

BENGAL AGRICULTURAL DEBTORS ACT, 1936

7 of 1936

[9th April, 1936]

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BENGAL AGRICULTURAL DEBTORS ACT, 1936

7 of 1936

[9th April, 1936]

An Act to provide for the relief of indebtedness of agricultural debtors in Bengal. WHEREAS it is expedient to provide for the relief of indebtedness of agricultural debtors and to amend the law governing the relation between agricultural debtors and their creditors; AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act; It is

hereby, enacted as follows :

1. Short title, extent and commencement :-

(1) This Act may be called the Bengal Agricultural Debtors Act, H1936].

(2) It extends to the whole of ¹[West Bengal].

(3) It shall come into force in such areas on such dates as the ²[State Government] may, by notification, direct.

1. Words subst. by the Indian Independence (Adaptation of Bengal and Punjab Acts) Order. 1948.

2. Words subst.by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order, 1950. respectively.

2. Definitions :-

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

(1) "agriculture" includes horticulture and dairy farming and the use of land for any purpose of husbandry inclusive of the keeping or breeding of live-stock, poultry or bees and the growing of fruits, vegetables and the like;

(2) "amount payable under an award" means an amount included under clause (d) of sub-section (1) of section 25 in an award as payable by a debtor in respect of any debt, or any part of such amount which remains unpaid, together with any interest on such amount or part thereof which is due under the award;

(3) "Appellate Officer" means an officer appointed under section 40;

(4) "award" means an award as made by a Board under sub-section (2) of section 19 or sub-section (6) of section 22, 4[or subsection (5) of section 37A] or as confirmed or modified by an Appellate Officer under sub-section (5) of section 40 ¹[or under section 40A];

(5) "Board" means a Debt Settlement Board established under subsection (1) of section 3, and includes an officer or the Collector authorised under the proviso to section 4;

(6) "Certificate-officer" means a Certificate-officer as defined in the Bengal Public Demands Recovery Act, 1913;

2(6A) "Civil Court" means a Civil Court within the meaning of the Bengal, Agra and Assam Civil Courts Act, 1887, and includes any Court exercising appellate or revisional jurisdiction over any such Court **3**[and also includes a union court established under the Bengal Village Self-Government Act, 1919];

(7) "Collector" includes any officer appointed by the **4**[State Government] to exercise any of the powers of a Collector under this Act;

(8) "debt" includes all liabilities **3**[incurred prior to the first day of January, 1940] of a debtor in cash or in kind, secured or unsecured, whether payable under a decree or order of a Civil Court or otherwise, and whether payable presently or in future, but does not include the following :

(i) any amount the liability for the payment of which is only contingent;

(ii) any rent not due at the time when a Board determines the amount of debts under section 18;

(iii) any share of the produce of land payable on account of land cultivated under the system known as adhi, barga or bhag',

(iv) any amount recoverable as a public demand, except

(a) an amount referred to in sub-section (1) of section 28,

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(b) arrears of rent payable on account of the use or occupation of land held by a tenant, 5and

7(c) any sum referred to in Article 12A of Schedule I to the Bengal Public Demands Recovery Act, 1913, or any sum **8**[any provincial Act or Act of the State Legislature], for the time being in force, relating to co-operative societies to be recovered as a contribution to the assets of a co-operative society or as the cost of liquidation thereof;

(v) any amount a suit or application for the recovery of which is barred **9**[by limitation, or which is otherwise irrecoverable under the law;]

(vi) any debt due to any bank included in the Second Schedule to

the Reserve Bank of India Act, 1934;

(vii) any tax or rate due to a Municipality or Union Board or Union Committee;

(9) "debtor" means a debtor whose primary means of livelihood is agriculture and who

(a) is a raiyat or an under-raiyat, or

(b) cultivates land himself or by members of his family or by hired labourers or by adhiars, bargadars or bhagdars; and includes a group of persons who join in making an application under the provisions of sub-section (1) of section 9 ¹⁰[and any person who, by virtue of provisions of sub-section (7) of section 37A shall be deemed to be a debtor];

(10) "loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of a Board, in substance a loan;

(11) "notification" means a notification published in the ¹¹[Official Gazette];

¹²(11A) "original principal" means the loan as originally borrowed, excluding any amount of interest on such loan which may at any time have been included as principal;

(12) "prescribed" means prescribed by rules made under this Act;

(13) "settlement" includes an amicable settlement and a settlement or adjustment made by order of a Board;

(14) "supplementary income" means any income derived by the debtor from any source other than agriculture;

¹³ (14a) "tout" means a person who habitually frequents the precincts of the office of a Board except

(a) for the purpose of his own proceedings before such Board, or

(b) as an agent of a party permitted to represent such party under section 46;

(15) the expressions "landlord", "raiyat", "under-raiyat" and "rent" have the same meanings as in the Bengal Tenancy Act, 1885.

1. Inst. by Ben. Act 2 of 1942.

2. Clause (6A), 'words and figures' and the word inst. by Ben. Act 8 of 1940.
3. Inst. by Ben. Act 2 of 1942.
4. Subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order. 1950, respectively.
6. Word omitted by Ben. Act 8 of 1940.
7. Sub-clause (iv)(c) and sub-clause (vii) inst. by Ben. Act 8 of 1940.
8. Words subst. by the Adaptation of Laws Order. 1950.
9. Subst. by Ben Act 8 of 1940
10. Inst. by Ben. Act 2 of 1942.
11. Subst by the Government of India (Adaptation of Indian Laws) Order, 1937.
12. Clause (11A) inst. by Ben. Act 8 of 1940.
13. Clause (14a) inst. by Ben. Act 5 of 1942.

3. Establishment of Debt Settlement Boards :-

(1) The ¹[State Government] may, by notification, establish one or more Debt Settlement Boards for any local area specified in the notification.

(2) Each Board shall consist of a Chairman and of not more than four other members, to be appointed by the ¹ [State Government].

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order. 1950. respectively.

4. Power of State Government to cancel appointments of Chairman and members of, or to dissolve, a Board :-

The ¹[State Government] may, at any time, for reasons to be recorded in writing, cancel, by notification, the appointment of the Chairman or of any other member of a Board or dissolve any Board :

Provided that if, when a Board is dissolved, t h e ¹[State Government] does not consider the appointment of another Board to be necessary or desirable, it may authorise any ³ [servant of the Government] to exercise such of the powers of the Board in connection with the making of awards as it may specify and the Collector to exercise all or any of the other powers of the Board.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order. 1950. respectively.

3. Words subst. by Ben. Act 8 of 1940 and the Adaptation of Laws Order, 1950. respectively.

5. Delegation of power to Commissioner :-

The ¹ [State Government] may, by notification, delegate its powers under sections 3 and 4 to the Commissioners.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order. 1950. respectively.

6. Tenure of office :-

The Chairman and the other members of a Board shall be appointed for a term of not more than three years, but shall be eligible for reappointment.

7. State Government may invest Boards with certain powers :-

The ¹[State Government] may, by notification, from time to time, empower a Board to exercise all or any of the powers under ²[sub-sections (2) or (3) of section 9], sub-section (2) of section 13, clause (b) ³ [or clause (c)] of sub-section (1) of section 19, section 21, or sub-section (1) of section 22, and unless so empowered a Board shall not exercise any such powers.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order. 1950. respectively.

2. Subst. by Ben. Act 8 of 1940.

3. Inst. by Ben. Act 8 of 1940.

8. Application for settlement of debts :-

(1) Subject to the provisions of section 9, a debtor may make an application for the settlement of his debts to a Board established for the local area within which he ordinarily resides within ¹ [seven years] after the first Board is established under sub-section (1) of section 3 for that local area.

(2) Unless that debtor has already made an application under subsection (1) any of his creditors may make an application to a Board to which the debtor might have applied under that subsection.

(3) If applications are made to more than one Board in respect of the debts of the same debtor, such applications shall, subject to rules made under this Act, be transferred to and dealt with by one Board.

(4) No objection as to the place of presentation of the application

shall be allowed by the Appellate Officer unless such objection was taken, at the earliest opportunity, before the Board to which the application was made and unless there has been a consequent failure of justice.

