

THE ANDHRA PRADESH REVENUE RECOVERY ACT, 1864
(Act II of 1864)

An Act to consolidate the Law for the Recovery of Arrears of Revenue in the State of Andhra Pradesh.

Whereas it is advisable that the laws relating to the collection of the public revenue should be consolidated and simplified it is hereby enacted as follows:—

Interpretation clause-Landholder:— The term "landholder" as used in this Act, shall be taken to comprise the following persons;

All persons holding under a Sanad-i-Milkiyat-i-istimrar, all other Zamindars, Shrotryamdars, Jagirdars, Inamdars and all persons farming the Land Revenue under the State Government. All holders of land under Ryotwari settlements, or in any way subject to the payment of revenue direct to the State Government.

1. Public Revenue:—

- (i) Public Revenue due on land shall, for the purposes of this Act, be taken to include cesses or other dues payable to the State Government on account of water supplied for irrigation.

Note:— This Act was extended to Telangana Area by Section 3 of the Madras Rent and Revenue Sales & the Madras Revenue Recovery (Andhra Pradesh Extension and Amendment) Act, 1958 (Andhra Pradesh Act VI of 1959) Published in the Andhra Pradesh Gazette, Extraordinary dated 10-1-1959.

- (ii) The title was substituted by the Andhra Pradesh Laws (Amendment of Short Titles) Act, 1961.

CASE LAW

Expression 'landholder' in Section 1 - Wide enough to include his successors-in-interest. Immediately after death of landholder his successors automatically become landholders liable to pay land Revenue. If they fail to pay revenue they become defaulters. *Roshan Alt vs. Gout. of A.P.*, 1971 (1) An.WR 232 = 1970 APHN 308.

Sections 1 and 2 - Public revenue is land revenue plus other cesses etc. payable to Government on account of water supply for irrigation. It is not equated to other debts or dues to Government under any other enactment. Land Revenue and Public Revenue are secured debts. Sales tax recoverable by Government from assessee is unsecured debt. *The Indian Bank (Nationalised Bank) vs. State of Andhra Pradesh*, 1993 (2) An.WR 609.

2. Security for Revenue: –

The land, the buildings upon it, and its products, shall be regarded as the security of the public revenue.

3. Landholder when and to whom to pay kist-Board of Revenue may alter amounts and dates of payment: –

Every landholder shall pay to the Collector, or other officer empowered by him to receive it, the revenue due upon his land on or before the day on which it falls due according to the kist-bandi or other engagement, and where no particular day is fixed, then within the time when the payment falls due according to local usage; Provided that, except where property is held under Sanad-i-Milikyat-i-istimrar or other similar instrument, it shall be lawful for the Board of Revenue, by notification published in the District Gazette, to alter and fix from time to time, the amount of the several kists or installments, and the dates at which they shall respectively become payable.

Explanation:– The reference to the District Gazette in this Act shall in its application to the territories specified in sub-section (1) of Section 3 of the States Re-organisation Act, 1956 (Central Act 37 of 1956); be construed as references to the Andhra Pradesh Gazette, until a District Gazette is published for the district in the said territories.

CASE LAW

Scope - Section is not charging Section - Right to recover revenue under it does not arise unless there is a legal liability. *N. Rqja Reddy us. State of A.P., 1965 (2) ALT 297.*

Sections 3 and 5 - Amounts due to one State by defaulter - Can be recovered by the Collector where the defaulter resides in another State on the basis of a certificate issued by the Collector in other State. *Somasudershana Gowd vs. The District Collector. Hyderabad and others, 1978(1)ALT87(NRC)= 1978(2) An. WR 443 = ALR 1978 A.P. 420.*

4. Arrears of Revenue: –

When the whole or portion of a kist shall not be so paid, the amount of the kist or of its unpaid portion shall be deemed to be an arrear of revenue.

5. Arrears of revenue how recovered: –

Whenever revenue may be in arrear, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to proceed to recover the arrear, together with interest and **costs** of the process, by the sale of defaulter's movable and immovable property, or by execution against the person of defaulter in manner hereinafter provided.

CASE LAW

Properties not registered in the name of the defaulter - Tahsildar has no power to attach the same for purpose of recovery of arrears due from the defaulter. *B. Kameswaramma vs. Tahsildar*, 1975 (2) APLJ 26 (SN) = 1975 (2) An. WR 9 (SN).

Sections 5,6 and 52 - Deputy Tahsildar has no power to levy land cess - Demand of arrears without notice - Not valid. *H.R. Rama Rao vs. Collector*, 1957ALT57(NRC) = 1957(2)An.WR 17 (NRC) = AIR 1957 A.P. 1042.

Sections 5, 7 and 14-A as extended to Telangana Area by Act VI of 1959, and Hyderabad Land Revenue Act (VHI of 1317-F). All provisions of Hyderabad Act In so far as they deal with mode and machinery for recovery of arrears of revenue and all provisions relating to attachment including exemption must be considered to be repealed in view of

1. Added by Section 5 of the Madras Rent & Revenue Sales and the Madras Revenue Recovery (Andhra Pradesh Extension and Amendment Act.) 1958.

Applicability of Madras Act. *Narasimhuloo vs. Chief Conservator of Forests*, 1969(1)

An.WR 533 = J 969 (I) APLJ 27.

Sections 5, 25, 36 and 57 - Scope of- Non service of demand notice - Conditions required prior to bringing to sale of defaulter's land for recovery of Akbari arrears. Certificate required to be issued not by the Excise authorities but by Collector of the District - Sale otherwise invalid. *Anthaiah vs. Superintendent, Excise Dept*, 1969 (2)ALT259 = 1970 (1) An.WR336.

Sections 5 and 48 - Expression "guilty of fraudulent conduct" - It is not necessary that the "fraudulent conduct" should be after the accrual of arrears. It would be enough that there was fraudulent conduct and it was for evading payment. *K. Venkateswara Rao vs. State* 1974 APhN 250.

Sections 5 and 59 - Section 5 does not empower Collector to attach and bring -property other than that of defaulter to sale. Such sale being void, is governed by Article 120 of Limitation Act (IX of 1908) and not by Sec. 59. Section 59 is applicable only to parties to sale. *Kalmili Radha Krishnaiah vs. Govt of A.P.*, 1979 (2) An. WR. 314 = 1979 L.S. 176 = AIR 1979 A.P. 225.

6. Terms of Sa nad-i-Miliyat-i-istimrar to be observed:—

If the defaulter held under a Sanad-i-Milkiyat-i-istimrar or other similar instrument, the mode of recovering the arrear shall be in accordance with the terms of such Sanad. In the case of other defaulters, the Collector or other officer empowered by the Collector

in that behalf, may at his discretion, proceed to realize the arrear by the sale of either the movable or immovable property of the defaulter, or of both.

7. Interest on arrears:—

Arrears of revenue shall bear interest at the rate of 6 percent per annum.

8. Rules for seizure and sale of movable property:—

In the seizure and sale of movable property for arrears of revenue, the following rules shall be observed.

First: Demand in writing:—The Collector, or other officer empowered by the Collector in that behalf, shall furnish to the person employed to distrain the property of a defaulter; a demand in writing and signed with his name, specifying the name of the defaulter, the amount of the arrear for which the distress may be issued, and the date on which the arrears fell due. The person employed to distrain shall produce the writing which, if the arrear together with the batta due to him, under Section 53, be not at once paid, shall be his authority for making the distress, and on the day on which the property may be distrained, shall deliver a copy of such writing to the defaulter, endorsing thereon a list or inventory of the property distrained, and the name of the place where it may be lodged or kept.

Second: Writing to state the distrained property will be sold:—The writing shall further set forth that the distrained property will be immediately brought to public sale, unless the amount, with interest, batta, and all expenses of the distress be previously discharged.

Third ; Service when defaulter is absent:—When a defaulter may be absent, a copy of the writing with the endorsement shall be fixed or left at his usual place of residence or on the premises where the property may have been distrained, before the expiration of the third day, calculating from the day of the distress.

