

ASSAM ACT VII OF 1937.

THE ASSAM COURT OF WARDS (AMENDMENT) ACT, 1937.

[Passed by the Assam Legislature.]

[Published in the Assam Gazette of the 17th November 1937.]

An Act to amend the Bengal Court of Wards Act, 1879, in its application to Assam

WHEREAS it is expedient to amend the Bengal Act al Court of Wards Act, 1879, in its application IX of 1879. to Assam in the manner hereinafter appearing ;

it is hereby enacted as follows :—

Short title, extent and commencement.

1. (1) This Act may be called the Assam Court of Wards (Amendment) Act, 1937.

(2) It extends to the whole of Assam.

(3) It shall come into force on such date as the provincial Government may, by notification in the local official Gazette, appoint in this behalf.

2. After section 9 of the Court of Wards Act, 1879 (hereinafter referred to as the said Act), the following section shall be substituted for section 9A of the said Act as inserted by sub-section (2) of section 2 of the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907—

Eastern Bengal and Assam Act III of 1907

“9A. When the Court of Wards withdraws from the charge of such property it shall publish, in the manner provided in section 64A, a notice of the termination of the charge and thereupon subject to the provisions of clause 3 of section 23—

(a) such charge shall terminate with effect from the date fixed in accordance with the provisions of section 65 ;

Price Indian : 2 as.]

[English : 2d.

(b) the owner of the said property shall be restored to the possession thereof from the said date subject to any order made by a Civil Court and to any contracts entered into by the Court of Wards for the preservation or benefit of such property."

Amendment of section 10A. 3. The following section shall be substituted for section 10A of the said Act as inserted by section 3 of the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907—

Eastern
Bengal and
Assam Act
III of 1907.

"10A. (1) Whenever the Court of Wards assumes charge of any person or property under section 7 or section 10, it shall publish, in the manner provided in section 64A, a notice calling upon all creditors having claims against the ward or his immovable property to submit the same in writing to the Court, at a place to be named in the notice, within six months from the date of the publication of the notice aforesaid :

Notice to creditors.

Provided that if a suit or proceeding in respect of a claim is pending in any Civil Court at the date of the publication of such notice, intimation of that fact shall be given by the creditor concerned to the Court of Wards within the period aforesaid and notice of the decision of the Civil Court in respect of such claim shall also be given to the Court of Wards within three months after the final disposal of such suit or proceeding.

(2) Every such claim (other than a claim on the part of the Government) not submitted to the Court in compliance with the provisions of sub-section 1, shall, notwithstanding any law, contract, decree or award to the contrary, cease to carry interest from the date of the expiry of the period for submission of the claim or in any case where a suit or proceeding in respect of a claim is pending in any Civil Court, the period of three months after the final disposal of such suit or proceeding referred to in the said sub-section :

Provided that, if the Court is satisfied that the creditor was prevented by any sufficient cause from complying with the provisions of sub-section (1), it may consider and allow, either wholly or in part, his claim for interest at any time after the date of the expiry of the period aforesaid."

Amendment of section 10B. 4. In section 10B of the said Act, as inserted by section 3 of the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907,— Eastern Bengal and Assam Act III of 1907.

(a) in sub-section (1), the words, figures and brackets "or the proviso to sub-section (5)" shall be omitted, and

(b) in sub-section (3), the words "and the Judge receiving any such document shall record his reasons for so doing" shall be omitted.

Substitution of new sections for section 10C. 5. For section 10C of the said Act the following sections shall be substituted :—

"10C. (1) Where any property is in charge of the Court of Wards no Civil Bar to certain proceedings. Court shall execute any decree or order against the person or property of the Ward within four years from the date of the commencement of the Assam Court of Wards (Amendment) Act, 1937, or from the date of the assumption of charge of the property by the Court of Wards, whichever is later, and for seven years thereafter if the interest due under such decree or order be paid in full every year during the said seven years.

In calculating the period of limitation applicable to an application for the execution of a decree or order, the time during which the execution of such decree or order is barred under this sub-section shall be excluded.

