

BENGAL REGULATION 8 OF 1819

(THE BENGAL PATNI TALUKS REGULATION, 1819)

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BENGAL REGULATION 8 OF 1819

(THE BENGAL PATNI TALUKS REGULATION, 1819)¹

[3rd September 1819]

A Regulation to declare the validity of certain tenures, and to define the relative rights of zamindars and patni talukdars; also to establish a process for the sale of such taluks in satisfaction of the zamindar's demand of rent* *².

1. By the rules of the perpetual settlement,³ proprietors of estates paying revenue to Government, that is, the individuals answerable to Government for the revenue then assessed on the different mahals were declared to be entitled to make any arrangements for the leasing of their lands in taluk or otherwise that they might deem most conducive to their interests. Preamble

By the rules of Regulation 44, 1793,⁴ however, all such arrangements were subjected to two limitations; first, that the jama or rent should not be fixed for a period exceeding ten years; and, secondly, that in case of a sale for Government arrears, such leases or arrangements should stand cancelled from the day of sale.

The provisions of section 2, Regulation 44, 1793,⁴ by which the period of all fixed engagements for rent was limited to ten years, have been rescinded by section 2, Regulation 5, 1812⁵; and in Regulation 18⁶ of the same year, it is more distinctly declared that zamindars are at liberty to grant taluks or other leases of their lands fixing the rent in perpetuity at their discretion, subject, however, to the liability of being dissolved on sale of the grantor's estate for arrears of the Government revenue in the same manner as heretofore.

¹ SHORT TITLE.—This short title was given by the Amending Act, 1897 (V of 1897), since repealed.

LOCAL EXTENT.—This Regulation is in force in the district of Sylhet—see the Assam Land Revenue Manual, 1931, Introduction.

² Words repealed by the Amending Act, 1891 (XII of 1891), are omitted.

³ See the Bengal Permanent Settlement Regulation, 1793 (I of 1793), *ante* p. 3.....

⁴ Ben. Reg. XLIV of 1793 was repealed by Act XXIX of 1871.

⁵ The Bengal Land Revenue Sales Regulation, 1812. It has been repealed in Assam by the Assam Land and Revenue Regulation, 1886 (I of 1886), s. 2. *post.*

The Bengal Leases and Land Revenue Regulation, 1812. It has been repealed in Assam by the Assam Land and Revenue Regulation, 1886 (I of 1886).

In practice, the grant of taluks and other leases at a rent fixed in perpetuity had been common with the zamindars of Bengal for sometime before the passing of the two Regulations last mentioned, but, notwithstanding the abrogation of the rule which declared such arrangements null and void, and the abandonment of all intention or desire to have it enforced as a security to the Government revenue in the manner originally contemplated, it was omitted to declare to the rules of Regulations 5¹ and 18¹ of 1812, or in any other Regulations, whether tenures at the time in existence and held, under covenants or engagements entered into by the parties in violation of the rule of section 2, Regulation 44, 1793² should, if called in question, be deemed invalid and void as heretofore.

This point it has been deemed necessary to set at rest by a general declaration of the validity of any tenures that may be now in existence, notwithstanding that they may have been granted at a rent fixed in perpetuity, or for a longer term than ten years while the rule fixing this limitation to the term of all such engagements, and declaring null and void any granted in contravention thereto, was in force.

Furthermore, in the exercise of the privilege thus conceded to zamindars under direct engagements with Government, there has been created a tenure which had its origin on the estates of the Raja of Burdwan, but has since been extended to other zamindars ; the character of which tenure is that it is a taluk created by the zamindar, to be held at a rent fixed in perpetuity by the lessee and his heirs for ever ; the tenant is called upon to furnish collateral security for the rent, and for his conduct generally, or he is excused from this obligation at the zamindars' discretion ; but even if the original tenant be excused, still, in case of sale for arrears, or other operation leading to the introduction of another tenant, such new incumbent has always in practice been liable to be so called upon at the option of the zamindar.

By the terms also of the engagements interchanged, it is amongst other stipulations provided that, in case of an arrear occurring, the tenure may be brought to sale by the zamindar, and, if the sale do not yield a sufficient amount to make good the balance of rent at the time due, the remaining property of the defaulter shall be further answerable for the demand.

These tenures have usually been denominated patni taluks, and it has been a common practice of the holders of them to underlet on precisely similar terms to other persons, who on taking such leases went by the name of darpatani talukdars ; these again sometimes similarly underlet to sepatnidars ; and the constitutions of all the title-deeds vary in nothing material from the original engagements executed by the first holder.

¹ See foot-notes 5 & on prepage.

² Ben. Reg. XLIV of 1793 was repealed by Act XXIX of 1871.

In these engagements, however, it is not stipulated whether the sale thus reserved to himself by the grantor is for his own benefit, or for that of the tenant ; that is, whether, in case the proceeds of sale should exceed the zamindar's demand of rent, the tenant would be entitled to such excess ; neither is the manner of sale specified, nor do the usages of the country nor the Regulations of Government afford any distinct rules by the application of which to the specific cases the defects above alluded to could be supplied or the points of doubt and difficulty involved in the omission be brought to determination in a consistent and uniform manner.

