

Bihar and Orissa Public Demands Recovery Act, 1914

[Bihar and Orissa Act No. 4 of 1914]

Last Updated 17th February, 2020 [bh589]

[Dated 01.07.1914]

An Act to consolidate and amend the law relating to the recovery of Public Demands in Bihar and Orissa.

Whereas it is expedient to consolidate and amend the law relating to the recovery of public demands in Bihar and Orissa;

And whereas the previous sanction of the Governor-General has been obtained, under Section 5 of the Indian Councils Act, 1892, to the passing of this Act: 55 and 52 Vict., c. 14.

It is hereby enacted as follows: -

Part-I

Preliminary

1. Short title, commencement and extent. - (1) This Act may be called the Bihar and Orissa Public Demands Recovery Act, 1914;
(2) [It shall come into force on such date] as the [State] Government may appoint by Notification in the Official Gazette; and
(3) It extends to the whole of Bihar and Orissa except the District of Angul and Sambalpur,
2. Repeal. - The following enactments are hereby repealed, namely -
 - (a) The Public Demands Recovery Act, 1895 (Ben. Act I of 1895), and
 - (b) The Bengal Public Demands Recovery (Amendment) Act, 1897 (Ben. Act I of 1897).
3. Definitions. - In this Act, unless there is anything repugnant in the subject or context -
 - (1) "*certificate debtor*" means the person named as debtor in a certificate filed under this Act and includes any person whose name is substituted or added as debtor by the Certificate Officer;
 - (2) "*Certificate Holder*" means the Government or person in whose favour a certificate has been filed under this Act, and includes any person whose name is substituted or added as creditor by the Certificate Officer.
 - (3) "*Certificate-Officer*" means a Collector, a Sub-Divisional Officer, and any officer appointed by a Collector, with the sanction of the Commissioner, to perform the functions of a Certificate Officer;
 - (4) "*Movable Property*" includes growing crops;

- (5) "Prescribed" means prescribed by Rules;
- (6) "Public Demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may by law, be chargeable thereon upto the date on which a certificate is signed under Part II; and
- (7) "Rules" means Rules and forms contained in Schedule II or made under Section 48.

Part-II

Filing, Service and Effect of Certificates, and Hearing of Objections thereto

4. Filing of certificate for public demand payable to Collector. - When the Certificate-Officer is satisfied that any public demand payable to the Collector is due, he may sign a certificate in the prescribed form, stating that the demand is due and shall cause the certificate to be filed in his office.

5. Requisition for certificate in other cases. - (1) When any public demand payable to any person other than the Collector is due such person may send to the Certificate Officer a written requisition in the prescribed form:

Provided that in the case of an order framed by a liquidator under the Cooperative Societies Act, 1912 [2 of 1912] the written requisition shall be sent by the Registrar of Co-operative Societies, Bihar and Orissa.

(2) Every such requisition shall be signed and verified in the prescribed manner, and except in such cases as may be prescribed, shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870 (VII of 1870) in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due.

Note 1. - Damages under Section 68 of the Bengal Tenancy Act, or Section 175 of the Chota Nagpur Tenancy Act cannot be included in certificates for arrears of rent.

[Note 2. - Requisitions made in respect of public demands payable to Government shall not be chargeable with any Court-fee (Board's Notification No. 4-4169, dated the 15th July, 1970)].

Note 3. - Government are pleased to exempt the Encumbered estates in Chota Nagpur and all Court of Wards estates in Bengal having properties in this province from pre-payment of ad valorem and process fees in certificate cases on the understanding that no question of remission of the fees will be considered, however insolvent the estates will be.

Government are also pleased to extend the concession to the Wards estates in Bihar which have difficulty in finding the money for purchase of stamps in advance on the aforesaid condition and also on the condition that estate should be exempted from pre-payment of fee for a given period.

[Memo No. 11198 R-I W-64, dated the 26th October, 1934, of the Government of Bihar and Orissa, Revenue Department.]

Note 4. - Government have exempted from pre-payment of ad valorem Court-fee, certificates issued under the Bihar and Orissa Co-operative Societies Act, 1935, on condition that the Court-fee will be the first charge on any sum realised in cash.

The Court-fee payable on a requisition for a certificate under a liquidator's order under Section 44 or an award under Section 48 of the Bihar and Orissa Cooperative Societies Act, 1935, is a Court-fee of [75 paise and not an ad-valorem Court-fee].

6. Filing of certificate on requisition. - On receipt of any such requisition the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery by suit is not barred by law, may sign a certificate, in the prescribed form, stating that the demand is due and shall include in the certificate the fee if any paid under Section 5, sub-section (2); and shall cause the certificate to be filed in his office.

7. Service of notice and copy of certificate on certificate debtor. - When a certificate has been filled in the office of a certificate officer under section 4 or section 6, he shall cause to be served upon the certificate-debtor, in the prescribed manner, a notice in the prescribed manner, a notice in the prescribed form and a copy of the certificate.

8. Effect of service of notice of certificate. - From and after the service of notice of any certificate under Section 7 upon a certificate-debtor -

(a) any private transfer or delivery of any of his immovable property situated in the district or, in the case of a Revenue paying Estate, borne on the revenue roll of the district in which the certificate is filed or of any interest in any such property shall be void against any claim enforceable in execution of the certificate; and

(b) the amount due from time to time in respect of the certificate shall be a charge upon such property, to which every other charge created subsequently to the service of the said notice shall be postponed.

