

Bengal Tanks Improvement Act, 1939

15 of 1939

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PREAMBLE

An Act to provide for the improvement of tanks in Bengal for purposes of irrigation.

Whereas it is expedient to provide for the improvement of tanks in Bengal for purposes of irrigation;

It is hereby enacted as follows:-

1. For Statement of Objects and Reasons, see the Calcutta Gazelle, Extraordinary, dated the 6th August. 1937. page 217; and for Report of the Select Committee, see the Calcutta Gazette, dated the 28th July. 1938. Part IVA. pages 151-159; and for proceedings of the Bengal Legislative Assembly, see the Bengal Legislative Assembly Proceedings-1937. Vol. LIU, No. 2. pages 314-320. 1938. Vol. LIII. No. I, page 66. and 1938. Vol. LIII, No.3, page 173 and pages 222-237; and for proceedings of the Bengal Legislative Council, see the Bengal Legislative Council Debates-1939. Vol. I. page 56. page 137. pages 451-456 and pages 467-485, 1939. Vol. II. pages 168-169. page 526 and page 954.

1. Short title, extent and commencement :-

(1) This Act may be called the Bengal Tanks Improvement Act.

1939.

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

(3) It shall come into ²force in such areas on such dates as the ³[State] Government may, by notification in the Official Gazette, direct.

1. The words within square brackets were substituted for the word "Bengal" by para. (2) of An. 3 of the Indian Independence (Adaptation of Bengal and Punjab Acts) Order. 1948.

2. This Act was brought into force in such areas and on such dates as follows:-

(1) On the 22nd November, 1940, in the districts of Birbhum. Bankura. Burdwan and Murshidabad (vide notification No. 10772 Misc., dated the 19th November, 1940. published in the Calcutta Gazette, dated the 28th November, 1940. Part I, page 3215);

(2) On the 10th April, 1941, in the district of Malda (vide notification No. 3751 Misc., dated the 5th April. 1941, published in the Calcutta Gazette, dated the 10th April, 1941. Part I, page 877);

(3) On the 6th May, 1943, in the district of Nadia (vide notification No. 6467 Misc., dated the 1st May. 1943. published in the Calcutta Gazette, dated the 13th May. 1943, Part I, page 993);

(4) On the 22nd June, 1944, in the district of Midnapore (vide notification No. 10728 Misc.. dated the 14th June. 1944, published in the Calcutta Gazette, dated the 22nd June, 1944, Part I, page 829);

(5) On the 17th August, 1944. in the district of Hooghly (vide notification No. 13826 Misc.. dated the 12th August. 1944. published in the Calcutta Gazette, dated the 17th August, 1944, part I, page 1043);

(6) On the 28th November, 1945, in the district of Dinajpur (vide notification No. 64 T.I., dated the 15th November. 1945, published in the Calcutta Gazette, dated the 29th November, 1945. Part I. page 1977);

(7) On the 1st September, 1948. in the district of 24-Parganas (vide notification No. 5097 T.I., dated the 12th August. 1948, published in the Calcutta Gazette, dated the 26th August. 1948, Part 1, page 1156);

(8) On the 1st March. 1959, in the district of Howrah (vide notification No. 1852 T.I., dated 17.2.59, published in the Calcutta Gazette of 1959, Part I, page 1056);

(9) On the 19th November, 1959. in the district of Purulia (vide notification No. 2026 T.I., dated 1.10.59, published in the Calcutta Gazette of 1959, Part 1. page 37.35).

3. This word was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. Definitions :-

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

¹(a1) "agricultural land" includes land used for the growing of vegetables and the like and also waste land which is capable of cultivation but does not include a fruit garden, an orchard, any temple, mosque or homestead land;

(1) "authorised person" means the Collector, a local authority, co-operative society, or any other person who takes possession of a tank under the provisions of this Act and includes the successors in interest of such a person;

(2) "Collector" includes a magistrate in charge of a subdivision of a district and any officer appointed by the ²[State] Government to exercise all or any of the functions of a Collector under this Act;

(3) "co-operative society" means a society registered under ²[the Bengal Co-operative Societies Act, 1940(Ben. Act XXI of 1940.)];

(4) "derelict tank" means a tank which has been declared to be a derelict irrigation work under section 4;

(5) "period of possession" means the period from the time when possession is first taken of a tank under section 5 or section 6 until the time when possession thereof is restored under section 21;

³(5a) "person having control over a tank" does not include a person by whom the tank is held for a limited time and whose interest in the tank is not transferable;

(6) "prescribed" means prescribed by rules made under this Act;

(7) "tank" means a reservoir, or place which has been used as a reservoir, for the storage of water whether formed by excavation or by the construction or one or more embankments or place where water naturally accumulates, and includes any part of a tank and the banks thereof except such portions of the banks as are homestead garden or orchard land.

1. Clause (a1) was inserted by Section 2(a) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

2. The words and figures within square brackets were substituted for the words and figures "the Co-operative Societies Act, 1912" by Section 2 and the First Schedule to the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

3. Clause (5a) was inserted by Section 2(b) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

3. Requisition by Collector to carry out improvements in certain tanks :-

If the Collector is of opinion that any tank has fallen into disrepair or disuse, he may serve a notice in the prescribed form and manner on the person having control over the tank ¹[requiring such person to intimate to him within a period specified in the notice if such person is willing to carry out and in case such person is so willing then,] to carry out within a period specified in the notice such improvements of the tank as the Collector considers necessary for the proper utilisation of the tank for purposes of irrigation.

