

The 13th February 1960

No.LJL.33/57/42.—The following Act of the Assam Legislative Assembly which received the assent of the President is hereby published for general information.

(Received the assent of the President on the 6th February 1960)

ASSAM ACT II OF 1960
**THE ASSAM TOWN AND COUNTRY PLANNING
ACT, 1959**

(As passed by the Assembly)

[Published in the *Assam Gazette*, dated the 17th February 1960]

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THE ASSAM TOWN AND COUNTRY PLANNING ACT, 1959

An

Act

to provide for the development of the towns and country sides of the State of Assam.

Preamble.—Whereas it is expedient to provide for the development of the towns and the country sides of the State of Assam on sound planning principles with the object of securing proper sanitary conditions, to conserve and promote the public health, safety and general welfare of the people living therein ;

It is hereby enacted in the Tenth Year of the Republic of India as follows:—

CHAPTER I

Preliminary

1. Short title, extent and commencement.—(1) This Act may be called the Assam Town and Country Planning Act, 1959.

(2) It shall extend to the whole of Assam excluding the Autonomous Districts:

Provided that if any District Council desires that all or any of the provisions of this Act should apply to the Autonomous District concerned, a notification may be issued to that effect and this Act shall then extend to that Autonomous District subject to such exceptions or modifications as may be specified in the notification.

2. Definitions.—In this Act, unless there is anything repugnant in the subject or context :—

(1) “Authority” shall mean the Local or Regional Authority appointed by the State Government for the purpose of administering the Act. Unless otherwise appointed by the State Government, the Authority in the case of Municipal Areas shall be taken to mean the Municipal Board for the area constituted under the Assam Municipal Act, 1956 (Assam Act XV of 1957).

(2) “Advisory Council” means the Town and Country Planning Advisory Council constituted under Section 3 of this Act.

(3) “Betterment Fee” means the fee prescribed in respect of an increase in the value of land resulting from the execution of a Development Scheme.

(4) “Building” means any construction for whatsoever purpose and of whatsoever materials constructed and every part thereof, whether used as human habitation or not and includes plinth walls, chimney, drainage works, fixed platforms, verandah, balcony, cornice or projection, or part of a building on anything affixed thereto or any walls, earth bank, fence or other construction enclosing or delimiting or intended to enclose or delimit any land or space.

(5) "Building Industrial" means a building, which is wholly or predominantly used as a warehouse, factory, distillery, iron foundry and all other buildings put to or be put to any use permitted in the zone by an authorised scheme applicable thereto.

(6) "Director" means Director of Town and Country Planning or any other officer appointed by the State Government.

(7) "Development" means the carrying out of building, engineering, mining or other operations in, on, or over the land, or making of any material change in the use of any buildings or of land :

Provided that the following operations or uses of land shall not be deemed for the purposes of this Act to mean development of the land, that is to say,—

- (a) the carrying out of works for the maintenance, improvement or other alteration of any building, being works which affect only the interior of the building or which do not materially affect the use and the external appearance of the building ;
- (b) the carrying out by a local authority of any works required for the maintenance or improvement of road, being works carried out on land within the boundaries of the road ;
- (c) the carrying out by any local authority any works for the purposes of inspecting, repairing or renewing any sewers, main pipes, cables or other apparatus, including the breaking open of any street or other land for that purpose ;
- (d) the use of any building or other land within the curtilage of a dwelling house for any purpose incidental to the enjoyment of the dwelling house as such.

(8) "Factory" means a place to which the provisions of the Indian Factories Act of 1934 or any amendment thereof shall apply.

(9) "Industrial Concern" means a commercial body, *e. g.*, a factory, workshop and a mill, or any concern of similar nature where materials are manufactured, repaired, altered or processed.

(10) "Master Plan" means a plan as defined under section 9 and shall comprise of items (a) to (e) of section 11.

(11) "Occupier" includes any person paying or liable to pay the rent or any portion of the rent of the land or building in respect of which the work is due or compensation or premium on account of the occupation of such land and building and also a rent free tenant.

(12) "Open space" means any land whether enclosed or not, on which not more than one twentieth part is covered with buildings and whole of the remainder has been laid out as a public garden or used for purposes of recreation or lies waste and unoccupied.

(13) "Prescribed" means prescribed by rules made under this Act.

(14) "Reconstituted plot" means a plot which is in any way altered by the making of a Development Scheme.

(15) "Road" means and includes any highway, street, lane, pathway, alley, passageway, carriage way, footway, square, bridge whether private or public, whether thoroughfare or not, whether existing or proposed in any scheme and includes all bunds, channels, ditches, drains, culverts, side walks and traffic islands.

(16) "Scheme" means a development scheme and includes a plan or plans together with the descriptive matter if any relating to such a scheme.

CHAPTER II

Constitution of the Advisory Council

3. Constitution of the Town and Country Planning Advisory Council.—(1) The State Government may constitute, by a notification in the official Gazette, the Council consisting of the following members to advise the Government on matters referred to it:—

- (i) Minister-in-charge of Town and Country Planning Chairman.
- (ii) Director of the Town and Country Planning Department ... Secretary.
- (iii) Secretary, Town and Country Planning Department .. Member.
- (iv) Chief Engineer, Public Works Department (R. and B.) or his nominee ... Member.
- (v) Chief Engineer, Public Works Department (Flood Control) or his nominee... Member.
- (vi) Public Health Engineer or his nominee Member.
- (vii) Secretary, Local Self-Government or his nominee... .. Member.
- (viii) Secretary, Finance Department or his nominee Member.
- (ix) Secretary, Revenue Department or his nominee Member.
- (x) Six other non-official members half of whom shall be elected by the Assembly and the rest shall be nominated by the State Government. Member.
- (xi) Such number of representatives of Local Authorities falling within the area as may be covered by the Master Plan not exceeding two as may be co-opted by the Council by notification, published in the official Gazette.