CASE LAW

Section 8 and A.P. (Agricultural Produce and Livestock) Markets Act, 1966, Sections 26 (2), 12 (1), 12-A, 12 B (4), 23 and 25 and A.P. (Agricultural Produce and Livestock) Market Rules, 1969, Rule 74(1) - Bye-laws of Agricultural Market Committee, Bye-law 24 (8) - Recovery of Market Fee - Trader shall submit monthly returns of his turnover for assessing market fee. For failure to furnish accounts, Market Committee can initiate proceedings under Section 26 (2) of the Markets Act for recovery of the fee under Revenue Recovery Act and also can launch prosecution under Sections 23 and 25 of the said Act. Quashing of criminal prosecution not a bar for recovery of market fee. In the absence of returns, Market Committee can assess the amount of market fee to the best of its judgment under Section 12-B(4) in addition to imposing penalty. Petitioner failed to furnish accounts - Market Committee (Assessing Authority) assessed Market fee obtaining particulars as to his turnover from Commercial Tax Department. Market fee assessed cannot be said to be unilateral. Notice issued to petitioner for payment of the

assessed market fee for the first time on 30-8-1990. As fee was not paid, second notice dated 8-2-1991 was issued. Petitioner refused to receive the said notice. It amounts to deemed service. Question of violation of principles of natural justice does not therefore arise when Market Committee resorted to recover the amount under Revenue Recovery Act in view of Sec.26(2) of Markets Act by approaching Revenue Authorities. Revenue Recovery proceedings initiated by order dated 8-2-1991. Issue of demand notice by MRO under Section 8 of the Revenue Recovery Act - Not illegal. Demand relates to four years 1985 to 1989-However, as the demand for the year 1985-86 having been made beyond three years from the expiry of the year to which the assessment relates, it is barred by time under Section 12-B of the Markets Act. Held that notice of demand issued for the other three assessment years is valid and that market fee can be recovered for the said three years under Revenue Recovery Act. *S. Narender Reddy vs. Agricultural Market Committee, Jogipet and others*, 2002 (4) ALT 151 (1998 (1) ALT 229 (DB) - followed).

Sections 8, 9, 25 to 44 - Liability of State - Extent of- Illegal attachment by Tahsildar - Government is not liable for tort. Officer effecting illegal attachment cannot be used in his official capacity. Factory building and machinery embedded therein. Machinery is immovable property - attachment by following procedure prescribed for attachment of movable property is illegal. *J. Kuppanna Chetty & Co. vs. Collector*, 1965 (2)ALT261 = 1965 (1) An. WR 183= AIR 1965 AP 457.

Sections 8 and 59 - Scope - Distraint proceedings - Proceedings under the Act - Test to determine - Starting point of limitation for a suit - Determination of.

(1988) I.L.R. 12 Mad. 168 (F.B.) - followed.

(1987) 1 M.L.J. 580 : A.I.R. 1937 Mad. 382 ; (1956) 2 M.L.J. 207: A.I.R. 1956 Mad. 616 and (1950) 1 M.L.J. 43 - Distinguished.

(1913) M.W.N. 75; (1932) 63 M.L.J. 249 ; I.L.R. 55 Mad. 876 - Dissented from. *P. China Kotaiah vs. P. Kotayya*, 1960 ALT 357 = 1960 (1) An.WR. 425.

9. Procedure when defaulter neglects to pay after notice:—

When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered into the satisfaction of the Collector or other officer empowered by the Collector in that behalf, the distraint shall transmit an inventory of the property distrained to the nearest public officer empowered to sell distrained property, under Act VII of 1839, in order that it may be publicly sold for the discharge of the arrears due, with interest, batta, and cost of distraint.

10. On tender of arrear and expenses prior to sale distress withdrawn:—

Where a defaulter may tender payment of the arrears demanded after his property may have been distrained, and prior to the day fixed for sale, together with payment of interest, batta, and all necessary expenses attending distress, the distrainer shall

receive the amount immediately upon the same being tendered, and shall forthwith release the property.

11. Distrained crop, how dealt with:—

The distrainer attaching the crop of un-gathered products of the land belonging to defaulter 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. In the latter case the expenses of reaping or gathering and storing such crops or products shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold. When crops or products belonging to a tenant shall have been sold, it shall be lawful for such tenant to deduct the value of the crops or products sold from any rent which may be due by him, then or afterwards, to the defaulter, in respect of the land on which such crops or products have been grown. It shall also be lawful for a tenant whose crops are attached for an arrear of revenue to pay the arrear and deduct the amount in the aforesaid manner from any rent due by him then or afterwards.

CASE LAW

Section 11 and A.P. Charitable and Hindu Religious Institutions and Endowments Act, 1966, Sees 60 and 63 - Attachment and sale of crops raised by a tenant of an institution for recovery of arrears of contributions amount and audit fee payable by the institution - Sustainable. *State of A.P. vs. M. Appadu*, 1978 (1) APLJ 59.

Sections 11 and 59 - Scope of - Crop cut and stored - Cannot be attached under Sec. 11 for recovery of arrears of land revenue - Applicability of Sec. 59. *Ch. Venkatarama Das vs. B. Latchanna*, 1967 (1) ALT82= AIR 1955 AP 277 = 1966 (1) An.WR 313.

12. Distrained cattle or goods not to be used:—

The distrainer shall not work the bullocks or cattle, or make use of the goods or effect distrained: he shall provide the necessary food for the cattle or livestock, the expense attending which shall be defrayed by the owner upon his redeeming the property, or from the proceeds of the sale in the event of its being sold.

13. Recovery of loss from neglect in respect of distrained property:—

Where property distrained may be stolen or lost, or damaged by reason of the necessary precaution for its due preservation not having been taken, or from its having been improperly worked or made use of, amount of such loss or damage shall be recoverable by summary process by the Collector from the officer whose neglect or act occasioned the loss or damage, and the amount when recovered shall be paid to person indemnified.

14. Distress to be proportionate to the arrear:—

The distress levied shall not be excessive, that is to say, the property distrained shall be as nearly as possible proportionate to the amount of the arrear.

CASE LAW

A tractor of an agriculturist cannot be attached. B. *Sai Reddy vs. Dist Collector, W.P. No. 1348 of 1975, dt .11-10-1976 (Unreported)*.

14-A. Articles exempted from distraint:—

The following articles shall not be distrained for arrears of revenue:—

- (a) the necessary wearing apparel, cooking vessels, beds, bedding of the defaulter and such personal ornaments of a woman as in accordance with religious usage cannot be parted with by her;
- (b) his ploughs, implements of husbandry, one pair of ploughing cattle, such manure and seed grain stocked by the defaulter on his behalf by his relations as may be necessary for the due cultivation of his lands in the ensuing year; and
- (c) any other class of articles which may be notified by the Government in the Andhra Pradesh Gazette.]

CASE LAW

Expression "Bed & Bedding" -A tape cost is a bed or bedding. *Y. Sreeramuh vs. P. Pappayya, 1972 (1) APLJ 12= 1971 APHN 75.*

15. Time of distress:—

Distress shall be made after sunrise and before sunset and not otherwise.

16. Penalty for fraudulent conveyance of property to prevent distress:—

When a defaulter may make a fraudulent conveyance of property to prevent the distress for arrears, any Civil Court of competent jurisdiction, upon proof thereof, shall summarily cause the property to be delivered up to the distrainer. The defaulter will further be liable to the penalties prescribed by Section 424 of the Indian Penal Code (Central Act 45 of 1860).

17. Claims to property distrained and sold— Revenue to be the first charge:—

Where any person, not being a defaulter or responsible for a defaulter, may claim a right to the property distrained, and the distrainer may, notwithstanding, cause the same to be sold such claimant, on proof of such right in any Civil Court of competent jurisdiction, and in the event of the distrainer being unable to prove the responsibility for the arrear of revenue, on account of which the property may have been sold,

shall recover from the distrainer the full value of such property, with interest, costs, and damages, according to the circumstances of the case. But claims to crops upon the ground or to gathered products of the ground attached, in the possession of the defaulter, whether founded upon a previous sale, mortgage, or otherwise, shall not bar the prior claim of revenue due from the ground upon which such crop or product may have been grown.

