

Cantonments (House-Accommodation) Act, 1923

UNION OF INDIA

India

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Act 6 of 1923

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1467.

The Committee which was appointed in the winter of 1920-21 to enquire into and make recommendations in regard to the administration of cantonments recommended inter alia that the Cantonments (House Accomodation) Act should be revised, so as to remove certain defects which have been brought to light and to carry out more fully the intention of the Act, namely, the better provision of house-accomodation for military officers in cantonments. These recommendations have now been examined by the Government of India whose conclusions are embodied in the draft Bill.² A number of the amendments are designed merely to bring the Act up-to-date by specifying, in place of the authorities by whom the Act is at present administered, other authorities recently constituted, e.g. District Commanders in lieu of Divisional Commanders.³ The principal changes of substance which the Bill seeks to introduce are, firstly, to substitute for the procedure under which houses are liable to be appropriated for use, on a monthly tenancy, by military officers holding direct from the house owner, a procedure under which Government will take such houses as may be required on a repairing lease for a term of at least five years and will allot the houses so leased to officers will become the tenants of Government who alone will deal with the house owner. Secondly, it is proposed to repeal those sections of the existing Act which provide for interference in the settlement of disputes between house-owners and individual tenants. If the Bill become law, individual officers will, as already explained, cease to be the direct tenants of house owners. Where the military officers prefers to take a house of private agreement with a house-owner, and not from Government, it is considered that there is no justification for interference between the two parties in case of disputes, which will in future be settled as they would outside a cantonment, either by agreement between parties or by recourse to the law Courts. Thirdly, the Bill alters the constitution of Committees of Arbitration and provides for an appeal to the Court against the decisions of such committees.[5th March, 1923.]An Act further to amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments.WHEREAS it is expedient further to

amend and to consolidate the law relating to the provision of house-accommodation for military officers in cantonments; It is hereby enacted as follows:-

Chapter I

Preliminary

1. Short title, extent and commencement.-

(1) This Act may be called the Cantonments (House-Accommodation) Act, 1923. (2) It extends to the whole of India [* * *] [The words "except Part B States" were omitted by Act 53 of 1950, s.2.] [* * *] [The brackets and words "(inclusive of British Baluchistan)" were rep. by the A.O. 1948.] [* * *] [The words "except Aden" were rep. by the A.O. 1937.] (3) It shall come into force on the first day of April, 1923, but it shall not become operative in any cantonment or part of a cantonment until the issue, or otherwise than in pursuance, of a notification as hereinafter provided by section 3: Provided that any notification made under section 3 of the Cantonments (House-Accommodation) Act, 1902, which is in force at the commencement of this Act, shall be deemed to be a notification made under section 3 of this Act.

2. Definitions.-

(1) In this Act, unless there is anything repugnant in the subject or context, -(a) "Brigade area" means one of the Brigade areas, whether occupied by a brigade or not, into which India is for military purposes for the time being divided, and includes any area which the Central Government may, by notification in the Official Gazette, declare to be a Brigade area for all or any of the purposes of this Act; [* * *] [The original cl.(b) was rep. by Act 9 of 1930, s.2.] (b) ["Cantonment Board" means a Cantonment Board constituted under the Cantonments Act, 1924 ;] [Cl.(bb), ins. by Act 10 of 1925, s.2, was relettered (b) by Act 9 of 1930, s.2.] (c) "Command" means one of the Commands into which India is for military purposes for the time being divided, and includes any area which the Central Government may, by notification in the Official Gazette, declare to be a Command for all or any of the purposes of this Act; (d) ["Officer Commanding the station"] [Substituted by Act 10 of 1925, s.6, for "Commanding Officer of the Cantonment"] means the officer for the time being in command of the forces in a cantonment [or, if that Officer is the Officer Commanding the District, the military officer who would be in command of those forces in the absence of the Officer Commanding the District] [Inserted by Act 9 of 1930, s.2.]; (e) "District" means one of the Districts into which India is for military purposes for the time being divided; it includes a Brigade area which does not form part of any such District and any area which the Central Government may, by notification in the Official Gazette, declare to be a District for all or any of the purposes of this Act; (f) "house" means a house suitable for occupation by a military officer or a military mess, and includes the land and buildings appurtenant to a house; (g) "military officer" means a commissioned or warrant officer of the Indian military or air forces on military or air force duty in a cantonment, [* * *] [The words "and includes a Chaplain on duty with troops in a cantonment" were omitted by the A.O. 1950.] [an officer of the Cantonments Department] [Substituted by Act 10 of 1925, s.2, for "a Cantonment Magistrate"] and any person in Army departmental employment whom the Officer Commanding the District may at