1. The words within square brackets were substituted for the words "requiring him" by Section 3, *ibid*.

4. Declaration of a tank to be a derelict irrigation work :-

(1) ¹[If the person having control over the tank does not send any intimation or sends any intimation to the Collector within the period fixed under section 3 that he is not willing to carry out the improvements referred to in that section or if such person sends any intimation to the Collector within such period that he is willing to carry out the improvements but fails to carry out the improvements] to the satisfaction of the Collector within the period specified in the notice issued under that section or within such further period as the Collector may, on application made to him in this behalf, think fit to allow, the Collector may, ²[by a notice served in the prescribed manner on] the person having control over the tank and otherwise published in the prescribed form and manner, declare the tank to be a derelict irrigation work.

(2) Every notice issued under sub-section (1) shall state the boundaries of the tank which is declared to be a derelict irrigation work ³[or the number entered in the record-of-rights finally published under Chapter X of the Bengal Tenancy Act, 1885(VIII of 1885), of the survey plot comprising such tank.]

(3) A copy of every notice published under Sub-section (1) shall be posted up in a conspicuous place near the tank, together with an intimation that any objections to the ⁴[confirmation] of the notice received by the Collector within one month from the date when it is so posted up. will be taken into consideration.

(4) On the expiry of the said period of one month, the Collector, after considering the objections, if any, shall confirm or withdraw the notice.

(5) A notice published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the tank to which it relates is a derelict irrigation work within the meaning of this section.

1. The words and figure within square brackets were substituted for the words and figure "If the improvements referred to in section 3 are not carried out" by Section 4(a)(i), *ibid*.

2. The words within square brackets were substituted for the words "by a notice to" by Section 4(a)(ii), of the Bengal Tanks Improvement (West Bengal Amendment) Act. 1948 (West Ben. Act XXIV of 1948).

3. The words and figures within square brackets were added by Section 4(b). *ibid*.

4. This word was substituted for the word "issue" by Section 4(e). *ibid*.

5. Power to Collector in respect of a derelict irrigation work

:-

After the notice declaring a tank to be a derelict irrigation work has been confirmed under section 4 the Collector, if he thinks fit, may at any time-

(a) take possession of the tank and carry out the improvements specified in the notice under section 3, or

(b) authorise under section 6 a local authority, co-operative society, or any other person interested to take such action.

6. Order for possession of, and improvements in a derelict tank :-

(1) Any local authority or co-operative society, or any other person who, in the opinion of the Collector, has an interest in a derelict tank, may, if authorised by the Collector by an order in writing in this behalf, take possession of such tank and carry out the improvements specified in the notice under section 3.

(2) In making an order under sub-section (1) the Collector shall, except for sufficient reason to be recorded in writing, give preference to ¹[the sole owner or] any co-sharer owner of the tank who has submitted as application stating that he is willing to carry out the said improvements or he may make an order in favour of more than one such co-sharer owner jointly.

(3) An order under sub-section (1) shall be in such form and shall

contain such particulars and conditions as may be prescribed.

1. The words within square brackets were inserted by Section 5 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

6A. Order for possession of lands adjoining a derelict tank for carrying out improve-ments in such tank :-

¹[(1) If any authorised person considers it necessary for the purpose of carrying out the improvements in a derelict tank to take possession of any land adjoining such tank, he may,-

(a) if he is the Collector, take possession of such land by order in writing, and

(b) if he is not the Collector, apply in the prescribed manner to the Collector to be empowered to take possession of such land and the Collector may, if he is satisfied after considering the application that such land is required for carrying out the improvements, empower the authorised person by order in writing to take possession of such land:

Provided that the Collector, shall not take possession or empower any authorised person to take possession of such land without giving in the prescribed manner the person in possession of such land reasonable opportunity of making any representation he may like to make and without considering any representation so made.

(2) Every order made under sub-section (1) shall specify the boundaries of the land to which it relates or the number entered in the record-of-rights finally published under Chapter X of the Bengal Tenancy Act, 1885, of the survey plot comprising such land and shall be in such form as may be prescribed.]

1. Section 64 was inserted by Section 6. *ibid*.

7. Cancellation of order under section 6 :-

(1) ¹[If any authorised person other than the Collector-]

²(a) fails to carry out the improvements to the satisfaction of the Collector in accordance with the conditions referred to in sub-section (3) of section 6, ³[or]

(b) fails, in the opinion of the Collector, to proceed with the improvements with due diligence or to maintain the tank in proper condition, or

(c) with or without the permission of the Collector gives up possession of the tank or abandons the work of improvement, or

(d) is, in the opinion of the Collector, guilty of any serious negligence or misconduct in relation to the tank or to persons having any right or interest in the tank or in the use of water thereof, or

(e) fails to comply with any order passed under section 26 or section 27,

the Collector may cancel the order made under section 6, ⁴[as well as any order made under clause (b) of sub-section (1) of section 6A] and thereupon all rights and powers of the said authorised person in respect of the tank ⁵[and in respect of any land of which possession is taken as a result of an order made under clause (b) of sub-section (1) of section 6A] shall cease and determine, and the Collector shall take possession of the tank ⁶[and such land].

(2) After taking possession of the tank ⁷[and such land] under sub-section (1) the Collector shall either appoint another authorised person to carry out the improvements or carry them out himself.

1. The words within square brackets were substituted for the words "If any authorised person-" by Section 7(1)(a). *ibid*.

2. Clause (a) was substituted for the original clause by Section 7(1)(b), *ibid*.

3. This word within square brackets was added by Section 2 and the First Schedule to the West Bengal Repealing and Amending Act. 1949 (West Ben. Act XIX of 1949).

