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Legislative Department

Bengal Act VII of 1936

The Bengal
Agricultural Debtors Act, 1935

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THE BENGAL AGRICULTURAL DEBTORS ACT, 1935.

[Published in the *Calcutta Gazette* of the 9th April, 1936.]

An Act to provide for the relief of indebtedness of agricultural debtors in Bengal.

WHEREAS it is expedient to provide for the relief of indebtedness of agricultural debtors and to amend the law governing the relations between agricultural debtors and their creditors ;

5 & 6 Geo. V, c. 61 ;
6 & 7 Geo. V, c. 37 ;
9 & 10 Geo. V, c. 101.

AND WHEREAS the previous sanction of the Governor General has been obtained under sub-section (3) of section 80A of the Government of India Act to the passing of this Act ;

It is hereby enacted as follows :—

1. (1) This Act may be called the Bengal Agricultural Debtors Act, 1935.

Short title,
extent and com-
mencement.

(2) It extends to the whole of Bengal.

(3) It shall come into force in such areas on such dates as the Local Government may, by notification, direct.

2. In this Act, unless there is anything repugnant in the subject or context,—

Definitions.

(1) "agriculture" includes horticulture and dairy farming and the use of land for any purpose of husbandry inclusive of the keeping or breeding of livestock, poultry or bees and the growing of fruits, vegetables and the like ;

(2) "amount payable under an award" means an amount included under clause (d) of sub-section (1) of section 25 in an award as payable by a debtor in respect of any debt, or any part of such amount which remains unpaid, together with any interest on such amount or part thereof which is due under the award ;

(3) "Appellate Officer" means an officer appointed under section 40 ;

(4) "award" means an award as made by a Board under sub-section (2) of section 19 or sub-section (6) of section 22, or as confirmed or modified by an Appellate Officer under sub-section (5) of section 40 ;

(5) "Board" means a Debt Settlement Board established under sub-section (1) of section 3, and includes an officer or the Collector authorised under the proviso to section 4 ;

(Section 2.)

(6) "Certificate-officer" means a Certificate-officer as defined in the Bengal Public Demands Recovery Act, 1913 ;

Ben. Act
III of 1913.

(7) "Collector" includes any officer appointed by the Local Government to exercise any of the powers of a Collector under this Act ;

(8) "debt" includes all liabilities of a debtor in cash or in kind, secured or unsecured, whether payable under a decree or order of a Civil Court or otherwise, and whether payable presently or in future, but does not include the following :—

(i) any amount the liability for the payment of which is only contingent ;

(ii) any rent not due at the time when a Board determines the amount of debts under section 18 ;

(iii) any share of the produce of land payable on account of land cultivated under the system known as *adhi*, *barga* or *bhag* ;

(iv) any amount recoverable as a public demand, except—

(a) an amount referred to in sub-section (1) of section 28, and

(b) arrears of rent payable on account of the use or occupation of land held by a tenant ;

(v) any amount a suit or application for the recovery of which is barred by limitation ; or

(vi) any debt due to any bank included in the Second Schedule to the Reserve Bank of India Act, 1934 ;

II of 1934.

(9) "debtor" means a debtor whose primary means of livelihood is agriculture and who—

(a) is a *raiyat* or an under-*raiyat*, or

(b) cultivates land himself or by members of his family or by hired labourers or by *adhiars*, *bargadars* or *bhagdars* ;

and includes a group of persons who join in making an application under the provisions of sub-section (1) of section 9 ;

(10) "loan" means a loan whether of money or in kind, and includes any transaction which is, in the opinion of a Board, in substance a loan ;

(11) "notification" means a notification published in the *Calcutta Gazette* ;

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

(13) "settlement" includes an amicable settlement and a settlement or adjustment made by order of a Board ;

of 1936.]

(Sections 3—8.)

(14) "supplementary income" means any income derived by the debtor from any source other than agriculture;

(15) the expressions "landlord," "raiyat," "under-raiyat" and "rent" have the same meanings as in the Bengal Tenancy Act, 1885.

VIII of
1885.

3. (1) The Local Government may, by notification, establish one or more Debt Settlement Boards for any local area specified in the notification. Establishment of Debt Settlement Boards.

(2) Each Board shall consist of a Chairman and of not more than four other members, to be appointed by the Local Government.

4. The Local Government may, at any time, for reasons to be recorded in writing, cancel, by notification, the appointment of the Chairman or of any other member of a Board or dissolve any Board : Power of Local Government to cancel appointments of Chairman and members of, or to dissolve, a Board

Provided that if, when a Board is dissolved, the Local Government does not consider the appointment of another Board to be necessary or desirable, it may authorise any officer who has had judicial experience to exercise such of the powers of the Board in connection with the making of awards as it may specify and the Collector to exercise all or any of the other powers of the Board.

5. The Local Government may, by notification, delegate its powers under sections 3 and 4 to the Commissioner. Delegation of power to Commissioner.

6. The Chairman and the other members of a Board shall be appointed for a term of not more than three years, but shall be eligible for reappointment. Tenure of office.

7. The Local Government may, by notification, from time to time, empower a Board to exercise all or any of the powers under sub-section (2) of section 9, sub-section (2) of section 13, clause (b) of sub-section (1) of section 19, section 21 or sub-section (1) of section 22, and unless so empowered a Board shall not exercise any such powers. Local Government may invest Boards with certain powers.

8. (1) Subject to the provisions of section 9, a debtor may make an application for the settlement of his debts to a Board established for the local area within which he ordinarily resides within five years after the first Board is established under sub-section (1) of section 3 for that local area. Application for settlement of debts.

(2) Unless the debtor has already made an application under sub-section (1) any of his creditors may make an application to a Board to which the debtor might have applied under that sub-section.

(Section 9.)

(3) If applications are made to more than one Board in respect of the debts of the same debtor, such applications shall, subject to rules made under this Act, be transferred to and dealt with by one Board.