(5) Notwithstanding anything contained in sub-section (1), a Board may for good and sufficient reason entertain a further application in respect of any debt incurred before the date of a first application under sub-section (1) or sub-section (2) whether such application was made to it or to any other Board, except when such application under either of the said sub-sections has been dismissed under sub-section (3) of section 13 or under clause (b)(ii) of sub-section (1) or sub-section (2) of section 17.

(6) A Board shall not entertain any further application for the settlement of any debt which has been incurred by a debtor (including any rent which has become due) after the date of application under subsection. (1) or sub-section (2).

1. Subst. by Ben. Act 8 of 1942.

9. Application for settlement of joint debts :-

(1) An application may be made under sub-section (1) of section 8 for the settlement of

(a) an ancestral debt for which two or more persons are jointly liable if one of such persons is a debtor within the meaning of this Act, and they all join in making such application, or

(b) a debt for which two or more persons are jointly liable if all such persons are debtors within the meaning of this Act and they all join in making such application, and the Board may pass orders under this Act regarding any debt to which such application relates.

(2) If a debtor within the meaning of this Act is jointly liable with other persons for any debt other than a debt for arrears of rent such debtor may make an application under sub-section (1) of section 8 for relief in respect of his liability in regard to such debt, and the Board, after consideration of the facts and circumstances of the case, may, if so empowered under section 7, pass such order as it thinks fit under this Act regarding the debt so far as such applicant is concerned and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act :

Provided that an order of the Board under this sub-section shall not affect the liability of any other person who is jointly liable with the debtor for the debt, but in no case shall the creditor to whom the debt is due be entitled to realize more than his dues from the persons jointly liable.

1 (3) If a debtor within the meaning of this Act is liable with other persons for a debt for arrears of rent, such debtor may, notwithstanding the provisions of clause (6) of sub-section (1), make an application under sub-section (1) of section 8 for relief in respect of the entire amount of such debt, and the Board, after consideration of the facts and circumstances of the case, may if so empowered under section 7, pass such order as it thinks fit, under this Act regarding the entire amount of such debt, and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act :

Provided that, notwithstanding anything contained in any other law,

(a) on compliance in full by the said debtor with an order of the Board under this sub-section, his liability and that of the said other persons to the landlord for the arrears of rent in respect of which such order is made, shall cease, but the said other persons shall be liable to contribute to the debtor in respect of the sum paid by him under the said order, and

(b) during the period allowed in the said order for full compliance with the terms thereof relating to the arrears of rent, the landlord

1. Sub-sec. (3) inst. by Ben. Act 8 of 1940.

10. Form and verification of application :-

Every application under section 8 shall be in writing in the prescribed form and shall be signed and verified in the prescribed manner.

11. Statement of debts to be included in application :-

(1) Any application made by a debtor under sub-section (1) of section 8 shall contain a statement of debt, in the prescribed form, which shall include the following :

(a) the name of the place where he ordinarily resides;

(b) the names and addresses of his creditors, the total amount

claimed by each creditor, to be owing to him in respect of each debt, so far as is known to the debtor, and a note whether each such claim is admitted by the debtor;

(c) the history of each debt with particulars of the original principal and the rate of interest chargeable;

(d) details of any debts for which the debtor is liable as a surety or is liable with other persons as a joint surety together with the names and addresses of all such persons;

1(dd) details of any liabilities incurred on or after the first day of January, 1940;

(e) particulars of the debtor's property both movable and immovable (including claims due to him), a specification of its value and of the places where it may be found, and details of any attachment, mortgage, lien or charge subsisting thereon together with the names and addresses of the co-sharers, if any, of the debtor;

1(ee) particulars of any property as in clause (e) of which the creditor has taken possession either as security for or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor;

(f) particulars of any property as in clause (e) which has been transferred by the debtor within two years previous to the date of his application together with the name and address of the transferee;

(g) particulars of any supplementary income of the debtor; and

(h) a declaration that all his debts and all his properties have been included in the statement.

(2) An application made by a creditor under sub-section (2) of section 8 shall contain a statement of debt, in the prescribed form, which shall include the following :

(a) the name of the place where the debtor ordinarily resides;

(b) the total amount of every debt claimed by the creditor to be owing to him from the debtor;

(c) the history of each such debt with particulars of the original principal and the rate of interest chargeable;

(d) the names and addresses of the other creditors, so far as they are known to the creditor;

(e) particulars, so far as they are known to the creditor, of the debtor's property, as in clause (e) of sub-section (1);

3 (ee) particulars of any property as in clause (e) of which the creditor has taken possession either as security for, or in lieu of payment of, any portion of the principal of the debt or any portion of the interest thereon, together with the name and address of any person who may be in possession of any portion of such property under the creditor;

(f) particulars, so far as they are known to the creditor, of any supplementary income of the debtor; and

(g) a declaration that agriculture is the primary means of livelihood of the debtor.

1. Clauses (dd) and (ee) inst.by Ben Act 8 of 1940.

3. Clause (ee) inst. by Ben. Act 8 of 1940.

12. Procedure on receipt of application :-

(1) On receipt of an application under section 8, the Board shall pass an order fixing a date and place for consideration. of the application, unless the application is dismissed forthwith under section 17.

(2) The Board shall, in the prescribed manner, give notice of such order to the debtor (if he is not himself the applicant) or (if the debtor is the applicant) to all persons whose names and addresses are given in the application.

(3) The applicant may, at the discretion of the Board, be examined on oath or affirmation on the date fixed under sub-section (1) or on such other date as the Board may fix and a memorandum of the substances of the statement made by the applicant shall be recorded in writing by the Board.

(4) No woman who has made an application under section 8 shall, against her will, be required to appear in person before the Board for the purpose of being examined under this section.

13. Further statements of debts :-

(1) ¹[At the time of giving the notice referred to in sub-section (2) of section 12, the Board shall,] in the prescribed manner, serve a notice on the debtor (unless the debtor is himself the applicant) and on every creditor whose name and address are given in the application and also publish a general notice requiring the debtor and all creditors to submit a statement of debt in the prescribed form within one month of the date of service of the notice, or publication of the general notice, whichever is later ²[and further requiring all creditors to produce on a date specified in the notices all documents (including entries in books of account) by which the creditor intends to prove any debt owing to him, together with a true copy of each such document]:

Provided that, if the Board is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with such notice, it may extend the period for the submission of his statement of debt ² (or the production of his documents and true copies thereof).

(2) If any creditor fails to comply with a notice under sub-section (1), the Board, if so empowered under section 7, may pass an order in writing declaring that the amount of any debt due to him from the debtor on the date of such order shall, for the purposes of this Act, be deemed to be the amount stated in the statement of debt submitted by the debtor, and that no debt of which the creditor has failed to submit a statement, other than debt which the debtor has included in his statement of debt shall be payable;

(3) If any debtor fails to comply with a notice under sub-section (1), the Board shall dismiss the application and may allow against the debtor such costs as the Board considers reasonable and such costs shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the same is due : Provided that an order made under sub-section (2) or sub-section (3) may be varied or reversed by the Board on an application for review or

Provided further that when a Board has ceased to exist an order made under sub-section (2) or sub-section (3) may be varied or reversed by the Appellate Officer on an application if it is proved to his satisfaction that the creditor or debtor or any person referred to in clause (d) of sub-section (1) of section 11, as the case may be,

had no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance.

1. Subst. by Ben. Act 8 of 1940.
2. Words inst. by Ben. Act 8 of 1940.

13A. Notice to persons in possession under a creditor :-

¹ . If in any statement of debt submitted by a creditor under sub-section (1) of section 13 any person who has not been served with a notice under sub-section (2) of section 12 is stated to be in possession of any portion of the immovable property of the debtor, the Board shall serve on such person in the prescribed manner a notice requiring him, if he desires to make any representation, to appear before the Board on such date as may be specified in the notice.

1. Sec. 13A inst. by Ben. Act 8 of 1940.

14. Production of documents :-

¹* * * * *

(2) The Board shall mark in the prescribed manner each original document **¹**[produced in compliance with the notice under sub-section (1) of section 13], keep the copy after verifying its correctness, and return the original to the creditor.

