

BENGAL PUBLIC DEMANDS RECOVERY ACT, 1913

[Bengal Act 3 of 1913]

[30th April 1913]

An Act to consolidate and amend the law relating to the recovery of public demands in Bengal Whereas it is expedient to consolidate and amend the law relating to the recovery of public demands in Bengal;

And whereas the previous sanction of the Governor-General has been obtained, under section 5 of the Indian Councils Act, 1892.(55 and 56 Vict. c. 14), to the passing of this Act;

It is hereby enacted as follows:

PART I

Preliminary

1. Short title, commencement and extent.—(1) This Act may be called the Bengal Public Demands Recovery Act, 1913;

(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 West Bengal.

NOTES

Object.—The Bengal Public Demands Recovery Act consolidates the law relating to public demands as defined in Schedule I to the Act. It is a self-contained Act laying down a complete procedure of execution and is unaffected by the General Law of Procedure - *Kalipada v Mukunda* 34 CWN 131.

Scope.—In respect of public demands arising outside West Bengal there can be no recovery within the State under the Act. But if a public demand arising within the State is sought to be recovered outside the State, the recovery is permissible under the Revenue Recovery Act which is a Central Act — *N. C. Mukherjee & Co. v Union of India* AIR 1864 Cal 165:

2. [Repeal]. *Rep. by sec. 3 and the Second Schedule of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).*

3. Definitions.—In this Act, unless there is anything repugnant in the subject or context—

(a1) "Calcutta" means the area comprised within the local limits for the time being of the ordinary original civil jurisdiction of the High Court at Calcutta;

- (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 under this Act;
- (3a) "Collector" means the chief officer-in-charge of the revenue administration of a district and includes an Additional District Magistrate appointed under sub-section (2) of section 10 of the Code of Criminal Procedure, 1898 (Act V of 1898);
- Explanation.*—For the purposes of this Act, the district of 24-Parganas shall be deemed to include Calcutta;
- (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 up to 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 39.

NOTES

Certificate-debtor.—A person in whose favour the certificate is granted is a certificate-debtor. The Certificate Officer has power to substitute or add a person as certificate-debtor during the proceeding for recovery of certificate due. When the certificate for recovery of income-tax due for Hindu undivided family was issued against the *Karta* and the *Karta* died the Certificate Officer added the latter *Karta*, and when he died the Certificate Officer brought on record all the members of joint family as there was no *Karta*. The circumstances of the case did not attract the operation of section 43 — *Dulal v Certificate Officer* 68 CWN 349.

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.

NOTES

Form of certificate.—Form of certificate in Form No. 1 has to be filled up by the Certificate Officer. Form of certificate must be strictly complied with—*Sudhirv Sudhangshu* 44 CWN 1097. Only because the certificate-debtors have not been described as trustees the certificate shall not be held to be defective if the certificate otherwise sufficiently identifies the certificate-debtors — *N.C. Ser v Income Tax Officer* 66 CWN 1065. Entire amount due is to be included in the certificate. Even though Order 2, rule 2 is not strictly applicable, the principle is applicable — 35 CLJ 304. Certificate against a wrong person is null and void — 23 CWN 608.

Article 227 of the Constitution.—When the Certificate Officer in a proceeding under this Act acts in excess of the jurisdiction and also in flagrant violation of the mandatory provisions of the Act, the High Court may quash the certificate under Art. 227 of the Constitution—*Abanendra v A.K. Biswas* 58 CWN 573: AIR 1954 Cal 355. But in invoking jurisdiction under Art. 227 of the Constitution the High Court should rather be concerned with validity of the certificate than the propriety of the form of certificate — *N.C. Mukherjee & Co. v Union of India* AIR 1964 Cal 165.

Irregular certificate.—The certificate filed u/s. 4 used the words 'sums overleaf instead of 'abovementioned sums' contained in the standard form. This irregularity does not render the certificate invalid — AIR 1958 Cal 165. Any defect or irregularity in form does not invalidate the certificate in view of section 2 of the Bengal Public Demands Recovery (Validation of Certificate and Notices) Act, 1961 — *Sitaramv Certificate Officer* 1977 CHN 65.

Certificate against a dead person.—Certificate against a dead person is a nullity — *Basiruddin v Saradindu* AIR 1935 Cal 130:38 CWN 1124. But when one of two or more certificate-debtors is found to have died before the making of certificate, the certificate is valid against the surviving certificate-debtors. The Certificate Officer may, in case of proceeding, add the legal representatives of the deceased certificate-debtor — 23 CWN 608.

5. Requisition for the 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 no action shall be taken under this Act on a requisition made by a land mortgage bank registered or deemed to be registered under the Bengal Co-operative Societies Act, 1940 (Ben. Act XXI of 1940), or an assignee of such bank, unless the requisition be countersigned by the Registrar of Cooperative Societies, West Bengal.

(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 the 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.

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 filed 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 form and a copy of the certificate.

NOTES

Notice u/s. 7 not to be declared invalid.—In view of the Public Demands Recovery (Validity of Certificate and Notices) Act, 1961, no notice served u/s. 7 shall be deemed to be invalid or shall be called in question merely on the ground of defect, error or irregularity — *M/s. Mukherjee v Union of India* AIR 1958 Cal 165. When the Certificate Officer instead of signing the certificate stamps his facsimile signature, the certificate cannot be held invalid — 67 CWN 759. Merely because the certificate is not in prescribed form or that it was not signed on the date in which it was filed would not be rendered invalid — *State of West Bengal v National Rubber Manufacturing* 76 CWN 883: AIR 1971 Cal 301.

Presumption of service if can be raised.—When the provision of notice is mandatory the presumption of service of notice cannot be raised — AIR 1981 Cal 273.

Alienation subsequent to service of notice.—Section 8(a) renders all private transfers void as against the claim enforceable in execution of the certificate — *Union of India v Ratanlal* AIR 1978 Cal 164. But any person acquiring interest in the property prior to issue of notice can challenge the sale under sec. 39 of the Bengal Public Demands

Recovery Rules — *Union of India v Jardine Henderson Ltd.* (1979)2 SCC 258: AIR 1979 SC 973.

Non-service of notice u/s. 7, its effect on certificate.—Non-service of notice does not affect the validity of the certificate. Notice u/s. 7 merely prevents "alienation by binding the immovable property of the debtor — *Union of India v Ratanlal* AIR 1978 Cal 164.

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 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 the immovable property of the certificate-debtor, wherever situated, to which every other charge created subsequently to the service of the said notice shall be postponed.

NOTES

Clause (a).—Clause (a) declares that from and after the service of notice on the certificate-debtor u/s. 7 any private transfer shall be void as against any claim enforceable in execution of the certificate. So private transfer is not absolutely void. It is void only against any claim enforceable in execution of the certificate. This provision is analogous to section 64 of the C.R Code. The claim of the auction-purchaser be the certificate-holder himself or a third party against a transferee from the certificate-debtor subsequent to the service of notice u/s. 7 is a claim enforceable in execution of the certificate — *B. Sharma v G. Dey* 69 CWN7.

Clause (b).—it is clear from clause (b) that the amount due in respect of the certificate shall be charged upon the immovable property of the certificate-debtor wherever the property is situate and in the matter of enforcement of the charge it is immaterial where the property is situated. On and from the date of service of notice u/s. 7 a charge is created immediately in respect of the immovable property of the certificate-debtor wherever the property is situated — *Union of India v Ratanlal* AIR 1978 Cal 164.

Lease.—The creation of leasehold interest or tenancy is a transfer within the meaning of the Transfer of Property Act and there is no reason to hold otherwise for the purposes of the Public Demands Recovery Act — *B. Sharma v G. De*69CWN7.

Bona fide purchaser for value.—There is no provision in the Act to give protection to *bona fide* purchaser for value without notice of the service of notice u/s. 7. As soon as

notice is served on the certificate-debtor the provision of section 8 comes into operation immediately — *Union of India v Ratanlal* AIR 1978 Cal 164.

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.

NOTES

Petition denying liability.—The petition denying liability can be filed by purchaser of the property after service of notice u/s. 7 — *Union of India v Jardine Henderson* AIR 1979 SC 973. When such an objection has been filed it is the duty of the Certificate Officer to decide the objection before taking any further steps in the proceedings — *Abanindra v Certificate Officer* 58 CWN 573.

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 the certificate accordingly.

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

NOTES

Hearing of objection.—When the certificate-debtor on receiving notice u/s.7 files an objection denying liability the certificate officer shall have to hear that objection before taking further steps in the proceeding — *Abanindra v A.K. Biswas* 58 CWN 573.

Certificate Officer may vary the certificate.—The certificate officer u/s. 3(1) read with section 10 can vary the certificate but when on the death of the *Karta* of a Hindu undivided family the members of the Hindu undivided family are added in the certificate there is no variation of certificate — *Dulal Bharv Certificate Officer* 68 CWN 349.

Whether the decision of Certificate Officer operates as *res judicata*.— The Certificate Officer is a court of limited jurisdiction in view of section 57 of the Act. Explanation VIII to section 11 of the OR Code reads as follows: "An issue heard and finally decided by a court of limited jurisdiction, competent to decide such issue, shall operate as *res judicata* in a subsequent suit, notwithstanding that such court of limited jurisdiction was not competent to try such subsequent suit or the suit in which such issue has been subsequently raised". In view of the above the decision of the Certificate Officer in respect of the matter in which he has exclusive jurisdiction operates as *res judicata* even in a subsequently instituted civil suit. So the decision about liability of the certificate-debtor rendered u/s. 10 will operate as *res judicata* in a subsequent title suit.

Article 226 can be invoked.—In proper cases Art. 226 of the Constitution can be invoked for quashing an order passed u/s. 10 of the Act — 56 CWN 232.

10A. Power to amend certificate by addition, omission or substitution of parties.— Subject to the provisions of the Limitation Act, 1963 (36 of 1963), and upon application made to him by the certificate-holder, 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 a copy of amended certificate shall be served upon the certificate-debtor as provided in section 7.

PART III

Execution of Certificates

11. 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 12, sub-section (1).

12. 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 (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.

NOTES

Transfer of certificate.—A certificate officer in whose office a certificate is filed, may send a copy thereof, for execution to any other certificate officer. In view of the proviso to section 12(2) there is no necessity to serve a notice u/s. 7 when a certificate is transferred to some other certificate officer than that in whose office the certificate is filed — *Haji Siddiquev Certificate Officer* AIR 1958 Cal 14.

Power of certificate officer to whom the certificate is transferred.—It is the certificate officer in whose office the certificate is filed has to dispose of the petition of the certificate-debtor denying the liability. The certificate officer to whom the certificate is transferred has no such power. Except this the certificate officer to whom the certificate has been transferred can decide all questions arising between certificate-holder and the certificate-debtor relating to the making, execution, discharge or satisfaction of certificate duly filed under the Act. Ordinarily a certificate officer to whom the certificate is transferred cannot question the validity of the certificate as to executing court cannot go behind the decree — *Hridayv Ram Chandra* 24 CWN 723 (FB). But when the court had no jurisdiction to make the certificate the executing court can refuse to execute it — *Gorachandv Prafulla* 20 CWN 48 (FB). The executing certificate officer can interpret certificate as he finds it in the reference to the address, date and amount — *N.C. Senv ITO66* CWN 1965.

