

The Assam Co-operative Agricultural and Rural Development Bank, Rules, 1961

ASSAM

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Rule

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The Assam Co-operative Agricultural and Rural Development Bank, Rules, 1961Published vide Notification No. ACC 43/60, dated 27th December, 1961Last Updated 11th February, 2020No. ACC 43/60. - In exercise of the powers conferred by Section 36 of Assam Co-operative Agriculture and Rural Development Bank Act, 1960 the Governor of Assam is pleased to make the following rules for the purpose of carrying out the provisions of the Act namely.-

Chapter I Preliminary

1. Short title, extent and commencement.

(1)These Rules may be called the Assam Co-operative Agricultural and Rural Development Bank, Rules, 1961.(2)They shall apply to the whole of the State of Assam.(3)They shall come into force at once.

2. Definitions.

- In these Rules, unless there is anything repugnant to the subject or context-(a)"The Act" means the Assam Co-operative Agriculture and Rural Development Bank Act, 1960 (Assam Act No. I of 1961);(b)"Applicant" means the Committee of mortgage Bank or any person duly authorised by such Committee in that behalf;(c)"Distrainger" means an officer of the Co-operative Department who is

empowered by the Registrar to distrain and sell the produce of the mortgaged land including the standing crops thereon in accordance with the provisions of Sections 8 to 10 or any person appointed by the State Government under Section 3 of the Assam Co-operative Societies Act, 1949 (Act I of 1950) to assist the Registrar.(d)"Principal Officer of the Co-operative Department in the area" means the Assistant Registrar of Co-operative Societies within the limits of whose jurisdiction property is situated ;(e)"Section" means a section of the Act; and(f)Words and expressions used in these rules shall bear the meaning respectively assigned to them in the Act.

Chapter II

Procedure in the Distraint and Sale of Produce

3. Deposit of cost of distraint and sale along with application.

- No applications under sub-section (1) and (2) of Section 8 shall be received unless the applicant deposits the cost of distraint and sale on a scale fixed by the Registrar.

4. Manner of effecting distraint on receipt of application.

- The application shall be in such form as may be required by the Registrar and shall be signed by a person authorised by the Committee. On receipt to the application the Registrar (or the Principal Officer of the Co-operative Department of the area) shall, if satisfied that the particulars set forth in the application are correct, prepare a demand notice in duplicate in the form laid down by the Registrar setting forth the name of the defaulter, the amount due together with interest and forward the same to the distrainer concerned.

5. Seizure and sale of distrained property.

- In the seizure and sale of the produce of the mortgage land including the standing crops thereon, the following procedure shall be observed-(a)Service of demand notice on the defaulter. - As soon as a distraint is made, the distrainer shall deliver to the defaulter a list of the property distrained and shall give him intimation in writing of the place and the day and hour at which the distrained property will be sold :Provided that where it is not possible to deliver such lists to the defaulter, the distrainer shall deliver such lists to some adult male member of the defaulter's family or to the authorised agent or the defaulter and when such delivery is not possible, shall affix the list on some conspicuous part of his residence and also at the place where the property is kept endorsing thereon the place, the day and hour at which property will be sold :Provided further that where the defaulter does not reside in the village in which the land is situated the standing crops or the product of which are distrained, the list shall be affixed on the land and a copy of it shall be sent by registered post to the defaulter to his last known place of residence ;(b)Custody, preservation and sale of distrained, property. - The distrainer shall make proper arrangements for custody and preservation of the distrained property during the interval between the distraint and sale. The applicant or the president, secretary or manager of the Mortgage Bank concerned, if he is authorised in this behalf, by the applicant shall, if required by the distrainer, undertake the custody and preservation of the

