

**Odisha Public Demands
Recovery Act, 1962**

&

**Odisha Public Demands
Recovery Rules , 1963**

INTRODUCTION

Collection of revenue both from agricultural and non-agricultural sources always bears significance of Government. Revenue Collectors with different names like Amin, Kanungo, Choudhiris, Jagirdars and other intermediaries were the chief instruments of collection during pre-independence. **To collect the arrear dues from peasants and artisans, persuasions, coercion and in certain cases, both were applied.** In the Pre-Colonial era in Orissa there appears no specific unified law-code relating to the process of collection.

The normal method of recovering money from the defaulter **is to file a suit** in the competent civil court, get a **decree** and if the defaulter does not discharge his liabilities, again to start an **execution** case through coercive methods like attachment, sale of immovable property and by arrest and detention. But where it is a **public demand** the same can be realised in a **certificate procedure** or revenue recovery procedure.

There was an Act. called the **Revenue Recovery Act, 1890** which was extended to the entire British India during the British rule. Different Acts and Regulation pertaining to recovery of public demands were implemented in different areas of the post -independent Orissa shown as under.

Area	Law in force
1. Undivided Balasore, Cuttack and Puri district	Bihar and Orissa Public Demands Recovery Act, 1914
2. Undivided District of Ganjam and Koraput	Madras Province, of areas Revenue Recovery Act, 1864
3. Angul sub division Dhenkanal dist.	Angul Laws Regulation, 1936
4. Khondmals (Phulbani) sub division	Khondmals Laws Regulation, 1936
5. Sambalpur & Baragarh sub division of undivided Sambalpur dist.	CPLR Act, 1881
6. Khariar sub-division of of undivided Kalahandi dist. and Mahadevpalli PS of Sambalpur	CPLR Act, 1917
7. Ex-Princely States	Bihar and Orissa Public Demands Recovery Act, 1914 & Odisha Merged States Laws Act, 1950

To suit the changing times, these Acts and Regulations outlived their existence and needed considerable modifications and thus, the different laws relating to recovery of public demands were repealed (**sec.69**), by the enactment of “**Orissa Public Demand Recovery At, 1962**” (**Act 1 of 1963**) which came in to force with effect from **1st April, 1964**. **A new set of rules OPDR Rules 1963** and executive instructions under the new Act has been issued by the Board of Revenue, Orissa

“**Principal Rules**” means the rules contained in **Schedule II** to the Act

As the procedures laid down in this OPDR Act are **summery in nature** and **extra ordinary in character** so as to enable the State to recover it's dues as a public demand expeditiously without taking the recourse of the general law.

Certificate proceedings is a **Judicial proceeding**. The **Certificate Officer is a Court** subordinate to the Sub-Ordinate Judge. It is incumbent on the Certificate Officer to deal with the grievance of the party before him in a judicious manner.

2. Constitutional Validity

It is settled law that the Revenue Recovery Act and other Acts creating special tribunals and procedures for the expeditious recovery of Revenue and State dues are in the public interest and do not violate Article- 14 of the Constitution- AIR 1956, SC 20, AIR 1957, SC 688, AIR 1961 SC 828; AIR 1961, SC 1704, AIR 1963, SC 222, AIR 1967, SC 1581, 14 GLR 617.

The provisions of the Act do not offend articles 19(1) (d) (i) and 20 and 21 of the Constitution- 3 GLR 666, 14 GLR 617.

The Act deals with with 70 Sections with the following chapters :

CHAPTER –I	PRELIMINARY
CHAPTER- II AND	FILING,SERVICE AND EFFECT OF CERTIFICATE HEARING OF OBJECTION THERE TO
CHAPTER III	EXECUTION OF CERTIFICATE
CHAPTER IV	REFERENCE TO CIVIL COURT
CHAPTER V	SUPPLEMENTAL PROVISIONS

3.Key Concept

The important key concept used in the Orissa Public Demand Recovery Act 1902 have been defined u/s.2 .

