

# LAND ACQUISITIONS CASES

## SECTION 183 -A

**-Ss. 183-A, 181 – Sanctioned building – Completion of construction – Extension of period specified – can be granted only on an application made before expiry of period specified – on expiry of the period, specified sanction lapses and fresh sanction becomes necessary for continuing construction. W.P. No. 1710 of 1987, D/-22-12-1994(Bom), Reversed.**

Section 183-A provide for the specification of the period for the completion of the building when the sanction is granted; and on expiry of that period construction of the building cannot be constituted without a fresh sanction, unless an extension of that period has been allowed on an application made therefore, it means that unless the Board has allowed an extension of the period specified for completion of the building on an application made therefore, the sanction lapses and the construction of the building shall not be continued thereafter without a fresh sanction. Section 183-A speaks of a fresh sanction on expiry of the period fix for the completion of the building as well as extension of that period on an application made therefore, meaning must, therefore, be given to both the provision, namely, fresh sanction and extension of that period; and the two powers must be constructed to be available in two different situation. This necessary to exclude any conflict and arbitrariness in exercise of the choice between the two powers similar cases. It appears that the two powers are meant to be exercised in two different situation and provision did not leave it to the option of the authority to decide which of the two powers is to be exercised in two different situation and the provisions does not leave it to the option of the authority to decide which of the to powers to be exercised in the case this means unless time is extended on an application made before its expiry, the sanction lapses and the erection of the building cannot be continued thereafter a without a fresh sanctioned. Effect of the provision in S. 183-A must also be kept in mind. Extension of time allowed has to be in continuity and it can not exceed the period fix initially for completion of building. The limit is of two extensions. In the present case, the period fix for completion of completion of one year and therefore, permissible two extensions could not two year because of the proviso. The application for extension was made much later after expiry of two years possible extension. The application had to be rejected by Executive Officer since the only power available to the officer on that date was of fresh sanction. *Pune Cantonment Board v. M.P.J. Builders. AIR 1996 SC 2645: 1996 AIR SCW 3299: 1996 (5) SCC 438: 1996 (7) JT 123.*

**-S. 183-A – Sanctioned building – Extension f period specified for completion of construction – Application for extension made much after expiry of maximum period for which extension could have been granted – Construction had not commenced even on that date – additional restriction on sanction of building had been imposed in meantime – Extension granted without considering these fact – Order is vitiated even if it is assumed that extension of time could be granted on an application made after expiry of the period allowed for completion of the construction. *Pune Cantonment Board v. M.P.J. Builders. AIR 1996 SC 2645: 1996 AIR SCW 3299: 1996 (5) SCC 438: 1996 (7) JT 123.***

**-S. 183-A** – Sanctioned building - Time for construction – Extension – Imposition of additional restriction on grant of building sanctioned earlier impermissible – Additional restriction prospective in operation – Yet is a relevant Consideration in deciding grant of extension. Pune Cantonment Board v. M.P.J. Builders. **AIR 1996 SC 2645: 1996 AIR SCW 3299: 1996 (5) SCC 438: 1996 (7) JT 123.**  
**SECTION 185.**

**-S. 185 – Notice of illegal construction – Representation against, by owner – Order of demolition pass after considering said representation – Proper – No independent enquiry is required to be held after notice was issued and reply thereof was given.**

**Misc. Petn. No. 2090 of 1975, D/-5-11-1979(Madhya Pradesh), Reversed.**

Where the owner of the disputed premises admitted on service of notice of illegal construction that he had carried on same in violation of law and requested the Cantonment Board to reconsider the matter and withdraw the notice and the board while considering the representation was not inclined to accede to request made by the owner, the resolution made by the cantonment Board thereafter to have the structure demolished cannot be faulted as violative of principals of natural justice. No independent inquiry is required to be held after the notice was issued and reply thereof was given by owner. Cantonment Board v. Mohanlal. **AIR 1996 SC 1586: 1996 AIR SCW 1832: 1996 (2) SCC 23: 1996 (1) SCJ 353.**

