

Bengal Rent Recovery (Under-Tenures) Act, 1865

08 of 1865

[07 June 1865]

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SCHEDULE 1 :- SCHEDULE

Bengal Rent Recovery (Under-Tenures) Act, 1865

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PREAMBLE

An Act to amend the law for the sale of such under-tenures as by the title-deeds or established usage of the country are transferable by sale or otherwise for the recovery of arrears of rent due in respect thereof.

Whereas doubts have arisen, in consequence of the repeal of section 16 of Regulation VII of 1832,² as to the authority by whom

patni taluks and other saleable under-tenures of the nature defined in clause 1 of section 8 of Regulation VIII of 1819³ are to be sold for arrears of rent due to the proprietor on account thereof;
And whereas it is expedient to amend the law for the sale of under-tenures in satisfaction of decrees for the recovery of such arrears;
It is enacted as follows:-

1. SHORT TITLE-This short title was given by the Amending Act, 1903 (I of 1903).

LEGISLATIVE PAPERS-For Statement of Objects and Reasons, see "Calcutta Gazette", 1865, p. 287.

LOCAL EXTENT-This Act contains no local extent clause, but it would appear from section 3 that it was intended to extend to the same territory as the Bengal Patni Taluks Regulation, 1819 (VIII of 1819), namely, the whole of the former Province of Bengal.

PARTIAL REPEAL IN EASTERN BENGAL.-Sections 4 to 17 and the Schedule appear to be obsolete in Eastern Bengal in consequence of the repeal of the Bengal Rent Act, 1859 (X of 1859), therein by the Bengal Tenancy Act, 1885 (VIII of 1885); but see the saving in section 2(3) of the latter Act.

2. Ben. Reg. VII of 1832 was finally repealed by the Bengal Civil Courts Act, 1871 (VI of 1871).

3. The Bengal Patni Taluks Regulation. 1819.

1. "Collector" defined :-

The word "Collector" as used in this Act, includes ¹[any officer vested with the powers of a Collector of a district].

² XXX XXX XXX

1. Substituted by the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947) for "all officers exercising the full powers of a Collector of a district".

2. The number clause, which was repealed by Section 3 and the Third Schedule of the Amending Act, 1903 (I of 1903), is omitted.

2. [Repealed] :-

[Laws repealed.]-Repealed by the Repealing Act, 1873 (XII of 1873).

3. Sale by whom conducted :-

The sale for the recovery of arrears of rent of patni taluks and other saleable under-tenures of the nature defined in clause 1 of section

8 of Regulation VII of 1819¹ shall be conducted by the Collector of land-revenue in whose jurisdiction, as defined by Act VI of 1853,² the lands lie ³[or by such other officer not below the rank of a Deputy Collector as may be duly authorised in this behalf by the State⁴ Government]; and all acts preparatory to, or connected with, the sale of such under-tenures as aforesaid which, by Regulations VIII of 1819¹ and I of 1820⁵ the Judge is required to perform, shall be performed by the said Collector ⁶[or other officer as aforesaid].

1. The Bengal Patni Taluks Regulation, 1819.

2. The Rent Recovery Act, 1853.

3. Inserted by the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

4. The word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

5. The Bengal Patni Taluks Regulation, 1820.

6. Added by the West Bengal Laws (Amendment and Repeal) Act, 1947 (West Ben. Act XII of 1947).

4. Publication of notice of sale :-

¹[Whenever a decree for an arrear of rent, due in respect of an under-tenure saleable under the provisions of section 105 of Act X of 1859², shall have been obtained, and an application for the sale of the said under-tenure under the same section shall have been made and allowed, the Collector in whose Court the decree is in course of execution shall thereupon cause to be hung up in his own Court and in that of the Collector and the Judge of the district within which the land comprised in the under-tenure to be sold is situated, and to be affixed on some conspicuous place on the land and in the town or village or nearest to which the said land is situated, a notice for the sale of the said under-tenure on some fixed date not less than 20 days from the hanging up of the said notice in the Court in which the decree is in course of execution.]

