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ACT No. XVI of 1882.

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor General on the 19th May, 1882.)

An Act to provide for the relief of Encumbered Estates in the Jhānsī Division of the North-Western Provinces.

Preamble.

WHEREAS many zamīndārs in the Jhānsī Division of the North-Western Provinces are in debt, and their immoveable property is subject to encumbrances, and it is expedient to provide for their relief in manner hereinafter appearing; It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title :

1. This Act may be called the Jhānsī Encumbered Estates Act, 1882 :

Commencement.

and it shall come into force on the passing thereof.

Interpretation-clause.

2. In this Act—

"land" :

"land" means land assessed to revenue :

"zamīndār" :

"zamīndār" means a proprietor of land or of any share in land, and includes an ubāridār :

"sir-land" :

"sir-land" means—

(a) land recorded as sir at the last settlement or revision of settlement of the district in which it is situate, and continuously so recorded since ;

(b) land continuously cultivated for twelve years by the proprietor himself with his own stock or by his servants, or by hired labour ;

(c) land

(c) land recognized by village-custom as the special holding of a co-sharer, or treated as such in the distribution of profits or charges among the co-sharers :

“public debt” means a debt due or liability incurred to Government : and

“public debt” :

“private debt” means any debt or liability other than a public debt.

“private debt.”

CHAPTER II.

APPOINTMENT OF OFFICERS.

3. The Local Government may, from time to time, by notification in the official Gazette, appoint, for any local area in the Jhānsī Division, a special Judge, who shall exercise the powers conferred, and perform the duties imposed, on him by this Act.

Power to appoint a special Judge.

The Local Government may, at any time, by a like notification, suspend or remove any special Judge so appointed.

Power to suspend or remove special Judge.

CHAPTER III.

OF THE APPLICATION AND PRELIMINARY INQUIRY.

4. (1) At any time within twelve months after a special Judge is appointed for any local area, any zamīndār owning land in that area may apply in writing to the Commissioner of the Jhānsī Division, stating that the zamīndār is subject to, or that his immoveable property or any part thereof is encumbered with, private debts, and requesting that the provisions of this Act be applied to him.

Application for benefit of Act.

(2) The like application may be made with respect to any such zamīndār by an officer appointed for the purpose by the Local Government :

(3) Provided that, where the zamīndār is a disqualified proprietor within the meaning of section 194 of the North-Western Provinces Land-revenue Act, 1873, the application shall be made—

(a) if his property is under the superintendence of the

the Court of Wards—by the manager of his property, with the consent of that Court; and

- (b) if his property is not under such superintendence—by the Deputy Commissioner of the district in which the property is situate.

(4) The Local Government may, from time to time, by notification in the official Gazette, extend the time prescribed for making applications under this section.

5. When any such application is made in the case of any zamindár, the Commissioner shall direct an inquiry to be made by the special Judge—

(a) into the nature and amount of the zamindár's private debts, and

(b) into the sufficiency of his property, whether moveable or immoveable (exclusive of his proprietary rights in land and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure), to discharge his private debts.

6. (1) When an inquiry has been directed under section five, the applicant shall, within a period to be fixed by the Commissioner, submit to the special Judge a written statement containing, so far as may be practicable,—

(a) such particulars as the special Judge may require respecting the private debts to which the zamindár is subject, or with which his immoveable property or any part thereof is encumbered;

(b) the nature and value of the zamindár's property (exclusive of his proprietary rights in land and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure); and

(c) the names and residences of his creditors, so far as they are known to, or can be ascertained by, the zamindár.

(2) The statement must be verified by the applicant or by some other competent person, in the manner required by law for the verification of plaints; and if

Power to extend time for making applications.

Order to inquire.

Written statement to be submitted.

Verification of statement.

it contains any averment which the person making the verification knows or believes to be false, or does not know or believe to be true, he shall be deemed to have intentionally given false evidence within the meaning of the Indian Penal Code.

(3) Provided that, when the application is made by an officer appointed under section four, clause (2), or by the Deputy Commissioner, it shall not be necessary to verify the statement; but the zamindār shall, so far as may be practicable, within a period to be fixed by the special Judge, furnish such information regarding the matters mentioned in clauses (a), (b) and (c) of this section as the Judge may require.

Proviso.

CHAPTER IV.