(2) Five of the members attending any meeting of the Council shall form the quorum for the purpose of transacting the business of that meeting of the Council.

(3) All members of the Council including the co-opted members shall have one vote each and the Chairman shall have a casting vote in case of equality of division, in addition to his own vote

(4) Nothing done by the Council in its meeting shall be held to be invalid because of any vacancy in the seats of the nominated or elected members or the absence of any of the members for any reason whatsoever.

(5) The Chairman shall preside over the meetings of the Advisory Council and in his absence the members present shall elect one among themselves to be the president for that particular meeting.

4. Resignation of non-official members.—Any non-official member may at any time resign his office, provided that his resignation shall not take effect until accepted by the State Government.

5. Term of office.—The term of office of any non-official member shall ordinarily be three years:

Provided that in case of the members representing the Legislature or Local Authorities, their terms of office shall terminate as soon as they cease to be members of such Legislature or Local Authority as the case may be.

6. Commencement of the term of office of non-official members.—(1) The term of office of non-official members shall commence on such date as may be notified in this behalf by the State Government.

(2) A person ceasing to be member by reason of the expiry of his term of office as described in section 5, shall be eligible for re-nomination or re-election.

7. Removal of non-official members.—The State Government may remove from the Council any member who:—

(a) refuses to act, or becomes incapable of acting or absents himself from three consecutive meetings of the Council and is unable to explain such absence to the satisfaction of the Council ; or

(b) has so flagrantly abused in any manner his position as a member of the Council as to render his continuance detrimental to the public interest :

Provided that when the State Government proposes to take action under the foregoing provisions of this section, an opportunity of explanation shall be given to the member concerned and when such action is taken, the reasons thereof shall be placed or recorded.

8. Filling of casual vacancies.—(1) When the place of a member nominated by the State Government becomes vacant by his resignation, removal or death, the State Government shall appoint a person to fill the vacancy.

(2) When the place of a member elected or co-opted becomes vacant, he shall be elected or co opted by the Legislature or the Council as the case may be.

(3) The term of office of a member nominated or elected or co-opted, as the case may be, under sub-sections (1) and (2) shall be the remainder of the term of office of the member in whose place he has been nominated or elected or co-opted.

CHAPTER III

Master Plan

9. Preparation of Master Plan.—A Master Plan hereinafter referred to as "Plan" in this Act for the development of any area within the State which the State Government may consider necessary, shall be drawn up by the Director in consultation with the local authority/authorities concerned and submitted to the State Government for examination and approval.

10. Publication of the Master Plan.—(1) On receiving the Plan and the Regulation from the Director, the State Government shall have them, as soon as may be, published in the official Gazette, in some local newspaper and in the locality in the manner prescribed and deemed to be required for wide and sufficient publicity in the locality inviting public opinion and objection, if any, to be submitted within a period not more than two months.

(2) After considering all objections, suggestions and representations that may have been received, and after getting the advice of the Council, the State Government shall have the plan finally prepared by the Director.

11. Contents of Master Plan and Zoning Regulations.—The Master Plan to be prepared as defined under Section 9, may include:—

- (a) A general land-use plan for residential, commercial, industrial, recreational and public and semi-public purposes ;
- (b) Zoning plan ;
- (c) Transportation plan including roads, railways, canals, etc. ;
- (d) Public utilities plan ;
- (e) A report giving relevant data and information in respect of the proposals in the Plan and any other things which the State Government may deem necessary.

12. Constitution of the Authority for Implementation of the Plan.—After the adoption of the Plan and the Regulations, they shall be sent for implementation to the Authority as may be declared or constituted by the State Government in this behalf.

13. Restrictions of use of land and buildings thereon after publication.—(1) The Plan as adopted by the State Government shall be published as prescribed in Section 10, and after such publication no person shall use any land, sub-divide any land or set up any new structure on any land covered by the Plan or change the existing structure of any building or use of any building or land within the area except with the permission of the Authority on a written application submitted for that purpose.

(2) Each such application shall be accompanied by a plan drawn to scale showing the actual dimension of the parcel of the land and the

building to be built upon it, the site and the position of the building to be erected and in case of alteration in the use or structure of the building or land, the nature and extent of such alteration.

(3) The Authority may also call for such other information as it may deem necessary to examine the application.

(4) The Authority shall not refuse the permission except on the ground of contravention of proposals contained in the Plan or the Regulations and unless the permission has been refused within a period of one month from the receipt of the application or such other information as may be called for by the Authority under sub-section (3), it shall be presumed that the permission has been given.

14. Power of the State Government to modify the Plan and the Regulation.—The State Government may review the Plan and may modify the Plan and the Regulations, from time to time, in such manner and in such procedure as followed for the preparation and approval of the original plan and the Regulations.

CHAPTER IV

Development Scheme

15. Preparation of the Development Scheme.—(1) After the commencement of this Act, the State Government after consultation with the Authority, if any, may by notification in the Official Gazette declare any area to be a scheme area for the purposes of this Act.