9. Filing of petition denying liability. - (1) The certificate debtor may within thirty days from the service of the notice required by Section 7, or where the notice has not been duly served then within thirty days from the execution of any process for enforcing the certificate, present to the Certificate Officer in whose office the certificate is filed or to the Certificate Officer who is executing the certificate, a petition, in the prescribed form, signed and verified in the prescribed manner, denying his liability, in whole or in part.

(2) If any such petition is presented to a Certificate Officer other than the Certificate Officer in whose office the original certificate is filed, it shall be sent to the latter officer for disposal.

10. Hearing and determining of such petition. - The Certificate Officer in whose office the original certificate is filed shall hear the petition, take evidence (if necessary) and determine whether the certificate-debtor is liable for the whole or any part of the amount for which the certificate was signed; and may set aside, modify or vary the certificate accordingly:

Provided that if the Certificate Officer is not the Collector, and considers that the petition involves a bonafide claim of right to property, he shall refer the petition to the Collector for orders, and the Collector, if he is satisfied that a bonafide claim or right of property is involved, shall make an order cancelling the certificate.

11. Power to amend certificate by addition, omission or substitution of parties. - Subject to the law of limitation the Certificate Officer may at any time amend a certificate by the addition, omission or substitution of the name of any certificate-holder or certificate-debtor or by the alteration of the amount claimed therein:

Provided that when any such amendment is made a fresh notice and copy shall be issued as provided in Section 7.

Part-III

Execution of Certificates

12. Who may execute certificate. - A certificate filed under Section 4 or Section 6 may be executed by -

- (a) the Certificate Officer in whose office the original certificate is filed or
- (b) the Certificate Officer to whom a copy of the certificate is sent for execution under Section 13 sub-section (1).

13. Transmission of certificate to another Certificate Officer for execution. - (1) A Certificate Officer in whose office a certificate is filed may send a copy thereof, for execution, to any other Certificate Officer in the same district or to the Collector of any other district.

(2) When a copy of a certificate is sent to any such officer, he shall cause it to be filed in his office, and thereupon the provisions of Section 8 with respect to certificates filed in the office of a Certificate Officer shall apply as if such copy were an original certificate:

Provided that it shall not be necessary to serve a second notice and copy under Section 7.

14. When certificate may be executed. - No step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of the service of the notice required by Sections 7 and 11, or when a petition has been duly filed under Section 9, until such petition has been heard and determined:

Provided that, if the Certificate Officer in whose office a certificate is filed is satisfied that the certificate-debtor is likely to conceal, remove or dispose of the whole or any part of such of his movable property as is liable to attachment under this Act, and that the realization of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such movable property.

15. Modes of execution. - Subject to such conditions and limitations as may be prescribed, a Certificate Officer may order execution of a certificate -

- (a) by attachment, and sale, if necessary, of any property, or, in the case of immovable property, by sale without previous attachment, or
- (b) by arresting the Certificate-debtor and detaining him in civil prison, or
- (c) by both of the methods mentioned in clauses (a) and (b).

Explanation to clause (c). - The Certificate Officer may, in his discretion, refuse execution at the same time against the person and property of the certificate-debtor.

16. Certain sales by whom to be held. - Where a revenue-paying estate or any share therein is liable to sale in execution of a certificate, such sale may be held either -

- (a) by the Certificate Officer exercising jurisdiction in the district to the revenue roll of which the estate or share appertains, or

(b) by the Certificate Officer exercising jurisdiction in the district in which such estate or share is situated:

Provided that in the latter case previous notice of the sale shall be sent to the Collector of the district on the revenue roll of which the estate or share is borne.

[17. Interest, cost and charges recoverable. - There shall be recoverable in the proceedings in execution of every certificate filed under this Act-

[(a) interest upon the public demand to which the Certificate relates at the rate of twelve per centum per annum from the date of the signing of the certificate up to the date of realisation.]

(b) such costs as are directed to be paid under Section 54 and

(c) all charges incurred in respect of-

(i) the service of notice under Section 7 and of warrants and other processes and,

(ii) all other proceedings taken or realising the demand.]

Attachment

18. Property liable to attachment and sale in execution of a certificate. - (1) The following property is liable to attachment and sale in execution of a certificate under this Act, namely lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, *hundies*, promissory notes. Government securities, bonds of other securities for money, debts, shares in Corporation and save as hereinafter mentioned, all other saleable property, movable or immovable belonging to the certificate-debtor, or over which or the profits of which, he has a disposing power which he may exercise for his own benefit, whether the same be held in the name of the certificate-debtor or by any other person in trust for him or on his behalf.

Note. - Under Sections 2(1)(a) and (b) and 33 of the Bengal Settled Estates Act, 1904, immovable property, securities and heir looms forming part of an estate settled under that Act can only be sold under the certificate procedure with the Special sanction of the State Government:

Provided that the following particulars shall not be liable to such attachment or sale namely -

(a) the necessary wearing-apparel, cooking vessels, beds and bedding of the certificate-debtor, his wife and children, and such personal ornaments as, in accordance with religious usage, cannot be parted with by any woman;

(b) tools of artizans and where the certificate-debtor is an agriculturist his implements of husbandry and such cattle and seed grain as may, in the opinion of the Certificate Officer, be necessary to enable him to earn his livelihood as such, and such portion of agricultural produce or as of any class of agricultural produce may have been declared to be free from liability under the provision of the next following Section;

(c) houses and other buildings (with the materials & the site thereof and the land immediately appurtenant thereto and necessary for their enjoyment) belonging to an agriculturist and occupied by him;

