

THE CHUTIA NAGPUR ENCUMBERED ESTATES ACT, 1876

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THE CHUTIA NAGPUR ENCUMBERED ESTATES ACT, 1876

ACT NO. VI OF 1876

[14th March, 1876.]

An Act to relieve certain Landholders in Chutia Nagpur.

Preamble.—WHEREAS it is expedient to provide for the relief of holders of land in Chutia Nagpur who may be in debt, and whose immoveable property may be subject to mortgages, charges and liens; It is hereby enacted as follows:—

I.—PRELIMINARY.

1. Short title.—This Act may be called “The Chutia Nagpur Encumbered Estates Act, 1876.”

II.—VESTING ORDER.

2. Power to vest management of property in an officer appointed by Commissioner.—Whenever any holder of immoveable property, or (when such holder is a minor, or of unsound mind, or an idiot) his guardian, committee or other legal curator,

or the person who would be heir to such holder if he died intestate,

or (when such person is a minor, or of unsound mind, or an idiot) his guardian, committee or other legal curator,

or when any such property belonging to such holder has been attached in execution of a decree of a Civil Court, the Deputy Commissioner within whose jurisdiction such property is situate,

applies in writing to the Commissioner, stating that the holder of the said property is subject to, or that his said property is charged with, debts or liabilities other than debts due, or liabilities incurred, to Government, and requesting that the provisions of this Act be applied to his case,

the Commissioner may, with the previous consent of the Lieutenant-Governor of Bengal, by order published in the *Calcutta Gazette*, appoint an officer (hereinafter called the Manager), and vest in him the management of the whole or any portion of the immoveable property of or to which the said holder is then possessed or entitled in his own right, or which he is entitled to redeem, or which may be acquired by or devolve on him or his heir, during the continuance of such management.

3. Effect of order.—On the such publication the following consequences shall ensue:—

Bar of suits.—*First*, all proceedings which may then be pending in any Civil Court in British India, in respect to such debts or liabilities, shall be barred; and all processes, executions and attachments for or in respect of such debts and liabilities shall become null and void;

Freedom from arrest.—*Secondly*, so long as such management continues, the holder of the said property and his heir shall not be liable to arrest for or in respect of the debts and liabilities to which the said holder was immediately before the said publication subject, or with which the property so vested as aforesaid or any part thereof was at the time of the said publication charged, other than debts due, or liabilities incurred, to Government,

Moveable property not liable to attachment for prior debts.—nor shall their movable property be liable to attachment or sale, under process of any Civil Court in British India, for or in respect of such debts and liabilities other than as aforesaid; and

Cessation of power to alienate.—*Thirdly*, so long as such management continues,

(a) the holder of the said immoveable property and his heir shall be incompetent to mortgage, charge, lease or alienate their immoveable property or any part thereof, or to grant valid receipts for the rents and profits arising or accruing therefrom,

Immoveable property freed from attachment.—(b) such property shall be exempt from attachment or sale under such process as aforesaid except for or in respect of debts due, or liabilities incurred, to Government, and

Cessation of power to contract.—(c) the holder of the same property and his heir shall be incapable of entering into any contract which may involve them, or either of them, in pecuniary liability.

III.—DUTIES OF MANAGER.

4. Manager to receive rents and profits.—The Manager shall, during his management of the said immoveable property, receive and recover all rents and profits due in respect thereof; and shall, upon receiving such rents and profits, give receipts for the same.

From the sums so received, he shall pay—

and pay therefrom the Government demand, *First*, the Government revenue, and all debts of liabilities for the time being due or incurred to Government;

rent due to superior landlord, *Secondly*, in the case of under-tenures, the rent (if any) due to the superior landlord, in respect of the said property:

annual sum for maintenance of holder of property and his heir, *Thirdly*, such annual sums as appears to the Commissioner requisite for the maintenance of the holder of the property, his heir, and their families:

costs of repairs and improvements, *Fourthly* the costs of such repairs and improvements of the property as appear necessary to the Manager and are approved by the Commissioner:

cost of management and the debt and liabilities, and the residue shall be applied in discharge of the costs of the management, and in settlement of such debts and liabilities of the holder of the property and his heir, as may be established under the provision hereinafter contained.

IV.—SETTLEMENT OF DEBTS.

5. Notice to claimant against holder of property.—On the publication of the order vesting in him the management on the said property, the manager shall publish a notice in English, Urdu and Hindi, calling upon all persons having claims against the holder of the said property to notify the same in writing to such Manager within three months from the date of the publication.

Notice how published.—Such notice shall be published by being posted at the kachahris in the district or districts in which the said property lies, and at such other places as the Manager thinks fit.

