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# THE RAJASTHAN PUBLIC DEMANDS RECOVERY ACT, 1952

(Act No. V of 1952)

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February 23, 1952].

## CONTENTS

### PART-I

#### Preliminary

1. Short title, extent and commencement
2. Definitions

### PART-II

#### Filing Service and effect of Certificates and Hearing of Objections Thereto

3. Requisition for recovery
4. Filing of certificates
5. Transmission of Certificates
6. Service of notice and copy of certificate
7. Effect of service of notice
8. Petition denying liability
9. [Omitted]

### PART-III

#### Execution of Certificates

10. Who may execute certificate
11. Execution of certificate by subordinate officers
12. When certificate may be executed
13. Modes of execution
- 13-A. Power to grant installments

### PART-IV

#### Supplemental Provisions

14. Interest, costs and charges recoverable
15. Payment under protest
16. Disposal by Collector
17. Persons under disability
18. Continuance of certificate
19. Procedure on death of defaulter
- 19-A. Liability of legal representative

### PART-V

#### Suits

20. Suits for cancellation or modifications of certificates

21. Parties to the suit
22. Place of suing
23. Suit not to operate as stay

### PART-V-A

#### APPEAL, REVISION AND REVIEWS

- 23-A. Appeal
- 23-B. Revision
- 23-C. Review
- 23-D. Stay of execution during appeal, revision or review

### PART-VI

#### Miscellaneous

24. Costs
25. Officers to have powers of Civil Court for certain purposes
26. Protection of action taken under Act
27. Application of the Indian Limitation Act, 1908
28. Penalties
29. Power of Government to make rules
30. Saving of other laws
31. [Omitted]

### THE SCHEDULE

## THE RAJASTHAN PUBLIC DEMANDS RECOVERY ACT, 1952

(Act No. V of 1952)

As amended by:-

1. Act No. 22 of 1952.
2. Act No. 25 of 1956.
3. Act No. 27 of 1957.
4. Act No. 42 of 1960.
5. Act No. 8 of 1962.
6. Act No. 14 of 1982.
7. Act No. 32 of 1976.

*Received the assent of the President on the 25th day of January,  
1952.*

**An Act to consolidate and amend the law relating to the recovery  
of public demands in <sup>1</sup>[the State of Rajasthan].**

## COMMENTARY

### SYNOPSIS

1. Statement of Objects and Reasons-Value of

<sup>1</sup> Subs. by Act No. 25 of 1956.

2. List of amending Acts
3. Applicability of the Act.
4. Constitutional validity.
5. Application of doctrine of Resjudicata.
6. Retrospective operation.
7. Whether Act is mandatory.

**1. Statement of object and Reasons-Value of.**-Statement of object and Reasons can be considered for a limited purpose to understand the purpose and intention of the legislatures which led to frame the Law or background thereof. The construction which further the aim and object shall be preferred to that which hampers it. *K. Kungu Govindas v. Prakkat Amma*, AIR 1966 Kerala 224; *State of W.B. v. Union of India*, AIR 1963 SC 1241; *University v. Sri Krishna*, AIR 1963 SC 703; *Prasher v. Basantsen*, AIR 1963 SC 1356.

**2. List of Amending Acts.**-Since the list of amending Acts is already given above, it is not repeated here.

**3. Applicability of the Act.**-[1] Where the certificate for recovery of dues is initiated under the Raj. P.D.R. Act. The provisions of the Act shall apply but where the certificate for recovery is initiated under the Raj. Land Revenue Act, 1956, then this Act shall not apply but the Raj. Land Revenue Act shall apply. This Act in such a case provides only the auxiliary machinery and not the substantive right or procedure such as reopening a conclusive certificate by objection. Under the Land Revenue Act the certificate is deemed conclusive and the Collector may decline to hear the objections. *Ram Ranjit Bux v. Chief Administrator Rehabilitation Finance Administration*, AIR 1960 Cal. 416.

[2] Recoveries from Ex-Jagirdar on account of tribute, Lagan Khalsa, District Board Cess and Matmi charges are not recoverable under the Act since Jagir Act being a special enactment, its provisions will prevail over the general provisions of this Act. *Smt. Hawa Kanwar v. State of Raj*, 1987 RRD 215.

[3] The provisions of this Act apply to the recovery of Taccavi loans by virtue of items 5 of form II the government of Rajasthan, taccavi Rules. Thus failure to comply with the statutory procedure prescribed for the purpose of recoveries under this Act renders the whole proceedings null and void and ineffective and without jurisdiction. *Brahm Dutta v. State of Raj*, 1956 RRD 28= 1956 RLW (RS) 142; *Ramchander v. State of Raj.*, 1956 RRD 98= 1956 RLW(RS) 96.

[4] A Certificate for recovery of arrears of rent filed against the waqf property, the dues are not recoverable under the P.D.R. Act, the liability falls under section 256(d) of the Rajasthan Land Revenue Act. The remedy to petitioner is open to make payment under protest which can be recovered by way of suit. *Nathilal v. State*, 1965 RRD 123.

[5] The loan was granted from the worship funds of thakurji. The Devsthan Department of the Ex-Mewar Government had control over the

funds and therefore; it was treated Govt. funds. The present Devsthan Department of the Govt. of Rajasthan was held to have rightly filed requisition under the Public Demands recovery Act. The Act was rightly applies. *Purshottam Chowdhuri v. Devsthan Department*, 1972 RRD 58.

[6] The Tehsildar acting as Recovery Agent under the Rajasthan Land Revenue Act is only a Revenue Officer and not a Judicial Officer thus his orders is not revisable by the Revenue Board as held in [1971 RRD 282] under section 257-B of the Act. *Hazari v. Jhajpur*, 1972 RRD 68.

[7] The proceedings for the recovery of the dues were initiated under section 257 of the Rajasthan Land Revenue Act, 1956. The debtor contended the case falls under items VI & VII of the schedule annexed to the Rajasthan Public Demands Recovery Act, 1952.

There is nothing to establish the effect of contract between the debtor and the Government and that in accordance with the term of the sub-due was recoverable as arrears of land revenue within the meaning of section 256 of Rajasthan Land Revenue Act, 1956. The proceedings held bide for wand of compliance of section 257-A of the Land Revenue Act. *Mohan Lal v. State of Rajasthan*, 1970 RRD 141.

**4. Constitutional Validity.**-This act has been assented to by the president of India under Article 254(2) of the Constitution thus it is not hit by the Constitution. *Lachmandas v. State of Punjab*, AIR 1963 SC 222; *Is. N.C. Mukharjee & Co. v. Union of India*, AIR 1964 Cal. 164; *Sitaram v. S.C. Das Gupta*, AIR 1954 Cal. 447.

**5. Application of doctrine of Resjudicata.**-The doctrine of resjudicata being a fundamental maxim of natural justice that no end man should be vexed twice over the same cause other wise there would be no end to litigation and no security to any person, shall apply though section 11 CPC may not apply. *Ex. Engineer E & M Deptt. Jodhpur v. Giradharilal*, 1961 RRD 241.

**6. Retrospective operation.**-The retrospective effect to any statute should be gathered from the language of the provision and also the object and reasons of the legislatures which enacted it. *Shri Bank Ltd. v. Sarkar Dutt Roy*, AIR 1966 SC 1953; *Rafiquenessa v. Lal Bahadur chetri*, AIR 1964 SC 1151; *Sajjan Singh v. State of Pubjab*, AIR 1964 SC 464.

The procedure applies retrospectively. *Memon Abdul Karim v. Deputy Custodian*, AIR 1964 SC 1256; *S.B.K. Oil Mills v. Subhash Chandra*, AIR 1961 SC 1596.

**7. Whether Act is mandatory.**-[1] Whether the Non-compliance of the provision renders the whole proceedings invalid though its effect may not prejudice the other party, held it is mandatory. *Sardarmal v. Smt. Gayatri Devi*, AIR 1964 Raj. 223.

The use of the word 'shall' is prima facie mandatory but not deemed always mandatory. *State of U.P. v. Babu ram*, 1961 SC 751; *M/s. Sainik Motors v. State of Raj.*, AIR 1961 SC 1480; *State of M.P. v. M/s. Azad Bharat Finance co.*, AIR 1967 SC 276.

[2] The Devsthan department advanced loan against mortgage security of a house. The third person got the auction sale of the house in execution. The auction purchaser applied under section 8 of the P.D.R. Act before the Collector, who dismissed the same and continued with the recovery proceedings. Purchasers appeal under section 23-A of the P.D.R. Act was also dismissed.

The learned members of the Board of Revenue made it abundantly clear that the two condition must be satisfied before the Collector goes to sign the certificate of recovery under section 4 of the P.D.R. Act viz.

(1) Firstly he must be satisfied that the demand is recoverable under P.D.R. Act and secondly its recovery by suit is not barred by any law for the time being in force.

When the debtor is served a notice, he can under section 8(1) of the P.D.R. Act can raise an objection of the following nature, first the demand is not recoverable under P.D.R. Act and secondly its recovery by suit is barred by any law. Such an objection can be taken in the petition denying liability.

The Devsthan Department is not entitled to sue the mortgagor for the recovery of mortgage money because of clauses (A) to (D) of sub-section (1) of section 68 of the Transfer of Property Act. Thus on account of this fact it was held that the proceedings under the P.D.R. Act for the recovery of mortgage money are not maintainable. *Khyai Lal v. A.C.Devsthan, 1972 RRD 171.*

Whereas it is expedient to consolidate and amend the law relating to the recovery of public demands in <sup>1</sup>[the State of Rajasthan].

It is hereby enacted as follows:-

## PART-I

### PRELIMINARY

1. <sup>2</sup>[Short title, extent and commencement.-(1) This Act may be called the Rajasthan Public Demands Recovery Act, 1952.

(2) <sup>3</sup>[It extends to the whole of the State of Rajasthan].

(3) It shall come into force on such <sup>4</sup>[date] as the State Government may by notification in the <sup>5</sup>[Official Gazette] appoint]

## COMMENTARY

### SYNOPSIS

#### 1. Commencement of the Act

<sup>1</sup> Subs. by Raj. Act No. 27 of 1957.

<sup>2</sup> Subs. by Act No. XXII of 1952.

<sup>3</sup> Subs. vide Item No.17 of the Schedule of the Raj. Act No. 27 of 1957.

<sup>4</sup> Came into force on 15-6-1952 vide R.G.Gaz dated 21-6-1952.

<sup>5</sup> Subs. by Raj. Act 27 of 1957.

2. Extent of operation
3. State of Rajasthan
4. State Government

1. **Commencement of the Act.**-The Act came into force on 15-6-1952 on the appointed date notified by the Government of Rajasthan vide Notfn. published in Rajasthan Gazette Pt.1, dated 21-6-1952, p. 273.

2. **Extent of operation.**-It shall extend to the whole of the State of Rajasthan. The Act was extended to the Part C state of Ajmer, Aburoad Taluka of Banaskantha District of the State of Bombay; and Sunel Tappa of Bhanpura Tehsil of Mandsaur District of Madhya Pradesh by the Rajasthan Extension of Laws Act, 1957 (Raj. Act 27 of 1957).

3. **State of Rajasthan.**-The term State of Rajasthan, determines the territorial jurisdiction and territorial extent of application of the present Act.

Clause (62) of Section 32 of the Rajasthan General Clauses Act, 1955, defines the term Rajasthan as under:-

"(62) 'Rajasthan' shall mean:-

(i) as regards the period on and from the said day, the new State of Rajasthan as formed by Section 10 of the States Reorganisation Act, 1956 (Cent. Act 37 of 1956), but shall not include the former Rajasthan State.

Clause (74A) of section 32 of the Rajasthan General Clauses Act, 1955, defines the term 'State' as under:-

"(74) 'State' used with reference to Rajasthan, shall mean the new State of Rajasthan as formed by section 10 of the States Reorganisation Act, 1956 which run as under:-

"10. **Formation of new Rajasthan State.**-(1) As from the appointed date there shall be formed a new Part A State to be known as the State of Rajasthan comprising the following territories, namely:-

(a) the territories of the existing State of Rajasthan except Sironj sub-division of Kotah District;

(b) the territories of existing State of Ajmer;

(c) Abu Road Taluka of Banaskantha District in the existing State of Bombay, and

(d) Sunel Tappa of Bhanpura Tehsil of Mandsaur District in the existing State of Madhya Bharat & thereupon the said territories shall cease to form part of the said State of Rajasthan, Ajmer, Bombay and Madhya Bharat, respectively.

(2) The territories comprised in the existing State of Rajasthan shall form a separate district to be known as Ajmer District and the territories referred to in clauses (c) and (d) of sub-section (1) shall be included in and become part of, Sirohi and Jhalawar districts, respectively, in the new State of Rajasthan".

**4. State Government.**-In the Act word 'State Government' has often been used. It requires explanation.

The 'State Government' has been defined under the Rajasthan General Clause Act, 1955, as under-

Sub-section (33) of section 32 of the same Act.

"(33) 'Government or the Government' shall include both the Central Government and any State Government".

In sub-section (75) of section 32 of the same Act-

"(75) "State government" shall mean in relation to anything done or to be done.

(i) On and from the commencement of the Constitution until the first day of November, 1956 the Rajpramukh, and

(ii) On and from the first day of November, 1956, the Governor" Sub-section (65) of section 32 of the same Act says,-

(65) "Rajpramukh" shall, as respects any period before the first day of November, 1956 mean the person who is for the time being the Rajpramukh of Rajasthan."

Sub-section (34-A) of section 32 of the same Act-

"(34-A) "Governor" means as respect the periods on or after the first day of November, 1956, the Governor of Rajasthan.

Only the Governor of the State of Rajasthan appointed under the Constitution of India shall mean the State Government of Rajasthan. The Rajpramukh of the State of Rajasthan was used to be called as the State Government of Rajasthan before the first day of November, 1956 and thereafter the Governor of the State.

The ministers or council of ministers for State of Rajasthan are the advisors to the Government of Rajasthan and thus they cannot be called the State Government of Rajasthan.

The Constitution requires that in order to make an act of the State Government, the action must be taken by the authority concerned in the name of the Governor. It is not till this formality is observed that the action can be regarded as that of the State Constitutionally speaking, the minister is no more than an advisor and that the head of the State, the Governor is to act with the aid and advice of his council of ministers. Therefore, until such advice is accepted by the Governor whatever the Minister or the Council of Ministers may say in regard to a particular matter does not become the act of the State until the advice of the Council of Ministers is accepted or deemed to be accepted by the Head of the State i.e. the Governor. *Bachttarsingh v. State of Punjab*, AIR 1963 SC 395; *State of Punjab v. Sodhi Sukhdevsingh*, AIR 1961 SC 493; *Ramanandan v. State*, AIR 1959 All 101 (FB).

It does not include a District Board or a local authority. *Mahalingam Raghunath*, AIR 1940 Mad. 916.