(4) No objection as to the place of presentation of the application shall be allowed by the Appellate Officer unless such objection was taken, at the earliest opportunity, before the Board to which the application was made and unless there has been a consequent failure of justice.

(5) Notwithstanding anything contained in sub-section (1), a Board may for good and sufficient reason entertain a further application in respect of any debt incurred before the date of a first application under sub-section (1) or sub-section (2) whether such application was made to it or to any other Board, except when such application under either of the said sub-sections has been dismissed under sub-section (3) of section 13 or under clause (b) (ii) of sub-section (1) or sub-section (2) of section 17.

(6) A Board shall not entertain any further application for the settlement of any debt which has been incurred by a debtor (including any rent which has become due) after the date of application under sub-section (1) or sub-section (2).

Application for
settlement of
joint debts.

9. (1) An application may be made under sub-section (1) of section 8 for the settlement of—

- (a) an ancestral debt for which two or more persons are jointly liable if one of such persons is a debtor within the meaning of this Act, and they all join in making such application, or
- (b) a debt for which two or more persons are jointly liable if all such persons are debtors within the meaning of this Act and they all join in making such application,

and the Board may pass orders under this Act regarding any debt to which such application relates.

(2) If a debtor within the meaning of this Act is jointly liable with other persons for any debt other than a debt for arrears of rent such debtor may make an application under sub-section (1) of section 8 for relief in respect of his liability in regard to such debt, and the Board, after consideration of the facts and circumstances of the case, may, if so empowered under section 7, pass such order as it thinks fit under this Act regarding the debt so far as such applicant is concerned and such order of the Board shall not be questioned in any Civil Court or in any manner other than that provided in this Act:

of 1936.]

(Sections 10, 11.)

Provided that an order of the Board under this sub-section shall not affect the liability of any other person who is jointly liable with the debtor for the debt, but in no case shall the creditor to whom the debt is due be entitled to realize more than his dues from the persons jointly liable.

10. Every application under section 8 shall be in writing in the prescribed form and shall be signed and verified in the prescribed manner. Form and verification of application.

11. (1) An application made by a debtor under sub-section (1) of section 8 shall contain a statement of debt, in the prescribed form, which shall include the following :— Statement of debt to be included in application.

- (a) the name of the place where he ordinarily resides ;
- (b) the names and addresses of his creditors, the total amount claimed by each creditor to be owing to him in respect of each debt, so far as is known to the debtor, and a note whether each such claim is admitted by the debtor ;
- (c) the history of each such debt with particulars of the original principal and the rate of interest chargeable ;
- (d) details of any debts for which the debtor is liable as a surety or is liable with other persons as a joint debtor or joint surety together with the names and addresses of all such persons ;
- (e) particulars of the debtor's property both movable and immovable (including claims due to him), a specification of its value and of the places where it may be found, and details of any attachment, mortgage, lien or charge subsisting thereon together with the names and addresses of the co-sharers, if any, of the debtor ;
- (f) particulars of any property as in clause (e) which has been transferred by the debtor within two years previous to the date of his application together with the name and address of the transferee ;
- (g) particulars of any supplementary income of the debtor ; and
- (h) a declaration that all his debts and all his properties have been included in the statement.

(2) An application made by a creditor under sub-section (2) of section 8 shall contain a statement of debt, in the prescribed form, which shall include the following :—

- (a) the name of the place where the debtor ordinarily resides ;

(Sections 12, 13.)

- (b) the total amount of every debt claimed by the creditor to be owing to him from the debtor ;
- (c) the history of each such debt with particulars of the original principal and the rate of interest chargeable ;
- (d) the names and addresses of the other creditors, so far as they are known to the creditor ;
- (e) particulars, so far as they are known to the creditor, of the debtor's property, as in clause (e) of sub-section (1) ;
- (f) particulars, so far as they are known to the creditor, of any supplementary income of the debtor ; and
- (g) a declaration that agriculture is the primary means of livelihood of the debtor.

Procedure on receipt of application.

12. (1) On receipt of an application under section 8, the Board shall pass an order fixing a date and place for consideration of the application, unless the application is dismissed forthwith under section 17.

(2) The Board shall, in the prescribed manner, give notice of such order to the debtor (if he is not himself the applicant) or (if the debtor is the applicant) to all persons whose names and addresses are given in the application.

(3) The applicant may, at the discretion of the Board, be examined on oath or affirmation on the date fixed under sub-section (1) or on such other date as the Board may fix and a memorandum of the substance of the statement made by the applicant shall be recorded in writing by the Board.

(4) No woman who has made an application under section 8 shall, against her will, be required to appear in person before the Board for the purpose of being examined under this section.

Further statements of debts.

13. (1) If after consideration of the application the Board does not dismiss the application forthwith under section 17, it shall, in the prescribed manner, serve a notice on the debtor (unless the debtor is himself the applicant) and on every creditor whose name and address are given in the application and also publish a general notice requiring the debtor and all creditors to submit a statement of debt in the prescribed form within one month of the date of service of the notice, or publication of the general notice, whichever is later :

Provided that, if the Board is satisfied that the debtor or any creditor is for good and sufficient cause unable to comply with such notice, it may extend the period for the submission of his statement of debt.

of 1936.]

(Section 14.)

(2) If any creditor fails to comply with a notice under sub-section (1), the Board, if so empowered under section 7, may pass an order in writing declaring that the amount of any debt due to him from the debtor on the date of such order shall, for the purposes of this Act, be deemed to be the amount stated in the statement of debt submitted by the debtor, and that no debt of which the creditor has failed to submit a statement, other than a debt which the debtor has included in his statement of debt shall be payable ;

and such order shall not be questioned in any Civil Court or in any manner other than that provided in this Act.