(3) No document relating to a debt regarding which a creditor has failed to submit a statement under sub-section (2) of section 11 or sub-section (1) of section 13, and no document which being in the possession or under the control of the creditor has not been produced by him as required by sub-section (1) **³** [of section 13], shall be admissible in evidence against the debtor or his successor in interest in any suit by the creditor or by any person claiming under him for the recovery of the debt to which such document relates unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the document before the Board.

1. Sub-sec. (1) omitted, 'words, figures and bracket' subst. by Ben. Act 8 of 1940.
3. Words and figures inst. by Ben. Act 8 of 1940.

15. Board to attempt amicable settlement :-

Subject to any rules made under this Act, the Board shall call upon the debtor and each creditor to explain his case regarding each

debt, and shall use its best endeavours to induce them to arrive at an amicable settlement.

16. Power of Board to require attendance of persons and production of documents and to receive evidence :-

(1) Subject to rules made under this Act, a Board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a Civil Court by the Code of Civil Procedure, 1908.

(2) Any person present may be required by a Board to furnish any information or to produce any document then and there in his possession or power.

17. Dismissal of applications :-

(1) An Application under section 8 may be dismissed by the Board, at any stage of its proceedings, in respect of all or any of the debts to which it relates,

(a) if, for reasons to be stated in writing, the Board does not consider it desirable or practicable to effect a settlement of debts, or

(b) if, in the opinion of the Board

(i) the applicant fails to pursue his application with due diligence, or

(ii) the debtor is attempting to use the provisions of this Act with a view to defraud any creditor or any person referred to in clause (d) of sub-section (1) of section 11.

(2) An application under section and shall be dismissed by the Board, if in its opinion

(a) such application includes a claim which is intended to defraud any creditor; or

(b) there has been transfer of any property by the debtor within two years previous to the date of such application with a view to defraud any creditor.

18. Determination of amounts of debts :-

(1) If there is any doubt or dispute as to the existence or amount of any debt, the Board shall decide whether the debt exists and

determine its amount : Provided that a decree of a Civil Court relating to a debt shall be conclusive evidence as to existence and amount of the debt as between the parties to the decree.

(2) Before passing any order under sections 19, 21, or 22 the Board, after considering the statements of debt submitted under section 11 and sub-section (1) of section 13 and ¹(the evidence produced, if any, after

2* * * # * * *

(4) When the Board has determined under sub-section (2) the amounts of the principal of a debt due from a debtor and of the arrears of interest due thereon, the decision of the Board in this respect shall not be questioned in any Civil Court or in any manner other than that provided in this Act.

2 (5) Notwithstanding anything contained in this Act or in any other law for the time being in force or in any contract, where a creditor has taken possession on any terms whatsoever of any immovable property of the debtor as security for, or in lieu of, payment of, any portion of the principal of the debt or any portion of the interest thereon, and where the Court has not pronounced a final decree for foreclosure or has not confirmed a sale held in execution of a final decree for the sale of the property, the Board shall, in making the determination under sub-section (2), prepare an account in the prescribed manner of the receipts of the creditor derived from the said property and after deducting the expenses properly incurred by the creditor (of which an account shall similarly be prepared) either for the cultivation or for the management of the said property, shall credit the sum of such receipts in reduction of the amount, if any, from time to time due to the creditor as interest on the original principal of the debt and, so far as such sum exceeds any interest due, in reduction or discharge, as the case may be, of such original principal.

(6) In determining under this section the amount of arrears of interest due

(a) the rate of interest taken shall not, notwithstanding anything contained in any contract, exceed the rate recoverable in a suit or other proceedings for the recovery of the interest under any law for the time being force, and

(b) where the debt relates to a loan in kind or where there is any

stipulation for the payment of interest in kind, the money value of the principal or interest shall, where the circumstances require such calculation, be calculated in the manner prescribed.

1. Words subst. by Ben. Act 8 of 1940.

2. Sub-sec. (3) omitted and sub-sec. (5) inst. by Ben. Act 8 of 1940.

19. Settlement of debts :-

(1) Subject to rules made under this Act

(a) when any creditor agrees in respect of any debt owing to him to an amicable settlement with the debtor the Board shall embody such settlement in writing; or

(6) when creditors to whom there is owing not less than forty per cent. of the total debt, agree to an amicable settlement with the debtor, the Board, if it is so empowered under section 7 and if it considers that an offer made by the debtor for the settlement of any debt not included in the amicable settlement is a fair offer which the creditor concerned ought reasonably to accept, may pass an order that the debt to which the offer relates shall be settled in accordance with such offer :

Provided that for the purposes of this clause an offer shall not be considered by the Board to be a fair offer

(i) if its terms are less favourable than the terms of the amicable settlement relating to a debt of the same description, or

1* # * * * * *

2 (c) when in respect of a debt referred to in sub-section (5) of section 18, the Board, if so empowered under section 7, considers that the debtor has made an offer for the settlement of the debt which the creditor ought reasonably to accept, it may order that the debt be settled in accordance with such offer, and may pass a further order directing the creditor to restore to the debtor by a specified date any immovable property of the debtor which is in his possession as security for or in lieu of payment of any portion of the principal of such debt or any portion of the interest thereon. Such date shall be fixed in consideration of the profits derived and the estimated profits which may be derived by the

(2) The terms of any settlement of debt under sub-section (1) shall be embodied in an award to be made by the Board.

Explanation. The words "total debt" mean the sum total of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute.

1. Clause (ii) to proviso omitted by Ben. Act 8 of 1940.
2. Clause (c) and Sec. 19A inst. by Ben. Act 8 of 1940.

19A. Delivery of immovable property to debtor :-

1 .

(1) If the creditor does not restore possession of the immovable property to the debtor by the date specified in an award under sub-section (2) of section 19, the debtor may apply to the Certificate exercising jurisdiction in the area in which such property is situated, to be put in possession thereof.

(2) An application under sub-section (1) shall be accompanied by the prescribed process fee, and the Certificate Officer, after giving notice in the prescribed manner to the creditor and to any person who may be in possession under the creditor and after such inquiry as he considers necessary, may direct the creditor to pay to the debtor such compensation as appears to him to be fair and equitable in respect of the period during which the creditor or any person who may be in possession under him retained possession of the property in contravention of the said order of the Board together with costs incidental to the application under this section, and may also pass an order directing the creditor or any person who may be in possession under him to deliver possession of the property to the debtor by a specified date.

(3) If possession of the property is not delivered to the debtor by the date specified in an order under sub-section (2), the Certificate Officer shall on the application of the debtor, order delivery of possession to be made by putting in possession of the property the debtor or any other person whom he may appoint to receive delivery on his behalf, and in delivering possession, the Certificate Officer shall have the same powers as under the Bengal Public Demands Recovery Act, 1913.

(4) Any compensation and costs payable under an order under this section shall be recoverable as a public demand.

1. Clause (c) and Sec. 19A inst. by Ben. Act 8 of 1940.

20. Decision by Board as to whether a person is a debtor :-

If any question arises in connection with proceedings before a Board under this Act, whether a person is a debtor or not ¹ [or whether a liability is a debt or not] the Board shall decide the matter.

1. Words inst. by Ben. Act 8 of 1940.

21. Grant of certificate in respect of certain debts :-

Subject to any rules made under this Act, if any creditor does not accept an offer made by the debtor which in the opinion of the Board is fair and such as the creditor ought reasonably to accept, the Board if it is so empowered under section 7, instead of passing any other order which it is competent to pass, may grant to the debtor a certificate in the prescribed form in respect of the debt to which the offer relates, and thereafter, notwithstanding the provision of any law for the time being in force, no Civil Court shall allow to the plaintiff, in any suit for the recovery of such debt, any costs in such suit or any interest on the debt after the date of such certificate ¹ * * * * and no decree for the recovery of such debt shall be executed until all amounts payable under an award in respect of other debts of the debtor have been paid, 34[or until the expiry of such period not exceeding ten years as may be specified in the certificate, whichever is later, or, if the award ceases to subsist under subsection (5) of section 29, until the award has so ceased to subsist.]