(2) Except as provided in section 203A, no property in charge of the Court of Wards shall be sold by any revenue authority under any law so long as the Court remains in charge thereof.

10CC. In calculating the period of limitation applicable to a suit against a ward, a period of four years shall be added to the period of limitation allowed by law." Special Limitation for suits against wards.

Amendment of section 10D. 6. For section 10D of the said Act as inserted by section 3 of the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907, the following shall be substituted :— Eastern Bengal and Assam Act III of 1907.

"10D. (1) On receipt of all claims submitted in compliance with the provisions of sections 10A and 10B, the Court shall proceed to investigate such claims, and shall decide which of Adjudication of claims.

them are to be wholly or partly admitted or wholly or partly rejected, as the case may be, and shall communicate its decision in writing to each claimant concerned.

(2) When the Court has admitted any claim under sub-section (1), it may make to the creditor a proposal in writing for the reduction of the claim, or of the rate of interest to be paid in future, or of both; and, if such proposal, or any modification of it, is accepted by the creditor and his acceptance is finally recorded and attested by the Court, it shall be conclusively binding upon the creditor and upon the ward.

(3) Subject to the provisions of sub-section (2), nothing in this section shall be construed to bar the institution of a suit in a Civil Court for the recovery of a claim against a ward or his property which has been submitted to the Court of Wards:

Provided that no decision of the Court of Wards under this section shall be proved in any such suit as against the defendant.

(4) In calculating the period of limitation applicable to suits for the recovery of a claim which has been submitted to the Court of Wards, the period from the date of submission of the claim up to the date of the communication of the Court's decision thereon to the creditor shall be excluded."

Substitution of new section for section 11.

7. For section 11 of the said Act the following section shall be substituted, namely—

"11. The Court of Wards may retain charge of the whole of the property of any joint proprietors disqualified under section 6 of which the Court has taken charge under section 7, or of any property of which the Court has taken charge under section 10, notwithstanding the fact that a joint proprietor, or some joint proprietors, of such property has or have ceased to be subject to the jurisdiction of the Court or that any person has become entitled to such property or any part thereof jointly with any disqualified proprietor:

Provided that if the share of such proprietor or person is duly partitioned the Court shall, subject to the provisions of section 13A, release such partitioned share.

Amendment of section 12.

8. In section 12 of the said Act, the words and figures "or under section 11", shall be omitted.

Amendment of section 13A.

9. In section 13A of the said Act as inserted by section 5 of the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907,

Eastern Bengal and Assam Act III of 1907.

after the words "or any part thereof" the words

"or any liabilities which were incurred by the Court for the benefit of the property of such proprietor" shall be inserted.

Amendment of section 22.

10. In section 22 of the said Act,—

- (i) after the word "support" the words "and education" shall be inserted ;
- (ii) after the words "each ward and" the words "for the support" shall be inserted.
- (iii) at the end of the said section the words "and the financial condition of the property of the ward under its charge" shall be added.

Amendment of section 23.

11. In section 23 of the said Act,—

- (i) for clause 2 the following clause shall be substituted, namely :—

"Clause 2.—If at the time when any property ceases to be under the charge of the Court of Wards, any liabilities enumerated in this clause are outstanding in respect of any part of the property, the Collector may attach the whole or any part of such property whether consisting of estates, or shares or parts of estates, or tenures or holdings and collect the rents, cesses and other demands due and all arrears thereof, managing the property so attached either directly or through a manager or by farming as he may think fit :

Provided that such attachment shall not remain in force for a period exceeding five years.

The Collector shall from the proceeds of such property discharge the liabilities of the whole property in the following order of priority—

- (1) cost of management,
- (2) arrears of Government revenue and interest,
- (3) current revenue,
- (4) cesses due to Government,
- (5) arrears of rent and cess due to the superior landlords and interest thereon,

(6) other Government dues including the principal and interest of loans advanced by Government, if any, and

(7) current rent.