(3) If any debtor fails to comply with a notice under sub-section (1), the Board shall dismiss the application and may allow against the debtor such costs as the Board considers reasonable and such costs shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the same is due :

Provided that an order made under sub-section (2) or sub-section (3) may be varied or reversed by the Board on an application for review or by the Appellate Officer on appeal if it is proved to the satisfaction of the Board or of the Appellate Officer that the creditor or debtor or any person referred to in clause (d) of sub-section (1) of section 11, as the case may be, had no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance :

Provided further that when a Board has ceased to exist an order made under sub-section (2) or sub-section (3) may be varied or reversed by the Appellate Officer on an application if it is proved to his satisfaction that the creditor or debtor or any person referred to in clause (d) of sub-section (1) of section 11, as the case may be, had no knowledge of the notice under sub-section (1) or that he has complied with it or that he had sufficient reason for non-compliance.

14. (1) When a creditor has submitted to the Board a statement of debt under sub-section (2) of section 11 or sub-section (1) of section 13, the Board shall fix a date for the production of all documents (including entries in books of account) by which the creditor intends to prove any debt owing to him together with a true copy of each such document. Production of documents.

(2) The Board shall mark in the prescribed manner each original document so produced, keep the copy after verifying its correctness, and return the original to the creditor.

(3) No document relating to a debt regarding which a creditor has failed to submit a statement under sub-section

(Sections 15—17.)

(2) of section 11 or sub-section (1) of section 13, and no document which being in the possession or under the control of the creditor has not been produced by him as required by sub-section (1), shall be admissible in evidence against the debtor or his successor in interest in any suit by the creditor or by any person claiming under him for the recovery of the debt to which such document relates unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the document before the Board.

Board to attempt amicable settlement.

15. Subject to any rules made under this Act, the Board shall call upon the debtor and each creditor to explain his case regarding each debt, and shall use its best endeavours to induce them to arrive at an amicable settlement.

Power of Board to require attendance of persons and production of documents and to receive evidence.

16. (1) Subject to rules made under this Act, a Board may exercise all such powers connected with the summoning and examining of parties and witnesses and with the production of documents as are conferred on a Civil Court by the Code of Civil Procedure, 1908.

Act V of 1908.

(2) Any person present may be required by a Board to furnish any information or to produce any document then and there in his possession or power.

Dismissal of applications.

17. (1) An application under section 8 may be dismissed by the Board, at any stage of its proceedings, in respect of all or any of the debts to which it relates,—

- (a) if, for reasons to be stated in writing, the Board does not consider it desirable or practicable to effect a settlement of debts, or
- (b) if, in the opinion of the Board—
 - (i) the applicant fails to pursue his application with due diligence, or
 - (ii) the debtor is attempting to use the provisions of this Act with a view to defraud any creditor or any person referred to in clause (d) of sub-section (1) of section 11.

(2) An application under section 8 shall be dismissed by the Board, if in its opinion—

- (a) such application includes a claim which is intended to defraud any creditor ; or
- (b) there has been transfer of any property by the debtor within two years previous to the date of such application with a view to defraud any creditor.

of 1936.]

(Sections 18, 19.)

18. (1) If there is any doubt or dispute as to the existence or amount of any debt, the Board shall decide whether the debt exists and determine its amount : Determination of amounts of debt.

Provided that a decree of a Civil Court relating to a debt shall be conclusive evidence as to the existence and amount of the debt as between the parties to the decree.

(2) Before passing any order under section 19, 21, or 22 the Board, after considering the statements of debt submitted under section 11 and sub-section (1) of section 13 and after hearing the parties and considering the evidence produced shall, in accordance with rules made under this Act, determine in respect of each debt the amount of the principal and the amount of the arrears of interest due thereon from the debtor up to the date of such determination.

(3) In determining the original principal of a debt for the purposes of proviso (ii) to clause (b) of sub-section (1) of section 19, the Board shall determine the amount of the original loan, after excluding any amount of interest on such loan which may at any time have been included as principal.

(4) When the Board has determined under sub-section (2) the amounts of the principal of a debt due from a debtor and of the arrears of interest due thereon, the decision of the Board in this respect shall not be questioned in any Civil Court or in any manner other than that provided in this Act.

19. (1) Subject to rules made under this Act—

Settlement of debts.

(a) when any creditor agrees in respect of any debt owing to him to an amicable settlement with the debtor, the Board shall embody such settlement in writing ; or

(b) when creditors to whom there is owing not less than forty *per cent.* of the total debt, agree to an amicable settlement with the debtor, the Board, if it is so empowered under section 7 and if it considers that an offer made by the debtor for the settlement of any debt not included in the amicable settlement is a fair offer which the creditor concerned ought reasonably to accept, may pass an order that the debt to which the offer relates shall be settled in accordance with such offer :

Provided that for the purpose of this clause an offer shall not be considered by the Board to be a fair offer—

(i) if its terms are less favourable than the terms of the amicable settlement relating to a debt of the same description, or

(Sections 20—22.)

(ii) if it contemplates the reduction of any debt to an amount which is less than the original principal of the debt as determined under sub-section (3) of section 18, unless creditors to whom there is owing not less than sixty *per cent.* of the total debt agree to the proposed reduction.

(2) The terms of any settlement of debts under sub-section (1) shall be embodied in an award to be made by the Board.

Explanation.—The words “total debt” mean the sum total of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute.

Decision by Board as to whether a person is a debtor.

20. If any question arises in connection with proceedings before a Board under this Act, whether a person is a debtor or not, the Board shall decide the matter.

Grant of certificate in respect of certain debts.

21. Subject to any rules made under this Act, if any creditor does not accept an offer made by the debtor which in the opinion of the Board is fair and such as the creditor ought reasonably to accept, the Board if it is so empowered under section 7, instead of passing any other order which it is competent to pass, may grant to the debtor a certificate in the prescribed form in respect of the debt to which the offer relates,

and thereafter, notwithstanding the provisions of any law for the time being in force, no Civil Court shall allow to the plaintiff, in any suit for the recovery of such debt, any costs in such suit or any interest on the debt after the date of such certificate in excess of simple interest at the rate of six *per cent. per annum* on the principal of such debt as determined under sub-section (2) of section 18, and no decree for the recovery of such debt shall be executed until all amounts payable under an award in respect of other debts of the debtor have been paid, or such award has ceased to subsist under sub-section (5) of section 29, or, if there is no award, until the expiry of such period not exceeding ten years as may be specified in the certificate.

