

## Chapter- 6

### Sale, Setting aside sale, Absolution of an Auction sale

---

Sale is a process of transferring ownership of property in exchange of price paid or promised or party paid and partly promised. After attachment of the property of the certificate-debtor the proceedings of holding an auction sale of the attached property are to be started. The purchaser in a certificate sale steps into the shoes of the certificate-debtor.

The certificate-debtor having no existing interest at the time of sale, the sale shall be a total nullity, conferring no right upon the person purchasing it. [A.I.R 1936 Pat. 572]

Where a sale is held under the Public Demands Recovery Act not in respect of one particular certificate debt, but in respect of several certificate debts all consolidated together, such a sale is not a sale in accordance with the Public Demands Recovery Act and as such is void. [Chittagong Engineering and Electric Supply Vs. Certificate Officer 17 DLR 404.]

#### What passes in a certificate sale:

Section 20 enacts that where any property of the certificate-debtor is sold in execution of certificate, it is only the right, title and interest of the certificate-debtor that will pass to the purchaser by the sale. Thus, the liability of the certificate-debtor in respect of the claim under a certificate is co-extensive with his personal right and interests in all the immovable property he might own in the district in which the certificate is filed.

The effect of a sale under the Public Demands Recovery Act being to pass to the purchaser merely the right, title and interest of the person named as judgment-debtor in the certificate, the purchaser acquires no right if the person appears to have no interest in the property on the date of sale. In order to pass any title to the purchaser it is necessary to make the certificate against the proper certificate-debtor. [Kalipada Vs. Mukanda 34 CWN 131]

#### Grounds on which an auction sale can be set aside:

Section 23 provides that where immovable property has been sold in execution of a certificate, the certificate-debtor, the certificate-holder or any other 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 grounds that—

- (a) notice was not served under section 7, or
- (b) a material irregularity in the certificate proceedings or in publishing or conducting the sale.

Provided as follows-

- (i) the certificate-officer is to be satisfied that the applicant has sustained substantial injury;
- (ii) the applicant is to deposit either the amount recoverable from him in execution of the certificate or the certificate-officer is to be satisfied by him that he is not liable to pay such amount.

It was stated in *Sheik Mohammad Hossain vs. Shasanka Debnath 1985; BLD 234*; that the court can set aside an auction sale *suo moto* without any prayer by any party if there is material irregularity as to the sale.

The mere non-service of notice under section 7 of the Act is not sufficient to set aside a sale. But for the purpose of setting aside a sale, the non-service of notice must cause some substantial injuries and that the injuries must be direct. Thus the non-service of notice is not by itself a ground for setting aside sale; but it must be followed by direct substantial injury. [A.I.R. 1931 P.C.33]

When the certificate is for debt which does not come within the purview of the clauses of Schedule I all execution steps are *void ab initio*. Certificates are nullities and such sale is void even though against bonafide purchaser. [Nanda Vs. Lala H. Narain 14 CWN 607.]

It was stated in *Sheik Mohammad Hossain vs. Shasanka Debnath 1985; BLD 234*; that the court can set aside an auction sale *suo moto* without any prayer by any party if there is material irregularity as to the sale.



**Circumstances constituting material irregularity:**

The circumstances constituting material irregularities for setting aside an auction sale are as follows:

- (i) Sale held not in the date advertised but on the subsequent date; [A.I.R. (1934) 659]
- (ii) Holding sale before the expiry of Thirty days as required under the Act; [9 D.L.R. (1957) 57]
- (iii) Omission to state time and place in the sale proclamation. [37 C.W.N. 622]
- (iv) Holding a sale without a fresh proclamation when adjourned to more than 7 days, unless certificate-debtor waives it out. [3 Cal. 542]
- (v) Failure to bring the legal heirs of the deceased certificate-debtor on record if died during the pending of the certificate proceeding; [40 Cal. 45]

For setting aside certificate sale material irregularity itself is not a ground. The irregularity must be proved to the satisfaction of the court. The material irregularity can be a reason for setting aside a sale if the irregularity causes substantial injury. The material irregularity apart from substantial injury and substantial injury apart from material irregularity is not sufficient to get the sale set aside. [35 CWN, 381; 21 Cal. 66 P.C.]

