

Bengal Agricultural and Sanitary Improvement Act, 1920

WEST BENGAL

India

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An Act to consolidate and amend the law relating to the construction of drainage and other works for the improvement of the agricultural and sanitary conditions of certain areas in Bengal. Whereas it is expedient to consolidate and amend the law relating to the construction of drainage and other works for the improvement of the agricultural and sanitary conditions of certain areas in Bengal; It is hereby enacted as follows:- Preliminary

1. Short title, extent and commencement. -

(1) This Act may be called the Bengal Agricultural and Sanitary Improvement Act, 1920. (2) It extends to the whole of [West Bengal] [except Calcutta as defined in clause (11) of section 3 of the Calcutta Municipal Act, 1923], and any area which has been or may hereafter be constituted a municipality under the provisions of the Bengal Municipal Act, [1932]: Provided that if any scheme under this Act jointly affects any area to which this Act extends and any municipal area, this Act shall be deemed to apply to such municipal area for the purposes of such scheme. (3) It shall come into force on such [date] as the [State Government] may, by notification in the [Official Gazette], direct.

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

(1) "Collector"-(a) means the officer in charge of the revenue jurisdiction of the district within which the lands which form the subject of a scheme under this Act are situated, or, in the case of a scheme relating to lands lying in more than one district, any such officer or officers as may be selected by the Commissioner; and (b) includes any officer appointed by the [State Government] by general or special order to discharge all or any of the functions of the Collector under this Act; (2) the "cost" of a work includes-(a) the total expenditure incurred by the Engineer for surveys, plans, estimates, valuations of a work, and incidental expenses connected therewith whether antecedent or

subsequent to the adoption of a scheme, and all expenses incurred in its execution;(b)the estimated capitalised cost of the maintenance of the work;(c)the total expenditure incurred by the Collector in connection with the scheme and work inclusive of any preliminary inquiry, compensation for the cost of any land taken or acquired for the purposes of this Act, the preparation or revision of any record-of-rights and the cost of apportionment and recovery;(d)all amounts paid, or estimated as payable, as compensation for damage inflicted in carrying out any scheme or work under this Act; and(e)interest on all recoverable deposits or advances made by the [State Government], or by a local authority or any person, at such rates and from and to such dates as may be prescribed;(3)"Engineer" means the District Engineer, or any Engineer or other person specially appointed by the [State Government] in the case of major schemes, or by the Collector in the case of minor schemes, to discharge all or any of the functions of an Engineer under this Act;(4)"landlord" means a person immediately under whom a tenant holds and includes a landlord in khas possession and also the [Government];(5)"local area" means the portion of a district or districts to which a scheme under this Act relates, and any municipal area included within such scheme;(6)"local authority" means any authority legally entitled to, entrusted by [any Government] with, the control or management of a municipal, or local fund, and includes a Local Board constituted under the Bengal Local Self-Government Act of 1885;(7)"major scheme" means a scheme-(i)in which the estimated cost of the work involved exceeds the prescribed amount, or(ii)in which more than one independent local authority is concerned, or(iii)which the Collector has certified should be treated, in such circumstances as may be prescribed, as a major scheme;(8)"minor scheme" means any scheme other than a major scheme;(9)"prescribed" means prescribed by rules under this Act;(10)a "scheme" includes-(a)a survey and plans,(b)estimates of the cost of the work involved in such scheme,(c)a description or map of the local area, and(d)a report on the scheme;(11)"tenant" means a person, whether resident or non-resident in the local area, who holds land or premises for any purposes whatsoever under another person, and is, or but for a special contract would be, liable to pay rent for that land or premises to that person, and includes any rent-free holder or temporary occupant of land or premises.Application for construction of works and procedure thereon.

