

সরকারী পাওনা আদায় আইনের
প্রয়োগ ও বিশ্লেষণ

[The Public Demands Recovery Act, 1913]

[English-Bangla]

THE PUBLIC DEMANDS RECOVERY ACT, 1913

(Discussion)

Chapter-1

Preliminary

Historical Background of the Law of Public Demands Recovery:

The notion of the law of public demands recovery is not a modern view at all. The public demands which was variously known as land revenue, public revenue or government revenue, played an important role in the past, and is also increasingly playing role in the present time.

In the primitive Hindu period the state exercised a great deal of claims over the produce of the land and most scrupulously realized the same and the government claimed and retained a lien on the produce of the land. General people also considered a part of their religious duty to pay the revenue to the government. The persons who failed to pay the revenue or a share of the produce of the land, in cash or any other kind, in pursuance of the prevailing system, was subject to various kinds of corporeal-punishment namely, torture, imprisonment and fine effecting forfeiture or sale of the property of the person same.

After conquering the Indian Subcontinent by the Muslims, it transmitted that Muslim rulers dislike the idea of permanently disposing the defaulters from land, despite the fact that the extreme measure of physical punishment failed.

During the early part of their administration, the British followed the system which was followed by the Muslim rulers though they gradually enacted various regulations from time to time for the recovery of land revenue, ensuring thereby punctual realization of revenue. But it can be seen that up to 1793, no codified general law for the recovery of rent, was enacted for the Indian

Subcontinent except some rules and orders having the validity of law.

Before passing The Public Demands Recovery Act, 1913, the previous regulations and Acts sustained various defects of uncertainty, obscurity and obduracy as to the law of law of recovery of arrears of rent. By passing The Public Demands Recovery Act, 1913, the law took final and permanent shape- providing special procedures for the recovery of the public demands which are recoverable under this Act.

Nature and Scope of the Public Demands Recovery Act, 1913:

The Public Demands Recovery Act, 1913 provides a short-term easier procedure for the realization of various kinds of dues which are basically undisputed in nature namely, fines, fees, rents, land revenue and charges payable to the government, local authorities and the court of wards. The procedures as specified for the realization of the public demands, in this Act are basically quasi-judicial though there are some exceptions which are judicial in nature. It can be regarded as an exhaustive and complete code in itself. It is an amended and consolidated Act. Consolidation, however, has been effected for the purpose of recovering public demands as specified in schedule- I of this Act.

The Public Demands Recovery Act, 1913 is a Self-Contained Act because of the following reasons:

- (i) it provides a short-term and easier procedure for the realization of the public demands;
- (ii) it provides the procedure to be followed in respect of the matter of conducting sale under this Act,
- (iii) it prescribes the complete procedure for execution,
- (iv) it incorporates new provisions concerning the realization of public demands;
- (v) it is easily comprehensible without reference to the provisions of any other law;

The Public Demands Recovery Act 1913 is generally regarded as a code in itself. It laid down the procedures to be observed in the

matter of affecting a sale under it. A certificate under this Act is equivalent to a decree of a civil court.

It was observed in *Akubali Hawlader Vs. Najamali Hawlader; 50 CWN* that "It has not been disputed and can not be disputed that the PDR Act, 1913 is a self contained statute which is complete in itself and although some of the provisions of this Act, which it adopts, are not set out at length but have been merely incorporated by reference, it is perfectly clear that the effect is the same if these specific provisions were repeated in the Act itself."

Having regard to the discussion and the decision of the case aforesaid, it can be said that the PDR Act, 1913 is an exhaustive and self-contained Act, because of its describing all the essential procedures as regard to the recovery of public demands.

Necessity of the PDR Act, 1913 instead of existing civil Law/The Purposes of the PDR Act, 1913:

According to the existing civil law, a creditor is entitled to recover his/her recoverable demand by filing a suit in the civil court, against the debtor on the ground of refusal or failure of the debtor to pay the demand or debt money upon the specified date of payment. Although, there is a civil justice system to give solution where the question of rights or title arises, the PDR Act, 1913 was inaugurated for the following purposes:

(1) State policy:

The Government of a country has to manage a large amount of money for the state policy. This money is collected from various sources of income of the Government and so to collect the money easily is one of the main purposes of adopting this Act.

