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PART III—Acts of the West Bengal Legislature.

GOVERNMENT OF WEST BENGAL

LAW DEPARTMENT

Legislative

NOTIFICATION

No. 1123-L.—1st August, 2012.—The following Act of the West Bengal Legislature, having been assented to by the Governor, is hereby published for general information:—

West Bengal Act XIV of 2012

THE WEST BENGAL ESCHEATS AND FORFEITURES
ACT, 2012.

[Passed by the West Bengal Legislature.]

[Assent of the Governor was first published in the *Kolkata Gazette*,
Extraordinary, of the 1st August, 2012.]

An Act to provide for taking over of charge, management, administration, supervision, custody and disposal of property vested in the State of West Bengal by escheat or lapse, or as bona vacantia and unclaimed property.

WHEREAS it is expedient, in the public interest, to provide and make provisions for the administration, development, control, custody, management, supervision and disposal of escheats, lapsed or unclaimed property in the State of West Bengal and for the matters incidental thereto;

It is hereby enacted in the Sixty-third Year of the Republic of India, by the Legislature of West Bengal, as follows:—

*The West Bengal Escheats and Forfeitures
Act, 2012.*

(Chapter I.—Preliminary.—Sections 1, 2.)

CHAPTER I

Preliminary

Short title, extent,
application and
commencement.

1. (1) This Act may be called the West Bengal Escheats and Forfeitures Act, 2012.

(2) It extends to the whole of the State of West Bengal.

(3) It applies to all property, which according to the Constitution of India or any other law for the time being in force, has vested or having become vested or shall vest in the State Government by escheat or lapse, or as *bona vacantia*, or which is forfeited or having become forfeited or shall forfeit in the State Government under the provision of this Act:

Provided that in respect of immovable property that comes under this Act, the same should be recorded in Collector's Khatian i.e. Khatian No. 1:

Provided further that the property mentioned in the first proviso should be brought into 'Land Bank' of the State Government, and its disposal is to be governed in such manner as may be decided by the State Government in respect of other categories of Government land in the Land Bank:

Provided also that the immovable property as already brought under Collector's Khatian as 'escheated property' and it is already settled by the collector in the manner as is followed in respect of management of Government land, such property may not be brought under the purview of this Act for its management under this Act:

Provided also that the immovable property as already brought under Collector's Khatian as 'escheated property' and still remains unsettled may come under the purview of this Act subject to the condition that it should also be brought into 'Land Bank' and its disposal also to be governed in such manner as may be decided by the State Government in respect of other categories of Government land in the 'Land Bank'.

(4) It shall come into force on such date as the State Government may, by notification in the *Official Gazette*, appoint in that behalf.

Note.—For the purpose of this section 'Land Bank' means a separate account to be maintained by Land and Land Reforms Department in respect of land and property to be vested under this Act.

Definitions.

2. In this Act, unless the context otherwise requires,—

- (a) "Appellate Authority" means the Secretary, Judicial Department of the State Government or such authority that the State Government may by general or special order delegate such function to;
- (b) "Claimant" means a person who had a legal claim on the previous owner, or just or natural right or claim to succeed to the previous owner's property or to any part thereof and claiming any interest in escheated property;
- (c) "Collector" means the Collector of a district and includes an Additional Collector or any other officer appointed, authorised or empowered by the State Government to exercise all or any of the powers of a Collector under this Act;

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(Chapter II.—Escheated Property.—Section 3.)