The legislatures in a State does not include Government of the State. *Ramjidas v. State of Rajasthan*, 1954 RLW 357.

**2. Definitions.**-In this Act unless there is anything repugnant in the subject or context:-

(1) "certificate" means a certificate filed under this Act;

<sup>1</sup>[(2) "defaulter" means a person named in a certificate to be the person from whom any public demand is due, whether such demand is due from him personally or as a legal representative of any other person and includes a person—

(i) whose name is subsequently substituted or added as such; and

(ii) who is responsible as surety for the payment of any such demand.]

(3) <sup>2</sup>[x x x]

(4) "prescribed" means prescribed by rules made under this Act; and

(5) "public demand" means any arrear of money mentioned or referred to in the Schedule to this Act and includes any interest which may by law be chargeable thereon upto the date of the signing of a certificate in respect thereof under section 4.

<sup>3</sup>[(6) "Public undertaking" means a Government company in which not less than fifty per cent of the paid-up share capital is held by the State of Rajasthan and also includes such other institution in which Government has financial interest, as may be specifically, notified in the Official Gazette by the State Government.]

### SYNOPSIS

1. General
2. Defaulter
3. Public demand
4. Priority to debts
5. Constitutional validity of priorities
6. To what public demand the Act shall apply

**1. General.**-[1] Purpose is two fold-(i) It provides Key to the meaning of the statutory words and expressions used in the Act and secondly it avoids confusion of meaning. *Pappathe Ammal v. Nail Pillai*, AIR 1964 Mad. 173.

[2] Its meaning is thus confined and dictionary meaning is avoided. It is an artificial meaning given to a word but that alone should be adhered to. *Rajasthan State Elec. Board v. Raj. Labour Court*, AIR 1966 Raj. 56;

<sup>1</sup> Subs. by Raj. Act 25 of 1956.

<sup>2</sup> Omitted-vide item No.27 of the Schedule.

<sup>3</sup> Added by Raj. Act 14 of 1982.

*Hari Prashad Shivshankar v. A.D. Divalkar*, AIR 1957 SC 121= 1957 SCR 121= 1957 SCA 57= 1957 SCJ 83.

[3] The Statutorily defined words must be read subject to the Qualifying words unless the context otherwise requires. *Bal Kishan v. ashoka Bank Ltd.*, AIR 1966 Kerala 42 (FB).

[4] Whether demand of Excise department under guarantee system a public demand under the Act-Question still undecided. [1973 RRD 445] Dissented. *Jagannath v. State of Rajasthan*, 1973 RRD 485.

**2. Defaulter.**-Means a person whose name appear in the certificate and against whom the public demand is due.

A company incorporated under the Companies Act in a suejuris Possessing rights and liabilities. Its managing Director is not liable to public demand due thus not a defaulter. *Bejai Singh Duggar v. Certificate Officer Bhapalpur*, 1965 BLJ 341.

Where it is not clear as to who was the defaulter. There is no justification to proceed against any one. *Mohanlal v. State of Rajasthan*, 1977 RRD 154.

**3. Public Demand.**-[1] It means an arrears of money as referred to in the schedule appended to this Act. Thus income tax dues. *Prahlad Roy v. Union of India*, AIR 1956 Pat. 316; *Durga Pd. v. Sect. of State*, AIR 1945 PC 62; *Hiralal v. ITO, Bhilwara*, 1962 RLW 461.

[2] Sales tax dues. *Murli Tehil Ram v. T. Assomal*, AIR 1955 Cal. 423.

[3] And arrears of any other tax dues are public demand. AIR 1967 SC 467.

[4] An arrears of rent in respect of property belonging to a minor under the management of courts of wards are public demands and the certificate can be issued therefore. *Sheikh Jan Mohd. v. Umanath Mishra*, AIR 1962 Pat. 440.

[5] The maintenance allowance though sanctioned by the Government and are recoverable from Zagir is still not a public demand. *Daulatsingh v. State of Rajasthan*, 1955 RLW 178.

[6] Royalty and mine rent is payable under the Mines and Minerals Act 1957 and not a matter of volition or agreement between the parties under lease hold. Thus dues of royalty and mines is thus not a public demand recoverable under the PDR Act but under 256 of the Land Revenue Act. *Taher Ali v. State*, 1973 RRD 3.

[7] Government building contractor constructing Government buildings under contract-Water supplied through pipe line with non-functioning or missing water meter-Contractor liable to pay cost under section 70 Contract Act-It is a public demand, recoverable under the Act. *State of Raj. v. Amarjeet Singh*, 1988 RRD 84.

[8] Recoveries from Ex-Jagirdar on account of tribute, Lagan Khalsa, District Board Cess and Matmi charges are not recoverable under the Act since Jagir Act being a special enactment, its provisions will prevail over

the general provisions of this Act. *Smt. Hawa Kanwar v. State of Raj.*, 1987 RRD 215.

[9] The proceeding in execution of the certificate cannot be said to have ended with the recovery of the full amount of the certificate. The certificate must be considered to be a certificate for the original amount mentioned in it as well as the amount payable in law, namely, interest, costs and charges. [AIR 1969 Cal. 204] Rel. It is a public demand under S. 14(a). *Govt. of Raj. v. Manaharlal*, 1984 RRD 33.

[10] The agreement does not contain any such terms and conditions whereby such a demand may be created. The obligation of the plaintiffs under the agreement was to make payment of the price of the grain supplied to them by the Government and they were further entitled to a commission @ Rs. 110/- per month. For shortage, the agreement provides, that the Government will in no way be responsible and the responsibility will be that of the agent. The agreement nowhere provides that in case of any shortage the Government will be able to recover the difference in the contracted price of grain found to be short and the market rate. Similarly the question of the alleged demand is not covered under item six of the Schedule. The plaintiffs could be disentitled to a relief of injunction only when it is found that the demand is a public demand covered under the Act and the suit was barred u/s. 20 of the Act being beyond 6 months' limitation. Since the demand does not fall within the preview and scope of item 6 of the Schedule and is also not covered under any other item, section 20 is not attracted and as such it cannot be held that the suit is barred under S. 20 of the Act S. 26 of the Act also does not apply because the plaintiffs have come with the case that no amount is due from them and the alleged recovery is illegal. *State of Rajasthan v. Ganeshwami*, 1979 WLN (UC) 10.

[11] Bid accepted and bid list signed by petitioner and also the surety. The Dy. Commissioner also signed the bid list. It amounts to contract concluded and a claim thereunder is a public demand under the Act. *Kalu v. Board of Revenue*, 1979 WLN 403.

[12] Defaulter was officer of the then Jaipur State- It was decided by the highest authority and head of the State that the amount due was as a consequence of misappropriation & embezzlement caused by him-Demand held to be public demand-No. lack of jurisdiction-Revision against order not competent. *Ratan Singh v. State*, 1981 RRD NUC 15.

[13] **Written instrument or agreement.**

In this case a certificate was issued against the petitioners who were authorised retail dealers in foodgrains for the cost of gunny bags supplied to them in 1946. The cost was calculated on the basis of a circular of the Civil Supplies Commissioner, dated 4th April, 1951.

It was held, that the circular could not take the place of an agreement or written instrument referred to in cl. (6) of the schedule, firstly because it was unilateral and secondly because it was issued in april, 1951 and

could not have retrospective effect. *M/s. Dungaram Dhangaram v. Civil Supplies*, ILR (1965) 15 Raj. 197; 1965 RLW 99.

**4. Priority to debts.**-[1] In case of equality of debts due, the crown's right shall prevail over the subject. But where the property of a defaulter, is attached in execution of a decree, the Collector cannot disturb attachment, he has only remedy to apply for retable distribution under section 73 CPC and for priority. *Bank of India v. John. Bowman*, AIR 1955 Bom.305.

[2] The Union of India has right of priority regarding recoveries of income tax dues. *Associated Pictures v. Union of India*, AIR 1959 Cal. 179.

[3] There is consensus of opinion that right of priority applies in the cases of demands and recoveries of arrears of taxes. The justification for the doctrine of priorities lies in the principle that the State is entitled to raise funds by taxation. But in respect of commercial activities of a State under any contract with the subject doctrine of priority may not prevail. *M/s. Builders Supply Corporation v. Union of India*, AIR 1965 SC 1061.

[4] Section 61(1)(a) of the Provincial Insolvency Act, 1920 does recognize the doctrine of priority of debts due to the Government as well as to any local authority but sections 60 and 73(3) CPC do not recognize the priority principle. *Murli Tahil Ram v. T. Assomal & Co.*, AIR 1955 Cal. 423.

**5. Constitutional validity of priorities.**-Priority to crown debts over private debts is part of the laws in force and therefore a part of the legal inheritance preserved under Article 372 of the Constitution of India. Thus priority is given unless (i) it is in conflict with any other article of the Constitution because Art. 372 applies subject to the other provisions of the Constitution and (ii) unless it is altered amended or repealed by a competent legislative body or authority. There is at present no Indian statute which affects the states claim for priority. But this priority is confined to the states revenue raising matters and does not extend to commercial activities in competition to its citizen because in the later case state is of equal status to that of a citizen. Held, priority given to state is hit by Article 19(1)(f) of the Constitution. *Murli Tahil Ram v. T. Assomal & Co.*, AIR 1955 Cal. 423; *Builders Supply Corp. v. Union of India*, AIR 1965 SC 1061.

**6. To what public demands the Act shall apply.**-[1] The public demand is an imposition of statutory liability which remains unpaid thus it is a direct creature of statute which if not specifically covered by the P.D.R. Act can under special agreement be recoverable by a proceedings in a civil court. *Saudamini Works v. State of Orissa*, ILR (1959) Cut. 365.

[2] Under an agreement the loss or damage are to be assessable by the forest officer and on demand if remains unpaid will be recoverable as public demand. The loss or damages assessed but no demand was ever made. Held it has not become a public demand, no proceedings under the

Act can be initiated. *Kuer Singh v. State of Bihar*, 1958 Pat.LR 450.

[3] The bidder failed to pay one fourth of the auction money at the close of bid which resulted into Reauction and fetched lesser bid money. Certificate for the recovery of the balance money issued. Held the proceedings under P.D.R. Act was ultravires and without jurisdiction. *S.A. Manhar v. State of Bihar*, 1958 Pat.LR 17.

[4] Demand by Government not on account of damages but stipulation under contract-Contract conditions made demand a public demand-amount recoverable under the Act. *Krishna Miners and Traders v. State*, 1974 RRD NUC 100.

## PART-II

### FILLING SERVICE AND EFFECT OF CERTIFICATES AND HEARING OF OBJECTIONS THERETO

**3. Requisition for recovery.**-(i) When any public demand is due, the officer or authority charged with its realization may send to the Collector having jurisdiction in the place where the defaulter resides or owns property a written requisition in the prescribed form.

(ii) Every such requisition shall be signed and verified in the prescribed manner.

## COMMENTARY

**1. General.**-[1] This Act is a special statute thus creates a special tribunal under the name certificate officer-Here in the section such officer is the Collector and also invested with a special jurisdiction for the purpose. The Collector on receipt of public demand certificate proceeds to recover the dues in a speedier manner which is different from the normal mode of realisation under the ordinary civil law. It is subject to one condition that outstanding dues must be the public demand, that being so the Collector has the jurisdiction to invoke the provisions of this Act otherwise not. *Tribeni Prashad Rungta v. State of Bihar*, AIR 1965 Pat. 274.

[2] It is only the Collector who can issue the certificate and adjudicate the petition denying liability. The power could not have been bestowed upon the Sub-Divisional Officer. [1969 RRD 450] Rel. *State of Rajasthan v. Onkarlal*, 1977 RRD 287.

[3] Director of Agriculture, relevant authority to realise dues and was requested by Dy. Secy. Finance to initiate recovery proceedings-Requisition filed by him perfectly legal-Collector's certificate contained all required particulars-No prejudice caused to applicant-Demand arose in course of commercial contract-Not a claim for revenue or rent. [1959 RRD 116 & 1969 RRD 122] not applicable. *Krishna Miners and Traders v. State*, 1974 RRD NUC 100.

**2. Requisition-Meaning.**-[1] The public officer who is charged to realise the outstanding dues shall make a request (in form No. 1 under rule 5) in a prescribed manner to the collector.

To initiate the appropriate proceedings against the defaulter or his property and realise the unpaid dues called the public demand. The Requisition is condition precedent for Collector to initiate recovery proceedings under the P.D.R. Act. The Collector shall follow the requisition made under this section 3. The requisition alone provides the jurisdiction to the receiving Collector to initiate recovery proceedings under the Act. *Gudla Satya Narayan v. State*, 1957 AP 1027; *Mannalal v. Collector Jhalawar*, AIR 1961 SC 828.

**[2] Requisition of recovery signed by Assistant Commissioner, Excise and Customs and not by Head of Department-Effect.**

A requisition for recovery is required to be sent to the Collector under s. 3 not by the Head of Department but by the officer or authority charged with realization of the demand. It is nobody's case that the Assistant Commissioner, Excise and Taxation was not the officer charged with the duty to realize the demand from the plaintiff. The requisition of recovery Ex. A/7 sent to the Collector not signed by the Head of Department but by the Assistant Commissioner. Excise and Customs was held not to be invalid. *Dali Chand v. The State of Rajasthan and others*, ILR (1975) 25 Raj. 1012 = 1975 RLW 452= 1975 WLN 454= AIR 1976 Raj. 112.

**3. To whom Requisition be sent.**-[1] The requisition of recoveries be sent to the Collector of the Revenue District in whose jurisdiction the defaulter resides or owns the property.

**[2] Officer requesting Collector to recover sum realizable as land revenue-Collector can proceed only under Public Demands Recovery Act-No authority in such cases to proceed under law providing for recovery of land revenue strictly so called.**

Where a public officer makes a request to the Collector to realize any sum which is realizable as arrears of land revenue, the Collector can only proceed under the provisions of the Public Demands Recovery Act on the receipt of such request. This request amounts to a requisition under S. 3 of the Act, and the Collector has then to follow the procedure provided in S. 4 onwards. If the defaulter objects and denies his liability under S. 8(1) of the Act, it is the duty of the Collector to proceed further under S. 8(2). He has no authority on such objection to drop the proceedings under Public Demands Recovery Act and to proceed under some other law, e.g. Qanoon Mal, Mewar, which provides for methods of recovery of land revenue strictly so called, and which does not authorize him to recover sums which are declared by some law to be realizable as land revenue. The Collector gets the authority to realise the later kind of sums under the provisions of S. 13 of the Public Demands Recovery Act. *Gyan Singh v. Collector, Bhilwara*, ILR (1955) 5 Raj. 644 = 1956 RLW 44.

