

ACT No. XXXIX OF 1858.

PASSED BY THE LEGISLATIVE COUNCIL OF INDIA.

(Received the assent of the Governor General on the 11th December 1858.)

*An Act for the better recovery of Arrears of Revenue under Ryotwar Settlements in the Madras Presidency.*

WHEREAS difficulties occur in applying the rules of Regulation XXVIII. 1802 of the Madras Code to lands under Ryotwar Settlements or otherwise subject to a Khas collection on the part of Government, and it is expedient to modify those rules; and whereas it is necessary to provide that the Collector shall, at his discretion, proceed to realize arrears of such Revenue by the sale of either the moveable or immoveable property of defaulters; It is hereby enacted as follows:—

Preamble.

I. Act XXIII of 1856 (*for the better recovery of arrears of Revenue under Ryotwar Settlements in the Madras Presidency*) is hereby repealed, except so far as relates to indemnity for any thing done before the passing of that Act.

Act repealed.

II. Whenever the Revenue or rent of any such lands is withheld beyond the day on which it falls due according to the Kistbundy or other engagement, or where no particular day is fixed, then beyond the time when such Revenue or rent becomes payable agreeably to local usage, the Collector shall have authority to proceed for the recovery of such arrears by the distress and the sale of the moveable property or the sale of the immoveable property of the defaulter wherever found. Provided that bullocks necessary to the cultivation of a tenant's holding, ploughs and implements of husbandry, and the tools of artisans, shall not be subject to distraint or sale.

Collector empowered to recover arrears of Revenue or rent by sale of moveable or immoveable property of defaulter.

Proviso.

III. In

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Seizure and sale of moveable property to be made as follows.

III. In the seizure and sale of moveable property for arrears of Revenue or rent, the following rules shall be observed—

*First.*—The Collector, or any other Officer empowered by the Collector in that behalf, shall furnish to the person employed to distrain the property of a defaulter, a demand in writing and signed with his name specifying the amount of the arrear for which the distress may be issued, and the date on which the arrear fell due. The person so deputed shall produce the writing as authority for making the distress, and on the day on which the property may be distrained, shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained and the name of the place where it may be lodged or kept.

Collector to furnish person distraining with a demand in writing.

Defaulter to be served with a copy.

*Second.*—The writing shall further set forth that the distrained property will be immediately brought to public sale, unless the amount and the expense of the distress be previously discharged.

Writing to state that the distrained property will be sold.

*Third.*—When a defaulter may be absent, a copy of the writing, with the endorsement, shall be fixed or left at his usual place of residence before the expiration of the third day calculating from the day of the distress.

Mode of service when defaulter is absent.

IV. Where a defaulter on receiving notice may neglect to pay the amount due or to give satisfactory security for early payment, or where a defaulter may have absconded or may be otherwise not forthcoming so that the notice cannot be served upon him, the distrainer shall in either case transmit an inventory of the property distrained to the nearest public Officer empowered to sell distrained property, in order that it may be publicly sold for the discharge of the arrear due.

Consequence of defaulter neglecting to pay after notice, or absenting himself.

V. Where a defaulter may tender payment of the arrear demanded after his property may have been distrained and prior to the day fixed for sale, together with payment of the necessary expenses attending the distress, the distrainer shall receive

On tender of arrear and expenses prior to the day of sale, distress to be withdrawn.

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receive the amount of such arrear and expenses immediately upon the same being tendered, and shall forthwith release the property.

VI. The distrainer attaching the crops or ungathered products of the lands belonging to a defaulter, may cause them to be sold when fit for reaping or gathering, or at his option may cause them to be reaped or gathered in due season and stored in proper places until sold. In the latter case the expense of reaping or gathering and storing such crops or products, shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold.

VII. The distrainer shall not work the bullocks or cattle or make use of the goods or effects distrained; he shall provide the necessary food for the cattle or live-stock, the expense attending which shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold.

VIII. Where property distrained may be stolen, or lost, or damaged by reason of the necessary precautions for its due preservation not having been taken, the loss or damage shall be made good by the Officer whose neglect occasioned the loss or damage.