4. The words, figures, letters and brackets within square brackets were inserted by Section 7(1)(c) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

5. The words, figures, letters and brackets within square brackets were inserted by Section 7(1)(d), *ibid*.

6. The words within square brackets were added by Section 7(1)(e), *ibid*.

7. The words within square brackets were inserted by Section 7(2). *ibid*.

8. Authorised person to retain possession of a derelict tank for a period not exceeding twenty-five years :-

¹[Subject to the provisions of this Act, the Collector or an authorised person shall be entitled to remain in possession of a derelict tank of which possession has been taken under the

provisions of this Act for such period not exceeding twenty-five years from the date on which possession of the derelict tank was taken under section 5 or section 6 as may, in the opinion of the Collector, be necessary to recover the amount referred to in sub-section (4) of section 17:

Provided that the Collector may, after considering the views of the authorised person, if any, and for reasons to be recorded in writing, vary such period from time to time subject to the maximum limit of twenty-five years.]

1. Section 8 was substituted for the original section by Section 8, *ibid*.

9. Owner to be restored to possession on certain conditions

:-

Notwithstanding anything contained in section 8, the Collector in his discretion may, at any time within the period determined under the said section, restore to possession of the tank the person recorded as entitled to possession thereof in the record-of-rights referred to in section 22 or his successors in interest, provided that-¹(a) such person pays to the Collector so much of the costs incurred up to that time both by the authorised person in carrying out the required improvements in the tank and by the Collector in carrying out the purposes of this Act in respect of the tank as remains unrecovered after realisation by the authorised person under this Act of the fees referred to in section 17 or of any sum under any lease referred to in section 18, together with interest on the costs so remaining unrecovered at a rate not exceeding six and a quarter per centum per annum, and (b) he undertakes to the satisfaction of the Collector to carry out any remaining improvements specified in the notice under section 3 within such period as the Collector may determine.

1. Clause (a) was substituted for the original clause by Section 9 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

9A. Authorised person to retain possession of land adjoining a tank during the period of possession of such tank :-

¹[An authorised person shall be entitled to remain in possession of any land adjoining a derelict tank of which possession is taken

under section 6A as long as such person remains in possession of such derelict tank under section 8.]

1. New sections 9A, 9B and 9C were inserted by Section 10. *ibid.*

9B. Restoration of possession of land adjoining a derelict tank and the retaking of possession of such land :-

¹[(1) Notwithstanding anything contained in section 9A, if the person recorded as entitled to possession of any land adjoining a derelict tank in the record-of-rights referred to in section 22 or his successor in interest is not the person recorded as entitled to possession of such derelict tank in the record-of-rights referred to in the said section or his successor in interest, then the Collector may, at the request of the person so recorded as entitled to possession of such land or his successor in interest or of the authorised person at any time after the required improvements in the tank have been completed, by an order in writing, restore the possession of such land to the person so recorded as entitled to possession of such land or to his successor in interest, although the possession of the tank by the authorised person has not terminated, and when the possession of such land is so restored all rights in the land which existed prior to the time when possession was taken of the land under section 6A, shall be revived:

Provided that before the Collector takes any action under this sub-section at the request of any person other than the authorised person, the Collector shall give the authorised person a reasonable opportunity of making any representation he may like to make and the Collector shall consider any representation so made.

(2) The person to whom the possession of such land has been restored under sub-section (1) shall not use it in such manner as may cause damage to the banks of the derelict tank or may affect the use of the tank for the purposes of irrigation.

(3) If the person referred to in sub-section (2) fails, in the opinion of the Collector, to comply with the provisions of that sub-section, the Collector may,-

(a) again empower the authorised person by an order in writing to take possession of such land whereupon the authorised person shall forthwith take possession thereof, or

(b) if he is the authorised person, himself again take possession of such land by order in writing,

and the authorised person so taking possession of such land again shall retain such possession as long as he remains in possession of

the tank.

(4) Every order made under sub-section (3) shall specify the boundaries of the land to which it relates or the number entered in the record-of-rights finally published under Chapter X of the Bengal Tenancy Act, 1885(VIII of 1885.), of the survey plot comprising such land and shall be in such form as may be prescribed.]

1. New sections 9A, 9B and 9C were inserted by Section 10. *ibid.*

9C. Restoration of possession of land adjoining a derelict tank on the restoration of possession of such tank under section 9 :-

¹[When the possession of a derelict tank is restored by the Collector under section 9, the Collector shall at the same time restore the possession of any land adjoining such tank of which possession was taken under section 6A and has not already been restored under sub-section (1) of section 9B or of which possession was retaken under sub-section (3) of section 9B to the person recorded as entitled to possession of such land in the record-of-rights referred to in section 22 or to his successor in interest:

Provided that where the person to whom the possession of the tank is restored under section 9 is not the person recorded as entitled to possession of such land in the said record-of-rights or his successor in interest, the possession of such land shall not be so restored until the improvements, if any, required to be carried out in the tank under clause (b) of the proviso to section 9 have been completed if the person to whom the possession of the tank is so restored agrees to pay the person so recorded as entitled to possession of such land the compensation which would have been payable by the authorised person under sub-section (1) of section 14A if such authorised person had continued to be in possession of such land.]

1. New sections 9A, 9B and 9C were inserted by Section 10. *ibid.*

10. Authorised person not liable to pay rent or compensation :-

An authorised person shall not be liable to pay any rent or compensation in respect of his possession of a derelict tank ¹[or any land of which possession is taken under section 6A or is retaken under sub-section (3) of section 9B] except as expressly provided in this Act.

