

2. DEFINITIONS.

In this Act, unless the context otherwise requires,-

- (a) "arrear" shall include any public demand which is not paid on or before the due date of payment;
- (b) "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;
- (c) "certificate-holder" means the Government or person 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.
- (d) "Certificate Officer" means a Sub-divisional Magistrate or any other officer appointed by the Deputy Commissioner as Certificate Officer with prior approval of the Government;
- (e) "Deputy Commissioner" means the Deputy Commissioner of a District and includes an Additional Deputy Commissioner dealing with revenue matters and Sub-Divisional Magistrates and subordinate Officers dealing in the Revenue matters;
- (f) "Government" means the State Government of Mizoram;
- (g) "prescribed" means prescribed by rules made under this Act;
- (h) "public demand" means any arrear or money payable or due to the Government, or to any scheduled Bank or financial institution approved by Reserve Bank of India, where the amount due to such bank or financial institution is less than ten lakh rupees and includes any money recoverable as arrear of land revenue by any law in force or by any agreement.

CHAPTER-II

FILING, SERVICE AND EFFECT OF CERTIFICATES AND HEARING OF OBJECTIONS THERE TO

3. FILING OF CERTIFICATES FOR PUBLIC DEMAND.

When the Certificate Officer is satisfied that any public demand payable to the Government, or Bank or any financial institution is due, he may sign a certificate in the prescribed form stating that the demand is due and shall cause the certificate to be filed in his office.

4. REQUISITION FOR CERTIFICATE IN OTHER CASES.

- (1) When any public demand payable to any person other than the Government, or Bank or any financial institution is due, such person may send to the Certificate Officer a written requisition in the prescribed form.
- (2) If, after issue of the requisition under sub-section (1), any payment towards or adjustment of or reduction in the certificate due is made, such person as mentioned in sub-section (1) shall intimate the same to the Certificate Officer as soon as possible.
- (3) The Government may prescribe a fee chargeable in certain cases for such requisitioning as mentioned in sub-section (1).

5. SIGNING AND FILING OF CERTIFICATES.

On receipt of such requisition, the Certificate Officer, if he is satisfied that the demand is recoverable, may sign a certificate in the prescribed form stating that the demand is due, and shall include the fee paid, if any and shall cause the certificate to be filed in his office.

6. SERVICE OF NOTICE.

When a certificate has been filed in his office, the Certificate Officer shall cause to be served a notice in the prescribed form upon the certificate-debtor in the prescribed manner along with a copy of the certificate within seven days of the filing of the certificates.

EFFECT OF SERVICE.

From and after the service of notice of the certificate upon a certificate-debtor-

- (a) any private transfer or delivery of any of his immoveable property situated in the district in which the certificate is filed 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 such property:

Provided that the Certificate Officer may, at any time for reasons to be recorded in writing, direct an attachment of the whole or any part of the immoveable properties belonging to the certificate-debtor.

8. FILING OF PETITION DENYING LIABILITY.

- (1) The certificate-debtor may, within fifteen days from the service of notice, or where the notice had not been served, then, within thirty days from the execution of the process for enforcing the certificate, present a petition to the Certificate Officer in whose office the certificate has been filed or to the Certificate Officer who is executing the Certificate, denying his liability in the whole or in part.

(2) If any such petition is presented to a Certificate Officer other than the Certificate Officer in whose office the original certificate is filed, it shall be sent to the latter officer for disposal.

9. HEARING AND DISPOSAL OF PETITION.

The Certificate Officer in whose office the original certificate is filed may, after hearing the petitioner and taking evidence, if necessary, confirm, set aside, amend or vary the certificate as he deems fit.

CHAPTER - III

EXECUTION OF CERTIFICATES

10. WHO MAY EXECUTE CERTIFICATES.

A certificate filed under section 3 or section 4 may be executed by -

- (a) the Certificate Officer in whose office the original certificate is filed, or
- (b) the Certificate Officer to whom a copy of the certificate is sent for execution under sub section (1) of section 11.

11. TRANSMISSION OF CERTIFICATES TO ANOTHER CERTIFICATE OFFICER FOR EXECUTION.

(1) A Certificate Officer in whose office a certificate is filed may send a copy of the certificate for execution to any other Certificate Officer.

(2) When a copy of a certificate is sent to any such officer, he shall cause it to be filed in his office, and thereupon the provisions of section 7 with respect to certificates filed in the office of the Certificate Officer shall apply as if such copy were an original certificate:

Provided that it shall not be necessary to serve a second notice and copy under section 6.

