

ASSAM TOWN AND COUNTRY PLANNING ACT, 1959

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ASSAM TOWN AND COUNTRY PLANNING ACT, 1959

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An Act to provide for the development of the towns and country-sides of the State of Assam Preamble. Whereas it is expedient to

provide for the development of the towns and the country sides of the State of Assam on sound planning principles with the object of securing proper sanitary conditions, to conserve and promote the public health, safety and general welfare of the people living therein; It is hereby enacted in the Tenth Year of the Republic of India as follows :

CHAPTER 1

Preliminary

1. Short title, extent and commencement :-

(1) This Act may be called the Assam Town and Country Planning Act, 1959.

2. Definitions :-

In this Act, unless there is anything repugnant in the subject or context

(1) "Authority" shall mean Local or Regional Authority appointed by the State Government for the purpose of administering the Act or the Development Authority constituted under S. 8 of this Act. Unless otherwise appointed by the State Government the Authority in the case of Municipal Areas shall be taken to mean the Municipal Board for the area constituted under the Assam Municipal Act, 1956 (Assam Act XV of 1957).

(2) "Advisory Council" means the Town and Country Planning Advisory Council constituted under S. 3 of this Act.

(3) "Betterment fee" means the fee prescribed in respect of an increase in the value of land resulting from the execution of a Development Scheme.

(4) "Building" means any construction for whatsoever purpose and of whatsoever materials constructed and every part thereof, whether used as human habitation or not and includes plinth walls, chimney, drainage works, fixed platforms, verandah, balcony, cornice or projection, or part of a building or anything affixed thereto or any walls, earth bank, fence or other construction enclosing or delimiting or intended to enclose or delimit any land or space.

(5) "Building, industrial" means a building which is wholly or predominantly used as a warehouse, factory, distillery, iron foundry and all other buildings put to or being put to any use permitted in

the zone by an authorised scheme applicable thereto.

(6) "Director" means Director of Town and Country Planning or any other officer appointed by the State Government.

(8) "Factory" means a place to which the provisions of the Indian Factories Act of 1934 or any amendment thereof shall apply.

(9) "Industrial concern" means a commercial body, e. g., a factory, workshop and a mill, or any concern of similar nature where materials are manufactured, repaired, altered or processed.

(10) "Master Plan" means a plan as defined under S. 9 and shall comprise of items (a) to (e) of S. 11.

(11) "Occupier" includes any person paying or liable to pay the rent or any portion of the rent of the land or building in respect of which the work is due or compensation or premium on account of the occupation of such land and building and also a rent free tenant.

(12) "Open space" means any land whether enclosed or not, on which not more than one-twentieth part is covered with buildings and whole of the remainder has been laid out as a public garden or used for purposes of recreation or lies waste and unoccupied.

(13) "Prescribed" means prescribed by rules made under this Act.

(14) "Reconstituted plot" means a plot which is in any way altered by the making of a Development Scheme.

(15) "Road" means and includes any highway, street, lane, pathway, alley, passageway, carriage way, footway, square, bridge, whether private or public, whether thoroughfare or not, whether existing or proposed in any scheme and includes all bunds, channels, ditches, drains, culverts, side walks and traffic islands.

(16) "Scheme" means a development scheme and includes a plan or plans together with the descriptive matter, if any, relating to such a scheme.

(17) "Administrator" means an officer appointed by the State Government as such under proviso to sub-S. (1) of S. 8-A of this Act to perform the functions and exercise the powers of the Development Authority as provided under S. 8-A of this Act.

(18) "Estate Officer" means a person appointed by the State Government as such to perform the functions of the Estate Officer.

(19) "Transferee" means a person including a firm or other body of individuals, whether incorporated or not to whom a site or building is transferred in any manner whatsoever and includes his successors and assigns.

CHAPTER 2

Constitution of the Advisory Council

3. Constitution of the Town and Country Planning Advisory Council :-

(2) Five of the members attending any meeting of the Council shall form the quorum for the purpose of transacting the business of that meeting of the Council.

(3) All members of the Council including the co-opted members shall have one vote each and the Chairman shall have a casting vote in case of equality of division, in addition to his own vote.

(4) Nothing done by the Council in its meeting shall be held to be invalid because of any vacancy in the seats of the nominated or elected members or the absence of the members for any reason whatsoever.

(5) The Chairman shall preside over the meetings of the Advisory Council and in his absence the members present shall elect one among themselves to be the president for that particular meeting.

4. Resignation of non-official members :-

Any non-official member may at any time resign his office ; provided that his resignation shall not take effect until accepted by the State Government.

5. Term of office :-

The term of office of any non-official member shall ordinarily be three years:

Provided that in case of the members representing the Legislature or Local Authorities, their terms of office shall terminate as soon as they cease to be members of such Legislature or Local Authority, as the case may be.

