

# The Works of Defence Act, 1903

<sup>1</sup>ACT No. VII OF 1903

[20th March, 1903]

**An Act to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions, and for determining the amount of compensation to be made on account of such imposition.**

WHEREAS it is expedient to provide for imposing restrictions upon the use and enjoyment of land in the vicinity of works of defence in order that such land may be kept free from buildings and other obstructions, and for determining the amount of compensation to be made on account of such imposition.

It is hereby enacted as follows:---

## PART I

### PRELIMINARY

**1 Short title and extent.**—(1) This Act may be called the <sup>2\*</sup> Works of Defence Act, 1903; and

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<sup>1</sup>For Statement of Objects and Reasons, *see* Gazette of India, 1902, Pt. V, p. 84; for Report of the Select Committee, *see ibid.*, 1903, p. 105; for Proceedings in Council, *see ibid.*, 1902, Pt. VI, p. 175; *ibid.*, 1903, pp. 14 and 50.

It has been extended to the Baluchistan States Union by the Baluchistan States Union (Federal Laws) (Extension) Order, 1953 (G. G. O. 4 of 1953) as amended.

It has also been extended to the Khairpur State, *see* G. G. O. 5 of 1953, as amended by G. G. O. 24 of 1953.

The Act has also been extended to the State of Bahawalpur *see* G. G. O. 11 of 1953, as amended.

It has also been extended to the Leased Areas of Baluchistan, *see* the Leased Areas (Laws) Order, 1950 (G. G. O. 3 of 1950); and applied in the Federated Areas of Baluchistan, *see* Gazette of India, 1937, Pt. I, p. 1499.

The Act has been and shall be deemed to have been brought into force in Gwadur with effect from the 8th September, 1958 by the Gwadur (Application of Central Laws) Ordinance, 1960 (37 of 1960), s. 2.

<sup>2</sup>The word "Indian" omitted by A. O., 1949, Sch.

<sup>1</sup>[(2) It extends to the whole of Pakistan.

**2. Definitions.** In this Act, unless there is something repugnant in the subject or context,---

(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth:

(b) the expression "person interested" includes all persons claiming an interest in compensation to be made on account of the imposition of restrictions upon the use and enjoyment of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land:

<sup>2</sup>[<sup>3</sup>(c) the expression "Division" means one of the Divisions or Groups into which Pakistan is, for military, naval or air force purposes for the time being divided ; it includes a Brigade area, a sub-Area which does not form part of any Division, a naval station, port, dockyard, or establishment ; or an air force Head quarters which does not form part of any air force Group, and any area which the <sup>4</sup>[Federal Government] may, by notification in the official Gazette, declare to be a Division for all or any of the purposes of this Act :]

<sup>5</sup>[(d) the expression "General Officer Commanding the Division" means with reference to a work pertaining to the Army, the army officer for the time being in command of the forces in a Division, with reference to a work pertaining to the Navy, the naval officer for the time being in command of the forces in a Division and with reference to a work pertaining to the Air Force, the air force officer for the time being in command of the forces in a Division]:]

(e) the expression "Commanding Officer" means the officer for the time being in command of a work of defence:---

<sup>1</sup>Subs. by the Central Laws (Statute Reform) Ordinance, 1960 (21 of 1960), s. 3 and 2nd Sch. (with effect from the 14th October, 1955), for sub-section (2) as amended by A. O., 1949, Sch. and the Federal Laws (Revision and Declaration) Act, 1951 (26 of 1951), s. 8.

<sup>2</sup>Subs. by the Indian Works of Defence (Amdt.) Act, 1921 (11 of 1921) s. 2, for the original cls. (c) and (d).

<sup>3</sup>Subs. by the Works of Defence (Amdt.) Ordinance, 1961 (34 of 1961), s. 2, for cl. (c) as amended by A. O., 1949, Sch., and A. O., 1937.

<sup>4</sup>Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government".

