-40 exceeds the fair rent as determined under section 6 and there is no agreement to the contrary after the commencement of the Act between the landlord and the tenant, the tenant shall be entitled to a refund of the excess or to set off such excess against the rent payable by him for the tenancy year 1940-41.

11. A tenant who is not in arrears with the fair rent of the tenancy or with the advances and interest which form a second charge on the produce of the tenancy and has not otherwise treated his landlord unfairly, shall, subject to the provisions of this Ordinance and provided that he is willing to pay the fair rent of the tenancy, be entitled to have his lease renewed for the ensuing tenancy year:

Provided that, where the tenant proposes to plant a crop which takes more than one year to mature or which is harvested for two or more years in succession without replanting, the Revenue Officer may renew the lease for such period exceeding one year as shall ensure that the tenant shall obtain the full produce of his crop on condition that the tenant pays each year the fair rent fixed for the tenancy.

12. A tenant, who is entitled to the renewal of his lease under section 11 and who desires to renew it for another tenancy year, shall intimate his desire to his landlord or his landlord's agent before the end of the current tenancy year:

Provided that the landlord may not less than 15 days before the beginning of the new tenancy year serve on the tenant a notice in writing of his intention to terminate the tenancy on the ground-

(i) that the tenant is in arrears with the fair rent of the tenancy or with advances and interest which form a charge on the produce of the tenancy; or

(ii) that the tenant has otherwise treated the landlord unfairly;

Provided also that the landlord may not less than three months before the beginning of the new tenancy year serve on the tenant a notice in writing of his intention to terminate the tenancy for one or more of the following reasons:-

(a) that the landlord being an agriculturist intends to work the land himself; or

(b) that the landlord not being an agriculturist intends to work the land himself as his principal means of subsistence; or

(c) that the landlord intends to assign the tenancy to a son, daughter, brother, brother-in-law, son-in-law, sister or grand-child who is an agriculturist and will work the land himself; or

(d) that the landlord intends to let the land lie fallow so as to permit the soil to recover from exhaustion and that the land has not lain fallow or been adequately manured during the past six years; or

(e) that the landlord intends to use the land for industrial, residential, religious or public purposes or for the construction of roads, bridges, embankments or drainage works;

Provided further that, subject to the provisions of sub-section (2) of section 13, any tenant, who has not obtained a lease in respect of his tenancy before the first day of the new tenancy year shall be deemed to have vacated the tenancy, unless before that date he has applied to the Revenue Officer for an order continuing him in his tenancy under sub-section (1) of that section.

13. (1) Any tenant who has been served with a notice by his landlord under the first or second proviso to section 12 may apply to the Revenue Officer before the first day of the new tenancy year for an order granting a lease of his tenancy for the ensuing year or, when the crop which the tenant proposes to plant is a crop which takes more than one year to mature or is harvested for two or more years in succession without replanting, for such period as shall ensure that the tenant shall obtain the full produce of the crop.

(2) Even though he has not obtained a lease under the third proviso to section 12, a tenant, who pleads that his failure to obtain a lease was due to evasion on the part of the landlord or the landlord's agent or to refusal on the part of either to grant such a lease, may apply to the Revenue Officer not later than the fifteenth day after the beginning of the new tenancy year for an order granting a lease of his tenancy for the ensuing tenancy year or for such period as shall ensure that the tenant shall obtain the full produce of the crop where such crop as the tenant proposes to plant is a crop which takes more than one year to mature or is harvested for two or more years in succession without replanting.

14. On receipt of an application under section 13 the Revenue Officer shall as soon as possible issue notice to the landlord and the applicant to appear before him.

15. (1) If after due service of notice the landlord fails to appear at the time appointed, the Revenue Officer, on the tenant giving an undertaking in writing that he is willing to pay the fair rent of the tenancy, shall pass an order granting the application.

(2) If after due service of notice the tenant fails to appear at the time appointed, the Revenue Officer shall dismiss the application.

16. If the landlord appears at the time appointed and shows that he has duly given notice to the tenant of his intention to terminate the tenancy under the first or second proviso to section 12, the Revenue Officer, if he is satisfied that the allegations under the first proviso to section 12 are true or that the landlord's intention or the intention of his relative under the second proviso is genuine, shall reject the tenant's application. If he is not so satisfied, he shall pass an order granting the application for the lease.
17. (1) Where the tenant's application is an application under section 13 (2), the Revenue Officer, after hearing both parties and such evidence as they may produce and making any further enquiry which he may deem necessary, shall determine whether the tenant's failure to obtain a lease before the prescribed date was due to the landlord's or his agent's evasion or the refusal of either to grant such a lease.
- (2) If the Revenue Officer finds that such failure was not due to such evasion or refusal, he shall reject the application.
- (3) If the Revenue Officer finds that the tenant's failure was due to such evasion or refusal and if he is satisfied after examining the parties and making such further enquiry as he may deem necessary that the tenant has fulfilled the conditions set out in section 12, he shall pass an order granting the application for the lease and it shall not be necessary for him to enquire into the reasons for such evasion or refusal:
- Provided that, if the landlord proves that he has duly served on the tenant notice under the first or second proviso to section 12, the Revenue Officer shall proceed in accordance with the provisions of section 16.
18. Where no fair rent of a tenancy has been determined by the Revenue Officer, the rent determined by agreement between the parties for the previous year shall be deemed to be the fair rent of the tenancy for the purposes of sections 15, 16 and 17 of this Ordinance.
19. (1) Every order passed under sections 15, 16 and 17 shall be deemed to be and shall have such force as if it were a lease of the tenancy granted by the landlord to the tenant for the period stated in the order.
- (2) A Revenue Officer who passes an order under sections 15, 16 and 17 may, where necessary, give effect to it by ejecting anyone in possession of the land.
- (3) A Revenue Officer may give effect to an order passed on appeal or in revision under this Ordinance by ejecting anyone in possession of the land.
- (4) Every order under sub-sections (2) and (3) shall specify the date on or before which it must be obeyed.
20. In the Act for section 43 the following section shall be substituted:-
- “43 (1) Whoever fraudulently or dishonestly-
- (a) causes produce to be attached under section 6 by representing that he has a charge on it; or
- (b) removes the produce from the tenancy before the charges on it have been satisfied or before adequate provision for such satisfaction has been made,
- shall be punishable on conviction before a Magistrate with imprisonment which may extend to three months or with fine not exceeding Rs. 500 or both.

