

THE PUBLIC DEMANDS RECOVERY ACT, 1913

(BENGAL ACT NO. III OF 1913)

[30th April, 1913]

¹ An Act to consolidate and amend the law relating to the recovery of public demands in Bangladesh.

WHEREAS it is expedient to consolidate and amend the law relating to the recovery of public demands in Bangladesh;

²[* * *]

It is hereby enacted as follows:-

PART I

PRELIMINARY

1. Short title, commencement and extent

(1) This Act may be called the ³[* * *] Public Demands Recovery Act, 1913.

(2) It shall come into force on such date as the Government may appoint by notification in the official Gazette.

(3) It extends to the whole of Bangladesh.

2. [Repealed]

[Repealed by the Bengal Repealing and Amending Act, 1938 (Act No. I of 1939).]

3. Definitions

In this Act, unless there is anything repugnant in the subject or context,-

(1) "Certificate-debtor" means the person named as debtor in a certificate filed under this Act, and includes any person whose name is substituted or added as debtor by the Certificate-officer;

(2) "Certificate-holder" means the Government or person in whose favour a certificate has been filed under this Act, and includes any person whose name is substituted or added as creditor by the Certificate-officer;

(3) "Certificate-officer" means a Collector, a ⁴[Upazila Nirbahi Officer, a Upazila Magistrate,] and any officer, appointed by a Collector ⁵[, with the sanction of the Commissioner] to perform the functions of a Certificate-officer under this Act;

(4) "movable property" includes growing crops;

(5) "prescribed" means prescribed by rules;

(6) "public demand" means any arrear or money mentioned or referred to in Schedule I, and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed under part II; and

(7) "rules" means rules and forms contained in Schedule II or made under section 39.

PART II

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

4. Filing of certificate for public demand payable to Collector

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

5. Requisition for certificate in other cases

(1) When any public demand payable to any person other than the Collector is due, such person may send to the Certificate-officer a written requisition in the prescribed form:

Provided that no action shall be taken under this Act, on a requisition made by a land mortgage bank registered or deemed to be registered under the Co-operative Societies Act, 1940, or an assignee of such bank, unless the requisition be countersigned by the Registrar of Co-operative Societies, Bangladesh.

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

6. Filing of certificate on requisition

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

7. Service of notice and copy of certificate on certificate-debtor

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

8. Effect of service of notice of certificate

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

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

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

9. Filing of petition denying liability

(1) The certificate-debtor may, within thirty days from the service of the notice required by section 7, or, where the notice has not been duly served, then within 30 days from the execution of any process for enforcing the certificate, present to the Certificate-officer in whose office the certificate is filed, or to the Certificate-officer who is executing the certificate, a petition, in the prescribed form, signed and verified in the prescribed manner, denying his liability, in whole or in part.

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

10. Hearing and determining of such petition

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

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

⁶[10A. Special provisions relating to certificate for the recovery of certain dues

(1) Notwithstanding anything contained in section 7, when a certificate has been filed in the Office of the Certificate-officer under section 4 or section 6 for the recovery of any dues under the ⁷[Bangladesh House Building Finance Corporation Order, 1973 or the Bangladesh Krishi Bank Order, 1973,] or the Co-operative Societies Act, 1940 or the ⁸[Customs Act, 1969] or for the recovery of any loan advanced by the ⁹[Government], ¹⁰[or for the recovery of any money referred to in Article 15 of Schedule I] the Certificate-officer shall, instead of causing a notice prescribed under section 7 to be served upon the certificate-debtor, cause a demand-notice to be served upon the certificate-debtor by registered post with acknowledgement due requiring the certificate-debtor to deposit with the Certificate-officer the amount of his debt within thirty days of the service of such notice.

(2) From and after the service of the demand-notice under sub-section (1) upon a certificate-debtor, the provisions of clauses (a) and (b) of section 8 shall apply.