6. Claim to contain full particulars. —Every such claimant shall, along with his claim present full particulars thereof.

Documents to be given up.—Every document on which the claimant founds his claim, or on which he relies in support thereof, shall be delivered to the Manager along with the claim.

Entries in Books.—If the document be an entry in any book, the claimant shall produce the book to the Manager, together with a copy of the entry on which he relies. The Manager shall mark the book for the purpose of identification, and, after examining and comparing the copy with the original, shall return the book to the claimant.

Exclusion of documents not produced.—If any document in the possession or under the control of the claimant is not delivered or produced by him to the Manager along with the claim, the Manager may refuse to receive such document in evidence on the claimant's behalf at the investigation of the case.

7. Debt not duly notified to be barred.—Every debt or liability other than debts due, or liabilities incurred, to Government or (in the case of under-tenures), the rent due to the superior landlord, to which the holder of the property is subject, or with which the property is charged, and which is not duly notified to the Manager within the time and in manner hereinbefore mentioned, shall be barred:

Provision for admission of claim within further period of nine months.—Provided that, when proof is made to the Manager that the claimant was unable to comply with the provisions of sections five and six, the Manager may admit his claim within the further period of nine months from the expiration of the said period of three months.

8. Determination of debts.—The Manager shall, in accordance with the rules to be made under this Act, determine the amount of all principal debts and liabilities justly due to the several creditors of the holder of the property, and to persons holding mortgages, charges or liens thereon, and the interest (if any) due at the date of such determination, in respect of such debts and liabilities.

9. Power to inquire into consideration for leases.—If such property or any part thereof be in the possession of any person claiming to hold it under a lease, dated within the three years immediately preceding the publication of the order mentioned in section two, the Manager, with the sanction of the Deputy Commissioner and Commissioner (or of the Commissioner only if the Deputy Commissioner be himself the Manager), may inquire into the sufficiency of the consideration for which the lease was given;

Power to set aside leases.— and, if such consideration appears to him insufficient, may by order either set aside the lease or cause the person so in possession to pay such consideration for the said lease as the Manager thinks fit, and in default of such payment the lease or shall be cancelled.

10. Appeal to Deputy Commissioner. —An appeal against any refusal, admission, determination or order under section six, seven, eight or nine shall lie, if preferred within six weeks from the date thereof to the Deputy Commissioner within whose jurisdiction the property is situate, and the decision of the manager, if no such appeal has been so preferred, shall be final:

Provided that, if the Deputy Commissioner be himself the Manager, the appeal shall lie to the Commissioner.

Appeal to commissioner.—An appeal shall lie from any decision of the Deputy Commissioner, if preferred within six weeks of the date of his decision, to the Commissioner, and the decision of such Commissioner, or of the Deputy Commissioner if no such appeal has been so preferred, shall be final.

11. Scheme for settlement of debts.—When the amount due in respect of the debts and liabilities mentioned in section eight has been finally determined, the Manager shall prepare and submit to the Commissioner a schedule of such debts and liabilities, and a scheme for the settlement thereof; and such scheme, when approved by the Commissioner, shall be carried into effect.

Power to return scheme for revision.—Until such approval is given, the Commissioner may, as often as he thinks fit, send back such scheme to the Manager for revision, and direct him to make such further inquiry as may be requisite for the proper preparation of the scheme.

12. Restoration of owner to his property.—When all such debts and liabilities have been discharged, or if, within six months after the publication of the order mentioned in section two, the Commissioner thinks that the provisions of this Act should not continue to apply to the case of the holder of the said property or his heir,

such holder or his heir shall be restored to the possession and enjoyment of the property, or of such part thereof as has not been sold by the Manager under the power contained in section eighteen, but subject to the leases and mortgages (if any) granted and made by the Manager under the powers hereinafter contained.

Restoration to be notified. Revival of barred proceedings and debts. Reinstatement of mortgagees.—Where the holder of the property or his heir is so restored under the circumstances mentioned in the second clause of this section, such restoration shall be notified in the *Calcutta Gazette*, and thereupon the proceedings, processes, executions, any attachments mentioned in section three (so far as they relate to debts and liabilities which the Manager has not paid off or compromised), and the debts and liabilities barred by section seven, shall be revived; and any mortgagee or conditional vendee dispossessed under section sixteen shall be reinstated, unless his claim under the mortgage or conditional sale has been satisfied;

Period of limitation as to revived proceedings and debts.—and in calculating the periods of limitation applicable to such revived proceedings, and to suits to recover and enforce such revived debts and liabilities, the time intervening between such restoration and the publication of the order mentioned in section two, shall be excluded.

V.—POWERS OF MANAGER.

13. Power to call for further particulars.—The manager may, from time to time, call for further and more detailed particulars of any claim preferred before him under this Act, and may at his discretion refuse to proceed with the investigation of the claim until such particulars are supplied.

