

# THE SALE OF LAND FOR REVENUE ARREARS ACT, 1845

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## ACT NO. 1 OF 1845

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Passed by the Governor General of India in Council on the *11th of January*, 1845.

AN Act to amend Act No. XII. Of 1841, entitled “An Act for amending the Bengal Code in regard to Sales of Land for Arrears of Revenue.”

Whereas it is found expedient to amend the existing law for the realization of the Land Revenue:

**I.** It is hereby enacted, that from the last day of February 1845, the third and following Sections of Act No. XII, of 1841 are repealed.

**II.** And it is hereby enacted, that if the whole or a portion of a kist or instalment of any month of the era, according to which the settlement and kist bundee of any Mehal have been regulated, be unpaid on the first of the following month of such era, the sum so remaining unpaid shall be considered an arrear of Revenue.

**III.** And it is hereby enacted, that upon the promulgation of this Act, the Sudder Board of Revenue at Calcutta shall determine upon what dates all arrears of Revenue and all demands, which by the Regulations and Acts in force are directed to be realized in the same manner as arrears of Revenue, shall be paid up in each permanently settled District or Zillah under their jurisdiction, in default of which payment the Estates in arrear in those Districts, except as hereinafter provided, shall be sold at Public Auction, to the highest bidder. And the said Board shall give notice of the dates so fixed in the official Gazettes, and shall direct corresponding publication to be made as far as regards each District, in the language of that District, in the office of the Collector or Deputy Collector, or other Officer duly authorized to hold sales under this Act, in the Courts of the Judge, Magistrate, (or Joint Magistrate, as the case may be,) Principal Sudder Ameer, Sudder Ameer, and Moonsiffs, and at every Thannah Station of that District; and the dates so fixed shall not be changed except by the said Board by advertisement and notifications, in the manner above described, to be issued at least three months before the close of the official year preceding that in which the new date is, or dates are, to take effect.

**IV.** And it is hereby enacted, that in Districts not permanently settled and in the Province of Benares no sale shall take place for arrears of Land Revenue or other demands of Government without the special sanction of the Sudder Board of Revenue previously obtained in each several case of sale. Provided, that the said Board at the time of authorizing such sale shall fix the latest day on which in each case such arrears or demands shall be received.

**V.** Provided always, and it is hereby enacted, that no states shall be sold for the recovery of arrears or demands, of the descriptions mentioned below, otherwise than after a notification in the language of the District, specifying the nature and amount of the arrear or demand, and the latest date on which payment thereof shall be received, shall have been affixed for a period of not less than fifteen clear days preceding the date fixed for payment, according to Section III or IV of this Act as the case may be, in the office of the Collector or other Officer duly authorized to hold sales under this Act, in the Court of the Judge within whose jurisdiction the land advertised lies, in the Courts of the Principal Sudder Ameer, and Sudder Ameer of the District, and in the Moonsiff's Court and Police Thannah of the Division in which

the Estate to which the notification relates, or a part of it, is situated, the same to be certified by the receipt of the Officer at whose office such notification may have been affixed; and also at the Cutcherry of the Malgoozar of the Estate, or at some conspicuous place upon the Estate, the same to be certified by the Peon or other person employed for the purpose.

*First.*-Arrears due from Estates in the Province of Benares.

*Secondly.*-Arrears due from Estates not permanently settled.

*Thirdly.*-Arrears other than those of the current or of the preceding year.

*Fourthly.*-Arrears due on account of Estates other than that to be sold.

*Fifthly.*-Arrears of Estates under attachment by order of any Judicial Authority.

*Sixthly.*-Arrears due on account of Tuccavee, Poolbundee or other demands not being Land Revenue, but recoverable by the same process as arrears of Land Revenue.

**VI.** And it is hereby enacted, that the Collector or other Officer duly authorized to hold sales under this Act shall as soon as possible after the latest day of payment fixed in the manner prescribed in Section III or IV of this Act, issue notifications in the language of the District, to be affixed in his own office and in the Court of the Judge of the District, and to be published in the official Gazettes, specifying the Estate or Estates which will be sold as aforesaid, and the day on which the sale of the same will commence, which day shall not be less than fifteen or more than thirty clear days from the date of affixing the notification in the office of the Collector or other Officer as aforesaid. And except as hereinafter provided, all Estates, so specified shall on the day notified for sale, or on the day or days following, be put up to public Auction by and in the presence of the Collector or other Officer as aforesaid, and shall be sold to the highest bidder. And no payment, or tender of payment made subsequent to sunset of the said latest day of payment, shall bar or interfere with the sale, either at the time of sale or after its conclusion.