<sup>5</sup>Subs. by Ordinance 34 of 1961, s. 2, for cl. (d)

(f) the expression "Collector" includes any officer specially appointed by the <sup>1</sup>[Federal Government] to perform the functions of a Collector under this Act:

(g) the expression "Court" means a principal Civil Court of original jurisdiction, unless the <sup>1</sup>[Federal Government] has appointed (as it is hereby empowered to do) a special judicial officer within any specified local limits to perform the functions of the Court under this Act:

(h) "maintain", with its grammatical variations and cognate expressions, does not, when used in relation to a house or other construction, include the doing of any act necessary for keeping such house or construction, until the making of the award referred to in section 12 or until the exercise, prior to the making of the award, of the powers of demolition conferred, in case of emergency, by section 6, sub-sections (1) and (3), in the state in which it was at the time of the publication of the notice referred to in section 3, sub-section (2):

(i) the following persons shall be deemed "entitled to act" as and to the extent hereinafter provided, that is to say,—

trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any case, and that to the same extent as the persons beneficially interested could have acted if free from disability:

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the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:---

Provided that,---

- (i) no person shall be deemed “entitled to act” whose interest in the subject- matter is shown to the satisfaction of the Collector or Court to be adverse to the interest of the person interested for whom he would otherwise be entitled to act ;

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<sup>1</sup> Subs. by F.A.O., 1975, Art. 2 and Table, for “Central Government”, which had been subs. by A. O., 1937, for “L.G.”.

<sup>2</sup> Certain words were omitted by the Federal Laws (Revision and Declaration) Ordinance. 1981 (27 of 1981), s. 3 and Second Sch.

- (ii) in every case the person interested may appear by a next friend or, in default of his appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof ;

- (iii) the provisions of <sup>1</sup>[Order XXXII of the First Schedule to the, Procedure, 1908 (Act V of 1908),] shall, *mutatis mutandis*, apply in the case of persons interested appearing before a Collector or Court by a next friend, or by a guardian for the case, in proceedings under this Act; and

- (iv) no person “entitled to act” shall be competent to receive the compensation-money payable to the person for whom he is entitled to act, unless he would have been competent to alienate the land upon the use and enjoyment of which restrictions are to be imposed and receive and give a good discharge for the purchase-money on a voluntary sale <sup>2</sup>[;]

- <sup>3</sup>[(j) the expression “work” or “work of defence” means any defence establishment and include a naval dockyard, an airfield, a runway, an emergency landing ground or any area declared by the <sup>4</sup>[Federal Government] to be a “work” or “work of defence” ;

- (k) the expression “Clearance Area” means,---

- (i) an area 250 yards wide measured on either side and at right angle to the centre line of a runway along its full length ;
- (ii) an area 75 yards wide measured on either side and at right angle to the centre line of a taxi way along its full length ;
- (iii) an area 42 yards wide all round an apron or hard standing measured from the outer edge ;
- (iv) an area immediately adjacent to both ends of a runway 300 yards long measured along and symmetrical to extended centre line of a runway and 250 yards wide either side of the centre line ; and
- (v) an area 500 yards wide flaring up to 707 yards beyond that mentioned in the preceding clause at each end of runway extending on the ground for a distance of 1,000 yards along and symmetrical about the extended centre line of a runway;

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<sup>1</sup> Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Second Sch., for “Chapter XXXI of the Code of Civil Procedure”.

<sup>2</sup> Subs. by the Works of Defence (Amdt.) Ordinance, 1961 (34 of 1961), s. 2, for the full-stop.

<sup>3</sup> Clauses (j), (k), (l), (m), (n), (o), (p) and (q), added *ibid*.

<sup>4</sup> Subs. by F.A.O., 1975, Art. 2 and Table, for “Central Government”.

- (l) “Funnel Area” means air space clearance at each end of a runway beginning at the end of the area mentioned in clause (k) (v) at the elevation of the end of runway and rising on a slope of 1

in 50 (for every 50 feet horizontal one foot vertical, known as glide angle) for a horizontal distance of 3,033 yards measured along and symmetrical about the extended centre line of runway, the width of the Funnel Area at the end of the distance mentioned in clause (k) (v) being 707 yards flaring up to 1,333 yards at the end;

- (m) “Area of Restricted Height” means air space clearance at each end of a runway beginning at the end of Funnel Area above an elevation of 60 yards measured above the elevation of the end of the runway and with a width of 1,333 yards and a length of 5,000 yards measured along and symmetrical about the extended centre line of the runway ;
- (n) “Inner Horizontal Surface” means an air space clearance above an elevation of 50 yards over and above the established airfield elevation, the extent of this surface being limited to an area included within a radius of 4,333 yards measured from the geometrical centre of the runway known as reference point ;
- (o) “Inner Conical Surface” means air space clearance extended outward and upward from the periphery of the Inner Horizontal Surface for a distance of 2,333 yards, the slope of Conical Surface being 20 horizontal to one vertical protruding above ;
- (p) “Outer Horizontal Surface” means air space clearance above an elevation of 166 yards over and above the established airfield elevation, the extent of this surface being limited to an area included between the outer periphery of Inner Conical Surface and a circle having a radius of 16,667 yards measured from the reference point ;
- (q) “Transition Surface” means air space clearance joining two adjacent surfaces with a slope of 7 horizontal to one vertical measured outward and upward and all along, the sides of runway Clearance Area, Funnel Area and Area of Restricted Height, the slope being measured at right angle to the runway axis except, at the ends of the Area of Restricted Height where it will be measured parallel to it.]