14. Power to summon witnesses and compel production of documents.—For the purposes of this Act, the Manager may summon and enforce the attendance of witnesses and compel them to give evidence, and compel the production of documents by the same means, and, as far as possible, in the same manner, as is provided in the case of a Civil Court by the Code of Civil Procedure.

15. Investigation to be deemed judicial proceeding.—Every investigation conducted by the Manager with reference to any claim preferred before him under this Act, or to any matter connected with any such claim, shall be taken to be a judicial proceeding within the meaning of the Indian Penal Code.

Statements of persons examined to be evidence.—And every statement made by any person examined by or before the Manager with reference to such investigation, whether upon oath or otherwise, shall be taken to be evidence within the meaning of the same Code.

16. Manager to have powers of holder of estate.—The Manager shall have, for the purpose of realizing and recovering the rents and profits of the said immovable property, the same powers as the holder of the property would have had for such purpose if this Act had not been passed.

Power to remove mortgagee or conditional vendee in possession.—And if such property, or any part thereof, be in the possession of any mortgagee or conditional vendee, the Manager may apply to the Court of the Deputy Commissioner within whose jurisdiction the property is situate, and such Court shall cause the same to be delivered to the Manager as if a decree therefor had been made in his favour, but without prejudice to the mortgagee or vendee preferring his claim under the provisions hereinbefore contained.

17. Power to lease.—Subject to the rules made under Section 19, the Manager shall have power to demise all or any part of the property under his management for any term of years not exceeding twenty years absolute, to take effect in possession in consideration of any fine or fines, or without fine and reserving such rents and under such conditions as may be agreed upon.

18. Power to raise money by mortgage or sale.—The Manager, with the previous assent of the Commissioner, shall have power to raise any money which may be required for the settlement of the debts and liabilities (other than as aforesaid) to which the holder of the property is subject, or with which such property or any part thereof is charged,

by demising by way of mortgage the whole or any part of such property for a term not exceeding twenty years from the said publication,

or by selling, with the previous consent of the holder of the property and of the person (being of full age) who would be his heir if he died intestate, by public auction or by private contract, and upon such terms as the Manager thinks fit, such portion of the same property as may appear expedient.

And no mortgagee advancing money upon any mortgage made under this section, shall be bound to see that such money is wanted, or that no more than is wanted is raised.

Manager's receipts.—And the receipt of the Manager for any monies paid to him as such, shall discharge the person paying the same therefrom and from being concerned to see to the application thereof.

The power to mortgage conferred by this section shall not be exercisable until six months have elapsed from the publication of the order mentioned in section two.

VI.—MISCELLANEOUS.

19. Power to make rules.—The Lieutenant-Governor of Bengal may, from time to time, make rules consistent with this Act to regulate the following matter:—

(a) the security to be required from subordinate officers under this Act,

(b) the notices to be given under this Act and the publication of such notices,

(c) the procedure to be followed in determining under section eight the debts and liabilities due to creditors and other persons, and in performing the other duties imposed on any officer by this Act,

(d) the allowance of interest on each of the principal debts and liabilities so determined, from the date on which it was incurred down to the date of the determination, and on the aggregate amount of such debts and liabilities from the date of the determination down to the date of payment,

(e) the order of paying debts and liabilities so determined;

and generally for the guidance of officers in all matters connected with the enforcement of this Act.

Such rules, when approved by the Governor General in Council and published in the *Calcutta Gazette*, shall have the force of law.

20. Power to appoint new Managers.—Whenever the Commissioner thinks fit, he may appoint any officer to be a Manager instead of any Manager appointed under this Act; and thereupon the property then vested under this Act in the former Manager shall become vested in the new Manager.

Every such new Manager shall have the same powers as if he had been originally appointed.

21. Managers to be public servants.—Every Manager appointed under this Act shall be deemed a public servant within the meaning of the Indian Penal Code.

22. Bar of suits.—No suit or other proceeding shall be maintained against any person in respect of anything done by him *bona fide* pursuant to this Act.

23. Saving of jurisdiction of Courts in Chutia Nagpur in respect of certain suits.—Nothing in this Act precludes the Courts in Chutia Nagpur having jurisdiction in suits relating to the succession to, or claims of maintenance from, any immoveable property brought under the operation of this Act, from entertaining and disposing of such suits; but to all such suits the Manager of such property shall be made a party.

24. Act not to affect powers conferred by Bengal Act II of 1869.—Nothing in this Act shall be deemed to take away or abridge any power or authority conferred by an Act passed by the Lieutenant-Governor of Bengal in Council, entitled “An Act to ascertain, regulate and record certain tenures in Chutia

Nagpur,” on any person appointed to be a Special Commissioner thereunder, or on the Commissioner of the division of Chutia Nagpur.