



The Sikkim Public Demands Recovery Act, 2006

Act 14 of 2006

Keyword(s):

Public Demands, Recovery, Certificate-Debtor, Certificate Officer, Moveable Property, Public Demand

Amendment appended: 12 of 2022

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SIKKIM

GOVERNMENT



GAZETTE

EXTRAORDINARY
PUBLISHED BY AUTHORITY

Gangtok

Wednesday, 25th June, 2008

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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK

No: 14/LD/P/2008

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NOTIFICATION

The following Act of the Sikkim Legislative Assembly having received the assent of the President on 16th day of May, 2008 is hereby published for general information:-

THE SIKKIM PUBLIC DEMANDS RECOVERY ACT, 2006 (ACT No.14 of 2006)

AN ACT

to make provisions for the recovery of public demands in Sikkim.

Be it enacted by the Legislature of Sikkim in the Fifty-seventh Year of the Republic of India as follows:-

PRILIMINARY

- | | | | |
|--|----|-----|---|
| Short title,
extent and
Commencement. | 1. | (1) | This Act may be called the Sikkim Public Demands Recovery Act 2006. |
| | | (2) | It extends to the whole of Sikkim. |
| | | (3) | It shall come into force at once. |
| Definitions. | 2. | | In this Act, unless there is anything repugnant in the subject or context – |

- (a) “Certificate-debtor” means the person named as debtor in a Certificate filed under this Act and includes any person whose name is substituted or added as debtor by the Certificate Officer;
- (b) “Certificate-holder” means the State Government or Corporation or Company owned or controlled by the State Government or any State Government Officer, Officer of the Corporation or any local authority in whose favour a Certificate has been filed under this Act and includes any person whose name is substituted or added as creditor by the Certificate Officer;
- (c) “Certificate Officer” means the Collector of the District and includes any other officer appointed by the State Government by notification, to perform the functions of a Certificate Officer under this Act;
- (d) “Moveable property” includes growing crops;
- (e) “Notification” means a notification published in the Official Gazettee;
- (f) “Public Demand” means any money payable to or any liability (inclusive of interest) which is claimed as due from any person by the State Government or a Department or any Corporation or Company or the State Bank of Sikkim or any Local Authority, under any law for the time being in force or under a written agreement with the above authorities or institution or instrument or any Decree or
- (g) Award of any Court or Authority competent to adjudicate the claims.
- (h) “The State Bank of Sikkim” means the State Bank of Sikkim incorporated under the State Bank of Sikkim Proclamation, 1968.

Power of Civil Certificate Officer.
483 of **5 of 1989**
enquiry
for **5 of 1908**
Civil

- 3. (1) Every Certificate Officer shall be deemed to be a Court for the purpose of section 480,481,482 and the Code of Criminal Procedure, 1898.
- (2) Every Certificate Officer may for the purpose of into any dispute relating to the issue of certificate money shall have same powers as conferred on the

respect of

Court under the Code of Civil Procedure, 1908 in

- (a) enforcing attendance of any person and examining him on oath;
 - (b) compelling and production of documents and material objects; and
 - (c) issuing commissions for purpose of examination of witness
- and every inquiry shall be deemed to be a judicial proceeding within the meaning of section 193 and 228 of the Indian Penal Code, 1860.

45 of 1860

Filing of Certificate 4.
application
for public demand.
due, he

prescribed,

- (1) When the Certificate Officer is satisfied on an application made to him or otherwise that any public demand is due, he may sign a certificate in such form as may be prescribed, stating that the demand is due, and shall cause the certificate to be filed in his office.
- (2) Before signing the Certificate, a notice shall be issued to the person or persons from whom any money is due and if necessary hold an enquiry as it deems necessary;
- (3) The certificate issued under this section shall be final and binding on the parties.
- (4) All proceeding under its section shall be completed within three months from the date of issue of notice to the opposite party.

Service of Notice 5.
Certificate
and copy of
upon
certificate on
form and a
certificate debtor.
and

When a certificate has been filed in the office of Officer under section 4, he shall cause to be served upon the certificate-debtor, a notice in the prescribed form and a copy of the certificate stating that the demand is due shall be paid forthwith.

Effect of Service of 6.
section 5
Notice of Certificate

On and from the date of service of notice under section 5 upon a certificate debtor,

- (a) any private transfer or delivery of any of his immovable property by certificate-debtor within the State of Sikkim shall be void against any claim enforceable in execution of the certificate, and
- (b) the amount due from time to time in respect of the certificate shall be a charge upon the immovable property of the certificate – debtor, in preference to all other charge of liabilities created on that property.

Who may execute 7.
by :-
Certificate
certifi-

- A certificate filed under section 4 may be executed
- (a) the Certificate Officer in whose office the original certificate is filed, or
- (c) the Certificate Officer to whom a copy of the certificate is sent for execution under sub-section (1) of section 8.

