

## **Assam Co-Operative Agriculture And Rural Development Bank Act, 1960**

**1 of 1961**

**[09 August 1961]**

### CONTENTS

1. Short Title, Extent And Commencement
2. Definitions
3. Appointment Of Trustee And His Powers And Functions
4. Trustee To Be A Corporation Sole
5. Issue Of Debentures By The Board
6. Charge Of Debentures Holders On Certain Properties
7. Guarantee By State Government Of Principal Of, And Interest On, Debentures
8. Distrain When To Be Made
9. Distrain How To Be Effected
10. Sale Of Property Distrained
11. Power Of Sale When To Be Exercised
- 11A. Section 11A
12. Application For Sale And Manner Of Sale
13. Application To Set Aside Sale On Deposit And Confirmation Of Sale In Default Or On Dismissal Of Such Application
14. Distribution Of Proceeds Of Sale
15. Certificate To Purchaser
16. Delivery Of Property To Purchaser
17. Appointment Of Receiver And His Powers
18. Title Of Purchaser Not To Be Questioned On The Ground Of Irregularity Etc
19. Appointment Of Sale Officers
20. Right Of Mortgage Bank Or The Central Mortgage Bank To Purchase The Mortgaged Property At Sale
21. Mortgages Executed In Favour Of Mortgage Bank Stand Vested In Central Mortgage Bank
22. Powers Of The Mortgage Bank Where Property Is Destroyed Or Security Becomes Insufficient
23. Power Of Board Or Of Trustee To Distrain And Sale Of Property Etc
24. Mortgagors Power To Lease
25. Mortgage Not To Be Questioned On Insolvency Of Mortgagor
26. Power Mortgage Bank To Receive Money And Grant Valid Discharges Notwithstanding Assignment Of Mortgage Deeds To The Central Mortgage Bank

27. Priority Of Mortgage Over Certain Claims
28. Right Of Mortgage Bank To Pay Prior Debts Of Mortgagor
29. Registration Of Documents Executed On Behalf Of A Mortgage Bank Or Of The Central Mortgage Bank
30. Proof Of Documents Or Entries In Documents
31. Provisions Of The Act Shall Apply To Loans Advanced By Mortgage Banks From Funds Not Borrowed From The Central Mortgage Bank
32. Service Of Notice
33. Section 102, 103 And 104 Of The Transfer Of Property Act, 1882, To Apply To Such Notices Under This Act
34. Officer Of Mortgage Bank And The Central Mortgage Bank And Sale Officers Not To Bid At Sale
35. Delegation Of Certain Powers By Board
36. Powers Of The State Government To Make Rules
37. Power Of The Board To Make Regulations

## **Assam Co-Operative Agriculture And Rural Development Bank Act, 1960**

**1 of 1961**

**[09 August 1961]**

An Act to facilitate the working of the Co-operative Agriculture and Rural Development Banks in the State of Assam. [Whereas it is expedient to facilitate the working of Co-operative Agriculture and Rural Development Banks in the State of Assam with a view to providing for grant of long-term and short-term loans for the purposes of agricultural development and activities incidental thereto, to finance construction of houses in rural areas, to promote rural industrialisation by providing loans to artisans, craftsmen and small entrepreneurs and to advance loans to institutions and corporate bodies engaged in activities which directly or indirectly help the farmers and the rural people, in the manner hereinafter appearing;] It is hereby enacted in the Eleventh Year of the Republic of India as follows :-

1. Substituted the long titles for the words "Co-operative land Mortgage Bank" by the Assam Act No. VIII of 1990, S.2 [published in the Assam Gazette Extraordinary (No. 75 dated 12th May, 1990).
2. (As passed by the Assembly), Received the assent of the President on the 29th December, 1960 and published in the Assam Gazette Extraordinary, dated the 5th January, 1961. Came into force from 9th August, 1961, vide Notification No. ACG. 264/ 59/191, dated 26th July 1961 and published in the Assam Gazette part IIA, dated 9th August 1961.
3. Substituted by Ibid S-3. Note : Before substitution of "Preamble"

read as follows :- "An Act to facilitate the working of the Co-operative Land Mortgage Bank in the State of Assam. Preamble-WHEREAS it is expedient to facilitate the working of the Co-operative Land Mortgage Banks in the State of Assam with a view to providing for the grant of property to enable them to discharge their debts: to carry out agricultural improvements and to promote thrift and self-help among them in the manner hereinafter appearing."