## PART II

### IMPOSITION OF RESTRICTIONS

**3. Declaration and notice that restrictions will be imposed.**—(1) Whenever it appears to the <sup>1</sup>[Federal Government] that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any work of defence or of any site intended to be used or to be acquired for any such work, in order that such land may be kept free from buildings and other obstructions, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorised to certify its orders.

(2) The said declaration shall be published in the <sup>2</sup>[official Gazette] and shall state the district or other territorial division in which the land is situate and the place where a sketch plan of the land, which shall be prepared on a scale not smaller than six inches to the mile and shall distinguish the boundaries referred to in section 7, may be inspected ; and the Collector shall cause public notice of the substance of the said declaration to be given at convenient places in the locality.

(3) The said declaration shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions.

**4. Power to do preliminary acts after publication of notice under section 3, sub-section (2).** It shall be lawful for such officer as the <sup>1</sup>[Federal Government] may, by general or special order, authorise in this behalf, and for his servants and workmen, at any time after publication of the notice mentioned in section 3, sub-section (2), to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soil, to do all other acts necessary to ascertain whether any and, if so, what restrictions should be imposed

on the use and enjoyment of the land, to set out the boundaries of the land upon the use and enjoyment of which restrictions are to be imposed, or of any part of such land, to mark such levels, boundaries and line by placing marks and cutting trenches, and, where otherwise the survey cannot be completed and the levels taken and the boundaries and line marked, to cut down and clear away any part of any standing crop, fence or jungle:

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<sup>1</sup>Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government", which had been subs. by A. O., 1937, for "L. G."

<sup>2</sup>Subs. by A.O., 1937, for "local official Gazette".

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling -house (unless with the consent of the occupier thereof) without previously giving such occupier at least seven days' notice in writing of his intention to do so.

**5. Payment for damage.** The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector or other chief revenue-officer of the district, and such decision shall be final.

**6. Further powers exercisable after publication of notice under section 3, sub-section (2).**— (1) Whenever a declaration has been made and public notice thereof has been given under section 3, it shall, subject to the provisions of sub-sections (2) to (4), be lawful for such officer as the <sup>1</sup>[Federal Government] may, by general or special order, authorise in this behalf, and for his servants and workmen, to enter and demolish any buildings or other constructions on the surface, to cut down or grub up all or any of the trees, to remove or alter all or any of the banks, fences, hedges and ditches, to make underground and other drains, to fill up all excavations, and demolish all buildings and other constructions below the surface, and generally to level and clear the said land and do all such acts for, levelling and clearing the same as he may deem necessary or proper, but in such manner nevertheless that evidence of the boundaries of the lands held by different owners may be preserved.

(2) The powers conferred by sub-section (1) shall not be exercised,---

(a) save as otherwise provided by sub-section (3), before the making of the award hereinafter referred to in section 12, nor

(b) save as otherwise provided by sub-section (4), after the expiration of six months from the making of the said award, or any shorter period on the expiration of which the officer exercising such powers gives notice to the Collector that there will be no further exercise of them.

(3) In case of emergency, the <sup>1</sup>[Federal Government] <sup>2</sup>\* \* \* may, by notification in the <sup>3</sup>[official Gazette], declare that all or any powers conferred by sub-section (1) may be exercised at any time within six months after the publication of the notice referred to in section 3, sub-section (2), and such powers may be exercised accordingly, and the said notification shall be conclusive proof of emergency.

<sup>1</sup>Subs. by F.A.O. 1975, Art. 2 and Table, for "Central Government", which had been subs. by A. O., 1937, for "L. G."

<sup>2</sup>The words "with the previous sanction of the G. G. in C." rep., *ibid.*

<sup>3</sup>Subs. *ibid.*, for "local official Gazette".

(4) Nothing in sub-section (2) shall be deemed to preclude any such officer or his servants or workmen from exercising at any time the said powers for the purpose of removing, wholly or in part, any building or other obstruction maintained, created, added to, altered, planted, stacked, stored or otherwise accumulated in

contravention of this Act or of any rule or order made thereunder or of any condition prescribed in accordance therewith.

