

Bihar and Orissa Public Demand Recovery Rules

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Rule BIHAR-AND-ORISSA-PUBLIC-DEMAND-RECOVERY-RULES of 1915

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Bihar and Orissa Public Demand Recovery Rules Last Updated 17th February, 2020 Signature and Verification of Requisitions For Certificates

1. Signature and Verification of requisition for certificates.

(1) Every requisition made under Section 5 shall be signed and verified at the foot by the person making it, or by some other person on his behalf who is proved to the satisfaction of the Certificate Officer to be acquainted with the facts of the case. (2) The verification shall state the person signing the requisition has been satisfied by enquiry that the amount stated in the requisition is actually due. (3) The verification shall be signed by the person making it and shall state the date on which it is signed. Service of Notices

2. Mode of Service.

- Service of a notice issued under Section 7, or under any other provision of this Act, shall be made by delivering or tendering a copy thereof signed by the Certificate Officer or such ministerial officer as he authorizes in this behalf, and sealed with the seal of the Certificate Officer.

3. Service on certificate-debtor or his agent.

- Wherever it is practicable, service shall be made on the certificate-debtor in person, unless he has an agent empowered to accept service in which case service on such agent shall be sufficient.

4. Service on adult male member of certificate-debtor's family.

- Where the certificate-debtor cannot be found, and has no agent empowered to accept service of the

notice on his behalf service may be made on any adult male member of the family of the certificate-debtor who is resident with him. Explanation. - A servant is not a member of the family within the meaning of this Rule.

5. Person served to sign acknowledgment.

- Where the serving officer delivers or tenders a copy of the notice to the certificate-debtor personally or to an agent or other person on his behalf, he shall require the signature of the person to whom the copy is so delivered or tendered to an acknowledgment of service endorsed on the original notice.

6. Procedure where certificate-debtor refuses to accept service or cannot be found.

- Where the certificate-debtor or his agent, or such other person aforesaid, refuses to sign the acknowledgment, or where the serving officer, after using all due and reasonable diligence, cannot find the certificate-debtor, and there is no agent empowered to accept service of the notice on his behalf, nor any other person on whom service can be made, the serving officer shall -(a) affix copy of the notice on the outer door or some other conspicuous part of the house in which the certificate-debtor ordinarily resides or carries on business or personally works for gain; or (b) if there be land affected by the notice, affix a copy of the notice on some conspicuous place in the office of the Certificate Officer and also on some conspicuous part of the land, and shall then return the original to the Certificate Officer by whom it was issued, with a report endorsed thereon or annexed thereto stating that he has so affixed the copy; the circumstances under which he did so, and the name and address of the person (if any) by whom the house or land was identified and in whose presence the copy was affixed.

7. Endorsement of time and manner of service.

- The serving officer shall, in all cases in which the notice has been served under Rule, 5, endorse or annex, or cause to be endorsed or annexed, on or to the original notice, a return stating the time when and the manner in which the notice was served and the name and address of the person (if any) identifying the person served and witnessing the delivery or tender of the notice.

8. Examination of serving officer.

- Where a notice is returned under Rule 6, the Certificate Officer shall, if the return under that Rule has not been verified by the affidavit of the serving officer, and may, if it has been so verified, examine the serving officer on oath, or cause him to be so examined by another Certificate Officer, or subject to any general order of the Collector by an Assistant Collector, Deputy Collector or Sub-Deputy Collector, touching his proceedings, and make such further inquiry in the matter as he thinks fit; and shall either declare that the notice has been duly served or order such service as he thinks fit.

9. Service by post.

- Notwithstanding anything hereinbefore contained, the notice may, if the Certificate Officer so directs, be served by post. Petitions under Section 9, Denying Liability

10. Signature and verification of petition denying liability.

(1) Every petition filed under Section 9, denying liability shall be signed and verified at the foot by the certificate-debtor or by some other person on his behalf-who is proved to the satisfaction of the Certificate Officer to be acquainted with the facts of the case. (2) The verification shall be signed by the person making it and shall state the date on which it is signed.

11. Transfer of such petitions.

(1) The Certificate Officer may, subject to any general or special order of the Collector transfer to any Assistant Collector or Deputy Collector subordinate to the Collector any petition filed under Section 9 and such Assistant Collector or Deputy Collector shall hear and determine such petition accordingly: Provided that the Collector may re-transfer any petition so transferred and order that it be heard and determined by the Certificate Officer. (2) The provisions of Section 10 shall be applicable to any Assistant Collector or Deputy Collector to whom any such petition has been transferred under sub-rule (1). Execution of Certificate

12. Execution in another district.

- Where a copy of a certificate is sent for execution to the Collector of another district under Section 13, sub-section (1) the certificate may be executed by him or may be transferred by him to any Certificate Officer in his district. Attachment

13. Attachment of movable property (other than agricultural produce) in possession of certificate debtor.

- Where the property to be attached is movable property (other than agricultural produce) in the possession of the certificate debtor; the attachment shall be made by actual seizure, and the attaching officer shall keep the property in his own custody or in the custody of one of his subordinates, and shall be responsible for the due custody thereof: Provided that, when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value the attaching officer may sell it at once.

14. Attachment of agricultural produce.

- Where the property to be attached is agricultural produce, the attachment shall be made by affixing a copy of the warrant of attachment -(a) where such produce is a growing crop - on the land on which such crop has grown, or (b) where such produce has been cut or gathered - on the threshing

floor or place of treading out grain or the like, or fodder-stack, on or in which it is deposited and another copy on the outer door or on some other conspicuous part of the house in which the certificate-debtor ordinarily resides, or, with the leave of the Certificate Officer, on the outer door or some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall thereupon be deemed to have passed into the possession of the Certificate Officer.

15. Provisions as to agricultural produce under attachment.

(1) Where agricultural produce is attached, the Certificate Officer shall make such arrangements for the custody thereof as he may deem sufficient and, when the produce is a growing crop, shall have regard to the time at which it is likely to be fit to be cut or gathered. (2) Subject to such conditions as may be imposed by the Certificate Officer in this behalf, either in the order of attachment or in any subsequent order, the certificate-debtor may tend, cut, gather and store the produce and do any other act necessary for maturing or preserving it, and, if the certificate-debtor fails to do all or any such acts the certificate-holder may, with the permission of the Certificate Officer and subject to the like conditions, do all or any of them either by himself or by any person appointed by him in this behalf, and the costs incurred by the certificate-holder shall be recoverable from the certificate-debtor as if they were included in the certificate. (3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require attachment merely because it has been served from the soil. (4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Certificate Officer may suspend the execution of the order for such time as he thinks fit, and may, in his discretion, make a further order prohibiting the removal of the crop pending the execution of the order of attachment. (5) A growing crop which from its nature does not admit of being stored shall not be attached under this Rule at any time less than twenty days before the time at which it is likely to be fit to cut or gathered.

