

LAND ACQUISITION (MINES) ACT, 1885

18 of 1885

[16th October, 1885]

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"The object of this Bill is to provide for cases in which mines or minerals are situate under land which it is desired to acquire under the Land Acquisition Act, 1870 (now see Land Acquisition Act, 1894). Act XXII of 1863, which was replaced by the Land Acquisition Act, 1870, contained specific provisions (Ss. 51 and 52) for cases in which mines and minerals lay under land taken up

under that Act. These provisions were not, however, re-enacted in the Act of 1870, which as the Government is advised, contemplates the acquisition of the underlying minerals as well as the surface of the land. Hitherto this state of the law has caused no inconvenience. Now, however, owing to its being proposed to extend railways across districts where there is a certain amount of coal to be found, notice has been drawn to, the convenience of the existing law which practically compels the Government either to purchase all the mines and minerals under the land over which it is proposed to construct a line or to abandon the undertaking altogether. Under these circumstances the present Bill has been prepared. It does not however simply re-enact the provisions which Act XXII of 1863 formerly contained, inasmuch as they do not appear to be adopted to the circumstances of the case. It follows rather the rules contained in the English Railway Clauses Consolidation Act, 1845Vic, C.20, section 77 et seq.) which it extends to the acquisition of land for all purposes and not merely for the construction of Railways". * * * *-Gazette of India, 1885, Part V, page 145.

1. Short title, commencement and local extent :-

(1) This Act may be called the Land Acquisition (Mines) Act, 1885; and

1 [(2) It extends to the whole of India except the territories which, immediately before the 1st November, 1956, were comprised in Part B States.

(3) It applies in the first instance to the territories which, immediately before the 1st November, 1956, were comprised in the States of Madras, Andhra, West Bengal, Bihar, Assam and Orissa, but any State Government may, from time to time by notification in the Official Gazette bring this Act into force in the whole or any specified part of the territories to which this Act extends, under its administration.]

1. Substituted for former sub-sections (2) and (3) by 2 A.L.O., 1956,

2. Saving for mineral rights of the Governmenta :-

Except as expressly provided by this Act, nothing in this Act shall affect the right of the **1** [Government] to any mines or minerals.

1. Substituted for 'Crown' by A.L.O., 1950.

3. Declaration that mines are not needed :-

(1) When the ¹[appropriate Government] makes a declaration under section 6 of the Land Acquisition Act, 1870, that land is needed for a public purpose or for a Company, it may, if it thinks fit, insert in the declaration a statement that the mines of coal, ironstone; slate or other minerals lying under the land or any particular portion of the land, except only such parts of the mines or minerals as it may be necessary to dig or carry away or use in the construction of the work for the purpose of which the land is being acquired, are not needed.

(2) When a statement as aforesaid has not been inserted in the declaration made in respect of any land under S.6 of the Land Acquisition Act, 1870, and the Collector is of opinion that the provisions of this Act ought to be applied to the land, he may abstain from tendering compensation under section 11 of the said Land Acquisition Act in respect of the mines, and may-

(a) when he makes an award under section 14 of that Act, insert such a statement in his award;

(b) when he makes a reference to the Court under section 15 of that Act, insert such a statement in his reference; or

(c) when he takes possession of the land under section 17 of that Act, publish such a statement in such manner as the ¹[appropriate Government] may, from time to time, prescribe.

(3) If any such statement is inserted in the declaration, award or reference, or publish as aforesaid, the mines or coal, iron-stone, slate or other minerals under the land or portion of the land specified in the statement, except as aforesaid, shall not vest in³ [the Government] when the land so vests under the said Act.

"S.2 of the Bill as introduced Act required the Government to determine, before it issued its declaration under section 6 of the Land Acquisition Act, whether the land should be acquired simply under that Act, that is to say, including the minerals or whether the special provisions of this Bill should be put in force with a view to excluding the minerals from the acquisition. It has been represented that it is not for the interest of any of those concerned that an irrevocable determination should necessarily come to on so important a point at a stage of the proceedings when the circumstances of the case would in all probability be imperfectly known. The Government, it will be observed on reference to the Land Acquisition Act, has discretion to withdraw from a proposed

acquisition of land up to a considerably later stage, and it seems but reasonable that it should have a discretion to exclude the minerals from the acquisition at any time up to the same stage if it turns out that their acquisition is not essential to the undertaking, and that either the owners are unwilling to part with them or the Government or the local authority or Company concerned is unwilling to pay their full value. We have accordingly (in section 3) empowered the Collector, who in such a matter would of course, act under the control of the Government, to exclude the minerals from the acquisition at any time up to the stage of the proceedings at which the land vests, and it is no longer in the discretion of the Government to recede from the transaction."-S.C.R.

