

The Markets and Fairs Act, 1862

MAHARASHTRA

India

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Act 4 of 1862

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The Markets and Fairs Act, 1862 Bombay Act No. 4 of 1862[24th April, 1862]No Statement of object and Reasons was published. For the Bill, as introduced, see Bombay Government Gazette, 1862, Supplement, page 49; for Report of the Select Committee, see Bombay Government Gazette, page 77, and for proceeding in Council, see *ibid*, pages 49, 76 and 95. The short title was given by the Bombay Short Titles Act., 1921 (Bombay 2 of 1921). This Act was extended to and shall be in force in that part of the State of Bombay to which immediately before the commencement of Bombay 84 of 1958 it did not extend, but excluding Greater Bombay (vide Bombay 84 of 1958, Section 2.). An Act for regulating the establishment [and the closure] [These words were inserted by Bombay 84 of 1958, Section 3.] of markets and fairs. Preamble Whereas the establishment of new markets or fairs in the neighbourhood of places where markets or fairs have been previously established leads to disputes between the owners of the lands on which such new and previously established markets or fairs are held, and such disputes not infrequently occasion breaches of peace and serious inconvenience to the frequenters of [such markets or fairs; And Whereas it is expedient to provide also for the closure of existing markets or fairs in the interests of the general public;] [These words were substituted for the words such markets or fairs' by Bombay 84 of 1958, Section 4.] It is enacted as follows :-

1. No new market or fair to be established without permission.

- [* * * *] [These words 'After the passing of this Act' were repealed by the Repealing Act, 1873 (12 of 1873).] No person shall establish a new market or fair without permission, in writing, from the Magistrate of the district. Penalty for attempt to establish without license. - If any person shall attempt to establish a new market or fair without such license he shall, on conviction by [a Magistrate of the first class] [These words were substituted for the words 'the Magistrate' by the Bombay General Clauses Act, 1886 (Bombay 3 of 1886). Schedule B. This Schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bombay 1 of 1904).], be subject to a fine not exceeding two hundred rupees, or, in default of payment, to simple imprisonment for any period not exceeding two [*] [The word 'calendar' was repealed by the Bombay General Clauses Act, 1886

(Bombay 3 of 1886).] months.

2. Person desiring to establish to apply to Magistrate.

- When any person desires to establish a new market or fair, he shall make application, in writing, to the Magistrate of the District. Contents of application. - The application shall specify - the name of place at which it is proposed to establish such new market or fair; the days on which it is to be held; the name of the place where the nearest existing market or fair is held; and the days on which it is held; the distance, in English miles, between the two places; and the reasons of the applicant for desiring to establish a new market or fair.

3. Procedure on application.

- [On receipt of the application the Magistrate, subject to the provisions of this section and of section 5A, may] [These words, figure and letter were substituted for the words 'On receipt of the application, the Magistrate shall' by Bombay 6 of 1956, Section 2(1).] issue a proclamation stating the desire of the applicant to establish a market or fair at the place named by him and the days on which it is proposed to be held and calling upon any person who may have any objection to the establishment of the market or fair to state his objection, in writing, within six weeks from the date of the proclamation. [Provided that the Magistrate instead of issuing a proclamation may, for reasons to be recorded in writing, dismiss the application summarily.] [This proviso was inserted by Bombay 6 of 1956, Section 2(2).] Publication of proclamation. - [If a proclamation is issued, it shall be fixed] [These words were substituted for the words 'The proclamation shall be fixed' by Bombay 6 of 1956, Section 2(3).] in a conspicuous place in the village or town in or near to which it is proposed that the new market or fair shall be held, and a copy of the same shall be affixed at the police station within the jurisdiction of which the village or town is situated, and in the Court of the Magistrate. Notice to land-owner of neighbouring market. - If it shall appear that any existing market or fair is held within a distance of [six miles] [These words were substituted for the words 'four miles' by Bombay 6 of 1956, section 2(3).] from the place where it is proposed that the new market or fair shall be established, the Magistrate shall cause a notice, to the effect of the proclamation to be served upon the owner of the land where such existing market or fair is held. The proclamation and notice (if any) shall be issued and served [at the expense of Government] [These words were substituted for the words 'at the expense of the applicant' by Bombay 6 of 1956, Section 2(5)].

4. Order permitting establishment.

- If, within the time specified in the proclamation and notice (if any), no objection is preferred to the establishment of the proposed market or fair, the Magistrate of the district shall pass an order permitting it to be established. Inquiry into objection. - If within the time specified any objection is preferred, the Magistrate of the district shall inquire into the objection, and pass such order as may appear proper under the circumstances of the case.

5. [Alteration of days on which market to be held. [These section were inserted by Bombay 6 of 1956, Section 3.]

- The Magistrate may, upon application or otherwise and after such enquiry (if any) as he thinks necessary, change or add to or reduce the days on which a market or fair is permitted under section 4 to be held.

5A. Magistrate to consult Director of Agricultural Marketing and Rural Finance or authorised officer before passing orders.

- No order under section 3, 4, [5 , 5C or 5D] [These figures, letters and word were substituted for the word figure 'or 5' by Bombay 84 of 1958, Section 5(1).] shall be made by the Magistrate of the District except in consultation with the Director of Agricultural Marketing and Rural Finance [* * *] [The words 'for the State of Bombay' were omitted by the Bombay Adaptation of Laws (State and Concurrent Subjects) Order, 1956.] referred to in the Bombay Agricultural Produce Markets Act, 1939, or any officer authorised by the Director in this behalf [or in consultation with any other officer specified by the State Government] [These words were added by Bombay 84 of 1958, Section 5(2).].