Transmission of 8.
filed
Certificate to
another Certificate
Officer for execution
Officer, he

- (1) A Certificate Officer in whose office a certificate is filed may send a copy thereof, for execution, to any other Certificate Officer.
- (2) When a copy of certificate is sent to any such shall cause it to be filed in his office and thereupon the provision of section 6 with respect to certificate office of a Certificate Officer shall apply as if such were an original certificate:

the
filed in the
copy

notice and

Provided that it shall not be necessary to serve a second copy under section 5.

Power of
filed, is
attachment.
remove or
property and
certificate would in conse
for

- 9. If the Certificate Officer, in whose office a certificate is satisfied that the certificate-debtor is likely to conceal, dispose of the whole or any part of such his movable that the realization of the amount of the quence be delayed or obstructed, he may at any time direct,

<p>or any</p> <p>moveable</p> <p>satisfact-</p> <p>cancelled</p> <p>Certificate</p>	<p>10.</p>	<p>reasons to be recorded in writing, attachment of the whole part of such moveable property:</p> <p>Provided that if the Certificate – debtor whose property has been so attached, furnishes, security to the satisfaction of the Certificate Officer, such attachment shall be cancelled from the date on which such security is accepted by the Certificate Officer.</p>
<p>Mode of execution</p> <p>prescribed,</p>	<p>10.</p>	<p>Subject to such conditions and limitations as may be prescribed, Certificate Officer may order execution of a Certificate –</p> <p>(a) by attachment and sale, if necessary, of any property or, in the case of immovable property, by sale without previous attachment, or</p> <p>(b) by attachment of any decree.</p>
<p>Interest, cost of and charges recoverable.</p> <p>certificate</p> <p>per</p> <p>upon the</p>	<p>11.</p>	<p>There shall be recoverable in the proceedings in execution every certificate filed under this Act –</p> <p>(a) Interest upon, the public demand to which the certificate relates, at the rate of twelve and a half per centum annum from the date of signing of the certificate date of realization,</p> <p>(b) such costs as are directed to be paid by the Certificate Officer in his discretion as having been incurred for the service of notice under section 5, and of warrants and other processes and all other proceedings taken for realizing the demand.</p>
<p>Property liable to attachment and sale in execution of a Certificate</p> <p>passing</p> <p>certificate debtor or any</p> <p>on the</p>	<p>12.</p>	<p>(1) All property both moveable and immovable, certificate debtor, is liable to attachment and sale in execution of the Certificate.</p> <p>(2) The Certificate Officer may attach the property by an order, and serving upon the adult member of his family or by affixing, the order front door of his house or place of residence.</p>

taken
the nearest
Certificate

(3) The movable property indicated in the order shall be into custody of the officer – in – charge of Police Station or out Post under the orders of the Officer.

(4) (a) In the case of immovable property, the Certificate Officer shall publish the date and time of sale with the up-set price fixed in the Official Gazettee and on the date so fixed shall sell the immovable property by public auction.

(b) In the case of movable property, no such publication is required. The movable property may be sold by public auction.

**Attachment of
payment
Decree
charge**
the

13. (1) The attachment of a decree of a Civil Court or the of money or for sale enforcement of a mortgage or shall be made by the issue to the civil Court to stay execution of the decree unless and until –
(a) the Certificate Officer cancels the notice, or
(b) the certificate holder or the certificate debtor applies to the Court receiving such notice to execute the decree.

(2) When a Civil Court receives an application under clause (b) of sub-section (I), it shall on an application of the certificate – holder or the certificate – debtor, and subject to the provisions relating to execution of decree under the law relating to Civil Procedure proceed to execute the attached decree and apply the net proceeds in satisfaction f the certificate.

(3) The certificate-holder shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

Purchaser's title,
it shall

14. (1) Where property is sold in execution of a certificate,

certificate of sale
interest of
and delivery of
possession
certifi-

purchaser's

vested

not

absolute,

specifying the
the time

shall

absolute.

- (2) vest in the purchaser with all the rights, title and the certificate-debtor at the time of sale. Where immovable property is sold in execution of a certificate and such sale has become absolute, the right, title and interest shall be deemed to have been in him from the time when the property is sold, and from the time, when the sale becomes absolute.
- (3) Where a sale of immovable property has become the certificate Officer shall grant a certificate property sold and the name of the persons who at of sale declared to be the purchaser. Such certificate bear date of the day on which the sale becomes
- (4) On the grant of certificate under sub-section (3), and on the application of the purchaser, the Certificate Officer shall order, delivery to be made by putting such purchaser or any person whom the purchaser may appoint to receive delivery on his behalf, in possession of the property and, if needed by removing any persons who refuses to vacate the same.

Setting aside sale. 15.
execution of a

whose

days

Officer to

When immovable property has been sold in certificate, the certificate-debtor or any person interest are affected by the sale may, within thirty from the date of the sale, apply to the Certificate set aside the sale on his depositing -
(a) for payment to the certificate-holder the amount speci-
fied in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of twelve and a half per centum per annum calculated from the date of the proclamation of sale to the date when the deposit is made;

(b) for payment to the purchaser, as penalty, a sum equal to five per centum of the purchase money, but not less than one rupee.