(2) Avoiding unreasonable delay:

Civil justice system is a very complex and lengthy process. Public demand and private demand are not the same. Public demand or money is used for the well-fair of the general people of the state. Therefore, public demand is more important than that of a private individual. So it can not be intended that there will be any delay in recovering public demand and this is why the PDR Act, 1913 was passed.

(3) Eliminating Harassment:

The long term process of the civil court system creates a harassment to both the parties i.e. the Government and debtor. To eliminate this harassment the PDR Act, 1913 was introduced.

Definitions:Certificate-debtor:

A debt is a sum of money which is payable or will become payable in future by reason of the application. A certificate-debtor is thus a living person against whom a certain amount of public demand is due and a certificate has been signed.

Section 3(1) Provides that '*Certificate-debtor*' means the person named as debtor in certificate filed under this Act, and includes any person whose name is substituted or added as debtor by the Certificate-officer.

A certificate-debtor therefore, is a person against whom a certificate for recovery of public demand has been signed. He is considered as a judgment-debtor in the civil procedure code.

At any stage of the proceeding, the certificate-officer may substitute or add any person as debtor either at his own motion or at the application of any party if the certificate-officer is satisfied that such person is liable for the debt. The certificate-officer can also substitute a person as debtor if it appears to him that such substitution is necessary in the proceeding. But before adding any person as debtor his name is to be brought in the order sheet, falling which there will be no legal certificate against him. [*Abdul Matin in the Book of Public Demands Recovery Act*]

When a certificate filed against two or more persons and that if one of the certificate-debtors is found to have died before the making of the certificate, the certificate is valid against the surviving certificate-debtor and the legal representatives of the deceased certificate-debtor may be substituted. [*23 C.W.N. 608*]

In *Abdul Jalil Shaikh vs. Md. Ameer Ali, 21 DLR (BR) 15*, it was stated that a certificate against a dead person is *void ab initio*

and a fresh certificate must issue against the legal representatives of the deceased.

Certificate-holder:

Certificate-holder means the person in whose favour the certificate has been filed. The Government becomes a certificate-holder while it is filed for any Government dues. The certificate-holder includes the person added or substituted as a creditor of the demand.

Section 3(2) provides that '*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.

A certificate once filed can not abate on the death of the certificate-holder.

Certificate-Officer:

Any person can be appointed as certificate-officer by the collector with the sanction of the commissioner. The collector is the principal officer in charge of revenue administration of the district. A commissioner is the chief officer in charge of the revenue administration of a division and it includes an additional commissioner.

According to section 3(3) a '*Certificate-officer*' means a collector, a Upazila Nirbahi Officer, a Upazila Magistrate and any officer appointed by a collector, with the sanction of the commissioner, to perform the functions of a Certificate-officer under this act.

Jurisdiction of the certificate-officer:

The jurisdiction of a collector as certificate-officer is to the whole of the district. A point may be raised as to the jurisdiction of other certificate-officers appointed by the collector. As regards additional collectors or assistant collectors, their territorial jurisdiction being co-extensive with that of the collector, it extends to the whole of the district. The territorial jurisdiction of the certificate-officers, other than the aforesaid, will extend to the area limited by the order of the collector. A certificate filed beyond the territorial jurisdiction of a certificate-officer is un-enforceable.

The certificate-officer performs a statutory duty and his act must be in conformity with it. [25 Cal. 146; 9 C.W.N. 756.]

Public Demand:

In general meaning, public demand is that demand or debt money which is recoverable by the government from a definite living person.

Section 3(6) provides that '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 of this Act.

Mr. S. Islam has given his comment on this view that "Schedule I describes the nature of dues which are realizable under the certificate procedure. Any demand that does not fall within any of the clauses of Schedule I can not be realized by certificates. This is the very foundation of the certificate-officer's jurisdiction."

For example, if a man borrows money from a certain person the latter can not take resort to the certificate procedure for a recovery of that money, but will have to go to Civil Court for the purpose.

It is therefore clear that dues which are not referable or covered by schedule I cannot be treated as public demand and consequently certificate proceeding under the PDR Act will not apply to such demands.