It must be proved that due to material irregularity the applicant has suffered a substantial injury and this injury also must be proved in the court to its satisfaction. The onus of proving that the applicant has sustained substantial injury by reason of such non-service of irregularity is on the applicant and it must be proved on the facts before the certificate-officer either by direct or circumstantial evidence. [Mahabir Prasad Vs. Dhanuk Dhari 31 Cal. 815]

**What sums to be deposited for setting aside the sale:**

According to section 22 where immovable property has been sold in execution of a certificate, the certificate-debtor or any other 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 the following amount-

- (1) As specified in the proclamation of sale with interest there on at the rate of six and a quarter percent,
- (2) A payment to the purchaser, as penalty a sum equal to five percent, of the purchase-money, but not less than one taka,
- (3) A payment to the collector where the certificate is for a public demand payable to 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.

It was stated in *Azizul Huq Vs. Hossain Ali Bepari*, 21 DLR that in an application under section 22, it is not necessary for the applicant to prove that there was any defect in the certificate proceedings, what he needs is make the application within thirty days of the sale and to deposit the amount prescribed in section 22.

Section 22 will apply only where the immovable property has been sold in the certificate proceeding; but where movable property has been sold this section has no application. A simple mortgage bond is a movable property and not immovable and therefore, the provisions of section 22 of the Act will not apply to sale of such bond in execution of a decree. [Lal Umrao Vs. Lal Singh 46 All. 917]

The Calcutta High Court in *Abdul Latif Vs. Jadav* 25 Cal. 216, held that the deposit of the amount within 30 days is sufficient and no application is necessary for setting aside the sale under section 22 of the Act. But The Bombay High Court in *Raoji Vs. Basni Lal* 43 Bom. 735 held the contrary view.

**Persons who may apply for setting aside sale:**

The certificate-debtor, the certificate-holder or any other person whose interest has been affected by the sale, can apply and are entitled to set aside the sale on depositing the money due under section 22.

The following persons are also entitled to apply for setting aside an auction sale:

- (i) An under raiyat; [11 C.W.N.724]



## 30 The Law of Public Demands Recovery Act

- (ii) Purchaser of a portion of an occupancy holding; [19 C.W.N.326]
- (iii) A beneficial owner of a property which has been sold as the property of the ostensible owner; [20 Cal. 488]
- (iv) A transferee of a share of an occupancy holding; [8 C.W.N.55]
- (v) A mortgage if the sale is free from mortgage. [29 Cal. 4 S.C.]
- (vi) A person who has purchased after attachment and before sale; [37 C.W.N. 912; A.I.R. (1933) Cal. 788]
- (vii) A defaulting auction purchaser liable to make of the deficiency in price; [A.I.R. 1933 Cal. 815]
- (viii) An attaching creditor in whose favour a decree has been passed; [ A.I.R. 1934 Cal. 477]
- (ix) An auction purchaser of property in execution of a decree; [A.I.R.1933 Pat. 435 S.B.]
- (x) A decree holder who has a charge on the property can apply to set aside sale on depositing the amount payable under the section. [A.I.R.1952 Mad. 806]

**Persons who may not apply for setting aside sale:**

The following persons may not apply for setting aside an auction sale:

- (i) An attaching creditor; [6 C.W.N. 57]
- (ii) A Purchaser prior to attachment in a money decree; [15 Cal. 488 F.B.]
- (iii) Purchaser at a private sale after sale in execution; [1 C.W.N.279.]
- (iv) A person who has merely contracted to purchase the land in execution; [23 Bom.181]
- (v) A co-sharer whose interest is not sold; [30 Cal. 425]

**When does a certificate Sale become absolute:**

According to section 25 where no application is made under sections 22, 23 or section 24 or where such application is made and disallowed, the certificate-officer shall make an order confirming the sale and there upon the sale shall become absolute.

