

# The Bengal Embankment Act, 1866

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### Act 7 of 1866

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The Bengal Embankment Act, 1866 Act No. 7 of 1866 Published vide Bengal Act No. 7/9.5.1866. An Act to make better provision for the acquisition of land for embankments, and other matters relating thereto Preamble - Whereas, it is expedient to make better provision for the acquisition of land required for embankments, and for charging the expense thereof upon the owners of lands benefited thereby; Be it enacted :

### **1. Lands for embankments may be acquired under powers for acquiring land for public purposes.**

- When it shall be necessary for any Collector to acquire land for the purpose of constructing any public embankment, or of extending or altering any embankment, the superintendence or charge whereof is vested in a servant of the Crown, the provisions of Act VI of 1857, passed by the Governor-General of India in Council, entitled "an Act for the acquisition of land for public purposes" or of any other Act for the time being in force relating to the acquisition of land for public purposes, shall extend and apply to the acquisition of such land for the purpose aforesaid, so far as the same shall be applicable; And such Collector shall and may take and acquire such land, and assess compensation for the same, and do all other acts necessary for the acquisition thereof, by and under the powers and provisions of such Act or Acts so far as the same is or are applicable in that behalf ; but no such declarations or orders by or on behalf of Government as are mentioned in Sections 2 and 3 of the said Act VI of 1857, shall be necessary or required. Any person to whom compensation has been awarded in respect of lands taken shall be entitled to receive the same together with interest after the rate of six per centum per annum from the time when the land was taken : Provided that, notwithstanding anything contained in Section 7, Clause 1, of Act XXXII of 1855 passed by the Governor-General of India in Council, entitled "An Act relating to embankments" it shall not be obligatory upon the Collector to pay to any person, nor shall any person have a right to a civil suit for the recovery of any money in respect of compensation for lands taken, where the same is payable as hereinafter provided by the persons whose lands are benefited, until and unless the Collector shall have received the same from such person.

## **2. Charging cost of land acquired, where lands of different owners benefited.**

- In cases where lands, the property of different owners, will, in the opinion of the Collector, derive benefit from the construction, alteration or extension of any public embankment, and it is necessary to acquire land for the purpose of such construction, alteration or extension, it shall be lawful for such Collector to charge the cost of such land and the expense attending its acquisition upon the persons so deriving such benefit, in such proportions as in his opinion shall be equivalent to the benefit derived by their lands respectively. Before assessing such contribution, the Collector shall cause a notice to be served on each of such persons, in which it shall be stated what land is being taken, and the purpose for which it is required, and that the lands of such person will derive benefit from the execution of the works, and giving him notice that an inquiry will be held, at a day and place to be named, for the purpose of apportioning amongst the persons whose lands will be benefited by the intended works the cost of the land and the expense of acquiring it. In case such person does not reside within the district in which his lands are situate, the notice may be served upon his agent, or, if he has no agent therein, it will be sufficient to affix the notice upon some conspicuous part of his estate.

## **3. Mode of inquiry as to proportion chargeable to each estate.**

- On the day fixed in the notice, which shall not be less than one month later than the date of service of such notice, the Collector shall proceed to make the necessary inquiry for the determination of the proportion to which the estates affected by the construction, extension or alteration of the embankment will be benefited thereby. In making his inquiry he shall receive such evidence as may be tendered by or on behalf of the owners of estates which may appear likely to be benefited by the construction, extension or alteration of the embankment as aforesaid, and on behalf of any other persons who may claim to be interested in the said inquiry, and he may make or cause to be made such local investigation, and call for such documents, and examine such witnesses, as he may think necessary ; and all the provisions of the law, for the time being in force in regard to the examination of witnesses and production of documents in judicial proceedings, shall be applicable to inquiries conducted by the Collector under this Act.