6. Commencement of the term of office of non-official members :-

(1) The term of office of non-official members shall commence on such date as may be notified in this behalf by the State

Government.

(2) A person ceasing to be member by reason of the expiry of his term of office as described in S. 5, shall be eligible for re-nomination or re-election.

7. Removal of non-official members :-

The State Government may remove from the Council any member who

(a) refuses to act, or becomes incapable of acting or absents himself from three consecutive meetings of the Council and is unable to explain such absence to the satisfaction of the Council; or

8. Filling of casual vacancies :-

(1) When the place of a member nominated by the State Government becomes vacant by his resignation, removal or death, the State Government shall appoint a person to fill the vacancy.

(2) When the place of a member elected or co-opted becomes vacant, he shall be elected or co-opted by the Legislature or the Council, as the case may be.

(3) The term of office of a member nominated or elected or co-opted, as the case may be, under sub-Ss. (1) and (2) shall be the remainder of the term of office of the member in whose place he has been nominated or elected or co-opted.

CHAPTER 2A

Constitution of the Development Authority

8A. Constitution of the Authority :-

(2) The Authority shall be a body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of properties both movable and immovable and to enter into an agreement, and shall be the said name sue and be sued.

8B. Composition of the Authority :-

(2) Notification of Members. The name of the members elected and appointed shall be published in the official Gazette.

(5) A member removed under Cls. (a) and (b) of sub-S. (4) shall not be eligible for re-appointment or re-election, as the case may be.

8C. Term of office and conditions of service of the Chairman

and members of the Authority :-

(1) The term of office and conditions of service of the Chairman and members of the Authority shall be such as may be prescribed and they shall be entitled to receive such salaries and allowances as may be fixed by the State Government.

(2) The Chairman or any member may resign his membership of the Authority by giving notice in writing to the State Government and on the resignation being accepted by the State Government, he shall cease to be a member of the Authority.

(3) Any vacancy created by resignation or removal shall be filled by fresh appointment or nomination by the State Government, or by election, as the case may be.

8D. Functions and powers of the Authority :-

Subject to the provisions of this Act, rules and directions of the State Government, the functions of the Authority shall be to promote and secure the development of the area according to the Master Plan and for that purpose it may carry out or cause to be carried out surveys of the area and to prepare report or reports of such surveys, and to perform any other function which is supplemental, incidental or consequential to any of the functions aforesaid or which may be prescribed.

8E. Meeting of the authority :-

(1) Each Authority shall meet once in a month at such time and place and shall, subject to the provisions of sub-Ss. (2) and (3), observe such procedure in regard to the transaction of business at its meeting as may be prescribed by bye-laws to be framed under S. 74 of this Act.

(2) The Chairman, or in his absence any member chosen by the members from amongst themselves, shall preside at a particular meeting of the Authority.

(3) All questions of the meeting of the Authority shall be decided by a majority of votes of the members present and voting and in the case of an equality of votes, the person presiding shall have a second or casting vote.

(4) Nothing done by the Authority in its meeting shall be held to be invalid because of any vacancy in the seats of the appointed, nominated or elected members or the absence of any of the

members for any reason whatsoever.

(5) Minutes shall be kept of the names of the members present and of the proceedings at each meeting in a book to be kept for this purpose, which shall be signed at the next ensuing meeting by the person presiding at such meeting, and shall be open to inspection by any member during office hours.

8EE. Powers of Chairman :-

The Chairman shall, for the transaction of the business connected with this Act or for the purpose of making any order authorised thereby, exercise all the powers vested by the Act in the Authority : Provided that the Chairman shall not act in opposition to, or in contravention of, any order of the Authority at a meeting or exercise any power which is directed to be exercised by the Authority at a meeting.

8F. Temporary association of persons with the authority for particular purposes :-

(1) The Authority may associate with itself in such manner and for such purposes as may be prescribed by rules with any person whose assistance or advice it may desire in performing any of its functions under this Act.

(2) Any person associated with it by the Authority under sub-S. (1) for any purpose shall have a right to take part in the discussions of the authority relevant to that purpose but shall not have a right to vote at a meeting and shall not be a member for any other purpose.

8G. Staff of the Authority :-

(1) Subject to such control and restrictions as may be prescribed by rules, the Authority may appoint such number of officers and employees as may be necessary for the efficient performance of its functions and may determine their designations and grades.

(2) The officers and employees of the Authority shall be entitled to receive such salaries and allowances, if any, as may be fixed by the Authority and shall be governed by such terms and conditions of service as may be determined by rules and regulations made in this behalf.

