



The Bengal Land-Revenue Sales Act, 1859

Act 11 of 1859

Keyword(s):

Improve the Law, Sale of Land, Arrear of Land Revenue

Amendment appended: 3 of 1862

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Act XI of 1859
(The Bengal Land-revenue Sales Act, 1859.)

CONTENTS.

PREAMBLE.

SECTION.

1. *(Repealed.)*
2. "Arrear of revenue" defined.
3. Latest day of payment.
4. *(Repealed.)*
5. Proviso as to certain descriptions of arrears.
6. Issue of notifications of sale.
Tender after latest day of payment not to stop sale.
7. Notice to *raiyats*, etc.
8. Claims of defaulter against Government not to invalidate sale.
9. Deposits receivable from persons not proprietors.
10. Separation of shares held in common, by opening separate account.
11. Separation of shares consisting of specific portions of land, by opening separate accounts.
12. If objection be made, parties to be referred to Civil Court.
13. Sale of separate shares.
14. Entire estate may be sold under certain conditions.
15. Deposit for protection of estate from sale.
16. Withdrawal of deposit.
17. Estate under attachment.
18. Power to exempt from sale.
Proviso.
19. Sales where to be made.
20. Adjournment of sales.
21. Order of selling.
22. Deposit on account of purchase-money.
23. Full payment of purchase-money.
24. Re-sale.
25. *(Repealed.)*
26. Annulment of sale in special cases.
27. Sales when final.
28. Certificate of sales.
29. Delivery of possession.
30. Liability of purchaser.
31. Application of purchase-money.
32. Notification of annulment of sale.
33. Jurisdiction of Civil Courts in suits to annul sales.
Proviso.
34. Effects of annulment of sales by decree of Court.
35. If sale annulled, purchase-money to be refunded.
36. Dismissal of suit brought to oust purchaser on ground that purchase was made for another.

SECTION.

37. Rights of purchaser of permanently-settled estate sold for its own arrears.
Proviso.
38. Registration of certain tenures and farms.
39. Common and special registry.
40. Application for registry.
41. Procedure on application for common registry.
42. Procedure on application for special registry.
43. Registration of leases of certain lands.
44. Registration of old tenures.
Proviso.
45. (*Repealed.*)
46. Expenses of measurement, survey or local inquiry.
47. Civil Court not competent to order entry in special register.
48. Suit for cancelment of registry of tenure or farm.
49. Proceedings of Revenue-authorities in registration of tenures, etc.
50. Effect of entry in special register.
51. Protection of *talukdari* tenures pending inquiry, in case of sale of parent estate for arrears of revenue.
52. Rights of purchaser of estate not permanently settled, sold for its own arrears.
53. Rights of purchaser being sharer in estate;
and of purchaser of estate not sold for its own arrears.
54. Rights of purchasers of shares of estate.
55. Recovery of arrears due to defaulters.
56. Punishment for contempt.
57. Default as to deposit a contempt.
58. Government may purchase at sale.
59. (*Repealed.*)
60. Regulations VII, 1822, and IX, 1825, in force in certain estates.
61. Interpretation.
62. Application of Act.

Schedule A.—Certificate of sale.

Schedule B.—(*Repealed.*)

Act XI of 1859

(The Bengal Land-revenue Sales Act, 1859.)¹

SUPPLEMENTED	...	...	...	<div style="border-left: 1px solid black; padding-left: 5px;"> Ben. Act III of 1862. Ben. Act VII of 1868. Ben. Act I of 1895. Ben. Act III of 1913. </div>
SHORT TITLE GIVEN	...	...		Act I of 1903.
REPEALED IN PART	...	...		<div style="border-left: 1px solid black; padding-left: 5px;"> Act XIV of 1870. Act XII of 1891. Ben. Act III of 1862. Ben. Act III of 1881. West Ben. Act VII of 1950. </div>
AMENDED	...	...	...	<div style="border-left: 1px solid black; padding-left: 5px;"> Ben. Act I of 1939. Ben. Act VII of 1942. Ben. Act II of 1943. </div>
REPEALED IN PART AND AMENDED				<div style="border-left: 1px solid black; padding-left: 5px;"> Act I of 1903. Act IV of 1914. Ben. Act VII of 1868. </div>
ADAPTED	...	...	...	<div style="border-left: 1px solid black; padding-left: 5px;"> (a) The Government of India (Adaptation of Indian Laws) Order, 1937. (b) The Adaptation of Laws Order, 1950. </div>

(4th May, 1859.)

An Act to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency.

[WHEREAS it is expedient to discontinue the practice of obtaining the previous sanction of the Board of Revenue to sales of estates for arrears of revenue, or other demands of Government, in the province of Cuttack;]

Preamble.

AND WHEREAS it is just that a person having a lien upon an estate, and paying the money necessary to protect it from sale for arrears of revenue, should be reasonably secured;

AND WHEREAS it is expedient to afford sharers in estates, who duly pay their shares of the *sadar jama* of their estates, easy means of protecting their shares from sale by reason of the default of their co-sharers;

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

LOCAL EXTENT.—This Act was passed for the whole of the former Province of Bengal—see the title and the concluding paragraph of s. 1, but was declared by s. 62 to extend only to such parts of that Province as are subject to the general Regulations.

It has been declared, by the Laws Local Extent Act, 1874 (XV of 1874), s. 6, to be in force throughout the former Province of Bengal, except as regards the Scheduled Districts.

It has been declared, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 3, to be in force in West Jalpaiguri, in the Jalpaiguri district.

