

THE BROACH THÁKURS' RELIEF ACT.

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SCHEDULE.

ACT No. XV OF 1871.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 31st March 1871).

An Act to relieve from Incumbrances the Estates of Thákurs in Broach.

Preamble.

WHEREAS the majority of the Thákurs in Broach are in debt, and their immoveable property is subject to mortgages, charges and liens; and whereas it is expedient to provide for their relief in manner hereinafter appearing; It is hereby enacted as follows :—

I.—PRELIMINARY.

Short title.

1. This Act may be called " The Broach Thákurs' Relief Act."

Interpretation-clause.

2. In this Act—

' thákur' means a person mentioned in the schedule hereto annexed, and

' heir' means the person for the time being entitled as heir to a thákur.

II.—VESTING ORDER.

Power to vest management of thákur's property in officer appointed by Government.

3. Whenever, within twelve months after the passing of this Act, any thákur,

or (when such thákur is an infant, or of unsound mind, or an idiot) his guardian, committee, or other legal curator,

or the person who would be heir to such thákur if he died intestate,

or (when such person is an infant, or of unsound mind, or an idiot) his guardian, committee, or other legal curator,

applies in writing to the Governor of Bombay in Council, stating that the thákur is subject to, or that

his

his immoveable property is charged with, debts or liabilities other than debts due, or liabilities incurred, to Government, and requesting that the provisions of this Act be applied to his case,

the Governor of Bombay in Council may, by order published in the Bombay Government Gazette, appoint an officer (hereinafter called the Manager), and vest in him the management of the immoveable property of or to which the thákur is then possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on the thákur or his heir during the continuance of such management.

4. On such publication, the following consequences shall ensue :—

Effect of order.

first, all proceedings in respect to such debts or liabilities which may then be pending in any Civil Court in British India, shall be barred; and all processes, executions and attachments for or in respect of such debts and liabilities shall become null and void;

Bar of suits against thákur.

secondly, so long as such management continues the thákur and his heir shall not be liable to arrest for or in respect of the debts and liabilities to which the thákur was immediately before the said publication subject, or with which his immoveable property or any part thereof was then charged, other than debts due, or liabilities incurred, to Government;

Thákur freed from arrest.

nor shall their moveable property be liable to attachment or sale, under process of any Civil Court in British India, for or in respect of such debts and liabilities other than as aforesaid; and

and his moveable property freed from attachment. Cessation of his power to alienate.

thirdly, so long as such management continues, (a) the thákur and his heir shall be incompetent to mortgage, charge, lease or alienate their immoveable property or any part thereof, or to grant valid receipts for the rents and profits arising or accruing therefrom;

and (b) such property shall be exempt from attachment or sale under such process as aforesaid, except for or in respect of debts due, or liabilities incurred, to Government.

Immov cable property freed from attachment.

III.—DUTIES

III.—DUTIES OF MANAGER.

Manager to receive rents and profits,

5. The Manager shall, during his management of the said property, receive and recover all rents and profits due in respect thereof; and shall, upon receiving such rents and profits, give receipts for the same.

From the sum so received, he shall pay—

and pay therefrom the Government demand:

first, the Government revenue, and all debts or liabilities for the time being due or incurred to Government in respect of the said property:

an annual sum for maintenance of thákur:

secondly, such annual sum as appears to the Governor of Bombay in Council requisite for the maintenance of the thákur, his heir and their families:

costs of repairs and improvements:

thirdly, the costs of such repairs and improvements of the property as appear necessary to the Manager and are approved by the Governor of Bombay in Council,

costs of management; and the debts and liabilities.

and the residue shall be applied in discharge of the costs of the management, and in settlement of such debts and liabilities of the thákur and his heir and their immoveable property, as may be established under the provisions hereinafter contained.

IV.—SETTLEMENT OF DEBTS.

Notice to claimants against thákur.

6. On the publication of the order vesting in him the management of the said property, the Manager shall publish in the Bombay Government Gazette a notice in English and Gujaráthí, calling upon all persons having claims against the thákur or his immoveable property to notify the same in writing to such Manager within three months from the date of the publication.