1. Substituted for "Provincial Government" by A.L.O., 1950.

3. Substituted for "the Crown" by A.L.O., 1950.

4. Notice to be given before working mines lying under land

:-

If the person for the time being immediately entitled to work or get any mines or minerals lying under any land so acquired is desirous of working or getting the same, he shall give the ¹ [appropriate Government] notice in writing of his intention so to do sixty days before the commencement of working. "It has been urged that the notice of thirty days to be given to the Government under section 3 of the Bill as introduced (now section 4 of the Act) by a mine-owner desiring to work his mines is too short having regard to the delays in communication in this country. We think the objection is reasonable and we have accordingly (in section 4 of the amended Bill) extended the period to sixty days. It has been held by the House of Lords in an important case (Dixon v. The Caledonian Railway Co., 5 App Ca 820) that when a mine-owner gives notice under S.78 of the Railway Clauses Consolidation Act, 1845 of his intention to work minerals, the Railway Company is not, for the purpose of giving its counter-notice to stop or control the working, limited to the thirty days for which the mine-owner's notice runs, that the period of thirty days is merely prescribed as a period until the expiration of which the mine-owner is debarred from working, and that the Company can at any time give its counter-notice, though of course if given at any time after the thirty days had expired and the workings had been commenced it would have no effect except as regards the further progress of the working. The opposite view, as. was pointed out by their Lordships would involve somewhat serious consequences, and it is obviously necessary that there should be no mistake as to the effect of the Bill in this respect. It would doubtless have been sufficient, so far as regards

the ultimate result, if we followed the exact wording of the English Act, on the main lines of which we are proceeding throughout. The highest Courts in this country would as a matter of course, follow thA decision of the House of Lords, but it is to be apprehended that inferior authorities might in many cases be ignorant of that decision and might mistake the effect of the wording of the English Act, which it must be admitted, is by no means clear. We have, therefore, thought it safer to amend the sections concerned in such a manner that they will in a clear and unmistakable way express the effect of the English Act as construed by the House of Lords".- S.C.R.

1. Substituted for "Provincial Government" by A.L.O., 1950.

5. Power to prevent or restrict working :-

(1) At any time or times after the receipt of a notice under the last foregoing section and whether before or after the expiration of the said period of sixty days, the¹[appropriate Government] may cause the mines or minerals to be inspected by a person appointed by it for the purpose; and

(2) If it appears to the¹[appropriate Government] that the working or getting of the mines or minerals, or any part thereof, is likely to cause damage to the surface of the land or any works thereon, the¹[appropriate Government] may publish⁴[* * * * *] a declaration of its willingness, either-

(a) to pay compensation for the mines or minerals still unworked or ungotten, or that part thereof, to all persons having an interest in the same, or

(b) to pay compensation to all such persons in consideration of those mines or minerals, or that part thereof, being worked or gotten in such manner and subject to such restrictions as the¹[appropriate Government] may in its declaration specify.

(3) If the declaration mentioned in case (a) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person.

(4) If the declaration mentioned in case (b) is made, then those mines or minerals, or that part thereof, shall not thereafter be worked or gotten by any person save in the manner and subject to the restrictions specified by the¹[appropriate Government].

⁷[(5) Every declaration made under this section shall be published in such manner as the ¹ [appropriate Government] may direct.]

"Another important English decision which points to an amendment of the Bill is that in *Smith v. Great Western Railway Co.* (2 Ch D 2351 and in appeal before the House of Lords 3 App Ca 165). We may have, under a Bill of this sort, a state of things to deal with, of which that case affords an illustration, were one person holding under a terminable lease has an immediate right to work the minerals and another person is entitled to the reversion on the expiration of the lease and perhaps to a rent or royalty during its continuance. The lease may or may not be of such a length as to admit of all the minerals being worked out during its continuance, and it may or may not be liable to be put an end to by forfeiture or otherwise before the expiration of its term. The provisions of the English Act, which deal specially with the subject now before us and which have been incorporated in this Bill, were found inadequate to provide for the exigencies of such a state of things as that referred to. They probably contemplate a settlement only with the person immediately entitled to work the mines and in order to provide for the case of a reversioner or other person interested, it was found necessary to call in the aid of a general provision of the law which would be out of place in a Bill like this. It appears to us that the simplest mode of dealing with the various interests that may co-exist in the mines is to require, in accordance with the scheme of the Land Acquisition Act, that they should all, whether present or future, be considered and compensated for simultaneously whenever the owner of the surface has occasion to exercise his power of stopping or controlling the working. We have accordingly provided in effect that where the person immediately entitled to work the mines intimates to the owner of the surface his intention to work them, and the latter after that determines to stop or control the working, the settlement of compensation must extend to all persons interested in the mines, and the stoppage or control will be binding in perpetuity on all alike".-S.C.R.