It has been extended, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), s. 5, to the following Scheduled Districts, namely :—
 the Western Duars, in the Jalpaiguri district; and
 the Darjeeling district.

(Sections 1—4.)

AND WHEREAS it is expedient to afford landholders, particularly absentees, facilities in guarding against the accidental sale of their estates for arrears of revenue by reason of the neglect or fraud of their agents;

* * * *

and it is therefore proper, for the above and other purposes, to improve the law relating to sales of land for arrears of revenue in the Provinces of Bengal, {Bihar and Orissa;}

It is enacted as follows :—

1. [Laws repealed.]—Rep. by the Repealing Act, 1870 (XIV of 1870.)

"Arrear of revenue" defined.

2. If the whole or a portion of a *kist* or instalment of any month of the era according to which the settlement and *kist-bandi* of any *mahal* have been regulated be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of revenue.

Latest day of payment.

3. Upon the promulgation of this Act the Board of Revenue at Calcutta shall determine upon what dates all arrears of revenue and all demands which, by the Regulations and Acts in force, are directed to be realised in the same manner as arrears of revenue, shall be paid up in each district under their jurisdiction, in default of which payment the estates in arrear in those districts, except as hereinafter provided, shall be sold at public auction to the highest bidder.

And the said Board shall give notice of the dates so fixed in the *Official Gazette*, and shall direct corresponding publication to be made, as far as regards each district in the language of that district, in the office of the Collector or other officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate (or Joint Magistrate, as the case may be,) and *Munsifs*, and at every *thana*-station of that district;

and the dates so fixed shall not be changed except by the said Board by advertisement and notification in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

4. [In Sylhet, personal property of defaulters may in the first instance be distrained and sold.]—Rep. by the Amending Act, 1891 (XII of 1891).

The Preamble beginning with "and whereas it is expedient to provide for the voluntary registration of dependent *taluks*" and ending with "held at rents sufficient for the security of the revenue;" were omitted by s. 3 of the Bengal Land-revenue Sales (West Bengal Amendment) Act, 1950 (West Ben. Act VII of 1950).

of 1859.]

(Sections 5, 6.)

5. Provided always that no estate, and no share or interest in any estate, shall be sold for the recovery of arrears or demands of the descriptions mentioned below, otherwise than after a notification, in the language of the district, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed, for a period of not less than fifteen clear days preceding the date fixed for payment according to section 3 of this Act,

Proviso as to certain description of arrears.

in the office of the Collector, or other officer duly authorized to hold sales under this Act,

in the Court of the Judge within whose jurisdiction the land advertised lies, and

in the *Munsif's* Court and police-*thana* of the division in which the estate or share of an estate to which the notification relates is situated, or, if the estate or share of an estate be situated within the jurisdiction of more than one *Munsif's* Court or police-*thana*, in some one or more of such Courts or *thanas*, and

also at the *cutcherry* of the *malguzar* or owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate, the same to be certified by the peon or other person employed for the purpose.

First.—Arrears other than those of the current year, or of the year immediately preceding.

Secondly.—Arrears due on account of estates other than that to be sold.

Thirdly.—Arrears of estates under attachment by order of any judicial authority, or managed by the Collector in accordance with such order.

Fourthly.—Arrears due on account of *takavi*, *pulbandi*, or other demands not being land-revenue, but recoverable by the same process as arrears of land-revenue.

6. The Collector or other officer duly authorized to hold sales under this Act shall, as soon as possible after the latest day of payment fixed in the manner prescribed in section 3 of this Act, issue notifications, in the language of the district, to be affixed in his own office and in the Court of the Judge of the district, specifying the estates or shares of estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than [thirty] * * * clear days from the date of affixing the notification in the office of the Collector or other officer as aforesaid.

Issue of notifications of sale.

¹This word was substituted for the word "fifteen" by s. 3 of the Bengal Land-revenue Sales Act, 1868 (Ben. Act VII of 1868).

²The words "or more than thirty" were repealed, *ibid*.

[Act XI

(Section 7.)

And, if the Government revenue of any estate or share of an estate to be sold exceed the sum of five hundred rupees, a notification of the sale of such estate or share of an estate shall be published in the *Official Gazette*.

[The Collector or other officer duly authorised to hold sales, shall also issue notice of sale by registered post in the name of the recorded proprietors of the estate, and in case their number be more than five, in the name of at least five of the biggest recorded shareholders informing them of the particulars of sale. Such notice shall be issued simultaneously with, or as soon as may be after, the issue of the notification referred to above. If the sale does not take place the cost of such registered notices shall be payable by the defaulters within fifteen days of the date on which the sale was to take place and if it is not paid within that period, it shall be realised from the defaulters by any process authorised for realising an arrear of public revenue.

No sale shall take place until the officer conducting the sale has satisfied himself that the notification of sale has been duly published and the notices of sale have been sent to proprietors by registered post but the omission to serve such notice on any proprietor or any defect in the service of any such notice shall not by itself be a ground for the annulment of a sale under this Act.]

Except as hereinafter provided, all estates or shares of estates so specified shall, on the day notified for sale, or on the day or days following, be put up to public auction by and in the presence of the Collector or other officer as aforesaid and shall be sold to the highest bidder.

And no payment or tender of payment, made after sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

7. Whenever an estate or share of an estate is notified for sale as provided by section 6 of this Act, the Collector or other officer as aforesaid shall affix a proclamation, in the language of the district,

in his own office, and as soon thereafter as may be in the *Munsif's Courts* and *police-thanas* within which the estate or share of an estate, or any part of it, is situated, and also at the *cutcherry* of the *malguzar* or the owner of the estate or share of an estate, or at some conspicuous place upon the estate or share of an estate,

forbidding the *raiya*s and under-tenants to pay to the defaulting proprietor any rent which has fallen due after the day fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums so paid.