### **1. Short Title, Extent And Commencement :-**

(1) This Act may be called ["Assam Co-operative Agricultural and Rural Development Bank"]<sup>1</sup> Act, 1960.

(2) It extends to the whole of the State of Assam.

(3) It shall come into force on such date<sup>2</sup> as the State Government may, by notification in the official Gazette, appoint.

1. Substituted in Short title for the words "Assam Co-operative land Mortgage Bank" by the Assam Act No. VIII of 1990. S-4.

2. (w.e.f. 9-8-1961) [Published in the Assam Gazette, Part-IIA, dated 9th August, 1961. p-2780, vide Notification No. AGC. 264/59/191, dated 26 July, 1961.]

### **2. Definitions :-**

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

[(a) "Board" means the Board of Directors of the Central Mortgage Bank and includes Managing Body of a registered Society or by whatever name such body is called but does not include the Administrative Council of the Society;

(b) "Central Mortgage Bank" means the [Co-operative Agriculture and Rural Development Bank Ltd.]<sup>1</sup> and includes any other registered Co-operative Society notified by the State Government in this behalf;

(c) "Mortgage Bank" means the [Co-operative agriculture and Rural Development Bank Ltd.]<sup>2</sup> registered under the Assam Co-operative Societies Act, 1949 and includes any other registered Co-operative Societies Act, 1949 and includes any other registered Cooperative Societies notified by the State Government in this behalf and admitted as a member of the Central Mortgage Bank.]<sup>3</sup>

(d) "Committee" means in relation to Mortgage Bank, the Board of Directors or Board of Management or the Panchayat or the Committee of Management or the Governing Body to whom the

management of its affairs is entrusted;

(e) "Prescribed" means prescribed by rules made by the State Government under this Act;

(f) "Registrar" means a person appointed to perform the duties of Registrar of Co-operative Societies under the Assam Co-operative Societies Act, 1949;

(g) "Sale Officer" means the Sale Officer appointed under Section 19 of this Act to attach and sell the property of defaulters or to execute any decree by attachment and sale of property;

(h) "Trustee" means the Trustee appointed under Section 3 of this Act.

1. Substituted by the Assam Act VIII of 1990 S-5.

2. Substituted by Ibid S-5.

3. Substituted by the Assam Act No. IV of 1976 S-2, (w.e.f. 27-3-1976)

Note : Before substitution of clauses (a), (b) and (c) of Section 2 read as follows-

(a) "Board" means the Board of Directors of the Assam Co-operative Central Land Mortgage Bank Limited;

(b) "Central Mortgage Bank" means the Assam Co-operative Central Land Mortgage Bank Limited;

(c) "Mortgage Bank" means the Assam Co-operative Land Mortgage Bank registered under the Assam Co-operative Societies Act, 1949 (Assam Act 1 of 1950) and admitted as a member of the Central Mortgage Bank.

### **3. Appointment Of Trustee And His Powers And Functions :-**

(1) The Registrar, or where the State Government appoint any other person in this behalf, such officer, shall be the Trustee for the purpose of securing the fulfillment of the obligation of the Central Mortgage Bank to the holders of debentures issued by the Board.

(2) The powers and functions of the Trustee shall be governed by the provisions of this Act and by the instrument of trust executed between the Central Mortgage Bank and the Trustee as modified from time to time by mutual agreement between the Board and Trustee.

### **4. Trustee To Be A Corporation Sole :-**

The Trustee appointed under Section 3 shall be a Corporation Sole by the name of the Trustee for the debentures and as such shall have perpetual succession and a common seal and in his Corporate

name shall sue and be sued.

## **5. Issue Of Debentures By The Board :-**

(1) With the previous sanction of the Trustee, the Board, may, from time to time, issue debentures of one or more denominations for such periods as it may deem expedient, on the security of the mortgages and other assets transferred or deemed to have been transferred under Section 21 by the Mortgage Banks to the Central Mortgage Bank and other properties of Central Mortgage Bank.

(2) Such debentures may contain a term fixing a period not exceeding ten years from the date of issue during which they shall be redeemable or reserving to the Board the right to call in at any time any of the debentures in advance of the date fixed for redemption after giving to the debenture holder concerned not less than three months notice in writing.