any time, by an order in writing, place on the same footing as a military officer for the purposes of this Act;(h)"owner" includes the person who is receiving, or is entitled to receive, the rent of a house, whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent, or be entitled to receive it, if the house were let to a tenant; and(i)a house is said to be in a state of reasonable repair when-(ii)all doors and windows are intact, properly painted or oiled, and provided with proper locks or bolts or other secure fastenings, and(iii)all rooms, out-houses and other appurtenant buildings are properly colour-washed or white-washed.(2)If any question arises whether any land or building is appurtenant to a house, it shall be decided by the [Officer Commanding the station] [Substituted by Act 10 of 1925, s.6, for "Commanding Officer of the Cantonment"] whose decision thereon shall, subject to revision by the [Collector] [Substituted by Act 9 of 1930, s.2, for "District Magistrate"], be final.(3)[In the application of this Act to any Part B State, and reference to an enactment not in force in that State shall be construed as a reference to the corresponding law in force in that State.] [Added by Act 53 of 1950, s.3.]

Chapter II

Application Of Act

3. Cantonments or parts of cantonments in which Act to be operative.-

(1)The [Central Government] [Substituted by the A.O. 1937, for "L.G."] [* * *] [The words "with the previous sanction of the G.G. in C." rep. by the A.O. 1937.] may, by notification in the Official Gazette, declare this Act to be operative in any cantonment or part of a cantonment [* * *] [The words "situate in the Province" rep. by the A.O. 1937.] other than a cantonment situate within the limits of a presidency-town.(2)Before issuing a notification under sub-section (1) in respect of any cantonment or part of a cantonment, the [Central Government] [Substituted by the A.O. 1937, for "L.G."] shall cause local inquiry to be made with a view to determining whether it is expedient to issue such notification, and what portion (if any) of the area proposed to be included therein should be excluded therefrom.

4. [Saving of written instruments.- [Subs.by the A.O.1937, for the original section.]

Nothing in this Act shall affect the provision of any written contract with the Government unless all the parties to that contract consent in writing to be bound by the terms of this Act.]

Chapter III

Appropriation Of Houses

5. Liability of houses to appropriation.-

Every situate in a cantonment or part of a cantonment in respect of which a notification under sub-section (1) of section 3 is for the time being in force shall be liable to appropriation by [Central Government] [Substituted by the A.O. 1937, for "L.G."] on a lease in the manner and subject to the conditions hereinafter provided.

6. [Conditions on which houses may be appropriated.-

(1)Where-(a)a military officer who is stationed in or has been posted to the cantonment, or a President of a military mess in the cantonment, applied in writing to the Officer Commanding the station stating that he is unable to secure suitable accommodation in the cantonment for himself or the mess on reasonable terms by private agreement, and that no suitable house or quarter belonging to the Government is available for his occupation or for the occupation of the mess, and the Officer Commanding the station is satisfied on inquiry of the truth of the facts so stated, or(b)the Officer Commanding the station is satisfied on inquiry that there is not in the cantonment a sufficient and assured supply of houses available at reasonable rates of rent by private agreement to meet the requirements of the military officers and military messes whose accommodation in the cantonment is in his opinion necessary or expedient, the Officer Commanding the station may, with a view of enforcing the liability under section 5, serve a notice on the owner of any house which appears to him to be suitable for occupation by a military officer or a military mess, as the case may be, within the cantonment, or, if this Act is in force in part only of the cantonment, within that part, requiring the owner to permit the house to be inspected, measured and surveyed by such person and on such date, not being less than three clear days from the service of the notice, and at such tie between sunrise and sunset, as may be specified in the notice.(2)On the date and at the time so specified the owner shall be bound to afford all reasonable facilities to the person specified in the notice for the purpose of the insepction, measurement and survey of the house and if he refuses or neglects to do so, such person may, subject to any rules made under this Act, enter on the premises and do all such things as may be reasonably necessary for the said purpose.]