Whether compensation for use and occupation of Govt. Land is a public demand—whether such compensation can be realized by certificate proceedings—Certificate proceedings are inappropriate for the realization of compensation for illegal occupation of

Govt. property inasmuch as demand which can be realized must be in pursuance of a contract enforceable in law and as such Government's rights to realize compensation for use and occupation against a trespasser does not come under Article 7 of schedule I of the PDR Act nor it is a public demand as defined in section 3(6) of the said Act. [Nukul Das Mridha Vs. Bangladesh (1986) BLD 331]

Illustrations of Public Demands/The demands which are considered as public:

A mere definition of something does not provide the clear or precise meaning of it without providing it with illustrations. To fulfill this purpose, Schedule I, (Art; 1-16) of the Public Demand Recovery Act-1913 is dealt with a list of public demands. The following mentioned are the some of them—

- (i) any demand or money which is recoverable as land revenue.
- (ii) any money due from the securities of a farmer in respect of the revenue of the estate farmed by him;
- (iii) any money awarded as fees or costs by a revenue authority under any law;
- (iv) any demand payable to the collector by a person holding any interest in land, pasturage, forests-rights, fisheries or the like;
- (v) any money payable to Government or any officer of the Government;
- (vi) any money payable to a local authority, namely, Paurashava or a Shahar Committee or Zilla Board;
- (vii) any arrear of rent or of any demand which is recoverable as rent;
- (viii) any money due from a purchaser at a sale held in execution of a certificate under this Act, whether the sale is subsisting or not;
- (ix) any money payable to a new Bank constituted under The Bangladesh Bank,
- (x) any money payable to Palli-Karma Sahayak Foundation (A company incorporated under the Companies Act,1994.)

Certificate:

A Certificate is no where defined. It is a declaration made by a specially empowered officer i.e. Certificate-officer as defined in section 3(3) of the Public Demands Recovery Act, 1913, in a prescribed form stating that the public demand is due from a definite living person to a definite person, i.e. the some of money as detailed in schedule I of the Act, has not been paid by a definite living person and as such is yet due against him.

The declaration of a certificate-officer as to the public demand bears the force of a decree of a civil court. [49 C.W.N.437; 12 DLR 448]

Distinction between a Certificate and a Decree:

Though, both a certificate and a decree are of civil nature and under the Public Demand Recovery Act, a certificate is regarded as equivalent to a decree of a civil court there are some distinctions between them which are as follows:

- (1) A decree is the subject matter of the civil court. On the other hand, a certificate is the act of the revenue authority.
- (2) A decree can not be made without a proper service of notice on the defendant and evidence is a must, whereas a certificate may be signed and filed without any evidence being taken or without any notice being served.
- (3) Rules as to decree are regulated by the Civil Code, 1908. This law is very difficult; therefore, it is needed to appoint any legal representative to deal the suit on behalf of a party. But procedure of certificate is regulated by the Public Demands Recovery Act, 1913 and here it is needless to appoint any legal representative.
- (4) There are some specific rules for the declaration and execution of a decree but there is no prescribed form. On the other hand, a certificate must be filed in the prescribed form.
- (5) The proceeding of a decree is a long-term process. But a certificate proceeding is a short-term process than that of a decree.
- (6) The demand or right of the private individual is recovered by the proceeding of a decree. On the other hand, by the certificate proceeding, the demand or right of the public i.e. the right of the general people is recovered.
- (7) The proceeding of a decree is a difficult and lengthy process; therefore, it creates physical and mental harassment to the both parties of a suit and at the same time, it is also a costly process. On the other hand, a certificate proceeding is a less costly process because of its not being a lengthy process.

Applicability of the Limitation Act, 1908 in Certificate Proceedings:

A suit of civil nature is filed within the period as specified in the Limitation Act, 1908. Public demand is also a demand of civil nature, so it is very simple to be arisen a question whether the provisions of the Limitation Act, 1908 are applicable to this proceeding.

In section 6 of the PDR Act, 1913 it is stated that on receipt of any requisition from any person other than the collector, the certificate-officer may sign a certificate if he is satisfied that the demand is due and is recoverable and that recovery by suit is not barred by law.

The expression 'recovery by suit is not barred' means that if a suit for recovery of the particular dues was filed in a court of law and if the court finds that it is not barred by time, it can be recovered under the PDR Act, 1913.

According to section 23, to set aside an auction sale, the certificate-holder, the certificate-debtor or any other person whose interest are affected by the sale, has to apply to the certificate-officer within sixty days from the date of the sale.

