

WORKS OF DEFENCE ACT, 1903

7 of 1903

[20th March, 1903]

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WORKS OF DEFENCE ACT, 1903

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Amending Act 39 of 1965. The Indian Works of Defence Act, 1903 (7 of 1903) provides for the imposition of restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions. The Act at present does not extend to some areas such as the territories which immediately before the 1st November, 1956, were comprised in Part B States. Hence it is not possible to impose restrictions which may be considered necessary upon the use and enjoyment of land around such defence works located in those territories. It is, therefore, proposed to amend the Act so as

to make its provisions applicable to the whole of India including the areas to which it does not at present extend. Gaz. of Ind., 23-8-1965, Pt. II, S. 2, Ext., p. 817. Amending Act 50 of 1974. The Indian Works of Defence Act, 1903, inter alia provides for the imposition of restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions. The restrictions under the Act are imposed through civil authorities, normally the Collector under section 37 of the Act, if the Collector or the officer authorised under section 6 is opposed or impeded in doing anything directed or permitted by the Act, he is empowered to enforce compliance if he is himself a magistrate and if not, he has to apply to a magistrate and in the cities of Calcutta, Madras and Bombay to the Commissioner of Police, who shall enforce compliance. Since the enactment of the Act, Commissioners of Police have been appointed for certain cities other than the presidency towns of Calcutta, Madras and Bombay. It is possible that the Commissioners of Police may be appointed in future for more cities also. With a view to enabling the Collector and the officer authorised under section 6 to apply to the Commissioners of Police for enforcing compliance with the Act in any area for which a Commissioner of Police has been appointed. it is proposed to amend section 37 of the Act suitably.

2. The Bill is mainly intended to achieve the above objects. Gaz. of Ind., 27-11-1973, Pt. II, S. 2, Ext., p. 949.

PART 1

PRELIMINARY

1. Short title and extent :-

(1) This Act may be called The b[* * * * *] Works of Defence Act, 1903; and

1 [(2) It extends to the whole of India].

1. Substituted for the original clauses (c) and (d) by the Indian Works of Defence (Amendment) Act, 1921 (11 of 1921), S. 2.

2. Definitions :-

In this Act, unless there is something repugnant in the subject or context,

(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the imposition of restrictions upon the use and enjoyment of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land;

a[(c) the expression "District" means one of the Districts into which India is, for military purposes for the time being, divided; it includes a Brigade area which does not form part of any District, and any area which the ¹[Central Government] may, by notification in the ¹[Official Gazette], declare to be a District for all or any of the purposes of this Act;

(d) the expression "General Officer Commanding the District" means the officer for the time being in command of the forces in a District;]

(e) the expression "Commanding Officer" means the officer for the time being in command of a work of defence;

(f) the expression "Collector" includes any officer specially appointed by the ³[Central Government] to perform the functions of a Collector under this Act;

(g) the expression "Court" means a principal Civil Court of original jurisdiction, unless the ⁴ [Central Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act;

"Clause 2. Owing to the altered procedure which we propose for adoption in Part II, the maximum period, which may elapse between the publication of the preliminary notice of a declaration to impose restrictions. and the issue of the subsequent notice calling for the presentation of claims to compensation, will, in ordinary cases amount to eighteen months, and this period may, with the previous sanction of the Governor-General in Council, be extended to three years. The actual proceedings in assessment up to the making of the award may not impossibly, at any rate in complicated cases, occupy a further period of a year. In these circumstances, houses and other constructions, which will be affected by the restrictions imposed under clause 7, may, unless the owner is given facilities for putting them in repair, fall into ruin long before the investigation for purposes of assessment is completed, with the result that the difficulty of proving the actual amount (i) the following persons shall be deemed to be interested in the Bill will be greatly enhanced. Even where the emergent powers conferred, by clause

6, sub-clause (3), are exercised, a period of several months, during which the condition, more especially of small and unsubstantial structures may be seriously altered by rain, may easily elapse before demolition commences; and, in these cases the report of the demolishing officer with respect to the buildings demolished by him is not unlikely: from the necessity of the case, to be most tangible evidence to which the parties can afterwards appeal. We think it desirable, therefore, to define the expression "maintained" for the purposes of clauses 6 and 7, in such a manner as to leave unaffected the liberty to repair buildings and other constructions during the interval from the publication of the preliminary notice to the making of the award or, in case of emergency, to demolition in anticipation of the award." S.C.R.