Provided that no order shall be made unless notice of the application has not been served to all the persons affected by the sale.

No application to set aside a sale can be entertained after confirmation of the sale; unless the ground falls within clause (2) of section 23 i.e. a suit to set aside a sale which has been made absolute is barred where no fraud in the matter of sale is proved. [*AIR 1928 All; 704:110 IC 876*]

Under section 25 where no application is made to set aside a sale or where such application is made and disallowed, the Certificate-officer is bound to make an order confirming the sale and it, thereupon becomes absolute. [*Somasaundaram Vs. Kondaya; 49 MLJ 410*]

If being aware of the certificate proceedings and having an opportunity to object, the certificate-debtor fails to do so, he is bound by the order confirming the sale, in other words, he is in effect a party to the order by which the sale is confirmed equally with the auction-purchaser and he cannot go behind it. [*AIR 1926 Mad. 12*]

**Distinction between Court's sale and Certificate sale:**

In the case of court sale the auction purchaser takes the risk and sustains the loss if it is, latter on, discovered that the property is not the property of the judgement-debtor; and that he can not apply for setting aside the same. But in a certificate sale, the auction purchaser can get the sale set aside on the ground of non existence of the property.



## Chapter- 7

### Disposal of Proceeds in execution certificate

Disposal means distribution of something. The total amount got from the auction sale is not payable to the certificate-holder. He is entitled to get the amount due from the certificate-debtor. If there remains any balance after the payment of the amount under this Act, shall be paid to the certificate-debtor. Section 26 deals with the disposal of proceeds in execution of a certificate. According to this section whenever assets are realized in execution of a certificate or by sale, they shall be disposed of in manner prescribed in this Act.

#### Manner of disposal of proceeds:

For the disposal of assets or proceeds in execution of a certificate under the Public Demands Recovery Act the under mentioned manners are followed –

- (a) there shall first be paid to the certificate-holder for the costs incurred by him;
- (b) there shall, in the next place, be paid to the certificate-holder the amount due to him under 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 there from any other amount recoverable under the procedure provided by this Act,
- (d) if there remains any balance after the payment of the amount referred to in clause (c), shall be paid to the certificate-debtor.

In section 26 it is further stated that 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 disputes.

Again, section 26(2) of the Act empowers the certificate-officer to determine any dispute arising between the certificate-debtor and the certificate-holder in respect of any claim referred to clause (c) of the section

In *Fazlur Rahman Vs. Ram Tullah; 21 Cal. 169*; it was stated that when the cost incurred in execution and the amount under

Certificate is satisfied and after that there still remains balance, the Certificate-holder may claim any outstanding charges that are due on the date the assets were realized and are recoverable under Certificate procedure. In the case of sale, the clause (c) of section 26 evitable means that all dues accrues between the filing of the Certificate and of sale can be realized out of the sale proceeds.

#### Notice to the Certificate-debtor before making disposal of surplus proceeds:

Rule 54A of Schedule II of the Public Demands Recovery Act, 1913 provides that if a certificate-holder files a claim before the certificate-officer to receive any amount referred to in clause (c) of sub-section (1) of section 26, the certificate-officer is required to issue a notice to the certificate-debtor who is entitled to dispute the claim within thirty days from the date of service of notice. If the certificate-debtor disputes the claim the certificate-officer shall determine the dispute as required by sub-section (2) of section 26 and there after payment of the amount claimed will be made in accordance with the determination so made. If the certificate-debtor does not dispute the claim, the amount claimed by the certificate-holder shall be paid to him after the expiry of thirty days in accordance with the provisions contained in clause (c) of sub-section (1) of section 26 of the Act.

The certificate-officer on the application of the certificate-holder with notice to the certificate-debtor under Rule 54A, can also adjust other outstanding demands of the nature enumerated and filling in Schedule I of the Act that have accrued due from the date of signing of the certificate up to the date of realization of assets.