The tenures in question have extended through several zilas of Bengal, and the mischiefs which have arisen from the want of a consistent rule of action for the guidance of the Courts of Civil Judicature in regard to them have been productive of such confusion as to demand the interference of the legislature ; it has accordingly been deemed necessary to regulate and define the nature of the property given and acquired on the creation of a patni taluk as above described, also to declare the legality of the practice of underletting in the manner in which it has been exercised by patnidars and others, establishing at the same time such provisions as have appeared calculated to protect the underlessee from any collusion of his immediate superior with the zamindar or other, for his ruin, as well as to secure the just rights of the zamindar on the sale of any tenure under the stipulations of the original engagements entered into with him.

It has further been deemed indispensable to fix the process by which the said tenures are to be brought to sale, and the form and manner of conducting such sale : and

Whereas the estates of zamindars under engagements with Government are liable to be brought to sale at any time for an arrear in the revenue payable by monthly *kists* to Government, it has seemed just to allow any zamindar who may have granted tenures with a stipulation of the right to sell for arrears the opportunity of availing himself of this means of realizing his dues in the middle of the year, as well as at the close, instead of only at the end of the Bengal year ¹ as heretofore allowed by the Regulations in force ; it has further been deemed equitable to extend this rule to all cases in which the right of sale may have been reserved, even though, in conformity with the Regulations heretofore in force, the stipulation for sale contained in the engagements interchanged may have restricted such sale to the case of a demand of rent remaining unpaid at the close of the Bengal year. ¹

* * * * *

¹ i. e., the month of Chaitra, which corresponds with the last part of March and the first part of April.

² The words "It has been likewise deemed advisable to explain and modify some of the existing rules for the collection of rents, with a view to render them more efficacious than at present, as well as to provide against sundry means of evasion now resorted to by defaulters," which were repealed by the Amending Act, 1891 (XII of 1891), are omitted.

The following rules have accordingly been enacted by His Excellency the Most Noble the Governor-General in Council, to take effect from the date of their promulgation throughout the several districts of the Province of Bengal, including Midnapur.

Leases fixing rent in perpetuity or for more than ten years, valid, though executed while section 2, Regulation 44, 1793, was in force.

2. It is hereby declared that any leases or engagements for the fixing of rent now in existence that may have been granted or concluded for a term of years or in perpetuity by a proprietor under engagement with [the Government]¹ or other person competent to grant the same, shall be deemed good and valid tenures, according to the terms of the covenants or engagements interchanged notwithstanding that the same may have been executed before the passing of Regulation 5, 1812,² and while the rule of section 2, Regulation 44, 1793,³ which limited the period for which it was lawful to grant such engagements to ten years, and declared all that might be entered into for a longer term to be null and void, was in full force and effect; and notwithstanding that the stipulations of the said leases may be in violation of the rule in question:

Provided, however, that nothing herein contained shall be held to exempt any tenures held under engagements from proprietors of estates paying revenue to [the Government]¹ from the liability to be cancelled on sale of the said estates for arrears of the said revenue * * * * unless especially exempted from such liability by the rule in question, or by any other specific rule of the Regulations in force.

Patni tenures declared valid, transferable and answerable for debt.

3. *First.*—The tenures known by the name of patni taluks, as described in the preamble to this Regulation, shall be deemed to be valid tenures in perpetuity, according to the terms of the engagements under which they are held. They are heritable by their conditions; and it is hereby further declared that they are capable of being transferred by sale, gift or otherwise, at the discretion of the holder, as well as answerable for his personal debts and subject to the process of the Courts of Judicature, in the same manner as other real property.

Patnidars' right of under-letting.

Second.—Patni talukdars are hereby declared to possess the right of letting out the lands composing their taluks in any manner they may deem most conducive to their interest; and any engagements so entered into by such talukdars with others shall be legal and binding between the parties to the same, their heirs and assignees. Provided, however, that no such engagements shall operate to the prejudice of the right of the zamindar to hold the

¹ Substituted for "Crown" by the A. O. 1950 which was substituted for "Government" by the A. O. 1937.

² The Bengal Land-revenue Sales Regulation, 1812. It is repealed in Assam, see Reg. I of 1886, s. 2 *post*.

³ Ben. Reg. XLIV of 1793 was repealed by Act XXIX of 1871.

⁴ The words and figures "under the rule of section 5, Regulation XLIV of 1793," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

superior tenure answerable for any arrear of his rent, in the estate in which he granted it, and free of all incumbrance resulting from the act of his tenant.

Third.—In case of an arrear occurring upon any tenure of the description alluded to in the first clause of this section, it shall not be liable to be cancelled for the same; *³ but the tenure shall be brought to sale by public auction, and the holder of the tenure will be entitled to any excess in the proceeds of such sale beyond the amount of the arrear of rent due, subject, however, to the provisions contained in section 17 of the Regulation.

Patni tenure not voidable for arrears.

4. If the holder of a patni taluk shall have underlet in such manner as to have conveyed a similar interest to that enjoyed by himself, as explained in the preamble to this Regulation, the holder of such a tenure shall be deemed to have acquired all the rights and immunities declared in the preceding section to attach to patni taluks, in so far as concerns the grantor of such under-tenure.

Inferior tenures under similar title deeds confer similar interest to that provided for patni taluks in section 3.

The same construction shall also hold in the case of patni taluks of the third or fourth decree.

