CHAPTER 18

LAND TENURE

1. In considering land tenure in the Bantu Areas, it is necessary to deal with the matter under two main categories, viz:—

I. Land acquired by Bantu from private sources; and

II. Land held or occupied by Bantu in the Bantu Areas.

I. LAND ACQUIRED BY BANTU FROM PRIVATE SOURCES.

2. In so far as the land falling under category I is concerned, the position was governed by the Natives Land Act, No. 27 of 1913, and the Native Trust and Land Act, No. 18 of 1936. With the passing of the Group Areas Act, No. 41 of 1950, however, certain procedural alterations have been made.

3. The general position arising out of the provisions of these Acts, may be briefly summarised as follows:—

(i) it is only within the Scheduled Native Areas and the Released Areas that a Bantu may acquire land or any interest in or right to land. The only exceptions are acquisition under permit issued in terms of the Group Areas Act, 1950, and by devolution or succession on death, whether under a will or on intestacy;

(ii) within the Scheduled Native Areas, a Bantu may acquire land from a Bantu or non-Bantu, but he may dispose of land only to another Bantu, alienation to a non-Bantu being subject to the approval of the Governor-General;

(iii) within a released Area, a Bantu may acquire land from and dispose of it to another Bantu, save for certain exceptions. He may acquire land from a non-Bantu only if the land to be acquired adjoins other Bantu-owned or Trust-owned land; if the land is wholly surrounded by land owned by non-Bantu, the intending Bantu purchaser requires the approval of the Governor-General. In regard to alienation to non-Bantu, if the Bantu-owned land is wholly surrounded by Bantu-owned or Trust-owned land, he may dispose of it to a non-Bantu only with the Governor-General's approval;

(iv) the provisions of section *one* of the Natives Land Act, No. 27 of 1913, apply only to the Scheduled Native Areas;

(v) the acquisition of immovable property and *ipso facto* the disposal thereof by and to Bantu, in a Released Area, and any matter in respect of the acquisition of immovable property which is governed by the Native Trust and Land Act, No. 18 of 1936, fall under the provisions of that Act; and

(vi) any other matter in regard to the acquisition of immovable property by and between the various races, is governed by the provisions of the Group Areas Act, No. 41 of 1950.

II. LAND HELD OR OCCUPIED BY BANTU IN THE BANTU AREAS.

4. Land held under this category may be divided into the following four main groups, viz:—

A. Communal tenure;

B. Individual tenure;

C. Tenure on Trust settlements; and

D. Tenure under particular schemes (e.g. irrigation schemes).

5. The main principles of each of these types are as follows:—

A. Communal Tenure.

6. "The Cape of Good Hope Commission on Native Laws and Customs" of 1883, found that according to Bantu custom, the land occupied by a tribe was theoretically regarded as the property of the paramount chief who, in relation to the tribe, was a trustee holding it for the people, who occupied and used it in subordination to him on communal principles. Under the tribal system the basic idea was occupation by the tribe as a whole, and land was not regarded as a negotiable or commercial asset, the idea of actual legal ownership of the soil not having been developed.

Each tribesman ordinarily received from the chief or deputy chief a homestead allotment for residential purposes, and an arable allotment for cultivation, polygamists obtaining a separate land or arable allotment for each wife. The remainder of the tribal holding was utilised as common pasturage from which, as membership of the tribe increased and fresh households were formed, further portions were allotted to the additional households.

7. The so-called communal tenure under which the land is held in the majority of the Bantu Reserves, is an adaptation of the traditional tribal system of land usage. The ownership remains in the State (the actual ownership having been vested in the S.A. Native Trust) while the use and occupation is enjoyed by the Bantu inhabitants by means of residential sites, arable allotments and communal pasturage. After the death of the holders of the land, the rights of occupation *ipso facto* terminate, but in practice the heir or heirs, under a system of primogeniture normally assume occupation, with the consent of the authorities, which are the Native Commissioners of the district concerned, or in some cases, the chiefs or headmen, in accordance with the relevant regulations.

8. The position is briefly as follows in the several regional areas:—

1. *Area Known as British Bechuanaland.*

9. This area comprises the present districts of Gordonia, Kuruman, Mafeking, Taung and Vryburg. The control of land in the Bantu Reserves in this area, is vested in the chiefs, with the minimum of intervention from the administration.

