

The M.P. Rajmarg Adhiniyam, 2004

MADHYA PRADESH

India

The M.P. Rajmarg Adhiniyam, 2004

Act 11 of 2005

- Published on 20 June 2005
- Commenced on 20 June 2005
- [This is the version of this document from 20 June 2005.]
- [Note: The original publication document is not available and this content could not be verified.]

The M.P. Rajmarg Adhiniyam, 2004 M.P. Act No. 11 of 2005 [Dated 20th June, 2005] Received the assent of the President on the 20th June, 2005; assent first published in the "Madhya Pradesh Gazette (Extra-ordinary)", dated the 2nd July, 2005. An Act to provide for the declaration of certain roads to be the highways and to provide for regulation of use of land appurtenant to highways, for the construction, maintenance and development of highways, for the prevention and removal of encroachment thereon, for levy of betterment charge and for certain other matters and to provide for the public such conditions as will ensure, road safety and maximum efficiency of all means of road transport on highways in the State of Madhya Pradesh. Be it enacted by the Madhya Pradesh Legislature in the Fifty-fifth Year of the Republic of India, as follows :-

Chapter I

Preliminary

1. Short title, extent and commencement.

(1) This Act may be called the Madhya Pradesh Rajmarg Adhiniyam, 2004. (2) It extends to the whole of the State of Madhya Pradesh. (3) It shall come into force on such date as the State Government may, by notification in the Official Gazette, appoint.

2. Definitions.

- In this Act, unless the context otherwise requires, - (a) "building" includes any erection of whatsoever material and in whatsoever manner constructed (including a farm-building for agricultural purposes) and also includes plinths, door steps, walls (including compound walls and fences) advertisement boards and the like; (b) "building line" means a line on either side of any highway or part of a highway, fixed, in respect of such highway or part thereof, by a notification issued under sub-section (1) of Section 12; (c) "Collector" means the Collector of a District and

includes any officer specially appointed by the State Government to perform the functions of a Collector under this Act;(d)"Court" means a principal Civil Court of original jurisdiction and includes any special judicial officer appointed by the State Government for any specified local limits to perform the functions of the Court under this Act;(e)"control line" means a line on either side of any highway or part of a highway beyond the building line, fixed in respect of such highway or part thereof, by notification issued under sub-section (1) of Section 12;(f)"Competent Authority" means the State Government or a local authority or any officer of the State Government or local authority notified by the State Government competent to sanction the construction of or repair to a highway;(g)"excavation" in relation to any piece of land means piercing the surface of that piece of land and includes digging of wells and tanks;(h)"encroachment" means occupation of any highway or part thereof and includes-(i)the erection of a building or any other structure, balconies, thresholds porches, projections on, over or overhanging the highway land;(ii)occupation of highway beyond the prescribed period, if any, for stacking building materials or goods of any other description for exhibiting articles for sale or erecting poles, awnings, tents, pandals and other similar erection or for parking vehicles or stabling domestic animals or for any other purposes; and(iii)excavations or embankments of any kind made or extended on any highway land;(i)"highway" means any thoroughfare or land declared to be a highway under Section 3 of this Act;(j)"Highway Authority" means the Authority appointed as the Highway Authority under Section 4 of or if no such appointment has been made, the State Government;(k)"highway boundaries" means the boundaries of a highway fixed, in respect of such highway, by notification issued under sub-section (1) of Section 12;(l)the expression "land" and "person interested" used in this Act shall have the same meanings as the said expressions have in the Land Acquisition Act, 1894 (1 of 1894);(m)"occupier" includes :-(i)any person who for the time being is paying or is liable to pay to the owner rent or any portion of the rent of the premises in respect of which such rent is paid or is payable;(ii)an owner living in or otherwise using his premises;(iii)a rent tree tenant;(iv)a licensee in occupation of any premises; and(v)any person who is liable to pay to the owner damages for the use and occupation of any premises;(n)"owner" means-(a)when used with reference to any premises, the person who receives the rent of the said premises or who would be entitled to receive the rent thereof if the premises were let, and includes-(i)an agent, manager or trustee by whatever name he is called who has a control over the premises or who receives rent on account to the owner;(ii)an agent, manager or trustee who receives the rent of, or is entrusted with, or concerned with any premises devoted to religious or charitable purposes;(iii)receiver, sequestrator or manager appointed by any Court of competent jurisdiction; and(iv)a mortgagee in possession;(b)when used with reference to an institution or a body corporate, the manager of such institution or body corporate;(o)"public place" means a road, street, way or other place whether a thoroughfare or not, to which the public have a right of access, and includes any place or stand at which passengers are picked up or set down by a public vehicle;(p)"public vehicle" means any vehicle used or adopted to be used for the carriage of passengers or goods for hire or reward;(q)"roadway" means the width of highway measured between outer edges of shoulders at any point along the highways;(r)"survey" includes all operations incidental to the determination, measurement and record of a boundary or boundaries or any part of a boundary and includes a resurvey;(s)"survey mark" means any mark or object erected, made employed or specified by a survey officer to indicate or determine or assist in determining the position or level of any point or points;(t)"survey officer" means any person appointed to be a survey officer under this Act;(u)"thoroughfare" means a road, street, lane, bridle

path or a foot-track, whether surfaced or unsurfaced, whether on land owned by the State Government or a local authority or on land belonging to a private person over which the public have or have acquired, a right of way by usage and includes-(i)the slope, berm, borrow-pits, footpaths, pavements and side drains of any such thoroughfare;(ii)all bridges, culverts, causeways, carriage ways or other road structures, built on or across such thoroughfare; and(iii)the trees, fences, posts and other highways accessories and materials and material stacks on the thoroughfare or on land attached to the thoroughfare;(v)"vehicle" means motor vehicle and includes a barrow, plough, drag and a wheeled or tracked conveyance of any description capable of being used on a highway.