**7. Restrictions.** From and after the publication of the notice mentioned in section 3, sub-section (2), such of the following restrictions as the <sup>1</sup>[Federal Government] may in its discretion declare therein shall attach with reference to such land, namely:---

- (a) Within an outer boundary which, except so far as is otherwise provided in section 39, sub-section (4), may extend to a distance of two thousand yards from the crest of the outer parapet of the work,---
  - (i) no variation shall be made in the ground- level, and no building, wall, bank or other construction above the ground shall be maintained, erected, added to or altered otherwise than with the written approval of the <sup>2</sup>[General Officer Commanding the Division], and on such conditions as he may prescribe;
  - (ii) no wood, earth, stone, brick, gravel, sand or other material shall be stacked, stored or otherwise accumulated:

Provided that, with the written approval of the <sup>3</sup>[General Officer Commanding the Division] and on such conditions as he may prescribe, road-ballast, manure and agricultural produce may be exempted from the prohibition:

Provided also that any person having control of the land as owner, lessee or occupier shall be bound forthwith to remove such road-ballast, manure or agricultural produce, without compensation, on the requisition of the Commanding Officer;

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<sup>1</sup>Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government", which had been subs. by A. O., 1937, for "L. G.".

<sup>2</sup>Subs. by the Works of Defence (Amdt.) Ordinance, 1961 (34 of 1961), s. 3, for "General Officer Commanding the District" which had been subs. by the Indian Works of Defence (Amdt.) Act, 1921 (11 of 1921), s. 3, for "General Officer Commanding the Division".

<sup>3</sup>Subs. by Ordinance 34 of 1961, s.3, for "General Officer Commanding the District" which had been subs. By Act II of 1921, s.3 for General Officer Commanding the Division, District or Brigade".

- (iii) no surveying operation shall be conducted otherwise than by or under the personal supervision of a public servant duly authorised in this behalf, in the case of land under the control of military authority, by the Commanding Officer and, in other cases, by the Collector with the concurrence of the Commanding Officer; and
- (iv) where any building, wall, bank or other construction above the ground has been permitted under clause (i) of this sub-section to be maintained, erected, added to or altered, repairs shall not, without the written approval of the <sup>1</sup>[General Officer Commanding the Division], be made with materials different in kind from those employed in the original building, wall, bank or other construction.

- (b) Within a second boundary which may extend to a distance of one thousand yards from the crest of the outer parapet of the work, the restrictions enumerated in clause (a) shall apply with the following additional limitations, namely:---

<sup>2</sup>[(i) no building, wall, bank or other construction of permanent materials above the ground shall be maintained otherwise than with the written approval of the <sup>3</sup>[General Officer Commanding the Division] and on such conditions as he may prescribe, and no such building, wall, bank or other construction shall be erected :]

Provided that, with the written approval of the <sup>1</sup>[General Officer Commanding the Division] and on such conditions as he may prescribe, huts, fences or other constructions of wood or other materials, easily destroyed or removed, may be maintained, erected, added to or altered:

Provided, also, that any person having control of the land as owner, lessee or occupier shall be

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<sup>1</sup>Subs. by the Works of Defence (Amdt.) Ordinance, 1961 (34 of 1961), s. 3, for "General Officer Commanding the District" which had been subs. by the Indian Works of Defence (Amdt.) Act, 1921 (11 of 1921), s. 3, for "General Officer Commanding the Division".

<sup>2</sup>Subs. by the Indian Works of Defence (Amdt.) Act, 1940 (28 of 1940), s. 2 (a), for the original cl. (i).

<sup>3</sup>Subs. by Ordinance 34 of 1961, s. 3, for "General Officer Commanding the District".

bound forthwith to destroy or remove such huts, fences or other constructions, without compensation, upon an order in writing signed by the <sup>1</sup>[General Officer Commanding the Division] ; and

(ii) live hedges, rows or clumps of trees or orchards shall not be maintained, planted, added to or altered otherwise than with the written approval of the <sup>2</sup>[General Officer Commanding the Division] and on such conditions as he may prescribe.

(c) Within a third boundary which may extend to a distance of five hundred yards from the crest of the outer parapet of the work, the restrictions enumerated in clauses (a) and (b) shall apply with the following additional limitation, namely:---

no building or other construction on the surface, and no excavation, building or other construction below the surface, shall be maintained or erected:---

Provided that, with the written approval of the Commanding Officer and on such conditions as he may prescribe, <sup>3</sup>[a building or other construction on the surface may be maintained and] open railings and dry brush-wood fences may be exempted from this prohibition.