- (d) books of account;
- (e) a mere right to sue for damages;
- (f) any right of personal service;
- (g) stipends and gratuities allowed to pensioners of the Government or payable out of any service family pension fund notified in the Official Gazette by the Central or any State Government in this behalf and political pensions;
- (h) allowances (being less than salary) of any public officer or of any servant of a railway company or local authority while absent from duty;
- (i) the salary or allowances equal to salary of any such public officer or servant as is referred to in clause (h), while on duty, to the extent of -
 - (i) the whole of the salary where the salary does not exceed twenty rupees monthly;
 - (ii) twenty rupees monthly, where the salary exceeds twenty rupees and does not exceed forty rupees monthly; and
 - (iii) one moiety of the salary in any other case;
- (j) the pay and allowances of persons to whom the Indian Articles of War apply;
- (k) all compulsory deposits and other sums in or derived from any fund to which the Provident Funds Act, 1897 (Act IX of 1897) for the time being applies in so far as they are declared by the said Act not to be liable to attachment;
- (l) the wages of labourers and domestic servants whether payable in money or in kind;
- (m) an expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (n) a right to future maintenance;
- (o) any allowance declared by any Indian law in force in the State, to be exempt from liability to attachment or sale in execution of a decree;
- (p) where the Certificate debtor is a person liable for the payment of land revenue, and movable property which, under any law for the time being applicable to him, is exempt from sale for the recovery of an arrear of such revenue, and
- (q) any immovable property which under the Tenancy law for the time being in force in the local area in which the Certificate is to be executed, would not have been liable to sale had the certificate been a decree of a Court of ordinary jurisdiction.

Explanation. - The particulars mentioned in clauses (g), (h), (i), (j) and (o) are exempt from attachment or sale whether before or after they are actually payable.

(2) Nothing in this Section shall be deemed -

(a) to exempt houses and other buildings (with the materials and sites thereof and the lands immediately appurtenant thereto and necessary or their enjoyment) from attachment or sale in execution of certificates for rent of any such house, building, site or land; or

(b) to affect the provisions of the Army Act or of any similar law for the time being in force.

19. Partial exemption of agricultural produce. - The State Government may, by general or special order published in the local Official Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce as may appear to the State Government to be necessary for the purpose of providing until the next harvest for the due cultivation of the land and for the support of the certificate-debtor and his family shall in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a certificate.

20. Payment of moneys, contrary to attachment, to be void. - Where an attachment has been made in execution of a Certificate, any payment to the certificate' debtor of any debt, dividend or other money, contrary to such attachment, shall be void as against all claims enforceable under the attachment.

Investigations of claims and Objections

21. Investigation by Certificate Officer. - (1) Where any claim is preferred to or any objection is made to the attachment or sale of any property in execution of a certificate, on the ground that such property is not liable to such attachment or sale, the Certificate Officer shall proceed to investigate the claim or objection:

Provided that no such investigation shall be made where the Certificate Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Certificate Officer ordering the sale may postpone it pending the investigation of the claim or objection.

22. Evidence to be adduced. - The claimant or objector must adduce evidence to show that -

(a) (in the case of immovable property) at the date of the service of the notice under Section 7, or

(b) (in the case of movable property) at the date of the attachment, he had some interest in, or was possessed of the property attached.

23. Release of property from attachment or sale. - Where upon the said investigation, the Certificate Officer is satisfied that for the reason stated in the claim or objection, such property was not -

(a) (in the case of immovable property) at the date of the service of the notice under Section 7, or

(b) (in the case of movable property) at the date of the attachment,

in the possession of the certificate-debtor or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him, or that, being in the possession of the certificate-debtor at the said date it was so in his possession, not on his own account or as his own property but on account of or in trust for some other person, or partly on his own account and partly on account of some other person.

The Certificate Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

24. Disallowance of claim to property attached. - Where the Certificate Officer is satisfied that the property was at the said date, in the possession of the certificate-debtor as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Certificate Officer shall disallow the claim.

25. Saving of suits to establish right to attached property. - Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a Civil Court to establish the right which he claims to the property in dispute; but subject to the result of such suit (if any), the order shall be conclusive.

Sale

26. Purchaser's title. - (1) Where property is sold in execution of a certificate there shall vest in the purchaser merely the right, title and interest of the certificate-debtor at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate, and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in from the time when the property is sold, and not from the time when the sale becomes absolute.

(3) Notwithstanding anything contained in sub-section (1), in areas in which Chapter XIV of the Bengal Tenancy Act, 1885 is in force where a tenure or holding is sold in execution of a certificate for arrears of rent due in respect thereof the tenure or holding shall, subject to the provisions of Section 22 of the said Act, pass to the purchaser subject to the interest defined in the said Chapter as "protected interests", but with power to annul the interests defined in the said Chapter as "incumbrances";

Provided as follows -

- (i) a registered and notified incumbrance within the meaning of the said Chapter shall not be so annulled except in the case mentioned therein, and
- (ii) the power to annul shall be exercisable only in the manner directed under that Chapter.

[(4) In areas in which the Chota Nagpur Tenancy Act, 1908, is in force -

- (a) the Commissioner may by order, in any case in which he may consider it desirable so to do - (i) prohibit the sale of any tenure or portion thereof; (ii) stay any such sale for any period specified in the order;]

(b) when a tenure or holding is sold in execution of a certificate for arrears of rent due in respect thereof, sub-section (1) shall not apply, but the purchaser shall acquire such right therein as if he had purchased at a sale thereof under sub-section (1) of Section 208 of the Chotanagpur Tenancy Act, 1908 in execution of a decree for such arrears.