## Chapter- 8

### Resistance to purchaser after sale

---

The auction-purchaser sometimes may be resisted or obstructed by the Certificate-debtor or by any person in obtaining possession of the property that has been purchased by him. If it actually happens, the purchaser has to move with an application to the Certificate-officer for the assistance. The Certificate-officer, then, shall investigate the matter and summon the opposite party to appear and answer the same for the settlement of the dispute available between them.

#### Meaning of Resistance and obstruction:

Generally, resistance or obstruction means bar to do something. But in the legal sense, the words resistance and obstruction do not convey the same meaning. Obstruction is a physical act whereas resistance is mental and also may sometimes be physical. There may be resistance to the auction-purchaser obtaining delivery of possession. When the auction-purchaser files an application to the certificate-officer asking for inquiry against the persons who are in possession and claims that they are not liable to be ejected, he really asks for an enquiry against the resistance (not obstruction) caused by the persons in possession.

The locking of the house which the auction-purchaser has purchased in execution of the certificate at the time when the auction-purchaser seeks possession amounts to resistance or obstruction. [AIR 1930 Bom. 375]

#### Remedy of the auction purchaser, resisted or obstructed:

Section 27(1) provides that 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 within thirty days from the date of resistance or obstruction under the provisions of Article 167 of the Limitation Act.

After receiving the application, the certificate-officer shall fix a day to investigate the matter and shall summon the party against whom the application is made, to appear and answer the same under section 27(2).

And if the certificate-officer is satisfied that the resistance or obstruction was occasioned without any just cause, he shall direct that the be put into possession of the property, and if the applicant is still resisted or obstructed in obtaining possession, the certificate-officer may also order the obstructer to be detained in the civil prison under section 28(1) for a term which may extends to thirty days.

A certificate-purchaser not availing of the benefit of section 27 may file a fresh application for the delivery of the possession within three years. [1933 Bom. 457 F.B; 1932 Cal.241.]

When obstruction made by (a) certificate-debtor, or (b) any person on behalf of certificate-debtor or (c) any person claiming under a title from the certificate-debtor created subsequently to section 7 notice—such person are to be punished by civil imprisonment and the purchaser are entitled to possession against them. [Kuppa Vs. Kumara 34 Mad. 450]

Possession means actual physical possession as well as constructive possession. A land lord other than a certificate-debtor or his representative, legal or assumed, may resist and claim possession through his tenants if they be in actual physical possession. [Braje Bala Vs. Guru Das 33 Cal. 487]

#### Resistance or obstruction in good faith:

Section 28(2) provides that 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, the certificate-officer shall make an order dismissing the application.

Clause (2) of section 28 provides that the possession of bonafide claimant other than the certificate-debtor should not be disturbed.



A claim is not bonafide if it is feigned claim of right and possession. The claim must be proved by fair and good evidence. The question of both the title and the possession are to be decided. [16 Madras. 127; 13 W.R.80; 5 Cal. 278.]

So, the consequence that follows from the determination of the application is that, if it is dismissed, the purchaser has no remedy to get back his purchase money as in a court sale there is no warranty of title. [Bahka Behri vs. Gruru Das; 40 C.L. J. 157]

Under the circumstance, the question of title must be tried coupled with the fact of *bona fied* possession of property. [Bilbasee Vs. Ganga Prasad; 5 Cal. 278]

## Chapter- 9

### Arrest, Detention and Release

Though arrest, detention and release are mostly the proceedings of the Criminal Procedures Act, the Public Demands Recovery Act also provides in short for the provisions of these terms because of growing of necessity in some cases to arrest, detain or release the certificate-debtors. From section 29 to section 33 of this Act deal with the provisions relating to arrest, detention and release of a certificate-debtor which are discussed bellow:

