

Madras Debt Conciliation Act, 1936

11 of 1936

[28 April 1936]

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PREAMBLE

An Act to make provision for the setting up of Debt Conciliation Boards to relieve Agriculturists from indebtedness.

WHEREAS it is expedient to relieve agriculturists from indebtedness by amicable settlement between them and their creditors;

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act;

It is hereby enacted as follows:--

1. For Statement of Objects and Reasons, see Fort St. George Gazette, dated the 13th March 1934, Part IV, pages 100-102.

This Act was extended to the merged State of Pudukkottai by section 3 of, and the First Schedule to, the Madras Merged States (Laws) Act, 1949 (Madras Act XXXV of 1949).

1. Short title, extent and commencement :-

(1) This Act may be called the Madras Debt Conciliation Act, 1936.

(2) It extends to the whole of the Presidency of Madras.

(3) It shall come into force on such *date as the ¹[State Government] may, by notification, appoint.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

* Came into force on the 1st January 1937.

2. Definitions :-

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

(a) landholder means a person holding land under a Sanad-i-Milkiyat-i-istimrar, a zamindar, shrotriyamdar, jagirdar or inamdar,

a person farming the land revenue under Government, and a holder of any land under ryotwari settlement or in any way subject to the payment of revenue direct to Government;

(b) tenant means a ryot having a permanent right of occupancy in his holding and includes a ¹[kanamdar in the Gudalur taluk of the Nilgiri district;]

(c) agriculture includes horticulture, the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees, sericulture and the growing of fruits, vegetables and the like;

(d) board means a Debt Conciliation Board established under sub-section (1) of section 3;

(e) creditor means a person to whom a debt is owing and includes a co-operative society;

(f) debt means all liabilities owing to a creditor, in cash or kind, secured or unsecured, whether payable under a decree or order of a civil court or otherwise, and whether mature or not but shall not include arrears of wages, land revenue or anything recoverable as an arrear of land revenue, rent as denned in the Madras Estates Land Act, 1908 (Madras Act I of 1908), or any money for the recovery of which a suit is barred by limitation;

(g) debtor means a person --

(i) who earns his livelihood mainly by agriculture or who is an occupancy tenant or landholder whether he cultivates the land personally or otherwise; and

(ii) whose debts exceed one hundred rupees;

(h) prescribed means prescribed by rules made under this Act;

(i) secured debt includes mortgage debt or any debt for which there is security, lien or charge on immovable property created by deed, statute or otherwise;

(j) secured creditor means a creditor who holds for his debt a security by way of mortgage, lien or charge on immovable property created by a deed, statute or otherwise.

1. These words were substituted for the words "Kanamdar in Malabar and a Mulgeni tenant in South Kanara" by clause 3 of, and the Schedule to, the Madras Adaptation of Laws Order, 1957.

3. Establishment and constitution of boards :-

(1) The ¹[State Government] may establish a Debt Conciliation Board for any district or part of a district. Such board shall consist of a chairman and two members appointed by the Government. The chairman shall be a person who holds or has held an office not lower in rank than, that of a Subordinate Judge or a Deputy Collector. One at least of the members, shall be a non-official. The ¹[State Government] may for reasons to be recorded in writing, cancel the appointment of the chairman or any member of the board or dissolve any board and from the date of such dissolution the board shall cease to exist.

(2) The chairman and every member of a board so established shall be appointed for a term not exceeding three years. Such chairman or member may on the expiration of the period for which he has been, appointed, be again appointed for a further term not exceeding three years.

(3) A board shall have such quorum as may be prescribed.

(4) Where the chairman and members of a board are unable to

agree, the opinion of the majority shall prevail. Where the board is equally divided, the chairman shall have ²(and exercise) a casting vote.

(5) When a board is dissolved or otherwise ceases to exist the ³[State Government] may, at any time establish another board for the area for which the former board was established and may declare the board newly established to be the successor in office of the board which has ceased to exist and such board shall exercise all the powers under the Act.

1. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for the word "Provincial" by the Adaptation Order of 1950.

2. These words were inserted by section 3(I) of, and the Second Schedule to, the Madras Repealing and Amending Act, 1951 (Madras Act XIV of 1951).

3. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State " was substituted for "Provincial" by the Adaptation Order of 1950.

4. Application for settlement between debtor and his creditors :-

(1) A debtor may make an application for the settlement of his debts to the board established for the local area within which he ordinarily resides, or if no board has been established for that local area, to the board established for any local area in which he holds immovable property, if any, but he shall not apply to more than one board.