- (d) “Competent Authority” means any person or authority of the Judicial Department of the State Government authorised to perform the functions of the competent authority under this Act or any other persons or authorities may be authorised by the State Government, by notification in the *Official Gazette*, to perform such functions of the competent authority or to perform different functions;
- (e) “court” means any civil court of competent jurisdiction;
- (f) “deceased” means the person on whose death property has accrued to the State Government by escheat or lapse;
- (g) “escheat” with all its grammatical variations means the automatic transfer to the State Government of property of a person who dies intestate without any legal heirs according to his personal law and in case of an artificial person such as a corporation, trust, association of persons or society recognized by law to be capable of owning property, whether in its own name or in the name of any governing body or office bearer by whatever name called or otherwise, the transfer to the State Government of property of such artificial person on its dissolution, winding up, becoming defunct whether by operation of law, declaration or in fact, including the circumstances mentioned in section 3 such fact being one that only the Competent Authority will have the power to determine in the manner prescribed;
- (h) “escheated property” means any land, building or other real or personal property or any interest, legal or equitable, in it or any interest in any corporeal or incorporeal hereditament and includes any movable or immovable or any abandoned immovable property, which has vested or having become vested or shall vest in the State Government by escheat or lapse, or as *bona vacantia* under the provisions of this Act;
- (i) “prescribed” means prescribed by rules made under this Act;
- (j) “property” means and includes both or any one of the escheated property or unclaimed property, as the case it may be;
- (k) “State Government” means the State Government of West Bengal and “State” means the State of West Bengal;
- (l) “unclaimed property” means any movable or immovable property or any article or treasure trove of any description or any interest, legal or equitable, in it which is forfeited or having become forfeited or shall forfeit to the State Government under the provisions of this Act;
- (m) the “masculine” shall include the feminine, the singular and the plural unless repugnant or contrary to the context.

CHAPTER II

Escheated Property

Escheats.

3. Notwithstanding anything contained in other laws for the time being in force, where a person dies intestate and without leaving legal heirs according to his personal law or any corporation, trust, association or society or the governing body of such corporation, trust, association or society, by whatever name called, recognised by law to be capable of owning property, whether in its own name or in the name of any governing body or office bearer by whatever name called or otherwise, the transfer to the State Government of the property of such artificial person on its dissolution, winding up, becoming defunct whether by operation of law, declaration or in fact

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(Chapter II.—Escheated Property.—Section 4.)

or has ceased to exist or is unable to hold the general meeting and reconstitute its new executive committee consecutively for last five years, the property of such person or artificial person, as the case may, be shall automatically stand transferred to the State Government, and the State Government may cause possession or management or administration of such property to be taken over by escheat or lapse, or as *bona vacantia* for want of rightful owner, and on such transfer having taken place automatically on such finding of fact as referred to in clause (g) of section 2 by the Competent Authority, the State Government shall become the owner of the property without any further act or document being needed.

Enquiry and
appeal.

4. (1) It shall be duty of the Collector of every district to send monthly reports to the Competent Authority of the occurrence of deaths of persons or the dissolution, winding up, becoming defunct in any manner whatsoever as provided in clause (g) of section 2 of any artificial person, having property within his district, whether such property is partly or wholly within his district, and whether it appears on a preliminary inquiry that the deceased person died intestate without any legal heirs according to his personal law or where there is no legally constituted successor entity in whom the property of the artificial person has vested. Any person whatsoever may send information to the Collector in this regard or may send such information directly to the Competent Authority. Whenever the Competent Authority on any report or on receipt of any information from any source or on his own motion is satisfied that the provisions of this Act applies to any property lying within the State, he shall cause an inquiry to be made as to whether the fact or facts as stated in clause (g) of section 2 as would attract the operation of section 3 of this Act exists or exist and on his being satisfied on such inquiry that such a fact exists he shall pass an order accordingly, recording that such fact exists, on which order recording the existence of such fact the property shall belong and be transferred automatically to the State Government without any further act or document being required.

(2) The enquiry held under sub-section (1) shall be of summary nature and for the purpose of such enquiry the Competent Authority may summon and examine on oath any person and may compel production of any document or thing. He shall have all the powers of a civil court but shall not be bound by the provisions of the Code of Civil Procedure and shall be entitled to regulate the proceedings before him in accordance with the provisions of natural justice.

5 of 1908.

(3) For the purpose of such inquiry, the Competent Authority shall cause to be published in the *Official Gazette* or in any three newspapers having wide circulation in the locality where the property is situated, a notice informing the public in general of such report or information having been received, and that an inquiry is proposed to be held on the expiry of not less than seven days from the date of publication of such notice, and the time and place of such hearing and the particulars of the property concerned. The newspapers should be so chosen as to ensure that they are in English, Bengali and Hindi or Urdu respectively.