(3) The provisions of section 9 or section 10 shall not apply in the case of a certificate for the recovery of any dues or loan specified in sub-section (1); and on the default of the certificate-debtor to deposit the amount of his debt as required by sub-section (1), the

Certificate-officer shall proceed to execute the certificate in accordance with the provisions of the Act.]

PART III

EXECUTION OF CERTIFICATE

11. Who may execute certificate

A certificate filed under section 4 or section 6 may be executed by-

- (a) the Certificate-officer in whose office the original certificate is filed, or
- (b) the Certificate-officer to whom a copy of the certificate is sent for execution under section 12, sub-section (1).

12. Transmission of certificate to another Certificate-officer for execution

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

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

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

13. When certificate may be executed

No step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of the service of the notice required by section 7, or, when a petition has been duly filed under section 9, until such petition has been heard and determined:

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

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

14. Modes of execution

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

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

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

15. [Omitted]

[Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).]

16. Interest, costs and charges recoverable

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

- (a) interest on the public demand to which the certificate relates, at the rate at which interest may, by law, be chargeable on the public demand on the date of the signing of the certificate or at the rate of six and a quarter per centum per annum, whichever is higher, from the date of the signing of the certificate up to the date of realization,
- (b) such costs as are directed to be paid under section 45, and
- (c) all charges incurred in respect of-
 - (i) the service of notice under section 7, and of warrants and other processes, and
 - (ii) all other proceedings taken for realizing the demand.

Attachment.

17. Attachment of property

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

18. Payment of moneys, contrary to attachment, to be void

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

19. Attachment of decree

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

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

(2) Where a Civil Court receives an application under clause (ii) of sub-section (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.

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

Sale

20. Purchaser's title

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

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

(3) Notwithstanding anything contained in sub-section (1) or in any other law for the time being in force, where a tenure or holding is sold in execution of a certificate for arrears of rent due in respect thereof or for the recovery of any dues under the ¹¹[* * *] Agricultural Income-tax Act, 1944, the tenure or holding shall, subject to the provisions of section 90 of the ¹²[* * *] State Acquisition and Tenancy Act, 1950, where that section is in force, pass to the purchaser with power to annual incumbrances:

Provided as follows-

(a) an incumbrance created by a registered instrument, of which a copy has, not less than three months before the actual of the arrear, been served on the Government shall not be so annulled except in the case prescribed; and

(b) the power to annual shall be so exercisable only in the manner prescribed.

(4) Notwithstanding anything contained elsewhere in this Act, no sale of any tenure or holding in execution of a certificate for arrears of rent or for the recovery of any dues under the ¹³[* * *] Agricultural Income-tax Act, 1944, shall effect the title or interest of the House Building Finance Corporation established under the ¹⁴[Bangladesh House Building Finance Corporation Order, 1973] or the ¹⁵[Bangladesh Krishi Bank] established under the ¹⁶[Bangladesh Krishi Bank Order, 1973] or a co-operative society established under the ¹⁷[* * *] Co-operative Societies Act, 1940 in respect of a registered and notified incumbrance mentioned in clause (i) of the proviso to sub-section (3), unless a concise statement of the order of attachment and proclamation of sale has, in the prescribed manner and at the time of issue of such proclamation, been sent by the Certificate-officer by registered post to the House Building Finance Corporation or the ¹⁸[Bangladesh Krishi Bank], or the co-operative society, as the case may be.

(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-section (3) shall not apply.

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

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

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against the 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.

22. Application to set aside sale of immovable property on deposit

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

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

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

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

(2) Where a person makes an application under section 23 for setting aside the sale of his immovable property he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this section.

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

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

Provided as follows:-

(a) no sale shall be set aside on any such ground unless the Certificate-officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

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

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

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

The purchaser at any sale of immovable property in execution of a certificate may, at any time within sixty days from the date of the sale, apply to the Certificate-officer to set aside the sale on the ground that the certificate-debtor had no saleable interest in the property sold, or that the property did not exist at the time of the sale.