8H. Delegation of power by Authority :-

The Authority may delegate all or any of its powers under this Act

to any officer, subject to such conditions, if any, as may be specified by the Authority.

CHAPTER 3

Master Plan

9. Preparation of Master Plan :-

A Master Plan hereinafter referred to as "Plan" in this Act for the development of any area within the State which the State Government may consider necessary, shall be drawn up by the Director in consultation with the Local Authorities concerned and submitted to the State Government for examination and approval.

10. Publication of the Master Plan :-

(1) On receiving the Plan and the Zoning Regulation from the Director, the State Government shall have them, as soon as may be, published in the manner prescribed, giving wide and sufficient publicity in the locality inviting public opinion and objection, if any, to be submitted within a period of not more than two months from the date of such publication ;

(2) After considering all objections, suggestions and representations that may have been received, and after getting the advice of the Council, the State Government shall have the Plan finally prepared by the Director, and adopt the same.

(3) copy of the Plan and the Zoning Regulation shall be supplied to the public on payment of such fees as may be prescribed.

11. Contents of Master Plan and Zoning Regulations :-

The Master Plan to be prepared as defined under S. 9, may include

(a) a General Landuse Plan for residential, commercial, industrial, recreational and public and semi-public purposes ;

(b) Zoning Plan;

(c) transportation Plan including roads, railways, canals, etc.;

(d) public utilities Plan ;

(e) a report giving relevant data and information in respect of the proposals in the plan and any other things which the State Government may deem necessary. After adoption of the plan and Zoning Regulations they shall be sent by the State Government for implementation to the Authority constituted under S. 8-A.

12. Implementation of the Plan :-

After the adoption of the plan and the Regulations, they shall be sent for implementation to the Authority as may be declared or constituted by the State Government in this behalf.

13. Restrictions of use of land and buildings thereon after publication :-

(1) The Plan as adopted by the State Government shall be published as prescribed in S. 10, and after such publication shall use any land, sub-divide any land by transfer, by way of gift, sale, partition or any other manner the whole or any part of the land or set up any new structure on any land covered by the Plan or change the existing structure of any building or use of any building or land within the area except with the permission of the Authority on a written application submitted for that purpose and on payment of such fees as may be prescribed by bye-laws framed by the Authority in this behalf.

(2) Each such application shall be accompanied by a Plan drawn to scale showing the actual dimension of the parcel of the land and the building to be built upon it, the site and the position of the building to be erected and in case of alteration in the use or structure of the building or land, the nature and extent of such alteration.

(3) The Authority may also call for such other information as it may deem necessary to examine the application.

(4) The Authority shall not refuse the permission except on the ground of contravention of proposals contained in the Plan or the Regulation and unless the permission has been refused within a period of one month from the receipt of the application or such other information as may be called for by the Authority under sub-S. (3), it shall be presumed that the permission has been given.

13A. Prohibition of registration in certain cases :-

Where any deed or document required to be registered under the Indian Registration Act, 1908, purports to sub-divide any land covered by the Plan, no registering officer shall register any such document unless the party presenting the deed or document for registration produces a 'No-objection Certificate' from the Authority to the effect that the authority has no objection to the registration of such deed or document.

14. Power of the State Government to modify the Plan and the Regulation :-

The State Government may review the Plan and may modify the Plan and the Zoning Regulations, from time to time, in such manner and in such procedure as followed for the preparation and approval of the original Plan and the Zoning Regulations.

CHAPTER 4

Development Scheme

15. Preparation of Development Scheme :-

(1) After the commencement of this Act, the Authority may, by notification in the official Gazette, declare any area to be a Scheme Area and shall thereafter prepare a scheme. Where no authority has been constituted, the State Government may, by notification in the official Gazette, direct any area to be a Scheme Area and the Director shall thereafter prepare a scheme.

(2) Notwithstanding anything contained in sub-S. (1), the State Government may, after making such enquiry as they may deem necessary by notification in the official Gazette, direct any local authority to prepare, publish and submit for their sanction before an appointed date a scheme under this section for an area specified in such notification.

(3) While preparing the scheme, the Authority, the Director or the Local Authority, as the case may be, shall issue a notice inviting names of all the claimants or any person interested in any land or building within the area under the Scheme to be submitted within a period not more than one month.

(4) Save as provided in this Act, the Authority, Director or Local Authority shall not undertake or carry out any development of land in any area which is not a Scheme Area.

(5) After the commencement of this Act, no development of land shall be undertaken or carried out in the Scheme Area by any person or body of persons except in the manner prescribed under S. 13 of this Act.