16. Attachment of debt, share and other movable property not in possession of certificate-debtor.

- In the case of -(a) a debt not secured by a negotiable instrument, (b) a share in the capital of a Corporation, or (c) other movable property not in the possession of the certificate-debtor, except property deposited in, or in the custody of any Court, the attachment shall be made by a written order prohibiting -(i) in the case of the debt - the creditor from recovering the debt and the debtor from making payment thereof until the further order of the Certificate Officer; (ii) in the case of the share - the person in whose name the share may be standing from transferring the same or receiving any dividend thereon; (iii) in the case of other movable property (except as aforesaid) - the person in possession of the same giving it over to the certificate-debtor. (2) A copy of such order shall be affixed on some conspicuous part of the office of the Certificate Officer and another copy shall be sent, in the case of the debt to the debtor, in the case of the share to the proper officer of the Corporation and, in the case of the other movable property (except as aforesaid), to the person in possession of the same. (3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to

the Certificate Officer, and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

17. Attachment of share in movables.

- Where the property to be attached consist of the share or interest of the certificate-debtor in movable property belonging to him and another as co-owners, the attachment shall be made by a notice to the certificate-debtor prohibiting him from transferring the share or interest or changing it in any way.

18. Attachment of salary or allowances of public officer or servant of Railway Company or Local Authority.

- Where the property to be attached is the salary or allowances of a public officer or of a servant of a Railway Company or Local Authority, the Certificate Officer, whether the certificate-debtor or the disbursing officer is or is not within the local limits of the Certificate Officer's jurisdiction, may order that the amount shall be withheld from such salary or allowances, either in one payment or by monthly instalments as the Certificate Officer may direct; and, upon notice of the order to such officer as the State Government may, by notification in the Official Gazette, appoint, in this behalf, the officer or other person whose duty it is to disburse such salary or allowances shall withhold and remit to the Certificate Officer the amount due under the order, or as the case may be. Note. - Under Government Notification No. 7035-R., dated the 12th October, 1915 the officers mentioned in column 2 of the following table have been appointed as officers to whom notices or orders attaching the salary or allowances of the public officers and servants, respectively mentioned opposite to them in column 1 of the table, should be sent -

Certificate debtor	Officer to whom notice should be sent	
(1)	Public Officers holding Gazetted appointments under the Government of Bihar.	Accountant-General, Bihar
(2)	Public Officers holding non-Gazetted appointments under the Government,	Head of the Office in which the certificate-debtor is employed.
(3)	Servants of local Authorities within the State of Bihar.	Chairman of the Local Authority under which the certificate debtor is employed.
(4)	Employees of State Railways worked by or being constructed by the State.	Chief Examiner of Accounts of the Railway concerned.
(5)	Employees of State Lines worked by Companies and Companies lines.	Chief Auditor of the Railway concerned,
(6)	Employees of Arrah-Sasaram Light Railway Company Limited, the Bakhtiyarpur-Bihar Light	The Managing Agents of the Railway concerned.

Railway Company Limited, Dehri-Rohtas Light
Railway Company Limited, the
Darjeeling Himalayan Railway Extension Company
Limited.

(2) Where the attachable proportion of such salary or allowances is already being withheld and remitted to a Certificate Officer or to a Civil Court in pursuance of a previous and unsatisfied order of attachment, the officer appointed by the State Government in this behalf shall forthwith return the subsequent order to the Certificate Officer issuing it, with a full statement of all the particulars of the existing attachment. (3) Every order made under this Rule, unless it is returned in accordance with the provisions of sub-rule (2), shall without further notice or other process, bind the Central or the State Government or the Railway Company or Local Authority as the case may be, and the Central or the State Government or the Railway Company or Local Authority, as the case may be, shall be liable for any sum paid in contravention of this Rule.

19. Attachment of negotiable instruments.

- Where the property is a negotiable instrument not deposited in a Court nor in the custody of a public officer, the attachment shall be made by actual seizure and the instrument shall be sought before the Certificate Officer and held subject to his orders.

20. Attachment of property in custody of Court or public officer.

- Where the property to be attached is in the custody of any Court or public-officer, the attachment shall be made by a notice to such Court or officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Certificate Officer by whom the notice is issued: Provided that, where such property is in the custody of a Court any question of title or priority arising between the certificate-holder and any other person, not being the certificate-debtor, claiming to be interested in such property by virtue of any assignment, attachment or otherwise, shall be determined by such Court.

21. Attachment of decree.

(1) Where the property to be attached is a decree, either for the payment of money or for sale in enforcement of a mortgage, or charge, the attachment shall be made by the issue to the Civil Court of a notice requesting the Civil Court to stay the execution of the decree unless and until -(i) the Certificate Officer cancels the notice, or (ii) the Certificate-holder or the certificate-debtor applies to the Court receiving such notice to execute the decree. (2) Where a Civil Court receives an application under clause (iii) of sub-section (1) it shall, on the application of the certificate-holder or the certificate debtor, and subject to the provisions of the Code of Civil Procedure, 1908 (V of 1908) proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate. (3) The certificate-holder shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

22. Attachment of immovable property.

- Where the property is immovable, no attachment need be made before sale.