(5) Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of sub-sections (3) and (4) shall not apply.

[(6) Notwithstanding anything contained in sub-section (1), where any estate is sold in pursuance of Section 98 of the Cess Act, 1880 (Bengal Act IX of 1880), in execution of certificate for any amount due to the Collector under the provisions of the said Act in respect of any arrears of cess, of any expenses incurred, of any fee or costs payable, of any notices served, or any fines imposed, or on any other account, the purchaser of the estate shall subject to the payment of any amount due under the provisions of the Bengal Land-Revenue Sales Act, 1859 (Bengal Act XI of 1859) or the Bengal Land-Revenue Sales Act, 1868 (Bengal Act VII of 1868) in respect of the arrears of land revenue accruing due in respect of that estate on or before the date of the sale -

(i) in the case of a sale of one or more shares, acquire the shares, subject to all incumbrances, and

(ii) in the case of a sale of the entire estate, acquire the estate free from all incumbrances with the following exceptions namely -

First - Istamrarior mukarraritenures which have been held at a fixed rent from the time of the permanent settlement.

Secondly - Tenures existing at the time of permanent settlement which have not been held at a fixed rent;

Thirdly - Tenures created or recognised by the settlement proceedings of any current temporary settlement, as tenures bearing a rent which is fixed for the period of such settlement;

Fourthly - Tenures of lands whereon dwelling houses, manufactories or other permanent buildings have been erected, or whereon permanent gardens, plantations, tanks, canals, places of worship or burning or burying grounds have been made:

Provided that -

(a) Where a separate account has been opened or one or more shares, the share or shares from which the arrears may be due shall be put up to sale in the first instance but if in any case of such sale the highest bid for share or shares put up to sale does not reach a sum sufficient to liquidate the amount of the certificate and costs including the costs of sale, the Certificate Officer shall stop the sale; and shall declare that the entire estate shall be put up to sale for the arrears of cess and costs of the certificate

at a further date; unless the other recorded sharer or sharers or one or more of them shall within a period of thirty days from the date on which the share or shares were last put up to sale, purchase the shares in arrears by paying the said amount of certificate due from such share;

- (b) where the entire estate is sold, it shall, in the first instance be put up to auction subject to incumbrances created by registered instruments and if the bidding reaches a sum sufficient to liquidate the amount of the certificate and costs including the costs of sale, the estate shall be sold subject to such incumbrances;
- (c) where the bidding for the entire estate does not reach a sum sufficient to liquidate the amount of the certificate and costs as aforesaid and if the certificate-holder thereupon desires that the estate be sold with power to annul all incumbrances, the officer holding the sale shall adjourn the sale and make a fresh proclamation for sale announcing that the estate shall be put to auction and sold with power to annul all incumbrances upon a future day specified therein, and upon that day, the estate shall be put up to auction and sold with power to annul all incumbrances;
- (d) where a purchaser or an estate having power to annul an incumbrance under the foregoing clause of this proviso desires to annul the same he may within one year from the date of the sale or the date on which he first has notice of the incumbrance, whichever is later, present to the Certificate Officer an application in writing, requesting him to serve on the incumbrancer a notice in the prescribed form declaring that the incumbrance is annulled, and thereupon the Certificate Officer shall cause the notice to be served in the prescribed manner and the incumbrance shall be deemed to be annulled from the date on which it is so served;
- (e) reasonable facilities may be allowed to the certificate-debtor to pay the amount of the certificate and costs at any time before the date of sale of the estate in such number of instalments as the Collector may think fit;
- (f) notwithstanding anything contained in this Act, the certificate debtor shall have the right to deposit the amount of certificate and costs including the cost of sale within ninety days after the date of sale and on the amount being so deposited, the Certificate Officer shall make an order setting aside the sale.]

[*Explanation.* - For the purposes of this proviso, when there is a separate account for the State of Bihar in respect of any share of an estate which has vested in that State under any provision of the Bihar Land Reforms Act, 1950 (Bihar Act XXX of 1950), the expression "*entire estate*"

shall not include the share or interest which has so vested in the State and the expression "*the other recorded sharer or sharers or one or more of them*" shall not include the State of Bihar.]

27. Suit against purchaser not maintainable on ground of purchase being on behalf of plaintiff. -

(1) No suit shall be maintained, against any person claiming title under a purchase certified by the Certificate Officer in such manner as may be prescribed on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this Section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

Setting Aside Sale

28. Application to set aside sale of immovable property on deposit. -(1) Where immovable property has been sold in execution of a certificate, the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Certificate Officer to set aside the sale, on his deposit in, -

(a) for payment to the certificate-holder; the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered with interest thereon at the rate of six and a quarter per centum per annum calculated from the date of the sale to the date when the deposit is made;

(b) for payment to the purchaser, as penalty, a sum equal to ten percent of the purchase money, but not less than one rupee;

(c) for payment to the Collector (where the certificate is for a public demand payable to the Collector), such outstanding charges due to the Government under any law for the time being in force as the Collector certifies to be payable by the certificate-debtor.

(2) Where a person makes an application under Section 29 for setting aside the sale of his immovable property, he shall not unless he withdraws that application, be entitled to make or prosecute an application under this Section.

Note. - In computing the 30 days prescribed in Section 28 (1), the day of sale should be excluded.