12. WHEN CERTIFICATES MAY BE EXECUTED.

No step in execution of a certificate shall be taken until the period of thirty days has elapsed since the date of service required by section 6 and section 9, when a petition has been duly filed in the office of the Certificate Officer under section 8, until such petition has been heard and disposed:

Provided that where the whole or any part of the moveable property of the certificate-debtor is liable to attachment under this Act, the Certificate Officer may, at any time for reasons to be recorded in writing, direct an attachment of the whole or any part of such moveable property.

13. INTEREST, COSTS, AND CHARGES RECOVERABLE.

There shall be recoverable, in the proceedings in execution of every certificate filed under this Act-

(a) interest upon the public demand to which the certificate relates, at the rate of fifteen per centum per annum from the date of signing the certificate upto the date of realisation:

Provided that in cases where the Certificate Officer is satisfied that the certificate-debtor has made default in payment of the dues wilfully and without reasonable cause, such interest may be charged at the rate of eighteen per centum per annum;

(b) such costs as are directed to be paid by the Certificate Officer under this Act; and

(c) all charges incurred in respect of-

(i) the service of notice under section 6 and of other processes; and

(ii) all other proceedings taken for realising the demand.

14. MODE OF EXECUTION.

Subject to such conditions and limitations as may be prescribed, a Certificate Officer may order execution of a certificate-

(a) by attachment and sale, if necessary, of any property or in the case of immoveable property including the property created in the name of relatives and friends where proof is there that the loan money used was for acquiring that property by sale without previous attachment, or

(b) by arresting the certificate-debtor and detaining him in the civil prison; or

(c) by any of the methods mentioned in sub-clauses (a) and (b).

15. PROPERTY LIABLE TO ATTACHMENT AND SALE.

Property liable to attachment and sale in execution of a decree of a Civil Court may be attached and sold in execution of a certificate under this Act:

Provided that the Government may, by general or special order, exempt certain agricultural produce required by the agriculturist to support his family till the next harvest, from liability to attachment or sale in execution of a certificate.

16. PAYMENT OF MONEY CONTRARY TO ATTACHMENT TO BE VOID.

When an attachment has been made in execution of a certificate, any payment to the certificate-debtor of any debt, dividend or other money, contrary to such attachment, shall be void as against all claims enforceable under the attachment.

17. VERIFICATION BY CERTIFICATE OFFICER.

(1) Where any claim is preferred to or any objection is made to the attachment or sale, of any property in execution of a certificate on the ground that such property is not liable to such attachment or sale, the Certificate Officer shall proceed to verify the claim or objection:

Provided that no such verification shall be made where the Certificate Officer considers that the claim or objection was unduly delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Certificate Officer ordering the sale may postpone it pending the verification and disposal of the claim or objection.

18. EVIDENCE TO BE ADDUCED.

The claimant or objector may adduce evidence to show that he had some interest in, or was in possession of, the property attached, on the date of service in the case of immoveable property or on the date of attachment in the case of moveable property.

19. RELEASE OF PROPERTY FROM ATTACHMENT OR SALE.

Where, upon the verification, the Certificate Officer is satisfied that the reason stated in the claim or objection is true and the property is not liable to attachment or sale, he may make an order releasing the property, wholly or to the extent he thinks fit, from attachment or sale.

20. DISALLOWANCE OF CLAIM TO PROPERTY ATTACHED.

Where the Certificate Officer is satisfied that the property was, on the said date, in the possession of the certificate-debtor as his own property and not on account of any other person or was in the possession of some other person in trust for him or in the possession of a tenant or other person paying rent to him, the Certificate Officer may disallow the claim.

21. PURCHASER'S TITLE.

(1) Where moveable property is sold in execution of a certificate there shall vest in the purchaser merely the right, title and interest of the certificate-debtor at the time of sale.

(2) Where immoveable property is sold in execution of a certificate, and such sale has been absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

22. SUIT AGAINST PURCHASER NOT MAINTAINABLE.

No suit shall be maintained against any person claiming title under a purchase certified by the Certificate Officer in such manner as prescribed, on the

ground that the purchase was made on behalf of the plaintiff or of some one through whom the plaintiff claims.

(2) Nothing in this section shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser, or interfere with the right of a third person to proceed against that property, though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

23. APPLICATION TO SET ASIDE SALE.

(1) Where immovable property has been sold in execution of a certificate, any person whose interests are affected by the sale, may at any time within thirty days from the date of sale, apply to the Certificate Officer to set aside the sale -

(a) on the ground that the notice was not served as required under section 6, or on the ground of material irregularity in the proceedings whereby the applicant has sustained substantial injury; or

(b) by depositing an amount specified in the proclamation for sale for the recovery of which the sale was ordered, five per centum of the said amount for payment to the purchaser and any public demand payable to the Government or Bank or any financial institution by the certificate-debtor; and

(c) on the ground that the property did not exist at the time of sale, or that the purchaser has suffered substantial injury owing to any misdescription in the sale proclamation of the interest of the certificate-debtor in the property sold.