16. Publication of the Development Scheme :-

(1) The Authority, the Director or the Local Authority, as the case may be, shall have the Scheme and the report and the names of all the claimants published in the manner prescribed under sub-S. (1)

of S. 10 and have a copy of them served on all persons who preferred claims, under sub-S. (3) of S. 15, inviting objection to be filed within a period of not more than two months.

(2) After the expiry of the aforesaid period, the Authority, the Director or the Local Authority, as the case may be, shall examine the Scheme in the light of such objection, giving sufficient opportunity for hearing all such interested persons who have filed objections and demanded a hearing in the manner prescribed, and shall approve or refuse to approve or approve with such modification as it may deem necessary, for the implementation of the Scheme and for imposing for that purpose reasonable restrictions in the use of land and building within the area.

(3) After the Authority, the Director or the Local Authority as the case may be, has adopted the Schemes, it shall be forwarded to the State Government for its approval and sanction, if so required under any rule prescribed, otherwise the Scheme will come into force from the date the Scheme is adopted.

17. Implementation of the Development Scheme :-

No person shall within any area where Scheme has come into force, erect or proceed with any building or work or remove or alter or make additions or make any substantial repair to a building or a part of it, a compound wall or any drainage work or remove any earth or change the use of land or building except on permission of the Authority on application submitted for the purpose. Unless the permission has been refused within one month from the date of receipt of the application it shall be presumed that the permission has been given.

18. Scope of the Development Scheme :-

(4) In the Scheme the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes and where the plot is already built upon, to ensure that the building, as far as possible, complies with the provisions of the Scheme as regards open spaces.

19. Amendments and alterations of the Development Scheme :-

(1) If after the final Scheme has come into force, the Authority considers that the Scheme is defective on account of an error or irregularity or for any other reason, it shall refer to the State

Government to modify or withdraw the Scheme and to publish the modified or withdrawn Scheme in the manner prescribed in sub-S. (1) of S. 10.

(2) The modification of the Scheme shall state every amendment proposed to be made in the Scheme and if any such amendment relates to matter specified in any or all of the Cls. (a) to (l) of sub-S. (2) of S. 18, the modification shall also contain such other particulars as may be found necessary by the Authority.

(3) The variation shall be open to inspection by the public at the office of the Local Body or Bodies as prescribed, covering the area during office hours.

(4) Within one month of the date of publication of the modification any person affected thereby may communicate in writing his objection to the Authority.

(5) After receiving the objection under sub-S. (2) above, the Authority may, after making such enquiry as it may think fit, approve the proposed modification with or without any further modification thereof.

(6) Such modification shall take effect as if it were incorporated in the Scheme from the date of its modification.

(7) The Authority shall thereafter submit the modified Scheme to the State Government for sanction. The modified Scheme shall be published after sanction as prescribed in sub-S. (l) of S. 10.

20. Power to revoke the Development Scheme :-

(1) Notwithstanding anything contained in S. 19, a Scheme may at any time be modified or revoked by a subsequent Scheme made, published and sanctioned in accordance with this Act.

21. Power of the authority to impose restrictions :-

For the purpose of the Master Plan, this Land-use and Zoning Regulations and the Scheme, the Authority may impose reasonable restrictions on the use of the land and buildings including the regulating of the open spaces to be maintained around the building or buildings, the percentage of the plot area to be covered by building or buildings, the number of building or buildings on each plot, height and character of building or buildings allowed in specified areas, the purpose for which building or buildings of the specified areas may or may not be used, the sub-division of plots,

parking space and loading and unloading space for any building and the sizes of projections and such other matters not inconsistent with the objects of this Act.

CHAPTER 5

Streets and Land Sub-divisions

22. Width of public streets :-

(1) The Authority shall, from time to time, with the sanction of the State Government, specify the minimum width for different cases of public streets according to the nature of the traffic likely to be carried there, the localities in which they are situated, the heights up to which buildings abutting thereon may be erected and other similar considerations.

(2) The width of a new public street shall not be less than that prescribed in sub-S. (1), or that shown on the Master Plan for the class to which it belongs in areas for which a Master Plan has been prepared.

23. Power to prescribe street lines :-

The Authority may prescribe a line on one or both sides of any public street, provided a public notice of the proposal has been issued by the Authority in the prescribed manner. No person shall construct or reconstruct any portion of any building on land within the prescribed new street line.

24. Setting back buildings to the prescribed street line :-

(2) When any building or any part thereof within the prescribed line of the street falls down or is burnt down or is taken down under the provisions of this Act or otherwise, the Authority may at once take possession of the portion of the land within the prescribed line of the street previously occupied by the said building and if necessary, clear the same.

(3) Land acquired under the foregoing sub-sections shall, henceforward, be deemed to be a part of the public street.