(3) The total amount due on the debentures issued by the Board and outstanding at any time shall not exceed the aggregate of (a) the amounts due on the mortgage and the value of the other assets transferred or deemed to have been transferred under Section 21 by the Mortgage Bank to the Central Mortgage Bank and subsisting at such time ; and (b) the amounts paid under mortgages aforesaid and remaining in the hands of the Board or of the Trustee at that time.

## **6. Charge Of Debentures Holders On Certain Properties :-**

The holders of the debentures have a floating charge on-

(a) all such mortgages and assets as are referred to in clause (a) of Sub-section (3) of Section 5;

(b) the amount paid under such mortgages and remaining in the hands of the board or of the trustee : and

(c) the other properties of the Central Mortgage Bank.

## **7. Guarantee By State Government Of Principal Of, And Interest On, Debentures :-**

(1) The principal of, and interest on the debentures issued under Section 5, shall in respect of such maximum amount as may be fixed by State Government and subject to such condition as it may think fit to impose, carry the guarantee of the State Government.

(2) The State Government may subject to any law of the legislature of the State increase the maximum amount of any guarantee given

under sub-section (1).

(3) The State Government may, after consulting the Board and the Turstee -

(a) by notification in the official Gazette; and

(b) by notice of not less than fourteen days in such of the principal news papers in the State and of other States in India as the State Government may select in this behalf;

discontinue any guarantee given by it or restrict the maximum amount thereof or modify the conditions, subject to which it is given, with effect from a specified date, not being earlier than six months from the date of publication of the notification in the official Gazette:

Provided that the withdrawal, restriction or modification of any guarantee shall not in any way affect the guarantee carried by any debenture issued prior to the date on which such withdrawal, restriction or modification takes effect.

(4) Every notification and notice referred to in sub-section (3) shall, where the maximum amount of guarantee is to be restricted or the conditions subject to which the guarantee is given are to be modified, set forth precisely the scope and effect of the restriction or modification, as the case may be.

## **8. Distraint When To Be Made :-**

(1) If any instalment payable under mortgage executed in favour of [The Central Mortgage Bank or"]<sup>1</sup> a Mortgage Bank or any part of such instalment has remained unpaid for more than one month from the date on which it fell due, the ["Board or the"]<sup>2</sup> Committee may in addition to any other remedy available to the ["Central Mortgage Bank or the"]<sup>3</sup> said Mortgage Bank, apply to the Registrar or to such person as the State Government may appoint in this behalf for the recovery of such instalment or part by distraint and sale of the produce of the mortgaged land including the standing crops thereon.

(2) On receipt of such application the Registrar or the person as the State Government may appoint in this behalf may, notwithstanding anything contained in the Transfer of Property Act, 1882 (Act IV of 1882) take action in the manner as prescribed for the purpose of distraining and selling such produce:

Provided that no distraint shall be made after the expiry of twelve months from the date on which the instalment fell due.

(3) The value of the property distrained shall be, as nearly as

possible, equal to the amount due and the expenses of the distraint and the costs of the sale.

1. Inserted in Section 8, the words "the Central Mortgage Bank or" by Assam Act No. XXIV of 1964 S-3, (w.e.f. 3-12-1964), [Published in the Assam Gazette Extraordinary, dated 3rd December, 1964]

2. Inserted in Section 8 the words "Board or the" by the Assam Act No. XXIV of 1964 (w.e.f. 3-12-1964).

3. Inserted in Section 8 the words "Central Mortgage Bank or the" by Ibid.

## **9. Distraint How To Be Effected :-**

(1) Before or at the time where a distraint is made under Section 8, the distrainer shall serve or cause to be served upon the defaulter a written demand specifying the amount for which the distraint is made.

(2) The demand shall be dated and signed by the distrainer and shall be served upon the defaulter by delivering a copy to him or in his absence to some adult member of his family at his usual place of abode or to his authorised agent or when such service can not be effected, by affixing a copy of the demand on some conspicuous part of his abode and of his land.

## **10. Sale Of Property Distrainted :-**

(1) If, within 15 days from the date of service of demand referred to in Section 9 the defaulter does not pay the amount for which the distraint was effected, the distrainer may sell, in auction, the distrainted property or such part thereof, as may in his opinion be necessary to satisfy the demand together with the expenses of the distraint and the cost of the sale.