7. Procedure for taking house on lease.-

(1)If, on the report of such person as aforesaid, the [Officer Commanding the station] [Substituted by Act 10 of 1925, s.6, for "Commanding Officer of the Cantonment"] is satisfied that the house is suitable for occupation by a military officer or a military mess, he may [* * * *] [The Words "with th previous sanction of the Officer Commanding the District" were rep.by Act 9 of 1930, s.4.] by notice-(a)require the owner to execute a lease of the house to [Central Government] [Substituted by the A.O. 1937, for "L.G."] for the specified period which shall not be less than five years;(b)require the existing occupier, if any, to vacate the house; and(c)require the owner to execute whithin such time as may be specified in the notice such repairs as may, in the opinion of the [Officer Commanding the station] [Substituted by Act 10 of 1925, s.6, for "Commanding Officer of the Cantonment"], be necessary for the purpose of putting the house into a state of reasonable repair.(2)Every notice issued under sub-section (1) shall state the amount of the annual rent proposed as reasonable for the house, calculated on the assumption that the owner will carry out the

required repairs, if any. It shall also contain an estimate of the cost of such repairs. (3) The following shall be deemed to be conditions of every lease executed under sub-section (1), namely:—(a) that the house shall, on the expiration of the lease, be redelivered to the owner in a state of reasonable repair, and (b) that the grounds and the garden, if any, appertaining to the house shall be maintained in the condition in which they are at the time at which the lease is executed; [Provided that nothing in this sub-section shall be deemed to affect the right of [Central Government] [Inserted by Act 9 of 1930, s.4] to avoid the lease in any such event as is specified in clause (e) of section 108 of the Transfer of Property Act, 1882.]

8. Procedure to be observed before taking a house on lease.

Rep. by the Cantonments (House-Accommodation Amendment) Act, 1930 (9 of 1930), s.5.

9. Sanction to be obtained before a house is occupied as a hospital, etc.-

No house in any cantonment or part of a cantonment in which that Act is operative shall, unless it was so occupied at the date of the issue of the notification declaring this Act or the [* * *] [Rep. by s.39 and Sch. of this Act.] Cantonments (House-Accommodation) Act, 1902, as the case may be, to be operative, be occupied for the purposes of a hospital, school, school hostel, bank, hotel, or shop, or by a railway administration, a company or firm engaged in trade or business or a club, without the previous sanction of the Officer Commanding the District given with the concurrence of the Commission or, in a State where there are no Commissioners, of the Collector.

10. Houses not to be appropriated in certain cases.-

No notice shall be issued under section 7 if the house—(a) was, at the date of the issue of the notification declaring this Act or the {Rep. by s.39 and Sch. of this Act.} Cantonments (House-Accommodation) Act, 1902, as the case may be, to be operative in the cantonment or part of the cantonment, or is, with such sanction as is required by section 9, occupied as a hospital, school, school hostel, bank, hotel or shop, and has been so occupied continuously during the three years immediately preceding the time when the occasion for issuing the notice arises, or (b) was, at the date of such a notification as is referred to in clause (a), or is, with such sanction as aforesaid, occupied by a railway administration or by a company or firm engaged in trade or business or by a club, or (c) is occupied by the owner, or (d) has been appropriated by the State Government with the concurrence of the Officer Commanding the District, or by the Central Government, for use as a public office or for any other purpose.

11. Time to be allowed for giving possession of house.-

(1) If a house is unoccupied, a notice issued under section 7 may require the owner to give possession of the same to the [Officer Commanding the station] [Substituted by Act 10 of 1925, s.6, for "Commanding Officer of the Cantonment"] within twenty-one days from the service of the notice. (2) If a house is occupied, a notice issued under section 7 shall not require its vacation in less

than thirty days from the service of the notice.(3)Where a notice has been issued under section 7 and the house has been vacated in pursuance thereof, the lease shall be deemed to have commenced on the date on which the house was so vacated.

