

The Bengal Embankment Act, 1855

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Act 32 of 1885

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The Bengal Embankment Act, 1855 Bengal Act No. 32 of 1885 An Act relating to embankments Preamble. - Whereas the Regulations now in 'force' for the maintenance embankments in the territories under the Government of the Lieutenant-Governor of Bengal have been found ineffectual for the intended purposes thereof ; and whereas it is desirable that provision should be made for the better supervision and protection of the same it is enacted as follows:

1.

[* * *]

2. "Embankment" defined.

- The word "embankment" in this Act means an embankment for the purpose of excluding or retaining water; and every embankment which is now kept up, or may hereafter be kept up, by the officers of the Crown at the expense either of the Crown or of any private person, is a public embankment within the meaning hereof.

3. Superintendent of Embankments.

- The Superintendence of the public embankments shall be entrusted, subject to the general orders of the Provincial Government, to all officer who shall be called the Superintendent of Embankments.

4.

1. Charge of embankment connecting public embankments, etc. - The Superintendent of Embankments may cause any Embankment which connects public embankments, or forms by junction with them part of a line

of embankments, or is necessary for the protection of the neighbouring country, to be taken charge of and kept up by the officers of the Crown.

2. Removing private embankment endangering public one - He may also cause any private embankment, which endangers the stability of a public embankment, or obstructs the beneficial drainage of the country, to be removed.

3. Changing line of embankment or making new one - He may also, when necessary, change the line of any public embankment, or make a new embankment.

4. Enlarging embankment, etc. - He may also enlarge any public embankment, and do all acts necessary and proper for the maintenance thereof.

5.

1. Notice to Collector before taking charge, etc. - Before the Superintendent shall cause any of the works mentioned in the first three clauses of the next preceding section to be executed, he shall give notice in writing to the Collector of the district of his intention so to do.

Issue of proclamation - Upon the receipt of such notice the Collector shall cause a proclamation to be issued, incorporating the substance of the notice, and calling upon all persons interested, who may be desirous of showing cause against the execution of such works, to appear before him on a certain day to be named therein.

2. Publication of proclamation - The proclamation shall be published by affixing the same in the cutcherry of the Collector, the mal cutcherry (if any) of the estate on which the works are intended to be executed, and on some conspicuous spot in the neighbourhood thereof.

The proclamation shall be published not less than fifteen days before the day appointed for hearing the parties interested.

3. Procedure on appearance of parties - The Collector shall hear the objections of any parties who may appear, and, after recording any evidence which they may adduce, shall communicate the objections that may be made,

together with his opinion thereon, to the Superintendent-of Embankments.

If the Superintendent agrees in opinion with the Collector, he shall pass an order accordingly. If he differ from the Collector, the case shall be referred to the Commissioner of Revenue, who shall pass such orders thereon as he may deem fit.

4. Appeal from orders of Superintendent and Commissioner - Every such order passed by the Superintendent shall be appealable to the Commissioner of Revenue, and every order of the Commissioner shall be appealable to the Board of Revenue ; but no appeal shall lie against any order passed under this section, unless the same be presented within one month form the date of the order.

5. Order not open to revision by civil Court - Subject to the right of appeal above-mentioned and to the orders and control of the Provincial Government, every order passed under this section shall be final and shall not be open to revision by any Civil Court, and shall be conclusive as to the necessity of any works ordered to be executed.

6. Charging cost of maintaining private embankments in charge of officers of the Crown.

(1) Whenever the Superintendent of Embankments shall hereafter cause an embankment which any person is bound to keep up or by which any person is benefited, to be taken charge of by the officers of the Crown, the expenses of keeping up such embankment shall, in the first instance, be charged to the person who is bound to keep it up and, in the absence of any such person, to the person who is benefited : Proviso - Provided that the amount so charged shall not exceed the reasonable expenses of keeping up an embankment in the original size and description, notwithstanding that the embankment shall have been enlarged or improved by the officers of the Crown. Explanation - A person who would sustain loss or damage if the embankment is kept out of repairs shall be deemed to be a person who is benefited by the embankment. (2) (a) The Collector shall decide any dispute as regards the persons who are bound to keep up an embankment and also as regards the apportionment of the expenses of keeping up such embankment amongst those persons. (b) If two or more persons are benefited by an embankment, the Collector shall apportion the expenses of keeping up such embankment amongst the persons so benefited. (c) When an apportionment is made by the Collector either under Clause (a) or (b) of this sub-section, the liability of every such person as aforesaid shall be limited to the sum as apportioned against him and the Collector may, while apportioning the sums against those persons, further direct that the sums may be paid by instalments subject to such conditions as he may impose. Every decision of the Collector under Sub-section (2) shall be appealable - (a) to the Revenue Commissioner if passed by the Collector of the district; and (b) to the Collector of the district, if passed by a Deputy Collector or any other officer