23. Removal of attachment on satisfaction or cancellation of certificate.

- Where -(a)the amount, due, with costs and all charges and expenses resulting from the attachment of any property or incurred in order to a sale, are paid to the Certificate Officer, or(b)the certificate is cancelled,the attachment shall be deemed to be withdrawn, and, in the case of immovable property, the withdrawal shall, if the certificate-debtor so desires, be proclaimed at his expense, and a copy of the proclamation shall be affixed in the manner prescribed by Rule 26, sub-rule (1).Sale Generally

24. Power to order sale of attached property.

- -Any Certificate Officer executing a certificate may order that any property liable to sale or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

25. Proclamation of sale by public auction.

(1)Where any immovable property, or any movable property exceeding [two hundred rupees] [Substituted for 'twenty rupees' by C.S. No. 6, dated 26.2.1969.] in value, is ordered to be sold by public auction, the Certificate Officer shall cause a proclamation of the intended sale to be made in the language of the Courts of the district.(2)Where the property to be sold is the holding of an occupancy raiyat, the Certificate Officer, before issuing the proclamation, shall hear the parties and estimate the value of the holding or of that portion of the holding the proceeds of the sale of which the considers, will be sufficient to satisfy the certificate:Provided that in execution of a certificate for arrears of rent in respect of the holding of any occupancy raiyat, if the certificate-holder specifies which portion of such holding should be sold, the Certificate Officer shall order that such portion or so much of such portion as may seem to him necessary to satisfy the decree, shall be sold:Provided further that if there is any incumbrance on any portion of such holding, the Certificate Officer shall not order such portion to be sold unless in the opinion of the Court, the decree cannot be satisfied without the sale of such portion.(3)Such proclamation shall be drawn up after notice to the certificate-debtor and shall state the time and place of sale, and shall specify, as fairly and accurately as possible -(a)the property to be sold;(b)(where the property to be sold is an interest in an estate or in part of an estate paying revenue to the Government) the revenue assessed upon the estate or part of the estate;(bb)where the property to be sold is the holding of an occupancy raiyat or a portion thereof, its value as determined by the Certificate Officer in the manner specified in sub-rule (2);(c)the amount for the recovery of which the sale is ordered; and(d)every other thing which the Certificate Officer considers it material for a purchaser to know in order to judge of the nature and value of the property.(4)where a tenure or a raiyatiholding at fixed rates situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885 ***** is in force, is to be sold in execution of certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the

tenure holding will first be put up to auction subject to registered and notified incumbrances, and will be sold subject to those incumbrances of the sum bid is sufficient to liquidate the amount specified in the certificate, and costs, and that otherwise it will, if the certificate-holder so desires be sold on a subsequent day, of which due notice will be given, with power to annul all incumbrances.(5)Where an occupancy holding, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1815 ***** is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the said proclamation shall also state that the holding will be sold with power to annul all incumbrances.(6)Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of sub-rules (4) and (5) shall not apply proclamation, the Certificate Officer may summon any person whom he thinks necessary to summon, and may examine him in respect to any such matters and require him to produce any document in his possession or power relating thereto.

26. Mode of making proclamation.

(1)Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and then upon a conspicuous part of the office of the Certificate Officer. A copy of the proclamation shall also be sent by registered post to the certificate-debtor or, if there be more than one certificate-debtor, to such one or more of them as the Certificate Officer may select in this behalf.Note. - When the several certificate-debtors are reasonably, near neighbours it would ordinarily suffice to send by registered post one copy of the proclamation, the recipient being selected on the basis of such considerations as the degree of interest, where the interests vary, age, if known and sex.Where, however, one or more of the certificate-debtors resides or reside at a distance from the recipient first selected the Certificate Officer should consider carefully the desirability of issuing supplementary copies.(2)Where the Certificate Officer so directs; such proclamation, shall also be published in the Official Gazette or in a local newspapers, or in both; and the costs of such publication shall be deemed to be costs of the sale.(3)If a tenure of a raiyati holding at fixed rates or an occupancy holding situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885, is in * * * * * in force is to be sold in execution of a certificate from arrears of rent due in respect thereof, the proclamation shall be published in the Malkachari or rent office of the estate and at the local thana.(4)Where property is divided into lots for the purpose of being sold separately it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Certificate Officer, otherwise be given.

27. Time of sale.

- Save in the case of property of the kind described in the proviso to Rule 13, no sale hereunder shall, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days in the case of immovable property, or of at least fifteen days in the case of movable property exceeding [two hundred rupees] [Substituted for 'twenty rupees' by C.S. No. 6, dated 26.2.1969.] in value, calculated from the date on which a copy of a sale proclamation has been affixed in a conspicuous part of the office of the Certificate Officer:Provided that if a tenure, a raiyati

holding at fixed rates or an occupancy holding situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885 * * * * * is in force, is to be sold in execution of a certificate for arrears of rent due in respect thereof, the sale shall not, without the consent in writing of the certificate-debtor, take place until after the expiration of at least thirty days calculated from -(a)the date on which a copy of the sale proclamation has been affixed at conspicuous part of the office of the Certificate Officer, or(b)the date on which the sale proclamation has been published in the Malkachari or rent office of the estate and at the local thana.whichever is later.

28. Adjournment or stoppage of sale.

(1)The Certificate Officer may in his discretion adjourn any sale hereunder to a specified day and hour, and the officer conducting any such sale may in his discretion adjourn the sale, recording his reasons for such adjournment:Provided that, where the sale is made in, or within the precincts of, the office of the Certificate Officer, no such adjournment shall be made without the leave of the Certificate Officer.(2)Where a sale is adjourned under sub-rule (1) for a longer period than seven days, a fresh proclamation under Rule 26 shall be made, unless the certificate-debtor consents to waive it.Note. - The board has recently had under consideration the question whether in view of Rule 28(2) of Schedule II of the Public Demands Recovery Act, IV of 1914, a fresh proclamation is necessary in a case where there is a series of short postponement each less than seven days, which taken together in the aggregate amount to more than seven days. It has now been decided in consultation with the Superintendent and Remembrancer of Legal Affairs, Bihar, that in such a case a fresh proclamation should be issued unless the certificate-debtors consent to waive the right in this respect. The attention of all District Officers is invited to the decision.(3)Every sale shall be stopped if, before the lot is knocked down, the debt and costs (including the costs of the sale) are tendered to the officer conducting the sale, or proof is given to his satisfaction that the amount of such debt and costs has been paid to the Certificate Officer who ordered the sale.

29. Defaulting purchaser answerable for loss on re-sale.

- Any deficiency of price which may happen on a re-sale by reason of the purchase default, and all expenses attending such re-sale, shall be certified to the Certificate Officer by the officer or other person holding the sale, and shall, at the instance of either the certificate-holder or the certificate-debtor, be recoverable from the defaulting purchaser under the procedure provided by this Act.

30. Restriction on bidding or purchase by officers.

- No officer or other person having any duty to perform in connection with any sale shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.Sale of Movable Property

31. Sale of agricultural produce.

(1)Where the property to be sold is agricultural produce, the sale shall be held -(a)if such produce is a growing crop - on or near the land on which such crop has grown; or(b)if such produce has been cut or gathered at or near the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited:Provided that the Certificate Officer may direct the sale to be held at the nearest place of public resort if he is of opinion that the produce is thereby likely to sell to greater advantage.(2)Where on the produce being put up for sale -(a)a fair price, in the estimation of the person holding the sale is not offered for it, and(b)the owner of the produce or a person authorised to act in this behalf applies to have the sale postponed till the next day or if a market is held at the place of sale the next market day.the sale shall be postponed accordingly and shall be then completed, whatever price may be offered for the produce.