<p>Person under certificate disability any</p>	<p>16.</p>	<p>When the Certificate Officer is satisfied that the debtor is a minor or of unsound mind, he shall, in proceeding under this Act permit him to be represented by any suitable person.</p>
<p>Procedure on death of certificate-debtor. after ser- decea- legal hands.</p>	<p>17.</p>	<p>When the Certificate – debtor dies before the been fully satisfied, the Certificate Officer may, ving a notice upon the legal representatives of the sed, proceed to execute the Certificate against such representatives and the provisions of this Act shall apply as if such notice was a notice under section 4. The legal representative shall be liable only to the extent of the property of the deceased which has come to his</p>
<p>Protection to officer have</p>	<p>18.</p>	<p>No suit or other legal proceeding shall lie against a Certificate Officer for any act done or purported to been done by him under the provisions of this Act.</p>
<p>Power to make purpose of rules provisions</p>	<p>19.</p>	<p>The State Government may make rules for the carrying out and giving effect to all or any of the of this Act.</p>
<p>Repeal and Saving action under the done or</p>	<p>20.(1) hereby (2)</p>	<p>The Sikkim Public Demand Recovery Act, 1988 is repealed. Notwithstanding such repeal, anything done or any taken in exercise of the powers conferred by or provisions of that Act shall be deemed to have been</p>

under this

such

Pending
re-
proceedings.
been the

21.

taken in exercise of the powers conferred by or

Act as if this Act was in force on the day on which
thing was done or such action was taken.

All proceedings pending under the existing law for
covery of public demand shall be deemed to have
proceedings under this Act and the Certificate
Officer shall continue the proceedings as though
they were initiated under this Act.

PRATIBHA DEVISINGH PATIL
PRESIDENT OF INDIA

R.K. PURKAYASTHA (SSJS)
LR-cum-Secretary
Law Department

- (b) **“arrears”** shall include the whole or part of an installment, if any, in respect of a public demand which is not paid on or before the due date for payment of such installment;
- (c) **“Certificate debtor”** means the person named as debtor in a Certificate filed under this Act and includes any person whose name is substituted or added as debtor by the Certificate Officer;
- (d) **“Certificate holder”** means the State Government or Corporation or Company owned or controlled by the State Government or any State Government Officer, Officer of the Corporation or any local authority in whose favour a Certificate has been filed under this Act and includes any person whose name is substituted or added as creditor by the Certificate Officer;
- (e) **“Certificate Officer”** means the Collector of the District and includes any other officer appointed by the State Government by notification, to perform the functions of a Certificate Officer under this Act;
- (f) **“Guarantor”** means an individual, a firm, a company or any entity, who has guaranteed the Certificate Holder to pay Certificate Debtor’s debt in the event of default of payment committed by the Certificate Debtor.
- (g) **“immovable property”** means any land or any building or part of a building and includes where any land or any building or part of a building is transferred together with any machinery, plant, furniture, fittings or other things, such machinery, plant, furniture, fitting or other things also;
- (h) **“movable property”** includes growing crops;
- (i) **“notification”** means a notification published in the Official Gazette;
- (j) **“public demand”** means any money payable to or any liability (inclusive of interest) which is claimed as due from any person by the State Government or a Department or any Corporation or Company or the State Bank of Sikkim or any Local Authority, under any law for the time being in force or under a written agreement with the above authorities or institution or instrument or any Decree or Award of any Court or Authority competent to adjudicate the claims;
- (k) **“the State Bank of Sikkim”** means the State Bank of Sikkim incorporated under the State Bank of Sikkim Proclamation, 1968.”

**Amendment
of Section 3**

- 3 In the principal Act, in Section 3, after clause (c) of sub-section 2, the following clauses shall be inserted namely; -
- “(d) discovery and inspection;
 - (e) dismissing an application for default or deciding it ex-parte; and

- (f) setting aside any order of dismissal of any application for default or any order passed by it ex-parte."

**Amendment
of Section 4**

- 4 Sub-section (2) of the principal Act shall be substituted with the following, namely; -

"(2) Upon receipt of application referred to in sub-section (1),

- (a) If the Certificate Officer is satisfied that the particulars set forth in the application are correct, he shall issue a notice demanding the amount due against whom the application has been made and calling upon him or her to remit within 7 (seven) days from the date of service of the notice mentioning the total amount due as per the application.
- (b) In case of death of any Certificate Debtor or the Guarantor; the Certificate Officer may issue notice to his or her legal heirs.
- (c) If the application, on scrutiny, is found to be defective and the defect noticed is formal in nature, the Certificate Officer may allow the party to rectify the same in his presence and if the said defect is not formal in nature, the Certificate Officer may allow the applicant such time to rectify the defect as deemed fit.
- (d) If the concerned applicant fails to rectify the defect within the time allowed, the Certificate Officer may by order and for reasons to be recorded in writing, decline to register the application.
- (e) A restoration application against the order of the Certificate Officer issued under clause (d) shall be made within 30 (thirty) days of passing such order to the Certificate Officer whose decision thereon shall be final."