1. Ins. by Sec. 5 of the Madras Rent and Revenue Sales and the Madras Revenue Recovery (A.P. Extension and Amendment) Act, 1958.

18. Penalty for forcibly or clandestinely taking away distrained property:—

Where it may be proved to the satisfaction of any Civil Court of competent jurisdiction that any person has forcibly or clandestinely taken away property once distrained, the Court may summarily cause such property to be restored to the distrainer. The offender will further be liable to the penalties prescribed by the Indian Penal Code, 1860 (Central Act 45 of 1860).

19. What places distrainer may force open:—

It shall be lawful for the distrainer to force open any stable, cow house, granary, godown, out house, the outer building, and he may also enter any dwelling house the outer door of which may be open and may break open the door of any room of such dwelling house for the purpose of attaching property belonging to a defaulter and 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 for the zenana or residence of woman, except as hereinafter provided.

20. Powers of distrainer to force open doors in the presence of a police officer:—

Where a distrainer may have reason to suppose that the property of a defaulter is lodged within a dwelling house, the outer door of which may be shut, or within any apartment appropriated to women, which, by the usage of the country, are considered private, such distrainer shall represent the same to the officer in charge of the nearest police station. 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 zanana. The distrainer also, in the presence of the police officer, after due notice given for the removal of women within a zenana, and often furnishing means for their removal in suitable manner (if they women of rank, who according to the customs of the country cannot appear in public), enter the zenana apartments for the purpose of distraining the defaulter's property deposited therein, but such property, if found, shall be left free to the former occupants.

21. Punishment for unlawful entry:—

Persons entering the apartments of women or forcing open the outer door of dwelling houses contrary to the provisions of this Act, shall on conviction before a Magistrate, be liable to a fine not exceeding Rupees 500 or to imprisonment of either description for any period not exceeding six months.

22. Proclamation of time of sale, and of property to be sold:—

The public officer, empowered under Act VIII of 1839 to sell distrained property, shall cause to be affixed to the outer door of the defaulter's house, or on the premises where the property may have been distrained a list of the property to be sold, with a notice specifying the place where, and the day and hour at which the distrained property will be sold and shall cause proclamation of the intended sale to be made by beat of drum in the village to which the lands on which the arrear has accrued may belong and in such places as the Collector or other officer empowered by the Collector in that behalf, may consider necessary to give due publicity to the sale. No sale shall take place until after the expiration of a period of fifteen days from the date on which the notice may be so affixed.

23. Sale, how conducted:—

At the appointed time, the property shall be put in one or more lots, as the said officer may consider advisable, and shall be disposed off to the highest bidder. Where the property may sell for more than amount of arrears the surplus, after deducting expenses of process and interest shall be paid to the defaulter.

23-A. Sale of perishable articles:—

Notwithstanding anything in Sections 22 and 23, crops of products which are in their nature speedily perishable shall be sold by the distrainer as early as possible after they are distrained in such manner as may be provided in the rules made by the State Government in this behalf, and the sale proceeds shall be deposited with the public officer referred to in Section 22.

24. Payment on purchase of distrained property, Resale in case of default:—

The property shall be paid for in ready money at the time of the sale, or as soon after as the officer holding the sale shall appoint, and the purchaser shall not be permitted to carry away any part of the property until he has paid for the same in full. Where the purchaser may fail in the payment of the purchase money, the property shall be resold, and the defaulting purchaser shall be liable for any loss arising, as well as the expenses incurred on the re-sale. Where the property may, in the second sale sell for a higher price than at the first sale, the difference or increase shall be the property of him on whose account the said first sale was made.

25. Demand to be served prior to attachment of land, Mode of service:—

Before a Collector, or other officer empowered by the Collector on that behalf proceeds to attach the land of the defaulter, or buildings thereon, he shall cause a written demand to be served upon the defaulter, specifying the amount due, the estate or land in respect of which it is claimed, the name of the party in arrear, the batta due to the person who shall serve the demand, and the time allowed for payment, which shall be fixed with reference to the distance from the land on which the arrear is due to the place *at* which the money is to be paid. Such demand shall be served by delivering a copy to the defaulter, or to some adult male member of his family at his usual place of abode, or to his authorised agent, or by affixing a copy thereof on some conspicuous part of his last known residence, or on some conspicuous part of the land about to be attached.

26. Procedure when defaulter neglects to pay:—

When the amount due shall not have been paid pursuant to the terms of the demand, and no arrangement for securing the same shall have been entered into to the satisfaction of the Collector, or other officer empowered by the Collector in that behalf, he shall proceed to recover the arrear by the attachment and sale of the defaulter's land in the following manner.

27. Mode of attachment:—

The attachment shall be effected by affixing a notice thereof to some conspicuous part of the land. The notice shall set forth that unless the arrears, with interest and expenses, be paid within the date therein mentioned, the land will be brought to sale in due course of law. The attachment shall be notified by public proclamation on the land, and by publication of the notice in the District Gazette.

28. Management of attached Property, When Revenue Officer to take charge:—

It shall be lawful for the Collector, when attaching the land of a defaulter, or at any time during such attachment to assume the management of the property attached. In such case he shall appoint an agent with a proper establishment of officers to manage the property, and shall give the agent certificate of appointment with written instructions under his seal and signature, and the expenses of management shall be defrayed out of the income of the property : provided always, that where the property may be too inconsiderable to admit of its being charged with the salary of an agent, it shall be committed to the care of such Revenue Officer as the Collector may select, who shall be subject to all the provisions herein contained in reference to agents.

29. Notice of assumption of agreement:—

Notice of the assumption of management shall forthwith be served on the defaulter in the manner prescribed in Section 25, and shall be notified by public proclamation on the land and by publication in the District Gazette.

30. Duties of agent:—

It shall be the duty of the agent, during the continuance of management under Section 28, to collect the rents and profits due, or accruing due upon the estate, according to the engagements, subsisting between the defaulter and the parties holding under him, or according to established usage where no specific engagement exists. The agent shall keep account of all his receipts and disbursements, and submit the same, and pay over the balance, to the Collector, or other officer empowered by the Collector in that behalf monthly, or whenever required, and the defaulter shall be at liberty to inspect the accounts at all reasonable time and to take copies of the same at his own expense without fee.

31. Liability of agent to suit or prosecution:—

It shall be lawful for the defaulter to proceed by prosecution or suit against the agent, in respect of any criminal or illegal act done by him to the injury of the defaulter or his estate, and all tenants, or other persons holding by subordinate title, shall have the same remedies against him as they would have had against the defaulter if the Act were done by the defaulter.

32. Effect of existing agreements between landholder and tenants:—

All engagements entered into between the landholder and his tenants, except such as are hereinafter mentioned, shall be binding upon the Collector, during attachment, but all such engagements collusively with a view to defeat or delay the effect of the attachment, and all leases of land at a rate lower than the usual rates of assessment, and not made bona fide for the purpose of erecting factories or buildings or of bringing waste land into cultivation, and all engagements made subsequently to attachment shall be null and void against the Collector, if he shall so declare subject, however to the right of the parties to such agreement to bring a suit against the Collector in the ordinary tribunals to establish the same; and all charges or encumbrances upon such land shall be postponed to the payment of the public revenue.

33. Payments by tenants:—

All payments on account of rent or profits actually due made before public notice of assumption of management to or on behalf any landholder by any person holding under him, shall be valid against the Collector, and all such payments made after public notice of such assumption or made before they were actually due, shall be null and void against the Collector, who shall be entitled to recover, as arrears of rent, the full

amount from the parties by whom it was paid, leaving, them to sue the defaulter in the ordinary Courts of law.