PROOF OF DEBTS AND PROCEDURE OF SPECIAL JUDGE.

7. (1) When the statement or information referred to in section six has been submitted or furnished, the special Judge shall publish in the official Gazette a notice in the vernacular language of the district calling upon all persons having claims against the person or the property of the zamindār by or with respect to whom the application was made under section four to present to the special Judge, within two months from the date of the publication, a written statement of their claims.

Publication of notice to claimants against zamindār.

(2) The special Judge shall also cause copies of the notice to be exhibited at his own office, at the offices of the Commissioner of the Jhānsi Division and the Deputy Commissioner of the district in which the land of the zamindār is situate, and at some conspicuous place in the village where the zamindār resides.

Copies of notice to be exhibited.

(3) The statement must be presented within the period specified in the notice, unless the claimant satisfies the special Judge that he had sufficient cause for not presenting the statement within that period, in which case the special Judge may receive the statement within a further period of two months from the expiration of the period so specified.

Provision for admission of claims within further period of two months.

8. After

Consequences
of notice.

8. After the publication of the notice, the following consequences shall ensue (namely) :—

- (a) all proceedings pending at the date of the publication in any civil or revenue Court in British India in respect of any private debt to which the zamindār is subject, or with which his immoveable property is encumbered, shall be for ever stayed; and all processes, executions and attachments issued by any such Court, and then in force, in respect of any such debt, shall become null and void;
- (b) in respect of any such debt no fresh proceeding, process, execution or attachment shall, except as hereinafter provided, be instituted in, or issued by, any civil or revenue Court in British India;
- (c) until the Commissioner has declared, as hereinafter provided, that the zamindār has ceased to be subject to the disabilities mentioned in this clause—
- (1) the zamindār shall be incompetent to sell, mortgage, exchange, give, or, without the consent of the Commissioner, lease his proprietary rights in land or any part thereof; and
 - (2) no proceeding, process, execution or attachment shall be instituted in, or issued by, any civil or revenue Court in British India against those rights in respect of any private debt contracted by the zamindār after the publication of the notice.

Claim to
contain full
particulars.

9. (1) Every claimant referred to in section seven shall, in the written statement of his claim, present full particulars thereof.

Documents
to be given
up.

(2) Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the special Judge along with the written statement.

Entries in
books.

(3) If the document is an entry in any book, the claimant shall produce the book to the special Judge together

together with a copy of the entry on which he relies. The special Judge 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.

(4) If any document in the possession or under the control of the claimant is not delivered or produced by him, as required by this section, the special Judge may refuse to receive that document in evidence on the claimant's behalf at the investigation of the case.

Exclusion of documents not produced.

10. Every claim against the zamīndār in respect of a private debt shall, unless made within the time and in the manner required by this Act, be deemed, for all purposes and on all occasions, to have been duly discharged.

Claim not duly notified to be deemed discharged.

11. The special Judge shall, by an order in writing, appoint a time for inquiring into each claim made as aforesaid, and a copy of that order shall be served on the claimant and on the zamīndār, or, when the application has been made on behalf of a disqualified proprietor, on the manager of his property, or the Deputy Commissioner, as the case may be.

Order appointing time for inquiry.

At the time so appointed, or at any subsequent time to which the proceedings may be adjourned, the special Judge shall hear such of the parties as appear, and, if the amount of any claim (other than a claim decreed by a competent Court) is disputed, shall inquire into the history and merits of that claim from the commencement of the transactions between the parties, and shall, as hereinafter provided, determine the amount (if any) justly due to the claimant.

History of transactions with zamīndār to be investigated.

Explanation.—Subject to the right of appeal and power of revision hereinafter conferred, the effect of this determination is to extinguish the previously existing right (if any) of the claimant, together with all rights (if any) of mortgage or lien by which the same is secured, and, where any amount is determined to be due to him, to substitute for those rights a right to recover that amount in the manner and to the extent hereinafter prescribed, and not otherwise.