Tender after
latest day
of payment
not to stop sale.

Notice to
*raiya*s,
etc.

of 1859.]

(Sections 8, 9.)

8. No claim to abatement or remission of revenue, unless the same shall have been allowed by the authority of ¹[the State Government], and no private demand or cause of action whatever, held or supposed to be held by any defaulter against ²[the Government], shall bar or render void or voidable a sale under this Act; nor shall the plea that money belonging to the defaulter, and sufficient to pay the arrear of revenue due, was in the Collector's hand bar or render void or voidable a sale under this Act, unless such money stand in the defaulter's name alone and without dispute, and unless, after application in due time made by the defaulter, or after the written agreement provided for in section 15 of this Act, the Collector shall have neglected, or refused on insufficient grounds to transfer it in payment of the arrear of revenue due.

Claims of defaulter, against Government not to invalidate sale.

9. The Collector or other officer as aforesaid shall, at any time before sunset of the latest day of payment determined according to section 3 of this Act, receive as a deposit from any person not being a proprietor of the estate or sharer of an estate in arrear, the amount of the arrear of revenue due to be credited in payment of the arrear at sunset as aforesaid, unless before that time the arrear shall have been paid by a defaulting proprietor of the estate.

Deposits receivable from persons not proprietors.

And in case the person so depositing, whose money shall have been credited in the manner aforesaid, shall be a party in a suit pending before a Court of Justice for the possession of the estate or share from which the arrear is due or any part thereof, it shall be competent to the said Court to order the said party to be put into temporary possession of the said estate or share, or part thereof, subject to the rules in force for taking security in the cases of parties in civil suits.

And if the person so depositing, whose money shall have been credited as aforesaid, shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said person, which would have been endangered or damaged by the sale, or which he believed in good faith would have been endangered or damaged by the sale, he shall be entitled to recover the amount of the deposit, with or without interest as the Court may determine, from the defaulting proprietor.

And if the party so depositing, whose money shall have been credited as aforesaid, shall prove before such a Court that the deposit was necessary in order to protect any lien he had on the estate or share or part thereof, the amount so credited shall be added to the amount of the original lien.

¹The words "the Provincial Government" were substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The words "the Crown" were substituted for the word "the Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "Government" was substituted for the word "Crown" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 10—12.)

Separation of shares held in common, by opening separate account.

10. When a recorded sharer of joint estate, held in common tenancy, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect.

The application must contain a specification of the share held in the estate by the applicant.

The Collector shall then cause to be published in his own office, in the Court of the Judge, Magistrate (or Joint-Magistrate as the case may be), and *Munsifs*, and in the police-*thanas* in whose jurisdiction the estate or any part thereof is situated, as well as on some conspicuous part of the estate itself, a copy of the application made to him.

If, within six weeks from the date of the publication of these notices, no objection is made by any other recorded sharer, the Collector shall open a separate account with the applicant, and shall credit separately to his share all payments made by him on account of it. The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

Separation of shares consisting of specific portions of land, by opening separate accounts.

11. When a recorded sharer of a joint-estate, whose share consists of a specific portion of the land of the estate, desires to pay his share of the Government revenue separately, he may submit to the Collector a written application to that effect. The application must contain a specification of the land comprised in his share, and of the boundaries and extent thereof, together with a statement of the amount of *sadar jama* heretofore paid on account of it.

On the receipt of this application the Collector shall cause it to be published in the manner prescribed for publication of notice in the last preceding section.

In the event of no objection being urged by any recorded co-sharer within six weeks from the time of publication, the Collector shall open a separate account with the applicant and credit separately to his share all payments made by him on account of it.

The date on which the Collector records his sanction to the opening of a separate account shall be held to be that from which the separate liabilities of the share of the applicant commence.

If objection be made, parties to be referred to Civil Court.

12. If any recorded proprietor of the estate, whether the same be held in common tenancy or otherwise, object that the applicant has no right to the share claimed by him, or that his interest in the estate is less or other than that claimed by him, or if the application be in respect of a specific portion of the land of an estate, that the amount of *sadar jama* stated by the applicant to have been heretofore paid on account of such portion of land is not the amount which has been recognized by the other sharers as the *jama* thereof, the Collector shall refer the parties to the Civil Court and shall suspend proceedings until the question at issue is judicially determined.

of 1859.]

(Sections 13—15.)

13. Whenever the Collector shall have ordered a separate account or accounts to be kept for one or more shares, if the estate shall become liable to sale for arrears of revenue, the Collector or other officer as aforesaid in the first place shall put up to sale only that share or those shares of the estate from which according to the separate accounts, an arrear of revenue may be due.

Sale of separate shares.

In all such cases notice of the intention of excluding the share or shares from which no arrear is due shall be given in the advertisement of sale prescribed in section 6 of this Act. The share or shares sold, together with the share or shares excluded from the sale, shall continue to constitute one integral estate, the share or shares sold being charged with the separate portion, or the aggregate of the several separate portions, of *jama* assigned thereto.

14. If in any case of a sale held according to the provisions of the last preceding section the highest offer for the share exposed to sale shall not equal the amount of arrear due thereupon to the date of sale, the Collector or other officer as aforesaid shall stop the sale, and shall declare that the entire estate will be put up to sale for arrears of revenue at a future date, unless the other recorded sharer or sharers, or one or more of them, shall within ten days purchase the share in arrear by paying to [the State Government] the whole arrear due from such share.