**Insertion of new
Sections 4A, 4B,
4C and 4D**

- 5 In the principal Act, after Section 4, the following sections shall be inserted, namely; -

"4A. Procedure after applications is made before the Certificate Officer.

- (1) Summary procedure shall be adopted under this Act for adjudication of dispute. Evidence shall be taken on affidavit and cross examination shall not be permitted except in few deserving cases.
- (2) The certificate debtor can file counter claim or claim of set off against the claimed amount.
- (3) Where the Certificate Officer is satisfied that the amount due to the applicant is correct, the Certificate Officer may pass final order directing the Respondents to pay the amount. In case, the Respondents fails to pay the ordered amount, recovery certificate shall be ordered to be issued reflecting the names and address cited in the application which is then executed before the Certificate Officer or the Officer executing the decree under the provisions of this Act.

4B. Procedure for filing application.

- (1) The application under this Act may be presented by the applicant in person or by a duly authorized legal practitioner to the Certificate Officer within whose jurisdiction the case falls.
- (2) The application shall be presented in two sets.

4C. Place of filing application.

The application shall be filed by the applicant before the Certificate Officer within whose jurisdiction-

- (a) the applicant is functioning;
- (b) the debtor, or each of the debtors where there are more than one, at the time of making application, actually or voluntarily resides, or carries on business, or personally works for gain; or
- (c) the cause of action, wholly or partly arises.

4D. Contents of application.

- (1) Every application filed under this Act shall set forth concisely under distinct heads the grounds for application and such grounds shall be numbered consecutively and shall be typed in double space on one side of the paper.
- (2) It shall not be necessary to present separate application to seek interim order of direction if in the original application the same is prayed for."

**Amendment of
Section 5**

- 6 In the principal Act, Section 5 shall be re-numbered as sub-section (1) of that section and after sub-section (1) as so re-numbered the following new sub-sections shall be inserted namely: -
 - "(2) Any notice or process to be issued by the Certificate Officer may be served by any of the following modes, namely;-
 - (a) notice shall be served or caused to be served to the debtors and guarantors personally, if he or she is present; or
 - (b) at the place where such debtor and guarantor ordinarily resides or carries on business or personally works for gain; or
 - (c) upon any adult member of his or her family of Certificate debtor or its guarantors or upon their authorized agent, or by speed post or by any means of electronic communication or by such courier services with acknowledgment due as are approved by the Certificate Officer; or
 - (d) by hand delivery (Dasti) through a process server; or
 - (e) if the Certificate Officer is satisfied that the notice cannot be served by any other means than the Certificate Officer may serve the notices through process server or the police and the concern SHO of the concern Police Station on receiving instruction from the Certificate Officer shall take prompt action to deliver the notice to the Certificate debtor and file acknowledgement of receipt before the Certificate Officer:

Provided that where notice issued by the Certificate Officer is served by the party himself or herself by hand delivery (Dasti) under clause (d) he or she shall file with the Certificate Officer concerned, the acknowledgment, together with an affidavit of service if required.

- (3) Certificate debtor or his or her guarantor shall also be at liberty to file a reply or objections or written statement within 30 (thirty) days from date of receiving of such demand notice:

Provided that upon application by the Certificate debtor or his or her guarantor, the time can be extended by the Certificate Officer which shall not exceed 60 (sixty) days by recording the reasons if the Certificate Officer is satisfied that there was a genuine ground for not filing the reply within the stipulated time.

- (4) Every such notice shall be signed by the Certificate Officer or any other officers appointed on his or her behalf and shall be sealed with the seal of the Certificate Officer. The notice must be accompanied by a copy of such application and demand certificate.
- (5) When such service cannot be effected even after best endeavor, the copy of demand Certificate shall affix or cause to be affixed on some conspicuous part of debtor's residence or the place where the property subject to charge is situated.
- (6) Where an acknowledgment purported to be signed by the debtor or an endorsement purported to be made by any person authorized by the postal department or the courier services that the debtor refused to take delivery of the notice, has been duly received, the Certificate Officer issuing the notice may declare that the notice has been duly served."

**Insertion of new
Section 6A and
6B.**

- 7 In the principal Act, after section 6, the following new sections shall be inserted, namely: -

"6A. Procedure when only Certificate Holder appears.

Where the Certificate debtor and his or her guarantor fail to appear even after the notice was duly served upon him, the Certificate Officer may conduct the hearing ex-parte and may pass an appropriate order. For the purposes of the ex-parte hearing and disposal of the application, the following shall be observed: -

- (a) where on the date fixed for hearing the Certificate debtor or his or her guarantor fails to appear despite the effective service of notice, the Certificate Officer may, in his discretion either adjourn the date of hearing or may pass an appropriate order ex-parte;
- (b) where the application has been heard ex-parte against the Certificate debtor, such Certificate debtor may apply to the Certificate Officer for an order to set it aside and if such Certificate debtor, satisfies the Certificate Officer that the notice was not duly served, or that he or she was prevented by any

sufficient cause from appearing when the application was called on for hearing, the Certificate Officer may make an order setting aside the ex-parte order as against him or her upon such terms as it thinks fit, and shall appoint a day for proceeding of the said application.