3. Procedure by the Collector on receipts of application for the undertaking of a work. - Whenever an application is received by the Collector from a local authority, or local authorities, or any person, or persons, recommending the undertaking of any work for the improvement, or for the prevention of the deterioration, of the agricultural or sanitary condition of any area, or if the Collector is himself of opinion that the undertaking of any such work is necessary, he shall cause such inquiries as he may deem necessary to be made and shall thereafter consult the local authority or local authorities concerned:

Provided that if after such inquiries, the Collector is satisfied that the proposed work will constitute a minor scheme which is mainly agricultural in character, reference to any local authority shall not be necessary but may be made if the Collector deems it desirable.

4. Order after inquiry. - (1) On completion of the necessary inquiries and after consultation, when necessary, with the local authority or local authorities, the Collector shall-

(a)if he considers that the proposed work should not be done, pass an order to that effect, or(b)if he considers that the work proposed or modified should be done, take action as hereinafter provided.(2)An appeal shall lie to the Commissioner against every order by the Collector under clause (a) of sub-section (1) within thirty days of such order; and the decision of the Commissioner thereon shall be final.

5. Engineer to prepare scheme. - (1) Whenever it has been decided under section 4 to proceed with any work, the Collector shall direct the Engineer to prepare a scheme.

(2)When the Engineer has prepared any such scheme, he shall forward it to the Collector, who may, subject to such rules as may be prescribed in this behalf, make such modifications therein as he may deem necessary.

6. Publication of scheme. - As soon as possible after the receipt of the scheme, the Collector shall publish a notice in the prescribed manner calling for objections or suggestions thereon by any local authorities, or person interested, within such time as may be prescribed.

7. Procedure in the case of minor schemes. - In the case of minor schemes, the Collector shall, as soon as possible after the expiry of the period fixed by the notice published under section 6, proceed in the prescribed manner to consider any objections or suggestions received in regard to the scheme.

8. Power of Collector to reject, or accept, scheme. - (1) The Collector may-

(a)reject the scheme referred to in section 7, or(b)subject to such rules as may be prescribed in this behalf, accept it with such modifications as he may deem necessary, and shall determine, in the prescribed manner, the method in which, and the conditions subject to which, the cost of the work shall be financed and distributed.(2)An appeal shall lie to the Commissioner against every order by the Collector under sub-section (1) within thirty days of such order; and the decision of the Commissioner thereon shall be final.

9. Procedure in the case of major schemes. Appointment of committee. - In the case of major schemes, the Collector shall, as soon as possible after the receipt of the scheme, in addition to the publication required by section 6,

refer it to the Commissioner, and the Commissioner shall forthwith appoint a committee, to be constituted in the prescribed manner, with the Collector as Chairman, representing the local authorities and the land-owning, cultivating and other interests of the area to which the scheme relates.

10. Committee to consider major schemes. - (1) On the expiry of the period fixed by the notice published under section 6, the committee shall proceed in the prescribed manner to consider any objections or suggestions in regard to the scheme received by the Collector, and may either accept the scheme with such modifications as it may deem necessary, or reject it.

(2) Whenever a scheme has been accepted by the committee, it shall frame proposals, in the prescribed manner, regarding the method in which, and the conditions subject to which, the cost of the work shall be financed and distributed. (3) An appeal shall lie to the [State Government] against every order by the committee under sub-section (1) or (2), within sixty days of such order. (4) It shall be in the discretion of the [State Government], in the case of any scheme rejected by the committee under sub-section (1), of [its] own motion, to cancel or modify such order, and in such case the committee shall be required to frame proposals for financing and distributing the cost of the work as sanctioned by the [State Government], in the manner set out in sub-section (2).

11. Committee to forward scheme to State Government for consideration. - When proceedings under section 10 have been completed, the committee shall forward the scheme through the Commissioner to the [State Government], together with its proposals for financing and distributing the cost thereof.

12. Order by the State Government on the scheme. - The [State Government] shall consider the scheme and proposals of the committee, together with any appeals which may, have been received under section 10, sub-section (3), and may reject them, or accept them, with such modifications as [it] may consider necessary, and the order of the [State Government] thereon shall be final.

13. Engineer to execute scheme. - (1) As soon as possible after a scheme has been accepted under section 8, or section 12, the Collector shall direct the Engineer to execute to work.