29. Application to set aside sale of immovable property on ground of non-service of notice or irregularity. - (1) Where immovable property has been sold in execution of a certificate, the certificate holder, the certificate-debtor or any person whose interests are affected by the sale, may at any time within sixty days from the date of the sale, apply to the Certificate Officer to set aside the sale on the ground that notice was not served under Section 7 or on the ground of a material irregularity in the certificate proceedings or in publishing or conducting the sale:

Provided as follows -

(a) no sale shall be set aside on the ground of any such material irregularity unless the Certificate Officer is satisfied that the applicant has sustained substantial injury thereby; and

(b) before the Certificate Officer passes an order setting aside a sale under this Section he shall require the certificate-debtor to pay the amount actually found due from him.

(2) Notwithstanding anything contained in sub-section (1) the Certificate Officer may entertain an application made after the expiry of sixty days from the date of the sale if he is satisfied that there are reasonable grounds for so doing. .

30. Application to set aside sale on ground that certificate-debtor had no saleable interest or that property did not exist. - The purchaser at any sale or immovable property in execution, of a certificate may, at any time within sixty days from the date of the sale, apply to the Certificate Officer to set aside the sale on the ground that the certificate-debtor had no saleable interest in the property sold or that the property did not exist at the time of the sale, or that the purchaser has suffered substantial injury owing to any mis-description in the sale proclamation of the interest of the certificate-debtor in the property sold.

31. Sale when to become absolute or be set aside. - (1) Where no application is made under Section 28, Section 29 or Section 30, or where such an application is made and disallowed, the Certificate Officer shall make an order confirming the sale and thereupon the sale shall subject to the provisions of sub-section (2) of Section 29 become absolute.

(2) Where such an application is made and allowed, and where in the case of an application under Section 28, the deposit required by that Section is made within thirty days from the date of the sale, the Certificate Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of the application has been given to all persons affected thereby.

32. Disposal of proceeds of execution. - (1) Whenever assets are realised, by sale or otherwise in execution of certificate, they shall be disposed of in the following manner -

(a) there shall first be paid to the certificate-holder the cost incurred by him;

(b) there shall, in the next place, be paid to the certificate-holder the amount due to him under the certificate in execution of which the assets were realised;

(c) if there remains a balance after these sums have been paid, there shall be paid to the certificate-holder therefrom any other amount recoverable under the procedure provided by this Act which may be due to him upon the date upon which the assets were realised; and (d) the balance (if any) remaining after the payment of the amount (if any) referred to in clause (c) shall be paid to the certificate-debtor.

(2) If the certificate debtor disputes any claim made by the certificate-holder to receive any amount referred to in clause (c), the Certificate Officer shall determine the dispute.

Obstruction of Possession After Sale

33. Application by purchaser resisted or obstructed in obtaining possession of immovable property. - (1) If the purchaser of any immovable property sold in execution of a Certificate is resisted or obstructed by any person in obtaining possession of the property he may apply to the Certificate Officer.

(2) The Certificate Officer shall fix a day for investigating the matter, and shall summon the party against whom the application is made to appear and answer the same.

34. Procedure on such application. - (1) If the Certificate Officer is satisfied that the resistance or obstruction was occasioned without any just cause by the certificate-debtor or by some person on his behalf; he shall direct that the applicant be put into possession of the property; and if the applicant is still resisted or obstructed in obtaining possession, the Certificate Officer may also, at the instance of the applicant, order the certificate-debtor or such other person to be detained in the civil prison for a term which may extend to thirty days.

(2) If the Certificate Officer is satisfied that the resistance or obstruction was occasioned by any person (other than the certificate-debtor) claiming in good faith to be in possession of the property on his own account or on account of some person other than the certificate-debtor, the Certificate Officer shall make an order dismissing the application.

35. Dispossession by purchaser. - (1) Where any person, other than the certificate debtor, is dispossessed by the purchaser of immovable property which has been sold in execution of certificate, he may make application to the Certificate Officer complaining of such dispossession.

(2) The Certificate Officer shall fix a day for investigating the matter and shall summon the party against whom the application is made to appear and answer the same.

36. *Bona fide* claimant to be restored to possession. - Where the Certificate Officer is satisfied that the applicant was in possession of the property on his own account or on account of some person other than the certificate-debtor he shall direct that the applicant be put into possession of the property.

37. Orders conclusive subject to suit in a Civil Court. - Any person not being a certificate-debtor, against whom an order is made under Section 36 or Section 34, sub-section (2), may institute a suit in a Civil Court to establish the right which he claims to the present possession of the property; but subject to the result of such (if any) the order shall be conclusive.

Arrest, Detention and Release

38. Power of arrest and detention. - A certificate-debtor, may be arrested in execution of a certificate at any hour and on any day, except as provided in Section 56, and when so arrested, shall as soon as practicable, be brought before the Certificate Officer; and his detention may be in the civil prison of the district in which the Certificate Officer ordering the detention exercises jurisdiction or, where such civil prison does not afford suitable accommodation in any other place which the State Government may appoint for the detention of persons ordered by the Civil Courts of such district to be detained:

Provided that, if the amount entered in the warrant of arrest as due under the certificate, and the costs of the arrest, have been paid either to the Certificate Officer or to the officer arresting the certificate-debtor such officer shall at once release him.

39. Release from arrest and re-arrest. - The Collector may order the release of a certificate-debtor who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Certificate Officer and that he has not committed any act of bad faith.

(2) If the Certificate Officer has grounds for believing the disclosure made by a certificate-debtor under sub-section (1) to have been untrue he may order the rearrest of the certificate-debtor in

execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by Section 40, sub-section (1):

Provided that if such order is passed by a Certificate Officer other than the Collector, the previous sanction of the Collector shall be necessary.