(a) **“arrear”** shall include the whole or part of an instalment, if any, in respect of a public demand which is **not paid** on or before the due date for payment of such instalment;

(b) **"certificate-debtor"** means the person **named as debtor in a certificate** filed under this Act and includes any person whose name is substituted or added as debtor by the Certificate Officer;

(c) **"certificate-holder"** means the **Government or person in whose favour a certificate has been filed** under this Act, and includes any person whose name is substituted or added as creditor by the Certificate Officer;

(d) **"Certificate Officer"** means a Collector, a Sub divisional Officer, and any officer appointed by a Collector, with sanction of the Revenue Divisional Commissioner, to perform the functions of a Certificate Officer under this Act

(g) **"Public Demand"** means any arrear or money specified in **Schedule I**, and includes any interest which may, by law, be chargeable thereon up to the date on which a certificate is signed under Chapter II;

Schedule I : PUBLIC DEMANDS (in nutshell)

(i) Any arrear of land revenue, cess or any dues payable to the Government on account of **water-supply for irrigation**.

(ii) from a farmer on account of an estate held by him in farm and is not paid on the latest date of payment fixed for the purpose.

iii) **demand payable to the Collector** by a person holding any interest in land, pasturage, forest-rights, fisheries, ghats, ferries, hats, trees or the like whether.

(iv) **Rents, fees and royalties due to Government for the use or occupation of land or water**, whether property of Government or not, or on account of any products thereof and all moneys falling due to Government under any grant, lease or contract which provides that they shall be recoverable as arrears of land revenue.

(v) Any rent, cess, water-rate or irrigation cess, or similar other dues payable to a Sarbarakar, Gountia or similar revenue collecting agents who, under the terms of settlement made with him, has previously paid the amount thereof to Government.

(vi) Any plough contribution due to a Sardar or Mootha Mallik in the Khondmals district who has previously paid the amount thereof to Government.

(vii) In the case of property which, under the provisions of any law for the time being in force is under **the charge of, or is managed, by the Court of Wards or the Revenue Authorities on behalf of a private individual any arrear of rent, or of any demand** which is recoverable as rent whether such arrear became due before or after the management devolved upon such Court or such authorities unless such enhanced rate has been agreed to by the person liable to pay the same or has

- (viii) Any money awarded as **fees or costs by a Revenue Authority under any law** or any rule having the force of law.
- (ix) Any money **which is recoverable under any law, custom or usage for the time being in force as an arrear of revenue or land** revenue or by the process authorised for the recovery of arrears of land revenue or the public revenue or of Government revenue.
- x) Any money, which is declared by any enactment or required by any custom or usage for the time being in force- (a) to be a demand or a public demand; (b) to be recoverable as arrears of a demand or public demand, or as demand or public demand.
- (xi) Any money payable to- (a) a **Government officer**; (b) any **local authority**; (c) The **Orissa State Electricity Board** constituted under the Electricity (Supply) Act, 1948. (d) any **corporation, public sector undertaking** or joint sector undertaking which is owned, controlled or managed by the State Government and notified them from time to time; (e) any **Improvement Trust or Special Planning Authority** constituted under the Orissa Town Planning and Improvement Trust Act, 1956 [Orissa Act 10 of 1957], which is notified by the State Government from time to time; (f) the Orissa State Housing Board constituted under the Orissa Housing Board Act, 1968 [Orissa Act 11 of 1969]; or (g) any **Scheduled Bank or Regional Rural Bank** on account of any loan advanced by such Bank under a State Sponsored Scheme in respect of which the person liable to pay the same has agreed, by a written instrument that it shall be recoverable as a public demand.
- xii) In the case of a person to whom the collection of tolls has been framed out under section 8 of the Canals Act, 1864 or of the sureties of such persons any money due in respect of such farm.
- (xiii) Any **money due from a purchaser on a sale held in the execution of a certificate** under this Act, whether the sale is subsisting or not.
- (xiv) In the case of **property belonging to any institution referred to in Section 52 of the Orissa Hindu Religious Endowment Act, 1951 any arrear of rent** whether such arrear became due before or after the control developed upon the Government.
- (xv) Any money due from a person who is a **surety for the payment** of any sum recoverable in accordance with the provision of this Act.

