



## The Orissa Public Demands Recovery Act, 1962

Act 1 of 1963

**Keyword(s):**

Arrear, Certificate-Debtor, Certificate-Holder, Certificate Officer, Movable Property, Public Demand, Revenue Divisional Commissioner

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ORISSA ACT 1 OF 1963  
**THE ORISSA PUBLIC DEMANDS RECOVERY  
ACT, 1962**

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ORISSA ACT I OF 1963

**[THE ORISSA PUBLIC DEMANDS RECOVERY  
ACT, 1962]**

*[Received the assent of the President on the 25th  
January 1963, first published in an extraordinary  
issue of the Orissa Gazette, dated the 8th  
February 1963]*

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: —

CHAPTER I

PRELIMINARY

1. (1) This Act may be called the Orissa Public  
Demands Recovery Act, 1962.

Short title,  
extent and  
commence-  
ment.

(2) It shall extend to the whole of the State of  
Orissa.

(3) It shall come into force<sup>2</sup> on such date as the  
State Government may, by notification, appoint.

2. In this Act, unless the context otherwise  
requires,—

Definitions

(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;

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1. For the Statement of Objects and Reasons, see *Orissa Gazette*, Extraordinary, dated the 6th March 1962 (No. 133) and for Report of Select Committee, see *ibid.*, dated the 11th August 1962 (No. 402).

2. Came into force with effect from the 1st June 1964—vide Notification No. 29114—VIC—47/64-R., dated the 5th May 1964, published in *Orissa Gazette*, Extraordinary, dated the 11th May 1964 (No. 778).

(Sec. 3)

- (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 this Act, and includes any person whose name is substituted or added as creditor by the Certificate Officer;
- (d) "Certificate Officer" means a Collector, a Subdivisional 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; and Orissa Act 19 of 1957.
- (i) "rules" and "forms" mean the rules and forms contained in Schedule II or made under section 47.

CHAPTER II

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

3. 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.

Filing of certificate for public demands payable to Collector.

(Secs. 4-7)

4. (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.

Requisition of certificate in other cases.

7 of 1876

(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, 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 Certificate Officer, as soon as possible, such payment, adjustment, or reduction as the case may be.

5. 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.

Filing of certificate on requisition.

6. When a certificate has 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.

Service of notice and copy of certificate on certificate debtor.

7. From and after the service of notice of any certificate under section 6 upon a certificate-debtor—

Effect of service of notice of certificate.

(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

(Secs. 8-9)

- (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.

Filing of  
petition  
denying  
liability.

8. (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.

Hearing and  
determining  
of such  
petition.

9. 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.



(Secs. 10-13)

10. 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;

Power to amend certificate by addition, omission or substitution of parties.

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

CHAPTER III

EXECUTION OF CERTIFICATES

11. A certificate filed under section 3 or section 5 may be executed by—

Who may execute certificate.

- (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. (1) A Certificate Officer in whose office, a certificate is filed may send a copy thereof for execution, to any other Certificate Officer [ \* \* \* \* \* ]

Transmission of certificate to another Certificate Officer for execution.

(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. 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:

When certificate may be executed.

<sup>1</sup> Omitted by the Orissa Public Demands Recovery (Amendment) Act, 1975 (Or. Act 49 of 1975), s. 3.

(Secs. 14-15)

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.

Interest,  
costs and  
charges  
recoverable.

14. 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 <sup>1</sup>[twelve and a half per centum] per annum from the date of the signing of the certificate up to 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, <sup>2</sup>[fifteen 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.

Modes of  
execution.

15. 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

1. Substituted by the Orissa Public Demands Recovery (Amendment) Act, 1975 (Or. Act 49 of 1975), s. 4 (a)

2. Substituted by *ibid.*, s. 4 (b).

## (Sec. 16)

- (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. (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 on 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.

(Secs. 17-18)

(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.

*Attachment*

Property liable to attachment and sale in execution of a certificate.

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

Partial exemption of agricultural produce.

18. 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

## (Secs. 19-21)

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

19. 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. Payment of money contrary to attachment, to be void.

*Investigation of claims and objections*

20. (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: Investigation by Certificate Officer.

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

- (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 moveable property at the date of attachment ,

he had some interest in, or was possessed of, the property attached.

## (Secs. 22-25)

Release of  
property  
from  
attachment  
of sale.

22. 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.

Disallowance  
of claim to  
property  
attached.

23. 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.

Saving of  
suits to  
establish  
right to  
attached  
property.

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

*Sale*

Purchaser's  
title.

25. (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.

## (Sec. 26)

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

B. & O. Act  
2 of 1913.

(3) Notwithstanding anything contained in sub-section (1), in areas in which Chapter XVI of the Orissa Tenancy Act, 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 "incumbrances":

Provided as follows :—

- (i) a registered and notified incumbrance 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. (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.

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

(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

(Secs. 27-28)

to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

*Setting aside sale*

Application to set aside sale of immovable property on deposit.

27. (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 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 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.

Application to set aside sale of immovable property on ground of non-service of notice or irregularity.

28. (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



(Secs. 29-30)

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 applicant 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 subsection (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. 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, 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.

Application to set aside sale on the ground that certificate-debtor had no saleable interest or that property did not exist.