Entire estate may be sold under certain conditions.

If such purchase be completed, the Collector or other officer as aforesaid shall give such certificate and delivery of possession as are provided for in sections 28 and 29 of this Act to the purchaser or purchasers, who shall have the same rights as if the share had been purchased by him or them at the sale.

If no such purchase be made within ten days as aforesaid, the entire estate shall be sold, after notification for such period and publication in such manner as is prescribed in section 6 of this Act.

15. If any recorded proprietor or co-partner of an estate shall deposit with the Collector money, or Government securities endorsed and made payable to the order of the Collector and shall sign an agreement pledging the same [to the State Government] by way of security for the *jama* of the entire estate, and authorizing the Collector to apply to the payment of any arrear of revenue that may become due from that estate the whole or any portion of the said money or securities that may be necessary for that purpose, then in the case of any arrear of revenue due from the said estate not being paid before sunset of the latest day of payment fixed under section 3 of this Act the Collector shall apply to the payment of such arrear the said money or securities, or such part thereof or of any interest due on the said

Deposit for protection of estate from sale.

¹See foot-note 1 on page 325, *ante*.

²The words "to the Provincial Government" were substituted for the words "to Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

(Sections 16—19.)

securities, as may be necessary; and for this purpose the Collector shall first apply any money that may be in his hands and any interest that may be due upon such securities, and may then sell and transfer the securities for any balance that may remain.

And so long as any money or securities as aforesaid, sufficient to cover any arrear that may fall due, shall remain and be available as aforesaid, the estate for the protection of which the said deposit was made shall be exempted from sale for arrears of revenue.

All moneys and securities so deposited shall be exempt from attachment otherwise than in execution of a decree of a Civil Court.

Withdrawal
of deposit.

16. It shall be competent to the person making a deposit under the provision of the last preceding section, or his representative or assignee, at any time, to withdraw the deposit and to revoke the pledge of the same.

Estate
under
attachment.

17. * * * * * no estate held under attachment by the Revenue-authorities otherwise than by order of a judicial authority shall be liable to sale for arrears accruing whilst it was so held under attachment.

And no estate held under attachment or managed by a Revenue-officer, in pursuance of an order of a judicial authority, shall be liable to sale for the recovery of arrears of revenue accruing during the period of such attachment or management, until after the end of the year in which such arrears accrued.

Power to
exempt
from sale.

18. It shall be competent to the Collector or other officer as aforesaid, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale; and in like manner it shall be competent to the Commissioner of Revenue, at any time before the sale of an estate or share of an estate shall have commenced, to exempt such estate or share from sale, by a special order to the Collector or other officer as aforesaid to that effect in each case; and no such sale shall be legal if held after the receipt of such order of exemption :

Proviso.

Provided, however, ²that the Collector or other officer as aforesaid, or the Commissioner, shall duly record in a proceeding the reason for granting such exemption; and provided also that an order for exemption so issued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector or other officer as aforesaid of the order of exemption.

Sales where
to be made.

19. Sales shall ordinarily be made by the Collector or other officer as aforesaid in the Land-revenue office at the *sadar* station of the district :

¹The original words and figures which were repealed by the Bengal Court of Wards (Amendment) Act, 1881 (Ben. Act III of 1881), are omitted.

²Formal words which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

of 1859.]

(Sections 20—23.)

Provided, however, that it shall be competent to the ¹[Commissioner] to prescribe a place for holding sales other than such office whenever ²[he] shall consider it beneficial to the parties concerned.

20. In case the Collector or other officer as aforesaid shall be unable, from sickness, from the occurrence of a holiday or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue and announcing the adjournment by written proclamation stuck up in his *cutcherry*; and so on, from day to day, until he shall be able to commence upon or to complete the sale; but with the exception of adjournments so made, recorded and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

Adjournment
of sales.

21. On the day of sale fixed according to section 6 of this Act, sales shall proceed in regular order; the estate to be sold bearing the lowest number on the *tauji* or register in use in the Collector's office of the district being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other officer as aforesaid to put up any estate out of its regular order by number, except where it may be necessary to do so in default of deposit, as provided in section 22 of this Act.

Order of
selling.

22. The party who shall be declared the purchaser of an estate or share of an estate at any such public sale as aforesaid shall be required to deposit immediately, or as soon after the conclusion of the sale of the estate or share as the Collector or other officer as aforesaid may think necessary, either in cash, ³[Reserve Bank of India]⁴* * post-bills, ⁵[currency notes], or Government securities, to be valued at the market-rate of the day, duly endorsed, twenty-five *per cent.* on the amount of his bid; and in default of such deposit the estate or share shall forthwith be put up again and sold.

Deposit
on account
of
purchase-money.

23. The full amount of purchase-money shall be made good by purchaser before sunset of the thirtieth day from that on which the sale of the estate or share of an estate bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the

Full
Payment
of purchase-money.

¹This word was substituted for the words "Board of Revenue" by the Decentralization Act, 1914 (IV of 1914).

²This word was substituted for the word "they", *ibid.*

³These words were substituted for the words "Bank of Bengal" by the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

⁴The words "notes or," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.

⁵These words were inserted by the Amending Act, 1903 (I of 1903).

(Sections 24—27.)

thirtieth; and, in default of payment within the prescribed period as aforesaid, the deposit shall be forfeited to Government, the estate or share shall be re-sold, and the defaulting purchaser shall forfeit all claim to the estate or share, or to any part of the sum for which it may subsequently be sold.