(2) From the proceeds of such sale, a deduction shall be made at a rate not exceeding 6 naye paise in the rupee on account of the cost of the sale.

(3) From the balance shall be deducted the expenses incurred by the distrainer on account of the distraint.

(4) The remainder, shall be applied to the discharge of the amount for which the distraint was made.

(5) The surplus, if any, shall be delivered to the person whose property has been sold and he shall be given a receipt for the amount discharged from the proceeds of the sale.

## **11. Power Of Sale When To Be Exercised :-**

(1) Notwithstanding anything contained in the Transfer of Property Act, 1882, (Act IV of 1882) where a power of sale without the intervention of the court is expressly conferred on the ["Central Mortgage Bank and the"]<sup>1</sup> Mortgage Bank by the mortgage deed ["the Board or"]<sup>2</sup> the Committee of such Bank or any person authorised by the Committee in this behalf shall, in case of default of payment of the mortgage money or any part thereof, have power in addition to any other remedy available to the bank to bring the mortgaged property to sale without the intervention of the court.

(2) No such power shall be exercised unless and until-

(a) the Board has previously authorised the exercise of the power conferred by sub-section (1) after hearing the objections, if any, of the mortgagor;

(b) notice in writing requiring payment of such mortgage money or part has been served upon -

(i) the mortgagor;

(ii) any person who has any interest in or charge upon the property mortgaged or in or upon the right to redeem the same ;

(iii) any surety for the payment of the mortgaged debt or any part thereof;

(iv) any creditor of the mortgagor who has in a suit for the administration of his estate obtained a decree for sale of the mortgaged property ; and

(c) default has been made in payment of such mortgage money or part thereof for three months after such service.

1. Inserted in Section 11, the words "Central Mortgage Bank and the" by Assam Act No. XXIV of 1964 S-3, (w.e.f. 3-12-1964), [Published in the Assam Gazette Extraordinary, dated 3rd December, 1964].

2. Inserted in Section 11 the words "the Board or" by Ibid.

### **11A. Section 11A :-**

(1) Where advance is made against hypothecation of assets, the Mortgage Bank shall have power to put the assets on sale for default by the borrower of payment of instalment due.

(2) No such power shall be exercised unless :-

(a) notice in writing requiring payment of instalment due has been served upon the borrower ; and

(b) default has been made in payment of such instalments due for three months after such service"]<sup>1</sup>

1. Inserted 11 A by the Assam Act No. VII of 1990 S. 6.



## **12. Application For Sale And Manner Of Sale :-**

(1) In exercise of the power of sale conferred by Section 11 and in conformity with the provisions thereof, ["the Board or"] the Committee [ \* \* \* ]<sup>1</sup> or any person duly authorised by such ["Board or the"] Committee may apply to the Sale Officer appointed in that behalf under Section 19 to sell the mortgaged property or any part there and such officer shall after giving notice of 30 days in writing to all the persons referred to in Section 11, sell property in the manner prescribed.

["(2) The Sale shall be by public auction and shall be held in the village where the mortgaged property is situated or at the nearest place of public resort or in the office of the Sale officer whichever place, in the opinion of the Sales Officer, is likely to attract the maximum number of bidders and the property is likely to sell to better advantage there."]<sup>2</sup>

1. Deleted in Section 12 and 13 for the words "of a Mortgage Bank" by Ibid, S. 4.

2. Substituted sub-section "(2)" of Section 12 by the Assam Act No. VIII of 1990. S.7.

Note-Before substitution of sub-section (2) of Section 12, Originally read as follows-

"(2) the sale shall be by public auction and shall be held in the village where the mortgaged property is situated or at the nearest place of public resort if the Sale Officer is of opinion that the property is likely to sell to better advantage there".

## **13. Application To Set Aside Sale On Deposit And Confirmation Of Sale In Default Or On Dismissal Of Such Application :-**

(1) When a mortgaged property has been sold under the provisions of this Act, the mortgagor or any person having a right or interest therein affected by the sale may, at any time, within thirty days from the date of sale, apply to the ["Board or the"] committee [ \* \* \* ]<sup>1</sup> concerned to have the sale set aside on his depositing at the officer of such Bank.-

(a) for payment to ["the Central Mortgage Bank or"] the Mortgage Bank, the amount specified in the proclamation of sale together with subsequent interest and the costs, if any, incurred by the bank in bringing the property to sale ; and

(b) for payment to the purchaser, a sum equal to such percent of

the purchase money as prescribed.

