

SCHEDULE E
PROCEDURE FOR RECOVERY OF TAX
[See sub-section (7) of section 50]

PART I
GENERAL PROVISIONS

1. **Definitions.**-In this Schedule, unless the context otherwise requires, -

- (a) "**certificate**" means a certificate received by the Tax Recovery Officer under rule 2;
- (b) "**defaulter**" means the assessee or dealer or any other person mentioned in the certificate;
- (c) "**execution**" in relation to a certificate, means recovery of arrears in pursuance of the certificate;
- (d) "**form**" means a form given in the Annexure to this Schedule;
- (e) "**movable property**" includes growing crops;
- (f) "**rule**" means a rule contained in this Schedule;
- (g) "**share in a company**" includes stock, debentures or bonds ; and
- (h) "**Tax Recovery Officer**" means any Officer of the Government not below the rank of Sales Tax Officer who may be authorised by the Government, by general or special notification, to exercise the powers of a Tax Recovery Officer and Government may appoint more than one such Officer and specify their local jurisdiction;

2. **Issue of certificate and the validity and amendment thereof.**-(1) Where an assessee or dealer or any other person is in default or is deemed to be in default in making a payment of tax or any other amount due under this Act, the assessing authority may forward to the Tax Recovery Officer, a certificate in Form 1 under his signature specifying the amount of tax and any other amount due from the assessee or dealer or any other person and the Tax Recovery Officer shall, on receipt of such certificate, proceed to recover from such assessee, dealer or other person the amount specified therein in accordance with the provisions in this Schedule.

(2) The assessing authority may issue a certificate under sub-rule (1) notwithstanding that proceedings for recovery of the amount by any other mode has been taken.

(3) When the assessing authority sends a certificate to the Tax Recovery Officer under this rule, it shall not be open to the assessee or dealer or such other person, as the case may be, to dispute before the Tax Recovery Officer the correctness of assessment of the tax including interest, if any, or of the order imposing penalty, and no objection to the certificate on any ground shall be entertained by the Tax Recovery Officer.

(4) Notwithstanding the issue of a certificate to the Tax Recovery Officer, the assessing authority shall have power to withdraw or correct any clerical or arithmetical mistake in the certificate by sending an intimation to the Tax Recovery Officer.

(5) Where an assessee has property within the jurisdiction of more than one Tax Recovery Officer to whom a certificate is sent by an assessing authority :-

- (a) is not able to recover the entire amount by the sale of the property, whether movable or immovable or both, within his jurisdiction; or
- (b) is of the opinion that, for the purpose of expediting or securing the recovery of the whole or any part of the amount under this Schedule, it is necessary so to do,

he may send the certificate or, where only a part of the amount is to be recovered a copy of certificate certified in the prescribed manner and specifying the amount to be recovered to a Tax Recovery Officer within whose jurisdiction the assessee resides or has property, and thereupon that Tax Recovery Officer shall also proceed to recover the amount under the Schedule as if the certificate or the copy thereof had been a certificate sent to him by the assessing authority.

3. Issue of notice.-When a certificate has been received by the Tax Recovery Officer from the assessing authority for the recovery of arrears, the Tax Recovery Officer shall cause to be served upon the defaulter a notice in Form 2 requiring the defaulter to pay the amount specified in the certificate within fifteen days from the date of service of the notice and intimating that in default, steps would be taken to realise the amount under this Schedule.

4. When certificate may be executed.- No step in execution of a certificate shall be taken until the period of fifteen days has elapsed since the date of the service of the notice under rule 3:

Provided that if the Tax Recovery Officer is satisfied that the defaulter is likely to conceal, remove or dispose of the whole or any part of such of his movable property as would be liable to attachment in execution of a decree of a Civil Court and that the realisation of the amount of the certificate would in consequence be delayed or obstructed, he may, at any time direct, for reasons to be recorded in writing, attachment of the whole or any part of such property :

Provided further that if the defaulter whose property has been so attached furnishes security to the satisfaction of the Tax Recovery Officer, such attachment shall be cancelled from the date on which such security is accepted by the Tax Recovery Officer.

5. Mode of recovery.- If the amount mentioned in the notice is not paid within the time specified therein or within such further time as the Tax Recovery Officer may grant, he shall proceed to realise the amount by one or more of the following modes, namely :-

- (a) by attachment and sale of the defaulter's moveable property;
- (b) by attachment and sale of the defaulter's immovable property;
- (c) by arrest of the defaulter and his detention in prison.

6. Interest, costs and charges recoverable.- There shall be recoverable in the said proceedings in execution of every certificate,-

- (a) interest at the rate of eighteen per centum per annum from the day commencing after the end of the period specified in rule 3; and
- (b) all charges incurred in respect of -
 - (i) the service of notice upon the defaulter to pay the arrears and of warrants and other processes; and
 - (ii) all other proceedings taken for realising the arrears.

