

EXEMPTIONS FROM LAND REVENUE (NO.1) ACT, 1863

2 of 1863

[9th April, 1863]

CONTENTS

1. Power to authorise and guarantee continuance in perpetuity of land to revenue-free holders on terms and conditions agreed to
2. Such lands subject to enactments (in Sec. 3) to be heritable and transferable property of holders and continued in perpetuity, subject to payment to State Government of nazrana and quit-rent
3. Adjustment so far as right of State Government to levy nazrana and quit rent, binding on holder and rightful owner and assigns
4. Such lands, so far as rights of State Government are concerned, to be recognised as heritable and transferable property of actual and legal successors by inheritance and heirs by adoption
5. Provisions in respect of amount of nazrana when it exceeds ten rupees
6. Holders asserting right to exemption may claim trial of, and adjudication upon, their title according to Act XI of 1852
7. When holders demand trial and adjudication security to be furnished.
8. Lands held on behalf of religious or charitable institutions
9. Power to invest officers with authority of Inam Commissioners and their assistants
10. Burden of proof in cases of inquiries under Sec. 6
11. Collector or other officer may serve notice on holder of land asking whether or not he demands inquiry under Sec. 6
12. .
13. Appeal from proceedings of officers making adjustment to be made to State Government
14. .
15. Quit-rents, nazranas, how levied
16. .

EXEMPTIONS FROM LAND REVENUE (NO.1) ACT, 1863

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An Act to facilitate the adjustment of unsettled claims to exemption from the payment of Government land-revenue, and to regulate

the succession to, and transfer of, lands wholly or partially exempt from the payment of such revenue in those parts of the Bombay Presidency which are subject to the operation of Act XI of 1852 of the Legislative Council of India. Preamble.-Whereas, it has been deemed expedient to provide for the final adjustment, summarily, of unsettled claims to exemption from the payment of land-revenue, and to fix the conditions which shall secure, in certain cases, the recognition of titles to such exemption with respect to succession and transfer in those districts of Bombay Presidency to which the operation of Act XI of 1852 of the Legislative Council of India extends; It is hereby enacted as follows :-

1. Power to authorise and guarantee continuance in perpetuity of land to revenue-free holders on terms and conditions agreed to :-

Clause 1st-When the holders of lands in any of the said districts (except as is excepted in clause second of this section) held either wholly or partially exempt from the payment of Government land-revenue, whose title to exemption has not yet been formally adjudicated, shall have consented to submit to the terms and conditions hereinafter described in preference to being obliged to prove their title to the exemption enjoyed by them, it shall be lawful for the State Government to finally authorize and guarantee the continuance, of the said land to said holders, their heirs and assigns upon the said terms and subject to the said conditions.

Exceptions-Clause 2nd.-The excepted cases to which the authority of adjustment and guarantee, vested in the State Government by this provision, shall not extend, are the cases of lands held as follows :- (1) lands held under treaty; (2) lands granted or held as jagirs or saranjams, or on similar political tenure: (3) lands held for service; and (4) lands already formally adjudicated to be not continuable hereditary.

2. Such lands subject to enactments (in Sec. 3) to be heritable and transferable property of holders and continued in perpetuity, subject to payment to State Government of nazrana and quit-rent :-

When the State Government shall have finally authorised and guaranteed the continuance, in perpetuity, to the holders, their heirs and assigns, of lands wholly or partially exempt from the ordinary payment of annual land- revenue, whose title to exemption has not already been formally adjudicated and who have

dispensed with an inquiry into such title, the said lands shall (subject to the enactments contained in Section 3) be the heritable and transferable property of the said holders, their heirs and assigns, without restriction as to adoption, collateral succession or transfer: and such lands shall thenceforth be continued, in perpetuity subject to an annual payment to the State Government. Such payment shall consist of- (1) a fixed annual payment as nazrana, in commutation of all claims ¹ [of the government] in respect of succession and transfer, and shall be calculated at the rate of the one anna for each rupee of assessment; and (2) of a quit-rent equal to one-fourth of the assessment. The said assessment shall be ascertainable under the following rules:-

Rule 2.-The assessment of lands of such an exceptional character as not to be assessable under the revenue-survey rules shall be in the discretion of the revenue-officers of the Government, which discretion shall be guided, so far as may be, by the rate at which similar land in the same district belonging to the Government is let, due regard being had by the said revenue-officers to all equitable considerations affecting such lands. Shares of the revenues of villages (such as amals) shall be assessed for the purpose of this Act at the value thereof, calculated at the average shown by such accounts of actual realisations by the holders as are forth-coming for the ten years immediately preceding the promulgation of these rules.