Chapter II

Declaration of Highways, Highway Authorities and their Powers and Functions

3. Declaration of roads, ways or lands as highways.

- The State Government may, by notification in the official Gazette, declare any thoroughfare or land to be a highway and classify it as-(i)an express highway,(ii)a State highway,(iii)a major district road,(iv)other district road.(v)a village road.

4. Appointment of Highway Authorities.

- The State Government may, by notification in the official Gazette, appoint for the purpose of this Act or any of its provisions, any person or any authority to be a Highway Authority for all the highways in the State or in part of the State for any particular highway or highways in the State.

5. Powers and duties of Highway Authorities.

(1)Subject to such conditions as may be specified in the notification appointing a Highway Authority and subject to the general or special orders of the State Government, a Highway Authority shall exercise powers and discharge duties in accordance with the provisions of this Act, for the restriction or regulation of use of land appurtenant to highways, for prevention and removal of encroachment and for all matters necessary and incidental to any or all of the above subjects.(2)Subject to the approval of the State Government and to such general or special orders which the State Government may make in this behalf, it shall be lawful for a Highway Authority to undertake or cause to be undertaken the construction, maintenance, development or improvement of highways.

Chapter III

Development and Maintenance of Highways

6. Power to enter land for reconnaissance and preliminary survey in connection with highway schemes.

(1)The Highway Authority or any officer not below the rank of a sub-engineer of Public Works Department or local body or any person authorised by the Highways Authority in this behalf, may for the purpose of carrying out any of the provisions of this Act-(a)enter upon any land along with his workmen and survey and take measurements and levels on it;(b)make such levels, dig or bore into the subsoil and do all other works necessary to ascertain whether the land is suitable or not;(c)set-out the boundaries of the proposed highway by placing marks and cutting trenches;(d)cut down and clear any part of a standing crop, fence etc. where otherwise survey cannot be completed and the levels taken and the boundaries marked; and(e)do all other acts necessary in this behalf :Provided that no person shall enter into any building or any enclosed Court or garden attached to a dwelling house or cut down and clear any part of standing crops, fence etc. without the consent of the occupier thereof or without giving such occupier at least 48 hours notice in writing of his intention to do so.(2)The Highway Authority or the authorised official shall, at the time of such entry pay or tender payment for all necessary damages to be done as aforesaid and in case of dispute as to the sufficiency of the amount so paid or tendered, shall within a period of seven days, refer the dispute and deposit offered amount if not accepted, for the decision to the Collector of the district and his decision shall be final.

7. Preparation of schemes for highway development.

(1)The Highway Authority on its own accord or if expressly requested by the Competent Authority shall, subject to the other provisions of this Act and subject to such rules as may be framed by the State Government for this purpose, prepare and submit to the Competent Authority for sanction, detailed scheme for the construction of a new highway or the improvement of or repairs to an existing one.(2)Such a scheme may provide for,-(a)the acquisition of any land, which in the opinion of the Highway Authority is considered necessary for its execution;(b)the demarcation and for preparation of layouts of all or any of the lands so acquired for different purposes;(c)the diversion or closure of any existing highway or a section of such highway;(d)the construction or reconstruction of the roadway including its widening, levelling, surfacing, bridging, severing, draining, water supply and street lighting arrangements and planting of roadside trees;(e)the laying out of footpaths, cycle tracks and special traffic lanes for any kind or class of vehicles, the designing and setting of parking bays and petrol, filling and service stations and other road side amenities, the location of advertisement posts and billboards; and(f)the layout of access roads at suitable distance connecting the highway or the proposed highway with the adjoining properties.

8. Power to do certain acts for execution of highway schemes.

- When the Competent Authority has sanctioned the highway schemes prepared in pursuance of Section 7 and arranged the necessary finances for its execution, the Highway Authority shall proceed to carry out the work and may, for this purpose-(a)enter into and perform all such contracts on behalf of the Competent Authority as may be considered necessary;(b)make arrangements for the

acquisition of the lands required under the scheme by outright gift or purchase by agreement, with the owner or owners, or failing such agreement, by resort to the provision of the Land Acquisition Act, 1894 (1 of 1894) as amended from time to time; (c) turn, divert or close either temporarily or permanently any existing highway or portion thereof; and (d) regulate, subject to such rules as may be presented in this behalf, the kind, number and speed of vehicles using any highway or portion thereof by means of barrier, diversion roads or other means.

9. Maintenance of highway plans.

(1) The Highway Authority shall maintain authorities plans for the highways in its charge. (2) Such plans shall show clearly the boundaries of the highway, the measurements of road widths, the distances between boundary marks and sufficient measurements from fixed points to enable the refixation of the position of boundary marks, in case they have been displaced or tempered with. (3) The Highway Authority shall have all such authoritative plans prepared after having a survey made of the highway and their boundaries in the manner prescribed.

10. Demarcation of road boundaries.

(1) The Highway Authority shall have the boundaries of the highways in its charge demarcated with reference to the authoritative plans maintained by it, by planting stones or other suitable marks of a durable nature at intervals all along the highway in such a manner that the imaginary line joining such stones or marks shows the road boundary correctly. (2) Where there are bends or kinks in the road boundary, the stones or marks shall be so located as to give the correct configuration of the boundary if they are joined by straight lines. (3) The boundary stones or marks, which may be given consecutive numbers, shall be maintained on the ground as if they constitute part of the highway.