#### Power to and Grounds of Arrest and Detention:

Under section 29, the Certificate-officer has the power to make an order for the arrest and detention of a certificate-debtor into the civil prison, in execution of a certificate, after giving him an opportunity to show the cause why he should not be committed to civil prison, under the following grounds:

- (a) If the certificate-debtor, with the object of obstructing or delaying the execution of the Certificate-
  - (i) Leaves or attempts to leave the local limits of the jurisdiction of the certificate-officer, or
  - (ii) Dishonestly transfers, conceals or removes any part of his property after the filing of the certificate.
- (b) if the certificate-debtor has or has had the ability or means to pay the amount for which the Certificate has been filed, since the date of filing of the certificate, but refuses or neglect or has refused or neglected to pay that amount.

Arrest and detention can be ordered only when the conditions of section 51 of the Civil Procedure Code are strictly satisfied. Reasons must be given every time for order of arrest and detention, otherwise it would be acting without jurisdiction. [Venkata Vs. Sreeramulu, AIR 1949 M.470]

An arrest of of the certificate-debtor on the basis of a defunct warrant which had spent its force by the expiry of the time, during which it was to be executed, is invalid. Any endorsement on such a warrant extending the time for its execution made after it has spent



its force cannot bring it back to life and therefore an arrest made in pursuance of such a warrant is illegal. [*Abanindra Vs. AK Biswas, 55 CWN 573*]

### **Release from Arrest and Re-arrest:**

According to section 30, the Collector may order the release of a certificate-debtor who has been arrested in execution of a certificate, upon being satisfied:

(i) that he has disclosed the whole of his property and placed it the disposal of the certificate-officer, and

(ii) that he has not committed any act of bad faith. But, if it is proved, after the release, that the discloser by the certificate-debtor to have untrue, the Collector may order the re-arrest of him.

In *Trangini Devi vs. Gavinda Mollik 9 DLR 57*, it was stated that in view of the provisions of section 30 of this Act, a Certificate-officer has no jurisdiction to put up a property to sale before the expiry of thirty days from the date of the service of sale notice.

### **Term of Detention in and Release from Prison:**

Section 31 provides for the term of detention in, and release of the certificate-debtor who has been arrested in execution of a certificate, from the civil prison.

According to this section, the term of detention in prison is—

- (a) Where the Certificate is for a demand of an amount exceeding fifty taka, the term of detention will be six months; and
- (b) In any other case, the term will be six weeks.

And the certificate-debtor will be entitled to get release from detention under any one of the following grounds:

- (i) if the amount is paid to the officer-in-charge of the civil prison, or
- (ii) if the certificate is canceled, or
- (iii) if the certificate-holder or Collector request to release the person detained, or
- (iv) if the person on whose request the certificate has been filed, omits to pay the substance allowance fixed by the certificate-officer.

In section 31 it is further stated that a certificate-debtor released from detention under this section shall not be discharged from his debt.

The law contemplates for releasing a certificate-debtor if the amount due be paid, or if it is otherwise fully satisfied or cancelled; or if the person making the requisition of the certificate request for releasing the certificate-debtor; or if the person making the certificate omits to pay the subsistence allowance. The law should strictly be followed in releasing a certificate-debtor from detention. [*13 Mad. 141; 5 C.W.N. 145.*]

### **Release on the ground of illness:**

According to section 32, where a warrant for the arrest of a certificate-debtor has been issued or he has been arrested but he is not in a fit state of health to be detained in the civil prison or he has been committed to civil prison but he suffers from any infectious or contagious disease or any serious illness, he may be released there from.

### **Prohibition of Arrest or Detention of woman and person under disability:**

According to section 33, a woman or any person who is minor or of unsound mind, shall not be arrested or detained. This section provides that neither a woman, nor a minor, nor any insane should be ordered to be arrested or detained in the civil prison.



