

### 37-A. INSTRUCTION ON CERTIFICATE CASE

#### NOTES ON –

#### THE BENGAL PUBLIC DEMANDS RECOVERY ACT ACT III OF 1913.

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This is a State Government Act. It came into force from 1<sup>st</sup> July, 1913, throughout Bengal but its application was barred in Chittagong Hill Tracts, now under Bangladesh but Act I of 1895 was in force there.

Ordinary practice is that a person to whom a debt is due, is to take resort to civil court and if the court passes decree in his favour, by execution thereof in the prescribed manner, he can realize the dues. But in all countries the State has reserved to itself, a special and peculiar procedure for recovery of certain dues and debts due to itself. Regular litigation in civil courts is time-consuming and costly too. Hence, for protection of public debtors and in respect of prima-facie undisputed debts eg. Land revenue, taxes, fines etc. where the main question is whether they have been paid or not, summary powers to enforce payment by attachment and sale of debtors' properties also by detention of the debtors in person, are given to revenue authorities. These powers are, in addition and not in derogation from any powers conferred by any other Act in force for recovery of those dues (vide sec. 55P.D.R. Act.) The right of appeal is limited to higher revenue authorities. The jurisdiction of the civil court is also barred except on the ground of want of jurisdiction of the revenue authorities or fraud occasioning substantial injury to the debtor. The public demands (vide schedule -I of the Act) are mainly dues and debts demandable by public officers from private persons, all created by Regulations and Statute.

The first Act which exclusive dealt with recovery of public demands other than land revenue is Act VII of 1880. There were some defects and difficulties were also experienced in the matter of recovery as it was found impossible to touch the person and property of certificate debtor beyond the province of Bengal because local legislature could not be enforced beyond its territories. The Revenue Recovery Act of 1890 was, therefore, passed by the Imperial Legislature to make better provisions for recovery of arrears of land revenue or a sum recoverable as an arrear of land revenue.

In 1895 revision of Act VII of 1880 was undertaken to remove defects pointed out by the High Court and improvements were effected by Act I of 1895 which was repealed by this Act III of 1913. This is a self contained Act. Besides various improvements to remove doubts, the principle of Ch. XIV of B.T. Act was made applicable to the sale of tenures and holdings under the P.D.R. Act and a new section 60 herein, introduced a new section 158 Act in the B.T. Act giving certain selected Zaminders, the right of Certificate procedure under certain specified terms and conditions (later on repealed in 1942).

The Act contains two schedules I - enumerating Public demands and II - Rules. The Board of Revenue was given authority to issue instruction in conformity with Acts and Rules, with approval of the Govt.

Public demand arising in this State cannot be recovered outside the State and recourse to Revenue Recovery Act I of 1890 (Central Act) has to be taken.

Apart from definition of public demand, those of the terms, 'certificate debtor, 'certificate holder, 'Certificate Officer' 'Collector' are important.

Certificate has nowhere been defined in the Act. It may be called a declaration by the certificate officer in a prescribed form (the gaps being filled up by the C.O. himself applying his mind) to the effect that a public demand is due from a definite living persons and has not been paid. This has force of civil court decree. Yet essential difference is that the certificate may be signed *exparte* without any notice on the alleged debtors or taking any evidence unlike in the case of a civil court decree. Of course the C.O. must satisfy himself that the amount is due. There is some difference in the matter of filing of certificate on account of public demand payable to the Collector (sec. 4) and that to any person other than the Collector (Sec.5&6). In respect of the former, the C.O. can straightway sign the certificate and file in his office for which no stamp duty is required, while in respect of the other, verified requisition is required from the person claiming it, along with *advalorem* court fee under the Court Fees Act, 1870.

After filing of the certificate, a notice in the prescribed form has to be served u/s. 7 on the debtor named in the certificate. This notice serves the purposes of attachment of immovable property within the meaning of Sec. 64 C.P.C. and makes the certificate holder simple mortgagee and effect of service of notice is that any private transfer of immovable property, thereafter, shall be void and the amount due shall be first charge on the immovable property of the certificate debtor, wherever situated.

Within 30 days from the date of service of notice u/s 7 or where such notice is not served, within 30 days from the date of execution of any process the certificate debtor, may file verified objection denying liability in full or part. The C.O. in whose office the certificate is filed, is to hear the parties, record evidence, if necessary, and give a decision. But if the objection involves bonafide disputes regarding right to property the case is to be referred to the Collector and if the Collector is satisfied about bonafides of the claim, he has to cancel the certificate (sec. 9-10).