11. Annual check of road boundaries.

(1) It shall be the duty of the Highway Authority to ensure that no part of the highway is encroached upon and for this purpose shall conduct regular check of the boundaries of the highway in its charge with a view to locating unauthorised encroachments if any. (2) When an unauthorised encroachment has been made on highway, the Highway Authority shall take immediate steps as specified in Section 34 for the removal thereof.

Chapter IV

Regulation of the use of land Appurtenant to Highway

12. Power to fix highway boundaries, building line and control line of highway.

(1) In any area in which the provisions of this Act have been brought into force, and (a) where any roadway or land has been declared to be a highway under this Act; or (b) where the construction or

development of a highway is undertaken; the State Government may, by notification, in the official Gazette, fix or modify with respect to such highway, the highway boundaries, the building line and the control line with a view to demarcate the area appurtenant to a highway in order to regulate the use of such area : Provided that having regard to the situation or the requirement of a highway or the local circumstances, it shall be lawful for the State Government-(i) to fix different building lines or control lines; or (ii) not to fix building lines or control lines in respect of any highway or portions thereof. (2) Not less than sixty days before issuing a notification under sub-section (1), the State Government shall cause to be published in the official Gazette and in the prescribed manner in the village and at the head quarters of the Tehsil and the District in which the highway is situated, a notification stating that it proposes to issue a notification in terms of sub-section (1) and specifying therein all the land situated between the highway boundary and the building line and between the building line and the control line proposed to be fixed under such notification together with a notice requiring all persons affected by such notification, who may wish to make any objection or suggestion with respect to the issue of such notification, to submit their objections or suggestions in writing to the Highway Authority or appear before such authority within one month of the publication of the notification in the official Gazette or within fifteen days from the date of the publication of the notification in the village, whichever period expires later. (3) The Highway Authority shall, after all such objections or suggestions have been considered or heard, as the case may be and after such further enquiry, if any, as it may think necessary, within a period of six months, forward to the State Government a copy of the record of the proceedings held by it together with a report setting forth its recommendations on the objections and suggestions. (4) If, after the expiry of the time allowed by sub-section (2), for the filing or hearing of objections or suggestions, no objection or suggestion has been made, the State Government shall proceed at once to issue the notification under sub-section (1). If any such objection or suggestion has been made, the State Government shall consider the record and the report referred to in sub-section (3) and may, either, - (a) abandon the proposal to issue a notification under sub-section (1), or (b) issue the notification under sub-section (1) with such modifications, if any, as it may think fit : Provided that if no notification is issued under sub-section (1), within a period of six months from the appointed day the proposal shall be deemed to have been abandoned. (5) In considering the objections or suggestions, the decision of the State Government on the question of issuing the notification under sub-section (1) shall be final and conclusive.

13. Map to be prepared and maintained.

- Within two months from the date of publication of notification under sub-section (1) of Section 12 fixing highway boundary, building line and control line with respect to any highway, the Highway Authority shall cause a map to be showing the alignment of the highway, the highway boundaries, building and control lines and other particulars necessary for the purpose of this Act and such map shall be kept in the office of the Highway Authority. Such map which shall bear the seal of the Highway Authority, shall be open to inspection. Copies of such map shall also be kept for inspection at such other places as may be prescribed, Extract or copies of such map shall be made available to any person on payment of prescribed fees.

14. Restriction on buildings between highway boundary and building line and between building line and control line.

(1) No permission for diversions of agricultural land for non-agricultural purposes shall be given in the area of land lying between the highway boundary and control lines without the prior sanction of the Collector of the district and subject to any general or special directions of the State Government. (2) Notwithstanding anything contained in any law, custom, agreement or instrument for the time being in force, on or after the appointed day, the following restrictions shall, subject to the provisions of this Act, be in force, that is to say no person shall, without the previous permission in writing of the Highway Authority—(a) upon any land lying between the highway boundary and the building line, proposed to be fixed under sub-section (2) or fixed under sub-section (1) of Section 12, as the case may be,—(i) construct, form or layout any means of access to or from highway; or (ii) materially alter any existing building; or (iii) make or extend any excavations; or (iv) construct, form or layout any work, however, construction of any building shall not be permitted upon such land; (b) upon any land lying between the building line and the control line proposed to be fixed under sub-section (2) or fixed under sub-section (1) of Section 12, as the case may be, (i) construct, form or layout any means of access to or from a highway; or (ii) erect any building; or (iii) materially alter any existing building; or (iv) make or extend any excavation; or (v) construct form or layout any work; (c) alter the use of any building already erected, in a manner, which will infringe any of the provisions of this Act or interfere with the use of a highway adjoining the land on which such building is erected. (3) Every person desiring to obtain permission under sub-section (2) shall make an application in writing to the Highway Authority in such form and containing such information as may be prescribed in respect of building, alteration, excavation works or means of access, as the case may be, to which the application relates. (4) On receipt of the application, the Highway Authority, after making such further enquiry as it may consider necessary, shall, by order in writing, either,—(a) grant the permission subject to such conditions, if any, as may be specified in the order; or (b) refuse to grant such permission : Provided that—(i) the permission under clause (a) of sub-section (1) to the making of any excavation or construction, formation or laying out of works in land for the purpose of repairing, renewing, enlarging or maintaining any underground sewer, drain, electric line, pipe, duct or other apparatus, shall not be withheld nor be made subject to any conditions as may be necessary for securing that such sewer, drain, electric line, pipe, duct or other apparatus shall be laid in such manner and at such levels that the construction, development or maintenance of a road thereover will not be prevented or prejudicially affected thereby; (ii) the permission under clause (c) of sub-section (1) to the erection, re-erection or alteration of a building or the making or extending of any excavation which conform to the requirements of safety and convenience of traffic on the adjoining road, shall be neither withheld nor made subject to unreasonable conditions; (iii) the permission for following works shall not be required—(a) agriculture, (b) horticulture, (c) pisciculture, (d) pasture, (e) poultry farming, (f) dairy farming, (g) construction of wells, tube wells and bore wells. (5) When the Highway Authority refuses permission, the reasons thereof shall be recorded and communicated to the applicant : Provided that nothing therein contained shall debar a person from making a fresh application after omitting therefrom the objectionable features communicated to him as aforesaid on account of which such permission was refused. (6) Whenever an application for permission under the proviso to sub-section (5) been made to the Highway Authority, it shall be obligatory for the Highway Authority to dispose