(2) If such deposit is made, ["the Board or"] the committee shall make an order setting aside the sale.

(3) Where no application is made under sub-section (1) or where such application is made and disallowed, ["The Board or"] the Committee shall apply to the Registrar or to the person appointed by the State in this behalf to make an order confirming the sale and on such officers confirming the sale, it shall become absolute.

1. Deleted in Section 12 and 13 for the words "of a Mortgage Bank" by Ibid, S. 4.

#### **14. Distribution Of Proceeds Of Sale :-**

(1) The proceeds of every sale under the provisions of Section 11, 12, 13 of this Act shall be applied by the Sale Officer, first in payment of all costs, charges and expenses actually incurred by him as incident to the sale or any proposed sale; secondly, in payment of all interest due on account of the mortgage in consequence whereof the mortgaged property was sold; thirdly, in payment of the principal money due on account of the mortgage ; and lastly, in payment of the residue, if any, with the approval of the Registrar or the officer appointed by the State Government in this behalf to the person interested in the property sold or if there are more such persons than one then to such persons according to their respective interests upon their joint receipt.

(2) Any person dissatisfied with the decision of the Sale Officer in regard to the distribution of the residue under subsection (1) may, within thirty days of the communication to him of such decision, institute a suit to establish the right amount of interest he claims in a Civil Court within whose jurisdiction the property sold is situated.

(3) The Sale Officer shall not distribute the residue under subsection (1) until thirty days have elapsed from the communication of his decision to all the persons concerned or if a suit has been instituted within the said period of thirty days by any such person until the suit is disposed of or otherwise terminated and on such disposal or termination, the residue shall be distributed in accordance with the decision of the court.

Explanation- In this sub-section "Court" means the Civil Court which would have jurisdiction to entertain a suit to enforce the mortgage and within the limits of whose jurisdiction the property sold is situated.

#### **15. Certificate To Purchaser :-**

Where a sale of mortgaged property has become absolute, the Sale Officer shall grant a certificate specifying the property sold and the name of the person who, at the time of the sale, is declared to be the purchaser. Such certificate shall bear date and the day on which the sale became absolute.

#### **16. Delivery Of Property To Purchaser :-**

(1) Where the mortgaged property sold is in the actual possession of the mortgagor or of some person on his behalf or of some person claiming under a title other than a lease for a period not exceeding three years created by the mortgagor subsequent to the mortgage in favour of ["The Central Mortgage Bank or"] the Mortgage Bank and a certificate in respect thereof has been granted under Section 15, the court shall on the application of the purchaser, order delivery of the property to be made by putting such purchaser or his agent specially appointed in writing for the purpose in possession of the property.

(2) Where the property sold is in the occupation of a tenant or other person entitled to occupy the same and a certificate in respect thereof has been granted under Section 15, the court shall, on the application of the purchaser, and after notice to such tenant or other person, order delivery to be made to the purchaser by affixing a copy of the certificate of sale in some conspicuous place on the property and proclaiming to the occupant and the public by beat of drum or other customary mode at some convenient place that the interest of the mortgagor has been transferred to the purchaser.

(3) In regard to the case dealt within sub-section (1) and (2), the provisions of Rules 97 to 103 of Order XXI of the first Schedule to the Code of Civil Procedure, 1908 (Act V of 1908) shall, mutatis mutandis and so far as may be, apply.

Explanation- In this Section "Court" shall have the same meaning as in Section 14.

#### **17. Appointment Of Receiver And His Powers :-**

(1) The Board may on the application of ["the Central Mortgage Bank or"] a Mortgage Bank and under circumstances in which the power of sale conferred by Section 11 may be exercised, appoint in writing, a Receiver of the produce and income of the mortgaged property or any part thereof and such Receiver shall be entitled

either to take possession of the property or collect its produce and income, as the case may be, to retain out of any money realised by him, his expenses of management including his remuneration, if any, as fixed by the Board, and to apply the balance in accordance with the provisions of subsection (8) of Section 69-A of the Transfer of Property Act, 1882 (Act IV of 1882).

