

# Land Laws of West Bengal - An Overview

*Dibakar Mukhopadhyay, W.B.C.S. (Executive),*

## Land Administration and Reforms:

1) It reveals to be of tremendous importance even in this space age in India --- land provides subsistence to her enormous body populace, the life – force for their existence. The equitable distribution of the benefit of land to all means the right use of land, its reform and protection. In ancient India, from Vedic period to Buddhist era represented by Lord Ashoka, concepts of ownership on land like ‘Zaminders’ is not available. Though ‘Manu’, the law-giver mentioned the kings/monarch, with limited power to realize revenue but the other law-givers did not recognize the kings as Bhupati/Bhuswami. With passage of time the tillers of the soil proved to be the owners of their land and not the king. The kings were responsible for security of their subjects only and for this they received a share of the produce as revenue.

2) Down the ages, land administration became coercive and concerned only with the extortion of revenue at the cost of the tillers to the benefit of the rulers. During Hindu period, village was considered as an unit to determine revenue and its multiple of ten of units had an officers called ‘**Collector**’ who was the highest officer responsible for collection of revenue and he was assisted by a host of officers. The Mughals considered the unit as ‘**Mouza**’. Since 1765, Dewani of Bengal, Bihar and Orissa accorded with the East India Company by Shah Alam of Delhi sultanate and steady collection of revenue was ensured by the company to their auction of land to the Zamindars for a fixed period ----- extortion and extraction of revenue from the farmers led to the Famine of Bengal in 1770 A.D.

Land Administration, made stringent to the benefit of the Company in the permanent settlement of Bengal in 1773 and the zaminders were relieved of the uncertainty regarding retention of their Zamindaries. Permanent Settlement meant settlement in perpetuity subject to payment of fixed amount to the government before sun set of the stipulated day.

As an effect of the Sepoy Mutiny of 1857 and growing discontent among the tillers, the Rent Act 1859 and Peasant movement in the Pabna District of the undivided Bengal against the misrule of the Zamindars in 1873 and Famine and Epidemic in Bengal and Bihar in 1874, The Bengal Tenancy Act 1885 was enacted by the British Govt. Rights of the raiyat on the land were protected, Records of Rights (ROR) were prepared. This Act consolidated all rules and regulations regarding tenancy. So it was also called consolidated Act. But this Act could not do away with the intermediaries between the tillers of land and the Government; the intermediaries were concerned only with extraction of rent from their subordinate tenants.

**3) Concept of Land Acquisition:** The Sovereign Power of every State has authority to appropriate for purposes of public utility, land situate within the limits of its jurisdiction. This appropriation by the sovereign power of private property for purposes of public utility is known in different countries by different names. The principle underlying appropriation by State of Private property is that the appropriation must be for 'Public utility' of 'Public Purpose' as it is called in India. The constitution of India has also provided that every owner of the land has a right to be heard before he is deprived of his right to his property by this State. Further, the question of payment of compensation is of paramount importance in the law of acquisition. Hence, the law of compensation is inseparably connected with the law of acquisition. The law of acquisition is, in its main principles, culminated in the Act I of 1894 by repealing and amending the other Acts relating to acquisition. But judged in the perspective of today, the Act-I of 1894, suffers from many infirmities.

The Preamble of the Land Acquisition Act-I of 1894 explains the reason which led to its enactment----- "For the acquisition of land needed for public purposes and for companies and for determining the amount of compensation to be made on account of such acquisition". The word 'acquisition' means and includes acquisition of all rights and interests of a tenant in a particular piece of land by paying fair value or compensation. The procedure for assessment of land value by the collector has also been expressly and clearly delineated in the Act. The proceedings of land acquisition have not been attributed any judicial character. These have been characterized as purely administrative in nature so as to protect the right of landowner in the matter of determination of land value by the Collector to be adjudicated by a competent court of Law.

After independence of India in 1947, series of amendments/modifications of the Act-I of 1894 were made and different Central and State Acts were passed to suit the demands of time. But till today, Act-I of 1894 is considered the mother Act. The procedure for determination of market value of land in all such Acts owes reference to the guidelines envisaged in Act-I of 1894.

**4) History of Land Administration thereafter in West Bengal:** Floud Commission, the Land Revenue Commission appointed by the British Govt. submitted their report in 1942, which recommended abolition of the intermediary system in the land administration in Bengal.