**VII.** And it is hereby enacted, that whenever an Estate is notified for sale as provided by Section VI of this Act, the Collector or other Officer as aforesaid shall affix a proclamation in the language of the District, in his own office, and as soon there after as may be in the Moonsiff's Courts and Police Thannahs within which the Estate, or any part of it is situated, and also at the Cutcherry of the Malgoozar of the Estate, or at some conspicuous place upon the Estate, forbidding the ryots and under-tenants to pay rent to the defaulting Proprietor or Proprietors from the date of the day after that fixed for the last day of payment, on pain of not being entitled to credit in their accounts with the purchaser for any sums paid after the date aforesaid.

**VIII.** And it is hereby enacted, that no claim to abatement or remission of Revenue unless the same shall have been allowed by the authority of Government, nor any private demand or cause of action whatever held or supposed to be held by any defaulter against Government shall bar a sale, or render a sale under this Act void or voidable; nor shall the plea that money belonging to the defaulter, faulted and sufficient to pay the balance or part of it, was in the Collector's hands, for a sale or render a sale under this Act void or voidable, unless such money stand in the defaulter's name alone and without dispute, and unless after application in due time made by the defaulter, the Collector shall have neglected, or refused on insufficient grounds, to transfer it to the credit of the Estate.

**IX.** And it is hereby enacted, that Collectors shall, at any time before sunset of the latest day of payment receive as a deposit from any party not being a proprietor of the Estate in arrear, the amount of the arrear of Revenue due from it, to be carried to the credit of the said Estate at sunset as aforesaid, unless before that time the arrear shall have been liquidated by a Proprietor of the Estate. And in case the

party so depositing, whose money shall have been credited to the Estate in the manner aforesaid, shall be a plaintiff in a suit pending before Court of Justice for the possession of the same or any part hereof, it shall be competent to the Judge of the Zillah in which such Estate is situated, to order the said party to be put into temporary possession of the said Estate, subject to the rules in force for taking security in the cases of appellants and defendants. And if the party depositing whose money shall have been credited as aforesaid shall prove before a competent Civil Court that the deposit was made in order to protect an interest of the said party, which would have been endangered, or damaged by the sale of the Estate he shall be entitled to recover the amount of the deposit with interest, from the Proprietors of the said Estate.

**X.** And it is hereby enacted that shall be liable to sale for the recovery of arrears which have accrued during the period of its being under the management of the Court of Wards, and no Estate, the sole property of a minor minors, and descended to him or them by the regular course of inheritance duly notified to the Collector for the information of the Court of Wards, but of which the Court of Wards has not assumed the management under Regulation VI. 1822, shall be sold for arrears of Revenue accruing subsequently to his or their succession to the same, until the minor or minors, or one of them, shall have attained the full age of 18 years. And no Estate held under attachment by the Revenue Authorities, otherwise than by order of Judicial Authority, shall be liable to sale for arrears accruing whilst it was so held under attachment. And no Estate held under attachment by a Revenue Officer, in pursuance of an order of Judicial Authority, shall be liable to sale for the recovery of arrears of Revenue accruing during the period of such attachment, until after the end of the year in which such arrears accrued.

**XI.** And it is hereby enacted, that it shall be competent to the Collector at any time before the sale of an Estate shall have commenced to exempt each Estate from sale; and in like manner it shall be competent to the Commissioner of Revenue at any time before the sale of an Estate shall have commenced, to exempt such Estate from sale, by a special order to the Collector to that effect in each case; and no sale of an Estate shall be legal if held after the receipt of an order of exemption in respect to such Estate. Provided, however, and it is hereby enacted, that the Collector or Commissioner shall duly record in a proceeding the reason for granting such exemptions and provided also, that an order for exemption so sued by the Commissioner shall not affect the legality of a sale which may have taken place before the receipt by the Collector of the order for exempting it from sale.