**<sup>4</sup>[7A. Restrictions with reference to airfield.]**— From and after the publication of the notice mentioned in section 3, sub-section (2), such of the following restrictions as the <sup>5</sup>[Federal Government] may in its discretion declare therein shall attach with reference to the land in the vicinity of an airfield, namely:---

(a) No variation shall be made in the ground level, and no building, wall or other construction above the ground level and no obstruction or ditch shall be permitted in the Clearance Area.

(b) No building, wall, bank or other construction above the ground level shall be maintained, erected, added to or altered in the Funnel Area, Area of Restricted Height, Transition Surface, Inner Conical Surface and Outer Horizontal Surface, otherwise than

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<sup>1</sup>Subs. by the Ordinance 34 of 1961, s.3 for "General Officer Commanding the District" which had been subs. by Act 2 of 1921, s.3, for General Officer Commanding the Division.

<sup>2</sup>Subs. by the Works of Defence (Amdt.) Ordinance, 1961 (34 of 1961), s. 3, for "General Officer Commanding the District" which had been subs. by the Indian Works of Defence (Amdt.) Act, 1921 (2 of 1921), s. 3, for General Officer Commanding the Division, District or Brigade".

<sup>3</sup>Ins. by the Indian Works of Defence (Amdt.) Act, 1940 (28 of 1940), s. 2 (b).

<sup>4</sup>S. 7A added by Ordinance 34 of 1961, s. 4.

<sup>5</sup>Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government",

with the written approval of the General Officer Commanding the Division, and on such conditions as he may prescribe.]

**8. Land to be marked out, measured, registered and planned.** As soon as may be after the publication of the declaration aforesaid, the Collector shall cause the land to be marked out and measured, and shall also prepared a register and a detailed plan, which shall be on a scale not smaller than six inches to the mile, showing accurately every building, tree and other obstruction.

**9. Notice to persons interested.**—(1) At any time before the expiration of,---

(a) the period of eighteen months from the publication of the declaration referred to in section 3, or

(b) such other period not exceeding three years from the said publication as the <sup>1</sup>[Federal Government] <sup>2</sup>\* \* \* may, by notification in the <sup>3</sup>[official Gazette], direct in this behalf, the Collector shall cause public notice to be given at convenient places on or near the land, stating the effect of the said declaration and that claims to compensation for all interests in such land affected by anything done or ordered in pursuance of such declaration may be made to him:---

Provided that, where anything has been done in exercise of the powers conferred, in case of emergency, by section 6, sub-section (3), the notice prescribed by this section shall be given as soon as may be thereafter.

(2) Such notice shall state the particulars of any damage ordered to be done or, in the case referred to in section 6, sub-section (3), done in exercise of any of the powers conferred by the said section, and the particulars of any restrictions attaching to the land under section 7, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for damage to such interests and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent.

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<sup>1</sup>Subs. by F.A.O., 1975, Art. 2 and Table for, "Central Government",

<sup>2</sup>The words "with the previous sanction of the G. G. in C.", rep., by A. O., 1937.

<sup>3</sup>Subs. *ibid.*, for "local official Gazette".

(3) The Collector shall also serve notice to the same effect on the occupier (if any) of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorised to receive service on their behalf, within the revenue-district in which the land is situate.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or, place of business.

**10. Power to require and enforce the making of statements as to names and interests.** The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than fifteen days after the date of the requisition), a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest, and of the rents and profits (if any) received or receivable on account thereof for three years next preceding the date of the statement.

**11. Application of certain sections of the Pakistan Penal Code.** Every person required to make or deliver a statement under section 9 or section 10 shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Pakistan Penal Code (XLV of 1860).

**12. Inquiry and award by Collector.** On the day fixed under section 9 or on any other day to which the inquiry has been adjourned, the Collector shall proceed to inquire into the objections (if any) which any person interested has stated pursuant to a notice given under the said section to the measurements made under section 8, and into the decrease in the value of the land, and into the respective interests of the persons claiming the compensation, and shall make an award under his hand of,---

- (a) the true area of the land and the nature of the obstructions from which the land is to be kept free;
- (b) the compensation which in his opinion should be allowed for any damage caused or to be caused under section 6 and for any restrictions imposed under section 7; and
- (c) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether they have respectively appeared before him or not.

**13. Award of Collector when to be final.** (1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area of the land, the nature of the said obstructions from which the land is to be kept free, the damage caused or to be caused under section 6, the value of the rights restricted under section 7, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested as are not present personally or by their representatives when the award is made.

