

THE UTTAR PRADESH RECOVERY OF DAMAGES TO PUBLIC AND PRIVATE PROPERTY ACT, 2020

UTTAR PRADESH

India

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Act 11 of 2020

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IN pursuance of the provisions of clause (3) of Article 348 of the Constitution, the Governor is pleased to order the publication of the following English translation of the Uttar Pradesh Lok Tatha Niji Sampatti Kshati Vasooli Adhiniyam, 2020 (Uttar Pradesh Adhiniyam Sankhya 11 of 2020) as passed by the Uttar Pradesh Legislature and assented to by the Governor on August 28, 2020. The Grih (Police) Anubhag-9 is administratively concerned with the said Adhiniyam. AN ACT to deal with all such acts of violence at public places and to control its persistence and escalation and to provide for recovery of damage to public or private property during banal, bundh, riots, public commotion, protests or thereof, in respect of property and constitution of claims tribunals to investigate the damages caused and to award compensation related there to. IT Is HEREBY enacted in the Seventy-first Year of the Republic of India as follows

Chapter 1

PRELIMINARY

1.

(1) This Act may be called the Uttar Pradesh Recovery of Damages to Public and Private Property Act, 2020. (2) It extends to the whole of Uttar Pradesh. (3) It shall be deemed to have come into force on March 15, 2020.

2. In this Act, unless the context otherwise requires,-

(a) "Claims Commissioner" means an officer not below the rank of Additional District Magistrate designated by the State Government; (b) "Claims Tribunal" means a claims Tribunal constituted under this Act; (c) "Damage" means loss, injury, or deterioration, caused by any act or omission by

any person to another person or property thereof;(d)"Mischief" shall have the same meaning as in section 425 of the Indian Penal Code;(e)"Person" shall have the same meaning as in section 11 of the Indian Penal Code;(f)"Private property" means a movable or an immovable property owned and controlled by any person or any religious body, society or trust or waqf, which is not public property under clause (g) of section 2 of this Act, or firms over which their owners have exclusive and absolute legal right;(g)"Public Property" means any property, whether movable or immovable and includes any machinery which is owned by, or in the possession of, or under the control of-(1)Central Government; or(11)the State Government; or(111)any local authority; or any corporation or a company as defined in Companies Act, 2013, established by, or under, a State Act; or any institution, concern or undertaking which the State Government may, by notification in the Gazette, specify in this behalf:Provided that the State Government, shall not specify any other institution concern or undertaking under this sub-clause unless such institution, concern or undertaking is financed wholly or substantially by funds provided directly or indirectly by the State Government or any other State Government or partially by the State Government and partially by the Central State Government or any other State Government.

Chapter 2

CLAIM PETITION, REVIEW OF CASES AND INVESTIGATION

3. Claim petition for public or private property

On receipt of the report of concern circle officer of police which is based on First Information Report of the incident and other information gathered in the meanwhile, the District Magistrate or Commissioner of Police or the Head of Office shall take immediate steps to file claim petition before the Claims Tribunal for compensation, preferably within three months of the date of causing of the damage to the public property.

4. Review of cases

The District Collector or the Commissioner as the case may be, will review the conduct of claim cases filed for compensation on a quarterly basis and send its report to the Government.

5. Monitoring of Cases

The Head of the Department shall monitor the conduct and disposal of claim filed for compensation and give necessary directions to the Head of Office periodically.

6. Claim petition for private property

Private property owners, whose property had also damaged in such incident, after getting a copy of such report from the 51-10/SO concerned in such manner as per rules to file their Claim petitions for compensation.

Chapter 3

CLAIMS TRIBUNAL, FUNCTION AND POWERS

7. Constitution of Claim Tribunal

(1)The State Government, by notification in the Gazette, constitute one or more damage to property Claims Tribunal hereinafter referred to as Claims Tribunal for such area as may be specified in the notification for the purpose of adjudicating upon claims for compensation in respect of damages to any publicproperty or private property or both and to perform the functions assigned to it under this Act.(2)Claims Tribunal shall consist of such number of members as the State Government may think fit to appoint and where it consists of two or more members, one of them shall be appointed as the Chairman thereof.(3)A person shall not be qualified for appointment to Claims Tribunal unless he has been a Retd. District Judge(as a Chairman), or is an officer of Additidnal Commissioner Rank (as a Member).(4)Where two or more Claims Tribunals are constituted for any area, the State Government, may by general or special order, regulate the distribution of business among them.