exercising the powers of a Collector :Provided that no appeal shall lie unless it is presented within thirty days from the date of the decision.

7.

1. Compensation for damages. - When the Superintendent of the Embankments shall enlarge or change the line of any embankment, or make a new embankment, or cause an embankment to be removed, any person sustaining damages thereby, who, but for the passing of this Act, would be entitled to compensation, may prefer his claim for such compensation to the Collector of the district, at any time within twelve months after the execution of the work by which he is endamaged, and the Collector thereupon shall report the case for the orders of the superior Revenue authorities.

If the claim be rejected, the claimant shall not be deprived, by reason of this Act, of any right which he might otherwise have had to recover such compensation by a civil action; but such action shall not lie unless the claimant shall have first preferred his claim to the Collector within the period above-mentioned, nor unless the suit be brought within a period of one year after notice to the claimant of its rejection. If the claim for compensation be admitted by the Revenue authorities, and the amount of compensation cannot be agreed upon, the same shall be settled by arbitration, in the manner hereinafter provided, and in no other manner, unless by the consent of the claimant and of the superior Revenue authorities.

2. Appointment of arbitrator. - Unless the Collector and the claimant concur in the appointment of a single arbitrator, the Collector on the part of Government, and the claimant shall each appoint an arbitrator.

The appointment shall be in writing, and neither of the said parties shall have power to revoke the same without the consent of the other.

3. Arbitrator how chosen when there are several claimants for compensation. - If there be several claimants for compensation in respect to the same injury, and they cannot agree in the appointment of an arbitrator on their behalf, in that case each of them may nominate one person and the Collector shall choose by lot out of the person so nominated by the parties or any of them a person to act as arbitrator on behalf of the claimants.

If only one person shall be so nominated, he shall be the arbitrator on behalf of the claimants.

4. Appointment of third arbitrator. - When more than a single arbitrator shall be appointed the arbitrators shall, before they enter upon the matters referred to them, nominate and appoint by writing a third person to act with them as arbitrator; and, in case the arbitrators shall neglect to appoint such third arbitrator for a period of seven days after having been required so to do, the Collector may appoint such third arbitrator.

If the arbitrators differ in opinion, or if one of them, having received due notice of a meeting of arbitrators, neglect to attend, any two arbitrators may make an award.

5. Appointment in place of arbitrator not acting. - If any person on being appointed an arbitrator shall refuse to act, or after accepting the appointment shall die or become incapable of acting, another person shall be appointed in his stead, in the same manner in which the first person was appointed.

6. Collector empowered to enforce attendance of arbitrators. - After the arbitrators have accepted the appointment, the Collector shall be competent to exercise towards them such powers and authority, for securing their attendance and the due completion of their award, as the said Collector may legally exercise towards witness summoned before him when acting judicially for the purposes of compelling them to attend and give evidence.

7. In default of award within specified period, fresh arbitrators may be chosen. - If no award to made within a period so fixed for that purpose by the Collector, he may order that the matter shall be referred to another arbitrator or other arbitrators, to be chosen in the same manner and subject to the same rules as the first.

8. Collector to furnish information to arbitrators, and to enforce attendance and examination of witnesses, etc. - The Collector shall furnish to the arbitrators, or, so far as may be in his power, procure for them, any information which his records or those of any public department may afford connected with the subject of inquiry.