25. Sale when to become absolute or be set aside

(1) Where no application is made under section 22, section 23 or section 24, or where such an application is made and disallowed, the Certificate-officer shall make an order confirming the sale, and thereupon the sale shall become absolute.

(2) Where such an application is made and allowed, and where, in the case of an application under section 22, the deposit required by that section made within thirty days from the date of the sale, the Certificate-officer shall make an order setting aside the sale:

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

Disposal of proceeds of execution.

26. Disposal of proceeds of execution

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

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

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

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

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

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

Resistance to purchaser after sale.

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

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

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

28. Procedure on such application

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

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

Arrest, Detention and Release.

29. Power to arrest and detention

(1) No order for the arrest and detention in civil prison of a certificate-debtor in execution of a certificate shall be made unless, after giving the certificate-debtor an opportunity of showing cause why he should not be committed to civil prison, 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,-

(i) is likely to abscond or leave the local limits of the jurisdiction of the Certificate-officer, or

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

Explanation.— In the calculation of the means of the certificate-debtor for the purpose of his 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) When a certificate-debtor appears before the Certificate-officer in obedience to a notice to show cause, the Certificate-officer shall proceed to hear the certificate-holder and take all such evidence as may be produced by him in support of his application for execution, and shall then give the certificate-debtor an opportunity of showing cause why he should not be committed to the civil-prison.

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

(4) Upon the conclusion of the inquiry under sub-section (3), the Certificate-officer may subject to the provision of section 31 make an order for the detention of the certificate-debtor in the civil prison and shall in that event cause him to be arrested:

Provided that in order to give the certificate-debtor an opportunity of satisfying the certificate-debt, the Certificate-officer may before making the order of detention leave the certificate-debtor in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days or release him on 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.

30. Release from arrest and re-arrest

(1) The Collector may order the release of a certificate-debtor who has been arrested in execution of a certificate, upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Certificate-officer and that he has not committed any act of bad faith.

(2) If the Certificate-officer has ground for believing the disclosure made by a certificate-debtor under sub-section (1) to have been untrue, he may order the re-arrest of the certificate-debtor in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorized by section 31, sub-section (1).

31. Detention in, and release from, prison

(1) Every person detained in the civil prison in execution of a certificate may be so detained,—

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

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

Provided that he shall be released from such detention—

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

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

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

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

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

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

32. Release on ground of illness

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

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

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

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

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

(4) A certificate-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed that authorized by section 31, sub-section (1).

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

Notwithstanding anything in this Act, the Certificate-officer shall not order the arrest or detention in the civil prison of—

(a) a woman, or

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

PART IV

REFERENCE TO CIVIL COURT

34. Suit in Civil Court to have certificate cancelled or modified

The certificate-debtor may, at any time within six months—

(1) from the service upon him of the notice required by section 7, or

(2) if he files, in accordance with section 9, a petition denying liability—from the date of the determination of the petition, or

(3) if he appeals, in accordance with section 51, from an order passed under section 10—

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

Provided that no such suit shall be entertained—

(a) in any case, if the certificate-debtor has omitted to file, in accordance with section 9, a petition denying liability, or to state in his petition denying liability the ground upon which he claims to have the certificate cancelled or modified, and cannot satisfy the Court that there was good reason for the omission, or

(b) in the case of a certificate for a demand mentioned in Article 1 or Article 2 of Schedule I, if the certificate-debtor has not paid the amount due under the certificate to the Certificate-officer—

(i) within thirty days from the service of the notice required by section 7, or

(ii) if he has filed, in accordance with section 9, a petition denying liability – then within thirty days from the date of the determination of the petition, or

(iii) if he has appealed in accordance with section 51 – then within thirty days from the decision of the appeal:

Provided also that no sale in execution of a certificate shall be set aside in such a suit unless the purchaser has been made a party to the suit and until a direction is made for the refund of the amount of the purchase-money, with such interest (if any) as the Court may allow not exceeding six and a quarter per centum per annum.