34. Settlement on withdrawal of attachment: –

All sums received from the property attached, after paying the expenses of attachment and management, shall be carried to the credit of the defaulter in discharge of the arrears due, and interest thereon at the rate of six percent per annum and as soon as all arrears, interest, costs of attachments, and expenses of management shall have been liquidated, the attachment shall be withdrawn, and a full account rendered of all receipts and disbursements during its continuance.

35. Persons interested in land may release it from attachment: –

It shall be lawful for any person claiming an interest in land which has been, or is about to be attached, to obtain its release by paying the arrears, interest, and costs incurred; and all such sums, if paid by a tenant, may be deducted from any rent then or afterwards due by him to the defaulters and if paid by a *bona fide* mortgagee or other encumbrances upon the estate, or any person not being in possession thereof by but *bona fide* claiming an interest thereon adverse to the defaulter shall be a charge upon the land, but shall only take priority over the charges according to the date at which the payment was made. Such sums when paid by a *bonafide* mortgagee or other encumbrances shall further constitute a debt from the defaulter.

CASE LAW

Section 35 and Limitation Act 1908, Art. 132 - Payment by mortgage of revenue payable to Government by mortgagor. Suit to enforce charge - Article 182 applies. *G.Venkata Sattayya vs. Mulibai*, 1955ALT517 = AIR 1955AP274.

Section 35 (2) read with B.S.O. 26 of Appendix 3 of para 2 and B.S.O. 26. Notice of 30 days from the date of publication till date of sale is mandatory. Sale held within 30 days is void. Section 38 (3) - Express order of Collector mandatory for confirmation of sale. Deeming confirmation not warranted under the Section. *D. Chandrappa vs. Government of A.P.*, 1990 (2) An. WR 370= 1989 (2) ALT38 (NRC).

36. Procedure in sale of immovable property: –

In the sale of immovable property under this Act the following rules shall be observed.

First – Publication: – The sale shall be by public auction to the highest bidder. The time and place of sale shall be fixed by the Collector of the district in which the property is situated or other officer empowered by the Collector in that behalf. The time may be either previous to or after the expiration of the fasli year.

Second—Notification one month before sale:— Previous to the sale the Collector, or other officer empowered by the Collector in that behalf, shall issue a notice thereof in English and in the language of the district, specifying the name of the defaulter; the position and extent of land of his buildings thereon; the amount of revenue assessed on the land, or upon its different sections. The proportion of the public revenue due during the remainder of the current fasli; and the time, place, and conditions of sale. This notice shall be fixed up one month at least before the sale in the Collector's Office and in the Taluk *cutcherry*, in the nearest police station house, and on some conspicuous part of the land.

Third—Deposit by purchaser:— A sum of money equal to fifteen per cent of the price of the land shall be deposited by the purchaser in the hands of the Collector, or other officer empowered by the Collector in that behalf, at the time of the purchase, and where the remainder of the purchase-money may not be paid within thirty days, the money so deposited shall be liable to forfeiture.

Fourth—Re-sale in default of payment:— When the purchaser may refuse or omit to deposit the said the sum of money or to complete the payment of the remaining purchase money, the property shall be resold at the expense and hazard of such purchaser, and the amount of all loss or expenses which attend such refusal or omission shall be recoverable from such purchaser in the same manner as arrears of public revenue. Where the lands may, on the second sale for a higher price than at the first sale, the difference shall be the property of him on whose account the said first sale was made.

Fifth—Agents to name principals:— All persons bidding at a sale may be required to state whether they are bidding on their own behalf or as agents, and, in the latter case, to deposit a written authority signed by their principals. If such requisition be not complied with, their bids may be rejected.

CASE LAW

Fourth condition as to re-sale - Scope - It implies that the re-sale is at the risk and hazard of the first purchaser. Collector cannot be compelled to hold a resale in the event of first purchaser not depositing the balance of the purchase money within thirty days - so long as resale is not held the first sale stands. *K. Devadattam vs. Union Bank of India*, 1957 ALT 554= 1958(1) An. WR 348= AIR 1958 AP 131 = 33ITR56.

Sale held without issuing a proclamation or within 50 days from the date of the proclamation is void. Remedy of the person questioning the sale is not only to file a petition under the provisions of the Act for setting aside the sale but also to file a suit for declaring the sale void. *M.A. Rao, vs. N. Bandi Dingam*, 1972 (2) APLJ 157 = 1972 APHN 227.

Section 36 (3) and (4) - Sale of property held by a public auction. Failure of auction purchasers in depositing the bid amounts as required under Sec. 36 -Sale is nullity. *K.*

Lakshma Reddy vs. Syed Burhanuddin, 1976 (2) APLJ 34 = 1976(2) An.WR 157 = 1976LR 275 = ILR 1976AP994.

Section 36 and Rule 2 of the Rules - Revenue Sales held within 30 days after publication of notice-Void. *M. NarasimhaRao vs. N. Nagaiah*, 1975 (1) APLJ 41 = 1974 (2) An.WR 19 (SN).

Section 36 (2) read with Para 11 of B.S.O. 41 and Sec. 57 (a) - The personal Assistant to the Collector can set aside the order of the Sub-Collector after confirmation of the revenue sale. Powers of the Government on revision. Madras Subordinate Collectors and Revenue Malversation (Amendment) Regulation (VII of 1828). Section 3 - Revision powers - Principles of natural justice. Order pronounced by the Minister in the presence of Advocates allowing the revision. Subsequently revision dismissed without notice by his successor - Not valid. *P. Subrahmanyam Raju (died) By Lrs. vs. Gout, of A.P.*, 1973 APHN209.

Section 36 (3) - Scope of- Fifteen percent of the price of land to be deposited by an auction purchase at the time of sale. Not complied with by the auction purchaser - Sale is wiped out. *Syed Burhanuddeen Hussain vs. State*, 1973 (2) APLJ 102 (SN).

Sections 36, 37-A, 38 . 57-A and 59 -A and 59 - Government and D.R.O. passing orders without giving opportunity or hearing to aggrieved party whose property was sold for arrears of sales tax. Principles of natural justice are violated. *Raja Lakshmana Setty vs. State*, 1974 APHN 239.

Sections 36 and 38 and A. P. District Collectors' Powers Delegation Act, 1961, Section 3 and Madras Malversation Amendment Regulation, 1828 - Default Committed by Auction-Purchaser in payment of the remaining purchase money under Sec. 36 (4). He can be permitted to pay the purchase money and he can ask for confirmation of sale. Revenue Divisional Officer is competent under Sec.38 to confirm a revenue sale. *Dr. A. Rangacharyulu vs. Raj a Lakshmana Setty*, 1974 ALT 55 (NRC).

36-A. Certain provisions of Section 36 not to apply to cases of purchase by Government:—

The provisions of the Third and Fourth clauses of Section 36 shall not apply to cases where immovable property sold under this act is purchased by the Government.]

37. Tender of arrears upto sunset on day before sale:—

It shall be competent to the defaulter or to any person acting on his behalf or claiming an interest in the land, to tender the full amount of the arrears of revenue with the interest thereon, and all charges which have been incurred in demanding the arrears, or in attaching or managing the estate or in taking the steps necessary for sale and thereupon the sale shall be stayed.

Provided always that such tender must be made before sunset on the day previous that appointed for the sale, and all sums ²[paid under this or the next succeeding section] by

any tenant, or bona fide mortgage, or other encumbrances or any person *bonafide* claiming an interest in the estate adverse to the defaulter may be recovered in the manner provided in Section 35.

37-A. Application to set aside sale of immovable property on deposit:—

- (1) Any person owning or claiming an interest immovable property sold under this Act may at any time within thirty days from the date of sale, deposit in the treasury of the taluk in which the immovable property is situated —
 - (a) a sum equal to five per centum of the purchase-money;
 - (b) a sum equal to the arrears of revenue for which the immovable property, was sold together with interest thereon and the expenses of attachment, management and sale and other costs due in respect of such arrears, and may apply to the Collector to set aside the sale.
- (2) If such deposit and application are made within thirty days from the date of sale, the Collector shall pass an order setting aside the sale, and shall repay to the purchaser the purchase money

1. Ins. by Section 2 of the Madras Revenue Recovery (Amendment) Act, 1937 (Madras Act XIV).

2. Subs, for the words "if no such application is made" by Madras Act 1 of 1906.

so far as it has been deposited, together with the five per centum deposited, by the applicant:

Provided that if more persons than one have made deposits and application under this section, the application of the first depositor to the Collector or to the Officer authorized to set aside the sale shall be accepted.