13. 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 section 7, 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 would be liable to attachment in execution of a decree of a civil court, 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]

Provided further that if the certificate-debtor whose movable property has been so attached furnishes security to the satisfaction of the Certificate Officer, such attachment shall be cancelled from the date on which such security is accepted by the Certificate Officer.

NOTES

When certificate may be executed.—Subject to the first proviso to section 13 a certificate officer cannot execute a certificate until and unless he has allowed 30 days from the date of service of notice u/s. 7 or until and unless he had disposed of the objection filed u/s. 10 of the Act.

Attachment of movables before disposal of objection.—The first proviso to section 13 is analogous to provision regarding attachment before judgment as provided in Order 38 rule 5 C.P. Code. But before attaching movables under the first proviso, the certificate officer must be satisfied that the certificate debtor has the present intention to conceal, remove or dispose of movable property with intent to delay or obstruct to realization of certificate dues. The reason of such prior issue of attachment order must be recorded by the certificate officer. He cannot act on mere vague allegations — *Durga Das v Nalin* AIR 1934 Cal 694.

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

- (a) by attachment and sale, or by sale (without previous attachment), of any property, or
- (b) by attachment of any decree, or
- (c) by arresting the certificate-debtor and detaining him in the civil prison, or
- (d) by any two or all of the methods mentioned in clauses (a), (b) and (c).

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

15. 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.

16. Interest, costs and charges recoverable.—There shall be recoverable, in the proceedings in execution of every certificate filed under this Act—

(a) interest calculated in such manner as may be prescribed upon the public demand to which the certificate relates, at the rate of six and a quarter *per centum per annum* from the date of the signing of the certificate up to the date of realization:

Provided that—

- (i) no interest shall be charged if the amount of public demand is less than twenty-five rupees or if the period from the date of signing the certificate up to the date of realization does not exceed three months;
 - (ii) no interest shall be charged for the period during which the execution proceedings are stayed under an order passed by the Certificate Officer at the instance of the certificate-holder; and
 - (iii) no interest shall be charged for the period during which the execution proceedings are stayed under an order passed in an appeal or in revision or by a Court at the instance of the certificate-holder, or any person other than the certificate-debtor,
- (b) such costs as are directed to be paid under section 45, 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 for realizing the demand.

NOTES

Interest, cost and charges.—All certificate amounts shall carry interest, costs and charges but they could be recoverable only when the execution proceedings are started. Amicable payment of the principal amount will not bring the certificate to an end. The certificate is to be considered as a whole including the principal amount, interest, cost and charges. The certificate-debtor shall have to pay or deposit the certificate amount only to escape the liability — *Khaddah Co. Ltd. v State of West Bengal* 72 CWN 683.

Public demand payable to any person other than the Collector.—When a public demand is payable to any person other than the Collector, the person has to send the requisition either to the Collector or to the certificate officer. The certificate officer on being satisfied about its recoverability signs the certificate and files it in his office, when he does it the certificate will carry interest as provided in section 16 — *Sankarlal v Union of India* (1976) 1 Cal LJ 478.

Attachment

17. Attachment of property.—Property liable to attachment and sale in execution of a decree of a Civil Court under section 60 of the Code of Civil Procedure, 1908 (Act V of 1908) may be attached and sold in execution of a certificate under this Act.

NOTES

The properties not liable to be attached.—Section 60, C.R Code gives a lost list of properties which are exempted from attachment. In execution of a decree passed by civil court, section 17 adopting section 60 lays down that properties which are exempt from attachment under section 60 cannot be sold in execution of the decree passed in certificate proceeding. Sub-section (1A) of section 60 clearly lays down that any agreement by which any person agrees to waive any exemption granted by section 60 is void.

18. 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 moneys, contrary to such attachment, shall be void as against all claims enforceable under the attachment.

NOTES

Payment of money contrary to attachment.—Section 18 declares that when any debt, dividend or money is specifically attached in accordance with the rules specified in Schedule II then any payment contrary to such attachment is void. But in order that provision of section 18 comes into play there must be a valid attachment under these Rules. The attachment is not complete until it has been effected in the manner prescribed in Rule 18. This provision is analogous to section 64, C.R Code.

19. Attachment of decree.—(1) The attachment of a Civil Court decree for the payment of money or for sale in enforcement of a mortgage or charge shall be made by the issue/to the Civil Court, of a notice requesting the Civil Court to stay the execution of the decree unless and until—

- (i) the Certificate Officer cancels the notice, or
- (ii) the certificate-holder or the certificate-debtor applies to the Court receiving such notice to execute the decree.

(2) Where a Civil Court receives an application under clause (//) of subsection (1), it shall, on the application of the certificate-holder or the certificate-debtor, and subject to the provisions of the Code of Civil Procedure, 1908 (Act V of 1908), proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate.

(3) The certificate-holder shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

NOTES

Attachment of decree.—A special procedure is adopted for attachment of decree of civil court. Firstly an application shall be filed through the certificate officer to the civil court with a request to stay execution of the decree and secondly the certificate officer or the certificate-debtor may apply for execution of the decree to the civil court and the civil court will apply the sale proceeds to the satisfaction of the certificate dues. As soon as the intimation is given to civil court to stay execution decree it amounts to attachment of the decree. If the civil court disregards the notice, all the further proceedings for execution of the decree will be *ultra virus*— *Manikv Banamali* 32 Cal 1104. It has been held that attaching certificate-holder is not competent to adopt the attached decree to his own satisfaction and release the judgment-debtor—*Durga v Secretary of State* AIR 1937 Cal 468: 41 CWN 889.

Sale

20. 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 to him 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, 1885¹ (VIII of 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 that Act, pass to the purchaser, subject to the interests defined in that Chapter as "protected interests", but with power to annul the interests defined in that Chapter as "incumbrances":

Provided as follows:

(i) a registered and notified incumbrance with the meaning of that Chapter shall not be so annulled except in the case prescribed; and

(ii) the power to annul shall be exercisable only in the manner prescribed.

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

1. The Bengal Tenancy Act, 1855 has been repealed by the West Bengal Land Reforms Act, 1955 (West Ben. Act X of 1956).

NOTES

Auction-purchaser's title vest from the date of sale.—The title of the auction-purchaser vests from the date of sale even if there is a time-lag in between the date of sale and the date of confirmation of sale. When the sale is made absolute the property vests by legal fiction from the date of sale. Section 20 is analogous to section 65 of C.P. Code — *Sashiv Radha* 19 CWN 835.

Right title and interest of the judgment-debtor.—Only the right title and interest of the judgment-debtor passes to the purchaser. The purchaser steps into the shoes of the certificate-debtor. If the certificate-debtor had no saleable interest in the property sold the auction -purchaser gets nothing. The sale in such a case is a nullity — *Kalipada v Mukunda* 34 CWN 131; *Arun v Ramnath* AIR 1932 Cal 115.

21. Suit against purchaser not maintainable on ground of purchase being made 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.

NOTES

Plea of *benami* purchase.—Section 21 is analogous to section 66 of C.P. Code based on public policy. The object of this section is to prevent the practice of certificate-debtors making secret purchases in the name of friends and relatives in certificate auction. The section declares that certificate purchaser shall be conclusively deemed to be the real purchaser. The section prohibits a suit to assert a *benami* title against him — *Durga v Bagalananda* AIR 1934 Cal 567; *Iswarv Kabiruddin* AIR 1934 Cal 322.

Setting aside sale

22. 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 depositing—

(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 proclamation of sale to the date when the deposit is made;

(b) for payment to the purchaser, as penalty a sum equal to five per cent of the purchase-money but not less than one rupee; and

(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 23 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.

NOTES

Setting aside sale under section 22.—The provision is analogous to Order 21, rule 89, C.P Code. The certificate-debtor or any person whose interest is affected by sale may at any time within 30 days from the date of sale apply for setting aside the sale on depositing the amount specified in the sale proclamation. The whole amount covered by section 22(1)(a)(b)(c) and rule 73 of Schedule II must be deposited within 30 days. If full amount is not deposited the sale will not be set aside (15 CLJ 89). The deposit must be voluntary and not under protest — *Nurjahan v Asia* AIR 1932 Cal 216:35 CWN 1056. The judgment-debtor cannot escape the consequences of making an insufficient deposit. An auction-purchaser has to be given notice before the sale can be set aside.

Any person whose interest affected.—Any person whose interest has been affected may also apply. A purchaser subsequent to an attachment but prior to sale can apply — AIR 1933 Cal 788. An auction-purchaser of the property in execution of a decree can also apply — AIR 1933 Pat 335. A defaulting auction-purchaser liable to make up deficiency in price may apply — *Hirala v Akhoy* AIR 1933 Cal 815: 37 CWN 766.

23. 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 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 any such ground unless the Certificate Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) an application made by a certificate-debtor under this section shall be disallowed unless the applicant either deposits the amount recoverable from him in execution of the certificate or satisfies the Certificate Officer that he is not liable to pay such amount.

(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.

NOTES

Who may apply.—The application for setting aside sale u/s. 23 may be filed by a certificate-holder, or a certificate-debtor or any person whose interests are affected by the sale. Certificate-holder has no right to apply for setting aside sale u/s. 22 but he can apply u/s. 23. This provision is analogous to order 21 rule 90, C.R Code where also decree-holder had the similar right to apply for setting aside the sale in execution of a decree passed by civil court.

Limitation.—An application u/s. 23 shall be filed within 60 days from the date of sale, under sub-section (2) the certificate officer has power to entertain an application after the expiry of the period of sixty days from the date of sale provided he is satisfied that there is reasonable ground for making the delay. Fraud "within the meaning of section 17 of the Limitation Act" if established, can be a good ground for condoning the delay - *Jatindra v Brojendra* 19 CWN 553. The certificate officer must be fully satisfied that on the facts established by the applicant that it was not possible for him even in spite of due care and attention to apply for setting aside the sale within time. A long delay due to ignorance apart from fraud will be no ground for condoning the delay — *Giribala v Tarak* 78IC 149. In view of section 56, sections 6 to 9 of the Limitation Act will not apply. So the minority of the applicant will not extend the period of limitation.

Non-service of notice.—Where the certificate-debtor had not only the knowledge of sale but also obtained several adjournments of the date of sale, it will not lie in his mouth

to please that sale is vitiated for non-service of notice *on* him regarding the date of sale — *Haji Siddiquev Certificate Officer* AIR 1958 Cal 14.

Grounds for setting aside the sale.—The following are the three grounds on which sale can be set aside, namely, (1) notice u/s. 7 has not been served, or (2) there has been material irregularity in the certificate proceedings, or (3) there has been material irregularity in publishing and conducting the sale. But even if any of these grounds is proved the sale will not be set aside unless the applicant can prove that he has sustained substantial injury by reason of the material irregularity — *Nandalalv Umrao* AIR 1931 PC 33: 35 CWN 381.

Material irregularity in the certificate proceeding.—Following are some of the instances of material irregularities in certificate proceeding, namely, (1) certificate filed by certificate officer without filling in the blanks in the prescribed form — *Sudhirv Sudhansu* 44 CWN 1097; (2) steps in execution started before expiry of 30 days of filing of the certificate or before the disposal of objection u/s. 10; (3) notice to certificate-debtor under rule 46(2) were not given; (4) the property sold is not saleable with the meaning of section 17; (5) the certificate officer had no jurisdiction to hold sale; (6) execution of certificate is barred by limitation; (7) certificate amount is not due on the date of sale.