35. Grounds for cancellation or modification of certificate by Civil Court

(1) No certificate duly filed under this Act shall be cancelled by a Civil Court, except on one of the following grounds, namely:—

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

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

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

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

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

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

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

Notwithstanding anything hereinbefore contained, a sale of immovable property in execution of a certificate shall not be held to be void on the ground that the notice required by section 7 has not been served; but a suit may be brought in a Civil Court to recover possession of such property or to set aside such sale on the ground that such notice has not been served, and that the plaintiff has sustained substantial injury by reason of irregularity:

Provided that no such suit shall be entertained-

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

(b) if the certificate-debtor has made appearance in the certificate proceeding, or has applied to the Certificate-officer under section 22 or section 23 to set aside the sale.

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

Except as otherwise expressly provided in this Act every question arising between the certificate-holder and the certificate-debtor, or their representatives, relating to the making, execution, discharge or satisfaction of a certificate duly filed under this Act, or relating to the confirmation or setting aside by an order under this Act of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Certificate-officer before whom such question arises, or of such other Certificate-officer as he may determine:

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

**PART V
RULES**

38. Effect of rules in Schedule II

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

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

(1) The ¹⁹[Board of Land Administration] may, after previous publication ²⁰[* * *] make rules regulating the procedure to be followed by persons making requisitions under section 5 and by Collectors and Certificate-officers acting under this Act; and may, be such rules, alter, add to or annul any of the rules in Schedule II.

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

(a) the signature and verification of requisitions made under section 5;

(b) the Certificate-officers to whom such requisitions should be addressed;

(c) the cases in which such requisitions shall not be chargeable with a fee;

(d) the service of notices issued under section 7, the service of other notices or processes issued under this Act, and the manner in which service may be proved;

(e) the signing and verification of petitions, under section 9, denying liability;

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

(g) the scale of charges to be recovered under section 16, clause (c);

(h) the maintenance and custody, while under attachment, of live-stock and other movable property, the fees to be charged for such maintenance and custody, the sale of such live-stock and property, and the disposal of the proceeds of such sale;

- (i) the registers, books and accounts to be kept by Certificate-officers, and the inspection thereof by the public;
- (j) the fee to be charged for the inspection of the register of certificates maintained under rule 59 in Schedule II;
- (k) the recovery of expenditure on the certificate establishment by the levy of costs under section 16, clause (b) and section 45;
- (l) the recovery of poundage fees;
- (m) the forms to be used under this Act.

40. Publication and effect of rules made under section 39

- (1) Rules made and sanctioned under section 39 shall be published in the official Gazette, and shall, from the date of publication or from such other date as may be specified, have the same force and effect as if they had been contained in Schedule II.
- (2) All references in this Act to the said Schedule II shall be construed as referring to that schedule as for the time being amended by such rules.

PART VI

SUPPLEMENTAL PROVISIONS

41. Persons under disability

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

42. Continuance of certificates

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

- (a) the property to which the demand relates ceasing to be under the charge or management of the Court of Wards or the Revenue-authorities; or
- (b) the death of the certificate-holder.

43. Procedure on death of certificate-debtor

Where a certificate-debtor dies before the certificate has been fully satisfied, the Certificate-officer may, after serving upon the legal representative of the deceased a notice in the prescribed form, proceed to execute the certificate against such legal representative; and the provisions of this Act shall apply as if such legal representative were the certificate-debtor and as if such notice were a notice under section 7:

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

44. Cancellation of certificates

- (1) The Certificate-officer shall cancel any certificate at the request of the certificate-holder.
- (2) The Certificate-officer may cancel any certificate filed under section 6 if the certificate-holder is not reasonably diligent.

45. Costs

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

46. Compensation

If the Certificate-officer is satisfied that any requisition under section 5 was made without reasonable cause, he may award to the certificate-debtor such compensation as the Certificate-officer thinks fit;

and the amount so awarded shall be recoverable from the certificate-holder under the procedure provided by this Act for recovery of costs.