32. Special provision relating to growing crop.

(1)Where the property to be sold is a growing crop and the crop from its nature admits of being stored, but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.(2)When the crop from its nature does not admit of being stored it may be sold before it is cut and gathered; and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending and cutting or gathering the crop.

33. Sale by public auction.

(1)Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the officer or other person holding the sale directs, and in default of payment the property shall forthwith be re-sold.(2)On payment of the purchase money, the officer or other person holding the sale shall grant a receipt for the same, and the sale shall become absolute.(3)Where the movable property to be sold is a share in goods belonging to the certificate-debtor and a co-owner, and two or more persons, of whom one is such coowner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

34. Irregularity not to vitiate sale, but any person injured may sue.

- No irregularity in publishing or conducting the sale of movable property shall vitiate, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person may institute a suit in a Civil Court against him for compensation, or if such other person is the purchaser for the recovery of the specific property and for compensation in default of such recovery.

35. Delivery of movable property, debts and shares.

(1)Where the property sold is movable property of which actual seizure has been made, it shall be delivered to the purchaser.(2)Where the property sold is movable property in the possession of some person other than the certificate-debtor, the delivery thereof to the purchaser shall be made by giving notice to the person in possession, prohibiting him from delivering possession of the property to any person except the purchaser.(3)Where the property sold is a debt not secured by a negotiable instrument or is a share in a Corporation, the delivery thereof shall be made by a written order of the Certificate Officer prohibiting the creditor from receiving the debt or any interest thereon, and the debtor from making payment thereof to any person except the purchaser, or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or prohibiting the person in whose name the share may be standing from making any transfer of the share to any person except the purchaser or receiving payment of any dividend or interest thereon, and the manager, secretary or other proper officer of the Corporation from permitting any such transfer or making any such payment to any person except the purchaser.

36. Transfer of negotiable instruments and shares.

(1)Where the execution of a document, or the endorsement of the party in whose name a negotiable instrument or a share in a Corporation is standing, is required to transfer such negotiable instrument or share, the Collector, or such officer as he may appoint in this behalf, may execute such document or make such endorsement as may be necessary and such execution or endorsement shall have the same effect as an execution or endorsement by the party.(2)Such execution or endorsement may be in the following form, namely - A, B, by C, D. Collector of the district ofin a proceeding under the Bihar and Orissa Public Demands Recovery Act, 1914, against A B.(3)Until the transfer of such negotiable instrument or share, the Certificate Officer may, by order, appoint some person to receive any interest or dividend due thereon, and to sign a receipt for the same and day receipt so signed shall be as valid and effectual for all purposes as if the same had been signed by the party himself.

37. Vesting order in case of other property.

- In the case of any movable property not hereinbefore provided for, the Certificate Officer may make an order vesting such property in the purchaser or as he may direct and such property shall vest accordingly.Sale of Immovable Property

38. Sale of tenure or holding at fixed rates, subject to registered and notified incumbrances.

(1)When a tenure or a holding at fixed rates, situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885 ***** is in force, has been advertised under Rule 25 for sale in execution of a certificate for arrears of rent due in respect thereof, it shall be put up to auction subject to registered

and notified incumbrances; and, if the bidding reaches a sum sufficient to liquidate the amount of the certificate and the costs of the sale, the tenure or holding shall be sold subject to such incumbrances.(2)The purchaser at such sale may, in manner provided by Section 167 of the Bengal Tenancy Act, 1885, and not otherwise annul any incumbrance upon the tenure or holding not being a registered and notified incumbrance.

39. Sale of tenure or holding at fixed rates, with power to avoid all incumbrances.

- If the bidding for a tenure or a holding at fixed rates put up to auction under Rule 38 does not reach a sum sufficient to liquidate the amount of the certificate and costs as aforesaid and if the certificate holder thereupon desired that the tenure or holding be sold with power to avoid all incumbrances, the person holding the sale shall adjourn the sale and make a fresh proclamation under Rule 25 announcing that the tenure or holding will be put up to auction and sold with power to avoid all incumbrances, upon a future day specified therein not less than fifteen or more than thirty days from the date of the postponement, and upon that day the tenure or holding shall be put to auction and sold with power to avoid all incumbrances.(2)The purchaser at a sale under this Rule may, in manner provided by Section 167 of the Bengal Tenancy Act, 1885 ***** and not other side, annul any incumbrance on the tenure or holding.

40. Sale of occupancy holding with power to avoid all incumbrances.

(1)When an occupancy holding situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885 ***** is in force has been advertised under Rule 25 for sale in execution of a certificate for arrears of rent due in respect thereof, it shall be put up to auction and sold with power to avoid all incumbrances.(2)The purchaser at a sale under this Rule, may in manner provided by Section 167 of the Bengal Tenancy Act, 1885 ***** and not otherwise, annul any incumbrances on the holding.

41. Rules 38 to 40 not to apply in certain cases to certificate-holders who are co-sharer landlords.

- Where the certificate-holder is a co-sharer landlord and the certificate is for his share of the rent only, the provisions of Rules 38, 39 and 40 shall not apply.

42. Postponement of sale to enable certificate-debtor to raise amount due under certificate.

(1)When an order for the sale of immovable property has been made, if the certificate-debtor can satisfy the Certificate Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property or some part thereof, or of any other immovable property of the certificate-debtor, the Certificate Officer may, on his application postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper to enable him to raise the amount.(2)In such case the Certificate Officer shall

grant a certificate to the certificate-debtor, authorising him, within a period to be mentioned therein and notwithstanding anything contained in Section 8 or Section 20, to make the proposed mortgage, lease or sale: Provided that all moneys payable under such mortgage, leases or sale shall be paid, not to the certificate-debtor but to the Certificate Officer: Provided also that no mortgage, lease or sale under this Rule shall be absolute until it has been confirmed by the Certificate Officer.