of the same within a period of three months.(7)The Highway Authority shall maintain a register with sufficient particulars of all permissions given or refused by it under this section and such register shall be available for inspection free of charge by all persons interested and such persons shall be entitled to take extracts therefrom.Explanation. - For the purpose of this section, "the appointed day" shall, with reference to any highway boundary, building line or control line, mean-(i)the day on which the notification is published in official Gazette under sub-section (2) of Section 12 proposing to fix such highway boundary, building line or control line; and(ii)if any modification is made in proposed highway boundary, building line or control line; the day on which the notification is published under sub-section (1) of Section 12 fixing such highway boundary, building line or control line.

15. Appeal.

(1)If any applicant, is aggrieved by any decision of the Highway Authority under Section 14, withholding permission or imposing any condition, he may appeal to the State Government or any Authority to be notified by the State Government within thirty days from the date on which such decision was communicated to him.(2)The Authority hearing the appeal may, after giving an opportunity to the appellant to be heard, make such order, as it may think fit within 30 days from the date of filing appeal and the decision of such Authority shall be final.

16. Exemption for works in progress.

- No restrictions under Section 14 shall apply to. any excavation or works necessary for the repair; renewal enlargement or maintenance of any sewer, drain, electric line, pipe, duct or other apparatus constructed in or upon the land before the date on which the restrictions came into force or with the consent of the Highway Authority on or after that date.

17. Setting back of building to building line or control line.

- If any building or any part thereof, erected before the appointed day, referred to in Section 14, lies between the building line and the middle of a highway, the Highway Authority may, whenever any such building or part thereof has, either entirely or in greater part, been taken down, burn down or fallen down by notice, require such building or part thereof, to be set back to the building line or control line.

18. Regulation or diversion of right of access to highway.

(1)The Highway Authority may, if it is considered essential in the interest of safety or convenience of traffic, regulate or divert any existing right of access to highway across the land lying between the control line and the highway boundary :Provided that any existing right of access shall not be diverted until alternative access has been given.(2)Where any existing right of access is diverted, the point at which alternative access is given to the highway shall not be unreasonable distant from the existing point of access.(3)The Highway Authority shall, by notification in the Official Gazette,

publish the date on which the existing right of access has been diverted and alternative access has been given.

19. Acquisition of land.

(1) If at any time, on the application of the Highway Authority, the State Government is satisfied that any land required for the purpose of a highway should be compulsorily acquired, it shall be acquired under and in accordance with the provisions of the Land Acquisition Act, 1894 (1 of 1894), as amended time to time. (2) In case of urgency, whenever it appears to the State Government that the land is required for temporary occupation by the Highway Authority, it may direct the Collector to procure the occupation and use of the same for the Highway Authority as per provisions contained in Sections 35, 36 and 37 of the Land Acquisition Act, 1894 (1 of 1894).

20. Claim for damage by affected person.

- Whenever for the purpose of a highway any damage to any construction or a fixture or crops or any land is likely to be caused, then the person affected may submit a claim to compensate for such damage to the Collector.

21. Matters to be considered in determining compensation.

- In determining the amount of compensation, the Collector shall take into consideration the damage sustained by any interested person owing to-(a) the setting back of any building or part thereof under Section 17; (b) the entry, survey, measure and doing any other acts in or on any land under Section 6.

22. Determination of the amount of compensation and declaration of award.

(1) On the day so fixed, or on any other day to which enquiry has been adjourned, the Collector shall give claimant or claimants an opportunity of being heard in person or by any person authorized by him in this behalf or by a pleader and shall, after hearing all the claims and after making such further enquiry, if any, as he thinks necessary, determine the amount of compensation in respect of the damages and the determination so made by the Collector in the prescribed manner shall be final : Provided that no such determination of compensation shall be made by the Collector under this sub-section without the previous approval of the State Government or such other officer as the State Government may authorize in this behalf : Provided further that the Collector may make an order of the determination of compensation without such approval in such class of cases as the State Government may specify in this behalf. (2) The Collector shall make an award of determination of compensation under sub-section (1) within a period of six months from the date of application and the list of persons getting award of compensation shall also be published in two newspapers, one of which shall be in Hindi Language.

23. Payment of compensation.

(1) Whenever an order of determination is made by the Collector under sub-section (1) of Section 22, the Collector shall render payment of compensation determined by him to the persons entitled thereto, according to the said determination unless prevented by the contingency mentioned in sub-section (2) of Section 24. (2) If the person entitled to receive the compensation shall not consent to receive it or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of compensation in the Court to which a reference under Section 24 would be submitted : Provided that any person admitted to be interested may receipt such payment under protest as to the sufficiency of the amount ; Provided further that no person who has received that amount otherwise than under protest shall be entitled to make any application under Section 24 : Provided also, that nothing herein contained shall affect the liability of any person who may receive the whole or any part of compensation determined under this Act to pay the same to the person lawfully entitled thereto.