25. Acquisition of land within the line of street :-

If any private land whether open or enclosed, lies within the prescribed line of a public street and is not occupied by a building or, if a platform, verandah, steps, compound wall, hedge or fence or other structure, is within the line of such street, the Authority may, after giving the owner of the land or building a notice of the

intention to do so, take possession of the said land with its enclosing wall, hedge or fence, if any, or of the said platform, verandah, steps, or such other structure as aforesaid or of the portion of the said platform, verandah, steps or other such structure as aforesaid which is within the prescribed line of the street.

26. Acquisition of the remaining part of building and land after their portions within a prescribed line of the street are acquired :-

If a building or land is partly within the prescribed line of a public street and if the Authority is satisfied that the land remaining after the exclusion of the portion within the said line will not be suitable or fit for construction of independent building, the Authority shall acquire the remaining portion of the land, if so desired by the owner.

27. Sub-division of private land :-

(1) Every person who intends to sub-divide any plot of land within the Master Plan Area shall give notice in writing to the Authority of his said intention and such notice shall be accompanied by the plans and statements in triplicate.

(2) All plans for sub-division of land shall be in accordance with the standards prescribed by the State Government.

28. Plan accompanying notice :-

A layout plan drawn to a suitable scale and containing the following information shall accompany the notice given under S. 27 :

- (a) The location of the land ;
- (b) The boundaries of the proposed land shown on the map, and sufficient description to define the same ;
- (c) Name and address of the owner of the land ;
- (d) Location, name and present widths of the adjacent roads and lanes ;
- (e) The major physical characteristics of the land proposed to be sub-divided, including topography, the approximate location and width of any water course and location of any areas subject to inundation or flood ;
- (f) The complete layout of the proposed sub-division showing the

location and widths of all the proposed streets, dimensions and uses of all the plots ;

(g) The locations of all drains, sewers and other utilities ;

(h) Building lines permissible ;

(i) Scale and north line ;

(j) Key plan.

29. Sanction with or without modification or refusal :-

(1) The Authority may either grant or refuse the approval to the plans or may approve them with such modifications as it may deem fit and thereupon shall communicate its decision to the person giving the notice within three months from the date of the notice.

(2) No person shall be allowed to construct a building on any plot of land, the subdivision of which has not been previously approved by the Authority.

30. Layout not according to Plan :-

Should the Authority determine at any stage that the layout or the construction is not proceeding according to the sanctioned Plan or is in violation of any provisions of this Act, it shall serve a notice on the applicant requiring him to stay further execution until correction has been effected in accordance with the approved plan.

30A. Power to stop development :-

(1) Where any development in any area has been commenced in contravention of the Master Plan or Development Scheme or without the permission, approval or sanction referred to in S. 29 or in contravention of any conditions subject to which such permission, approval or sanction has been granted, the Authority may, in addition to any prosecution that may be instituted under this Act, make an order requiring the development to be discontinued on and from the date of the service of the order and such order shall be complied with accordingly.

(2) Where such development is not discontinued in compliance with the order under sub-S. (1), the Authority may require any Police Officer not below the rank of Sub-Inspector of Police to remove the person by whom the development has been commenced including all his assistants and workmen from the place of development within such time as may be specified in the requisition and such

Police Officer shall comply with the requisition accordingly.

(3) After the requisition under sub-S. (2) has been complied with, the Authority may depute by a written order a police officer or an officer or an employee of the Authority to keep a watch on the place to ensure that the development is not continued.

(4) The provisions of this section shall be in addition to and not in derogation of, any other provisions relating to stoppage of building operations contained in any other law for the time being in force.

30B. Power of demolition of building :-

Where any development has been commenced or is being carried on or has been completed in contravention of the Master Plan or Development Scheme or without the permission, approval or subject to which such permission, approval or sanction has been granted, the Authority may, in addition to any prosecution that may be instituted under this Act make an order directing that such development shall be removed by demolition, filling or otherwise by the owner, occupier, manager or by any person at whose instance the development has been commenced or is being carried out or has been completed within such period not being less than five days and more than thirty days from the date on which a copy of the order of removal with brief statement of the reasons thereof has been delivered to the owner, occupier and manager or the person at whose instance the development has been commenced or is being carried out or has been completed as may be specified in the order and on his failure to comply with the order, the Authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner, occupier, manager or any person at whose instance the development was commenced or was being carried out or was completed as arrears of land revenue ;

provided that no such order shall be made unless the owner, occupier, manager or the person concerned has been given a reasonable opportunity to show cause why the order shall not be made.

(2) The provisions of this section shall be in addition to and not in derogation of any other provision relating to demolition of buildings contained in any other law for the time being in force.

(3) No compensation shall be claimed by any person for any damage which he may sustain in consequence of the removal of

any development under this section or the discontinuance of the development under S. 30-A of this Act.