(2) Unless the 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 for the settlement of the debts of the same debtor are made to more than one board, such applications shall, in accordance with rules made under this Act, be transferred to and dealt with by one board as one single application.

4A. Power of Government to prohibit receipt of fresh applications and direct certain applications not to be further proceeded with :-

¹[²[(1)] Notwithstanding anything contained in this Act, the ³(State) Government may direct--

(a) that after a specified date, a board shall not receive applications under section 4; and

(b) that applications under section 4 received by the board after a date (whether before or after the issue of a direction under this clause) fixed in this behalf and not finally disposed of by it on or before the date specified under clause (a) shall not be further proceeded with.

The applications referred to in clause (b) shall be deemed to have been dismissed.]

⁴[(2) All applications received by a board and not finally disposed of by it before it ceased to exist, shall be deemed to have been dismissed on the date on which this sub-section comes into force.

Explanation.--Nothing contained in this sub-section shall apply to applications deemed to have been dismissed under sub-section (1).]

1. This section was inserted by section 2 of the Madras Debt Conciliation (Second Amendment) Act, 1943 (Madras Act XXXI of 1943) re-enacted permanently by section 2 of, and the First Schedule to, the Madras Re-enacting and Repealing (No. I) Act,

1948 (Madras Act VII of 1948).

2. Section 4-A was re-numbered as sub-section (1) and sub-section (2) was added by section 2 of the Madras Debt Conciliation (Amendment) Act, 1946 (Madras Act V of 1946), re-enacted permanently by section 2 of, and the First Schedule to, the Madras Re-enacting and Repealing (No. I) Act, 1948 (Madras Act VII of 1948).

3. This word was substituted for the word "Provincial" by the Adaptation Order of 1950.

4. Section 4-A was re-numbered as sub-section (1) and sub-section (2) was added by sections of the Madras Debt Conciliation (Amendment) Act, 1946 (Madras Act V of 1946), re-enacted permanently by section 2 of, and the First Schedule to, the Madras Re-enacting and Repealing (No. I) Act, 1948 (Madras Act VII Of 1948).

5. Verification of application :-

Every application to the board shall be in writing and shall be signed and verified in the manner proscribed by the Code of Civil Procedure, 1908 (Central Act V of 1908), for signing and verifying plaints.

6. Particulars to be stated in application :-

(1) Every application made by a debtor to a board shall contain the following particulars, namely:--

(a) a statement that the debtor is unable to pay his debts;

(b) the place where he resides;

(c) the amount and particulars of all claims against him together with the names and residences of his creditors so far as they are known to, or can by the exercise or reasonable care and diligence be ascertained by him; and

(d) particulars of the debtors property, both movable and immovable (including claims due to him), a specification of the

value thereof and of the places where the same may be found and details of any mortgage, lien or charge subsisting thereon.

(2) Every application made by a creditor shall contain the following particulars, namely:--

(a) the place where the debtor resides; and

(b) the amount and particulars of his claim against such debtor.

7. Rejection of application :-

The application shall be rejected if it does not comply with any of the requirements mentioned in sections 5 and 6.

The rejection of an application under this section shall not preclude the applicant from making a fresh application.

8. Procedure on receipt of application :-

(1) On receipt of an application under section 4 the board shall unless it rejects the application under section 7 pass an order fixing a date and place for hearing the application.

(2) Notice of the order under sub-section (1) shall be sent by registered post to the debtor and creditors.

(3) If the application is made by a creditor, the debtor shall, on his appearance, furnish the particulars mentioned in sub-section (1) of section 6 and notice shall be sent to all creditors specified by him.

9. Dismissal of application :-

An application under section 4 may be dismissed by the board at any stage of the proceedings--

(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, the applicant fails to pursue his application with due diligence:

Provided that, when such applicant is a creditor, the board, instead of dismissing such application, may substitute the debtor or any other creditor who shall thereafter be deemed to be the applicant for the purposes of this Act; or

(c) if the application includes a claim which, in the opinion of the board, is collusive and intended to defraud any creditor.

10. Notice calling upon Creditors to submit statements of debts :-

(1) If, after examining the debtor, it is in the opinion of the board desirable to attempt to effect a settlement between him and his creditors, a notice shall be issued and served or published in the manner prescribed, calling upon every creditor of the debtor to submit a statement of debts owed to such creditor by the debtor. Such statement shall be in writing and shall be signed and verified in the manner prescribed by the Code of Civil Procedure, 1908 (Central Act V of 1908), for signing and verifying claims and shall be submitted to the board within two months from the date of service or publication of the notice as the case may be:

Provided that, if the board is satisfied that any creditor was, for good and sufficient cause, unable to comply with such directions, it may extend the period for the submission of his statement of the debt owed to him.