Adjustment of an insolvent debtor's debts.

22. (1) When the Board is satisfied that the debts of a debtor are such that they cannot be reduced under the provisions of section 19 to an amount which he will be able to repay within twenty years, and that the debtor is a fit person to be given the benefit of this section, the Board if it is so empowered under section 7, may, subject to rules

of 1936.]

(Section 22.)

made under this Act and after considering all the circumstances of the debtor, by a written order declare him to be insolvent and may by such order either—

- (a) reduce his debts to such amounts as it considers that he can pay within a period, not exceeding twenty years, to be mentioned in the order, or
- (b) if, for reasons to be recorded in writing, it does not consider the reduction of his debts under clause (a) to be desirable, direct that, subject to the provisions of sub-section (4) and of section 24, all his property shall be sold and the proceeds shall be utilised towards the payment of his debts in such manner as may be specified in the order.

Ben. Act
III of
1913.

(2) The Certificate-officer shall, on the requisition of the Board in the prescribed form, sell the property of the debtor referred to in clause (b) of sub-section (1) in the manner provided in the Bengal Public Demands Recovery Act, 1913, and the provisions of the said Act regarding sales in execution of certificates shall, subject to the provisions of this Act, apply to such sale.

(3) When the Board reduces the debts of an insolvent under clause (a) of sub-section (1), it shall specify in the order what sum he shall pay in each year towards the settlement of the debts as so reduced and in what manner such sums shall be distributed among the creditors :

Provided that the sum to be paid in each year shall be fixed by the Board at an amount which, in its estimation, is likely, in a year of normal harvest, to leave to the insolvent as provision towards his maintenance one-half of the surplus which remains from the value of the produce of his land after paying to the landlord the current rent due for such land.

(4) When the Board directs the sale of an insolvent's property under clause (b) of sub-section (1), it shall set aside, as provision towards his maintenance, not more than one-third of the land held by him in his direct possession exclusive of the land occupied by his dwelling house :

Provided that, even if he holds less than three acres of land in his direct possession, the Board shall thus set aside not less than one acre of the land so held exclusive of the land occupied by his dwelling house :

Provided further that no portion of the immovable property of an insolvent shall be exempted under this sub-section from sale for realisation of arrears of rent.

(5) When the property of the insolvent referred to in clause (b) of sub-section (1) has been sold under sub-section (2) or when he has paid all the sums fixed by the Board under

(Sections 23—25.)

sub-section (3) or when his property has been sold under section 28, the Board shall make an order of discharge and grant him a certificate of discharge in the prescribed form. Such certificate shall release the insolvent from all debts which were or might have been included in the application under section 8 :

Provided that if within five years of the order declaring the debtor insolvent any property is acquired by, devolves on, or is declared by a Civil Court or is discovered to belong to, the insolvent debtor such property shall, on application made by a creditor to the Board, be available for distribution among the creditors of the debtor, to the extent of their debts, in such manner as the Board may direct.

(6) An order passed by a Board under sub-section (1) shall be embodied in an award to be made by the Board.

The principal of certain debts not to be reduced.

23. The principal of any debt due in respect of arrears of rent or under section 171 of the Bengal Tenancy Act, 1885, shall not be reduced under clause (b) of sub-section (1) of section 19 or under section 22, and the provisions of section 21 shall not apply to the principal of any such debt.

VIII of 1885.

Exemption of certain property of an insolvent debtor from sale.

24. (1) When a debtor is declared insolvent under sub-section (1) of section 22, the Board shall, in the prescribed manner, determine what portion of his immovable property shall be deemed to be the dwelling house of the debtor for the purposes of this Act.

(2) Such dwelling house shall be exempt from sale under sub-section (2) of section 22 and from sale for the recovery of any unsecured debt under section 28, and, notwithstanding anything contained in any other Act, the debtor shall be incompetent to mortgage, charge, lease or alienate the same in any way until he is granted a certificate of discharge under sub-section (5) of section 22.

(3) Notwithstanding anything contained in any other Act, no part of the property of a debtor who has been declared insolvent under sub-section (1) of section 22 shall be exempt from sale under sub-section (2) of that section or under section 28 except such movable property as shall be prescribed, the immovable property excluded as provision towards his maintenance, and, subject to the provisions of sub-section (2), his dwelling house as determined under sub-section (1).

Awards.

25. (1) An award shall be in the prescribed form and shall include the following particulars :—

(a) a list of the immovable properties of the debtor with particulars of any mortgage, lien or charge subsisting thereon ;

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(Section 26.)

- (b) a list of the movable properties of the debtor on which there is any mortgage, lien or charge with particulars of such mortgage, lien or charge ;
- (c) details of all debts which have been determined under section 18 or regarding the amount of which there is no doubt or dispute ;
- (d) the amount to be paid to each creditor for each debt owing to him under the terms of an amicable settlement or of an order of the Board under section 19 or section 22 ;
- (e) the manner and the order in which and the times at which the amounts referred to in clause (d) shall be paid :

Provided that the order in which such amounts shall be paid shall be in accordance with any rules made under this Act ;

- (f) the rate of interest, if any, payable on each amount referred to in clause (d) ;
- (g) an order that all the properties mentioned in the list referred to in clause (a) or clause (b) except such properties as are exempt from sale shall, subject to any mortgage, lien or charge subsisting thereon, be security for the amounts payable under the award.

(2) At a place and time of which notice shall be given to the parties in the prescribed manner, the award shall be explained to the parties present and shall be signed by the Board ; but the validity of an award shall not be affected by the absence of any of the parties.

(3) From the date of the signing of the award under sub-section (2) it shall, in supersession of all previous decisions of a Civil Court in respect of the debts mentioned in it, be binding on the debtor and his creditors and the successors in interest of such debtor and creditors.

26. Notwithstanding anything contained in this or any other Act—

Special provision for arrears of rent.