**[3] Requisition for recovery-It can be issued against more than one person.**

Requisition for recovery Ex. A/7 was sent to the Collector mentioning therein the names of the defaulters. It is certainly a requisition for recovery against several persons but no such provision of law or rule has been shown which prohibits sending of requisition for recovery against more than one person. *Doli Chand v. State of Rajasthan and others*, ILR (1975) 25 Raj. 1012= 1975 RLW 452= 1975 WLN 454= AIR 1976 Raj. 112.

**4. Filling of certificates.**-(i) On receipt of any such requisition as is referred to in section 3, the Collector if he is satisfied that the demand is recoverable under this Act and that its recovery by suit is not barred by any law for the time being in force, may sign a certificate to that effect in the prescribed form specifying, therein the amount of the demand the account on which it is due the name of the defaulter and such other particulars as may be necessary for his identification and shall cause the certificate to be filed in his office.

(ii) Where the Collector is himself the officer charged with the realization of a public demand, he shall cause a like certificate to be signed and filed in his office.

## COMMENTARY SYNOPSIS

1. Certificate, meaning of
2. nature and scope of certificate
3. Requisite of a valid certificate
4. Issue of certificate
5. Validity of certificate
6. Issue of fresh certificate
7. Amendment of certificate
8. Certificate whether a decree
9. Execution of certificate
10. Certificate officer.

**1. Certificate meaning of.**-Upon receipt of requisition, the Collector shall sign a certificate under this section and there upon the recovery proceedings are initiated. The certificate is prepared in a prescribed Form 2. Collector has to follow the procedure laid down in section 4. *Gyan Singh v. Collector, Bhilwara*, ILR 1955 Raj. 644= 1956 RLW 44.

**2. Nature & Scope of certificate.**-[1] Mere filing of a certificate is ipso facto does not constitute like passing of a decree by a competent Civil Court and therefore, the Collector is under duty to be first satisfied himself that the defaulters liabilities are conclusively established and the dues are recoverable under the PDR Act. The Certificates ripen into a valid decree and becomes executable only after the objection of the section

8 of the PDR Act denying liability are heard and finally dismissed. The Collector while signing the certificate has merely to consider a prima-facie case for recovery. *The State v. Guman Chand*, 1970 RLW (RS) 57.

[2] It is like initiating an execution proceedings for realisation of the dues. Thus the certificate must contain the name of the defaulter against whom the recovery proceedings are initiated thus omission of name and necessary particulars is a material defect fatal to the validity of the recovery proceedings, Held proceeding invalid and liable to be quashed. *Associated Stone Industries v. Mining Engg., Kota*, 1951 RRD 116.

**3. Requisites of a valid certificate.**-[1] A requisition is made under section 3 but the Collector while issuing or signing the certificate and initiating recovery proceedings under the Act must follow the procedure provided under this section. *Gian Singh v. Collector, Bhilwara*, ILR 1955 Raj. 644= 1956 RLW 44.

[2] The certificate must confirm in form and manner as laid down in section 4 of the Act. It is the basic principal of law that if the thing is not done in a form and manner prescribed under the mandatory provision of law, it contravenes the law thus invalid and in effective. Thus where the officer failed to apply its mind to see whether the certificate is properly filed or not and mentions names and other description of the defaulter on the reverse side of the certificate form, held certificate is invalid and proceedings taken are liable to be quashed. *Nageshwar Pd. Singh v. R.B. Kashinath Singh*, ILR 23 Cal. 775; *Lachmikant Deo v. Rameshwar*, AIR 1948 Pat. 104 (tabular form of certificate not correctly filled).

[3] Ordinarily, the mentioning of period of dues is a necessary requirement where the demand consist of claim for revenue or rent. Thus omission to specify period of loan due to a Government does not render the certificate materially defective so as to render the proceedings invalid. *Mannalal v. Collector Jhalawar*, AIR 1961 SC 828.

[4] The presence of a valid certificate is the very foundation to bestow Jurisdiction upon the Collector to initiate recovery proceedings and in absence of which renders the sale void ab initio. *Khosal Diwan v. Mubarak Ali*, ILR (1958) 10 Assam 326.

[5] The Collector upon receipt of the requisition must pursue it and be himself satisfied as to the—

Recoverability of the demand i.e.

- (a) Demand is not barred by any law for the time being inforce.
- (b) The officer sending the requisition is Competent to send the requisition.
- (c) Other necessary requirements so as to issue certificate is made available by the Officer sending the requisition.
- (d) The person against whom the requisition has been sent resides or owns property in the area of such Collector.

Upon being satisfied as to the above points, the collector shall prepare the certificate and sign the same in the manner prescribed under this Section.

The satisfaction of the Collector is the condition precedent to sign the certificate. The certificate issued in routing without the Collector being satisfied is held to be nullity. *M/s. Associated Stone Industries v. Mining Engineers Kota*, 1951 RRD 116; *Sasamusa Super Works v. State of Bihar*, AIR 1955 patna 49.

[6] The certificate must contain the correct and Legible description of the person or persons liable under certificate along with the details of the dues so as to enable him to know the exact nature of the demand and the liability therefore. An omission to that effect renders the certificate invalid and whole proceedings void abinitio. *Associated Stone Industries v. Mining Engineer Kota*, 1951 RRD 116(B).

[7] It was omitted to file certificate. The want of certificate is a very serious defect and entire recovery proceedings are null and void and without jurisdiction. The very foundation is missing thus whole of the proceedings would be purse void. *Messers Govind Singh v. State of Rajasthan*, 1971 RRD 27.

[8] The Rajasthan High Court have laid down following prerequisites of a valid certificate Viz.—

- (i) That the demand should be one recoverable under the Schedule of the PDR Act.
- (ii) That there is requisition as required under Section 3 unless the case is covered by section 4(2) of the Act.
- (iii) That there is certificate-in strict compliance with section 4 of the Act.
- (iv) That notice under section 6 has been served on the defaulter or defaulters.

If these conditions are not complied with, there is patent lack of jurisdiction in the Collector to proceed for recovery under the Raj. PDR Act. *Rajhumal v. The State of Raj.*, 1957 RLW 370= ILR 1955 Raj. 748; followed in *Associated Stone Industries v. Mining Engineers*, 1959 RRD 116.

[9] The authority sending the requisition under section 3 must put full signatures and not to put mere initials only. *Rajhumal v. State*, 1957 RLW 370= ILR 1955 Raj. 748.

[10] The period for which the demand is made must be stated. *Rajhumal v. State*, 1957 RLW 370= ILR 1955 Raj. 748.

[11] The certificate must be signed by the competent authority i.e. the Collector. Vide Government Order No. F. 22(17) RL/55, dated 28-2-1957 issued by the Revenues (B) Department Government of Rajasthan by which the Additional Collector have been empowered to act under the Raj. PDR Act. This order though not published in the gazette yet by virtue of

section 25 of the Raj. Land Revenue Act Additional Collectors have been empowered to exercise the powers of a Collector under the present Act too.

But this order was issued on 28-2-1957 which has no retrospective effect. Thus a certificate signed by the Additional Collector and disposes of the objection falling before such date is clearly without jurisdiction hence nullify and in effective. *Associated stone. Industries v. Mining Engineer*, 1959 RRD 116.

**[12] Certificate-No period in column No. 4 for which demand was made was mentioned- Effect-Irregularity.**

The certificate Ex. 5 issued by the Collector, Banswara did not disclose the period for which the demand is due.

Held, that failure on the part of the Collector, Banswara to mention the period in column No. 4 of the certificate is a mere irregularity. It was observed that no prejudice appears to have been caused to the plaintiff on account of non-mentioning of the period for which the demand was made [1956 RLW 538] relied on; [1957 RLW 370; AIR 1954 Cal. 35] (distinguished and explained). *Dalichand v. The State of Rajasthan & Ors.*, ILR (1975) 25 Rajasthan 1012= 1975 RLW 452= 1975 WLN 454= AIR 1976 Raj. 112.

**[13] Failure to mention in certificate minor details required by prescribed Form-Omission whether invalidates certificate.**

While it is very desirable that the officer who is to discharge the heavy responsibility of signing and filing a certificate of demand under S. 4 of the Rajasthan Public Demands Recovery Act, should strictly comply with the requirements of Form prescribed for the purpose specially because the certificate is prepared and signed exparte and has the effect of passing a decree against the defaulter, the failure to comply with every minute detail of the certificate cannot be regarded to have the effect of invalidating it, where no prejudice appears to have been caused to the defaulter on that account.

Where, therefore, in column No. 4 of the Form prescribed by the Rules for certificate required to signed and filed by the Collector under S. 4 of the Act, the Collector while mentioning the amount of demand with interest omitted to expressly specify the period for which it was due, it was held that omission was not sufficient to invalidate the certificate particularly when no prejudice on that account was shown to have been caused to the petitioner. [AIR 1954 Cal. 355 and 23 IA 45] distinguished. *Manna Lal v. The Collector, Jhalawar*, ILR (1956) 6 Raj. 517= 1956 RLW 538.

**4. Issue of Certificate.**-[1] In a requisition it was stated to realise the dues as arrears of land Revenue. Section 30 of the PDR Act says that the Act is supplementary and realizable under this Act. This request amount to requisition under sec. 3 and the recovery should be made under the Raj. PDR Act. *Gian Singh v. Collector Bhilwara*, 1956 RLW 44= ILR 1955 Raj. 644.

[2] An auction sale, the petitioner gave bid and deposited one fourth of the auction sale price. Before the confirmation of auction sale the petitioner bidder revoked the same and filed a suit for refund of the deposit. The officer accepted the bid and demanded the balance three fourth amount of auction price. It was held that no certificate can be issued as the finality of agreement is doubtful and secondly the petitioners suit for recovery is pending. *Hanuman Pd. v. Mining Engineer Jaipur*, 1960 RLW 223= ILR 1960 (10) Raj 975.

**[3] Issue of certificate under, for refund of sales tax, which is subsequently adjudged illegal.**

M & Co. in this case were the importers-cum-wholesale dealer of controlled cloth appointed by the Rajasthan Government for Cjuru district in 1950. They sold cloth to retailers nominated by the Collector on controlled rates after adding the amount of takes actually paid. One of such takes was a sales tax imposed by the Bombay Government which was subsequently declared illegal by the Supreme Court [AIR 1953 SC 252]. The Rajasthan Government was not successful in its attempt of claiming refund of the tax from the Government of Bombay or the suppliers and issued a certificate against M & Co. to make the refund. Held, that the Government of Rajasthan could not call upon M & Co. to refund the amount of the sales tax, which it had paid to the suppliers in the State of Bombay, simply because the Government of Rajasthan was not successful in getting a refund of that amount direct from the Government of Bombay. *Mudan Gopal v. Collector, Churu*, ILR (1964) 14 Raj. 986= 1964 RLW 581.

**5. Validity of Certificate.**-[1] State Government not competent to confer powers under S. 26(1)(D) on S.D.O.-Certificate issued by S.D.O. is also invalid. *Jaganath Singh v. State of Rajasthan*, 1978 WLN UC 350.

[2] In order to make a certificate valid, Strict compliance of law and procedure is essential. The entries of a prescribed form of certificate must be correctly filled, defect in fatal renders the certificate inexecutable. *Satis Chandra v. Union of India*, 65 CWN 324.]

[3] But this view was dissented from in. *M/s. N.C.M. Mukherjee v. Union of India*, AIR 1964 Cal. 165.

[4] The officer who signs the certificate virtually passes an exparte decree against the defaulter. Thus heavy responsibility has been cast on such authority to comply the law strictly before signing the certificate. Held under the circumstance the omission is mere irregularity which does not affect the root of the cause. Held no prejudice is caused. *Mannalal v. The Collector Jhalawar*, 1965 RLW 538=ILR 1965 Raj. 517.

[5] In order to constitute a certificate to be valid in law, the correct description of the defaulter and the period of the demand must be mentioned in the certificate. Omission is fatal and vitiates the recovery proceedings. *M/s Associated Stone & Co., v. Mining Engineer*, 1959 RRD 116.

[6] Mere misdescription of amount does not due invalidate the certificate. *Umed Ali vs. Raj. laxmi*, ILR 33 CAL. 34.

[7] A certificate issued upon a requisition made by an incompetent authority and without duly signed and verified in a prescribed form and manner, is not void. *Mohinuddin v. Prithvichand*, 31 IC 664= AIR 1916 Cal. 444.

[8] But in a latter case of the same High Court defects and irregularities issuing certificate are not mere irregularities then it can not be ignore. *Bhangiya Deyashlat v. G.G. of India*, AIR 1955 Cal. 835.

[9] A certificate for recovery was not filed in strict compliance of sec. 4 of the P.D.R. Act such certificate is invalid and can not be an instrument of recovery. The requirement of sec. 4 of the P.D.R. Act are mandatory. Any defect in the certificate is fatal to the recovery proceeding-*Govind Singh vs. State of Rajasthan*, 1971 RLW (RS) 62; *Purshottam vs. State of Rajasthan*, 1969 RRD 122.

[10] The Statute only empowers the Collector and not the Sub-Divisional Officer to act under the Act.

In exercise of the power under part IInd of the P.D.R. Act, all the Sub-Divisional Officer are invested with the powers of Collector by the Government. The Government can not divest powers of the Collector and bestow the same upon the Sub-Divisional Officer against the legislative intent. The Sub-Divisional Officer were held to be without jurisdiction and certificate issued by them was quashed. *Shri Surendra Nath v. Recovery Officer Jhalawar*, 1969 RRD 450.

**6. Issue of fresh certificate.**-[1] The Collector previously had held that the electric charges are not recoverable under the P.D.R. Act. The Collector is not competent to issue fresh certificate for the same electric charges dues. The doctrine of resjudicata bars the issue of fresh certificate. *Ex-Engineer E. & M Deptt. Jodhpur v. Girdharilal*, 1961 RRD 241.

[2] The Chief Engineer filed requisition for recovery of the amount due on account of embezzlement, under section 3 of P.D.R. Act upon hearing the objection, the Collector withdraw the certificate on the ground that the Chief Engineer was not an authorised person to file requisition. The fresh requisition is filed by a duly authorised person in maintainable. *State v. Guman Chand*, 1970 RLW (RS) 57.

**7. Amendment of certificate.**-[1] Where the amount of tax due is reduced by the appellate authority the certificate can accordingly be amended to such reduced amount of demand for tax. *Ladhu Ram v. D.K. Ghosh*, AIR 1956 Cal. 504.

[2] A mere mistake in the amount can be corrected by amending the certification accordingly. Where the nature of debt due is altered in the requisition the certificate can accordingly be amended. *Tribeni Pd. Rungta V. State of Bihar*, AIR 1965 Pat. 274.

[3] Demand for dues of income tax against a firm which subsequently found dissolved. The name of the firm can be substituted by the names of the partners constituting the firm. The amendment in the certificate to that extent is within the competence of the Collector. *Bajranglal v. I.T.O. Cuttak*, AIR 1958 Orissa 280.

**8. Certificate whether a decree.**-[1] The Certificate takes the shape of a decree when following conditions are fulfilled.