5. The right of alienation having been declared to vest in the holder of a patni taluk, it shall not be competent to the zamindar or other superior to refuse to register, and otherwise to give effect to such alienations, by discharging the party transferring his interest from personal responsibility, and by accepting the engagements of the transferee.

Zamindar not to refuse to give effect to transfer.

In conformity, however, with established usage, the zamindar or other superior shall be entitled to exact a fee upon every such alienation; and the rate of the said fee is hereby fixed at two *per cent.* on the jama or annual rent of the interest transferred, until the same shall amount to one hundred rupees, which sum shall be the maximum of any fee to be exacted on this account.

but may demand fee

The zamindars shall also be entitled to demand substantial security from the transferee or purchaser, to the amount of half the jama or yearly rent payable to him from the tenure transferred; the condition of furnishing such security on requisition being understood to be one of the original liabilities of the tenure.

and security.

The above rules shall apply equally to the case of a sale made in execution of a decree or judgment of Court, as to all other alienations, but it shall not apply to the case of sale for an arrear in the rent due to the zamindar or other superior, under the rules hereinafter contained.

The purchaser at such a sale shall be entitled to have his name registered and to obtain possession without fee, though of course liable to be called on to give security under the conditions of the tenure purchased.²

¹ The words and figures "under the rule contained in the seventh clause of section 15, Regulation VII, 1799, for leases conveying a limited interest in the land," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

² Section 5 does not apply to transfers of any fractional portion of a patni taluk, or to any alienation other than that of the entire interest, see the concluding paragraph of s. 6, *post*.

Zamindar may refuse sanction to transfer till fee and security tendered.

6. It shall be competent to the zamindar or other superior to refuse the registry of any transfer until the fee above stipulated be paid, and until substantial security to the amount specified be tendered and accepted:

Provided, however, that if the security tendered by any purchaser or transferee should not be approved by the zamindar, and the party tendering it shall be dissatisfied with such rejection, he shall be competent to appeal therefrom by petition or common motion in the Civil Court of the district, which authority, if satisfied of the sufficiency of the security tendered, shall issue an injunction on the zamindar to accept it and give effect to the transfer without delay.

It is hereby provided that the rules of this and of the preceding section shall not be held to apply to transfers of any fractional portion of a patni taluk, nor to any alienation other than of the entire interest; for no apportionment of the zamindar's reserved rent can be allowed to stand good unless made under his special sanction.

Upon public sale, if security not tendered within one month, zamindar may attach.

7. In case of the sale of a patni tenure in execution of a judgement of Court, if the purchaser do not, within the period of one month from the sale, conform to the rules of section 5 of this Regulation, in order to obtain the transfer of his tenure by the superior to whom the rent fixed upon it is payable, the zamindar or other superior shall be entitled, of his own authority, to send a sazawal to attach and hold possession of the tenure until the forms prescribed be observed.

In case also of the sale of a patni tenure for arrears of the rent due upon it, under the rules of this Regulation, if security be required by the zamindar and the purchaser fail to furnish the same within one month of the date of sale, the zamindar shall similarly be entitled to send a sazawal to attach and hold possession of the interest which may have passed on the sale, to the exclusion of the purchaser, until the prescribed security be given.

Attachments to have effect of trust.

Attachments made under this section shall be regarded as trusts for the benefit and at the risk of the purchasers: consequently, after deducting the rent due and the expense of attaching, any surplus that may be yielded by the collections shall be held in deposit for such purchaser: but, if the collections for the time fall short of the rent, the tenure and person of the proprietor shall be liable in the same manner as if no attachment had been made, and the accounts produced by the zamindar or other superior making the attachment shall be received as *prima facie* evidence to warrant process for an arrear so accruing.

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18. *First.*—Zamindars, that is, proprietors under direct engagements with the Government ² shall be entitled to apply in the manner following for periodical sales of any tenures upon which the right of selling or bringing to sale for an arrear of rent may have been specially reserved by stipulation in the engagements interchanged on the creation of the tenure. Zamindars allowed sales of tenures in which right to sell for arrears is reserved.

The exercise of this power shall not be confined to cases in which the stipulation for sale may have been unrestricted in regard to time, but shall apply equally to tenures held under engagements stipulating merely for a sale at the end of the year, in conformity with the practice heretofore allowed by the Regulations in force.

Second.—On the first day of Baisakh, ³ that is, at the commencement of the following year from that of which the rent is due, the zamindar shall present a petition * * *⁴ to the Collector ⁵ containing a specification of any balances that may be due to him on account of the expired year, from all or any talukdars or other holders of an interest of the nature described in the preceding clause of this section. First sale to be applied for on first of Baisakh.

The same shall then be stuck up in some conspicuous part of the cutcherry with a notice that, if the amount claimed be not paid before the first of Jeth ⁶ following, the tenures of the defaulters will on that day be sold by public sale in liquidation.

Should, however, the first of Jeth ⁶ fall on a Sunday or holiday, the next subsequent day, not a holiday, shall be selected instead; a similar notice shall be stuck up at the sadar cutcherry of the zamindar himself, and a copy or extract of such part of the notice as may apply to the individual case shall be by him sent to be similarly published at the cutcherry or at the principal town or village upon the land of the defaulter.