(h) "maintain", with its grammatical variations and cognate expressions, does not, when used in relation to a house or other construction, include the doing of any act necessary for keeping such house or construction, until the making of the award referred to in section 12 or until the exercise, prior to the making of the award, of the powers of demolition conferred, in case of emergency, by section 6, sub-sections (1) and (3), in the state in which it was at the time of the publication of the notice referred to in section 3, sub-section (2);

(i) the following persons shall be deemed "entitled to act" as and to the extent hereinafter provided, that is to say,- trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any case, and that to the same extent as the persons beneficially interested could have acted if free from disability; a married woman, in cases to which the English law is applicable, shall be deemed the person so entitled to act, and, whether of full age or not, to the same extent as if she were unmarried and of full age; and the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted: Provided that

(i) no person shall be deemed "entitled to act" whose interest in the subject-matter is shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act;

(ii) in every case the person interested may appear by a next friend or, In default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to

act on his behalf in the conduct thereof;

(iii) the provisions of Code of Civil Procedure, 1908 shall, mutatis mutandis, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian, for the case, in proceedings under this Act; and

(iv) no person "entitled to act" shall be competent to receive the compensation money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land upon the use and enjoyment of which restrictions are to be imposed and receive and give a good discharge for the purchase-money on a voluntary sale.

1. Substituted for the words "local Government" and "local official Gazette", by A.O. 1937 (1-4-1937).

3. Substituted for the words "Local Government" by A. O., 1937 (1-4-1937).

4. Substituted for the words "Local Government" by A. O., 1937 (1-4-1937).

2A. Construction of references to laws not in force, or any functionary not in existence, in any area :-

Any reference in this Act to any law which is not in force in any area or 'any reference therein to any functionary not in existence in any area shall, in relation to that area, be construed as a reference to the corresponding law, if any, in force or to the corresponding functionary, if any, in existence, in that area.]

PART 2

IMPOSITION OF RESTRICTIONS

3. Declaration and notice that restrictions will be imposed :-

(1) Whenever it appears to the ¹[Central Government] that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended, to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders.

(2) The said declaration shall be published in the ² [Official Gazette] and shall state the district or other territorial division in which the land is situate and the place where a sketch plan of the

land, which shall be prepared on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in section 7 , may be inspected; and the Collector shall cause public notice of the substance of the said declaration to be given at convenient places in the locality,

(3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions.

OBJECTS AND REASONS "Clause 3. To prevent the recurrence of misconception, we have sought to render it clear that the initial declaration under this clause need only be accompanied by a "sketchplan", illustrating, by way of general notice to the public, the outline of the zones within which all or any of the restrictions specified in clause 7 will attach. The "de-tailed plan" referred to in clause 8 is a separate document which is required for the purposes of minute and detailed assessment of compensation and for the preparation of which the initial declaration cannot be postponed". S.C.R.

1. Substituted for the words "Local Government" by A.O., 1937 (1-4-1937).

2. Substituted for the words "Local Official Gazette", by A.O., 1937 (1-4-1937).

4. Power to do preliminary Acts after publication of notice under section 3, sub-section (2) :-

It shall be lawful for such officer as the ¹ [Central Government] may, by general or special order, authorise in this behalf, and for his servants and workmen, at any time after publication of the notice mentioned in section 3 , sub-section (2), to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether any and, if so, what restrictions should be imposed on the use and enjoyment of the land, to set out the boundaries of the land upon the use and enjoyment of which restrictions are to be imposed, or of any part of such land, to mark such levels, boundaries and line by placing marks and cutting trenches, and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle: Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling-house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

