

13. RULES OF ESCHEAT PROPERTIES

From the Bengal Practice and Procedure Manual, 1940
published by the Board of Revenue, Bengal

CHAPTER XI.

Escheats.

General Rules

359. (i) All property, whether real or personal, to which there is no legal claimant, belongs to the State.

(ii) It has been ruled that kutchra, tiled or thatched houses are immovable property and such houses left by persons dying intestate are to be dealt with as immovable property.

Real or Immovable Property

360. When real property is left without a claimant, it does not appear that the intervention of the civil courts is in any way necessary, or can be, by any law, invoked.

361. By section 7, Regulation XIX of 1810, the Board is vested with the general superintendence of all escheats, and is required to inform itself fully, "through the local agent," of any property of that description, and to direct whether it should, in its opinion, be sold on the public account, or in what other mode it should be disposed of. The Collector being ex-officio local agent, should report, for the orders of the Commissioner and the Board, all cases, subject to the exceptions, mentioned in Rule 362, in which he learns the existence of unclaimed real property. He should take immediate possession of such property on the part of the Crown, and take measures at the same time to invite claimants to the property as publicly as possible. Should the Collector's action be opposed by any person actually in possession, he must desist from occupying the property and report the circumstances with his opinion in regard to the propriety of instituting a suit for the establishment of the right of the Crown. Notices inviting claimants to the property should remain open for six months.

362. The Provincial Government has, however, decided not to act upon its right of taking possession as escheats of mere occupancy tenures (whether transferable or not) of cultivators dying without heirs and in such cases Collectors should not put forward any claim on behalf of the Crown and no report to the Board need be made.

In the case of any tenure of a middleman or cultivator which, though of a permanent character, is worth less than Rs.500, according to the valuation of such tenures in the district for the time being, the Collectors should report all particulars to the Board as hitherto, but should refrain from taking possession until the orders of the Board are received, as, in respect of such tenures, the Provincial Government will not, as a matter of course in every case, act on its right to claim the escheat.

Government claims.

How kutchra, tiled or thatched houses are to be treated.

Civil Courts have no jurisdiction where real property is concerned.

Duties of the Board and of Collectors.

Occupancy tenures will not be claimed by the Crown.

Procedure in case of tenures worth less than Rs.500.

363. With reference to the provisions of the law of limitation (Act IX of 1908), the Board will not ordinarily direct the sale of any such property until it has been in full possession of it for twelve years except in the case of lakhiraj and rent-free tenures valued at less than Rs.500, of which the sale will be sanctioned at the end of six months after the declaration of each case.

Property escheated not to be ordinarily sold for twelve years.

364. Small patches of land in the neighbourhood of towns, or such escheats as shops, tanks and gardens similarly situate, may, with the special sanction of the Provincial Government in each case, be appropriated to local improvements.

Appropriation to local improvements.

365. On the occurrence of the escheat of estates which may have belonged to Hindus, Muhammadans, or others, to whom the Indian Succession Act, 1925, does not apply, the Provincial Government will deal in a liberal spirit with the claims of persons, who, except for the fact of illegitimacy, would have been entitled to succeed, or who for any reason have a moral, though not a legal, claim to consideration; such cases will be reported to the Provincial Government for final orders.

Illegitimate claimants to be liberally dealt with.

366. In dealing with the escheated property of illegitimate Europeans who may die intestate in India, it has been customary for the Central Government to be guided by the principles applicable to the disposal of similar escheats in England; under which the property, or a portion thereof, is distributed, as a matter of grace and bounty, to the next-of-kin of the deceased, after deducting the expenses incurred and a proportion as the Crown's share according to a certain scale.

Illegitimate European claimants.

Personal or Movable Property.

367. The mode of procedure where personal property is left without a claimant is described in section 7, Regulation V of 1799, which requires that such property should be advertised and if unclaimed within twelve months following the date of advertisement, an inventory with a report should be submitted by the District Judge to the Board (Decentralization Act IV of 1914). By this it is not meant that a report should be submitted at the end of each calendar year, but as soon as the twelve months' term has expired in each case. In each month of the year a report in the form given in Appendix A should be made of such cases as have in the previous month been pending for the prescribed period. In regard to the personal property the duty of the Magistrate is confined to informing the Judge concerning it whenever he becomes aware of its existence. It follows of course that he should take such measures as lie in his power to make himself acquainted with the existence of such property.

Duties of the Magistrate and District Judge.

367A. (1) When the personal property consists of hand-notes or bonds, etc., they should also be included in the inventory for orders of the Board. If realisation of the money due on them was already barred at the time when they were seized by the police, they should be ordered to be destroyed as useless papers. If realisation is not barred orders for bringing their value to the credit of the Provincial Government either by sale at a reasonable price or by suit should be passed. Before instituting the suit steps should be taken to realise the assets amicably if possible and the amount at which claim is to be settled should be fixed with the approval of the Board. When institution of a suit is decided on as a last resort, it should be ascertained on enquiry that the prospects of realisation of assets are good.