(4) Any Claimant or person, intending to appear in such inquiry with an intention to oppose escheat or lapse and automatic transfer of title to the State Government, may appear on the date of such inquiry, at the time and venue fixed, with a written representation containing the particulars of his claim and the right which he claims in the property including the reasons for his opposing the escheat or lapse, as the case may be, and shall enclose with such representation a copies of all documents that he relies upon and shall also produce before the Competent Authority the originals of such documents. If the copy of any document is not enclosed then the claimant or person shall not be entitled to rely upon it. The Competent Authority shall thereafter pass an order recording his satisfaction that such fact as mentioned in clause (g) of section 2 sufficient to attract the provisions of section 3 exists or does not exist.

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(Chapter II.—Escheated Property.—Section 5.)

Explanation.—Whatever interest is sufficient to maintain an application for letters of administration to the estate of a deceased or obtain winding up or dissolution of a body corporate including a corporation or a company, or receive share of sale of assets of any artificial person recognized to be capable of owning property on its dissolution, sale or becoming defunct, shall be held to be an interest sufficient to maintain an objection or representation against such escheat or lapse in the preliminary inquiry.

(5) The gist of every order passed on such inquiry shall be published in the *Official Gazette* or in three newspapers, one in English, one in Bengali and one in Hindi or Urdu preferably within a week from the passing of the order.

(6) The decision of the Competent Authority shall be subject to an appeal before the Appellate Authority which shall be made within a period of 30 days from the date of publication of the gist of the order in the manner mentioned in sub-section (5) provided that the Appellate Authority may allow, for sufficient cause being shown, an appeal to be preferred within a further period of thirty days but not thereafter. The appeal does not have to be in any particular form, but shall contain a concise statement of the grounds on which the appeal is being preferred and all the facts of the case and shall enclose with it the representation made by the appellant before the Appellate Authority with all its enclosures. If a person has not made any representation before the Competent Authority but shows that he has the interest mentioned in the *Explanation* to sub-section (4), then such appeal shall be maintainable provided that such person explains in a separate application what prevented him from approaching the Competent Authority with such representation, and on the satisfaction in writing recorded by the Appellate Authority as to the cause for such prevention being sufficient.

(7) The decision of the Appellate Authority shall be final and shall not be interfered with except by the High Court of Calcutta exercising jurisdiction under Article 226 or 227 of the Constitution of India or the Supreme Court under Article 136 of the Constitution of India. No suit or other proceeding apart from the aforesaid shall lie against any determination by the Competent Authority or the Appellate Authority.

Taking charge.

5. On the order as in sub-sections (1) and (4) of section 4 being passed and its gist being notified in the manner mentioned in sub-section (5) of section 4, the Competent Authority may direct that the Collector take steps to take over possession, management or administration of the escheated property, and for that purpose the Collector may at once take charge of such escheated property. Unless otherwise directed, charge may be taken in the following manner, namely:—

- (a) in case of immovable property, a notice shall be served on the person, if any, in possession of the property, and where is in such person refuses or evades notice or cannot be found, it shall be served by affixture on a conspicuous part of the property, and on the notice board of the office of the Collector;
- (b) in case of immovable property where is in no one's possession or is lying vacant or an abandoned property, or in absence of proper identification of the person in possession, a notice shall be served by affixture on a conspicuous part of the property and on the notice board of the office of the Collector;
- (c) in case of movable property, the notice shall be served on the person, if any, in possession of the property or may be affixed at his place of residence or business, if any, and on the notice board of the office of the Collector.

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(Chapter II.—Escheated Property.—Sections 6, 7.)

Publication of
notice.

6. The Collector, on taking charge of any escheated property, shall publish a general notice in any two newspapers having wide circulation in the area where such property is located; on being published in English and other in the regional language, or in the *Official Gazette* or by proclamation in the locality where the escheated property is situated calling upon all the persons who may have any claim to such escheated property to appear before him and prefer their claims within six weeks from the date of publication of the notice, and such publication shall be sufficient for all purposes.

Taking possession
and assume
management.

7. (1) Notwithstanding anything contained herein, on being passing of an order under sub-sections (1) and (4) of section 4 and the publication of its gist in the manner provided in sub-section (5) of section 4 and after service of the notice under section 5 and publication of the general notice under section 6, it shall be lawful for the Collector or any person authorised by the State Government whether by general or special order to enter into possession of the property and to assume administration or management thereof and also to make or cause to be made an inventory of the escheated property.