**XII.** And it is hereby enacted, that sale shall ordinarily be made by the Collector or other Officer duly authorized by Government in that behalf in the Land Revenue Cutcherry at the Sudder Station of the District, provided, however, that it shall be competent to the Sudder Board to prescribe a place for holding sales other than such Cutcherry whenever they shall consider it beneficial to the parties concerned.

**XIII.** And it is hereby enacted, that in case the Collector, or other Officer as aforesaid, shall be unable from sickness, from the occurrence of a holiday, or from any other cause, to commence the sale on the day of sale fixed as aforesaid, or if, having commenced it, he be unable, from any cause, to complete it, he shall be competent to adjourn it to the next day following, not being Sunday or other close holiday, recording his reasons for such adjournment, forwarding a copy of such record to the Commissioner of Revenue, and announcing the adjournment by a written proclamation stuck up in his Cutcherry, and so on, from day to day, until he shall be able to commence upon, or to complete the sale, but with the exception of adjournments so made, recorded, and reported, each sale shall invariably be made on the day of sale fixed in the manner aforesaid.

**XIV.** And it is hereby enacted, that on the day of sale fixed according to Section VI of this Act, sales shall proceed in regular order; the Estate to be sold bearing the lowest number on the Towjee or registers in use in the Collector's Office of the District being put up first, and so on, in regular sequence; and it shall not be lawful for the Collector or other Officer as aforesaid to put up any Estate out of its regular

order by number, except where it may be necessary to do so on default of deposit, as provided in Section XV of this Act. XV. And it is hereby enacted, that the party who shall be declared the purchaser of an Estate at any such public sale as aforesaid, shall be required to deposit immediately, or as soon after the conclusion of the sale of the Estate as the Collector may think necessary, either in Cash, Bank of Bengal Notes or Post Bills, or Government Securities duly indorsed, 25 per cent. on the amount of his bid, and in default of such deposit, the Estate shall forthwith be put up again and sold,

**XVI.** And it is hereby enacted, that the full amount of purchase money shall be made good by the purchaser before sunset of the thirtieth day from that on which the sale of the Estates bought by him took place, reckoning that day as one of the thirty; or if the thirtieth day be a Sunday or other close holiday, then on the first office day after the thirtieth: and in default of payment within the prescribed period as aforesaid, then and afterwards as often as such default shall occur, the deposit shall be forfeited to Government, the Estate shall be re-sold, and the defaulting purchaser shall forfeit all claim to the Estate, or to any part of the sum for which it may subsequently be sold; and in the event of the proceeds of the sale which may be eventually consummated being less than the price bid by the defaulting bidder aforesaid, the difference shall be leviable from him by any process authorized for realizing an arrear of public Revenue, and it shall be so levied and credited to the defaulting Proprietor of the Estate sold; and if default of payment of purchase money shall have occurred more than once, the defaulting bidders shall be held jointly and severally responsible for such difference to the extent of the amount of their respective bids. Provided always, that every such re-sale shall be made after notification and in the forms prescribed by Section VI of this Act; and that such notification shall not be issued until the expiration of three clear days after the day on which the default shall have occurred. Provided also that payment or tender of

held jointly and severally responsible for such difference to the extent of the amount of their respective bids. Provided always, that every such re-sale shall be made after notification and in the forms prescribed by Section VI of this Act; and that such notification shall not be issued until the expiration of three clear days after the day on which the default shall have occurred. Provided also that payment or tender of payment by or on behalf of the Proprietor of the arrear for which the Estate was first sold and of the arrear which may have subsequently become due, if such payment or tender of payment be made before sun-set of the day preceding the day of the notification of re-sale, and after the defaulting purchaser shall have made the deposit required by Section XV of this Act, shall bar such re-sale.