**14. Adjournment of inquiry.** The Collector may, for any cause he thinks fit, from time to time adjourn the inquiry to a day to be fixed by him.

**15. Power to summon and enforce attendance of witnesses and production of documents.** For the purpose of inquiries under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including the parties interested or any of them, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the <sup>1</sup>[Code of Civil Procedure 1908 (Act V of 1908)].

**16. Matters to be considered and neglected.** In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

**17. Supplementary proceedings.** Whenever the officer exercising powers conferred by section 6 considers it necessary that anything in respect of which any person is or may be entitled to compensation but of which no notice has been given or compensation awarded, under sections 9 and 12, respectively, should be done in pursuance of the said powers, the Collector shall cause supplementary notice to be given, as nearly as may be, in the manner prescribed by section 9 and subject to the limit of time imposed by sub-section (1) of that section, and the provisions of sections 10 to 16 shall, so far as they are applicable, be deemed to apply to any further inquiry and award which may be held or made in consequence of such supplementary notice.

### PART III

#### REFERENCE TO COURT AND PROCEDURE THEREON

**18. Reference to Court.**— (1) Any person interested who has not accepted the award may, by

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<sup>1</sup>Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Second Sch., for "Code of Civil Procedure Act (XIV of 1882)."

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 of the land, the amount of the compensation, the

persons to whom it is payable, or the apportionment of the compensation among the persons interested:---

Provided that every such application shall be made,---

- (a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award;
- (b) in other cases, within six weeks of the receipt of the notice from the Collector under section 13, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

(2) The application shall state the grounds on which objection to the award is taken.

**19. Collector's statement to the Court.**—(1) In making the reference the Collector shall state, for the information of the Court, in writing under his hand,---

- (a) the situation and extent of the land with particulars of any damage caused under section 6 or of restrictions imposed under section 7;
- (b) the names of the persons whom he has reason to think interested in such land;
- (c) the amount of compensation awarded under section 12; and
- (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon, and of the statements in writing made or delivered by, the parties interested respectively.

**20. Service of notice.** The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons, 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 awarded; and
- (c) if the objection is in regard to the area of the land, the nature of the obstructions or the amount of the compensation, the Collector.

**21. Restriction on scope of proceedings.** The scope of the inquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

**22. Proceedings to be in open Court.** Every such proceeding shall take place in open Court, and all persons entitled to practice in any Civil Court in the Province shall be entitled to appear, plead and act, as the case may be, in such proceeding.

**23. Matters to be considered in determining compensation.**—(1) In determining the amount of compensation to be awarded for damage caused, or to be caused, or for restrictions imposed under this Act, the Court shall take into consideration,---

- (a) the actual decrease in market-value of the land owing to the publication of the declaration relating thereto under section 3 and any damage caused or to be caused under section 6;

(b) the damage sustained by the person interested, by reason of the removal of any standing crops in the exercise of any power conferred by section 6;

(c) the damage (if any) sustained by the person interested, by reason of ceasing to be able to use such land conjointly with his other land;

(d) the damage (if any) sustained by the person interested by anything done or ordered under sections 6 and 7 injuriously affecting his other property, moveable or immovable, in any other manner, or his earnings; and,

(e) if, in consequence of the imposition of restrictions, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change.

(2) In addition to the amount representing the actual decrease in the market-value of the land as above provided, the Court shall in every case award a further sum of fifteen per centum on such amount.

**24. Matters not to be considered in determining compensation.** In determining the amount of compensation to be awarded for damage caused, or to be caused, or for restrictions imposed under this Act, the Court shall not take into consideration,---

- (a) the degree of urgency which has led to the damage or the imposition of restrictions;
- (b) any disinclination of the person interested to submit to damage or restrictions;
- (c) any damage sustained by him, which, if caused by a private person, would not render such person liable to a suit;
- (d) any increase to the value of the other land of the person interested, accruing or likely to accrue from anything done under this Act; or
- (e) any outlay or improvements on, or disposal of, the land commenced, made or effected without the sanction of the Collector after the date of the publication of the declaration under section 3.

**25. Rules as to amount of compensation.** —(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 12.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

**26. Form of awards.** Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded under section 23, sub-section (1), clause (a), and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section, together with the grounds of awarding each of the said amounts.

**27. Costs.** —(1) Every such award shall also state the amount of costs incurred in the proceedings under this Part, and by what persons and in what proportion they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector, unless the Court is of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

**28. Collector may be directed to pay interest on excess 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 Court may direct that the Collector shall pay interest on such excess at the rate of six per centum per annum from the date of his award to the date of payment of such excess into Court.