1. The words, figures, letters and brackets within square brackets were inserted by Section 11 of the Bengal Tanks Improvement (West Bengal Amendment) Act. 1948 (West Ben. Act XXIV of 1948).

11. Possession by an authorised person not to affect the rights or liabilities of other persons :-

Save as otherwise expressly provided in this Act, the possession of a derelict tank ¹[or of any land adjoining a derelict tank under this Act] by an authorised person shall not affect the right or liability of any other person to receive or pay rent in respect of the said tank ²[or land] or in respect of any right or interest therein:

Provided that where rent ³[in respect of the tank] was, at the time when possession was first taken of the tank under this Act, payable by any person solely in respect of a right to use the water of the tank for irrigation purposes the liability to pay such rent shall cease and determine from the date on which such possession was taken.

1. The words within square brackets were inserted by Section 12(a). *ibid*.

2. The words within square brackets were inserted by Section 12(b), *ibid*.

3. The words within square brackets were inserted by Section 12(c). *ibid*.

12. Authorised person to pay rent to owner and compensation to person other than the owner dispossessed by him :-

¹(1) Where a derelict tank is, at the time of the taking of possession thereof by an authorised person, in the actual possession of the owner of the tank, the authorised person shall pay, during the period he remains in possession, to such owner at such times and in such manner as may be prescribed, such rent as the Collector, after such inquiry as he thinks fit, may determine:

Provided that where the authorised person is the owner of the tank in actual possession thereof, no such payment of the rent determined by the Collector under this sub-section shall be necessary; but the amount of such rent shall be included in and form part of the costs incurred or likely to be incurred by the authorised person in carrying out the required improvements in the tank.

¹(2) Where a derelict tank is, at the time of the taking of possession thereof by an authorised person, in the actual possession of any person other than the owner of the tank, the authorised person shall, at such times and in such manner as may be prescribed, pay to the person dispossessed by him such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent which the person so dispossessed is liable to pay in respect of the tank, and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of the interference with his possession.

1. The original section 12 was renumbered as sub-section (2) of that section and before the said sub-section, as so renumbered, new sub-section (1) was inserted by Section 13, *ibid*.

13. Authorised person to pay compensation to persons who have right to fish in the tank, etc., on payment :-

Where, at the time of the taking of possession of a derelict tank by an authorised person, any person has a right, on payment of any rent or charge, to catch fish in the tank or to take fruits from trees on, or other produce from, the banks of the tank the authorised person shall, at such times and in such manner as may be prescribed, pay to the said person such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent or charge which the said person continues to be liable to pay to the owner or any tenant of the tank and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of the interference with the exercise of his right.

14. Authorised person to pay compensation to cultivators who hold a lease of the bed of a tank :-

(1) Where the bed or any part of the bed of a tank has been leased out to cultivators for agricultural purposes the authorised person shall pay compensation to such cultivators, and thereupon such lease shall be terminated. The amount of compensation payable to each cultivator shall be such amount as the Collector, after such inquiry as he thinks fit, deems fair and equitable ¹* * * * :

²Provided that the compensation payable to such cultivators shall not be less than an amount which bears to the total amount of

salami, as determined by the Collector to have been paid for obtaining the lease, the same ratio as the unexpired period of lease bears to the total period of such lease:

2 Provided further that where no period of lease is expressly mentioned or agreed to between the parties concerned the total period of lease shall be taken as twelve years.

(2) The amount of compensation determined by the Collector under sub-section (1) shall be paid in the prescribed manner and within the prescribed time to the authorised person by the landlord who granted the lease. If the landlord makes default in such payment the same shall be recoverable from the landlord by the Collector as a public demand and paid by him to the authorised person.

1. The words "but not less than the salami paid by such cultivator for the lease" were omitted by Section 14(a) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

2. These provisos were added by Section 14(b), *ibid*.

14A. Payment of compensation to persons having rights in lands adjoining a tank of which possession is taken under this Act :-

¹[Where the owner of a derelict tank is not the owner of any land adjoining such tank of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, the authorised person shall, at such times and in such manner as may be prescribed, pay to the person in possession of such land at the time of taking or retaking possession thereof such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent which the person so dispossessed is liable to pay in respect of the land and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of interference with his possession.

(2) Where the owner of a derelict tank is also the owner of any land adjoining such tank of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, the authorised person shall-

(a) in the case where such land is in the actual possession of the owner thereof, pay at such times and in such manner as may be prescribed to such owner such rent as the Collector, after such inquiry as he thinks fit, may determine:

Provided that where the authorised person is the owner of such land in actual possession thereof, no such payment of the rent determined by the Collector under this clause shall be necessary; but the amount of such rent shall be included in and form part of the costs incurred or likely to be incurred by the authorised person in carrying out the required improvements in the tank; and

(b) in other cases, pay at such times and in such manner as may be prescribed to any person to whom such land has been leased out and who hold such land as lessee at the time such possession is taken or retaken and to every other person having at that time, on payment of any rent or charge, any right in such land, such compensation as the Collector, after such inquiry as he thinks fit, may determine, and such compensation shall not be less than the amount of the rent or charge which the person to whom the compensation is paid continues to be liable to pay to the owner or the tenant of such land and shall be deemed to be a full and complete satisfaction for all loss suffered by every such person as a result of the interference with the exercise of his right.]

1. Section 14A was inserted by Section 15 of the Bengal Tanks Improvement (West Bengal Amendment) Act. 1948 (West Ben. Act XXIV of 1948).