24. Reference to Court.

(1) Any person interested who has not accepted the order awarding compensation may, within a period of 45 days from the date of order by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement, the amount of compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested. (2) The application shall state that grounds on which objection to the determination of compensation is taken.

25. Collector's statements to Court.

- The Collector shall, in making the reference State for the information of the Court in writing under his hand- (a) the situation and extent of claim, with particulars of any building structure etc.; (b) the names of persons whom he has reason to believe are interested in the claim; (c) the amount of compensation determined under Section 22; (d) the amount paid or deposited under Section 23; and (e) if the objection be to the amount of compensation, the grounds on which the amount of compensation was determined.

26. Service of notice.

- On receipt of reference the Court shall cause a notice, to be served on the following persons, specifying the day on which the Court shall proceed to determine the objection and directing their appearance before the Court on the specified day, namely :- (a) the applicant; (b) all persons interested in the objection except such (if any) of them as have consented without protest to receive payment of the compensation determined; and (c) the State through Collector, if the objection is in regard to the amount of compensation.

27. Restriction of scope.

- The scope of the enquiry in every such proceeding shall be restricted to the consideration of the interests of persons affected by the objection.

28. Proceedings to be in open Court.

- Every proceeding shall take place in the open Court and all the persons entitled to practice in any civil Court in the State shall be entitled to appear, plead and act (as the case may be) in such proceeding.

29. Form of award.

- Every award of compensation by the Court under this section shall be in writing signed by the Judge and shall specify the amount awarded together with the reasons of award. Every such award shall be deemed to be a decree and the statement of grounds of every such award, a judgement within the meaning of clause (2) and clause (9) of Section 2 respectively of the Code of Civil Procedure, 1908 (5 of 1908).

30. Costs.

- The Court shall, while deciding every reference, also state the amount of costs incurred in the proceedings before it and by what persons and proportions they are to be paid :Provided that, when the award of the Collector is not upheld, the cost shall ordinarily be paid by the Collector unless the Court is of the opinion that the claim of the applicant was so extravagant or he was negligent in putting his case before the Collector so that some deduction from his costs should be made or that he should pay a part of Collector's cost.

31. Interest on enhanced compensation.

- If the sum, which in the opinion of the Court, the Collector ought to have awarded as compensation, is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of nine percent per annum from the date on which the damage was caused to the date of payment of such excess into the Court :Provided that the award of the Court may also direct the where such excess or part thereof is paid into the Court after the date of expiry of one year from the date on which the damage was caused, interest at the rate of fifteen percent per annum shall be payable from the date of expiry of the said period of one year on the amount of such excess or part thereof which has not been paid into the Court before the date of such expiry.

Chapter V

Prevention of Unauthorised occupation and Encroachment on A Highway and Removal of Encroachment

32. Land forming part of highway deemed to be Government property.

- All lands forming part of a highway which even do not already vest in the State Government shall for the purposes of this chapter be deemed to be the property of the State Government. The land shall vest in the State when compensation has been paid or provided.

33. Prevention of unauthorised occupation of highway.

(1) No person shall occupy or encroach upon any highway within the highway boundaries. (2) No right shall accrue to any person over any part of any highway by way of adverse possession.

34. Removal of encroachment.

(1) When as a result of checking of the highway boundaries or otherwise it is found that an encroachment has taken place on a highway, the Highway Authority or any officer authorised in this behalf shall serve a notice on the person responsible for the encroachment or on his representative requiring him to remove such encroachment and restore the land to its original condition as it existed before the said encroachment within the period specified in the notice. (2) The notice shall specify the land encroached upon and the limit within which such encroachment is to be removed and shall also state that the failure to comply within the period specified therein will render the person liable to prosecution and also to summary eviction. (3) If the encroachment is not removed within the period specified in the notice no valid cause is shown for non-compliance, the Highway Authority or the authorised officer referred to in sub-section (1) may request in writing to the Collector to remove the encroachment and thereupon the Collector shall take action for summary eviction as if the matter falls within the scope of Section 61. (4) Where the encroachment is of such a nature that its immediate removal is considered essential in the interest of safety of traffic on the highway or the safety of any structure forming part of the highway and no notice can be served immediately on the person responsible for the encroachment or his representative under sub-section (1) owing to his absence or for any other reason, the Highway Authority or the authorized official may, in addition to prosecution of the person under sub-section (3), either-(i) have such protective work as may be feasible at a reasonable cost carried out so as to minimise the danger to traffic on the highway; or (ii) have the encroachment removed with the help of the police, if necessary.

35. Appeal against notice served.

- Where the person on whom notice to remove an encroachment has been served under sub-section (1) of Section 34 lays claim that the land in respect of which encroachment has been alleged is his

property, he shall within the time limit prescribed in the notice for the removal of the encroachment file an appeal before the Collector under intimation to the Highway Authority. The Collector shall after due enquiry record his decision in writing and communicate the same to the appellant and the Highway Authority. The Highway Authority shall till then desist from taking further action in the matter.