## **4. Power to make award stating names of owners of lands benefited and proportion of cost payable.**

- The Collector shall and may after such inquiry make an award, in which he shall find and state the names of the persons whose lands will be or are benefited by the constructions, alteration or extension of such embankment and the proportion of the cost of the land and the expense of its acquisition (including therein the cost of the said inquiry which they ought, respectively, to bear. No appeal, from award, but one owner may recover from another not assessed or under-assessed- No appeal shall lie from the award of the Collector. But it shall be competent to the owner of any land assessed to a larger amount than his fair proportion to recover such excess in the Civil Court from the owner of any land or estate benefited thereby upon whom no assessment has been made or a smaller amount has been assessed then ought to have been awarded against him : Provided that in

such suit no more shall be recovered from any person than the amount to which he ought to have been assessed where he has not been required to contribute, or the amount by which the sum he was required to pay was less than his fair proportion where he has been required to contribute.

## **5. Expenses included in cost of acquiring land.**

- There shall be included in the expense of acquiring the land so to be distributed amongst the persons benefited not only the compensation awarded to the owner of the land taken, including interest at the rate of six per centum per annum from the time when the land was taken, but also the cost of surveys and plans of notices, of the said inquiry and award, and all other costs, charges and expenses incidental to obtaining possession of such land. The amount so awarded shall and may be recovered from the person so required to pay the same in the same way by the same means as arrears of Government revenue.

## **6. Expenses of sluice apportioned where lands of different owners benefited.**

- When application has been made to the Collector under Section 8 of the said Act XXXII of 1855 for the construction of a sluice in any public embankment, and in the opinion of the Collector lands, the property of other persons as well as of the person making the application, will be benefited by the construction of the sluice, the expense of such construction may be assessed upon and recovered from such persons in such shares or proportions as shall in the opinion of the Collector, be equivalent to the benefit derived by their lands respectively : Provided nevertheless, that notice in writing shall be served on all such persons, stating that it is proposed to make such sluice, the probable expense thereof, and that an inquiry will be held at a place and hour specified, for the purpose of apportioning the expense of such construction among the persons to be benefited thereby, and that such person is supposed to be likely to be benefited thereby. And such notice may be served, and such inquiry shall be held, and such award shall be made, subject to the same rules, powers and provisos in all respects as is hereinbefore provided in the case of the apportionment of the cost of land required for embankments. And the said award shall be final : but a civil suit may be brought to recover any excess with which any such person may be charged from persons who ought to have been charged but have not been charged with any portion of the expense or against whom less has been awarded than their fair proportion, as hereinbefore provided with respect to the apportionment of the cost of land.

## **7. Disposal of lands no longer required for embankments.**

- Whenever, in consequence of the construction or alteration of any public embankment, the maintenance of any other public embankment, or the retention of any land appropriated to the purposes thereof, may no longer be required, and the permanent relinquishment of the same may be deemed expedient by the officer in charge of the embankments, it shall be lawful for the Collector to dispose of the site of the embankment, or of the land so abandoned, by public sale ; and all the provisions of the law for the time being in force in regard to sales of land in default of payment of the Government revenue shall be applicable, so far as the same may be reasonably applied to sales under the provisions of this section. The proceeds of such sales shall, after the payment of all

expenses incurred on account of the same, be applied to the payment of the cost of the new land taken up for embankment purposes, and in such case the residue only of the cost of such new land shall be apportioned among the owners of lands benefited as hereinbefore provided. Provided that it shall not be competent to the Collector to sell in the manner aforesaid any land which shall not have been taken up for embankment purpose under the provisions of this Act.

## **8. Collector may delegate powers to Deputy Collector.**

- A Collector may delegate any of his powers under this Act to a Deputy Collector ; but from any order passed by a Deputy Collector to whom powers have been so delegated an appeal shall lie to the Collector, if presented within fifteen days of the date of the order.

## **9. Act does not apply where obligation to provide land exists.**

- Nothing in this Act shall be held to exempt any person from the obligation of giving land gratuitously, or of paying for land taken up for the purpose of public embankments, where such obligation exists by any law or custom.

## **10. Interpretation.**

- The following words and expressions shall have the several meanings hereby assigned to them, unless where a contrary intention appears from the context. [\* \* \*]"Collector" - The word "Collector" shall include any officer exercising, by authority of the Provincial Government the duties of a Collector of land revenue by whatever name his office may be designated."Owner" - The word "owner" shall include zamindars, holders of patni tenures or of any rent-free tenure, dependent talukdars, Sundarban grantees and farmers or holders of tenures paying revenue direct to the Provincial Government.