43. Prohibition of purchase of tenure or holding by certificate-debtor.

(1) when a tenure or holding situated in an area in which Chapter XIV of the Bengal Tenancy Act, 1885 ***** is in force, is put up for sale in execution of a certificate for arrears of rent due in respect thereof the certificate-debtor shall not bid for or purchase the tenure or holding. (2) If a certificate-debtor purchases, by himself or through another person a tenure or holding so sold, the Certificate Officer may, if he thinks fit, on the Application of the certificate-holder or any other person interested in the sale, by order, set aside the sale; and the costs of the application and order, and any deficiency of price which may happen on the re-sale, and all expenses attending it, shall be paid by the certificate-debtor.

44. Deposit by purchaser and re-sale in default.

- On every sale of immovable property, the person declared to be the purchaser shall pay immediately after such declaration, a deposit of twenty-five percent on the amount of his purchase-money, to the officer or other person conducting the sale; and in default of such deposit, the property shall forth with be re-sold.

45. Time for payment of purchase-money in full.

- The full amount of purchase-money payable shall be paid by the purchaser to the Certificate Officer on or before the fifteenth day from the sale of the property.

46. Procedure in default of payment.

- In default of payment within period mentioned in Rule 45 the deposit may, if the Certificate Officer thinks fit after defraying the expense of the sale be forfeited to the Government, and the property shall be re-sold, and the defaulting purchaser shall forfeit all claim to the property or to any part of the sum for which it may subsequently be sold.

47. Notification on re-sale.

- Every re-sale of immovable property in default of payment of the purchase-money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period hereinbefore prescribed for the sale.

48. Bid of co-sharer to have preference.

- Where the property sold is a share of undivided immovable property and two or more persons, of whom one is a co-sharer, respectively bid the same for such property or for any lot, the bid shall be deemed to be the bid of the co-sharer.

49. Return of purchase-money in certain cases.

- Where a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase, together with the penalty (if any) referred to in clause (b) of Section 28, and such interest as the Certificate Officer may allow shall be paid to the purchaser.

50. Certificate to purchase.

- Where a sale of immovable property has become absolute, the Certificate Officer shall grant a certificate specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser.(2)Such certificate shall bear date of the day on which the sale became absolute.

51. Delivery of property in occupancy of certificate-debtor.

- Where the immovable property sold is in the occupancy of the certificate-debtor or of some person on his behalf, or of some person claiming under a title created by the certificate-debtor subsequently to the service of the notice issued under Section 7, and a certificate in respect thereof has been granted under Rule 50, the Certificate Officer shall on the application of the purchase, order delivery to be made by putting such purchase, or any person whom he may appoint to receive delivery on his behalf, in possession of the property and, if needed by removing any person who refuses to vacate the same.

52. Delivery of property in occupancy of tenant or other person.

- Where the property sold is in the occupancy of a tenant or other person entitled to occupy the same, and a certificate in respect thereof has been granted under Rule 50, the Certificate Officer shall, on the application of the purchaser, order delivery to be made by affixing a copy of the certificate of sale in some conspicuous place on the property, and proclaiming to the occupant by beat of drum or other customary mode, at some convenient place, that the interest of the certificate-debtor has been transferred to the purchaser.Arrest and Detention

53. Discretionary power to permit certificate debtor to show cause against detention in prison.

(1)The Certificate Officer may, before issuing a warrant for the arrest of the Certificate-debtor, issue a notice calling upon him to appear before the Certificate-Officer, on a day to be specified in the notice, and show cause why he should not be committed to the Civil Prison.(2)Where appearance is

not made in obedience to the notice the Certificate Officer may issue a warrant for the arrest of the certificate-debtor.

54. Subsistence allowance.

(1)When a certificate has been signed either in accordance with the provisions of Section 4, or on a requisition made under Section 5, of certificate-debtor shall be arrested in execution of the certificate unless and until the certificate-holder pays into Court such sum as the Certificate Officer thinks sufficient for the subsistence of the certificate-debtor from the time of his arrest until he can be brought before the Certificate Officer.(2)When a certificate-debtor is committed to the Civil Prison in execution of a certificate, the Certificate Officer shall fix for his subsistence such monthly allowance as he may be entitled to according to the scale fixed by the State Government for the subsistence of arrested judgment-debtors, or where no such scale has been fixed, as the Certificate Officer considers sufficient with reference to the class to which the certificate-debtor belongs.(3)The monthly allowance fixed by the Certificate Officer shall be supplied by the person upon whose requisition the certificate was signed, by monthly payments in advance before the first day of each month.(4)The first payment shall be made to the Certificate Officer for such portion of the current month as remains unexpired before the certificate-debtor is committed to the Civil Prison; and the subsequent payment (if any) shall be made to the officer in charge of the Civil Prison.(5)Sums disbursed by the certificate-holder for the subsistence of the certificate-debtor in the Civil Prison shall be deemed to be costs in the proceeding:Provided that the certificate-debtor shall not be detained in the Civil Prison or arrested on account of any sum so disbursed.Supplemental

55. Register of certificate.

(1)Every Certificate Officer shall cause to be kept in his office a register of certificates filed in his office under this Act, and shall cause particulars of all such certificate to be entered in such register.(2)Such register shall open during office hours, for not less than two hours daily, and at such time as may be fixed by the Collector, for inspection by any person who desires to inspect the same; and a fee of [six paise] [Substitute for one anna.] shall be chargeable for every such inspection.Note 1. - The fee should be prepaid by Court-fee stamp affixed to the application.Note 2. - A surcharge at the rate of [twelve paise] [Substituted for two annas.] shall be levied on the fee prescribed under this Rule.A manager under the Court of Wards having occasion to inspect a certificate register should be required to pay the fee under this Rule.

56. Payment by instalments.

(1)Payment of the amount due under any certificate may be made by instalments, if the Certificate Officer in whose office the certificate is filed so directs.(2)The payment of every such instalment shall be entered in the register referred to in Rule 55.

57. Remittance to Certificate Officer of sums received under a certificate transferred for execution.

- When a copy of a certificate has been sent to another officer under Section 13, sub-section (1), all sums received by such officer under such certificate shall be remitted by him to the Certificate Officer in whose office the original certificate is filed.

58. Entry of satisfaction.

- When the whole or any portion of the amount due under a certificate has been realised, the Certificate Officer in whose office the original certificate is filed shall cause an entry of the fact to be made upon the certificate and in the register referred to in Rule 55.

59. Communication of satisfaction to other persons.

- When a copy of certificate has been sent to another officer under Section 13, sub-section (1), or, when a certificate has been signed upon a requisition, any satisfaction of the certificate whether in whole or in part, shall be certified to such officer, or to the sender or such requisition, as the case may be. Forms

60. Forms in Appendix.

- The forms set forth in the Appendix, shall be used with such variation as circumstances may require.