31. Penalty for violation :-

The Authority will have power to impose fine not exceeding Rs. 250 on any person, firm or corporation who violates, disobeys, refuses to comply with, or who resists the enforcement of any of the provisions of this Act. Continuation of the violation shall constitute a separate offence for which a fine of Rs. 50 per day may be imposed for the days after the first conviction. An appeal shall lie to the Appellate Authority constituted under this Act.

CHAPTER 6

Acquisition of land

32. Power of State Government to acquire land :-

Where on the representation of the Authority it appears to the State Government that in order to enable it to execute the Scheme it is necessary that the land within adjoining or surrounded by any such area should be acquired, the State Government may in consultation with the council acquire the land by publishing in the official Gazette a notice to the effect that the State Government has decided to acquire the land in pursuance of this section.

33. Procedure for acquisition of land :-

(1) The provisions of the Land Acquisition Act, 1394 (Central Act No. I of 1894) shall be applicable for acquisition of land under this Act and the compensation shall be computed under the provisions of the same Act.

(2) In computing compensation for land acquired, the value will be the market value as prevailed on the 1st of January, 1957.

(3) The owner o'f the lands will also be entitled to the reasonable cost of development, if any, made during the period.

(4) Twenty-five per cent increase in value on the date of acquisition of the land.

34. Disposing of land :-

Subject to the rules made under this Act, the Authority may retain, lease, exchange or otherwise transfer, any land acquired by it under this Act:

Provided that in case of lease or transfer the owner will get first priority, if due to acquisition he becomes landless.

35. Provisions of private negotiations before compulsory acquisition :-

(1) The Authority may, in the first instance, make reasonable efforts to purchase any land by private negotiation.

(2) In case of failure to purchase the land by private negotiation within a specified time, the said land shall be compulsorily acquired.

(3) Nothing in this section shall however, debar the State Government or a local authority from compulsorily acquiring any land without prior private negotiation.

36. Payment to owner by adjustment :-

All payments due to be made to any person by the Authority, under this Act shall, so far as possible, be made by an adjustment in respect of the plot concerned or of any other plot in which he has an interest and failing such adjustment shall be paid in cash or in such other way as may be agreed upon by the parties.

CHAPTER 7

Compensation and betterment

37. Right to compensation :-

Any person whose property is injuriously affected in value by the making of a Scheme shall, if he makes a claim for the purpose within a period of three months after the date of publication of a notification sanctioning the Scheme under S. 16, be entitled to obtain compensation in respect thereof from the Authority.

38. No right to compensation :-

A person shall not be entitled to obtain compensation under the foregoing section on account of any building erected on or contract made or other thing done with respect to any land within the area included in a scheme after the date of the notification of the scheme under S. 15 : Provided that this provision shall not apply to any building erected, contract made, other thing done in accordance with the permission granted under Ss. 13 and 17 of this Act.

39. Power of Government to exclude compensation in certain cases :-

(2) No compensation shall be payable for refusal of permission to make any alteration in building which is not in conformity with the

use specified in the Plan or in the Scheme.

40. Right of owner to require Authority to acquire or purchase land :-

(1) The owner of any land which is to be acquired for purposes of a Scheme may, at any time, after the sanction of the Scheme by the Government, by a written notice to the Authority in the prescribed manner, call upon it to acquire or purchase the land in so far as the land is to be acquired by the State Government or the Authority.

(2) If within six months of the service of the notice under sub-S. (1) the land is not purchased or acquisition proceedings are not started, the Scheme, in so far as that land is concerned, shall be deemed to have been withdrawn and all notices and orders in that connection shall lapse.

41. Levy of betterment fee :-

(1) Every property which has increased in value due to its inclusion within an area under a Plan or a Scheme or due to the execution of such schemes shall be charged with a betterment fee : Provided that no such fee shall be levied on such public land or building as are used for charitable, religious and educational purposes or for places of non professional entertainment and recreation.

(2) The betterment fee shall be an amount equal to twenty per cent in case of residential holdings so long as the original owners use for their residences and equal to fifty per cent in case of non-residential areas and will be realised in five equal instalments.

Explanation. The increase in value for the purpose of this section shall be the increase in the market prices in between the date on which a notification under sub-S. (1) of S.15 has been issued and the date on which the execution of the Scheme has been substantially completed.

42. Appeal :-

(1) Any person aggrieved by the decision of the Authority with respect to matters of compensation and betterment fee, may appeal to the Appellate Authority within thirty days of the award.

(2) If the owner of any property objects to the amount of betterment fee determined by the Authority on any ground he shall also state the amount which he contends would be correct and may

within thirty days of the date on which the determination of his objection or appeal becomes final by written notice, require the Authority to acquire the property together with any building or other works that may exist thereon.