1. Substituted for "Provincial Government" by A.L.O., 1950.

4. The words "in such manner as the Governor-General in Council may, from time to time, direct" were omitted by the Devolution Act, 1920 (38 of 1920), S. 2 and Schedule I.

7. Inserted, by the Devolution Act, 1920 (38 of 1920).

6. Mode of determining persons interested and amount of compensation :-

When the working or getting of any mines or minerals has been prevented or restricted under section 5, the persons interested in those mines or minerals and the amounts of compensation payable to them respectively shall, subject to all necessary modifications, be ascertained in the manner provided by the Land Acquisition Act,

1870, for ascertaining the persons interested in the land to be acquired under that Act, and the amounts of compensation payable to them, respectively.

7. If appropriate Government does not offer to pay compensation, mines may be worked in a proper manner :-

(1) If before the expiration of the said sixt2y days the ¹[appropriate Government] does not publish a declaration as provided in section 5 , the owner, lessee or occupier, of the mines may, unless and until such a declaration is subsequently made, work the mines or any part thereof in a manner proper and necessary for the beneficial working thereof, and according to the usual manner of working such mines in the local area where the same are situate.

(2) If any damage or obstruction is caused to the surface of the land or any works thereon by improper working of the mines, the owner, lessee or occupier of the mines shall at once, at his own expense, repair the damage or remove the obstruction, as the case may require.

(3) If the repair or removal is not at once effected, or, if the ¹(appropriate Government] so thinks fit, without waiting for the same to be effected by the owner, lessee or occupier, the ¹ [appropriate Government] may execute the same and recover from the owner, lessee or occupier the expense occasioned thereby.

1. Substituted for "Provincial Government" by A.L.O., 1950.

8. Mining communications :-

If the working of any mines is prevented or restricted under section 5 , the respective owners, lessees and occupiers of the mines, if their mines extend so as to lie on both sides of the mines the working of which is prevented or restricted, may cut and make such and so many airways, headways, gateways or water-levels through the mines, measures or strata, the working whereof is prevented or restricted, as may be requisite to enable them to ventilate, drain and work their said mines; but no such airway, headway, gateway or water level shall be greater dimensions or section than may be prescribed by the ¹ [appropriate Government] in this behalf, and, where no dimensions are so prescribed not greater than eight feet wide and eight feet high, nor shall the same be cut or made upon any part of the surface or works, or so as to injure the same, or to

interfere with the use thereof. "We have introduced three new sections (8, 9 and 10) corresponding to sections 80, 81 and 82 of the Railways Clauses Consolidation Act, 1845 (8 and 9 Vict., c. 20). We question whether the object of these sections would not have been otherwise attained through the medium of the Land Acquisition Act, the provisions of which were made applicable by section 6.....; but as importance appeared to be attached to them in the memorial of the Coal Companies, we have thought it better to remove all doubts by including them. They will doubtless overlap section 6,,. but no practical harm will result from this".-S.C.R.

1. Substituted for "Provincial Government" by A.L.O., 1950.

9. Appropriate Government to pay compensation for injury done to mines :-

The ¹[appropriate Government] shall, from time to time, pay to the owner, lessee or occupier of any such mines extending so as to lie on both sides of the mines, the working of which is prevented or restricted, all such additional expenses and losses as may be incurred by him by reason of the severance of the lands lying over those mines or of the continuous working of those mines being interrupted as aforesaid, or by reason of the same being worked in such manner and under such restrictions as not to prejudice or injure the surface or works, and for any minerals not acquired by the ¹[appropriate Government] which cannot be obtained by reason of the action taken under the foregoing sections; and if any dispute or question arises between the ¹ [appropriate Government] and the owner, lessee or occupier as aforesaid, touching the amount of those losses or expenses, the same shall be settled as nearly as may be in the manner provided for the settlement of questions touching the amount of compensation payable under the Land Acquisition Act, 1870.

1. Substituted for "Provincial Government" by A.L.O., 1950.

10. And also for injury arising from any airway or other work :-

If any loss or damage is sustained by the owner or occupier of the lands lying over any such mines, the working whereof has been so prevented or restricted as aforesaid (and not being the owner, lessee or occupier of those mines), by aforesaid (and not being the owner, lessee or occupier of those mines), by reason of the making of any such airway or other works as aforesaid, which or any like work it would not have been necessary to make but for the working

of the mines having been so prevented or restricted as aforesaid, the ¹ [appropriate Government] shall pay full compensation to that owner or occupier of the surface lands for the loss or damage so sustained by him.