Material irregularity in publishing and condoning sale.—Following are some of the instances of material irregularity in publishing and conducting sale:

- (1) Omission to mention date, time and place of sale in the sale proclamation - *Krishna v Nripendra* AIR 1933 Cal 662.
- (2) Misstatement or under-statement of the value of the property-*Daulat v Rahisha* AIR 1931 Cal 490; AIR 1933 Cal 339.
- (3) Sale not held on the date mentioned but on a subsequent date- *Gobardhan v Sarat* AIR 1933 Cal 486: 37 CWN 146.
- (4) Sale held against legal representatives without service of notice on them.
- (5) Omission to state the share or extent of the property sold, the revenue assessed and value of the property — *Krishna v Nripendra* AIR 1933 Cal 662.

Deposit to be made by certificate-debtor.—When the certificate-debtor applies for setting aside sale he has to deposit the certificate amount together with costs reliable u/s. 16 or must satisfy the court that he is not liable to pay such amount.

Notice to auction-purchaser.—Under the proviso to section 25 notice to auction-purchaser is necessary before setting aside sale. But there is no obligation to implead him as a party to the proceedings — AIR 1945 Cal 502.

Defects in sale proclamation, when not fatal.—When the certificate officer having notice of the defects in sale proclamation fails to rectify the defects in sale proclamation by filing proper application before the certificate officer he is stopped from challenging the sale on the ground of defects in sale proclamation - *New Birbhum Coal Co. v Surendra* AIR 1934 Cal 205:37 CWN 1054.

Setting aside sale on compromise.—A sale cannot be set aside on compromise between certificate-holder and the certificate-debtor on the Stamp and that it has been adjusted or satisfied out of court so as to prejudice the interest of the auction-purchaser — *Seth Nanhelal v Umrao* AIR 1931 PC 33. But if the auction-purchaser joined in the agreement and all the parties concerned agree that sale will be set aside on the certificate-debtor depositing the amount in full within a certain period the agreement is valid — AIR 1921 Cal 356.

24. 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 of 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.

NOTES

Auction-purchaser's right to have the sale set aside.—An auction-purchaser can apply for setting aside sale only on two grounds, namely, (1) that the certificate-debtor has no saleable interest in the property sold, or (2) that the property is non-existing. But if the certificate-debtor had moiety share in the property or even equity of redemption the sale cannot be set aside on this ground. The application must be made within sixty days. On the sale being set aside either u/s. 22, 23 or 24, the purchaser is entitled to get refund of the purchase money with interest. A separate suit for refund may be filed except in case when the sale is set aside on the ground that the certificate-debtor has no saleable interest. In such case if he fails to apply u/s. 24 his separate suit for refund of purchase money on the ground that the certificate-debtor has no saleable interest will not lie — *Jarana Md. v Jaltu Md.* 22 CWN 780 (FB).

25. Sale when to become absolute or be set aside.—(1) Where no application is made under section 22, section 23 or section 24, or where such an application is made and disallowed, the Certificate Officer shall make an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such an application is made and allowed, and where, in the case of an application under section 22, 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.

NOTES

Continuation of sale.—Only when sixty days have passed from the date of sale and no application for setting aside sale is filed or when such an application has been filed and has been disallowed that the question of sale to be confirmed will arise. In such a case the court is bound to confirm the sale -*Nanhelal v Umrao MR 1931 PC 33*.

Disposal of proceeds of execution

26. Disposal of proceeds of execution.—(1) Whenever assets are realized, by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner:—

- (a) there shall first be paid to the certificate-holder the costs 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 realized;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the certificate-holder there from 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 realized; 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.

Resistance to purchaser after sale

27. 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.

28. 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.

Arrest, Detention and Release

29. Power to arrest and detention.—(1) **No order for the arrest and** detention in civil prison of a certificate-debtor in execution of a certificate shall be made unless the Certificate Officer has issued and served a notice upon the certificate-debtor Calling upon him to appear before him on a day to be

specified in the notice and to show cause why he should not be committed .to civil prison, and unless the Certificate Officer, for reasons recorded in writing, is satisfied,—

(a) that the certificate-debtor, with the object or effect of obstructing or delaying the execution of the certificate,—

* * * *

(ii) has, after the filing of the certificate in the office of Certificate Officer, dishonestly transferred, cancelled, or removed any part of his property, or

(b) that the certificate-debtor has or has had since the date of the filing of the certificate, the means to pay the amount for which the certificate has been issued, or some substantial part of such amount and refuses or neglects or has refused or neglected to pay the same.

Explanation.—In the calculation of the means of the certificate-debtor for the purpose of this clause there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the certificate.

(1a) Notwithstanding anything contained in sub-section (1), a warrant for the arrest of the certificate-debtor may be issued by the Certificate Officer if the

Certificate Officer is satisfied, by affidavit, or otherwise, that, with the object or effect of delaying the execution of the certificate, the certificate-debtor is likely to abscond or leave the local limits of the jurisdiction of the Certificate Officer.

(1b) Where appearance is not made in obedience to a notice, issued and served under sub-section (1), the Certificate Officer may issue a warrant for the arrest of the certificate-debtor.

(1c) Every person arrested in pursuance of a warrant of arrest issued under sub-section (1a) or sub-section (1b), shall be brought before the Certificate Officer as soon as practicable and in any event within twenty-four hours of his arrest (exclusive of the time required for journey):

Provided that, if certificate-debtor pays the amount entered in the warrant of arrest as due under the certificate, and the cost of arrest, to the officer arresting him, such officer shall at once release him.

(2) When a certificate-debtor appears before the Certificate Officer in obedience to a notice to show cause or is brought before the Certificate Officer under sub-section (1c), the Certificate Officer shall proceed to hear the certificate-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the certificate-debtor an opportunity of showing cause why he should not be committed to the civil prison.

(3) Pending the conclusion of the inquiry under sub-section (2), the Certificate Officer may, in his discretion; order the certificate-debtor to be detained in the custody of such officer as the Certificate Officer may think fit or release him on his furnishing security to the satisfaction of the Certificate Officer for his appearance when required.

(4) Upon the conclusion of the inquiry under sub-section (2), the Certificate Officer may subject to the provision of section 31 make an order for the detention of the certificate-debtor in the civil prison and shall in that event cause him to be arrested if he is not already under arrest:

Provided that in order to give the certificate-debtor an opportunity of satisfying the certificate debt, the Certificate Officer may before making the order of detention leave the certificate-debtor in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days or release him on furnishing security to the satisfaction of the Certificate Officer for his appearance at the expiration of the specified period if the certificate debt be not sooner satisfied.

(5) When the Certificate Officer does not make an order of detention under sub-section (4), he shall, if the certificate-debtor is under arrest, direct his release.

30. Release from arrest and re-arrest.—(1) 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 ground for believing the disclosure made by a certificate-debtor under sub-section (1) to have been untrue, he may order the re-arrest 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 authorized by section 31, sub-section (1).

31. 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 officer 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.

32. Release on ground of illness.—(1) At any time after a warrant for the arrest of 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 infectious 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 authorized by section 31, sub-section (1).

33. 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

34. 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 51, from an order passed under section 10 — from the date of the decision of such appeal, bring a suit in the 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 51 — 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 not exceeding six and a quarter *per centum per annum*.

NOTES

Suit to have the certificate cancelled or varied.—The certificate-debtor is entitled to approach civil suit court to have the certificate cancelled in certain contingencies within the period of six months from the date mentioned in each of the clauses (1). (2) and (3). A civil suit on the ground of non-service of notice u/s. 7 is maintainable — *Lakshman v Ramdas* 33 CWN 795. Such suit is premature if filed before decision of the petition of objection filed — *Rani Harshamukhi v Kabakrishna* AIR 1940 Cat 314. In civil court the certificate-debtor is entitled to raise a point which he did not press in the objection petition u/s. 9 — *Ram Krishna v Badri Narayan* AIR 1943 Cal 531:47 CWN 649.

35. 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 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.

(3) Nothing contained in this section shall interfere with the ordinary original jurisdiction of the High Court at Calcutta, or with the jurisdiction of the Calcutta Court of Small Causes.

NOTES

Scope.—Section 35 lays down the grounds on which the civil court can cancel or modify the certificate. The grounds of cancellation under this section are — (1) that the amount stated in the certificate was actually paid or discharged before the signing of the certificate; or (2) that no part of the amount was due by the certificate-debtor to certificate-holder; or (3) that in the case of fine etc. those were imposed not in substantial compliance with the law or rule under which those were imposed and the certificate-debtor suffered substantial injury as a result thereof. The following are the grounds on which modification of the certificate may be prayed for before civil court—

- (a) that a portion of the alleged debt is not due; or
- (b) that the certificate-debtor has not received credit for any portion which he has paid.

36. 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, and that the plaintiff has sustained substantial injury by reason of irregularity:

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 proceeding, or has applied to the Certificate Officer under section 22 or section 23 to set aside the sale.

NOTES

Scope.—Section 36 provides for right to file a civil suit for recovery of possession or to set aside a certificate sale of immovable property where notice of certificate has not been served.

Limitation.—The suit u/s. 36 has to be filed within one year from the date of delivery of possession. The reason for making date of possession as the date on which limitation starts may be that even notice u/s. 7 has not been served, the certificate-debtor will in any view have knowledge of the sale not later than the date on which possession either actual or constructive is delivered to the purchaser and the manner of delivery of possession whether actual or symbolical does not materially affect the source of knowledge which is to be imputed to the certificate-debtor from the fact of delivery of possession — *Banshi Gopal v Uday Chand* AIR 1954 Cal 113 (FB).

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

NOTES

Jurisdiction of civil court barred.—The jurisdiction of civil court is barred in respect of every question arising between the certificate-holder and the certificate-debtor or their legal representatives relating to the making execution, discharge or satisfaction of a certificate duly filed under the Act or relating to the confirmation or setting aside of a sale held in execution of such certificate by an order under this Act except as otherwise provided in the Act. These matters are in the exclusive jurisdiction of the Certificate Officer to decide. The Act has, however, provided remedy by civil suit under section 34 under conditions mentioned in section 35 and under section 36. In the proviso to section 37 it has been provided that in respect of any of this question a suit may be brought upon the ground of fraud.

The expression 'duly filed' clearly indicates in order to exclude the jurisdiction of civil court the certificate has to be duly filed. Thus absence of jurisdiction of the certificate officer is to be distinguished from the irregular exercise of jurisdiction. In case of irregular exercise of jurisdiction civil court has limited power of interference as specified in sections 34, 35, 36 and 37 of the Act. But when the action of the certificate-officer is an

abuse of the provisions of the Act, the jurisdiction of civil court to grant the declaration that the certificate is void, and to grant injunction is very much there — *Satya Kishore v Province of Bengal* AIR 1950 Cal 467.