property distrained and shall be responsible for any loss or damage to the distrained property owing to the applicant, negligence.(c)Time of distress. - The distress shall take place after sun-rise and before sun-set.(d)Disposal of distrained crops. - If crops or ungathered products, of the land belonging to the defaulter are distrained, the distrainer may cause them to be sold when fit for reaping or gathering or at his option may cause them to be reaped or gathered, in due season and stored in proper places until sold.(e)Power of distrainer to force open places. - It shall be lawful for the distrainer to force open any stable, cowshed, granary, godown, outhouse or other building, and he may also enter any dwelling house the outer door of which may be opened and may break open the door of any room in such dwelling house for the purpose of distraining the produce of the mortgaged land lodged therein provided always that it shall not be lawful for such distrainer to break open or enter any apartment in such dwelling house appropriated to the women except as hereinafter provided.(f)When police help is to be requisitioned in forcing open places. - Where a distrainer may have reason to suppose that produce of the mortgaged land is lodged within a dwelling house, the outdoor of which may be shut, or within any apartments appropriated to woman which by the usages and customs of the country are considered private, the distrainer shall represent the fact to the officer-in-charge of the nearest police station-(i)On such representation, the officer-in-charge of the said station shall send a police officer to the spot, in the presence of whom, the distrainer may force open the outer door of such dwelling house in like manner as he may break open the door of any room within the house except the apartments appropriated to the woman.(ii)The distrainer may also in the presence of the Police Officer after due notice given for the removal of women within an apartment meant for women, and after furnishing means for their removal in a suitable manner (if they be women of rank who, according to the usage and customs of the country cannot appear in public) enter the woman apartments for the purpose of distraining the produce of the mortgaged land if any, deposited therein, but such property if found, shall be immediately removed from such apartments after which they shall be left free to the former occupants.(g)Due Proclamation and conduct of sale of distrained property. - The distrainer shall on the day previous to and on the day of sale cause proclamation of the time and place of the intended sale to be made by beat of drum in the village in which the defaulter resides or the produce is kept and in such other place or places as the distrainer may consider necessary to give due publicity to the sale.(h)Immediate sale of perishable articles. - No sale shall take place until after the expiry of the period of 15 days from the date of the service of the demand referred to in Section 9 of the Act ; provided that when the property seized is subject to speedy or natural decay, the distrainer may sell it at any time before the expiry of the said period of 15 days.(i)How sale is conducted. - At the appointed time and place, the distrainer shall sell in public auction the distrained property or such part thereof as may be necessary, in one or more lots as the distrainer may consider desirable and dispose of the same to the highest bidder.The distrainer may in his discretion postpone the sale to a specified day and hour, recording the reasons for such postponement. Where a sale is so postponed for a longer period than seven days, a fresh proclamation under clause (f) shall be made unless the defaulter consents to waive it.(j)Deposit of purchase money of distrained property. - The property shall be paid for in cash at the time of sale or soon as thereafter as the distrainer shall appoint and the purchaser shall not be permitted to carry away any part of the property until he has paid for it in full.(k)Resale of distrained property in case of default. - If the purchaser fails in the payment of purchase money, the property shall be resold and the proceeds of such resale shall be applied in the manner provided in Section 10. Any deficiency of price which may happen on the

resale and all expenses attending such resale shall, at the instance of either the applicant or the defaulter be recoverable from the defaulting purchaser (under the provisions relating to the execution of an award) as an arrear of land revenue.(l)Procedure against forcible removal of distrained property. - Where on an application made in this behalf, it is proved to the satisfaction of any civil Court of competent jurisdiction that any property distrained under these rules has been forcibly or clandestinely removed by any person, the Court may order forthwith such property to be restored to the distrainer.(m)Withdrawal of distress on payment of amount due with expenses. - When prior to the day fixed for sale, a defaulter or any person acting on his behalf or any person claiming an interest in the property distrained pays the full amount due including interest and other expenses incurred in distraining and proclaiming the sale the distrainer shall not proceed with the sale and shall release the property forthwith to such persons.(n)Investigation of claims and Postponement of sale of distrained property. - (i) Where any claim is preferred by any person other than the defaulter to any right or interest in the distrained property, the distrainer shall investigate the claim and dispose of the same on its merits :Provided that no such investigation shall be made where the distrainer considers that the claim has been purposely or unnecessarily delayed to suit the design of the person preferring the claim.(ii)Where the property to which the claim applies has been advertised for sale, the distrainer may postpone the sale pending investigation.

Chapter III

Procedure in the Sale of Mortgaged Property

6.

In the sale of immovable mortgaged property under the provisions of Sections 11 to 19 the following procedure shall be observed-(a)Payment of costs of proclamation and sale of mortgaged property. - No applications under sub-section (1) of Section 12 shall be received unless the applicant deposits the necessary cost of proclamation and sale on a scale fixed by the Registrar.(b)Application for sale of immovable property and particulars connected with sale. - The application shall be in such form as may be required by the Registrar and shall be signed by the applicant or where the applicant is a member of the committee of a Mortgage Bank, by a person duly authorised by the Committee. It shall state the amount due for recovery including expenses incurred in the service of the notices referred to in clause (b) of sub-section (2) of Section 11, and the names and addresses of the persons on whom notices were served under the said clause. It shall also contain a description sufficient for identification of the immovable property to be proceeded against and in case such property can be identified by boundaries or numbers in a record of settlements and survey, the specification of such boundaries or numbers.(c)Duties of sale officer on receipt of application. - On receipt of the application the Sale Officer shall state in the notice under sub-section (1) of Section 12 the amount claimed by the Mortgage Bank including expenses incurred by it in the service of notices and the particulars of properties to be sold in case of non-payment within a time to be allowed by him.(d)When the defaulters fail to pay. - If before the expiration of the time allowed in the notice issued under clause (c) the amount specified in such notice is not paid, the Sale Officer shall, after giving notice to the mortgage Bank on whose behalf the application is made, proceed to sell the immovable property specified in the application in the following manner.(e)Proclamation before