And, in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public revenue, and such difference shall be taken and considered to be a part of the purchase-money, and shall be dealt with in the manner hereinafter prescribed for the disposal thereof.

Re-sale.

24. When default is made in the payment of purchase-money, a notification of the intended re-sale shall be published for the period and in the manner prescribed in section 6 of this Act, but such notification shall not be published until the expiration of three clear days after the day on which the default shall have occurred; and if the payment or tender of payment of the arrear on account of which the estate or share was first sold, and of any arrear which may have subsequently become due, shall be made by or on behalf of the proprietor of the estate or share before sunset of the third day, the issue of the notification of re-sale shall be stayed. The rules contained in the last preceding section shall be applicable to every such re-sale :

Provided that, if default of payment of purchase-money shall occur more than once, the amount to be recovered from the defaulting bidders shall be the difference between the highest bid and the proceeds of the sale eventually consummated, which amount may be levied in manner aforesaid from any of the defaulting bidders to the extent of the amount by which his bid exceeds the amount realized.

25. (*Appeals.*)—*Rep. by the Bengal Land-revenue Sales Act, 1858 (Ben. Act VII of 1868).*

Annulment of sale in special cases.

26. It shall be competent to the Commissioner of Revenue, on the ground of hardship or injustice, to suspend the passing of final orders in any case of appeal from a sale, and to represent the case to the Board of Revenue, who, * * * may annul the sale and cause the estate or share of an estate to be restored to the proprietor on such conditions as may appear equitable and proper.

Sales when final.

27. All sales of which the purchase-money has been paid up as prescribed in section 23 of this Act, and against which no appeal shall have been preferred ²[or in respect of which no application under section 37A has been made or in respect of which no appeal under sub-section (3) of section 37B has been preferred], shall be final

¹The words "if they see cause, may recommend to the Local Government to annul the sale; and the Local Government in any such case" were omitted by the Decentralization Act, 1914 (IV of 1914).

²Inserted by s. 2 of the Bengal Land-revenue Sales (Amendment) Act, 1942 (Ben. Act VII of 1942).

of 1859.]

(Sections 28—31.)

and conclusive at noon of the '[sixtieth] day from the day of sale, reckoning the said day of sale as the first of the said '[sixty] days.

And sale against which an appeal may have been preferred and dismissed by the Commissioner ²[or in respect of which an application under section 37A may have been made or an appeal under sub-section (3) of section 37B may have been preferred and such application or appeal has been dismissed] shall be final and conclusive from the date of such dismissal, if more than '[sixty] days from the day of sale, or if less, then at noon of the '[sixtieth] day as above provided.

28. Immediately upon a sale becoming final and conclusive the Collector or other officer as aforesaid shall give to the purchaser a certificate of title in the form prescribed in Schedule A annexed to this Act.

Certificate of sales.

And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the estate or share of an estate sold being vested in the person or persons named from the date specified.

And the Collector shall also notify such transfer by written proclamation in his own office, and in the Courts of the *Munsifs* and police-*thanas* within whose jurisdictions any part of the estate or share sold shall be situated.

29. The Collector or other officer as aforesaid shall order delivery of possession of the estate or share purchased to be made by removing any person who may refuse to vacate the same, and by proclamation to the occupants of the property by beat of drum or in such other mode as may be customary, at some convenient place or places; and by affixing a copy of the certificate at the *mal cutcherry* or in some conspicuous place of the estate or share of an estate purchased.

Delivery of possession.

30. The party certified as the proprietor of an estate or share of an estate by purchase under this Act shall be answerable for all instalments of the revenue of Government which may fall due after the latest day of payment aforesaid.

Liability of purchaser.

31. The Collector shall apply the purchase-money, first, to the liquidation of all arrears due upon the latest day of payment from the estate or share of an estate sold; and, secondly, to the liquidation of all outstanding demands ³[including the cost of notices referred to in section 6] debited to the estate or share of an estate in the public accounts of the district : holding the residue, if any, in deposit on

Application of purchase-money.

¹The words "sixtieth" and "sixty" were substituted for the words "thirtieth" and "thirty" respectively, by s. 4 of the Bengal Land-revenue Sales Act, 1868 (Ben. Act VII of 1868).

²Inserted by s. 2 of the Bengal Land-revenue Sales (Amendment) Act, 1942 (Ben. Act VII of 1942).

³Inserted by s. 3 of the Bengal Land-revenue Sales (Amendment) Act, 1943 (Ben. Act II of 1943).

[Act XI.]

(Sections 32, 33.)

account of the late recorded proprietor or proprietors of the estate or share of an estate sold, or their heirs or representatives, to be paid to his or their receipt on demand in manner following : to wit, in shares proportioned to their recorded interest in the estate or share of an estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of proprietors upon their joint receipt.

And, if before payment to the late proprietor or proprietors of any surplus that may remain of the purchase-money, the same be claimed by any creditor in satisfaction of a debt, such surplus shall not be payable to such claimant, nor shall it be withheld from the proprietor, except under precept of a Civil Court.

32. The annulment by a Commissioner or by ¹[Board of Revenue] of a sale made under this Act shall be publicly notified by the Collector or other officer as aforesaid, in the same manner as the becoming final and conclusive of sales is required to be notified by section 28 of this Act; and the amount of deposit and balance of purchase-money shall be forthwith returned to the purchaser with interest thereon at the highest rates of the current public securities : which shall be paid by ²[the State Government], unless the proprietor shall have become liable for the same under the provisions of ³[section 2 of the Bengal Land-revenue Sales Act, 1868.] or section 26 of this Act.