12. Surrender of house when to be enforced.-

If the owner fails to give possession of a house to the [Officer Commanding the station] [Substituted by Act 10 of 1925, s.6, for "Commanding Officer of the Cantonment"] in pursuance of a notice issued under section 7, or if the existing occupier fails to vacate a house in pursuance of such a notice, the District Magistrate, by himself or by another person generally or specially authorised by him in this behalf, shall enter on th premises and enforce the surrender of the house.

13. Option in certain cases for owner on whom notice is issued under section 7 of call upon the Government to purchase.-

(1)If a house, in respect of which a notice is issued under section 7, is shown to the satisfaction of the [Central Government] [Substituted by the A.O. 1937, for "L.G."], or is proved by a decree or order of a Court of competent jurisdiction, to have been erected-(a)under any conditions, rules, regulations or orders which were in force in Bengal prior to the eighth day of December, 1864, and conferred on the owner the option of offering the house for sale to the military officer applying for its appropriation for his occupation or to the East India Company or the Government, or(b)under any conditions, rules, regulations or orders which were in force in Bombay prior to the first day of June, 1875, and conferred such an option as is described in clause (a), then the owner shall have the option of either complying with the notice or offering the house [for sale to the Central Government] [Substituted by the A.O. 1937, for "for sale to the Govt."].(2)If the owner elects to sell the house, and [the Central Government] [Substituted by the A.O. 1937, for "the Govt."] is willing to purchase it, the question of the amount of the purchase-money to be paid shall, in the event of disagreement, be referred to [a civil court, in accordance with the provisions of Chapter IV] [Substituted by Act 9 of 1930, s.6, for "a Committee of Arbitration"].

14. Provision where house is held on long lease by a tenant.-

(1)If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease for any term exceeding one year, the Central Government shall, for the term of one year from the date on which the house is vacated in pursuance of the notice, or for the unexpired term of the lease whichever is the shorter, be liable to the owner for the rent fixed by the registered lease instead of for the rent payable under this Act if the rent so fixed exceeds the rent so payable.(2)If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease from year to year, the Central Government shall be liable as aforesaid for the term of six months from the date on which the house is vacated in pursuance of the notice.(3)Nothing in this section shall be deemed-(a)to render the Central Government so liable unless an application in writing in this behalf is made by the owner to the [Officer Commanding the

station] [Substituted by Act 10 of 1925, so, 6, for "Commanding Officer of the Cantonment"] within fifteen days from the service of the notice: or(b)to limit or otherwise affect any agreement between the Government and the owner.

15. Power for owner to refer to civil court on question of rent.-

(1)If the owner considers that the rent stated in a notice issued under section 7 is not reasonable, he may, within a period of [thirty] [Subs.by Act 9 of 1930, s.7, for "fifteen"] days from the service of such notice, [refer the matter to a civil court, in accordance with the provisions of Chapter IV] [Substituted by Act 9 of 1930, s.7, for "require that the matter be referred by the Officer Commanding the station to a Committee of Arbitration"].:[Provided that where an appeal has been made to the Officer Commanding the District under section 30, the period of thirty days shall be reckoned from the date on which the owner received notice of the result of the appeal under sub-section (2) of section 32.] [Inserted by Act 22 of 1933, s.2.](2)If the owner does not make such a [reference] [Substituted by Act 9 of 1930, s.7, for "requisition"] within the said period, he shall be deemed to have accepted the rent so offered.