Rule 3.-Lands for which a judi, salami or other quit-rent or land tax under whatever denomination, is already paid to the State Government, instead of being liable to only one-fourth of the assessment, shall in addition to the annual amount of such judi, salami, quit-rent or other tax aforesaid, be liable to a further annual quit-rent, equal to one fourth of the sum by which the annual or average annual amount of such judi, salami or other quit rent or tax aforesaid may fall short of the assessment.

Rule 5.-The whole of the exempt lands found in the possession of each holder shall be continued according to the provisions of this section (Sec 2) and the rules thereunto annexed, and subject to the enactments contained in Sec 3.

1. The word "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. 3 of 1886), Schedule B. This Schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bom. 1 of 1904).

3. Adjustment so far as right of State Government to levy nazrana and quit rent, binding on holder and rightful owner and assigns :-

Any adjustment made by the State Government with the holder of land held wholly or partially exempt from the payment of land revenue, in accordance with Section 2¹[***] and the rules annexed to the said section, shall so far as the right of the State Government to levy the nazrana and the annual quit-rent mentioned in the said section is concerned, not only be binding upon such holder, his heirs and assigns but also in the rightful owner, his heirs and assigns, whosoever such rightful owner may be : Savings of rights and remedies of rightful owner, his heirs and assigns.- Provided always that the said rightful owner, his heirs and assigns, shall not, by this Act or anything therein contained, be deprived of any rights or remedies¹ [* * *] to which he or they would be entitled against the said holder, his heirs or assigns for the recovery of the said lands or any part thereof if this Act not been passed; and in the event of rightful owner, his heirs or assigns recovering the said lands or any part thereof, from the said holder, his heirs or assigns, and declaration, guarantee or adjustment made by the State Government under, or in accordance with, sections 1 and 2 [***] and the rules annexed to the said Section 2 with respect to the said lands while the same were in the possession of the said holder, shall accrue to the benefit of the said rightful owner, his heirs and assigns.

1. The word "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. 3 of 1886), Schedule B. This Schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bom. 1 of 1904).

4. Such lands, so far as rights of State Government are concerned, to be recognised as heritable and transferable property of actual and legal successors by inheritance and heirs by adoption :-

Lands held partially or wholly exempt from the payment of land-revenue, and already formally adjudicated to be so continuable hereditarily in perpetuity, may, at the option of the holder, the henceforth recognised, so far as the rights of the State Government are concerned, as the heritable and also the transferable property, not only of the actual descendants of the person to whose descendants inheritance may have been limited by the terms of the said adjudication, but also of all his legal successors by inheritance,

including heirs by collateral successions and heirs by adoption, and their assigns; and thereafter the right of the State Government or its officers to question the title to possession, or to exemption from the payment of land-revenue, of any holder of the said land already so adjudicated to be heritable in perpetuity on the ground that he does not belong to the family to which title is restricted by the adjudication, is hereby abrogated; Land adjudicated to be heritable to be held subject to payment of additional nazrana.-and, in any case of recognition as in this section aforesaid, lands already adjudicated to be heritable, and to which such recognition applies, are henceforth to be held subject to the payment to the State Government of annual nazrana calculated at the rate of one anna for each rupee of the assessment of the land, ascertainable as provided in the rules of Section 2 [***], which nazrana is to be in addition to the partial assessment (if any) ordered by the terms of the formal adjudication under which the land has already been declared to be continuable : Proviso.-Provided, however, that the assent of the holder of all lands adjudicated as aforesaid to the acceptance of such recognition and the payment of such nazrana as in this section as aforesaid shall be assumed, unless such holders shall, within three (3) [* * *] months from the date on which this act comes into operation, decline to accept such recognition as aforesaid by a notice given in writing to the Collector of the district.