(2) After the Master Plan has been approved by the State Government the Authority shall define the area which it considers necessary for development. The Director shall prepare a scheme and submit it to the State Government with all information necessary for consideration and approval of the scheme.

(3) While preparing the scheme the Director shall issue a notice inviting the names of all the claimants of any interest on any land or building within the area under the scheme to be submitted within a period not more than one month and submit the same to the Authority along with the scheme and the report.

(4) Save as provided in this Act, the Authority shall not undertake or carry out any development of land in any area which is not a scheme area.

(5) After the commencement of this Act, no development of land shall be undertaken or carried out in the scheme area by any person or body of persons except in the manner prescribed under section 13 of this Act.

16. Publication of the Development Scheme.—(1) The Authority shall have the scheme and the report and the names of all the claimants published in the manner prescribed in sub-section (1) of section 10 and have a copy of them served on all persons who preferred claims under sub-section (3) of section 15, inviting objections to be filed within a period not more than two months.

(2) After the period for submitting opinion and objection of the public or of any interested persons has expired, the Authority shall

examine the scheme in the light of such opinion and objection giving sufficient opportunity for hearing to all such interested persons who have filed objections and demanded hearing in the manner prescribed and shall approve or refuse to approve or approve with such modifications, as it may deem necessary, for the implementation of the scheme and for imposing for that purpose reasonable restrictions in the use of land and buildings within the area.

(3) After the Authority has adopted the scheme, it shall be forwarded to the State Government for sanction and shall come into force as soon as the sanction has been accorded by the State Government after taking into account the financial implications of the scheme.

17. Implementation of the Development Scheme.—(1) The scheme shall come into force from the date as may be fixed by the Government in sanctioning the scheme and shall be implemented by such authority as may be authorised by the State Government in that behalf.

(2) No person shall within the area for which the Government has sanctioned a Development Scheme, erect or proceed with any building or work or remove or alter or make additions or make any substantial repair to a building or a part of it, a compound wall or any drainage work or remove any earth or change the use of any land or building except on permission of the authority on application submitted for the purpose. Unless the permission has been refused within one month from the date of receipt of the application it shall be presumed that the permission has been given.

18. Scope of the Development Scheme.—(1) A scheme may be made in accordance with the provisions of the Act in respect of any land which is:—

- (a) in the course of development,
- (b) likely to be used for building purposes, or
- (c) already built upon.

Explanation:—

The expression "Land likely to be used for building purposes" shall include any land likely to be used as, or for the purpose of providing open spaces, roads, streets, parks, pleasure or recreational grounds, parking spaces, or for the purpose of executing any work upon or under the land incidental to a scheme, whether in the nature of a building work or not.

(2) Such scheme may make provisions for any of the following matters:—

- (a) the laying out or re-laying out of land, either vacant or already built upon ;
- (b) the filling up or reclamation of low-lying swamp or unhealthy areas or levelling up of land ;
- (c) lay out of new streets or roads, construction, diversion, extension, alteration, improvement and stopping up of streets, roads and communications ;

- (d) the construction, alteration and removal of buildings, bridges and other structures ;
- (e) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, industrial and commercial activities, green belts and dairies, transport facilities and public purposes of all kinds ;
- (f) drainage inclusive of sewerage, surface or sub-soil drainage and sewage disposal ;
- (g) lighting ;
- (h) water supply ;
- (i) the preservation of objects of historical importance or natural beauty and of buildings actually used for religious purpose ;
- (j) the imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the number, height and character of buildings allowed in specified areas, the purposes to which buildings or specified areas may or may not be appropriate, the subdivision of plots, the discontinuance of objectionable uses of land in any area in reasonable periods, parking space and loading and unloading space for any building and the sizes of projections and advertisement signs ;
- (k) the suspension, so far as may be necessary for the proper carrying out of the scheme, of any rule, bye-law, regulation, notification or order made or issued under any Act of the State Legislature or any of the Acts which the State Legislature is competent to amend ;
- (l) such other matter not inconsistent with the objects of this Act.

(3) The draft scheme shall contain the following particulars :—

- (a) the area, ownership and tenure of each original plot ;
- (b) the land allotted or reserved under clause (e) of sub-section (2) of section 18 with a general indication of the uses to which such land is to be put and the terms and conditions subject to which such land is to be put to such cases ;
- (c) the extent to which it is proposed to alter the boundaries of original plots ;
- (d) an estimate of the net cost of the scheme ;
- (e) a full description of all details of the scheme under such clause of sub-section (2) of section 18, as may be applicable ;
- (f) the laying out or re-laying out of land either vacant or already built upon ;

(g) the filling up or reclamation of low-lying swamp or unhealthy areas or levelling up of land ; and

(h) any other prescribed particulars.

(4) In the scheme the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes and where the plot is already built upon, to ensure that the building, as far as possible, complies with the provisions of the scheme as regards open spaces.

(5) In order to render original plots more suitable for building purposes the scheme may contain proposals:—

(a) to form a reconstituted plot by the alteration of the boundaries of an original plot ;

(b) to provide with the consent of the owners that two or more original plots each of which is held in one ownership in severality or in joint ownership, shall hereafter, with or without alteration of boundaries be held in ownership in common as a reconstituted plot.