(3) The Authority shall thereupon acquire the property.

CHAPTER 8

Appeal and the Appellate Authority

43. Appointment of Appellate Authority :-

(1) Save as otherwise provided, the State Government shall appoint an Appellate Authority to hear all appeals arising out of the provisions of this Act. The decision of Appellate Authority shall be final.

(2) The person or persons appointed by the State Government as Appellate Authority shall have the qualification of a District Judge or of becoming a member of the Assam Board of Revenue under the Assam Board of Revenue Act, 1962. The appointment shall be on such terms and conditions as the State Government may decide.

44. Duties of the Appellate Authority :-

(2) All appeals to the Appellate Authority shall be filed within a month from the date of the order appealed against. The time required for taking out copies of the order shall be excluded. The Appellate Authority may, however, in its discretion condone such delay in filing appeal for sufficient reason.

45. Procedure of working of the Appellate Authority :-

(1) The Appellate Authority shall conduct its proceedings in the prescribed manner after giving the opposite party or any one interested in the order appealed against, an opportunity of being heard.

(2) The Appellate Authority may, at any time, call for any extract from any proceeding of the State Government or Authority and call for any return or statement or report concerning or connected with any matter with which the Authority has been authorised to deal.

(3) The Appellate Authority shall have all the powers of a Civil Court for the purposes of taking evidence on oath and of enforcing the attendance of witnesses including the parties interested or any of them and compelling the production of documents and material

objection if considered necessary.

(4) The Appellate Authority in its discretion may make any order regarding the costs to be paid by any of the parties to the proceedings and the Appellate Authority shall have full powers to determine by whom or out of what property and to what extent such costs are to be paid and the authority shall be bound to execute the orders of the Appellate Authority in accordance with the direction, if any, contained in the order and such costs or amounts awarded by the Appellate Authority shall be realised as arrears of land revenue.

46. Right to appear by recognised agent :-

Every party to any proceeding before the Appellate Authority shall be entitled to appear either in person or by his recognised agent.

47. . :-

Protection of action taken under this Act (1) No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done in pursuance of this Act or any order made thereunder. (2) Save as otherwise expressly provided in this Act, no suit or other legal proceedings shall lie against the State Government for any damage caused or likely to be caused by anything in good faith done or intended to be done in pursuance of this Act or any order made thereunder.

CHAPTER 9

Finance

48. Development fund :-

The receipts of Authority under this Act shall form a separate development fund and all expenditure under this Act, or any Development Scheme thereunder, shall be defrayed out of such fund. No portion of the fund shall, except with the sanction of Government, be expended for purposes not provided for by this Act.

49. Power to borrow :-

The Authority as defined in this Act shall be deemed to be a local authority as defined in the Local Authorities Loans Act, 1914 (Central Act IX of 1914) for the purpose of borrowing money under that Act and the making and execution of a Plan and Scheme shall be deemed to be a work which such local authority is legally authorised to carry out.

50. Grants, advances and loans :-

The Government may make such grants, advances and loans to the Authority as the Government may deem necessary for the performance of functions of the Authority under this Act to issue all grants.

50A. Levey of fees :-

(1) For the purpose of providing and maintaining any amenity, the Development Authority may levy such fees as it may consider necessary which shall be in addition to any fee for the time being leviable under this Act or any other law in force, in respect of any site or building on the transferee or occupier thereof.

(2) Where any transferee or occupier makes any default in the payment of any fee levied under sub-S. (1), the Authority may direct in addition to the amount of the arrears, a sum not exceeding that amount shall be recovered from the transferee or occupier, as the case may be, by way of penalty.

(3) In case of any default in payment of an amount payable under this Act the outstanding amount in default together with any sum, if any, directed to be paid by way of penalty under sub-S. (2) may be recovered from the transferee or occupier, as the case may be, in the same manner as arrear of land revenue.

50B. Resumption of site or building :-

In case of non-payment of consideration money or any instalment thereof on account of the transfer of any site or building or any rent due in respect of the lease of any such site or building or in case of the breach of any other conditions of such transfer or breach of any rules made under the Act the Authority may, if it thinks fit, resume the site or building so transferred and may further forfeit the whole or any part of the money, if any, paid in respect thereof.

50C. Audit of account of the Authority :-

The accounts of the Authority shall be subject to audit annually by the Accountant General, Assam. The accounts of the Authority along with the Audit Report shall be placed before the State Legislature.

CHAPTER 10

Legal proceedings

51. Penalty for breach of the provisions of the Master Plan or Scheme :-

(1) When a Master Plan or a Scheme has been sanctioned under this Act any person who commits or knowingly permits a breach of any specified provisions of the Master Plan or of the Scheme or who neglects or fails to comply with any such provisions shall be punishable under this section.