#### ART IV

#### APPORTIONMENT OF COMPENSATION

**29. Particulars of apportionment to be specified.** Where there are several persons interested, if such persons agree in the apportionment of the compensation, the particulars of such apportionment shall be specified in the award, and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

**30. Dispute as to apportionment.** When the amount of compensation has been settled under section 12, if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Collector may refer such dispute to the decision of the Court.

#### PART V

#### PAYMENT

**31. Payment of compensation or deposit of same in Court.** —(1) On making an award under section 12, the Collector shall tender payment of the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in sub-section (2).

(2) If they do not consent to receive it, or if there is no person competent to alienate the land, or if there is any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court to which a reference under section 18 would be submitted:---

Provided, first, that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:---

Provided, secondly, that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:---

Provided, thirdly, that nothing herein contained shall affect the liability of any person, who may receive the whole or any part of any compensation awarded under this Act, to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the <sup>1</sup>[Federal Government], instead of awarding a money-compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, or by the remission of land-revenue on the same or on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

(4) Nothing in sub-section (3) shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

**32. Investment of money deposited in respect of lands belonging to persons incompetent to alienate.** -(1) If any money is deposited in Court under section 31, sub-section (2), and it appears that the land in respect of which the same was awarded belonged to any person who had no power to alienate the same, the Court shall order the money to be invested,---

- (a) in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money was deposited is held, or
- (b) if such purchase cannot be effected forthwith, then in such Government or other approved securities as it thinks fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land, and such moneys shall remain so deposited and invested until the same are applied,---

- (i) in the purchase of such other lands as aforesaid; or
- (ii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies, the Court shall order the cost of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:---

- (a) the costs of such investments as aforesaid;
- (b) the costs of the orders for the payment of the interest or other proceeds of the securities in which such moneys are for the time being invested, and for the payment out of Court of the principal of such moneys and the costs of all proceedings relating thereto,

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<sup>1</sup>Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government", which had been subs. by A. O., 1937 for 'L.G.'

except such as may be occasioned by litigation between adverse claimants.

**33. Investment of money deposited in other cases.** If any money is deposited in Court under this Act for any cause other than that mentioned in section 32, the Court may, on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it thinks fit, and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as will, in its opinion, give the parties interested therein the same benefit therefrom as they might have had from the land in respect of which such money was deposited or as near thereto as may be.

**34. Payment of Interest.** When the amount of any compensation awarded under this Act is not paid or deposited within fifteen days of making the award, the Collector shall pay the amount awarded with interest thereon at the rate of six per centum per annum from the date of the award until it is so paid or deposited.

## PART VI

### MISCELLANEOUS

**35. Service of notices.**—(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 3, sub-section (2), by the officer therein mentioned, and, in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and, if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or curies on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the court-house and also in some conspicuous part of the land upon which restrictions are to be imposed:---

Provided that, if the Collector or Judge so directs, a notice may be sent by post in a letter addressed to the person named therein at his last known residence, address or place of business and service of it may be proved by the production of the addressee's receipt.

**36. Penalties.** Whoever wilfully,---

- (a) obstructs any person in doing any of the acts authorized by section 4, section 6 or section 8, or
- (b) destroys, damages, alters or otherwise interferes with the ground-level or any work done under section 6, or
- (c) contravenes any of the provisions of section 7, <sup>1</sup>[section 7A] or any condition prescribed there under,

shall be punishable with imprisonment for a term which may extend to one month, or with fine which may extend to fifty rupees, or with both, and, in the case of a continuing offence, with an additional fine which may extend to five rupees for every day after the first in regard to which he is convicted of having persisted in the offence; and any expenses incurred in removing the effects of his offence may be recovered from him in the manner provided by the law for the time being in force for the recovery of fines.

**37. Magistrate to enforce the terms of the Act.** If the Collector or officer authorized under section 6 is opposed or impeded in doing anything directed or permitted by this Act, he shall, if a Magistrate, enforce compliance, and, if not a Magistrate, he shall apply to a Magistrate <sup>2\*</sup> \* \* and such Magistrate <sup>3\*</sup> \* shall enforce compliance.

**38. Completion of imposition of restrictions not compulsory, but compensation to be awarded when not completed.**—(1) The <sup>4</sup>[Federal Government] shall be at liberty to withdraw from the imposition of any declared restrictions before any of the measures authorized by section 6 have been taken.

(2) Whenever the <sup>4</sup>[Federal Government] withdraws the imposition of any declared restrictions, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings thereunder, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said restrictions.