¹[(2) If no statement is submitted by a creditor in compliance with the provisions of sub-section (1) in respect of debts owed to him by the debtor, then, subject to the provisions of sub-section (3) --

(a) in the case of any debt included in the particulars furnished by the debtor under sub-section (1) of section 6 or sub-section (3) of section 8, the creditors shall not be entitled, in any proceeding before a board or civil court or on any other occasion, to dispute the accuracy of the, said particulars in regard to such debt; and

(b) every other debt shall be deemed for all purposes and on all occasions to have been duly discharged.]

(3) If a creditor proves to the satisfaction of the board or a civil court that the notice was not served on him or that he had no knowledge of the publication thereof or that for some other sufficient reason, he was unable to submit the statement, the board or court may ²(remove the disability imposed by clause (a) of sub-section (2) in regard to the debts referred to in that clause and revive the debts referred to in clause (b) of that sub-section), if the creditor files an application in that behalf within two months after he becomes aware of the proceedings taken under this section:

Provided that a creditor shall not be entitled to apply under this sub-section to the board and to a civil court simultaneously or to apply to either the board or civil court after having applied to the other.

1. This sub-section was substituted for original sub-section (2) by section 2(i) of the Madras Debt Conciliation (Amendment) Act, 1943 (Madras Act IX of 1943) (re-enacted permanently by section 2 of, and the First Schedule to, the Madras Re-enacting and Repealing (No. I) Act, 1948 (Madras Act VII Of 1948).

2. These words were substituted for the words "revive the debt" by section 2(ii) of the Madras Debt Conciliation (Amendment) Act, 1943 (Madras Act IX of 1943) re-enacted permanently by section 2 of, and the First Schedule to, the Madras Re-enacting and Repealing (No. I) Act, 1948 (Madras Act VII of 1948).

11. Procedure on submission of statement of debts :-

(1) Every creditor submitting a statement of the debts owed to him in compliance with a notice issued under sub-section (1) of section 10 shall furnish, along with such statement full particulars of all such debts and shall at the same time produce all documents, including entries in books of account on which he relies to support his claims, together with a true copy of every such document.

(2) The board shall, after marking for the purpose of identification every original document so produced and verifying the correctness of the copy, retain the copy and return the original to the creditor.

(3) If any document which is in the possession or under the control of the creditor is not produced by him as required by sub-section (1) the document shall not be admissible in evidence against the debtor in any suit brought by the creditor or by any person claiming under him for the recovery of the debt:

Provided the board or the court shall have power to excuse for valid reasons any default or delay in producing the document and to grant reasonable time for producing the same in any proceeding pending before it.

12. Power of board to decide dispute as to the existence or amount of debts or assets :-

(1) The board shall call upon the debtor and each creditor respectively to explain his case regarding each debt.

(2) If there is a dispute as to the existence or the amount of the debt due to any creditor or the assets of any debtor the board may decide the matter after taking such evidence as may be adduced by all the parties concerned and such decision shall be binding on all parties in all proceedings before the board:

Provided that a decree of a civil court relating to a debt shall be conclusive evidence as to the existence and amount of the debt.

(3) The board shall prepare a complete schedule of the creditors and of the assets and liabilities of the debtor.

13. Power of board to require attendance of persons and production of documents :-

(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 (Central Act V of 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.

14. Agreement of amicable settlement, its registration and effect :-

(1) If the creditors to whom more than fifty per cent of the total amount of the debtors debts is owing come to an amicable settlement with the debtor, such settlement shall forthwith be reduced to writing in the form of an agreement recording the amounts payable to such creditors and the manner in which, the assets from which and the times at which they are to be paid. Such agreement if considered equitable by the board shall be read out and explained to the parties concerned, and shall be signed or otherwise authenticated by the board and the parties who have agreed to the amicable settlement:

Provided that, when a co-operative society is one of such creditors no settlement, in so far as it affects the debts owing to such society, shall be valid without the previous approval in writing of the Registrar of Co-operative Societies:

Provided further that when a secured creditor does not agree to the settlement, such settlement, shall not affect his rights to proceed against the secured property.

(2) An agreement made under sub-section (1) shall, within thirty days from the date of the making thereof, be registered under the Indian Registration Act, 1908 (Central Act XVI of 1908), by the chairman of the board in such manner as may be prescribed and it shall then take effect as if it were a decree of a civil court and be executable as such.