1. As to the repeal of sections 4 to 6 in Eastern Bengal, see footnote 1 on page 27, ante.

2. The Bengal Rent Act, 1859.

5. Contents of notice of sale :-

¹[The said notice shall specify, in the words issued in the plaint in the suit in which the decree was made, the name of the village, estate and pargana, or other local division, in which the land comprised in the said under-tenure is situated, the yearly rent payable under the said under-tenure, and the gross amount recoverable under the said decree.]

1. As to the repeal of sections 4 to 6 in Eastern Bengal, see footnote 1 on page 27, ante.

6. How sale may be stopped :-

¹[If the sum due under the decree, together with interest to date of payment and all costs of process, be paid into Court at any time before the sale commences, whether by the defaulting holder or the under-tenure or any one on his behalf, or any one interested in the protection of the under-tenure, such sale shall not take place; and the provisions of section 13 of Regulation VIII of 1819², for the recovery of sums paid by other than the defaulting-holder of the under-tenure to stay the sale of the under-tenure, shall be applicable to all similar payments made under this section.]

1. As to the repeal of sections 4 to 6 in Eastern Bengal, see footnote 1 on page 27, ante.

2. The Bengal Patni Taluks Regulation, 1819.

7. Sale to highest bidder :-

¹[The under-tenure shall be sold to the highest bidder in open Court.]

1. As to the repeal of sections 7 to 11 in Eastern Bengal, see footnote 1 on page 27, ante.

8. Deposit by purchaser :-

¹[The party who shall be declared to be the purchaser shall be required to deposit immediately, in cash or Government currency notes, twenty-five per cent. of the amount of his bid; and, in default to such deposit, the under-tenure shall be put up again and sold forthwith, or on the next ensuing office-day.]

1. As to the repeal of sections 7 to 11 in Eastern Bengal, see footnote 1 on page 27, ante.

9. Deposit forfeited if balance of purchase-money not paid up :-

¹[The full amount of the purchase-money shall be made good by the purchaser before sunset of the eighth day from that on which the sale of the under-tenure took place, reckoning that day as one of the eight; or, if the eighth day be a Sunday or other close holiday, then on the first office day after the eighth day; and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to the Government, and the under-tenure shall be re-sold, and the defaulting purchaser shall forfeit all claims thereto or to any part of the sum for which the said under-tenure may be subsequently sold.

If the proceeds of the sale which may be eventually completed be less than the price bid by the defaulting purchaser, the difference shall be leviable from him under the law for enforcing the payment of money in satisfaction of a decree for arrears of rent.]

1. As to the repeal of sections 7 to 11 in Eastern Bengal, see footnote 1 on page 27, ante.

10. Provisions as to sales to apply to resale :-

¹[The provisions of all the sections of this Act with regard to sales shall also be applicable to all re-sales under this Act which may be rendered necessary by the default of any purchaser.]

1. As to the repeal of sections 7 to 11 in Eastern Bengal, see footnote 1 on page 27, ante.

11. Certificate and possession to be given to purchaser on payment in full :-

¹[When the purchase-money shall have been paid in full, the officer holding the sale shall give the purchaser, certificate in the form prescribed in the Schedule annexed to this Act; and shall further, on the purchaser making application and depositing the requisite costs, depute an officer or amin to put him in possession of the under-tenure in the customary manner, and to publish the fact of the purchase to the cultivators of the lands comprised therein.]

1. As to the repeal of sections 7 to 11 in Eastern Bengal, see footnote 1 on page 27, ante.

12. Proceeds of sale how dealt with :-

¹[From the proceeds of the sale of the under-tenure, the officer holding such sale shall repay to the judgment-creditor the necessary expenses incurred by him in procuring it; and, after satisfying the decree in execution of which the sale was made, shall hold the residue, if any, in deposit on account of the defaulting holder of the under-tenure.]

