

The Maharashtra Underground Pipelines and Underground Ducts (Acquisition of Right of User in Land) Act, 2018

MAHARASHTRA

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Act 49 of 2018

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The Maharashtra Underground Pipelines and Underground Ducts (Acquisition of Right of User in Land) Act, 2018 (Maharashtra Act No. 49 of 2018) (First published, after having received the assent of the Governor in the " Maharashtra Government Gazette ", on the 9th August 2018). An Act to provide for the acquisition of right of user in land for laying underground pipelines and to create underground ducts for carrying utilities and services (except electricity cables) in the State of Maharashtra and for matters connected therewith or incidental thereto. Whereas both Houses of the State Legislature were not in session ; And Whereas the Governor of Maharashtra was satisfied that circumstances existed which rendered it necessary for him to take immediate action to provide for the acquisition of right of user in land for laying underground pipelines and to create underground ducts for carrying utilities and services (except electricity cables) in the State of Maharashtra and for matters connected therewith or incidental thereto ; and, therefore, promulgated the Maharashtra Underground Pipelines and Underground Ducts (Acquisition of Right of User in Land) Ordinance, 2018 (Maharashtra ordinance XIII of 2018) on the 9th May 2018 ; And Whereas it is expedient to replace the said Ordinance, by an Act of the State Legislature ; it is hereby enacted in the Sixty-ninth Year of the Republic of India as follows :-

1. Short title, extent and commencement.

(1) This Act may be called the Maharashtra Underground Pipelines and Underground Ducts (Acquisition of Right of User in Land) Act, 2018. (2) It extends to the whole of the State of Maharashtra. (3) It shall be deemed to have come into force on the 9th May 2018.

2. Definitions.

- In this Act unless the context requires otherwise, -(a)"Competent Authority" means any person or authority authorized by the State Government, by notification in the Official Gazette, to perform the functions of a Competent Authority under this Act ;(b)"Corporation" means any body corporate established under any Central or State Act or a company incorporated under the Companies Act, 2013 (18 of 2013) or any other law for the time being in force ;(c)"Government" or "State Government" means the Government of Maharashtra ;(d)"Land Acquisition, Rehabilitation and Resettlement Authority" means the Authority established under sub-section (1) of section 51 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013);(e)"prescribed" means prescribed by rules made under this Act ;(f)"Urban Local Body" means the local authority as defined in subclauses (a), (b) and sub-clause (c)(Iii) Of Clause (15) Of Section 2 Of The Maharashtra Regional And Town Planning Act, 1966 (Maharashtra Xxxvii Of 1966);(g)"underground pipeline" means an underground pipeline laid for carrying utilities and services from one place to another at a depth of not less than one and a half meter of the land surface ;(h)"underground duct" means a duct created not less than one and a half meter below the surrounding ground level for carrying utilities and services from one place to another.

3. Publication of notification regarding intention to acquire right of user in land.

(1)Whenever it appears to the State Government that it is necessary in the public interest for carrying utilities and services from one locality to another locality, an underground pipeline may be laid or underground duct may be created by the Government, Corporation or Urban Local Body and that for the purpose of laying such underground pipeline or creating such underground duct, it is necessary to acquire the right of user in any land under which underground pipelines may be laid or underground ducts may be created, it may, by notification in the Official Gazette, declare its intention to acquire the right of user in such land.(2)Every notification under sub-section (1) shall give a brief description of the land in which such underground pipelines are to be laid or underground ducts are to be created.(3)The Competent Authority shall cause the substance of such notification to be published at such places and in such manner as may be prescribed.(4)Any person interested in such land may, within a period of twenty-one days from the date of publication of the notification under sub-section (1) in the Official Gazette, object to the laying of the underground pipelines or to the creation of underground ducts.(5)Every objection under sub-section (4) shall be made to the Competent Authority in writing and shall set out the grounds thereof and the Competent Authority shall give the objector an opportunity of being heard either in person or through his legal practitioner and may, after hearing all such objections and after making such further inquiry, if any, as it deems necessary, by an order, either allow or reject such objections within thirty days from the last date specified for filing objections under sub-section (4).(6)Every order made by the Competent Authority under sub-section (5) shall be final.