- (c) Where the notice is served but not on due time, the Certificate Officer shall postpone the hearing to a future date by issue of a notice to the Certificate holder.

6B. Procedure when only Certificate debtor appears.

Where the Certificate debtor appears but the Certificate holder does not appear then the Certificate Officer may conduct the hearing ex-parte and may pass an appropriate order:

Provided that if the Certificate holder by an application satisfies to the Certificate Officer that the non-appearance was not intentional or show sufficient cause to that effect, the Certificate Officer may restore the application upon such terms and costs as it thinks fit, and shall fix a day for proceeding of such application by issue of a notice to the Certificate debtor."

**Amendment of
Section 7**

- 8 (1) In the principal Act, in Section 7, in clause (a), for the words "Certificate Officer", the word "District Collector or other Officer authorized by him/her to act on his/her behalf" shall be substituted. (2) In the principal Act, in Section 7, clause (b), shall be substituted namely: -

"(b) on filling of the certificate for execution, the District Collector shall execute the decree either by himself or he may transfer the same to the Additional District Magistrates or the Sub Divisional Magistrates for execution of the Certificate."

**Omission of
Section 8**

- 9 Section 8 of the principal Act shall be omitted.

**Amendment of
Section 9**

- 10 In the principal Act, in Section 9-

- (1) for the words "Certificate Officer" wherever they occur, the words "District Collector or other Officer authorized by him/her to act on his/her behalf" shall be substituted; and
- (2) after the words "part of such" and before the words "his movable property", the word "of" shall be inserted.

**Amendment of
Section 10**

- 11 In the principal Act, in Section 10-

- (1) for the word "Certificate Officer" the words "District Collector or other Officer authorized by him/her to act on his/her behalf" shall be substituted.
- (2) after clause (b), the following new clauses shall be inserted namely:

- “(c) by passing an order for taking physical possession of the property of the Certificate debtor or his or her guarantor(s) by the Certificate holder and transfer of title of the property in the name of the Certificate holder;
- (d) by attachment or by freezing of all or any of the bank accounts of the Certificate debtor or his or her guarantor(s) maintained with any banks in India.”

**Insertion of new
Section 10 A**

12 In the principal Act, after Section 10, the following section shall be inserted, namely:-

“10A. Execution proceeding.

- (1) The execution of Certificate shall ordinarily be taken in the following manner, namely:-
 - (a) disposal of mortgaged immovable properties against which the loan has been secured by the Certificate debtor shall be first proceeded against, but nothing in this clause shall preclude the other properties both movable and immovable property being proceeded against simultaneously in case of necessity;
 - (b) if there is no immovable property of the Certificate debtor or if the sale proceeds of the immovable property or properties attached are insufficient to meet in full, the demand of the Certificate holder, then the other movable property of the Certificate debtor or his or her guarantor or other unencumbered immovable property belonging to the Certificate debtor including his or her guarantor, may be proceeded against.
- (2) In case of seizure and sale of movable property, the following shall be observed, namely: -
 - (a) the District Collector or other Officer authorized by him/her to act on his/her behalf shall, after giving prior notice to the Certificate debtor, proceed to the place where the Certificate debtor resides or the property to be seized is situated and serves the demand upon him. If the demand together with the interest and all expenses is not at once paid, the District Collector or other Officer authorized by him/her to act on his/her behalf shall make the seizure and shall immediately deliver to the Certificate debtor a list or inventory of the property seized along with an intimation of the place, day and hour at which the seized property will be brought to sale if the amounts due are not discharged prior to such date;
 - (b) after the seizure is made, the District Collector or other Officer authorized by him/her to act on his/her behalf may arrange for the custody of the attached property with the Certificate holder or otherwise;
 - (c) if the, District Collector or other Officer authorized by him/her to act on his/her behalf requires the Certificate holder to undertake the custody of the property, he/she shall be bound to do so and

any loss incurred owing to his/her negligence shall be made good by him/her;

- (d) the District Collector or other Officer authorized by him/her to act on his/her behalf may, at the instance of the Certificate debtor or of any person claiming an interest in such property, leave it in the charge of such Certificate debtor or such claimant if he/she enters into a bond with one or more sufficient sureties for making the property available for auction when called for;
- (e) the seizure shall be made after sunrise and before sunset and not at any other time;
- (f) if crops or un-gathered products of the land, belonging to a Certificate debtor are attached, the District Collector or other Officer authorized by him/her to act on his/her behalf may cause them for sale when fit for reaping or gathering or at his or her option may cause them to be reaped or gathered in due season and stored in proper place until sold. In the latter case, the expenses of reaping or gathering and storing such crops or products shall be defrayed by the owner upon his/her redeeming the property or from the proceeds of the sale in the event of it being sold;
- (g) the District Collector or other Officer authorized by him/her to act on his/her behalf shall make necessary arrangements for the food for the seized cattle or livestock, the expenses against which shall be defrayed by the owner upon his/her redeeming the property, or from proceeds of the sale in the event of it being sold;
- (h) the District Collector or other Officer authorized by him/her to act on his/her behalf may force open any stable, cow house, granary, godown, out-house or other building and he or she may also enter into any dwelling house and may break open the door of any room in such dwelling house for the purpose of attaching property belonging to Certificate debtor lodged therein, provided always that it shall not be lawful for the District Collector or other Officer authorized by him/her to act on his/her behalf to break open or enter any apartment in such dwelling house appropriated for the occupation of women except as hereinafter provided;
- (i) the seizures shall not be excessive, but the property seized shall be, as nearly as possible proportionate to the sum due against the Certificate debtor together with interest and all expenses incidental to the seizure and sale;
- (j) where the District Collector or other Officer authorized by him/her to act on his/her behalf may have reason to believe that the property of a Certificate debtor is lodged within a dwelling house, the outer door of which may be shut, or within any apartments appropriated for the women which, by the usage of the country are considered private, the District Collector or other Officer authorized by him/her to act on his/her behalf shall represent that

