

Orissa Public Demands Recovery Act, 1962

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Orissa Public Demands Recovery Act, 1962

An Act to consolidate and amend the law relating to the recovery of public demands in the State of Orissa Be it enacted by the Legislature of the State of Orissa in the Thirteenth Year of the Republic of India, as follows: Published vide Orissa Gazette Ext./8.2.1963-O.A. No. 1 of 1963. For Statement of Objects and Reasons, see Orissa Gazette Ext. No. 133/6.3.1962 and for Report of Select Committee, see *ibid*, No. 402/11.8.1962. The Act came into force with effect from 1st June, 1964, vide Notfn. No. 29114-VIC - 47/64-R./5.5.1964, published vide Orissa Gazette Ext.No. 778/11.5.1961.

CHAPTER 1 PRELIMINARY

1. Short Title, Extent And Commencement :-

- (1) This Act may be called the Orissa Public Demands Recovery Act, 1962.
- (2) It shall extend to the whole of Orissa.
- (3) It shall come into force on such date as the State Government may, by notification, appoint.

2. Definitions :-

In this, Act, unless the context otherwise requires-

- (a) "arrear" shall include the whole or part of an instalment, if any, in respect of a public demand which is not paid on or before the due date for payment of such instalment;
- (b) "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;
- (c) "certificate-holder" means the Government or person in whose favour a certificate has been filed under the Act, and includes any person whose name is substituted or added as creditor by the Certificate Officer;
- (d) "Certificate Officer" means a Collector, a Sub-divisional Officer,

and any officer appointed by a Collector, with the sanction of the Revenue Divisional Commissioner, to perform the functions of a Certificate Officer under this Act;

(e) "movable property" includes growing crops;

(f) "prescribed" means prescribed by rules made under this Act;

(g) "public demand" means any arrear or money specified 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 Chapter II;

(h) "Revenue Divisional Commissioner" means the Revenue Divisional Commissioner appointed under the Orissa Revenue Divisional Commissioners Act, 1957 (Orissa Act 19 of 1957); and

(i) "rules" and "forms" means the rules and forms contained in Schedule II or made under Section 47.

CHAPTER 2

FILING, SERVICE AND EFFECT OF CERTIFICATES AND HEARING OF OBJECTIONS THERETO

3. Filing Of Certificate For Public Demands Payable To Collector :-

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

4. Requisition Of 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.

(2) Every such requisition shall be signed and verified in the prescribed manner, and except in such cases as may be prescribed, shall be chargeable with a fee of the amount which would be payable under the Court-fees Act, 1870 (7 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.

(3) If after issue of a requisition under this section any payment towards or adjustment of or reduction in the certificate dues is made it shall be the duty of the Requisitioning Officer to intimate the Certificates Officer, as soon as possible, such payments, adjustment, or reduction, as the case may be.

5. 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 Sub-section (2) of Section 4 and shall cause the certificate to be filed in his office.

6. Service Of Notice And Copy Of Certificate On Certificate Debtor :-

When a certificates had been filed in the office of a Certificate Officer under Section 3 or Section 5, 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.

7. Effect Of Service Of Notice Of Certificate :-

From and after the service of notice of any certificate under Section 6 upon a certificate-debtor -

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

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

Provided that the Certificate Officer may, at any time for reasons to be recorded in writing direct an attachment of the whole or any part of the immovable properties belonging to the certificate-debtor.

8. Filing Of Petition Denying Liability :-

(1) The certificate-debtor may, within thirty days from the service of the notice required by Section 6 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 only on the ground that -

(a) the certificate dues have been fully or partly paid; or

(b) the person on whom such notice has been served is not the person named as certificate-debtor in the certificate :

Provided that a certificate-debtor in respect of dues other than those in relation to which the liability under any law for the time being in force is not open to question in a Civil Court may also deny his liability on any other ground :

Provided further that no petition under this sub-section shall be entertained by a Certificate Officer unless he is satisfied that such amount of the certificate dues as the certificate-debtor may admit to be due from him has been paid.

(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.

9. Hearing And Determining Of Such Petition :-

The Certificate Officer in whose office the original certificate is filed may after hearing the petition and taking evidence, if necessary, confirm, set aside, modify or vary the certificate as he deems fit.