**CANTONMENT ACT (2 OF 1924) SECTION 5.**

**-s.5 – See Land Acquisition and Requisition – Land Acquisition Act (1894), S.4. AIR 1996 SC 2677: 1996 AIR SCW 3343.**

**SECTION 28**

**-Ss. 28(2)(h), 254, 31** – Cantonment Board Election Rules, R. 43 – Member of cantonment Board – Election – disqualification – Arrears of rent due and owing by returned candidate to “Board” in respect of certain land taken of lease from Board – Notice as Contemplated by S. 28(2)(h) for making payment, not served on candidate by Board – **Held**, candidate did not suffer from disqualification under S. 28(2)(h) in respect of lease amount – Knowledge and awareness on part of candidate as to existence of liability would not satisfy requirement of ‘notice’ under, and for purpose of S. 28(2)(h). Nisar Ahmad Ibrahim Khan v. Deolali Cantonment Board. **AIR 1988 SC 29: 1987 Supp SCC 562: (1988) 1 UJ (SC) 388: (1988) 90 Bom LR 1.**

**SECTION 31**

**-S. 31** – Member of Cantonment Board – Elections – Disqualification. **AIR 1988 SC 290.**

**SECTION 52**

**-S. 52(1)(b)** – It is obligatory on the Officer Commanding-in-Chief to give a hearing to the owner, lessee or occupier besides that to the cantonment Board when he upsets the

resolution / decision of the Cantonment Board granting sanction to the owner to erect or re-erect the building. AIR 1992 SC 61: 1991 AIR SCW 1728.

### **SECTION 99**

**-S. 99(2) (f) – ‘In the occupation of the Central Government’ – House acquired under S. 7 of Cantonment (House Accommodation) Act, 1923 – Military Officer allowed to stay house so acquired – House is in occupation of Central Government.**

Where the Central or the state Government after obtaining the lease under S. 7 of the Cantonments (House Accommodation) Act, 1923, lease it out to any person, it is itself not entitled to actual occupation but has to put sub lessee into occupation. In such a case, it may be reasonable said that the government has ceased to be in occupation. In the case where the government after taking the lease merely giving the licence to some person to come and live in it, it is entitled to take away the permission at any time and thus to come in to possession itself. Thus the fact that the person to whom possession has been given is residing in the building, does not make it any the less the actual occupation of the government. Where, therefore, a Military Officer is permitted to be in possession of house acquired by the Central Government under S. 7 of the Act of 1923, the house is, for purposes of S. 99(2) (f) of the Cantonment Act, 1924, in Occupation of the Central Government through Military officer whom it has permitted to reside in it. ILR (1959) Punjab 63, **Affirmed**. Cantonment Board, Ambala Cantonment v. Deepak Prakash. AIR 1963 SC 963: (1963) 1 SCR 196: 1962 SCD 824.

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**-S. 181 – Building Plans – Sanction as to, to be given after conversion of old grant site into freehold site and subject to payment of conversion charges – New scheme of building restriction issued before sanction was given – Building plans as originally submitted – Cannot be approved – Fresh plans if submitted would be governed by such new schemes and bye-laws of 1988 approving new schemes.**

Where the builders were intimated that their plans could be sanctioned only after conversion of the old grants into freehold tenure and subject to the payment of conversion charges by them before such sanction was given, to scheme of building restriction were issued making provision for the minimum open space required to be left and the maximum floor space index, the building plan submitted by them before such scheme could not approved. It was more so when new bye-laws of 1988 approved the second scheme of the building in the matter open spaces, area and height limitation of the building in the cantonment area, the building plan only be sanctioned according to the scheme of the of building restriction in force at the relevant time and no sanction of the favour of them to the building plan submitted originally. Therefore, if the builder submitted fresh building plans they would govern by buy-law of 1988. Putting restriction

and reducing the height and floor space index in respect of multistoried building have been made in larger public interest and for the benefit of the entire population of the city of pune. The slogan of the builders and land owners of utilizing the maximum area for construction of high rise building for felling the need of houses in big urban cities should always be subservient to the building restriction made in the larger interest of the whole inhabitants of pune and keeping in view the influx of population, environment hazards, sanctioned provision for supply of water, electricity and other amenities. Usman Gani J. Khatri of Bombay v. Cantonment Board. **AIR 1994 SC 233: 1993 AIR SCW 3684: (1992) 3 SCC 455: 1992 (4) JT 538.**