36. Recovery of cost of removal of encroachment.

(1) Whenever the Highway Authority or any officer authorized under Section 34 has under the provisions of Section 34 removed any encroachment or carried out any protective work in respect of any encroachment the expenditure involved shall be recovered from the person responsible for the encroachment in the manner hereinafter provided. (2) A statement of the expenditure incurred shall be served by the Highway Authority or the authorised officer referred to in sub-section (1) on the person responsible for the encroachment or his representative with a direction to pay the amount within a specified period to the authority mentioned therein. (3) The statement shall be accompanied by a certificate from the Highway Authority or the authorised officer referred to in sub-section (1) to the effect that the amount of expenditure indicated in the statement represents the charges incurred and such a certificate shall be conclusive proof of the fact that the charges have actually been incurred. (4) The material, if any, recovered as a result of the removal of any encroachment shall be handed over to the person responsible for the encroachment on payment of the amount within the specified period and if such payment is not made, the material may be auctioned and after deducting the amount due from the proceeds, the balance, if any, shall be made over to such person. (5) If the proceeds of the auction sale do not cover the total amount due for, the excess over the amount realised by the sale of material or if there is no material to dispose of and due amount has not been paid by the person responsible for the encroachment within the specified period, the entire amount due shall be recovered from such person as an arrear of the land revenue.

Chapter VI

Supplemental Provision Relating to Compensation

37. Determination of amount of compensation by agreement.

- After the issuance of notice under Section 19 and before the determination of amount of compensation under Section 22, the Collector may enter into an agreement, for setting the amount of compensation including apportionment of such amount among persons interested, with any person interested and as and when such an agreement is concluding, the Collector shall intimate to the Highway Authority the fact of conclusion of the agreement with a certified copy thereof and thereafter the Collector shall stop further proceedings with regard to determination of the amount of compensation under Section 22 and shall make payment to the person or persons interested in accordance with the said agreement : Provided that no such agreement shall be concluded by the Collector under this section without the previous approval of the State Government or such other officer as the State Government may authorize in this behalf.

38. Compensation for cutting of standing crops, trees.

- At the time of any entry, survey or measurement or doing of any of the things under Section 6, the officer making the entry, survey or measurement or doing anything, shall prepare a detailed report of the damage done as a result of such entry, survey measurement or execution of work including the cutting of standing crops, trees or removal of temporary structures, if any, on the land and forward it to the Collector for consideration at the stage of determination of compensation under Section 22.

39. No compensation for unauthorised erections.

- If any person has unauthorisedly erected, re-erected, added or altered any building on any land, which is required for the purpose of a highway, then any appreciation in the utility of the land from such erection, re-erection, addition or alteration shall not be taken into account in determining the amount of compensation under Section 22.

40. No compensation for removal of encroachment.

- No compensation shall be payable for the removal of any encroachment.

41. Payment of adjustment.

- All payments due to be made to any person by way of compensation by the Highway Authority under this Act shall as far as possible be made by adjustment in such person's account regarding betterment charge if any, due from such person under Chapter VII.

Chapter VII

Payment of Betterment Charges

42. Notice to owners and persons interested.

- Where any work, which a Highway Authority is empowered to undertake on a highway by or under the provisions of this Act, is undertaken, the officer authorised by the State Government in this behalf shall give notice to the person known or believed to be the owner of, or interested in the land benefited by a work, requiring them to appear before him either personally or by an agent at a time and place therein mentioned (such time not being earlier than thirty days from the date of notice) and to state their objections, if any, to the imposition and recovery of betterment charges on such lands :Provided that no such notice shall be given unless the Highway Authority with the previous sanction of the State Government has declared that the value of such lands is likely to increase or has increased by reason of the construction of such work.

43. Inquiry and order.

- On the date fixed under Section 42 or on such other date to which the inquiry may be adjourned, the officer authorised under Section 42 shall, after holding a formal inquiry and after hearing the objections, if any, stated by the persons as required by the notice under Section 42, make an order. The order shall specify-(a)the lands benefited by the construction of works;(b)the increase in the value of such lands by the proposed construction; and(c)the amount of betterment charges leviable on each of the said lands :Provided that the betterment charges shall be levied from the date of order of diversion passed by Sub Divisional Officer (Revenue) under Section 172 of Madhya Pradesh Land Revenue Code, 1959 (No. 20 of 1959) :Provided further that no betterment charges shall be leviable in respect of any land-(i)which is unsuitable for development as a building site, or(ii)which is situated beyond a distance of two hundred meters from the middle of the highway on either side.

44. Increase in value and betterment charges.

- The increase in value on account of the construction of work shall be the amount by which the value of the land on the date of the completion of the proposed work is likely to exceed or has exceeded the value of the land on the date of the commencement of the said work and the betterment charges shall be one fourth of such increase in value.Explanation : - For the purpose of this section the State Government shall by notification in the official Gazette specify-(a)the date of commencement of the construction of any work; and(b)the date of completion of such work.

45. Finality of order fixing betterment charges.

- The order, fixing the betterment charges/ made under Section 43, shall be final.

46. Remedy to person aggrieved.

- Any person aggrieved by the order fixing the betterment charges may, approach a Court of competent jurisdiction.

47. Betterment charges be recoverable as arrears of land revenue.

- The betterment charges recoverable in respect of any land, if not paid, shall be recoverable as arrears of land revenue.

Chapter VIII

Supplemental Provisions to Secure Safety of Traffic and Prevention of Damage to Highways