Where the sale is without jurisdiction the bar of section 37 is not attracted - *Tikendrajitv Mrityunjoy* AIR 1940 Cal 554, The civil court has the jurisdiction to decide whether the certificate has been duly filed or not — *Secy, of State v Sayed Sadak* 44 CWN 901,

Where the certificate-debtor was minor and no question was appointed in certificate proceeding the suit brought by him challenging the validity of the certificate §0 far as he is concerned is not barred by section 37 — *Manindra v Satish* 49 CWN 437,

Fraud.—The allegations of fraud have to be specifically made. A general allegation of fraud without particularly mentioning the facts constituting fraud is not enough — 19 CWN 553. In view of the proviso to section 37 a suit to set aside a certificate sale in the civil court will lie on the ground of fraud, The sale can be attacked collaterally on that ground by way of defence — AIR 1959 Pat 508.

PART V Rules

38. 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.

39. 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, by 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 requisitions made under section 5;
- (b) the Certificate Officers to whom such requisitions should be addressed;
- (c) the cases in which such requisitions 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 certificates, proceedings in execution of certificates and petitions under section 9 denying liability from one Certificate Officer to another for disposal;
- (ff) the manner of calculating interest referred to in section 16, clause (a);
- (g) the scale of charges to be recovered under section 16, clause (c);
- (h) the maintenance and custody, while under attachment, of livestock and other movable property, the fees to be charged for such maintenance and custody, the sale of such livestock 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 of certificates maintained under rule 59 in Schedule II;
- (k) the recovery of expenditure on the certificate establishment by the levy of costs under section 16, clause (b) and section 45;
- (l) the recovery of poundage fees;
- (m) the forms to be used under this Act.

40. Publication and effect of rules made under section 39.—(1) Rules made and sanctioned under section 39 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

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

42. Continuance of certificates.—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 of the Revenue authorities; or
- (b) the death of the certificate-holder.

43. Procedure on death of certificate-debtor.—Where a 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.

44. Cancellation of certificates.—(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.

45. Costs.—Subject to such limitation as may be prescribed, the award of any cost of and 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.

46. 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.

47. 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 for the attachment of property, he may at the same time use every precaution, consistent with this section, to prevent its clandestine removal.

48. Application of Act XVIII of 1850.—Every Collector, Certificate Officer, Assistant Collector or Deputy Collector acting under this Act, and every officer of the Government 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 Officer's Protection Act, 1850 (XVIII of 1850).

49. Officers 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 power of a Civil Court for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

50. 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.

51. 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 made under section 22,
(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, authorize—

- (i) any Subdivisional 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.

NOTES

Right to appeal.—A right to appeal accrues to a party as soon as the claim is filed. It is a substantive right and it subsists unless expressly taken away by a specific legislation — *Tax Recovery Officer v Md. Ismail* (1980) 1 Cal LJ 539. The question whether a revision petition will be converted into a memorandum of appeal is a question for the appellate authority to decide — *Hazi Siddique v Certificate Officer* AIR 1958 Cal 14.

52. Bar to second appeals.—No appeal shall lie from any order of a Collector, or an officer authorised under section 51, sub-section (3), when passed on appeal.

53. Revision.—(1) 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.

(2) The period of limitation for an application for revision under this section shall be thirty days from the date of the order revision whereof is applied for excluding the time occupied in obtaining a copy of the order:

Provided that such an application for revision may be admitted after the period aforesaid if the applicant satisfies the Collector, the Commissioner or the Board, as the case may be, that he had sufficient cause for not making the application within the period.

NOTES

Scope.—When the appeal lies, the revision is not entertainable — *Haji Siddique v Certificate Officer* AIR 1958 Cal 14. Ordinarily a plea which raises new question of fact will not be entertained for first time in revision — *N.C. Mukherjee & Co. v Union of India* AIR 1964 Cal 165. But when the certificate-holder has included in his claim dues of other party and the certificate-debtor failed to raise that question before the certificate officer the Board of Revenue in revision could entertain that question when there is *prima facie* ground in support of certificate-debtor's objection — *M/s. Raimohan Dass v Union of India* AIR 1970 Cal 206: 73 CWN 919.

54. 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 mistake or error either in the making of the certificate or in the course of any proceeding under this Act.

55. 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.

56. Application of the Indian Limitation Act, 1908.—(1) Sections 6 to 9 of the Limitation Act, 1908 (36 of 1908) shall not apply to suits, appeals or applications under this Act.

(2) Except as declared in sub-section (1), the provisions of the Limitation Act, 1908, shall apply to all proceedings under this Act as if a certificate filed hereunder were a decree of a Civil Court.

57. 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 Limitation Act, 1908 (36 of 1908).

58. 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 (Act XLV of 1860).

59. Signature of documents by ministerial officers.—(1) Any Certificate Officer may, by written order, authorize 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.

60. *[Rep. by the Bengal Public Demands Recovery (Amendment) Act, 1942 {Ben. Act I of 1942}].*

61. [Rep. by the Bengal Public Demands Recovery (Amendment) Act, 1942 (Ben. Act I of 1942)].

62. [Rep. by the Bengal Repealing and Amending Act, 1946 {Ben. Act XVI of 1946)].

63. [Rep. by the Bengal Public Demands Recovery (Amendment) Act, 1942 {Ben. Act I of 1942)].

64. [Rep. by the Bengal Public Demands Recovery (Amendment) Act, 1942 (Ben. Act I of 1942)].

Schedule I Public Demands

[See sees. 3(6) and 34(b)]

1. Any arrear of revenue which remains due in the following circumstances, namely: When, under the provisions of Bengal Land-Revenue Sales Act, 1859 (XI of 1859), or the Bengal Land-Revenue Sales Act, 1868 (Ben. Act VII of 1868), or any other law for the time being in force, an estate or tenure, or any share of an estate or tenure, has been sold for the recovery of arrears of revenue due thereupon, and, after deducting the expenses of such sale, the balance of the sale-proceeds remaining is insufficient to liquidate the arrears of revenue in discharge of which such sale-proceeds may, under the said provisions, be applied.
2. Any arrear of revenue which is due from a farmer on account of an estate held by him in farm, and is not paid on the latest day of payment fixed under section 3 of the said Bengal Land Revenue Sales Act, 1859 (XI of 1859).
3. Any money which is declared by any law for the time being in force to be recoverable or realizable as an arrear of revenue or land-revenue, or by the process authorized for the recovery of arrears of revenue or of the public revenue or of Government revenue.
4. Any money which is declared by any enactment for the time being in force—
 - (i) to be a demand or a public demand, or
 - (ii) to be recoverable as arrears of a demand or public demand, or as a demand or public demand, or
 - (iii) to be recoverable under the Bengal Land Revenue Sales Act, 1868 (Ben. Act VII of 1868).
5. Any money due from the sureties of a farmer in respect of the revenue of the estate farmed by him.
6. Any money awarded as fees or costs by a revenue authority under any law or any rule having the force of law.

7. Any demand payable to the Collector by a person holding any interest in land, pasturage, forest-rights, fisheries or the like, whether such interest is or is not transferable, when such demand is a condition of the use and enjoyment of such land, pasturage, forest-rights, fisheries or other thing.

8. In the case of property which, under the provisions of any law for the time being in force, is under the charge of, or is managed by, the Court of Wards or the revenue authorities on behalf of a private individual - any arrear of rent, or of any demand which is recoverable as rent, whether such arrear became due-before or after the management devolved upon such court or such authorities.

9. Any money payable to an officer of the Government, in respect of which the person liable to pay the same has, by a written instrument, which shall, except in cases of fees, not exceeding fifty rupees per annum, for licences granted for use and occupation of agricultural land vested in the Government under the West Bengal Estates Acquisition Act, 1953 (West Bengal Act I of 1954), be duly registered, agreed that such money shall be recoverable as a public demand.

9A. Any money payable to Government or to an officer of Government in repayment of a loan in cash or in kind, in respect of which money, the person to whom the loan in cash or in kind was advanced, has agreed by a written instrument that such money shall be recoverable as a public demand.

9B. Any money payable to a society registered or deemed to have been registered under the West Bengal Societies Registration Act, 1961 (West Ben. Act XXVI of 1961), when such money is financed jointly by the State Government and the Central Government and is granted by such society as subsidy or loan to a person who agrees by a written instrument, registered or unregistered, that such money shall be recoverable as a public demand.

10. Any stamp duty payable by a proprietor in respect of a paper of partition prepared under the Estates Partition Act, 1897 (Ben. Act V of 1897).

11. In the case of a person to whom the collection of tolls has been framed under section 8 of the Canals Act, 1864 (Ben. Act V of 1864), or of the sureties of such person - any money due in respect of such farm.

12. Any money awarded as compensation under section 2 of the Bengal Land Revenue Sales Act, 1868 (Ben. Act VII of 1868).

12A. Any sum ordered by a liquidator appointed under sub-section (1) of section 42 of the Co-operative Societies Act, 1912 (II of 1912), to be recovered as a contribution to the assets of a society or as the cost of liquidation.

12B. Any sum due to a land mortgage bank registered under the Cooperative Societies Act, 1912, or any sum due to an assignee of such bank in respect of any principal sum or any interest thereon under a mortgage made to the bank.

13. Any money due from a purchaser at a sale held in execution of a certificate under this Act, whether the sale is subsisting or not.

14. Any money payable to a local authority.

15. Any money awarded as costs by the High Court at Calcutta in proceedings under Article 226 of the Constitution of India relating to matters arising outside its ordinary original civil jurisdiction.

16. Any money fixed as water rate by the State Government under sub-section (2) of section 14 of the Damodar Valley Corporation Act, 1948 (XIV of 1948).

17. Any sum payable to the Government by a person on account of use or occupation by such person of any house, tenement or room belonging to the Government.

18. Any money payable to a Government company wholly owned either by the State Government or by the Central Government or jointly by the State Government and the Central Government.

19. Any amount paid in advance under section 8B of the West Bengal Land (Requisition and Acquisition) Act, 1948 (West Bengal Act II of 1948), to a person not lawfully entitled thereto or any amount paid in advance to a person under the said section in excess of what is payable under section 7 of the said Act.

Schedule II

Rules

(See section 38)

Signature and Verification of Requisitions for Certificates

1. Signature and verification of requisition for certificate.—(1) Every requisition made under section 5 shall be signed and verified at the foot by the person making it.

(2) The verification shall state that the person signing the requisition has been satisfied by inquiry that the amount stated in the requisition is actually due.

(3) The verification shall be signed by the person making it, and shall state the date on which it is signed.

1 A. The procedure and the rules to be followed in respect of certificates for arrears of sales tax shall be the same as those in the case of arrears of land revenue payable to the Collector.

1B. All the columns of Form No. 1 (Certificate of Public Demand) shall be filled up clearly in ink before the same is filed in the office of the Certificate Officer, and subsequent corrections, if any, made therein shall be made in red ink, and initialed by the Certificate Officer with dates.

Service of Notices

2. Mode of service.—Service of a notice issued under section 7, or under any other provision of this Act, shall be made by delivering or tendering a copy thereof, signed by the Certificate Officer or such ministerial officer as he authorizes in this behalf, and sealed with the seal of the Certificate Officer.

Note.—It has been laid down by the Calcutta High Court in the case reported in 58 CWN 573-586, that omission to sign the Notice under section 7 of the Public Demands Recovery Act, 1913, by the Certificate Officer or by one: authorised by him or the use of rubber-stamp or lithographic signatures thereon j renders the notice invalid — *Vide* Board's 'D' Group, C.R Branch file No. 23 of 1954.