fact to the Officer-in-Charge of the nearest police station. On such representation, the Officer-in-Charge of the said station shall send a Police Officer to the spot in the presence of which the District Collector or other Officer authorized by him/her to act on his/her behalf may force open the outer door of such dwelling house in like manner as he may break open the door of any other room within the house. The District Collector or other Officer authorized by him/her to act on his/her behalf may also in the presence of the Police Officer, after due notice given for the removal of women and, after furnishing means for their removal in suitable manner (if they be women of rank who according to the customs of the country cannot appear in public) enter the rooms for the purpose of seizure of the property of the Certificate debtor, if any, deposited therein but such property, if found, shall be immediately removed from such rooms, after which they shall be left free to the former occupants;

- (k) the District Collector or other Officer authorized by him/her to act on his/her behalf shall on the day prior to and on the day of sale, cause proclamation of the time and place of the intended sale to be made by beat of drum or publishing in a local newspaper, or in both, in the village or town in which the Certificate debtor resides and in such other place or places or manner as he may consider necessary to give due publicity to the same:

Provided that where property is divided into lots for the purpose of being sold separately, it shall be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the District Collector or other Officer authorized by him/her to act on his/her behalf, otherwise be given;

- (l) no sale shall take place until after the expiration of the period of 15 (fifteen) days from the date on which the sale notice has been served or affixed in the manner specified in Section 10:

Provided that where the property seized is subject to speedy and natural decay, or where the expenses of keeping it in custody are likely to exceed the value, the District Collector or other Officer authorized by him/her to act on his/her behalf may sell it at any time before the expiry of the period of 15 (fifteen) days;

- (m) the District Collector or other Officer authorized by him/her to act on his/her behalf may, in his discretion, adjourn the sale to any other day, after recording his reasons in writing for such adjournment;
- (n) where it is proved to the satisfaction of District Collector or other Officer authorized by him/her to act on his/her behalf having competent jurisdiction under this Act, that any property which has been seized under these Act has been forcibly or clandestinely removed by any person, the District Collector or other Officer authorized by him/her to act on his/her behalf may order forthwith such property to be restored to such Certificate holder;

- (o) where prior to the day fixed for the sale, the Certificate debtor or any person acting on his/her behalf or any person claiming an interest in the property attached, pays the full amount due including interest and other costs incurred in attaching the property the District Collector or other Officer authorized by him/her to act on his/her behalf shall cancel the order of attachment and release the property forthwith;
- (p) no officer or other person having a duty to perform in connection with any sale shall, whether directly or indirectly bid for, acquire or attempt to acquire any interest in the property sold;
- (q) where the property is sold, of which actual seizure has been made, it shall be delivered to the purchaser. Where the property sold is in the possession of any person, delivery thereof to the purchaser shall be made by giving notice to the person in possession prohibiting him delivering possession of the property to any other person except the purchaser;
- (r) in required cases the District Collector or other Officer authorized by him/her to act on his/her behalf may pass an order directing the concerned Station House Officer of the concern Police Station to provide security during attachment of property or assessment of property or seizure of property or sale of property, etc. and the concern SHO on receiving such requisition shall make prompt arrangement for deployment of security personnel as may be necessary for the purpose."

**Amendment of
Section 12**

13 In the Principal Act in Section 12; -

- (1) For the words "Certificate Officer" whenever they occur, the words "District Collector or other Officer authorized by him/her to act on his/her behalf" shall be substituted;
- (2) In sub-section (4), after clause (b), the following clauses shall be inserted, namely: -
 - “(c) in the case of immovable property, if the property is not sold on the first public auction, the District Collector or other Officer authorized by him/her to act on his/her behalf shall re-fix the reserve price of the property as it deems fit and necessary and call for second public auction;
 - (d) in case the immovable property is not sold in second auction attempt, the District Collector or other Officer authorized by him/her to act on his/her behalf may pass an order for taking physical possession of the immovable property by the Certificate holder by transfer of title on the property in favour of the Certificate holder and shall also pass an order in favour of the Certificate holder to sell the property to any interested buyers at a price negotiated between the Certificate holder and the prospective buyers or also by offering the property to the State Government for acquisition of the property by the State Government against suitable compensation

as per the prevalent circle rates or block rates or as per the prevalent law for the time being in force:

Provided that such sale of immovable property shall be given effect having due regard to the prevalent local land laws.”