1. Words omitted and words subst. by Ben. Act 8 of 1940.

22. Adjustment of an insolvent debtors debts :-

(1) When the Board is satisfied that the debts of a debtor are such that they cannot be reduced under the provision of section 19 to an amount which he will be able to repay within twenty years, and that the debtor is a fit person to be given the benefit of this section, the Board if it is so empowered under section 7, may, subject to rules made under this Act, and after considering all the circumstances of the debtor, by a written order declare him to be insolvent and may by such order either

(a) reduce his debts to such amounts as it considers that he can pay within a period, not exceeding twenty years, to be mentioned in the order, or

(b) if, for reasons to be recorded in writing, it does not consider the reduction of his debts under clause (a) to be desirable, direct that,

subject to the provisions of sub-section (4) and of section 24, all his property shall be sold and the proceeds shall be utilised towards the payment of his debts in such manner as may be specified in the order.

(2) The Certificate Officer shall, on the requisition of the Board in the prescribed form, sell the property of the debtor referred to in clause (b) of sub-section (1) in the manner provided in the Bengal Public Demands Recovery Act, 1913, and the provisions of the said Act regarding sales in execution of certificates shall, subject to the provisions of this Act, apply to such sale.

(3) When the Board reduces the debts of an insolvent under clause (a) of sub-section (1), it shall specify in the order what sum he shall pay in each year towards the settlement of the debts as so reduced and in what manner such sums shall be distributed among the creditors : Provided that the sum to be paid in each year shall be fixed by the Board at an amount which, in its estimation, is likely, in a year of normal harvest, to leave to the insolvent as provision towards his maintenance one-half of the surplus which remains from the value of the produce of his land after paying to the landlord the current rent due for such land.

(4) When the Board directs the sale of an insolvent's property under clause (b) of sub-section (1), it shall set aside, as provision towards his maintenance, not more than one-third of the land held by him in his direct possession exclusive of the land occupied by his dwelling house : Provided that, even if he holds less than three acres of land in his direct possession, the Board shall thus set aside not less than one acre of the land so held exclusive of the land occupied by his dwelling house :

Provided further that no portion of the immovable property of an insolvent shall be exempted under this sub-section from sale for realisation of arrears of rent.

(5) When the property of the insolvent referred to in clause (6) of subsection (1) has been sold under sub-section (2) or when he has paid all the sums fixed by the Board under sub-section (3) or when his property has been sold under section 28, the Board shall make an order of discharge and grant him a certificate of discharge in the prescribed form. Such certificate shall release the insolvent from all debts which were or might have been included in the application under section 8 : Provided that if within five years of the order

declaring the debtor insolvent any property is acquired by, devolves on, or is declared by a Civil Court or is discovered to belong to, the insolvent debtor such property shall, on application made by a creditor to the Board, be available for distribution among the creditors of the debtor, to the extent of their debts, in such manner as the Board may direct.

(6) An order passed by a Board under sub-section (1) shall be embodied in an award to be made by the Board.

23. The principal of certain debts not to be reduced :-

The principal of any debt due in respect of arrears of rent or under section 171 of the Bengal Tenancy Act, 1885, shall not be reduced under clause (b) of sub-section (1) of section 19 or under section 22, and the provisions of section 21 shall not apply to the principal of any such debt.

24. Exemption of certain property of an insolvent debtor from sale :-

(1) When a debtor is declared insolvent under sub-section (1) of section 22, the Board shall, in the prescribed manner, determine what portion of his immovable property shall be deemed to be the dwelling house of the debtor for the purposes of this Act.

(2) Such dwelling house shall be exempted from sale under sub-section (2) of section 22 and from sale for the recovery of any unsecured debt under section 28, and notwithstanding anything contained in any other Act, the debtor shall be incompetent to mortgage, charge, lease or alienate the same in any way until he is granted a certificate of discharge under sub-section (5) of section 22.

(3) Notwithstanding anything contained in any other Act, no part of the property of a debtor who has been declared insolvent under sub-section (1) of section 22 shall be exempt from the sale under sub-section (2) of that section or under section 28 except such movable property as shall be prescribed, the immovable property excluded as provision towards his maintenance, and subject to the provisions of sub-section (2), his dwelling house as determined under sub-section (1).

25. Awards :-

(1) An award shall be in the prescribed form and shall include the

following particular :

(a) a list of the immovable properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon;

(b) a list of the movable properties of the debtor on which there is any mortgage, lien or charge with particulars of such mortgage, lien or charge;

(c) details of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute;

(d) the amount to be paid to each creditor for each debt owing to him under the terms of an amicable settlement or of an order of the Board under section 19 or section 22;

(e) the manner and the order in which and the times at which the amounts referred to in clause (d) shall be paid :

Provided that the order in which such amounts shall be paid shall be in accordance with any rules made under this Act;

(f) the rate of interest, if any, payable on each amount referred to in clause (d);

(g) an order that all the properties mentioned in the list referred to in clause (a) or clause (6) except such properties as are exempt from sale shall, subject to any mortgage, lien or charge subsisting thereon, be security for the amounts payable under the award ;

1 (h) the date, if any, by which possession of immovable property is to be restored to the debtor under the terms of an award under sub-section (2) of section 19.

(2) At a place and time of which notice shall be given to the parties in the prescribed manner the award shall be explained to the parties present and shall be signed by the Board; but the validity of an award shall not be affected by the absence of any of the parties.

(3) From the date of the signing of the award under sub-section (2) it shall, in supersession of all previous decisions of a Civil Court in respect of the debts mentioned in it, be binding on the debtor and his creditors and the successors in interest of such debtor and creditors.

1. Clause (h) inst. by Ben. Act 8 of 1940.

26. Special provision for arrears of rent :-

Notwithstanding anything contained in this or any other Act

(a) if any rent due for any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 falls into arrears, the landlord may include in a suit for the recovery of such arrears the amount of arrears of rent payable under such award;

(b) if any land referred to in clause (a) is advertised for sale in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the provisions of section 171 of the Bengal Tenancy Act, 1885, shall not apply, but any person whose interests are affected may pay into Court the amount requisite to prevent such sale, and thereupon the amount so paid, together with interest at the prescribed rate which shall not exceed twelve per centum per annum, shall be included by the Board in the award in accordance with rules made under this Act and such amount shall take priority of every other debt payable under the award and of every other charge on the land other than an arrear of rent.

27. Existing mortgages, etc., to subsist :-

(1) When an award is made as regards any debt which is secured by mortgage, lien or charge on any immovable property of a debtor such mortgage, lien or charge shall subsist to the extent of the amount payable in respect of such debt under the award until such amount has been paid or the property has been sold for the satisfaction of such debt or the debtor has been granted a certificate of discharge under sub-section (5) of section 22 :

1 Provided that where an award under sub-section (2) of section 19 directs the restoration of possession of immovable property to the debtor, the mortgage, charge or lien shall be subject to such modifications as to the period of possession as may be contained in the award.

(2) Any mortgage, lien or charge upon any immovable property securing a debt on account of which any amount is payable under a decree of a Civil Court shall cease to subsist when such property is sold under the provisions of section 28 or sub-section (4) of section 29.

1. Proviso inst. by Ben. Act 8 of 1940.

28. Recovery of amounts included in an award :-

(1) If by the date fixed the debtor fails to pay any amount payable under an award such amount shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the amount is due. If the creditor does not so apply such amount shall, for the purposes of clause (iii) of section 35, be deemed to be a debt incurred by the debtor after date of the signing of the award.

(2) Subject to any rules made under this Act, the Certificate Officer, if satisfied that there is good reason for the failure to pay by the fixed date, may allow time to the debtor within which to pay any amount due. If the Certificate Officer thus allows time, he may, if he thinks fit, further direct that a similar period of time shall be given to the debtor after the time fixed in the award for payment of any other amount payable thereunder, within which to make such other payment, and the award shall be deemed to be modified accordingly.

(3) If the Certificate Officer does not allow time under sub-section (2), or if the debtor fails to pay within the time allowed, the Certificate Officer shall proceed to recover the amount in the manner provided in the Bengal Public Demands Recovery Act, 1913 :

Provided that if such debtor has been declared insolvent under section 22, the Certificate Officer after allowing such time, if any, as he thinks fit, shall, forthwith, subject to the provisions of sub-section (4) of section 22 and section 24, sell such portion of the property of the debtor as will be sufficient to pay all the amounts payable whether under the award or sub-section (1) of section 29.