1. Substituted for "Provincial Government" by A.L.O., 1950.

11. Power to officer of appropriate Government to enter and inspect the working of mines :-

For better ascertaining whether any mines lying under land acquired in accordance with the provisions of this Act are being worked or have been worked, or are likely to be worked so as to damage the land or the works thereon, an officer appointed for this purpose by the ¹ [appropriate Government] may, after giving twenty-four hours notice in writing, enter into and return from any such mines or the works connected therewith; and for that purpose the officer so appointed may make use of any apparatus or machinery belonging to the owner, lessee or occupier of the mines, and use all necessary means for discovering the distance from any part of the land acquired to the parts of the mines which have been, are being or are about to be worked.

1. Substituted for "Provincial Government" by A. L.O., 1950.

12. Penalty for refusal to allow inspection :-

If any owner, lessee or occupier of any such mines or works refuses to allow any officer appointed by the ¹ [appropriate Government] for that purpose to enter into and inspect any such mines or works in manner aforesaid, he shall be punished with fine which may extend to two hundred rupees.

1. Substituted for "Provincial Government" by A.L.O., 1950.

13. If mines worked contrary to provisions of this Act, appropriate Government may require means to be adopted for safety of land acquired :-

If it appears that any such mines have been worked contrary to the provisions of this Act, the ¹[appropriate Government] may, if it thinks fit give notice to the owner lessee or occupier thereof to construct such works and to adopt such means as may be necessary or proper for making safe the land acquired, and the works thereon, and preventing injury thereto; and if after such notice, any such owner, lessee or occupier does not forthwith proceed to construct the works necessary for making safe the land acquired and the works thereon, the ¹ [appropriate Government]

may itself construct the works and recover the expense thereof from the owner, lessee or occupier.

1. Substituted for "Provincial Government" by A.L.O., 1950.

14. Construction of Act when land acquired has been transferred to a local authority or Company :-

When a statement under section 3 has been made regarding any land, and the land has been acquired by the Government, and has been transferred to, or has vested, by operation of law, in a local authority or Company, then sections 4 to 13 , both inclusive, shall be read as if for the words "the ¹[appropriate Government]", wherever they occur in those sections ² [except in section 5 , sub-section (5), and section 8] the words "the local authority or Company, as the case may be, which has acquired the land", were substituted. "An objection has been taken in some quarters to section 11 of the Bill as introduced (now section 14), which in effect gives to certain Companies the powers conferred on the Local Government by some of the foregoing provisions of the Bill. It appears to be overlooked that the section in question can apply only to Companies established for such purposes and occupying such a position from a public point of view as would warrant the Government in acquiring land on their behalf. In particular it is provided, by s.48 of the Land Acquisition Act, 1870 , S.49 of the Land Acquisition Act, 1870 (now see s.40 Land Acquisition Act, 1894 , S.41 Land Acquisition Act, 1894), that land shall not be acquired for a Company under that Act, unless it is needed for a work likely to prove useful to the public and the Company enters into an agreement with the Government settling among other matters, the time within which and the conditions on which the work shall be executed and maintained and the terms on which the public shall be entitled to use it...."-S.C.R,

1. Substituted for "Provincial Government" by A.L.O., 1950.

2. Inserted by the Devolution Act, 1920 (28 of 1920).

15. Pending cases :-

Repealed by the Repealing and Amending Act, 1937 (20 of 1937) section 3 and Schedule II.]

16. Definition of local authority and Company :-

In this Act-

(a) "local authority" means any municipal committee, district board, body of port commissioners or other authority legally entitled to, or

entrusted by the Government with, the control or management of any municipal or local fund; and

(b) "Company" means a company registered under any of the enactments relating to Companies from time to time in force in ¹[India] or formed in pursuance of an Act of Parliament ²[of the United Kingdom] or by Royal Charter or Letters Patent;

³ [(c) "appropriate Government" means in relation to acquisition of land for the purposes of the Union, the Central Government, and in relation to acquisition of land for any other purposes, the State Government.]

1. Substituted for "Part A States and Part C States" by A.L.O., 1950.

2. Inserted by A.L.O., 1950.

3. Added, by A.L.O., 1950.

17. This Act to be read with Land Acquisition Act, 1870 :-

This Act shall, for the purposes of all enactments for the time being in force, be read with and taken as part of the Land Acquisition Act, 1870.