16. Power for owner to refer to civil court on question of repairs.-

(1)If the owner fails to execute any repairs to a house as required by a notice issued to him under section 7, the [Officer Commanding the station] [Substituted by Act 10 of 1925, s.6, for "Commanding Officer of the Cantonment"] may by notice require the owner to execute the repairs within such period, not being less than [thirty] [Substituted by Act 10 of 1925, s.8, for "fifteen"] days, as may be specified in the notice.(2)If the owner objects to any requisition contained in a notice issued under sub-section (1), he may within [thirty] [Substituted by Act 10 of 1925, s.8, for "fifteen"] days from the service of the notice [refer the matter to a civil court in accordance with the provisions of Chapter IV] [Substituted by Act 10 of 1925, s.8, for "require that the matter be referred by the Officer Commanding the station to a Committee of Arbitration"]:[Provided that where an appeal has been made to the Officer Commanding the District under section 30, th period of thirty days shall be reckoned from the date on which the owner received notice of the result of the apeal under sub-section (2) of section 32.] [Inserted by Act 22 of 1933, s.3](3)[Every reference under sub-section (2) shall be accompanied by an estimate of the repairs, if any, which the owner considers necessary in order to put the house into a state of reasonable repair.] [Inserted by Act 9 of 1930, s.8]

17. [Power to have repairs executed and recorver cost.- [Substituted by Act 9 of 1930, s.9, for the original section.]

If the owner fails to comply with a notice issued under sub-section (1) of section 16, the Military Engineer Services or the Public Works Department may, with the previous sanction of the Officer Commanding the station and notwithstanding any right of reference conferred by that section, cause the repairs specified in the notice to be executed at the expense of [the Central Government], and the cost thereof, or, where a reference has been made, the amount finally determined by the civil

court, may deducted from the rent payable to the owner.]

18. Notice to be given of devolution of interest in house in cantonment.-

Every person on whom devolves, by transfer, by succession or by operation of law, the interest of an owner in any house, or in any part of any house, situate in a cantonment or part of a cantonment in respect of which a notification under sub-section (1) of section 3 is for the time being in force, shall be bound to give notice of the fact to the [Officer Commanding the station] [Substituted by Act 10 of 1925, s.6, for "Commanding Officer of the Cantonment"] within one month from the date of such devolution, and, if he, without reasonable cause, fails to do so, he shall be punishable with fine which may extend to fifty rupees.[CHAPTER IV [Substituted by Act 9 of 1930, s.10, for the original Chapter IV consisting of ss. 19 to 28.] Procedure In References

19. Jurisdiction in references.-

All references under this Act shall be made by application to, and tried by, the Court of the District Judge.

20. Procedure and powers of the Court.-

References under this Act shall be deemed to be proceedings within the meaning of section 141 of the Code of Civil Procedure, 1908, and in the trial thereof the Court may exercise any of its powers under that Code.

21. Restriction of scope of inquiry.-

The scope of the inquiry in a reference under this Act shall be restricted to a consideration of the matters referred to the Court in accordance with the provisions of this Act.

22. to 28.

[* * * * *] [Substituted by Act 9 of 1930, s.10, for the original Chapter IV consisting of ss. 19 to 28.]].

Chapter V

Appeals

29. [Appeal to High Court.- [Substituted by Act 9 of 1930, s.11, for the original section]

(1)An appeal shall lie to the High Court against the decision of the Court of the District Judge upon a reference tried by it.(2)No appeal under this section shall be admitted unless it is made within thirty

days from the date of the decision against which it is preferred.(3)An appeal preferred under this section shall be deemed to be an appeal from an order within the meaning of section 108 of the Code of Civil Procedure, 1908]

30. [Appeal to Officer Commanding the District.- [Substituted by Act 9 of 1930, s.12, for the original section.]

The owner or any tenant of a house in respect of which a notice has been issued under section 7 may, within a period of [ten days] from the date of the service thereof, appeal to the Officer Commanding the District against the decision of the Officer Commanding the station to appropriate the house.]

31. Petition of appeal.-

(1)Every petition of appeal under section 30 shall be in writing and accompanied by a copy of the notice appealed against.(2)Any such petition may be presented to the [Officer Commanding the station] [Substituted by Act 10 of 1925, s.6, for "Commanding Officer of the Cantonment"], and that officer shall be bound to forward it to the authority empowered by section 30 to hear the appeal, and may attach thereto any report which he may desire to make in explanation of the notice appealed against.(3)If any such petition is presented direct to the Officer Commanding the District and an immediate order on the petition is not necessary, the Officer Commanding the District may refer the petition to the [Officer Commanding the station] [Substituted by Act 10 of 1925, s.6, for "Commanding Officer of the Cantonment"] for report.