In free India, on demand of the people in West Bengal, the West Bengal Estates Acquisition Act, 1953 was enacted. By the enactment of this Act, the rights and interests of the intermediaries got vested to the state w.e.f. 15/4/55. None of the intermediaries and the raiyats or under-raiyat could hold land in excess of the ceiling under section 6(1) of the Act. The EA Act 1953 could not provide ceiling on the holding of land for tank fishery, religious and charitable trust, poultry, live stock breeding and dairy. It could not thwart the ill - act on the part of the big raiyats in holding agri- land in fictitious transfers and in its changes of classification.

The West Bengal Non-Agricultural Tenancy Act, 1949 was passed after independence. The Act mainly dealt with mode of use, leasing out, determination of rent etc. of non-agri land along with causes of eviction or protection of non agri tenants. Transfer and inheritance right was granted in the Act.

The West Bengal Land Reforms Act, 1955 along with its so many amendments, enacted with the purpose of reforming the law relating to land tenure, consequent on the vesting of all estates and of certain rights therein in the state, was not enough in checking the tendency of the big raiyats and their family members in acquiring more land. Section 4(2) of the EA Act 1953 and the West Bengal Non-Agricultural Tenancy Act, 1949 could also be of great help to them in restoring back the intermediary system, abolished so long. WBNAT Act 1949 permitted creation of tenancies and sub tenancies so far as the non-agricultural land was concerned. Again, in absence of any prohibitory law, an unlimited quantum of such land could also be acquired and held subsequently.

**5)** In West Bengal Land Reforms Act, 1955, “**Collector**”, in case of a district, is the person appointed by the State Govt. who is in charge of the revenue administration. This includes ADM (LR) & DL & LRO in the district. **Chapter-II** defines rights of the raiyat and runs from Sec. 4 to 13. He has no sub-soil right but only surface right. **Ch.-IIA** defines the restrictions on alienation of land of scheduled castes and scheduled tribes. This part is spread over from Sec. 14 to 14J. **Ch. IIB** states on ceiling provisions of the land held by a raiyat. This portion is spread over from Sec. 14J to 14Z.

A special drive was launched by the Administrative machinery in 1967-69 to recover clandestinely retained land and it was achieved considerably. It was found that land was retained by big raiyats in the names of relatives, deities, friends and non-existent persons, even in the names of unborn babies and domestic animals. A big raiyat could however, lawfully hold a good quantum of land in his family. This trend led to the concentration of land in the hands of a few unabated. All these causes gave place to the significant amendment of 1971 of the West Bengal Land Reforms Act, 1955.

**6)** W.B.L.R. (Amendment) Act 1981 changed the definition of land which meant land of every description and classification and also land in mill, factory, workshop, tea-garden, poultry, dairy, live-stock breeding etc. Under Section 3A of the amended Act, all rights and interests in land coming within the purview of the West Bengal Non-Agricultural Tenancy Act, 1949 got vested to the state with effect from 9/9/80.

**7)** WBLR (Amendment) Act 1981 determined ceiling provision of land on tea garden, mill factory, workshop, poultry, dairy, live stock breeding.

**8)** But this amendment contained provision for getting land exceeding ceiling limit for such purposes under the special consideration of the Government, (Sec. 14Z).

**9)** The ceiling provision under the WBLR Act with its amendments at the equitable distribution of material resources has been furthered by its significant role in institutionalizing Barga land in favour of the Bargadar and his family under

chapter III and in distributing ceiling surplus land vested to the state, among the landless under chapter VI.

This objective of equitable distribution of the benefit of land resources to people is our concern in the Department of the Land & Land Reforms. We “Stop not till this goal is reached”. **Ch.-IV** and Ch.-V define provisions of revenue and consolidation of holds after forming co-operative societies.