**XVII.** And it is hereby enacted, that it shall be lawful for the Commissioner of Revenue to receive an appeal against any sale made under this act if preferred to him on or before the fifteenth day from the date of sale, reckoning as in Section XVI, or if preferred to the Collector for transmission to the Commissioner on or before the tenth day from the day of sale, and not otherwise: and the Commissioner shall be competent in every case of appeal so preferred, to annul any sale of an Estate made under this Act, which shall appear to him not to have been conducted according to from the Proprietor of any moderate compensation for his loss, if the sale shall have been occasioned by neglect of the Proprietor, such compensation not to exceed interest, at the current rate of Government Securities, on the amount of deposit or balance of purchase money during the period of its being retained in the Collector's office, and the order of the Commissioner shall, in such cases, be final.

**XVIII.** And it is hereby enacted, that it shall be competent to the Commissioner of Revenue on the ground of hardship or injustice to suspend the passing orders in any case of appeal from a sale and to represent the case to the Sudder Board, of Revenue, who, if they see cause, may recommend to the Local Government to annul the sale: and the Local Government in any such case may annul the sale and cause the Estate to be restored to the Proprietor on such conditions as may appear equitable and proper.

**XIX.** And it is hereby enacted, that all sales of which the purchase money has been paid up as prescribed in Section XVI of this Act, and against which no appeal shall have been preferred, shall be

final and conclusive at noon of the thirtieth day from the day of sale, reckoning the said day of sale, as the first of the said thirty days. And sales against which an appeal may have been preferred, and the appeal dismissed by the Commissioner, shall be final and conclusive from the date of such dismissal, if more than thirty days from the day of sale, or if less, then at noon of the thirtieth day as above provided.

**XX.** And it is hereby enacted that immediately upon a sale becoming final and conclusive, the Collector or other Officer as aforesaid, shall give to the purchaser a Certificate of Title in the following form:

I certify that A. B. has purchased at Public Auction under Act No. I of 1845, Mehal C, and that his purchase has taken effect on and since the----day of ----- (being the date of the day after that fixed for the last day of payment).

(Signed) D.E., Collector.

And the said certificate shall be deemed in any Court of Justice sufficient evidence of the title to the Estate sold being vested in the person or persona named from the date specified: and the Collector shall also notify such transfer by written proclamation in his own Cutcherry, and in those of the Moonsiff and Darogab of the Jurisdictions within which any part of the Estate sold shall be situated, and also at the Cutcherry of the Malgoozar of the Estate, or on some conspicuous place on the Estate and shall apply the purchase money first to the liquidation of all arrears due upon the latest day of payment; and secondly, to the liquidation of all outstanding demands debited to the Muhal in the Public accounts of the District, holding the residue, if any, in deposit on account of the late recorded Proprietor or Proprietors of the Estate sold, to be paid to their receipt on demand in the manner following to wit, in shares proportioned to their recorded interest in the Estate sold, if such distinction of shares were recorded, or if not, then as an aggregate sum to the whole body of Proprietors upon their joint receipt, Provided that if prior to payment of any surplus that may remain of the purchase money after liquidation of all Government arrears and dues to the Proprietor of the state sold, or his representative, the same may be claimed by creditors in satisfaction of debts due by him to them, or by any one creditor, such surplus shall not be payable to any such claimant, nor shall it be withheld from the Proprietor by attachment, except under precept, and in satisfaction of decrees of Court for such debts. And if the balance of purchase money have in any such case been paid away in liquidation of the Proprietor's just debts by order of any Court, and a decree shall afterwards pass for annulling, the sale, the Proprietor shall not be restored to possession until the amount so paid away be returned by him with interest.

**XXI.** And it is hereby enacted, that any suit brought to oust the certified purchaser as aforesaid, on the ground that the purchase was made on behalf of another person, not the certified purchaser, though by agreement the name of the certified purchaser was used, shall be dismissed with costs.

**XXII.** And it is hereby enacted, that the annulment of a sale by a Commissioner shall be publicly notified by the Collector or other Officer as aforesaid in the same manner as the becoming final and conclusive of sales is required to be notified by Section XX of this Act, and the amount of deposit and balance of purchase money shall be forthwith returned to the purchaser, with interest thereon, at the highest rate of the current Public Securities, from the dates on which they were respectively paid in to the date on which the refund is actually made.

**XXIII.** And it is hereby enacted, that the party certified as the Proprietor of an Estate by purchase at public sale for the recovery of arrears of Revenue shall be answerable for all instalments of the Revenue of Government which may fall due subsequently to the *latest day of payment aforesaid*.