(2) When the cost or part thereof is to be recovered from the land-plords and tenants of the local area, the Collector may direct the preparation, or revision, as the case may be, of a record-of-rights of the local area in accordance with the provisions of Chapter X of the Bengal Tenancy Act, 1885, in

so far as the same may be applicable.

14. Compulsory Acquisition of land needed for the purposes of this Act. - The [State Government] may, at the request of the Collector, acquire, under the provisions of the Land Acquisition Act, 1894, any land required for the purpose of this Act.

"Land" in this section has the same meaning as in clause (a) of section 3 of the Land Acquisition Act, 1894.

15. Advance of, or security for, cost of work. - [* * *]

(2)The cost of the work, or any portion thereof may [* * *] be advanced by the [State Government], or by any local authority, or any person, [or security for such cost to the satisfaction of the Collector may be given by the local authority or person concerned.][(3)] Notwithstanding anything contained in the Bengal Local Self-Government Act of 1885, it shall be lawful for a District Board to make any payment referred to in sub-section (2) from the district fund.

16. Power to enter into, or upon, land forming part of a local area. - The Engineer, or any other person duly authorised to prepare a scheme, or to execute any work under this Act may himself, or by his agents and workmen, enter into or upon any land forming part of the local area, and carry out such work thereon as may be required.

Apportionment and recovery of costs.

17. Report by engineer on completion of work. - On the completion of any work executed under this Act, the Engineer shall forthwith submit to the Collector a report accompanied by-

(a)a statement of the items of the cost of the work referred to in sub-clauses (a), (b) and (d) of clause (2) of section 2; and (b)a copy of the map prepared in the prescribed manner of the local area benefited by the improvement.

18. Procedure on receipt of report. - (1) On receipt of the report and other documents required by section 17, the Collector shall-

(i)prepare a statement showing the total cost of the work;(ii)distribute the said cost between-(a)the applicant,(b)the [State Government],(c)the local authorities concerned, and(d)the landlords and tenants collectively of the local area, in the manner determined under section 8 or 10; and(iii)apportion the share of such cost recoverable from the landlords or tenants, or both, or

different classes thereof, according to such rates as may be determined in the prescribed manner, having regard, so far as practicable, to the degree of benefit derived, or estimated to be derived by the different areas and classes affected by the scheme.(2)The Collector shall publish in the prescribed manner the statement and the particulars referred to in sub-section (1), and a copy of the map submitted under clause (b) of section 17, after such revision as he may deem necessary, and shall send an abstract of the statement and particulars to each local authority concerned.(3)Any person interested may appeal to the Commissioner within thirty days of such publication against the order of apportionment under clause (iii) of sub-section (1), and the decision of the Commissioner thereon shall be final.

19. Collector to determine amount recoverable and prepare detailed statement. - The Collector shall then determine the amount recoverable from each landlord or tenant and enter such amount in a detailed statement.

20. Procedure on completion of detailed statement. - (1) On completion of the detailed statement referred to in section 19, the Collector shall publish a copy of the same in the prescribed manner.

(2)Any landlord, or tenant within the local area may, if he objects to the amount apportioned against him, appeal to the Commissioner within sixty days of the publication of the said statement on one or more of the following grounds, namely;-(a)that he will not be benefited by the improvement, or(b)that there has been material error in regard to the degree of benefit derived, of estimated to be derived, from the improvement, or(c)that he holds no land or premises, or has no interest in the land or premises in the local area.(3)The order of the Commissioner on any appeal under sub-section (2) shall be final.(4)The Collector may, on application or on his own motion, at any time, correct any mistakes in the calculation of the amount apportioned against landlord or tenant.

21. Realisation of costs due. - After the disposal of appeals, if any, under section 20, sub-section (2), the Collector shall confirm the statement, with modifications, if any, and shall proceed in the prescribed manner to recover from the local authority, person, landlord or tenant concerned, the amount of the cost due from them.