7. Purchaser's title.- (1) Where property is sold in execution of a certificate, there shall vest in the purchaser merely the right, title and interest of the defaulter at the time of the sale, even though the property itself be specified.

(2) Where immovable property is sold in execution of a certificate and such sale has become absolute, the purchaser's right, title and interest shall be deemed to have vested in him from the time when the property is sold, and not from the time when the sale becomes absolute.

8. Suit against purchaser not maintainable on ground of purchase being made on behalf of plaintiff.-(1) No suit shall be maintainable against any person claiming title under a purchase certified by the Tax Recovery Officer in the manner laid down in this Part on the ground that the purchase was made on behalf of the plaintiff or on behalf of some one through whom the plaintiff claims.

(2) Nothing in this rule shall bar a suit to obtain a declaration that the name of any purchaser certified as aforesaid was inserted in the certificate fraudulently or without the consent of the real purchaser or interfere with the right of a third person to proceed against that property though ostensibly sold to the certified purchaser, on the ground that it is liable to satisfy a claim of such third person against the real owner.

9. Disposal of proceeds of executions.-(1) Whenever assets are realised by sale or otherwise in execution of a certificate, they shall be disposed of in the following manner, namely :-

(a) there shall first be paid to the assessing authority the costs incurred by him;

(b) there shall , in the next place, be paid to the assessing authority the amount due under the certificate in execution of which the assets were realised;

(c) if there remains a balance after payment of the sums referred to in clauses (a) and (b), there shall be paid to the assessing authority therefrom any other amount recoverable under the procedure provided by this Act which may be due on the date on which the assets were realised ; and

(d) the balance , if any, remaining after the payment of the amount, if any, referred to in clause (c) shall be paid to the defaulter.

(2) If the defaulter disputes any claim made by the assessing authority to receive any amount referred to in clause (c), the Tax Recovery Officer shall determine the dispute.

10. General bar to jurisdiction of Civil Court, save where fraud alleged.- Except as otherwise expressly provided in this Act, every question arising between the assessing authority and the defaulter or their representatives relating to the execution, discharge or satisfaction of a certificate or relating to the confirmation or setting aside of a sale held in execution of such certificate shall be determined, not by suit, but by the order of the Tax Recovery Officer before whom such question arises:

Provided that a suit may be brought in a Civil Court in respect of any such question upon the ground of fraud.

11. Property exempt from attachment.- (1) All such property, as is by the Code of Civil Procedure, 1908 exempted from attachment and sale in execution of a decree of Civil Court, shall be exempt from attachment and sale under this Schedule. 5 of 1908.

(2) The decision of the Tax Recovery Officer as to what property is so entitled to exemption shall be conclusive.

12. Investigation by Tax Recovery Officer.-(1) Where any claim is preferred to, or any objection is made to the attachment or sale of any property in execution of a certificate on the ground that such property is not liable to such attachment or sale, the Tax Recovery Officer shall proceed to investigate the claim or objection :

Provided that no such investigation shall be made where the Tax Recovery Officer considers that the claim or objection was designedly or unnecessarily delayed.

(2) Where the property to which the claim or objection applies has been advertised for sale, the Tax Recovery Officer ordering the sale may postpone it, pending the investigation of the claim or objection, upon such terms as to security or otherwise as the Tax Recovery Officer deems fit.

(3) The claimant or objector shall adduce evidence to show that -

(a) in the case of immovable property, at the date of the service of notice issued under this Schedule to pay the arrears; or

(b) in case of movable property, at the date of the attachment, he had some interest in, or was possessed of, the property in question.

(4) Where upon the said investigation, the Tax Recovery Officer is satisfied that, for the reason stated in the claim or objection, such property was not, at the said date, in the possession of the defaulter or of some person in trust for him or in the occupancy of a tenant or other person paying rent to him or that being in the possession of the defaulter at the said date, it was so in his possession, not on his own account or as his own property, but on account of or in trust for some other person, or on his own account and partly on account of some other person, the Tax Recovery Officer shall make an order releasing the property, wholly or to such extent as he thinks fit, from attachment or sale.

(5) Where the Tax Recovery Officer is satisfied that the property was, at the said date, in the possession of the defaulter as his own property and not on account of any other person, or was in the possession of some other person in trust for him, or in the occupancy of a tenant or other person paying rent to him, the Tax Recovery Officer shall disallow the claim.

(6) Where a claim or an objection is preferred, the party against whom an order is made may institute a suit in a Civil Court to establish the right which he claims to the property in dispute, but subject to the result of such suit, if any, the order of the Tax Recovery Officer shall be conclusive.

13. Removal of attachment on satisfaction or cancellation of certificate. -
Where -

(a) the amount due with costs and all charges and expenses resulting from the attachment of any property or incurred in order to hold a sale, are paid to the Tax Recovery Officer ; or

(b) the certificate is cancelled,

the attachment shall be deemed to be withdrawn and in the case of immovable property the withdrawal shall, if the defaulter so desires, be proclaimed at his expense and a copy of the proclamation shall be affixed in the manner provided by this Schedule for a proclamation of sale of immovable property.