10. British Bechuanaland Proclamation No. 2 of 1885 reserved to the Bantu Chiefs in that area, original and exclusive jurisdiction in all civil cases between members of their tribes; and, with certain reservations, jurisdiction according to Bantu law in all criminal cases arising exclusively between members of their respective tribes. This power, with certain amendments, has been retained to the present day (see, *inter alia*, Section 24 of Act No. 54 of 1952).

11. The same regard for the traditional institutions was from the commencement evidenced in matters pertaining to land occupation. There are no special land regulations applicable in the Bantu Reserves in this area, except the General Trust Regulations published under Government Notice No. 494 of 1937, as amended, which are of general application to all Trust land.

2. *Natal Locations and Reserves (Excluding Mission Reserves).*

12. While the allocation of land is in the hands of the chiefs and headmen, not only is this power subject to the overriding authority of the Native Commissioner and the Chief Native Commissioner, but the manner of allocation as well as the rights of the individual to the land allotted to him are governed, not by Bantu custom, but by Government regulations.

13. These regulations were published under Proclamation No. 123 of 1931, as amended from time to time, and are applicable to the locations and reserves in Natal and Zululand.

3. *Mission Reserves: Natal.*

14. Apart from certain areas where a tenure approaching a form of individual tenure, is in force, land in the Natal Mission Reserves is, generally speaking, held on a communal basis, but the system of tenure differs from that in the remainder of Natal, in that rights to the land are controlled by officials, are based on lawful residence in the Reserves and not on tribal membership, and are subject to payment of rent.

15. The relevant controlling provisions are contained in the Mission Reserves Act 1903, and, *inter alia*, in regulations published under Government Notice No. 621 of 1919, as amended, and Proclamation No. 126 of 1951.

4. *Orange Free State Reserves.*

16. The control of land in the Orange Free State Reserves is in the hands of the Native Commissioner who acts in collaboration with the Chief and Native Reserve Boards (since superseded by Bantu Authorities). The occupation of the land is on a communal tenure system.

17. The controlling regulations in respect of the Thaba Nchu and Seliba Reserves, are contained in Government Notice No. 1049 of 1916, as amended from time to time, while in the Witzieshoek Reserve, Proclamation No. 186 of 1941, as amended, regulates matters in reference to land.

5. *Ciskei Unsurveyed Locations.*

18. The main features of the system of tenure obtaining in the unsurveyed locations in the Ciskei, are that the allocation of land is under the control of the Native Commissioner who acts after consultation with the chief or headman, as the case may be; provision is made for the registration of allotments, the issue of a permission to occupy to the allotment holder, the protection, transfer, cancellation of rights of occupation, temporary absence of the holder, devolution of rights in case of death, removal of improvements and rights to commonage, etc. The regulations are contained in Proclamation No. 302 of 1928, as amended.

6. *Transkeian Territories (Unsurveyed Locations).*

19. In nineteen of the twenty-six districts comprising the Bantu Areas of the Transkeian Territories, the land is occupied under communal tenure. The occupation and use of the land is controlled by Proclamation No. 26 of 1936, as amended, the provisions of which are similar to those applicable in the unsurveyed locations in the Ciskei, and Proclamations Nos. 174 of 1921 and 170 of 1922 (Xalanga District).

7. *Transvaal.*

20. The Bantu Reserves in the Transvaal comprise both Trust vested land (previously Crown land as in the other provinces), and land owned by the Bantu themselves (generally tribally). No specific land control regulations were issued until 1939 (Proclamation No. 264 of 1939) prior to which the traditional tribal control under the chiefs, was to a large extent left undisturbed. All previous regulations were subsequently repealed by Proclamation No. 13 of 1945, which is the existing controlling Proclamation, the provisions of which are somewhat similar to those obtaining in other provinces, with the necessary modifications to suit local conditions.

8. *Main Features of Communal System of Land Tenure.*

21. The main features of the communal system of land tenure may be summarised as follows:—

(i) the land is divided into allotments for residential and cultivation purposes respectively, with a communal grazing commonage. With certain exceptions, the control of the land is vested in the local officials, in consultation with the chief or headman concerned;

(ii) the average extent of a residential site is ½ morgen and an arable allotment from four to five morgen, although in practice, owing to shortage of land, many allotments are smaller than the prescribed areas;

(iii) the principle of "one-man-one-lot" is enforced, with provision for polygamous households and other special cases;

(iv) married men, or single women with family obligations, are regarded as being entitled to land;

(v) the allotment holder usually receives a document of occupation, which is an extract from the Native Commissioner's land register;

(vi) no charge is generally made for the right to use and occupy land, but the annual local tax of 10s. per hut (which in practice means per wife) is payable by married men;

(vii) alienation, when it is allowed, is subject to the consent of the controlling official (the Native Commissioner). The rights are not heritable, but widows and heirs have first claim to re-allotment if the Native Commissioner is satisfied that they require the land; and

(viii) there is no security of tenure, the rights being subject to forfeiture for various reasons, prescribed in the regulations. The rights are personal and free disposition either *inter vivos* or *mortis causa*, is not conceded.