22. Recovery of arrears as arrears of land revenue. - All arrears shall be recoverable in the prescribed manner as if they were arrears of land-revenue.

Miscellaneous.

23. Compensation for consequential damage. - Whenever any land, other than land taken or acquired for the purpose of this Act, or any right of fishery, right or drainage, right of the use of water, or other right of property,

is injuriously affected by any act done, or any work executed under this Act, the person in whom such property, or right is vested may prefer a claim by petition to the Collector, for compensation;

Provided that the refusal to execute any work for which application is made, and the refusal of permission to execute any work for the execution of which the permission of the Collector or any other authority is required under this Act, shall not be deemed acts on account of which a claim for compensation can be preferred under this section.

24. Limitation to claim for compensation. - (1) No claim under section 23 shall be entertained which is made later than three years after the completion of the work by which such right is injuriously affected.

(2) For the purposes of this section, the date of the completion of the work shall be the date of the publication of the statement and particulars referred to in section 18, sub-section (2).

25. Procedure for determining compensation. - When any such claim is made, proceedings shall be taken with a view to determine the amount of compensation, if any, which should be made and the person to whom the same should be payable, so far as possible in accordance with the provisions of the Land Acquisition Act, 1894.

26. Matters to be considered in determining compensation. - In any such case which is referred by the Collector to the Court for the purpose of determining whether any, and, if so, what amount of compensation should be awarded, the Court shall take into consideration-

- First, the market value of the property or right injuriously affected at the time when the act was done or the work executed;
- Secondly, the damage sustained by the claimant by reason of such act or work injuriously affecting the property or right;
- Thirdly, the consequent diminution of the market value of the property or right injuriously affected when the act was done or the work executed;
- Fourthly, whether any person has derived, or will derive, benefit from the act or work in respect of which the compensation is claimed or from any work connected therewith, in which case they shall set off the estimated value of such benefit, if any, against the compensation which would otherwise be decreed to such person:

Provided that the Court shall not take into consideration-

- First, the degree of urgency which has led to the act or work being done or executed;
- Secondly,

any damage sustained by the claimant, which, if caused by a private person, would not in any suit instituted against such person justify a decree for damages.

27. Additional costs. - If, after the apportionment of the cost of the work as above provided, any expenses not included in such apportionment shall be found to have been paid, or to have become payable, on account of the said work, whether as compensation, or otherwise, or if the amount recovered is insufficient to cover the cost of the scheme, the Collector may proceed to distribute, apportion and recover such additional cost, or deficiency ; and the procedure set out in section 18 and the following section shall then apply.

28. Drainage works subject to laws relating to public embankments. - All outlets and water-channels, natural or artificial, included in a scheme under this Act, whether reconstructed, cleared, altered, enlarged, excavated or cut under this Act or not, and the construction and maintenance of embankments and dams and works therein, or connected therewith, shall be subject to the law for the time being in force regulating the construction and maintenance of public embankments, rivers, channels and outlets.

29. Lands and works how to be vested. - All lands which are taken, or acquired permanently under this Act for the purpose of a scheme, and any work constructed under this Act, and all water-channels, embankments and dams included within the scheme, whether reconstructed, cleared, altered, enlarged, excavated, or cut under this Act, or not, shall be vested in the Collector on behalf of [Government], or subject to such conditions as may be prescribed, in such local authority, or person as the [State Government], may, by general or special order, direct:

Provided that when the total cost of any work has been paid by any local authority, or person, the said lands and works, including any water-channels, embankments and dams, shall, subject to such conditions as may be prescribed, vest in such local authority, or person.

30. Maintenance of works. - The local authority, or person in whom the lands, or works, water-channels, embankments, and dams, are vested shall be responsible for their maintenance, subject to such rules as may be prescribed :

Provided that if the Collector is satisfied that such maintenance is being neglected, or that it is desirable, in the public interests, that such maintenance should be undertaken by the Government, he shall report, through the Commissioner, to the [State Government], who may direct that the duty

of maintenance be undertaken by the [State Government].