- (a) if any rent due for any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 falls into arrears, the landlord may include in a suit for the recovery of such arrears the amount of arrears of rent payable under such award ;

(Sections 27, 28.)

(b) if any land referred to in clause (a) is advertised for sale in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the provisions of section 171 of the Bengal Tenancy Act, 1885, shall not apply, but any person whose interests are affected may pay into Court the amount requisite to prevent such sale, and thereupon the amount so paid, together with interest at the prescribed rate which shall not exceed twelve *per centum per annum*, shall be included by the Board in the award in accordance with rules made under this Act and such amount shall take priority of every other debt payable under the award and of every other charge on the land other than an arrear of rent.

Ben. Act
III of 1913.
VIII of
1885.

Existing mortgages, etc., to subsist.

27. (1) When an award is made as regards any debt which is secured by a mortgage, lien or charge on any immovable property of a debtor, such mortgage, lien or charge shall subsist to the extent of the amount payable in respect of such debt under the award until such amount has been paid or the property has been sold for the satisfaction of such debt or the debtor has been granted a certificate of discharge under sub-section (5) of section 22.

(2) Any mortgage, lien or charge upon any immovable property securing a debt on account of which any amount is payable under a decree of a Civil Court shall cease to subsist when such property is sold under the provisions of section 28 or sub-section (4) of section 29.

Recovery of amounts included in an award.

28. (1) If by the date fixed the debtor fails to pay any amount payable under an award such amount shall be recoverable as a public demand on application made within the prescribed period by a creditor to whom the amount is due.

If the creditor does not so apply such amount shall, for the purposes of clause (iii) of section 35, be deemed to be a debt incurred by the debtor after the date of the signing of the award.

(2) Subject to any rules made under this Act, the Certificate-officer, if satisfied that there is good reason for the failure to pay by the fixed date, may allow time to the debtor within which to pay any amount due. If the Certificate-officer thus allows time, he may, if he thinks fit, further direct that a similar period of time shall be given to the debtor after the time fixed in the award for payment of any other amount payable thereunder, within which to make such other payment, and the award shall be deemed to be modified accordingly.

of 1936.]

(Section 29.)

Ben. Act
III of
1913.

(3) If the Certificate-officer does not allow time under sub-section (2), or if the debtor fails to pay within the time allowed, the Certificate-officer shall proceed to recover the amount in the manner provided in the Bengal Public Demands Recovery Act, 1913 :

Provided that, if such debtor has been declared insolvent under section 22, the Certificate-officer after allowing such time, if any, as he thinks fit, shall, forthwith, subject to the provisions of sub-section (4) of section 22 and section 24, sell such portion of the property of the debtor as will be sufficient to pay all the amounts payable whether under the award or under sub-section (1) of section 29.

(4) Subject to the proviso to sub-section (3), if the Certificate-officer fails to recover the full amount in respect of which an application has been made under sub-section (1) by sale of the movable property or agricultural produce of the debtor, he shall sell such portion of the immovable property of the debtor as will be sufficient to pay all amounts payable whether under the award or under sub-section (1) of section 29 or under any decree which has, to the knowledge of the Certificate-officer, been passed by a Civil Court in respect of a debt of which details are included in the award under clause (c) of sub-section (1) of section 25.

(5) When the Certificate-officer sells the immovable property of a debtor under sub-section (2) of section 22 or under this section he shall keep a separate account of the proceeds realised from the sale of any portion of such property upon which a mortgage, lien or charge is shown as subsisting in the list included in the award under clause (a) of sub-section (1) of section 25.

(6) If any debt in respect of which no amount is payable under the award is secured by a mortgage, lien or charge shown in such list, the Certificate-officer shall sell the immovable property subject to such mortgage, lien or charge, unless a decree of a Civil Court for the recovery of the debt is outstanding in respect of such property. If such a decree is outstanding the Certificate-officer shall distribute the sale proceeds in accordance with the provisions of clause (a) of sub-section (2) of section 29.

29. (1) When a Certificate-officer has sold property of a debtor under sub-section (2) of section 22 or under section 28 he shall first pay from the proceeds of the sale any amount payable as costs of sale in execution of the certificate and next—

Distribution of
sale proceeds.

(a) any amount payable for arrears of rent under the award and as arrears of rent which may have fallen due between the date of determination of the debt under sub-section (2) of section 18 and the date of confirmation of the sale ;

(Section 29.)

- (b) any amount due to the Local Government included in a certificate issued under the Bengal Public Demands Recovery Act, 1913.

Ben. Act
III of
1913.

(2) After making the payments under sub-section (1), if any, the Certificate-officer shall proceed as follows :—

- (a) he shall, in the first instance, apply the surplus of the proceeds realised from the sale of any portion of the immovable property for which he has kept a separate account under the provisions of sub-section (5) of section 28 to the payment of any amounts payable under the award or under a decree of a Civil Court to creditors on account of debts which are secured by a mortgage, lien or charge upon such property in order of priority determined in accordance with the provisions of the Transfer of Property Act, 1882, and if such surplus is insufficient to meet such payments the balance of such amounts shall, unless the debt has been extinguished by such sale, rank equally with unsecured debts :

IV of
1882.

Provided that if there is any dispute or doubt as to the priority of payment of such debts the Certificate-officer shall refer the matter to the Appellate Officer who shall determine the same according to the provisions of the aforesaid Act ;

- (b) when there is a surplus after payment of the amounts referred to in clause (a), the Certificate-officer shall apply the sum of such surplus and of any proceeds realised from the sale of other property of the debtor to the payment of any other amounts payable under the award,

and if such sum is insufficient to meet such payment such other amounts and any amount payable on account of an unsecured debt for the recovery of which a decree has been passed by a Civil Court, and of which details are given in the award under clause (c) of sub-section (1) of section 25, shall rank equally between themselves for purposes of payment :

Provided that if any instalment has been paid under the award, for the year when an instalment fell due for the recovery of which application has been made under sub-section (1) of section 28, any instalment which fell due in that year, but which has not been paid, shall be given priority ;

- (c) any surplus remaining after payment of the creditors in accordance with the foregoing provisions of this section shall be paid by the Certificate-officer to the debtor.