(i) It forms the public demand recoverable under the Rajasthan P.D.R. Act.

(ii) Signed by a competent officer or authority charged with the realisation of the same.

(iii) Requisition for a certificate must be in a prescribed form (Form No. 1 under rule 15) and it shall be duly verified in a prescribed manner by the competent officer.

(iv) Then it shall be sent to the collector of the District in which the defaulter resides or the properties of the defaulter is situated. Then the certificate ripen into a decree and is executable under the Raj. P.D.R. Act. AIR 1967 SC 400; 1968 (1) SCJ 207.

[2] The certificate being conclusive proof of the matter contained therein the Collector was held rightly refused the objection on the merits. *Ram Ranjan Rakshit v. Chief Administrator for Rehabilitation Finance Administration*, AIR 1960 Cal. 416.

**9. Execution of certificate.**-[1] Where the certificated defaulter is found to be dead, same can be executed against the legal Representatives of the deceased defaulter. *Lachmicant v. Rameshwar Choudhury*, AIR 1948 Pat. 104(A).

[2] Dues relating to land revenue, Taccavi loan and dues of Tehsil-Defaulter raising objection-Held that the defaulter was entitled to satisfy himself that whatever was demanded was legally recoverable. Also when his property was attached and Tehsildar took possession of it and managed it after attachment, the State was bound to account for the money realized. If nothing was realized, the Collector should have recorded a finding to that effect. The mere fact that the Tehsil refused to render any account on the pretense that the papers were not available did not absolve the creditor from accounting. Task although difficult but not impossible. Order set aside and case remanded. *Mst. Rajia Begum v. State of Rajasthan*, 1975 RRD 342.

**10. Certificate Officer.**-Under the Rajasthan P.D.R. Act a competent and prescribed officer is the Collector. But by virtue of a State Government Order No. F. 22(17) RL/55, dated 28-3-1951 issued by the Revenue (B) Department of the Government of Rajasthan, the Additional Collector also been empowered to act and dispose of the matters under the Act. The order though not published in Rajasthan Gazette have the force of law. The order has a prospective operation-Thus Additional Collector was held to be an incompetent officer to act under the Act before 28-2-1957.

*Associated Stone Industries v. Mining Engineer*, [1959 RRD 116]. The sub-divisional officer has no jurisdiction under the said order before 28-2-1957. *Thakur Narayan Singh v. State of Raj.*, 1967 RRD 124.

**5. Transmission of Certificates.**-(i) A Collector in whose office a certificate shall have been filed under section 4 may transmit a copy thereof to any other Collector within whose jurisdiction the defaulter resides or owns property.

(ii) Upon receipt of such copy, such other Collector shall proceed as if the certificate were originally filed in his office.

### COMMENTARY

**Transmission of certificate.**-[1] A certificate can be transferred from one certificate officer to another. The law does not prevent it as this is purely an administrative affair. *Ladhu Ram v. D.K. Ghose*, AIR 1956 Cal. 504.

[2] After transfer, the transferee Collector is not ceased of the jurisdiction to proceed with the recovery proceedings, he can withdraw the certificate. *Ladhu Ram v. D.K. Ghose*, AIR 1957 Cal. 667.

[3] The transferee collector cannot issue a fresh certificate of his own. *Baluram v. Member, Board of Revenue*, AIR 1962 Cal. 499.

[4] The transferee collector shall proceed as if the certificate were originally filed in his office. The transferor Collector shall retain the original certificate and shall transmit copy thereof to other Collector within whose jurisdiction the defaulter resides or owns property.

**6. Service of notice and copy of certificate.**-When a certificate has been filed under section 4 or transmitted under section 5 the Collector in whose office it has been so filed or to whose office it has been so transmitted shall cause to be served upon the defaulter in the prescribed manner a notice in the prescribed form along with a copy of the certificate:

Provided that, where the Collector in whose office the certificate has been filed under section 4 has served a notice under this section, it shall not be necessary for the Collector to whose office it may be transmitted under section 5 to serve a like notice again.

### COMMENTARY

#### SYNOPSIS

1. Jurisdiction-Essential prerequisites of
2. Notice-Service of
3. What is 'copy of certificate'
4. Service of notice, have to be caused

5. Proof of service

6. Burden of proof

**1. Jurisdiction-Essential pre-requisites of.**-[1] Following are the essential pre-requisites to bestow legally valid jurisdiction to a recovery officer to proceed under the P.D.R. Act, namely:-

1. The demand should be such as covered under schedule appended to the Raj. P.D.R. act.

2. That there is requisition under section 3 of the Act, unless the case under sub-section (2) of section 4 of the Act.

3. That the certificate has been filed in strict compliance of section 4 of the Act or transmitted under section 5 of the Act.

4. That the notice under section 6 has been served upon the defaulter. *Bajjnath Sahai v. Ramgun Singh*, ILR 23 Cal. 775.

[2] The amount due and outstanding is essential to proceed for realisation of the same and without prior notice whole proceedings taken to is vitiated and void. *Thakur Jaisingh v. Tehsildar Neem ka Thana*, 1954 RLW 543; ILR 1954 Raj. 743.

[3] The compliance of section 5 paves the very foundation of the jurisdiction thus any action in violation to section 6 is without jurisdiction, illegal and void ab initio. *Rajhumal v. State of Raj.*, 1957 RLW 370, ILR 1955 Raj. 748.

[4] The Deputy Commissioner while sanctioning the Taccavi loan also decided that the recovery shall be under the Revenue standing order No. 5 and no jurisdiction to prescribe mode of recovery not laid down in the standing order No. 4 itself and to what extent his decision was held to be ultravires. The proceedings conducted by the subordinate officers were clearly ultravires and the arrears were directed to be realised in accordance with the provisions contained in the Raj. P.D.R. Act, 1952. *Shri Ramchandra v. State*, 1956 RRD 98= 1956 RLW (RS) 96.

[5] As the Collector issued a letter to the Tehsildar for taking suitable steps for recovery of the arrears of the Taccavi loan without complying with the aforesaid provisions of law, the proceedings conducted by the Tehsildar and steps taken by him is void and without jurisdiction. *Brahmdati v. State*, 1956 RLW (RS) 142= 1956 RRD 23.

**2. Notice-Service of-Form of Notice.**-The notice shall be prepared in the prescribed Form No. 3 and shall be duly signed (not initialed) by and sealed of the officer issuing the notice in duplicate. The notice must accompany the copy of certificate prepared and filed under sec. 4 or 5 as the case may be. It must be addressed to the defaulter. In case of death of the defaulter, notice may be prepared in the name of the legal Representatives of such deceased defaulter. *Lachmikant v. Rameshwar*, AIR 1948 Pat. 104(B).

**3. What is copy of certificate.**-It contain the correctness of the demand as required is no certificate nor copy thereof and service of such

document is not sufficient compliance of the requisites of section 6, if it is not in a prescribed form of certificate. *Lachmikant v. Rameshwar*, AIR 1944 Pat. 104 (B).

**4. Service of notice.**-[1] Service of notice is essential requisite to be complied with. The officer cannot withhold service of notice on the pretext that the defaulter has otherwise the full knowledge of, cannot be substituted for the statutory requirement of service of notice. *Lachmikant v. Rameshwar*, AIR 1944 Pat. 104 (B).

[2] **Copy of certificate not served on defaulter-Omission, whether invalidates proceedings.**

Where a copy of the certificate is not served on the defaulter, but the gist of it is mentioned in the notice also, the defaulter can apply for a copy before making his objections and the omission was not such as to constitute a defect in laying the foundation of the jurisdiction under the Act. *Rijhu Mal v. The State of Rajasthan*, ILR (1957) 7 Raj. 748= 1957 RLW 370= AIR 1958 Raj. 17.

[3] **Notice to defaulter before taking proceedings for actual realization of amount is essential.**

If an amount is desired to be recovered under the Public Demands Recovery Act, the procedure provided under that Act must be followed. Service of notice on the defaulter under S. 6 of the Act is essential before taking proceedings for the actual realization of the amount. Where such proceedings are taken without giving the notice as required under S. 6, the proceedings for realization must be prohibited. *Jai Singh, Thakur v. Tehsildar, Neem-Ka-thana*, ILR (1954) 4 Raj. 743= 1954 RLW 543= AIR 1954 Raj. 200.

[4] The notice must be served on the defaulter himself or his authorised agent or in case of death of the defaulter his legal representatives personally or their authorised agent. The service of notice on a person who is neither the named defaulter nor his authorised agent is invalid and without effect. *Lachmikant v. Rameshwar*, AIR 1948 Patna 104.

[5] The Rules of procedure for service must be complied with. Where the copy of certificate was not delivered but taken back after show of the copy of certificate with signature of the defaulter thereon is merely a technical defect which does not affect the root of the foundation of jurisdiction. *M.B. Sarkar v. S. Banerjee*, AIR 1957 Ca. 257.

[6] The process server must take toil to effect service personally on the defaulter before mode of substituted service is resorted to. *Ousephcherian v. K.C. Gopal Krishna*, AIR 1957 TC 257.

[7] Order 5, R. 17, CPC is applicable in service of notices. *Ousephcherian v. K.G. Gopal Krishna*, AIR 1957 TC 257.

**5. Proof of Service.**-[1] Where service of notice is disputed the

must be produced. *Lachmikant v. Rameshwar*, AIR 1948 Pat. 104.

[2] Notice sent by registered post returned with the remarks of 'refusal' held valid service (See rule 11).

Thus the substituted service of notice can be resorted to by delivery of copy of notice to the adult male member of the defaulters family, or where the defaulter is not found despite attempts and the service cannot otherwise be procured, the affixing the notice on the outer door of the residential house of the defaulter held sufficient service. *Beni Ray v. Babui Bacha Kuer*, AIR 1922 Pat. 546= 69 IC 700.

[3] The service by post may be resorted to under express order of the officer to that effect. ILR (1905) 32 Cal. 691.

[4] The service of notice on the wife not residing with the defaulter is insufficient. *Eravipillai v. Maluk Mohd. Shaul*, AIR 1953 TC 494.

[5] The person who sends petition denying liability by post is deemed to have been duly served. *Chaturbhuj v. State of Raj.*, 1964 RRD 299.

[6] The finding of the court that the service of notice is valid is a finding of law. *Rameshwar Singh v. Kesho Prasad Singh* AIR 1938 Pat. 622.

**6. Burden of proof.**-Where service of notice is denied, the onus to prove sufficient service is on the person who alleges it. *Garpantha Loan Office Ltd. v. Mst. Saydunnissa Khatun*, AIR 1943 Cal. 114; *Lachmikant deo V. Rameshwar*, AIR 1948 Patna 105 (E).

**7. Effect of service of notice.**-From and after the service upon a defaulter to the notice of a certificate under section 6—

(a) any private transfer or delivery of any immovable property of the defaulter situated within the local limits of <sup>1</sup>[the jurisdiction of] the Collector issuing the notice or of any interest in any such property 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 the immovable property of the defaulter, wherever situated, to which every other charge created subsequently to the service of the said notice shall be postponed.

## COMMENTARY

### I. Consequences of services of notice-

(a) **Mandatory effect.**-The certificate holder becomes a secured creditor. It shall have the effect of first charge on the properties of the defaulter. He becomes the simple mortgagee. *Brahmanand Sharma v. Ganpatinath*, AIR 1965 Cal. 492.

(b) **Prohibitory Effect.**-Any transfer of immovable property after the service of notice is void as regards the certificate holder. Thus it prohibits the transfers of property by the defaulter after service. *Baidhyanath v. Jai Kumari*, AIR 1957 Pat. 706; *Krishna Chandra Pradhan v. Ravindra Narayan Dass*, AIR 1956 NUC (Orissa) 1859.

**2. Effect of subsequent amendment in certificate.**-Incidence of charge created by service of notice is not materially affected by the fact of subsequent amendment in the certificate as a result of compromise by the parties. *Kameshwarsingh v. Bahadur v. Ishwarprasad Singh*, AIR 1940 Pat. 692.

**8. Petition denying liability.**-(1) The defaulter may, within thirty days from the service of the notice under section 6, or where the notice has not been duly served, within thirty days from the execution of any process for enforcing the certificate, present to the Collector issuing<sup>1</sup> [the notice] a petition in the prescribed form signed and verified in the prescribed manner denying his liability in the whole or in part<sup>2</sup> [on the ground that the demands is not recoverable under this Act or that its recovery by suit is barred by any law for the time being in force.]

<sup>3</sup>[(2) A Collector to whom, a petition has been presented under sub-section (1) shall<sup>4</sup> [x x x] where the certificate has been transmitted to such Collector under section 5,<sup>5</sup> [x x x] forward the petition<sup>6</sup> [to] the Collector in whose office the certificate has been originally filed.]

<sup>7</sup>[(3) The Collector in whose office the certificate was originally filed shall hear and determine the petition and may set aside, modify or vary the certificate, if necessary in accordance with his decision.]

(4) All proceedings under the certificate shall be stayed pending the determination of a petition presented under this section.

## COMMENTARY

### SYNOPSIS

1. Scope of
2. Presentation and grounds of petition
3. Jurisdiction
4. Hearing of petition
5. Resjudicata
6. Certificate not enforceable
7. Revision

<sup>1</sup> Subs. by Act No. 22 of 1952.

<sup>2</sup> Ins. by Act No. 42 of 1960.

<sup>3</sup> Subs. by Act No. 22 of 1952.

<sup>4</sup> Omitted & Subs. by Act No. 42 of 1960.

<sup>5</sup> Omitted & Subs. by Act No. 42 of 1960.

<sup>6</sup> Omitted & Subs. by Act No. 42 of 1960.

<sup>7</sup> Subs. by Act No. 42 of 1960.

**1. Scope of.**-[1] Petitioner not entitled to adduce evidence on the point that the Government suffered no loss or damage. He can raise a protest only on two grounds, namely, that the demand is not recoverable under the Act or that its recovery by suits is barred by any law for the time being in force and no other. His remedy lies in a suit to be filed under S. 20. *Hariram v. State of Raj.*, 1983 RRD 228.

[2] It is based on principles of natural justice that no one should be condemned unheard. Thus it provides an opportunity of being heard when he disputes by raising objections denying liability, objection can be made on the following grounds only:-

- (i) That the amount is not recoverable under the Act, or
- (ii) That the recovery is barred by any law in force.

All pleas ought to be taken at the earliest opportunity and failure to raise any plea and raises the same at later stage the petitioner is not entitle to indulgence. *Umashanker v. State of Raj.*, 1967 RRD 174.

[3] Any objection raised by the defaulter must be inquired into by the certificate officer. *M/s. Mohatta Bros. Ltd. v. State*, 1967 RRD 86.

[4] The Collector cannot drop but must hear the objections and decide it accordingly. *Gian Singh v. Collector, Bhilwara*, ILR 1955 Raj. 644.