40. Detention in, and release from prison. - (1) Every person detained in the civil prison in execution of a certificate may be so detained -

(a) where the certificate is for a demand of an amount exceeding fifty rupees-for a period of six months, and

(b) in any other case - for a period of six weeks:

Provided that he shall be released from such detention -

(i) on the amount mentioned in the warrant for his detention being paid to the office-in-charge of the civil prison, or

(ii) on the certificate being otherwise fully satisfied or cancelled, or

(iii) on the request of the person (if any) on whose requisition the certificate was filed or of the Collector, or

(iv) on the omission by the person (if any) on whose requisition the certificate was filed to pay the subsistence allowance fixed by the Certificate Officer:

Provided, also, that he shall not be released from such detention under clause (ii) or clause (iii) without the order of the Certificate Officer.

(2) A certificate-debtor released from detention under this Section shall not merely by reason of his release, be discharged from his debt; but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

41. Release on ground of illness. - At any time after a warrant for the arrest of a certificate-debtor has been issued, the Certificate Officer may cancel it on the ground of his serious illness;

(2) Where a certificate-debtor has been arrested, the Certificate Officer may release him if in the opinion of the Certificate Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a certificate-debtor has been committed to the civil prison, he may be released therefrom -

(a) by the Collector, on the ground of the existence of any infections or contagious disease, or

(b) by the Certificate Officer, or the Collector, on the ground of his suffering from any serious illness.

(4) A certificate-debtor released under this Section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by Section 40, sub-section (1).

42. Prohibition of arrest or detention of women and persons under disability. - Notwithstanding anything in this Act, the Certificate Officer shall not order the arrest, or detention in the civil prison of -

- (a) a woman, or
- (b) any person who, in his opinion, is a minor or of unsound mind.

Part-IV

Reference to Civil Court

43. Suit in Civil Court to have certificate cancelled or modified. - The certificate-debtor may, at any time within six months -

- (1) from the service upon him of the notice required by Section 7, or
- (2) if he files, in accordance with Section 9, a petition denying liability - from the date of the determination of the petition, or
- (3) if he appeals, in accordance with Section 60, from an order passed under Section 10 from the date of the decision of such appeal.

bring a suit in a Civil Court to have the certificate cancelled or modified and for any further consequential relief to which he may be entitled:

Provided that no such suit shall be entertained -

- (a) in any case, if the certificate-debtor has omitted to file, in accordance with Section 9 a petition denying liability, or to state in his petition denying liability the ground upon which he claims to have the certificate cancelled or modified, and cannot satisfy the Court that there was good reason for the omission, or
- (b) in the case of a certificate for a demand mentioned in Article 1, or Article 2 of Schedule I, if the certificate-debtor has not paid the amount due under the certificate to the Certificate Officer -
 - (i) within thirty days from the service of the notice required by Section 7, or
 - (ii) if he has filed in accordance with Section 9, a petition denying liability - then within thirty days from the date of the determination of the petition, or
 - (iii) if he has appealed in accordance with Section 60 - then within thirty days from the decision of the appeal:

Provided also that no sale in execution of a certificate shall be set aside in such a suit unless the purchaser has been made a party to the suit and until a direction is made for the refund of the amount of the purchase money, with such interest (if any) as the Court may allow.

44. Grounds for cancellation or modification of certificate by Civil Court. - (1) No certificate duly filed under this Act shall be cancelled by a Civil Court, except on one of the following grounds, namely -

- (a) that the amount stated in the certificate was actually paid or discharged before the signing of the certificate;

(b) that no part of the amount stated in the certificate was due by the certificate debtor to the certificate holder; or

(c) that, in the case of fines imposed, or costs, charges, expenses, damages, duties or fees adjudged, by a Collector or a public officer under any law or any Rule having the force of law, the proceedings of such Collector or public officer were not in substantial conformity with the provisions of such law or Rule, and that in consequence the certificate-debtor suffered substantial injury from some error, defect or irregularity in such proceedings.

(2) No certificate duly filed under this Act shall be modified by a Civil Court except on one of the following grounds namely -

(i) that a portion of the alleged debt was not due; or

(ii) that the certificate-debtor has not received credit for any portion which he has paid.

Note. - The mere fact that a greater sum is claimed as due in a certificate made under this Act does not render the certificate and the notice bad so as to exclude the operation of the Rule of limitation laid down in Section 43.

45. Suit to recover possession of, or to set aside sale of immovable property, where notice of certificate not served. - Notwithstanding anything hereinbefore contained, a sale of immovable property in execution of a certificate shall not be held to be void on the ground that the notice required by Section 7 has not been served; but a suit may be brought in a Civil Court to recover possession of such property or to set aside such sale on the ground that such notice has not been served:

Provided that no such suit shall be entertained -

(a) if instituted more than one year from the date on which possession of the property was delivered to the purchaser; or

(b) if the certificate-debtor has made appearance in the certificate proceedings, or has applied to the Certificate Officer under Section 28 to set aside the sale.

46. General bar to jurisdiction of Civil Courts, save where fraud alleged. - Except as otherwise expressly provided in this Act, every question arising, between the certificate-holder & the certificate-debtor, or their representatives, relating to the making, execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act, of a sale held in execution of such certificate, shall be determined not by suit but by order of the Certificate Officer before whom such question arises, or of such other Certificate Officer as he may determine:

Provided that a a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.