8. Function and powers of the Claims Tribunal

(1)It shall be the duty of the Claims Tribunal to determine the damages caused to a public or a private property in the incidents occurred under section 3 orsection 4 and to award suitable compensation related thereto.(2)The Claims Tribunal may, if it thinks fit, appoint a Claims Commissioner to estimate the damages and investigate liability to assist it in holding the inquiry.(3)The Claims Tribunal may, also appoint one Assessor in every district as the case may be to assist the Claims Commissioner who is technically qualified to asses such damage from the panel appointed by the State Government.(4)The remuneration, to be paid the person or persons under sub-section (2) and,sub-section (3) shall in every case be determined by the State Government.(5)The Claims Commissioner and the Assessor may seek instructions from the claims Tribunal to summon the existing video or other recordings from private and public sources to pinpoint the damage and establish nexus with the perpetrators of the damage.(6)The Claims Commissioner will make a report to the Claims Tribunal within a period of three months of within the extended time, if any, granted by the Claims Tribunal. The Claims Tribunal will determine the liability after hearing the parties.(7)The Claims Tribunals may, subject to any rules that may be made in this behalf, follow such summary procedure as it thinks fit.The Claims Tribunal shall have all the powers of a Civil Court for the purpose of taking evidence on oath and of enforcing the attendance of witnessesand of compelling the discovery and production of documents and material objects and for such other purposes as may be prescribed; and the ClaimsTribunal shall be deemed to be a Civil Court for all the purposes of section 195 and Chapter XXVI of the Code of Criminal Procedure, 1973(2 of 1974)PROCEDURE OF CLAIMS TRIBUNAL

9. Claim petition for compensation

(1)Every application/Claim petition for compensation shall filled within three Application/month be accompanied by a fee of rupees twenty five in the form of court- fee stamps.(2)All applications,

before the Claims Tribunal, other than application mentioned in clause (i) shall be stamped with a court-fee stamp of rupees fifty. A process fee of rupees hundred shall be in the form of court-fee stamps paid for each witness or party summoned.(3)An application under this section shall be presented before the Claims Tribunal by the petitioner unless he is prevented by sufficient cause from appearing personally, in which case the application may be presented by his agent authorized in writing in this behalf. .

10. Cause of action to claim public and private property damage to property

The cause of action for initiating steps would be acts causing damage to public and private property.

11. Who may initiate the action for claiming compensation

Wherever a destruction, or loss or damage to public and private property takes place due to hartal, bundh, riots, public commotion, protests or thereof, the primary action for responsibility for -initiating before the Claims claiming Tribunal, constituted under this Act, of competent jurisdiction, preferably within three compensation months of occurrence of the incident; however Claim Tribunal may condone the delay of for public and 30 days if applicant shows the reasonable cause.(1)For the public property, would vest with the Head of the Office exercising time limit control over the property damaged during and as a result of the bundhs, strikes, riots, public commotion and protests etc. In the case of public sector undertakings, the Head of the Office or the Chief Executives of any person authorized by the Head of Department or Chief Executive shall take necessary steps to file Claim petition for compensation.(2)For the private property, would vest with the owner of the private property authorized representative or trustee having exclusive and absolute legal rights and who is not trespasser of the property damaged, may file claim petition for payment of compensation.

12. Who may be joined as respondents

In a Claim Petition for damages to property the Head of office or owner of the private property as the case may be will include as respondents, the persons who within his knowledge had exhorted, instigated or committed such Acts, the persons who are so named in the report of the police. The names and designation of the person who exhorted or perpetrated the acts leading in the destruction or damages, who sponsored, called for or exhorted the agitation.

13. The Claims Tribunal shall send to the respondents a copy of application together with a notice of the day on Which it will hear the application. The tribunal shall proceed ex-parte against the respondent who failed to appear before the tribunal and the tribunal shall attach the property and direct the authorities to publish the name, address along with photograph with a warning for public at large, not to purchase the property of the respondent.

14. The respondents, at or before the first hearing or within such further time as the Claims Tribunal may allow, which shall not be later than thirty days from the date of service of notices, file a written statement dealing with the damages claimed in the claim petition and any such written statement shall form part of the record.

15. The Claims Tribunal shall decide the matter with due observance of natural justice and may also take evidence on oath and summon the document as matter require.

16. The Claims Tribunal may, at any stage of an enquiry before it and after due notice to the parties visit and inspect the site of the incident or any other place or thing which in its opinion, is necessary to view for a proper decision of the claim petition.

17. The Claims Tribunal may, for reasons to be recorded, on the application of a Party or otherwise, adjourn the hearing from time to time. When adjournment is granted on application the Claims Tribunal may, make such order, as it thinks fit, with respect to the costs occasioned by the adjournment. In any case not more than three adjournments shall be given to a party:

Provided that the Claim Tribunal shall decide the claim petition expeditiously and in any case within one year of the framing of the issues.