sale. - Proclamation of sale shall be published by fixing notice in the office of the Principal Officer of the Co-operative Department in the area and in the office of the Sub-Deputy Collector at least ten days before the date fixed for the sale and also by beat of drum in the village where the mortgaged property to be sold is situated on two consecutive days previous to the date of sale and on the day of sale, prior to the commencement of the sale. The proclamation shall state the time and place of sale and specify as fairly and accurately as possible-(i)The property to be sold ;(ii)The Revenue or rent payable in respect thereof ;(iii)The amount for the recovery of which the sale is ordered ; and(iv)Every other matter which the Sale Officer considers material for a purchaser to know in order to judge the nature and value of the property.(f)How sale is conducted. - The sale officer may, in his discretion postpone the sale to a specified date and hour, recording his reasons for such postponement. Where a sale is postponed for a longer period than seven days a fresh proclamation under clause (e) shall be issued unless the mortgagor consents to waive it.(g)Deposit by purchasers and re-sale in the event of default. - A sum of money equal to 15 percent of the sale price of the immovable property shall be deposited by the purchaser in the hands of the Sale Officer at the time of purchase and in default of such deposit the property shall forthwith be resold : provided that the Mortgage Bank at whose instance the property is sold is the purchaser and is entitled to set off the purchase money against the amount under clause (1) the Sale Officer shall dispense with the requirement of this clause.(h)Time allowed for payment of balance of Purchase Money. - The remainder of the purchase money shall be paid within fifteen days from the date of sale : Provided that in calculating the remainder of the purchase money to be paid under the clause, the purchaser, shall have the advantage of any set off to which he may be entitled under clause (1).(i)Steps to be taken by Sales Officer in default of payment. - In default of payment within the period mentioned in clause (h), the deposit may, if the sale officer thinks fit, after defraying all costs, charges and expenses of the same, be forfeited to the Government and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.(j)Defaulting purchaser responsible for loss of deficiency on re-sale. - Any deficiency of price which may happen on the re-sale by reasons of the purchaser's default and all expenses attending such re-sale shall, at the instance either of the applicant or of the mortgagor be recoverable from the defaulting purchaser as an arrear of land revenue.(k)Notification on re-sale. - Every re-sale of the immovable mortgaged property in default of payment of the purchase money within the period allowed for such payment, shall be made after issue of a fresh proclamation in the manner and for the period herein before prescribed for the sale.(l)Where the applicant bank purchases, purchase money shall be adjusted towards amounts due. - Where the Mortgage Bank at whose instance the property is sold, purchases, the purchase money and the amount due shall be set off against one another, and the Sale Officer shall record satisfaction of payment of mortgage money in whole or in part, as the case may be.

7. Release of property on payment of dues.

- Where prior to the day fixed for sale the mortgagor or any person acting on his behalf or any person claiming an interest in the mortgaged property makes payment of the full amount due including interest and other costs, charges and expenses incurred in connection with the sale of the property, the Sale Officer shall not proceed with the sale.

8. Mortgage Bank to be informed of the results of sale.

(1)The Sale Officer shall on the conclusion of the sale, make a report to the Mortgage Bank at whose instance the property was put to sale, regarding results of the sale.(2)Application to set aside the sale on deposit. - Whenever, the sale of the mortgaged property is set aside under sub-section (2) of Section 13 the deposit or the purchase money as the case may be, shall be returned to the purchaser ; in addition a sum equal to 5 percent of the purchaser money deposited by the mortgagor or the person having a right or interest in the mortgaged property under sub-clause (b) of sub-section (1) of Section 13 shall also be returned to the purchaser.

9. Sale of Immovable property to be proportionate to the amount.

- It shall be lawful for the Sale Officer to sell the whole or any portion of the immovable mortgaged property of a mortgagor in discharge of money due provided always that so far as may be practicable, no larger section or portion of the immovable property shall be sold than may be sufficient to discharge the amount due with interest and expenses of sale.

10. Remuneration to persons employed in serving notices and summons.

- Persons employed in serving notices or other processes under these rules, shall be entitled to remuneration at such rates as may from time to time be fixed by the Registrar.

11. Amount returnable to applicant after deduction.

- The amount deposited under Rule 3 or clause (a) of Rule 6, as the case may be, shall be returned to the applicant except where the expenses or costs incurred by the distrainer on account of the distraint or sale, as the case may be, or where the costs, charges and expenses properly incurred by the Sale Officer as incident to the sale or attempted sale exceed sales proceeds in which case such excess shall be deducted from the amount deposited and the balance, if any, shall be returned to the applicant.

12. Grant of Receipt.

- Every person making payment towards any money due for the recovery of which application has been made under these rules shall be entitled to a receipt signed by the distrainer or the Sale Officer, as the case may be, such receipt shall state the name of the person making the payment and the subject matter in respect of which the payment is made.