

THE BOMBAY RENT-FREE ESTATES ACT, 1852

ACT NO. XI OF 1852

[Passed on the 13th February, 1852.]

Recites expediency of providing means of settling claims against Government in certain districts : and that rules of Bombay R. 17, 1827, Chap. 9, 10, and R. 6, 1833, Cl. 1. Do not apply to districts not under Government Regulations: enacts.

1. *No order of Government regarding title to lands in any of the non-regulation districts shall be questioned in any Court of law on ground of inconsistency with this Act.*

2, 3. *Governor of Bombay may appoint in recited districts an Inam Commissioner with assistants : who (3) shall discharge their duties according to rules in Schedule to this Act.*

4. *Claims to exemption shall be determined according to Rules in Schedule B.*

5. *Each Inam Commissioner to have same authority for examination of witnesses and taking evidence and inflicting penalties as the Civil Courts.*

6. *Bribery, extortion and generally all act of abuse under the Commission shall be punishable as criminal offences without prejudice to civil remedy.*

7. *No decision of Inam Commissioner, & c. shall be questioned in Court of law.*

assistants.

Rule 1. Defines the functions of the Inam Commissioner and his assistants.

Rule 2. Gives appeal against orders of Assistant Commissioner.

Rule 3. And subsequent rules prescribe the mode of proceeding to establish claims.

Schedule B. Rules for adjudication of title to estates claimed as Inam.

Rule 1. Confines all Inams already declared permanent by competent authority competency of officer shall be decided if questioned.

Rule 2. Land to be hereditary if expressly made so by Sunnud, provided, (1) that Sunnud was made by competent authority; (2) that no illegal conditions are attached to the tenure; and (3) that it was not reoked, & c.

Rule 3. An uninterrupted holding for 60 years before the introduction of heir in possession all the time. The right not to descend on heirs by adoption, not on female heirs.

Rule 4. Lands held for 40 years in the male line to continue to be held for one more generation; but not by an adopted heir; (1) what shall be sufficient proof of authorized possession ; (2) claim to be allowed unless to grounds of it be disproved; and (3) what shall be deemed the time of the introduction of British Government.

Rule 5. None so numbered.

Rule 6. Exemptions not protected by above rules to be abolished on demise of incumbent: and (1) bond fide holder to be deemed incumbent; (2) this privilege not to extend to persons holding by fraud.

Rule 7. Lands held for support of Mosques, & c. not to be resumed. (4) if they have been enjoyed for 40 years; (5) What shall be deemed sufficient proof of enjoyment ; (6) but this rule not to apply in favor of private holdings (7) see the provision.

Rule 8. Lands held under on official tenure intended to be permanent not to be resumed; but this rule is subject to several complicated provisions, not capable of abridgment.

Rule 9. On resumption of lands a moiety may be continued to widows of last incumbent, &c. in case of destitution.

Rule 10. Makes discretionary with Government to apply these rules to certain specified kinds of lands.

Rule 11. Empowers the G. in C. to relax the rules ; who also shall interpret them.

An Act for the Adjudication of Titles to certain Estates claimed to be wholly or partially Rent-free in the Presidency of Bombay.

WHEREAS in the Territories of the Deccan Kandeish, and Southern Mahratta Country, and in other Districts more recently annexed to the Bombay Presidency, claims against Government on account of Inams and other Estates wholly or partially exempt from payment of Land Revenue are excepted from the cognizance of the ordinary Civil Courts, and incapable of being justly disposed of under the Rules for the determination of Titles, and the Rules of Procedure contained in Chapters IX. and X. of Regulation XVII. of 1827 of the Bombay Code and their Supplements; and whereas it is desirable that the said claims should be tried and determined without further delay. It is declared and enacted as follows:

I. The Rules in Chapters IX. and X. of Regulation XVII. of 1827, and in Clause 1 of Regulation VI. of 1833 of the Bombay Code, do not apply to any of the Districts of the Bombay Presidency which were not brought under the General Regulations of Government by Regulation XXVIII. of 1827 of the Bombay Code; and no order hitherto passed regarding the continuance or resumption of lands in any of the said Districts held or claimed from Government as wholly or partially free of assessment, shall be liable to be questioned in any Court of Law, on the grounds of any interpretation or construction of the Law, which may be inconsistent with the declarations made and the rules prescribed by this enactment.