4. FILING, SERVICE AND EFFECT OF CERTIFICATES AND HEARING OF OBJECTIONS THERETO

Sec. 3. Filing of certificate for Public demands payable to Collector-

When the Certificate Officer is **satisfied** that any public demand payable to **the Collector** is due, he may **sign** a certificate in the **Form No.1** stating that the demand is due and shall cause the certificate to be filled in his office

Sec: 4. Requisition of Certificate in other cases –

(1) When any public demand payable to any person **other than the Collector** is due, such person may send to the Certificate Officer a written requisition in **Form No.2**

(2) Every such requisition shall be **signed and verified** in the manner mentioned Rule 5 (details of properties to be furnished along with the requisition including the property to be attached in statement) and shall be chargeable with a fee of the amount which would be payable under the Court Fees Act of 1870, in respect of a plaint for the recovery of a sum of money equal to that stated in the requisition as being due except in such cases as may be prescribed under Rule 6,.

(3) If after issue of a requisition under this section any payment towards **or adjustment of or reduction** in the certificate dues is made it shall be the duty of the. Requisitioning Officer to intimate the Certificate Officer, as soon as possible, such payment, adjustment, or reduction as the case may be.

Sec: 5. Filing of certificate on requisition - On receipt of any such requisition, the Certificate Officer, if he is satisfied that the demand is recoverable and that recovery by suit is **not barred by law**, may sign a certificate, in the prescribed form, stating that the demand is due; and shall include in the certificate the fee, if any, paid under sub-section (2) of section 4 and shall cause the certificate to be filed in the office.

Case Law : The State Of Orissa vs Laxminarayan Lal on 25 April, 1978 , 1979 43 STC 364 Orissa

Now it is to be observed that in [Section 37](#), the legislature, when limiting the common law right of the subject to seek relief in a court of law, refers to a certificate duly filed under this Act and, in my opinion, it is a condition precedent to the issue of a valid certificate that the public demand should be due and payable by the certificate-debtor and if, at the time when the certificate is signed by the certificate officer, there is no public demand due from the certificate-debtor, the certificate is ultra vires, and all the proceedings founded upon it are null and void....

On the authorities indicated above, there can be no second opinion that the amounts due to the sales tax department were not a "public demand" when the requisition was sent to the certificate officer, in as much as the conditions precedent to make the amounts a public demand had not been satisfied and the civil court has, therefore, jurisdiction to-entertain the suit and interfere in the matter. The judgment of the lower appellate court is, therefore, unexceptionable. The appeal must accordingly fail and is dismissed with costs throughout.

Sec.6. Service of notice –

When a certificate has been filed in the office of a Certificate Officer under Section 3 or Section 5, he shall cause to be served upon the certificate-debtor, in the following manner, **a notice in the prescribed form No.3 and a copy of the certificate.**

a) Personal service b) Substituted service c) Affixture (d) Regd.Post with AD

The Process Server serves the notice and while submitting back the service return **(SR)** endorse on the reverse side of the notice ,the manner in which he has served it. The Nazir /Asst. Nazir of the office or the person in charge take his statement and solemnly affirm the same on the said side of the notice. **The notice without the copy of the certificate is defective .No rubber stamp or fasmile signature should be use .It must be signed by the CO.Notice signed subsequent to the date of filing of the certificate cannot invalidate the notice.**

The notice also gives the option that the CDr. may send the amount due on him even by postal MO. Alternatively, the certificate invites objection of the CDr. **within thirty days** from the date of receipt of the notice, if the CDr. chooses to deny the liabilities. If he (CDr) files a **petition denying his liability either fully or partially** on relevant ground, the CO would **hear both the parties** ie. the CDr. and CHr., take the evidence, if necessary, and then **confirm** the certificate or **set aside or modify or vary the certificate**. If the CDr. pays the Certificate amount by the date prescribed (ie. 30 days shown in the notice) or takes time from the CO and pays the amount within the date so permitted then the certificate case **is closed on satisfaction of the dues paid**.

If the CDr. does not respond to the notice within the prescribed time it is reasonable and legal to proceed with in execution of the certificate.

Execution of the Certificate

Sec.11 and 12 of the OPDR Act speaks that the authority of execution is **available with the CO and also with other CO** if a copy of the same is sent the said officer .It will be treated as if the original certificate is filed before him.