(6) The scheme shall include all such provisions as the Authority may think necessary for carrying out the objects of the Act including the following matters :—

(a) the laying out or re-laying out of land, either vacant or already built upon ;

(b) the filling up or reclamation of low-lying swamp or unhealthy areas or levelling up of land ;

(c) lay out of new streets or roads, construction, diversion, extension, alteration, improvement and stopping up of streets, roads and communications ;

(d) the construction, alteration and removal of buildings, bridges and other structures ;

(e) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, industrial and commercial activities, green belts and dairies, transport facilities and public purposes of all other kinds ;

(f) drainage inclusive of sewerage, surface or sub-soil drainage and sewage disposal ;

(g) lighting ;

(h) water supply ;

(i) the preservation of objects of historical importance or natural beauty and of buildings actually used for religious purposes.

19. Amendments and alterations of the Development Scheme.—

(1) If after the final scheme has come into force, the Authority considers that the scheme is defective on account of an error or irregularity or for any other reason, it shall refer to the State Government to modify or withdraw the scheme and to publish the modified or withdrawn scheme in the manner prescribed in sub-section (1) of Section 10.

(2) The modification of the scheme shall state every amendment proposed to be made in the scheme and if any such amendment relates to

matter specified in any or all of the clauses (a) to (l) of sub-section (2) of Section 18, the modification shall also contain such other particulars as may be found necessary by the Authority.

(3) The variation shall be open to inspection by the public at the office of the Local Body or Bodies as prescribed, covering the area during office hours.

(4) Within one month of the date of publication of the modification, any person affected thereby may communicate in writing his objection to the Authority

(5) After receiving the objection under sub-section (4) above, the Authority may, after making such enquiry as it may think fit, approve the proposed modification with or without any further modification thereof.

(6) Such modification shall take effect as if it were incorporated in the scheme from the date of its modification.

(7) The Authority shall thereafter submit the modified scheme to the State Government for sanction. The modified scheme shall be published after sanction as prescribed in sub-section (1) of Section 10.

20. Power to revoke the Development Scheme.—(1) Notwithstanding anything contained in section 19, a scheme may at any time be modified or revoked by a subsequent scheme made, published and sanctioned in accordance with this Act.

(2) The State Government, at its own initiative or on the application of the Authority may at any time, by a notification in the official Gazette revoke a scheme, if it is satisfied that under the special circumstances of the case the scheme shall be so revoked:

Provided that where revocation or modification is ordered by Government after people have partially or wholly implemented a scheme, compensation should be paid for the necessary alterations in the manner prescribed.

21. Power of the Authority to impose restrictions.—For the purpose of the Master Plan, the Land-use and Zoning Regulation and the Scheme, the Authority may impose reasonable restrictions on the use of the land and building including the regulating of the open spaces to be maintained around the building or buildings, the percentage of the plot area to be covered by building or buildings, the number of building or buildings on each plot, height and character of building or buildings allowed in specified areas, the purpose for which building or buildings of the specified areas may or may not be used, the subdivision of plots, parking space and loading and unloading space for any building and the sizes of projections and such other matters not inconsistent with the objects of this Act.

CHAPTER V

Streets and Land Subdivisions

22. Width of public streets.—(1) The authority shall, from time to time, with the sanction of the State Government specify the minimum width for different classes of public streets according to the nature of the traffic likely to be carried there, the localities in which they are situated, the heights up to which buildings abutting thereon may be erected and other similar considerations.

(2) The width of a new public street shall not be less than that prescribed in sub-section (1) or that shown on the Master Plan for the class to which it belongs in areas for which a Master Plan has been prepared.

23. Power to prescribe Street lines.—The Authority may prescribe a line on one or both sides of any public street, provided a public notice of the proposal has been issued by the Authority in the prescribed manner. No person shall construct or reconstruct any portion of any building on land within the prescribed new street line.

24. Setting back buildings to the prescribed street line.—(1) If any building or any part of a building abutting on a public street is within such line of the street, the Authority may require such building to be set back to the prescribed line, whenever it is proposed—

(a) to re-build such building or to take down such building,

(b) to remove, reconstruct or make any addition to or structural alteration in any portion of such building which is within the regular line of the street.

(2) When any building or any part thereof within the prescribed line of the street falls down or is burnt down or is taken down, under the provisions of this Act or otherwise, the Authority may at once take possession of the portion of land within the prescribed line of the street previously occupied by the said building and if necessary, clear the same.

(3) Land acquired under the foregoing sub-sections shall, henceforward be deemed to be a part of the public street.

25. Acquisition of land within the line of street.—If any private land whether open or enclosed, lies within the prescribed line of a public street and is not occupied by a building, or if a platform, verandah, steps, compound wall, hedge, or fence or other structure, is within the line of such street the Authority may, after giving the owner of the land or building a notice of the intention to do so, take possession of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, steps, or such other structure as aforesaid or of the portion of the said platform, verandah, steps or other such structure as aforesaid which is within the prescribed line of the street.

26. Acquisition of the remaining part of building and land after their portions within a prescribed line of the street are acquired.—If a building or land is partly within the prescribed line of a public street and if the Authority is satisfied that the land remaining after the exclusion of the portion within the said line will not be suitable or fit for construction of independent building, the Authority shall acquire the remaining portion of the land if so desired by the owner.

27. Subdivision of private land.—(1) Every person who intends to sub-divide any plot of land within the Master Plan Area shall give notice in writing to the Authority of his said intention and such notice shall be accompanied by the plans and statements in triplicate.

(2) All plans for subdivision of land shall be in accordance with the standards prescribed by the State Government.