Copies of notice to be exhibited.

He shall also cause copies of such notice to be exhibited at the Mámlatdárs' Kachahrís in the District or Districts in which the said property lies and at such other places as the Manager thinks fit.

Claim to contain full particulars.

7. Every such claimant shall, along with his claim, present full particulars thereof.

Documents to be given up.

Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the Manager along with the claim.

If

If the document be an entry in any book, the claimant shall produce the book to the Manager together with a copy of the entry on which he relies. The Manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Entries in books.

If any document in the possession or under the control of the claimant is not delivered or produced by him to the Manager along with the claim, the Manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

Exclusion of documents not produced.

8. Every debt or liability (other than debts due, or liabilities incurred, to Government) to which the thákur is subject, or with which his immoveable property or any part thereof is charged, and which if not duly notified to the Manager within the time and in manner hereinbefore mentioned, shall be barred :

Debt or liability not duly notified, to be barred.

Provided that, when proof is made to the Manager that the claimant was unable to comply with the provisions of sections six and seven, the Manager may admit such claim within the further period of nine months from the expiration of the said period of three months.

Provision for admission of claim within further period of nine months.

9. The Manager shall, in accordance with the rules to be made under this Act, determine the amount of the debts and liabilities due to the several creditors of the thákur and persons holding mortgages, charges or liens on the said property or any part thereof.

Determination of debts and liabilities.

10. An appeal against any refusal, admission or determination under sections seven, eight or nine shall lie, if preferred, within six weeks from the date of such determination, to the Commissioner of Division to whom the Manager is subordinate, and the decision of such Commissioner, or of the Manager if no such appeal has been so preferred, shall be final.

Appeal.

11. When the total amount of such debts and liabilities has been finally determined, the Manager shall

Scheme for settlement of debts and liabilities.

shall prepare and submit to the Governor of Bombay in Council, a schedule of such debts and liabilities, and a scheme for the settlement thereof; and such scheme, when approved by the Governor of Bombay in Council, shall be carried into effect.

Power to re-
turn scheme
for revision.

Until such approval is given, the Governor of Bombay in Council may, as often as he thinks fit, send back such scheme to the Manager for revision, and direct him to make such further enquiry as may be requisite for the proper preparation of the scheme.

Restoration
of thákur to
his property.

12. When all such debts and liabilities have been discharged,

or if, within six months after the publication of the order mentioned in section three, the Governor of Bombay in Council thinks that the provisions of this Act should not continue to apply to the case of the thákur or his heir,

the thákur or his heir shall be restored to the possession and enjoyment of his immoveable property, or of such part thereof as has not been sold by the Manager under the power contained in section nineteen, but subject to the leases and mortgages (if any) granted and made by the Manager under the powers hereinafter contained.

Revival of
barred pro-
ceedings and
debts.

Where the thákur or his heir is so restored under the circumstances mentioned in the second clause of this section, the proceedings, processes, executions and attachments mentioned in section three (so far as they relate to debts and liabilities not settled by the Manager), and the debts and liabilities barred by section eight, shall be revived, and any mortgagee dispossessed under section seventeen shall be reinstated unless his claim under the mortgage has been satisfied;

and in calculating the periods of limitation applicable to such revived proceedings and to suits to recover and enforce such revived debts and liabilities, the time intervening between such restoration and the publication of the order mentioned in section three shall be excluded.

V.—POWERS

V.—POWERS OF MANAGER.

13. The Manager may, from time to time, call for further and more detailed particulars of any claim preferred before him under this Act, and may at his discretion refuse to proceed with the investigation of the claim until such particulars are supplied.

Power to call for further particulars.

14. For the purposes of this Act, the Manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure.

Power to summon witnesses and compel production of documents.

15. The Manager may administer an oath in such form as he thinks fit to any person examined before him touching the matters to be enquired into under this Act.

Power to administer oaths.

16. Every investigation conducted by the Manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Investigation to be deemed a judicial proceeding.