14. Authority entitled to attach and sale.-The attachment and sale of property shall be made by Tax Recovery Officer.

15. Defaulting purchaser answerable for loss on resale.- Any deficiency of price which may happen on a resale by reason of the purchaser's default, and all expenses attending such resale, shall be certified by the Tax Recovery Officer and shall, at the instance of either the assessing authority or the defaulter, be recoverable from the defaulting purchaser under the procedure provided by this Schedule :

Provided that no such application shall be entertained unless filed within fifteen days from the date of resale.

16. Adjournment or stoppage of sale.-(1) The Tax Recovery Officer may adjourn any sale hereunder to a specified day and hour.

(2) Where a sale of immovable property is adjourned under sub-rule (1) for a longer period than one calendar month, a fresh proclamation of sale under this Schedule shall be made unless the defaulter consents to waive it.

(3) Every sale shall be stopped if, before the lot is knocked down, the arrears and costs (including the costs of the sale) are tendered to the Tax Recovery Officer.

17. Private alienation to be void in certain cases.-(1) Where a notice has been served on a defaulter under rule 3, the defaulter or his representative in interest shall not be competent to mortgage, charge, lease or otherwise deal with any property belonging to him except with the permission of the Tax Recovery Officer, nor shall any Civil Court issue any process against such property in execution of a decree for the payment of money.

(2) Where an attachment has been made under this Schedule, any private transfer or delivery of the property attached or of any interest therein and any payment to the defaulter of any debt, dividend or other moneys contrary to such attachment, shall be void as against all claims enforceable under the attachment.

18. Prohibition against bidding or purchase by officer.-No officer or other person having any duty to perform in connection with any sale under this Schedule shall, either directly or indirectly, bid for, acquire or attempt to acquire any interest in the property sold.

19. Prohibition against sale on holidays.-No sale under this Schedule shall take place on a Sunday or other general holiday recognised by the Government or any day which has been notified by the Government to be a local holiday for the area in which the sale is to take place.

20. Assistance by police.-The Tax Recovery Officer may direct to the officer-in-charge of the nearest police station for such assistance as may be necessary in the discharge of his duties, and upon such direction, the officer-in-charge shall depute a sufficient number of police officers for furnishing such assistance.

PART II

ATTACHMENT AND SALE OF MOVABLE PROPERTY

21. **Warrant** .-When any movable property is to be attached the Tax Recovery Officer shall prepare a warrant under his signature in Form 3 specifying the name of the defaulter and the amount to be realised and cause a copy of the warrant to be served on the defaulter.

22. **Attachment**.-If, after service of the copy of the warrant, the amount is not paid forthwith, the Tax Recovery Officer shall proceed to attach the movable property of the defaulter.

23. **Property in defaulter's possession**.-Where the property proceeded against is movable property (other than agricultural produce) in the possession of the defaulter, it shall be attached by actual seizure and the Tax Recovery Officer shall keep the property in his custody or in the custody of one of his subordinates who shall be responsible for due custody thereof :

Provided that when the property seized is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, the Tax Recovery Officer may take steps for sale of the property at once.

24. **Agricultural produce**.-Where the property proceeded against is agricultural produce, it shall be attached by affixing a copy of the warrant -

- (a) where such produce is growing crop, on the land on which such crop has grown; or
- (b) where such produce has been cut or gathered on the threshing floor or place for treading out grain or the like, or fodder-stack, on or in which it is deposited,

and another copy on the outer door or on some other conspicuous part of the house in which the defaulter ordinarily resides, or on the outer door or on some other conspicuous part of the house in which he carries on business or personally works for gain, or in which he is known to have last resided or carried on business or personally worked for gain; and the produce shall, thereupon, be deemed to have passed into the possession of the Tax Recovery Officer.

25. **Provisions as to agricultural produce under attachment**.- (1) Where agricultural produce is attached, the Tax Recovery Officer shall make such arrangements for the custody, watching, tending, cutting and gathering thereof as it may deem sufficient, and the assessing authority shall bear such amount as the Tax Recovery Officer shall require in order to defray the cost of such arrangements.

(2) Subject to such conditions as may be imposed by the Tax Recovery Officer in this behalf, either in the order of attachment or in any subsequent order, the defaulter may tend, cut, gather and store the produce and do any other act necessary for maturing

or preserving it; and if the defaulter fails to do all or any of such acts, the Tax Recovery Officer may, subject to the like conditions, do all or any of such acts, and the costs incurred by him shall be recoverable from the defaulter as if they were included in the certificate.

(3) Agricultural produce attached as a growing crop shall not be deemed to have ceased to be under attachment or to require re-attachment merely because it has been severed from the soil.