IX. The distress levied shall not be excessive, that is to say, the property distrained shall be as nearly as possible proportionate to the amount of the arrear.

X. Distress shall be made after sun-rise and before sun-set and not otherwise.

XI. Where a defaulter may make a fraudulent conveyance of property, to prevent the distress for arrears, the Zillah Court, upon proof thereof, shall summarily cause the property to be delivered up to the distrainer, and may impose on the parties to the fraud such fine, not exceeding one-half of the value of the property, as it may think proper.

XII. Where

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XII. Where a person, not being a defaulter or responsible for a defaulter, may claim a right to the property distrained, and the claimants, on proof of such right in the Zillah Court and in the event of the distrainer being unable to prove the responsibility for the arrear of Revenue or rent on account of which the property may have been sold, shall recover from the distrainer the full value of such property, with costs and damages, according to the circumstances of the case. But claims to crops upon the ground, or to gathered products of the ground attached, in the possession of the defaulter, whether founded upon a previous sale, mortgage, or otherwise, shall not bar the prior claim of Revenue or rent due from the ground upon which such crop or product may have been grown.

XIII. Where it may be proved to the satisfaction of the Zillah Court that any person has forcibly or clandestinely taken away property once distrained, the Court may cause such person to be imprisoned for a period not exceeding six months or until he sooner restore the property or make good the value of it to the distrainer, and may also impose on him a fine not exceeding the value of such property.

XIV. The distrainer shall have power to force open any stable, cow-house, golah, granary, godown, out-house, or other building, as also to enter any dwelling-house the outer door of which may be open (excepting the apartments in such dwelling-house appropriated for the Zenana or residence of women); and to break open the door of any room in such dwelling-house for the purpose of attaching property belonging to a defaulter and lodged therein.

XV. Where a distrainer may have reason to suppose that the property of a defaulter is lodged within a dwelling-house the outer door of which may be shut, or within any apartments appropriated to women which by the usage of the country are considered private, such distrainer shall represent the same to the head Officer of the Police (within whose jurisdiction the house may be situated), and on such representation, the head Officer of the Police shall send a Police Officer to the spot, in the presence of whom the distrainer may force open the outer door of such dwelling-house, in like manner as they may break open the door of any room

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room within the house, except the Zenana; the distrainer may also, in the presence of the Police Officer, after due notice given for the removal of women within a Zenana, and after furnishing means for their removal in a suitable manner (if they be women of rank who according to the customs of the country cannot appear in public), enter the Zenana apartments for the purpose of distraining the defaulter's property deposited therein; but such property, if found, shall be immediately removed from such apartments, after which they shall be left free to the former occupants; and nothing in this Act shall be understood to authorize a distrainer or his agent to force open the door of a dwelling-house, or to enter the apartments of women which by the usage of the country are considered private, in any other mode than is herein prescribed.

XVI. Persons entering the apartments of women, or forcing open the outer door of dwelling-houses, contrary to the provisions of this Act, shall on conviction before a Magistrate be liable to be imprisoned for any period not exceeding six months.

Punishment for unlawful entry.

XVII. The public Officer empowered to sell distrained property shall cause to be affixed to the outer door of the defaulter's house a list of the property to be sold, with a notice specifying the place where, and the day and hour at which the distrained property will be sold, and shall cause proclamation of the intended sale to be made by beat of drum in the village to which the lands on which the arrear has accrued may belong, and in such place or places as the Collector may consider necessary to give due publicity to the sale. No sale shall take place until after the expiration of a period of fifteen days from the date on which the notice may be so affixed.

Proclamation to be made of the time of sale and of the property to be sold.

XVIII. At the appointed time, the property shall be put up in one or more lots as the distrainer may consider advisable, and shall be disposed of to the highest bidder. Where the property may sell for more than the amount of the arrear, the overplus, after deducting expenses of process and interest, shall be paid to the defaulter.

Sale how to be conducted.

XIX. The property shall be paid for in ready money at the time of sale or as soon after as the Officer holding the sale shall appoint, and the purchaser shall not be permitted to carry away any part of the property until he has paid for the same.