Section 34 provides that suit in civil court, to have a certificate cancelled or modified, has to be filed within six months.

From the above discussion it can be said that, provisions of the Limitation Act, 1908 are applicable to this proceeding though the recovery of the demand which is payable to the collector, is not barred by any time limitation as stated in section 4 of the PDR Act, 1913.

Special provisions for the recovery of certain dues:

Section 10A of the Public Demands Recovery Act, 1913 provides for the special provisions regarding certificate filed for the recovery of certain dues. According to this section, where a certificate has been filed before the certificate-officer under section 4 or 6 of this Act, for the recovery of certain dues under the House Building Finance Corporation Order, 1973 or Bangladesh Krishi

Bank Order, 1973 or the Co-operative Societies Act, 1940 or the Customs Act 1979 or for the recovery of any loan advanced by the Government or for the recovery of any money as referred to in Article 15 of Schedule I, that is to say, any money payable to a new bank constituted under the Bangladesh Bank (Nationalization Order, 1972), the certificate-officer instead of serving notice under section 7 of the Act, is required to serve a demand notice upon the certificate-debtor by a registered post with acknowledgement due requiring the certificate-debtor to deposit the amount of the debt to the certificate-officer within Thirty days from the service of notice.

When a demand notice is served by registered post upon the certificate-debtor under section 10A of the Act, the clauses (a) and (b) of section 8 will be applicable i.e. the certificate-debtor is under statutory prohibition from transferring his immovable property situated in the district. Practically, the immovable properties of the certificate-debtor from and after the service of the demand notice remains under attachment.

A sale held in execution of certificate under section 10A can be set aside under sections 22 and 23 of the Act. Equally a suit may be brought into the civil court under section 34 on the grounds set forth in section 35 to have a certificate cancelled.

Chapter- 2

Filing of Certificate and hearing of petition

Certificates are signed and filed under the Public Demands Recovery Act, 1913 for the recovery of the public demands payable to the collector or to any other persons acting on behalf of the Government. Certificates are of two categories, i.e. certificates for public demands payable to the collector under section 4 and certificates for public demands payable to any person other than the collector under section 6. The filing of Certificate is not the final proceeding for the realization of any public demands, but there are provisions for filing petition under section 9 denying the liability prescribed in the certificate filed under section 4 or 6 either in whole or in part.

Filing of certificate for Public Demand payable to Collector:

According to section 4 of the PDR Act, 1913 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.

The declaration of a certificate-officer as to the public demand bears the force of a decree of a civil court. [49 C.W.N.437; 12 DLR 448]

A certificate once made remains valid as a decree against the debtor until it is legally set aside or fully satisfied, or until the execution of it has become barred under the law and rules applicable to the execution of decree of the Civil Court. Repeated execution may be had on it, but it will still remain valid for what may still remain due. A certificate should, therefore continue to be borne on the pending files and the registers of the Certificate-officer until it has ceased to be effective for one or other of those reasons. [Board's Instruction No. 17]

Filing of certificate on requisition:

According to section 6, on receipt of any requisition by any person other than the collector under section 5, 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 cause the certificate to be filed in his office.

Every requisition under section 5 shall be signed and verified and the certificate issued upon a requisition must state that it is not barred by law. The defects in making requisition or issuing certificate are gross irregularities and these can not be over looked.

The omission to sign or verify a requisition is a formal defect which does not affect the merits of the case. And as such the proceeding taken on such defective requisition is not *void ab initio*. [19 C.W.N.1159]

When a certificate filed against two or more persons and that if one of the certificate-debtors is found to have died before the making of the certificate, the certificate is valid against the surviving certificate-debtor and the legal representatives of the deceased certificate-debtor may be substituted. [23 C.W.N. 608]

When a certificate is filed in the office of the certificate-officer under section 4 or section 6, he shall serve a notice and a copy of certificate, in the prescribed form on the certificate-debtor under section 7.

In *Chittagong Engineering & Electric Supply Co. Vs. Certificate-officer 17 DLR 404* it was stated that a sale held without service of notice under section 7 was a nullity till the Legislature expressly provided to the contrary under section 36.