- (3) If a person applies under Section 38 to set aside the sale of immovable property, he shall not unless he withdraws such application, be entitled to make an application under this section.]

CASE LAW

Sections 37-A and 38 - Person affected can apply. *Badari Narayana vs. Ramaiah*, 1972(2) ALT 306.

38. Application to set aside sale:—

- (1) At any time within thirty days from the date of sale of the immovable property, application may be made to the Collector to set aside the sale on the ground of some material irregularity, or, mistake or fraud, in publishing or conducting it; but, except as otherwise as hereinafter provided no sale shall be set aside on the ground of any such irregularity or mistake unless the applicant proves to the satisfaction of the Collector that he has sustained substantial injury by reasons thereof.
- (2) If the application be allowed, the Collector shall set aside the sale and may direct a fresh one.
- (3) *Order confirming or setting aside sale:—* On the expiration of thirty days from the date of the sale, [if no application to have the sale set aside is made under Section 37-A or under clause (1) of this section] or if such application has been made and rejected, the Collector shall make an order confirming the sale provided that, if he shall have reason to think that the sale sought to be set aside notwithstanding that no such application has been made or on ground other than those alleged in any application which has been made and rejected, he may, after recording his reason in writing set aside the sale.
- (4) *Refund of deposit or purchase-money when sale set aside:—* Whenever the sale of any lands is not so confirmed or is set aside, the deposit or the purchase-money, as the case may be, shall be returned to the purchaser.
- (5) *On confirmation of sale, purchaser's name to be registered:—* After the confirmation of any such sale, the Collector shall register the lands sold in the name of the person declared to be the purchaser and shall execute and grant a certificate of sale bearing, his seal and signature to such purchaser.

1. Subs, for the words "so paid" by Madras Act 1 of 1909.

- (6) *Certificate of sale:—* Such certificate shall state the property sold and name of the purchaser, and it shall be conclusive evidence of the fact of the purchase in all Courts and Tribunals, where it may be necessary to prove the same; and no proof of the Collector's seal or signature shall be necessary, unless the authority before whom it is produced shall have reason to doubt its genuineness.]

CASE LAW

Section 38 - Power to confirm or set aside the sale - Power can be delegated. Clause 13 of Order No. 41 of the Standing order of the Board of Revenue. *H. Tej Raj Chordia vs. Collector of Srikakulam, 1965 (1) ALT 65= 1965 (1) An. WR 118.*

Section 38 - Scope - Petition to set aside an auction sale - Counter affidavit of Collector cannot be read as supplementary judgment. *P. Achiraju vs. Collector, 1959 (2) An. WR 328.*

Application to set aside the sale in public auction on the ground of certain vague allegations - No notice to the petitioner need be given. *G. Rami Reddy vs. Sub-Collector, Bodhan & others, 1985 (1) ALT 67 (NRC).*

39. Proclamation of sale:—

Where lands may be purchased in a public sale the Collector or other officer empowered by the Collector in that behalf, shall publish in the villages, in which the land sold may be situated, in the catchery of the taluk, in the head catchery of the district, and in the District Gazette, the name of the purchaser and the date of purchase, together with a declaration of the lawful succession of such purchaser to all the rights and proprietary of the former land holder in the said lands.

40. Delivery of possession:—

Where, notwithstanding such publication, any lawful purchaser of land may be resisted and prevented from obtaining possession of his purchased land, any Court of competent jurisdiction, on application and production of certificate of sale provided for by the Section 38, shall cause the proper process to be issued for the purpose of putting such purchaser in possession in the same manner as if the purchased land had been decreed to purchaser by a decision of the Court.

41. Contracts and payments binding on purchaser:—

All contracts entered into by the defaulter with his tenants, and all payments to him by them shall be binding upon the purchaser to the same extent and under the same conditions as laid down in Sections 32 and 33 of this Act.

42. Sale to be free of all encumbrances— Disposal of surplus:—

All lands brought to sale on account of arrears of revenue shall be sold free of all encumbrances, and, if any balance shall remain after liquidating the arrears with interest and the expenses of attachment and sale and other cost due in respect to such arrears, it shall be paid over to the defaulter unless such payment be prohibited by the injunction of a Court of competent jurisdiction.

Section 42 and Income -tax Act, 1992, Sec. 46 (2) - Property already subject to mortgage sold for arrears of income tax due from mortgagor. Purchaser cannot get title free from

mortgage. Section 42 of the Act is not applicable to such sales. Section 46 (2) of Income Tax Act refers only to procedure laid down under Revenue Recovery Act.

I.L.R. 26 Mad 230; I.L.R. 7 Mad. 434 - Relied on.

(1941) 2 M.L.J. 993 ; A.I.R. 1942 Mad. 244 - Distinguished. *M. Satyam vs. K. Krishna Murthy*, 1971 (2) An. WR 433 = 1971 APHN318.

43. Recovery of arrears due to defaulter on day of sale:—

Arrears of rent which on the day of sale may be due to the defaulter from his under-tenants shall, in the event of the sale, be recoverable by him after the sale by any process except, distraint, which might have been used by him for that purpose before the said sale.

44. Sale of land for arrears:—

It shall be lawful for the Collector or other officer empowered by the Collector in that behalf, to sell the whole or any portion of the land of a defaulter in discharge of arrears of revenue; provided always that, so far as maybe practicable, no large section of the land shall be sold than may be sufficient to discharge the arrears with interest, and expenses of attachment, management, and sale.

45. Appointment of assessment on sub-division:—

Where only a part of a landed estate held under a Sanad-i-Milkiyat-i-istimrar, or otherwise subject to the payment of a lump assessment, may be sold, the assessment, upon such part shall be apportioned by the Collector previous to sale in the following manner:—

The amount of revenue to be assessed on each division shall bear the same proportion to the actual value of such division as the total amount of the revenue of whole estate may bear to the total actual value of the entire estate previous to such division.

Production of accounts-Effect of non-production:— To this end the Collector shall have power to demand from land holders and from the Karanams of villages, account of the produce and of the charges attending the management of lands to be divided; such landholders and Karanams shall furnish the said accounts when required for a period of not less than three years next proceeding the then current year; where the landholder may refuse or unreasonably delay to comply with such demand so as to prevent the assessment being fixed on such divided portions of land, the Collector, shall proceed to sell the entire estate.

46. Confirmation of appointment of Board:—

Repealed by the Madras Decentralisation Act, 1914 (Madras Act VII of 1914).

CASE LAW

Section 46 (2) - No power lies with Collector to file an application for the execution of a decree obtained by assessee against a third party. *V. Surayya us. V. Mallaiah*, 1955 ALT 226.

47. Sale may be postponed on tenders of security:—

When a defaulter tenders security, it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to accept it and postpone the sale of the defaulter's property upon such conditions and until such time as he may appoint in the event of default being made in the performance of such conditions, the Collector or such officer may sell the property and proceed against his defaulter or against his security or both.

48. Powers of arrest in case of willful or fraudulent non-payment of arrears-Period of imprisonment-Debt not extinguished:—

When arrears of revenue, with interest and other charges as aforesaid cannot be liquidated by the sale of the property of defaulter, or his surety, and the Collector shall have reason to believe that the defaulter or his surety is willfully withholding payment of the arrears, or has been guilty of fraudulent conduct in order to evade payment, it shall be lawful for him to cause the arrest and imprisonment of the defaulter, or his surety not being a female, as hereinafter mentioned; but no person shall be imprisoned on account of arrears of revenue for a longer period than two years, or for a longer period than six months if the arrear does not exceed Rs. 500, or for a longer period than three months, if the arrear does not exceed Rs. 50; provided that such imprisonment shall not extinguish the debt due to the State Government by the defaulter, or his surety.