61. Other forms.

- Where no form is set forth in the Appendix, the appropriate form in use in Civil Courts shall be used, with such modifications as may appear to be necessary.

II

Appendix Forms [See Rule 60] Form No. 1 Certificate of public demands [See Sections 4 and 6] Filed in the Office of the Certificate Officer of..... (Name of district)

Number of certificate	Name and address of certificate-holder	Name and address of certificate-debtor	Amount of public demand [including interest, if any, and including the fee paid under Section 5, sub-section (2), if any for which the certificate is signed, and period for which such	Further particular of the public demand for which this certificate is signed

demand is due

I hereby certify that the above-mentioned sum of Rs..... in due to the above-named from the above named.....[If the certificate is signed on requisition sent under Section 5 add-I further certify that the above-mentioned sum of Rs.....is justly recoverable, and that recovery by suit is not barred by law.Dated this day of..... 20.....A.B.Certificate-Officer of.....Form No. 2Requisition for a certificate[See Section 5]To,The Certificate Officer of the District of

Name of certificate debtor	Address of certificate	Amount of public demand for which this requisition is made	Nature of the public demand for which this requisition is made
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I request you to , a cover the above mentioned sum of Rs..... which I am satisfied, after inquiry is due from the said.....in respect of.....Verified by me on theday of 20.....A. B.(Designation)Form No. 3Nature of certificate-debtor[See Section 7]To,(Name of Certificate-debtor)You are hereby informed that a certificate against you for Rs due from you on account of has this day been in my office, under Sections of the Bihar and Orissa Public Demands Recovery Act, 1914, If you deny your liability to pay the said sum of Rs.....you may, within thirty days from the service of this notice file in my office a petition denying liability in whole or in part. If, within the said thirty days, you fail to file such a petition, or if you fail to show cause, or do not show sufficient cause, why such certificate should not be executed, it will be executed, under the provisions of the said Act, unless you pay Rs. (Rs on account of the demand and Rson account of costs of realisation) into any office. Until the said amount is so paid you are hereby prohibited from alienating your immovable property, or any part of it, by sale, gift, mortgage or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately.A copy of the certificate above mentioned is hereto annexed.You may remit the amount by money order, quoting the number and year of the certificate.Dated this day of.....20.....A. B.Certificate Officer of.....Form No. 4Petition denying liability[See Section 9]To,The Certificate Officer of.....The humble petition of (Name of petitioner) of (address).Showeth -That a certificate no. of (year), for the sum of Rs..... has been filed against your petitioner in your office under Section..... of the Bihar & Orissa Public Demands Recovery Act, 1914.That your petitioner respectfully denies his liability to pay the said sum of Rs.....(or, where the liability to pay part is admitted, denies his liability to pay more than Rs.....), and thus for the following reasons -That the facts above stated are true to the best of your petitioner's knowledge and belief.Your petitioner therefore respectfully prays that the said certificate may be set aside (or modified or varied).A.B.(Petitioner)Form No. 5Notice to show cause why sale should not be set aside[See Section 29]To,Whereas the undermentioned property was sold on the.....day of... 20.....in execution of certificate no.....dated the..... 20.....and whereas.....the certificate-holder [or certificate- debtor] has applied to me to set aside the sale of the said property on the ground that.....Take notice that if you have any cause to show why the said application should not be granted you should appear with your proofs in the office on the day of..... 20.....when the said application will be heard and determined.Given under my hand and seal, this day of 20Description

of Property Certificate Officer Form No. 6 Warrant of arrest [See Section 38] To,
Whereas a certificate no.

{|

Original Demand Interest Cost Execution Rs. P.

Total

| was filed in this office on the ... 20 under Section of the Bihar and Orissa Public Demands Recovery Act, 1914, against certificate-debtor, and the sum of Rs. as noted in the margin is due from him in respect of the said certificate; and whereas the said sum of Rs. has not been paid to the certificate-|}holder in satisfaction of the said certificate, these are to command you to arrest the said certificate-debtor and, unless the said certificate debtor should pay to you the said sum of Rs. together with Rs. for the cost of executing this process, or should produce a receipt showing payment of the amount of the Certificate Officer, to bring him before the Court with all convenient speed. You are further commanded to return this warrant on or before the day of 20 with an endorsement certifying the day on which and the manner in which it has been executed, or the reason why it has not been executed. Dated this day of 20 Certificate Officer. Form No. 7 Order committing certificate-debtor to the civil prison [See Section 38] To, The Officer-in-charge of the civil prison at Whereas who has been brought before me this day of 20 under a warrant in execution of certificate no. filed in this office on the 20 under Section of the Bihar and Orissa Public Demands Recovery Act, 1914, and by which certificate it was ordered that the said should pay and whereas the said has not paid the said sum nor satisfied me that he is entitled to be discharged from custody. You are hereby required to take and receive the said into the civil prison and keep him imprisoned therein for a period not exceeding or until the said certificate shall be fully satisfied, or the said or until the said certificate shall be fully satisfied, or the said shall be otherwise entitled to be released according to the terms and provisions of Section 40 or Section 41 of the said Act; and I hereby fix paise per diem as the rate of the monthly allowance for the subsistence of the said during his confinement under this order of committal. Dated this day of 20 Certificate Officer. Form No. 8 Notice of legal representative of certificate-debtor [See Section 52] To, (Name of Legal Representative) You are hereby informed that a certificate against deceased, for Rs. due from him on account of was filed in this office on the 20 under Section of the Bihar and Orissa Public Demands Recovery Act, 1914, and that a demand of Rs. in respect of the said certificate proceeding is due from you as the legal representative of the said deceased. If you deny your liability to pay the said sum of Rs. you may within thirty days from the service of this notice, file in my office a petition denying liability, in whole or in a part. If, within the said thirty days, you fail to file such a petition, or if you fail to show cause or do not show sufficient cause, why such certificate should not be executed, it will be executed under the provisions of the said Act, unless you pay Rs. (Rs. on account of the demand and Rs. on account of realization) into my office. Until the said amount is so paid, you are hereby prohibited, from alienating your immovable property, or any part of it; by sale, gift, mortgage or otherwise. If you in the meantime conceal, remove or dispose of any part of your movable property, the certificate will be executed immediately. A copy of the certificate above