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(Sections 30, 31.)

(3) The proceedings of a Certificate-officer under this section shall be in accordance with rules made under this Act.

Ben. Act
III of
1913.

(4) Notwithstanding anything contained in the Bengal Public Demands Recovery Act, 1913, if any amount payable under an award in respect of a debt secured by a mortgage, lien or charge on any immovable property of a debtor which is exempted from sale under the said Act cannot be recovered as a public demand, the Certificate-officer shall recover such amount by the sale of such immovable property and shall pay to the debtor the balance (if any) remaining after payment of such amount. The procedure under the Bengal Public Demands Recovery Act, 1913, shall be applicable to such sale.

(5) If the Certificate-officer fails to recover as a public demand or under the provisions of sub-section (4) any amount payable under the award, he shall certify that it is irrecoverable and thereupon the award shall cease to subsist and any amount that was payable under it shall be recoverable within three years from the date on which the award ceased to subsist as if a decree of the Civil Court had been passed for its payment on such date :

Provided that the Certificate-officer, instead of at once certifying any part of such amount to be irrecoverable may make a report to the Board which may pass an order declaring that the debtor is insolvent and thereupon the provisions of sub-section (5) of section 22 shall as far as possible apply to such insolvent.

VIII of
1885.

30. Notwithstanding anything in any other Act, when any land mentioned in the list referred to in clause (a) of sub-section (1) of section 25 is sold in execution of a decree, or of a certificate under the Bengal Public Demands Recovery Act, 1913, for arrears of rent, the balance of the sale proceeds which remains after the payment of the amounts referred to in clauses (a), (b) and (c) of sub-section (1) of section 169 of the Bengal Tenancy Act, 1885, or in clauses (a), (b) and (c) of sub-section (1) of section 26 of the Bengal Public Demands Recovery Act, 1913, shall be paid to the Certificate-officer, or retained by him as the case may be, for distribution in the manner provided in section 29 of this Act.

Distribution of balance of sale proceeds when land is sold in execution of a decree or certificate for arrears of rent.

II of 1912.

31. No settlement under this Act of the debts of a member of a co-operative society registered under the Co-operative Societies Act, 1912, who owes any amount to such society, shall be valid without the previous approval in writing of a prescribed authority.

Settlement of debts of a member of a co-operative society.

(Sections 32—35.)

Stay of proceedings before the Board.

32. If a debtor informs the Board at the earliest opportunity that the decree referred to in the proviso to sub-section (1) of section 18 was obtained *ex parte* and that he intends to apply to the Civil Court to set it aside the Board may stay further proceedings for such time as it may consider necessary to enable the debtor to set aside the decree.

Bar to suits and proceedings in Civil and Revenue Courts.

33. Except as provided in this Act, no Civil or Revenue Court shall entertain a suit, application or proceeding against the debtor in respect of—

- (a) any debt included in an application under section 8 or in a statement under sub-section (1) of section 13, proceedings in connection with which are pending before a Board ; or
- (b) any debt for which any amount is payable under an award, except in accordance with the provisions of sub-section (5) of section 29.

Stay and abatement of suits and proceedings.

34. When an application under section 8 or a statement under sub-section (1) of section 13 includes any debt in respect of which a suit or other proceeding is pending before a Civil or Revenue Court, the Board shall give notice thereof to such Court in the prescribed manner, and thereupon the suit or proceeding shall be stayed until the Board has either dismissed the application in respect of such debt or made an award thereon, and if the Board includes any part of such debt under clause (d) of sub-section (1) of section 25 in the award or the Board decides that the debt does not exist the suit or proceeding shall abate so far as it relates to such debt.

Bar to execution of certain decrees and certificates.

35. Notwithstanding anything contained in any Act, no decree of a Civil Court or certificate under the Bengal Public Demands Recovery Act, 1913, shall be executed—

Ben. Act
III of
1913.

- (i) for the recovery of a debt included in an application under section 8 or in a statement under sub-section (1) of section 13, until—
 - (a) the application has been dismissed by the Board in respect of such debt ; or
 - (b) an award in which such debt is included has ceased to subsist under sub-section (5) of section 29 ;

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(Sections 36—39.)

- (ii) except as provided in clause (a) of sub-section (1) of section 29, for the recovery of arrears of rent which became due from a debtor after the date of an application under section 8 in respect of his debts, unless notice of such decree or certificate has been given to the Board in the prescribed manner, and three months have elapsed since such notice was given ;
- (iii) for the recovery of a debt incurred by a debtor after the date of an application under section 8 in respect of his debts, until all the amounts payable under the award have been paid or such award has ceased to subsist under sub-section (5) of section 29.

36. Notwithstanding anything contained in any Act, any decree of a Civil Court passed in regard to a debt after the date of an application under section 8 shall be treated as a nullity in so far as—

Certain decrees to be treated as nullities.

- (a) it is inconsistent with any order passed by a Board under sub-section (2) of section 13 regarding any debt or with any determination by the Board under section 18 of the principal and the arrears of interest of any debt included in a subsisting award ; or
- (b) it relates to a debt the documents in respect of which being in the possession or under the control of the creditor have not been produced before the Board and marked by the Board as required by section 14 unless it is proved to the satisfaction of the Civil Court that there were sufficient reasons for non-production of the documents before the Board.

37. After receipt of an application under section 8 the Board may attach the immovable property of the debtor in the prescribed manner and thereupon such property shall be deemed to be under attachment under the provisions of the Code of Civil Procedure, 1908, until such attachment is withdrawn or cancelled by the Board.

Attachment of debtor's immovable property.

Act V of 1908.

38. No appeal or application for revision shall lie against any decision or order of or award by a Board except as provided in this Act.

Bar to appeal or revision.

39. (1) The Local Government may authorise the Collector, subject to rules made under this Act, to transfer from one Board to another, for disposal, applications made under section 8.