Part-V

Rules

47. Effect of Rules in Schedule II. - The Rules in Schedule II shall have effect as if enacted in the body of this Act, until altered or annulled in accordance with the provisions of this part.

48. Power of Board of Revenue to make Rules as to procedure. - (1) The Board of Revenue may, after previous publication and with the previous sanction of the State Government, make Rules, regulating the procedure to be followed by persons making requisitions under Section 5 and by Collectors and Certificate Officers acting under this Act, and may be such Rules, alter, add to or annul any of the Rules in Schedule II.

(2) Such Rules shall not be inconsistent with the provisions in the body of this Act, but subject thereto, may, in particular and without prejudice to the generality of the power conferred by sub-section (1), provide for all or any of the following matters, namely -

- (a) the signature and verification of requisition made under Section 5;
- (b) the Certificate Officers to whom such requisition should be addressed;
- (c) the case in which such requisition shall not be chargeable with a fee;
- (d) the service of notices issued under Section 7, the service of other notices or processes issued under this Act and the manner in which service may be proved;
- (e) the signing and verification of petitions, under Section 9, denying liability;
- (f) the transfer of such petitions to other officers for disposal;
- (g) the scale of charges to be recovered under Section 17, clause (c);
- (h) the maintenance and custody while under attachment, of live stock and other movable property, the fees to be charged for such maintenance and custody, the sale of such live-stock and property, and the disposal of the proceeds of such sale;
- (i) the registers, books and accounts to be kept by Certificate Officers, and the inspection thereof by the public;
- (j) the fee to be charged for the inspection of the register or certificates maintained under Rule 55, in Schedule II;
- (k) the recovery of expenditure on the certificate establishment by the levy of costs under Section 17, clause (b), and Section 54;
- (l) the recovery of poundage fees;
- (m) the forms to be used under this Act.

49. Publication and effect of Rules made under Section 48. - (1) Rules made and sanctioned under Section 48 shall be published in the Official Gazette and shall, from the date of publication or from such other date as may be specified have the same force and effect as if they had been contained in Schedule II.

(2) All references in this Act to the said Schedule II shall be construed as referring to that Schedule as for the time being amended by such Rules.

Part-VI

Supplemental Provisions

50. Persons under disability. - Where the Certificate Officer is satisfied that the certificate-debtor is minor or of unsound mind he shall in any proceeding under this Act, permit him to be represented by any suitable person.

51. Continuance of certificate. - No certificate shall cease to be in force by reason of -

(a) the property to which the demand relates ceasing to be under the charge or management of the Court of Wards or the revenue-authorities;

or

(b) the death of the certificate-holder.

52. Procedure on death of certificate-debtor. - (1) Where certificate-debtor dies before the certificate has been fully satisfied, the Certificate Officer may, after serving upon the legal representative of the deceased a notice in the prescribed form proceed to execute the certificate against such legal representative and the provisions of this Act shall apply as if, such legal representative were the certificate debtor and as if such notice were a notice under Section 7: Provided that where the certificate is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and, for the purpose of ascertaining such liability, the Certificate Officer executing the certificate may, of his own motion or on the application of the certificate-holder compel such legal representative to produce such accounts as the Certificate Officer thinks fit.

(2) for the purposes of this Section, property in the hands of a son or other descendant which is liable under Hindu Law for the payment of the debt of a deceased ancestor, in respect of which a certificate has been filed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

53. Cancellation of certificate. - (1) The Certificate Officer shall cancel any certificate at the request of the certificate holder.

(2) The Certificate Officer may cancel any certificate filed under Section 6 if the certificate-holder is not reasonably diligent.

[(3) The Certificate Officer may cancel any certificate under which only an amount not exceeding [Rs. 25.00 (Rs. twenty five)] on account of interest, cost and charges mentioned in Section 17 remains to be recoverable in a certificate proceeding if -

(i) the certificate-debtor has paid the entire amount mentioned in the certificate, as filed in the office of Certificate Officer under Section 4 or Section 6, without contest before or after the issue of notice under Section 7 of this Act;

(ii) the certificate-debtor is not traceable.]

54. Cost. - Subject to such limitation as may be prescribed, the award of any costs of, incidental to any proceeding under this Act shall be in the discretion of the officer presiding, and he shall have full power to direct by whom and to what extent such costs shall be paid.

55. Compensation. - If the Certificate Officer is satisfied that any requisition under Section 5 was made without reasonable cause, he may award to the certificate-debtor such compensation as the Certificate Officer thinks fit; and the amount so awarded shall be recoverable from the certificate-holder under the procedure provided by this Act for recovery of costs.

[55A. Restitution consequent on reversal or modification of order. - (1) When the order of a Certificate Officer is set aside or modified by reason of any order passed under Sections 60,62 or 63 the Certificate Officer shall have full power to give effect to such order and may for that purpose direct that the certificate debtor shall be restored to possession of the property sold in consequence of the order so set aside or modified or receive such compensation from the certificate-holder as the Certificate Officer may think fit, and such compensation shall be recoverable as a public demand.

(2) An order passed under sub-section (1) shall for the purposes of Section 60 deemed to be an original order.]

56. Entry into dwelling-house. - (1) No person executing any warrant of arrest issued under this Act, or any process issued under this Act directing or authorizing the attachment of movable property, shall enter any dwelling-house after sunset or before sunrise.