30. (1) Where no application is made under section 27, 28 or 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.

Sale when to become absolute or be set aside.

(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 make an order setting aside the sale :

(Secs. 31-32)

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

*Disposal of Proceeds of Execution*

Disposal of proceeds of execution.

31. (1) Whenever assets are realised, by sale or otherwise in execution of a certificate, they shall be disposed of 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.

*Obstruction of Possession after sale*

Application by purchaser resisted or obstructed in obtaining possession of immovable property.

32. (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.

(Secs. 33—37)

33. (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.

Procedure on such application.

(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.

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

Dispossession by purchaser.

(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. 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.

Bona fide claimant to be restored to possession.

36. Any person, not being a 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.

Order's conclusive subject to suit in a Civil Court.

*Arrest, detention and release*

37. (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

Power of arrest and detention.

(Sec. 37-*contd.*)

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 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 subsection (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.

*(Sec. 37-contd.)*

(3) 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.

(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 hours 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 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.

(6) Pending the conclusion of the inquiry under sub-section (5), 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 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 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

(Secs. 38-39)

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.

Release from  
arrest and  
rearrest.

38. (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 rearrest of the certificate-debtor in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that specified in sub-section (1) of section 39 :

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

Detention in  
and release  
from prison.

39. (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 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

## (Sec. 40)

- (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 rearrested under the certificate in execution of which he was detained in the civil prison.

40. (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 <sup>Release on ground of illness.</sup> 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 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 rearrested, 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.

(Secs. 41-42)

Prohibition of arrest or detention of women and persons under disability.

41. 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 IV

REFERENCE TO CIVIL COURT

Suit in Civil Court to have certificate cancelled or modified.

42. 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 be 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.]

1. Substituted by the Orissa public Demands Recovery (Amendment) Act, 1975 (Or. Act 49 of 1975), s. 5.



## (Sec. 43)

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.

43. (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:—

Grounds for  
cancellation  
or modifica-  
tion of  
certificate by  
Civil Court

- (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 of 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.

(Secs. 44-46)

Suit to recover possession of, or to set aside sale of, immovable property where notice of certificate not served.

44. 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.

General bar to jurisdiction of Civil Courts, save where fraud alleged.

45. 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 V

### RULES

Effect of rules in Schedule II.

46. 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.

## (Sec. 47)

47 (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 Officers acting under this Act ; and may, by such rules, alter, add to or annul any of the rules in Schedule II.

Power of Board of Revenue to make rules as to procedure.

(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 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 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 petitions, under section 8 denying liability ;
- (f) the transfer of such petitions to other officers 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 live-stock and other movable property, the fees to be charged for such maintenance and custody, the sale of such live-stock and property, and the disposal of the proceeds of such sale :

\*For rules, see Notification No. 776-1-Spl. 53/53-M. R., dated the 23rd December, 1973, published in *Orissa Gazette* dated the 27th December, 1973, Pt. III, p. 2221.

(Secs. 48-50)

- (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.

Publication and effect of rules made under section 47.

48. (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 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.

## CHAPTER VI

### SUPPLEMENTAL PROVISIONS

Persons under disability.

49. 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.

Continuance of certificates

50. 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.

## (Secs. 51-54)

51 (1) 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 6 :

Procedure on death of certificate-debtor.

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

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

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

Cancellation of certificate.

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

53. 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 by whom and to what extent such costs shall be paid.

Costs.

54. 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.

Compensation.

(Secs. 55-57)

Restitution consequent on reversal or modification of order.

55. (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 restored to possession of the property sold in consequence of the order so set aside or modified, or receive such compensation from the certificate-holder as the Certificate Officer may think fit, and such compensation shall be recoverable as a public demand.

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

Entry into dwelling-house.

56. (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 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.

Application of Act 18 of 1850.

57. 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

(Secs. 58-60)

18 of 1850

discharge of his functions under this Act, be deemed to be acting judicially within the meaning of the Judicial Officer's Protection Act, 1850.

58. Every Collector, Certificate Officer, Assistant Collector, Deputy Collector, or 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.

Officers to have power of Civil Court for certain purposes.

59. 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.

Control over Officers.

[60. (1) An appeal from any original order made under this Act shall lie,—

Appeal

- (a) if the order was made by a Certificate Officer below the rank of an 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.

( Secs. 61-64 )

Revision

61. 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.]

Review

62. 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.

Saving of other Acts.

63. 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 this Act are applicable ; and, save as otherwise expressly provided, no legal remedy shall be affected by this Act

Application of the [Limitation Act, 1963].

64 (1) Sections 6 to 9 of the '[Limitation Act, 1963]<sup>1</sup> [36 of 1963 ] shall not apply to suits, appeals or applications under this Act.

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

1. Substituted by the Orissa Public Demands Recovery (Amendment) Act, 1975 (Or. Act 49 of 1975), s. 8.



(Secs. 65-69)

136 of 1963] 65. 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 ].

Certificate Officer deemed to be a Court.

45 of 1860 66. 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.

Penalties

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

Liability of person in custody of attached movable property.

45 of 1860 (2) Without prejudice to the provisions of subsection (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.

68. (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.

Signature of documents by ministerial officers.