He shall, on the application of the arbitrators, summon any witnesses whom the arbitrators may call for, and whom the parties may not be able to produce before them without such process, and require the persons so summoned to bring and produce before them all such books, papers, deeds, writings, maps and plans as they shall require. He shall also cause the proper affirmation to be made and signed by any witness whom the arbitrators may desire to examine upon affirmation, or he may

empower the arbitrators to cause such affirmation to be made and signed before them. Penalty on witness not appearing - Any witness who shall refuse or omit to appear when duly summoned by the Collector, or who shall appear but shall refuse to make such affirmation, or who shall refuse to give evidence, shall be liable to the same punishment which would be incurred under the law by a witness refusing to appear or give evidence before the Collector when acting judicially. Penalty for false deposition - Any person giving intentionally and deliberately a false deposition under an affirmation, in any case referred to arbitration as above, shall be held to be guilty of perjury, and shall be liable to the penalties prescribed for that offence by law.

9. Award of arbitrators - On the close of the inquiry the arbitrators shall deliver a full and complete award, which shall specify the amount of compensation and the party or parties entitled thereto.

The proceedings of the arbitration shall be deposited in the Collector's office; and every party interested therein shall be entitled to a copy of the award on plain paper under the seal and signature of the Collector, which copy shall be prima facie evidence thereof.

10. When payment of compensation may be deferred - If the right to the compensation awarded shall in any case be doubtful, or if there exists any ground which, in the judgement of the arbitrators or of the Collector, render it improper to make immediate payment thereof to any of the claimants, the amount shall be invested in Government securities, and held in deposit until one of the claimants shall obtain an order of Court for the payment thereof.

11. Reversal or alteration of award - No award passed under this section shall be liable to be reversed or altered, except by the decision of a Civil Court on the ground of corruption or misconduct of the arbitrators and no suit to set aside such an award shall be entertained, unless it be instituted within three months from the date of the award.

In case the award shall be reversed, the matter shall be referred to another arbitrator or other arbitrators, to be appointed in the same manner as the first.

12. Dismissal of suits against the Crown - All suits and proceedings instituted against the Crown in any case in which compensation has been awarded, except suits instituted for the reversal of awards as aforesaid, shall be dismissed with costs.

Proviso - But nothing herein contained shall affect the right of any party to recover the amount awarded from any person who may have received the same without any just title thereto.

13. Estimated value of benefit to be set off against compensation awarded -
In fixing the amount of compensation to which any person may be entitled by reason of any of the acts mentioned in Clause 1 of this section, the Court or arbitrators, as the case may be, shall take into consideration whether any party to the suit or arbitration has derived or will derive benefit from the act in respect of which the compensation is claimed, and shall set off the estimated value of such benefit, if any, against the compensation which would otherwise be decreed or awarded to that party.

14. Exception of cases of compensation in respect to puts, trees, or crops -
The provisions of this section shall not be held applicable to cases in which the compensation to be made has reference only to huts, trees or crops which it may be necessary to remove or destroy in enlarging or changing" the line of a public embankment.

In all such cases the officer in charge of the public embankments of the district shall report to the Collector, and the Collector shall thereupon proceed to value and make compensation for such huts, trees and crops, in the manner prescribed in Section 12 of this Act.

8.

1. Application by land-holder to have a sluice made in public embankment - If any land-holder, farmer or cultivator be desirous of having a sluice made in any public embankment for the purpose of drainage or irrigation, he shall make an application in writing to the Collector of the district in which such embankment is situate.

The application shall contain such particulars of the land to be drained or irrigated as may enable the officers of the Crown to judge of the advantage which may be derived from the work, and shall declare as regards an embankment maintained at the expense of the State, whether the applicant is willing to bear such part, not exceeding half of the cost thereof, as may be determined by the Provincial Government; and, as regards any other public embankment whether the applicant is willing to defray the whole or such part of the cost incidental to and attendant on, the proposed work, as may be determined as aforesaid.

2. Officer in immediate charge to report on proposed work - The Collector shall transmit such application to the officer in charge of the embankments of the district, who shall report his opinion thereon to the Superintendent of Embankments, and, if he be of opinion that compliance with the application

is unobjectionable shall annex to his report a plan of the proposed work and an estimate of the expense of its construction.

The Superintendent of Embankments shall pass such order thereon as he shall think fit, which order shall be final.

3. Upon applicant engaging to defray cost, Collector may issue certificate - If the construction of the proposed sluice receive the approval of the Superintendent of Embankments, the Collector shall require the applicant to enter into a written agreement to defray the whole or half of the expense or such portion thereof as may be determined under the provisions of Clause 1 of this section, as the case may be, and, upon such agreement being executed, shall issue a certificate to the officer in charge of the public embankments of the district to construct the sluice.