**10)** The following defects have been noticed in the Barga Recording and distribution of patta land to the pattadars undertaken by the L &LR Deptt., Govt. of West Bengal:-

**a)** In considerable nos. of cases, the pattadars were allotted land unfit for agriculture, vested to the state and / or donated by the landlord as ceiling surplus land;

**b)** In a good nos. of cases, quantum of land offered to the pattadars are uneconomic holdings and / or became uneconomic through subsequent subdivision and fragmentation of land;

**c)** Co-operative movement in West Bengal was not so successful like Gujrat, etc;

**d)** Some pattadars are also land lords through improper selection by the revenue officers and thereby very essence of the movement of equitable distribution of land holdings are frustrated As a result, benami intermediary system of barga cultivation is aggravated;

**e)** Barga Recording and recording of names of pattadars deal only with the landholding but not the cropping pattern, and thereby the issue of intensive cultivation, yield per acre and fertility of the soil, etc. all these issues have not even been taken care of to restore soil productivity, acreage and feeding these growing population in future are neglected.

**11)** The W.B. Land Reforms Act is a piece of Social Legislation. After vesting of ceiling surplus lands of raiyat, it is required to be settled to the landless persons so as to subserve common good. **Section 49** and its subsections are provided for

implementation of Land Reforms measure in West Bengal. Here, SDO takes final decision as regards distribution of land.

**12)** Another point is taxing agricultural sector at increasing rate and intensification of the collection of land revenue from the comparatively rich land owners. Recent introduction of Kolkata land Revenue Act, West Bengal Land Revenue Act, etc. are some of the important examples. Through these, Govt. is trying to redistribute income in agriculture as well as whole economy. Hence, this is also a part of the Land Reforms process.

**13)** **Section 49(5)** empowers the Collector to settle land for public purposes or for establishment, maintenance and preservation of any educational or research institution or industry. **Rule 20A** added to the W.B. Land Reforms Rules, 1965 by Notification no.8416-L, Ref., dt.1.7.1968 published on 6.7.1968 provides that this settlement can be made by the Collector of the district or the ADM or the SDO where the settlement is made.

**14)** We, the people in the L & LR Deptt to the Govt. of West Bengal work as :-

Directorate	Secretariat
<ol style="list-style-type: none"> <li>1. D.L.R. &amp; S &amp; Jt. LRC, West Bengal.</li> <li>2. Dy. Directors.</li> <li>3. Addl. Directors.</li> <li>4. Office-on-Spl Duty.</li> <li>5. O.S.</li> <li>6. Dealing Asstt.</li> <li>7. Group 'D' employees.</li> </ol>	<ol style="list-style-type: none"> <li>1. MIC, L. &amp; L.R. Deptt.</li> <li>2. Commissioner General</li> <li>3. Principal Secretary &amp; L.R.C.</li> <li>4. Special Secretary</li> <li>5. Jt. Secretary</li> </ol>
<b>District</b>	<ol style="list-style-type: none"> <li>6. Dy. Secretaries</li> </ol>

1. District Magistrate & Collector	7. Asstt. Secretaries
2. Addl. District Magistrate & Dist. Land & Land Reforms Officer	8. Officer-on-Spl. Duty
3. Dy. DL & LROs	9. Section Officer
4. Officer-in-Charge (SRO-II)	10. Dealing Asstt.
5. Revenue Officer	11. Group 'D' employees
6. H.A.	
7. D.A	
8. Group D employees.	

### 15) Concept of Land Acquisition:

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4) Under Article 298(i) of the Constitution of India, the executive power to acquire land for the purposes of a State rests with the State Government concerned, while power to acquire land for the purposes of the Union has been vested in Central Govt. The Land Acquisition Act, 1894 (Act I of 1894) which has been amended by the Adaptation of Laws Order, 1950 in keeping with the provisions contained in the aforesaid article of the constitution, also empowers the Central Govt. to acquire land for the purposes of the Union and the State Govt. for all other purposes.

But subsequently, the Govt. of India, Ministry of Agriculture and Rural Development in their Notification No.50782(E) dt. 25.10.82 have entrusted their functions under the Land Acquisition Act, 1894, in relation to the acquisition of land for the purposes of the Union, to the State Govt., under provisions of Article 298(i) of the Constitution. The State Govt. can also acquire land under the Act for all purposes including those of Central Govt. But in cases of acquisition of land for the Central Govt., the Notifications under sec.4 and Declaration under sec.6 of the Act, have, however to be published in a modified manner and separate forms are to be used..