48. Prevention of observations of view of person using any highway.

(1) Whenever the Highway Authority is of opinion that it is necessary for the prevention of danger arising from obstructions of the view of persons using any highway specially at any bend or corner of the highway, it may save as otherwise provided in Section 16, serve a notice upon the owner or occupier of land alongside or at the bend or corner of such highway to alter within such time and in such manner as may be specified in the notice the height or character of any existing wall (not being a wall forming part of a permanent structure), fence, hedge, trees, advertisement posts, billboard or any other object thereon, so as to cause it to conform with any requirement specified in the notice. (2) Reasonable expenses incurred by the owner or occupier in complying with the requirement of the notice shall be reimbursed to him, provided the object or obstruction has not been constructed or erected in contravention of any law for the time being in force. Determination of the amount to be reimbursed shall be made by the Highway Authority and the decision in this respect shall be final. (3) No expenses incurred in case of removal of the object of obstruction constructed or erected in contravention of any law or bye-law for the time being in force shall be reimbursed in complying with the requirement of the notice. Action against concerned person who has constructed or erected the object of obstruction in contravention of any law or bye-law shall also be taken as provided in the relevant law. (4) If any person upon whom a notice has been served under subsection (1) objects to comply with any requirement of such notice, he may within one month of the receipt, send to the Highway Authority his objection in writing stating the grounds thereof. (5) The Highway Authority shall, within one month of the receipt of the objection, consider the grounds advanced and shall by order in writing, withdraw the notice or amend or confirm it. (6) If a person is aggrieved by an order passed by the Highway Authority under sub-section (5) he may, prefer an appeal within fifteen days from the date when such order was communicated to him, to the Collector, whose decision in the matter shall be final. (7) (a) If any person fails to comply with the notice served on him under sub-section (1) as amended or confirmed, as the case may be, under sub-section (5), the Highway Authority may take action to alter the object causing obstruction of view. (b) Any expenditure incurred by the Highway Authority in altering the object causing the aforesaid obstruction of view shall be recovered from the person concerned if the said object was constructed or erected in contravention to any law in force in this respect, without prejudice to the action provided for in any other law for the time being in force.

49. Highway Authority to regulate traffic when highway declared unsafe.

- If at any time, it appears to the Highway Authority that any highway in its charge or any portion thereof, is or has been rendered unsafe for vehicular or pedestrian traffic by reason of damage or otherwise, it may, subject to such rule as may be prescribed in this behalf, either close the highway or the portion of it to all traffic or to any class of traffic, or regulate the number and speed or weight of vehicles using the highways.

50. Prohibition of use of heavy vehicles on certain highway.

- Where the Highway Authority is satisfied that any highway or a portion thereof, or any bridge, culvert or a cause way built on or across any highway, is not designed, to carry' vehicles of which the

ladenweight exceeds such limit as may be fixed in this behalf, it may, subject to such rules as may be prescribed in that behalf, prohibit or restrict the plying of such vehicles on or over such highway or such part of the highway or such bridge, culvert or causeway.

51. Procedure to be followed when Highway Authority desires to close any highway permanently.

(1)Where in exercise of the powers conferred by Section 49 the Highway Authority desires to close down any highway or part thereof, permanently, it shall give notice of its intention to do so by notification in the official Gazette. The notification shall also be published in atleast two newspapers, one of which shall be in Hindi language.(2)The notice shall indicate the alternative route, if any, which is proposed to be provided or which may already be in existence and shall also invite objections, if any, to the proposal to be submitted within such time as may be specified.(3)The Highway Authority shall finalize its proposal to close down any highway or part of it after considering the objections, if any, received within the specified time and shall submit the final proposal to the State Government for approval together with such objections as may have been received against the proposal.(4)The State Government may either approve the proposal, with or without modifications, or reject it.(5)When the State Government has approved the proposal, it shall, publish its order in the official Gazette.(6)When the orders of the State Government have been published in the official Gazette, the Highway Authority shall arrange for further publicity to be given to the orders in atleast two newspapers one of which shall be in Hindi language and the highway or part thereof shall then be closed.

52. Consent of Highway Authority required to do certain acts on highway.

(1)Notwithstanding anything contained in any other enactment for the time being in force, no person other than the Highway Authority or any person authorised by it, shall construct or carry any cable, wire, pipe, drain, sewer, channel of any kind through, across, under or over any highway except with the permission in writing of the Highway Authority.(2)In giving its consent the Highway Authority may impose such conditions as it may deem to be necessary and may also impose a rent or other charge for land, forming part of the highway, occupied by or applied to the proposed work.(3)If any person constructs or carries out any work in contravention of sub-section (1), the Highway Authority, may arrange for the removal of such work and restoration of highway to its former condition in accordance with the provisions of Section 34 as if the work constituted an encroachment on the highway and such expenses, as the Highway Authority may incur for this purpose shall, without prejudice to any other action that may be taken against such persons, be recovered from him in accordance with the procedure provided in Section 36 in so far as that procedure is applicable.

53. Prevention and rectification of damage to highway.

(1)No person shall wilfully cause or allow any vehicle or animal in his charge to cause any damage to any highway.(2)Where in contravention of sub-section (1) any damage has been caused to any

highway, the Highway Authority shall have the damage repaired and the expenses involved shall, without prejudice to any other action that may be taken against the person responsible for the contravention of sub-section (1), be recovered for him in accordance with the procedure provided in Section 36 in so far as procedure is applicable.

Chapter IX

Penalties

54. Disobedience of orders, instructions and refusal to give information.

- Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction or obstructs any person or authority in the discharge of any functions that such person or authority is empowered under this Act to discharge or being required by or under this Act to supply any information, withholds such information, or gives information which he knows to be false or which he does not believe to be true shall, on conviction, be punishable with fine which may extend to two thousand rupees.

55. Contravention of restrictions relating to access or erecting any building.

- Whoever, erects, alters or extends any building or makes any excavation, or constructs any means of access to or from a highway or does any other work in contravention of the provisions of Section 14 shall on conviction be punishable-(a)with fine which may extend to five thousand rupees; and(b)with further fine which may extend to one thousand rupees for each day after such conviction, during which the offending structure or work is not removed, demolished or cleared and the site not restored to its original condition.