--Ss. 185(1) and 187(1) – **Distinction between – Shop on private land** – shop owner constructing structure projecting into a drain belonging to cantonment Board – Case falls within S. 187(1).

Section 185 deal with erection or re-erection of building on private lands whereas S .187 deal with the construction of projection of structures overhanging, projecting in to or encroaching on any street, any drain or adequate. The two provision deal with the different situations, one has nothing to do with the other. The Cantonment Board, Meerut v. Narain Dass. **AIR 1970 SC 105: 1970 All LJ 33: (1969) 2 SCC 125: (1970) 1 SCJ 282.**

#### **SECTION 187**

-**S. 187** – Whether local Boards can take action under provisions similar to S. 187 even after the period of limitation for filing suits by those bodies for possession of public streets or roads or parts thereof or on which they have discontinued their possession expires. (Quaere). The Cantonment Board, Meerut v. Narain Dass. **AIR 1970 SC 105: 1970 All LJ 33: (1969) 2 SCC 125: (1970) 1 SCJ 282.**

-**S. 187 (1)** – Shops on private land – Shop owner constructing structure projecting into a drain belonging to Cantonment Board – Case S. 187(1) – See Ibid, S. 185(1). **AIR 1970 SC 105: 1970 All LJ 33.**

#### **SECTION 254**

-**S.254** – Member of Cantonment Board – Election – Disqualification. **AIR 1988 SC 290.**

#### **SECTION 259**

- **S. 259** – New plea – plea of jurisdiction not depending upon facts – plea that order of magistrate acting under s. 259 of Cantonment Act is not revisable under Ss. 435, 439 of Criminal P.C. – plea not allowed to be raised – Order can be interfered with under Art. 227 of the Constitution – See Constitution of India, Art. 136. **AIR 1966 SC 108: 1966 Cri LJ 93.**

- **S. 259 (1) (as amended by Act 2 of 1954)** – scope – Arrears of rent due under a lease – Cannot be recovered under S. 259. Cantonment Board, Ambala v. Pyarelal. **AIR 1966 SC 108: 1966 Cri LJ 93: (1965) 2 SCWR 972: (1966) 1 SCJ 304.**

# **CANTONMENTS (EXTENSION OF RENT CONTROL LAWS) ACT (46 OF 1957)**

See under Houses and Rents

## **CANTONMENTS (HOUSE ACCOMODATION) ACT (6 OF 1923) SECTION 7**

**-S. 7** – Cantonment Act (1924), S. 99(2) (f) – ‘In the occupation of the Central Government’ –House acquired under S.7 of cantonments (House Accommodation) Act, 1923 – Military Officer allowed to stay in house is in occupation of central Government – See Cantonments Act (1924), S. 99(2)(f). **AIR 1963 SC 963.**

## **CANTONMENTS LAND ADMINISTRATION RULES (1937) RULE 27.**

**-R. 27** – Power given to military Estates Officer to grant lease for regulation of old grant is discretionary, but refusal should only be for sufficient reasons. AIR 1970 All 357. **Affirmed.** Sahodara Devi v. Govt. of India. **AIR 1971 SC 1599: (1972) 3 SCC 156: 1971 UJ (SC) 568: 1971 (Supp) SCR 230.**

# **BHOPAL ABOLITION OF JAGIRS AND LAND REFORMS ACT (10 OF 1953)**

See under Tenancy Laws

## **BHOPAL GAS DISASTER (PROCESSING OF CLAIMS) ACT (21 OF 1985)**

### **PREAMBLE.**

**--Pre. Ss. 3, 4,9,10 – Validity – Victims of gas leaks – Claim for compensation – Representation – Taking over Claim of victims by Govt. – Not illegal.**