33. No sale for arrears of revenue or other demands realizable in the same manner as arrears of revenue are realizable, made after the passing of this Act, shall be annulled by a Court of Justice, except upon the ground of its having been made contrary to the provisions of this Act, and then only on proof that the plaintiff has sustained substantial injury by reason of the irregularity complained of : and no such sale shall be annulled upon such ground, unless such ground shall have been declared and specified in an appeal made to the Commissioner under ³[section 2 of the Bengal Land-revenue Sales Act, 1868]; and no suit to annul a sale made under this Act shall be received by any court of Justice, unless it shall be instituted within one year from the date of the sale becoming final and conclusive as provided in section 27 of this Act : and no person shall be entitled to contest the legality of a sale after having received any portion of the purchase-money :

¹These words were substituted for the word "Government" by the Decentralization Act, 1914 (IV of 1914).

²The words "the Provincial Government" were substituted for the words "the Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

³These words and figures were substituted for the word and figure "section 25" by the Amending Act, 1903 (I of 1903).

Notification
of annulment
of sale.

Jurisdiction
of Civil
Courts in
suits to
annul sales.

Ben. Act
VII of
1868.

of 1859.]

(Sections 34—37.)

Provided, however, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or omission connected with a sale under this Act from his remedy in a personal action for damages against the person by whose act or omission he considers himself to have been wronged.

Proviso.

34. If a sale made under this Act be annulled by a final decree of a Civil Court, application for the execution of such decree shall be made within six months after the date thereof; otherwise the party in whose favour such decree was passed shall lose all benefit therefrom.

Effects of annulment of sales by decree of Court.

And no order for restoring such decree-holder to possession shall be passed until any amount of surplus purchase-money that may have been paid away by order of a Civil Court be repaid by him, with interest at the highest rate of the current Government securities.

And, if such party shall neglect to pay any amount so recoverable within six months from the date of such final decree, he shall lose all benefit therefrom.

35. In the event of a sale being annulled by a final decree of a Court of Justice, and the former proprietor being restored to possession, the purchase-money shall be refunded to the purchaser by ¹[the State Government], together with interest at the highest rate of the current public securities.

If sale annulled, purchase-money to be refunded.

36. Any suit brought to oust the certified purchaser as aforesaid on the ground that the purchase was made on behalf of another person not the certified purchaser, or on behalf partly of himself and partly of another person, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

Dismissal of suit brought to oust purchaser on ground that purchase was made for another.

²37. (1) The purchaser of an entire estate in the permanently settled districts of West Bengal sold under this Act for the recovery of arrears due on account of the same, shall acquire the estate free from all encumbrances which may have been imposed after the time of settlement and shall be entitled to avoid and annul all tenures, holdings and leases with the following exceptions :—

Rights of a purchaser of a permanently settled estate sold for its own arrears.

(a) tenures and holdings which have been held from the time of the permanent settlement either free of rent or at a fixed rent or fixed rate of rent, and

(b) (i) tenures and holdings not included in exception (a) above made, and (ii) other leases of land whether or not for purposes connected with agriculture or horticulture,

¹See foot-note 2 on page 332, ante.

²Substituted by s. 4 of the Bengal Land-revenue Sales (West Bengal Amendment) Act, 1950 (West Ben. Act VII of 1950), for the original s. 37.

(Section 37A.)

existing at the date of issue of the notification for sale of the estate under this Act :

Provided that notwithstanding anything contained in any law for the time being in force or in any lease or contract no person shall be entitled to hold under such a purchaser as is aforesaid any tenure, holding or lease coming within exception (b) above made, free of rent or at a low rent or at a rent or rate of rent fixed in perpetuity or for any specified period unless the right so to hold has been expressly recognised under any law for the time being in force by any competent civil or revenue court; and the purchaser shall be entitled to proceed in the manner prescribed by any law for the time being in force for the determination of a fair and equitable rent of such tenure, holding or lease.

(2) For the purposes of this section —

(a) (i) "tenure" includes a tenure as defined in the Bengal Tenancy Act, 1885, and

(ii) "holding" includes a holding as defined in the Bengal Tenancy Act, 1885;

(b) any rent which is lower than what has been entered in any record of rights prepared and finally published under Chapter X of the Bengal Tenancy Act, 1885, before the commencement of the Bengal Land-revenue Sales (West Bengal Amendment) Act, 1950, shall be presumed to be a low rent;

(c) Section 75A of the Bengal Tenancy Act, 1885, shall not have any application.

VIII of
1885.

West Ben.
Act VII
of 1950.

Application for
setting aside
sale.

37A. Where any estate or share of an estate has been sold under this Act, the defaulting holder of the estate or of a share thereof or any person who holds an interest therein by virtue of a title acquired before such sale or any person whose interests are affected by the sale may, at any time within thirty days from the date of the sale, apply to the Collector to have the sale set aside on his depositing with the Collector—

(a) for payment to the purchaser, a sum equal to three *per cent* of the purchase-money but not less than one rupee; and

(b) for payment to the ²[State] Government, a sum equal to the amount specified in the notification of sale as that for the recovery of which the sale was ordered together with such costs, if any, as the ³[State] Government may have incurred subsequent to the issue of such notification of sale.

¹Inserted by s. 3 of the Bengal Land-revenue Sales (Amendment) Act, 1942 (Ben. Act VII of 1942).

²Substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

of 1859.]

(Sections 37B—52.)

37B. (1) Notwithstanding anything contained elsewhere in this Act where the deposit required by section 37A is made within thirty days from the date of the sale, the Collector shall make an order setting aside the sale, provided that no order shall be made unless the notice of the application has been given to the purchaser.