Execution of the certificate is more important part of the provisions in the Act. This can be executed by the C.O. in whose office it is filed or copy may be sent to some other C.O. within the State under whose jurisdiction the debtor has properties, for execution and the latter C.O. will cause the copy to be filed in his office to take further action treating the copy as original certificate. He is not required to reissue notice u/s 7 but if objection is filed before him, this has to be forwarded to the issuing Certificate Officer for disposal. Only after expiry of the prescribed time for filing objection and where this is filed, after disposal thereof that steps can be taken for execution, The Certificate Officer in whose office the certificate is filed, can at any time, direct attachment of movable properties of the C.D., if he is satisfied that there is apprehension of the C.D.'s concealing or removing movables causing delay in realizing the dues. But in such case, the C.D. can get the order cancelled by furnishing sufficient security.

Modes of execution (Sec. 14)

- (a) by attachment and sale or by sale (without previous attachment) of any property movable or immovable; or
- (b) 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 above methods.

Besides the amount noted in the certificate interest @ 6¼% for the period between signing of the certificate and realization, cost directed u/s. 45 and charges in respect of service of notices and realizing the demand have to be realized from C.D. However, no such interest is to be levied in respect of demand below 25.00 and if the period is less than 3 months. Similarly no interest can be charged for the period during which the proceeding is stayed under order of the appellate authority or revising authority at the instance of the certificate holder.

Properties liable to attachment u/s 60 C.P.C. can only be attached. Rules 13-24 in schedule II may be also be read in this connection (not reproduced as the list is long). There are many items exempted from attachment, Payment to the certificate debtor contrary to the attachment is void as against all claims enforceable thereunder. Civil court decree can also be attached by issuing a notice requesting the court to stay execution of the decree till the notice is cancelled or unless the C.D. or C.H. applies for execution in which case the amount realized would be applied for satisfaction of the certificate demand.

No proclamation of sale is necessary in case the value of movable property is less than Rs.40/- and the attaching officer can sell it on the spot (Rule 45). If the value is in excess, proclamation is necessary as in case of all immovable property (Rule 46). There are special rules regarding attachment of growing crops and sale thereof. Rule 18A - 18H are Garnishee Rules dealing with payment of rent due to the certificate debtor, to the certificate officer.

Only the right title and interest of the debtor passes to the purchaser in a sale, from the time of sale. The provisions with regard to annulment of interest defined as incumbrance in immovable properties are of no practical utility now due to passing of the E.A. Act. There is provision that the certificate purchaser is to be conclusively deemed to be real purchaser and suits to assert Benami title against the certified purchaser is prohibited.

### **Setting aside the sale of immovable property .**

There are various provisions for setting aside the certificate sale of immovable properties. Application may be made to the C.O. by any person whose interest is affected by the sale, within 30 days of the sale by depositing the amount mentioned in the proclamation of sale with 6¼% interest upto the time of deposit, 5% of the purchase money as penalty to be paid to the purchaser and all outstanding charges due to Government whether in respect of the property sold or not (sec. 22). U/s 23 application may be made by C.D., C.H. or any person affected by the sale, to the Certificate Officer, within 60 days from the date of the sale of immovable property on the ground of non service of notice u/s 7 or on the ground of materials irregularity and the sale can be set aside by the C.O., if the following conditions are present, viz :-

- (1) Sec 7 notice was not served, or
- (2) there was material irregularity in the certificate proceeding; or
- (3) there was material irregularity in publishing and conducting sale; and
- (4) the applicant sustained substantial injury by reason of the material irregularity.

The C.D. may be required to make deposit of certificate amount with all interests realizable unless he can prove that he is not liable to pay such amount.

Sale can also be set aside on the application of the purchaser within 60 days from the date of sale, on the ground that C.D. had no saleable interest in the property sold or the property did not exist at the time of the sale (Sec 24).

Only when 60 days have elapsed from the date of sale, in case where no application is made u/s 22, 23 or 24 or when such application being filed, they are disallowed, the sale would be confirmed. After confirmation, no application can be received by C.O. for setting aside the sale. On the other hand when application u/s 22 accompanied by necessary deposit is made or when application u/s 23 or 24 is made and allowed the sale shall be set aside.

### **Arrest & detention.**

In the way of execution of the certificate, there is provision for arrest and detention of the C.D. in civil jail, subsistence being paid by the C.H. But recourse to this procedure can not be taken as a matter of course. First of all, the C.O. has to issue notice on the C.D. to show cause why he should not be committed to civil prison. If the C.D. disobeys the notice or is likely to abscond or leave the jurisdiction of the executing C.O., warrant of arrest can be issued. Moreover, if the C.O. on hearing the C.H. is satisfied that the C.D., with the object of obstructing or delaying execution of the certificate, has, after the filing of the certificate dishonestly transferred, concealed or removed any part of his property or has means to pay the amount due or a substantial part thereof and has refused or neglected to pay, then warrant of arrest can be issued and the arrested C.D. has to be produced before the C.O. within 24 hours from the time of arrest, the time required for the journey being excluded. There, an enquiry has to be made by the C.O., hearing the C.D. and C.H. and if the C.O. is satisfied that the above circumstances exist, he can order detention of the C.D. in civil prison. But women, minors and lunatics can not be arrested.

