

The Jammu and Kashmir Flood Plain Zones (Regulation and Development) Act, 2005

JAMMU & KASHMIR

India

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Act 17 of 2005

- Published on 7 November 2005
- Commenced on 7 November 2005
- [This is the version of this document from 7 November 2005.]
- [Note: The original publication document is not available and this content could not be verified.]

The Jammu and Kashmir Flood Plain Zones (Regulation and Development) Act, 2005(Act No. 17 of 2005)[Received the assent of the Governor on 7th November, 2005 and published in Government Gazette dated 11th November, 2005].An Act to provide for zoning of flood plains and rivers in the State and regulation of developmental activities in the flood plains with a view to restrict the damage caused by floods and for matters incidental thereto.Be it enacted by the Jammu and Kashmir State Legislature in the Fifty-sixth Year of the Republic of India as follows :-

Chapter I Preliminary

1. Short title, extent and commencement.

(1)This Act may be called the Jammu and Kashmir Flood Plain Zones (Regulation and Development) Act, 2005.(2)it extends to the whole of the State of Jammu and Kashmir.(3)It shall come into force on such date as the Government may, by notification in the Government Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires,-(a)'Act' means the Jammu and Kashmir Flood Plain Zones (Regulation and Development) Act, 2005;(b)'flood plain' includes water channel, flood channel and that area of nearby low land as may be susceptible to flood inundation;(c)'flood plain zoning' means restricting any human activity in flood plains of a river where the plains are created by overflow of water from the channels of rivers and streams;(d)'flood zone' means the area which is

required to carry the flow of the maximum probable floods;(e)'Flood Zoning Authority' in relation to a river, means the authority appointed by the Government under sub-section (3) of section 3;(f)'land' includes interest in land, benefits arising out of land and things attached to earth or permanently fastened to anything attached to the earth;(g)'occupier' in respect of any land, means any person who has any interest in the land and cultivates the land himself or through his servants or by hired labour and includes a tenant;(h)'owner' in relation to any land includes any person having interest in such land;(i)'prescribed' means prescribed by rules made by the Government under the Act;(j)'prescribed authority' means the person or authority as the Government may in this behalf appoint;(k)'river' includes its tributaries;(l)'Special Tribunal' means the Special Tribunal established under section 4 of the Jammu and Kashmir Special Tribunal Act, 1988;(m)'water channel' means the channel in which the flow of a river are generally confined.

Chapter II

Powers of the Flood Zoning Authority

3. Declaration of flood plain zoning.

(1)Where the Government considers it necessary or expedient to do so, it may by notification in the Government Gazette, declare the flood plain zoning in respect of a river that flows in the State shall be made in the manner hereinafter specified.(2)The Government may direct that a survey be made of the notified river for the purpose of determining the limits within which the provisions of the Act are to be applied and that proper charts and registers be prepared specifying all boundaries and landmarks and any other necessary matters for the purposes of ascertaining such limits.(3)The Government may, by notification in the Government Gazette, appoint the Deputy Commissioner of the District or such other authority as it may consider necessary, as the Flood Zoning Authority for the purposes of making a survey of the area as required under sub-section (2).

4. Powers and functions of the Flood Zoning Authority.

- The Flood Zoning Authority shall exercise the powers and discharge the duties in accordance with the provisions of the Act.

Chapter III

Surveys and Delineation of Flood Plain Area

5. Survey.

(1)The Flood Zoning Authority shall carry out surveys of flood plains of the rivers and determine the nature and the extent of flood plains of the rivers.(2)The Flood Zoning Authority shall, on the basis of the survey carried out under sub-section (1), establish flood plain zones and delineate the areas which are subject to flooding including classification of land with reference to relative risk of flood plain use intended to safeguard the health, safety and property of public.(3)The Flood Zoning

Authority shall prepare charts and registers indicating the areas delineated under sub-section (2).

6. Power to take up survey.

- The Flood Zoning Authority shall have the powers -(a)to enter upon and survey and take levels of any land within its jurisdiction;(b)to mark such, levels, boundaries and lines by placing marks or boundary stones;(c)to measure the land;(d)to do all other acts necessary for the purposes of ascertaining the limits referred to in sub-section (2) of section 3;(e)where the survey cannot be so completed and the levels taken, to cut down and clear away any part of standing crop or fence:Provided that no Flood Zoning Authority or any other officer authorized by it shall enter into any building or open any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least thirty days notice in writing of his intention to do so.

7. Payment of damages.

(1)The Flood Zoning Authority or any other officer generally or specially authorized by it in this behalf, who has entered upon any land under section 6, shall before leaving tender compensation to the owner or occupier of such land for any damage which may have been caused and in case of dispute as to the sufficiency of, or entitlement to, the amount so tendered, the Flood Zoning Authority shall refer the matter to the Divisional Commissioner having jurisdiction in the area for his decision within fifteen days:Provided that the Divisional Commissioner shall, before deciding the matter, afford reasonable opportunity to the person concerned.(2)Any person aggrieved by the decision of the Divisional Commissioner may, within 30 days from the date of decision, prefer appeal to the Special Tribunal.