(2) Whether it is found that the hand-note or bonds will be barred or are likely to lose their value before the expiry of the period during which the notice inviting claimants remains open, the District Magistrate should forthwith obtain the orders of the District Judge for their disposal in the manner indicated in subparagraph (1). The latter should submit a report stating the action taken for the formal approval of the Board.

368. In all cases in which intestate movable property is taken possession of by the police, the officer in charge of the police station in which the occurrence takes place shall submit a report to the Magistrate of the district or division of district within which his station is situated. The report shall be in Form I in Appendix B. The Police should not, however, take property out of a claimant's hands. If a claimant has obtained possession of property dishonestly before they hear of it, action should be taken against him under section 404 of the Indian Penal Code.

369. The report in Form I, when received by the Magistrate of the district or division of the district, should be forwarded, with a memorandum to the District Court having jurisdiction in the case, and the orders of the Court should be requested. If, however, bonafide claimant to any property, appears after the police report is received, the Magistrate will release it to him as having been wrongly taken possession of.

370. On receipt of the Magistrate's report, the District Judge will reply in a separate communication, and the property will be dealt with in accordance with his orders. In practice, there are only two ways in which the property is dealt with. It is either ordered to be sold on the spot and the money remitted to Court, or the property itself is ordered to be sent to the Court.

371. When, in the case of property that very rapidly deteriorates and perishes, the police assume the responsibility of selling it in anticipation of orders, or when the Court directs that the property shall be sold on the spot, and account of the sale in Form II hereto annexed shall be prepared in triplicate by the police. The three copies shall be sent to the Magistrate of the district or division of the district who shall send two copies to the Judge, and the third to the District Treasurer. One of the two copies forwarded to the Judge shall be returned with his signature to the police station at which it was originally prepared.

372. When the District Judge directs that the property itself is to be sent to the Court, a chalan in Form III shall be prepared in triplicate by the police. As in Rule 371 one copy shall be returned by the District Judge with his signature to the police station at which it was originally prepared.

373. All money and valuables sent to the District Judge by the police should under the existing rules be remitted to the treasury as soon as they reach the Court, and in the event of the Treasurer not receiving within due time the cash or valuables entered in the form received by him under Rule 371 or Rule 372, he should immediately report the matter to the Judge by a note at the foot of the daily advice list of payments now sent to Civil Courts.

374. Horses, cattle, ponies, sheep and goats should not be sold by the police without the orders of the District Judge. They should be placed in the nearest pound, and the Judge should pass orders as soon as he receives the report so as to prevent the possibility of the cost for keep exceeding the value of the animal. The animal

Duties of the Police.

Report in Form I to be sent to District Court.

Property to be dealt with in accordance with District Judge's order.

Procedure for selling the property on the spot.

Procedure when the property itself is sent to the Court.

Money and valuables to be remitted to the treasury as soon as they reach the Court.

Horses, cattle, etc., not to be sold without the orders of the District Judge.

should, when it is ordered to be sold, be disposed of, if possible, at a public market.

375. The cost of keep in cases referred to in Rule 374 will be deducted from the sale proceeds and paid to the pound-keeper, and only the net proceeds will be remitted to the Judge, as provided in Form II. Similarly, the cost of transport of such intestate movable property as is sent up to the District Court should be entered in the chalan forwarding the property (Form III). This cost should be paid at once from the amount to credit on account of property sold. In cases in which a claim to the property is afterwards judicially allowed, the successful claimant will generally be required to satisfy the charge for transport, or for keep of live animals, before receiving the property or its proceeds.

376. In cases where personal property under attachment of the civil court is claimed by persons alleging themselves to be heirs of the deceased intestate persons, the Collector should be represented before the Judge by the Pleader of the Crown, where the interests of the Provincial Government require such cases to be watched.

377. Section 7, Regulation V of 1799, applies without distinction to the movable property of persons dying intestate either in or out of hospitals.

378. The Indian Succession Act, 1925, and the Administrator-General's Act, 1913, have superseded section 7 of Regulation V of 1799, as regards European British subjects. As the law now stands a District Judge is bound to keep the property of a deceased European British subject, under Rs.1,000 in value, until some person comes forward to claim it. The inconvenience of District Officers can be obviated by selling the property and remitting the funds to the Judge who will place them in the Treasury to the account of the estate. The Judge would be perfectly justified in giving orders for the sale of the property after some time has elapsed, as such a course would be for the benefit and protection of the estate.

Charge for transport or for keep of live animals.

Interest of the Provincial Government to be watched.