Payment on the purchase of distrained property how to be made.

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same. Where the purchaser may fail in the payment of the purchase money, the property shall be re-sold, and the defaulting purchaser shall make good to the distrainer any loss arising, as well as the expenses incurred on the re-sale.

XX. When a defaulter shall not have any moveable property of which distraint can be made, or when, after the moveable property of such defaulter shall have been distrained and sold, the arrear due with interest and all expenses of the distress and sale is not liquidated by the proceeds of such sale, the Collector shall have authority to proceed against and sell the immoveable property of the defaulter for the amount due with interest and all expenses attending such sale.

When Collector may sell the immoveable property in addition to the moveable property of the defaulter.

XXI. Immediately on the occurrence of an arrear, or at any subsequent period, the Collector shall have authority to attach at his discretion the whole or such portion of a defaulter's immoveable property as he may deem sufficient to answer the amount in arrear, but the previous sanction of the Board of Revenue shall in all cases be necessary for the sale of immoveable property.

Previous sanction of the Board of Revenue necessary for the sale of immoveable property.

XXII. The provisions of Sections XI, XII, XIII, XV, XVI, and XVII, Regulation XXVI. 1802 shall be applicable to sales of immoveable property under this Act, but a Persian translation of the sale advertisement shall not be necessary.

Rules applicable to the sale of immoveable property.

XXIII. When the immoveable property of a defaulter is first attached and sold, if the arrear due with interest, expenses of attachment and sale, and all other just charges, be not fully liquidated by the sale, the Collector may cause the moveable property of the defaulter to be distrained and sold for the recovery of the balance thereof with interest and all expenses of the distress and sale.

When Collector may sell the moveable property after the immoveable property of the defaulter has been distrained.

XXIV. When arrears of Revenue or rent with interest and other charges as aforesaid may not be liquidated by the sale of the property of the defaulter, and the Collector shall have reason to believe that the defaulter is wilfully withholding

Where arrears cannot be liquidated by distress, defaulter wilfully withholding payment may be arrested.

holding



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holding payment of the arrears or has been guilty of any fraudulent conduct in order to evade payment, it shall be lawful for him to cause the arrest of the defaulter in the manner prescribed in Section XIII of Regulation XXVII. 1802 ; but no person shall be imprisoned on account of an arrear of Revenue

Limit of imprisonment. for a longer period than two years, or for a longer period than six months if the arrear does not exceed five hundred Rupees, or for a longer period than three months if the arrear does not exceed fifty Rupees.

XXV. Persons aggrieved by the Collector's acts under the preceding Section may proceed in the Zillah Court according to the provisions of Sections XI and XII Regulation XXVII. 1802. The provisions of the said Sections shall be applicable to such proceedings, and no other proceeding in any Court shall be had or taken against the Collector.

Proceeding by persons aggrieved by the Collector's acts under the preceding Section.

XXVI. Interest at one per centum per mensem shall be charged on all arrears of rent or Revenue under this Act from and after thirty days after the arrear has accrued.

What interest to be charged on arrears.

XXVII. Regulation V. 1822 shall not be applicable to sales of property under this Act.

Regulation V. 1822 not to apply to sales under this Act.

XXVIII. Arrears of Revenue due to Government other than land Revenue and demands recoverable as arrears of Revenue shall hereafter be recoverable in the same manner as arrears of land Revenue may be recovered under the provisions of this Act.

Arrears of certain Revenue, &c., other than land Revenue, recoverable under this Act.

XXIX. Regulation XXVIII. 1802 shall be inoperative as respects arrears of Revenue recoverable under this Act.

Regulation XXVIII. 1802 not to apply to arrears recoverable under this Act.

XXX. The amount of any fine imposed under this Act shall be recoverable by the Collector in the manner prescribed in this Act for the recovery of arrears of Revenue or rent.

Recovery of Fines.

XXXI. Nothing contained in this Act shall be held to prevent parties aggrieved by any proceedings under this Act, except as hereinbefore provided, from applying to the Courts of Adawlut for redress.

Suits by persons aggrieved by proceedings under this Act.