Chapter IV

Declaration of limits of Flood Plains

8. Declaration of intention of the Government to demarcate flood plain areas.

- The Government may, on the basis of a report from the Flood Zoning Authority or otherwise, by notification in the Government Gazette, declare its intention to demarcate the flood plain areas and either prohibit or restrict the use of land therein.

9. Public notices.

(1)The Flood Zoning Authority shall, on the issue of notification under section 8, cause public notice of the substance of such notification to be given at conspicuous places in the area.(2)The Flood Zoning Authority shall also give notice individually to the owners and occupiers of the land situated in the area.(3)The Flood Zoning Authority shall exhibit records, charts, maps, registers and such other documents showing the river channel, flood channel and the flood plain area, specifying the

nature and extent to which the use of land in the area is either prohibited or restricted in his office for inspection by the public at large.

10. Objections.

(1) Any person who desires to raise any objection to the limits and the prohibitions or restrictions specified in the public notice referred to in section 9 may, within a period of sixty days from the date of publication of the notification in the Government Gazette, submit to the Flood Zoning Authority a statement in writing setting forth his objections. (2) The Flood Zoning Authority shall consider the objections, if any, received under sub-section (1), and also afford to the party concerned a reasonable opportunity of being heard in the matter. (3) The Flood Zoning Authority shall forward to the Government, its proposal together with the records referred to in sub-section (3) of section 9 and the objections, if any, received under sub-section (1).

11. Decision of the Government.

(1) The Government shall, after considering the proposal of the Flood Zoning Authority and other documents referred to under sub-section (3) of section 10 by notification in the Government Gazette, declare that the provisions of the Act, shall apply to the said river with boundaries and limits as specified in the notification. (2) The decision of the Government shall be final. (3) The areas delineated and approved by the Government shall be deemed to be the flood plain and the limits shall, wherever necessary, be marked either by boundary stones or other suitable marks. (4) The Flood Zoning Authority shall maintain the charts of the areas and registers delineated and such charts and registers shall form part of the permanent records of the office. (5) The charts and registers shall be open for inspection to public.

Chapter V

Prohibition or restriction of the use of the Flood Plains

12. Powers to prohibit obstruction, etc. in flood plain area.

(1) Where the Government is satisfied that it is necessary to do so in the interest of public health, safety or properly or in the interest of reducing the inconvenience to public to prohibit or restrict the activities in the flood plain, it may, by notification in the Government Gazette, specify the area where such prohibition or restriction is to be enforced and the nature and extent of such prohibition or restriction: Provided that no notification under this sub-section shall be issued after the expiry of six months from the date of publication of notification under section 8. (2) Upon the publication of a notification under sub-section (1), notwithstanding anything contained in any law, custom, agreement or instrument for the time being in force, the prohibition or restriction specified in such notification shall have effect. (3) No person shall undertake any activity within the prohibited area or restricted area except with the previous permission of the Flood Zoning Authority: Provided that where a person makes an application to the Flood Zoning Authority for permission under this sub-section to undertake any activity and the Flood Zoning Authority does not, within a period of

ninety days from the date of receipt of such application, communicate to the person that permission applied for has been refused, it shall be presumed that the flood Zoning Authority has granted such permission.

13. Penalty.

(1) If any person commences or carries on or attempts to carry on any activity in the area specified in the notification under sub-section (1) of section 12, contrary to the terms and conditions specified in such notification or the permission granted under sub-section (3) of section 12, he shall be punishable by the Flood Zoning Authority with—(a) fine which may extend to five thousand rupees; and (b) further fine which may extend to two hundred rupees for each day after the conviction under clause (a). (2) The Flood Zoning Authority shall, before imposing fine, afford such person a reasonable opportunity of being heard.

14. Power to compound.

(1) Subject to such conditions as may be prescribed, any officer authorized by the Government by a general or special order in this behalf may, either before or after the institution of proceedings under the Act, accept from the person who has committed or is reasonably suspected of having committed an offence, a sum of money not exceeding five thousand rupees. (2) On the payment of such sum of money, such person shall be discharged and no further proceedings shall be taken against him in respect of such offence.

15. Appeal.

(1) Any person aggrieved by any decision of the Flood Zoning Authority may prefer an appeal to the prescribed authority within a period of ninety days from the date on which such decision was communicated to him: Provided that the prescribed authority may entertain the appeal after the expiry of the said period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing appeal in time. (2) The prescribed authority may, after giving a reasonable opportunity to the appellant of being heard in the matter, make such orders as it deems fit and the decision thereof shall be final.

16. Revision.

(1) Where no appeal has been preferred under section 15, the Government may, for the purpose of examining the legality, propriety or correctness of any inquiry or proceedings of the Flood Zoning Authority, call for the records of any inquiry or proceedings of the Flood Zoning Authority and make such order in the case as it thinks fit: Provided that no such records shall be called after the expiry of one year from the date of such order. (2) No order of the Flood Zoning Authority shall be varied by the Government so as to prejudicially affect any person without giving such person a reasonable opportunity of being heard in the matter.