Applicability of section 7, Regulation V of 1799, to the property of persons dying intestate either in or out of hospital.

Indian Succession Act and the Administrator-General's Act have superseded section 7, Regulation V of 1799, as regards European British subjects.

APPENDIX - A

INVENTORY of articles under the seal of the Judge of the property of persons who have died intestate, and to which no claims have been advanced within twelve months following the date of the issue of the proclamation prescribed by law, submitted to the Secretary to the Board of Revenue, in accordance with Government Circular No. 60, dated the 21st September 1879, with the request that the Board may be moved to authorize the property to be sold, and the proceeds thereof, together with the cash in hand, to be carried to the credit of the Provincial Government.

Dated

District Judge

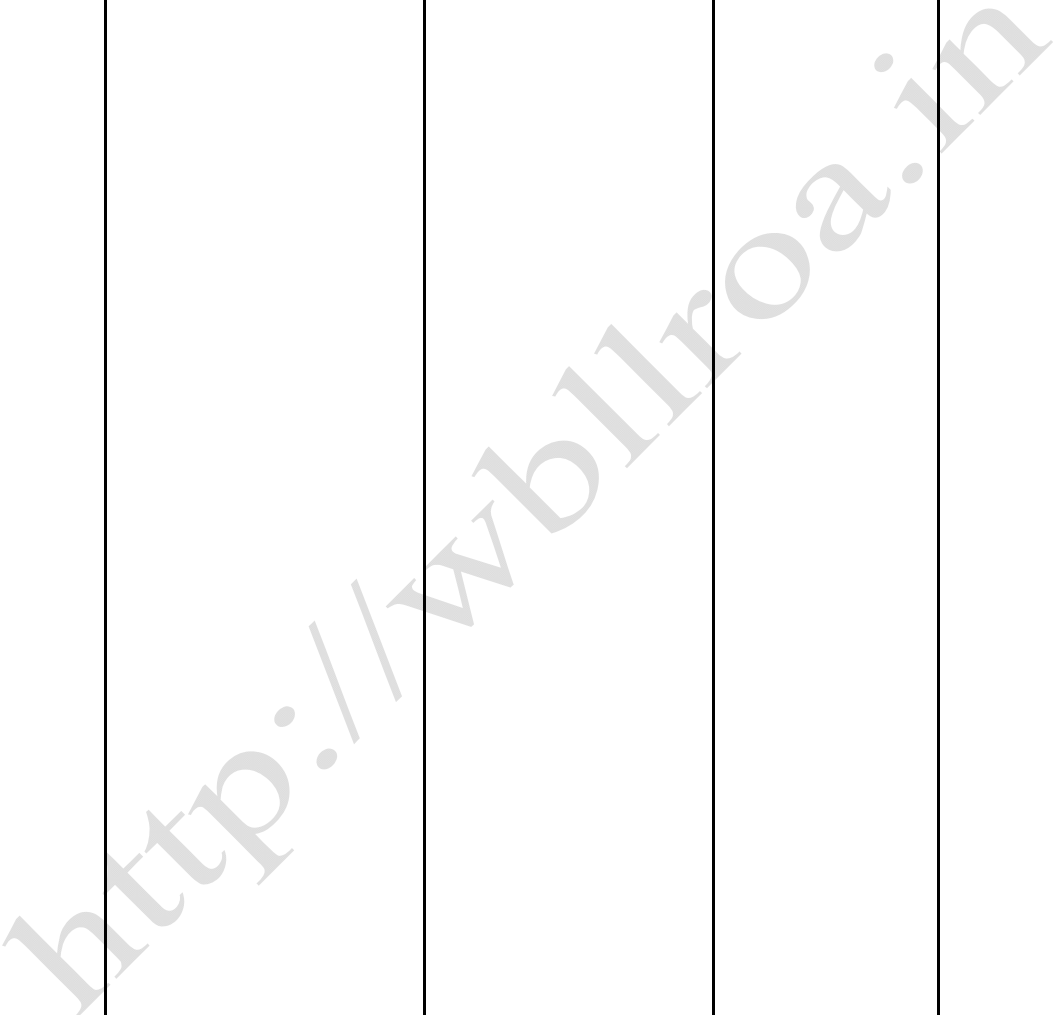
Name	Date of proclamation	Property	Estimated value			Total			Remarks
			Rs.	a.	p.	Rs.	a.	p.	

District Judge

APPENDIX - B

Form - I

REPORT of the intestate movable property from station
district dated

Annual Number 1	Date and place of death 2	Name and Residence of deceased, if known 3	List of property 4	Remarks 5
				

Memo No., dated

FORWARDED to the District Judge of for information and orders.

Signature of Magistrate.

Signature of Police Officer.