(2) The Magistrate may in his discretion direct that the fine, or any part of it, if realized, shall be paid as compensation to the aggrieved party.”

21. (1) Any person, who wilfully disobeys any ejectment order under this Ordinance and fails to leave the land on the date specified in the order, shall be punishable on conviction before a Magistrate with imprisonment which may extend to one month or with fine which may extend to Rs. 200 or with both.

(2) The Magistrate may in his discretion direct that the fine, or any part of it, if realized, shall be paid as compensation to the applicant in whose favour the ejectment order was made.

22. (1) Any landlord, who, having obtained termination of a tenancy by advancing any of the reasons given in the second or third proviso to section 12, fails during the tenancy year in respect of which he obtained termination of the tenancy, except for causes beyond his control, to implement his intention, shall be punishable on conviction before a Magistrate with imprisonment which may extend to three months or with fine not exceeding Rs. 500 or both.

(2) The Magistrate may in his discretion direct that the fine, or any part of it, shall , if realized, be paid as compensation to the tenant whose tenancy was terminated.

23. Offences under section 43 of the Act and sections 21 and 22 of this Ordinance shall be compoundable.

24. Subject to the following modifications the provisions of this Ordinance and of the Act shall apply to tenants, sub-tenants and sub-tenancies as if they were landlords, tenants and tenancies respectively:-

(a) Under Chapter II of the Act the landlord shall have the same rights against a sub-tenant as the tenant has against his sub-tenant;

(b) Under Chapter III of the Act-

(i) the landlord shall have the same rights against the sub-tenant as against the tenant;

(ii) the sub-tenant shall have the same rights as against the landlord as if he were the landlord's immediate tenant; and

(iii) the tenant shall not be liable to compensate the sub-tenant for any improvement;

(c) A sub-tenant shall intimate his desire to renew his sub-lease both to the landlord and the tenant;

(d) Notice under section 12 of this Ordinance shall be given not only to the tenant but also to the sub-tenant;

(e) A sub-tenant who is entitled to the renewal of his sub-lease shall be given a lease of the land covered by the sub-lease, if the lease in favour of the tenant be not renewed, and

(f) Subject to the provisions of clause (b), both the landlord and the tenant shall be made parties to proceedings relating to a sub-tenancy.

25. (1) An appeal shall lie to the Deputy Commissioner of the District from any order of a Revenue Officer under this Ordinance.

(2) The period of limitation for such an appeal shall be thirty days from the date of the order appealed against.

26. The Deputy Commissioner of the District may on his own motion but not on the application of a party call for the record of any proceeding under this Ordinance of any Revenue Officer subordinate to him and may pass such order as he thinks fit:

Provided that he shall not make an order reversing or modifying the proceeding or order of any Revenue Officer without giving the parties affected an opportunity of being heard;

Provided also that the Deputy Commissioner shall not vary any order of a Revenue Officer determining the fair rent, if the basis of such orders is an amicable settlement between the parties.

27. No Civil Court shall exercise jurisdiction in respect of any matter which is to be adjudicated upon or determined under this Ordinance.

28. (1) The Governor may make rules-

- (i) prescribing the officers to whom applications under this Ordinance may be made and the date by which and the manner in which such applications may be made and disposed of;
- (ii) prescribing the levy of costs in proceedings under this Ordinance from the landlord and the tenant;
- (iii) prescribing the considerations which a Revenue Officer shall or may take into account in determining what constitutes unfair treatment of a landlord by a tenant;
- (iv) generally for carrying out the purposes of this Ordinance.

(2) All rules made under this section shall be published in the Gazette.

29. The fact that the Tenancy Ordinance, 1940, has ceased to operate shall not-

- (a) affect anything duly done or suffered thereunder; or
- (b) affect any right, privilege, obligation or liability acquired, accrued or incurred thereunder; or
- (c) affect any proceeding or remedy in respect of any such right, privilege, obligation or liability, and any such proceeding or remedy may be continued or enforced as if the Ordinance had not ceased to operate.

By order,
F. S. V. DONNISON,
Secretary to the Govt. of Burma,
Judicial Dept.