1. Substituted for the words "Local Government" by A. O., 1937 (1-4-1937).

5. Payment for damage :-

The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

6. Further powers exercisable after publication of notice under section 3, sub-section (2) :-

(1) Whenever a declaration has been made and public notice thereof has been given under section 3 , it shall, subject to the provisions of sub-sections (2) to (4), be lawful for such officer as the ¹[Central Government] may, by general or special order, authorise in this behalf, and for his servants and workmen, to enter and demolish any buildings or other constructions on the surface, to cut down or grub up all or any of the trees, to remove or alter all or any of the banks, fences, hedges and ditches, to make under ground and other drains, to fill up all excavations, and demolish all buildings and other constructions below the surface, and generally to level and clear the said land and do all such acts for levelling and clearing the same as he may deem necessary or, proper but in such manner nevertheless that evidence of the boundaries of the lands held by different owners may be preserved.

(2) The powers conferred by sub-section (1) shall not be exercised,

(a) save as otherwise provided by sub-section (3), before the making of the award hereinafter referred to in section 12 , nor

(b) save as otherwise provided by sub-section (4), after the expiration of six months from the making of the said award, or any shorter period on the expiration of which the officer exercising such powers gives notice to the Collector that there will be no further exercise of them.

(3) In case of emergency, the ¹[Central Government] ³ [* *] may, by notification in the Official Gazette, declare that all or any powers conferred by sub-section (1) may be exercised at any time within six months after the publication of the notice referred to in section 3 , sub-section (2), and such powers may be exercised accordingly,

and the said notification shall be conclusive proof of emergency.

(4) Nothing in sub-section (2) shall be deemed to preclude any such officer or his servants or workmen from exercising at any time the said powers for the purpose of removing, wholly or in part, any building or other obstruction maintained, created, added to, altered, planted, slacked, stored or otherwise accumulated in contravention of this Act or of any rule or order made thereunder or of any condition prescribed in accordance therewith.

OBJECTS AND REASONS "Clause 6. The original Bill, following the lines of the Defence Act, 1860 (23 and 24 Vict., c. 112), section 34, purported, in all cases, to authorize the exercise of the powers of demolition conferred thereby after the expiration of fourteen days from the preliminary notice. On the other hand, it restricted to six months the period of three years during which, under the English Statute, acts in pursuance of those powers must be completed. One result of this abridgment of time was that the issue of the notice calling upon persons affected to present their claims for compensation was postponed until after the demolition was complete. We think that this procedure is, in several respects, capable of improvement. At the outset, we see no necessity, in ordinary cases, for exercising any power of demolition until after the Collector has completed his assessment and made his award. On the contrary, it will be difficult, if not impossible, to arrive at a really reliable estimate on the basis of statements relating to structures which have ceased to exist. In the case of emergency, the exigencies of defence in this country may render impracticable the delay of fourteen days, which, on the analogy of peace conditions in England, the original Bill would have rendered obligatory in all circumstances alike. We propose to recognize the distinction by enacting expressly that the acts of demolition, for the completion of which we would retain the very abridged period of six months, shall not commence until after the making of the award; and from this rule we would except only the case, not of mere urgency as contemplated by S.17 OF the Land Acquisition Act, 1894, but of actual emergency sufficiently grave to warrant a notification to which the previous sanction of the Governor-General in Council is required. As an additional safeguard, we suggest that emergent power, so notified, shall not be exercised after the expiration of a period of six months after the publication of the preliminary notice. Having thus narrowed down these powers to absolutely extreme cases, we consider it inexpedient to hamper the discretion of the officer exercising them by accepting a suggestion to enact a proviso directing, on the analogy of S.17 OF the Land Acquisition Act, 1804, sub-section (1), that no building shall be entered or demolished without giving the occupier reasonably sufficient notice to enable him to remove his moveable property without unnecessary inconvenience. To give as much notice as

appears reasonably practicable is always a convenience to all parties concerned: but we are reluctant to prescribe, for cases of emergency, a proviso, necessarily in general terms, which would only result in claims raising the difficult question of fact whether, in the particular circumstances, an hour or two longer might or might not have been allowed." S.C.R.