After satisfaction of the above liabilities the Collector shall, subject to any order of the Civil Court in this behalf, release the property to the proprietor, and pay to him or his duly constituted agent any surplus that remains in the hands of the Collector, and shall furnish such proprietor with an account of the receipts and expenditure extending over the time when the property was under attachment." ; and

(ii) after clause 2 the following clause shall be added, namely :—

"*Clause 3.*—(1) When the Court of Wards decides to withdraw from the charge of any property on the ground that, in its opinion, the property is insufficient to pay the liabilities of the proprietor, secured and unsecured, within a reasonable period, it shall give the proprietor and his creditors such opportunities as it thinks reasonable to come to an agreement regarding the release of the property from the charge of which it is about to withdraw and if any such agreement is reached, the Court of Wards, if it is of opinion that the agreement is valid, shall release the property to the proprietor.

If the property is not so released, the Court of Wards may, upon notice to the proprietor call a meeting of his creditors to elect not less than two trustees to administer the property. At such meeting the creditors shall have votes in proportion to the debts owing to them respectively. The opinion of creditors to whom three-fourths of the debts of the proprietor are owing shall prevail. The procedure relating to the holding of such meeting shall be laid down by the Court of Wards.

If the creditors fail to elect the trustees or if the trustees elected refuse or neglect to act within a time to be fixed by the Court of Wards, the Court of Wards may appoint the trustees. The trustees so elected or appointed shall be deemed to be appointed by the Civil Court.

(2) Upon the trustees, so elected or appointed, as the case may be, expressing their willingness to act as trustees the property shall, subject to the right of the Collector to attachment, collection and discharge of the liabilities mentioned in clause 2 of section 23, vest in them, in trust to administer it under the directions of such Civil Court as

may be prescribed by rules for discharging the other liabilities of the proprietor and making over the residue, if any, to him. The Collector shall pay to the trustees, instead of to the proprietor or his agent, any surplus that remains in his hands. Notice of the withdrawal of the Court of Wards and the vesting of the property in the trustees shall be published in the manner provided in section 64A.

(3) Upon the vesting of the property in the trustees the charge of the Court of Wards shall be deemed to be withdrawn but the proprietor shall not become liable to arrest or imprisonment in execution of any decree or order for such liabilities.

(4) Any adjudication of claims by the Court of Wards or compromise under section 10D shall be binding in the same manner and to the same extent as if the Court of Wards had not withdrawn from charge of the property and as if the Civil Court had made such adjudication or recorded such compromise.

(5) The Civil Court shall have all the powers given by law, including the law of insolvency, for the administration of the said property and the trusts mentioned above and shall also have power to remove trustees and appoint new trustees.

(6) The proprietor or the creditors shall be at liberty to apply to the Civil Court from time to time, as there may be occasion, for such removal or appointment, for the framing of a scheme of administration, or for the termination of the trust and discharge of the trustees.

(7) The form of notice, the manner of service thereof, the manner of signifying the willingness of trustees to act, the procedure for the election of trustees and the Civil Court under whose directions the trustees shall administer the property may be prescribed by rules to be framed by the Local Government."

Amendment of section 34A. 12. In section 34A of the said Act as inserted by section 7 of the Eastern Bengal and Assam Court of Wards (Amendment) Act, 1907— Eastern Bengal and Assam Act III of 1907.

After the expression "as if it were an arrear of land revenue" at the end of the said section there shall be inserted the words—

"or under the procedure provided by the Bengal Act Bengal Public Demands Recovery Act, 1913, for III of 1913, the recovery of public demands."

Substitution of new section for section 48. 13. For section 48 of the said Act the following section shall be substituted, namely :—

“48. All moneys received by the manager shall be applied to the purposes hereinafter mentioned, in accordance with such instructions as the Court may, from time to time, give in that behalf.

Application of moneys received by the manager. Unless the Court shall specially otherwise direct, priority shall be given to the purposes included in class I over those included in class II, to the purposes included in class II, over those included in class III, and to the purposes included in class III over those included in class IV.

CLASS I

- (1) The payment of all charges necessary for the management and supervision of the property of the Ward,
- (2) the payment of the charges referred to in section 22, and
- (3) the discharge of the instalments of Government revenue and of all cesses and other public demands from time to time due in respect of such property or any part of such property.