28. Plans accompanying notice.—A layout plan drawn to a suitable scale and containing the following informations shall accompany the notice given under section 27 :—

- (a) The location of the land,
- (b) The boundaries of the proposed land shown on the map, and sufficient description to define the same,
- (c) Name and address of the owner of the land,
- (d) Location, name and present widths of the adjacent roads and lanes,
- (e) The major physical characteristics of the land proposed to be sub-divided, including topography, the approximate location and width of any water course and location of any areas subject to inundation or flood,
- (f) The complete layout of the proposed sub-division showing the location and widths of all the proposed streets, dimensions and uses of all the plots,
- (g) The locations of all drains, sewers and other utilities,
- (h) Building lines permissible,
- (i) Scale and north line,
- (j) Key plan.

29. Sanction with or without modification or refusal.—(1) The Authority may either grant or refuse the approval to the plans or may approve them with such modifications as it may deem fit and thereupon shall communicate its decision to the person giving the notice within three months from the date of the notice.

(2) No person shall be allowed to construct a building on any plot of land, the sub-division of which has not been previously approved by the Authority.

30. Layout not according to plan.—Should the Authority determine at any stage that the layout or the construction is not proceeding

according to the sanctioned plan or is in violation of any provisions of this Act, it shall serve a notice on the applicant requiring him to stay further execution until correction has been effected in accordance with the approved plan.

31. Penalty for violation.—The Authority will have power to impose fine not exceeding Rs.250 on any person, firm or corporation who violates, disobeys, refuses to comply with, or who resists the enforcement of any of the provisions of this Act. Continuation of the violation shall constitute a separate offence for which a fine of Rs 50 per day may be imposed for the days after the first conviction. An appeal shall lie to the Appellate Authority constituted under this Act.

CHAPTER VI

Acquisition of Land

32. Power of State Government to acquire land.—Where on the representation of the Authority it appears to the State Government that in order to enable it to execute the scheme it is necessary that land within, adjoining or surrounded by any such area should be acquired, the State Government may in consultation with the Council acquire the land by publishing in the Official Gazette a notice to the effect that the State Government has decided to acquire the land in pursuance of this section.

33. Proceeding for acquisition of land.—(1) The provisions of the Land Acquisition Act, 1894 (Central Act No.1 of 1894) shall be applicable for acquisition of land under this Act and the compensation shall be computed under the provisions of the same Act.

(2) In computing compensation for land acquired, the value will be the market value as prevailed on the 1st of January, 1957.

(3) The owner of the lands will also be entitled to the reasonable cost of development, if any, made during the period.

(4) Twenty-five per cent increase in value on the date of acquisition of the land.

34. Disposing of land.—Subject to the rules made under this Act, and with the previous sanctions of the State Government, the Authority may retain, lease, exchange or otherwise, transfer any land acquired by it under this Act:

Provided that in case of lease or transfer the owner will get first priority, if due to acquisition he becomes landless.

35. Provision of private negotiation before compulsory acquisition.—(1) The Authority may, in the first instance, make reasonable efforts to purchase any land by private negotiation.

(2) In case of failure to purchase the land by private negotiation within a specified time, the said land shall be compulsorily acquired.

(3) Nothing in this section shall, however, debar the State Government or a local authority from compulsorily acquiring any land without prior private negotiation.

36. Payment to owner by adjustment.—All payments due to be made to any person by the Authority, under this Act, shall so far as possible, be made by an adjustment in respect of the plot concerned or of any other plot in which he has an interest and failing such adjustment shall be paid in cash or in such other way as may be agreed upon by the parties.

CHAPTER VII

Compensation and betterment

37. Right to compensation.—Any person whose property is injuriously affected in value by the making of a scheme shall, if he makes a claim for the purpose within a period of three months after the date of publication of a notification sanctioning the scheme under section 16, be entitled to obtain compensation in respect thereof from the Authority.

38. No right to compensation.—A person shall not be entitled to obtain compensation under the foregoing section on account of any building erected on or contract made or other thing done with respect to any land within the area included in a scheme after the date of the notification of the scheme under section 15:

Provided that this provision shall not apply to any building erected, contract made or other thing done in accordance with the permission granted under sections 13 and 17 of this Act.

39. Power of Government to exclude compensation in certain cases.—(1) No compensation shall be payable in respect of any property which may be injuriously affected by putting into operation of any provision of the scheme which:—

- (a) prescribes the space about buildings ; or
- (b) limits the number of buildings ; or
- (c) regulates the size, height, design or external appearance of buildings ; or
- (d) prohibits or restricts building operations permanently or temporarily on the ground that erection of buildings thereon will be likely to be injurious to the health of the occupants or the neighbours or likely to cause excessive expenditure of public money in making provision for roads, sewers, water supply or other public services ; or
- (e) prohibits or restricts the use of land or a building for a purpose which may involve danger or injury to public hygiene or the health of the occupants or their neighbours or for a purpose which is against the public policy or public morals ; or
- (f) in the interests of safety, regulates the height and position of proposed walls, and building fences or hedges near the corners or bends of roads ; or

(g) in the case of the erection of any building intended to be used for purposes of business or industry, requires the provision of parking the vehicles.

(2) No compensation shall be payable for refusal of permission to make any alteration in any building which is not in conformity with the use specified in the Plan or in the scheme.