CASE LAW

Default in payment of income tax - Procedure for arrest and detention of defaulter. *Hariram Dholandas vs. Collector*, 1959(37) ITR375 = ILR1960 (2) AP 416.

Proceedings to recover excise arrears from one of the partners by way of arrest and detention in Civil Prison without proceeding against other partner and without adopting the other mode of recovery by sale of movable or immovable property of the petitioner which was attached. Not illegal as both the modes of recovery are alternative in nature. *Venkat Goud us. Excise Inspector*, 1989 (3) ALT 503.

Warrant of arrest issued without fulfilling the conditions prescribed under Section 48- Not valid. *Yadagiri vs. Superintendent of Central Jail*, 1973(1)APLJ 100 (SN) = 1973APHN 244.

Sections 48 and 49 and G.O.Ms. No. 77, Rev. dt 28-1-1968 issued under Section 3 of A.P. District Collector's Powers Delegation Act., 1961 and A.P. Subordinate Collectors and Malversation (Amendment) Regulation, 1828, Section 3. Revenue Divisional Officer has

jurisdiction to issue a warrant of arrest and detention of a defaulter. *N. Bathaiah vs. R.D. O.*, 1978 (1)ALT31 (NRC) = 1978 (1)APLJ407(FB).

Sections 48, 49 and A. P. General Sales Tax, Act 1957, Sec. 16 (4) - Properties of a defaulter not capable of fetching even a fraction of the dues. Order of arrest issued by Collector before bringing properties to sale valid. Police officer can execute the arrest warrant. *Ch. Kislaiah vs. State of A.P.*, 1966(1) An. WR267 = 1966 (2) MLJ (Crl.) 274 = ILR 1967 AP 934 = 1967 (20) STC 73.

Sections 48 and 49 - Sections are valid - Warrant of arrest and detention issued in confirm with the Sections is immune from attack during the period of detention under the Maintenance of Internal Security Act, 1971. Power vested in Collector under Sections 48 and 49 - Not violative of principles of natural justice. *P. Venkata Seshamma vs. State of A.P.*, AIR 1976AP1 = 1976(1) An. WR 119(FB).

Sections 48 and 49 and G.O.Ms. 77, Rev., dated 28-1-68 issued under Section 3 of the A.P. Dist. Collector's Powers Delegation Act, 1961 and A.P. Subordinate Collectors and Revenue Malversation (Amendment) Regulation, 1828, Section 3. Revenue Divisional Officer has jurisdiction to issue a warrant of arrest and detention of a defaulter. *N. Bathaiah vs. R.D.O., Cuddapah*, 1978 (1) ALT31(NRC) = 1978 (1) APLJ 407 - 1978 APHN 180 = AIR 1978 A.P. 366 = (1980) 46 STC 232 (F.B.).

49. Procedure in cases of arrest:—

The Collector shall issue his warrant for the arrest of the defaulter, or his surety, or both, not being females, which shall specify his or their names, the amount of revenue due and the date on which it becomes payable, and the warrant shall be signed and sealed by the authority by whom it was issued. The officer charged with the execution of the warrant shall thereupon arrest the defaulter, or his surety, or both and convey him or them to the district goal, and deliver the warrant to the goaler, which shall be sufficient authority to him to receive the prisoner or prisoners. A copy of such warrant shall be retained by the goaler, who shall forthwith dispatch the original to the officer in charge of the goal.

50. Mode of enforcing payment by sureties:—

All the remedies prescribed by this Act in case of revenue defaulter may be employed against their sureties, and it shall be lawful for the Collector, or other officer empowered by the Collector in that behalf, to enforce the same simultaneously with or either previously or subsequently to, their enforcement against the principal; so nevertheless, that no more than the total sum in arrears, and interest with costs and charges, shall be realized from both.

51. Removal of crops may be prevented where revenue is payable in kind:—

When land revenue is payable in kind, it shall be lawful for the Collector or other officer empowered by the Collector in that behalf, to prevent the removal of the crop

from the land until a division has been made and the portion which belongs to the State Government has been set apart, unless the landholder furnishes such security as the Collector may deem satisfactory.

52. Similar process in case of other species of revenue, advances, fees, cesses, etc.:—

All arrears of revenue other than land revenue due to the State Government, all advances made by the State Government for cultivation or other purposes connected with the revenue, and all fees or other dues payable by any person to or on behalf of the village servants employed in revenue or police duties, and all cases lawfully imposed upon land [and all sums due to the State Government, including compensation for any loss or damage sustained by them in consequence of a breach of contract], may be recovered in the same manner as arrears of land revenue under the provisions of this Act, unless the recovery thereof shall have been or may hereafter be otherwise specially provided for.

CASE LAW

Section 52 and Land Acquisition Act, 1894 - Government can recover the amount due to it as arrear of land revenue under the Act in the absence of any specific provision in the relevant Act relating to mode of recovery of the amount due there under. Compensation amount deposited in Court pursuant to award of Civil Court withdrawn by claimants. Government filing petition under Sec. 144, CPC for recovery of the said amount from claimants by way of restitution after award was set aside in appeal in the absence of any provision under L.A. Act in that respect. Order of lower Court authorizing Government to recover the amount under Revenue Recovery Act - Not illegal. *K. Pothuraju @ Kalyanam and others vs. Government of A.P., Revenue Dept and another*; 1999 (3) ALT366 (D.B.) = 1999 (2) L.S. 1.

Section 52 and A.P. Excise (Lease of Right to sell Arrack in Retail) Rules, 1988, Rule 22(2) - Cancellation of Excise licence for non-payment of privilege fee of arrack shops and resale of those shops by auction. Resultant loss thereby to Government. Becomes due only if determination is made after giving adequate opportunity to person concerned. Recovery of the said loss as excise arrears under the Act without giving such opportunity to defaulter. Bad and legally unsustainable - Recovery proceedings pending quashed. *Mandela Nagasurya Ranga Rao vs. The Excise Superintendent, West Godavari*, 1997 (2) ALT 748== 1997 (1)APLJ 257.

Section applicable for recovery of cess payable under the Act. *H.R.S. Murthy vs. District collector, Chittoor*, 1960 ALT 33 (NRC).

Determination of liability and amount due towards such liability are conditions precedent for initiating proceeding under Sec. 52 against any person. *Mulajkar vs. Govt. of A.P.*, 1970(2)An.WR360 = AIR 1971 A.P. 169= 1970APHN228.

Section is valid- Does not infringe Article 19 (1) (f) of the Constitution of India. *K. Rajalingam vs. State of A.P.*, AIR 1968 A.P. 156.

Village Munsiff misappropriating Government revenues - R.D.O. dismissing the petition and determining the sum due to the Government. Appeal preferred to the D. R.O. also dismissed. Second Appeal to the Board of Revenue. Board dismissing the appeal but directing the lower authorities to assess the correct balance of the amount misappropriated giving credit to the payments made. Amount is due when it is determined by the R.D.O. *G.Rama Rao vs. R.D.O.*, 1975 ALT544 = 1975 (2) APLJ 342 = 1975 (2) An.WR 428 = ILR 1974 A.P. 63.

Three categories of cases under - On revision of scholarship excess amount paid cannot be recovered. *B, Lingam Naida vs. Tahsildar, Paravathipuram & anr.*, 1978 (1) An. WR 19 = 1979 APHN 164.

Section 52 and A.P. (Telangana Area) Tenancy and Agricultural Lands Act, 1950, Sec. 50-B - Immovable property of an Abkari contractor transferred and alienated by him. Certificate under Section 50-B issued to the transferee. Government cannot proceed against such property under the Revenue Recovery Act for recovering the excise arrears due from the contractor. *G. Gangaram & anr. vs. State of A.P.*, 1978(1) ALT 12 (NRC) = 1978 APHN 76 = 1978 (1) An. WR 4 (NRG).