Conditions of a valid Certificate:

To be valid a certificate must fulfill the following conditions:

- (1) The certificate must be signed and filed up by the certificate-officer;
- (2) The whole of the claim is to be included in the certificate;
- (3) The certificate must be in the prescribed form;
- (4) The certificate must contain the demand due, the person from whom and to whom the demand is due;

- (5) Amount due for which realization certificate is filed must fall within the purview of the Public Demand Recovery Act;
- (6) The demand for which realization certificate is filed by the certificate-officer must be due or arrear;
- (7) The amount due contained in the certificate must be actual and payable by a definite living person;
- (8) The certificate demand must be legally recoverable and not barred by law;
- (9) Certificate must not be filed against a wrong or dead person;

Filing of Petition denying liability:

According to section 9, the certificate-debtor may, within thirty days from the service of notice required by section 7, submit a petition to the certificate-officer in whose office the certificate is filed or to the certificate-officer who is executing the certificate, in the prescribed form denying his liability, in whole or in part.

It was said in *Magnum Enterprise Ltd. Vs. General Certificate Officer, Cmmilla and another, 13 BLD (HCD) 498* that when a Certificate is signed under section 6 of the P.D.R. Act, whether a notice is served upon the Certificate-debtor under section 7, the Certificate-debtor is entitled to make a petition under section 9, denying liability in whole or in part, whether is against the principle of natural justice.

If a certificate-debtor files a petition under section 9 of the Public Demands Recovery Act denying his liability either as a whole or in part, any transfer of his property before the disposal of the petition is void. [*Chittagong Engineering and Electric Supply Co. Ltd. Vs. Certificate-officer, (1965) 17 DLR, 404*]

Hearing and Determination on the Petition:

The objection petition filed by the certificate-debtor under section 9 of the Act denying the liability of the claim shall be heard and disposed of by the certificate-officer under section 10. According to this section the certificate-officer in whose office the original certificate is filed, shall hear the petition and determine

whether the certificate-debtor is liable and may set aside, Modify or vary the certificate accordingly.

When the certificate-debtor after receipt of notice under section 7 files his objection denying his liability, it is the duty of the certificate-officer to decide the decision before taking further steps in the proceedings. If the certificate-officer without considering and deciding the objection orders sale of debtor's property, the procedure is unwarranted by law. [*Abanindra vs Biswas, AK. 58 CWN573*]

The certificate-debtor has his right to institute a civil suit to get a declaration that the certificate is void and to otherwise get consequential relief in spite of the decision of the certificate-officer to the contrary in the petition of objection under section 9. The decision of the certificate-officer will not operate as *res judicata*, as he acted without jurisdiction.

[*Obaidul Huq Chowdhury*]

Where a sale is void on account of its being held at a time when application under section 9 of the Act was pending determination the affected party can invoke the High Court Division writ jurisdiction for an order declaring the sale held as without jurisdiction. Provision of section 23 of this Act does not afford sufficient relief. [*Chittagong Engineering and Electric Supply Co. Ltd. Vs. Certificate-officer Dacca 17 DLR 404*]

Chapter- 3

Service of Notice of Certificate

All the legal functions have some legal effects. The act of the service of and the non-service of notice is also a legal function and so, it has also some legal effects. Section 8 of the Public Demands Recovery Act, 1913, deals with the effects of the service of, and sections 23 and 36 deal with the effect of the non-service of, notice under section 7. The effects are mentioned below:

Service of Notice and Copy of Certificate on Certificate-debtor:

In section 7 it is stated that when a certificate is filed in the office of the certificate-officer under section 4 or section 6, he shall serve a notice and a copy of certificate, in the prescribed form on the certificate-debtor.

In *Chittagong Engineering & Electric Supply Co. Vs. Certificate-officer 17 DLR 404* it was stated that a sale held without service of notice under section 7 was a nullity till the Legislature expressly provided to the contrary under section 36.

There is an absolute requirement of law that notice under section 7 must be served on the certificate-debtor in order that a certificate may become legally executable and immediately thereafter it has been provided by section 8 that from and after the service of such notice on the certificate-debtor, any private transfer or delivery of any immovable property of the certificate-debtor shall be void against any claim enforceable in execution of the certificate.