**Types of land to be acquired:**

- a) *Land, all the interests in which are already vested in Govt., land in which no interests of private persons exist, cannot form the subject of proceedings under Land Acquisition Act. The transfer of such land from one Department of Government to another should be arranged for by executive action.*
- b) *When Govt. desires to acquire land for any public purpose, they must acquire all types of outstanding interests in land i.e. interests not already vested in Govt.*
- c) *When land has been acquired under the Act and made over to a local authority or to a company, it may again be acquired under the Act, if subsequently required for a public purpose by Govt. or by some other local authority or company.*

The Act-1 of 1894 is a land mark among the laws relating to Land Acquisition. It has stood the test of a century and is still considered the best in its field in spite of incorporation of some amendments made to suit the need of the time and Government policy like some other century old Acts viz. Evidence Act, Civil Procedure Code, Criminal procedure Code and Indian Penal Code.

This Act, judged in the context of the needs of the present day, is found to suffer from infirmities like (a) delay in payment, (b) lacking in provision for rehabilitation of persons evicted due to acquisition prescribing no time-limit for sending Reference petitions to the Court by the Collector, (d) disposal of reference petitions within some prescribed time-limit by the Court., (e) absence of any express provision / direction in the Act for the Requiring Bodies to place required fund for payment of compensation at the disposal of the Collector on demand etc.

**Restriction on acquisition:**

With a view to restricting acquisition of land to the minimum necessity for a project, it has been decided by Govt. that a Screening Committee be constituted by the Collector with some officials and non-officials to examine the proposals for acquisition of land exceeding 10 (ten) acres for various projects of Government, both State and Central / Local Bodies / Public under takings / Companies etc. in the districts.

**16) Procedures to be followed:**

- ❖ Preliminary Investigation Report
- ❖ **Sec. 4 (i)**, Notification.
- ❖ **Sec. 5A**, Hearing of objection.
- ❖ *Preparation of Estimates.*
- ❖ **Sec.6**, Declaration That Land is required for a public purpose.
- ❖ **Sec. 7**, After declaration Collector to take Order for acquisition.
- ❖ **Sec. 8**, Land to be marked out, Measured & Planned.
- ❖ **Sec.9**, Notice to Persons interested.
- ❖ **Sec.10**, Power to require and enforce making of statements as to names and interests
- ❖ **Sec.11**, Enquiry by Collector on Claims, Preparation or Award and

apportionment.

- ❖ **Sec.12 (i)**, Award of Collector When to be final.
- ❖ **Sec.12 (2)**, Notice of Award.
- ❖ **Sec. 13 A**, correction of clerical errors etc.
- ❖ **Section 16**, Power to take Possession.
- ❖ **Section 17**, special powers of taking possession in case of urgency.
- ❖ **Section 18**, Reference to Court
- ❖ **Section 30**, Reference to court on the ground of dispute as to apportionment, title etc.

### **Distinction between scope of Sec.18 and Sec.30:**

The person, who wants to file application for reference u/s 18 within the period stipulated by the said section, can file such application u/s 18 as of right and the Collector is bound to make the reference to the Court;

Whereas, in case of reference u/s 30, the reference may be made either on an application by a person interested or by Collector suo moto and there is no period of Limitation and the person cannot claim to file an application u/s 30 as of right.

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### **Acquisition of Land - A New Approach:**

To make large quantum of land available within shortest possible time, to bring radical changes in age old administrative procedures and practices prevailing and to expedite and dispose of the land acquisition cases efficiently, the New Approach in Land Acquisition has been brought about by the L&LR Deptt. Govt. of West Bengal through a series of Govt. Orders compiled in A Manual, in third time( 1<sup>st</sup> in the year 1951 and 2<sup>nd</sup> in the year 1991), published on 06.06.06 with immediate effect. Interestingly, this 116-year old Land Acquisition Act, 1894 has no Rule framed by either the State or Central Govt. yet.