mentioned is hereto annexed. You may remit the amount by money order quoting the number and year of the certificate. Dated this.....20.....Certificate Officer. Form No. 9 Notice to certificate-holder [See Section 21] Whereas.....has made application to the Court for the removal of attachment on.....placed at your instance in execution of certificate no..... of 20....., this is to give you notice to appear before me on..... the day of.....20 either in person or by a pleader duly instructed to support your claim, as attaching creditor. Given under my hand and seal, this.....of.....20 day. Certificate Officer Form No. 10 Warrant of sale of property [See Rule 24] To, The These are to command you to sell by auction, after giving.....days, previous notice, by affixing the same in this office, and after making due proclamation the undermentioned property attached in execution of certificate no.....in favour ofor so much of said property as shall realize the sum of Rs..... being the.....of the said certificate and costs still remaining unsatisfied. You are further commanded to return this warrant on or before the..... day of.....20.....with an endorsement certifying the manner in which it has been executed, or the reason why it has not been executed. Given under my hand and seal, this.....day of.....20.....Specification of property - Certificate Officer Form No. 11 Notice of the day fixed for setting a sale proclamation [See Rule 25] To,.....Certificate-Debtor, Whereas in execution of certificate no.....of.....a sale is about to be held of your property mentioned below you are hereby informed that the..... day of 20..... has been fixed for setting the terms of the..... proclamation of sale. The total amount due from you in respect of the certificate including costs and interests is Rs..... Given under my hand and seal, this.....day of..... 20Specification of property - Certificate Officer Form No. 12 Proclamation of sale [See Rule 25] Notice is hereby given that, under Rule 24 in Schedule II to the Bihar and Orissa Public Demands Recovery Act, 1914, an order has been passed by me for the sale of the property mentioned in the annexed schedule, in satisfaction of the claim of the certificate-holder under the certificate mentioned in the margin amounting, with costs and interest up to date of sale, to the sum of..... The sale will be by public auction, and the property will be put for sale in the lots specified in the schedule. The sale will be of the property of the certificate-debtor above named as mentioned in the Schedule below. In the absence of any order of postponement, the sale will be held by..... monthly sale commencing at O'clock on the.....at.....in the event, however, of the debt above specified and of the..... cost of the sale, being tendered or paid before knocking down of any lot the sale will be stopped. At the sale the public generally are invited to bid, either personally or by duly authorized agent. The following are the further. Conditions of sale The particular, specified in the schedule below have been stated to the best of the information of the Certificate Officer; but the Certificate Officer will not be answerable for any error, mis-statement or omission in this proclamation.

2. The amount by which the buildings are to be increased shall be determined by the officer conducting the sale. In the event of any dispute arising to the bid amount, or as to the bidder, the lot shall at once be again put up to auction.

3. The higher bidder shall be declared to be the purchaser of any lot provided always that he is legally qualified to bid, and provided that it shall being the discretion of the officer holding the sale to decline acceptance of the highest bid when the price offered appears so clearly inadequate as to make it, advisable to do so.

4. For reasons recorded, it shall be in the discretion of the officer conducting the sale to adjourn it, subject always to the provisions of Rule 28 in Schedule II of the Bihar and Orissa Public Demands Recovery Act, 1914.

5. In the case of movable property, the price of each lot shall be paid at the time of sale or as soon after as the officer holding the sale directs, and in default of payment the property shall forthwith be again put up and resold.

6. In the case of immovable property the person declared to be the purchaser shall pay immediately after such declaration a deposit of 25 percent of the amount of his purchase money to the officer conducting the sale, and in default of such deposit the property shall forthwith be put up again and resold.

7. The full amount of the purchase-money shall be paid by the purchaser before the office of Certificate Officer closes on the fifteenth day after the sale of the property, exclusive of such day, or if the fifteenth day be a Sunday or other holiday, then on the first office day after the fifteenth day.

8. In default of payment of the balance of purchase money within the period allowed the property shall be re-sold after the issue of a fresh notification of sale. The deposit after defraying the expense of the sale, may, if the Certificate Officer thinks fit, 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 be subsequently sold.

Given under my hand and seal, this.....day of.....20.....Certificate Officer
of property

Number of lot	Description of property to be sold with the name of each owner where there	The revenue assessed upon the estate if the property to be sold is an interest in an estate or a part	Claims (if any) which have been put forward to the property and any other
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	are more certificate debtors than one	of anestate paying revenue to the known particulars bearing Government on itsnature and value	
1	2	3	4

Form No. 13 Order on the Nazir for causing publication of proclamation of sale [See Rule 26] To, The Nazir of..... Whereas an order has been made for the sale of the property of the certificate-debtor under certificate no..... dated the..... 20..... which is specified in the schedule hereunder annexed, and whereas..... the..... day of..... 20..... has been fixed for the sale of the said property..... copies of the proclamation of sale are by this warrant made over to you, and you are hereby ordered to have the proclamation published by beat of drum within each of the properties specified in the said schedule to affix a copy of the said proclamation on a conspicuous part of each of the said properties and afterwards on my office, and then to submit to me a report showing the dates on which and the manner in which the proclamations have been published. Dated the..... day of..... 20.....

Schedule 3

Certificate Officer Form No. 14 Certificate, by officer holding a sale, of the deficiency of price on a resale of property by reason of the purchaser's default. [See Rule 29] Certified that the re-sale of the property in execution of certificate no..... dated the..... 20..... in consequence of default in the price..... of the said property, amounting to Rs..... and that the expenses attending such re-sale amounted to Rs..... making a total of Rs which sum is recoverable from the defaulter. Dated the day of..... 20..... Officer holding the sale Form No. 15 Certificate of sale of land [See Rule 50] This is to certify that..... has been declared the purchaser at a sale by public auction on the..... day of..... 20..... of..... in execution of certificate no..... dated the..... 20..... and that. the said sale has been duly confirmed by me. Given under my hand and seal, this day of..... 20..... Certificate Officer. Form No. 16 Order for delivery to certified purchaser of land at a sale in execution [See Rule 51] To, The Whereas..... has become the certified purchaser of..... at a sale in execution of certificate no dated the. 20..... you are hereby ordered to put the said..... the certified purchaser, as aforesaid, into possession of the same. Given under my hand and seal, this..... day of..... 20..... Certificate Officer. Form No. 17 Notice to show cause why warrant of arrest should not issue [See Rule 53] To, Whereas..... has made application to me for execution of certificate no..... of 20..... by arrest and imprisonment of your person you are hereby required to appear before me on the.... day of..... 20..... to show cause why you should not be committed to the civil prison in execution of the said certificate. Given under my hand and seal, this..... day of..... 20..... Certificate Officer



[See Section 69]

Part I – Amendments of Bihar Tenancy Act, 1885

I. For Chapter XIII A of the Bihar Tenancy Act, 1885 the following shall be substituted, namely -

Chapter XIII

A Summary Procedure for the Recovery of rents under the Bihar & Orissa Public Demands Recovery Act, 1914

158A. Repealed by the Bihar Tenancy (Amendment) Act, 1938 (Bihar Act 11 of 1938), Section 58.