(2) Notwithstanding anything contained in sub-section (1), the Certificate Officer may entertain an application made after expiry of thirty days from the date of the sale if he is satisfied that there are reasonable grounds for so doing.

(3) Where such application is made and allowed, the Certificate Officer shall make an order setting aside the sale:

Provided that no order shall be made unless notice of application has been given to all persons affected thereby, in the form of public notice.

24. SALE WHEN TO BECOME ABSOLUTE.

Where no application is made under section 23, or where such application is made and disallowed, the Certificate Officer shall make an order confirming the sale, and thereupon the sale shall become absolute.

25. DISPOSAL OF PROCEEDS OF EXECUTION.

(1) Whenever assets are realised by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner -

- (a) there shall be paid to the certificate-holder the costs incurred by him;
- (b) there shall, in the next place, be paid to the certificate-holder the amount due to him under the certification of which the assets were realised;
- (c) if there remains a balance after these sums have been paid, there shall be paid to the certificate-holder any other amount recoverable under the procedure prescribed, which may be due to him on the date by which the assets were realised;
- (d) the balance, if any, remaining after the payment of the amount, shall be paid to the certificate-debtor; and
- (e) the balance, if any, remaining after the payment of the amount shall be realised in favour of the Government towards the cost incurred by the Government for such recovery.

2. If the Certificate debtor disputes any claim made by the certificate holder to recover any amount referred to in clause (c) of sub-section (1) the Certificate Officer shall determine the dispute.

26. PROCEDURE ON RESISTANCE OR OBSTRUCTION MADE TO THE PURCHASER.

(1) If the purchaser of any property sold in execution of a certificate is resisted or obstructed by any person in obtaining possession of the property, he may apply to the Certificate Officer for necessary action.

(2) The Certificate Officer shall verify such application and shall require the party against whom the application is made to appear and answer the same.

(3) If the Certificate Officer is satisfied that the resistance or obstruction was occasioned without any just cause by the certificate-debtor or by some person on his behalf, he shall direct that the applicant be put in possession of his property; and if the applicant is still resisted or obstructed in obtaining possession the Certificate Officer may also, at the instance of the applicant, order the certificate-debtor or such other person to be arrested and detained in the civil prison for a term which may extend to thirty days.

(4) If the Certificate Officer is satisfied that the resistance or obstruction was occasioned by any person other than the certificate-debtor claiming in good faith to be in possession of the property on his own account or on account of some person other than the certificate-debtor, the Certificate Officer shall make an order dismissing the application.

27. POWER OF ARREST AND DETENTION.

A certificate-debtor may be arrested in execution of a certificate at any hour and on any day, and when so arrested, shall, as soon as practicable, be brought before the Certificate Officer; and his detention may be in the civil prison of the district in which the Certificate Officer ordering the detention exercise jurisdiction, or, where such civil prison does not afford suitable accommodation, in any other place which the government may appoint for the detention of such persons:

Provided that, if the certificate-debtor pays the amount entered in the warrant of arrest as due under the certificate, and the cost of the arrest, to the officer arresting him, in the prescribed manner such officer shall at once release him.

28. DETENTION IN AND RELEASE FROM PRISON

(1) Every person detained in the civil prison in execution of a certificate may be so detained-

- (a) Where the certificate is for a demand of an amount exceeding five thousand rupees, for a period of six months, and
- (b) in any other case for a period of six weeks:

Provided that the certificate-debtor shall be released from such detention-

- (i) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison; or
- (ii) on the certificate being otherwise fully satisfied, or cancelled, or
- (iii) on the request of the person (if any) on whose requisition the certificate was filed or of the Deputy Commissioner; or
- (iv) on the omission by the person (if any) on whose requisition the certificate was filed to pay the subsistence allowance fixed by the Certificate Officer.

Provided further that the certificate-debtor shall not be released from such detention under sub-clause (ii) or sub-clause (iii) without the order of the Certificate Officer.

(2) A certificate-debtor released from detention under this section shall not merely by reason of his release, be discharged from his debt; but shall be liable to be re-arrested under the certificate in execution of which he was detained.