Each certificate-debtor is entitled under this section to get a notice and a copy of the certificate. The notice must be in the prescribed form duly signed by the certificate-officer or his clerk authorized by him and shall bear the office seal. Failure to serve copy of the certificate vitiates sale. [*Lachmikant Vs. Rameshwaar, AIR 1948 P 104*]

Effect of Service of Notice:

In section 8 it is stated that from and after the service of notice of any certificate under section 7 upon a certificate-debtor—

- (1) any of his immovable property situated in the district in which the certificate is filed, shall be seized under charge.
- (2) any private transfer or delivery of any of such immovable property or any interest in any of such property shall be void against any claim enforceable in execution of a certificate.
- (3) all of his immovable property shall be regarded as attached property.
- (4) other rights of the certificate-debtor over the immovable property shall be postponed until or unless the total recovery of the amount of public demand.

It was stated in *Abdul Jalil Shaikh Vs. Md. Ameer Ali, 21 DLR (BR) 15* that transfer by private sale of a property in respect of which notice has been served under section 7 is void against any claim enforceable under the certificate.

Private transfer means a voluntary sale, gift or mortgage and not the enforced execution of a transfer in compliance with a decree of a court. [*Qurban Ali Vs. Ashraf Ali; 4 All. 219*]

Though a notice served under section 7, does not amount to attachment of the immovable property but the effect as enumerated in section 8 that private transfer shall be void against any claim enforceable in execution of the certificate and 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. [*Jibal Hoque vs. Charu Bala Brahma 19 DLR 312*]

Upon the service of notice under section 7, the certificate binds all immovable properties of the certificate-debtor to the same effect as if it had been attached and the certificate-holder, by operation of law, becomes a simple mortgagee. [*Bhekdhari vs. Radhika, 1934 P649*]

Effect of Non-Service of Notice:

According to section 23(1) of the PDR Act, 1913, where any immovable property has been sold in execution of a certificate, the certificate-holder, the certificate-debtor or any other person whose interests are affected by the sale, may apply to the certificate-officer,

at any time within sixty days from the date of the sale, to set aside the sale, on the ground that notice was not served under section 7.

Provided that no sale shall be set aside on this ground unless the certificate-officer is satisfied that the applicant has sustained substantial injury by the reason of the non-service of notice,

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*]

In *Mosharrif Hossain Mondal vs. Md. Elias Hossain Mollic 60 DLR, 2008, (Civil),490*, it was said that a person whose interest is affected by auction sale, has the right to file an application under section 23 of the Public Demand Recovery Act, 1913, to set aside the auction sale.

According to section 36, a suit may be brought in a civil court on the ground that notice was not served under section 7, on the certificate-debtor and in consequence of it, he has sustained substantial injury.

Mode of Service of Notice:

Section 7 enjoins the certificate-officer to issue notice with copy of the certificate upon the certificate-officer. The mode of service of notice has been laid down in rules 2-9 of schedule II of the Act. The service shall be done upon the certificate-debtor in person, unless he employed an agent to accept the same.

The notice may be served upon the adult male member of the family of the certificate-debtor if the certificate-debtor is not found. It may be served even by post.

A pordanishin woman can not accept a notice personally. She comes under the expression can not be found. The service of notice upon her can be affected by serving it upon any adult male member of her family or by affixing it on her residence. [*Kshirod Vs. Nabu, C.W.N. 12*]

Chapter- 4

Execution of Certificate

A Certificate would have no value if it is not executed. Execution means to take effective measures and constructive steps for the ends of realization of public dues for which Certificate has been filed. So, it can be noted here that to fulfill the ultimate purpose of recovering public demands by filing Certificate, execution is a must.

Provisions as to execution of certificate:

Provisions as to execution of certificate are dealt in sections 11, 12, 13, 14 and 16 of the Public Demand Recovery Act, 1913. Section 11 deals with the executor of a certificate, section 12 with the transmission of certificate to another certificate-officer for execution, section 13 with the period of execution, section 14 with the modes of execution and section 16 deals with the recoverable interest, costs and charges in the proceeding in execution of a certificate filed under this Act.

Who may Execute Certificate:

According to section 11, a certificate filed under section 4 or section 6 may be executed by the Certificate-officer in whose office the original certificate is filed or the certificate officer to whom a copy of the certificate is sent for execution under section 12(1).

Section 12(1) provides that, a Certificate-officer in whose office a certificate is filed may send a copy thereof, for execution to any other certificate-officer.