II. For sub-section (1) of Section 158B of the Bihar Tenancy Act, 1885, the following shall be substituted, namely - "(1) Where a tenure or holding or part of a holding is sold in execution of - (a) a decree for arrears of rent due in respect of the tenure or holding; (b) a decree for damages under Section 186A; or (c) a certificate for arrears of rent signed under the Bihar and Orissa Public Demands Recovery Act, 1914, the tenure or holding or part of the holding shall, subject to the provisions of Section 28, pass to the purchaser. If such decree was obtained by - (i) a sole landlord; or (ii) the entire body of landlords; or (iii) one or more co-sharer landlords who has or have, sued for the rent due to all the co-sharers in respect of the entire tenure or holding and made all the remaining co-sharers parties defendant to the suit, or if such certificate was signed on the requisition of, or in favour of a sole landlord or the entire body of landlords." III. (1) In sub-section (1) of Section 167 of the Bengal Tenancy Act, 1885 after words "the foregoing Sections" the words "or under" the Bihar and Orissa Public Demands Recovery Act, 1914" shall be inserted. (2) In sub-section (4) of the said Section - (a) after the words "a decree" the words "or a certificate signed under the Bihar and Orissa Public Demands Recovery Act, 1914" shall be inserted, and (b) after the words "the Chapter" the word "or the Act" be inserted. IV. In sub-section (1) of Section 171 of the Bihar Tenancy Act, 1885, after the words "under this Chapter" the following shall be inserted, namely - "or in execution of a certificate for arrears of rent due in respect thereof, signed under the Bihar and Orissa Public Demands Recovery Act, 1914." V. In Section 172 of the Bihar Tenancy Act, 1885 for the words. "When a tenure or holding is advertised for sale under this Chapter in execution of a decree against a superior tenant defaulting" the following shall be substituted namely - "When a tenure or holding is advertised for sale - (a) under this Chapter in execution of a decree against a superior tenant defaulting, or (b) in execution of a certificate, signed under the Bihar and Orissa Public Demands Recovery Act, 1914, for arrears of rent due in respect of the tenure or holding from superior tenant defaulting."

Part II – Amendment of the Orissa Tenancy Act, 1913

(Not printed)

Part III – Amendment of the Chota Nagpur Tenancy Act, 1908

I. For Section 244 of the Chota Nagpur Tenancy Act, 1908, the following shall be substituted, namely -

244. Recovery of arrears of rent under the certificate procedure where there is record of rights - (1) When an arrear of rent accrues in respect of a Mundari Khuntkattidari tenancy for which a record of rights has been prepared under this Act or under any law in force before the commencement of this Act.

No suit shall be maintainable in any Court for the recovery of the arrear but the landlord may apply in writing to the Deputy Commissioner to sign a certificate authorizing the recovery thereof, with simple interest not exceeding twelve and-a-half, or (in the case of money recoverable under the Cess Act, 1880) at twelve and-a-half, per centum per annum, under the Bihar and Orissa Public Demands Recovery Act, 1914.(2)Every such application shall be signed and verified by the landlord making it in the manner prescribed by Rule 1 in Schedule II to the said Act, as amended for the time being by Rules made under Section 48 thereof; and shall be chargeable with a fee of the amount which would be payable under the Court-Fees Act, 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the application as being due.(3)Upon receiving any such application the Deputy Commissioner may after making such inquiry and taking such evidence as he may consider necessary, and if he is satisfied that the arrear is due, sign a certificate, in the prescribed form stating that the arrear is due; and shall include in the certificate the fee paid under sub-section (2) and shall cause the certificate to be filled in his office.(4)The person in whose favour any such certificate is signed shall be deemed to be the certificate-holder for the amount mentioned in the certificate, and the person against whom the certificate is signed shall be deemed to be the certificate-debtor for the said amount; and all proceedings taken by the Certificate Officer for the recovery of such amount shall be taken at the instance of the first mentioned person, and at his cost and on his responsibility, and not otherwise.(5)The Bihar and Orissa Public Demands Recovery Act, 1914, and Sections 181 to 207 to this Act, such restriction and notifications (if any) as may be prescribed, shall apply to the execution and to all proceedings arising out of the execution of certificates filed under sub-section (8):Provided as follows -(a)subject to the provisions of Section 258, a certificate signed under this Section may be enforced only by the attachment and sale of the movable property of the person against whom the certificate is made, or by the attachment and realization of rent or other debts due to him, or by execution against his person in the manner provided by Chapter XVI, or by any two or more of these processes; and(b)no objection by any third person to the attachment or sale of crops shall be entertained except -(i)an objection, by a mortgagee holding under a bhugut bandha mortgage, that the judgment debtor has other movable property or assets, from which the sum due can be realized; or(ii)an objection, by a lessee holding under a mukarrari lease as described in Section 240, clause (a), that the land in respect of which the arrear accrued is included in his lease, and that the judgment debtor has other movable property or assets from which the sum due can be realised; or(iii)an objection, by a cultivator, that he is in possession of the land in respect of which the arrear accrued, that the land is recorded in the record-of-rights as being in the possession of himself or of some person from whom he has lawfully

acquired such possession and that the judgment-debtor has other movable property or assets from which the sum due can be realised; or (iv) an objection, by such third person, that the land on which such crops were or are standing is entered in the record-of-rights as being in the possession of himself or of some person from whom he has lawfully acquired possession, and that such land does not form part of the tenancy in respect of which the certificate was signed. (6) Notwithstanding anything hereinbefore contained, the Deputy Commissioner may, in any case, by written order setting forth the reasons therefor refuse to sign a certificate as aforesaid, or stay for any specified period the execution of any certificate which has been signed. (7) An appeal from any order made under sub-section (6) shall lie as provided in Chapter XVI. II. In Sections 47 and 248 of the Chota Nagpur Tenancy Act, 1908, the words and figures "the Bihar and Orissa Public Demands Recovery Act, 1914." shall be substituted for the words and figures "the Public Demands Recovery Act. 1895."