56. Unauthorised occupation of highway.

- Whoever-(a)occupies or makes any encroachment on any highway in contravention of the provisions of sub-section (1) of Section 33; or(b)fails to comply with the notice served on him under sub-section (1) of Section 34 for no valid reason shall on conviction be punishable-(i)for first offence with fine which may extend to five thousand rupees;(ii)for a subsequent offence in relation to the same encroachment with fine which may extend to ten thousand rupees;(iii)for persistent encroachment, imprisonment upto two months plus a further fine not exceeding five hundred rupees per day on which such occupation of the highway or encroachment continues.Explanation :- For the purposes of clause (iii) "persistent encroachment" shall mean continuance or committing of encroachment by any person on the same portion or place of the highway for which he was punished earlier under clauses (i) and (ii) of this Section.

57. General provision for punishment of offences.

- Whoever contravenes any provision of this Act or of any rule or order made thereunder shall,

unless otherwise provided for in this Act on conviction, be punishable-(a)for a first offence with fine which may extend to one hundred rupees; and(b)for a subsequent offence with fine which may extend to five hundred rupees.

58. Power to compound offences.

- Notwithstanding anything contained in any law for the time being in force, any offence committed under this Act other than an offence prescribed under Section 56 may be compounded by the Highway Authority on such terms as may be specified by the State Government by special or general order and if any proceedings have been instituted against any person in any criminal Court, then on the terms of the compromise being carried out the composition shall amount to an acquittal and in no case shall, any further proceedings, be taken against such person or any property of such person with reference to the same facts.

Chapter X Miscellaneous

59. Powers and duties of police.

- Every police officer shall forthwith furnish information to the nearest Highway Authority or the nearest officer subordinate to the Highway Authority of any offence coming to his knowledge which has been committed against this Act or any rule made under this Act and shall be bound to assist the Highway Authority and its officers and employees in the exercise of their lawful authority.

60. Duties of village officials.

- Every village Kotwar by whatever name called, shall forthwith inform the nearest police station or the nearest Highway Authority or any officer duly authorized by the Highway Authority whenever he becomes aware that, any survey mark of any highway or any mark showing the building or control line determined in respect of a highway has been destroyed, damaged, removed, displaced or otherwise tampered with or that any damage to any highway has been made.

61. Eviction.

- Any person wrongfully occupying any land,-(a)which is a part of a highway; or(b)the occupation of which contravenes any provisions of this Act and the said provisions do not provide for the eviction of such person;shall be evicted under and in accordance with the provisions of Section 34 of this Act.

62. Certain persons to be public servants.

- The Highway Authority and all the officers and other persons authorised or appointed under this Act shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code,

1860 (45 of 1860).

63. Bar of jurisdiction.

- No Civil Court shall have jurisdiction to settle, decide or deal with any question which is by or under this Act required to be settled, decided or dealt with by the Highway Authority, the Collector, an officer or person authorised under this Act, or the State Government.

64. Protection of persons acting in good faith and limitation of suit or prosecution.

- No suit, prosecution or other legal proceedings shall lie against any public servant or officer or person duly authorized under this Act in respect of anything done or intended to be done, in good faith under this Act or the rule or order made thereunder.

65. Power to make rules.

(1)The State Government may, by notification in the official Gazette, make rules to carry out all or any of the purposes of this Act.(2)In particular and without prejudice to the generality of the foregoing power, the State Government may make rules for all or any of the following matters :- (a)the manner in which the notification may be published in the village and at the headquarter of the Tehsil and District under Section 12;(b)the other places at which copies of map may be kept for inspection under Section 13;(c)the form of application and its contents under sub-section (3) of Section 14;(d)prescribing the rules subject to which a highway or portion of it may be closed to traffic or any class of traffic or the number and speed or weight of vehicles using the highway may be regulated under Section 49;(e)prescribing the rules subject to which plying of vehicles may be prohibited under Section 50;(f)the prevention of obstruction of view of persons using highways and of annoyance, danger or injury to the public;(g)the prevention of obstruction, encroachment and nuisance on or near and of damages to highway;(h)the proper maintenance of boundary marks demarcating highway boundaries and building and control lines;(i)the prescription of various forms of applications required to be made and the forms of notices and bills required to be served on persons, the charges to be made for the supply of copies of maps and the charges to be imposed or levied under the provisions of this Act;(j)the general guidance of the Highway Authority in the discharge of its functions under this Act;(k)regulation or diversions of existing rights of access;(l)the manner in which the notice or statements may be served or presented; and(m)any other matter which is required to be or may be prescribed under this Act.(3)All rules made under this Act shall be laid on the table of the Legislative Assembly.

66. Provisions of this Act or rules to prevail over inconsistent provisions in other laws.

- Save as provided in any Central Act relating to Cantonments, Railways, Telegraph and Electricity, the provisions of this Act or rules made thereunder in regard to any matter dealt with, thereby shall

prevail over the provisions of any other law made by the State Legislature or any law which the State Legislature is competent to make or to amend, in so far as such law is inconsistent with the said provisions or rules and such law to the extent of such inconsistency shall cease to apply or shall not apply to any such matter :Provided that if any highway is declared to be a National Highway under the National Highway Act, 1956 (48 of 1956), it shall be lawful for the State Government to fix the building and control lines for different portions of the said highway under Section 12 or to levy betterment charges under Section 43 on lands, the value of which has increased by reasons of the construction or proposed constructions of such highway and thereafter the provisions of this Act in so far as they apply to the restrictions of buildings between the building line and control line and other provisions relating to such building and control lines, as the case may be and the provisions of this Act relating to the levy of betterment charges shall, mutatis mutandis, apply.

67. Repeal.

- The Madhya Pradesh Highway Act, 1936 (34 of 1936) is hereby repealed.