4. Declaration of acquisition of right of user in land.

(1) Where no objections under sub-section (4) of section 3 have been made to the Competent Authority within the period specified therein or where the Competent Authority has passed final order under sub-section (5) of the said section 3, the Competent Authority shall declare, by notification in the Official Gazette within thirty days from the date of passing of order under subsection (5) of section 3, that the right of user in the land for laying underground pipelines or for creating underground ducts should be acquired :Provided that, if the Competent Authority fails to issue a declaration, within thirty days from the date of passing of order under sub-section (5) of section 3, the declaration under sub-section (1) of section 3 shall be deemed to be lapsed :Provided further that, nothing in the preceding proviso shall preclude issuance of a fresh notification under sub-section (1) of section 3.(2) On the publication of the declaration under sub-section (1), the right of user in the land specified therein shall vest absolutely in the State Government free from all encumbrances.(3) Notwithstanding anything contained in sub-section (2), the State Government may, on such terms and conditions, as it may think fit, direct, by an order in writing, that the right of user in the land for laying the underground pipelines or for creating underground ducts shall, instead of vesting in the State Government, vest in the Corporation or Urban Local Body proposing to lay underground pipelines or to create underground ducts, free from all encumbrances.

5. Power to enter and survey.

- On publication of the declaration under sub-section (1) of section 4, it shall be lawful for any person authorized by the State Government or the Corporation or Urban Local Body and its servants and workmen to,-(a) enter upon, survey and take levels of any land specified in the notification ;(b) dig or bore into the sub-soil ;(c) set out the intended line of work ;(d) mark such levels, boundaries and lines by placing marks and cutting trenches ;(e) cut down and clear away any part of any standing crop or fence or jungle, subject to obtaining necessary permissions under the relevant laws on forests, where survey is not completed or levels are not taken or boundaries and lines are not marked ; and(f) do all other acts necessary to ascertain whether to lay underground pipelines or to create underground ducts :Provided that, while exercising any power under this section, such person or any servant of such person shall cause as little damage or injury as possible to such land.

6. Laying underground pipelines or creating underground ducts.

(1) Where the right of user in any land has been vested in the State Government or Corporation or Urban Local Body under section 4,-(i) it shall be lawful for any person authorized by the State Government or the Corporation or Urban Local Body, as the case may be, and its servants to enter upon the land and lay underground pipelines or create underground ducts or to do any other act necessary for laying of such underground pipelines or creating underground ducts :Provided that, as far as practicable, no underground pipelines shall be laid or underground ducts shall be created under any land which, immediately before the date of the notification under sub-section (1) of section 3, was under or appurtenant to any residential, commercial, industrial or institutional building ;(ii) such land shall be used only for laying underground pipelines or for creating underground ducts and maintaining, examining, repairing, altering or removing any such

underground pipelines or underground ducts or for doing any other act necessary for any of the aforesaid purposes or for the utilization of such underground pipelines or such underground ducts.(2)If any dispute arises with regard to any matter referred to in the proviso to clause (i) of sub-section (1), the dispute shall be referred to the Competent Authority, whose decision thereon shall be final.

7. Power to enter upon land for maintenance, inspection, etc.

- For maintaining, examining, repairing, altering or removing any underground pipelines or underground ducts, or for taking measurement for any of the aforesaid purposes, or for making any inspection, any person authorized in this behalf by the State Government or the Corporation or Urban Local Body may, after giving reasonable notice to the occupier of the land, enter thereupon with such workmen and assistants as may be necessary :Provided that, where an emergency exists, no such notice shall be necessary.

8. Restrictions regarding use of land.

(1)The owner or occupier of the land with respect to which a declaration has been made under sub-section (1) of section 4, shall be entitled to use the land for the purpose for which such land was put to use immediately before the date of the notification under sub-section (1) of section 3 :Provided that, such owner or occupier shall not, after the declaration under sub-section (1) of section 4, -(i)construct any building or any other structure;(ii)construct or excavate any tank, well, reservoir or dam; or(iii)plant any tree on that land.(2)The owner or occupier of the land shall not do any act which may cause or is likely to cause any damage in any manner whatsoever to underground pipelines or underground ducts.