(4) Subject to the proviso to sub-section (3), if the Certificate Officer fails to recover the full amount in respect of which an application has

(5) When the Certificate Officer sells the immovable property of a debtor under sub-section (2) of section 22 or under this section he shall keep a separate account of the proceeds realised from the sale of any portion of such property upon which a mortgage, lien or charge is shown as subsisting in list included in the award under clause (a) of sub-section (1) of section 25.

(6) If any debt in respect of which an amount is payable under the award is secured by a mortgage, lien or charge shown in such lists the Certificate Officer shall sell the immovable property subject to

such mortgage, lien or charge, unless a decree of a Civil Court for the recovery of the debt is outstanding in respect of such property. If such a decree is outstanding the Certificate Officer shall distribute the sale proceeds in accordance with the provisions of clause (a) of sub-section (2) of section 29.

29. Distribution of sale proceeds :-

(1) When a Certificate Officer has sold property of a debtor under sub-section (2) of section 22 or under section 28 he shall first pay from the proceeds of the sale any amount payable as costs of sale in execution of the certificate and next

(a) any amount payable for arrears of rent under the award and as arrears of rent which may have fallen due between the date of determination of the debt under sub-section (2) of section 18 and the date of confirmation of the sale; and

(b) any amount due to the ¹ [State Government] included in a certificate issued under the Bengal Public Demands Recovery Act, 1913.

(2) After making the payment under sub-section (1), if any, the Certificate Officer shall proceed as follows :

(a) he shall, in the first instance, apply the surplus of the proceeds realised from the sale of any portion of the immovable property for which he has kept a separate account under the provisions of sub-section (5) of section 28 to the payment of any amounts payable under the award or under a decree of a Civil Court to creditors on account of debts which are secured by a mortgage, lien or charge upon such property in order of priority determined in accordance with the provisions of the Transfer of Property Act, 1882, and if such surplus is insufficient to meet such payments the balance of such amounts shall, unless the debt has been extinguished by such sale, rank equally with unsecured debts :

Provided that if there is any dispute or doubt as to the priority of payment of such debts the Certificate Officer shall refer the matter to the Appellate Officer who shall determine the same according to the provisions of the aforesaid Act;

(b) when there is a surplus after payment of the amounts referred to in clause (a), the Certificate Officer shall apply the sum of such surplus and of any proceeds realised from the sale of other property

of the debtor to the payment of any other amounts payable under the award, and if such sum is insufficient to meet such payment such other amounts and any amount payable on account of an unsecured debt for the recovery of which a decree has been passed by a Civil Court, and of which details are given in the award under clause (c) of sub-section (1) of section 25, shall rank equally between themselves for purposes of payment :

Provided that if any instalment has been paid under the award, for the year when an instalment fell due for the recovery of which application has been made under sub-section (1) of section 28, any instalment which fell due in that year, but which has not been paid, shall be given priority;

(c) any surplus remaining after payment of the creditors in accordance with the foregoing provisions of this section shall be paid by the Certificate Officer to the debtor.

(3) The proceedings of a Certificate Officer under this section shall be in accordance with rules made under this Act.

(4) Notwithstanding anything contained in the Bengal Public Demands Recovery Act, 1913, if any amount payable under an award in respect of a debt secured by a mortgage, lien or charge on an immovable property of a debtor which is exempted from sale under the said Act cannot be recovered as a public demand, the Certificate Officer shall recover such amount by the sale of such immovable property and shall pay to the debtor the balance(if any) remaining after payment of such amount. The procedure under the Bengal Public Demands Recovery Act, 1913, shall be applicable to such sale.

(5) If the Certificate Officer fails to recover as a public demand or under the provisions of sub-section (4) any amount payable under the award, he shall certify that it is irrecoverable and thereupon the award shall cease to subsist and any amount that was payable under it shall be recoverable within three years from the date on which the award ceased to subsist as if a decree of the Civil Court had been passed for its payment on such date :

Provided that the Certificate Officer, instead of at once certifying any part of such amount to be irrecoverable, may make a report to the Board which may pass an order declaring that the debtor is insolvent and thereupon the provisions of sub-section (5) of section 22 shall as far as possible apply to such insolvent.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950. respectively.

30. Distribution of balance of sale proceeds when land is sold in execution of a decree or certificate for arrears of rent :-

Notwithstanding anything in any other Act, when any land mentioned in the list referred to in clause(a) of sub-section (1) of section 25 is sold in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the balance of the sale proceeds which remains after the payment of the amounts referred to in clauses (a), (b) and (c) of sub-section (1) of section 169 of the Bengal Tenancy Act, 1885, or in clauses (a), (b) and (c.) of sub-section (1) of section 26 of the Bengal Public Demands Recovery Act, 1913, shall be paid to the Certification Officer, or retained by him as the case may be, for distribution in the manner provided in section 29 of this Act.

31. Settlement of debts of a member of a co-operative society :-

No settlement under this Act of the debts of a member of a co-operative society registered under the Co-operative Societies Act, 1912, who owes any amount to such society, shall be valid without the previous approval in writing of a prescribed authority.

32. Stay of proceedings before the board :-

If a debtor informs the Board at the earliest opportunity that the decree referred to in the proviso to sub-section (1) of section 18 was obtained ex-parte and that he intends to apply to the Civil Court to set it aside the Board may stay further proceedings for such time as it may consider necessary to enable the debtor to set aside the decree.

33. Bar to suits and proceedings in civil and revenue courts :-

Except as provided in this Act, no Civil or Revenue Court shall entertain a suit, application or proceeding against the debtor in respect of

(a) any debt included in an application under section 8 ¹[or section 37A] or in a statement under sub-section (1) of section 13, proceedings in connection with which are pending before a Board ² [or an Appellate Officer or a District Judge or an Additional District

Judge]; or

(b) any debt for which any amount is payable under an award, except in accordance with the provisions of sub-section (5) of section 29.

Applicability : The opening words of section 33 namely, "except as provided in this Act" make S. 33 inapplicable to a case covered by section 26(a). To the extent, however, if any, that the plaintiffs claim is not covered by section 26(2), it is maintainable under the general law in spite of section AIR 1955 NUC (Cal) 1543.

1. Inst. by Ben. Act 2 of 1942.

2. Words inst. by Ben. Act 8 of 1940.

34. Stay and abatement of suits and proceedings :-

¹ When an application under section 8 or statement under sub-section (1) of section 13 includes any debt in respect of which a suit or other proceeding is pending before a Civil or Revenue Court, or when an Appellate Officer entertains an appeal or a District Judge or an Additional District Judge entertains an application for revision, relating to such a debt, the Board or the Appellate Officer or the District Judge or the Additional District Judge, as the case may be, shall give notice thereof to such court in the prescribed manner, and thereupon the suit or the proceeding shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon or until the Appellate Officer has disposed of such appeal or the District Judge or the Additional District Judge has disposed of such application for revision, and if the Board or the Appellate Officer or District Judge or Additional District Judge includes any part of such debt in clause (d) of sub-section (1) of section 25 in the award or decides that the debt does not exist the suit or proceeding shall abate so far as it relates to such debt.

Explanation. For the purpose of this section an execution proceeding for the sale of any property shall be deemed to be pending and the debt

1. Sec. 34 subst. by Ben. Act 8 of 1940.

35. Bar to execution of certain decrees and certificates :-

Notwithstanding anything contained in any Act, no decree of a Civil Court or certificate under the Bengal Public Demands Recovery Act, 1913, shall be executed

(i) for the recovery of a debt included in an application under

section 8 ¹[or under sub-section (2) of section 37A] or in a statement under sub-section (1) of section 13, until

(a) the application has been dismissed by the Board in respect of such debt; or

(b) an award in which such debt is included has ceased to subsist under sub-section (5) of section 29;

(ii) except as provided in clause (a) of sub-section (1) of section 29, for the recovery of arrears of rent which became due from a debtor ²[on or after the first day of January, 1940, or] after the date of an application under section 8 in respect of his debts, unless notice of such decree or certificate has been given to the Board in the prescribed manner, and three months have elapsed since such notice was given;

(iii) for the recovery of ³[any sum in respect of any loan other than a loan recoverable as a public demand] incurred by a debtor ² [on or after the first day of January, 1940, or] after the date of an application under section 8 in respect of his debts, until all the amounts payable under the award have been paid or such award has ceased to subsist under sub-section (5) of section 29.