40. Right of owner to require Authority to acquire or purchase land.—(1) The owner of any land which is to be acquired for purposes of a scheme may, at any time, after the sanction of the scheme by the Government, by a written notice to the Authority in the prescribed manner, call upon it to acquire or purchase the land in so far as the land is to be acquired by the State Government or the Authority.

(2) If within six months of the service of the notice under sub-section (1) the land is not purchased or acquisition proceedings are not started, the scheme, in so far as that land is concerned, shall be deemed to have been withdrawn and all notices and orders in that connection shall lapse.

41. Levy of betterment fee.—(1) Every property which has increased in value due to its inclusion within an area under a plan or a scheme or due to the execution of such schemes shall be charged with a betterment fee:

Provided that no such fee shall be levied on such public land or building as are used for charitable, religious and educational purposes or for places of non-professional entertainment and recreation.

(2) The betterment fee shall be an amount equal to twenty per cent in case of residential holdings so long the original owners use for their residences and equal to fifty per cent in case of non-residential areas and will be realised in five equal instalments.

Explanation.—The increase in value for the purpose of this Section shall be the increase in the market prices in between the date on which a notification under sub-section (1) of Section 15 has been issued and the date on which the execution of the scheme has been substantially completed.

42. Appeal.—(1) Any person aggrieved by the decision of the Authority with respect to matters of compensation and betterment fee, may appeal to the Appellate Authority within thirty days of the award.

(2) If the owner of any property objects to the amount of betterment fee determined by the Authority on any ground he shall also state the amount which, he contends would be correct and may within thirty days of the date on which the determination of his objection or appeal becomes final by written notice, require the authority to acquire the property together with any building or other works that may exist thereon.

(3) The authority shall thereupon acquire the property.

CHAPTER VIII

Appeals and the Appellate Authority

43. Appointment of Appellate Authority.—(1) Save as otherwise provided, the State Government shall appoint an Appellate Authority to hear all appeals arising out of the provisions of this Act. The decision of Appellate Authority shall be final.

(2) The person or persons appointed by the State Government as Appellate Authority shall have the qualification of a District Judge. The appointment shall be on such terms and conditions as the State Government may decide.

44. Duties of the Appellate Authority.—(1) The duties and powers of the Appellate Authority shall be as follows:—

(a) to hear and decide appeals against the orders of the Authority.

(b) to decide and hear appeals in respect of such other matters and exercise such other powers as may be entrusted to and conferred upon it by the State Government in accordance with the provisions of this Act.

(2) All appeals to the Appellate Authority shall be filed within a month from the date of the order appealed against. The time required for taking out copies of the order shall be excluded. The Appellate Authority may, however, in its discretion condone such delay in filing appeal for sufficient reasons.

45. Procedure of working of the Appellate Authority.—(1) The Appellate Authority shall conduct its proceedings in the prescribed manner after giving the opposite party or any one interested in the order appealed against an opportunity of being heard,

(2) The Appellate Authority may, at any time, call for any extract from any proceeding of the State Government or Authority and call for any return or statement or report concerning or connected with any matter with which the authority has been Authorised to deal.

(3) The Appellate Authority shall have all the powers of a Civil Court for the purposes of taking evidence on oath and of enforcing the attendance of witnesses including the parties interested or any of them and compelling the production of documents and material objection if considered necessary.

(4) The Appellate Authority in its discretion may make any orders regarding the costs to be paid by any of the parties to the proceedings and the Appellate Authority shall have full powers to determine by whom or out of what property and to what extent such costs are to be paid and the authority shall be bound to execute the orders of the Appellate Authority in accordance with the directions, if any, contained in the order and such costs or amounts awarded by the Appellate Authority shall be realised as arrears of land revenue.

46. Right to appear by recognised agent.—Every party to any proceeding before the Appellate Authority shall be entitled to appear either in person or by his recognised agent.

47. Protection of action taken under this Act.—(1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

(2) Save as otherwise expressly provided in this Act, no suit or other legal proceeding shall lie against the State Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

CHAPTER IX

Finance

48. Development Fund.—The receipt of Authority under this Act shall form a separate development fund and all expenditure under this Act, or any development scheme thereunder, shall be defrayed out of such fund. No portion of the fund shall, except with the sanction of Government, be expended for purposes not provided by this Act.

49. Powers to borrow.—Authority as defined in this Act shall be deemed to be a local authority as defined in the Local Authorities Loans Act, 1914 (Central Act IX of 1914) for the purpose of borrowing money under that Act, and the making and execution of a plan and scheme shall be deemed to be a work which such local authority is legally authorised to carry out.

50. Grants, advances and loans.—The Government may make such grants, advances, and loans to the Authority as the Government may deem necessary for the performance of functions of the Authority under this Act issued all grants.

CHAPTER X

Legal Proceedings

51. Penalty for breach of the provisions of the Master Plan or scheme.—(1) When a Master Plan or a scheme has been sanctioned under this Act any person who commits or knowingly permits a breach of any specified provisions of the Master Plan or of the scheme or who neglects or fails to comply with any such provisions shall be punishable under this section.

(2) In case of any such breach or default the Authority shall send to any such person a notice calling on him to discontinue the breach or cause it to be discontinued or to comply with such provision of the Master Plan or the scheme within a time to be specified in the notice.