**XXIV.** And it is hereby enacted, that no sale for arrears of Revenue or other demands realizable in the same manner, made after the taking effect of this Act, shall be set aside by a Court of Justice except upon the ground of its having been made contrary to the provisions of this Act: And except the contravention thereto shall have been declared and specified in an appeal made to the Commissioner under section XVII of this Act, and except the action in the Civil Court be instituted within one year, from the date of the sale becoming final and conclusive as provided Section XIX of this Act: And no person shall be entitled to of a sale after having received any portion of the purchase money: Provided, however, and it is hereby enacted, that nothing in this Act contained shall be construed to debar any person considering himself wronged by any act or circumstance connected with a sale under this Act, from his remedy in a personal action for damages against the individual by whose act or omission he considers himself to have been wronged.

**XXV.** And it is hereby enacted, that in the event of a sale being reversed by a final decree of a Court of Justice, the purchase money shall be refunded to the purchaser by Government, together with interest at the highest rate of the current Public Securities.

**XXVI.** And it is hereby enacted, that the purchaser of an Estate sold under this Act, for the recovery of arrears due on account of the same, in the permanently settled Districts of Bengal, Behar, Orissa and Benares, shall acquire the Estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be entitled after notice given under Section X. Regulation V. 1812, to enhance at discretion, (any thing in the existing Regulations to the contrary notwithstanding) the rents of all under-tenures in the said Estate, and to eject all tenants thereof, with the following exceptions:

First. Tenures which were held as Istemreree or Mocurreree at a fixed rent, more than 12 years before the permanent Settlement.

Secondly. Tenures existing at the time of the Decennial Settlement, which have not been, or may not be, proved to be liable to encrease of assessment on the grounds stated in Section LI. Regulation VIII of 1793.

Thirdly. Lands held by Khood Kast or Kudeemee Ryotts having rights of occupancy at fixed rents or at rents assessable according to fixed rules under the Regulations in force.

Fourthly. Lands held under bonâ fide leases, at fair rents, temporary or perpetual, for the erection of dwelling houses, or manufactories, or for mines, gardens, tanks, canals, places of worship, burying grounds, clearing of jungle, or like beneficial purposes, such lands continuing to be used for the purposes specified in the leases.

Fifthly. Farms granted in good faith at fair rents and for specified areas by a former Proprietor, for terms not exceeding twenty years, under written leases. registered within a month from their date. Provided that a written notice, specifying Full particulars of the position, rent and area of the lands, the terms of the lease and the names of the parties shall at the same time be given by the latter to the Collector in every case, and the Collector shall be at liberty to object to the same in the event of his seeing reason to believe that the security of the Public Revenue will be materially affected thereby. The exception declared in this Clause shall not extend to leases objected to by the Collector, by a notification to be fixed up in his Office, with the sanction of the Commissioner, within three months of the date of the notice so made to him by the parties. Provided also, that a purchaser of an Estate at a sale for arrears of Revenue shall be at liberty by suit in Court to set aside all such farms, although the same be under written and duly registered leases, and although such notice may have been given as aforesaid, if the same shall not have been granted in good faith at fair rents.

**XXVII.** And it is hereby enacted, that the purchaser of an Estate sold under this Act for the recovery of arrears due on account of the same in Districts other than those mentioned in Section XXVI, shall acquire the Estate free from all encumbrances which may have been imposed upon it after the time of settlement, and shall be competent to avoid and annul all tenures which may have originated with the defaulter or his predecessors, being representatives or assignees of the original engager, as well as all agreements with ryotts or the like settled or credited by the first engager or his representatives, subsequently to the last settlement, as well as all tenures which the first engager may, under the conditions of his settlement, have been competent to set aside, alter, or renew, saving always and except bonafide leases of ground for the erection of dwelling houses, or buildings, or for offices thereunto belonging, or for gardens, tanks, canals, water-courses, or the like purposes, which leases or engagement shall, so long as the land is duly appropriated to such purposes, and the stipulated rent paid, continue in force and effect. Provided that nothing in this Act contained shall be construed to entitle any purchaser of land at a public sale to demand a higher rate of rent from any person whose tenure or agreement may be annulled as aforesaid than was demandable by the former Malgoozar, except in cases in which such persons may have held their lands under engagements, stipulating for a lower rate of rent than would have been justly demandable for the land, in consequence of abatements having been granted by the former Malgoozars from the old established rates by special favor, or for a consideration, or the like, or in cases in which it may be proved that according to the custom of the Purgunnah, Mouzah, or other local division such persons are liable to be called upon for any new assessment, or other demand not interdicted by the Regulations of Government.