(2) Any person or persons, whosoever, in possession of the escheated property shall forthwith deliver the physical possession of the same to the Collector or any such person authorised by the State Government:

Provided that if any person has been in exclusive possession of any property for not less than 5 years, which is to be escheated under this Act, the State Government may arrange for such compensation or alternate accommodation in respect of such person, as it may, by order, determine.

(3) If there is any opposition in taking possession of any property by the Collector under sub-sections (1) and (2) and there is risk to the property of being damaged or otherwise suffering loss or deterioration for the delay in taking possession, the Collector may use such force as is necessary, including police help to obtain physical possession of such property and if there is no risk to the property of being damaged for the delay in taking possession thereof and there is proper arrangement for its supervision, care and maintenance, the person in possession of the property may left in possession thereof for a period of fortnight, within which such person shall be entitled to file an objection before the Competent Authority which shall be decided in the same manner as in sub-section (4) of section 4. A copy of such order shall be duly authenticated or certified by the Competent Authority and made over to the objector or opponent of the taking over of possession free of charge. Such order shall be appealable before the Appellate Authority provided the appeal is preferred within thirty days from the date the duly certified or authenticated copy of the order is made over to the objector. No appeal shall lie after the expiry of this period. During the pendency of the appeal before the Appellate Authority or the objection before the Competent Authority the objector in possession will be entitled to remain in possession but shall not be entitled to deal with or alienate the property or create third party interests:

Provided that in case the objection is not filed within a period of fortnight or the appeal is not preferred within a period of thirty days as mentioned in sub-section (3) the Collector will be entitled to dispossess such objector by the use of such force as he considers necessary, including police help. The decision of the Competent Authority if not appealed against within the time mentioned in sub-section (3), or the Appellate Authority as mentioned in sub-section (3), shall be final and no suit or other proceeding shall lie against such decision.

(4) The property taken into possession under any of the provisions of sub-sections (1), (2) and (3) shall be managed by the State Government in the manner so to be prescribed:

Provided that the Controller may dispose of any property by public auction after taking possession thereof under any of the provisions of sub-sections (1), (2) and (3) in the manner so to be prescribed.

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(Chapter II.—*Escheated Property.*—Sections 8, 9.—Chapter III.—*Unclaimed Property.*—Sections 10, 11.)

(5) No transfer of the escheated property by sale, gift or otherwise shall be made nor shall any encumbrance be created in respect thereof by any person, except the Collector or any other person authorised by the State Government, with approval of the Competent Authority.

(6) The Collector shall have an authority to realize rents, profits and incomes of the escheated property, if any:

Provided that notwithstanding anything contained in any other law for the time being in force, no right of any kind shall accrue to any person in respect of such property except those permitted by the Collector.

Disposal of
escheated
property.

8. On the publication of the order recording satisfaction as in sub-sections (1) and (4) of section 4 and the publication of the gist in the manner provided for in sub-section (5) of section 4, the State Government may dispose of the escheated property through the Collector of the concerned district or any other person authorised in this behalf by the State Government with the approval of the Competent Authority being sufficient indication of the decision of the State Government. The said disposal shall be made in the manner, namely:—

- (a) in the case of escheats which are movable property, the Collector shall take steps for the sale of the property by public auction and the sale proceeds shall be credited to the State Government; and
- (b) in the case of escheats which are immovable property, shall be disposed of in such manner as may be prescribed.

Bar to jurisdiction.

9. No suit or other proceeding shall lie against the State Government or any of its authorities or officers in respect of any act or step or other measure taken under this Act or that is to be decided under this Act except as provided for in this Act:

Provided that nothing in this section shall be held to exclude the jurisdiction of the High Court at Calcutta under Article 226 or Article 227 of the Constitution of India or the Supreme Court under Article 136 of the Constitution of India.

CHAPTER III

Unclaimed Property

Police to take
charge of
unclaimed
properties found
in public places.

10. Any unclaimed property or any article or treasure trove found in a public place, the owner of which is not known, shall be taken charge of by any police officer who shall send them for disposal to the Collector.