47. Entry into dwelling-house

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

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

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

48. Application of Act XVIII of 1850

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

49. Officer to have powers of Civil Court for certain purposes

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

50. Control over officers

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

51. Appeal

(1) An appeal from any ²¹[* * *] order made under this Act shall lie—

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

(b) if the order was made by the Collector, ~~to~~ to the ²²[Commissioner]:

Provided that no appeal shall lie from any order made under section 22.

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

(3) The Collector may, by order, with the previous sanction of the ²³[~~the~~ Commissioner] authorize

(a) any Sub-divisional Officer, or

(ii) any officer appointed under clause (3) of section 3 to perform the functions of a Certificate-officer, to exercise the appellate powers of the Collector under sub-section (1)

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

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

52. Bar to second appeals

No appeal shall lie from any order of a Collector, or an officer authorized under section 51, sub-section (3), when passed on appeal.

²⁴[**53. Revision**

(1) The Collector may revise any order passed by a Certificate-officer, Assistant Collector or Deputy Collector under this Act.

(2) The Commissioner may revise any order passed by a Collector under this Act.

²⁵[(3) The Board of Land Administration may revise any order passed by a Commissioner under this Act and the order of the Board shall be final.]]

54. Review

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

²⁶[54A. Government may empower certain officers

The Government may, by notification in the official Gazette, empower an Additional Deputy Commissioner or a joint Deputy Commissioner to exercise all or any of the powers exercisable by the Collector under this Act.]

55. Saving of other Acts

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

56. Application of the Limitation Act, 1908

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

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

57. Certificate-officer deemed to be a Court

A Certificate-officer shall be deemed to be a Court, and any proceeding before him shall be deemed to be a civil proceeding within the meaning of section 14 of the Limitation Act, 1908.

58. Penalties

Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein, from being taken in execution of a certificate, shall be deemed to have committed an offence punishable under section 206 of the ²⁷[Penal Code].

59. Signature of documents by ministerial officers

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

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

60. [Repealed]

[Repealed by section 6 of the Bengal Public Demands Recovery (Amendment) Act, 1942 (Act No. I of 1942).]

61. [Repealed]

[Repealed by section 6 of the Bengal Public Demands Recovery (Amendment) Act, 1942 (Act No. I of 1942).]

62. [Repealed]

[Repealed by section 3 and the Second Schedule of the Bengal Repealing and Amending Act, 1946 (Act No. XVI of 1946).]

63. [Repealed]

[Repealed by section 6 of the Bengal Public Demands Recovery (Amendment) Act, 1942 (Act No. I of 1942).]

64. [Repealed]

[Repealed by section 6 of the Bengal Public Demands Recovery (Amendment) Act, 1942 (Act No. I of 1942).]

Annotations

¹ Throughout this Act, except otherwise provided, the words "Bangladesh", "Government" and "Taka" were substituted, for the words "East Pakistan", "Provincial Government" or "Central Government or the Provincial Government" and "rupees" respectively by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

² The 2nd paragraph of the preamble was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

³ The word "Bengal" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

⁴ The words and commas "Upazilla Nirbahi Officer, a Upazila Magistrate," were substituted, for the words and commas "Sub-divisional Officer," by section 2 of the Public Demands Recovery (Amendment) Act, 1987 (Act No. XXXV of 1987).

⁵ The comma and words ", with the sanction of the Commissioner" were inserted by section 2 and Schedule of the Bangladesh Laws (Amending) Ordinance, 1976 (Ordinance No. IX of 1976).

⁶ Section 10A was inserted by the Bengal Public Demands Recovery (Amendment) Ordinance, 1961 (East Pakistan Ordinance No. XXXV of 1961.)