CLASS II

- (1) The payment of all rents, cesses and other demands due to any superior landlords in respect of any land held on behalf of the ward, and
- (2) the payment of interest at not more than four and a half per centum per annum on all debts incurred by the Court on behalf of the ward or on all debts incurred by the ward which the Court has admitted in the following order of priority—
 - (a) debts incurred by the Court in order to consolidate or pay off previous debts incurred at a higher rate of interest,
 - (b) debts secured by immovable property of the ward,
 - (c) debts which the Court has reduced under sub-section (2) of section 10D, and
 - (d) other debts which the Court has admitted.

CLASS III

- (1) The maintenance in an efficient condition of the estates, buildings and other immovable property belonging to the ward, and

(2) the payment, on such scale as the Court may authorise, of such religious, charitable and other allowances not exceeding the amounts paid out of the proceeds of the property before it came under the charge of the Court, and such allowances and donations befitting the position of the ward's family and such expenses for the education of the members of the ward's family as the Court may authorise to be paid.

CLASS IV

(1) The payment of the difference between interest at four and a half per centum per annum and interest at the rate contracted for on all debts of the ward admitted by the court in the order specified in clauses (b), (c) and (d) of item (2) in class II,

(2) liquidation of the principal amount of the debts in reasonable instalments, and

(3) improvement of the land and property of the ward and the benefit of the ward and his property generally."

Amendment of section 49. 14. In section 49 of the said Act, for the words beginning with "or under the second clause" and ending with the words "made for such purposes", the following shall be substituted, namely—

"any surplus which remains after providing, so far as the Court may think fit, for the objects mentioned in section 48".

Insertion of new section 55A. 15. After section 55 of the said Act the following section shall be inserted, namely—

"55A. No decree or order shall be made by a Civil Court against any person for anything done, honestly and with due diligence under this Act".

Amendment of section 60B. 16. In section 60B of the said Act,—

(a) after the words "the purposes of" the word, figures and letter "Section 10C," shall be inserted, and

(b) for the words and figures "a person whose property is under the charge of the Court of Wards by virtue of the second clause of section 11,"

the following shall be substituted, namely—

"a person whose property is under the charge of the Court of Wards under section 11 by

reason of the fact that such person has become entitled to the property jointly with a disqualified proprietor”.

A m e n d- 17. For section 64A of the said Act as insert- E a s t e r n
ment of sec- ed by section 12 of the Eastern Bengal and Bengal and
tion 64A. Assam Court of Wards (Amendment) Act, 1907, Assam Act
there shall be substituted the following section, III of 1907.
namely—

“64A. Any notice required to be published
Publication of noti- by the provisions of section
ces. 9A or of sub-section (1) of
section 10A or clause 3 of
section 23 and any order required to be publish-
ed under section 65, shall be published—

- (a) in the *Assam Gazette* ;
- (b) in at least three issues each of one
English and one Vernacular news-
paper published in Assam ;
- (c) in two issues of a newspaper (if any)
published in the district or division
in which the ward ordinarily resides,
or has last resided ; and
- (d) by posting such notice on the notice-
boards in the offices of the Deputy
Commissioner and of the Judge of
the district in which the place named
in the notice is situate.”

A m e n d- 18. In section 65 of the said Act, for the
ment of sec- words “as the Court may direct” the words,
tion 65. figures and letter “in the manner provided in
section 64A” shall be substituted.

A m e n d- 19. In section 65A of the said Act, as inserted
ment of sec- by section 11 of the Bengal Court of Wards Bengal Act
tion 65A. (Amendment) Act, 1881,— III of 1881.

- (a) the brackets and words “(as if it were
an arrear of land revenue or)” as
inserted by section 13 of the Eastern
Bengal and Assam Court of Wards
(Amendment) Act, 1907, shall be
omitted ; and
- (b) for the words and figures “as a demand,
under Bengal Act 7 of 1880 or any
other Act at the time being in force
for the recovery of public demands”
the words and figures “as a public Bengal Act
demand under the Bengal Public III of 1913.
Demands Recovery Act, 1913” shall
be substituted.