(2) A Receiver appointed under sub-section (1) may, for sufficient cause and on application made by the mortgagor, be removed by the Board.

(3) A vacancy in the office of the Receiver may be filled up by the Board.

(4) Nothing in this Section shall empower the Board to appoint a Receiver when the mortgaged property is already in the possession of a Receiver appointed by a Civil Court.

### **18. Title Of Purchaser Not To Be Questioned On The Ground Of Irregularity Etc :-**

Whether any property is sold in the exercise or purported exercise of a power of sale under the provision of this Act, the title of the purchaser shall not be questioned on the ground that -

(a) the circumstances required for authorising the sale had arisen ;  
or

(b) due notice of the sale was not given ; or

(c) the power of sale was otherwise improperly or irregularly exercised ;

but any person who has suffered any damage by an unauthorised, improper or irregular exercise of any such power shall have a remedy in damages against ["the Central Mortgage Bank or"] the Mortgage Bank. Such property, shall vest in the purchaser free from all encumbrances.

### **19. Appointment Of Sale Officers :-**

The Registrar shall appoint Sale Officers for the purpose of conducting sale under the provisions of this Act.

### **20. Right Of Mortgage Bank Or The Central Mortgage Bank To Purchase The Mortgaged Property At Sale :-**

(1) Notwithstanding anything contained in any law for the time being in force, it shall be lawful for a Mortgage Bank or the Central Mortgage Bank to purchase any mortgaged property sold under this

Act and the property so purchased shall be disposed of by such Bank by sale within such period as may be fixed by the Trustee.

(2) Nothing in the Assam Fixation of Ceiling on Land Holdings Act, 1956 (Assam Act I of 1956) fixing a maximum limit of agricultural holding shall apply to the acquisition of land by a Mortgage Bank or the Central Mortgage Bank under subsection (1).

### **21. Mortgages Executed In Favour Of Mortgage Bank Stand Vested In Central Mortgage Bank :-**

The mortgage executed in favour of, and all other assets transferred to a Mortgage Bank by the members thereof shall, with effect from the date of such execution or transfer (including those mortgaged to a Mortgage Bank before commencement of this Act) be deemed to have been transferred by such Mortgaged Banks to the Central Mortgage Bank and shall stand vested in the Trustee.

### **22. Powers Of The Mortgage Bank Where Property Is Destroyed Or Security Becomes Insufficient :-**

Where any property mortgaged to ["the Central Mortgage Bank or"] a Mortgage Bank is wholly or partially destroyed or the security is rendered insufficient and the mortgagor, having been given a reasonable opportunity by ["the Board or"] the Committee [ Deleted ]<sup>1</sup> of providing further security enough to render the whole security sufficient of repaying such portion of the loan as may be determined by ["the Board or"] the committee, has failed to provide such security or to repay such portion of the loan, the whole of the loan shall be deemed to fall due at once and the Committee shall be entitled to take action against the mortgagor under Section 8 or Section 11 for the recovery thereof.

Explanation.-A security is insufficient within the meaning of this Section unless the value of the mortgaged property exceeds the amount for the time being due on the mortgage by such proportion as may be specified in the bye-laws of the ["Central Mortgage Bank or the "] Mortgage Bank.

1. Deleted the words "of a Mortgage Bank" by the Assam Act No. XXIV of 1964 (with effect from 3-12-1964) S 9.

### **23. Power Of Board Or Of Trustee To Destrain And Sale Of Property Etc :-**

["(1) The Trustee may direct the Board or the Committee, and the

Board may direct the Committee to take action against a defaulter under Section 8, Section 11 or Section 12 and if the Board or the Committee neglects or fails to do so, the Trustee or the Board may take such action." ]1

(2) Where such action is taken by the Board the provisions of this Act and of any rules made in this behalf shall apply in respect thereto as if all references to the Mortgage Bank and to its Committee in the said provisions were references to the Central Mortgage Bank and the Board respectively.

(3) Where such action is taken by the Trustee, the provisions of this Act and of any rules made thereunder shall apply in respect thereto as if all references to ["the Central Mortgage Bank or the"] Mortgage Bank or to ["the Board or the"] provisions were references to the Trustee.