Conceptually and from the jurisprudential point of view, especially in the background of the preamble to the constitution of India and the mandate of the Directive principal, it was possible to authorize the central government to take over the claim of the victim of the gas leak to fight against the multinational corporation in respect of the claim. In the circumstances of the situation fully and properly. On its plain terms the state has taken over the exclusive right to represent and act in place of every person who has made or is entitled to make a claim in the same manner and to the same effect as such person. Whether such provision is valid or not in the background of the requirement of the constitution and the code of the civil procedure is another debate. But there is no precipitation or inhibition, conceptually or jurisprudentially for Indian State acting for the victims as the Act has sought to provide.

The Act in question was passed in recognition of the right of the sovereign to act as parens patriac. The government of India in order to effectively safeguard the rights of the victims in the matter of the conduct of the case was entitled to act as parens patriac, which position was reinforced by the statutory provisions, namely, the Act, It has to be borne in mind that conceptually and jurisprudentially,

# **BERAR MUNICIPAL LAW (1900)**

## **SECTION 10**

--**Ss. 10, 11, and 20** – Inam Rules (1859), Rr. II ,V, VI, VII, and XIV – Patelki inam lands – Right of revenue authorities to resume and regrant – See Land Revenue – Berar Land Revenue Code (1928), S. 190. **AIR 1960 SC 642.**

## **SECTION 20.**

--**Ss. 20, 10, 11** – Berar Land Revenue Code (1928), Ss. 190, 192 – Berar Inam Rules (1859), Rr. II ,V, VI, VII, and XIV – Patelki inam lands in Berar – Nature of – Right of revenue authority to resume and regrant such land – See Land Revenue – Berar Lands Revenue Code (1928), S. 190. **AIR 1960 SC 642**

# **BENGAL PUBLIC DEMANDS RECOVERY ACT (3 OF 1913)**

## **SECTION 4.**

--S. 4 – Dues as arrears of land revenue – Requisition for, under control Act viz. Revenue Recovery Act (1 of 1890) – Constitute ‘public’ ‘demand’ – Hence recoverable under State also – Discretion to switch over proceeding under State Act. Vesting in collector, Employees’ State Insurance Corporation v. Overseas Tal Industries. **1994 SCC (L & S) 1129.**

## **SECTION 7**

--Ss. 7, 8 and 10 – Fresh notice under S. 7 to certificate debtors when necessary.

Where the amount of govt. dues was not reduced on the objection of the certificate debtors but was so reduced on the information received from the I.T.O. a fresh notice under section 7 to certificate debtor was necessary. Union of India v. M / s. Jardine Henderson Ltd. **AIR 1979 SC 972: (1979) 2 SCC 258: 118 ITR 112: (1979) 2 SCJ 261.**

## **SCHEDULE 2, RULE 22.**

--Sch. 2, R. 22 – Recovery of Income-tax dues – Common Law doctrine of priority of State debts is applicable – Doctrine has not become subject-matter of legislative provision by R. 22, Sch. II – Doctrine is not displaced – See Income-tax Act (1922), S. 46. **AIR 1965 SC 1061.**

## **Purchase of property of certificate debtor**

### **SCHEDULE 2, RULE 39.**

--Sch. 2, Rr. 39, 40 – Purchase of property of certificate debtor after issue of notice under s. 7 – Locus standi of purchaser in proceeding against certificate debtor for recovery of dues.