(4) Where an order for the attachment of a growing crop has been made at a considerable time before the crop is likely to be fit to be cut or gathered, the Tax Recovery Officer may suspend the execution of the order for such time as he thinks fit and may make a further order prohibiting the removal of the crop pending execution of the order of attachment.

(5) A growing crop, which from its nature does not admit of being stored, shall not be attached under this rule at any time less than twenty days before the time at which it is likely to be fit to be cut or gathered.

26. Debts and shares etc.-(1) In the case of -

- (a) a debt not secured by a negotiable instrument,
- (b) a share in a company, or
- (c) other movable property not in the possession of the defaulter except property deposited in, or in the custody of any court,

the attachment shall be made by a written order in Form 4 prohibiting –

- (i) in the case of debt, the creditor from recovering the debt and debtor from making payment thereof until further order of the Tax Recovery Officer,
- (ii) in the case of a share, the person in whose name the share may be standing from transferring the same or receiving any dividend thereon, and
- (iii) in case of any other movable property (except as aforesaid), the person in possession of the same from giving it over to the defaulter.

(2) A copy of such order shall be affixed on some conspicuous part of the office of the Tax Recovery Officer and another copy shall be sent, in the case of debt, to the debtor; in the case of share, to the proper officer of the company; and in the case of other movable property (except as aforesaid), to the person in possession of the same.

(3) A debtor prohibited under clause (i) of sub-rule (1) may pay the amount of his debt to the Tax Recovery Officer and such payment shall discharge him as effectually as payment to the party entitled to receive the same.

27. **Attachment of decrees.**-(1) Where the property proceeded against is a decree of a Civil Court for the payment of money or for sale in enforcement of a mortgage or charge, the attachment shall be made by the issue, to the Civil Court, of a notice in Form 5 requesting the Civil Court to stay the execution of the decree unless and until -

(i) the Tax Recovery Officer cancels the notice, or

(ii) the assessing authority or the defaulter applies to the Court receiving such notice to execute the decree.

(2) Where a Civil Court receives an application under clause (ii) of sub-rule (1), it shall, on the application of the assessing authority or the defaulter and subject to the provisions of the Code of Civil procedure, 1908 proceed to execute the attached decree and apply the net proceeds in satisfaction of the certificate. 5 of 1908.

(3) The assessing authority shall be deemed to be the representative of the holder of the attached decree, and to be entitled to execute such attached decree in any manner lawful for the holder thereof.

28. **Share in movable property.** - Where the property proceeded against consists of the share or interest of the defaulter in movable property belonging to him and another as co-owners, the attachment shall be made by a notice in Form 6 to the defaulter prohibiting him from transferring the share or interest or charging it in any way.

29. **Attachment of negotiable instrument.**-Where the property is a negotiable instrument not deposited in a Court nor in the custody of a public officer, the attachment shall be made by actual seizure.

30. **Attachment of property in custody of Courts or public officer.**-Where the property proceeded against is in the custody of any Court or public officer, the attachment shall be made by a notice in Form 7 to such Court or Officer, requesting that such property, and any interest or dividend becoming payable thereon, may be held subject to the further orders of the Tax Recovery Officer by whom the notice is issued :

Provided that where such property is in the custody of a Court, any question of title or priority arising, between the assessing authority and any other person, not being the defaulter, claiming to be interested in such property by virtue of any assignment, attachment or otherwise shall be determined by such Court.

31. **Attachment of partnership property.**-(1) Where the property proceeded against consists of an interest of the defaulter, being a partner, in the partnership property, the Tax Recovery Officer may make an order charging the share of such partner in the partnership property and profits with payment of the amount due under the certificate, and may, by the same or subsequent order, appoint a receiver of the share of such partner in the profits, whether already declared or accruing and of any other money which may become due to him in respect of the partnership, and direct accounts and enquiries and

make an order for the sale of such interest or such other order as the circumstances of the case may require.

(2) The other person shall be at liberty at any time to redeem the interest charged or in the case of a sale being directed, to purchase the same.

32. **Attachment not to be excessive.**-The attachment by seizure shall not be excessive, that is to say, the property seized shall be as nearly as possible proportionate to the amount specified in the warrant.

33. **Inventory.**-In the case of attachment of movable property by actual seizure, the Tax Recovery Officer, shall, after seizure of the property, prepare an inventory of all the property attached, specifying in it the place where it is lodged or kept, and a copy of the inventory shall be delivered to the defaulter.

34. **Seizure between sunrise and sunset.**-Attachment by seizure shall be made after sunrise and before sunset, and not otherwise.

35. **Power to break open door, etc.**-The Tax Recovery Officer may break open any inner or outer door of any building and enter any building in order to seize any movable property, after giving all reasonable opportunity to women to withdraw, if he has reasonable grounds to believe that such building contains movable property liable to seizure under the warrant and he has notified his authority and intention of breaking open if admission is not given.

36. **Sale.**- The Tax Recovery Officer may direct that any movable property attached under this Schedule or such portion thereof as may seem necessary to satisfy the certificate shall be sold.