Chapter VI

Compensation

17. Payment of compensation.

(1) Where any permission to undertake an activity in the flood plain has been refused to a person or where as a result of prohibition or restriction imposed on any person under the Act, such person suffers any damage, he shall be entitled to the payment of compensation not exceeding the difference between the value of the land as determined under the provisions of Land Acquisition Act, Samvat 1990 and the value which it would have, had the permission for carrying on any activity been granted or the prohibition or restriction had not been imposed. (2) In determining the amount of compensation under sub-section (1), any restriction to which the land is subjected under any other law for the time being in force in regard to the right of the person claiming compensation to carry on any activity on the land or otherwise to the use of the land shall be taken into consideration.

18. Determining the compensation and apportionment by consent.

(1) The persons to whom the compensation under section 17 is to be paid and the apportionment of such amount among the persons interested therein shall be determined by agreement between the Flood Zoning Authority and the person or persons claiming interest therein. (2) In default of any such agreement, the Flood Zoning Authority shall, after holding such enquiry as it considers necessary, make an award determining, - (a) the amount of compensation to be paid under section 17; and (b) the apportionment, if any, of such compensation among persons known or believed to be interested therein: Provided that where the amount of compensation exceeds the prescribed limit, no award shall be made without the previous approval of the Government or such other officer as the Government may authorize in this behalf.

19. Compensation not admissible.

(1) No compensation shall be awarded, - (a) if the land was subject to substantially similar restriction under any other law in force on the date on which the restrictions were imposed by or under the Act; (b) if compensation in respect of substantially similar restrictions, imposed under some other law, has already been paid in respect of the land to the claimant or his predecessor in interest; and (c) for removal of any encroachment. (2) If any person has unauthorisedly undertaken any activity, any increase in the value of land from such activity shall not be taken into account in estimating the value of land.

20. Appeal against award.

(1) Any person aggrieved by the award of the Flood Zoning Authority under sub-section (2) of section 18 may prefer an appeal against such award before the Special Tribunal. (2) An appeal under sub-section (1) shall be made within forty-five days from the date of communication of the award

and no appeal shall be entertained after the expiry of the said period.(3)The appeal under this section shall be disposed of, as far as practicable, within a period of six months.

21. Decision enforceable as decree of civil court.

- The decision under section 20 shall be enforceable as a decree of a civil court.

22. Payment under award.

- On the determination of compensation under sub-section (1) of section 18 or on the making of a decision under section 20 against such award, the compensation shall be paid by the Flood Zoning Authority in accordance with the provisions of the State Land Acquisition Act, Samvat 1990.

Chapter VII

Powers to remove obstruction

23. Powers to remove obstructions after prohibition.

(1)The Flood Zoning Authority may, in accordance with the provisions of the Act, direct any owner or occupier of land to do any act or remove any unauthorized obstruction within such time as may be specified by it and such owner or occupier shall do such act or remove the obstruction, as the case may be.(2)If the owner or occupier fails to comply with the order of the Flood Zoning Authority within time specified under sub-section (1), the Flood Zoning Authority may cause the act to be performed or cause the obstruction to be removed.(3)All expenses incurred by the Flood Zoning Authority under sub-section (2) shall be recovered from such owner or occupier, as the case may be, as arrears of land revenue.

Chapter VIII

Miscellaneous

24. Preventing Flood Zoning Authority from doing an act to be offence.

- Any person, who prevents the Flood-Zoning Authority in discharging its functions or exercising its powers under the Act, shall be deemed to have committed an offence under section 186 of the Jammu and Kashmir State Ranbir Penal Code, Samvat 1989.

25. Flood Zoning Authority and other officers to be public servants.

- The Flood Zoning Authority and other officers and employees authorized under the Act shall be deemed to be public servants within the meaning of section 21 of the Jammu and Kashmir Ranbir Penal Code, Samvat 1989.

26. Protection of action taken in good faith.

(1) No suit, prosecution or other legal proceedings shall lie against the Government, Flood Zoning Authority or any authority or person exercising any power or performing any duty under the Act for anything which is in good faith done or intended to be done in pursuance of the Act or rules made therein. (2) No suit or other legal proceeding shall lie against the Government, Flood Zoning Authority or any authority or person exercising the power or performing any duty under the Act, for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of the Act or any rule or order made thereunder or notification issued thereunder.

27. Recovery of fine.

- The fine imposed under the Act shall be recovered in the manner provided in Chapter XXXVIII of the Code of Criminal Procedure, Samvat 1989.

28. Power to make rules.

(1) The Government may, by notification in the Government Gazette, make rules to carry out the purposes of the Act. (2) In particular and without prejudice to the generality of the foregoing provisions, such rules may provide for- (a) the manner in which charts and records shall be maintained; (b) the limits beyond which the compensation shall not exceed in respect of any area; (c) the manner in which appeal under section 20 shall be made or disposed of; (d) any other matter which has to, or may be, prescribed. (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 and if both Houses of the Legislature agree that the rule should not be made or should be modified, the rule shall, thereafter, be of no effect or have the effect in such modified form as the case may be: Provided, however, any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.