10. Power To Amend Certificate By Addition, Omission Or Substitution Of Parties :-

Subject to the law of limitation, the Certificate Officer may at any time and shall upon receipt of intimation, if any, under Sub-section (3) of Section 4 amend the certificate by addition, omission, or substitution of the name of any certificate-holder or certificate-debtor, or by alteration of the amount claimed therein, as the case may be:

Provided that when any such amendment is made, a fresh notice and copy shall be issued as provided in Section 6.

CHAPTER 3

EXECUTION OF CERTIFICATES

11. Who May Execute Certificate :-

A certificate filed under Section 3 or Section 5 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 Sub-section (1) of Section 12.

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 7 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 6.

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 notice required by Sections 6 and 10 or, when a petition has been duly filed under Section 8, until such petition has been heard and determined :

Provided that where the whole or any part of the movable property of the certificate-debtor is liable to attachment under this Act, the Certificate Officer may, at any time for reasons to be recorded in writing direct an attachment of the whole or any part of such movable property.

14. Interest, Costs And Charges Recoverable :-

There shall be recoverable, in the proceedings in execution of every certificate filed under this Act -

(a) interest upon the public demand to which the certificate relates, at the rate of twelve and a half per centum per annum from the date of the signing of the certificate upto the date of realisation:

Provided that in cases where the Certificate Officer is satisfied that the certificate-debtor has made default in payment of the dues wilfully and without reasonable cause such interest may be charged at a rate not exceeding 1[eighteen] per centum per annum;

(b) such costs as are directed to be paid under Section 53; and

(c) all charges incurred in respect of -

(i) the service of notice under Section 6 and of warrants and other processes; and

(ii) all other proceedings taken for realising the demand.

1. Substituted vide O.P.D.R (Amendment) Act, 1981 -O.A No. 23 of 1981.

15. Modes Of Execution :-

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

(a) by attachment and sale, if necessary, of any property or in the case of immovable property by sale without previous attachment; or

(b) by arresting the certificate-debtor and detaining him in the civil prison; or

(c) by both of the methods mentioned in Clauses (a) and (b).

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

16. Special Mode Of Recovery :-

(1) Notwithstanding anything contained in any other law or contract to the contrary, the Certificate Officer may at any time or from time to time, by notice in writing, a copy of which shall be forwarded to the certificate-debtor at his last address known to the Certificate Officer, require -

(a) any person from whom any money is due or may become due to the certificate-debtor; or

(b) any person who holds or may subsequently hold any money for or an account of the certificate-debtor.

to pay to the Certificate Officer either forthwith or upon the money becoming due or being held or at or within the time specified in the notice (not being before the money becomes due or is held) so much of the money as is sufficient to pay the amount due in respect of the certificate or the whole of the money when it is equal to or less than such amount.

(2) Where a person on whom a notice is served under Sub-section (1) proves to the satisfaction of the Certificate Officer that the money demanded or any part thereof was not due to the certificate-debtor or that he did not hold any money for or on account of the certificate-debtor at the time the notice was served on him, nor is the money demanded or any part thereof likely to

become due to the certificate-debtor or be held for or on account of the certificate-debtor nothing contained in this section shall be deemed to require such person to pay such money or part thereof to the Certificate Officer.

(3) The Certificate Officer may, at any time or from time to time, amend or revoke any such notice or extend the time for making any payment in pursuance of the notice.

(4) The Certificate Officer shall grant a receipt for any amount paid in compliance with notice issued under Sub-section (1) and the person making such payment shall be deemed to have made the payment under the authority of the certificate-debtor and the receipt granted by the Certificate Officer shall constitute a good and sufficient discharge of the liability of such person to the certificate-debtor to the extent of the amount specified in the receipt.

(5) Any person discharging any liability to the certificate-debtor after service on him of the notice issued under Sub-section (1) shall, if the liability is discharged in any manner other than that required in the said notice be personally liable to the Certificate Officer to the extent of the liability so discharged or to the extent of the liability of the certificate-debtor, whichever is less.