29. RELEASE ON GROUND OF ILLNESS.

(1) At any time after a warrant for the arrest of a certificate-debtor has been issued, the Certificate Officer may cancel it on the ground of his serious illness as may be prescribed.

(2) Where a certificate-debtor has been arrested, the Certificate Officer may release him if he is not in a fit state of health to be detained in the civil prison in the opinion of the competent authority as may be prescribed.

(3) A certificate-debtor released under this section may be re-arrested, but the period of his detention in the civil prison shall not in the aggregate exceed the period specified in section 28.

30. PROHIBITION OF ARREST OR DETENTION OF WOMEN AND PERSONS UNDER DISABILITY.

Notwithstanding anything contained in this Act, the Certificate Officer shall not order the arrest or detention in the civil prison of-

- (a) a woman, or
- (b) any person who, in his opinion, is a minor or of unsound mind.

CHAPTER IV**APPEAL, REFERENCE AND SUPPLEMENTARY PROVISIONS.****31. APPEAL.**

(1) An appeal from any original order made by a Certificate Officer shall lie to the Commissioner of Revenue Department, if presented within thirty days from the date of the order appealed against excluding the time taken for obtaining the copy of the order.

(2) Pending the decision of any appeal, execution may be stayed if the appellate authority so directs, but not otherwise.

32. CANCELLATION OR MODIFICATION OF CERTIFICATION.

(1) No certificate filed under this Act shall be cancelled by the appellate authority except on any one or more of the following grounds, namely:

- (a) that the amount stated in the certificate was actually paid or discharged before the signing of the certificate; or
- (b) that no part of the amount stated in the certificate was due by the certificate debtor to the certificate-holder; or
- (c) that in the case of fine imposed, or costs, charges, expenses, damages duties or fees adjudged, the proceedings were not in conformity with the provisions of law and that the certificate debtor suffered substantial injury from such error, defect or irregularity in such proceedings.

(2) No certificate duly filed under this Act shall be modified by the appellate authority, except on the following grounds-

- (a) that a portion of the alleged debt was not due; or
- (b) that the certificate-debtor has not received credit for any portion which he has paid.

33. BAR TO JURISDICTION OF CIVIL COURT.

Except otherwise expressly provided in the Act, every question arising between the certificate-holder and the certificate-debtor, or their representatives, relating to the making, execution, discharge or satisfaction of a certificate duly filed under this Act, of a sale held in execution of such certificate, shall be determined, not by suit, but by order of the Certificate Officer before whom such question arises, or of such other Certificate Officer as he may determine:

Provided that a suit may be brought in a civil court only in respect of any such question upon the ground of fraud.

34. PERSONS UNDER DISABILITY.

Where the Certificate Officer is satisfied that certificate-debtor is a minor or of unsound-mind, he shall, in any proceeding under this Act, permit him to be represented by the natural guardian or a guardian applied by a court or, in the absence of any such guardian, any suitable person in consonance with the customary laws applicable to such minor or person of unsound-mind.

35. CONTINUANCE OF CERTIFICATES.

No certificate shall cease to be in force by reason of -

(a) the property to which the demand relates ceasing to be under the charge or management of the Court of Wards or the revenue authorities, or

(b) the death of the certificate-holder.

36. PROCEDURE ON DEATH OF CERTIFICATE-DEBTOR.

(1) Where a certificate-debtor dies before the certificate has been fully satisfied, the Certificate Officer may, after serving upon the legal representative of the deceased a notice in the prescribed form, proceed to execute the certificate against such legal representative; and the provisions of this Act shall apply as if such legal representative were the certificate-debtor and as if such notice were a notice under section 6:

Provided that where the certificate is executed against such legal representative, he shall be liable only to the extent of the property of the deceased which has come to his hands and has not been duly disposed of; and for the purpose of ascertaining such liability, the Certificate Officer executing the certificate may, of his own motion, or on the application of the certificate-holder, compel such legal representative to produce such accounts as the Certificate Officer thinks fit.

(2) For the purpose of this section, property in the hands of a son or other descendant which is liable for the payment of the debt of a deceased ancestor in respect of which a certificate has been filed, shall be deemed to be property of the deceased which has come to the hands of the son or other descendant as his legal representative.

37. CANCELLATION OF CERTIFICATES.

(1) The Certificate Officer shall cancel any certificate at the request of the certificate-holder.

(2) The Certificate Officer may cancel any certificate filed under section 3 if the certificate-holder is not reasonably diligent.

38. COSTS.

Subject to such limitation as may be prescribed, the award of any cost of, and incidental to any proceeding under this Act including costs occasioned by adjournment of any such proceedings at any stage thereof, shall be in the discretion of the officer presiding, and shall have full power to direct by whom and to what extent such costs shall be paid.