1. Substituted for the words "Local Government" by A.O., 1937 [1-4-1937].

3. The words "with the previous sanction of the Governor-General in Council" were omitted, by A.O., 1937 [1-4-1937]

7. Restrictions :-

From and after the publication of the notice mentioned in section 3, sub-section (2), such of the following restrictions as the ¹[Central Government] may in its discretion declare therein shall attach with reference to such land, namely:

(a) Within an outer boundary which, except so far as is otherwise provided in section 39, sub-section (4), may extend to a distance of two thousand yards from the crest of the outer parapet of the work,

(i) no variation shall be made in the ground-level, and no building, wall, bank or other construction above the ground shall be maintained, erected, added to or altered otherwise than with the written approval of the b[General Officer Commanding the District], and on such conditions as he may prescribe;

(ii) no wood, earth, stone, brick, gravel, sand or other material shall be stacked, stored or otherwise accumulated: Provided that, with the written approval of the c [General Officer Commanding the District] and on such conditions as he may prescribe, road-ballast, manure and agricultural produce may be exempted from the prohibition: Provided also that any person having control of the land as owner, lessee or occupier shall be bound forthwith to remove such road-ballast, manure or agricultural produce, without compensation, on the requisition of the Commanding Officer:

(iii) no surveying operation shall be conducted otherwise than by or under the personal supervision of a public servant duly authorised in this behalf, in the case of land under the control of military authority, by the Commanding Officer and, in other cases, by the Collector with the concurrence of the Commanding Officer; and

(iv) where any building, wall, bank or other construction above the ground has been permitted under clause (i) of this sub-section to

be maintained, erected, added to or altered, repairs shall not, without the written approval of the b[General Officer Commanding the District], be made with materials different in kind from those employed in the original building, wall, bank or other construction.

(b) Within a second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the work, the restrictions enumerated in clause (a) shall apply with the following additional limitations, namely:

(i) ²[no building, wall, bank or other construction of permanent materials above the ground shall be maintained otherwise than with the written approval of the General Officer Commanding the District and on such conditions as he may prescribe, and no such building, wall, bank or other construction shall be erected:] Provided that, with the written approval of the ¹[General Officer Commanding the District] and on such conditions as he may prescribe, huts, fences or other constructions of wood or other materials, easily destroyed or removed, may be maintained, erected, added to or altered: Provided also, that any person having control of the land as owner, lessee or occupier shall be bound forthwith to destroy or remove such huts, fences or other constructions, without compensation, upon an order in writing signed by the ⁴[General Officer Commanding the District]; and

(ii) live hedges, rows or clumps of trees or orchards shall not be maintained, planted, added to or altered otherwise than with the written approval of the ³[General Officer Commanding the District] and on such conditions as he may prescribe.

(c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work, the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation, namely: no building or other construction on the surface, and no excavation, building or other construction below the surface, shall be maintained or erected: Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, ⁶ [a building or other construction on the surface may be maintained and] open railings and dry brush-wood fences may be exempted from this prohibition.

1. Substituted for the words "General Officer Commanding the Division, District or Brigade". by A.O., 1937 [1-4-1937].

2. Substituted for the words "General Officer Commanding the

Division", by the Indian Works of Defence (Amendment) Act, 1921 (11 of 1921), S. 3.

4. Substituted for the words "no building, wall, bank or other construction of permanent materials above the ground shall be maintained or erected" by the Indian Works of Defence (Amendment) Act, 1940 (28 of 1940), S. 2

6. Inserted, by the Indian Works of Defence (Amendment) Act, 1921 (11 of 1921), S. 3.

8. Land to be marked out, measured, registered and planned :-

As soon as may be after the publication of the declaration aforesaid, the Collector shall cause the land to be marked out and measured, and shall also prepare a register and a detailed plan, which shall be on a scale not smaller than six inches to the mile, showing accurately every building, tree and other obstruction.