(6) Any amount of money which a person is required to pay under Sub-section (1) or for which he is personally liable to the Certificate Officer under Sub-section (5) shall, if it remains unpaid, be recoverable as a public demand under this Act.

(7) Nothing in this section shall operate to effect any action that may have been taken or prevent any action that may be or is being taken under the other provisions of this Act for recovery of the dues in respect of the certificate from the certificate-debtor.

17. Property Liable To Attachment And Sale In Execution Of A Certificate :-

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 (5 of 1908) may be attached and sold in execution of a certificate under this Act.

18. Partial Exemption Of Agricultural Produce :-

The State Government may, by general or special order published in the Gazette, declare that such portion of agricultural produce, or of any class of agricultural produce as may appear to the State Government to be necessary for the purpose of providing until the

next harvest for the due cultivation of the land for the support of the certificate-debtor and his family shall, in the case of all agriculturists or of any class of agriculturists, be exempted from liability to attachment or sale in execution of a certificate.

19. Payment Of Money Contrary To Attachment To Be Void

:-

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

20. Investigation By Certificate Officer :-

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

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

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

21. 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 6, or

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

22. 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 6, 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.

23. 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 or 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.

24. 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.

25. Purchasers 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 purchasers right, title and interest shall be deemed to have vested in 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 XVI of the Orissa Tenancy Act, 1913 (B. and O. Act 2 of 1913) 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 26 of the said Act, pass to the purchaser, subject to the interests

defined in the said Chapter as "protected interests" but with power to annul the interests defined in the said Chapter as "encumbrances" :

Provided as follows :

(i) a registered and notified encumbrance within the meaning of the said Chapter shall be so annulled except in the case mentioned therein ; and

(ii) the power to annul shall be exercisable only in the manner directed under that Chapter.

(4) 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.

26. Suit Against Purchaser Not Maintainable On Ground Of Purchase Being On Behalf Of Plaintiff :-

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

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

27. 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 for the recovery of which the sale was ordered, with interest thereon at the rate of six and a quarter per centum per annum, calculated from the date of the sale of the date when the deposit is made;

(b) for payment to the purchaser, as penalty, as sum equal to five

per cent of the purchaser money but not less than on 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 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 28 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.

28. Application To Set Aside Sale Of Immovable Property On Ground Of Non-Service Of Notice Or Irregularity :-

(1) Where immovable property has been sold in execution of a certificate, the certificate-holder, the certificate-debtor, or any person whose interests are affected by the sale, may, at any time within sixty days from the date of the sale, apply to the Certificate officer to set aside the sale, on the ground that notice was not served under Section 6 or on the ground of a material irregularity in the certificate proceedings or in publishing or conducting the sale :
Provided that -

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

(b) In the case of an application by the certificate-debtor the Certificate Officer shall, before passing an order setting aside a sale under this section, require him to pay the amount actually found due from him.

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

29. Application To Set Aside Sale On The 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 Certificate Officer to set aside the sale on the ground that the certificate-debtor had no saleable interest in the property sold, or that the property did not exist at the time of the sale, or that the purchaser has suffered substantial injury owing to any

misdescription in the sale proclamation of the interest of the certificate-debtor in the property sold.

30. Sale When To Become Absolute Or Be Set Aside :-

(1) Where no application is made under Section 27, 28 and 29 or where such an application is made and disallowed, the Certificate Officer shall make an order confirming the sale, and thereupon the sale shall, subject to the provisions of Subsection (2) of Section 28, become absolute.

(2) Where such an application is made and allowed, and where in the case of an application under Section 27, the deposit required by that section is made within thirty days from the date of the sale, the Certificate officer shall made 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.

31. Disposal Of Proceeds Of Execution :-

(1) Whenever assets are realised, by sale or otherwise in execution of a certificate, they shall be disposed off in the following manner, namely :

(a) there shall 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 realised;

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

(d) the balance, if any, remaining after the payment of the amount, if any, referred to in Clause (c) shall be paid to the certificate-debtor.

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

32. Application By Purchaser Resist Ad 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.

33. 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 his 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 made an order dismissing the application.