31. Administration of capitalised cost of maintenance. - All sums recovered as the estimated capital cost of the maintenance of works constructed under this Act shall be administered in the prescribed manner.

32. Penalty for constructing weirs, etc., obstructing public damage. - (1) Any person who, without lawful authority, erects, or causes to be erected, any weir or other obstruction in any outlet or water-channel, or cultivates the bed of a water-channel, so as to obstruct natural drainage, shall, upon conviction before a Magistrate, be liable to a penalty not exceeding two hundred rupees for every such offence.

(2) It shall be in the discretion of such Magistrate to direct any such offender to remove or pay for the entire cost of the removal of any such obstruction.

33. Powers of the Commissioner, etc., in taking evidence. - The Commissioner, the Collector, and a committee appointed under section 9 shall have all such powers as are conferred on a Civil Court by the Code of Civil Procedure, 1908, for the purpose of compelling the attendance of witnesses and the production of evidence, and for the purpose of examining witnesses in any inquiry, or appeal, as the case may be, which they may be empowered to make or entertain under this Act.

34. Proceedings not to be invalidated by irregularities. - No proceeding under this Act shall be defeated or invalidated by reason of any defect or omission in the publication or service of any notification, notice or order, unless material injury is done to any person by such defect or omission.

35. Power of State Government to make Rules. - (1) The [State Government] may, after previous publication, make rules to carry out the purposes of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, the [State Government] may make rules—(a) fixing the rate of interest to be paid, and the dates from and to which interest on all recoverable deposits, or advances are to be paid under sub-clause (e) of clause (2) of section 2; (b) fixing the amount of the costs of the work involved in a scheme in excess of which such scheme shall be deemed to be a major scheme, and prescribing the circumstances under which the Collector may certify a scheme to be a major scheme; (c) prescribing the manner of publication of a notice under section 6, a copy of the final statement of cost and the map under section 18,

sub-section (2), and a copy of the detailed statement under section 20, sub-section (1), and prescribing the time within which objections and suggestions are to be made under section 6;(d)prescribing the manner in which the objections or suggestions referred to in section 7 and section 10, sub-section (1), shall be considered;(e)prescribing the manner in which a scheme may be modified, if necessary, under section 5, sub-section (2), and clause (b) of subsection (1) of section 8;(f)determining the constitution of the committee referred to in section 9, and regulating the conduct of business at meetings of the committee;(g)prescribing the manner and conditions for financing and distributing the cost of the work involved in a scheme under section 8, sub-section (1), and section 10, sub-section (2);(h)prescribing the manner in which the Engineer shall prepare the map under clause (b) of section 17;(i)prescribing the manner in which the Collector shall determine the rates at which the cost of a scheme shall be recoverable under clause (iii) of sub-section (1) of section 18, and the instalments, if any, by which such cost shall be recovered;(j)prescribing the manner in which the Collector shall recover costs under section 21, and arrears under section 22;(k)prescribing the conditions subject to which lands and works shall vest in a local authority, or person under section 29;(l)for the maintenance of works under section 30;(m)determining the manner in which the sums referred to in section 31 shall be administered;(n)prescribing the forms of accounts, surveys, plans, maps, estimates, statements, and reports;(o)regulating the powers and duties of any officer, or person under this Act.

36. Repeal. - The following enactments are hereby repealed, namely:-

(a)the Bengal Drainage Act, 1880;(b)the Bengal Drainage (Amendment) Act, 1902; and(c)the Bengal Sanitary Drainage Act, 1895:Provided that in the case of any scheme or work which has, at the commencement of this Act, been completed under the Bengal Drainage Act, 1880, or the Bengal Sanitary Drainage Act, 1895, the costs of such scheme, or work shall be recoverable in accordance with the provisions of those Acts, as if this Act had not been passed:Provided also that any scheme or work of whatever nature commenced under either of the aforesaid Acts, and not completed before the commencement of this Act, shall, so far as it is not inconsistent, be deemed to have been commenced under this Act.