18. The Claims Tribunal may, in its discretion, allow any party to appear himself before it through a legal practitioner during hearing of the case.

19.

(1)The Claims Tribunal, in passing order, shall record concisely in judgment the finding on each of the issues framed and the reasons for such finding and make an award, specifying the amount of compensation to be paid and shall also specify the person or persons jointly or severally separately as the case may be to whom compensation shall be payable:Provided that the Claims Tribunal may, for reasons to be recorded, award an 'Exemplary Damages' to an extent not exceeding double of the amount of the compensation liable to be paid :Provided further that if any amount as compensation has been paid, to the owner of the private property damaged in incident, by the State Government or Central Government or Insurance company or any other agency in this behalf, the Claims Tribunal shall adjust such amount from the amount of compensation so awarded:Provided also that the compensation shall not be less than the market value of the property damaged on the day of

incident.(2)Where compenstion is awarded to two or more person, under sub-section(I)the Claims Tribunal shall a'so specify the amount payable to each of them.As soon as the order of recovery for damage is passed the property of the respondent to be attatched and authorities shall be directed to publish the name address along with photograph with a warning for public at large not to purchase property attatched.(3)The Claims Tribunal may while disposing of the claim for compensation, make such orders regarding costs and expenses incurred in the proceeding as it thinks fit.

20. Where any Claims Tribunal allows a claim for compensation made under this Act such Tribunal may direct that in addition to the amount of compensation simple interest shall also be paid at such rate and from such date not earlier than the date of making the claim as it may specify in this behalf.

21.

(1)The Principles of absolute liability shall apply once the nexus with the event that precipitated the damage is established.(2)The liability will be borne by the actual perpetrators of the crime or instigate or incites giving rise to the liability to be shared, as finally determined by the Claims Tribunal.(3)Damages shall be assessed for—damages to public property;damages to private property;cost of the actions by the authorities and police to take preventive and other actions.

22. Every order or award passed by Claim Tribunal shall be final and no appeal is maintainable against such order before any court.

23. Where any amount is due from any person under an award, the Claims Tribunal may, on an application made to it by the person entitled to the amount, issue a certificate for the amount to the Collector and the Collector shall proceed to recover the same in the same manner as an arrear of land revenue.

24. Where any Claims Tribunal has been constituted for any area, no Civil Court shall have jurisdiction to entertain any question relating to any claim for compensation which may be adjudicated upon by the Claims Tribunal for that area, and no injunction in respect of any action taken or to be taken by or before the Claims Tribunal in respect of the claim for compensation shall be granted by the Civil Court.

25. Proceedings of claim petition shall not be barred by the criminal proceeding, if any originated by the concerned incident.

Chapter 4

MISCELLANEOUS

26. The State Government may, by notification, make rules for carrying out the purposes of this Act.

27.

(1) If any difficulty arises in giving effect to the provision of this Act the State Government may by a notified order, make such provisions, not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removing the difficulty. (2) No order under sub-section (1) shall be made after the expiration of a period of two year from the commencement of this Act. (3) Every order made under sub-section (1) shall be laid, as soon as may be, before both Houses of the State Legislature and the provisions of sub-section (1) of section 23-A of the Uttar Pradesh General Clauses Act, 1904. (4) Where this Act is silent on any subject of proceeding before tribunal, the provisions of Civil Procedure Code shall apply on the same.

28.

(1) With the promulgation of this Act any other existing law or Government orders corresponding to this Act are hereby cancelled and declared ineffective: Provided that subject to the provisions of this Act, the repeal shall not effect,—(a) the previous operation of any such Government Orders or law or anything duly done or suffered thereunder; (b) any right, privilege, obligation or liability acquired, accrued or incurred under such Government Order or law; (c) any penalty, forfeiture or punishment incurred in respect of any offence committed against such Government Order or law; (d) any investigation, legal proceeding or remedy in respect of such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid; and any such investigation, legal proceeding or remedy may be instituted or enforced and any such penalty, forfeiture, or punishment may be imposed as if such Government Order or law had not been repealed. (2) Notwithstanding anything contained in the proviso to sub-section (1) anything done or any action taken under any Government Order or law repealed by sub-section (1) shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.

29. (I) The Uttar Pradesh Recovery of Damages to Public U. P. Ordinance and Private Property Ordinance, 2020 is hereby repealed. no. 2 of 2020

(2) Notwithstanding such repeal, anything done or any action taken under the provisions of the principal Act as amended by the Ordinance referred to in sub-section (1) shall be deemed to have

been done taken under the corresponding provisions of the principal Act as amended by this Act as if the provisions of this Act were in force at all material times.