Section 52 and Companies Act, Sec. 518 (2) and (3) - Rent due from company - Proceedings for recovery by Collector. Section 518 cannot be invoked to restrain Government from recovering money in manner laid down in Sec.52. *J.V.S. Chenoy vs. District Collector*, AIR 1965 A.P. 159.

Section 52 and Limitation Act, Art. 16 - Scope -Applicable to cases of illegal levies also. Amount alleged to have been illegally demanded by revenue authorities as a case under Sec. 78 A.P. (A.A.) District Boards Act and paid under protest. Suit for recovery of such amount - Limitation Act, Art. 16 applies. *Government of A.P. vs. Sadaram Nookayya*, AIR 1962 A.P. 20.

52-A. Recovery of sums due to certain banks and other public bodies as arrears of land revenue:—

- (1) Without prejudice to any other mode of recovery which is being taken or may be taken, all loans granted and all advances made to any person— (i) by any bank to which the re-payment of the said loans and advances is guaranteed by the State Government or; (ii) by such corporation established by or under a Central Provincial or State Act, or Government Company as defined in Section 617 of the Companies Act, 1956, or such other public body as may be notified in this behalf by the State Government in the Andhra Pradesh Gazette;

²[(iii) by any Bank under any welfare scheme or programme, such as Prime Minister's Rozgar Yojana and the like, sponsored by the State or Central

Government as may be notified therein in this behalf by the State Government in the Andhra Pradesh Gazette;] together with interest on such loans and advances and all sums, such as rents, margin money and the like, due to the bodies mentioned aforesaid may be recovered in the same manner as arrears of land revenue under the provisions of this Act :

Provided that the State Government may, by notification in Andhra Pradesh Gazette, specify the loans and advances together with interest thereon, and other sum due to the bodies mentioned in item (ii) ²[and item (iii)] above which may be recoverable under the provisions of this section. **Explanation:**— In this sub-section, "bank", means any banking company as defined in clause (c) of Section 5 of the Banking Regulation Act, 1949, and includes —

- (a) the Reserve Bank of India constituted under the Reserve Bank of India Act, 1934.
 - (b) the State Bank of India constituted under the State Bank of India Act, 1955.
 - (c) any subsidiary bank as defined in the State Bank of India (Subsidiary Bank) Act, 1959;
 - (d) any corresponding new bank constituted under Section 3 of the Banking Companies (Acquisition and Transfer of Undertaking) Act, 1970.
 - (e) any corresponding new Bank constituted under the Banking Companies (Acquisition and Transfer of Undertakings) Act, 1980" (Central Act 40 of 1980).]
- (2) Out of the proceeds of the dues pertaining to the bodies mentioned in item (ii) [and item (iii)] of sub-section (1) so recovered ten per centum thereof shall be deducted towards the collection charges and the balances shall be paid by the Collector or other officer empowered by the Collector in that behalf, to the respective bodies.

1. Ins. by Sec. 2 of A.P. Act 18 of 1977. 2. Ins. by Act 22 of 1997 (w.e.f. 19-6-1997).

CASE LAW

Section 52-A - Recovery of sums due to certain Banks and other public bodies as arrears of Revenue. Loan amount due to Second-respondent-Corporation from petitioners. Notices dated 5-10-1988 and 15-11-1988 to enforce dues under the Revenue Act. Question of Limitation. *N.A. Radha and others vs. State of*

Andhra Pradesh, Revenue Department and others; 2000 (2) ALT'484 = 2000 (1) L.S. 382 = 2000 ALT (Rev.) 309.

Section 52-A(l) proviso - G.O.Ms. No.261, Rev. (N) Dept., dated 17-3-1987 - Sum due to A.P. State Civil Supplies Corporation Lid. (3rd respondent) recoverable under the provisions of the Act in view of Notification issued under the G.O. Amount to be recovered must be an ascertained sum. Impugned notice of attachment issued under the Act for a certain sum pending the suit filed for rendition of account, showing thereby that the amount mentioned in notice not an ascertained sum. Subsequent passing of preliminary decree and dismissal of application filed to set aside the said decree cannot be taken as implying that the amount mentioned in the notice was an ascertained sum on the date of notice. Corporation not entitled to recover the amount pursuant to the said notice - Impugned notice liable to be quashed. *D. Venkateshwara Rao vs. Collector, Nizamabad, 1998 (1) ALT 229 (D.B.) = 1998 ALT (Rev.) 152 = 1998 (1) L.S. 31.*

Section 52-A and State Financial Corporation Act, 1951, Sec. 32G - Whether provisions of Sec. 32-G and A.P. Revenue Recovery Act, Sec. 52-A cannot be made applicable for recovery of the amount as the amount could not be called Revenue ? *Grandhi Kamaraj vs. Government of A.P.; 1996 (2) An.W.R. 132.*

Section 52-A - Constitutional validity of - Act falls under Entry 11-A of List III and Entry 30 of List 11 of the Constitution of India. Section 52-A of the Act not ultra vires the powers of State Legislature - Valid in its entirety. Not only loans and advances but also other sums due to State-owned Corporations can be recovered as arrears of land revenue under the said provision. Dues owing to public bodies assume the character of public dues. Recovery of such dues under Section 52-A valid. *C.J. Raju vs. The State of Andhra Pradesh and others; 1995 (1) ALT 333 (F.B.).*

Section 52-A and Andhra Pradesh Housing Board not notified in the Gazette as one of the Public bodies. The Housing Board cannot recover certain amount

1. Ins. by Act 22 of 1997 (w.e.f. 19-6-1997).

due under a contract as arrears of land revenue. *G. Venkatesh vs. District Collector, Hyderabad & others, 1983 (1) ALT 17 = 1983 (1) An. WR 437.*

Section 52-A read with Sec. 50 - Applicability - Notice under Sec. 52-A not mentioning precisely the amount due recoverable and without giving opportunity to defaulter/guarantor - Not valid. *Ch.NarasaReddy vs. Collector, Ongole & others, 1987 (2) ALT 969.*

Section 57-A (i) - Government to exercise powers quasi judicially and not administratively. Principles of natural justice have got to be followed. Application by auction purchasers at a revenue sale against an order forfeiting their deposits under Sec. 36 (3) and for re-sale - No notice to debtor. Government allowing the application, setting aside the order of forfeiture and ordering resale without any notice to debtor. Order is illegal being violative of principles of natural justice. *B. Hussain vs. Stale*, AIR 1970 A.P. 137.

52-B. Recovery of dues from persons from whom money is due to the defaulter:—

- (1) The Collector or any officer empowered by the State Government in this behalf may, at any time or from time to time, by notice in writing (a copy of which shall be forwarded to the defaulter at his last address known to the Collector or other officer) require any person after being satisfied that money is due or may become due to the default from such person or that such person has held or may subsequently hold money, for or on account of the defaulter, to pay the Collector or other officer, either forthwith upon the money becoming due or being held at or within the time specified in the notice (not being before the money in becomes due or is held) so much of the money is sufficient to pay the amount due by the defaulter in respect of arrear or the whole money when it is equal to or less than that amount.
- (2) The Collector or other officer may, at any time, or from time to time, amend or revoke any such notice to extend the time, for making any payment in pursuance of the notice.
- (3) Save as otherwise provided in this Section, every person to whom a notice is issued under sub-section. (1), shall be bound to comply with such notice.
- (4) The Collector or other officer shall grant a receipt for any amount paid in compliance with a notice issued under sub-section (1) and the person so paying shall be deemed to have made the payment under the authority of the defaulter and the receipt of the Collector or other officer shall constitute a good and sufficient discharge of the liability of such persons to the extent of the amount referred to in the receipt.
- (5) Any person discharging any liability to the defaulter after receipt of the notice referred to in this section, shall be personally liable to the Collector or other officer to the extent of the liability discharge or to the extent of the liability of the defaulter for the amount due under this Act, whichever is less.
- (6) When any person to whom a notice under this sub-section is sent objects to it by a statement on oath that the sum demanded or any part thereof is not due by him to the defaulter, or that he does not hold any money for or on account of the defaulter, then nothing contained in this section shall be deemed to require such person to pay the sum deemed or any part

thereof to the Collector or other officer, but if it is discovered that such statement was false in any material particular, such person shall be personally liable to the Collector or other officer to the extent of his own liability to the defaulter on the date of the notice or to the extent of the defaulter's liability for any sum due under this Act, whichever is less.