**Basic features of the new procedure:**

- An involvement, liaison and joint effort of Requiring Body in the matter of acquisition of land has been felt. They have made the added party in all court
- Consent Award system has been emphatically introduced and thereby reduced one-sided authoritarianism of the State machinery. This may totally eliminate the scope of future court cases.
- Collectors have been empowered both financially and administratively.
- Computerisation of the LA setup in all Collectorates has been ensured with sound coordination between LR and LA wings of the L&LR Department. This was circustically not prevalent till date.
- First formal introduction of bare minimum Resettlement and Rehabilitation packages to the BPL families evicted on account of compulsory acquisition.
- Rescheduling of the time table for acquisition, reducing time frame to bare minimum of four to four & half months.
- First time, different application forms and different mode of payment of rural and urban landowners and submission of photographs for the 'Consent Awardees' have been introduced.
- Delivery mechanism near to e-governance and deployment of outside manpower and outsourcing of such works have been permitted which is sure to bring visible changes in civil administration in this sector.

Seven numbers of Govt. Orders ranging from 1701-LA-3M-07/06 dt.06/06/06 to 1707-LA-3M-07/06 dt. 06/06/06 along with six numbers of various types of Application Forms i.e. 666-LA-01 to 666-LA-05 and some clarifications have facilitated execution of the new process.

**17) List of Acts under Land Acquisition:****CENTRAL ACTs:**

- a) The Requisitioning and Acquisition of Immovable property Act, 1952:
- b) The Defence of India Act, 1962:
- c) The Defence of India Rules, 1962:
- d) The Defence of India Act of 1962 was subsequently amended and the Defence of India Act 1971 (No.42 of 1971).

**STATE ACTs:-**

- a) The Land Acquisition Act, 1894 (Act I, 1894).
- b) The West Bengal Land (Requisition & Acquisition) Act, 1948 (Act II of 1948).
- c) The West Bengal Land Development and planning Act, 1948
- d) The West Bengal Acquisition and Settlement of Homestead Land Act, 1969.

e) The West Bengal Requisitioned Land (continuance of Power) Act. No. VIII of 1951

f) The Labourers, Artisans and Fishermen Act, 1975.

**18) List of Acts under Land Administration and Reforms:**

a) The Rent Act, 1959.

b) The Bengal Tenancy Act, 1885.

c) The Estate Acquisition Act, 1953.

d) The Non-Agricultural Tenancy Act, 1949.

e) The West Bengal Land Reforms Act, 1955.

f) Restoration of Alienated Land Act, 1573.

g) Urban Land (Ceiling and Regulation) Act, 1976.

**19) SDO as Authority in removal of encroachments:**

To evict the encroachers from the Govt. lands, the provisions of the W.B. Public Land (Eviction of Unauthorised Occupants) Act, 1962 and the Rules framed there under are applied. The Act provides for speedier and less cumbersome procedure for removing the encroachment/ illegal construction by trespassers. Under this Act, Collector can order eviction and even execute such eviction. BL&LROs should identify the encroached lands and send proposals to SDEMs who function as Collector, through SDL&LROs. Action for demolition of structures/encroachment follows after issue of notice **U/s 3** of the Act.

**Conclusion:**

Since 01.04.1989, the integrated set up in land administration after merger of Settlement Wing and Management Wing has started functioning for the sake of better administration.

**20) Urban Land (Ceiling & Regulation) Act, 1976:** This is a Central Act, came into force in State of West Bengal w.e.f. 17<sup>th</sup> February, 1976 and subsequently been repealed through the Urban Land (Ceiling & Regulation) Repeal Act, 1999 by Govt. of India. All the states except West Bengal has adopted this enactment.

The Urban land (Ceiling & Regulation) Act, 1976 is a Central Act enacted under Clause (I) of Article 252 of Indian Constitution. This was in pursuance of the resolution passed by the Legislatures of the State of West Bengal along with those

of 10 other States to the effect that the matter regarding ceiling on ownership and possession of the urban land be regulated in those States by Parliament by law. The Parliament passed an act for regulating the matter accordingly in the year, 1976 and the Act became operative with effect from 17<sup>th</sup> February, 1976 in West Bengal and other States which passed such resolution.

The said Act was enacted to provide for the imposition of a ceiling on vacant land in urban agglomerations, for the acquisition of such land in excess of ceiling, to regulate the construction of buildings on such land and for matters connected therewith, with a view to preventing the concentration of urban land in the hands of a few persons and speculation and profiteering therein and with a view to bringing about an equitable distribution of land in urban agglomerations to subserve the common good.

Progress and implementation of the Urban land (Ceiling & Regulation) Act, 1976 by the State of West Bengal(upto March, 2011).