## Chapter- 10

### Interference of Civil Court into Certificate Proceedings

Though the purposes of the Public Demands Recovery Act, 1913 are fulfilled mostly by the revenue authority or by the Board of Land Administration, there are provided also some grounds on which necessity grows to bring suit in the civil court for adjudication of certain matters. Sections 34-37 specifically refer to the jurisdiction of the civil courts somewhere with certain limitations, somewhere without any limitation and somewhere subject to general bar to the exercise of the jurisdiction.

#### Right of a certificate-debtor to bring suit in a civil Court:

Section 34 of the Public Demand Recovery Act, 1913 gives right to a certificate-debtor to bring a suit in the civil Court to have the certificate cancelled or modified and for any other consequential relief under certain limitations. Such a suit must be brought within six months from the date of—

- (i) service of notice under section 7, or
- (ii) if he files a petition under section 9 denying liability- from the date of the determination of his petition, or
- (iii) if he appeals under section 51, against an order passed under section 10- from the date of the decision of such appeal.

The Government can always take appropriate proceedings under the PDR Act for realizing its outstanding dues from the lessee after the expiry of the terms of lease. [*Sirajuddin Ahmed Vs. The Secretary Ministry of Land 1 MLR; 1996 (AD) 55*]

Section 34 provides for civil suit within 6 months from the service of notice upon the certificate-debtor under section 7 and if the debtor files petition denying the liability in accordance with section 9. [*Magnum Enterprise Ltd. Vs. General Certificate Officer, Commilla and another, 13 BLD(HCD) 498.*]

#### Grounds on which a suit may be brought in a civil Court:

According to section 35, a suit may be brought in a civil Court to set aside an auction sale, or for recovery of possession, of immovable property 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; or
- (b) that no part of the amount stated in the certificate was due by the certificate-debtor to the certificate-holder; or
- (c) that the Collector or public officer were not in substantial conformity with the provisions of this Act, and that consequence the certificate-debtor suffered substantial injury from some error defect or irregularity in such proceedings.

Fines imposed or costs, charges, expenses, damages, duties or fees adjusted by the collector or the public officer under any law are liable to be cancelled by the civil court if suffering from substantial error, defect or irregularity in the proceedings. [*14 C.W.N. 607*]

Section 37 provides that a suit may be brought in a civil Court in respect of any question upon the ground of fraud.

Fraud must be clearly proved; circumstances of mere suspicion should not be taken as proof of fraud, but the evidence must be sufficient to overcome the natural presumption of honesty and fair dealing. [*Rakhal Chandra vs. Prasad Chandra, AIR 1926 Cal. 73*]

According to section 36, a suit may be brought in a civil Court, against a sale of immovable property, to set aside the sale or to recover possession of such property on the ground that notice has not been served under section 7, and that the plaintiff has suffered substantial injury by reason of irregularity.

Under Public Demands Recovery Act two alternative remedies are given for setting aside a certificate sale on the ground of non-service of notice under section 7. Of these two, one is the filing of an application to the certificate-officer under section 23, and the other is the filing of a suit under section 36 of the Act impleading both of them as party. [*Gaibanda Loan officer Vs. Suresh Chandra, 46 C.W.N.975*]



The plaintiff-respondents had moved the Circle Officer (Revenue) for setting aside the auction sale ignoring the provisions of section 36 of the PDR Act. Fraud and collusion in holding auction sale were not proved. If the auction sale stands, plaintiff responds can no longer claim any right, title and interest in the disputed land. *[Alauddin Sarder Vs. Surendra Nath Falia 40 DLR (AD) 257]*

## Chapter- 11

### Rules and Their Effects

---

The Board of revenue or the Board of Land Administration enjoys power to make rules regarding certificate proceedings. These rules are to be followed by the persons making requisitions under section 5, by the collectors and by the certificate-officers. Such rules however, must be consistent with the provisions contained in the body of the Act.