15. Permission of the authorised person necessary to use or occupy the tank, etc. :-

¹[(1) During the period of possession no person shall without the permission of the authorised person use or occupy the tank or use the water thereof except for drinking and other domestic purposes or catch fish in the tank or take fruits from trees on, or other produce from, the banks of the tank, except such portions of the banks as are homestead, garden or orchard lands.

¹(2) During the period any land, of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, remains in the possession of an authorised person, no person shall without the permission of the authorised person use or occupy such land or take fruits from trees on, or other produce from, such land.]

1. The original section 15 was renumbered as sub-section (1) of that section and to the said section, as so renumbered, new sub-section (2) was added by Section 16 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

16. Rights to use the water of the tank :-

¹[During the period of possession all rights to use the water of the tank for irrigation purposes shall vest in the authorised person and no person shall use the water of the tank for such purposes except with the permission of the authorised person or in so far as he may be permitted to do so by or under the provisions of this Act.]

1. New sections 16, 16A, 16B, 17 and 17A were substituted for the original sections 16 and 17 by Section 17, *ibid*.

16A. Maximum irrigation area :-

¹[(1) When the possession of any tank has been taken under section 5 or section 6, the Collector shall determine in the prescribed manner the maximum area of land to the limits of which irrigation from the said tank may practicably be extended (hereinafter referred to as the maximum irrigation area) and the system and alignment by which and the priority in accordance with which such irrigation can be so extended to the land in that area, and shall publish a notice in the prescribed form and manner defining the limits of the maximum irrigation area specifying the system, alignment and priority so determined.

(2) Every person possessing agricultural land within the maximum irrigation area shall, subject to the provisions of sub-sections (3) and (4), be liable to pay a fee annually during the period of possession to the authorised person at the rate fixed and in the manner provided under section 17 and such liability shall not cease by reason of such person not using water for irrigation purposes from the tank to which the maximum irrigation area relates.

(3) Any person concerned may, within thirty days of the date of the publishing of the notice referred to in sub-section (1), apply in the prescribed form and manner and on payment of the prescribed fee to the Collector for-

(a) including any land within the maximum irrigation area,
(b) excluding any land from the maximum irrigation area, and
(c) exempting any land or part of any land from liability to pay the fees referred to in sub-section (2) on the ground that such land cannot practicably be irrigated from the tank to which the maximum irrigation area relates, or cannot be benefited by such irrigation or that such land is not agricultural land,
and the Collector after giving the applicant a reasonable opportunity of being heard may pass such order as to such inclusion, exclusion or exemption as he thinks fit.

(4) The Collector may, of his own motion at any time after the expiry of thirty days from the date of publishing of the notice referred to in sub section (1), include within the maximum irrigation area any land which was not agricultural land at the time of publication of such notice but has subsequently been converted into agricultural land, or otherwise revise the limits of the maximum irrigation area or exempt any land or part of any land within such maximum irrigation area from liability to pay the fees referred to in sub-section (2) and the Collector shall modify the list referred to in sub-section (1) of section 16B accordingly:

Provided that before any order for such inclusion, revision or exemption is passed all concerned shall, by notice served or published in the prescribed manner, be given a reasonable opportunity of making any representation which they may like to make and the Collector shall consider such representation.]

1. New sections 16, 16A, 16B, 17 and 17A were substituted for the original sections 16 and 17 by Section 17, *ibid*.

16B. Preparation of list :-

¹[(1) As soon as may be after the Collector has disposed of any application made under sub-section (3) of section 16A, he shall prepare a list in the prescribed form and manner of the persons who are liable to pay the fee referred to in sub-section (2) of that section and such list shall specify the amount of agricultural land within the maximum irrigation area in respect of which each such person is to pay such fee and the amount of such fee which such person is to pay annually to the authorised person.

(2) The Collector shall publish the list referred to in sub-section (1) and every modification of such list in the manner prescribed and shall, where the authorised person is not the Collector, forward a copy of such list and every modification of such list to the authorised person who shall permit every person whose name is entered in the list or his successor in interest to use the water of the tank for the irrigation of the land of such person as long as the amount of the fee payable by such person is duly paid and not otherwise.

(3) If any dispute arises between persons entered in the list prepared under sub-section (1) as to any matter in respect of the use of water by such persons from the tank for the irrigation of their lands the authorised person or a person authorised in this behalf by the Collector shall decide the dispute and his decision,

subject to the provisions of section 26, shall be final.]

1. New sections 16, 16A, 16B, 17 and 17A were substituted for the original sections 16 and 17 by Section 17, *ibid.*

17. Payment and rate of fees :-

¹[(1) Every person whose name is included in the list referred to in sub-section (1) of section 16B or his successor in interest shall pay annually and in the prescribed manner and on the dates prescribed to the authorised person or to such person as may be authorised by the Collector in this behalf the fees fixed according to the provisions of this section.

(2) If the fees payable under sub-section (1) are not paid within thirty days from the due date fixed for such payment, interest on the amount of the fees so outstanding shall be payable at the rate of six and one quarter per centum per annum calculated from the day on which such payment became due until the date on which the amount of the fees so outstanding is paid or recovered, as the case may be.

(3) The Collector shall fix, in respect of any tank of which possession is taken under this Act and for which the maximum irrigation area has been determined by the Collector, the rate or rates at which fees to be paid to the authorised person under sub-section (1) shall be calculated and different rates may be so fixed for classes of agricultural lands of different descriptions or having different advantages or for lands for the irrigation of which any person had at the time when possession was taken of the tank under this Act the prescriptive right to use water for irrigation.