34. Dispossession By Purchaser :-

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

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

35. Bona Fide Claimant To Be Restored To Possession :-

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

36. Orders Conclusive Subject To Suit In A Civil Court :-

Any person, not being certificate-debtor, against whom an order is made under Section .35 or Sub-section (2) of Section 33 may

institute a suit in a Civil Court to establish the right which he claims to the present possession of the property; but subject to the result of such suit, if any the order shall be conclusive.

37. Power Of 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 obstruction or delaying the execution of the certificate has, after the filing of the certificate in the office of Certificate Officer, dishonestly transferred, concealed, or removed any part of his property; or

(b) that the certificate-debtor has or 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.

(2) Notwithstanding anything contained in Sub-section (1), if the Certificate Officer is satisfied -

(a) that the property of the certificate-debtor or any part thereof is likely to be dishonestly transferred, concealed or removed; or

(b) that the certificate-debtor refuses or neglects or has refused or neglected to pay the same; or

(c) on enquiry or evidence to be recorded in writing or on affidavit that the certificate-debtor is likely to abscond or leave the local limits of the jurisdiction of the Certificate Officer.

he may issue warrant for the arrest of the certificate-debtor.

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

(4) Every person arrested in pursuance of a warrant of arrest issued

under Sub-section (2) or Sub-section (3), shall be brought before the Certificate Officer as soon as practicable and in any event within twenty-four hour of his arrest (exclusive of the time required for journey):

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

(5) 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 (4), the Certificate Officer shall proceed to hear the certificate-holder and taken 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.

(6) Pending the conclusion of the inquiry under Sub-section (5), the Certificate Officer may, in his discretion, or the certificate-debtor to be detained in the custody of such officer as the Certificate Officer may think fit or release him on his executing a bond with or without security to the satisfaction of the Certificate Officer for his appearance when required.

(7) Upon the conclusion of the inquiry under Sub-section (5), the Certificate Officer may subject to the provisions of Section 65 make 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 be for 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 his 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.

(8) When the Certificate Officer does not make an order of detention under Sub-section (7), he shall, if the certificate-debtor is under arrest, direct his release.

38. 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 in 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 specified in Sub-section (1) of Section 39.

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

39. 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 two hundred and 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 release 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.

40. Release An Ground Of Illness :-

(1) At any time after a warrant for the arrest of a certificate-debtor has been issued, the Certificate Officer may cancel it on the ground of serious illness of the certificate-debtor.

(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 of 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 specified in Sub-section (1) of Section 39.

41. 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.

CHAPTER 4

REFERENCE TO CIVIL COURT

42. Suit In Civil Court To Have Certificate Cancelled Or Modified :-

The certificate-debtor may, subject to the provisions of any other law for the time being in force, at any time within six months -

(1) from the service upon him of the notice required by Section 6; or

(2) If he has filed under Section 8, a petition denying liability from the date of the determination of the petition; or

(3) if he has filed an appeal under Section 60 from an order passed under Section 9 from the date of the decision of such appeal, bring a suit in a Civil Court to have the certificate cancelled, or modified, and for any further consequential relief to which he may entitled :

Provided that no such suit shall be entertained -

(a) where the relief prayed for is merely on any one or more of the grounds specified in Section 8 if the certificate-debtor has omitted to file, in accordance with the said section a petition denying liability and cannot satisfy the Court that there was good reason for the omission ; or

(b) if the certificate-debtor has not paid all amounts due under the certificate to the Certificate Officer, whether or not, under protest made in writing at the time of payment :

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, the Court may allow.

43. 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 any one or more of the following grounds, namely :

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

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

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

(2) No certificate duly filed under this Act shall be modified by a Civil Court, except on 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.

44. 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 6 has not been served; but a suit may be brought in a Civil Court to recover possession of such property or to set aside such sale on the ground that such notice has not been served :

Provided that no such suit shall be entertained -

- (a) if instituted more than one year from the date on which possession of the property was delivered to the purchaser, or
- (b) if the certificate-debtor has made appearance in the certificate proceeding, or has applied to the Certificate Officer under Section 27 to set aside the sale.

45. General Bar To Jurisdiction To Civil Courts, Save Where Frauds 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.