The Collector can order release of the arrested C.D. if he is satisfied that he (C.D.) has disclosed the whole of his property and has placed at the disposal of C.O. and has not committed any act of bad faith. But the C.D. can be rearrested if the C.O. has grounds for believing that disclosure is untrue.

A man can be detained in civil prison for the maximum period of 6 months if the demand exceeds Rs.50.00, in other cases for six weeks only and can be released under the following circumstances even before expiry of the period of sentence viz:-

- (i) if the amount noted in the warrant be paid to the officer-in-charge of civil prison; or
- (ii) if the certificate is otherwise satisfied or cancelled under orders of C.O.; or

- (iii) on the request of the Collector or the requiring authority of the certificate, also under order of the C.O.; or
- (iv) on the omission of the requiring authority to pay the subsistence allowance.

The C.D. released from detention will not be discharged of the liability unsatisfied but can not be detained in civil prison again.

That apart, on the ground of health, the C.O. can release the detained person and the Collector can do so on the ground of existence of any contagious disease but in such cases the C.D. can be re-arrested and in that case the total period of detention cannot exceed the maximum period stated before.

### **Reference to Courts**

The C.D. has right to institute a suit for getting the certificate cancelled or modified and for further consequential relief, within a period of 6 months from the date of service of notice u/s. 7 or the date of determination of objection u/s 9, if filed, or from the date of disposal of appeal u/s. 51 under certain conditions as u/s. 34. The grounds for cancellation or modification of the certificate are noted in sec. 35.

Sale of immovable property in certificate case, cannot be declared to be void merely on the ground that sec. 7 notice was not served but suit can be filed for recovery of possession of property sold on the ground that section 7 notice was not served and the plaintiff sustained substantial injury by reason of irregularity the time limit which is one year from the date of delivery of possession to the purchaser. But no such suit can be entertained if the C.D. applied to the C.O. for setting aside the sale u/s. 22 or 23.

### **General Bar to jurisdiction of Civil Court**

There is general bar to jurisdiction of civil courts on matters arising between the C.H. and C.D. relating to making, execution, discharge or satisfaction of the certificate duly filed, confirmation or setting aside of an order of the C.O. except when ground of fraud is alleged.

### **Provision of appeal etc.**

Sec. 51 provides for appeal against the order of the C.O. to the Collector, where the C.O. is subordinate to the Collector, within 15 days and when C.O. is Collector, to the Commissioner within 30 days. There is no provision for appeal against order u/s 22 for setting aside the sale by the C.O. The Collector, with previous approval of the Commissioner, can order exercising appellate powers by officers who are certificate officers other than in respect of cases in which orders were passed by them.

No second appeal lies in certificate cases (sec. 52) but the Collector can revise any order passed by subordinate Certificate Officers. The Commissioner can revise the orders passed by the Collector. The Board of Revenue may revise the order passed by the Commissioner. Normal time limit for filing revision petition is 30 days but on good and sufficient reason the time can be extended by the revising authority. The Revising authority should interfere when the certificate officers :-

- (i) have exercised jurisdiction not vested in them by law; or
- (ii) have failed to exercise a jurisdiction so vested; or
- (iii) have acted illegally or with such material irregularity as have occasioned a substantial failure of justice.

Review is permissible by the C.O. or his successor in office on account of mistake or error (sec 54).

### **Miscellaneous –**

Collector has general power of control and supervision over the proceeding of the subordinate C.Os.

The C.Os have limited and not all the powers of the civil courts.

The Indian limitation Act (IX of 1908) applies (except sec. 6-9) as if certificates are decrees of civil courts. A minor or one of the unsound mind can be represented by a suitable person permitted by the C.D. i.e. the C.O. should appoint a guardian – ad-litem as without appointment of such guardian the proceedings will be a nullity.

A certificate is enforceable against the property in charge of court of wards also against legal representatives on the death of the C.Ds only to the extent of property passing to their hands.

Certificates can be cancelled at the request of the C.H. or when C.O. finds that the C.H. is not reasonably diligent.

Details of procedure on various matters regarding filing of certificate, sale of movable properties of different values, mode of service of notices, attachment, fees payable etc. are in the Rules in Schedule II and in the instruction issued by the Board of Revenue.

The Collector can, with previous sanction of the Commissioner, appoint any officer to be Certificate Officer u/s. 3 clause (3) of the Act. The Sub-divisional Officers are ex-officio, Certificate Officers, and need not be specially authorized by the Collector (Board's Instruction – para 1).



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