The zamindar shall be exclusively answerable for the observance of the forms above prescribed, and the notice required to be sent into the mufassal shall be served by a single peon, who shall bring back the receipt of the defaulter, or of his manager,

¹ As to the officer who should conduct sales of tenures of the nature of those described in clause first of section 8 of Bengal Regulation VIII of 1819, see the Bengal Patni Taluks Regulation 1820 (1 of 1820), s. 2, *post*, and the Bengal Rent Recovery (Under-tenures) Act, 1865 (Ben. Act. VIII of 1865), s.3, *post*.

² Substituted for "Crown" by the A.O. 1950 which was substituted by the A. O. 1937, for "Government".

³ The month of Baisakh corresponds with the last part of April and the first part of May.

⁴ The words "to the Civil Court of the District, and a similar one," which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁵ In Assam, the Deputy Commissioner. As to exercise of functions of Deputy Commissioners, see the Assam Land and Revenue Regulation, 1886 (I of 1886), Chap. VII, *post*.

⁶ The month of Jeth corresponds with the last 1st part of May and the first part of June.

for the same, or, in the event of inability to procure this, the signatures of three substantial persons residing in the neighbourhood, in the attestation of the notice having been brought and published on the spot.

If it shall appear from the tenor of the receipt or attestation in question that the notice has been published at any time previous to the fifteenth of the month of Baisakh,¹ it shall be sufficient warrant for the sale to proceed upon the day appointed.

In case the people of the village should object or refuse to sign their names in attestation, the peon shall go to the cutcherry of the nearest munsif or if there should be no munsif, to the nearest thana, and there make voluntary oath of the same having been duly published; certificate to which effect shall be signed and sealed by the said officers and delivered to the peon.

Mid-year sale to be applied for on first of Kartik.

Third.—On the first day of Kartik,² in the middle of the year, the zamindar shall be at liberty to present a similar petition with a statement of any balances that may be due on account of the rent of the current year, up to the end of the month of Assin³ and to cause similar publication to be made of a sale of the tenures of defaulters, to take place on the first of Aghan, unless the whole of the advertised balance shall be paid before the date in question, or so much of it as shall reduce the arrear including any intermediate demand for the month of Kartik,² to less than one-fourth of a four-anna proportion of the total demand of the zamindar, according to the kistabandi, calculated from the commencement of the year to the last day of Kartik².

Sales how conducted.

⁵9. All sales of saleable tenures applied for under the rule of this Regulation shall be made in public cutcherry * * * the land shall be sold to the highest bidder, and every one, not being an actual defaulter, shall be free to bid, not excepting the person in satisfaction of whose demand the sale may be made, nor the under-tenants of the defaulter; fifteen *per cent.* of the purchase money shall be paid immediately the lot is knocked down, and the officer conducting the sale shall be competent to refuse to accept a bid, or to knock down a lot to any bidder, unless he has assurance to his satisfaction that the amount required to be deposited is in hand for the purpose, or will be produced within two hours.

¹ The month of Baisakh corresponds with the last part of April and the first part of May.

² The month of Kartik correspond with the last part of October and the first Part of November.

³ The month of Assin corresponds with the last part of September and the first part of October.

⁴ The month of Aghan corresponds with the last part of November and the first part of December.

⁵As to the extension of the application of s. 9 see the Bengal Patni Taluk Regulation, 1820 (I of 1820), s. 2(3) *post*,

⁶ The words "by the Registrar or acting Registrar of the Civil Court, or in his absence, by the person in charge of the office of Judge or of Magistrate of the district within which the lands may be situated, which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

If the fifteen per cent. be not paid in cash, or in ¹[currency notes], within two hours of the sale, or an equivalent amount in Government securities be not lodged, the lot shall be re-sold on the same day, and, if the remainder of the purchase-money be not paid by noon of the eighth day, notice shall be given of re-sale on the following day, that is, on the ninth from the first sale, by proclaiming the same by beat of drum through the bazar of the sadar station of the zila, after which the lot shall be re-sold at the appointed time at the risk of the first purchaser, who shall forfeit the advance of fifteen *per cent.* already made, * * 2 and be further answerable for any sum in which the proceeds of the second sale may fall short of the antecedent one; such deficiency to be levied by the process for the execution of decrees of the Civil Courts.

10. At the time of the sale the notice previously stuck up in the catcherry shall be taken down, and the lots be called up successively in the order in which they may be found in that notice. Forms to be observed in selling.

A person shall attend on the part of the zamindar, with a particular statement of the payments made up to the day of sale, on account of the balance of each advertised lot, together with the receipt for, or certificate of, the notice directed to be published in the mufassal, nor shall any lot be put up to sale until the statement produced shall have been inspected, and the existence of a balance for the year ascertained therefrom, nor until the receipt for the notice shall have been read; the observance of which forms shall be recorded in a separate rubakari to be held upon each lot sold.

If the sale be of the description provided for in the third clause of section 8 of this Regulation, the kistbandi of the defaulter shall likewise be produced, in order that it may be seen that the balance remaining unpaid exceeds a four-anna proportion of the demand up to the date of sale; nor shall the sale take place unless this be ascertained.

The zamindar shall be exclusively responsible for the correctness and authenticity of the papers to be thus exhibited, nor shall the public officer making the sale be answerable in any respect except for its fairness and publicity, and for the observance of the rules prescribed for his guidance in this Regulation.

¹ The words "currency notes" in s. 9 were substituted for the words "notes of the Bank of Bengal" by the Amending Act, 1903 (I of 1903), since repealed.