B. Individual Tenure.

22. Individual tenure as distinguished from communal tenure, embodies a system whereby rights in land, defined by survey, and identified from an approved diagram, are allocated or transferred to an individual as sole owner of such rights under a title deed registered in a deeds registry (normally in the Chief Native Commissioner's office), and in which the conditions of grant are prescribed.

23. This system is in force in the District of Glen Grey (under Cape Act, No. 25 of 1894, as amended), in surveyed locations in several districts of the Ciskei (under Proclamations Nos. 117 of 1931 and 119 of 1931, as amended), and in seven surveyed districts in the Transkeian Territories (Proclamations Nos. 227 of 1898, 241 of 1911 and 196 of 1920, as amended).

24. In certain mission reserves, in Natal, grants were made under freehold tenure, namely in Amanzimtoti, Umvoti and Imfume, while at Impapala (District of Eshowe), Ifafa and Amanzimtoti there is in operation a system of leasehold tenure; and at Umtwalumi (District of Umzinto) a system of individual tenure was introduced by Proclamations Nos. 68 and 69 of 1951.

1. *Main Features of Individual Tenure.*

25. Apart from certain isolated cases in Natal referred to above, individual tenure of land under registered title is confined to surveyed locations in some districts of the Ciskei and Transkei. While there are some differences in the application of the system in the Transkei and Glen Grey, on the one hand, and in the rest of the Ciskei on the other hand, the main features of the system as a whole, are well defined and may be summarised as follows:—

(i) the land is demarcated into sites for residential purposes, allotments for arable purposes and grazing commonages for general use;

(ii) registered title is issued in respect of arable or garden allotments, of an average size of four to five morgen; and in some areas, in respect of building or residential sites of approximately ½ morgen. In other areas the building or residential sites are held under Permission to Occupy;

(iii) the principle of "one-man-one-lot" is applied and sub-division is controlled;

(iv) a perpetual annual quitrent, calculated according to the size of the allotment (subject to a minimum fixed amount) is payable by the registered holder;

(v) the title is subject to restrictive conditions, e.g. restriction on disposal of the land except with official approval, forfeiture of land on account of conviction of the registered holder, of certain crimes, or for absenteeism and non-beneficial occupation and non-payment of quitrent;

(vi) the land may not be mortgaged or pledged nor may it be sold in execution for debt. It is not divisible by will, and is inheritable only in terms of a Table of Succession, based on a system of primogeniture; and

(vii) the simple and cheap registration system operated through specially instituted deeds offices by the Native Affairs Department, eliminates the elaborate and expensive conveyancing procedure which characterises the registration and disposal of land in European areas.

C. Tenure on Trust Settlements.

26. On Trust Settlements the land is settled in accordance with carefully planned schemes under close supervision. The control of occupation of land is vested in the Trust (exercised through the officials, normally the Native Commissioner and field officers), under regulations promulgated under Proclamations Nos. 12 of 1945 and 13 of 1945.

27. The system is a form of leasehold tenure, under which the occupier pays a fixed or fixable annual rental prescribed by Proclamation No. 92 of 1949, and in return acquires residential and cultivation rights in respect of defined portions of land and certain rights in respect of grazing commonages.

28. The conditions of tenure (with variations) are analogous to those under the communal tenure system.

D. Tenure under Particular Schemes.

1. *Irrigation Schemes.*

29. Where conditions are favourable, irrigation schemes have been established under which plots of land, generally of much smaller extent and subject to more intensive farming and stricter control measures than the dry land allotments, are allocated to Bantu settlers.

30. Examples of such schemes are: Tugela and Mooi Rivers (Msinga District, Proclamation No. 195 of 1932, as amended), Grobler Irrigation Scheme (Thaba Nchu District, Proclamation No. 173 of 1938, as amended), Linokana (Marico District, Proclamation No. 106 of 1948), Olifants (Groblersdal District, Proclamation No. 371 of 1948), Njelele (Soutpansberg District), Gompies (Potgietersrus District), Seodin (Kuruman District, Proclamation No. 195 of 1948), Taung (Taung District, Proclamation No. 4 of 1943, as amended).

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