1. As to the repeal of sections 12 to 16 in Eastern Bengal, see footnote 1 on page 27, ante.

13. Appeal :-

¹[An appeal shall lie to the Collector from any proceedings of a Deputy or Assistant Collector, if made within fifteen days; and to the Commissioner from any original proceedings of a Collector under this Act if made within thirty days from the date of the sale; but no proceedings under this Act shall be reversed or modified in appeal, except upon the ground of irrelevancy of the law, or of such an irregularity in procedure as, in the opinion of the appellate authority, has caused injury to the interests of one of the parties to the suit in which the decree was passed.]

1. As to the repeal of sections 12 to 16 in Eastern Bengal, see footnote 1 on page 27, ante.

14. Power of revision :-

¹[No appeal as of right shall lie from any order passed in appeal under this Act; but a Commissioner in any case in which an appeal has been heard by a Collector, and the Board of Revenue in any case in which an appeal has been heard by the Commissioner, may call for the record at any time within three months from the date of the order passed in appeal, and pass thereon such orders as they may think proper.]

1. As to the repeal of sections 12 to 16 in Eastern Bengal, see footnote 1 on page 27, ante.

15. Recovery by purchaser of purchase-money if sale set aside :-

¹[If any sale of an under-tenure shall, under either of the two preceding sections, be set aside, the purchaser shall be entitled to

receive back the purchase-money with or without interest, and in such manner as the appellate or revising authority may in each instance direct.

Any order for the recovery of the purchase-money or interest, passed by such appellate or revising authority as aforesaid, may be enforced by the process in force under decrees for the recovery of arrears of rent.]

1. As to the repeal of sections 12 to 16 in Eastern Bengal, see footnote 1 on page 27, ante.

16. Purchaser to acquire the under-tenure with certain exceptions, free of incumbrances :-

¹[The purchaser of an under-tenure sold under this Act shall acquire it free from all incumbrances which may have accrued thereon by any act of any holder of the said under-tenure, his representatives or assignees, unless the right of making such incumbrances shall have been expressly vested in the holder by the written engagement under which the under-tenure was created or by the subsequent written authority of the person who created it, his representatives or assignees:

Provided that nothing herein contained shall be held to entitle the purchaser to eject khudkast raiyats or resident and hereditary cultivators, nor to cancel bona fide engagements made with such class of raiyats or cultivators aforesaid by the late incumbent of the under-tenure or his representatives, except it be proved, in a regular suit, to be brought by such purchaser for the adjustment of his rent that a higher rent would have been demandable at the time such engagements were contracted by his predecessor.

Nothing in this section shall be held to apply to the purchase of a tenure by the previous holder thereof, through whose default the tenure was brought to sale.]

1. As to the repeal of sections 12 to 16 in Eastern Bengal, see footnote 1 on page 27, ante.

17. Zamindar how to proceed if purchaser do not register :-

¹[The purchaser of an under-tenure sold under this Act shall apply to the zamindar or other landholder, within fifteen days from the day of sale, to have his name registered in the zamindar or other landholders books as the purchaser; and shall execute a kabuliyat on the same terms and conditions on which the under-tenure was

held by the defaulter; and if such application be not made within fifteen days, it shall be lawful for the zamindar or other landholder to sue the said purchaser under the provisions of clause 1 of section 23 of Act X of 1859.^{2]}

1. As to the repeal of section 17 and the Schedule in Eastern Bengal, see foot-note 1 on page 27, ante.

2. The Bengal Rent Act, 1859.

18. [Repealed] :-

[Indemnity.]-Repealed by the Repealing Act, 1873 (XII of 1873).

SCHEDULE 1

SCHEDULE

**1 SCHEDULE
(Referred to in section 11)**

I certify that A. B. has purchased, under Act 8 of 1865, the under-tenure (as specified in the notice of sale), and that his purchase took effect on the day of (being the day after that fixed for the last day of payment).

(Signed) CD.

Collector.

1. As to the repeal of section 17 and the Schedule in Eastern Bengal, see foot-note 1 on page 27, ante.