3. Service on certificate-debtor or his agent.—Wherever it is practicable, service shall be made on the certificate-debtor in person, unless he has an agent empowered to accept service, in which case service on such agent shall be sufficient.

4. Service on adult male member of certificate-debtor's family.—Where the certificate-debtor cannot be found, and has no agent empowered to accept service of the notice on his behalf, service may be made on any adult male member of the family of the certificate-debtor who is residing with him.

Explanation.—A servant is not a member of the family within the meaning of this rule.

5. Person served to sign acknowledgment.—Where the serving officer delivers or tenders a copy of the notice to the certificate-debtor personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original notice.

6. Procedure where certificate-debtor refuses to accept service or cannot be found.—Where the certificate-debtor or his agent, or such other person as aforesaid refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the certificate-debtor, and there is no agent

empowered to accept service of the notice on his behalf, nor any other person on whom service can be made, the serving officer shall—

(a) affix a copy of the notice on the outer door or some other conspicuous part of the house in which the certificate-debtor ordinarily resides or carries on business or personally works for gain, or

(b) if there be land affected by the notice, affix a copy of the notice on some conspicuous place in the office of the Certificate Officer and also on some conspicuous part of the land, and shall then return the original to the Certificate Officer by whom it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house or land was identified and in whose presence the copy was affixed.

7. Endorsement of time and manner of service.—The serving officer shall in all cases in which the notice has been served under rule 5, endorse or annex, or cause to be endorsed or annexed, on or to the original notice, a return stating the time when and the manner in which the notice was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the notice.

8. Examination of serving officer.—Where a notice is returned under rule 6, the Certificate Officer shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Certificate Officer, or, subject to any general order of the Collector, by an Assistant Collector, Deputy Collector or Sub-Deputy Collector, touching his proceedings and may make such further inquiry in the matter as he thinks fit; and shall either declare that the notice has been duly served or order such service as he thinks fit.

9. Service by post.—Notwithstanding anything hereinbefore contained, the notice may, if the Certificate Officer so directs, be served by post.

Petitions under Section 9, denying Liability

10. Signature and verification of petition denying liability.—(1) Every petition filed under section 9, denying liability, shall be signed and verified at the foot by the certificate-debtor or by some other person on his behalf who is proved to the satisfaction of the Certificate Officer to be acquainted with the facts of the case.

(2) The verification shall be signed by the person making it, and shall state the date on which it is signed.

(3) The petition referred to in sub-clause (1) above shall be filed in duplicate so that one copy may be supplied to the certificate-holder.

11 .Transfer of such petitions.—(1) The Certificate Officer may, subject to any general or special order of the Collector, transfer to any Assistant Collector or Deputy Collector subordinate to the Collector any petition filed under section 9; and such Assistant Collector or Deputy Collector shall hear and determine such petition accordingly:

Provided that the Collector may re-transfer any petition so transferred, and order that it be heard and determined by the Certificate Officer.

(2)The provisions of section 10 shall be applicable to any Assistant Collector or Deputy Collector to whom any such petition has been transferred under sub-rule (1).

Execution of Certificates

12. Execution in another district.—Where a copy of a certificate is sent for execution to any other Certificate Officer under section 12, sub-section (1), the certificate may be executed by him.

Attachment of Movable Property, etc.

13. Application for attachment of movable property in the possession of the certificate-debtor.—At the time of making an application for the attachment of movable property in the possession of the certificate-debtor, the certificate-holder shall declare whether the property is above or below forty rupees in value. If the property is declared to be above forty rupees in value, the certificate-holder shall pay the costs of issuing the proclamation of sale. If, however, the value of the property, having been declared to be forty rupees or under, should be found as determined by rule 14, to exceed forty rupees, the certificate-holder shall pay the costs of issuing the proclamation of sale immediately on receipt of notice of attachment.

14. Procedure for the attachment of movable property when its value is up to Rs. 40 or above.—When the attaching officer believes that the property attached does not exceed forty rupees in value, he shall inform the debtor or, in his absence, any present adult member of his family, that it will be sold by public auction at once without the issue of any proclamation. In case the certificate-holder or the certificate-debtor, or any person on his behalf, object to this, the attaching officer shall convoke a *panchayat* of not less than three respectable adult male inhabitants of the neighborhood, of whom ordinarily the headman of the village should be one, and shall require them to assess the value of the property. If they determine that it exceeds forty rupees in value, he shall deal with it according to the rules for the sale of movable property exceeding forty rupees in value;

otherwise he shall forthwith proceed to sell it by auction after giving such reasonable notice as the circumstances of the case admit of to intending purchasers.

15. Attachment of movable property (other than agricultural produce) in possession of certificate-debtor.—Where the property to be attached is movable property (other than agricultural produce) in the possession of the certificate-debtor, the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof:

Provided that, when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the attaching officer may sell it at once.

16. Attachment of agricultural produce.—Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment—

(a) where such produce is growing crop — on the land on which such crop has grown, or (2) Subject to such conditions as may be imposed by the Certificate Officer in this behalf, either in the order of attachment or in any subsequent order, the certificate-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it and if the certificate-debtor fails to do all or any of such acts, the certificate-holder may, with the permission of the Certificate Officer and subject to the like conditions, do all any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the certificate-holder shall be recoverable from the certificate-debtor as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been served from the soil.

(4) Where an order for the attachment of growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Certificate Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

17. Provision as to agricultural produce under attachment.—(1) Where agricultural produce is attached, the Certificate Officer shall make such arrangements for the custody thereof as he may deem sufficient, and for the purpose of enabling the Certificate Officer to make such arrangements, every application for the attachment of a growing crop shall specify the time at which it is likely to be fit to be cut or gathered and the applicant shall deposit in Court such sum as the Court shall require in order to defray the cost of watching or tending the crop till such time.

(2) Subject to such conditions as may be imposed by the Certificate Officer in this behalf, either in the order of attachment or in any subsequent order, the certificate-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it and if the certificate-debtor fails to do all or any of such acts, the certificate-holder may, with the permission of the Certificate Officer and subject to the like conditions, do all any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the certificate-holder shall be recoverable from the certificate-debtor as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been served from the soil.

(4) Where an order for the attachment of growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Certificate Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment.

(5) A growing crop which from its nature does not admit of being stored shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

18. Attachment of debt, share, and other movable property not in possession of certificate-debtor.—(1) In the case of—

- (a) a debt not secured by a negotiable instrument,
- (b) a share in the capital of a Corporation, or
- (c) other movable property not in the possession of the certificate-debtor except property deposited in, or in the custody of, any Court, the attachment shall be made by a written order prohibiting,—

(i) in the case of the debt — the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Certificate Officer;

(ii) in the case of the share — the person in whose name the share may be standing from transferring the same or receiving any dividend thereon;

(iii) in the case of the other movable property (except as aforesaid) — the person in possession of the same from giving it over to the certificate debtor.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Certificate Officer, and another copy shall be sent, in the case of the debt, to the debtor, in the case of the share, to the proper officer of the Corporation, and, in the case of the other movable property (except, as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Certificate Officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

(4) Before making under sub-rule (1) an order of attachment of rents due to the certificate-debtor from any subordinate tenure-holders or any *raiyat* or any under-*ra/yaf*, the Certificate Officer may, upon the application of the certificate-holder, issue notice on the certificate-debtor calling upon him to submit a statement signed and verified in the manner specified in rule 1 containing the names of the tenants from whom rent is due to him and the amount of rent due to him from each such tenant within fifteen days from the date of receipt of the notice and the Certificate Officer shall make the order of attachment under sub-rule (1) after considering the said statement. Where the certificate-debtor in spite of such notice fails to furnish such statement within the time mentioned in this sub-rule the Certificate Officer shall issue the order of attachment under sub-rule (1) on such subordinate tenure-holders, *raiyats* or under-*ra/yate* as are named in the application for an order of attachment under that sub-rule.

18A. Rules regarding realization of rents due to certificate-debtor from the holders of subordinate interests.—(1) Rents due to a certificate-debtor from subordinate tenure-holders or *raiyats* or under-*ra/yate* which have been attached under rule 18 may be dealt with under the eight succeeding rules.

(2) "**Garnishee**" Rules.—The word "Garnishee" in these rules means and includes such subordinate tenure-holders, *raiyats* and under-*rayats*.

18B. Certificate Officer to issue notice to the garnishee liable to pay rent.—(1)

Upon the application of the certificate-holder, the Certificate Officer may issue a notice to the garnishee liable to pay the rent calling on him either to pay to the Certificate Officer the rent due from him to the certificate-debtor or so much thereof as may be sufficient to satisfy the certificate and costs of execution, or to appear and show cause on a date to be specified in the notice why he should not do so.

(2) Notwithstanding anything else in these rules notice under sub-rule (1) may be issued simultaneously with an order under rule 18(1).

(3) Such application shall be made on affidavit verifying the facts alleged and stating that in the belief of the deponent the garnishee is indebted to the certificate-debtor.

This sub-rule shall not apply when the Central Government or the State Government is the certificate-holder.

18C. Certificate Officer to order the garnishee to comply with the terms of notice.—

When the garnishee does not forthwith pay to the Certificate Officer the amount due from him to the certificate-debtor or so much thereof as is sufficient to satisfy the certificate and the costs of execution or does not appear and show cause in answer to the notice, the Certificate Officer may order the garnishee to comply with the terms of such notice, and on such order execution may issue as through such order were a certificate against him other than one for arrears of rent.

18D. Certificate Officer to amend notice where the garnishee disputes liability.—

(1) Where the garnishee disputes liability in part only, the Certificate Officer may amend the notice in accordance with the amount admitted, and unless the amount as amended is forthwith paid to the Certificate Officer, may make an order under rule 18C.

(2) Notwithstanding anything in sub-clause (1) where the garnishee disputes the liability in whole or in part and where the Certificate Officer thinks fit to make a determination as to the whole or part liability disputed by the garnishee, the Certificate Officer shall proceed to investigate the dispute, take evidence (if necessary) and determine whether the garnishee is liable for the whole or any part of the amount for which the notice was issued and may set aside, modify or vary the notice accordingly, and unless the amount of the notice so amended is paid forthwith shall make an order under rule 18C.

18E. Rule 43 to apply to an order made under rule 18C.—The provisions of rule 43 shall apply to an order made under rule 18C.

18F. Certificate Officer to order a third person to state the particulars of his claim, if any.—Where it is suggested or appears to be probable that a third person has a claim

to or other interest in the amount, the Certificate Officer may order such third person to appear and state the nature and particulars of his claim (if any) to such amount and prove the same.

18G. Certificate Officer to proceed under rule 18D in case the third person does not appear.—After hearing such third person and any other person or persons who may subsequently be ordered to appear, or when such third person or other person or persons do not appear when so ordered, the Certificate Officer may proceed as prescribed in rule 18D.

18H. Payment under rule 18B or rule 18C.—Payment made by the garnishee on a notice under rule 18B or under an order under rule 18C shall be valid discharge to him as against the certificate-debtor and any other person ordered to appear as aforesaid for the amount paid or levied though such certificate may be set aside or reversed.