Publication
in *Official
Gazette.*

11. (1) The Collector shall publish, in the prescribed manner, a general notice in any two newspapers having wide circulation in the area where such property is found or located; one being published in English and the other in the regional language, or in the *Official Gazette* inviting claimants to prefer claims to the unclaimed property sent to him by the police under section 10 within three months from the date of publication of the notice.

(2) Nothing contained in sub-section (1) shall prevent the Collector from disposing of any perishable articles, which come into his possession, at any time, either before or after the publication of the notice under sub-section (1) as the case may be.

(3) The article referred to in sub-section (2) shall be sold in public auction in the manner prescribed, and the proceeds of the sale shall be handed over to the rightful claimant after deducting the expenses of the sale. In case no claim on such property is preferred, the proceeds of the sale shall be credited to the State Government.

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(Chapter III.—Unclaimed Property.—Sections 12-14.—
Chapter IV.—Miscellaneous.—Sections 15-18.)

Forfeiture of
unclaimed
property.

12. If no claim is preferred within the period specified in sub-section (1) of section 11, the Collector shall pass an order forfeiting the unclaimed properties, other than those dealt with under the sub-section (2) of section 11, to the State Government, and the unclaimed properties shall thereupon be sold in public auction in the manner prescribed, and the sale proceeds to be credited to the State Government.

Uncontested
claim.

13. If a claim is preferred within the time allowed and it is not contested, the unclaimed property shall be handed over to the Collector.

Contested claim.

14. In the case of a contested claim, the Collector shall refer the matter to the court and shall be guided by the decision of the court:

Provided that nothing contained in this section shall prevent the Collector from disposing of any perishable article, which comes into his possession for public auction, at any time before the decision of the court, and in that case the sale proceeds shall be handed over to the court after the deduction of the sale expenses.

CHAPTER IV

Miscellaneous

Information
regarding
escheated and
unclaimed
property.

15. All officers of the Land and Land Reforms Department or Police Department or such other officers as may be directed by the State Government or as the case it may be, shall report to the Collector all cases to which this Act applies when such case come to their respective knowledge.

Superintendence
and custody.

16. (1) Subject to the general or special order of the State Government, the Judicial Department of the State Government shall be the authority in whom vests the general superintendence over all escheated and unclaimed properties.

(2) The Collector shall be the custodian of all escheated properties:

Provided that the State Government may appoint any other officer as custodian in addition to or in place of the Collector and fix his jurisdiction:

Provided further that notwithstanding anything contained in any other law for the time being in force, no right of any kind in respect of the grant hereby made, shall accrue to any person in respect of such property except those permitted by the Collector or such other person duly authorised by the State Government with the approval of the Competent Authority.

Appointment of
administrator.

17. The State Government by a special order may appoint any person or any officer of the State Government as an administrator for proper control, custody, supervision, administration or management of the affairs and maintenance of any escheated property in the manner so to be prescribed.

Finding of court as
to escheat.

18. Wherein any case arising before a civil court finds that any property vests in the State Government by escheat or by lapse or as *bona vacantia* or forfeited to the State Government, it shall forthwith pass an order transferring the suit or other proceeding to the Competent Authority and shall cease to hear it any further. In such case, the Competent Authority shall issue notice under sub-section (3) of section 4 and initiate a proceeding in accordance with the provisions of section 4.

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Act, 2012.*

(Chapter IV.—Miscellaneous.—Sections 19-23.)

Collector to
manage.

19. During the pendency of any proceeding before the Competent Authority or the Appellate Authority except where the possession has been allowed to remain with the objector under sub-section (3) of section 7 and subject to the other provisions of section 7, the Collector shall hold and manage the property in the prescribed manner.

Prohibition of
alienation etc.

20. (1) All properties to which this Act applies belong to the State Government and no person who holds such property shall sell, transfer, gift, alienate, dispose of or encumber such property or part of it in any way, except the Collector or any other person authorised by the State Government under the provision of this Act with the approval of the Competent Authority.

(2) Any transfer, alienation, disposition or encumbrance made or created, knowingly or otherwise, in contravention of sub-section (1) shall be void.

Penalties.

21. Notwithstanding anything to the contrary contained elsewhere in this Act, any person who contravenes the provision of sub-section (2) of section 7, without having preferred the objection within the period of fortnight or an appeal within the period of thirty days as provided for in sub-section (3) of section 7, or contravenes the provisions of sub-section (5) of section 7 or of section 20, shall be guilty of an offence, on conviction whereof, he shall be liable to be punished with imprisonment which may extend to seven years and with fine which may extend to thirty lakh of rupees. Such offence shall not be compoundable and shall be cognizable and non-bailable.