1. Inst. by Ben. Act 2 of 1942.

2. Inst. by Ben. Act 8 of 1940.

3. Words subst. by Ben. Act 8 of 1940.

36. Certain decrees to be treated as nullities :-

Notwithstanding anything contained in any Act, any decree of a Civil Court passed in regard to a debt after the date of an application under section 8 shall be treated as a nullity in so far as

(a) it is inconsistent with any order passed by a Board under subsection (2) of section 13 regarding any debt or with any determination by the Board under section 18 of the principal and the arrears of interest of any debt included in a subsisting award; or

(b) it relates to a debt the documents in respect of which being in the possession or under the control of the creditor have not been produced before the Board and marked by the Board as required by section 14 unless it is proved to the satisfaction of the Civil

37. Attachment of debtors immovable property :-

After receipt of an application under section 8 the Board may attach

the immovable property of the debtor in the prescribed manner and thereupon such property shall be deemed to be under attachment under the provisions of the Code of Civil Procedure, 1908, until such attachment is withdrawn or cancelled by the Board.

37A. Applications for restoration to possession of immovable property sold in decrees or certificate for debt :-

1 .

(1) When any immovable property of any person has been sold after the twelfth day of August, 1935, in execution of a decree of a Civil Court or a certificate under the Bengal Public Demands Recovery Act, 1913, relating to a debt, other than a certificate for the recovery of any amount payable under an award, such person or his heir, executor or administrator may, notwithstanding anything contained in this Act or in any other law for the time being in force or in any agreement, apply for relief under this section, if the following conditions are fulfilled, namely : Section 37A(8) : An application under section 37A(8) to subordinate Judge. Dinajpur was made. The Court at whose order the property was sold was Subordinate Judge's Court, Dinajpur. The former Court has jurisdiction to entertain an application, AIR 1955 NUC (Cal) 2954. It is open to the Civil Court to examine whether the applicant is a person whose immovable property has been sold and is as such entitled to maintain the application under section 37A and if the Civil Court finds against the

(a) if, on the date of the sale, such person was a debtor,

(b) if the sale was held

(i) before an appointment was made under sub-section (2) of section 3 in relation to the Board established for the local area within which such person ordinarily resided at the time of the sale, or

(ii) notwithstanding the issue by such Board of a notice under section 34, or

(iii) before the commencement of the Bengal Agricultural Debtors (Amendment) Act, 1940, in the case of a debt for arrears of rent in respect of which such person was liable jointly with any other person, and

(c) if the property sold was in the possession of the decree-holder

on or after the twentieth day of December, 1939, or was alienated by the decree-holder before that date in any manner otherwise than by

(i) a bona fide gift by a heba whether by registered instrument or not, or

(ii) any other bona fide gift by registered instrument, or

(iii) a bona fide lease for valuable consideration whether by registered instrument or not, or

(iv) any other bona fide transfer for valuable consideration (excepting a mortgage) by registered instrument.

(2) The application referred to in sub-section (1) shall be made to the Board established for the local area within which applicant ordinarily resides and within one year from the date of the commencement of the Bengal Agricultural Debtors (Amendment) Act, 1942, or from the date on which possession of the property was delivered to the decree-holder, whichever is later, notwithstanding that on the date of such application the period of [seven years] from the establishment of the first Board in such local area has already expired; and the Board shall first determine whether the application fulfils the conditions specified in that sub-section and whether it can be entertained.

(3) No Board shall entertain an application under sub-section (2) if such application relates to a debt in respect of which a Civil Court has previously entertained a suit instituted or an application made under the provisions of the Bengal Money-lenders Act, 1940, and no Civil Court shall entertain a suit instituted or an application made under the provisions of that Act if such suit or application relates to a debt in respect of which a Board has previously entertained an application made under the provisions of this section.

(4) If the Board decides that an application made under sub-section (2) fulfils the conditions specified in sub-section (1) and can be entertained by it, and if after an opportunity has been allowed in the manner prescribed, the applicant, the decree-holder and the landlord of the applicant in respect of the property sold in the case where the decree-holder is not such landlord, or where the Board finds that the property sold is subject to any bona fide mortgage executed by the decree-holder before the twentieth day of

December, 1939, the applicant, the decree-holder, such landlord and such mortgagee do not effect an amicable settlement of the debt within such period as the Board may allow, the Board shall, in such manner as may be prescribed, estimate the average annual gross receipts deemed to have been derivable from the property sold during the period beginning on the first day of January, 1934 and ending on the thirty-first day of December, 1938.

(5) After making the estimate referred to in sub-section (4), the Board shall make an award directing the applicant (a) to pay annually in cash to the decree-holder one-half of the value of such average annual gross receipts until the debt is extinguished or until twenty years have expired from the date of the award, whichever is earlier, and (b) in addition, to pay in cash together with each such annual payment as long as such payment continues any amount payable to the landlord of the applicant as current annual rent of the property sold: 45. Words subst. by Ben. Act 8 of 1942. Provided that if the property sold is subject to any bona fide mortgage executed by the decree-holder before the twentieth day of December, 1939, the Board shall in the said award instead of directing the payment referred to in clause (a), direct

(i) that the applicant shall until the principal of the said mortgage in so far as such principal does not exceed the debt referred to in clause (a) of sub-section (7), is paid off or until twenty years have expired from the date of the said award, whichever is earlier, pay to such mortgagee annually and in cash one-half of the value of the average annual gross receipts referred to in clause (a) of this sub-section, and

(ii) that the applicant shall, if after such principal of the said mortgage is paid off anything on account of the debt referred to in clause (a) of sub-section (7) is still outstanding and twenty years have not expired from the date of the said award, continue to pay the amount referred to in clause (a) of this sub-section to the decree-holder until the debt is extinguished or until twenty years have expired from the date of the said award, whichever is earlier.

Explanation. For the purposes of this proviso any payment made to the mortgagee under clause (i) of this proviso shall be deemed to be made towards the debt referred to in clause (a) of sub-section (7).

(6) The Board shall in the case where any improvement has been

effected bona fide by the decree-holder before the twentieth day of December, 1939, by the erection of a building whether of masonry, bricks, stone or any other material whatsoever or by the construction of any tank or well on the property sold or on any portion thereof, allow compensation to the decree-holder for any loss caused to him by the restoration of the possession of such property to the debtor and shall, before making an award under sub-section (5), determine the amount of such compensation in the manner prescribed.

(7) For the purposes of an award made under sub-section (5)

(a) the debt shall be deemed to be

(i) the amount of the decree or certificate in execution of which the property was sold together with all costs of such execution including the cost of delivery of possession of the property to the decree-holder calculated in the manner prescribed, and

(ii) in addition, the compensation, if any, allowed under subsection (6) and in the case of a decree or certificate for arrears of rent, the amount of the rent, if any, payable to the decree-holder in respect of the property between the date of the institution of the suit or the filing of the certificate and the date on which the decree-holder secured possession of the property, after deducting therefrom, in respect of each year during which the decree-holder remained in possession of the property, an amount equal to half the average annual gross receipts estimated under sub-section (4), and a proportionate amount in respect of any portion of any such year; and

(b) in the case to which the proviso to sub-section (5) applies, the debt shall include so much of the principal of the mortgage referred to in that proviso as is payable under clause (i) of that proviso to the mortgagee, and after such an award has been made, the applicant shall be deemed to be a debtor.

(8) The debtor may present a copy of the award made under sub-section (5) to the Civil Court or Certificate Officer at whose order the property was sold, and such Court or Certificate Officer shall thereupon direct that the sale be set aside, that the debtor together with any person who was in possession of the property sold or any part thereof at the time of delivery of possession of such property to the decree-holder as an under-raiyat of the debtor and who has been ejected therefrom by reason of such sale be

restored to possession of the property with effect from the first day of Baisakh next following or the first day of Kartic next following, whichever is earlier, and that any person who is in possession of the property other than a person who was in possession of the property or part thereof as an under-raiyat of the debtor at the time of delivery of possession of such property to the decree-holder shall be ejected therefrom with effect from that date.