Sale when to be set aside.

(2) No suit to set aside an order made under this section shall be brought by any person against whom such order is made.

(3) An appeal shall lie to the Commissioner against an order made under sub-section (1) refusing to set aside a sale if such appeal is preferred within thirty days from the date of the order.

37C. Where a sale is set aside under section 37B, the purchaser shall be entitled to an order for repayment of his purchase-money with or without interest as the Collector may direct.

Return of purchase-money in certain cases.

37D. (1) Where the sale has been set aside at the instance of, and on the deposit by, a person other than the defaulting proprietor or proprietors, the amount paid for such setting aside of the sale, shall be deemed to be a debt bearing interest at six *per cent per annum* and secured by a mortgage of the estate or a share thereof sold in favour of the said person.

Amount paid to prevent sale to be in certain cases a mortgage-debt on the estate or share thereof.

(2) His mortgage shall take priority over every other charge on the said estate or share other than a charge for arrears of revenue.

(3) He shall be entitled to the possession of the said estate or share as mortgage of the defaulting proprietor or proprietors and to retain possession of it as such until the said debt with interest thereon has been discharged.

(4) Nothing in this section shall affect any other remedy to which any such person would be entitled.

38. to 51. [*Repealed by the Bengal Land-revenue Sales (West Bengal Amendment) Act, 1950 (West Ben. Act VII of 1950.)*]

52. The provisions of section 37 of this Act shall *mutatis mutandis* apply in the case of a purchaser of an estate in a district of West Bengal not permanently settled, sold under this Act for the recovery of arrears due on account of the same.

Rights of purchaser of an estate not permanently settled, sold for its own arrears.

¹Inserted by s. 3 of the Bengal Land-revenue Sales (Amendment) Act, 1942 (Ben. Act VII of 1942).

²Substituted by s. 6 of the Bengal Land-revenue Sales (West Bengal Amendment) Act, 1950 (West Ben. Act VII of 1950), for the original section 52.

[Act XI

(Sections 53—58.)

Rights of purchaser being sharer in estate;

53. Excepting * * * sharers with whom the Collector, under sections 10 and 11 of this Act, has opened separate accounts, purchase the estate of which he is proprietor or co-partner, or who by repurchase or otherwise may recover possession of the said estate, after it has been sold for arrears under this Act, and likewise any purchaser of an estate sold for arrears or demands other than those accruing upon itself, shall by such purchase acquire the estate subject to all its encumbrances existing at the time of sale, and shall not acquire any rights in respect to under-tenants or *raiya*s which were not possessed by the previous proprietor at the time of the sale of the said estate.

and of purchaser of estate not sold for its own arrears.

Rights of purchasers of shares of estate.

54. When a share or shares of an estate may be sold under the provisions of section 13 or section 14, the purchaser shall acquire the share or shares subject to all encumbrances, and shall not acquire any rights which were not possessed by the previous owner or owners.

Recovery of arrears due to defaulters.

55. Arrears of rent which on the latest day of payment may be due to the defaulter from his under-tenants or *raiya*s shall, in the event of a sale, be recoverable by him after the said latest day, by any process except distraint which might have been used by him for that purpose on or before the latest day.

Punishment for contempt.

56. Any Collector or other officer as aforesaid conducting a sale under this Act shall be competent to punish any contempt committed in his presence in open *cutcherry* or office for the time being, by fine, to an extent not exceeding two hundred rupees, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector or other officer as aforesaid, shall carry his sentence into effect :

Provided that an appeal from any order passed under this section shall lie to the Revenue Commissioner, whose decision shall be final.

Default as to deposit a contempt.

57. A default to make good a bid by making the deposit required by section 22 of this Act shall be held to be a contempt.

Government may purchase at sale.

58. When an estate is put up for sale under this Act for the recovery of arrears of revenue due thereon, if there be no bid, the Collector or other officer as aforesaid may purchase the estate on

*The words and figures "shares in estates under *banvara* who may have saved their shares from sale under sections 33 and 34, Regulation XIX, 1814, and" which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

of 1859.]

(Sections 59—62.)

account of the '[State Government] for one rupee, or if the highest bid be insufficient to cover the said arrears and those subsequently accruing up to the date of sale, the Collector or other officer as aforesaid may take or purchase the estate on account of the '[State Government] at the highest amount of bid; in both which cases the '[State Government] shall acquire the property subject to the provisions of this Act.

59. [*Fees and charges demandable by Collector.*—*Rep. by the Bengal Land-revenue Sales (Amendment) Act, 1862 (Ben. Act III of 1862.)*

60. The provisions of Regulation VII, 1822², and Regulation IX, 1825³, shall be in force in every estate in any part of which a measurement, survey, or local inquiry may be made under this Act, and in every estate purchased or taken on account of '[the State Government] under this Act.

Regulations VII, 1822, and IX, 1825 in force in certain estates.

61. In the construction of this Act the word "Collector" shall include a Deputy Collector or other officer exercising, by the authority of '[the State Government], the powers of a Collector or Deputy Collector.

Interpretation.

62. The operation of this Act shall be confined to such parts of the Lower Provinces in the Presidency of Fort William in Bengal as are or shall be subject to the general Regulation of that Presidency.

Application of Act.

¹The words "Provincial Government" were substituted for the word "Government" by para. 3 and 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

²The Bengal Land-revenue Settlement Regulation, 1822.

³The Bengal Land-revenue Settlement Regulation, 1825.