And every statement made by any person examined by or before the Manager with reference to such investigation, whether upon oath or otherwise, shall be taken to be evidence within the meaning of the same Code.

Statements of persons examined, to be evidence.

17. The Manager shall have, for the purpose of realizing and recovering the rents and profits of the said immoveable property, the same powers as a Collector possesses under the law for the time being in force for the realization and recovery of land-revenue due to Government.

Manager to have powers of a Collector.

And if such property, or any part thereof, be in the possession of any mortgagee, the Manager may apply to the Court of the District Judge within whose jurisdiction the property is situate, and such Court shall cause the same to be delivered to the Manager as if a decree therefor had been made in his favour; but without prejudice to the mortgagee preferring

Power to remove mortgagee in possession.

ferring his claim under the provisions hereinbefore contained.

Power to
lease.

18. Subject to the rules made under section twenty, the Manager shall have power to demise all or any part of the said property, for any term of years not exceeding twenty years absolute, to take effect in possession, in consideration of any fine or fines, or without fine, and reserving such rents and under such conditions as may be agreed upon.

Power to
raise money
by mortgage
or sale.

19. The Manager, with the previous assent of the Governor of Bombay in Council, shall have power to raise any money which may be required for the settlement of the debts and liabilities (other than as aforesaid) to which the thákur is subject, or with which his immoveable property or any part thereof is charged, by demising by way of mortgage the whole or any part of such property for a term not exceeding twenty years from the said publication,

or by selling, with the previous consent of the thákur and of the person (being of full age) who would be his heir if he died intestate, by public auction or by private contract, and upon such terms as the Manager thinks fit, such portion of the same property as may appear expedient.

And no mortgagee advancing money upon any mortgage made under this section, shall be bound to see that such money is wanted or that no more than is wanted is raised.

Manager's
receipts.

And the receipt of the Manager for any monies paid to him upon any mortgage or sale made under this section, or for any rents or profits received by him under section five, shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

The power to mortgage conferred by this section shall not be exercisable until six months have elapsed from the publication of the order mentioned in section three.

VI.— MISCELLANEOUS.

Power to
make rules.

20. The Governor of Bombay in Council may, from time to time, make rules consistent with this Act in all matters connected with its enforcement.

Such

Such rules, when published in the Bombay Government Gazette, shall have the force of law.

21. Whenever the Governor of Bombay in Council thinks fit, he may appoint any officer to be a Manager in the stead of any Manager appointed under this Act; and thereupon the management then vested under this Act in the former Manager shall become vested in the new Manager.

Power to
appoint new
Managers.

Every such new Manager shall have the same powers as if he had been originally appointed.

22. Every Manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

Managers
be public
servants.

23. No suit or other proceeding shall be maintained against any person in respect of anything done by him *bonâ fide* pursuant to this Act.

Bar of suits.

24. No petition, application, memorandum of appeal or other proceeding under this Act, shall be chargeable under the Court Fees Act, 1870.

Petitions,
&c., under
Act exempt
from Court
fees.

25. Nothing in this Act precludes the Courts of Broach, having jurisdiction in suits relating to the succession to, or rights of persons claiming maintenance from, any immoveable property brought under the operation of this Act, from entertaining and disposing of such suits, but to all such suits the Manager of such property shall be made a party.

Saving of
jurisdiction
of Courts in
Broach in
respect of cer-
tain suits.

26. And whereas doubts have been raised as to the validity of Bombay Act No. VI of 1862 (*for the amelioration of the condition of Talookdars in the Ahmedabad Collectorate, and for their relief from debt*) so far as it purports to affect the High Court of Judicature at Bombay, for the purpose of precluding such doubts, it is hereby further enacted that the said Act, so far as it purports to affect the said High Court, shall be deemed to be and to have been valid.

Amendment
of Bombay
Act VI of
1862.

SCHEDULE.

(See Section 2)

The Thákur of Ahmód.
The Thákur of Saród.
The Thákur of Kerwára.
The Thákur of Dehej.
The Thákur of Janiádra.