9. Opening of sluices.

- Sluices constructed in any public embankment shall be opened only by, or with the permission of the officer of the immediate charge of the embankment, under such orders, either general or special, as he may receive from the officer in charge of public embankments of the district or from the Superintendent of Embankments.

10. Officer in immediate charge may authorise temporary watercourse, etc., to be made.

- Whenever any person is desirous that a temporary watercourse should be made through, or that a temporary roadway should be made over any public embankment, or that a temporary dam should be constructed in any embanked river, he shall apply to the nearest officer of the Embankment Department, who shall communicate the application to the officer in charge of the public embankments of the district, and that officer shall pass such orders thereon as he shall think fit, subject to the control of the Superintendent of Embankments. If the proposed work is to be executed by an officer of the Crown the applicant, before the commencement of the work, shall enter into a written agreement to defray the expenses of, and incidental to, making such roadway, or of making and closing or removing such watercourse or dam. In any case of emergency the officer in immediate charge of an embankment, subject to such general instructions as he may receive from the officer in charge of the embankments of the district, or from the Superintendent of Embankments, may cause a temporary watercourse to be made through such embankment.

11. Annual specifications and estimates for maintaining or improving embankments kept up at the expense of zamindars.

- 1. Specifications of the work and estimates of the expense which may be required for the maintenance or improvement of embankments kept up at the expense of zamindars or others shall be prepared as soon after the rains in each year as may be practicable. Copies of the specifications and estimates shall be transmitted to the office of the Collector, and may be examined by any person interested in the embankments. Notice of the receipt of the specifications and estimates shall be posted up in the Collector's office ; and, should any objection be preferred by any such person within a period of one month from the date of such notice, the Collector shall communicate the objection, with his own opinion thereupon, to the Superintendent of Embankments, who shall pass such orders as may appear to him reasonable and proper : Provided, however, that, if the objection referred to the construction of sluices or other new works, any person dissatisfied with the order of the Superintendent may appeal to the Commissioner, who, subject to the orders of the Board of Revenue and of the Provincial Government may disallow the construction of the work.

2. Accounts to be forwarded to Collector, who may recover as arrears of Government revenue - The accounts of the actual expense incurred in maintaining or improving embankments kept up at the expense of zamindars or others and in constructing and repairing sluices and making temporary watercourses or roadways through or over any public embankment, or executing any other work the expense of which may be chargeable to individuals, shall be prepared as soon as possible after the completion of such works, and shall, as soon as such accounts shall have received the sanction of the Superintendent of Embankments, be forwarded to the office of the Collector, and may be there examined by any person interested.

Notice of the receipt of the accounts shall be posted up in the Collector's office; and if, within one month from the date of such notice, any interested person shall object to the accounts, on the ground either that the work charged for has not been performed, or that the whole sum charged has not been expended, or that the rates of charge are higher than the estimate, the Collector shall inquire into such objection, and if the objection appears to be well founded, shall communicate the same with his opinion thereon, to the Superintendent of Embankments. If the Superintendent concurs with the Collector, he shall pass order accordingly; if he differs, the case shall be reported to the Commissioner whose decision shall be final. When the objection shall have been finally disposed of, or, if no objection be preferred when a full month shall have elapsed from the date of notice, the Collector shall proceed to levy the amount from the parties liable to pay the same by the process which is or may be in force for the recovery of arrears of Government revenue.

12.

1. Superintendent to report to Collector as to removal of buildings, etc. - Whenever the Superintendent of Embankments shall be of opinion that the removal of any houses, huts or other buildings, situated between a public

embankment and the river, is necessary, he shall make a report to that effect, accompanied by a detailed statement of the houses, huts or other buildings to be removed, to the Collector of the district in whose jurisdiction the land on which such houses, huts or other buildings stand, is situated.

2. Collector to give notice to claimants - When such report is received the Collector shall cause a notice, containing a general description of the houses, huts or other buildings proposed to be removed, to be affixed in some conspicuous place upon the land, and to be published by proclamation in the nearest bazar, calling on all persons claiming a right in such houses, huts or other buildings to appear in person or by authorised agent at a place to be specified in the notice, on or before a given date, not being less than fifteen days from the date of such proclamation, in order to make known the amount and particulars of their claim to compensation to a jury to be appointed in the following manner.