II. The Governor of Bombay in Council may appoint in any Zillah or other division of the Territories subject to the Presidency of Bombay, which were not brought under the General Regulations of Government by the said Regulation XXVIII. of 1827, an Inam Commissioner with so many Assistants, and such subordinate Establishment, as may be necessary for the purposes hereinafter mentioned.

III. The duties of each Inam Commissioner and his Assistants shall be discharged according to the Rules in Schedule A. annexed to this Act.

IV. In the adjudication of claims to exempt lands or interests therein, the titles of claimants shall be determined by the Rules in Schedule B. annexed to this Act.

V. Each Inam Commissioner and his Assistants shall have the same authority to procure the attendance of witnesses, and to take evidence, as now is, or from time to time may be, by Law vested in the ordinary Civil Courts; and so far as concerns the penalties for not giving evidence, for false testimony, for resistance of process, contempts, and other like matters, connected with cases under cognizance by any one of the said Officers, his Office shall be held to be a Court of Civil Jurisdiction of the same authority as the superior Civil Court of the Zillah or District in which his Office from time to time shall be established. Provided that all complaints against, or appeals from the proceedings of the Inam Commissioner or any of his Assistants, in exercise of the authority conferred on them respectively by this Section, shall be made under the second Rule of Schedule A. annexed to this Act, and shall not be cognizable by any other authority or in any other manner than as therein specified.

VI. Bribery, extortion, and generally all acts of abuse, or misapplication of authority, or other misconduct, committed by any Officer belonging to the Establishment of the Inam Commission, or temporarily employed therein under the provisions of this enactment, shall be punishable as criminal offences with fine and ordinary imprisonment without labour for a period not exceeding five years, and the receipt of a present, directly or indirectly, by any such Officer from any person against whom or in whose behalf he may be officially employed, shall be considered extortion. And no penalty or punishment adjudicated under this Clause shall preclude any other Civil prosecution to which the offender may be liable.

VII. No decision or order of the Inam Commissioner, or of any of his Assistants, or of the Governor in Council, under the provisions of this enactment, so long as the same shall be in force under such provisions, shall be questioned or avoided in any Court of Law; and no Commissioner or Assistant Commissioner, or

other person acting under the provisions of this Act, shall be liable to be sued in any Civil Court for any act bonâ fide done or ordered to be done by him in pursuance of the said provisions.

SCHEDULE A

Rules for defining the duties of each Inam commissioner and his assistants

1. The duty of the Inam Commissioner and his Assistants shall be to investigate, in the manner prescribed by this enactment, the titles of persons holding or claiming against Government the possession or enjoyment of Inams or Jagheers, or any interest therein, or claiming exemption from the payment of Land Revenue, and generally to act according to the instructions of Government in all matters not specifically provided for in this enactment.

2. All orders of the Assistant Commissioners shall be appealable to the Inam Commissioner, who shall also have the authority of revising and of modifying, reversing or annulling, if necessary, their orders and proceedings, and the orders and proceedings of the Inam Commissioner shall be in like manner appealable to, and subject to modification, reversal, or annulment by the Governor of Bombay in Council, whose orders shall in every case be final.

3. The Inam Commissioner or his Assistants shall receive from the persons holding or claiming to hold lands or any interest therein exempt from the payment of Revenue, statements explaining the nature of the title by which the lands or interests are so held, and shall take and record the evidence offered in support of such statements.

4. These statements may be received, either directly by the Officers of the Inam Commission, or through the medium of the Revenue Authority of the Talooka in which the land or interest so held or claimed as exempt is situated; or in which the alleged proprietor resides, without any previous procedure, except a general invitation to such landholders of a District who shall hold or claim to hold lands exempt as aforesaid to state the nature of their titles.

5. But when such general invitation is not sufficiently attended to, a notice may be issued to any party holding or claiming to hold any lands or any interest therein wholly or partially exempt as aforesaid, requiring him personally, or by his Agent, to shew his title. The notice issued in such cases shall state the nature of the investigation which is intended, and shall call upon the alleged proprietor of the exempt lands or interest held or claimed to be held exempt as aforesaid, to attend either personally or by an authorized Agent, at a specified place, and within a specified period, (which shall never be less than two months from the date of the notice being served,) to explain the nature of his title to hold such lands or interest exempt as aforesaid, and to produce all the evidence forthcoming to prove it. The notice shall further explain that a failure to comply with its terms will render the land, or interest to which it relates, liable to attachment.