[5] After deciding the objection under section 8, the order becomes executable; pending the objection, the execution is stayed. Thus the objection, proceedings cannot proceed till the objections are decided. *Abanindra Kumar v. A.K. Biswas*, AIR 1954 Cal. 355.

[6] Where the third person raises an objection that the property under attachment is not liable to attachment and sale. The Collector is competent to hear the objection. Order 21, Rule 58, CPC, shall apply. *M/s. Mohatta Bros. Ltd. v. State*, 1967 RRD 86.

[7] The period of limitation for raising any objection under section 8 is thirty days from the date of service of notice for the defaulter and to third persons within thirty days fro the date the process affects his interest or right. *Devichand v. State of Raj.*, 1968 RLW 291.

[8] The section 8 does not contemplate the presentation of petition denying liability in person nor it prohibits sending by post. It can be sent by post to the certificate officer issuing the notice. *Chaturbhuj v. State of Raj.*, 1964 RRD 299.

[9] The Devsthan Department advanced loan against mortgage security of a house. The third person got the auction sale of the house in execution. The auction purchaser applied under section 8 of the P.D.R. Act before the Collector, who dismissed the same and continued with the recovery proceedings. Purchasers appeal under section 23-A of the P.D.R. Act was also dismissed.

The learned members of the Board of Revenue made it abundantly clear that the two condition must be satisfied before the Collector goes to sign the certificate of recovery under section 4 of the P.D.R. Act. viz.

Firstly he must be satisfied that the demand is recoverable under P.D.R. Act and secondly its recovery by suit is not barred by any law for the time being in force.

When the debtor is served a notice, he can under section 8(1) of the P.D.R. Act raise an objection of the following nature—firstly the demands not recoverable under the P.D.R. Act and secondly its recovery by suit is barred by any law. Such of objection can be taken in the petition denying liability.

The Debthn Department is not entitle to sue the mortgagor for the recovery of mortgage money because of clauses (A) to (D) of sub-section (1) of section 68 of the Transfer of Property Act. Thus on account of this fact it was held that the proceedings under the P.D.R. Act for the recovery of mortgage money are not maintainable. *Khyai Lal v. A.C. Devsthan*, 1972 RRD 171.

[10] **Provisions whether mandatory.**—The procedure laid down by sub-s. (3) of S. 8 of the Rajasthan Public Demands Recovery Act is mandatory. A breach of this procedure would be a serious infirmity and cannot but have the effect of vitiating the further proceedings. *Jagannath v. State of Rajasthan & Ors.*, ILR (1966) 16 Raj. 237= 1966 RLW 253.

## 2. Presentation and grounds of petition.

[1] Objection under sent by registered post-Collector denied to hear objection—It is proper presentation. [1964 RRD 299] Rel. Revision allowed. *Shri B.N.K. Sahkari Upphokta Bhandar v. State*, 1981 RRD 96.

### [2] Petition denying liability.

An application to be treated as a petition denying liability must be made within 30 days from the service of the notice under s. 6 or where the notice has not been duly served within 30 days from the execution of any process for enforcing the certificate. If an application is not filed within the aforesaid period, that application cannot be treated as a petition denying liability and S. 20(2)(b) is not attracted because it applies only when a petition denying liability as provided under S. 1(1) has been presented. *Devichand v. State of raj.*, ILR (1963) 13 Raj. 665= 1963 RLW 291.

[3] **Challenge to recovery certificate before the Collector.**—When the defaulter has not chosen to file a civil suit to challenge the recovery certificate amount under section 20 of the Act, under section 8 before the Collector, he can deny the liability only on two grounds namely, one that the demand is not recoverable under the Act and two that the recovery by suit has become time barred. The defaulter is not at liberty to contest matter on merits or on any other grounds before the Collector. *M/s Jaspal Singh v. Board of Revenue*, 2003 WLC UC 92 (Raj).

**3. Jurisdiction.**—[1] It is only the Collector who can issue the certificate and adjudicate the petition denying liability. The power could not have been bestowed upon the Sub-Divisional Officer. [1969 RRD 450] Rel. *State of Rajasthan v. Onkarlal*, 1977 RRD 287.

[2] **Petition denying liability decided by S.D.O.—Objection about jurisdiction not taken in appeal against order of S.D.O. or plaint—Objection about jurisdiction not to be entertained.**

It was urged that the S.D.O., Banswara had no jurisdiction to decide the objection petition filed by the plaintiff under s. 8(3).

There is no denying the fact that no plea was taken in the plaint that the Sub-Divisional Officer, Banswara, had no authority to deal with objection petition filed by the plaintiff under s. 8(3) of the Act. In such matters, it must be remembered that if a technical plea of the nature sought to be raised had been raised in the plaint, the dependents would have had the opportunity to produce before the court the authority which empowered the S.D.O. to deal with such objection petition. That apart, the point sought to be raised is not purely legal which may be allowed to be urged without any amendment of the plaint. It is a mixed question of law and fact. It is further significant to note that the plaintiff filed an appeal against the judgment of the S.D.O. before the Revenue Appellate Authority, Udaipur and that appeal was dismissed. The judgment of the Revenue Appellate Authority does not show that the plaintiff therein took the plea that the S.D.O. had no jurisdiction to decide the objection petition under S. 8(3) of the Act.

Held, that the course which the litigation between the parties had taken up to the date the suit was instituted and the abandonment of any contention about the authority of the S.D.O. before the Revenue Appellate Authority are sufficient to reject this point. *Dalichand v. The State of Rajasthan & Others*, ILR (1975) 25 Raj. 1012= 1975 RLW 452= 1975 WLN 454= AIR 1976 Raj. 112.

[3] **Proceedings for recovery taken without determination of petition under s. 8 are without jurisdiction.**

S. 8(4) clearly provides that all proceedings under the certificate shall be stayed pending the determination of a petition presented under this section. Where this is not done the action of the Collector, subject to the proviso to s. 12 is without jurisdiction. *Rijhu Mal v. The State of Rajasthan*, ILR (1957) 7 Raj. 748= 1957 RLW 370= AIR 1958 Raj. 17.

[4] When hearing was made by an officer not competent to hear, whole proceedings are vitiated as without jurisdiction. Order so passed is nullify. *Shri Ali Mohd. v. State of Raj.*, 1960 RLW (RS) 110= 1961 RRD 24; *Associated Stone Industries v. Mining Engineer*, 1959 RRD 116.

[5] Other remedy is by way of a writ under Article 226 of the Constitution. *M.M. Ispahani Ltd. v. Union of India*, AIR 1957 Cal. 430.

## 4. Hearing of petition.

[1] An opportunity of hearing must be provided to the petitioner as it is the demand of justice. This hearing can only be possible when the petitioner is duly informed of the date of hearing. Process must be served upon him in accordance with the provisions of CPC. *Sardar Khazan Singh v. Assistant Comm. E & Taxation*, 1959 RRD 123= 1959 RLW (RS) 140.

[2] Violation of this fundamental right of hearing vitiates whole proceedings. *Jagganath v. State of Raj.*, 1966 RLW 253; *Khazan Singh v. Asstt. Comm. E & T*, 1959 RRD 123= 1959 RLW (RS) 140.

[3] **S. 8(3)-Requisition Authority, whether required to decide objection in accordance with law.**

It was contended that the requisition authority in the present case did not decide objection petition under s. 8(3) of the Act in accordance with law. Suffice it to say in this connection that it is not the case of plaintiff that the person authorised under s. 8(3) of the Act to decide the objection petition was the requisition authority. In absence of that it is immaterial whether the requisition authority decided the objection petition in accordance with law or not. *Dalichand v. The State of Rajasthan & others.*, ILR (1975) 25 Raj. 1012= 1975 RLW 452= 1975 WLN 454= AIR 1976 Raj. 112.

**5. Res judicata.**-The hearing by an officer is not a court thus Res judicata does not apply. *Dwarkanath v. Shri Govind Choudhuri*, [AIR 1929 Cal. 130]. The Collector is a revenue officer and remains the same though the Raj. Land Revenue Act was not in force. *Ex. Engineer E&M Deptt. v. Girdharilal*, 1961 RRD 241.

**6. Certificate not enforceable.**-[1] Where the contract itself was void and unenforceable a certificate of demand issued on its basis is also void and unenforceable. *State of Raj. v. Jai Narain Jha*, 1983 RLR 404.

[2] Where it is not clear as to who was the defaulter, there is no justification to proceed against any one. *Mohanlal v. State of Rajasthan*, 1977 RRD 154.

**7. Revision.**-An objection was raised to the effect that the applicant was a minor at the time of standing surety and as such he was precluded from entering into such a contractual obligation. This objection was taken note of and considered. Objection rejected. Held that no interference can be made in revision. *Dhoolchand v. Commissioner, Devasthan Deptt.*, 1977 RRD NUC 86.

9. <sup>1</sup>[Omitted]

### PART-III

#### EXECUTION OF CERTIFICATES

**10. Who may execute certificate.**-A certificate may be executed by—

- (a) the Collector in whose office it is originally filed under section 4, or
- (b) the Collector to whom a copy of the certificate is transmitted under section 5.

<sup>1</sup> Omitted by Act No. 42 of 1960.

### COMMENTARY

**Who may execute certificate.**-(i) A certificate may be executed by a Collector in whose office it is filed under section 4, or,

(ii) by a Collector to whom same is transferred for execution under section 5 of the Act. *Chandi Charan v. Certificate Officer*, [STC 526 Cal]. Under section 4 see also. *Rai Mohandass v. Union of India*, AIR 1970 Cal. 206.

**11. Execution of certificate by subordinate officers.**-A Collector in whose office a certificate is filed under section 4 or to whom a copy of the certificate is transmitted under section 5 may send it for execution to any Assistant Collector or Tehsildar subordinate to him, within whose jurisdiction the defaulter resides or owns property:

Provided that no action under this section shall be taken until after the expiry of thirty days since the service of notice under section 6 or when a petition has been presented under section 8 until after its final determination.

**12. When certificate 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 the service of the notice under section 6, or, when a petition has been presented under section 8, until such petition has been heard and determined:

Provided that, if the Collector is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment for the recovery of an arrear of land revenue and that the realization of the amount of the certificate would in consequence be delayed or obstructed, he may at any time direct, for reasons to be recorded in writing, an attachment of the whole or any part of such property.

### COMMENTARY

The provision is mandatory yet there is reason to believe that the defaulter is likely to transfer, remove or conceal the property in order to delay, defeat or obstruct the execution proceedings.

**13. Modes of execution.**-Subject to the other provisions of this Act, the amount due under a certificate may be recovered in one or more of the modes <sup>1</sup>[specified in section 228 of the Rajasthan Land Revenue Act, 1956 (Rajasthan Act 15 of 1956) and the provisions of <sup>2</sup>[that act] shall apply as if such amount were an arrear of land revenue

<sup>1</sup> Subs. by Act No. 42 of 1960.

<sup>2</sup> Subs. by Act No. 42 of 1960.

due from the defaulter.

## COMMENTARY SYNOPSIS

1. Modes of Recovery
2. Attachment, powers of
3. Objection to attachment
4. Raj Land Revenue Act, 1956 (Sections 228 to 252)
5. Legality of sale
6. Suits to set aside auction sale
7. Sale certificate
8. Legal Representatives

**1. Mode of Recovery.**-The Recovery may be made under the provisions of the Rajasthan Land Revenue Act, 1956. It is an opinion given to the officer as well as the parties too. Thus the defaulter can pay or deposit the amount due under protest under 257-B of the Raj. Land Revenue Act. No prejudice is called if the certificate is treated as an application under section 257-A of the Raj. Land Revenue Act, 1956. *Nathilal v. State, 1965 RRD 123; Kirorilal v. State, 1966 RLW (RS) 121* (may institute suit also).

**2. Attachment, powers of.**-Only the Collector under section 230 of the Raj. Land Revenue Act can attach property under section 239 such powers has been vested in Collector to authorise Assistant collector in that behalf. Thus Tehsildar has neither authority to attach nor power to carry out sale. *Ramshwar v. State, 1957 RRD 57.*

**3. Objection to attachment.**-[1] The competent authority can only hear the objection against attachment. The competent officer cannot refuse to entertain objection though made under Order 21, Rule 58, CPC. *Ramswar v. State, 1957 RRD 57.*

[2] Whether the defaulter or the third person raises any objection against attachment under O. 21, Rule 58, CPC. The officer must hear and decide it in accordance with law. *M/s. Mohatta Bros. Ltd. v. State, [1967 RRD 86]*. Merely because sale has already taken place, does not prevent the investigation of the claim and hearing of the objection against attachment of third parties. *Premraj v. State of Raj., 1967 RD 149.*

**4. Raj. Land Revenue Act, 1956 (Sections 228 to 252).**-[1] In order to fetch full price and prevent formation of rings in auction sale, the Collector has ample powers and there is nothing which debars him to prevent such situation. Auction bids are merely the offers thus power to accept it or reject is finally vests in the Collector. The Collector may impose conditions such as reserve price etc. etc. *Nirtaram v. Asstt. Collector (1st Grade) Patiala, ILR (1966) Punj 548.*

[2] The deposit of 25% is a reasonable condition to compel the bidder to comply the rest of the contract. It is taken of solvency of the bidder, cheque may be accepted. *Mahideenbi v. Khatoonbibi, 1966 IMLJ 291.*

[3] By virtue of this section that provision of 228 to 252 of the Raj. Land Revenue Act mutatis mutandis apply to the recovery proceedings under this Act. *Hiralal v. ITO, Bhilwara, 1962 RLW 461.*

[4] The procedure in Raj. and Revenue Act is self contained thus Order 21, Rr. 85 and 86, CPC does not apply. *Ram Krishna v. Mohd. Malahan, AIR 1955 TC 10; Goberia v. State, ILR (15) Raj. 166; M/s. Mohatta Bros v. State, 1967 RRD 86; J. Kuppanna Chetty v. Collector, Anantpur, AIR 1965 AP 457.*

**5. Legality of sale.**-[1] A sale without notice is void. *AIR 1953 TC 494, AIR 1962 MP 280.*

[2] Mere presence of the defaulter at the spot for sale does not cure the defect of want of notice. [1964 MPLJ (Notes) 36]. *Premchand v. Board of Revenue, 1963 MPLJ (Notes) 10.*

[3] Object of notice is to afford an opportunity to defaulter to make payment. Auction purchaser purchases the property free of all encumbrances. Provisions of publication and sale proclamations are mandatory and non-compliance thereof renders the entire sale void. *Eravi Pillai v. Mallik Mohd., AIR 1953 TC 494 (FB).*

[4] Standing crop is movable property. *State of Kerala v. O.K. Panicker, AIR 1958 Kerala 168.*

**6. Suits to set aside auction sale.**-[1] Section 247 of the Raj. Land Revenue Act applies. This section does not bar a regular suit for the purpose. *Harprasad v. Gopal Chandra, AIR 1927 Cal. 315.*

[2] A suit for declaration that certificate of sale was fraudulent and collusive is not barred. [AIR 1942 Pat. 386]. A suit shall lie on the ground of irregularity in service of notice. *Darshan Raut v. Ghandaram Raut, AIR 1951 Pat. 610.*

[3] The suit to set aside sale shall lie till the title in property passes to the auction purchaser. *Ram Rao v. State of Bom., AIR 1963 SC 827*

**7. Sale Certificate.**-[1] Auction purchaser's title becomes complete when it is confirmed. Sale certificate is merely an evidence of that fact. It is not in the nature of sale deed or instrument of title. *Raman v. Narayana, AIR 1952 TC 478; Hari Pd. v. Lal Bihari Singh, AIR 1940 Pat. 328 (FB)* (Sale is as under CPC).