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

In sending the copy of the certificate to be filed in the office of the certificate-officer of another District the certificate-officer making the certificate should state whether the notice under section 7 of the Act has been served on the debtor. [Board Instruction No. 20]

The executing certificate-officer to whom a certificate is sent under section 12 has no power to hear any objection as to validity, legality of the certificate. [*Nagendra Nath Vs. Secretary of State 15 CLJ 89*]

When a Certificate may be executed:

The period of execution of a certificate, according to section 13, is thirty days, since the date of the service of notice required by section 7 or since the hearing and determination on the petition filed under section 9 and no step in execution of a certificate shall be taken after that period.

When an objection petition under section 9 denying liability in whole or in part, in respect of a certificate debt was filed, any sale while the objection petition was pending disposal, shall under the mandatory provision of section 13, be void. [*Chittagong Engineering and Electric Supply Co. vs. Certificate-officer; 17 DLR 404*]

Modes of Execution:

According to section 14, subject to such conditions and limitations as may be prescribed, a Certificate-officer may order for the 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.
- (d) By any two or all of the methods mentioned in clause (a), (b) and (c).

There is an explanation to clause (d) stating that the Certificate-officer may, in his discretion, refuse execution at the same time against the person and property of the Certificate-debtor.

In *Raghubar vs. Jadunandan 16 CWN 736* it was stated that execution of a certificate is to be in the mode prescribed in section 14 of the Act. When in the course of such execution the certificate-debtor comes to know about the debt under the certificate the time for filing his objection, if any, under section 9 will commence to run

from the date of such knowledge. The period of limitation can not be extended by the certificate-officer.

Recoverable Interest, Costs and Charges by Execution of Certificate:

Section 16 of the Act provides interest, costs and charge which are recoverable in respect of every certificate which has been filed under section 4 or 6. In other words, these include the amounts which are liable from time to time in respect of the certificate after it has been filed. It should be noted that up to the stage of filing of a certificate under section 4 or 6 whatever sums become due are included in the certificate, and they are as follows:

- (i) actual amount due;
- (ii) interest, if any, from the date when the amount becomes due to the date of filing of the certificate, and
- (iii) all charges incurred in respect of the service of notice under section 7 and of all other proceedings taken for recovering the demand.

Money paid by the certificate-holder for the subsistence of the certificate-debtor in civil prison and also the advalorem court fee paid by the certificate-holder for the purpose of recovering of certificate debt means 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.*]

Chapter- 5

Attachment of property of a Certificate-Debtor

The word attachment means and includes a preliminary step to sell of a property in execution of certificate. Attachment is one of the three modes of execution of a Certificate. By attachment, private transfer of property, in question, by the Certificate-debtor, is intended to be prevented. So the effect of attachment of property is to prevent private alienation and to subject the attached property to claims enforceable under attachment. It is to be noted here that the legal consequence that follows from attachment of property, is that private alienation; not alienation by law is intended to be prevented.

“Attachment does not create any title; it does not prevent alienation by law.” (*Raghu Nath vs. Sundar Das 41 IA 251, 18 CWN 1058*)

In *Shym Sundar Vs. Kalu Ram; 42 CWN 1040(1045)*; it was said that the main purpose of attachment is to prevent the transfer, or charging of the property attached, by the judgement debtor.

An attachment must be actually; and that while it is related to movable property it must be by ‘actual seizure’. While it is of agricultural produce to be made by affixing a copy of the warrant on the land where there is growing crops, and on threshing floor and other places where produce has been cut and gathered. The attachment of debt is to be done by a written order prohibiting the creditor from recovery and the debtor from making payment. The attachment of negotiable instrument is to be done by actual seizure of the instrument. An attachment does not subsist while the application for attachment has been dismissed. Attachment creates no title in the property.

The mere order of attachment is not sufficient to show attachment. It must be strictly proved. [*Gonesh Vs. Brij, J.C.L.J. 365; Nor Ahmed Vs. Altaf, 9 C.W.N. 693*]

Properties Liable to Attachment and Sale:

All kinds of properties of a certificate-debtor are not liable to be attached or sold. Section 17 of the PDR Act provides properties which are 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.