² The words "(which shall be in such case regarded as part of the proceeds of the sale)," in s. 9, which were repealed by the Forfeited Deposits Act, 1850 (XXV of 1850), are omitted. As to the application of forfeited deposits, see s. 2 of that Act, *post*.

Tenure to be sold free of incumbrance by act of defaulter.

111. *First.*—It is hereby declared that any taluk or saleable tenure that may be disposed of at a public sale, under the rules of this Regulation, for arrears of rent due on account of it, is sold free of all incumbrances that may have accrued upon it by act of the defaulting proprietor, his representatives or assignees, unless the right of making such incumbrances shall have been expressly written vested in the holder by a stipulation to that effect in the engagements under which the said taluk may have been held.

No transfer by sale, gift or otherwise, no mortgage of other limited assignment, shall be permitted to bar the indefeasible right of the zamindar to hold the tenure of his creation answerable, in the state in which he created it for the rent, which is in fact his reserved property in the tenure, except the transfer or assignment should have been made with a condition to that effect under express authority obtained from such zamindar.

No under-lease to stand after sale.

Second.—In like manner, on sale of a taluk for arrears all lease originating with the holder of the former tenure, if creative of a middle interest between the resident cultivators and the late proprietor, must be considered to be cancelled, except the authority to grant them should have been specially transferred; the possessors of such interest must consequently lose the right to hold possession of the land and to collect the rents of the raiyats this having been enjoyed merely in consequence of the defaulter's assignment of a certain portion of his own interest, the whole of which was liable for the rent.

Exception in favour of bona fide engagements with raiyats.

Third.—Provided, nevertheless, that nothing herein contained shall be construed to entitle the purchaser of a taluk or other saleable tenure intermediate between the zamindar and actual cultivators to eject a khudast raiyat or resident and hereditary cultivator, nor to cancel *bona fide* engagements made with such tenants by the late incumbent or his representative, except it be proved in regular suit, to be brought by such purchaser, for the adjustment of his rent, that a higher rate would have been demandable at the time such engagements were contracted by his predecessor.

Above rule to take effect retrospectively.

12. The rules of the preceding section, being declaratory of the principle to be observed on all occasions wherein saleable tenures are made responsible for the zamindar's reserved rent will equally apply to the case of taluks, heretofore sold, as to those that may be sold henceforward, if the sale shall have been fair, and the process observed in conducting it shall have been that recognised and in use in the district at the time of selling.

Proviso.

Nothing, however, herein contained shall operate to the prejudice of any agreement, express or implied, now subsisting between the purchaser of a taluk and the lessees of his predecessor.

1 As to the extension of the application of s. 11 See the Bengal Patni Taluks Regulations, 1820 (I of 1820), s. 2 (3), *post*,

Neither shall the rule for the fall of under-tenures be considered to apply to any private transfer by a talukdar of his own interest, nor to a public sale in execution of a decree, nor to the case of a relinquishment by the talukdar in favour of the zamindar, nor to any act originating with the former holder, other than default as aforesaid: all such operations involve only a transfer of the tenure in the state in which it may be held at the time, and the new incumbent succeeds to no more than the reserved rights of the former tenant, such as they may be, and is of course subject to any restriction put upon the tenure by his act.

Rule not to apply to private transfer.

13. *First.*—With reference to the injury that may be brought upon the holder of a taluk of the second degree by the operation of the preceding rules, in case the proprietor or the superior tenure purposely withholds the rent due from himself to the zamindar after having realized his own dues from the inferior tenantry, it is deemed necessary to allow such talukdars the means of saving their tenures from the ruin that must attend such a sale; and the following rules have accordingly been enacted for this purpose.

Reason for allowing under-tenant means of staying sale. How under-tenant may stay sale.

Second.—Whenever the tenure of a talukdar of the first degree may be advertised for sale in the manner required by the second and third clauses of section 8 of this Regulation, for arrears of rent due to the zamindar, the talukdars of the second degree, of any number of them, shall be entitled to stay the final sale, by paying into court the amount of balance that may be declared due by the person attending on the part of the zamindar on the day appointed for sale; in like manner they shall be entitled to lodge money antecedently, for the purpose of eventually answering any demand that may remain due on the day fixed for the sale, and, should the amount lodged be sufficient, the sale shall not proceed, but, after making good to the zamindar the amount of his demand, any excess shall be paid back to the person or persons who may have lodged it.

Third.—If the amount so lodged shall be rent due by the inferior talukdar, the holder of the advertised tenure, the same shall be stated at the time of making the deposit, and the amount shall be carried to the account of the tenant or tenants lodging it, and be deducted from any claim of rent that may at the time be pending, or be thereafter brought forward against him or then by the proprietor of the advertised tenure on account of the year or months for which the notice of sale may have been published.

Procedure in case of amount lodged being rent due from under-tenant.

As to the extension of the application of s. 13, see—

the Bengal Patni Taluks Regulation, 1820 (I of 1820), s. 2 (3), *Post* and—

the Bengal Rent Recovery (Under-Tenures) Act, 1865 (Ben. Act VII of 1865) *Post*.

and in case
of amount
lodged being
advanced
from private
funds.