37. **Issue of proclamation.**-When any sale of movable property is ordered by the Tax Recovery Officer it shall issue a proclamation in Form 8 in the local language of the intended sale, specifying the time and place of sale and whether the sale is subject to confirmation or not.

38. **Manner of making proclamation.**-(1) Such proclamation shall be made by beat of drum or other customary mode, -

(a) in the case of property attached by actual seizure, -

(i) in the village in which the property was seized, or, if the property was seized in the town or city, then in the locality in which it was seized, and

(ii) at such other places as the Tax Recovery Officer may direct; and

(b) in the case of property attached otherwise than by actual seizure, in such places, if any, as the Tax Recovery Officer may direct.

(2) A copy of the proclamation shall also be affixed in a conspicuous part of the office of the Tax Recovery Officer.

39. Sale after fifteen days.-Except where the property is subject to speedy and natural decay or when the expense of keeping it in custody is likely to exceed its value, no sale of movable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiry of at least fifteen days calculated from the date on which a copy of the sale proclamation was affixed in the office of the Tax Recovery Officer.

40. Sale of agricultural produce.-(1) Where the property to be sold is agricultural produce, the sale shall be held -

(a) if such produce is a growing crop, on or near the land on which such crop has grown, or

(b) if such produce has been cut or gathered, at or near the threshing floor or place for treading out grain or the like, or fodder-stack on or in which it is deposited :

Provided that the Tax Recovery Officer may direct the sale to be held at the nearest place of public resort, if he is of opinion that the produce is thereby likely to sell to greater advantage.

(2) Where, on the produce being put up for sale, -

(a) a fair price, in the estimation of the Tax Recovery Officer, is not offered for it; and

(b) the owner of the produce or a person authorised to act on his behalf, applies to have the sale postponed till the next day or, if a market is held at the place of sale, till the next market day,

the sale shall be postponed accordingly, and shall be then completed, whatever price may be offered for the produce.

41. Special provisions relating to growing crops.-(1) Where the property to be sold is a growing crop and the crop from its nature admits of being stored but has not yet been stored, the day of the sale shall be so fixed as to admit of the crop being made ready for storing before the arrival of such day, and the sale shall not be held until the crop has been cut or gathered and is ready for storing.

(2) Where the crop from its nature does not admit of being stored or can be sold to a greater advantage in an unripe stage, as in the case of green wheat, it may be sold before it is cut and gathered, and the purchaser shall be entitled to enter on the land, and to do all that is necessary for the purpose of tending or cutting or gathering the crop.

42. Sale to be by public auction.—The property shall be sold by public auction in one or more lots as the Tax Recovery Officer may consider advisable and if the amount to be realised by sale is satisfied by the sale of a portion of the property, the sale shall be immediately stopped with respect to the remainder of the lots.

43. Procedure of sale by public auction.—(1) Where movable property is sold by public auction, the price of each lot shall be paid at the time of sale or as soon after as the Tax Recovery Officer directs, and in default of payment, the property shall forthwith be resold.

(2) On payment of the purchase money, the Tax Recovery Officer holding the sale shall grant a certificate specifying the property purchased, the price paid and the name of the purchaser and the sale shall become absolute.

(3) Where the movable property to be sold is a share in goods belonging to the defaulter and a co-owner and two or more persons, of whom one is such co-owner, respectively bid the same sum for such property or for any lot, the bidding shall be deemed to be the bidding of the co-owner.

44. Irregularity not to vitiate sale, but any person injured may sue.—No irregularity in publishing or conducting the sale of movable property shall vitiate the sale, but any person sustaining substantial injury by reason of such irregularity at the hand of any other person, may institute a suit in a Civil Court against him for compensation, or (if such other person is the purchaser) for the recovery of the specific property and for compensation in default of such recovery.

45. Negotiable instruments and shares in a company.—Notwithstanding anything contained in this Schedule where the property to be sold is a negotiable instrument or a share in a company, the Tax Recovery Officer may, instead of selling it by public auction, sell such instrument or share through a broker.

46. Order for payment of coin or currency notes to the Tax Recovery Officer.—Where the property attached is current coin or currency notes, the Tax Recovery Officer may, at any time during the continuance of the attachment, direct that such coin or notes, or a part thereof sufficient to satisfy the certificate, be paid over to the assessing authority.

PART III

ATTACHMENT AND SALE OF IMMOVABLE PROPERTY

47. **Attachment.**—Attachment of immovable property of the defaulter shall be made by an order in Form 9 prohibiting the defaulter from transferring or charging the property in any way and prohibiting all persons from taking any benefit under such transfer or charge.

48. **Service of notice of attachment.**—A copy of the order of attachment shall be served on the defaulter.

49. **Proclamation of attachment.**—The order of attachment shall be proclaimed at some place on or adjacent to the property attached by beat of drum or other customary mode, and a copy of the order shall be fixed on a conspicuous part of the property and on the notice board of the office of the Tax Recovery Officer.