FORM - II

Account sales of intestate movable property sold at station,
district dated

Number and year of original report, with name of deceased, if known. 1	Number and description of article as per original report. 2			Weight or measure (Where possible) 3	Price at which sold. 4			Remarks. 5
	Rs.	a.	p.		Rs.	a.	p.	
Less cost of feeding live-stock as per memorandum at foot _____ . No. Horse _____ days at _____ per day _____ Cow or buffalo _____ Goat _____ . Total				Total Net proceeds forwarded				

Signature of Police Officers
Dated

Signature of Receiving Officer

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Less cost of feeding live-stock as per memorandum at foot _____ . No. _____ Horse _____ days at _____ per day _____ Cow or buffalo _____ Goat _____ . Total				Total Net proceeds forwarded				

Signature of Police Officers
Dated

Signature of Receiving Officer

FORM - III

Chalan of intestate movable property from..... station, district

Number and year of original report, with name of deceased, if known. 1	Number and description of article as per original report. 2	Weight or measure 3	Date of despatch 4	Cost of despatch 5			Remarks. 6
				Rs.	a.	p.	

Signature of Police Officer
Dated

Signature of Receiving Officer

FORM - III

Chalan of intestate movable property from..... station, district

Number and year of original report, with name of deceased, if known. 1	Number and description of article as per original report. 2	Weight or measure 3	Date of despatch 4	Cost of despatch 5			Remarks. 6
				Rs.	a.	p.	

Signature of Police Officer Signature of Receiving Officer
Dated

FORM - III

Chalan of intestate movable property from..... station, district

Number and year of original report, with name of deceased, if known. 1	Number and description of article as per original report. 2	Weight or measure 3	Date of despatch 4	Cost of despatch 5			Remarks. 6
				Rs.	a.	p.	

Signature of Police Officer Signature of Receiving Officer
Dated

Government of West Bengal
Office of the Director of Land Records and Surveys
And Joint Land Reforms Commissioner, West Bengal.

Memo No.476/3498/C/91-Pt.I

Dated Alipur the 12/15th July, 1993

To
The District Land & Land Reforms Officer,
Birbhum.

Sub : Petition dated 20.11.90 of Shri Haradhan Chatterjee and others.

Ref : His memo no.13/11410/Misc.Ptn.91/4/91 Dated 31.7.91/2.8.91.

From the report it appears that Smt. Renubala Dasi died leaving no legal heir. The properties held by the deceased lady is an escheat one as per provisions of Section 29 of Hindu Succession Act, 1956. Such escheat properties is to be recorded in Collector's Khatian.

Correction of record may be taken up u/s. 51B of the W.B. L.R. Act in the case the mouza records are yet to be finally published or u/s. 51A(4) suo-moto in case the records are finally published. Notice may be issued to all concerned including notices at several conspicuous places in the concerned village.

He is, therefore, requested to kindly take action as per instruction mentioned above and report early.

P. K. Agrawal
D.L.R. & S & Jt. L.R.C.,
West Bengal.

Memo No.476/3499-3516/C/91

dated : 12th July, 1993.

Copy forwarded for informaton and necessary action to the D.L.&L.R.O., It may be impressed upon all that similar action to correct record to bring the escheat properties to the Collector's Khatian may be taken by all concerned after being satisfied that the deceased has no heir at all.

P. K. Agrawal
D.L.R. & S & Jt. L.R.C.,
West Bengal

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Government of West Bengal
Office of the Board of Revenue, West Bengal
Writers' Buildings, Calcutta-1.

Memo No.5303 (19)/Escheat

Dated, the 13th/30th Sept., 1993

From: Secretary
Board of Revenue, West Bengal.

To : 1) **The Director of Land Records & Surveys, West Bengal**
2) **The District Land & Land Reforms Officer,**

A question has arisen about the treatment of land taken over by Collectors as escheat.

The undersigned is directed to say that the advice of Law Officer of the Government was obtained on the issue.

Section 29 of the Hindu Succession Act, 1956 provides that Escheat property would devolve on the Government and that the Government shall assume all obligations and liabilities attached to that property such as creation of valid trusts or charges

affecting the property for maintenance of persons entitled thereto, payment of mortgage or other debts etc.

Thus any incumbrances created on the land by the erstwhile owner or owners remains even after Government takes over that property by Escheat.

The undersigned is further directed to say that in view of this provision, reasonable attempts should be made before disposing of or settling the property to find out if an incumbrance exists on the property. To that purpose, a search for 10 years may be made in the registration office concerned. Further, a notice may be issued in a local newspaper inviting information from members of the public in general about any incumbrances that might have been created on the landed property.

Having done so, the land may be dealt with in the same manner as vested or khasmahal land subject to such incumbrances as may be found. If there is no incumbrance, the land should be distributed or settled in the same manner as khasmahal/vested land.

K.P. Sandilya
Secretary
Board of Revenue, West Bengal.

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