1. Substituted sub-section "(1)" of Section 23 by the Assam Act No. XXIV of 1964. Note - Before substituted sub-section (1) of Section 23 read as follows -

"(1) The Board or the trustee may direct the committee of a mortgage Bank to take action against a defaulter under Section 8, Section 11, or Section 22 and if the Committee neglects, or fails to do so, the Board or the Trustee may take such action."

#### **24. Mortgagors Power To Lease :-**

(1) Notwithstanding anything contained in the Transfer of Property Act, 1882 (Act IV of 1882) or in any other law for the time being in force, a mortgagor shall not grant a lease of the mortgaged property for a period exceeding three years.

(2) Any lease granted in contravention of the provisions of sub-section (1) shall be void.

#### **25. Mortgage Not To Be Questioned On Insolvency Of Mortgagor :-**

Notwithstanding anything contained in the Provincial Insolvency Act 1920 (Act V. of 1920) and in any law relating to insolvency, a mortgage executed in favour of [The Central Mortgage Bank or"] a Mortgage Bank shall not be called in question on the ground that it was not executed in good faith for valuable consideration or on the ground that it was executed in order to give ["the Central Mortgage Bank or"] the Mortgage Bank a preference over the other creditors of the mortgagor.

## **26. Power Mortgage Bank To Receive Money And Grant Valid Discharges Notwithstanding Assignment Of Mortgage Deeds To The Central Mortgage Bank :-**

Notwithstanding that a mortgage executed in favour of a Mortgage Bank has been transferred, or is deemed under the provision of Section 21 to have been transferred to the Central Mortgage Bank-

(a) all moneys due under the mortgage may, in the absence of any specific direction to the contrary issued by the Board or Trustee and communicated to the mortgagor, be paid to ["the Central Mortgage Bank or"] the Mortgage Bank and such payment shall be valid as if the mortgage had not been so transferred ; and

(b) the Mortgage Bank shall, in the absence of any specific direction to the contrary issued by the Board or Trustee and communicated to the Mortgage Bank be entitled to sue on the mortgage or take any other proceedings for the recovery of the moneys due under the mortgage.

## **27. Priority Of Mortgage Over Certain Claims :-**

A mortgage executed in favour of a Mortgage Bank and Central Mortgage Bank shall have priority over any claim of the Government arising from a loan under the Land Improvement Loans Act, 1883 (Act XIX of 1883) or the Agriculturists Loans Act, 1884 (Act XII of 1884) granted after execution of the mortgage.

## **28. Right Of Mortgage Bank To Pay Prior Debts Of Mortgagor :-**

(1) Where a mortgage is executed in favour of ["the Central Mortgage Bank or"] a Mortgage Bank for payment of prior debts of the mortgagor, the Bank may, notwithstanding the provisions of Sections 75 and 76 of the Transfer of Property Act, 1882 (Act VI of 1882), by notice in writing, require any person to whom any such debt is due, to receive payment of such debt or part thereof from the Mortgage Bank at its registered office within such period as may be specified in the notice.

(2) Where any such person fails to receive such notice or such payment, such debt or part thereof as the case may be, shall cease to carry interest from the expiration of the period specified in the notice:

Provided that where there is a dispute as regards the amount of any such debt the person to whom such debt is due shall be bound

to receive payment of the amount offered by the ["Central Mortgage Bank or the"] mortgage Bank towards the debt, but such receipt shall not prejudice the right, if any, of such person, to recover the balance claimed by him.

## **29. Registration Of Documents Executed On Behalf Of A Mortgage Bank Or Of The Central Mortgage Bank :-**

(1) Notwithstanding anything contained in the [ \* \* \* ]<sup>1</sup> Registration Ac. 1908 (Act XVI of 1908), it shall not be necessary for any officer of a Mortgage Bank or the Central Mortgage Bank to appear in person or by agent at any registration office in any proceedings connected with the registration of any instrument executed by him in his official capacity or to sign as provided in Section 58 of that Act.

(2) Where any instrument is so executed, the registering officer to whom such instrument is presented for registration, may, if he thinks fit, refer to such officer as stated in subsection (1) for information respecting the same, and on being satisfied of the execution thereof, shall register the instrument.

1. Omitted the word "INDIAN" by the Central Act No. XLV of 1969. S-2.

## **30. Proof Of Documents Or Entries In Documents :-**

Any Mortgage Bank or the Central Mortgage Bank may grant copies of any document obtained and kept by it in the course of its business or of any entries in such document; and any copy so granted shall, where certified in such manner as may be prescribed, be admissible in evidence for any purpose in the same manner and to the same extent as the original document, or the entries therein, as the case may be.