1. No. of Statement received u/s 6(10) of the Act – 33024
2. No. of Statement disposed of u/s 10(1) of the Act – 2609
3. Area involved u/s 10(1) – 9796346.59 sqr.mtrs.
4. No. of Statements disposed of u/s 10(3) of the Act – 1370
5. Area involved u/s 10(3) of the Act – 5290777.74 sqr.mtrs.
6. No. of cases where possession has been taken over u/s 10(5) & 10(6) – 677
7. Area involved in 10(5) & 10(6) - 2021909.54 sqr.mtrs.
8. No. of Appeal cases - 1271
9. No. of Court cases pending – 100(approx)
10. Quantum of lands distributed - 6, 55,181.72 sq. mts.

The Urban land (Ceiling & Regulation) Act, 1976 has been repealed by an Ordinance through a notification dated 11.01.1999. The said Ordinance is stated to have been passed in the Parliament. The Repeal Act applies initially to the States of Haryana, Punjab and Union Territories. It shall also apply to such other states which adopt the Act by resolution passed in State Legislature under Article 252(2) of the Constitution.

In section 4 of the Urban land (Ceiling & Regulation) Repeal ordinance, 1999 it has been provided that

“All proceedings relating to any order made or purported to be made under the principal Act pending immediately before the Commencement of this Ordinance, before any court, tribunal or any authority shall abate :

.....  
 .....

It may be noted that a large number of cases initiated under the provision of Urban land (Ceiling & Regulation) Act, 1976 are lying pending before the Appellate Authorities and in the High Court. A huge number of acquisition proceedings started by different Competent Authorities are lying at different stages. Moreover, no. of returns submitted by holders which are yet to be taken up by different Competent Authorities is considerable.

The Govt. of West Bengal has so far not adopted the Repeal Act. The Stand of the Government is that it will accept repeal provided the UL(C&R) Act, 1976 could be substituted by a state Act because the Govt. is of the opinion that an enactment of State Act on Ceiling and Regulation of Urban Land is necessity in order to the State Govt. with the opportunity to subserve the common particularly the welfare of the people in the middle and lower income category. Absence of such Act will strengthen the hands of private owners , who it is apprehended , will get full control of the Urban land and use the same not always conducive to the welfare of the common people. A committee which was formed to draft a State Act submitted a draft bill but it could take its final shape as Ld. L.R. did not give any positive opinion in favour of the proposed draft.

In the year 2006, the Government of India launched Jawaharlal Nehru National Urban Renewal Mission (JNNURM), a programme for integrated development of urban infrastructure, planned development of cities and universalisation of urban services for urban poor. There were some mandatory and optional reforms at State and ULB level to access firms under JNNURM. One of the mandatory reforms was repeal of Urban land (Ceiling & Regulation) Act, 1976. Memorandum of Agreement along with reform agenda and city development plans for Kolkata Metropolitan Area and Asansol Urban Area was signed by the State Government.

In view of the requirement of the reform agenda the State Govt. constituted a committee to examine the issues relating to the said Act headed by Shri S.S.

Chattopadhyay, I.A.S.(Retd.), Former Secretary, Urban development and Poverty Alleviation , Government of India. The committee conclude that, as it is not possible to amend this Act, it will be realistic and appropriate to adopt the Urban land (Ceiling & Regulation) Repeal Act, 1999. It was decided that a three member committee shall study the S. S. Chattopadhyay report. Thereafter no action has been taken.

Till now stand of the Govt. is that there should be enactment of some Act on imposition of ceiling and regulation of urban land so that Govt. may equip itself with the power to subserve that common good, particularly welfare of the middle and lower income groups of the society by way of distribution of ceiling surplus land.

State Govt. through formation of a Committee, drafted a Bill for proposed State Act in substitution of the Principal Act. Provision was kept for inclusion of the pending proceeding and cases already started as a Saving Clause. But Section 4 of the Repeal Act prohibits inclusion of the Saving Clause due to restrictive provisions of the Repeal Act. Section 4 of the Repeal Act reads as follows.

“All proceedings relating to any order made or purported to be made under Principal Act pending immediately before the commencement of this Act, before any Court, Tribunal or other Authority shall abate:

Provided that this section shall not apply to the proceedings relating to sections 11, 12, 13 and 14 of the Principal Act in so far as such proceedings are related to the land, possession of which has been taken over by the State Government in this behalf or by the Competent Authority.”