CHAPTER 5
RULES

46. 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 Chapter.

47. 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 4 and by Collectors and Certificate Officer acting under this Act; and may, by such rules, after, add to or annual any of the rules in Schedule II.

(2) Such rules shall not be inconsistent with the provisions 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 4;

(b) the Certificate Officers to whom such requisition 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 6 the service of other notices or processes issued under this act and the manner in which such service may be proved;

(e) the signing and verification of petitioners, under Section 8 denying liability;

(f) the transfer of such petitions to other offices for disposal;

(g) the scale of charges to be recovered under Clause (c) of Section 14;

(h) the procedure to be followed in attachment of property, movable or immovable;

(i) 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;

(j) the registers, books and accounts to be kept by Certificate Officers, and the inspection thereof by the public;

(k) the fee to be charged for the inspection of the register of certificates maintained under Rule 55 in Schedule II;

(l) the recovery of expenditure on the certificate establishment by the levy of costs under Clause (b) of Section 14 and Section 53;

(m) the recovery of poundage fees; and

(n) the forms to be used under this Act.

48. Publication And Effect Of Rules Made Under Section 47

:-

(1) Rules made under Section 47 shall be published in the 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 Scheduled II.

(2) All reference 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.

CHAPTER 6

SUPPLEMENTAL PROVISIONS

49. 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 him to be represented by his natural guardian or guardian appointed by a Court or in the absence of any such guardian any suitable person.

50. Continuance Of Certificate :-

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

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

(b) the death of the certificate-holder.

51. Procedure On Death Of Certificate-Debtor :-

(1) Where a certificate-debtor dies before the certificate has been fully satisfied, 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; 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 6 :

Provided that where the certificate is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability, the Certificate Officer executing the certificate may of his own motion or on the application of the certificate-holder, compel such legal representative to produce such accounts as the Certificate Officer thinks fit.

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

52. Cancellation Of Certificate :-

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

(2) The Certificate Officer may cancel any certificate filed under Section 5 if the certificate-holder is not reasonably diligent.

53. Costs :-

Subject to such limitation as may be prescribed, the award of any costs of, and incidental to, any proceeding under this Act including costs occasioned by adjournment of any such proceedings at any stage thereof, shall be in the discretion of the officer presiding, and he shall have full power to direct to whom and to what extent such costs shall be paid.

54. Compensation :-

If the Certificate Officer is satisfied that any requisition under Section 4 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.

55. Restitution Consequent On Reversal Or Modification Of Order :-

(1) When the order of a Certificate Officer is set aside or modified by reason of any order passed under Section 60, 61 or 62 the Certificate Officer shall have full power to give effect to such order and may for that purpose direct that the certificate-debtor shall be resorted to possession of the property sold in consequence of the order so set aside or modified, or receive such compensation "from the certificate-holder as the Certificate Officer may think fit, and such compensation shall be recoverable as a public demand.

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

56. Entry Into Dwelling-House :-

(1) No person executing any warrant of arrest issued under this Act, or any process issued under this Act directing or authorising 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 reasonable time for her to withdraw and giving her reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the attachment of property he may at the same time use every precaution, consistent with this section, to prevent its clandestine removal.

57. Application Of Act 18 Of 1850 :-

Every Collector, Certificate Officer, Assistant Collector, Deputy Collector or Sub-Deputy Collector acting under this Act, and every Government officer making a requisition under Section 4, shall, in the discharge of his functions under this Act, be deemed to be acting judicially within the meaning of the Judicial Officers Protection Act, 1850 (18 of 1850).

58. Officers To Have Powers Of Civil Court Of Certain Purposes :-

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

59. Control Over Officers :-

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

60. Appeal :-

(1) An appeal from any original order made under this Act shall lie -
(a) if the order was made by a Certificate Officer below the rank of

a n Additional District Magistrate, to the Additional District Magistrate;

(b) if the order was made by an Additional District Magistrate, to the Collector;

(c) if the order was made by a Collector, to the Revenue Divisional Commissioner :

Provided that no appeal shall lie from an order setting aside a sale on an application made under Section 27.

(2) Every such appeal shall be presented within thirty days from the date of the order appealed against.