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

Repeal

1. Substituted by the Orissa Public Demands Recovery (Amendment) Act, 1975 ( Or. Act 49 of 1975 ), s. 9.

## 600 THE ORISSA PUBLIC DEMANDS RECOVERY ACT, 1962 [ Or. Act I

(Sec. 70)

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, 1914.	The whole
3. Regulation 4 of 1936	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—The whole.
5. Act 18 of 1881	Central Provinces Land Revenue Act, 1881.	Sections 93 to 114, 119 and 157-A.
6. Central Provinces Act 2 of 1917	Central Provinces Land Revenue Act, 1917.	Sections 127 to 155 and 225 and sub-clauses (f) 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".

Savings.

70. 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.

## SCHEDULE I

### Public Demands

[ See section 2 (g) ]

(i) Any arrear of land revenue, cess or any dues payable to the Government on account of water-supply for irrigation.

(ii) Any arrear of land revenue which is due from a farmer on account of an estate held by him in farm and is not paid on the latest date of payment fixed for the purpose.

(iii) Any demand payable to the Collector by a person holding any interest in land, pasturage, forest-rights, fisheries, ghats, ferries, hats, trees, or the like whether such interest is or is not transferable when such demand is a condition to the use and enjoyment of such land, pasturage, forest-rights, fisheries, ghats, ferries, hats, trees or other things and for which an agreement has been executed by the persons concerned.

(iv) Rents, fees and royalties due to Government for the use or occupation of land or water, whether property of Government or not, or on account of any products thereof and all moneys falling due to Government under any grant, lease or contract which provides that they shall be recoverable as arrears of land revenue.

(v) Any rent, cess, water-rate or irrigation cess, or similar other dues payable to a Sarbarakar, Gountia or similar revenue collecting agents who, under the terms of settlement made with him, has previously paid the amount thereof to Government.

(vi) Any plough contribution due to a Sardar or Mootha Malik in the Khondmals district who has previously paid the amount thereof to Government.

(vii) 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

(Sch.-contd.)

which is recoverable as rent whether such arrear became due before or after the management devolved upon such Court or such authorities :

Provided that this clause shall not apply to any arrears of rent at an enhanced rate unless such enhanced rate has been agreed to by the person liable to pay the same or has been confirmed by a competent court.

(viii) Any money awarded as fees or costs by a Revenue Authority under any law or any rule having the force of law.

(ix) Any money which is recoverable under any law, custom or usage for the time being in force as an arrear of revenue or land revenue or by the process authorised for the recovery of arrears of land revenue or of the public revenue or of Government revenue.

(x) Any money which is declared by any enactment or required by any custom or usage for the time being in force—

(a) to be a demand or a public demand ;

(b) to be recoverable as arrears of a demand or public demand, or as a demand or public demand.

(xi) Any money payable to a Government Officer or any Local Authority, in respect of which the person liable to pay the same has agreed, by a written instrument that it shall be recoverable as a public demand

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

Bengal Act  
5 of 1864.

(xiii) Any money due from a purchaser on a sale held in the execution of a certificate under this Act, whether the sale is subsisting or not.

(xiv) In the case of property belonging to any institution referred to in section 52 of the Orissa Hindu Religious Endowments Act, 1951 any arrear of rent whether such arrear became due before or after the control devolved upon the Government.

Orissa Act  
2 of 1952.

(xv) Any money due from a person who is a surety for the payment of any sum recoverable in accordance with the provisions of this Act.

## SCHEDULE II

### Rules

(See section 46)

#### *Signature and verification of Requisitions for Certificates*

1. (1) Every requisition made under section 4 shall be signed and verified at the foot by the person making it, 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.

Signature and verification of requisitions for certificates.

(2) The verification shall state that the person signing the requisition has been satisfied by enquiry 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.

#### *Service of Notices*

2. Service of a notice issued under section 6, 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 authorises in this behalf, and sealed with the seal of the Certificate Officer.

Mode of service.

3. 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.

Service on certificate-debtor or his agent.

4. 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.

Service on adult male member of certificate-debtor's family.

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

5. 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,

Persons served to sign acknowledgment.

(Sch.-contd.)

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.

Procedure where certificate-debtor refuses to accept service or cannot be found.

6. Where the certificate-debtor or his agent, or such other person 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.

Endorsement of time and manner of service.

7. 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.

Examination of serving officer.

8. 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.

(Sch.-contd.)

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. Notwithstanding anything herein before <sup>Service by</sup> contained, the notice may, if the Certificate Officer <sup>post.</sup> so directs, be served by post.

*Petitions under section 8 denying liability.*

10. (1) Every petition filed under section 8 shall <sup>Signature and verification of petition denying liability.</sup> 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.

11. (1) The Certificate Officer may, subject to <sup>Transfer of such petitions</sup> 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 8 ; and such Assistant Collector or Deputy Collector shall hear and determine such petition accordingly:

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

(2) The provisions of section 9 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. Where a copy of the certificate is sent for execution to the Collector of another district <sup>Execution in another district.</sup> under sub-section (1) of section 12 the certificate may be executed by him or may be transferred by him to any Certificate Officer in his district.

(Sch. contd.)

Attachment  
of movable  
property,  
other than  
agricultural  
produce in  
possession of  
certificate-  
debtor.