Insertion of new Section 12A.

14 In the principal Act, after Section 12, the following new section shall be inserted, namely: -

“12A. Disposal of Proceeds of Execution.

- (1) Whenever assets are realized, by sale or otherwise in execution of a certificate, they shall be disposed off in the following manner, namely; -
 - (a) there shall be paid to the Certificate holder the costs incurred by him;
 - (b) there shall, in next place, be paid to the Certificate holder the amount due to him under the certificate in execution of which the assets are realized;
 - (c) if there remains any balance after the above payments, there shall be paid, to the Certificate holder therefrom any other amount recoverable under the procedure provided by this Act which may be due to him on the date on which the assets were realized;
 - (d) the balance, if any, remaining after the payment of the amount, referred to in clause (c), shall be paid to the Certificate debtor; and
 - (e) if the Certificate debtor disputes any claim made by the Certificate holder with regard to any amount referred to in clause (c), the District Collector or other Officer authorized by him/her to act on his/her behalf shall determine the dispute.”

Insertion of new Sections 13A

15 In the principal Act, after Section 13, the following sections shall be inserted, namely: -

“13A. Attachment of salary or allowances of public officer or of servant of a local authority.

Where the movable property to be attached is the salary or allowance or wages of a public officer or of a servant of local authority or a firm or a company, the District Collector or other Officer authorized by him/her to act on his/her behalf may order in a prescribed form, order the amount shall, subject to the provisions of Section 60 of the Code of Civil Procedure, 1908 (5 of 1908), be deducted or realized from such salary or allowance or wages either in one payment or by monthly installments as the District Collector or other Officer authorized by him/her to act on his/her behalf may direct and upon notice of the order, the officer or other person whose duty is to disburse such salary or allowances or wages shall withhold and remit to the District Collector or other Officer authorized by him/her to act on his/her behalf, the requisite amount.”

Insertion of new Sections 14A, 14B, 14C, 14D, 14E and 14F.

16 In the principal Act, after Section 14, the following sections shall be inserted, namely: -

“14A. Procedure for attachment and sale of immovable property.

In the attachment and sale of immovable property, the following shall be observed, namely: -

- (a) where the District Collector or other Officer authorized by him/her to act on his/her behalf is satisfied and there is reason to believe that the Certificate debtor with intent to defeat or delay the execution proceedings is about to dispose off the whole or any part of his/her property, the demand notice issued by the Certificate Officer under Section 4 shall not allow any time to the Certificate debtor for the payment of the amount due by him/her. The order shall be made stating that the property of the Certificate debtor shall be attached forthwith;
- (b) if the Certificate debtor fails to pay the amount specified in the demand notice within the time allowed, the District Collector or other Officer authorized by him/her to act on his/her behalf shall proceed to attach and sell the immovable property noted in the application for execution in the manner hereinafter specified;
- (c) proclamation of sale shall also be published by affixing a notice in the office of the District Collector or other Officer authorized by him/her to act on his/her behalf at least 30 (thirty) days before the date fixed for the sale. Such proclamation shall state the names of Certificate holder and the Certificate debtor, the time and place of sale and also shall specify as fairly and accurately as possible:-
 - (i) the property to be sold;
 - (ii) any encumbrance to which the property is liable;
 - (iii) the amount for the recovery of which the sale is ordered;
 - (iv) every other matter which the District Collector or other Officer authorized by him/her to act on his/her behalf considers material for a purchaser to know in order to judge the nature and value of the property;
- (d) when any immovable property is sold under this Act, the sale shall be subject to the prior encumbrances on the property, if any;
- (e) the Certificate holder shall, when the amount for the realization of which the sale is held, furnish the information to the District Collector or other Officer authorized by him/her to act on his/her behalf within such time as may be fixed by him;
- (f) the time for production of the encumbrance certificate may be extended at the discretion of the District Collector or other Officer authorized by him/her to act on his/her behalf;
- (g) the sale shall be by public auction to the highest bidder:

Provided that it shall be open to the District Collector or other Officer authorized by him/her to act on his/her behalf to accept or decline the highest bid where the price offered appears to be unduly low or for other reasons:

Provided further that the District Collector or other Officer authorized by him/her to act on his/her behalf may in his/her discretion adjourn the sale to a specified day and hour, recording his reasons for such adjournment;

- (h) where a sale is so adjourned for a longer period than 7 (seven) days, a fresh notice shall be issued unless the Certificate debtor consents to waive it;
- (i) the sale shall be held after the expiry of not less than 30 (thirty) days calculated from the date on which notice of the proclamation was affixed in the office of the District Collector or other Officer authorized by him/her to act on his/her behalf and the place of sale shall be the village or town where the property to be sold is situated or such adjoining prominent place of public resort as may be fixed by the District Collector or other Officer authorized by him/her to act on his/her behalf;
- (j) a sum of money equal to 25 percent of the minimum auction value of the immovable property shall be deposited by the purchaser at the time of the purchase, and in default of such deposit, shall forfeit all claims to the property or any part of the deposited money, thereafter, the property shall forthwith be put up for resale:

Provided that on application on sufficient reasons by the purchaser, the time may be extended at the discretion of the District Collector or other Officer authorized by him/her to act on his/her behalf;

- (k) the remainder of the purchase money and the amount required for the general stamp duty for the purchase shall be paid within 15 (fifteen) days from the date of sale or purchase.