32. Order in appeal final.-

[(1)] [The original s.32 was re-numbered as sub-section(1) of that section by Act 22 of 1933, s.5.] The decision on any such appeal of the Officer Commanding the District [* * *] [The words "or of the General Officer Commanding-in-Chief, the Command, as the case may be" were rep. by Act 9 of 1930, s.13.] shall be final, and shall not be questioned in any court otherwise than on the ground that the house is situate in a cantonment, or part of a cantonment, in which this Act is not operative:Provided that no appeal shall be decided until the appellant has been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner [and in giving a decision the Officer Commanding the District shall record briefly the grounds therefor.] [Inserted by Act 9 of 1930, s.13].(2)[Notice of the result of the appeal shall be given to the appellant as soon as may be, and, where the appellant is a tenant of the house, to the owner of the house also.] [Inserted by Act 22 of 1933, s.5.]

33. Suspension of action pending appeal.-

Where an appeal has been presented under section 30 within the period prescribed [therein] [Substituted by Act 9 of 1930, s.14, for "by sub-section (2) of that section"], all action on the notice shall, on the application of the appellant, be held in abeyance pending the decision of the appeal.

Chapter VI

Supplemental Provisions

34. Service of notice and requisitions.-

Every notice or requisition prescribed by this Act shall be in writing, signed by the person by whom it is given or made or by his duly appointed agent, and may be served by post on the person to whom it is addressed, or, in the case of an owner who does not reside in or near the cantonment, on his agent appointed [in accordance with a bye-law made under clause (29) of section 282 of the Cantonments Act, 1924] [Substituted by Act 10 of 1925, s.4, for "under the Cantonments Act, 1910, or any rule made thereunder".].

34A. [Computation of periods of limitation.- [Inserted by Act 9 of 1930, s.15.]

The period prescribed for making any reference of preferring any appeal under this Act shall be computed in accordance with the provisions of the Indian Limitation Act, 1908.]

35. Power for Central Government to make rules.-

(1)The Central Government may make rules to carry out the purposes and objects of this Act.(2)In particular and without prejudice to the generality of the foregoing power, such rules may-(a)[* * * *] [Cl.(a) was rep. by Act 9 of 1930, s.16.](b)define the powers of entry, inspection, measurement or survey which may be exercised in carrying out the purposes and objects of this act or of any rule made hereunder.

36. Further provisions respecting rules.-

(1)The power to make rules under section 35 shall be subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Official Gazette and in such other manner (if any) as the Central Government may direct.(2)Any rule under section 35 may be general for all cantonments or parts of cantonments [* * * *] [The words "in the Provinces" were omitted by the A.O. 1950.] in which this Act is for the time being operative, or may be special for any of such cantonments or parts as the Central Government may direct.(3)A copy of the rules under section 35 for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment [Board] [Substituted by Act 32 of 1940, s.3 and Sch.11, for "Authority"].(4)In making any rule under clause (b) of sub-section (2) of section 35, the Central Government may direct that whoever obstructs any person, not being a public servant within the meaning of section 21 of the Indian Penal Code, in making any entry, inspection, measurement or survey, shall be punishable with fine which may extend of fifty rupees, and, in the case of a continuing offence, with fine which, in addition to such fine as aforesaid, may extend to five rupees for every day after the first during which such offence continues.

37. Inapplicability of section 556 of the Code of Criminal Procedure, 1898, to trials of offences.-

No Judge or Magistrate shall be deemed, within the meaning of section 556 of the Code of Criminal Procedure, 1898, to be a party to, or personally interested in, any prosecution for an offence constituted by or under this Act merely because he is a member of the Cantonment [Board] [Substituted by Act 32 of 1940, s.3 and Sch.11, for "Authority"] or has ordered or approved the prosecution.

38. Protection to persons acting under Act.-

No suit or other legal proceeding shall lie against any person for anything in good faith done, or intended to be done, under this Act or in pursuance of any lawful notice or order issued under this Act.

39. Repeals.-

Rep. by the Repealing Act, 1927 (12 of 1927), s.2 and Sch.The ScheduleEnactments Repealed.- [Rep. by the Repealing Act, 1927 (12 of 1927), s.2 and Schedule.]