(4) The rate to be fixed under sub-section (3) shall be such that all costs incurred or likely to be incurred-

(i) by the authorised person in carrying out the required improvements in the tank; and

(ii) by the Collector in carrying out the purposes of this Act in respect of the tank; may be recovered together with interest thereon at a rate, fixed by the ²[State] Government, not exceeding six and one quarter per centum per annum and together with an amount estimated by the Collector as is likely to be necessary for maintaining the tank in proper condition during the period of possession determined by the Collector under section 8.

(5) The Collector may revise the rate or rates of fees fixed under this section in respect of any tank.

(6) Any sum due to the authorised person under this section shall

be recoverable as a public demand.]

1. New sections 16, 16A, 16B, 17 and 17A were substituted for the original sections 16 and 17 by Section 17, *ibid*.

2. This word was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

17A. Passage of water :-

¹[No person shall obstruct the passage of any water taken for irrigation purposes from any tank in accordance with the system, alignment and priority for taking water as determined by the Collector under sub-section (1) of section 16A.]

1. New sections 16, 16A, 16B, 17 and 17A were substituted for the original sections 16 and 17 by Section 17, *ibid*.

18. Power of authorised persons to lease out the tank, etc.

:-

¹(1) During the period of possession the authorised person may, subject to the provisions of this Act and the previous permission of the Collector, lease to any person for a period not extending beyond the period of possession any part of the banks of the tank or any right to take fruit from trees on, or other produce from, such banks or any right to rear and catch fish in the tank.

¹(2) During the period any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B remains in the possession of an authorised person, such authorised person may, subject to the provisions of this Act and the previous permission of the Collector, lease to any person for a period not extending beyond the said period of possession any part of the said land or any right to take fruits from trees on, or other produce from, such land.

¹(3) Any sum due to the authorised person under any lease granted under this section shall be recoverable as a public demand.

¹(4) All sums realised or estimated to be realised by the Collector or by the authorised person under any lease granted under this section and any other income derived from the tank including banks thereof and from adjoining lands taken possession of under section 6A and by the sale of silt or otherwise, shall be applied in payment of the costs recoverable under sub-section (4) of section 17.

1. The original section 18 was renumbered as sub-section (1) of that section and to the said section, as so renumbered, new sub-sections (2), (3) and (4) were added by Section 18 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

19. Bar to transfer of tank except as provided in this Act :-

Except as provided in this Act, no transfer by sale, gift, will, mortgage, lease or any contract or agreement of any right acquired by an authorised person under the provisions of this Act in respect of a derelict tank, ¹[or in respect of any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B] shall be valid.

1. The words, figures, letters and brackets within square brackets were inserted by Section 19. *ibid.*

19A. Bar to acquisition of occupancy rights in lands leased out under section 18 :-

¹[Notwithstanding anything contained in the Bengal Tenancy Act, 1885(VIII of 1885.), no person shall acquire any occupancy right, in any part of the banks of, or in any land adjoining, a tank leased out to such person under section 18 and no person who has held any part of the banks of any tank under a lease under section 18 at any time since the commencement of this Act shall be deemed to have acquired any occupancy right therein.]

1. Section 19A was inserted by Section 20. *ibid.*

20. Application of the Act to tank improved as a relief measure :-

¹[(1) When any tank has been re-excavated at the expense of the ²[Statel Government as a relief measure by the system commonly known as Test or Famine Relief, the Collector may, after giving an opportunity to the person having control over the tank to be heard in the matter, direct that possession of such tank should be taken over by the Collector.

(2) When possession of any improved tank is taken over under sub-section (1) such tank shall be deemed for the purposes of this Act to be a tank taken over and improved under the provisions of this Act and the provisions of this Act shall thereupon apply *mutatis mutandis* to such tank accordingly.]

1. Section 20 was substituted for the original section by Section 21 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

2. This word was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

21. Restoration of possession of tank :-

¹[(1) When the possession of a derelict tank is terminated in accordance with the provisions of section 8, the tank shall be restored to the possession of the persons who were recorded as entitled to possession thereof in the record-of-rights referred to in section 22, or their successors in interest and any land possession of which was taken under section 6A but has not been previously restored under section 9B or section 9C or possession of which has been retaken under sub-section (3) of section 9B shall be restored to the possession of the persons who are recorded as entitled to possession thereof in the record-of-rights referred to in section 22 or their successors in interest.

(2) When possession of any tank or land is restored under sub-section (1) or under section 9, all rights in the tank including all rights to use the water for the purposes of irrigation which existed prior to the time when possession was first taken of the tank under section 5 or section 6 and all rights in such land which existed prior to the time when possession of the land was taken under section 6A or retaken under sub-section (3) of section 9B, as the case may be, excepting any rights for which compensation has been paid under section 14, shall be revived.]

1. Section 21 was substituted for the original section by Section 22 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

22. Record-of-rights in respect of derelict tanks :-

(1) The Collector shall prepare in the prescribed form and manner a record-of-rights in respect of all tanks which are declared to be derelict tanks under this Act, ¹[and a record-of-rights in respect of the lands adjoining such tanks of which possession is taken under section 6A or retaken under sub-section (3) of section 9B] and during the period of possession of any such tank ²[or during the period for which any such land remains in the possession of an authorised person] he may, on application or of his own motion,

from time to time, add to or alter in the prescribed manner any entry in the record-of-rights ³[in respect of such tank or such land].