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<sup>1</sup>Ins. by the Works of Defence (Amdt.) Ordinance, 1961 (34 of 1961), s. 5.

<sup>2</sup> The words and brackets "or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police" omitted by A. O., 1949, Sch. The words "and Bombay" had been subs. for "Bombay and Rangoon" by A. O., 1937.

<sup>3</sup> The words and brackets "or Commissioner (as the case may be)" omitted by A. O., 1949, Sch.

<sup>4</sup> Subs. by F. A. O., 1975, Art. 2 and Table, for "Central Government" which had been subs. by A. O., 1937, for "L. G.",

(3) The provisions of Part III shall apply, so far as may be, to the determination of the compensation payable under this section.

**39. Demolition of part of house or building and imposition of restrictions on part of land.**— (1) The provisions of this Act shall not be put in force for the purpose of demolishing or acquiring the right to demolish a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be demolished or that the right to demolish the whole of it shall be acquired:---

Provided that the owner may at any time before the Collector has made his award under section 12, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be demolished, or that the right to demolish the whole of it shall be acquired:---

Provided, also, that if any question shall arise as to whether any building or other construction proposed to be demolished under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court, and such building or other construction shall not be demolished until after the question has been determined.

In deciding on such a reference the Court shall have regard to the question whether the building or other construction proposed to be demolished is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim of the kind referred to in section 23, sub-section (1), clause (c), by a person interested, on account of ceasing to be able to use the land, upon the use and enjoyment of which restrictions are to be imposed, conjointly with his other land the <sup>1</sup>[Federal Government] is of opinion that the claim is unreasonable or excessive, it may at any time before the Collector has made his award, order the imposition of restrictions upon the whole of the land of which the land upon the use and enjoyment of which it was first sought to impose restrictions forms a part.

(3) In the case provided for by sub-section (2) no fresh declaration or other proceeding under sections 3 to 10 shall be necessary; but the Collector shall without delay furnish a copy of the order of the <sup>1</sup>[Federal Government] to the person interested, and shall thereafter proceed to make his award under section 12.

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<sup>1</sup> Subs. by F.A.O., 1975, Art. 2 and Table, for "Central Government", which had been subs. by A. O., 1937, for "L. G."

(4) Notwithstanding anything contained in section 7, clause (a), any land, upon the use and enjoyment of which restrictions are imposed under this section, may be included in the outer boundary, even though its distance from the crest of the outer parapet of the work exceeds two thousand yards.

**40. Exemption from stamp duty and fees.** No award or agreement made under this Act shall be chargeable with a stamp duty, and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

**41. Notice in case of suits for anything done in pursuance of Act.** No suit or other proceeding shall be commenced or prosecuted against any person for any thing done in pursuance of this Act, without giving to such person a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender of sufficient amends.

**42. Code of Civil Procedure to apply to proceedings before Court.** Save in so far as they may be inconsistent with any thing contained in this Act, the provisions of the <sup>1</sup>[Code of Civil Procedure, 1908 (Act V of 1908)] shall apply to all proceedings before the Court under this Act.

**43. Appeals in proceedings before Court.** Subject to the provisions of the <sup>1</sup>[Code of Civil Procedure, 1908 (Act V of 1908)] applicable to appeals from original decrees, an appeal shall lie to the High Court from the award or from any part of the award of the Court in any proceeding under this Act.

**44. Power to make rules.**— (1) The <sup>2</sup>[Federal Government] <sup>3</sup>\* \* \* may make rules for the guidance of officers in all matters connected with the enforcement of this Act.

(2) The power to make rules under sub-section (1) shall be subject to the condition of the rules being made after previous publication.

(3) All rules made under sub-section (1) shall be published in the <sup>4</sup>[official Gazette], and shall thereupon have effect as if enacted in this Act.

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<sup>1</sup> Subs. by the Federal Laws (Revision and Declaration) Ordinance, 1981 (27 of 1981), s. 3 and Second Sch., for “Code of Civil Procedure (XIV of 1882)”.

<sup>2</sup> Subs. by F.A. O., 1975, Art. 2 and Table, for “Central Government”, which had been subs. by A. O. 1937, for “G.G. in C”.

<sup>3</sup> The words “and the L.G., with the previous sanction of the G.G. in C” rep. by A. O., 1937.

<sup>4</sup> Subs. *ibid.*, for “local official Gazette”.

[Go to Index](#) | [LL. B. - I](#) | [LL. B. - II](#) | [LL. B. - III](#) | [LL. B. Directory](#) | [Home](#)