#### Rule making power of the Board of Revenue/the Board of Land Administration:

Section 39 of the Public Demands Recovery Act, 1913 provides that the Board of Land Administration may, after previous publication, make rules regulating the procedure to be followed by persons making requisition under section 5 and by Collectors and Certificate-officers acting under this Act; and may, by such rules, alter, add or annul any of the rules in schedule II. Such rules shall not be inconsistent with the provisions in the body of this Act, but, subject thereto, may, in particular, 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 requisitions shall not be chargeable with a fee;
- (d) the service of notice issued under section 7, the service of other notice 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) 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 assets of such sale;
- (i) the registers, books of 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 and section 45;
- (l) the recovery of poundage fees;
- (m) the forms to be used under this Act.

### Effect of the Rules:

The rule making power conferred to the Board of Land Administration under this section is subject to the overriding limitation that such rules shall not be inconsistent with the provisions of this Act, and further the rules framed by the Board shall have to be approved by the Government

According to section 40, the rules made and sanctioned under section 39, from the date of publication in the official gazette or from such other date as may be specified, have the same force and effect as if they had been contained in schedule II.

Section 38 provides that the rules in schedule II have effect as if enacted in the body of this Act.

In *Kannisa vs. Devi Chand AIR 1923*, it was said that rules made by statutory bodies should be reasonable and consistent with the provisions of this Act; otherwise they would be *ultra vires* and void.

## Chapter- 12

### Supplemental Provisions

#### Procedure of recovering public demand in case of the death of the Certificate-debtor:

The civil justice system unlike the criminal justice system does not exempt the liable person from the proceeding in case of his death. Because, in the case of civil justice system the person as well as his property is liable to fulfill the liability claimed against him. The liability transfers to his legal representatives as his properties transfers to them according to his personal law.

Section 43 provides for the procedure on the death of the Certificate-debtor. According to this section, where a Certificate-debtor dies before the certificate has been fully executed, the Certificate-officer may, after serving upon the legal representative of the deceased, a notice in the prescribed form, proceeds 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.

It was stated in *Jitendra Nath Das vs. Income Tax Officer 21 DLR(BR) 12* that- when a certificate-debtor dies after a certificate case started, notice under section 43 must be served prior to the date of actual sale; otherwise the certificate-debtor could legitimately claim that they have received no intimation of the date of sale.

Where the sole certificate-debtor dies before making the certificate, the certificate is null and void and can not be given effect to unless a fresh certificate is issued against his heirs. (1935 Cal 95)

In *Nandi Charan Pal Vs. Certificate-officer; 64 CWN 484*; the court decided that Certificate against the person who was dead at the material time, was *void ab initio*. So a fresh Certificate must be issued against the legal representative of the deceased.

It will not be irrelevant to note that the legal representatives of the deceased debtor are not personally liable for the debts. Their



liability extends only to the property which has come to their hands. [Kunwar Jang Vs. Lala Gur; 801 IC 600]

### Provisions as to Costs and Compensation:

Section 45 and section 46 deal with the provisions as to costs and compensation respectively. According to section 45, the award of any costs of any proceeding under this Act shall be in the direction of the officer presiding, and he shall have full power to direct by whom and to what extent such costs shall be paid.

Provided that such direction must be under such limitation as may be prescribed.

The cost as directed under section 45 of the Act includes incidental expenses to any proceeding under the Act determined by exercising the discretion of the presiding officer, and that such discretion is to be exercised quite judiciously. [Huxby Vs. West London ERY(1886) Q.B.D. 373; Upendra Narain Vs. Biswesware, 29 C.W.N. 297]

In *Degdu Jitram vs. Chandra Vhan* 24 Bom.314 it was stated that the expression "cost" to any proceeding includes cost of application.

Money paid by the certificate-holder for the subsistence of the certificate-debtor in civil prison and the advalorem court fee paid by the certificate-holder for the purpose of recovering of certificate debt mean and includes cost.

Cost may be awarded against the Government while circumstances justify it. [Secretary of State Vs. Town Karan, P.L.J. 321; 56 I.C. 507.]

Section 46 provides 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 he (c/o) things fit and the amount so awarded shall be recoverable from the certificate-holder under the procedure provided by this Act for recovery of costs.