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

1[Provided that the appellate authority shall not direct stay of execution in any case, unless -

(a) the certificate-debtor has paid at least fifty per centum of the total amount due under the certificate to the Certificate Officer, whether or not under protest made in writing at the time of payment, and produces a certificate from the Certificate Officer showing such payment to have been made; or

(b) after considering the evidence adduced, he has prima facie reasons to believe on the plea of the certificate-debtor that the public demand said to be due from him under the certificate has, in fact, been paid.]

1. Inserted vide Orissa Gazette Ext. No. 1431, dated 18.11.1998.

61. Revision :-

An order passed in an appeal under Section 60 may be revised by -

(a) if the order was passed by an Additional District Magistrate or by a Collector, the Revenue Divisional Commissioner;

(b) if the order was passed by a Revenue Divisional Commissioner, the Board of Revenue :

Provided that where the certificate-debtor makes an application under this section for revision of any appellate order* no such application shall be entertained unless he has paid all amounts due under the certificate to the Certificate Officer, whether or not, under protest made in writing at the time of payment, and produces a certificate from the Certificate Officer showing such payment to have been made.

62. 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 processing under this Act.

63. Saving Of Other Acts :-

The powers given by this Act, shall be deemed to be in addition to, and not in derogation of any powers conferred by any other Act for the time being in force for the recovery of any due, debt or demand to which the provisions of the this Act are applicable; and, save as otherwise expressly provided, no legal remedy shall be affected by this Act.

64. Application Of The Limitation Act, 1963 :-

(1) Sections 6 to 9 of the Limitation Act, 1963 (36 of 1963) shall not apply to suits, appeals or applications under this Act.

(2) Except as declared in Sub-section (1), or as otherwise provided in this Act, the provisions of the Limitation Act, 1963 (36 of 1963) shall apply to all proceedings under this Act as if a certificate filed hereunder were a decree of a Civil Court.

65. 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, 1963 (36 of 1963).

66. 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).

67. Liability Of Person In Custody Of Attached Movable Property :-

(1) Where any person has been entrusted by the attaching officer with the custody of any movable property taken in execution of a

certificate may, on the failure of such person to fulfil the conditions of the entrustment, be executed against him to the extent to which he has rendered himself personally liable.

(2) Without prejudice to the provisions of Sub-section (1) whenever the person referred to therein wilfully and without sufficient cause fails to produce the property kept in his custody before any lawful authority in accordance with the terms of such entrustment such person shall be deemed to have committed an offence punishable under Section 206 of the Indian Penal Code (Act XLV of 1860).

68. Signature Of Documents By Ministerial Officers :-

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

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

69. Repeal :-

The enactments specified in the second column of the Table appended hereto are hereby repealed to the extent mentioned in the third column thereof.

No.	and year	Enactment repealed	Extent of repeal
	1	2	3
1.	Madras Act 2 of 1864	Madras Revenue Recovery Act, 1864	The whole
2.	Bihar and Orissa Act 4 of 1914	Bihar and Orissa Public Demands Recovery Act,	The whole
3.	Regulation 4 of 1936	1914 Khondmals Laws Regulation, 1936	Chapter VI
4.	Regulation 5 of 1936	Angul Laws Regulation, 1936	Chapter VI and entry in Part V of the Schedule "1914-IV-Bihar and Orissa Public Demands Recovery Act, 1914-"
5.	Act 18 of 1881	Central Province Land Revenue Act,	The whole Sections 93 to 114, 119 and 157-A

		1881	
6.	Central Provinces Act 2 of 1917	Central Provinces Land Revenue Act, 1917	Sections 127 to 155 and 225 and Sub-clauses (i) and (ii) of Section 227 (2) (k)
7.	Orissa Act 4 of 1950	Orissa Merged States (Laws) Act, 1950	The entry in the Schedule-"1914-IV-The Bihar and Orissa Public Demands Recovery Act, 1914" under the heading "Bihar and Orissa".

70. Savings :-

All proceedings under any of the enactments repealed under Section 69 and pending on the date of commencement of this Act shall be continued and disposed of as if this Act had not been passed.