Under the sale certificate the purchaser is entitle to those rights interest and title which the defaulter had. He enters into the shoe of the defaulter owner. *Kalipad Roy v. Mukynd Lal Roy, AIR 1929 Cal. 679; Mt. Gahan Priya v. Bharat Chandra, AIR 1950 Assam 117; Badrinarayan v. Bageshwri Pd., AIR 1951 Patna 274.*

[2] Purchaser can take property to the extent of their shares in it. *Mangilal v. Daya Shanker, [AIR 1936 Pat. 572]* (As debtor had no interest, nothing devolves upon the purchaser).

**8. Legal representatives.**-Delay or failure to bring on record is mere irregularity. *Hari Pd. Singh v. Lal Bihari, [AIR 1940 Pat. 328 (FB)];*

*Lachmikant v. Rameshwar*, [AIR 1948 Pat. 105]. The claim for pre-emption by co-sharers is not unconstitutional but it is in the interest of the general public. *Baburam v. Bati Nath*, AIR 1962 SC 1476.

<sup>1</sup> **13-A. Power to grant installments.**-The Collector referred to in section 10 may, for any sufficient reason, order that payment of the amount due under a certificate shall be made by such number of installments and on such terms as to payment of interest, the attachment of the property of the defaulter, the taking of security from him, or otherwise, as he thinks fit:

Provided that the installments granted shall not be spread over a period exceeding three years.]

#### PART-IV

##### SUPPLEMENTAL PROVISIONS

**14. Interest, costs and charges recoverable.**-There shall be recoverable in the proceedings in execution of every certificate,—

<sup>2</sup>[(a) interest upon the amount of public demand, as stated in the certificate, from the date of signing of the certificate up to the date of realization—

(i) at the rate of six and a quarter per cent per annum in the case of certificates signed before the commencement of the Rajasthan Public Demands Recovery (Amendment) Act 1976, and

(ii) at the rate of thirteen per cent per annum in the case of certificates signed after such commencement.]

(b) such costs as may be directed to be paid in any proceeding under this Act, and

(c) all charges incurred in respect of—

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

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

#### COMMENTARY

**1. Costs & charges of Execution.**-[1] Charges are the expenses incurred in getting the service of notices and other charges in realisation of the public demand.

Where the notice was sent by registered post, the postal charges are recoverable as such under it, likewise the defaulter resides in a city away from the town where the certificate authority holds his office, the process servers travelling allowances and out station expenses are recoverable

<sup>1</sup> Ins. by Act No. 32 of 1976.

<sup>2</sup> Subs. by Act No. 32 of 1976.

under it.

Costs is not defined yet it is discretionary with the Executing Officer.

Interest is a question of law whether payment or realisation there of is agreed or not. There can not be an agreement to pay or realise interest beyond the statutory rate of interest. The statutory rate of interest shall be Rs. 6.25% P.A. The interest runs from the date of certificate under Section 4 of the Act, till realisation. *M/s. R.B.H.M. Jute Mills v. Certificate Officer*, AIR 1967 SC 400.

[2] The proceeding in execution of the certificate cannot be said to have ended with the recovery of the full amount of the certificate. The certificate must be considered to be a certificate for the original amount mentioned in it as well as the amount payable in law, namely, interest, costs and charges. [AIR 1969 Cal. 204] Rel. It is a public demand under s. 14(a). *Govt. of Raj. v. Manoharlal*, 1984 RRD 33.

**2. Effect of compromise or settlement.**-There can not be compromise or settlement in violation of section 14. Thus, it does not avoid or lessen liability to pay interest or costs etc. *Khardah Co. v. State of W.B.*, AIR 1969 Cal. 284.

**15. Payment under protest.**-After a notice under section 6 has been served or at any subsequent stage, a defaulter may pay under protest the amount due under a certificate to the officer executing it. Such protest shall be in writing signed by the defaulter or his duly authorized agent and shall be made at the time of payment and thereupon all further proceedings in execution of the certificates shall be stayed.

#### COMMENTARY

**Payment under protest.**-Where the defaulter denies the liability to pay, to avoid hardship, it is advised to pay the whole amount under protest in a prescribed manner. This results into stay of execution proceedings. Then he may seek remedy through a Civil Court under a regular suit. *Kashinath v. Collector*, 1959 All.LJ 789.

**16. Disposal by Collector.**-If any amount has been paid under protest under section 15 and the protest is in order, such amount along with the protest shall be forwarded to the officer or authority charged with the realization of the public demand:

Provided that, where such protest is made on any of the grounds specified in section 9, the Collector to whom the payment has been so made shall keep the amount thereof in his custody till the expiry of the period within which a suit may be brought under section 20, or if a suit has in the meantime been brought until the same has been finally

disposed of.

**17. Persons under disability.**-Where the officer executing a certificate is satisfied that the defaulter is a minor or of unsound mind he shall in any of proceeding under this Act, permit him to be represented by any suitable person.

### COMMENTARY

The execution Officer may allow a minor or person of unsound mind to be represented by any suitable person of his choice. The minor or such person shall be bound by his acts and omissions.

**18. Continuance of certificate.**-No certificate shall cease to be in force by reason of the death of the defaulter.

**19. Procedure on death of defaulter.**-Where a defaulter dies before the amount due under the certificate has been fully satisfied, the officer executing it may after serving upon the legal representative of the deceased a notice in the prescribed form <sup>1</sup>[proceed subject to the provisions of section 19-A to execute the certificate] against such legal representative and the provisions of this Act shall apply as if such legal representative were the defaulter and as if such notice were a notice under section 6.

### COMMENTARY

[1] The execution proceedings shall not abate on the ground of the death of the defaulter. The proceedings shall continue by bringing this legal representatives on record.

Held fresh notice is necessary to such legal representatives. *lachimikant v. Rameshwar*, AIR 1948 Pat. 104 (A).

[2] The execution proceedings once started shall last till satisfaction unless stayed by an order of the competent authority.

Failure to bring Legal Representatives of deceased defaulter on record after attachment but before auction sale is mere irregularly and does not vitiate subsequent proceedings of sale. *Hari Prasad v. Lal Behari*, AIR 1946 Pat. 328.

[3] Issue of certificate against a dead person is fatally defective. Where deceased is a defaulter in representative capacity, to bring all those persons represented by the deceased is not substitution but a correction of description. *Dulalchand Bhar v. Certificate Officer*, 68 CWN 349.

<sup>1</sup> Subs. by Raj. Act 25 of 1956.

<sup>1</sup>[**19-A. Liability of legal representative.**-Where the certificate is executed against the legal representative, whether the name of such representative was originally mentioned in the certificate, or was substituted under section 19, 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 officer executing the certificate may compel such legal representative to produce such accounts as such officer thinks fit.]

### PART-V

#### SUITS

**20. Suits for cancellation or modifications of certificates.**-(1) A defaulter may bring a suit to have a certificate canceled or modified and for any further consequential relief to which he may be entitled.

(2) Such a suit may be brought at any time within 6 months—

(a) from the service upon the defaulter of the notice required by section 6 or

(b) from the date of the determination of a petition denying liability under section 8 <sup>2</sup>[x x x], or

(c) from the date of the protest lodged by him under section 15, <sup>3</sup>[or].

<sup>4</sup>[(d) from the date of the decision of an appeal filed by him under section 23-A):

<sup>5</sup>[x x x]

Provided <sup>6</sup>[x x x] that notwithstanding anything contained in this Act and in any other law for the time being in force, the defaulter may in a suit instituted under this section, prove that nothing was due from him on account of the public demand or that the amount due was less than the amount stated in the certificate.

### COMMENTARY

#### SYNOPSIS

1. Suits who can bring
2. Nature of suits
3. Sections 8 and 20 of this Act
4. Section 20 and Section 67 of the Income tax Act
5. Limitations for suits
6. Court Fees for
7. Notice under section 80, CPC

<sup>1</sup> Ins. by Act No. 25 of 1956.

<sup>2</sup> Omitted by Act No. 42 of 1960.

<sup>3</sup> Added by Act No. 25 of 1956.

<sup>4</sup> Ins. by Act No. 25 of 1956.

<sup>5</sup> Omitted by Act No. 42 of 1960.

<sup>6</sup> Omitted by Act No. 42 of 1960.

8. Jurisdiction of Civil Courts

9. Issue of writ

1. **Suits who can bring.**-Only the defaulter can bring suit under this section. Thus third person whose objection against attachment when dismissed cannot seek remedy under this Section.

2. **Nature of suits.**-[1] Suits contemplated under this sections are:-

1. Suits for cancellation of certificate, or

2. Suit for modification of the certificate, and

3. Other suitable consequential remedy in addition to either of the first two.

A suit to cancel certificate on the plea that certificate had not been filed in accordance with law is not beyond the scope of this section. *Secretary of State v. Syed Sadak Raza*, AIR 1941 Cal. 167.

[2] A suit for declaration and injunction and consequential relief to refund the amount deposited under protest is maintainable under this section. *Pratan Chandra v. Sect. of State*, AIR 1922 Cal. 101.

[3] That a suit for declaration that a certificate is nullity and not binding upon defaulter is not barred. AIR 1950 Cal. 467.

[4] This issue of certificate and determination of objections under section 8 or 9 are not final and conclusive between the parties thus a suit under section 20 shall lie. No res judicata operates. The relief to cancel certificate is a substantive relief and not a consequential relief only. *Kapoor Chand v. State*, 1960 RLW 236.

[5] The right to sue accrue when objection denying liability it filed is heard and finally decided. Pending such petition no suit under section 20 shall lie lest it would be premature.

The defaulter pleading fraud and collusion in assessing the demand may bring a regular suit independent of this section. Reason is such demand is voidable and without jurisdiction and not binding. *Rani Harshumukhi v. Naba Krishna Roy*, AIR 1938 Cal. 608; *Sukhi Sahu v. Prayad Shah*, AIR 1959 Pat. 508.

[6] When amount of tax reconsidered and reduced to the advantage of the assessee and not to his disadvantage, he has no reason to complaint against the same. *Raja Bahadur Kamakhya Pd. v. ITO*, 1969 ITR 563.

[7] Not to speak of absence of valid contract, where the demand is found due under a valid contract, still the defaulter is justified to challenge the applicability of the provisions of the Act. *Hanuman Pd. v. Mining Engineer*, 1960 RLW 223.

3. **Sections 8 and 20 of this Act.**-Where the petition denying liability is filed with in the time under section 8(1) the Collector has to consider and decide it under sub-section (3) of section 8. If same is not presented within time, it cannot be treated as valid petition denying liability and therefore Clause (b) of sub-section (2) of section 20 shall not apply but the clause (a) of the same shall apply. *Devi Chand v. State of Raj*, 1963 RLW

291= ILR (1963) 13 Raj. 665.

4. **Section 20 of the Act and Section 67 of the Income Tax Act.**-There is no virtual conflict between the two, section 20 should be read subject to section 67 of the Income Tax Act and 259 of the Raj. Land Revenue Act. The assessment made and demand found due can be challenged under section 20 of this Act. *Hiralal v. ITO, Bhilwara*, 1962 RLS 461.

5. **Limitations for suits.**-[1] There is fixed period of six months to institute a suit under sub-section (i) of section 20 of the Act.

A suit for declaration is not one covered under sub-section (i) of sec. 20 thus a residuary Article 120 of the Indian Limitation Act, 1908 (now corresponding to Article 113 of the Limitation Act, 1963) would apply. *Satya Kishore Bannerjee v. Province of Bengal*, AIR 1952 Cal. 467.

[2] A suit by the auction purchaser that the defaulter judgment-debtor had no interest in the auction property shall be governed by Article 11 of the Limitation Act 1908. *Jamuna Sonar v. Atmaram*, AIR 1931 Pat. 109.

[3] Special Limitation for suits under section 20 apply to modification or cancellation of certificates issued under this Act and a suit to set aside sale is independent of this section is not covered by this section. 1910 6 IC 337.

6. **Court fee for.**-A fixed Court Fee of Rs. 10/-(Ten) is held sufficient under Article 17 of the Second Schedule of the Rajasthan Court Fees Act. *Kapoor Chand v. The State*, AIR 1960 Raj. 171= 1960 RLW 236= ILR (1960) 10 Raj. 631.

7. **Notice under sec. 80 CPC.**-[1] Notice under section 80, CPC is mandatory before a suit under this section. *Director of Industries v. Janardan*, AIR 1969 Orissa 58.

[2] But as it is the continued certificate execution proceedings, no notice under section 80, CPC is necessary. *Hira Laxmi v. I.T.O.*, AIR 1955 Pat. 404.

8. **Jurisdiction of Civil Courts.**-[1] A suit to set aside execution sale lies in Civil Court. *Matangini Devi v. Girish Chandra*, ILR 30 Cal. 619.

[2] Where the sale is held in contravention of the provisions of PDR Act, sale is illegal and void. *Kapoor Chand v. Kalyan Mal*, C.A. No. 145 of 1959; decided on 28-7-1961, by the Rajasthan High Court.

Third person who is not a defaulter can bring suit for declaration and injunction against disturbing his possession and such suit shall lie in the Civil Court. *Bidya Nath v. Kimansu Bala Bose*, AIR 1950 Pat. 89.

[3] A suit by minor that he was not represented in the execution proceedings and thus challenges the sale, such suit is not barred. *Mahindra Kumar v. Satish Chandra*, AIR 1945 Cal. 456.

[4] A sale held prior to the date mentioned in the sale3 proclamation under the PDR Act, the Civil Court is entitle to set aside such sale.

*Tikendra Jit Ghosh v. Mritunjay*, AIR 1940 Cal. 554.

[5] Recovery for short supply of grain or commission is not a public demand-Provisions of the section do not apply. *State of Rajasthan v. Ganeshmal*, 1979 WLN (UC) 10.