(9) A debtor who has been restored to possession of any property under sub-section (8) shall not, so long as there remains unpaid any sum payable under an award made under sub-section (5) or until the expiration of twenty years from the date of such award, whichever is earlier, alienate by sale, lease, gift or other form of transfer, or create any charge upon, such property or any portion thereof and, notwithstanding anything contained in any other law, any alienation or charge so made shall be void and of no effect.

(10) The provisions of sections 28 and 29 shall, so far" as may be, be applicable in the case where the debtor fails to pay by the date fixed any sum payable under an award made under sub-section (5).

(11) When the debt is extinguished, or when twenty years have expired from the date of the award made under sub-section (5), or when such award ceases to subsist under sub-section (5) of section 29, whichever is earlier, the decree or certificate in execution of which the property was sold shall be deemed to have been fully satisfied.

(12) In this section the expression 'decree-holder' includes the certificate- holder and any person to whom any interest in the decree or certificate is transferred by assignment in writing or by operation of law.

1. Sec. 37A inst. by Ben. Act 2 of 1942.

38. Bar to appeal or revision :-

No appeal or application for revision shall lie against any decision or order of or award by a Board except as provided in this Act.

39. Transfer of applications from one Board to another :-

(1) The ¹ [State Government] may authorise the Collector subject to rules made under this Act, to transfer from one Board, to another, for disposal, applications made under section 8.

(2) A Board to which an application is transferred under sub-section (1) may continue the proceedings in connection with the application from the stage which has been reached when the application is transferred.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order, 1950. respectively.

40. Appeals :-

(1) An appeal may be made in the prescribed manner to an Appellate Officer to be appointed by the 46[State Government] against

(a) any decision or order of a Board under this Act or of a Certificate Officer under sub-section (2) of section 28 or section 29,

(b) any award,

(c) the grant of a certificate under section 21, or

(d) any failure on the part of a Board to perform its function under this Act or any abuse by a Board of its powers :

1 Provided that an appeal against any order under section 21, section 22 or section 29, and no other appeal shall be made to an Appellate Officer appointed under this section who has had such judicial experience as may be prescribed.

(2) An appeal under sub-section (1) shall lie if made within thirty days of the date of the decision, order, award or certificate referred to in that sub-section.

(3) The 46[State Government] may make rules regarding the procedure to be followed by the Appellate Officer, and for the control and inspection of his work.

(4) The Appellate Officer may after giving the appellant an opportunity of being heard reject an appeal summarily if he considers that there is no sufficient ground for interfering.

2(4A) The Appellate Officer may stay any order directing the restoration of possession of immovable property to a debtor under clause (c) of sub-section (1) of section 19 pending the disposal of an appeal preferred to him against such order.

(5) If the Appellate Officer does not reject the appeal summarily,

he shall hear the parties, if they appear, and consider any reasons which the Board may submit in regard to the grounds of such appeal, and may then either confirm or modify the decision or order of the Board or direct the Board to take such action as he thinks fit,

3 (6) Subject to the provisions of section 40A the orders of the Appellate Officer shall be final.

(7) An appeal for the purpose of this section includes an application for revision.

(8) No appeal shall lie against a decision or order passed by a Board with the consent of the debtor and the creditor.

1. The proviso and sub-sec. (6) subst. by Ben Act 8 of 1940.

2. Sub-sec. (4A) inst. by Ben. Act 8 of 1940.

3. The proviso and sub-sec. (6) subst. by Ben Act 8 of 1940.

40A. Revision :-

1 .

(1) An application may be made in the prescribed manner for revision by the District Judge of an order made by an Appellate Officer.

(2) An application under sub-section (1) shall lie if made within thirty days of the date of the order referred to in that sub-section.

(3) Every such application shall be made to the Appellate Officer who shall forward to the District Judge the record of the case, the application and any explanation which he may desire to offer in respect of the application.

(4) The District Judge shall consider such papers as may be forwarded to him by the Appellate Officer, but shall not hear the parties or any person appearing on their behalf.

(5) If the District Judge does not reject the application, he may, if he is satisfied that there has been a substantial failure of justice by reason of any illegality or irregularity contained in the order of the Appellate Officer, or for any other sufficient cause either modify or reverse the order or any portion thereof :

Provided that the District Judge may transfer to an Additional District Judge subordinate to him any papers forwarded to him by an Appellate Officer under sub-section (3) and such Additional District Judge shall in respect of the applications so transferred

exercise the same powers and

1. Sec. 40A inst. by Ben. Act 8 of 1940.

41. Power of Appellate Officer to transfer application :-

Omitted by Ben. Act 8 of 1940.

42. Reference to Appellate Officer :-

Subject to rules made under this Act, a Board may, if it thinks necessary, make a reference to the Appellate Officer stating the question upon which his opinion, advice or direction is required and the Appellate Officer shall give his opinion, advice or direction, as the case may be, thereon as soon as possible.

43. Control over Board :-

(1) A Board shall, in all proceedings under this Act, be subject to the control of the ¹[State Government].

(2) Any person appointed by the ¹ [State Government] in this behalf may inspect or cause to be inspected any property, books or documents in the possession or under the control of the Board and require the Board to furnish such statements, accounts, reports, copies of documents or such other information relating to the proceedings and duties of the Board, as he thinks fit to call for.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order, 1937 and the Adaptation of Laws Order. 1950, respectively.

44. Power of Board to review its order :-

Subject to any rules made under this Act

(a) a Board may, on an application made by any person interested ¹[or of its own motion], review any decision or order passed by it and pass such order in reference thereto as it thinks fit,

(b) an Appellate Officer may, on an application made by any person interested ¹ [or of his own motion], review any decision or order passed by him or his predecessor and pass such order in reference thereto as he thinks fit :

Provided that no order shall be varied or reversed unless an opportunity has been given to the person interested to appear and be heard in support of such order,

1. Words inst. by Ben. Act 8 of 1940.

45. Certain Acts not to apply to the proceedings under this Act :-

(1) Except as otherwise provided in this Act, the provisions of

(a) the Indian Evidence Act, 1872, and

(b) the Code of Civil Procedure, 1908,

(2) The procedure to be followed by a Board in any proceedings before it shall, subject to the provisions of this Act, be in accordance with rules prescribed under this Act.

46. Representation of party before a Board :-

1(1) Subject to any rules made under this Act, no legal practitioner as defined in the Legal Practitioners Act, 1879, shall represent any party in any proceedings before a Board, nor shall any other agent, without the permission of the Board, represent any party in any such proceedings.

2 (2) Notwithstanding anything contained in sub-section (1) no person whose name is included in a list of touts prepared and published under sub-section (1) of section 46A shall be permitted to appear as an agent of any party before a Board.

1. Sec. 46 renumbered as sub-sec. (1) by Ben. Act 5 of 1942.

2. Sub-sec. (2) tntst. by Ben. Act 5 of 1942.

46A. Power to frame and publish lists of touts :-

1 .

(1) Every Subdivisional Magistrate may, as regards the Boards within his own jurisdiction, frame and publish lists of persons proved to his satisfaction, by evidence of general repute or otherwise, to be touts, and may, from time to time, alter and amend such lists.

(2) No person's name shall be included in any list until he shall have had an opportunity of showing cause against such inclusion.

(3) Where the name of any person is included in a list framed and published under this section, such person may, within thirty days of the publication of the list in which his name first appears, apply in writing to the District Magistrate, for the removal of his name from such list ; and the orders of the District Magistrate, passed after such inquiry (if any) as he considers necessary, on such application

shall be final.

1. Sections 46A to 46F inst. by Ben. Act 5 of 1942.

46B. Report to Subdivisional Magistrate against suspected touts :-

1 . A Board may report to the Subdivisional Magistrate the name of any person alleged or suspected to be a tout for inclusion in the list referred to in sub-section (1) of section 46A, and the Subdivisional Magistrate may take such action on the report as he thinks fit.

1. Sections 46A to 46F inst. by Ben. Act 5 of 1942.

46C. Hanging up of lists of touts in Boards office :-

1 . A copy of a list of touts referred to in sub-section (1) of section 46A shall be kept hung up in the office of every Board in the subdivision to which the same relates.

1. Sections 46A to 46F inst. by Ben. Act 5 of 1942.

46D. Presumption as to touts :-

1 . Every person whose name is included in a list of touts referred to in sub-section (1) of section 46A, if found within the precincts of the office of any Board without a written permission from the Board, shall be deemed to be acting as a tout for the purposes of section 46F:

Provided that this section shall not apply where such person is a party to a proceeding before such Board or has been directed to appear by any process of such Board.