18-I. Costs.—The costs of any application made under rule 18B and of any proceeding arising there from or incidental thereto shall be in the discretion of the Certificate Officer.

19. Attachment of share in movables.—Where the property to be attached consists of the share or interest of the certificate-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the certificate-debtor prohibiting him from transferring the share or interest or charging it in any way.

20. Attachment of salary or allowances of public officer or servant of | Railway Company or Local Authority.—(1) Where the property to be attached is the salary or allowances of a public officer or of a servant of a Railway Company or Local Authority, the Certificate Officer, whether the certificate-", debtor or the disbursing officer is or is not within the local limits of the Certificate Officer's jurisdiction, may order that the amount shall be withheld from such salary or allowances, either in one payment or by monthly installments as the

Certificate Officer may direct; and, upon notice of the order to such officer as the State Government may, by notification in the Official Gazette, appoint in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Certificate Officer the amount due under the order, or the monthly installments, as the case may be.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Certificate Officer or to a Civil Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the State

Government in this behalf shall forthwith return the subsequent order to the Certificate Officer issuing it, with a full statement of all the particulars of the existing attachment,

(3) Every order made under this rule, unless it is returned in accordance with the provisions of sub-rule (2), shall, without further notice or other process, bind Central Government or the State Government or the Railway Company or Local Authority, as the case may be; and Central Government or the State Government or the Railway Company or Local Authority, as the case may be, shall be liable for any sum paid in contravention of this rule.

21. Attachment of negotiable instruments.—Where the property is a negotiable instrument not deposited in a Court nor in the custody of a public officer, the attachment shall be made by actual seizure, and the instrument shall be brought before the Certificate Officer and held subject to his orders.

22. Attachment of property in custody of Court or public officer.—Where the property to be attached is in the custody of any Court or public officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Certificate Officer by whom the notice is issued :

Provided that, where such property is in the custody of a Court, any question of title or priority arising between the certificate-holder and any other person, not being the certificate-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

23. Attachment of immovable property.—Where the property is immovable, no attachment need be made before sale.

24. Removal of attachment on satisfaction or cancellation of certificate.—Where—
(a) the amount due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to a sale, are paid to the Certificate Officer, or

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the certificate-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by rule 47, sub-rule (1).

**Maintenance and custody, while under attachment,
of livestock and other movable property**

25. Custody of property under attachment.—Under rule 15, the property seized will remain in the custody of the attaching officer or of one of his subordinates on his responsibility.

26. Removal of property to Court.—If no suitable place can be found in the village for the safe custody of the attached property, the attaching officer shall remove the property to the Court at the certificate-holder's expense. In the event of the certificate-holder failing to provide the necessary funds, the attachment shall be withdrawn.

27. List of property under attachment.—Whenever attached property is kept at the place where it is attached, the officer shall forthwith report the fact to the Certificate Officer, and with his report shall forward an accurate list of the property seized, so that the Certificate Officer may thereon at once issue the proclamation of sale..

28. Debtor's consent to the sale of the property under attachment.—If the debtor shall give his consent in writing to the sale of the property without awaiting the expiry of the prescribed term, the officer shall receive the same and forward it without delay to the Certificate Officer for orders.

29. Custody of property under attachment, while in Court.—When property is removed to the Court it shall be kept by the *nazir* on his own sole responsibility in such place as may be approved by the Certificate Officer. If the property cannot, from its nature or bulk, be conveniently kept in the Court premises, or in the personal custody of the *nazir*, he may, subject to approval by the Certificate Officer, make such arrangements for its safe custody under his own supervision as may be most convenient and economical and the Certificate Officer may fix the remuneration to be allowed to the persons, not being officers of the Court, in whose custody the property is kept.

30. Claim of any person other than the certificate-holder to the property under attachment.—When property remains at the place where it is attached in the custody of the attaching officer, and any person other than the certificate-debtor shall claim the same, or any part of it, the officer shall nevertheless, unless the certificate-holder desires to withdraw the attachment of the property so claimed, remain in possession, and shall direct the claimant to prefer his claim to the Certificate Officer.

31. Withdrawal of attachment.—If the certificate-holder shall withdraw an attachment, or if it be withdrawn under rule 26 or rule 33, the attaching officer shall inform the debtor, or in his absence, an adult member of his family, that the property is at his disposal.

In the absence of any person to take charge of it, or in case the officer shall have had notice of claim by a person other than the certificate-debtor, the officer shall, if the property has been moved from the premises in which it was seized, replace it where it was found at the time of seizure.

32. Feeding and tending of livestock under attachment.—Whenever livestock is kept at the place where it has been attached, the certificate-debtor shall be at liberty to undertake the due feeding and tending of it, under the supervision of the attaching officer, but the latter shall, if required by the certificate-holder, and on his paying for the same, at a rate to be fixed by the Certificate Officer, engage the services of as many persons as may be necessary for the safe custody of it.

33. Cost for feeding livestock and expenses attending its removal to Court.—In the event of the certificate-debtor failing to feed attached live stock, the officer shall call upon the certificate-holder either to pay for feeding it on the spot, or for the expenses attending its removal to the Court. If the certificate-holder shall fail to provide for either, the officer shall report the matter, without delay, to the Certificate Officer who may thereupon withdraw the attachment.

34. Responsibility of the nazir for safe custody and proper feeding.—When attached livestock is brought to Court, the *nazir* shall be responsible for the safe custody and proper feeding of it so long as the attachment continues.

35. Custody of livestock in Government pounds.—If there be a Government pound in or near the place where the Court is held, the *nazir* shall be at liberty to place in it such attached livestock as can be properly kept there in which case the pound-keeper will be responsible for the property to the *nazir*, and shall receive the same rates for accommodation and maintenance thereof as are paid in respect of impounded cattle of the same description.

36. Responsibility of the nazir for the custody of livestock.—If there be no pound available, or if, in the opinion of the Certificate Officer, if it be inconvenient to lodge the attached livestock in the pound, the *nazir may* keep it in his own premises, or he may entrust it to any person selected by himself and approved by the Certificate Officer. The *nazir* will in all cases remain responsible for the custody of the property.

37. Rates to be allowed for the custody and maintenance of various descriptions of livestock.—The Certificate Officer shall, from time to time, fix the rates to be allowed for the custody and maintenance of the various descriptions of livestock with reference

to seasons and local circumstances. The Collector may make any alterations he deems fit in the rates so prescribed.

38. Fees to be charged where process of attachment of movable property is by actual seizure.—(1) Where process of attachment of movable property by actual seizure is issued, fees at the following rates shall be charged, and the officer deputed to attach such property shall be furnished with a certificate stating the period for which the fees in accordance with this rule have been paid :

- (i) When the amount or value of the subject-matter of the case exceeds Rs. 1,000—
- | | Rs. | a. | p. |
|--|------|----|-----|
| (a) for the seizure under the order of attachment | | 2 | 0 0 |
| (b) for each man necessary to ensure safe custody of property so attached, when such man is actually in possession <i>per diem</i> . | | 0 | 6 0 |
- (ii) When the amount or value of the subject-matter of the case is Rs. 1,000 or under, but above Rs. 50—
- | | | | |
|--|-------|---|-----|
| (a) for the seizure under the order of attachment. | ... | 1 | 0 0 |
| (b) for each man necessary to ensure the safe custody of property so attached, when such man is actually | | | |
| in possession, <i>per diem</i> | | 0 | 4 0 |
- (iii) When the amount or value of the subject-matter of the case is Rs. 50 or under—
- | | | | |
|---|------|---|-----|
| (a) for the seizure under the order of attachment. | | 0 | 8 0 |
| (b) for each man necessary to ensure the safe custody of property so attached, when such man is actually in possession, <i>per diem</i> | | 0 | 4 0 |

Note (1).—When any process of attachment of movable property by actual seizure is issued, as a result of action taken under sections 13 and 14 of the Act, only the special fees leviable under the above rule should be charged. At this stage, the fee of annas twelve for an ordinary executive revenue process, as prescribed in rule 166(a), page 18 of the Bengal Practice and Procedure Manual, 1934, which is added to the certificate demand at the preliminary stage when notice under section 7 of the Act is issued, should not be imposed again.

Note (2).—When a process of attachment of movable property by actual seizure is re-issued after a partially or wholly unsuccessful attempt to realize certificate dues, the fees as laid down in the above rule should be levied afresh, except in cases where the re-issue is due to any mistake or fault on the part of the Nezarat staff.

Note (3).—The phrase "amount or value of the subject-matter of the case" means the original demand as in the certificate signed under section 4 or 6 subject to any modification subsequently made under section 10.

Note (3a).—In addition to the fees leviable under the above rule, the boat hire prescribed in rule 166(c), page 18 of the Practice and Procedure Manual, 1934, should be charged.

(2) When process of attachment is issued in a number of cases relating to the same or neighboring villages, the fee (a) referred to above must be paid in each case, and the daily fee (b) only for the men actually employed. The daily fee (b) is to be paid at the time of obtaining the process for so many days as the Certificate Officer shall order, not being ordinarily less than fifteen days, and the number of days required for the coming and going of the attaching officer; but where the officer is not to be left in possession, then the daily fee is to be paid only for the time to be occupied by the officer going, effecting the attachment and returning. When the inventory filed by the certificate-holder shows the property to be of such small value, that the expense of keeping it in custody may probably exceed the value, the Certificate Officer shall fix the daily fee with reference to the provisions of rule 15:

Provided that, if it appears that for any reason the number of days fixed by the Certificate Officer under this rule, and in respect of which fees have been paid, is likely to be exceeded and the certificate-holder desires to maintain the attachment, the certificate-holder shall apply to the Certificate Officer to fix such further number of days as may be necessary and the additional fees in respect thereof shall be paid in the manner provided in sub-rule (3). If such additional fees be not paid within the period originally fixed and in respect of which fees have been paid, the attachment shall cease on the expiry of that period.

(3) Fees for issue of process of warrant of arrest.—Where process of warrant of arrest is issued in certificate cases, the fees at the following rates shall be charged—

- (i) Rupee 1 when the amount under certificate is Rs. 50 or under,
- (ii) Rupees 4 when the amount under certificate is Rs. 1,000 or under but above Rs. 50,
- (iii) Rupees 10. when the amount under certificate exceeds Rs. 1,000.

Note (4).—When a warrant of arrest is re-issued after a partially or wholly unsuccessful attempt to realise the certificate dues, the fees as laid down in the above rule should be levied afresh, except in cases where the re-issue is due to any mistake or fault on the part of the Nezarat staff.

Note (5).—In addition to the fees leviable under the above rule the boat hire prescribed in rule 166(c), page 18 of the Practice and Procedure Manual, 1934, should be charged.

(4) The fees prescribed by this rule shall be payable in advance at the time of when the petition for service or execution is presented, and shall be paid by means of court-fee stamps affixed to the petition in addition to the stamps necessary for its own validity.

38A. Refund of custody fees.—All refund cases of custody fees will be entered in Register 8 and the Certificate Officer shall be asked to report whether the claim is admissible. If his report shows that the refund may be granted, the Collector will authorise him to issue a payment order on the back of the paper to which the court fee stamps are affixed. The refund will be adjustable under the head "VII - Stamps - Deduct - Refunds".