Fourth.—If the person or persons making such a deposit, in order to stay the sale of the superior tenure, shall have already paid the whole of the rent due from himself or themselves, so that the amount lodged is an advance from private funds, and not a disbursement on account of the said rent, such deposit shall not be carried to credit in, or set against future demands for rent, but shall be considered as a loan made to the proprietor of the tenure preserved from sale by such means, and the taluk so preserved shall be the security to the person or persons making the advance, who shall be considered to have lien thereupon, in the same manner as if the loan had been made upon mortgage; and he or they shall be entitled, on applying for the same, to obtain immediate possession of the tenure of the defaulter, in order to recover the amount so advanced from any profits belonging thereto.

If the defaulter shall desire to recover his tenure from the hands of the person or persons who, by making the advance, may have acquired such an interest therein, and entered on possession in consequence, he shall not be entitled to do so, except upon re-payment of the entire sum advanced, with interest at the rate of twelve *per cent.* per annum up to the date of possession having been given as above, or upon exhibiting proof, in a regular suit to be instituted for the purpose, that the full amount so advanced, with interest, has been realised from the usufruct of the tenure.

Sale not to
be stayed
unless arrear
claimed be
lodged.

14. *First.*—Should the balance claimed by a zamindar on account of the rent of any under-tenure remain unpaid upon the day fixed for the sale of the tenure, the sale shall be made without reserve, in the manner provided for in sections 9 and 10 of this Regulation; nor shall it be stayed or postponed on any account, unless the amount of the demand be lodged.

But suit to
lie for its
Reversal.

It shall however be competent to any party desirous of contesting the right of the zamindar to make the sale, whether on the ground of there having been no balance due, or on any other ground, to sue the zamindar for the reversal of the same, and, upon establishing a sufficient plea, to obtain a decree with full costs and damages.

The purchaser shall be made a party in such suits, and upon decree passing for reversal of the sale, the Court shall be careful to indemnify him against all loss, at the charge of the zamindar or person at whose suit the sale may have been made.

Defaulter
may apply
for summary
investigation.
Sale not to
be stayed
unless
amount
claimed be
deposited.

Second.—In cases also in which a talukdar may contest the zamindar's demand of any arrear, as specified in the notice advertised, such talukdar shall be competent to apply for a summary investigation at any time within the period of notice; the zamindar shall then be called upon to furnish his kabuliyat and other proofs at the shortest convenient notice, in order that the award may, if possible, be made before the day appointed for sale.

Such award, if so made, will of course regulate the ulterior process; but, if the case be still pending the lot shall be called up in its turn, notwithstanding the suit; and if the zamindar or his agent in attendance insist on the demand, the sale shall be

made on his responsibility, nor shall it be stayed, or the summary suit be allowed to proceed, unless the amount claimed be lodged in cash, or in Government securities, or in [currency notes],¹ by the talukdar contesting the demand; and if such deposit be not made, the alleged defaulter will have no remedy but by a regular action for damages and for reversal of the sale [unless he makes an application under section 14A]².

³[14A. *First*—It shall be competent to a defaulting patni-
dar of a patni taluk or a defaulting holder of a tenure sold under
this regulation or a talukdar or tenure-holder of the second decree
of such taluk or tenure or to a person holding an interest in such
taluk or tenure in virtue of a title acquired before the sale of the
taluk or tenure or to a person having a mortgage on such taluk
or tenure to apply to the Collector to have the sale set aside on
the applicant depositing with the Collector within thirty days
from the date of sale, or, if the taluk or tenure has been re-sold,
within thirty days from the date of the original sale—

Procedure
for setting
aside sale.

- (a) a sum of money equal to one per cent. of the purchase money for payment to [the State Government]⁴ for the purposes specified in the second clause of section 17,
- (b) a sum of money equal to the amount on account of which the sale has been made together with interest and all charges incurred in bringing the taluk or tenure to sale, for payment to the zamindar, and
- (c) a sum of money equal to five per cent. of the purchase money and in no case less than one rupee for payment to the purchaser.

On receipt of an application to set aside the sale the Collector shall serve a notice on the zamindar and the auction purchaser fixing a date for hearing the same.

Second.—No application shall be entertained under this section if the applicant has instituted a suit in the Civil Court to set aside the sale unless he first withdraws such suit.

Third.—No application shall be allowed under this section without the consent of the zamindar if the defaulting talukdar or tenure-holder is liable or has agreed to pay on behalf of the zamindar any revenue or cess due to [the State Government]⁴ from the zamindar and such revenue or cess has not been paid to [the State Government]⁴ or deposited in Court before the date fixed for the hearing of the application.

¹ The words "currency notes" in s. 14 (2) were substituted for the word "notes of the Bank of Bengal," by the Amending Act, 1903 (1 of 1903), since repealed.

& ² Inserted by Ben. Act IV of 1933 which was extended to the district of Sylhet with effect from the 8th July 1935, vide Notification No.2021-R., dated 8th July 1935.

⁴ The words "the Provincial Government" substituted for "Government" by the A. O. 1937, the word "Provincial" has been substituted by the word "State" by A. O. 1950.

Fourth.—If no objection is made by the zamindar, or the auction purchaser on the date fixed for the hearing of the application or on any subsequent date to which the hearing may be adjourned and the deposit required by the first clause of this section has been made within thirty days from the date of the sale, the Collector shall allow the application and make an order setting aside the sale, and shall pass orders for the disposal of the money deposited by the applicant and the refund of the purchase money.