(2) No outer door of a dwelling-house shall be broken open unless the dwelling-house or a portion thereof is in the occupancy of the certificate debtor and he or any other occupant of the house refuses or in any way prevents access thereto; but when the person executing any such warrant or other process has duly gained access to any dwelling-house, he may break open the door of any room and enter, if he has reason to believe that entering into the room is necessary in order to enable him to execute the process.

(3) Where a room in a dwelling-house is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, the person executing the process shall give notice to her that she is at liberty to withdraw; and, after allowing a reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of executing the process; and if the process be before the attachment of property, he may at the same time use every precaution, consistent with this Section, to prevent its clandestine removal.

57. Application of Act XVIII of 1850. - Every Collector, Certificate Officer, Assistant Collector or Deputy Collector acting under this Act, and every Government Officer making a requisition under Section 5, shall, in the discharge of his functions under this Act, be deemed to be acting judicially within the meaning of the Judicial Officers' Protection Act, 1850.

58. Officer to have powers of Civil Court for certain purposes. - Every Collector, Certificate Officer, Assistant Collector or Deputy Collector acting under this Act, shall have the powers of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

59. Control over officers. - All Certificate Officers (not being Collectors), Assistant Collectors and Deputy Collectors shall, in the performance of their duties under this Act, be subject to the general supervision and control of the Collector.

60. Appeal. - (1) An appeal from any original order made under this Act shall lie -

(a) if the order was made by an Assistant Collector or a Deputy Collector, or by a Certificate Officer not being the Collector - to the Collector; or

(b) if the order was made by the Collector - to the Commissioner:

Provided that no appeal shall lie from any order setting aside a sale on an application made under Section 28:

[Provided further that no appeal against an order passed under Section 10 shall be entertained unless the appellate authority is satisfied that the appellant has paid forty percent of the amount determined under that Section or such amount as the appellant admits to be due from him, whichever is greater.]

(2) Every such appeal must be presented, in case (a), within fifteen days, or in case (b) within thirty days, from the date of the order.

(3) The Collector may, by order, with the previous sanction of the Commissioner, authorise -

(i) any Sub-divisional Officer; or

(ii) any officer appointed under clause (3) of Section 3 to perform the functions of a Certificate Officer;

to exercise the appellate powers of the Collector under sub-section (1).

(4) When any officer has been so authorized, the Collector may transfer to him for hearing any appeal referred to in clause (a) of sub-section (1), unless the order appealed against was made by such officer.

(5) Pending the decision of any appeal, execution may be stayed if the appellate authority so directs, but not otherwise.

61. Bar to second appeals. - No appeal shall lie from any order of a Collector, or an officer authorized under Section 60, sub-section (3) when passed on appeal.

62. Revision. - The Collector may revise any order passed by a Certificate Officer, Assistant Collector or Deputy Collector under this Act; the Commissioner may revise any order passed by a Collector under this Act; and the Board of Revenue may revise any order passed by a Commissioner under this Act:

[Provided that no revision petition shall be entertained by any authority unless the certificate-debtor deposits forty per cent of the certificate dues at the time of its filing:

Provided further that no certificate debtor shall be called upon to do so if he has already deposited this amount at any earlier stage.]

63. Review. - Any order passed under this Act may, after notice to all persons interested, be reviewed by the officer who made the order, or by his successor in office, on account of mistakes or error either in the making of the certificate or in the course of any proceeding under this Act.

64. Saving of other Acts. - The powers given by this Act shall be deemed to be in addition to, and not in derogation from, any powers conferred by any other Act now in force for the recovery of any due, debt or demand to which the provisions of this Act are applicable; and, except where expressly so provided. No legal remedy shall be affected by this Act.

65. Application of the [Limitation Act, 1963]. - (1) Section 6 to 9 of '[the Limitation Act, 1963 (Act no. 36 of 1963) shall not apply to suits, appeals or applications under this Act.

(2) Except as declared in sub-section (1), or as otherwise provided in this Act, the provisions of the [Limitation Act, 1963], shall apply to all proceedings under this Act as if a certificate filed hereunder were decree of a Civil Court.

66. Certificate Officer deemed to be a Court. - A Certificate Officer shall be deemed to be a Court, and any proceeding before him shall be deemed to be a civil proceeding within the meaning of Section 14 of the [Indian Limitation Act, 1908].

67. Penalties. - Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate, shall be deemed to have committed an offence punishable under Section 206 of the Indian Penal Code (XLV of 1860).

68. Signature of documents by ministerial officers. - (1) Any Certificate Officer may, by written order, authorise any ministerial officer to sign, on behalf of the Certificate Officer, any copy, issued by the Certificate Officer under this Act, of any document referred to therein.

(2) The State Government may, by notification, in the Official Gazette, empower Certificate Officers to authorize ministerial officers, by written order, to sign on behalf of Certificate Officers any classes of original notices, summonses or proclamations issued by Certificate Officers under this Act which are specified in such notification.

69. Amendments of the [Bengal Tenancy Act], 1885 (8 of 1885); the Orissa Tenancy Act, 1913 (B. & O. Act 2 of 1913); and the Chota Nagpur Tenancy Act, 1908 (Bengal Act 6 of 1908). - [Chapter XIII A and Sections 158B, 167, 171 and 172] of the [Bengal Tenancy Act], 1885 (8 of 1885), Chapter XV and Sections 212, 221, 225 and 226 of the Orissa Tenancy Act, 1913 (B. & O. Act 2 of 1913); and Section 244 and 248 of the Chota Nagpur Tenancy Act, 1908 (Bengal Act 6 of 1908) are amended in the manner and to the extent shown in Schedule III.