13. 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. The attaching officer may keep the property in his own custody or in the custody of one of his subordinates, or may make it over to any Chaukidar or respectable resident of the village, willing to be responsible for its safe keeping who shall give a receipt therefor. If no such person can be found to take custody of the property the attaching officer shall bring it to the Court at once at the certificate-holder's expense. In the event of the certificate-holder failing to provide the necessary funds the property may be released :

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 :

Provided further that in the case of livestock the same may be kept in the custody of the certificate-debtor, who shall give a receipt therefor and shall be subject to the conditions laid down in the rules, if any, made in this behalf by the Board of Revenue.

Attachment  
of agricul-  
tural  
produce.

14. 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 a growing crop on the land on which such crop has grown; or,
- (b) where such produce has been cut or gathered—on the threshing floor or place of treading out grain or the like, or fodder-stock, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the House in which the certificate-debtor ordinarily resides, or, with the leave of the Certificate Officer on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain;



(Sch.-contd.)

and the produce shall thereupon be deemed to have passed into the possession of the Certificate Officer.

15. (1) Where agricultural produce is attached the Certificate Officer shall make such arrangements for the custody thereof as he may deem sufficient, and, when the produce is a growing crop, shall have regard to the time at which it is likely to be fit to be cut or gathered.

Provisions as to agricultural produce under attachment.

(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 or 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 severed from the soil.

(4) Where an order for the attachment of a 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.

(Sch.-contd.)

Attachment  
of debt,  
share and  
other mova-  
ble property  
not in  
possession of  
a certificate-  
debtor.

16. (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 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.

Attachment  
of share in  
movables.

17. 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 changing it in any way.

(Sch.-contd.)

18. (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 instalments as the Certificate Officer may direct; and, upon notice of the order to such officer as the State Government may, by notification, 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 instalments, as the case may be.

Attachment of salary or allowances of public officer or servant of Railway Company or Local Authority.

(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 the Government or the Railway Company or Local Authority, as the case may be; and the 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.

19. 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 order.

Attachment of negotiable instruments.

20. 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

Attachment of property in custody of Court or public officer.

(Sch. contd.)

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.

Attachment  
of decree.

21. (1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage or charge, the attachment 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 the Civil Court receives an application under clause (ii) of sub-rule (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, proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate. 5 of 1908

(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.

Attachment  
of immova-  
ble property.

22. Where the property is immovable, no attachment need be made before sale.

Removal of  
attachment  
on satisfac-  
tion or can-  
cellation of  
certificate.

23. 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

(Sch.-contd.)

- (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 sub-rule (1) of rule 26.

*Sale generally*

24. Any Certificate Officer executing 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.

Power to order sale of attached property.

25. (1) Where any immovable property, or any movable property exceeding twenty 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.

Proclamation of sale by public auction.

(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) every 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 raiyati holding at fixed rates situated in an area in which Chapter XVI of the Orissa Tenancy Act, 1913, is in force, is to be sold in

(Sch.-contd.)

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 XVI of the Orissa Tenancy Act, <sup>B. & O. Act 2</sup> of 1913, 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-rules (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.

Mode of  
making pro-  
clamation.

26. (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 then upon a conspicuous part of the office of the Certificate Officer. A copy of the proclamation shall also be sent by registered post to the certificate-debtor or, if there be more than one certificate-debtor, to such one or more of them as the Certificate Officer may select in this behalf.

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

(Sch.-contd.)

B. & O. Act 2  
of 1913.

(3) If a tenure, a raiyati holding at fixed rates or an occupancy holding situated in an area in which Chapter XVI of the Orissa Tenancy Act, 1913, 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 police-station.

(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.

27. Save in the case of property of the kind described in the first proviso to rule 13, 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 twenty rupees in value, calculated from the date on which a copy of sale proclamation has been affixed in a conspicuous part of the office of the Certificate Officer : Time of sale

Bihar and  
Orissa Act 2  
of 1913.

Provided that if a tenure, a raiyati holding at fixed rates or an occupancy holding situated in an area in which Chapter XVI of the Orissa Tenancy Act, 1913, 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 police-station,

whichever is later.

(Sch.-contd.)

Adjournment  
or stoppage  
of sale.

28. (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 seven days, a fresh proclamation under rule 26 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.

Defaulting  
purchaser  
answerable  
for loss on  
resale.

29. Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, 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.

Restriction  
on bidding  
or purchase  
by officers.

30. (1) 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.

(2) Nothing in sub-rule (1) shall be construed so as to preclude the State Government from purchasing any property at any such sale through their officers other than those referred to in sub-rule (1) duly authorised in that behalf.

Sale of agri-  
cultural  
produce.

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

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



(Sch.-contd.)

- (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  
stock, 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.

32. (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.

Special provisions relating to growing crops.

(2) When the crop from its nature does not admit of being stored, 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 and cutting or gathering the crop.

33. (1) Where movable property is sold by public action 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.

Sale by public auction.

(Sch.-contd.)

(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 is 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, bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

Irregularity not to vitiate sale but a person injured may sue.

34. 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 a 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.

Delivery of movable property, debts and shares.

35. (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.

(Sch.-contd.)

36. (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 in a proceeding under the Orissa Public Demands Recovery Act, 1962 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 has been signed by the party himself.