Investigation of Claims and Objections

39. 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 is made 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 upon such terms as to security or otherwise, as the Court shall deem fit.

40. 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.

41. 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.

42. 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.

43. 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.

Note.—It has been held by the Calcutta High Court in the case of *Union of India v Shri Raja Ram Shaw and others* in Civil Rules Nos. 1145 and 1146 of 1952, that the right of appeal given under section 51 of the Act cannot be taken away by any rule, such as rule 43 which has been made under the rule-making power of a non-legislative body and that the right of suit of the claimant or the objector is not taken away whether he prefers an appeal or not. Orders passed by the Certificate Officer under rule 41 or 42 are, therefore, appealable to higher Revenue Authorities—*Vide* Board's 'D' Group, OR Branch File No. 10 of 1955.

Sale generally

44. Power to order sale of attached property.—Any Certificate Officer executing of a certificate may order that any property liable to sale, or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

45. Sale of movable property falling under rule 15 or of value not exceeding Rs. 40 or greater value.—Sales of property under the proviso to rule 15 and of movable property not exceeding forty rupees in value, shall be held on the spot. Such sales will necessarily be conducted by peons when they are attaching officers. Sales of movable property of greater value can, under rule 46, take place only after the issue of a

proclamation, but they may be held on the spot or at the *sadar* or subdivisional headquarters, as may seem convenient and conducive to the securing of good prices, provided that the place and time of sale are notified in the proclamation. For such sales officers of higher rank than peons should always be deputed when the value of the property is estimated to exceed Rs. 50 and proclamation should be issued. When the value is between Rs. 40 and Rs. 50, the Collector or Certificate Officer may, by a special order, depute a peon, if he considers it desirable to do so.

46. Proclamation of sale by public auction.—(1) Where any immovable property, or any movable property exceeding forty rupees in value, is ordered to be sold by public auction, the Certificate Officer shall cause a proclamation of the intended sale to be made in the language of the Courts of the district.

(2) Such proclamation shall be drawn up after notice, to the certificate-debtor, and shall state the time and place of sale, and shall specify as fairly and accurately as possible,—

- (a) the property to be sold;
- (b) (where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government) the revenue assessed upon the estate or part of the estate;
- (c) the amount for the recovery of which the sale is ordered; and
- (d) any other thing which the Certificate Officer considers it material for a purchaser to know in order to judge of the nature and value of the property.

(3) Where a tenure, or a *rayati* holding at fixed rates, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885 (VIII of 1885), is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the tenure or holding will first be put up to auction subject to registered and notified encumbrances, and will be sold subject to those encumbrances if the sum bid is sufficient to liquidate the amount specified in the certificate, and costs, and that otherwise it will, if the certificate-holder so desires, be sold on a subsequent day, of which due notice will be given, with power to annul all encumbrances.

(4) Where an occupancy holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is to be sold in execution Of a certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the holding will be sold with power to annul all encumbrances.

(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-clauses (3) and (4) shall not apply.

(6) For the purpose of ascertaining the matters to be specified in the proclamation, the Certificate Officer may summon any person whom he thinks necessary to summon, and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

47. Mode of making proclamation.—(1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Certificate Officer.

(2) Where the Certificate Officer so directs, such proclamation shall also be published in the Official Gazette or in a local newspaper, or in both; and the cost of such publication shall be deemed to be costs of the sale.

(3) If a tenure, a *raiyyati* holding at fixed rates or an occupancy holding situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885 (VIII of 1885), is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the proclamation shall also be published in the *Malkachari* or rent office of the estate and at the local *thana*.

(4) Where property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Certificate Officer, otherwise be given.

48. Time of sale.—Save in the case of property of the kind described in the proviso to rule 15, no sale hereunder shall, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days in the case of immovable property, or of at least fifteen days in the case of movable property exceeding forty rupees in value, calculated from the date on which a copy of a sale proclamation has been affixed in a conspicuous part of the office of the Certificate Officer or in a case of immovable property in a conspicuous part of the property whichever is later:

Provided that if a tenure, a *raiyyati* holding at fixed rates or an occupancy holding situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885 (VIII of 1885), is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the sale shall not, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days, calculated from—

(a) the date on which a copy of the sale proclamation has been affixed in a conspicuous part of the office of the Certificate Officer, or

(b) the date on which the sale proclamation has been published in the *Malkachari* or rent office of the estate and at the local *thana*, whichever is later.

49. Purchase of property by the certificate-holder.—(1) No holder of a certificate in execution of which property is sold shall, without the express permission of the Certificate Officer, bid for or purchase the property.

(2) Where certificate-holder purchases with such permission, the purchase-money and the amount due on the certificate may be set off against one another, and the Certificate Officer executing the certificate shall "enter up satisfaction of the certificate in whole or in part accordingly.

(3) Where a certificate-holder purchases, by himself or through another person, without such permission, the Certificate Officer may, if he thinks fit, on the application of the certificate-debtor or any other person whose interests are affected by the sale, by order set aside the sale; and the costs of such application and order, and any deficiency of price which may happen on the re-sale and, all expenses attending it, shall be paid by the certificate-holder.

(4) This rule shall not apply when the certificate-holder is the Central Government or the State Government.

50. Adjournment or stoppage of sale.—(1) The Certificate Officer may, in his discretion, adjourn any sale hereunder to a specified day and hour; and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:

Provided that, where the sale is made in, or within the precincts of, the office of the Certificate Officer, no such adjournment shall be made without the leave of the Certificate Officer.

(2) Where a sale is adjourned under sub-rule (1) for a longer period than one calendar month a fresh proclamation under rule 47 shall be made unless the certificate-debtor consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid to the Certificate Officer who ordered the sale.

51. Defaulting purchaser answerable for loss on re-sale.—Any deficiency of price which may happen on a re-sale by reason of the purchaser's default, and all expenses attending such re-sale, shall be certified to the Certificate Officer by the officer or other person holding the sale, and shall, at the instance of either the certificate-holder or the certificate-debtor, be recoverable from the defaulting purchaser under the procedure provided by this Act:

Provided that no such application shall be entertained unless made within 15 days from the date of re-sale.

52. Restriction on bidding or purchase by officers.—No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire, any interest in the property sold.

53. Levy of poundage fees.—(1) The percentage or poundage fee on the gross amount realized by any sale under the Public Demands Recovery Act, 1913 (Ben. Act III of 1913), shall be leviable on every such sale at the rate of 2 *per cent* on such gross amount up to Rs. 1,000 and at the rate of 1 *per cent*, on all excess of gross amounts over Rs. 1,000.

(2) The percentage or poundage fee under sub-rule (1) shall be paid in court-fee stamps by the auction-purchaser (certificate-holder or other person) as soon as his bid is accepted by the Court and the sale is completed.

(3) The percentage leviable under sub-rule (1) shall be calculated on multiples of Rs. 25, that is to say, a poundage fee of 8 annas should be levied for every Rs. 25, or part of Rs. 25, realized by the sale, up to Rs. 1,000. and in the case of the proceeds of the sale exceeding Rs. 1,000, an additional fee of 4 annas for every Rs. 25 or part thereof should be levied.

(4) In case in which several properties are sold in satisfaction of one certificate, only one poundage fee calculated on the gross sale-proceeds should be levied, 2 *per cent* being charged on the gross sale-proceeds up to Rs. 1,000 and 1 *per cent*, on such proceeds exceeding Rs. 1,000.

(5) The proceeds of a sale effected in execution of a certificate may be paid out of Court only on an application made for that purpose in writing.

(6) In case in which the certificate-holder applies for leave to purchase under rule 49, sub-rule (1), no order to set off the purchase money against the amount of the certificate shall be made on that application. If a certificate-holder auction-purchaser

desires such set off, he shall file a separate application for the purpose at the time of the payment of the poundage fee.

(7) When a sale of immovable property is set aside under sub-section (2) of section 25, the Certificate Officer may make an order for payment by the certificate-debtor or by the person at whose instance the sale is set aside of the poundage fee paid by the auction-purchaser (certificate-holder or other person) under sub-rule (2).

54. Addition of costs, etc., to certificate and payment by certificate-holder of purchase money in excess of the amount of certificate.—Upon the hearing of the petition referred to in rule 53, sub-rule (6), the costs of execution, including the poundage fee, shall be added to the certificate; and in cases in which the amount of the purchase-money exceeds the amount of the certificate and such costs, the certificate-holder-auction-purchaser shall pay to the Certificate Officer the sum of *25 percent*, on the balance of the purchase-money after deducting the amount of the certificate and of such costs, and shall pay the balance on or before the fifteenth day from the sale in accordance with rule 69.

54A. Time limit within which the certificate-debtor can dispute claim of certificate-holder to receive payment of the balance of the sale proceeds under section 26, clause (c).—If a certificate-holder files a claim before the Certificate Officer to receive any amount referred to in clause (c) of sub-section (1) of section 26, the Certificate Officer shall issue notice to the certificate-debtor, who may dispute the claim within thirty days from the service of the notice. If the certificate-debtor disputes the claim, the Certificate Officer shall determine the dispute as required by sub-section (2) of section 26, and payment of the amount claimed will be made in accordance with such determination. If the certificate-debtor does not dispute the claim, the amount claimed by the certificate-holder shall be paid to him after the said period of thirty days in accordance with the provisions contained in clause (c) of sub-section (1) of the said section.

Sale of movable property

55. Sale of agricultural produce.—(1) Where the property to be sold is agricultural produce, the sale shall be held,—

- (a) if such product is a growing crop — on or near the land on which such crop has grown, or

(b) if such produce has been cut or gathered — at or near the threshing-floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited:

Provided that the Certificate Officer may direct the sale to be held at the nearest place of public-resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale,—

(a) a fair price, in the estimation of the person holding the sale, is not offered for it, and

(b) the owner of the produce, or a person authorised to act in his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, the next market day, the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

56. Special provisions relating to growing crops.—(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe state (e.g. as green wheat), it may be sold before it is cut and gathered; and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

57. Sale by public auction.—(1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be resold.

(2) On payment of the purchase-money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.

(3) Where the movable property to be sold as a share in goods belonging to the certificate-debtor and a co-owner, and two or more persons, of whom one is such co-owner, respectively did the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

58. Irregularity not to vitiate sale, but any person injured may sue.—No irregularity in publishing or conducting the sale of movable property shall vitiate the sale; but any

person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in Civil Court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery

59. Delivery of movable property, debts and shares.—(1) Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.

(2) Where the property sold is movable property in the possession of some person other than the certificate-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him from delivering possession of the property to any person except the purchaser.

(3) Where the property sold is a debt not secured by a negotiable instrument or is a share in a Corporation, the delivery thereof shall be made by a written order of the Certificate Officer prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Corporation from permitting any such transfer or making any such payment to any person except, the purchaser.

60. Transfer of negotiable instruments and shares.—(1) Where the execution of a document, or the endorsement of the party in whose name a negotiable instrument or a share in a Corporation is standing, is required to transfer such negotiable instrument or share, the Collector, or such officer as he may appoint in this behalf, may execute such document or make such endorsement as may be necessary and such execution or endorsement shall have the same effect as an execution or endorsement by the party.