9. Compensation.

(1)Where in exercise of the powers conferred under sections 5, 6 or 7, any damage, loss or injury is sustained by any person interested in the land, in respect of which notification under sub-section (1) of section 4 has been issued, the State Government or the Corporation or Urban Local Body shall be liable to pay compensation to such person for such damage, loss or injury, the amount of which shall be determined by the Competent Authority within thirty days of notification under sub-section (1) of section 4. While determining such compensation, it shall have due regard to the damage or loss sustained by reason of-(i)the removal of trees or standing crops, if any, on the land;(ii)the temporary severance of the land under which underground pipelines have been laid or underground ducts have been created, from other lands belonging to, or in the occupation of such person; or(iii)any damage to any other property, whether movable or immovable, of such person, caused in any manner.(2)Where the right of user of any land has vested in the State Government or the Corporation or Urban Local Body, as the case may be, it shall be liable to pay such compensation in addition to compensation payable under sub-section (1) calculated as per rules made by the State Government in this behalf.(3)If the amount of compensation determined in pursuance of the provisions of sub-section (2) is not acceptable to either of the parties, an application may be made by the aggrieved party within thirty days after receipt of communication by the Competent Authority

in that regard, to the Land Acquisition, Rehabilitation and Resettlement Authority whose decision in this regard shall be final.(4)Where the land becomes unbuildable by virtue of the right of user vesting in the State Government or Corporation or Urban Local Body, as the case may be, the land may be acquired under the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (30 of 2013).

10. Deposit and payment of compensation.

(1)The amount of compensation determined under section 9 shall be deposited by the State Government or the Corporation or Urban Local Body, as the case may be, with the Competent Authority within one hundred and eighty days of determination of compensation under section 9.(2)If the amount of compensation is not deposited within the time specified under sub-section (1), the State Government or the Corporation or Urban Local Body, as the case may be, shall be liable to pay interest thereon at the rate of nine per cent. per annum from the date on which the compensation had to be deposited till the date of actual deposit.(3)After the compensation has been deposited under sub-section (1), the Competent Authority shall, on behalf of the State Government or the Corporation or Urban Local Body, as the case may be, pay the compensation to the persons entitled thereto within next thirty days.(4)If any dispute arises as to the apportionment of the compensation or additional compensation or any part thereof, the Competent Authority shall refer the dispute to the Land Acquisition, Rehabilitation and Resettlement Authority and the decision of the said Authority thereon shall be final.

11. Period within which compensation shall be made.

- The Competent Authority shall pay compensation under section 9 within two years from the date of publication of the notification under sub-section (1) of section 3 and if no compensation is paid within that period, the entire proceedings for the acquisition of right of user in the land, shall lapse.Explanation. - In computing the period of two years, referred to in this section, the period during which any action or proceeding in pursuance of the said notification is stayed by an order of a court shall be excluded.

12. Special power in cases of urgency.

(1)In cases of urgency, whenever the State Government so directs, the Competent Authority, even though no such award or order has been made under section 9, may, on the expiration of fifteen days from the publication of the notification under sub-section (1) of section 3, acquire right of user in land needed for laying of such underground pipelines or for creating underground ducts. Such right of user in the land shall thereupon vest absolutely in the State Government, free from all encumbrances :Provided that, the Competent Authority shall not acquire right of user in any land or part thereof under this sub-section without before giving to the occupier thereof notice of its intention so to do, the period of which shall be at least forty-eight hours' or such longer period as may be reasonably sufficient to enable such occupier to remove his movable property from such land without unnecessary inconvenience.(2)In every case under sub-section (1), the Competent Authority shall, at the time of taking possession, offer to the persons interested, compensation for