37. 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*

38. (1) When a tenure or a holding at fixed rates, situated in an area in which Chapter XVI of the Orissa Tenancy Act, 1913, is in force, has been advertised under rule 25 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 incumbrances ; 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 incumbrances.

(Sch.-contd.)

(2) The purchaser at such sale may, in manner provided by section 221 of the Orissa Tenancy Act, 1913 and not otherwise, annul any incumbrance upon the tenure or holding, not being a registered and notified incumbrance. B. & O. Act  
2 of 1913.

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

39. (1) If the bidding for a tenure or a holding at fixed rates put up to auction under rule 38, does not reach a sum sufficient to liquidation the amount of the certificate and costs as aforesaid, and if the certificate-holder thereupon desires that the tenure or holding be sold with power to avoid all incumbrances, the person holding the sale shall adjourn the sale and make a fresh proclamation under rule 25 announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances, on a future day specified therein, not less than fifteen or more than thirty days from the date of the postponement; and on that day the tenure or holding shall be put up to auction and sold with power to avoid all incumbrances.

(2) The purchaser at a sale under this rule may, in manner provided by section 221 of the Orissa Tenancy Act, 1913, and not otherwise, annul any incumbrance on the tenure or holding. B. & O. Act  
2 of 1913.

Sale of occupancy holding with power to avoid all incumbrances.

40. (1) When an occupancy holding situated in an area in which Chapter XVI of the Orissa Tenancy Act, 1913, is in force, has been advertised under rule 25 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 incumbrances. B. & O. Act  
2 of 1913.

(2) The purchaser at a sale under this rule may in manner provided by section 221 of the Orissa Tenancy Act, 1913, and not otherwise, annul any incumbrances on the holding. B. & O. Act  
2 of 1913.

Rules 38 to 40 not to apply in certain cases to certificate holders who are co-sharer landlords.

41. Where the certificate holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of rules 38, 39 and 40 shall not apply.

Postponement of sale to enable certificate-debtor to raise amount due under certificate.

42. (1) When 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

(Sec.-contd.)

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, authorising him, with a period to be mentioned therein, and notwithstanding anything contained in section 7 or section 19 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.

43. (1) When a tenure or holding, situated in an area in which Chapter XVI of the Orissa Tenancy Act, 1913, 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.

Prohibition of purchase of tenure or holding by certificate-debtor.

B. & O. Act 2 of 1913.

(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 resale, and all expenses attending it, shall be paid by the certificate-debtor.

44. On every sale of immovable property, the person declared to be the purchaser shall, immediately after such declaration, pay 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 resold.

Deposit by purchaser and resale in default.

(Sch.-contd.)

**Time for payment of purchase-money in full.** 45. 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.

**Procedure in default, of payment.** 46. In default of payment within the period mentioned in rule 45, 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 resold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

**Notification on resale.** 47. Every resale 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.

**Bid of co-sharer to have preference.** 48. 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.

**Return of purchase-money in certain cases.** 49. 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 27, and such interest as the Certificate Officer may allow, shall be paid to the purchaser.

**Certificate to purchaser.** 50. (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 of the day on which the sale became absolute.

**Delivery of property in occupancy of certificate-debtor.** 51. 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 6 and a certificate in respect thereof has been granted under

(Sch.-contd.)

rule 50, 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 needed by removing any person who refuses to vacate the same.

52. 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 50, 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.

Delivery of prop. rty in occupancy of tenant or other person.

#### *Arrest and Detention*

53. (1) When a certificate has been signed either in accordance with the provisions of section 3, or on a requisition made under section 4, 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.

Subsistence allowance.

(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.

(Sch.-contd.)

(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*

Register of certificates.

54. (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 ten naye paise shall be chargeable for every such inspection.

Payment by instalments.

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

(2) The payment of every such instalment shall be entered in the register referred to in rule 54.

Remittance to Certificate Officer of sums received under a certificate transferred for execution.

56. When a copy of a certificate has been sent to another officer under sub-section (1) of section 12 all sums received by such officer under such certificate shall be remitted by him to the Certificate Officer in whose office the original certificate is filed.

Entry of satisfaction.

57. When the whole or any portion of the amount due under a certificate has been realised, 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 54.



(Sch.-contd.)

58. When a copy of a certificate has been sent to another officer under sub-section (1) of section 12 ; or when a certificate has been signed upon a requisition, any satisfaction 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.

Communi-  
cation of  
satisfaction  
to other per-  
sons.

*Forms*

59. The forms set forth in the Appendix shall be used, with such variations as circumstances may require.

Forms in  
Appendix.

60. Where no form is set forth in the Appendix, the appropriate form in use in Civil Courts shall be used, with such modifications as may appear to be necessary.

Other forms.



(Appendix—contd.)

FORM No. 2

REQUISITION FOR CERTIFICATE

(See section 4)

To  
The Certificate Officer of the district of

Name of certificate-debtor	Address of certificate-debtor	Name of surety	Address of surety	Amount of public demand for which this requisition is made	Nature of the public demand for which this requisition is made
1	2	3	4	5	6

I request you to recover the above-mentioned sum of Rs. \_\_\_\_\_ which I am satisfied after enquiry, is due from the said \_\_\_\_\_ in respect of \_\_\_\_\_

Verified by me on the \_\_\_\_\_ day of \_\_\_\_\_ 19 .