9. Notice to persons interested :-

(1) At any time before the expiration of

(a) the period of eighteen months from the publication of the declaration referred to in section 3 , or

(b) such other period not exceeding three years from the said publication as the ¹[Central Government] ² [* * *] may, by notification in the c[Official Gazette] direct in this behalf, the Collector shall cause public notice to be given at convenient places on or near the land, stating the effect of the said declaration and that claims to compensation for all interests in such land affected by anything done or ordered in pursuance of such declaration may be made to him: Provided that, where anything has been done in exercise of the powers conferred, in case of emergency, by section 6 , sub-section (3), the notice prescribed by this section shall be given as soon as may be thereafter.

(2) Such notice shall state the particulars of any damage ordered to be done or, in the case referred to in section 6 , sub-section (3), done in exercise of any of the powers conferred by the said section, and the particulars of any restrictions attaching to the land under section 7 , and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for damage to such

interests and their objections (if any) to the measurements made under section 8 . The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business.

OBJECTS AND REASONS "Clause 9 Our proposal, as explained under clause 6, to postpone the exercise of powers of demolition, except in emergent cases, until after the award referred to in clause 11, removes the principal reason for fixing at six months the period after which the second notice calling for claims to compensation must issue. It is necessary to fix some definite period because clause 38 invests the Local Government with a power of withdrawal from the initial declaration and, if the survey, planning and valuing operations preliminary to the actual assessment owners, whose property is transferred in the interim and who cannot, therefore, claim compensation, may suffer owing to the depreciated market-value. There seems to be a consensus of opinion that six months will often be insufficient for the purpose; but a period of three years over which the proceedings under the Statute may extend, will not usually be required; and we would; therefore suggest eighteen months which with the previous sanction of the Governor-General in Council, may be extended to three years. Where emergent powers are exercised under clause 6, sub-clause (3), any lapse of time after the demolition of a building increases the difficulty of proof of damage; and in such cases, therefore, we think it reasonable to impose upon the periods defined in sub-clause (1) the further limitation that notice must be given as soon as may be after the exercise of any such power. We have defined with greater distinctness, in sub-clause (2), the particulars to be contained in the second notice calling for claims. A precise statement of damage caused or to be caused under clause 6 will be necessary in view of the altered procedure by which the award will ordinarily precede such damage. A consequential amendment has been made in clause 13, sub-clause (1). From sub-clause (4), the reference to registration under the Post Office Act, 1898 VI of 1898), has been omitted as sufficiently covered by the General

Clauses Act, 1897 (X of 1897), section 27. A similar alteration will be found in the proviso to clause 3I, sub-clause (3)." S.C.R.

1. Substituted for the words "Local Government" by A.O., 1937 [1-4-1937].

2. The words "with the previous sanction of the Governor-General in Council" were omitted, by A.O., 1937 [1-4-1937].

10. Power to require and enforce the making of statements as to names and interests :-

The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement,

11. Application of certain sections of the Indian Penal Code :-

Every person required to make or deliver a statement under section 9 or section 10 shall be deemed to be legally bound to do so within the meaning of sections 175 and Section 176 of the Indian Penal Code, 1860 .

12. Inquiry and award by Collector :-

On the day fixed under section 9 or on any other day to which the inquiry has been adjourned, the Collector shall proceed to inquire into the objections (if any) which any person interested has stated pursuant to a notice given under the said section to the measurements made under section 8 , and into the decrease in the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of

(a) the true area of the land and the nature of the obstructions from which the land is to be kept free;

(b) the compensation which in his opinion should be allowed for any damage caused or to be caused under section 6 and for any restrictions imposed under section 7 ; and

(c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or

of whose claims he has information, whether they have respectively appeared before him or not.

13. Award of Collector when to be final :-

(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested; whether they have respectively appeared before the Collector or not, of the true area of the land, the nature of the said obstruction from which the land is to be kept free, the damage caused or to be caused under section 6 , the value of the rights restricted under section 7 and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

14. Adjournment of inquiry :-

The Collector may, for any cause he thinks fit, from time to time adjourn the inquiry to a day to be fixed by him.

15. Power to summon and enforce attendance of witnesses and production of documents :-

For the purpose of inquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ,

16. Matters to be considered and-neglected :-

In determining the amount of compensation, the Collector shall be guided by the provisions contained in section 3 and section 4 .