12. When

12. When the special Judge inquires, under section eleven, into the history and merits of a claim, he shall—

notwithstanding any agreement between the zamindar and the claimant, or the persons (if any) through whom they claim, as to allowing compound interest, or as to setting off the profits of mortgaged property in lieu of interest without an account, or otherwise determining the manner of taking the account, and

notwithstanding any statement or settlement of account, or any contract purporting to close previous dealings and create a new obligation,

open the account from the commencement of the transactions between the parties, and take that account according to the following rules (that is to say):—

(a) separate accounts of principal and interest shall be taken;

(b) in the account of principal there shall be debited to the zamindar such money as may, from time to time, have been actually received by him, or on his account, from the claimant, and the price of goods (if any) sold to him by the claimant as part of the transactions between them;

(c) in the account of principal there shall not be debited to the zamindar any money which he may have agreed to pay in contravention of section 257 A of the Code of Civil Procedure;

(d) in the account of principal there shall not be debited to the zamindar any accumulated interest which has been converted into principal at any statement or settlement of account, or by any contract made in the course of the transactions, unless the special Judge, for reasons to be recorded by him in writing, deems such debit to be reasonable;

(e) in the account of interest there shall be debited to the zamindar, monthly, simple interest on the balance of principal for the time being outstanding

at the rate allowed by the special Judge as hereinafter provided;

(f) all money paid by, or on account of, the zamindár to the claimant, or on his account, and all profits, service or other advantages of every description received by the claimant in the course of the transactions, shall be credited first in the account of interest, and, when any payment is more than sufficient to discharge the balance of interest due at the time it is made, the residue of that payment shall be credited to the zamindár in the account of principal:

Explanation.—The advantages mentioned in this clause shall be estimated, if necessary, at such money-value as the special Judge may determine in his discretion, or with the aid of arbitrators appointed by him;

(g) the accounts of principal and interest shall be made up to the date of making the claim; and the aggregate of the balances (if any) appearing due on both the accounts against the zamindár at that date shall be deemed to be the amount due at that date, except when the balance appearing due on the account of interest exceeds that appearing due on the account of principal, in which case double the latter balance shall be deemed to be the amount then due.

13. The interest to be awarded in taking an account, according to the rules set forth in section twelve, shall be—

Interest to be allowed.

(a) the rate (if any) agreed upon between the zamindár and the claimant, or the persons (if any) through whom they respectively claim, unless that rate is deemed by the special Judge to be unreasonable; or

(b) if that rate is deemed by the special Judge unreasonable, or if no rate was agreed upon, or, when any agreement to set off profits in lieu of interest without an account, entered into between the zamindár and the claimant, or the persons (if any) through whom they respectively claim, has been set aside by the special Judge, such rate as the special Judge deems reasonable.

Proceedings when amount determined to be due is paid into court.

14. If, on the termination of the inquiries by the special Judge, the zamindār forthwith pays into court the aggregate amount of the claims determined to be due, together with the aggregate of such costs (if any) as the special Judge may in each case award against the zamindār, the special Judge shall submit a report of his proceedings to the Commissioner, and shall, on the application of each claimant, pay to him such portions (if any) of the said aggregate amounts as may be due to him.

Power to rank debts and fix future interest.

15. If the zamindār does not pay the said amounts under section fourteen, and these amounts cannot, in the opinion of the special Judge, be paid from the proceeds of the sale of the zamindār's property (exclusive of his proprietary rights in land and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure), the special Judge shall make an order ranking the claims and costs according to the order in which they shall be paid or discharged, and fixing the interest (if any) to be paid on the amounts thereof respectively from the date of the final decision thereon to the date of the payment or discharge thereof.

Power to eject mortgagee, &c.

16. When any person whose claim has been determined by the special Judge, or whose claim is, under section ten, to be deemed to be discharged, has, as mortgagee or otherwise, obtained possession of any land of the zamindār as security for his claim and continues in possession of that land, the special Judge may order him to be ejected therefrom.

Any order passed under this section shall be executed as nearly as may be in accordance with the rules prescribed by the Code of Civil Procedure for the execution of decrees.

Report to be submitted by special Judge in certain cases.

17. When the proceedings hereinbefore prescribed have been concluded otherwise than under section fourteen, the special Judge shall submit a report to the Commissioner, showing the nature and amount of the claims and costs as determined and awarded by him, the nature and amount of all the zamindār's property (exclusive of his proprietary rights in land

and

and of the property mentioned in the first proviso to section 266 of the Code of Civil Procedure) which may be available for the payment or discharge of the same, and, when an order has been made under section fifteen, the particulars of such order.

CHAPTER V.