Fifth.—If any objection is made by the zamindar or auction purchaser the Collector shall refer the application together with the objection to the nearest Civil Court having jurisdiction and such Civil Court shall decide whether the applicant is entitled under this section to have the sale set aside, and shall either dismiss the application or make an order setting aside the sale, and shall pass such further orders regarding the disposal of the money deposited by the applicant, the refund of the purchase money, the payment of costs or any other matter arising out of the application as it thinks fit.

The Civil Court may, at its discretion, make suitable arrangement for protection of the taluk or tenure but the patnidar or tenure-holder shall be allowed to remain in possession if he pays to the Court in advance six months' rent payable by him for such patni or tenure or gives security for one year's rent to the satisfaction of the Court. If such payment is not made or security is not given the Court may appoint a receiver for the patni or tenure.

Sixth.—The Civil Court may direct that any sum in deposit with the Collector under the first or third clause of this section shall be invested pending decision of the application by the Civil Court and thereupon the Collector shall remit the said sum to the Civil Court for investment.

Seventh.—Notwithstanding anything contained in this section, the zamindar may, at any time after the sale proceeds have been deposited under section 9, if such sale proceeds are still in deposit and the sale has not been set aside, withdraw therefrom an amount equal to the amount on account of which the sale was made or the whole amount of the sale-proceeds less the one per cent. due to [the State Government]¹, whichever is less, and if the sale is thereafter set aside by the Collector or the Civil Court under this section an amount equal to the amount so withdrawn by the zamindar shall be paid out of the deposit made by the applicant under sub-clause (b) of the first clause of this section to the auction purchaser instead of to the zamindar.

¹ Substituted for "Government" by the A. O. 1937; the word "State" substituted for "Provincial" by A. O. 1950.

¹ 15. *First*—[On the expiry of thirty days from the date of any sale made under this Regulation, or if there has been a resale within thirty days of the original sale if the entire amount of the purchase money has been paid by the purchaser, and if no application under section 14A to set aside the sale is pending.]² such purchaser shall receive from the officers conducting the sale a certificate of such payment.

Delivery of possession to purchaser.

The purchaser shall then proceed with the certificate in question to procure a transfer to his name in the cutcherry of the zamindar, and upon furnishing security, if required, to the extent of half the jama or annual rent, he shall receive the usual "amal-dustauk" or order for possession, together with the notice to the raiyats and others to attend and pay their rents henceforward to him.

The zamindar shall also be bound to furnish access to any papers connected with the tenure purchased that may be forthcoming in his cutcherry, and should he in any manner delay the transfer in his office, or refuse to give the orders for possession, notwithstanding that good and substantial security shall have been furnished or tendered on requisition, the new purchaser shall be entitled to apply direct to the court,³ and he shall receive orders for possession, and shall be put in possession, of the lands by means of the nazir, in the same manner as possession is obtained under a decree of Court:

Provided, however, that, if the delay be on account of the zamindar's contesting the sufficiency of the security tendered, the rule contained in section 6 of this Regulation shall be observed.

Second.—When the new purchaser shall proceed to take possession of the lands of his purchase, if the late incumbent himself, or the holders of tenures or assignments derived from the late incumbent, and intermediate between him and the actual cultivators, shall attempt to offer opposition, or to interfere with the collections of the new purchaser, from the lands composing his purchase, the latter shall be at liberty to apply immediately to the Civil Court⁴ for the aid of the public officers in obtaining possession of his just rights.

Procedure in case of opposition to purchaser.

¹ As to the extension of the application of s. 15, see the Bengal Patni Taluks Regulation, 1820 (I of 1820), s. 2 (3), *post*.

² Substituted for the words "So soon as the entire amount of the purchase-money shall have been paid in by the purchaser at any sale made under this Regulation" by Ben. Act IV of 1933.

³ As to the substitution of the Collector for the Court, see the Bengal Rent Recovery (Under-Tenures) Act, 1865 (Ben. Act VIII of 1865), s. 3, *post*.

⁴ As to the substitution of the Collector for the Court, see the Bengal Rent Recovery (Under-tenures) Act, 1865 (Ben. Act VIII of 1865), s. 3, *post*.

A proclamation shall then issue under the seal of the Court and signature of the Judge¹ declaring that the new incumbent having, by purchase at a sale for arrears of rent due to the zamindar, acquired the entire rights and privileges attaching to the tenure of the late talukdar, in the state in which it was originally derived by him from the zamindar, he alone will be recognized as entitled to make the zamindari collections in the mufassal, and no payments made to any other individual will on any account be credited to the raiyats or others in any * *² suit for rent * * *³ or any other occasion whatever when the same may be pleaded.

Procedure in case of continued opposition.

Third.—Should the late incumbent or his late under-tenants continue to oppose the entry of the new purchaser, notwithstanding the issuing of such a proclamation, or should there be reason to apprehend a breach of the peace on the part of any one, the aid of the police-officers and of all other public officers who may be at hand and capable of affording assistance shall be given to the new purchaser, on his presenting a written application for the same; and in the event of any affray or breach of the peace occurring, the entire responsibility shall rest with the party opposing the lawful attempt of the purchaser to assume his rights.

16. [Sale of Under-tenures for arrears.] *Rep-by the Bengal Rent Recovery (Under-tenures) Act, 1865 (Ben. Act 8 of 1865).*

Disposal of proceeds of sales.