50. **Attachment to relate back from the date of service of notice.**—Where any immovable property is attached under this Schedule, the attachment shall relate back to, and take effect from, the date on which the notice to pay the arrears, issued under this Schedule, was served on the defaulter.

51. **Sale and proclamation of sale.**— (1) The Tax Recovery Officer may direct that any immovable property which has been attached or such portion thereof as may seem necessary to satisfy the certificate, shall be sold.

(2) Where any immovable property is ordered to be sold, the Tax Recovery Officer shall cause a proclamation in Form 8 of the intended sale to be made in the local language.

52. **Content of proclamation.**—A proclamation of sale of immovable property shall be drawn up after notice to defaulter and shall state the time and place of sale and shall specify, as fairly and accurately as possible,—

- (a) the property to be sold;
- (b) the revenue, if any, assessed upon the property or any part thereof;
- (c) the amount for the recovery of which the sale is ordered; and
- (d) any other thing which the Tax Recovery Officer considers it material for a purchaser to know, in order to judge the nature and value of the property.

53. **Mode of making proclamation.**—(1) Every proclamation for the sale of immovable property shall be made at some place on or near such property by beat of drum or other customary mode, and a copy of the proclamation shall be affixed on a conspicuous part of the property and also upon a conspicuous part of the office of the Tax Recovery Officer.

(2) Where the Tax Recovery Officer so directs, such proclamation shall also be published in the official Gazette or in a local newspaper, or in both, and the cost of such publication shall be deemed to be cost of the sale.

(3) Where the property is divided into lots for the purpose of being sold separately, it shall not be necessary to make a separate proclamation for each lot, unless proper notice of the sale cannot, in the opinion of the Tax Recovery Officer, otherwise be given.

54. Time of sale.—No sale of immovable property under this Schedule shall, without the consent in writing of the defaulter, take place until after the expiration of at least thirty days calculated from the date on which a copy of the proclamation of the sale has been affixed on the property or in the office of the Tax Recovery Officer, whichever is later.

55. Sale to be by auction.—The sale shall be by public auction to the highest bidder and shall be subject to confirmation by the Tax Recovery Officer.

56. Deposit by purchaser and resale in default.—(1) On every sale of immovable property, the person declared to be the purchaser shall pay, immediately after such declaration, a deposit of twenty-five per centum of the amount of his purchase money, to the Tax Recovery Officer and in default of such deposit, the property shall forthwith be resold.

(2) The full amount of purchase money payable shall be paid by the purchaser to the Tax Recovery Officer on or before the fifteenth day from the date of the sale of the property.

57. Procedure in default of payment.—In default of payment within the period mentioned in rule 56, the deposit may, if the Tax Recovery Officer thinks fit, after defraying the expenses of the sales, be forfeited to the Government, and the property shall be resold, and the defaulting purchaser shall forfeit all claims to the property or to any part of the sum for which it may subsequently be sold.

58. Authority to bid.—All persons bidding at the sale shall be required to declare if they are bidding on their behalf or on behalf of their principals, and, in the latter case, they shall be required to deposit their authority and in default their bids shall be rejected.

59. Application to set aside sale of immovable property on deposit.— (1) Where immovable property has been sold in execution of a certificate, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of sale, apply to the Tax Recovery Officer to set aside the sale, on his depositing -

(a) for the payment to the assessing authority, the amount specified in the proclamation of sale as that for the recovery of which the sale was ordered, with interest thereon at the rate of twelve per centum per annum calculated from the date of proclamation of sale to the date when the deposit is made; and

(b) for the payment to the purchaser, as penalty, a sum equal to five per centum of the purchase money, but not less than one rupee.

(2) Where a person makes an application under rule 60 for setting aside the sale of his immovable property, he shall not, unless he withdraws that application, be entitled to make or prosecute an application under this rule.

60. Application to set aside sale of immovable property on ground of non-service of notice or irregularity.—Where immovable property has been sold in execution of a certificate, the assessing authority, the defaulter, or any person whose interests are affected by the sale, may, at any time within thirty days from the date of the sale, apply to the Tax Recovery Officer to set aside the sale of the immovable property on the ground that notice was not served on the defaulter to pay the arrears as required by this Schedule on the ground of a material irregularity in publishing or conducting the sale :

Provided that -

(a) no sale shall be set aside on any such ground, unless the Tax Recovery Officer is satisfied that the applicant has sustained substantial injury by reason of the non-service or irregularity; and

(b) an application made by a defaulter under this rule shall be disallowed unless the applicant deposits the amount recoverable from him in execution of the certificate.

61. Setting aside sale where defaulter has no saleable interest.— At any time within thirty days of the sale the purchaser may apply to the Tax Recovery Officer to set aside the sale on the ground that the defaulter had no saleable interest in the property sold.