5. Provisions in respect of amount of nazrana when it exceeds ten rupees :-

6. Holders asserting right to exemption may claim trial of, and adjudication upon, their title according to Act XI of 1852 :-

Clause I st--When lands are held wholly exempt from the payment of land-revenue, upon the title to which exemption there has not been any formal adjudication, the holders asserting a right to such exemption shall be at liberty, on the conditions herein after described, to claim a trial of, and adjudication upon, their title, according to Act XI of 1852, so far as the same is not altered, modified or superseded by, or inconsistent with, the provisions of this Act.

Effect of exemption not being established.-Clause 3rd-In the event, upon such inquiry as aforesaid, of there being a failure by the holders to establish title to exemption from payment of land-revenue, the lands to which he has failed to establish such title

shall forthwith become and be liable to payment of annual revenue at the full assessment.

7. When holders demand trial and adjudication security to be furnished. :-

Refund of assessment with interest if holder prove title.-Clause 2nd-If the inquiry result in the establishment of the asserted title the holder, or, in the event of his decease, his heir who succeeds to possession of the said lands, shall be entitled to a refund of any assessment levied under the provisions of this section, pending such inquiry of aforesaid and to interest thereon at the rate of five per cent per annum.

Full amount of land-revenue to be paid if holder fail to prove title.-Clause 3rd-If the result of the inquiry be that the holder fail to prove his title, the full amount of land-revenue assessable on the lands from the date of the holder's demand for trial shall be levied from the said holder and his security, or either, any sums levied pending adjudication as aforesaid being taken in account of the same.

8. Lands held on behalf of religious or charitable institutions :-

Clause 1st-Lands held wholly or partially exempt from the payment the land-revenue on behalf of religious or charitable institutions shall, if already formally adjudicated to be permanently so continuable, be so continued wholly or partially exempt from such payment of land-revenue as aforesaid according to the terms of the adjudication.

Clause 3rd-It is, however, hereby declared that lands held on behalf of religious or charitable institutions wholly or partially exempt from the payment of land-revenue, shall not be transferable from such institutions either by assignment, sale (whether such sale be judicial, public or private), gift, devise or otherwise howsoever, and no nazrana shall be leviable on account of such lands.

9. Power to invest officers with authority of Inam Commissioners and their assistants :-

It shall be lawful for the State Government to appoint officers to carry out the inquiries provided for in this Act in the districts in which Act XI of 1882 has the force of law, and to invest any officer

so appointed with the authority conferred by the above Act on Inam Commissioners and Assistant Inam Commissioners.

10. Burden of proof in cases of inquiries under Sec. 6 :-

Whensoever any person, or persons, holding lands wholly or partially exempt from the payment of land-revenue, upon the title to which exemption there has not been any formal adjudication, shall (whether such alleged title be founded on grant or prescription or any other ground whatsoever) demand an inquiry under Section 6¹ [* * *] into such title, the burden of proof of such title shall, in every instance, lie and be cast exclusively upon the person or persons holding, or claimed to hold, such lands so wholly or partially exempt from the payment of land-revenue as aforesaid, notwithstanding any existing usage, law. Regulation, Act or Statute in anywise to the contrary; and it shall not be lawful for any Civil Court [* * *] to place the burden of proof upon the Government, or upon the officer or officers representing the Government of a right to levy the ordinary land-revenue upon the lands the subject of any such inquiry as aforesaid, and it shall in every instance be presumed, until the contrary is distinctly proved, that the Government has the right to levy such ordinary land-revenue upon the lands the subject of any such inquiry as aforesaid. It is, however, hereby further provided that nothing in this section contained shall disentitle the Government, or its duly authorised officers, to produce and give evidence in rebuttal or disproof of the alleged title to exemption aforesaid, if it seems to the Government, or its duly authorised officers, desirable or necessary to produce and give such evidence.