Protection of action
taken under this
Act.

22. (1) No suit, prosecution or other legal proceeding shall lie against any person for anything which is done in good faith or intended to be done in pursuance of this Act or any rules made thereunder.

(2) No suit or other legal proceeding shall lie against the State Government for any damage caused or likely to be caused or any injury suffered or likely to be suffered by virtue of any provision of this Act or by anything in good faith done or intended to be done in pursuance of this Act or any rules made thereunder.

Power to make
rules.

23. (1) The State Government may, by notification in the *Official Gazette*, make rules for the purpose of carrying into effect the provisions of this Act.

(2) In particular, and without prejudice to the generality of the foregoing powers, such rules may provide for—

- (a) the manner of making enquiry;
- (b) the manner of taking charge and possession of any property;
- (c) the making reports to the Collector;
- (d) the taking approvals from the Competent Authority;
- (e) the manner of notices in addition to what has been provided for in this Act;
- (f) rendering assistance to the Collector and Administrator by any public officer;
- (g) the superintendence, custody and disposal of escheated property and unclaimed property and perishable article;
- (h) the manner in which the property shall be managed by the State Government;

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(Chapter IV.—Miscellaneous.—Sections 24-26.)

- (i) the manner in which an administrator to be appointed;
- (j) the procedure to be observed in public auctions under this Act;
- (k) the proceedings before the Competent Authority including adjudication of objections under sub-section (3) of section 7 of this Act;
- (l) the proceedings before the Appellate Authority including an appeal under sub-section (3) of section 7 of this Act;
- (m) the manner of making payments;
- (n) any other matter which has to be, or may be, prescribed.

(2) Every rule made under this Act shall be laid as soon as may be after it is made before the State Legislature while it is in session which may approve it with or without modification; and if approved with modification, shall take effect with such modification prospectively; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under the rule.

Act to have over-riding effect.

24. The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument or in any decree or order of any court or other authority having effect by virtue of any law other than this Act.

Power to remove difficulties.

25. If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion may require, by order published in the *Official Gazette* make such provisions, not inconsistent with the provisions of this Act, do or cause to be done anything which may be necessary or expedient for removing the difficulty.

Repeal and saving.

26. (1) On and from the date of this Act comes into force, the enactments specified in the Schedule, so far as they are in force in the State of West Bengal, shall be repealed to the extent mentioned in third column thereof.

(2) Notwithstanding such repeal, anything done, or any action taken, or any rules or orders made, or any notices or notifications issued, in exercise of any power conferred by the said enactments or under any other law for the time being in force shall be deemed to have been done, taken, made or issued under the corresponding provisions of this Act, as if, this Act commenced on the date on which the said action, rules or orders were taken or made or the notices or notifications issued.

(3) All proceedings at present pending before the Board of Revenue of the State Government relating to escheats shall stand transferred to the Competent Authority who at his discretion may proceed *de novo*, or from the stage reached at the time of such transfer or such other stage as he considers fit, subject to natural justice being complied with in both the exercise of and result of exercise of discretion.

(4) All properties escheated under any proceeding prior to the commencement of this Act or in possession of, being administered, controlled or in the custody of the Board of Revenue of the State Government prior to the commencement of this Act, shall be deemed to have been escheated under this Act and the Competent Authority or the Collector, as the case may be, shall take over such administration, control or custody and possession, as the case may be. This Act shall have effect as if the escheat were under this Act.

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(Schedule.)

THE SCHEDULE

[See sub-section (1) of section 26]

Number and year	Short title	Extent of repeal
(1)	(2)	(3)
Bengal Regulation 5 of 1799	The Bengal Wills and Intestacy Regulation, 1799.	The whole.
Bengal Regulation XLIX of 1810.	The Bengal Charitable Endowments, Public Buildings and Escheats Regulation, 1810.	So far as relates to escheat.

By order of the Governor,

MALAY MARUT BANERJEE,
Secy. to the Govt. of West Bengal,
Law Department.