PROCEDURE OF COMMISSIONER AND MODE OF LIQUIDATION.

18. On receiving a report under section seventeen, the Commissioner shall direct that the property reported by the special Judge as available for the payment or discharge of the claims and costs determined and awarded by him, or any specified portion of that property, be sold by public auction, and, from the proceeds thereof, shall pay or discharge, so far as practicable, the amount of the said claims and costs.

On report of special Judge, Commissioner to sell property reported by special Judge, and, if necessary, to direct valuation of proprietary rights.

If those proceeds are not sufficient to pay or discharge in full that amount, the Commissioner shall direct the value of the zamindar's proprietary rights in land to be ascertained in the manner following:—

For the purposes of a loan, the value of those rights shall be estimated to be a sum amounting to six times the nett annual profits of the zamindar.

For the purposes of purchase by Government, the value of those rights shall be estimated to be a sum amounting to ten times those nett annual profits.

Explanation.—The expression "nett annual profits" means the balance left, after deducting the amount of the annual Government revenue and the rates payable annually by the zamindar under the North-Western Provinces Local Rates Act, 1878, or any other Act for the time being in force, from the aggregate amount of—

"Nett annual profits."

(a) the rents which he is entitled to receive annually from his tenants;

(b) the

(b) the rent which he would have to pay annually for his sîr-land (if any), if he were an ex-proprietary tenant thereof;

(c) all other profits annually receivable by him as zamîndâr; and

(d) in the case of profits occasionally receivable or varying in amount from year to year, the average annual amount of such profits during the ten years next preceding the valuation.

19. When the value of the zamîndâr's proprietary rights has been ascertained as directed in section eighteen, the Commissioner shall proceed as follows:—

(a) If the sum at which the rights have been valued for the purposes of a loan is sufficient to pay or discharge the unpaid balance of the claims and costs determined and awarded by the special Judge together with the zamîndâr's public debts, the Commissioner may, with the consent of the zamîndâr, direct such sum as may be necessary, not being more than the amount of such valuation, to be advanced from the public treasury as a loan to the zamîndâr, repayable with interest thereon at the rate of five per cent. per annum, by instalments, within a term not exceeding ten years, and shall, from the sum so advanced, pay or discharge in full the said balance and the said public debts.

(b) If the zamîndâr does not consent to accept such loan, or if the sum at which his proprietary rights in land have been valued for the purposes of a loan is not sufficient to discharge the said balance and the said public debts, the Commissioner may order that any portion, or, if necessary, the whole, of those rights shall be sold in the manner hereinafter prescribed in order to discharge such balance and debts.

20. When an order for the sale of the proprietary rights of any zamîndâr has been made under section

section nineteen, the Commissioner may order those rights to be attached and taken under the management of the Deputy Commissioner, who shall have for this purpose the same powers as are conferred, for the management of a mahāl, on a Collector by the North-Western Provinces Land-revenue Act, 1873, section 155.

The management shall continue until the rights are sold under this Act.

21. (1) All sales under this Act of proprietary rights in land shall be made by public auction in the manner prescribed by the said North-Western Provinces Land-revenue Act, 1873, for the sale of immovable property for arrears of land-revenue.

Mode of selling proprietary rights.

(2) If, at the public auction of any zamīndār's proprietary rights in land, any bid is made for those rights above the sum at which they have been valued for the purposes of purchase by Government, the rights shall be sold to the highest bidder; and the proceeds of the sale shall be paid to the Deputy Commissioner or such officer as the Commissioner may direct.

(3.) If no such bid is made, the Commissioner shall direct a sum of money equal to the amount of that valuation to be paid from the public treasury to the Deputy Commissioner or such officer.

22. The Deputy Commissioner or such officer, as the case may be, shall thereupon, subject to the control of the Commissioner,—

Duty of Deputy Commissioner.

first, pay from the money which he has received under section twenty-one the zamīndār's public debts;

secondly, out of the balance of that money, pay or discharge, so far as may be practicable, the unpaid balances of the claims and costs determined and awarded by the special Judge in the order in which they are ranked under section fifteen by that Judge;

thirdly, pay the surplus (if any) to the zamīndār.

When the whole of a zamīndār's proprietary rights

rights

rights in land have been sold in execution of an order passed under section nineteen, clause (b), and the proceeds of the sale are insufficient to discharge in full the amounts referred to in this section, the unpaid balance of those amounts shall nevertheless be deemed to have been duly discharged.