⁷ The words, commas and figures "Bangladesh House Building Finance Corporation Order, 1973 or the Bangladesh Krishi Bank Order, 1973," were substituted, for the words, commas and figures "House Building Finance Corporation Act, 1952 or the Agricultural Development Bank Ordinance, 1961," by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

⁸ The words, comma and figure "Customs Act, 1969" were substituted, for the words, comma and figure "Sea Customs Act, 1878" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

⁹ The word "Government" was substituted, for the words "Central or Provincial Government" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

¹⁰ The words and figures "or for the recovery of any money referred to in Article 15 of Schedule I" were inserted by section 2 of the Public Demands Recovery (Amendment) Ordinance, 1978 (Ordinance No. XXXV of 1978).

¹¹ The word "Bengal" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

¹² The words "East Bengal" were omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

¹³ The word "Bengal" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

¹⁴ The words, commas and figures "Bangladesh House Building Finance Corporation Order, 1973" were substituted, for the words, commas and figures "House Building Finance Corporation Act, 1952" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

¹⁵ The words "Bangladesh Krishi Bank" were substituted, for the words "Agricultural Development Bank of Pakistan" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

¹⁶ The words, comma and figure "Bangladesh Krishi Bank Order, 1973" were substituted, for "Agricultural Development Bank Ordinance, 1961" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

¹⁷ The word "Bengal" was omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

¹⁸ The words, commas and figures "Bangladesh House Building Finance Corporation Order, 1973" were substituted, for the words, commas and figures "House Building Finance Corporation Act, 1952" by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

¹⁹ The words `Board of Land Administration` were substituted, for the word "Government" by the Schedule of the Laws (Amendment) Ordinance, 1982 (Ordinance No. XLI of 1982).

²⁰ The words "and with the previous sanction of the Provincial Government" were omitted by the Schedule of the Bangladesh Laws (Repealing and Amending) Order, 1973 (President`s Order No. 12 of 1973).

²¹ The word "original" was omitted by the Schedule of the Bangladesh Laws (Repealing and Amending) Order, 1973 (President`s Order No. 12 of 1973)

²² The word `Commissioner` was substituted, for the words "Civil Court" by the Schedule of the Bangladesh Laws (Amending) Ordinance, 1976 (Ordinance No. IX of 1976)

²³ The word `Commissioner` was substituted, for the words "Civil Court" by the Schedule of the Bangladesh Laws (Amending) Ordinance, 1976 (Ordinance No. IX of 1976)

²⁴ Section 53 was substituted, for section 53 by the Schedule of the Bangladesh Laws (Amending) Ordinance, 1976 (Ordinance No. IX of 1976).

²⁵ Sub-section (3) was substituted, for the former sub-section (3) by the Schedule of the Laws (Amendment) Ordinance, 1982 (Ordinance No. XLI of 1982).

²⁶ The words `Penal Code` were substituted, for the words `Pakistan Penal Code` by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

²⁷ The words `Penal Code` were substituted, for the words `Pakistan Penal Code` by section 3 and 2nd Schedule of the Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973)

Amending Law(s)

The Public Demands Recovery (Amendment) Act, 1987 (Act No. XXXV of 1987).

The Laws (Amendment) Ordinance, 1982 (Ordinance No. XLI of 1982).

The Public Demands Recovery (Amendment) Ordinance, 1978 (Ordinance No. XXXV of 1978).

The Bangladesh Laws (Amending) Ordinance, 1976 (Ordinance No. IX of 1976).

The Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

The Bengal Public Demands Recovery (Amendment) Ordinance, 1961 (East Pakistan Ordinance No. XXXV of 1961).

Provision(s) Repealed/Omitted by

The Bangladesh Laws (Revision And Declaration) Act, 1973 (Act No. VIII of 1973).

The Bengal Repealing and Amending Act, 1946 (Act No. XVI of 1946).

The Bengal Public Demands Recovery (Amendment) Act, 1942 (Act No. I of 1942).

Translation

No Translation Available.

Associated Subordinate Legislation(s)

No Subordinate Legislation Available.

Related Law(s)

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Related Judgment Categories

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This law has been updated upto (last amending law):

The Public Demands Recovery (Amendment) Act, 1987 (Act No. XXXV of 1987).