Thereafter, the State Govt. decided to shift back from the decision and till continues with the Principal Act.

**Achievements so far:**

Approximately, 499 acres i.e. 20-21 lakhs sq. mts. of land are vested to the state since inception though a considerable portion of this is not free from all sorts of encumbrances.

**Goal before the State Govt.:**

To adopt the Repeal Act, 1999 in the State Assembly. Thereafter, a Bill will have to be passed in the same Forum for enactment of the State Act on ceiling and regulation of urban land.

**Task before the Govt.:**

After adoption of the Repeal Act, 1999, there are two obvious situations i.e., a) possibilities of disposal by transfer of ceiling surplus land by the owners which were determined under the pending proceeding of UL (C&R) act, 1976; and b) whether the land already been released after adoption of the Repeal Act can again be brought under preview of its State Act on ceiling and regulation of urban land.

Considering above it is decided that the Principal Act will continue after sorting out the following difficulties / problems faced so far in administering the Act.

a) Inadequate manpower available for effective implementation, b) large No. of court cases, c) lengthy procedure leading to litigation at many stages, d) unauthorized occupation of land getting vested under the Act, and e) tendency of land owners to delay cases in the hope of repeal of the Act.

Although the UL (C&R) Act, 1976 is restrictive/regulatory by nature, there are provisions which have empowered the State Govt. to exercise e.g., application of Section 20 of the said Act. If the decision already taken to continue the implementation of UL (C&R) Act'76 stands, the only way open to the Govt. is to make liberal and pragmatic application of the Sec.20 of Act because it is beyond the power of the State Govt. to amend the Act.

**An outline of the new proposed State Act:-**

Perhaps there will be no ceiling on land holding. The individual owner/promoter may start construction of housing complex/factory/business center etc. on a particular quantum of vacant urban Land after obtaining necessary permission from other statutory authority like Corporation/Municipality, PCB, etc. Necessary permission will only be required from the Competent Authority, if and only if, said quantum of land exceeds this limit. CA may also be empowered to give NOC for a particular quantum and after scrutiny of same specified documents like, land ownership, proposed proposal of land use, clearance of concerned Department in case of commercial use, vacant area proposed, plan for use of underground water, scope for conversation of surface rain water, question of pollution and environment, fire fighting arrangement, etc. Beyond this, State Govt. in the appropriate Department may give such clearance. There may be scope of fixing a certain number of accommodations for lower income groups in case of giving clearance for a Housing Project. Provision for charging permission fees and

imposition of penalty in case of violation of law should also be there. But all these restrictions may not be applicable for any developed schemes undertaken by either Central or State Government's and / or its Undertakings.

**Role of SDO as Competent Authority in implementation of existing UL (C&R) Act, 1976:-**

1) Imposition of ceiling on land holding of vacant held by a person (an individual, family & firm or company or a body or association of individuals) -- Section 4 of the Act.

2) Acquisition of excess vacant land by State Govt., subsequent disposal of the same to subserve the common good and payment of compensation in cash or bonds.

3) Regulation on transfer of urban property. Among four types of urban agglomeration, the ceiling limit varies from 500 sq. mts. to 2000 sq. mts. It also fixes the ceiling limit on the construction of plinth area of a dwelling unit which also varies from 300 sq. mts. to 500 sq. mts. To deal with huge burden of compensation, the Act impose, ceiling on quantum of compensation payable by the Govt.

4) The State Govt. can also grant exemption in respect of certain category of vacant land if it is deemed proper and justified. Here, recommendations of the CA on the basis of inspection followed by scrutiny of documents are necessary.

**The main sections of the Act being dealt by the Competent Authority & SDO:-**

**Section 6:** Filing of statement by persons holding vacant land in excess of the ceiling limit.

**6(1):** Liability to file statement before CA for all vacant land & other ceiling limit.

**6(2):** Issue of notice upon a person directing him to file statement of his holding as referred

to in sub-section(1).