A. B.

(Designation)

FORM NO. 3

NOTICE TO CERTIFICATE-DEBTOR

(See section 6)

TO

(Name of certificate-debtor)

You are hereby informed that a certificate against you for Rs. \_\_\_\_\_ due from you on account of \_\_\_\_\_ has this day been filed in my office, under section \_\_\_\_\_ of the Orissa Public Demands Recovery Act, 1962. If you deny your liability to pay the said sum of Rs. \_\_\_\_\_ you may, within thirty days from the service of this notice, file in my office a petition denying liability, in whole or in part, on one or more of the grounds specified below :—

(a) The certificate dues have been fully or partly paid.

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



(Appendix—contd.)

FORM NO. 5

NOTICE TO SHOW CAUSE WHY SALE SHOULD NOT BE SET ASIDE

(See section 28)

To

Whereas the under-mentioned property was sold on the day of 19 in execution of certificate No. , dated the 19 . And whereas the certificate-holder (or certificate-debtor) has applied to me to set aside the sale of the said property on the ground that

Take notice that if you have any cause to show why the said application should not be granted, you should appear with your proof in this office on the day of 19 , when the said application will be heard and determined.

Given under my hand and seal, this the day of 19  
Description of property —

*Certificate-officer*

FORM NO. 6

WARRANT OF ARREST

(See section 37)

To

Whereas a Certificate No. _____ Rs.    nP. _____ Original demand .. _____ Interest .. _____ Costs .. _____ Execution .. _____ Total .. _____	was filed in this office on the 19 , under section _____ of the Orissa Public Demands Recovery Act, 1962, against certificate-debtor, and the sum of Rs. _____ as noted in the margin is due from him in respect of the said certificate and whereas the said sum of Rs. _____ has not been paid to the certificate-holder in satisfaction of the said certificate, these are command you to arrest the said certificate-debtor and unless the said certificate-debtor should pay to you the said sum of Rs. _____ together with Rs. _____ for the cost of executing this process or should produce a receipt showing payment of the amount to the Certificate-Officer to bring him before the Court with all convenient speed.
--	---

You are further commanded to return this warrant on or before the day of 19 , with an endorsement certifying the day on which and the manner in which it has been executed or the reason why it has not been executed.

Dated this day of , 19

*Certificate Officer*

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(Appendix—contd.)

FORM No. 7

ORDER COMMITTING CERTIFICATE-DEBTOR TO THE CIVIL PRISON

(See section 37)

To

Whereas \_\_\_\_\_, who has been brought before me this day of \_\_\_\_\_ 19\_\_\_\_, under a warrant in execution of certificate No. \_\_\_\_\_ filed in this office on the \_\_\_\_\_, 19\_\_\_\_, under section \_\_\_\_\_ of the Orissa Public Demands Recovery Act, 1962 and by which certificate it was ordered that the said \_\_\_\_\_ should pay \_\_\_\_\_ and whereas the said \_\_\_\_\_ has not paid the said sum nor satisfied me that he is entitled to be discharged from custody.

You are hereby in the name of Government commanded and required to take and receive the said \_\_\_\_\_ into the Civil Prison and keep him imprisoned therein for a period not exceeding \_\_\_\_\_, or until the said certificate shall be fully satisfied or the said \_\_\_\_\_ shall be otherwise entitled to be released according to the terms and provisions of section 39 or section 40 of the said Act, and I hereby fix \_\_\_\_\_ nP. per diem as the rate of the monthly allowance for the subsistence of the said \_\_\_\_\_ during his confinement under this order of committal.

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

*Certificate Officer*

FORM No. 8

NOTICE TO LEGAL REPRESENTATIVE OF CERTIFICATE-DEBTOR

(See section 51)

(Name of Legal Representative)

To

You are hereby informed that a certificate against \_\_\_\_\_ deceased for Rs. \_\_\_\_\_ due from him on account of \_\_\_\_\_ was filed in this office on the \_\_\_\_\_ 19\_\_\_\_, under section \_\_\_\_\_ of the Orissa Public Demands Recovery Act, 1962 and that a demand of Rs. \_\_\_\_\_ in respect of the said certificate proceeding is due from you as the legal representative of the said deceased. If you deny your liability to pay the said sum of Rs. \_\_\_\_\_, you may within thirty days from the service of this notice, file in my office a petition denying inability in whole or in part. If within the said thirty days you fail to file such a petition, or if you fail to show cause/do not show sufficient cause why such certificate should not be executed, it will be executed under the provisions of the said Act, unless you pay Rs. \_\_\_\_\_ (Rs. \_\_\_\_\_ on account of the demand and Rs. \_\_\_\_\_, on account of costs of realization) into my office. Until the said amount is so paid you are hereby prohibited from alienating your immovable property, or any part of it by sale, gift, mortgage or otherwise. If you in the

(Appendix—contd.)

meantime conceal, remove or dispose of any part of your movable property the certificate will be executed immediately.

A copy of the certificate above mentioned is hereto annexed.

You may remit the amount by money order quoting the number and year of the certificate.