6. The notice shall be served upon the party holding or claiming to hold the land or interest exempt as aforesaid, or, if his place of residence be not known, upon the person acting for him, or in default of such, upon the person in charge of the land or interest.

7. If such persons cannot be found, a notice shall be posted in the Office of the Native Revenue Officer of the District, and in the Chouree, or most public place of the village, where the land or interest under inquiry is situated, calling on any person who may claim as proprietor to appear, either personally or by his Agent, to prove his title within six months from the date of the notice, under penalty of the attachment of the land or interest, and on failure of the appearance of a claimant, the land or interest shall be liable to attachment.

8. The attachment provided for by Rules 5 and 7 shall be enforced by the Collector or Chief Revenue Authority of the District in which the land to which it relates is situated, at the written requisition of the Inam Commissioner or his Assistant, which shall be a sufficient warrant to the Collector for the attachment of the land, and for the collection of the rents accruing therefrom on account of Government during its attachment.

9. As soon as possible after the receipt of the statements in each District, and of the evidence by which they are supported, they shall be tested by the entries in the Government accounts and State records, and

by any other evidence procurable, whether in favor of Government or of the claimants, and decisions shall then be passed on them as to the continuance, resumption, or full or partial assessment of the lands.

10. In cases where the notices provided for in Sections V. and VII. fail to procure the attendance of the persons to whom they are addressed, and no claimant appears to prosecute his claim, the Commissioner or Assistant Commissioner shall proceed to ascertain the facts of the case from such evidence as may be forthcoming or procurable, and shall pronounce such decision thereupon as to him shall seem just regarding the lands or interests to which the notices referred.

11. An attachment enforced under Rule 8 shall be removed by the Collector or Chief Revenue Authority by whom it was made, on receipt of a communication from the Inam Commissioner or his Assistant, certifying that he considers the attachment to be no longer necessary; but the rents collected from the land during its attachment shall in no case be restored to the alleged proprietor, except under the general or special instructions of Government.

12. Certified copies of decisions, made according to the provisions of Rule 9, shall be delivered as soon as possible after each decision is passed, to the persons on whose claims the decision shall have been pronounced, or their agents; and copies of all decisions made in the absence of any claimant, according to the provisions of Rule 10, shall be sent to the Mamlutdar, or other Revenue manager of the talook in which the lands to which they relate are situated, who shall deliver them to the parties affected by them, should they be discoverable, or otherwise cause them to be publicly posted in the village to which the lands in question belong.

13. Decisions, affecting any lands or any interests therein, passed under this enactment, shall be carried into execution by the Collector or Chief Revenue Authority of the District in which the lands to which they relate are situated, at the requisition of the Inam Commissioner or his Assistant, in any manner which may, from time to time, be prescribed by the Governor of Bombay in Council.

14. In all cases where a person may be desirous of appealing against any decision of the Inam Commissioner or his Assistants, he shall apply by a petition, addressed to the Authority by whom, according to Rule 2, his appeal is cognizable, which petition shall be presented to such Authority within one hundred days from the date of the decree appealed against, a copy of which must accompany the petition of appeal, and no appeal which is not so made shall be admitted, without proof of the existence of a just and necessary cause for its not having been preferred in due time; and it is hereby provided, that no decree passed by the Inam Commissioner or any of his Assistants, shall be liable to be set aside for want of form in the proceedings, but only for matters affecting the justice of the decision.

SCHEDULE B

Rules for the adjudication of titles to estates claimed as Inam or exempt from payment of land revenue

1. Regarding Inams already declared permanent by competent authority since the introduction of the present Government.—All lands held under a specific and absolute declaration by the British Government, or any competent officer acting under it, that they were to be continued hereditarily or in perpetuity exempt, wholly or partially, from the payment of Revenue, are to be so continued according to the purport of such declaration.