3. Selection of jury - The Collector shall direct a Deputy Collector or a Principal Officer of his establishment to proceed to the spot, and thereto select three respectable inhabitants of the neighbourhood, to form with himself, a jury for determine the value of the houses, huts or buildings, and, if any dispute should arise, the rights of the claimants.

4. Proceedings of jury - The jury shall assess the value of each house, hut or building separately.

If in any case they differ, the value shall be assessed according to the opinion of the majority ; and, if they be equally divided, the Deputy Collector or other officer as aforesaid shall have a casting vote.

5. Award of jury - Having completed their proceedings, the jury shall make their award, which shall contain a schedule of the houses, huts and buildings, the amount of value assessed on each and the name of the person or persons entitled to receive the same.

The award shall be final and conclusive and not open to question in the Civil Court :Provided always that any person who was not present at the inquiry, or whose claim may have been set aside by the jury, may institute a suit for the value of the property claimed by him against the person to whom payment may have been made under the award.

13. After award, Collector to give notice of payment, and to remove buildings, etc. in thirty days.

- The Collector, on receiving the award, shall cause a notice to be affixed in some conspicuous place upon the land, with a citation calling on the parties to appear before him or the Deputy Collector or other officer aforesaid, in person or by authorised agent, at a certain time and place, and receive the amount so awarded, and warning them to remove their houses, huts or other buildings within thirty days from the date of such notice.

14. When Collector may remove buildings, etc., at cost of owners.

- If, on the expiration of the above stated period, the houses, huts or other buildings shall have not been previously removed, the Collector shall cause the same to be removed or levelled ; and if any expense be incurred in removing or levelling the same, the Collector may sell the materials at public auction in order to defray the charge, delivering any surplus that may remain to the owner.

15. Penalty for obstructing officer in discharge of duty.

- Whoever wilfully obstructs any duly authorised person in removing or levelling any embankment, house, hut or other building shall be liable to be imprisoned for any time not exceeding six months, with or without labour, at the discretion of the Magistrate, or to fine not exceeding two hundred rupees, commutable, if not paid, to a period of imprisonment not exceeding six months, or to both.

16. Penalty for wilful damage to embankment by cutting, etc.

- Whoever wilfully, and without due authority cuts through, or attempts to cut through, any embankment, whether public or private, or destroys or attempts to destroy any such embankment, or open any sluice or watercourse in any such embankment, shall be liable, on conviction before a Magistrate, to be imprisoned for a term not exceeding one year, with or without labour, or to a fine not exceeding two hundred rupees, commutable, if not paid, to a period of imprisonment not exceeding one year, or to both ; or, if the Magistrate be of opinion that such punishment is insufficient for the offence, he may commit the offender to the Sessions Court, in which case he shall be liable, on conviction, to imprisonment for a period not exceeding seven years, with or without labour, or to fine, or to both.

17. Penalty for other wilful damage.

- Whoever damages any public embankment by making any dam or other obstruction for the purpose of diverting or opposing the current of an embanked river without the permission of the officer in immediate charge of the embankment, or by refusing or neglecting to remove any such dam or obstruction at the proper season, or by cutting or otherwise altering the banks of any embanked river, or by removing the earth from such embankment, or by grazing or tethering any cattle or animals on any such embankment, or by driving stakes into or cutting or rooting out grass

growing on, such embankment, or by any other wilful act destroys or diminishes the efficiency of such embankment shall be liable, on conviction before a Magistrate, to simple imprisonment for a term not exceeding six months, or to a fine not exceeding two hundred rupees, or to both.

18. Jurisdiction of Deputy or Assistant Magistrate.

- Any Deputy or Assistant Magistrate may take cognizance of offences under this Act, and may punish offenders to the extent of the power conferred upon him by any law for the time being in force.

19.

[* * *]

20. Right of appeal.

- All sentences and orders passed by a Magistrate, Deputy Magistrate or Assistant Magistrate under this Act shall be appealable, subject to the general provisions which regulate appeals.

21. Interpretation.

- In the construction of this Act, [* * *] the word "Collector" shall mean any Collector, Deputy Collector or other Revenue Officer in independent charge of any district or portion of a district.