Transfer of applications from one Board to another.

(Section 40.)

(2) A Board to which an application is transferred under sub-section (1) may continue the proceedings in connection with the application from the stage which has been reached when the application is transferred.

Appeals.

40. (1) An appeal may be made in the prescribed manner to an Appellate Officer to be appointed by the Local Government against—

- (a) any decision or order of a Board under this Act or of a Certificate-officer under sub-section (2) of section 28 or section 29,
- (b) any award,
- (c) the grant of a certificate under section 21, or
- (d) any failure on the part of a Board to perform its functions under this Act or any abuse by a Board of its powers :

Provided that in the case of appeals against any order under sub-section (2) of section 13, section 18, clause (b) of sub-section (1) of section 19, section 21, section 22 or section 29, the Appellate Officer appointed under this section shall be a person who has had such judicial experience as may be prescribed by rules made under this Act.

(2) An appeal under sub-section (1) shall lie if made within thirty days of the date of the decision, order, award or certificate referred to in that sub-section.

(3) The Local Government may make rules regarding the procedure to be followed by the Appellate Officer, and for the control and inspection of his work.

(4) The Appellate Officer may after giving the appellant an opportunity of being heard reject an appeal summarily if he considers that there is no sufficient ground for interfering.

(5) If the Appellate Officer does not reject the appeal summarily, he shall hear the parties, if they appear, and consider any reasons which the Board may submit in regard to the grounds of such appeal, and may then either confirm or modify the decision or order of the Board or direct the Board to take such action as he thinks fit.

(6) The orders of the Appellate Officer shall be final.

(7) An appeal for the purpose of this section includes an application for revision.

(8) No appeal shall lie against a decision or order passed by a Board with the consent of the debtor and the creditor.

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(Sections 41—45.)

41. Whenever it appears to the Appellate Officer that for the ends of justice it is expedient to transfer from one Board to another an application made under section 8, he may order that the application be transferred to such Board as may be specified in the order and unless he otherwise directs, the provisions of sub-section (2) of section 39 shall be applicable to the proceedings in connection with such application.

Power of Appellate Officer to transfer application.

42. Subject to rules made under this Act, a Board may, if it thinks necessary, make a reference to the Appellate Officer stating the question upon which his opinion, advice or direction is required and the Appellate Officer shall give his opinion, advice or direction, as the case may be, thereon as soon as possible.

Reference to Appellate Officer.

43. (1) A Board shall, in all proceedings under this Act, be subject to the control of the Local Government.

Control over Board.

(2) Any person appointed by the Local Government in this behalf may inspect or cause to be inspected any property, books or documents in the possession or under the control of the Board and require the Board to furnish such statements, accounts, reports, copies of documents or such other information relating to the proceedings and duties of the Board, as he thinks fit to call for.

44. Subject to any rules made under this Act—

Power of Board to review its order.

(a) a Board may, on an application made by any person interested, review any decision or order passed by it and pass such order in reference thereto as it thinks fit,

(b) an Appellate Officer may, on an application made by any person interested, review any decision or order passed by him or his predecessor and pass such order in reference thereto as he thinks fit :

Provided that no order shall be varied or reversed unless an opportunity has been given to the persons interested to appear and be heard in support of such order.

45. (1) Except as otherwise provided in this Act, the provisions of—

Certain Acts not to apply to the proceedings under this Act.

I of 1872.
Act V of
1908.

(a) the Indian Evidence Act, 1872, and
(b) the Code of Civil Procedure, 1908,
shall not apply to any proceedings before a Board.

(*Sections 46—52.*)

(2) The procedure to be followed by a Board in any proceedings before it shall, subject to the provisions of this Act, be in accordance with rules prescribed under this Act.

Representation of a party before a Board.

46. Subject to any rules made under this Act, no legal practitioner as defined in the Legal Practitioners Act, 1879, shall represent any party in any proceedings before a Board, nor shall any other agent, without the permission of the Board, represent any party in any such proceedings. XVIII of 1879.

Registration of awards and certificates.

47. (1) Every award and every certificate granted under section 21 or sub-section (5) of section 22, shall be registered under the Indian Registration Act, 1908, by the Chairman of the Board in such manner and within such period as may be prescribed. XVI 1908.

(2) For the purpose of the registration under sub-section (1) of an award or a certificate the Chairman shall be deemed to be an officer of Government empowered to execute such instrument within the meaning of section 88 of the Indian Registration Act, 1908.

Publication of orders and awards.

48. A copy of any order made by a Board under sub-section (2) of section 13, and a copy of any award shall be published in such manner as may be prescribed by the Local Government.

Chairman and members of Boards deemed to be public servants.

49. The Chairman and the other members of a Board shall be deemed to be public servants within the meaning of the Indian Penal Code. Act XLV of 1860.

Proceedings deemed to be judicial proceedings.

50. All proceedings under this Act shall be deemed to be judicial proceedings within the meaning of section 228 of the Indian Penal Code.

Indemnity.

51. No suit, prosecution or legal proceeding whatever shall lie against any Chairman or other member of a Board, Appellate Officer or Certificate-officer in respect of anything in good faith done or intended to be done under this Act.

Extension of period of limitation.

52. Notwithstanding anything contained in any other Act, when the period of limitation is calculated for any application, suit or appeal regarding a debt which has been the subject of any proceedings under this Act, the time during which such proceedings continued and the time during which the person interested in such debt was debarred by any provision of this Act from making or instituting the application, suit or appeal, or executing the decree in question, as the case may be, shall be excluded.

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(Sections 53—55.)

Negotiability of
awarded
amounts.

53. The right to receive any amount payable under an award shall be assignable in the prescribed manner.

Penalties.

54. (1) Whoever—

- (a) intentionally makes any false statement in writing or makes any false statement which has been recorded whether on oath or not before any Board or an Appellate Officer, in any proceeding under this Act ;
- (b) intentionally produces before a Board any false copy or translation of a document ;
- (c) falsely personates another and in such assumed character produces any document or makes any admission or statement or does any other act in any proceeding under this Act ; or
- (d) abets any act punishable under this section ;

shall, on conviction, be liable to imprisonment for a term which may extend to three years or to fine or to both.