¹[(3) (a) Notwithstanding anything contained in the Indian Registration Act, 1908 (Central Act XVI of 1908), it shall not be necessary for the chairman or any member of the board or any party who has signed or otherwise authenticated the agreement referred to in sub-section (1), to appear in person or by agent at any registration office in any proceeding connected with the registration of such agreement, or to sign as provided in section 58 of the Act.

(b) The registering officer to whom any such agreement is sent for registration may, if he thinks fit, refer to the chairman of the board or to any other person for information respecting the same, and on being satisfied of the execution thereof shall register the agreement.]

(4) If, after the making of an agreement under subsection (1), ²(the disability in, respect of any debt is removed or) any debt is revived by the board or civil court under sub-section (3) of section 10, the agreement and all proceedings taken in pursuance thereof shall stand cancelled; the application under section 4 shall be deemed to have been received in the office of the board on the date of ³(such removal or revival), and all the provisions of this Act shall apply in respect of the application accordingly.

1. This sub-section was substituted for original sub-section (3) by section 2 of the Madras Debt Conciliation (Amendment) Act, 1942 (Madras Act XVII of 1942) re-enacted permanently by section 2 of,

and the First Schedule to, the Madras Re-enacting and Repealing (No. I) Act, 1948 (Madras Act VII of 1948).

2. These words were inserted by section 3 of the Madras Debt Conciliation (Amendment) Act, 1943 (Madras Act IX of 1943) re-enacted permanently by section 2 of, and the First Schedule to, the Madras Re-enacting and Repealing (No. I) Act, 1948 (Madras Act VII of 1948).

3. These words were substituted for the words "such reviver" by *ibid*.

15. Properties exempt from attachment not to be taken into account :-

In any scheme of debt conciliation under this Act such properties as are exempt from attachment under the Code of Civil Procedure, 1908 (Central Act XVI of 1908), shall not be taken into account and shall be left to the judgment debtor free from any liability for his debts.

16. Maximum amount allowable in satisfaction of a debt :-

In any scheme of debt conciliation under this Act, no creditor shall be allowed a greater amount in satisfaction of both principal and interest than twice the amount of the principal and if the debt was incurred before the first day of June 1933 twice the amount due on the said date.

17. Power of board to dismiss application :-

If no amicable settlement is arrived at under subsection (1) of section 14 within twelve months from the date of the application under section 4, the board shall dismiss the application.

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

(1) Where, during the hearing of any application made under section 4, any creditor refuses to agree to an amicable settlement, the board shall, if it is of opinion that the debtor has made such creditor a fair offer which the creditor ought reasonably to accept, grant the debtor a certificate, in such form as may be prescribed in respect of the debts owed by him to such creditor.

The board, in coming to a decision whether the offer made is fair or not, may take into consideration--

(i) the fall or rise in the value of land and its produce in the locality;

(ii) the amount of consideration actually received;

(iii) the reasonableness of the rates of interest;

(iv) the onerous conditions, if any, subject to which the loan was granted;

(v) whether at any time, the creditor or the debtor was offered settlement of the debt in full or part and if so what the terms were; and

(vi) any other particulars which the board thinks it desirable to take into account.

Power of court to disallow costs or interest.

(2) Where any creditor sues in a civil court for the recovery of a debt in respect of which a certificate has been granted under sub-section (1), the court shall, notwithstanding the provisions of any law for the time being in force, not allow the plaintiff any costs in such suit, or any interest on the debt after the date of such certificate in excess of simple interest at 6 per cent per annum on the principal amount due on the date of such certificate.

Decrees in suits after registration of agreement not to be executed.

(3) Where after the registration of an agreement under sub-section (2) of section 14, any unsecured creditor sues for the recovery of a

debt (other than a debt incurred subsequent to such agreement) in respect of which a certificate has been granted under sub-section (1) or any creditor sues for the recovery of a debt incurred after the date of such agreement, any decree passed in such suit shall, notwithstanding anything contained in the Code of Civil Procedure, 1908 (Central Act V of 1908), not be executed as against the assets, if any, set apart in the agreement for the satisfaction of the agreed debts until all amounts recorded as payable under such agreement have been paid.

19. Bar of civil suits :-

No civil court shall entertain--

(a) any suit in respect of--

(1) any matter pending before a board, or

(2) the validity of any procedure or the legality of any agreement made under this Act, or

(3) the recovery of any debt recorded as wholly or partly payable under an agreement registered under subsection (2) of section 14 from any person who, as a debtor, was party to such agreement, or

(4) the recovery of any debt which has been deemed to have been duly discharged under ¹[clause (b) of] subsection (2) of section 10, except a debt which is revived under sub-section (3) of that section; or

(b) any application to execute a decree, the execution of which is suspended under sub-section (3) of section 18.