14B. Application to set aside sale on deposit.

- (1) Where, any person either owning such property or holding an interest therein by virtue of title acquired before such sale may apply to have the sale set aside on depositing the minimum auction value with the District Collector or other Officer authorized by him/her to act on his/her behalf.
- (2) If an application is made within 30 (thirty) days from the date of sale, the District Collector or other Officer authorized by him/her to act on his/her behalf shall pass an order setting aside the sale and shall repay to the purchaser the purchase money so far as it has been deposited, together with interest as per provision of the Act:

Provided that if more persons than one have made deposit and application under this rule, the application of the first depositor to the District Collector or other Officer authorized by him/her to act on his/her behalf shall be accepted.

14C. Application to set aside sale on ground of irregularity or fraud.

- (1) At any time within 30 (thirty) days from the date of the sale of immovable property, the Certificate debtor or any person entitled to share in a rateable distribution of the assets or where interests are affected by the sale; may apply to the District Collector or other Officer authorized by him/her to act on his/her behalf to set aside the sale, on the ground of a material irregularity or mistake or fraud in publishing or conducting the sale:

Provided that no sale shall be set aside on the ground aforesaid unless the District Collector or other Officer authorized by him/her to act on his/her behalf is satisfied that the applicant has sustained substantial injury by reason of such irregularity, mistake or fraud.

- (2) If the application is allowed, the District Collector or other Officer authorized by him/her to act on his/her behalf shall set aside the sale and may direct a fresh one.
- (3) On the expiration of 30 (thirty) days from the date of sale, if no application to have the sale set aside is made under sub-section
- (1) or if such application has been made and rejected, the District Collector or other Officer authorized by him/her to act on his/her behalf shall make an order confirming the sale:

Provided that if there shall have reason to believe that the sale ought to be set aside notwithstanding that no such application has been made on grounds other than those alleged in any application which has been made and rejected. He may after recording reasons in writing set aside the sale.

- (4) Whenever the sale of any immovable property is not so confirmed or is set aside, the deposit or the purchase money, as the case may be, shall be returned to the purchaser.
- (5) After the confirmation of any such sale, the District Collector or other Officer authorized by him/her to act on his/her behalf shall grant a Certificate of sale bearing his/her seal and signature to the purchaser.
- (6) Such Certificate shall state the property sold and the name of the purchaser and it shall be conclusive evidence of the fact of the purchase in all courts and tribunals, where it may be necessary to prove it and no proof of the seal or signature of the District Collector or other Officer authorized by him/her to act on his/her behalf shall be necessary unless the authority before whom it is

produced shall have reason or doubt in regard to its authenticity or genuineness.

14D. Sale of immovable property to be proportionate to that amount due.

The District Collector or other Officer authorized by him/her to act on his/her behalf may sell the whole or any portion of the immovable property of a defaulter in discharge of money due provided always that so far as may be practicable, no larger section or portion of the immovable property shall be sold than may be sufficient to discharge the amount due with interest, and expenses of attachment, if any, and sale.

14E. Receipts for payment of amount due.

Every person making a payment towards any money due for the recovery of which application has been made under these sections shall be entitled to a receipt for the amount signed by the District Collector or other Officer authorized by him/her to act on his/her behalf. Such receipt shall state the name of the person making the payment and the subject matter in respect of which the payment is made.

14F. Investigation of claims and objection to attachment of property.

- (1) Where any claim is preferred to, or any objection is made to the attachment of any property attached under those sections on the ground that such property is not liable to such attachment; the District Collector or other Officer authorized by him/her to act on his/her behalf shall investigate the claim or objection and dispose of it on merit;
- (2) Where the property to which the claim or objection relates, has been advertised for sale, the District Collector or other Officer authorized by him/her to act on his/her behalf may postpone the sale pending the investigation of the claim or objection.

14G. Order of the Certificate Officer shall be final.

Subject to the provisions of this Act and the rules made hereunder, the order of the Certificate Officer disposing of an application shall be final."

Insertion of
Section 15 A.

- 17 In the principal Act, after Section 15, the following section shall be inserted, namely: -

"15A. Date and place of hearing to be notified.

- (1) The District Collector or other Officer authorized by him/her to act on his/her behalf shall notify the parties the date and place of hearing of the application filed under Section 15 of the Act in such manner as it may deem fit.

- (2) Every order of the Certificate Officer shall be in writing and shall be signed and dated by him.
- (3) The order shall be pronounced in presence of both the parties.”

Suraj Chettri (SSJS)
L.R.-cum-Secretary
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