⁴(1a) In the record-of-rights prepared under sub-section (1), there shall be shown in addition to any other details that may be prescribed, the following:-

(a) the names of all persons from the actual possessor upwards up to and including the owner having permanent transferable right in the tank and adjoining lands together with their addresses, nature and extent of right and interest in the tank and adjoining lands as existing immediately before possession of such tank or land is taken under the provisions of this Act;

(b) the revenue or rent and cesses, if any, payable by the different persons referred to in clause (a) in respect of the tank or land or if that be not ascertainable then the revenue or rent and cesses in respect of the estate, tenure, or holding in which such tank or land is included; and

(c) the numbers of cadastral survey plots together with the names and addresses of possessors of such plots who may have immediately before possession of such tank is taken the prescriptive right of taking water from such tank for irrigation purposes.

(2) Every entry in the record-of-rights referred to in sub-section (1) shall be evidence of the matter referred to in such entry, and shall be presumed to be correct in every particular for the purposes of this Act until it is proved by evidence to be incorrect.

1. The words, figures, letters and brackets within square brackets were inserted by Section 23(a). *ibid*.

2. The words within square brackets were inserted by Section 23(b). *ibid*.

3. The words within square brackets were added by Section 23(e) of the Bengal Tanks Improvement (West Bengal Amendment) Act. 1948 (West Ben. Act XXIV of 1948).

4. Sub-section 1 (a) was inserted by Section 23(d). *ibid*.

23. Application of the Act to certain tanks :-

¹[(1) The ²[State] Government may, by order published in the Official Gazette, direct that any tank which may have been improved under the provisions of this Act prior to the commencement of the Bengal Tanks Improvement (West Bengal Amendment) Act. 1948(West Ben. Act XXIV of 1948.), shall, with

effect from a date to be specified in such order, be deemed to have been improved in accordance with the provisions of this Act as amended by the last mentioned Act.

(2) When an order under sub-section (1) is made in respect of any tank, the Collector shall, in the prescribed manner, prepare or revise the list of maximum irrigation area, revise the order regarding period of possession and assessment of fees and take such other action as may be deemed necessary to give effect to such order.]

1. Section 23 was substituted for the original section by section 24 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

2. This word was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

24. Costs :-

¹[All costs incurred by the Collector in carrying out the purposes of this Act in respect of a tank of which possession is taken under section 6 or in respect of any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B shall be paid by the authorised person at such times and in such manner as may be prescribed, and on default in payment thereof the same shall be recoverable by the Collector as a public demand.]

1. Section 24 was substituted for the original section by Section 25 of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

25. Decision of disputes :-

¹(1) During the period of possession all disputes relating to the exercise of any rights in respect of a tank or the use of the water thereof by the authorised person ¹* * * * shall be decided by the Collector in such manner as may be prescribed.

²(2) During the period any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B remains in the possession of an authorised person, all disputes relating to the exercise of any rights in respect of such land shall be decided by the Collector in such manner as may be prescribed.

1. The original section 25 was renumbered as sub-section (1) of that section, and in the said section, as so renumbered, the words, figures and brackets, "or among any other persons referred to in

sub-section (2) of section 16" were also omitted by section 26(a),
ibid.

2. Sub-section (2) was added by Section 26(b). ibid.

26. Appeal against action of authorised person :-

Any person aggrieved by any action ¹[or decision] of an authorised person, other than the Collector, ²[or any person authorised by the Collector] may appeal to the Collector who after giving such authorised person an opportunity to be heard in the matter shall pass such order thereon as he thinks fit.

1. The words within square brackets were inserted by Section 27(a). ibid.

2. The words within square brackets were inserted by Section 27(b), ibid.

27. Other appeals :-

(1) Any person aggrieved by any order passed by a Collector, other than the Collector of the district, under this Act may appeal in the prescribed manner to the Collector of the district.

(2) Any person aggrieved by any order passed, on appeal or otherwise, by the Collector of the district may appeal in the prescribed manner to the Commissioner.

(3) Any person aggrieved by any order passed by a Commissioner under this Act may appeal in the prescribed manner to the Board of Revenue:

Provided that where an order passed by the Collector of the district on appeal has been confirmed by the Commissioner no appeal under this sub-section shall lie except on a point of law.

28. Procedure in proceedings under section 27 :-

Notwithstanding anything contained in any other Act the procedure to be followed by the Collector of the district, Commissioner or Board of Revenue in any proceedings under section 27 shall be in accordance with rules made under this Act.

29. Order of Civil Court not to operate during period of possession :-

Nor decree ¹[or order] of a Civil Court shall operate to disturb,

curtail or otherwise modify the possession under this Act of a tank²[or of any land adjoining such tank] by the authorised person, or, during the period of possession³[of such tank or during the period for which any such land remains in the possession of an authorised person] to annul or alter any order or decision of the Collector or any other Revenue authority made or purporting to have been made under the provisions of this Act.

1. The words within square brackets were substituted for the words "nor order" by Section 2 and the First Schedule to the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949).

2. The words within square brackets were inserted by Section 28(a) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

3. The words within square brackets were inserted by Section 28(b), *ibid*.

30. Bar to jurisdiction of Civil Courts :-

¹(1) No suit shall lie in any Civil Court for compensation in respect of any injury, damage or loss resulting from anything done under this Act.

¹(2) No suit or other proceedings shall lie against the Collector, other authorised person or any officer or worker employed by or under the Collector for anything in good faith done or intended to be done or purporting to be done under the provisions of this Act or any rule made thereunder.

1. The original section 30 was renumbered as sub-section (1) of that section and after the said section, as so renumbered, new sub-section (2) was added by Section 29. *ibid*.