Sec.13. No step in execution of a certificate shall be taken until the period **of 30 days** has elapsed since the date of the service of notice required by sec. 6 and 10 or when a petition has been duly filed under section 8, until such petition has been heard and determined:

Provided that where the whole or any part of the movable property of the certificate-debtor is liable to attachment under this Act, the Certificate Officer may, at any time for reasons to be recorded in writing, direct an **attachment of the whole** or any part of such movable property

As per sec14 (a) interest on the public demand to which the certificate relates, at the rate of **12 ½** [twelve and a half per centum] per annum from the date of signing of the certificate up to the date of realisation: provided that in cases where the certificate Officer is satisfied that the certificate debtor has **made default in payment of the dues will fully** and without reasonable cause such interest may be charged at a rate not exceeding 18 [eighteen per centum] per annum :

(b) such **costs** as are directed to be paid under section 53;
and

(c) all charges incurred in respect of - (i) the service of notice under section 6 and of warrants and other processes: and (ii) all other proceedings taken for realising the demand

The entire amount of interest is charged to the account of the CHr.

Mode of execution:

Sec.15 of the Act provides the mode of execution like

a) **by attachment and sale**, if necessary, of any property or in **the case of immovable property by sale without previous attachment**; or

(b) **by arresting** the certificate-debtor and **detaining him** in the civil prison; or (

c) **by both of the methods** mentioned in clauses (a) and (b).

(The Certificate Officer may, in his discretion, refuse execution at the same time against the person and property of the certificate-debtor)

Part III A of the Rules 1863 deals with the manner of application for attachment issue of its warrant , service ,inventory fees to be charged for attachment etc. Further **Rule 14 to 23 of Schedule II** gives the elaborate procedure on attachment of movable property other than agriculture produce under the possession of the CDr, attachment of agricultural produce, attachment of debt and shares and other movables not in possession, attachment shares in movables, attachment of salary or allowance ,attachment of negotiable instruments attachment of property in sustody of the a court or pub,ic officer. attachment of immovable property. Rule 24 speaks of the removal of the attachment..

If any **objection is filed** by the CDr. regarding attachment properties, the same will be **heard and disposed** of before the steps **taken for sale** .

If the attached property to be sold is an immovable one, the CO draws of proclamation of the sale of such property by fixing the date time and place .The proclamation of he sale is served on the CDr.and the sale conducted after the expiry of **30 days** from the date of serving a copy of the proclamation affixed in the office the CO . On the date,time and place so proclaimed the same by public auction is conducted. The highest bidder has to pay **at least 25%** of the fixed purchase money at the time of such sale and the rest purchase money to the CO on or **before 15th day** from the date of sale of the property. If **he defaults** by that time the initial deposit will be **forfeited** to the Govt. and the property shall be resold and the defaulting bidder shall forfeit all cll claims on the property

As per **sec.30** of th Act the CO shall make an order confirming the sale which would give title and owner ship to the purchaser free from all encumbrances.

Section 37 to 41 has spelt out about the procedure of the realisation of the certificate dues from the CDr. by **arrest and detention**.

No order for the arrest and detention in civil prison of a CDr. in execution of certificate should be made unless the CO has issued and served a notice upon the CDr calling him to appear **before him on a day to be specified in the notice** and to **show cause as to why he should not be committed to civil prison**, and unless the Certificate Officer, for reasons recorded in writing, is satisfied-

(a) that the certificate-debtor, with the object or effect of obstructing or delaying the execution of the certificate has, after the filing of the certificate in the office of Certificate Officer, **dishonestly transferred, concealed, or removed any part of his property; or**

(b) that the certificate-debtor **has** or had since the date of the filing of the certificate, **the means to pay** the amount for which the certificate has been issued, or some substantial part of such amount and **refuses or neglects or has refused or neglected to pay the same**.

Explanation -In the calculation of the means of the certificate-debtor for the purpose of this clause there shall be left out of account any property which, by or under any law or custom having the force of law for the time being in force, is exempt from attachment in execution of the certificate.