1. This expression was inserted by section 4 of the Madras Debt Conciliation (Amendment) Act, 1943 (Madras Act IX of 1943) re-

enacted permanently by section 2 of, and the First Schedule to, the Madras Re-enacting and Repealing (No. I) Act, 1948 (Madras Act, VII of 1948.)

20. Avoidance of certain transfers of debtors property :-

Every transfer of property made, with intent to defeat or delay the creditors of the debtor, after an application has been made to a board under section 4 and until the agreement registered in pursuance of such application has been fully carried out shall be voidable by order of the board on application by the creditors so defeated or delayed.

21. Alienation made with sanction of board not to be considered as a fraudulent preference :-

Any alienation of land for a fair price made with the sanction of the board in pursuance of or to carry out the agreement mentioned in section 14 shall not be considered as a fraudulent preference under the Presidency Towns Insolvency Act, 1909 (Central Act III of 1909), and the Provincial Insolvency Act, 1920 (Central Act V of 1920), nor shall such alienation be voidable under section 53 of the Transfer of Property Act, 1882 (Central Act IV of 1882).

22. Bar of appeal or revision :-

No appeal or application for revision shall lie against any order passed by a board.

23. Power of board to review its order :-

A board may, on application from any person interested, made within ninety days of the passing of an order, or on its own motion at any time review any order passed by it and pass such order in reference thereto as it thinks fit:

Provided that no order shall be varied or reversed unless notice has been given to the persons interested to appear and be heard in support of such order.

24. Appearance of parties before board :-

In any proceedings before a board any party may appear in person or with the permission of the board by a legal practitioner or an agent authorized in writing.

25. Stay of pending suits or other proceedings :-

When an application has been made to a board under section 4, any suit or other proceedings then pending before a civil court in respect of any debt for the settlement of which application has been made shall not be proceeded with until the board has dismissed the application.

26. Report by board regarding sums due to Government :-

Where in the course of an enquiry into an application made under section 4 a board finds that there is any sum owing to Government on account of loans advanced under the Agriculturists Loans Act, 1884 (Central Act XII of 1884), or the Land Improvements Loans Act, 1883 (Central Act XIX of 1883), or otherwise, the board shall report this fact to the Collector.

27. Computation of period of limitation for suits and proceedings :-

(1) In calculating the period of limitation for any suit filed in, or proceedings before, a civil court for the recovery of a debt which was the subject of any proceedings under this Act, the time during which such proceedings were pending as well as the time taken for the obtaining of certified copies of the order of the board shall be excluded.

(2) The period during which proceedings under this Act have been pending, including the actual period fixed in the agreement for payment of all the debts shall, in all suits filed or proceedings taken, in civil courts to recover debts, be excluded from computation under section 48 of the Code of Civil Procedure 1908 (Central Act V of 1908), or under the Indian Limitation Act, 1908 (Central Act IX of 1908).

28. Members of board deemed to be public servants :-

The members of a board shall be deemed to be public servants within the meaning of the Indian Penal Code.

29. Power to make rules :-

(1) The ¹[State Government] may make rules to carry out all or any of the purposes of this Act and not inconsistent therewith.

(2) In particular and without prejudice to the generality of the foregoing power, they shall have power to make rules--

(a) with reference to all matters expressly required or allowed by this Act to be prescribed;

(b) regulating the procedure before a board;

(c) prescribing the charges to be made by a board for anything done under this Act and the persons by whom and the manner in which such charges shall be paid;

(d) prescribing the records to be kept and the returns to be made by a board;

(e) prescribing the allowances, if any, to be paid to the chairman and members of a board;

(f) regulating the power of a board to summon parties and witnesses and the production of documents under section 13 and the grant of expenses to witnesses; and

(g) prescribing the place at which and the manner in which an agreement shall be registered under sub-section (2) of section 14.

(3) All rules made under this Act shall be subject to the condition of the rules being made after previous publication.

(4) In making any rule, the ²[State Government] may direct that a

breach thereof shall be punishable with fine which may extend to fifty rupees, and in case of a continuing breach with fine which may extend to ten rupees for every day during which the breach continues after ³[conviction for the first breach.]

1. The words "Provincial Government" were substituted for the words "Governor in Council" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1959.

2. The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

3. These words were substituted for the words "the first breach" by section 3(1) of, and the Second Schedule to, the Madras Repealing and Amending Act, 1951 (Madras Act XIV of 195).