In execution of certificates under this Act the following properties are liable to attachment and sale i.e. lands, houses or other buildings, goods, money, bank-notes, cheques, bills of exchange, hundis, promissory notes, Government securities, bonds or other securities for money, debts, shares, in a corporation and all other saleable property, belonging to the certificate-debtor or over which or the profit of which he has a disposing power which he may exercise for his own benefit if the same be held in the name of the certificate-debtor or by any person in trust for him. [Obaidul Huq chowdhury's Public Demands Recovery Act, 1913 published by DLR]

According to rule 23 of schedule II, an immovable property need not be attached before sale because of the service of notice under section 7 of the Act brings the immovable properties of the certificate-debtor to the same effect as if it has been attached. [1934 Pat. 648; 20 Cal. 826 P.C.]

“Agriculturist, A person who has no other sources of livelihood than agriculture is an agriculturist and houses in his occupation are exempt from attachment.” (Mst. Bhuta vs. Bishesher AIR 1925 All 303)

Properties not liable to Attachment and Sale:

The properties which are free from attachment and sale are as follows:

- (i) The necessary wearing apparel, cooking vessels, beds and beddings of the certificate-debtor or his family members;
- (ii) Where the certificate-debtor is an agriculturist, his implements of husbandry and such cattle and seed grains as may be necessary to enable him to earn his livelihood;

- (iii) Houses and other buildings belonging to an agriculturist and occupied by him;
- (iv) Books of account;
- (v) A mere right to sue for damage;
- (vi) Any right of personal service;
- (vii) Stipends and gratuities allowed to pensioner or payable out any service;
- (viii) Allowances of any public officer or of any servant of rail way or local authority while absent from duty;
- (ix) All compulsory deposits and other sums in or derived from any fund to which the provident funds Act, 1925 applies in so far they are declared by the said Act not to be attached;
- (x) The wages of labourers and domestic servant, whether payable in money or in kind;
- (xi) An expectancy of succession by survivorship or other merely contingent or possible right or interest;
- (xii) A right to future maintenance;
- (xiii) Any allowance declared by law as exempted from attachment and sale in execution of a decree;
- (xiv) Any movable property which under law is exempted from sale;
- (xv) Any immovable property which under the tenancy law for the time being in force in the local area in which certificate is to be executed, would not have been liable to sell had the certificate been a decree of a court of ordinary jurisdiction.

In *M & S.M Rail Way Vs. Chengali Sydali (1950) 1 MJI 186; AIR 1950 Mad. 402* it was observed that a judgment-debtor's provident fund is not liable to attachment.

Gratuity payable to a servant of university is not in the form of government pension and hence not exempted from attachment. [*Abdullah Vs. Jiwan Mal, 75 I.C. 954; AIR 1924 Lah. 688.*]

Payment of Money, contrary to Attachment:

According to section 18 of the PDR Act, 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

This section deals with debt, dividend and money which are liable to attachment. The debts, dividends and money are to be attached specially in accordance with the rules contained in schedule II of the Act for the purpose of preventing their alienations. The debt means a perfect and absolute debt. A sum of money that has not yet become due is not a debt because it creates no obligation. A payment depending on contingencies is not a debt. A money claim which has become due is a debt though it may be payable at a future date. But a money claim accruing due is not a debt. A future right to receive profits is not a debt and not attachable. [Abdul Matin]

Attachment of decree:

Section 19 lays down the provisions for attachment of decree of the civil court. Section 60 of the civil procedure code does not explicitly allude the decrees as properties liable to attachment and sale. But the decrees are attachable and saleable as included in the expression "all other saleable property".

The decree obtained by a decree holder if attached by another decree holder, the latter stands in the position of the former and is entitled to put into execution in the same manner as the original and takes the money and certifies the payment. [A.I.R. 1930 All. 659]

An application to the civil court through the certificate-officer with a request to stay the execution of a decree amounts to an attachment of the decree. The decree so attached shall be executed through the civil court subject to the provisions laid down in the code, in order 21 rule 53 and that the certificate-debtor may receive excess amount after the satisfaction of the certificate debt.

Such attachment is affected by issuing a notice to the civil court, concerned to stay the execution of the decree unless and until—

- (i) the certificate-officer issuing the notice cancels the notice, or

- (ii) the Certificate-holder or the Certificate-debtor who obtained the decree attached applies to the Court execute the decree.

The attachment shall be in-effective if no notice under order 21 rule 53(1)(b) is issued. [Profulla Chandra Vs. Ramesh Chandra I.L.R. (1948) Cal. 36.]