* 17. *First.*—The following rules have been enacted for the disposal of the proceeds of any sale made under the rules of this Regulation.

Deduction on account of Government.

Second.—One per cent. shall first be deducted from the net proceeds realized, and shall be carried to the account of the [State Government]⁵, for the purpose of meeting the expenses of any extra establishments which it may be necessary to maintain for carrying into effect the provisions of this Regulation.

¹ As to the substitution of the Collector for the court *see* the Bengal Rent Recovery (under-tenures) Act, 1865 (Ben. Act VIII of 1865).

² The words "summary" which was repealed by the Repealing Act, 1874 (XVI of 1874), is omitted.

³ The words and figures "brought under the provisions of section 15, Regulation VII, 1799, or in any application to stay process by distraint, under the rules of Regulation V, 1812" which were repealed by the Repealing Act, 1874 (XVI of 1874), are omitted.

⁴ As to the extension of the application of s. 17, *see* the Bengal Patni Taluks Regulation, 1820 (I of 1820), s. 2(3), *post*.

⁵ The words "the Provincial Government" substituted for "Government" by A. O. 1937, the word "Provincial" has again been substituted by "State" by the A. O. 1950.

Third.—The balance on account of which the sale may have been made shall next be made good in full (with interest and all charges incurred in bringing the taluk to sale) to the zamindar or other person to whom the same may be due: Payment to zamindars.

Provided, however, that no former balances, beyond those of the current year (or of that immediately expired, if the sale be at the commencement of the following year), shall be included in the demand to be thus satisfied. Such antecedent balances, if the zamindar shall have omitted to avail himself of the process within his reach for having them satisfied at the time, will have become in fact mere personal debts of the individual talukdar, and must be recovered in the same way as other debts by a regular suit in the Court.

Fourth.—Any excess that may remain after satisfying the demand of the zamindar, in the manner above described shall be forthwith sent by the officer conducting the sale to the treasury of the Collector¹ or Assistant Collector of the district, to be there held in deposit to answer the claims of the talukdars of the second degree, or of others who, by assignment of the defaulter, may be at the time in possession of a valuable interest on the land composing the taluk sold or on any part of it. Disposal on remainder.

Fifth.—It shall be competent to any one conceiving himself to possess such an interest to bring forward his claim to the price he may have paid for the same, or for a just compensation for the loss sustained by him in consequence of the sale, by instituting a regular suit at any time within two months from the date of sale. Under-tenants free to prosecute for price of their interest or compensation.

If the Court shall, on investigation, consider the plaintiff's claim to be an equitable one, the Court will award to the claimant either the price he may have originally paid, or the value of the interest at the time of sale, or any other amount that may be deemed just and equitable under all the circumstances.

If there be more claimants than one, payment shall not be made from the deposit until the whole of the claims be settled; and, in case the value assessed upon the whole should exceed the amount in deposit, such amount shall be divided proportionately, and the remainder stand as a personal debt against the defaulter, to be realized from him by the usual process for the execution of decrees.

¹ In Assam, the Deputy Commissioner. As to exercise of functions of Deputy Commissioners, see the Assam Land and Revenue Regulation, 1886 (I of 1886), Chapter VII, *post*.

Suit not to
lie if under-
tenant be
himself in
arrear at
time of sale.

Sixth.—Provided, however, that no talukdar of the second degree or other possessor of an assigned interest upon the land of the tenure sold, who may be holding under a stipulation for the payment of an annual amount in the way of rent, shall be entitled to recover compensation for the loss of such tenure or assignment upon its becoming cancelled by sale of the superior taluk, except after exhibiting proof that the whole amount of the rent demandable from himself has been paid or lodged for the purpose prior to the date of sale.

When de-
faulters to
receive ex-
cess un-
claimed.

Seventh.—Should no claims upon the purchase-money of a taluk sold as above be brought forward by any under-tenants or assignees within the period of two months from the date of sale, or should be amount claimed by those who may have sued not equal the entire deposit, the defaulter whose tenure may have been sold shall be at liberty to petition the Court for the amount so held in deposit, or for the excess thereof, as the case may be, and he shall receive a certificate under the sale of the Court, of there being no claims to afford ground of detention for the whole or any part of the deposit; and, upon exhibiting such certificate to the Collector,¹ the amount set free thereby shall be paid to his receipt.

In the same manner, upon executing a decree passed in favour of any under-tenants or assignees, they shall receive certificates under the seal of the Court, declaring the amount adjudged to them out of the deposit; and upon exhibiting these certificates the amount shall be paid severally to their receipts by the Collector.¹

Substitution
of Govern-
ment securi-
ties for cash
in deposit.

Eighth.—It shall be competent to any party interested in a deposit to withdraw the whole or any part thereof on substituting Government securities, bearing interest, in lieu of the money so held in deposit; such securities to be taken at the rate of discount or premium of the day * * * *

18-19. [Rules regarding attachment of land of defaulter, summary process against person of defaulter.] Rep. by the Bengal Rent Act, 1859 (Act 10 of 1859).

¹ In Assam, the Deputy Commissioner. As to exercise of functions Deputy Commissioners, see the Assam Land and Revenue Regulation, 1886 of 1886), Chapter VII, *post*.

² The words "as shown by the Government Gazette last received," which were repealed by the Amending Act, 1903 (I of 1903), are omitted.