Provision 1st.—If any question shall arise as to the competency of the officer to make or give such declaration as aforesaid, the Commissioner or Assistant Commissioner is to suspend his judgment, and report the circumstances of the case to the Governor of Bombay in Council, to whom a power is hereby reserved of determining finally whether such officer was competent to make or give such declaration, and the Commissioner or Assistant Commissioner, upon receiving the determination of the said Governor in Council, shall decide accordingly.

2. Regarding claims to personal Inams, not yet adjudicated under the present Government.—Any land held under a sunnud declaring it to be hereditary, shall be so continued according to the terms of the sunnud.

Provision 1st.—Provided that the grant was either made, or specifically recognized, by Authority competent to alienate Government Revenue in perpetuity, the question of which recognition and competency is to be referred to and determined by Government in the manner prescribed by Provision 1st, Rule 1.

Provision 2nd.—And provided that there be nothing in the conditions of the tenure which cannot be observed without a breach of the laws of the land, or the rules of public decency.

Provision 3rd.—And provided that the grant was not afterwards revoked or disallowed, or an alteration of its terms ordered or recognized by a competent authority.

3. All lands uninterruptedly held as wholly or partially exempt from assessment for a period of sixty years before the introduction of the British Government, and then in the authorized possession of a grandson in male descent, or male heir of the body of such grandson of the original grantee, shall continue to be so held so long as there shall be in existence any male heir of the body of the person who was incumbent at the introduction of the British Government, tracing his lineage from such incumbent through male heirs only.

4. All lands, uninterruptedly held as wholly or partially exempt from assessment, for a period of forty years before the introduction of the British Government, and then in the authorized possession of a son, or male heir of the body of a son of the original grantee, are to be continued for one succession further than that of the person who was incumbent at the introduction of the British Government, that is, until the death of his last surviving son.

Provision 1st.—The authorized possession contemplated by Rules 8 and 4 does not involve the necessity of proving any specific authority from, or recognition by, the Government or Paramount Power. The mere entry of the holding, as continued in the genuine accounts of the District Officers (even in those not audited and passed by the Government of the time being), will be sufficient to bring it under the heads of “uninterrupted” and “authorized” so far as regards the purposes of this Rule; provided only that there are no entries in the Collectorate accounts, which shew that the holding of such lands exempt as aforesaid must have been unauthorized by the Government or Paramount Power.

Provision 2nd.—If there be not evidence forthcoming to disprove a claimant's assertion that his holding has been undisputedly enjoyed for the number of years and descents requisite to fulfil the conditions of Rules 3 and 4 respectively, his prescriptive right shall be admitted.

Provision 3rd.—The introduction of the British Government is to be reckoned from the time the East India Company became the Government or Paramount Authority over each District as regards its Inams. In the Territories ceded by or conquered from the Peshwa, therefore, whether Khalsat Mahals or Serinjams, &c., held exclusive of Inams, &c., the introduction of the British Government will date from the close of that of the Peshwa. But in case of the lapse of an independent principality, or of a jagheer more ancient than the Peshwa's Government, and over the Inams of which he did not claim any authority, the introduction of the British Government should be reckoned only from the date at which the general management of the Districts may have come into the hands of the Company, and in case any question shall arise as to the precise date when the East India Company became the Government over any district, or when the general management of any District came into their hands, such question shall be referred to and determined by Government in the manner prescribed by Provision 1st, Rule 1.

6. Land held as wholly exempt from payment of Revenue, or on partial assessment, the possession of which is not continuable under the preceding Rules, is to be resumed on the demise of the incumbent.

Provision 1st.—In case the incumbent at the time of the introduction of the British Government may have died, the permission to hold for life is to be extended to the person in whose name the land may be continued, when the investigation is commenced, if there be no fraud apparent, nor other reason for withholding this indulgence.

Provision 2nd.—When land is evidently held by fraud recently committed, (as when an Inam which was resumed under the late Government has been re-occupied under the present Government without authority, or as when a pretended Inam is found to have originated. Since the introduction of this Government with the connivance of District or Village Officers), it shall be at once resumed, not being continuable under this or any of the preceding Rules.

7. Regarding claims to Inams apparently permanent by the nature of the objects for which they are held, and not merely personal.—All lands held for the support of Mosques, Temples, or similar Institutions, of the permanent character of which there can be no doubt, are to be continued permanently, even though their permanent continuance may not have been expressly provided for when they were granted.