31. Power to enter land to make survey, etc. :-

The Collector, subject to any rules made under this Act, may at any time enter upon any land with such officers or servants as he considers necessary, and make a survey or take measurements thereof or do any other acts which he considers to be necessary for carrying out any of his duties under this Act.

32. Power to compel production of statements and documents :-

(1) Subject to rules made under this Act the Collector may, for the

purposes of this Act, by notice, require any person to make and deliver to him a statement or to produce records or documents in his possession or control relating to any land or tank at a time and place specified in the notice.

(2) Every person required to make or deliver a statement or to produce any record or document under this section shall be deemed legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code (Act XLV of 1860.).

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

For the purposes of an inquiry under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including any of the persons interested in the tank ¹[or in the land adjoining such tank] 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(Act V of 1908.).

1. The words within square brackets were inserted by Section 30 of the Bengal Tanks Improvement (West Bengal Amendment) Act. 1948 (West Ben. Act XXIV of 1948).

34. Power to authorise subordinate officer to exercise Collectors powers :-

The Collector may, by order in writing, authorise any officer subordinate to him to exercise the powers of the Collector under clause (a) of section 5 ¹[or clause (a) of sub-section (1) of section 6A, or clause (b) of sub-section (3) of section 9B] or under section 31.

1. The words, figures, letters and brackets within square brackets were inserted by Section 31. *ibid.*

35. Penalty :-

Whoever contravenes any of the provisions of section 15, ¹[section 16 or section 17A] shall be punished with fine which may extend to one hundred rupees.

1. The words, figures and letters within square brackets were substituted for the words, figures and brackets "or sub-section (1) of section 16" by Section 32. *ibid.*

36. No reduction of revenue for anything done under this Act :-

The proprietor of a tank ¹[or of any land adjoining a tank] shall not be entitled to claim, on account of anything done under the provisions of this Act, any reduction in the revenue payable by him to ²[the State Government].

1. The words within square brackets were inserted by Section 33. *ibid.*

2. The words "the Provincial Government" were originally substituted for the words "the Government" by Section 2 and the First Schedule to the West Bengal Repealing and Amending Act, 1949 (West Ben. Act XIX of 1949) and thereafter the word "State" was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

37. Power to make rules :-

(1) The ¹[State] Government may make rules² for carrying out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:-

(a) the forms of notices under section 3, sub-section (1) of section 4 and sub-section (1) of section 23, of ³[orders under sub-section (1) of section 6, sub-section (1) of section 6A and sub-section (3) of section 9B], and of record-of-rights under sub-section (1) of section 22;

(b) the manner of serving notice under section 3, ⁴[sub-section (1) of section 4] and sub-section (1) of section 23 and of publishing notice under sub-section (1) of section 4;

(c) the particulars and conditions to be specified in an order under sub-section (1) of section 6;

⁵(cc) the manner of making an application under clause (b) of sub-section (1) of section 6A and of giving reasonable opportunity to the person in possession of the land to make any representation under the proviso to the said sub-section;

(d) the time and manner of payment of compensation under section 12, section 13, ⁶[sub-section (2) of section 14 and sub-sections (1) and (2) of section 14A], and of costs under section 24;

⁷(dd) the manner of determining the maximum irrigation area and the system, alignment and priority of irrigation in that area, and

the form and the manner of publishing the notice defining the limits of the maximum irrigation area and the system, alignment and priority of irrigation in that area, under sub-section (1) of section 16A and the form and manner of the application and the fee payable under sub-section (3) of that section;

⁷(ddd) the manner of service and publication of notice referred to in the proviso to sub-section (4) of section 16A;

⁷(dddd) the form of the list and the manner of its preparation under sub-section (1) of section 16B and the manner of publication of the list and every modification thereof under sub-section (2) of that section;

(ddddd) the manner and the dates of payment of fees under sub-section (1) of section 17;

(e) the manner of preparing the ⁸[record-of-rights] under sub-section (1) of section 22, and of adding or altering any entry therein;

⁹(ee) the manner of preparation and revision of the list of maximum irrigation area referred to in sub-section (2) of section 23;

(f) the manner of deciding disputes under ¹⁰[sub-sections (1) and (2) of section 25];

(g) the manner of making an appeal and the procedure to be followed in any proceedings under section 27;

(h) the procedure and conduct of the Collector and of officers and servants referred to in section 31;

(i) the exercise of powers under sub-section (1) of section 32 to enforce the making and delivery of statements and production of documents.

1. This word was substituted for the word "Provincial" by para. 4(1) of the Adaptation of Laws Order, 1950.

2. For rules made under this section, see notification No. 7482 Misc.. dated 25.7.40. published in the Calcutta Gazette of 1940. part I. pages 2159-2178. as subsequently amended.

3. The words, figures, letters and brackets within square brackets were substituted for the words, figures and brackets "order under sub-section (1) of section 6" by Section 34(1) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).

4. The words, figures and brackets within square brackets were inserted by Section 34(2). *ibid.*

5. Clause (cc) was inserted by Section 34(3), *ibid*.
6. The words, figures, letter and brackets within square brackets were substituted for the words, figures and brackets "and subsection (2) of section 14" by Section 34(4). *ibid*.
7. New clauses (dd), (ddd), (ddd) and (dddd) were inserted by Section 34(5). *ibid*.
8. This word was substituted for the word "record-of-rights" by Section 34(6) of the Bengal Tanks Improvement (West Bengal Amendment) Act, 1948 (West Ben. Act XXIV of 1948).
9. Clause (ee) was inserted by Section 34(7), *ibid*.
10. The words, figures and brackets within square brackets were substituted for the word and figures "section 25" by Section 34(8), *ibid*.