39. COMPENSATION.

If the Certificate Officer is satisfied that any requisition made under section 4 was made without reasonable cause, he may award to the certificate-debtor such compensation as the Certificate Officer may think fit and the amount so awarded shall be recoverable from the certificate-holder under the procedure prescribed by this Act for recovery of costs.

40. RESTITUTION CONSEQUENT ON REVERSAL OR MODIFICATION OF ORDER.

(1) When the order of a Certificate Officer is set aside or modified by reason of any order passed under section 32, the Certificate Officer shall have full power to give effect to such order and for that purpose, direct that the certificate-holder shall be restored with possession of the property sold in consequence of the order so set aside or modified, or receive such compensation from the certificate-holder as the Certificate Officer may think fit, and such compensation shall be recoverable as a public demand.

(2) An order passed under sub-section (1) shall, for the purposes of section 32, be deemed to be an original order.

41. ENTRY INTO DWELLING HOUSE.

(1) No person executing any warrant of arrest issued under this Act, or any process issued under this Act directing or authorising the attachment or moveable property, shall enter any dwelling house after sunset or before sun rise.

(2) No outer door of dwelling house shall be broken open unless the dwelling house or a portion thereof is in the occupancy of the certificate-debtor and he or any other occupant of the house refuses or in any way prevents access thereto; but, when the person executing any such warrant or other process has duly gained access to any dwelling house he may break open the door of any room and enter if he has reason to believe that entering into the room is necessary in order to enable him to execute the process.

(3) Where the room in a dwelling house is in the actual occupancy of a woman the person executing the process shall give notice to her that she is at liberty to withdraw; and after allowing reasonable time for her to withdraw and giving her reasonable facility for withdrawing, he may enter such room for the purpose of executing the process and if the process is for the attachment of property, he may at the same time use precaution, consistent with this section, to prevent each clandestine removal.

42. PROTECTION OF ACTION TAKEN UNDER THIS ACT.

No suit or other legal proceedings shall lie against any person for anything done or purported to be done in good faith under this Act or any rule or order made there-under.

43. OFFICERS TO HAVE POWERS OF CIVIL COURT.

Any other officer acting as Certificate Officer or appellate authority under this Act shall have the powers of a civil court only for the purposes of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

44. CERTIFICATE OFFICER DEEMED TO BE A CIVIL COURT.

A Certificate Officer shall be deemed to be a civil court and any proceeding before him shall be deemed to be a civil proceeding with the meaning of section 14 of Limitation Act, 1963.

45. PENALTIES.

Whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate, shall be deemed to have committed an offence punishable under section 206 of the Indian Penal Code (Act XLV of 1860).

46. LIABILITY OF PERSON IN CUSTODY OF ATTACHED PROPERTY.

(1) Where any person has been entrusted by attaching officer with the custody of any property taken in execution of a certificate and on failure of such person to fulfil the conditions to the entrustment, a certificate may be executed against him to the extent he has rendered himself personally liable.

(2) Without prejudice to the provisions of sub-section (1) whenever the person referred to therein wilfully and without sufficient cause fails to produce the property kept in his custody before any lawful authority in accordance with the terms of such entrustment such person shall be deemed to have committed an offence punishable under section 206 of the Indian Penal Code (Act XLV of 1860).

47. POWER TO MAKE RULES.

(1) The Government may make rules for the purpose of carrying out the provisions of the Act.

(2) All rules made under sub-section (1) shall be laid as soon as possible after they are made before the Mizoram Legislative Assembly.

48. ACT TO HAVE OVERRIDING EFFECT.

(1) Save as provided under sub-section (2), the provision of this Act shall have effect notwithstanding anything inconsistent therewith contained in the Mizo District (Transfer of Land) Act, 1963 as amended from time to time or in any provision of Act or any other law made by the State Legislature for the time being in force or in an instrument having effect by virtue of any such law other than this Act.

(2) The provisions of this Act or the rules made thereunder shall be in addition to and not in derogation of the Mizoram Co-Operative Societies Act, 1991 (19 of 1991).

49. REPEAL AND SAVINGS.

On the commencement of this Act, the Bengal Public Demands Recovery Act, 1913 shall stand repealed.

Provided that, anything done or any action taken under any of the said Act so repealed shall be deemed to have been done or taken under the corresponding provisions of this Act, unless such thing or action is inconsistent with any of the provisions of this Act.

P. Chakraborty,
Secretary,
Law & Judicial Department,
Government of Mizoram.