1. Sections 46A to 46F inst. by Ben. Act 5 of 1942.

46E. Complaint to Subdivisional Magistrate against touts found within precincts of Boards office :-

1 . Any Board may make a complaint in writing to the Subdivisional Magistrate regarding any person included in a list of touts referred to in sub-section (1) of section 46A, who enters or is found within the precincts of the office of such Board, and the Subdivisional Magistrate may thereupon take such action as he thinks fit.

1. Secs. 46A to 46F inst. by Ben. Act 5 of 1942.

46F. Penalty :-

1 . Any person who acts as a tout whilst his name is included in a list of touts referred to in sub-section (1) of section 46A shall be punishable with imprisonment for a term which may extend to

three months, or with fine which may extend to five hundred rupees or with both.

1. Secs. 46A to 46F inst. by Ben. Act 5 of 1942.

47. Registration of awards and certificates :-

(1) Every award and every certificate granted under section 21 or sub-section (5) of section 22, shall be registered under the Indian Registration Act, 1908, by the Chairman of the Board in such manner and within such period as may be prescribed.

(2) For the purpose of the registration under sub-section (1) of an award or a certificate the Chairman shall be deemed to be an officer of Government empowered to execute such instrument within the meaning of section 88 of the Indian Registration Act, 1908.

48. Publication of orders and awards :-

A copy of any order made by a Board under sub-section (2) of section 13, and a copy of any award shall be published in such manner as may be prescribed by the ¹ [State Government].

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order. 1950. respectively.

49. Chairman and members of Boards deemed to be public servants :-

The Chairman and the other members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code.

50. Proceedings deemed to be judicial proceedings :-

All proceedings under this Act shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code.

51. Indemnity :-

No suit, prosecution or legal proceeding whatever shall lie against any Chairman or other member of a Board, Appellate Officer or Certificate Officer in respect of anything in good faith done or intended to be done under this Act.

52. Extension of period of limitation :-

Notwithstanding anything contained in any other Act, when the period of limitation is calculated for any application, suit or appeal regarding a debt which has been the subject of any proceedings

under this Act, the time during which such proceedings continued and the time during which the person interested in such debt was debarred by any provision of this Act from making or instituting the application, suit or appeal, or executing the decree in question, as the case may be, shall be excluded.

53. Negotiability of awarded amounts :-

The right to receive any amount payable under an award shall be assignable in the prescribed manner.

54. Penalties :-

(1) Whoever

(a) intentionally makes any false statement in writing or makes any false statement which has been recorded whether on oath or not before any Board or an Appellate Officer, in any proceeding under this Act;

(b) intentionally produces before a Board any false copy or translation of a document;

(c) falsely personates another and in such assumed character produces any document or makes any admission or statement or does any other act in any proceeding under this Act; or

(d) abets any act punishable under this section; shall, on conviction, be liable to imprisonment for a term which may extend to three years or to fine or to both.

(2) No prosecution for any offence under this section may be commenced, except by, or with the permission of, the Collector.

55. Power to make rules :-

(1) The ¹[State Government] may make rules² for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the ¹[State Government] may make rules to provided for all or any of the following matters, namely :

(a) the maximum amount of debt which can be dealt with under the provisions of this Act;

⁴(b) the fees to be paid for anything done under this Act and the persons by whom and the manner in which such fees shall be paid ;

- (c) the allowances, if any, to be paid to the Appellate Officer, the Chairman and other members of a Board ;
- (d) the office establishment of a Board, the pay, allowances and conditions of service of such establishment;
- (e) the procedure of a Board, and the quorum for a meeting of a Board;
- (f) the forms of application under section 8, of statements of debt under section 11, of awards, of certificates under section 21, of
- (g) the transfer of applications under sub-section (3) of section 8 or sub-section (1) of section 39, and disposal of applications under sub-section (3) of section 8 ;
- (h) the manner of signing and verification of applications under section 8 ;
- (i) the manner of giving notice under sub-section (2) of section 12, sub-section (1) of section 13, ⁵[section 13A, sub-section (2) of section 19A] and sub-section (2) of section 25 ;
- (j) the marking of original documents produced under sub-section (2) of section 14 ;
- (k) the amicable settlement by a Board of debts under section 15 ;
- (l) the summoning and examination by a Board of parties and their witnesses, and the production of documents, under sub-section (1) of section 16 ;
- (m) the determination by a Board under sub-section (2) of section 18 of the amount of the principal of a debt and the amount of interest due thereon ;
- ⁶(ma) the preparation of accounts of receipts and expenses of a creditor under sub-section (5) of section 18 ;
- ⁵(mb) the calculation of the money value of principal or interest referred to in sub-section (6) of section 18 ;
- (n) the settlement of debts by a Board under section 19 ;
- (o) the grant of a certificate under section 21 ;
- (p) the declaration by a Board under sub-section (1) of section 22 that a debtor is insolvent, the sale of his property and the reduction

of his debts ;

(q) the determination of a portion of the immovable property of a debtor as his dwelling house under sub-section 24 ;

(r) the movable property of an insolvent debtor which shall be exempted under sub-section (3) of section 24 from sale ;

(s) the order of payment of the amount referred to in clause (d) of sub-section (1) of section 25 ;

(t) the period within an application under sub-section (3) of section 13 and sub-section (1) of section 28 shall be made ;

(u) the grant of time under sub-section (2) of section 28 for payment of the amount due ;

(v) the distribution of sale proceeds and the proceedings of a Certificate Officer under section 29 ;

(w) the authorities whose approval is required under section 31 ;

(x) the manner of giving notice under section 34 and under section 35;

(y) the manner of attachment of immovable property under section 37;

8(ya) the forms of application under sub-section (2) of section 37A, and the manner of making the estimate referred to in sub-section (4) of that section ;

6(yb) the manner in which an opportunity shall be allowed to effect an amicable settlement under sub-section (4) of section 37 ;

6(yc) the manner in which the amount of compensation shall be determined under sub-section (6) of section 37A ;

6 (yd) the manner of calculation of costs referred to in sub-clause (i) of clause (a) of sub-section (7) of section 37A ;

(z) the transfer and disposal of applications under section 39 ;

(za) the manner of making an appeal under sub-section (1) of section 40;

(zb) the judicial experience required in the case of certain Appellate Officer under proviso to sub-section (1) of section 40 ;

(zc) the procedure of an Appellate Officer and the control and inspection of his work under sub-section (3) of section 40 ;

(zd) the manner of review under section 44 of a decision or order passed by a Board or an Appellate Officer;

(ze) the representation of a party in proceedings before a Board;

(zf) the manner in which and the period within which awards and certificates shall be registered under sub-section (1) of section 47;

(zg) the publication under section 48 of awards and of certain orders; and

(zh) the manner of assignment of an award under section 53.

(3) The power of making rules conferred by clause (b) of sub-section (2) is subject to the condition that the rules be made after previous publication.

1. Words subst. by Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order. 1950. respectively.

2. See Notification No. 9187-L.R., dated the 26.6.36 pub. in the Cal. Gaz. of 1936. part I. page 1575.

4. See Notification No. 9187-L.R dated the 26.6.36 Pub in Cal Gaz. of 1936. part I. page 1625.

5. Inst. by Ben. Act 8 of 1940.

6. Clauses (ma) and (mb) inst. by Ben. Act 8 of 1940.

8. Clauses (ya) to (yd) inst. by Ben. Act 2 of 1942.

56. Penalty for breach of rules :-

In making any rule under this Act the ¹ [State Government] may direct that breach thereof shall be punishable with fine which may extend to fifty rupees and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues.

1. Words subst. by the Government of India (Adaptation of Indian Laws) Order. 1937 and the Adaptation of Laws Order. 1950. respectively.

57. Certain fees recoverable as public demands :-

¹ . The fees which may be prescribed under clause (b) of sub-section (2) of section 55 for an order of determination under sub-section (2) of section 18 and which have not been paid by the date fixed by the Board shall be recoverable as public demands payable to the Collector.

1. Sec. 57 inst. by Ben. Act 8 of 1940.