the standing crops and trees, if any, on such land and for any other damage caused by such sudden dispossession; and, in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be included at the time of awarding compensation for the land under the provisions herein contained.(3)Before taking possession of any land under sub-section (1), the Competent Authority shall, without prejudice to the provisions of sub-section (2), make payment of eighty per centum of the compensation for such land as estimated by him, to the persons interested and entitled thereto unless prevented by one or more of the contingencies mentioned in section 9; and where the Competent Authority is so prevented, the provisions of section 9 shall apply as they apply to the payment of compensation under that section.(4)The amount paid or deposited under sub-section (3), shall be taken into account for determining the amount of compensation required to be tendered under section 9 and where the amount so paid or deposited exceeds the compensation awarded by the Competent Authority under section 9, the excess amount may, unless refunded within three months from the date of award or order of the Competent Authority, be recovered as an arrear of land revenue.(5)In case of any land to which, in the opinion of the State Government, the provisions of sub-section (1) are applicable, the State Government may direct that the provisions of section 3 shall not apply, and, if it so directs, a declaration may be made under section 4 in respect of the land at any time after the date of publication of the notification under section 3.

13. Competent Authority to have certain powers of civil court.

- The Competent Authority shall have for this Act, all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely
:- (a) summoning and enforcing the attendance of any person and examining him on oath
;(b) requiring the discovery and production of any document ;(c) recording of evidence on affidavits
;(d) requisitioning any public record from any court or office ;(e) issuing commission for examination of witnesses.

14. Protection for action taken in good faith.

- No suit, prosecution or other legal proceedings shall lie against any person for anything which is done or intended to be done in good faith in pursuance of this Act or any rule or notification made or issued thereunder.

15. Bar of Jurisdiction.

- No civil court shall have jurisdiction to entertain any suit or to try any dispute or to pass any interim injunction in respect of any matter for which the Competent Authority or the Land Acquisition, Rehabilitation and Re-settlement Authority is empowered under this Act.

16. Punishment.

(1) Whosoever willfully obstructs any person in doing any of the acts authorized under section 5, 6 or

7 of this Act or willfully fills up, destroys, damages or displaces any trench or mark made under section 5 or willfully does anything prohibited under the proviso to sub-section (1) of section 8, shall be punishable with simple imprisonment which may extend to six months or fine or with both.(2)Whosoever willfully removes, displaces, damages or destroys any underground pipelines or underground ducts shall be punishable with rigorous imprisonment for a term which shall not be less than one year, but which may extend to three years and shall also be liable to fine.

17. Power to make rules.

(1)The State Government may, by notification in the Official Gazette, make rules, for carrying out the purposes of this Act.(2)Except when the rules are made for the first time, all rules made under this Act shall be subject to the condition of previous publication.(3)Every rule made under this Act shall be laid, as soon as may be, after it is made, before each House of the State Legislature, while it is in session for a total period of thirty days, which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, both Houses agree in making any modification in rule or both Houses agree that the rule should not be made, and notify their decision to that effect in the Official Gazette, the rule shall from the date of publication of such decision in the Official Gazette, have effect only in such modified form or be of no effect, as the case may be; so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

18. Power to remove difficulties.

(1)If any difficulty arises in giving effect to the provisions of this Act, the State Government may, as occasion arises, by an order published in the Official Gazette, do anything not inconsistent with the provisions of this Act, which appears to it to be necessary or expedient for the purposes of removing the difficulty :Provided that, no such order shall be made after the expiry of a period of two years from the date of commencement of this Act.(2)Every order made under sub-section (1) shall be laid, as soon as may be, after it is made, before each House of the State Legislature.

19. Repeal of Maharashtra Ordinance XIII of 2018 and saving.

(1)The Maharashtra Underground Pipelines and Underground Ducts (Acquisition of Right of User in Land) Ordinance, 2018 (Maharashtra Ordinance XIII of 2018.), is hereby repealed.(2)Notwithstanding such repeal, anything done or any action taken (including any notification or order issued) under the corresponding provisions of the said Ordinance, shall be deemed to have been done, taken or, as the case may be, issued under the corresponding provisions of this Act.