(3) If after such time any such person under sub-section (1) continues to neglect or causes a breach of any specified provision, such person shall be prosecuted and on conviction by a Magistrate be punishable by any or all of the following :—

- (i) with fine which may extend to Rs. 500 with or without simple imprisonment not exceeding a period of 2 months ;
- (ii) if the breach, neglect or failure continues after such conviction with fine which may extend to Rs. 30 for every day during which the breach, neglect or failure continues after such conviction.

52. Power to execute works on failure to comply with notice.—If a notice has been given under this Act to a person requiring him to execute a work in respect of any property, movable or immovable, or to provide or do or refrain from doing anything within a time specified in the notice and if such person fails to comply with such notice, then the authority may cause such work to be executed or such thing to be provided or done, and may recover all expenses incurred by it on such account from the said person as an arrear of land revenue.

53. Right of occupier to execute works in default of owner.—When default is made by the owner of a building or land in the execution of any work required under this Act to be executed by him, the occupier of such building or land may, with the prior approval of the Authority cause such works to be executed, and the expenses thereof shall, in the absence of any contract to the contrary, be paid to him by the owner, or the amount may be deducted out of the rent from time to time becoming due from him to such owner.

54. Procedure upon opposition to execution by occupier.—(1) If after receiving information of the intention of the owner of any building or land to take any action in respect thereof in compliance with a notice issued under this Act, the occupier refuses to allow such owner to take action, the owner, may apply to a District Magistrate or Subdivisional Officer as the case may be.

(2) The District Magistrate or Subdivisional Officer upon proof of such refusal may make an order in writing requiring the occupier to allow the owner to execute all such works, with respect to such building or land, as may be necessary for compliance with the notice, and may also, if he thinks fit, order the occupier to pay to the owner the costs relating to such application or order.

(3) If after the expiry of eight days from the date of the Magistrate's order, the occupier continues to refuse to allow the owner to execute such work, the occupier shall be liable, upon conviction, to a fine which may extend to Rs.30 for every day during which he has so continued to refuse.

(4) Every owner, during the continuance of such refusal shall be discharged from any liability on account of such breach or default.

55. Recovery of cost of work by the occupier.—When the occupier of a building or land in compliance with a notice issued under this Act, executed a work for which the owner of such building or land is responsible, either in pursuance of the contract of tenancy or by law, he shall, in the absence of any contract to the contrary, be entitled to recover from the owner by deduction from the rent payable by him or otherwise the reasonable cost of such work.

56. Penalty for obstructing contractor or removing mark.—
If any person.—

- (a) obstructs or assaults any person with whom the authority has entered into a contract for the performance or execution by such person of his duty or of anything which he is empowered or required to do under this Act ; or
- (b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorised under this Act, shall be punishable with fine which may extend to Rs.500 or with or without simple imprisonment for a term which may extend to two months.

57. Officers under the Act to be public servants.—Every officer and servants of authority and every other officer employed by the State Government for the purposes of this Act, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act No.15 of 1860).

58. Authority for prosecution.—Unless otherwise expressly provided, no court shall take cognizance of any offence punishable under this Act, except on the complaint of, or upon information received from, the Authority or some person authorised by the Authority by orders in this behalf.

59. Power of Authority to institute proceedings, etc., and to take legal advice.—The Authority shall subject to rules framed under this Act have powers to—

- (a) institute, defend or withdraw from legal proceedings under this Act ;
- (b) compound any offence against this Act, before the matter is referred to the court ;
- (c) admit compromise, or withdraw any claim made under this Act ; and
- (d) obtain such legal advice and assistance as it may from time to time think necessary or expedient to obtain for any of the purposes, referred to in the foregoing clauses of this section for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Authority or any officer or servant of the Authority.

60. Bar to suits and prosecutions in certain cases.—(1) No suit, prosecution or other proceeding shall lie against an Authority or any officer or servant thereof or any person acting under their direction or any Government Officer or servant employed for the purposes of this Act for anything which is in good faith done in pursuance of this Act, or any rules made thereunder.

(2) No suit, prosecution or other proceedings shall lie against any officer or servant of the authority or any Government Officer or servant employed for the purposes of this Act for anything done under this Act,—

- (a) unless the previous sanction of the State Government has been obtained; and
- (b) until the expiration of two months after notice in writing has been given to the person to be sued, clearly stating the cause of action, and the nature of relief sought, etc.

61. Punishment for malicious abuse of powers.—Any officer or servant of the Authority or of the Government who wilfully or negligently abuses any power conferred on him by or under this Act, shall be punishable with imprisonment which may extend to six months or with fine which may extend to Rs.500 or with both:

Provided that no prosecution shall be instituted under this section—

- (a) unless the previous sanction of the State Government has been obtained ;
- (b) until the expiry of two months' notice in writing has been given to the person concerned clearly stating the cause of action and the nature of relief sought, etc.

62. Registration of documents, plans or maps in connection with scheme.—(1) Nothing in the Indian Registration Act, 1908 (Central Act No. XVI of 1908) shall be deemed to require the registration of any document, plan or map prepared, made or sanctioned in connection with a scheme which has come into force.

(2) All such documents, plans and maps relating to the sanctioned scheme shall, for the purposes of sections 48 and 49 of the Indian Registration Act, 1908 (Central Act XVI of 1908) be deemed to have been and to be registered in accordance with the provisions of that Act :

Provided that documents, plans and maps relating to the scheme shall be accessible to the public, free of charge in the manner prescribed.

63. Orders under the Act not to be questioned in any Court.—No order made in exercise of any power conferred by or under this Act shall be called in question in any court except as provided in this Act.