**XXVIII.** And it is hereby enacted, that it shall be competent to the Local Government, when it shall seem proper at any time before a sale for arrear shall have been actually made to direct it to be made, subject to the leases, assignments, or other encumbrances with which a Proprietor in possession, his ancestors, or predecessors may have burthened his assessed Estate, or to such of them as shall appear payer. In all such cases notice of the condition imposed by the Local Government shall be given by the Collector at the time of calling up the lot for sale, and such further notification shall be made as the Local Government may direct: Provided however, that in case the sale so restricted shall not realize an amount equal to the arrear due at the time of sale, or there shall appear ground to apprehend, that by reason of the restriction the future realization of the Revenue will be endangered, it shall be competent to the Local Government at any time before such restricted sale shall have become final and conclusive in the manner laid down in Section XIX of this Act, to direct the sale to be cancelled, and a new sale of the Estate to be made without other restrictions than those contained in the exceptions specified in Clauses 1 to 5 of Sec. XXVI of this Act. If after the sale has become final and conclusive, occasion should again arise to bring to sale for arrears an Estate purchased with a restriction of the above description, it shall at all times be competent to the Local Government to direct that the Muhal shall be sold without any other restriction than those contained in the exceptions specified in Clauses 1 to 5 of Sec. XXVI of this Act, or with the reservation before reserved. In the former event, should the purchase money realized by the unrestricted sale exceed in a large amount the sum obtained at the restricted sale, it shall farther be competent to the Local Government to direct a portion, or the whole of the excess to be paid to persons whose interests have been reserved at the first, shall become void at the second sale.

**XXIX.** And it is hereby enacted, that excepting Copartners of Estates under Butwarrah who may have saved their shares from sale under Sections 33 and 34. Regulation XIX. 1814, any recorded or unrecorded Proprietor or Copartner who may purchase in his own name or in the name of another the Estate of which he is Proprietor or Copartner; or who by re-purchase or otherwise may recover possession of the said Estate after it has been sold for arrears under this Act; and likewise any purchaser of an Estate sold for other arrears or demands than those accruing upon itself, shall by such purchase acquire the

Estate subject to all its encumbrances existing at the time of sale and shall not acquire any rights in respect to ryotts and under-tenants which were not possessed by the previous Proprietor at the time of the sale of the said Estate.

**XXX.** And it is hereby enacted, that arrears of rent which on the latest day of payment may be due to the defaulter from his tenants, shall in the event of a sale be recoverable by him after the said latest day by any process except distraint which might have been used by him for that purpose on or before the said latest day.

**XXXI.** And it is hereby enacted, that any Collector, or Officer exercising the powers of Collector, in respect to sales, shall be competent to punish any contempt. committed in his presence in open Cutcherry or Office for the time being, by fine, to an extent not exceeding Co.'s Rs. 200, commutable, if not paid, to imprisonment in the civil jail for a period not exceeding one month; and the Magistrate to whom such an offender may be sent by a Collector as aforesaid, shall carry his sentence into effect. Provided that an appeal from any order passed under this Section shall lie to the Revenue Commissioner, whose decision shall be final.

**XXXII.** And it is hereby enacted, that a default to make good a bid by making the deposit required by Section XV of this Act shall be held to be a contempt.

**XXXIII.** And it is hereby enacted, that the 'operation of this Act shall be confined to the Provinces of Bengal, Behar, Orissa and Benares, now subject to the General Regulations, and to the Ceded and Conquered Provinces similarly subject the General Regulations, under the Government of the Presidencies of Fort William in Bengal, and nothing in this Act contained shall affect land in the Town Calcutta, or the Settlements of Singapore, Penang or Malacca.

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