### 9. Issue of writ.

#### Issue of writ for quashing a certificate filed under the Act.

The petitioner's was the highest bid at an auction on the 29th March, 1956 of the right to collect royalty on the produce of certain mines for a period of 2 years from April 1, 1956 to March 31, 1958. The petitioner revoked his offer on 26th May, 1956, before any acceptance of it was conveyed to him. He also later filed a suit for the refund of the advance deposit made by him in this connection and this suit was decreed in his favour. The petitioner was informed of the sanction of contract in his favour on 4th June, 1956 after the revocation of his offer and this contract was also subsequently canceled by the Director of Mines with effect from 24th December, 1956.

A certificate was, however, filed against the petitioner under the Public Demands Recovery Act, 1952 for the amount due on the contract for a whole year and recovery proceedings were started thereunder.

In the circumstances of the case, the certificate issued against the petitioner was held to be illegal and untenable and was quashed. *Hanuman Prasad v. The Mining Engineer, Jaipur Divi*, ILR (1960) 10 Raj. 975= 1960 RLW 223.

**21. Parties to the suit.**-(1) A suit under section 20 shall ordinarily be brought against the officer or authority charged with the realization of the public demand:

Provided that where the suit is brought under clause (b) or clause (c) of sub-section (2) of the said section, the Collector shall also be made a party thereto.

(2) The <sup>1</sup>[State Government] shall not be made a party to any suit under section 20 unless the public demand was due to the <sup>2</sup>[State Government].

**22. Place of suing.**-A suit under section 20 shall be instituted in a Civil Court <sup>3</sup>[x x x] having jurisdiction in the local area in which the office of the officer or authority charged with the realization of the public demand is situated.

**23. Suit not to operate as stay.**-No suit instituted under section 20 shall operate to stay further proceedings under and in execution of the certificate sought to be canceled or modified otherwise than in

<sup>1</sup> Subs. by Act No. 27 of 1957.

<sup>2</sup> Subs. by Act No. 27 of 1957.

<sup>3</sup> Omitted by Act No. 22 of 1952.

pursuance of an injunction issued by the Court in which the suit is instituted.

## <sup>1</sup>[PART-V-A

### APPEAL, REVISION AND REVIEWS

**23-A. Appeal.**-(1) An appeal from <sup>2</sup>[an Order made by the Collector under section 8 or 19-A] shall lie to the <sup>3</sup>[revenue appellate authority].

(2) Subject to the provisions contained in section 5 of the Indian Limitation Act (IX of 1908), every such appeal shall be presented within thirty days from the date of the order.

(3) No appeal shall lie from any order of the <sup>4</sup>[revenue appellate authority] passed on appeal.

<sup>5</sup>[**23-B. Revision.**-The Board of Revenue shall have power to revise any order made under this Act by any officer subordinate to the Board.

## COMMENTARY

### SYNOPSIS

1. General
2. Maintainability
3. Nature of proceedings
4. Copy of order
5. Superintending powers of High Court under Article 227
6. Period of Limitation for Revision
7. Sections 20, 23A and 23B.

**1. General.**-The initial objection that demand is not recoverable as same is not covered by Schedule under the Act not raised under Section 8, it cannot be raised in revision. *Umashanker v. State*, 1966 RRD 174; *Nathulal v. State*, 1966 RRD 253, See also *Bhanwerlal v. State*, 1965 RRD 154.

**2. Maintainability.**-[1] Objection against recovery under S. 13 decided by SDO- Revision against such order-Order of Single Bench, holding that revision is not maintainable set aside in review petition-Revision maintainable. *Takhat Singh v. State*, 1985 RRD 360.

[2] An objection was raised to the effect that the applicant was a minor at the time of standing surety and as such he was precluded from entering into such a contractual obligation. This objection was taken note of and considered. Objection rejected, Held that no interference can be made in revision. *Dhoolchand v. Commissioner, Devasthan Deptt.*, 1977 RRD NUC 86.

<sup>1</sup> Ins. by Act No. 25 of 1956.

<sup>2</sup> Subs. by Act No. 42 of 1960.

<sup>3</sup> Subs. by Act No. 8 of 1962.

<sup>4</sup> Subs. by Act No. 8 of 1962.

<sup>5</sup> Subs. by Act No. 42 of 1960.

[3] Revision against order of Collector-Photostat copy of impugned order filed alongwith application by mistake, taking it to be the certified copy-Certified copy produced at the hearing- Defect curable. [1980 RRD 228] held not applicable. *B.N.K. Sakhari Upbhokta Bhandar v. State*, 1981 RRD 96.

[4] Where alternative remedy by way of revision is available no writ petition lies. *Ramsingh v. State of Raj*, 1977 WLN (UC) 370; *Haru v. state of Raj.*, 1977 WLN UC 381.

**3. Nature of proceedings.**-Board exercises power under S. 23-B of the Act and not under S. 84 of Land Revenue Act-Arbitration clause in the agreement-Board cannot refer matter to arbitration-Reference to Ss. 68 and 69 of Land Revenue Act not proper when proceedings are under this Act- Nature of proceedings in Civil Court and proceedings under this Act different. *Krishna Miners & Traders v. State of Rajasthan*, 1974 RRD NUC 100.

**4. Copy of order.**-Revision can be filed without copy of order and a time can be granted to file copy of the order. *State v. Manaklal*, 1965 RRD 160.

**5. Superintending powers of H.C. u/Art. 227.**-The H.C. has such powers in appropriate cases of miscarriage of justice. *Brahmanand v. Ganpati Nath*, AIR 1965 Cal. 492.

**6. Period of Limitation.**-No period of Limitation, held Section 31 and Art. 131 Limitation Act, 1963 does not apply. *State v. Manaklal*, 1965 RRD 160.

**7. Section 20, 23-A & 23-B.**-[1] The Collector proceeded against B under PDR Act and attached the house of B on 12-10-1959. Who must have disclosed the fact that the same is mortgaged with Hind Bank. B concealed the material fact and persisted to legal proceeding to obstruct or delay the recovery proceedings by B. The suit of B was dismissed by the District Judge on 2-1-1965. Meanwhile the Mortgagee Hind Bank sued B and auction sold the property which was purchased by one J, the petitioner, on resumption of proceedings on decision of 2-1-1965 the purchaser 'J' objected to auction sale of the house. It was held that when it was attached, B was in possession. As the PDR proceedings were initiated prior to the purchase of property by J. Thus 'J' was rightly directed by the RAA to proceed for cancellation of the certificate under Section 20 without cancellation the recovered proceedings under PDR can not be stopped Revision rejected. *Jamkilal v. Collector, Jaipur*, 1974 RRD 137.

[2] A Direct revision by-passing appropriate authorities by a person aggrieved of an order under Section 8(3) is no warranted nor permitted; held revision rightly dismissed. *Harish Chand v. State*, 1974 RRD 211; *Chiranjii Lal v. State of Raj.*, 1974 RRD 526.

[3] The Act do not provide for second appeal under section 23-A of the PDR Act. Section 10 of the Rajasthan Land Revenue Act, 1956 would not be applicable in view of the specific provision to the contrary in other

enactment viz. the PDR Act. *Manipal Singh v. State*, 1968 RRD 455.

[4] A loan was advanced for construction of a well to the Sarpanch of the Gram Panchayat. The Sub-Divisional Officer ordered the recovery of the loan under the PDR Act from the successor Sarpanch. The Successor Sarpanch petitioner did not file appeal or revision before the Board under section 23-A or 23-B or the PDR Act but instead of which filed a revision under section 84 of the Land Revenue Act, 1956. The revision under section 84 is not maintainable and therefore liable to be dismissed because the only remedy lies with the petitioner is to proceed under section 23-A or 23-B or PDR Act and nonelse. *Poosa Ram v. State of Rajasthan*, 1972 RRD 229.

[5] Revision against inter-locutory order under s. 23-B is not maintainable being premature. *Nagour Coop. Mkg. Society v. State*, 1973 RRD 85; *Chouthmal v. State*, 1974 RRD 560.

**23-C. Review.**-Any order passed under this Act may, after notice to all persons interested, be reviewed, by the officer who made the order or by his successor-in-office, or, if the order is passed by the Board of Revenue, then by such Board on account of mistake or error either in the making of the certificate or in the course of any proceeding under this Act.

**23-D. Stay of execution during appeal, revision or review.**-Pending the decision of any appeal or application for revision or review, execution may be stayed, if the appellate, revising or reviewing authority as the case may be, so directs, but not otherwise; and such direction for stay may be given on such terms, if any, as the authority giving the direction may think fit].

## PART-VI

### MISCELLANEOUS

**24. Costs.**-Subject to such limitations as may be prescribed, the award of cost of and incidental to any proceeding under this Act, shall be in the discretion of the officer incharge of such proceeding and he shall have full power to direct by whom and to what extent such costs shall be paid.

**25. Officers to have powers of Civil Court for certain purposes.**-Every Collector, Assistant Collector or Tehsildar acting under this Act, shall have the powers of a Civil Court for the purposes of receiving evidence, administering oath, enforcing the attendance of witnesses and compelling the production of documents.

**26. Protection of action taken under Act.**-No suit, prosecution or other proceeding shall lie except as otherwise herein provided against the <sup>1</sup>[State Government] or any officer of <sup>2</sup>[State Government] or any person acting under the authority of the <sup>3</sup>[State Government] or any officer of <sup>4</sup>[State Government] in respect of anything which is in good faith done or intended to be done under this Act in furtherance of the provisions thereof.

### COMMENTARY

[1] Recovery for short supply of grain or commission is not a public demand-Provisions of section 26 do not apply. *State of Rajasthan v. Ganeshmal*, 1979 WLN (UC) 10.

[2] The Central or the State Government can not be made liable for the torts of the officers such as Tehsildar in effecting illegal attachment. *Chegondi Venkata Raman v. Bonum Latchanna*, AIR 1966 AP 227; *J.K. Ghetty v. Collector*, AIR 1965 AP 457.

**27. Application of the Indian Limitation Act, 1908.**-(1) Sections 6 to 9 of the Indian Limitation Act, 1908, shall not apply to suits or proceedings under this Act.

(2) Except as declared in sub-section (1) the provisions of the Indian Limitation Act, 1908, shall apply to all proceedings under this Act as if a certificate were a decree of a Civil Court.

### COMMENTARY

Now the Limitation Act, 1963, shall apply. The previous Limitation Act, 1908 do not expressly provide period of Limitation for Revisions, but the new Act provides a period of 90 days for revisions from the date of order or decree under Article 131 of the Limitation Act. *State v. Manaklal*, 1965 RRD 161.

**28. 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 offense punishable under section 206 of the Indian Penal Code, 1860.

**29. Power of Government to make rules.**-(1) The <sup>5</sup>[State Government] may <sup>6</sup>[by Notification in the] <sup>7</sup>[Official Gazette] make rules <sup>8</sup>[x x x] for the purpose of carrying into effect the provisions thereof.

1 Subs. by Raj. Act No. 27 of 1957.

2 Subs. by Raj. Act No. 27 of 1957.

3 Subs. by Raj. Act No. 27 of 1957.

4 Subs. by Raj. Act No. 27 of 1957.

5 Subs. by Act NO. 27 of 1957.

6 Ins. & Omitted by Act No. 22 of 1952.

7 Subs. by Act NO. 27 of 1957.

8 Ins. & Omitted by Act No. 22 of 1952.

(2) Such rules may, in particular, and without prejudice to the generality of the powers conferred by sub-section (1), provide for all or any of the following matters, namely:—

- (a) the signature and verification of requisitions made under section 3;
- (b) the service of notices issued under section 6, the service of other notices or processes issued under this Act, and the manner in which service may be proved;
- (c) the signing and verification of petitions, under section 8, denying liability;
- (d) the forms to be used under this Act; and
- (e) all matters which according to the provisions of this Act, are to be prescribed.

<sup>1</sup>[(3) x x x]

### COMMENTARY

**Interpretation of Rules.**-[1] The rules are subordinate to the Act. Rules are framed by subordinate Law making body under the Act which are not the legislatures thus the Validity of the Act is not dependent upon what a subordinate authority chooses to do or undo. *State of Bombay v. United Motor*, AIR 1953 SC 252.

[2] The rules framed by the subordinate law making authority have the same force as the statute itself. *Khetsidass Girdhari Lal v. Pratap Mal*, AIR 1946 Cal. 197.

[3] Any rule in consistent with the section is void and ineffective to the extent of such inconsistency. *Bajinath v. Ahmad Mushaji*, ILR 40 Cal. 219; *Hemandass v. Nihal Dass*, AIR 1934 Sindh 110; *North British India Merchantile Co.*, (1937) 5 ITR 349.

[4] An interpretation of rules which tends to defeat object of the statute must if possible be avoided. *CIT v. Tej Singh*, 1959 (35) ITR 408.

[5] The Government who as subordinate rules making authority has the power to make rules operative retrospectively. *Poonamchand v. State of AP*, 1961 (12) STC 634.

[6] The rules do not apply until the condition of prepublication is complied with. *Hazi Mamu v. State of Kerala*, 1961 (12) STC 142.

[7] The section must control and govern the rules. The rules must be construed in the light of the section. Where there is conflict between the two, the section shall prevail. *Bishweshwer v. Board of Revenue*, AIR 1956 Raj. 101 (FB); *C.P. Syndicate v. I.T. Comm.*, AIR 1962 Bom. 104; *Chandra Kant Rao v. State of Raj.*, 1963 RLW 111; ILR 1963 Raj. 1.

[8] The rules must be so construed to support the main act. *Virappa v. State of Mysore*, AIR 1965 Mys. 227; *Kanchan Bai v. Manaklal*,

<sup>1</sup> Omitted by Act No. 22 of 1952.

**AIR1966 Guj. 19; Pramoda v. Kunjeer Raj, AIR 1954 Bom. 518.**

[9] The rules which take away the force of the Act is ultravires and void. *C.P. Syndicate v. It Com.*, **AIR 1962 Bom. 104.**

[10] The rules cannot be allowed to enlarge the scope of the statute for, the rules are framed by the subordinate law making body under the Act which are not the legislatures thus validity of an Act is not dependent upon the rules. *Central Bank of India v. Their workmen*, **AIR 1960 SC 12; State of Bombay v. United Motors, **AIR 1953 SC 252.****

[11] The High Court as a court of judicial review has possessed of extensive writ jurisdiction under article 226 of the Constitution, can see whether the rules were lawfully made or not. *Automobile Transport (P) Ltd. v. State of Raj.*, **AIR 1962 Raj. 24; ILR 1960 Raj. 1332.**

**30. Saving of other laws.**-(1) The powers given by this Act or the rules made thereunder shall be deemed to be in addition to and not in derogation from, any powers conferred by any other law for the time being in force for the recovery of any due, debt or demand to which the provisions of this Act are applicable, and except where expressly so provided, no legal remedy shall be affected by this Act.

(2) Nothing in this Act shall be construed—

- (a) to impair any security provided by any other enactment for the time being in force, for the recovery of any dues, debt or demand, to which the provisions of this Act are applicable, or
- (b) to authorize the arrest or detention in the civil prison of any person for the recovery of any tax payable to a local authority.