64. Effect of orders inconsistent with other enactments.—Any order made under this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

CHAPTER XI

Miscellaneous Provisions

65. Service of notice.—Every notice issued under this Act shall be served as prescribed by rules.

66. Method of giving public notice.—Subject to the provisions of this Act, every public notice required under this Act shall be deemed to have been given if it is published in some local newspaper (if any) or a paper of general circulation in the area and posted upon a notice board to be exhibited for public information at the building in which the meetings of the Local Authority are ordinarily held or by publishing it in official Gazette.

67. Formal defects in assessments and demands.—No assessment list or other list, notice or other such document specifying, or purporting to specify with reference to any charge, or fee, any person's property, thing or circumstances shall be invalid only by reason of a clerical or technical mistake in the name, residence, place of business or occupation of the person or in the description of property, thing or circumstances and it shall be sufficient if the person, property, thing or circumstances is described sufficiently for the purpose of identification, and it shall not be necessary to name the owner or occupier of any property liable in respect of the charge.

68. Power and duties of police in respect of offences and assistance to Authorities.—Every police officer, mauzadar or officer of the Local Authority shall give immediate information to the Authority of an offence coming to his knowledge which has been committed under this Act, or against any rule, made under this Act and shall be bound to assist all members, officers and servants of the Authority in the exercise of their lawful authority.

69. Decision of disputes between Authorities.—Should a dispute arise between the Authority and any other Local Authority on any matter in which they are jointly interested, such dispute shall be referred to the State Government, whose decision shall be final.

70. Powers to enter into land for inspection, etc.—For the purpose of making or execution of any scheme, the Authority or persons appointed by the State Government, their subordinates and contractors may enter into or upon any land, in order—

- (a) to make any inspection, survey, measure valuation or enquiry ;
- (b) to take levels ;
- (c) to dig or bore into the sub-soil ;
- (d) to set out boundaries and intended lines of work ;
- (e) to mark levels, boundaries and lines by marks and cutting trenches ; or

- (f) to do any other thing, whenever it is necessary to do so, for any of the purposes of this Act or any rule made or scheme sanctioned hereunder or any scheme which the authority intends to frame hereunder :

Provided as follows :—

- (a) except when it is otherwise specially provided by a rule no such entry shall be made between sunset and sunrise ;
- (b) except when it is otherwise specially provided by the rules, no building which is used as a human dwelling shall be so entered unless with the consent of the occupier thereof, without giving, the said occupier at least 24 hours previous notice in writing of the intention to make such entry;
- (c) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

71. Mode of proof of the records of the Authority.—A copy of receipt, application, plan, notice, order, entry in a register, or other document in the possession of the Authority shall, if duly certified by the lawful keeper thereof or other person authorised by the Authority in this behalf be received as *prima facie* evidence of the entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent as, the original entry or document would, if produced, have been admissible to prove such matters.

72. Power of Authority to make agreements.—The Authority shall be competent to make any agreement with any person in respect of any matter, which is to be provided for in a scheme and, unless it is otherwise expressly provided therein, such agreement shall take effect on and after the day on which the scheme comes into force.

73. Powers of the State Government to make rules.—
(1) The State Government shall have power to make specific rules in respect of the following matters.

(2) In particular and without prejudice to the generality of the foregoing powers, the State Government in consultation with the Council shall have power to make rules in respect of the following matters :—

- (i) The manner of publication of the notification regarding scheme, their modifications, variations, revocations, submission and sanction by the State Government.
- (ii) Powers that may be delegated to any Authority established under this Act or to any officer.
- (iii) Procedure to be adopted for securing co-operation of various Government Departments, the owners or other persons or bodies interested in schemes.

- (iv) All matters pertaining to land acquisition including procedure and making of awards, compensation and the possession of land by Authority in ordinary and emergent cases.
- (v) Calculation, assessment and payment of compensation in respect of property which is injuriously affected within the meaning assigned to it in section 37 of this Act.
- (vi) Calculation, assessment and collection of betterment contribution.
- (vii) Procedure of filing, hearing and deciding objections and appeals under the Act and all matters connected therewith.
- (viii) The delegation of powers to and the duties that shall be discharged by the Director and the matters on which and the manner in which he shall be consulted.
- (ix) Matters other than those referred to in foregoing clauses which are expressly or by implication requires or allowed by this Act to be prescribed by rules.
- (x) Creation and administration of fund for the purpose of implementing the provisions of this Act.

74. Power of the Authority to make bye-laws.—(1) The Authority shall have power to make bye-laws in respect of the matters enumerated under this section and not inconsistent with the rules made by the State Government—

- (i) land sub-division and lay out of public street,
- (ii) width for different classes of public streets according to the nature of traffic to be carried thereon,
- (iii) street lanes and setting back of buildings from the regular line of the street,
- (iv) zoning regulations prescribing the type or description of building which may or may not be, and the purpose for which a building may or may not be created, in any prescribed area or areas,
- (v) regulation and display of advertisement in the interest of amenity, aesthetic, or public safety,
- (vi) regulations in any manner not specifically provided for in this Act, the erection of any enclosure, wall, fence, tent or other structure on any land within the limits of the authority.

(2) The power to make bye-law under this Act shall be subject to the condition of previous publication.

(3) No such bye law shall come into force until it is approved by the State Government.

(4) The State Government may cancel their confirmation of any such bye-law and thereupon the bye-law shall cease to have effect.

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