(2) Notwithstanding anything contained in sub-section (1), if the Certificate Officer is satisfied –

(a) that the property of the certificate-debtor or any part thereof **is likely to be dishonestly transferred, concealed or removed; or**

(b) that the certificate-debtor **refuses or neglects or has refused or neglected** to pay the same; or

(c) on enquiry or evidence to be recorded in writing or on affidavit that the certificate-debtor is likely to abscond or leave the local limits of the jurisdiction of the Certificate Officer: he may **issue a warrant for the arrest** of the certificate-debtor

Sec.39 deals with 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 certificate being otherwise fully satisfied, or cancelled; or

(iii) on the request of the person, if any, on whose requisition the certificate was filed or of the Collector; or (

iv) on the omission by the person, if any, on whose requisition the certificate was filed to pay the subsistence allowance fixed by the Certificate Officer:

Provided also that he shall not be released from such detention under clause (ii) or clause (iii) without the order of the Certificate Officer.

(2) A certificate-debtor released from detention under this section shall not, merely by reason of his release, be discharged from his debt; but he shall not be liable to be re-arrested under the certificate in execution of which he was detained in the civil prison.

Under sec.40 the release of CDr. on grounds of serious illness of infection of contagious disease has been provided .The CO shall not arrest or detention of a woman or any person of unsound mind or a minor in civil prison.

Section 42 to 45 deals with reference to the civil court

Section 51 speaks on the procedure on death of the CDr. In case of death the CDr. before the certificate has been fully satisfied, the CO will cause service of notice on the legal heirs of the deceased CDR and substitute their names in the proceeding.

Procedure have been laid down in **Rule 53 of** Schedule II regarding subsistence (livelihood) allowance –

(1) When a certificate has been signed either in accordance with the provisions of Section 3, or on a requisition made under Section 4, no certificate-debtor shall be arrested in execution of the certificate unless and until the certificate-holder pays into Court such sum as the Certificate Officer thinks sufficient for the subsistence of the certificate-debtor from the time of his arrest until he can be brought before the Certificate Officer.

(2) When a certificate-debtor is committed to the civil prison in execution of a certificate, the Certificate Officer shall fix for his subsistence such monthly allowance as he may be entitled in according **to the scale fixed by the State Government** for the subsistence of arrested judgment-debtors, or where no such scale has been fixed, as the Certificate Officer considers sufficient with reference to the class to which the certificate debtor belongs.

(3) The monthly allowance fixed by the Certificate Officer shall be supplied by the person **upon whose requisition the certificate was signed**, by monthly payments in advance before the first day of each month.

(4) The first payment shall be made to the Certificate Officer for such portion of the current month as remains un-expired before the certificate-debtor is committed to the civil person; and the subsequent payment, if any, shall be made to officer-in-charge of the civil prison.

(5) Sums **disbursed by the certificate-holder** for the subsistence of the certificate debtor in the civil prison shall be deemed to be costs in the proceeding:

Sec.60 - Appeal

(a) if the order was made by a Certificate Officer below the rank of an Additional District Magistrate, to the Additional District Magistrate;

(b) if the order was made by an Additional District Magistrate, to the Collector;

(c) if the order was made by a Collector to the Revenue Divisional Commissioner:

Provided that no appeal shall lie from an order setting aside a sale on an application made under Section 27.

(2) Every such appeal shall be presented within **(30) thirty days** from the date of the order appealed against.

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

[Provided that the appellate authority shall not direct stay of execution in any case, unless-

(a) the certificate-debtor has **paid at least fifty per centum of the total amount due** under the certificate to the certificate officer, whether or not under protest made in writing at the time of payment, and produces a certificate from the certificate officer showing such payment to have been made; or

(b) After considering the evidence adduced, he has prima facie reasons to believe on the plea of the certificate-debtor that the public demand said to be due from him under the certificate has, in fact, been paid.

Sec 61. Revision

a) if the order was passed by an Additional District Magistrate or by a Collector, the Revenue Divisional Commissioner;

(b) if the order was passed by a Revenue Divisional Commissioner, the Board of Revenue :

Provided that where the certificate-debtor makes an application under this section for revision of any appellate order, no such application shall be entertained **unless he has paid all amounts** due under the certificate to the Certificate Officer, whether or not under protest made in writing, at the time of payment, and produces a certificate from the Certificate Officer showing such payment to have been made. 62. Review- Any order passed under this Act 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 mistake or error either in the making of the certificate or in the course of any proceeding under this Act.