(2) Such execution or endorsement may be in the following form, namely:—

A B, by *C D*, Collector of the district of in a proceeding under the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), against *A B*.

(3) Until the transfer of such negotiable instrument or share, the Certificate Officer may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same; and any receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

61 .Vesting order in case of other property.—In the case of any movable property not hereinbefore provided for, the Certificate Officer may make an order vesting such property in the purchaser or as he may direct; and such property shall vest accordingly.

Sale of immovable property

62. Sale of tenure or holding at fixed rates, subject to registered and notified encumbrances.—(1)When a tenure or a holding at fixed rates, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885 (VIII of 1885), is in force, has been advertised under rule 46 for sale in execution of a certificate for arrears of rent due in respect thereof, it shall be put up to auction subject to registered and notified encumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the certificate and the costs of the sale, the tenure or holding shall be sold subject to such encumbrances.

(2) The purchase at such sale may, in manner provided by section 167 of the Bengal Tenancy Act, 1885, and not otherwise annul any encumbrance upon the tenure or holding, not being a registered and notified encumbrance.

63. Sale of tenure or holding at fixed rates, with power to avoid all encumbrances.

1) If the bidding for a tenure or a holding at fixed rates put up to auction under rule 62, does not reach a sum sufficient to liquidate the amount of the certificate and costs as aforesaid, and if the certificate-holder thereupon desired that the tenure or holding be sold with power to avoid all encumbrances, the person holding the sale shall adjourn the sale and make a fresh proclamation under rule 46 announcing that the tenure or holding will be put up to auction and sold with power to avoid all encumbrances, upon a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and upon that day the tenure or holding shall be put up to auction and sold with power to avoid all encumbrances.

(2) The purchaser at a sale under this rule may, in manner provided by section 167 of the Bengal Tenancy Act, 1885 (VIII of 1885), and not otherwise, annul any encumbrance on the tenure or holding.

64. Sale of occupancy holding, with power to avoid all encumbrances.—(1) When an occupancy-holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, has been advertised under rule 46 for sale in execution of a certificate for arrears of rent due in respect thereof, it shall be put up to auction and sold with power to avoid all encumbrances.

(2) The purchaser at a sale under this rule may, in manner provided by section 167 of the Bengal Tenancy Act, 1885, and not otherwise, annul any encumbrance on the holding.

65. Rules 62 to 64 not to apply in certain cases to certificate-holders who are co-sharer landlords.—Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of rules 62, 63 and 64 shall not apply.

66. Postponement of sale to enable certificate-debtor to raise amount due under certificate.—(1) Where an order for the sale of immovable property has been made, if the certificate-debtor can satisfy the Certificate Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof, or of any other immovable property of the certificate-debtor, the Certificate Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case the Certificate Officer shall grant a certificate to the certificate-debtor, authorizing him, within a period to be mentioned therein, and notwithstanding anything contained in section 8 or section 18, to make the proposed mortgage, lease or sale:

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the certificate-debtor, but to the Certificate Officer:

Provided also that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Certificate Officer.

67. Prohibition of purchase of tenure or holding by certificate-debtor.—(1) When a tenure or holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in force, is put up for sale in execution of a certificate for arrears of rent due in respect thereof, the certificate-debtor shall not bid for or purchase the tenure or holding.

(2) If a certificate-debtor purchases, by himself or through another person, a tenure or holding so sold,, the Certificate Officer may, if he thinks fit, on the application of the certificate-holder or any other person interested in the sale, by order, set aside the sale; and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the certificate-debtor.

68. Deposit by purchaser and re-sale in default.—On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such

declaration, a deposit of twenty-five per cent, on the amount of his purchase-money, to the officer or other person conducting the sale; and, in default of such deposit, the property shall forthwith be re-sold.

69. Time for payment of purchase-money in full.—The full amount of purchase-money payable shall be paid by the purchaser to the Certificate Officer on or before the fifteenth day from the sale of the property.

70. Procedure in default of payment.—In default of payment within the period mentioned in rule 69, the deposit may, if the Certificate Officer thinks fit, after defraying the expenses of the sale, be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

71. Fresh proclamation before re-sale.—Every re-sale of immovable property, in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

72. Bid of co-sharer to have preference.—Where the property sold is a share of undivided immovable property, and two or more persons, of whom one is a co-sharer, respectively bid the same sum for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

73. Return of purchase-money in certain cases.—Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty (if any) referred to in clause (b) of section 22, and such interest as the Certificate Officer may allow, shall be paid to the purchaser.

74. Certificate to purchaser.—(1) Where a sale of immovable property has become absolute, the Certificate Officer shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall bear date the day on which the sale became absolute.

75. Delivery of property in occupancy of certificate-debtor.—Where the immovable property sold is in the occupancy of the certificate-debtor, or of some person on his behalf, or of some person claiming under a title created by the certificate-debtor subsequently to the service of the notice issued under section 7, and a certificate in respect thereof has been granted under rule 74, the Certificate Officer shall, on the application of the purchaser, order delivery to be made by putting such purchaser, or any

person whom he may appoint to receive delivery on his behalf, in possession of the property, and, if need be, by removing any person who refuses to vacate the same.

76. Delivery of property in occupancy of tenant or other person.—Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under rule 74, the Certificate Officer shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the certificate-debtor has been transferred to the purchaser.

Arrest and Detention

77. *[Omitted by sec. 4 of the Bengal Public Demands Recovery (Amendment) Act, 1953 (West Ben. Act XIII of 1953).]*

78. Subsistence allowance.—(1) When a certificate has been signed either in accordance with the provisions of section 4, or on a requisition made under section 5, no certificate-debtor shall be arrested in execution of the certificate unless and until the certificate-holder pays into Court such sum as the Certificate Officer thinks sufficient for the subsistence of the certificate-debtor from the time of his arrest until he can be brought before the Certificate Officer.

(2) When a certificate-debtor is committed to the civil prison in execution of a certificate, the Certificate Officer shall fix for his subsistence such monthly allowance as he may be entitled to according to the scale fixed by the State Government for the subsistence of arrested judgment-debtors, or, where no such scale has been fixed, as the Certificate Officer considers sufficient with reference to the class to which the certificate-debtor belongs.

(3) The monthly allowance fixed by the Certificate Officer, shall be supplied, by the person upon whose requisition the certificate was signed, by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the Certificate Officer for such portion of the current month as remains unexpired before the certificate-debtor is committed to the civil prison; and the subsequent payments (if any) shall be made to the officer in charge of the civil prison.

(5) Sums disbursed by the certificate-holder for the subsistence of the certificate-debtor in the civil prison shall be deemed to be costs in the proceeding:

Provided that the certificate-debtor shall not be detained in the civil prison or arrested on account of any sum so disbursed.

Supplemental

79. Register of certificates.—(1) Every Certificate Officer shall cause to be kept in his office a register of certificates filed in his office under this Act, and shall cause particulars of all such certificates to be entered in such register.

(2) Such register shall be open during office hours, for not less than two hours daily, and at such time as may be fixed by the Collector, for inspection by , any person who desires to inspect the same; and a fee of one anna shall be chargeable for every such inspection.

Note.—*The fee should be prepaid by court-fee stamp affixed to the application.*

80. Payment by installments.—(1) Payment of the amount due under any certificate may be made by installments, if the Certificate Officer in whose office the certificate is filed so directs.

(2) The payment of every such installment shall be entered in the register referred to in rule 79.

81. Remittance to Certificate Officer of sums received under a certificate transferred for execution.—(1) When a copy of a certificate has been sent to another officer under section 12, sub-section (1), all sums except Government demands, received by such officer under such certificate shall be remitted by him to the Certificate Officer in whose office the original certificate is filed.

82. Entry of satisfaction.—When the whole or any portion of the amount due under a certificate has been realized, the Certificate Officer in whose office the original certificate is filed shall cause an entry of the fact to be made upon the certificate and in the register referred to in rule 79.

83. Communication of satisfaction to other persons.—When a copy of a certificate has been sent to another officer under section 12, sub-section (1), or when a certificate has been signed upon a requisition, any satisfaction n of the certificate, whether in whole or in part shall be certified to such officer, or to the sender of such requisition, as the case may be.

83A. Exemption of requisitions from Liquidator of Co-operative Societies from *ad valorem* fee.—Requisitions from a Liquidator of Cooperative Societies appointed under section 90 of the Bengal Co-operative Societies Act, 1940 (Ben. Act XXI of 1940), submitted under rule 139 of the Bengal Co-operative Societies Rules, 1942, shall be

treated as applications from a Government officer, and shall accordingly be exempt from *ad valorem* fee.

83B. Procedure to be followed when one of two or more certificate-debtors is found to have died before the filing of the certificate.—Where one of two or more certificate-debtors is found to have died before the certificate was filed under section 4 or section 6, the Certificate Officer may, at any stage of the proceedings and on such terms as he thinks fit, order that the name of the deceased be struck out and that the legal representative of the deceased be added as a certificate-debtor, and the certificate shall be amended accordingly.

(2) When a certificate is so amended, the Certificate Officer shall cause a notice and a copy of the amended certificate to be served, in accordance with the provisions of section 7, on the new certificate-debtor and, if the Certificate Officer thinks fit, on the other certificate-debtors.

(3) The certificate proceedings as against the new certificate-debtor shall be deemed to have begun only on the service of such notice and certificate on him.

83C. Requisition from the Directorate of Commercial Taxes under sub-section, (1) of section 5 of the Bengal Public Demands Recovery Act, 1913 (Ben. Act III of 1913), made during the period from 24th March, 1952 to 15th January, 1953, shall not be chargeable with fees.

Forms

84. Forms in Appendix.—The Forms set forth in the Appendix shall be used, with such variations as circumstances may require.

Note.—It has been laid down by the Calcutta High Court in the case reported in 58 CWN 573-586, that the certificate form is a statutory form and the effect of any error or omission in filling it is fatal to the certificate and to the entire proceeding which is liable to be quashed. The following defects, namely—

- (i) mis-description in the name of the certificate-holder in the certificate, or
- (ii) omission to mention correctly in the certificate other particulars including the period for which the demand is due and the reason for the imposition of penalty, or
- (iii) omission to sign by the Certificate Officer the certificate which is filed in his office, renders the certificate invalid—*Vide* Board's 'D' Group, C.P Branch File No. 23 of 1954.

APPENDIX FORMS

(See rule 84) **Form No. 1**

(West Bengal Form No. 1027) **Certificate of Public Demand**

[See sections 4 and 6]

Certificate No.....filed in the office of*

Name and address of certificate-holder		
Amount of public demand [including interest, if any, and including the fee paid under section 5, sub-section (2), if any] for which this certificate is signed, and period for which such demand is due.	Rs.	P.
Name and address of certificate-debtor:		
Further particulars of the public demand for which this certificate is signed.		

* Name of district

I certify that the sums mentioned hereinbefore are due to the certificate-holder by the certificate-debtor(s) and that they are justly recoverable, the recovery by suit not being barred by law.

Dated this.....day of.....20...

Certificate Officer

Form No. 2

(Bengal Form No. 1028)

Requisition for a Certificate

(See section 5)

To the Certificate Officer of the district of

Name of certificate-debtor	Address of certificate-debtor	Amount of public demand for which this requisition is made	Nature of the public demand of which this requisition is made
1	2	3	4