- (7) Where any person to whom a notice under sub-section (1) is sent, fails to pay to the Collector or other officer the sum demanded or any part thereof as required in the said notice, such sum shall be recoverable from such person as if it were an arrear of land revenue due from him.

53. Process servers to be paid batta:—

Persons employed in serving notices, or in other process under this Act, shall be entitled to batta at such rates as may, from time to time, be fixed by the Board of Revenue with the sanction of the State Government and published in the District Gazette.

54. Interest and charges recoverable as arrears:—

The batta mentioned in the foregoing section, as well as interest, and all costs and charges incurred under the authority of this Act, shall be recoverable from the defaulter and his sureties in the same manner as arrears of land revenue.

55. Who to bear expenses of countermanded sale, Recovery thereof:—

Where property having been attached or distrained may be ordered to be put up for the sale, and the sale may be countermanded, the proprietor shall, nevertheless, be responsible for the expenses incurred in consequence of the attachment or distraint, in the same manner as if the sale had taken place; and in the event of such proprietor omitting to discharge the amount, it shall be recoverable by the process under which the original demand would have been recoverable.

56. Receipt of payment of revenue:—

Every person making a payment of revenue shall be entitled to a receipt for the same, and the receipt shall be signed by such officer or person and shall be in such form and contain such particulars as may be laid down by rules made under this Act.

1. Subs, by Sec. 2 of the Madras Revenue Recovery (A.P. Amendment) Act VI of 1960.

**57. Procedure where defaulter or surety resides out of district —
Effect of Collector's application — saving of right to sue applicant:—**

Where a defaulter or his surety may reside or hold property out the District wherein default shall have been made, the Collector of the District in which such defaulter or surety resides or holds property shall, on the written application of the Collector in whose District such default has been made, proceed in all respects against the defaulter and his surety, and his or their property in the same manner as if the default had been made in his own district. Every such application shall be signed and sealed by the Collector making it and shall be conclusive as to the amount due, and the party in arrears; in all proceedings against the Collector acting upon such application, or any person acting under his authority; and no proof of the seal, or signature of official character, of the Collector making the application shall be required; unless the Court shall see reason to doubt its genuineness; provided always, that nothing herein contained shall affect the right of any party to sue in his own district the Collector who made the application.

A Collector may delegate all or any of his powers and duties under this section to any subordinate revenue officer not below the rank of Deputy Tahsildar.

57-A. Revision:—

- (1) The State Government may either suo moto or on application made to them, call for and examine the record relating to any decision or order passed or proceeding taken by any authority or officer subordinate to them under this Act for the purposes of satisfying themselves as to the legality or propriety of such decision or order or as to the regularity of such proceeding and pass such order in reference thereto as they think fit.
- (2) The State Government may stay the execution of any such decision, or order or proceeding pending the exercise of their powers under sub-section (1) In respect thereof.
- (3) Powers of the nature referred to in sub-sections (1) and (2) may also be exercised by the Board of Revenue in the case of any decision or order passed or proceeding taken by any authority or officer subordinate to it.

58. Cognizance of questions relating to rate of revenue:—

No Court of Civil judicature shall have authority to take into consideration or decide any question as to rate of land revenue payable to the State Government or as to the amount of assessment fixed on the portions of a divided estate.

1. Amended by Act 15 of 1964.

CASE LAW

Suit for declaration and injunction - Claim by plaintiff that to the suit lands only the dry rate of assessment ought to be levied. Question falls under Sec. 58 and consideration thereof is barred. But so far as the question that the Estate Manager has no jurisdiction to determine the land revenue and that Board of Revenue alone has jurisdiction does not fall under Sec. 58 and the suit is maintainable. *D.Nandesam Chowdary vs. State of A.P.*, 1964(1)ALT326=1964 (2)An.WR95.

59. Suits by persons aggrieved by proceeding – Limitation: –

Nothing contained in this Act shall be held to prevent parties deeming themselves aggrieved by any proceedings under this Act, except as herein before provided, from applying to the Civil Courts for redress; provided that Civil Courts shall not take cognizance of any suit instituted by such parties for any such cause of action, unless such suit shall be instituted within six months from the time at which the cause of action arose.

CASE LAW

Does not apply to strangers to the proceedings - A void sale could also be ignored. *K. Radhakrishnaiah vs. Goutoj' A.P.*, AIR 1979 A.P. 255 = 1979 (2) An.WR 314 = 1979 L.S. 176.

Starting point of limitation under is the date of the act complained of- Suit filed beyond six months barred by time.

(1888) I.L.R. 12 Mad. 168 (F.B.) - Followed.

(1957) 1 M.L.J. 580; A.I.R. 1937 Mad. 382; (1956) 2 M.L.J. 207; A.I.R. 1959 Mad. 616 and (1950) 1 M.L.J. 43 - Distinguished.

(1913) M.W.N. 75 ; (1932) 63 M.L.J. 240 ; I.L.R. 55 Mad. 876 - Dissented from. *P. China Kolayya vs. P. Kotmjya*, 1960 ALT357 = 1960 (1) An.WR 425.

60. Survival of suits against Collector – Liability for predecessor's acts: –

No suit brought against any Collector by any person deeming himself aggrieved by anything done or purporting to be done under this Act, shall abate by reason of the departure from his district of the Collector against whom such suit shall have been brought; but the suit shall be continued against the successor of such Collector in all respects as though it had been instituted against himself. A suit may be brought against any Collector in his official capacity on account of anything done or purporting to have been done under this Act by his predecessor, subject to the limitation prescribed in the section provided that the Collector shall be personally liable for any official act of his predecessor.

Power to make rules:—

(1) The State Government may by notification in the Andhra Pradesh Gazette, make its rule to carry out the purposes of this Act.

1. Ins. by Madras Rent and Revenue Sales and Madras Revenue Recovery (A.P. Extension and Amendment) Act, 1958.

(2) All rules made under this section shall, as soon as may be after they are made, be laid on the Table of the Legislative Assembly and shall be subject to such modifications, whether by way of repeal or amendment as the Assembly may make within in fourteen days thereafter during the session in which they are so laid.

61. Regulation V of 1822 not to apply to sales:—

Regulation V of 1822 shall not be applicable to sales of property under this Act.

62. Regulation XXVIII of 1802 and I and II of 1803 not to apply to arrears:—

Regulation XXVIII of 1802 and Regulations I and II of 1803 shall be inoperative as respects arrears of revenue recoverable under this Act.

CASE LAW

Section 62 and Andhra Prpadesh (Andhra Area) General Sales Tax Act, 1939 - Dealer obtaining licence by paying provisional fee. Cannot be assessed as unlicensed dealer - Refusal to pay the balance of fee. *KM. Khudrathulla & Co. vs. State of A.P.. 1960 (11) S.T.C. 595 (A.P.)*.

Section 62 and A.P. Subordinate Collectors & Revenue Malversation Regulation 7 of 1828, Sec. 3 (3) - Sale confirmed by the Deputy Collector cannot be set aside by the Collector exercising revision power under the Regulation. *Smt. Sharada Naidu vs. D.R.O, W.P.No. 3849/70 dt. 14-11-1972 (Unreported)*.

63. Saving of Regulation V of 1804 and X of 1831:—

Nothing in this Act shall be held to bar the operation of the Provisions of Regulation V of 1804 and of Regulation X of 1831, in respect to the sale of lands of minors and other disqualified landholders.

64. (Scope of Act) Omitted by the Andhra Pradesh Adaption of Laws Order, 1957.

65. (Repeal of certain enactments). Repealed by Central Act XII of 1873.

(Commencement of Act) Repealed by Central Act XII of 1873.