⁴The words "the Provincial Government" were substituted for the word "Government" by para. 3 and the 1st Sch. of the Government of India (Adaptation of Indian Laws) Order, 1937, and the word "State" was subsequently substituted for the word "Provincial" by paragraph 4(1) of the Adaptation of Laws Order, 1950.

[Act XI of 1859.]

(Schedules.)

SCHEDULE A.

I certify that A. B. has purchased, under Act No. 11 of 1859, the *mahal* (or share of a *mahal*) specified below, standing in the *tauzi* of the district of _____ and that his purchase took effect on the _____ day of _____ (*being the day after that fixed for last day of payment*).

(Signed.)

D.E.,
Collector.

SPECIFICATION.

(If of an entire mahal.)

Tauzi number
Name of *mahal*
Name of the former proprietor
Sadar Jama

(If of a share of a mahal.)

Tauzi number of the entire *mahal*
Name of the entire *mahal*
Sadar jama of the entire *mahal*
Description of the share sold
Subordinate *tauzi* number of the share sold
Name of the former proprietor of the share sold
Sadar Jama for which the share sold is separately liable.

SCHEDULE B.

FEES.

Rep. by the Amending Act, 1903 (1 of 1903).

This Schedule is referred to in section 28.

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BENGAL ACTS OF 1862 TO 1889, IN FORCE IN WEST BENGAL.

Bengal Act III of 1862

[THE BENGAL LAND-REVENUE SALES (AMENDMENT) ACT, 1862.]¹

SHORT TITLE GIVEN	..	Act I of 1903.
REPEALED IN PART	..	Act XII of 1873. Act I of 1903. Ben. Act II of 1906. E. B. and A. Act I of 1907.
AMENDED	..	Ben. Act I of 1939.

[23rd April, 1862.]

An Act to amend² [the Bengal Land-revenue Sales Act, 1859].

WHEREAS it is expedient to extend the period allowed for the registry of³ * * tenures⁴ * * and to alter the scale of fees on certain applications for the opening of separate accounts for shares or entire estates, for deposit of money or Government securities, and for registry of under-tenures and farms;

Preamble.

It is enacted as follows:—

1. [*Repeal of sections 45 and 59 of the Bengal Land-revenue Sales Act, 1859 (XI of 1859)]. Rep. by the Repealing Act, 1873 (XII of 1873).*

2. * * * * *

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

LOCAL EXTENT.—Since this Act is (*see* section 4, *post*) to be taken and read as part of the Bengal Land-revenue Sales Act, 1859 (XI of 1859), it has the same local extent as that Act.

The Act has been extended, by notification under the Scheduled Districts Act, 1874 (XIV of 1874), section 5, to the following Scheduled Districts, namely:—

the Western Duars, in the Jalpaiguri district, and
the Darjeeling district.

²These words and figures were substituted for "Act XI of 1859 (to improve the law relating to sales of land for arrears of revenue in the Lower Provinces under the Bengal Presidency)" by s. 2 and the First Schedule of the Bengal Repealing and Amending Act, 1938 (Ben. Act I of 1939).

³The word "under" which was repealed by the Amending Act, 1903 (I of 1903), is omitted.

⁴The words "and farms" were repealed, *ibid.*

⁵The first two paragraphs were repealed, *ibid.*

(Sections 3, 4.—Schedule of fees.)

Limitation.

Applications for the registry of tenures created after the passing of this Act must be made within three months of the date of the deed constituting the tenure.

Fees to be paid at rates mentioned in schedule.

3. The Collector on the part of the Government shall be entitled to demand from applicants under ¹* sections 15 and 16, sections 40, 43 and 44, of Act XI of 1859², fee not exceeding the rates specified in the schedule to this Act annexed, which schedule shall be taken as part of this Act; and applications under the said sections shall not be received unless the said fees are tendered therewith.

Act to be read as part of Act XI of 1859.

4. This Act shall be taken and read as part of the said Act XI of 1859².

Schedule of fees.

1. [Filing an application under section 10 or section 11 of Act XI of 1859 for opening a separate account for a share of an entire estate.]—*Rep. in Western Bengal, by the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act II of 1906) and in Eastern Bengal, by the Eastern Bengal and Assam Land Registration (Amendment) Act, 1907 (E. B. and A. Act I of 1907).*

2. For filing an application—

for a deposit of money of Government securities under section 15 of the said Act—half *per cent.* of the amount deposited;

for any interest on Government securities so deposited drawn by the Collector—half *per cent.* of the amount drawn.

For filing an application for withdrawal of a deposit under section 16 of the said Act—half *per cent.* of the amount withdrawn.

3. For filing an application, under sections 40, 43 of 44 of the said Act, for the registration of an under-tenure or farm—

if the annual rent of the under-tenure or farm do not exceed 1,000—rupees—at the rate of five *per cent.* on the rent;

if the annual rent of the under-tenure or farm exceed 1,000 rupees—at the above rate up to 1,000 rupees, and at one *per cent.* on all above that amount.

¹The words and figures "sections 10 and 11," were repealed, in Western Bengal, by s. 16(4) of the Bengal Land Registration (Amendment) Act, 1906 (Ben. Act II of 1906) and in Eastern Bengal, by s. 16(4) of the Eastern Bengal and Assam Land Registration (Amendment) Act, 1907 (E. B. & A. Act I of 1907), and are omitted. The former Act has been repealed by the Bengal Laws Act, 1914 (Ben. Act I of 1914), and the latter Act has been extended to Western Bengal by the same Act.

²The Bengal Land-revenue Sales Act, 1859.