Provisions 1st, 2nd and 3rd.—The same as the corresponding Provisions of Rule 2 of this Schedule in those cases in which Title Deeds or other Records proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming.

Provision 4th.—When there is no proof forthcoming to shew whether or not an Inam, coming under the Provisions of this Rule, was granted, or even specifically recognized by a competent authority, still, if it has been undisputedly enjoyed for a period of forty years before the introduction of the present Government, it shall be permanently continued, and enjoyment proved by the mere entry of the Inam, as continued in genuine accounts of the District Officers, (even in those not passed by the Government of the time being,) is to be considered sufficiently “uninterrupted” to give an Inam the benefit of this provision, if there be no entries in the Government accounts which shew that it must have been unauthorized by them.

Provision 5th.—If the forthcoming records do not go far enough back to test the existence of enjoyment of the duration contemplated in Provision 4th as establishing full prescriptive title in such Inams, still, if so far as they do go, they are not opposed to the claimant's assertion that sufficient enjoyment has taken place, the prescriptive title of the Inam shall be admitted according to his assertions, unless there be other evidence forthcoming to disprove them.

Provision 6th.—The peculiar advantages of this Rule shall not apply to the holdings of individuals in their own names for the performance of ceremonial worship, claims to which must be decided under the Rules for personal claims.

Provision 7th.—When claims of the denomination coming under this Rule are found to be unsupported by proof of original valid title, and are proved void of sufficient prescriptive enjoyment, they are to be adjudicated according to Rule 6.

8. All lands authorizedly held by an official tenure which it is evident from local usage was meant to be hereditary, and has been so considered heretofore, even though there be no sunnuds declaring it to be so,—for instance, Inams which form the authorized emoluments of any hereditary office, as of Kazees, Tillage Joshees, &c., and are not merely personal,—are to be continued permanently.

Provisions 1st, 2nd and 3rd.—The same as the corresponding Provisions of Rule 2 of this Schedule in those cases in which Title Deeds or other Records, proving the circumstances of the original grant, or its specific recognition by competent authority, are forthcoming,

Provision 4th.—When there is no proof forthcoming to shew whether or not an Inam, coming under the provisions of this Rule, was granted or even specifically recognized by competent authority, still if it has been undisputedly enjoyed as an official and not merely personal holding from the earliest period to

which the forthcoming evidence does relate, it shall be continued permanently as official emolument, unless the claimant's own statement renders this course improper.

Provision 5th.—The provisions of this Rule are not in any way to apply to emoluments continued for service performed to the State, as the Service Wuttuns of Desaees, Surdesaees, Nargowdas, Deshpandes, Patells, Coolkurnees, Mhars, Tulwars, whose claims are to be disposed of according to the Rules which are or may be established for the regulation of such holdings.

Provision 6th.—It is to be understood that mere length of enjoyment of land as Inam by an official person is not of itself sufficient to entitle a claim to be brought under this Rule.

Provision 7th.—If a holding, claimed under this Rule, be found incapable of permanent continuance under it, the claimant shall be allowed the advantages of any of the preceding Rules of this Schedule which may be applicable to his case.

9. Regarding Provision for the Widows of the last incumbents of resumed holdings.—On the resumption of any lands under the Rules of this Schedule a moiety, or other portion may be continued to the Widows of the last incumbents during their lives, in cases of proved poverty and destitution.

Provision 1st.—In the case of a holding, which is recognizable as an hereditary personal Inam, the widow of a proprietor who dies without surviving male issue, or other heirs to whom his Inam will of necessity descend, is by right his sole heir, and during her life, the Inam cannot be regarded as having lapsed to Government: it should therefore, in such a case, be continued undiminished during the widow's life.

10. Regarding the exception of certain tenures from the application of these Rules.—These Rules shall not be necessarily applicable to Jageers, Serinjams, or other tenures for service to Government, or tenures of a Political nature, the titles and continuance of which shall be determined as heretofore under such Rules as Government may find it necessary to issue from time to time.

11. Regarding the modification and interpretation of these Rules.—Any of these Rules may be relaxed in favor of claimants under instructions from the Governor of Bombay in Council, in whom shall also be vested the power of interpreting the precise meaning of any of the Rules respecting which a question may arise.