23. When a sum of money has been lent, under section nineteen, clause (a), to a zamindár, and applied as provided in that clause, and he fails to pay any instalment of principal or interest on the day fixed for the payment thereof, the whole sum remaining unpaid on account of principal or interest, or both, shall be recoverable at once as if it were an arrear of land-revenue due by him in respect of the land comprised in the valuation made under section eighteen.

24. When a sum of money has been paid from the public treasury in respect of any proprietary rights of a zamindár as provided in section twenty-one, and has been applied as provided in section twenty-two, the following consequences shall ensue (namely):—

(a) all such proprietary rights shall vest in Her Majesty;

(b) in respect of any of his sîr-land, the proprietary rights in which are, under this section, vested in Her Majesty, the zamindár shall be deemed to be an ex-proprietary tenant holding the land directly under the Government.

25. In each of the following cases (namely),—

(a) when a report has been submitted to the Commissioner under section fourteen, or

(b) when the claims and costs determined and awarded by the special Judge have been paid or discharged in full under section eighteen, or

(c) when the amount lent, under section nineteen, to a zamindár has been repaid together with the interest due thereon, or

(d) when the amount so lent with interest has been recovered from him as an arrear of land-revenue,

or the balance thereof remaining unpaid has been remitted by the Local Government, or

(e) when the whole, or, where it is necessary to sell only a portion, that portion, of his proprietary rights in land has been sold under this Act to the highest bidder, or those rights have vested in Her Majesty under section twenty-four,

the Commissioner shall declare that the zamindar has ceased to be subject to the disabilities mentioned in section eight, clause (c):

Provided that, in cases coming under clause (d) of this section, no such declaration shall be made without the previous sanction of the Local Government.

CHAPTER VI.

OF APPEAL AND REVISION.

26. An appeal against any decision or order of the special Judge, under this Act, shall lie to the Commissioner if preferred within one month from the date of the decision or order, and not later, unless the appellant satisfies the Commissioner that he had sufficient cause for not presenting the appeal within that period. Appeals.

Subject to the power of revision next hereinafter provided, the decision of the Commissioner on an appeal under this section shall be final.

27. The Board of Revenue or the Commissioner may, of its or his own motion, or on the application of any person concerned, call for and revise the proceedings in any case under this Act, and pass such order thereon, consistent with the provisions herein contained, as it or he thinks fit: Power to call for proceedings and pass order thereon.

Provided that nothing in this section shall empower the Commissioner to pass any order reversing or modifying an order passed by the Board of Revenue.

CHAPTER VII.

MISCELLANEOUS.

28. If a zamindár with regard to whom a notice has been published under section seven dies before a declaration has been made in respect of him under section twenty-five,

(a) the proceedings under this Act shall be continued as nearly as may be possible in all respects as if the zamindár were still living; and

(b) any person succeeding to the whole or any portion of the zamindár's proprietary rights in land shall become subject in respect of those rights to the disabilities imposed by section eight, clause (c), and shall continue so subject until a declaration has been made in respect of him under section twenty-five.

29. Every investigation conducted by the special Judge with reference to any claim made to him under this Act, or to any matter connected with any such claim, shall be deemed to be a judicial proceeding within the meaning of the Indian Penal Code; and the special Judge shall be deemed to be a public servant within the meaning of that Code.

30. For the purposes of compelling the attendance of witnesses and the production of documents, and of awarding costs, the special Judge shall have the powers conferred on a Civil Court by the Code of Civil Procedure.

31. No suit or other proceeding shall be maintained against any person in respect of anything done by him in good faith pursuant to this Act.

32. The Local Government may, from time to time, make rules consistent with this Act—

(a) to regulate the procedure in all cases under this Act;

(b) to

Death of zamindár during proceedings.

Investigation to be deemed a judicial proceeding.

Special Judge deemed public servant within meaning of Indian Penal Code.

Power to summon witnesses, compel production of documents and award costs.

Bar of suits.

Power to make rules.

(b) to declare what shall, for the purposes of this Act, be deemed to be the vernacular language of any specified district; and

(c) generally to carry out the provisions of this Act.

Such rules shall be published in the official Gazette, and, when so published, shall have the force of law.