## **31. Provisions Of The Act Shall Apply To Loans Advanced By Mortgage Banks From Funds Not Borrowed From The Central Mortgage Bank :-**

The provisions of the Act shall apply also to the loans advanced by Mortgage Banks from funds which have not been borrowed from the Central Mortgage Bank.

## **32. Service Of Notice :-**

Whenever under the provisions of this Act notice is required to be



given to any person in writing, it shall be sufficient to send such notice by -

- (i) Registered post with acknowledgment due; or
- (ii) Personal service through official messenger; or
- (iii) affixing a copy of the notice at the last known place of residence or business of the person concerned through any officer bearer or employee of the Central Mortgage Bank or Mortgage Bank, as the case may be, with two witnesses when the person concerned refuses to accept the notice and sign the acknowledgment or he cannot be found.

**33. Section 102, 103 And 104 Of The Transfer Of Property Act, 1882, To Apply To Such Notices Under This Act :-**

The provision of Section 102 and 103 of the Transfer of Property Act, 1882, and rules made by the High Court under Section 104 of that Act for carrying out the purposes of the said Sections, shall apply, so far as may, in respect of all notices to be served under this Act.

**34. Officer Of Mortgage Bank And The Central Mortgage Bank And Sale Officers Not To Bid At Sale :-**

At any sale of movable or immovable property held under the provisions of this Act in order to recover any money due to a Mortgage Bank, no Director, Secretary or other officer of such Bank or of the Central Mortgage Bank (except on behalf of the Bank of which he is a Director or Secretary or an Officer) and no sale officer or other persons having any duty to perform in connection with such sale, shall either directly or indirectly bid for or acquire or attempt to acquire any interest in such property.

**35. Delegation Of Certain Powers By Board :-**

The Board may, if it thinks fit delegate all or any of its powers under Section 11, 17 and 23 to an Executive Committee constituted by it and consisting of two or more of its members.

**36. Powers Of The State Government To Make Rules :-**

- (1) The State Government may, by notification in the official Gazette, make rules for carrying out the purposes of the Act.
- (2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the

following matter, namely.-

- (a) the manner of effecting distraint;
- (b) the custody, preservation and sale of distrained property;
- (c) the investigation of claims by persons other than the defaulter to any right or interest in the distrained property and for the postponement of the sale pending such investigation ;
- (d) the immediate sale of perishable articles;
- (e) the due proclamation and conduct of the sale;
- (f) the recovery of the expenses of proclamation and sale;
- (g) the deposit of the purchase money;
- (h) the re-sale of the property, if the purchase money is not deposited; and (i) any other matter which has to be, or may be, prescribed.

(3) All rules made under this Section shall be laid for not less than fourteen days before the Assam Legislative Assembly as soon as possible after they are made, and shall be subject to such modifications as the Legislative Assembly may make during the Session in which they are so laid or the Session immediately following.

### **37. Power Of The Board To Make Regulations :-**

(1) The Board may, subject to the approval of the Trustee, make regulations not inconsistent with the provisions of this Act and the rules made thereunder for enabling into discharge its functions under this Act.

(2) In particular, and without prejudice; to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely -

- (a) fixing the period of debentures and the rate of interest payable thereon ;
- (b) calling in debentures after giving notice to debenture holders ;
- (c) the issue of new debentures in place of debentures damaged or destroyed;
- (d) converting one class of debenture into another, bearing a different rate of interest;
- (e) the inspection of the account books and proceedings of Mortgage Banks ;
- (f) the submission of returns and reports by Mortgage Banks in respect of their transaction;
- (g) the periodical settlement of accounts between Mortgage Bank and the payment of the amounts recovered by Mortgage Banks on

mortgages transferred or deemed under the provisions of Section 21 to have been transferred to the Central Mortgage Bank;

(h) specifying the form in which applications to mortgage Banks for loans should be made and for the valuation of the properties offered as security for such loans;

(i) the investment of moneys realised from mortgagor ; and

(j) generally for any other matter in respect of which the Board considers provisions should be made for the purposes of this Act.

(3) All such regulations shall be published in the Official Gazette.