17. Supplementary proceedings :-

Whenever the officer exercising powers conferred by section 6 considers it necessary that anything in respect of which any person is or may be entitled to compensation but of which no notice has been given or compensation awarded, under section 9 and section 12 , respectively, should be done in pursuance of the said powers, the collector shall cause supplementary notice to be given, as nearly as may be, in the manner prescribed by section 9 and subject to the limit of time imposed by sub-section (1) of that section, and the provisions of section 10 to section 16 shall, so far

as they are applicable, be deemed to apply to any further inquiry and award which may be held or made in consequence of such supplementary notice.

PART 3

REFERENCE TO COURT AND PROCEDURE THEREON

18. Reference to Court :-

(1) Any person interested who has not accepted the award may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested: Provided that every such application shall be made,

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 13 ; sub-section (2) or within six months from the date of the Collector's award, whichever period shall first expire.

(2) The application shall state the grounds on which objection to the award is taken

19. Collectors statement to the Court :-

(1) In making the reference the Collector shall state, for the information of the Court, in writing under his hand

(a) the situation and extent of the land with particulars of any damage caused under section 6 or of restrictions imposed under section 7 ;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount of compensation awarded under section 12 ; and

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon and of the statements in

writing made or delivered by, the parties interested respectively.

20. Service of notice :-

The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons namely ;

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land, the nature of the obstructions or the amount of the compensation, the Collector

.

21. Restriction on scope of proceedings :-

The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

22. Proceedings to be in open Court :-

Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court in the ¹ [State] shall be entitled to appear, plead and act, as the case may be, in such proceeding.

1. Substituted for the words "Local Government" by A. O., 1937 (1-4-1937).

23. Matters to be considered in determining compensation :-

:-

(1) In determining the amount of compensation to be awarded for damage caused, or to be caused, or for restrictions imposed under this Act, the Court shall take into consideration

(a) the actual decrease in market-value of the land owing to the publication of the declaration relating thereto under section 3 and any damage caused or to be caused under section 6 ;

(b) the damage sustained by the person interested, by reason of the removal of any standing crops in the exercise of any power conferred by section 6 ;

(c) the damage (if any) sustained by the person interested, by reason of ceasing to be able to use such land conjointly with his other land;

(d) the damage (if any) sustained by the person interested, by anything done or ordered under section 6 and section 7 injuriously affecting his other property, movable or immovable, in any other manner, or his earnings; and

(e) if, in consequence of the imposition of restrictions, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change.

(2) In addition to the amount representing the actual decrease in the market-value of the land as above provided, the Court shall in every case award a further sum of fifteen per centum on such amount.

OBJECTS AND REASONS "Clause '23. We have recast the wording of sub-clause (1), paragraph (a), to preclude argument to the effect that Court must take into consideration the decrease in market-value which has actually occurred between the two points of time specified, irrespective of the question whether such decrease was occasioned by the publication of the declaration under clause 3 or any damage caused or to be caused under clause 6. From paragraph (b) we have removed the reference to "trees" which, in the case of removal of obstruction, must, we think, be taken into consideration under paragraph (a)." S.C.R.

24. Matters not to be considered in determining compensation :-

In determining the amount of compensation to be awarded for damage caused, or to be caused, or for restrictions imposed under this Act, the Court shall not take into consideration

(a) the degree of urgency which has led to the damage or the imposition of restrictions;

(b) any disinclination of the person interested to submit to damage or restrictions;

(c) any damage sustained by him, which, if caused by a private person, would not render such person liable to a suit;

(d) any increase to the value of the other land of the person interested, accruing or likely to accrue from anything done under

this Act; or

(e) any outlay or improvements on, or disposal of, the land commenced, made or effected without the sanction of the Collector after the date of the publication of the declaration under section 3 .