Where a property of certificate debtor was purchase after issues of notice under Section 7 to such debtor and the same was sought to be sold for recovery dues against the debtor, the purchaser of the property would have locus standi to prefer objection before the certificate officer and to show under R. 40 that at the date of notice under Section 7 he had some interest in the property in question. Union of India v. M /s Jardine Henderson Ltd. **AIR 1979 SC 972: (1979) 2 SCC 258: 118 ITR 112: (1979) 2 SCJ 261.**

## **BENGAL REVENUE FREE LANDS (NON BADSHAHI GRANTS) REGULATIO. (19 OF 1793)**

### **SECTION 4.**



--S. 4 – Grant – Lakheraj – Invalid Lakheraj resumed and settled - Rights of grantees extend to sub-soil rights – See Grant. **AIR 1964 SC 918.**

### **BENGAL WILLS AND INTESTACY REGULATION (5 OF 1799) SECTION 3.**

--Ss. 3 and 4 – Section 4 does not apply where there is a single heir. **ILR (1957) 3 Cal 572, Reversed.**

Per Hindayatullah, Raghbar Dayal and N. Rajagopala Ayyangar, JJ, (S.K.Das and Sarkar, JJ. Contra), each of the Ss. 2, 3, and 4 of regulation (5 of 1799), is a complete code for dealing with the different situation. S. 2 deal with the case when the deceased dies living a will under which an executor is appointed to manage the property, S. 3 deals with the case when the deceased dies intestate living a single heir and S. 4 to cases when the deceased dies intestate leaving more then one heir. The provision of Ss.3 & 4 are not in consisting in any manner. The second part of S. 4 does not apply to case where the deceased dies intestate leaving only one heir entitled to succeed to the entire estate, a case which is covered by S. 3 of this Regulation. **Prativa Bose v. Kumar Rupendra Deb Raikat. AIR 1965 SC 540: (1965) 1 SCJ 167: (1964) 4 SCR 69: (1964) 1 SCA 1.**

### **SECTION 4**

--S. 4 – Section 4 does not require application – Art. 181, Limitation Act, (1908) has no application. **Prativa Bose v. Kumar Rupendra Deb Raikat. AIR 1965 SC 540: (1965) 1 SCJ 167: (1964) 4 SCR 69: (1964) 1 SCA 1.**

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**-Ss. 13, 3 – Property in possession of receiver – Owner is not absolved from obligation to pay agricultural income-tax.**

The liability to pay tax is charged on the agricultural income of every person. By S. 13 in addition to owner, the receiver is to be deemed to be an assessee. But the fact that the receiver may be deemed to be an assessee and liable to pay tax, does not absolve the owner on whose behalf the income was received, from the obligation to pay agricultural income tax. Section 13 merely provides machinery for recovery of tax, and is not a charging section. *Ramswaroop Dass v. State of Bihar*. AIR 1961 SC 1147: (1961) 42 ITR 770: (1962) 1 SCJ 415: (1961) 3 SCR 405.

**Section 26.**

**-S. 26 – Item of income omitted from assessment though included in return – It can be assessed under S. 26.**

The Agricultural Income-tax officer is competent under S. 26 of the Bihar Agricultural income-tax Act to assess an item of income which he had omitted to tax earlier.

The use of the words ‘any reason’ and which are of wide import dispenses with those conditions by which S. 34 of the Indian Income-tax Act is circumscribed. *Kameshwar Singh v. State of Bihar*. AIR 1959 SC 1303: (1959) 37 ITR 388: 1960 SCJ 145: (1960) 1 SCR 332.

**SECTION 28.**

**-SS. 28 and 13 – Reference to High Court – Question of fact - Question of fact and law – question whether concern is partnership firm or not.**

Whether a concern is a partnership firm or is not a partnership firm is ordinarily a question of fact and law in the sense that if the authority who have ascertain question of fact apply a wrong principle of law in instructing themselves as to what they have to find, then the finding of the fact is not conclusive because they have done it according to wrong principles. The question therefore, whether on the facts and circumstances established in the case under consideration an inference of a partnership firm within the meaning of the partnership Act, 1932. Follows and S. 13 of the Bihar Agricultural Income-tax Act, 1948, is not attracted thereto, is a question of law. *Champaran Cane Concern v. State of Bihar*. AIR 1963 SC 1737: (1963) 49 ITR (SC) 152: (1963) 2 SCJ 499: (1964) 2 SCR 921.