62. Confirmation of sale.— (1) Where no application is made for setting aside the sale under the forgoing rules or where such an application is made and disallowed by the Tax Recovery Officer, he shall (if the full amount of the purchase money has been paid) make an order confirming the sale, and thereupon, the sale shall become absolute.

(2) Where such application is made and allowed and where, in the case of an application made to set aside the sale on deposit of the amount and penalty and charges, the deposit is made within thirty days from the date of the sale, the Tax Recovery Officer shall make an order setting aside the sale :

Provided that no order shall be made unless notice of the application has been given to the persons affected thereby.

63. Return of purchase money in certain cases.—When a sale of immovable property is set aside, any money paid or deposited by the purchaser on account of the purchase together with the penalty, if any, deposited for the payment to the purchaser, and such interest as the Tax Recovery Officer may allow, shall be paid to the purchaser.

64. Sale certificate. - (1) Where a sale of immovable property has become absolute, the Tax Recovery Officer shall grant a certificate in Form 10 specifying the property sold and the name of the person who at the time of sale is declared to be the purchaser.

(2) Such certificate shall state the date on which the sale became absolute.

65. Postponement of sale to enable defaulter to raise amount due under certificates.—(1) Where an order for the sale of immovable property has been made, if the defaulter can satisfy the Tax Recovery Officer that there is reason to believe that the amount of the certificate may be raised by the mortgage or lease or private sale of such property, or some part thereof or of any other immovable property of the defaulter, the Tax Recovery Officer may, on his application, postpone the sale of the property comprised in the order for sale, on such terms and for such period as he thinks proper, to enable him to raise the amount.

(2) In such case, the Tax Recovery Officer shall grant a certificate to the defaulter, authorising him within a period to be mentioned therein, and notwithstanding anything contained in this Schedule, to make the proposed mortgage, lease or sale :

Provided that all moneys payable under such mortgage, lease or sale shall be paid, not to the defaulter, but to the Tax Recovery Officer:

Provided further that no mortgage, lease or sale under this rule shall become absolute until it has been confirmed by the Tax Recovery Officer.

66. Fresh proclamation before resale.—Every resale of immovable property in default of payment of the purchase money within the period allowed for such payment, shall be made after the issue of a fresh proclamation in the manner and for the period herein before provided for the sale.

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

PART IV

ARREST AND DETENTION OF THE DEFAULTER

68. **Notice to show cause.**—(1) No order for the arrest and detention in civil prison of a defaulter shall be made unless the Tax Recovery Officer has issued and served a notice in Form 11 upon the defaulter calling upon him to appear before him on the date specified in the notice and to show cause why he should not be committed to the civil prison, and unless the Tax Recovery Officer, for reasons recorded in writing, is satisfied

(a) that the defaulter, with the object or effect of obstructing the execution of the certificate has, after the receipt of the certificate in the office of the Tax Recovery Officer, dishonestly transferred, concealed, or removed any part of his property ; or

(b) that the defaulter has, or had since the receipt of the certificate in the office of the Tax Recovery Officer, the means to pay the arrears of some substantial part thereof and refuses or neglects or has refused or neglected to pay the same.

(2) Notwithstanding anything contained in sub-rule (1), a warrant for the arrest of the defaulter may be issued by the Tax Recovery Officer if he is satisfied, by affidavit or otherwise, that with the object or effect of delaying the execution of the certificate, the defaulter is likely to abscond or leave the local limits of the jurisdictions of the Tax Recovery Officer.

(3) Where appearance is not made in obedience to a notice issued and served under sub-rule (1), the Tax Recovery Officer may issue a warrant in Form 12 for the arrest of the defaulter.

(4) Every person arrested in pursuance of a warrant of arrest under sub-rule (2) or sub-rule (3) shall be brought before the Tax Recovery Officer as soon as practicable and in any event within twenty four hours of his arrest (exclusive of the time required for the journey) :

Provided that if the defaulter pays the amount entered in the warrant of arrest as due and the costs of the arrest to the officer arresting him such officer shall at once release him.

69. **Hearing.**—When a defaulter appears before the Tax Recovery Officer in obedience to a notice to show cause or is brought before the Tax Recovery Officer under rule 68, the Tax Recovery Officer shall proceed to hear the assessing authority and take

all such evidence as may be produced by him in support of execution by arrest, and shall then give the defaulter an opportunity of showing cause why he should not be committed to the civil prison.

70. Custody pending hearing.—Pending the conclusion of the enquiry, the Tax Recovery Officer may order the defaulter to be detained in the custody of such officer as he may think fit or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance when required.

71. Order of detention.—(1) Upon the conclusion of the enquiry the Tax Recovery Officer may make an order for the detention of the defaulter in the civil prison and shall, in that event, issue a warrant of detention in Form 13 and cause him to be arrested if he is not already under arrest :

Provided that in order to give the defaulter an opportunity of satisfying the arrears, the Tax Recovery Officer may, before making the order of detention, leave the defaulter in the custody of the officer arresting him or of any other officer for a specified period not exceeding fifteen days, or release him on his furnishing security to the satisfaction of the Tax Recovery Officer for his appearance at the expiration of the specified period if the arrears are not so satisfied.