(2) No prosecution for any offence under this section may be commenced except by, or with the permission of, the Collector.

Power to make
rules.

55. (1) The Local Government may make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power the Local Government may make rules to provide for all or any of the following matters, namely :—

- (a) the maximum amount of debt which can be dealt with under the provisions of this Act ;
- (b) the fees to be paid for anything done under this Act and the persons by whom and the manner in which such fees shall be paid ;
- (c) the allowances, if any, to be paid to the Appellate Officer, the Chairman and other members of a Board ;
- (d) the office establishment of a Board, the pay, allowances and conditions of service of such establishment ;
- (e) the procedure of a Board, and the quorum for a meeting of a Board ;

(Section 55.)

- (f) the forms of application under section 8, of statements of debt under section 11, of awards, of certificates under section 21, of requisitions under sub-section (2) of section 22, and of certificates of discharge under sub-section (5) of section 22 ;
- (g) the transfer of applications under sub-section (3) of section 8 or sub-section (1) of section 39 and disposal of applications under sub-section (3) of section 8 ;
- (h) the manner of signing and verification of applications under section 8 ;
- (i) the manner of giving notice under sub-section (2) of section 12, sub-section (1) of section 13 and sub-section (2) of section 25 ;
- (j) the marking of original documents produced under sub-section (2) of section 14 ;
- (k) the amicable settlement by a Board of debts under section 15 ;
- (l) the summoning and examination by a Board of parties and their witnesses, and the production of documents, under sub-section (1) of section 16 ;
- (m) the determination by a Board under sub-section (2) of section 18 of the amount of the principal of a debt and the amount of interest due thereon ;
- (n) the settlement of debts by a Board under section 19 ;
- (o) the grant of a certificate under section 21 ;
- (p) the declaration by a Board under sub-section (1) of section 22 that a debtor is insolvent, the sale of his property and the reduction of his debts ;
- (q) the determination of a portion of the immovable property of a debtor as his dwelling house under sub-section (1) of section 24 ;
- (r) the movable property of an insolvent debtor which shall be exempt under sub-section (3) of section 24 from sale ;
- (s) the order of payment of the amount referred to in clause (d) of sub-section (1) of section 25 ;
- (t) the period within which an application under sub-section (3) of section 13 and sub-section (1) of section 28 shall be made ;
- (u) the grant of time under sub-section (2) of section 28 for payment of the amount due ;
- (v) the distribution of sale proceeds and the proceedings of a Certificate-officer under section 29 ;
- (w) the authorities whose approval is required under section 31 ;

of 1936.]

(Section 56.)

- (x) the manner of giving notice under section 34 and under section 35 ;
 - (y) the manner of attachment of immovable property under section 37 ;
 - (z) the transfer and disposal of applications under section 39 ;
 - (za) the manner of making an appeal under sub-section (1) of section 40 ;
 - (zb) the judicial experience required in the case of certain Appellate Officer under proviso to sub-section (1) of section 40 ;
 - (zc) the procedure of an Appellate Officer and the control and inspection of his work under sub-section (3) of section 40 ;
 - (zd) the manner of review under section 44 of a decision or order passed by a Board or an Appellate Officer ;
 - (ze) the representation of a party in proceedings before a Board ;
 - (zf) the manner in which and the period within which awards and certificates shall be registered under sub-section (1) of section 47 ;
 - (zg) the publication under section 48 of awards and of certain orders ; and
 - (zh) the manner of assignment of an award under section 53.
- (3) The power of making rules conferred by clause (b) of sub-section (2) is subject to the condition that the rules be made after previous publication.

56. In making any rule under this Act the Local Government may direct that a breach thereof shall be punishable with fine which may extend to fifty rupees and, where the breach is a continuing one, with further fine which may extend to ten rupees for every day after the first during which the breach continues.

Penalty for
breach of rules.

Provisions of section 13 of the Bengal Agricultural Debtors Act.

A letter which appeared in the "Amrita Bazar Patrika" of 6th April 1938 from a lawyer of Satkhira (Khulna district) complains that the provisions of section 13 of the Bengal Agricultural Debtors Act are unfairly favourable to debtors and prejudicial to the interests of creditors; it is argued that if a creditor fails to comply with a notice under sub-section (1) of section 13 to produce his statement of claims, the amount due to him shall be deemed to be the amount stated in the debtor's application, whereas on the other hand if the creditor is the applicant and the debtor fails to comply with such a notice, it is merely provided that the creditor's application shall be dismissed, whereupon (it is stated in the letter) the creditor is left to sue the debtor in the civil court, only to be stopped almost immediately by the issue of a notice under section 34.

2. It seems that there is still a great deal of misunderstanding over this point; it is true that if the debtor fails to comply with a notice under sub-section (1) of section 13 the creditor's application shall be dismissed under sub-section (3) of that section, and that the creditor will have to resort to the civil court, but a suit filed by the creditor under these circumstances cannot be stayed by a notice under section 34. Sub-section (5) of section 8 provides as follows:—

"A Board may for good and sufficient reason entertain a further application in respect of any debt incurred before the date of the first application under sub-section (1) or sub-section (2) (of section 8) whether such application was made to it or to any other Board, except when such application under either of the said sub-sections has been dismissed under sub-section (3) of section 13."

Put briefly this means that a debtor who has failed to comply with a notice under sub-section (1) of section 13 with the result that the creditor's application has been dismissed under sub-section (3) can never again make any further application to any Debt Settlement Board, and consequently that no notice under section 34 can ever be issued on behalf of such a debtor to stay a civil suit started against him by the creditor. It is considered that this provision imposes sufficient penalty upon debtors who refuse to comply with notices issued under sub-section (1) of section 13; and Government hope that this cause of misapprehension concerning the Act will now be removed. (Press Note.)