OBJECTS AND REASONS "Clause 24. We have omitted the words 'of the land or', which the original Bill re- produced from the fifth clause of s.24 of the Land Acquisition Act, 1894. The posi- tion in the two cases appears to us to be essentially different. Under the enactment cited, the land is acquired by the Government which benefits by the increase. The Bill, however, contemplates a continuance of the owner's title and occupation with compensa- tion for any damage occasioned by restrictions upon use and enjoyment; but if the value of any portion of the land is actually increased, the damage must, of necessity, be proportionately reduced, and the point must, therefore, be taken into account under clause 23, sub-clause (1), paragraph (a)." S.C.R.

25. Rules as to amount of compensation :-

(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 6 , the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under S. 1.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount award- ed by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allow- ed by the Judge) to make such claim, the amount awarded to him by the Court-shall not be less than, and may exceed, the amount awarded by tht Collector

.

26. Form of awards :-

Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under section 23 , sub- section (1), clause (a), and also the amounts (if any) respectively award- ed under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

27. Costs :-

(1) Every such award shall also state the amount of costs incurred

in the proceedings under this Part, and by what persons and in what proportion they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court is of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. Collector may be directed to pay interest on excess compensation :-

If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date of his award to the date of payment of such excess into Court.

PART 4

APPORTIONMENT OF COMPENSATION

29. Particulars of apportionment to be specified :-

Where there are several persons interested, if such persons agreed in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

30. Dispute as to apportionment :-

When the amount of compensation has been settled under section 2 , if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

PART 5

PAYMENT

31. Payment of compensation, or deposit of same in Court :-

(1) On making an award under section 2 , the Collector shall tender payment of the compensation awarded by him to the persons interested thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in sub-section (2).

(2) If they do not consent to receive it, or if there is no person competent to alienate the land, or if there is 'any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 8 would be submitted: Provided, first, that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount: Provided, secondly, that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 8 : Provided, thirdly, that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the ¹ [Central Government] instead of awarding a money-compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, or by the remission of land-revenue on the same or on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in sub-section (3) shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

1. Substituted for the words "or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police" by the Works of Defence (Amendment) Act, 1974 (50 of 1974), S. 3(12-12-1974).

32. Investment of money deposited in respect of lands belonging to persons incompetent to alienate :-

(1) If any money is deposited in Court under section 25 , sub-section (2), and it appears that the land in respect of which the same was awarded belonged to any person who had no power to alienate the same, the Court shall order the money to be invested

(a) in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money was deposited is held, or,

(b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as it thinks fit; and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same are applied .

(i) in the purchase of such other lands as aforesaid; or

(ii) in payment to any person or persons becoming absolutely entitled there- to.

(2) In all cases of moneys deposited to which this section applies, the Court shall order the cost of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:

(a) the costs of such investment as aforesaid;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities in which such moneys are for the time being invested, and for the payment out. of Court of the principal of such moneys and the costs of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

33. Investment of money deposited in other cases :-

If any money is deposited in Court under this Act for any cause other than that mentioned in section 32 ; the Court may, on. the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as.it thinks fit, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefit therefrom as they might have had from the land in respect of which such money was deposited or as near thereto as may be.

34. Payment of interest :-

When the amount of any compensation award- ed under this Act is not paid or deposited within fifteen days of making the award, the Collector shall pay the amount awarded 'with interest thereon at the rate of six per centum per annum from the date of the award until it is so paid or deposited.

35. Service of notices :-

(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 3 , sub-section (2), by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court- house and also in some conspicuous part of the land upon which restrictions are to be imposed : Provided that, if the Collector or Judge so directs, a notice may be sent by post in a letter addressed to the person named therein at his last known residence, address or place of business and service of it may be proved by the production of the addressee's receipt

.

36. Penalties :-

Whoever wilfully

(a) obstructs any person in doing any of the acts authorised by section 4 , section 6 or section 8 , or

(b) destroys, damages, alters or otherwise interferes with the ground-level or any work done under section 6 , or

(c) contravenes any of the provisions of section 7 or any condition prescribed thereunder, shall be punishable with imprisonment for a term which may extend to one month or with fine which may extend to fifty rupees, or with both, and, in the case of a continuing offence, with an additional fine which may extend to five rupees for every day after the first in regard to which he is convicted of having persisted in the offence; and any expenses incurred in

removing the effects of his offence may be recovered from him in the manner provided by the law for the time being in force for the recovery of fines.