5B. Refusal of permission if within 5 miles a market or fair is already established.

- If there be a market or fair within a distance of five miles from the place where it is proposed that the new market or fair shall be established, the Magistrate shall refuse permission to establish such new market or fair.]

5C. [Power to close existing market or fair in public interest. [Section 5C and 5D were inserted by Bombay 84 of 1958, Section 6.]

- The District Magistrate, on an application made to him under this Act for the closure of an existing market or fair, if he is satisfied that it is necessary so to do-(a)for the prevention of breaches of the peace or serious inconvenience to the frequenters of such market or fair, or(b)because of the vicinity of any place of public religious worship, educational institution, hostel, hospital, nursing home, or other public place to the market or fair and the consequent nuisance caused to such public place by the holding of the market or fair, or(c)on grounds of public health, public convenience or safety, or the proper regulation of traffic,may, by order in writing, direct that, from such date as is stated therein, either permanently or for a period specified in the order such market or fair shall be closed and shall not be held at such place:Provided that no order shall be made by the Magistrate, unless he has followed the procedure set out in section 5D.

5D. Procedure for closure of existing market or fair.

(1)An application for the closure of an existing market or fair under the last preceding section shall specify-the name of the place at which the existing market or fair is held; the days on which it is held;the name of the place in the vicinity where any other market or fair is held or proposed to be held;the days on which that market or fair is held or is proposed to be held; the distance in miles between the two places; and the reasons for the closure of the existing market or fair.(2)On receipt of such application, the District Magistrate shall issue a proclamation, stating therein that an application has been made to him for the closure of an existing market or fair and the reasons urged therefore, and-calling upon all persons who may be interested in the holding of the market or fair, or who may have any objection to such closure, to submit their objections in writing to the Magistrate, within six weeks from the date of the proclamation. The District Magistrate shall also cause a notice, setting out the matter contained in the proclamation, to be served upon the owner of the land upon which the market or fair to be closed is held, and also upon the owner of such market or fair, calling upon them to show cause, within six weeks from the date of the notice, why such market or fair should not be closed:Provided that the District Magistrate, instead of issuing a proclamation and notice as aforesaid, may for reasons to be recorded in writing, dismiss the application summarily.(3)If a proclamation is issued, it shall be fixed in a conspicuous place in the village or town in or near to which the market or fair to be closed is held, and a copy of the same shall be affixed at the police station within the jurisdiction of which the village or town is situated.(4)The proclamation and notice (if any) shall be issued and served at the expense of Government.(5)If, within the time specified in the proclamation and notice, no objection is preferred to the closure of the market or fair, the District Magistrate may forthwith, and if within such time any objection is preferred, the District Magistrate shall enquire into the objection, and, pass such order as may appear proper under the circumstances of the case.]

6. [Appeal. [This section was substituted for the original by Bombay 84 of 1958, Section 7.]

- Every order passed by a District Magistrate under section 3, 4, 5, 5C or 5D shall, within six weeks, be open to appeal to such officer as the State Government may specify in this behalf (hereinafter in this section referred to as 'the appellate authority'). The order made by the District Magistrate, subject to an appeal to the appellate authority, and the decision of the appellate authority on appeal, shall be final.]

7. Penalty for contravening, disobeying or opposing order.

- Every person who shall contravene, disobey or oppose any order duly made under this Act, shall be liable to a fine not exceeding two hundred rupees, or, in default of payment, to imprisonment [* * *] [The words 'of either kind' and the word 'calendar' were repealed by the Bombay General Clauses Act, 1886 (Bombay 8 of 1886).] for any period not exceeding two [* *] [The words 'of either kind' and the word 'calendar' were repealed by the Bombay General Clauses Act, 1886 (Bombay 8 of 1886).] months.

7A. [Delegation. [This section was inserted by Bombay 6 of 1956, Section 5.]

- The District Magistrate may delegate his powers under this Act to any officer not below the rank of a Mahalkari in respect of the whole or any part of the area within the jurisdiction of such officer.]

8. [Extent. [This section was substituted for the original by Bombay 84 of 1958, Section 8.]

- This Act shall extend to the whole of the State of Bombay, except Greater Bombay.]

9. [Interpretation and saving. [This section was substituted by Bombay 5 of 1956, Section 6.]

- [In this Act, unless the context otherwise requires, -(1)"market"] includes a bazaar, but does not include-(a)a market belonging to, maintained, established or regulated by, a local authority under any law relating to local authorities and for the time being in force;(b)an assemblage of people collected at, or concerned in, the inauguration of sacred edifices, or collected at or concerned in, any other religious festival or ceremonies not forming a part of a fair or market;](2)["a District Magistrate" or "Magistrate of the District" includes any other Magistrate, whom the State Government may, in respect of any area, specify in this behalf.] [This sub-section was added by Bombay 84 of 1958, Section 9(2).]

10. [Saving of general powers of State Government.]

- Repealed by Bombay XXI of 1954, First Schedule.

11. [Meaning of "Magistrate".]

- Repealed by Bombay III of 1886.