**31.**<sup>1</sup> [x x x]

#### THE SCHEDULE

#### Public Demands

[See Section 2(5)]

<sup>2</sup>[x x x]

<sup>3</sup>[6. Any money payable to the State Government or to a department or an officer of Government—

- (i) Under or in pursuance of written instrument, or
- (ii) Under in pursuance of an agreement evidenced by a writing, a correspondence or otherwise in repayment of any advances or in lieu of any services rendered or supplies made by the Government or such department or officer of Govern-

<sup>1</sup> Omitted by Act No. 27 of 1957.

<sup>2</sup> Omitted by Act No. 42 of 1960.

<sup>3</sup> Subs. by Act No. 27 of 1957.

ment].

7. Any money payable to any local authority, in respect of which the person liable to pay the same has agreed, by a written instrument or agreement, duly registered, that it shall be recoverable as a demand or a public demand or as an arrear of revenue or land revenue.

8. Any money payable to the <sup>1</sup>[State Government] or to a department or an officer of <sup>2</sup>[State Government] in consequence of loss, misappropriation, defalcation or breach of trust by a public servant.

9. Any money due from a person who is a surety for the payment of any sum recoverable under the provisions of this Act.

10. Any money due from a purchaser at a sale held in execution of a certificate under this Act, whether the sale is subsisting or not.

<sup>3</sup>[11. Any money payable to a public undertaking—

- (i) under or in pursuance of a written instrument; or
- (ii) under or in pursuance of an agreement with the public undertaking and evidenced by a writing, a correspondence or otherwise in repayment of any loan or advance or in lieu of any services rendered or supplies made by or on behalf of the public undertaking; or
- (iii) in consequence of loss, misappropriation, defalcation or breach of trust by any employee of a public undertaking.]

#### COMMENTARY

##### 1. Item 6(ii)-Scope.

Government building contractor constructing Government buildings under contract-Water supplied through pipe line with non-functioning or missing water meter-Contractor liable to pay cost under section 70, Contract Act-It is a public demand, recoverable under the Act. *State of Raj. v. Amarjeet Singh*, 1988 RRD 84.

##### 2. Item 8 of the Schedule-'government' whether includes a 'Panchayat'.

A 'Panchayat' is a body corporate under the Rajasthan Panchayat Act of 1953 and it cannot be possibly equated with the Government. A sum of money payable to a Panchayat cannot be held to be payable to the Government. *Jagan Nath v. State of Rajasthan & Ors.*, **ILR (1966) 16 Raj. 237; 1966 RLW 253.**

<sup>1</sup> Subs. by Act No. 27 of 1957.

<sup>2</sup> Subs. by Act No. 27 of 1957.

<sup>3</sup> Added by Act No. 14 of 1982.

## THE RAJASTHAN PUBLIC DEMANDS RECOVERY RULES, 1953

### CONTENTS

#### Rules -

1. Short title, extent & commencement
2. Definitions
3. Signatures & verification of requisitions
4. Mode of Service
5. Service on defaulter or his agent
6. Service on adult male member of family
7. Person served to sign acknowledgment
8. Procedure where defaulter refuses to accept service or cannot be found
9. Endorsement of time & manner of service
10. Examination of serving Officer
11. Service by post
12. Signature and verification of petition denying liability
13. Register of certificates
14. Entry and remittance of sums received under a certificate
15. Forms

#### Forms

## THE RAJASTHAN PUBLIC DEMANDS RECOVERY RULES, 1953

(Section 29)

*[Notification No. F. 7 (174) W. M/52, dated 19-2-1953, published in Rajasthan Gazette. Part IV-B, dated 28-2-1952.]*

In exercise of the powers conferred by section 29 of the Rajasthan Public Demands Recovery Act, 1952 (No. V of 1952), the Government of Rajasthan is pleased to make the following rules:—

### THE RAJASTHAN PUBLIC DEMANDS RECOVERY RULES, 1953

#### Preliminary

**1. Short title, extent & commencement.**-(1) These rules may be called the Rajasthan Public Demands Recovery Rules, 1953.

(2) They extend to the whole of Rajasthan.

(3) They shall come into force on the date of their first publication in the Rajasthan Gazette.

**2. Definitions.**-(1) In these Rules, unless the context requires otherwise:—

(i) "Act" means the Rajasthan Public Demands Recovery Act, 1952.

(ii) "appendix" means the appendix appended to these rules;

(iii) "form" means form set forth in the appendix, and

(iv) "section" means a section of the Act.

(2) The General Clauses Act, 1897 of the Central Legislature shall apply to the interpretation of these rules, as it applies to the interpretation of a Central Act.

#### Signature and Verification of Requisitions

**3. Signatures & verification of requisitions.**-(1) Every requisition made under section 3 shall be signed and verified at the foot by the person making it.

(2) The verification shall state that the person signing the requisition has been satisfied by inquiry that the amount stated in the requisition is actually due.

(3) The verification shall be signed by the persons making it, and shall state the date on which it is signed.

#### Service of Notices

**4. Mode of Service.**-Service of a notice issued under section 6, or under any other provision of this Act, shall be made by delivering or tendering a copy thereof, signed by the Collector and sealed with the seal of the Collector.

**5. Service on defaulter or his agent.**-Whenever it is practicable, service shall be made on the defaulter in person, unless he has an agent empowered to accept service in which case service on such agent shall be sufficient.

**6. Service on adult male member of family.**-Where the defaulter cannot be found, and has no agent empowered to accept service of the notice on his behalf, service may be made on any adult male member of the family of the defaulter who is residing with him.

*Explanation.*-A servant is not a member of the family within the meaning of this rule.

**7. Person served to sign acknowledgment.**-Where the serving officer delivers or tenders a copy of the notice to the defaulter personally, or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original notice.

**8. Procedure where defaulter refuses to accept service or cannot be found.**-Where the defaulter or his agent or such other person as aforesaid, refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the defaulter, and there is no agent empowered to accept service of the notice on his behalf, nor any other person on whom service can be made, the serving officer shall—

- (a) affix a copy of the notice on the outer door or some other conspicuous part of the house in which the defaulter ordinarily resides or carries on business or personally works for gain, or
- (b) if there be land, affected by the notice, affix a copy of the notice on some conspicuous place in the office of the Collector and also on some conspicuous part of the land.

and shall then return the original to the Collector by whom it was issued a report endorsed thereon or annexed thereto stating that he has so affixed the copy, the circumstances under which he did so, and the name and address of the person (if any) by whom the house or land was identified and in whose presence the copy was affixed.

**9. Endorsement of time & manner of service.**-The serving officer shall in all cases in which the notice has been served under rule 7, endorse or annex, or cause to be endorsed or annexed on or to the original notice a return stating the time when and the manner in which the notice was served, and the name and address of the person (if any) identifying the person served and witnessing the delivery of the tender of the notice.

**10. Examination of serving Officer.**-Where a notice is returned under rule 8, the Collector shall, if the return under that rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified examine the serving officer on oath, or cause him to be so examined by another Collector or by an Assistant Collector, touching his proceedings and make such further inquiry in the matter as he thinks fit, and shall either declare that the notice has been duly served or order such service as he thinks fit.

**11. Service by post.**-(1) Where for any reason whatsoever, the summons is returned, unserved, the Collector, may, either in lieu of, or in addition to, the manner provided for service of summons in the foregoing rules, direct the summons to be served by registered post addressed to the defaulter or his agent empowered to accept service at the place where the defaulter or his agent ordinarily resides or carries on business or personally works for gain.

(2) An acknowledgment purporting to be signed by the defaulter or the agent or an endorsement by a postal employee that the defaulter or the agent refused to take delivery may be deemed by the Collector issuing summons to be *prima facie* proof of service.]

**Petitions denying liability**

**12. Signature and verification of petition denying liability.**-(1) Every petition filed under section 8 denying liability shall be signed and verified at the foot by the defaulter or by some other person on his

<sup>1</sup> Substituted by Notification No. F 7(1) FD/R/Gen/64, dated 16-1-1964, published in Rajasthan Gazette, Part IV-C, Ordinary, dated 20-2-1964.

behalf who is proved to the satisfaction of the Collector to be acquainted with the facts of the case.

(2) The verification shall be signed by the person making it and shall state the date on which it is signed.

**Supplemental**

**13. Register of certificates.**-(1) Every Collector shall cause to be kept in his office a register of certificates filed in his office under the Act and shall cause particulars of all such certificates to be entered in such register.

(2) Such register shall be open during office hours, for not less than two hours daily, and at such time as may be fixed by the Collector, for inspection by any person who desires to inspect the same, and a fee of one rupee shall be chargeable for every such inspection.

**Note:**-The fee should be prepaid by Court-fee stamp affixed to the application.

**14. Entry and remittance of sums received under a certificate.**-Where the whole or any portion of the amount due under a certificate has been realised, the Collector in whole office the certificate is originally filed shall cause—

- (a) an entry of the fact to be made upon the certificate and in the register referred in rule 13, and
- (b) the amount so realised to be remitted to the officer or authority sending the requisition under section 3.

**15. Forms.**-The forms set forth in the appendix shall be used with such variations as circumstances may require.

**APPENDIX**

**FORMS**

(See Rule 15)

**FORM NO. 1**

**Requisition for a Certificate**

(See Section 3)

To the Collector of the district of.....

Name of defaulter	Address of defaulter	Amount of public demand for which this requisition is made
1	2	3

<sup>1</sup> [Period for which demand is due]	Nature of the public demand, for which this requisition is made	<sup>2</sup> [Budget head wherein recovery shall be deposited]
1	2	3

I request you to recover the above-mentioned sum of Rs. which I am satisfied, after inquiry, is due from the said in respect of .....  
 Verified by me on the.....day of .....19.....

A.B.  
 Designation.

**FORM No. 2**  
**Certificate of Public Demand**  
 (See Section 4)

Filed in the office of the Collector of (name of the district)

No. of Certificate	Name and address of authority sending requisition	Name and address of defaulter	Amount of public demand including interest, if any for which this certificate is signed and period for which such demand is due	Further particulars of the public demand for which this certificate is signed
1	2	3	4	5

I hereby certify that the above-mentioned sum of Rs. is due from the above-named.

I further certify that the above-mentioned sum of Rs. is justly recoverable and that its recovery by suit is not barred by law.

Dated this.....day of.....19.....

<sup>1</sup> Inserted by Notification No. F 12 (28) F. (B)/61, dated 22-2-1962, published in Rajasthan Gazette, Part IV-C, Ordinary, dated 10-5-1962.  
<sup>2</sup> Inserted by Notification No. F 12 (28) F.D./61, dated 5-11-1962, published in Rajasthan Gazette, Part IV-C, Ordinary, dated 22-11-1962.

A.B.  
 Collector

**FORM No. 3**  
**Notice to defaulter**  
 (See Section 6)

To (name of defaulter)

You are hereby informed that a certificate against you for Rs..... due from you on account of..... has this day been filed in my office under section 4 of the Rajasthan Public Demands Recovery Act, 1952. If you deny your liability to pay the said sum of Rs.....you may, within thirty days from the service of this notice, file in my office a petition denying liability, in whole or in part. If, within the said thirty days, you fail to file such a petition or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed, it will be executed, under the provisions of the said Act, unless you pay Rs..... (Rs.....on account of the demand and Rs.....on account of costs of realisation) into my office, until the said amount is so paid, you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage or otherwise. If you in the mean time conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.

A copy of the certificate above mentioned is hereto annexed.

You may remit the amount by money order, quoting the number and year of the certificate.

Dated this.....day of.....19.....

A.B.  
 Collector of

**FORM No. 4**  
**Petition denying liability**  
 (See Section 8)

To

The Collector of  
 The Humble petition of (name of petitioner) of (Address)  
 SHOWETH-

That a certificate No. ....of..... (year) for the sum of Rs..... has been filed against your petitioner in your office under section 4 of the Rajasthan Public Demands Recovery Act, 1952.

That your petitioner respectfully denies his liability to pay the said sum of Rs. .... (or, where the liability to pay part is admitted, denies his liability to pay more than Rs.....), and this for the following reasons:-

That the facts above stated are true to the best of your petitioner's knowledge and belief.

Your petitioner therefore respectfully prays that the said certificate may be set aside (or modified or varied).

A.B.  
(Petitioner)

FORM No. 5

Notice to Legal representative of defaulter

(See Section 19)

To

(Name of Legal representative)

You are hereby informed that a certificate against deceased, for Rs.....due from him on account of..... was filed in this office on..... 19....., under section.....of the Rajasthan Public Demands Recovery Act, 1952, and that a demand of Rs..... in respect of the said certificate proceeding is due from you as the legal representative of the said deceased. If you deny your liability to pay the said sum of Rs.....you may, within thirty days from the service of this notice file in my office a petition denying liability in whole or in part. If, within the said thirty days, you fail to file such a petition, or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed, it will be executed, under the provisions of the said Act, unless you pay Rs..... (Rs.....on account of the demand and Rs.....on account of costs of realization) into my office. Until the said amount is so paid, you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.

A copy of the certificate above-mentioned is hereto annexed.

You may remit the amount by money-order, quoting the number and year of the certificate.

Dated this.....day of.....19.....

A.B.  
Collector

PUBLIC DISTRIBUTION SYSTEM (CONTROL ORDER, 2001

NOTIFICATIONS

[S.O. 211, dated 29th September, 2001, Pub. in R.G.Gaz. pt.IV-C, dated 1-10-2001, P. 265(5)]

In exercise of the powers conferred by Clause-10 of the Public Distribution System (Control) Order, 2001, the State Government hereby authorises following officers mentioned in column No.1 of the Schedule appended as below to exercise all the powers of search and seize under clause 10 of the said order for the area specified against them in column No.2, namely:-

Schedule	
1	2
1. Commissioner, Addl. Commissioner and Dy.Commissioner, Foods & Civil Supplies Department, Rajasthan, Jaipur	For the whole of Rajasthan State.
2. District Supply Officer, Assistant District Supply Officer, Enforcement Officer, Enforcement Inspector posted at Head Quarter, Food and Civil Supplies Department, Rajasthan Jaipur.	For the whole of Rajasthan State.
3. All District Supply Officer, Addl. Distt. Supply Officers, Assistant Distt Supply Officer, Enforcement Officers and Enforcement Inspectors.	For their respective jurisdiction.
4. All Executive Magistrates or Revenue Officers not below the rank of Tehsildar.	For their respective jurisdiction.

[S.O.212, Dated 29th September, 2001, Pub. in R.G.Gaz. pt.IV- C, dated 1-10-2001, p.265 (7)]

In exercise of the powers conferred by paragraph-1(4), 1(5), 1(7), 2(4), 4(3), 4(5), 5(vi), 5(vii), 6(2) and 6(9) of the Annexe to the Public Distribution System (Control) Order, 2001, the State Government