37. Magistrate to enforce the terms of the Act :-

If the Collector or officer authorised under section 6 is opposed or impeded in doing anything directed or permitted by this Act, he shall, if a Magistrate, enforce compliance, and, if not a Magistrate, he shall apply to a Magistrate¹ [or (within any area for which a Commissioner of Police has been appointed) to the Commissioner of Police] and such Magistrate or Commissioner (as the case may be) shall enforce compliance.

1. Substituted for the words "The Central Government may make rules" by the Works of Defence (Amendment) Act, 1974 (50 of 1974), S. 4 (12-12-1974).

38. Completion of imposition of restrictions not compulsory, but compensation to be awarded when not completed :-

(1) The¹ [Central Government] shall be at liberty to withdraw from the imposition of any declared restrictions before any of the measures authorised by section 6 have been taken.

(2) Whenever the¹ [Central Government] withdraws the imposition of any declared restrictions, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said restrictions.

(3) The provisions of Part III shall apply, so far as may be, to the determination of the compensation payable under this section.

1. Substituted for the words "The Central Government may make rules" by the Works of Defence (Amendment) Act, 1974 (50 of 1974), S. 4 (12-12-1974).

39. Demolition of part of house or building and imposition of restrictions on part of land :-

(1) The provisions of this Act shall not be put in force for the purpose of demolishing or acquiring the right to demolish a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall

be demolished or that the right to demolish the whole of it shall be acquired: Provided that the owner may at any time before the Collector has made his award under section 22 , by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be demolished, or that the right to demolish the whole of it shall be acquired: Provided also, that if any question shall arise as to whether any building or other construction proposed to be demolished under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question, to the Court, and such building or other construction shall not be demolished until after the question has been determined. In deciding on such a reference the Court shall have regard to the question whether the building or other construction proposed to be demolished is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim of the kind referred to in section 21 , sub-section (1), clause (c), by a person interested, on account of ceasing to be able to use the land, upon the use and enjoyment of which restrictions are to be imposed, conjointly with his other land, the ¹ [Central Government] is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the imposition of restrictions upon the whole of the land of which the land upon the use and enjoyment of which it was first sought to impose restrictions forms a part.

(3) In the case provided for by sub-section (2) no fresh declaration or other proceeding under section 33 to section 34 shall be necessary; but the Collector shall without delay furnish a copy of the order of the a[Central Government] to the person interested, and shall thereafter proceed to make his award under section 22 .

(4) Notwithstanding anything contained in section 17 , clause (a), any land, upon the use and enjoyment of which restrictions are imposed under this section, may be included in the outer boundary, even though its distance from the crest of the outer parapet of the work exceeds two thousand yards

1. Substituted for the words "The Central Government may make rules" by the Works of Defence (Amendment) Act, 1974 (50 of 1974), S. 4 (12-12-1974).

40. Exemption from stamp-duty and fees :-

No award or agreement made under this Act shall be chargeable with stamp-duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

41. Notice in case of suits for anything done in pursuance of Act :-

No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

42. Code of Civil Procedure to apply to proceedings before Court :-

Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Code of Civil Procedure, 1908 shall apply to all proceedings before the Court under this Act.

43. Appeals in proceedings before Court :-

Subject to the provisions of the Code of Civil Procedure, 1908 applicable to appeals from original decrees, an appeal shall lie to the Supreme Court from the award or from any part of the award of the Court in any proceeding under this Act.

44. Power to make rules :-

(1) ¹[The Central Government may, by notification in the Official Gazette, make rules] for the guidance of officers in all matters connected with the enforcement of this Act.

(2) The power to make rules under sub-section (1) shall be subject to the condition of the rules being made after previous publication.

² [(3) Every rule made under this section shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that

rule.]

1. Substituted for the words "The Central Government may make rules" by the Works of Defence (Amendment) Act, 1974 (50 of 1974), S. 4 (12-12-1974).

2. Substituted for sub-section (3), by the Works of Defence (Amendment) Act, 1974 (50 of 1974), S. 4 (12-12-1974)