Dated this                      day of                      19

*Certificate-Officer*

FORM NO. 9

NOTICE TO CERTIFICATE-HOLDER

(See section 20)

Whereas                      has made application to the Court for the removal of attachment on                      placed at your instance in execution of Certificate No.                      of 19                      day of 19                      this is to give you notice to appear before me on the                      day of 19                      either in person or by a pleader duly instructed to support your claim as attaching creditor.

Given under my hand and seal, this                      day of                      19

*Certificate-Officer*

FORM NO. 10

WARRANT OF SALE OF PROPERTY

(See rule 24)

To

The

These are to command you to sell by auction after giving                      day's previous notice by affixing the same in this office and after making due proclamation, the under mentioned property attached in execution of certificate No.                      in favour of                      , or so much of the said property as shall realize the sum of Rs.                      , being the                      of the said certificate and costs still remaining unsatisfied.

You are further commanded to return this warrant on or before the day of                      19                      , with an endorsement certifying the manner in which it has been executed or the reason why it has not been executed.

Given under my hand and seal, this                      day of                      19 .

Specification of property :—

*Certificate-Officer*

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(Appendix—contd.)

FORM NO. 11

NOTICE OF THE DAY FIXED FOR SETTLING A SALE PROCLAMATION

(See rule 25)

To

Certificate-debtor

Whereas in execution of certificate No. \_\_\_\_\_ of a sale is about to be held of your property mentioned below, you are hereby informed that the day of \_\_\_\_\_ 19\_\_\_\_, has been fixed for settling the terms of the proclamation of sale.

The total amount due from you in respect of the certificate including costs and interests is \_\_\_\_\_

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_.

Specification of property :—

Certificate-Officer

FORM NO. 12

PROCLAMATION OF SALE

(See rule 25)

Notice is hereby given that, under rule 24 in Schedule II to the Orissa Public Demands Recovery Act, 1962 an order has been passed by me for the sale of the property mentioned in the annexed schedule, in satisfaction of the claim of the certificate-holder under the certificate mentioned in the margin (1) amounting with costs and interest up to date of sale, to the sum of \_\_\_\_\_

1) Certificate No. \_\_\_\_\_ of \_\_\_\_\_ 19\_\_\_\_, under which is the certificate-holder and is the certificate-debtor.

The sale will be by public auction and the property will be put up for sale in the lots specified in the schedule. The sale will be of the property of the certificate-debtor above-named as mentioned in the schedule below.

In the absence of any order of postponement, the sale will be held by at the monthly sale commencing at \_\_\_\_\_ 'O' clock on the \_\_\_\_\_ at \_\_\_\_\_. In the event, however, of the debt above specified and of the costs of the sale, being tendered or paid before the knocking down of any lot, the sale will be stopped,

At the sale the public generally are invited to bid, either personally or by duly authorised agent. The following are the further.

Conditions of sale

The particulars specified in the schedule below have been stated to the best of the information of the Certificate-Officer, but the Certificate-Officer will not be answerable for any error, misstatement or omission in this proclamation.



2. The amount by which the biddings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising as to the amount bid or as to the bidder, the lot shall at once be again put up to auction.

3. The highest bidder shall be declared to be the purchaser of any lot, provided always that he is legally qualified to bid and provided that it shall be in the discretion of the officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it advisable to do so.

4. For reasons recorded it shall be in the discretion of the officer conducting the sale to adjourn it, subject always to the provisions of rule 28 in Schedule II to the Orissa Public Demands Recovery Act, 1962.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the same directs and in default of payment the property shall forthwith be again put up and resold.

6. In the case of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 per cent on the amount of his purchase money to the officer conducting the sale and in default of such deposit the property shall forthwith be put up again and resold.

7. The full amount of the purchase money shall be paid by the purchaser before the office of the Certificate-Officer closes on the fifteenth day after the sale of the property exclusive of such day or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase money within the period allowed to property shall be resold after the issue of a fresh notification of sale. The deposit after defraying the expense of the sale may if the Certificate-officer thinks fit be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may be subsequently sold.

Given under my hand and seal, this            day of            19

*Certificate-Officer*

**SCHEDULE OF PROPERTY**

Number of lot	Description of property to be sold with the name of each owner where there are more certificate-debtor than one	The revenue assessed upon the estate or part of the estate, if the property to be sold is an interest in an estate or a part of an estate paying revenue to the Government	Claims (if any) which have been put forward to the property and any other known particulars bearing on its nature and value
2		3	4

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(Appendix—contd.)

FORM NO. 13

ORDER ON THE NAZIR FOR CAUSING PUBLICATION OF PROCLAMATION OF SALE.

(See rule 26)

To

The Nazir of

Whereas an order has been made for the sale of the property of the Certificate-debtor under Certificate No. , dated the , 19 , which is specified in the schedule herunder annexed and whereas the day of 19 has been fixed for the sale of the said property, copies of the proclamation of sale are by this warrant made over to you and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on my office and then to submit to me a report showing the dates on which and the manner in which the proclamations have been published.

Dated the day of 19 .