This section has been incorporated as a safeguard against irresponsible and unfounded certificate. However, certificate filed under section 4 for the dues payable to Collector are exempted from

the operation of this section. The compensation awarded under this section is realizable by the certificate-holder by filing a requisition duly stamped under section 5 of this Act.

### Provisions as to entering the dwelling house of the certificate-debtor:

Section 47 of the Public Demands Recovery Act provides for the provisions as to entering into the dwelling house of the certificate-debtor by a person executing any warrant of arrest or a process. Under this section a person executing any arrest warrant can not enter the dwelling house of the certificate-debtor during the period between sun set and sun rise. Further he can not break open the outer door of the dwelling house if it is not in the occupation of the certificated-debtor and if the certificate-debtor does not refuse or prevent the entrance of the person executing the warrant or the process. If the certificate debtor is a woman and if according to the custom of the country she does not make her appearance shown before the public, the person executing the warrant or the process shall allow her reasonable time so that she can withdraw her from the dwelling house.

### Provisions as to Appeal, Revision and Review:

No one can claim that all the judgements, orders or decrees prescribed either by the judicial or by the executive authorities are fully accurate or free from any kind of error. So for the solution of the error there are provided provisions as to appeal, revision and review. Public Demands Recovery Act also provides for the proceedings which are discussed below:

#### Appeal:

Appeal means an application by the aggrieved party to the higher authority against any judgment, order or decree prescribed by the lower authority. Section 51 of the PDR Act, 1913 provides for the provisions relating to appeal. According to this section, an appeal shall lie, from any order, made, except under section 22, under this Act—

- (i) if by an Assistant Collector or a Deputy Collector, or by a Certificate-officer not being the Collector,- to the



Collector within fifteen days from the date of the order; and

- (ii) if by the Collector, - to the Commissioner within thirty days from the date of the order.

The Collector may, by order, with the previous sanction of the Commissioner, authorize any Sub-divisional Officer, or any officer appointed under clause 3 of section 3, to exercise the appellate power of the Collector under this section.

The Collector may transfer any appeal referred to him, to the so authorized officer, for hearing, unless the order appealed against, was made by such officer.

The specific provisions have not been made in respect of the procedures to be followed by an appellate court under this section, but in spite of that the appellate court shall follow the principles of equity, justice and good conscience in doing real and substantial justice. [33 Cal. 927]

#### **Bar to second Appeal:**

Section 52 provides that no appeal shall lie from any order of a collector, or an officer authorized under section 51, when passed on appeal. The collector may however review his own order if found any mistake or error apparent in making of the certificate or in the course of the proceedings.

#### **Revision:**

Revision means an act of the higher authority against any judgement, order or decree prescribed by any lower authority being concerned by any application of the aggrieved party or *suo moto*, where there is no provision for appeal. Section 53 of the PDR Act provides that—

- (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;

- (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.

The power given under section 53 of the PDR Act is very wide and is not restricted to be used only *suo motu*. This section also does not set any time limit. [Sajeda Begum vs. Member, Bhumi Appeal Board and others 51 DLR 516.]

The provisional power under this Act can only be invoked if the Certificate-officer or Assistant Collector or Deputy Collector do anything excess to their jurisdiction or fail to exercise the jurisdiction vested upon them or act illegally or irregularly in discharging their duties by causing substantial failure of justice. [7 Bom. 341]

#### **Review:**

Review means an act of the authority by which the authority can reexamine his own judgement, order or decree where there is no provision for appeal or appeal is not made. By the power of review the court passing the order can correct its own mistake or error apparent in the judgement or proceedings.

According to section 54 of the PDR Act, 1913, any order passed under this Act may be reviewed by the officer who made the order, or by his successor in office, on account of mistake or error in the certificate proceedings under this Act. Section 54 empowers the court passing the order to correct its defect by exercising its inherent power. But for the purpose of removing such apparent mistake or error the court under this section must give notice to all the interested persons.

.....