Sec. 66. speaks of **Penalties** for the person whoever fraudulently removes, conceals, transfers or delivers to any person any property or any interest therein, intending thereby to prevent that property or interest therein from being taken in execution of a certificate, shall be deemed to have committed an offence punishable under Section 206 of the Indian Penal Code, 1860 (Act 45 of 1860).

ROLE OF REVENUE INSPECTOR

Revenue Inspector means a Revenue Inspector and any other whole-time salaried Government employee in direct charge of revenue collection and other miscellaneous revenue work at the village and includes a part time agent by whatever designation he is called namely Gountia, Sarbarkar, village Officer in Ganjam **(Rule 8 MTA) His roles are**

- To realise certificate dues in cases involving Rs,20/ or less
- To prepare arrear list of the defaulters of govt .dues and maintain their account
- To execute warrant of attachment issued for collection of all Government dues as issued by the certificate officer as per Law
- To make enquiry and furnish such information which will be required by the Certificate Court for expeditious disposal of certificate cases
- To function as receiver for attached properties and to maintain accounts of the income of the attached properties

ORDER SHEET

(As per para 267 of ORM, 1964)

From 4.1.2015

to 10.11.2015

Tahsil.....Tangi

PS.....Tangi

village.....Nirakarapur

Sub Divison.....Khordha

Dist.....Khordha

Certificate Case No 94 of the year 2015

Nature of case:

U/s.3 of the Odisha Public Demand Recovery Act,1962

Sl.No& date of order	Order of the officer and signature	Note on Action taken on the order with date
1	2	3.
4.1.2015	<p>Perused the requisition filed by the Revenue Inspector, <u>Nirakarapur</u> in Form No. 1 to schedule I of the <u>Odisha Public Demand Recovery Act,1962</u> herein after mentioned as Act for realisation of an amount of Rs. <u>from one Narendra Jagadey s/o basudeb Jagadey</u>.....of village.....<u>Nirakarapur</u>. PS..<u>Tangi</u>.. Dist...<u>Khordha</u> towards arrear of land revenue pertaining to water rate of khata No....<u>155</u>.....of village <u>Nirakarapur</u>.....The dues has not been barred by limitation. I am satisfied that the demand being a public demand is recoverable as arrear of land revenue and <u>payble</u> to Collector. The certificate is signed.</p> <p>Issue notice u/s.6 in Form No.3 to the Certificate Debter (<u>CDr</u>) which is returnable by Dt.....</p> <p>Put up the case record on.....</p> <p align="right">Sd/</p> <p align="right">Certificate Officer & Tahsildar.....</p>	

CR is taken up today. Notice served duly and SR back. No reply denying the liabilities received within the prescribed period nor any deposit made.
Issue notice to the CDr to be present on Dt.....

Sd/

Certificate Officer & Tahssildar.....

CR is taken up today. CDr is absent on call.
Issue warrant of attachment in **Form A** as required u/r 8 of the OPDR Rules 1963. Revenue Inspector.....to carry out the attachment of movable property

Send copy of the order to Revenue Inspector concerned. He should serve the copy of warrant on the CDr as required under rule 9 of the above Rules.

Put ip on.....

Sd/

Certificate Officer & Tahssildar.....

No action taken by the Revenue Inspector, as it appears. Ask him to furnish the action taken report on the orders of the proceeding date. However issue a notice to the CDr to appear in my camp court on.....at RI Office.....

Sd/

Certificate Officer & Tahssildar.....

Case taken up today, CDr. is present and files a petition stating to have deposited the amount to the Revenue Inspector. Revenue Inspector present furnishes a report regarding realisation of the certificate dues in full as detailed below:

Date	RR. No.	Amount
.....	XXXXXXXX	Rs.....

Perused the records and satisfied (as required u/r.57 of the Schedule-II) that the dues have been fully realised. Entry in the Register of certificates mad. No further action is warranted. The case is closed.

Sd/

Certificate Officer & Tahsildar.....

**T H A N K
Y O U**