*Certificate-Officer*

FORM NO. 14

CERTIFICATE BY OFFICER HOLDING A SALE OF THE DEFICIENCY OF PRICE ON A RE-SALE OF PROPERTY BY REASON OF THE PURCHASER'S DEFAULT

(See rule 29)

Certified that the re-sale of the property in execution of Certificate No. dated the 19 , in consequence of default on the part of purchaser, there was deficiency in the price of the said property amounting to Rs. and that the expenses attending such re-sale amounted to Rs. making a total of Rs. which sum is recoverable from the defaulters.

Dated the day of 19 .

*Officer holding the sale*

(Appendix—contd.)

FORM No. 15

CERTIFICATE OF SALE OF LAND

(See rule 50)

This is to certify that \_\_\_\_\_ has been declared the purchaser at a sale by public auction on the \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_, of \_\_\_\_\_ in the execution of Certificate No. \_\_\_\_\_, dated the \_\_\_\_\_, 19\_\_\_\_, and that the said sale has been duly confirmed by me.

Given under my hand and seal, this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_

\_\_\_\_\_  
*Certificate-Officer*

FORM No. 16

ORDER FOR DELIVERY TO CERTIFIED PURCHASER OF LAND AT A SALE IN EXECUTION

(See rule 51)

To

The

Whereas \_\_\_\_\_ has become the certified purchaser of at a sale in execution of Certificate No. \_\_\_\_\_ dated the \_\_\_\_\_ 19\_\_\_\_, you are hereby ordered to put the said \_\_\_\_\_ the certified purchaser as aforesaid into possession of the same.

Given under my hand and seal, this \_\_\_\_\_, day of \_\_\_\_\_ 19\_\_\_\_

\_\_\_\_\_  
*Certificate-Officer*

(Appendix—contd.)

FORM No. 17

REGISTER OF CERTIFICATES

(See rule 54)

Board's Register No. 10.....Certificates made under the Orissa Public Demands Recovery Act, 1962

NOTE 1. If separate volumes of the register are kept for local cess, wards, etc., it will not be necessary to describe the nature of the claim in column 5 as, "Local Cess for the Kist of etc." but it will suffice merely to mention the particular Kist or instalment. In the volume for miscellaneous cases, however, the particular department should be mentioned in this column.

NOTE 2. Process fees or costs under sections 54 and 55 of the Orissa Public Demands Recovery Act, 1962 should be shown separately in sub-column (a) of column 13.

NOTE 3. Delay due to appeals should be noted in column 15.

NOTE 4. Certificates received on transfer from other districts are to be shown in red ink.

NOTE 5. Every amendment of a certificate and every payment made on it will be noted in this register under the initials of the Certificate-officer.

NOTE 6. Column—6-A is only to be used for cases of wards and encumbered, etc., states

Serial number of the year	Serial number of requisition in Register 9, or name of other district from which received	Date of receipt by Certificate-officer	Name and address of debtor	Nature of claim	Amount of claim	Amount with date of court or process fees	Date of certificate	Section of Act under which certificate is made
1	2	3	4	5	6	6(a)	7	8

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of 1963 ]

(Appendix—contd.)

FORM No. 18

[See section 16 (1)]

NOTICE TO PAY TO THE CERTIFICATE-OFFICER MONEY BECOMING  
DUE TO OR BEING HELD BY ANY PERSON/AUTHORITY  
TOWARDS SATISFACTION OF CERTIFICATE DUES

To

( )

Whereas.....certificate-debtor in certificate Case  
No.....of.....has to pay certificate dues amounting to  
Rs.....

And whereas it has come to the knowledge of this Court that a sum of Rs. ....  
.....appertaining to the said certificate-debtor is being held by/becoming due  
to you.

You are hereby required to withhold a sum of Rs. ....out of the  
dues aforesaid and remit the said sum to this Court by.....  
forthwith when it becomes due for payment to the certificate-debtor.

Given under my hand and seal, this.....day of.....19

*Certificate-Officer*

ORISSA ACT 15 OF 1998

**THE ORISSA PUBLIC DEMANDS RECOVERY (AMENDMENT) ACT, 1998**

**TABLE OF CONTENTS**

**PREAMBLE**

**SECTIONS**

1. Short title
2. Amendment of section 60
3. Amendment of schedule 1

## ORISSA ACT 15 OF 1998

## \* THE ORISSA PUBLIC DEMANDS RECOVERY (AMENDMENT) ACT, 1998

[ Received the assent of the Governor on the 23rd October 1998, first published in an extraordinary issue of the Orissa Gazette, dated the 3rd November, 1998 ]

AN ACT FURTHER TO AMEND THE ORISSA PUBLIC DEMANDS RECOVERY ACT, 1962.

**B**E it enacted by the Legislature of the State of Orissa in the Forty-ninth Year of the Republic of India as follows:—

- Short title. 1. This Act may be called the Orissa Public Demands Recovery (Amendment) Act, 1998.
- Amendment of Section 60. 2. In section 60 of the Orissa Public Demands Recovery Act, 1962 (hereinafter Orissa Act I referred to as the principal Act), to sub-section (3), the following proviso shall be added, namely :—
- “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.”
- Amendment of Schedule I. 3. In Schedule I to the principal Act, in clause (c) of the Explanation to item (xi), the words and commas “to small Industries, artisans, weavers and self-employed persons in a specified locality of the State” shall be omitted.

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\* For the Bill see *Orissa Gazette, Extraordinary* dated the 1st July 1998 ( No. 842 )