1. The word "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. 3 of 1886), Schedule B. This Schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bom. 1 of 1904).

11. Collector or other officer may serve notice on holder of land asking whether or not he demands inquiry under Sec. 6 :-

Service on non-resident persons.-Clause 4th-If such persons as last aforesaid be not resident within the [district], the notice shall be served upon any person acting for the aforesaid in respect of lands.

Service when several persons hold lands jointly.-Clause 5th-When more persons than one hold jointly lands wholly or partially exempt from land-revenue service of notice upon any one of them shall In

every case be sufficient.

When no person acts for holder and holder cannot be found.-Clause 7th-If there be not any person acting for the holder, and if he cannot be found the notice shall be served upon some one of the actual occupants of the land (if any), and a copy of such notice shall be posted in the office of the chief native revenue-officer of the district, and in the chauri or most public place In the village where the lands are situate.

Claimant allowed benefit of evidence to be found in Government records in custody of such public officer.-Clause 12th-Any claimant demanding an inquiry into his title shall be allowed the benefit of any evidence to be found In the records of the present or any former Government in custody of such public officer as is authorised by the State Government to have charge or custody of the same, and such public officer shall be bound to search for and to produce the same on application made to him.

12. . :-

Validation of prior notices, orders and settlements.] Rep. Act XVI of 1895.

13. Appeal from proceedings of officers making adjustment to be made to State Government :-

When any adjustment of a claim or claims to total or partial exemption from land-revenue has been made by the State Government, or any duly authorised officer of the Government, under the second fifth and eight sections ¹ [* * *] [* * *] any appeal from or against the proceedings, orders or acts of the officers of the Government engaged in making any such adjustment shall be made to the State Government, or to such officer or officers as may be appointed by the State Government to take cognizance of such appeals, and shall not be recognisable by any other authority.

1. The word "of this Act" were repealed by the Bombay General Clauses Act, 1886 (Bom. 3 of 1886), Schedule B. This Schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bom. 1 of 1904).

14. . :-

Bar of suits against Government officers.] Rep. Act X of 1876.

15. Quit-rents, nazranas, how levied :-

All quit-rents nazranas succession duties, transfer duties and

forfeitures payable under this Act, shall be levied in the manner in which ordinary land-revenue is now recoverable, and the claim of the State Government to such quit rents and nazranas, and to all forfeitures provided by this Act, shall have precedence over any other debt, demand or claim whatsoever, whether in respect of mortgage, judgment, decree, execution or attachment or otherwise howsoever, against the lands, or the holder or holders thereof.

16. . :-

(A) [Number and gender.] Rep. Bombay III of 1886.

(B) Interpretation-clause.-The word "lands" shall for the purposes of this Act, be understood to include villages, portions of villages, shares of the revenue thereof, and landed estate of every description.

(C) "Political tenure" is tenure created from, or dependent upon, political considerations, the existence of which shall be determined by the Government.

(D) The phrase "lands held for service" shall include lands specially granted or held or continued, normally for the performance of service, whether that service be actually performed or not, and lands granted, held or continued, partly in consideration of past service, and partly for the performance of prospective service, but shall not include lands granted in consideration of past service only; and it is to be understood that the Government shall be competent to determine any question that may arise in giving effect to this Act, as to whether or not any lands are held for service.

(E) formal adjudication shall be held to mean final adjudication under any Regulation of the Bombay Government, or under Act XI of 1852, in cases to which the same were applicable, and in other cases final adjudication after inquiry by the State Government or some authorised officer thereof.

(F) For the purposes of this Act, the word "holder" shall be taken to signify the person who, by himself, his tenants, sub-tenants or agents, is in possession of the land held wholly or partially exempt from land-revenue assessment, and shall include a mortgage in possession as aforesaid.

(G) The word "transfer" shall, for the purposes of this Act, be taken to mean the permanent alienation of land, be assignment, gift,

sale, deed or other instrument or otherwise however, and also mortgage of the same under which possession shall have passed or is to pass to the mortgage.