**Section 8:** Preparation of draft statement as regards vacant land held in excess of ceiling limit.

**Section 9:** Preparation of final statement as regards vacant land in excess of ceiling limit.

**Section 10:** Acquisition of vacant land in excess of ceiling limit.

**Section 10(1):** Issue of Notification in respect of particulars of vacant land held by the person in excess of the ceiling limit as shown u/s9.

**Section 10(3):** Declaration by the CA that the excess vacant land referred to in the Notification published under sub-section(1) be deemed to have been acquired by the State Govt.

**Section 10(5):** Taking over possession of Govt. land vested under sub-section (3), by the person authorised by the CA within stipulated period as provided in this sub-section.

**Section 11:** Payment of compensation for vacant land acquired.

**Section 20:** Exemption of certain category of vacant land from the preview of the Act -- power of the State Govt.

**Section 22:** Retention of vacant land emergency upon destruction or demolition of any holding or any holding or any for redevelopment in accordance with the muster plan furnished by the applicant/returnee.

**Section 26:** Notice to be given before transfer of vacant lands.

**Section 27:** Prohibition on transfer of urban property.

**Section 29:** Regulation on construction of building with dwelling units (certain restriction imposed).

**Basic features of Urban Land (Ceiling & Regulation) Act, 1976**

1) **Objectives:** – Vesting of ceiling surplus land in Urban Agglomeration area and distribution thereof for public purposes.

A) Land may be of individual and /or companies, institutions etc.

B) There are four categories of urban agglomeration :

Category 'A':- Kolkata, Delhi, Mumbai.

Category 'B':- Population of more than 10 lakhs.

Category 'C':- Population between 5 lakhs to 10 lakhs.

Category 'D':- Population between 2 lakhs to 5 lakhs.

(Though Durgapur and Asansol belong to category 'D' at the time of its notification. Since then it remained unchanged. Though population figure have increased).

**2) Ceiling limit:** - Quantum of vacant land can be retained by the owner (individual or Company etc.) in the following manner for different categories.

Category 'A':- Vacant land upto 500 sq. mtrs. (7.5 Cottahs approx.)

Category 'B':- Vacant land upto 1000 sq. mtrs. (15 Cottahs approx.)

Category 'C':- Vacant land upto 1500 sq. mtrs. (22.5 Cottahs approx.)

Category 'D':- Vacant land upto 2000 sq. mtrs. (30 Cottahs approx.)

In addition person holding a building along with vacant land may retain constructed portion of the vacant land appurtenant to that building (where there is building in existence) upto 500 sq. mtrs. and an additional quantum upto 500 sq. mtrs. if the building is a dwelling unit.

**3) Statutory Exemption:** - Land held by Government of India, State Government, Semi Government organisation, Public Charitable, Welfare organisation, Religious Trust etc. are exempted from ceiling limit under section 19.

**4) Power of State Government:** - State Government can exempt if it thinks necessary to allow to retain ceiling surplus vacant land to fulfill public purposes.

**5) Structure prevailing in West Bengal:** - Three urban agglomerations viz. Kolkata, Durgapur, Asansol under the 12 Competent Authorities who are statutory authorities to proceed under this Act.

The erstwhile owner of the vested land gets compensation dependant on the quantum of land vested subject to a maximum ceiling of rupees 2 lakhs.

**6) Distribution of vested land:** - Govt. can distribute and/or settle on long term basis said land to any individual (special case) and/or any organisation for Cultural, Educational, Social, Health and Social Welfare, Philanthropic etc. purposes defining it as public purposes.

**7) Rules under the Act:** - There is a rule framed by Central Government known as "The Urban Land (Ceiling & Regulation) Rules, 1976 which has come into force on 17<sup>th</sup> February, 1976 (with amendment upto 10.05.1976) by the Government of India. There is no other Rule framed by the State Government till date.

### **SDO as Authority in removal of encroachments:**

**To evict the encroachers from the Govt. lands, the provisions of the W.B. Public Land (Eviction of Unauthorised Occupants) Act, 1962 and the Rules** framed there under are applied. The Act provides for speedier and less cumbersome procedure for removing the encroachment/ illegal construction by trespassers. Under this Act, Collector can order eviction and even execute such eviction. BL&LROs should identify the encroached lands and send proposals to

SDEMs who function as Collector, through SDL&LROs. Action for demolition of structures/encroachment follows after issue of notice **U/s 3** of the Act.

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