(2) When the Tax Recovery Officer does not make an order of detention under sub-rule (1), it shall, if the defaulter is under arrest, direct his release.

72. Detention in and release from prison.—(1) Every person detained in the civil prison in execution of a certificate may be so detained –

- (a) where the certificate is for a demand of an amount exceeding two hundred and fifty rupees, for a period of six months; and
- (b) in any other case, for a period of six weeks :

Provided that he shall be released from such detention –

- (i) on the amount mentioned in the warrant for his detention being paid to the officer-in-charge of the civil prison, or
- (ii) on the request of the assessing authority who has issued the certificate or of the Tax Recovery Officer on any ground other than the grounds mentioned in rules 73 and 74:

Provided further that where he is to be released on the request of the assessing authority, he shall not be so released without the order of the Tax Recovery Officer.

(2) A defaulter released from detention under this rule shall not, merely by reason of his release, be discharged from his liability for the arrears, but he shall not be

liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

73. **Release.**—(1) The Tax Recovery Officer may order the release of a defaulter who has been arrested in execution of a certificate upon being satisfied that he has disclosed the whole of his property and has placed it at the disposal of the Tax Recovery Officer and that he has not committed any act of bad faith.

(2) If the Tax Recovery Officer has ground for believing the disclosure made by a defaulter under sub-rule (1) to have been untrue, it may order the re-arrest of the defaulter in execution of the certificate, but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 72.

74. **Release on ground of illness.**—(1) At any time after a warrant for the arrest of a defaulter has been issued, the Tax Recovery Officer may cancel it on the ground of his serious illness.

(2) Where defaulter has been arrested, the Tax Recovery Officer may release him if, in the opinion of the Tax Recovery Officer, he is not in a fit state of health to be detained in the civil prison.

(3) Where a defaulter has been committed to the civil prison, he may be released therefrom by the Tax Recovery Officer on the ground of existence of any infectious or contagious disease or on the ground of his suffering from any serious illness.

(4) A defaulter released under this rule may be re-arrested but the period of his detention in the civil prison shall not in the aggregate exceed that authorised by rule 72.

(5) An order of release under second proviso to sub-rule (1) of rule 72 or sub-rule (1) of rule 73 or under this rule shall be made in Form 14.

75. **Entry into dwelling house.**—For the purpose of making an arrest under this Schedule,—

(a) no dwelling house shall be entered after sun-set and before sunrise;

(b) no outer door of a dwelling house shall be broken open, unless such dwelling house or a portion thereof is in the occupancy of the defaulter and he or any other occupant of the house refuses or in any way prevents access thereto, but when the person executing any warrant has duly gained access to any dwelling house, he may break open the door of any room or apartment if he has reason to believe that the defaulter is likely to be found there; and

(c) no room which is in the actual occupancy of a woman who, according to the customs of the country, does not appear in public, shall be entered into,

unless the officer authorised to make the arrest has given notice to her that she is at liberty to withdraw and has given her reasonable time and facility for withdrawing.

76. Prohibition against arrest of women, minors, etc.—The Tax Recovery Officer shall not order the arrest and detention in the civil prison of –

(a) a woman, or

(b) any person who, in his opinion, is a minor or of unsound mind.

77. Subsistence allowance.—(1) When a defaulter is arrested or detained in the civil prison, the sum payable for the subsistence of the defaulter from the time of arrest until he is released shall be borne by the assessing authority.

(2) Such sum shall be calculated on the scale fixed by the Government for the subsistence of judgement-debtors arrested in execution of a decree of a Civil Court.

(3) Sums payable under this rule shall be deemed to be costs in the proceeding:

Provided that the defaulter shall not be detained in the civil prison or arrested on account of any sum so payable.

PART V

MISCELLANEOUS

78. Power to take evidence.—The Tax Recovery Officer shall have the powers of a Civil Court while trying a suit for the purpose of receiving evidence, administering oaths, enforcing the attendance of witnesses and compelling the production of documents.

79. Appeals.—(1) An appeal from any original order passed by the Tax Recovery Officer under this Schedule, not being an order which is conclusive, shall lie to the Commissioner.

(2) Every appeal under this rule must be presented within thirty days from the date of the order appealed against.

(3) Pending the decision of any appeal, execution of the certificate may be stayed if the Commissioner so directs, but not otherwise.

80. Review.—Any order passed under this Schedule may, after notice to all persons interested, be reviewed by the Officer who made the order, or by his successor in office on account of any mistake apparent from the record.

81. **Recovery from surety.**—Where any person has under this Schedule become surety for the amount due by the defaulter, he may be proceeded against under this Schedule as if he were the defaulter.

82. **Saving regarding charge.**—Nothing in this Schedule shall affect any provision of this Act whereunder the tax is a first charge upon any asset.