(2) In case of any such breach or default the Authority shall send to any such person a notice calling on him to discontinue the breach or cause it to be discontinued or to comply with such provisions of the Master Plan or the Scheme within a time to be specified in the notice.

52. Power to execute works on failure to comply with notice :-

If a notice has been given under this Act to a person requiring him to execute a work in respect of any property, movable or immovable, or to provide or do or refrain from doing anything within a time specified in the notice and if such person fails to comply with such notice, then the Authority may cause such work to be executed or such thing to be provided or done, and may recover all expenses incurred by it on such account from the said person as an arrear of land revenue.

53. Right of occupier to execute works in default of owner :-

When default is made by the owner of a building or land in the execution of any work required under this Act to be executed by him, the occupier of such building or land may, with the prior approval of the Authority, cause such works to be executed, and the expenses thereof shall, in the absence of any contract to the contrary, be paid to him by the owner, or the amount may be deducted out of the rent from time to time becoming due from him to such owner.

54. Procedure upon opposition to execution by occupier :-

(1) If after receiving information of the intention of the owner of any building or land to take any action in respect thereof in compliance with a notice issued under this Act, the occupier refuses to allow such owner to take action, the owner may apply to the District Magistrate or Sub-divisional Officer, as the case may be.

(2) The District Magistrate or Sub-divisional Officer upon proof of such refusal may make an order in writing requiring the occupier to allow the owner to execute all such works with respect to such

building or land as may be necessary for compliance with the notice, and may also, if he thinks fit, order the occupier to pay to the owner the costs relating to such application or order.

(3) If after the expiry of eight days from the date of the Magistrate's order the occupier continues to refuse to allow the owner to execute such work, the occupier shall be liable, upon conviction, to a fine which may extend to Rs. 30 for every day during which he has so continued to refuse.

(4) Every owner, during the continuance of such refusal shall be discharged from any liability on account of such breach or default.

55. Recovery of cost of work by the occupier :-

When the occupier of a building or land in compliance with a notice issued under this Act, executes a work for which the owner of such building or land is responsible, either in pursuance of the contract of tenancy or by law, he shall, in the absence of any contract to the contrary, be entitled to recover from the owner by deduction from the rent payable by him or otherwise the reasonable cost of such work.

56. Penalty for obstructing contractor or removing mark :-

If any person

(a) obstructs or assaults any person with whom the Authority has entered into a contract for the performance or execution by such person of his duty or of anything which he is empowered or required to do under this Act; or

(b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorised under this Act, he shall be punishable with fine which may extend to Rs. 500 or with or without simple imprisonment for a term which may extend to two months.

57. Officers under the Act to be public servants :-

Every officer and servant of the Authority and every other officer employed by the State Government for the purposes of this Act, shall be deemed to be public servant within the meaning of S; 21 of the Indian Penal Code (Central Act No. 45 of 1860).

58. Authority for prosecution :-

Unless otherwise expressly provided, no court shall take cognizance of any offence punishable under this Act, except on the complaint

of, or upon information received from, the Authority or some person authorised by the Authority by order in this behalf.

59. Power of Authority to institute proceedings etc., and to take legal advice :-

The Authority shall, subject to rules framed under this Act, have powers to

(a) institute, defend or withdraw from legal proceedings under this Act;

(b) compound any offence against this Act, before the matter is referred to the court;

(c) admit, compromise, or withdraw any claim made under this Act; and

(d) obtain such legal advice and assistance as it may from time to time think necessary or expedient to obtain for any of the purposes, referred to in the foregoing clauses of this section for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Authority or any officer or servant of the Authority.

59A. Power to recover dues as an arrear of land revenue :-

Any sum recoverable by the Authority under this Act, if not paid on demand, shall be recoverable as an arrear of land revenue.

60. Bar to suits and prosecutions in certain cases :-

(1) No suit, prosecution or other proceedings shall lie against an Authority or any officer or servant thereof or any person acting under their direction or any Government officer or servant employed for the purposes of this Act for anything which is in good faith done in pursuance of this Act, or any rules made thereunder.

61. Punishment for malicious abuse of powers :-

Any officer or servant of the Authority or of the Government who wilfully or negligently abuses any power conferred on him by or under this Act, shall be punishable with imprisonment which may extend to six months or with fine which may extend to Rs. 500 or with both :

62. Registration of documents, plans or maps in connection with Scheme :-

(1) Nothing in the Indian Registration Act, 1908 (Central Act No.

XVI of 1908) shall be deemed to require the registration of any document, plan or map prepared, made or sanctioned in connection with a Scheme which has come into force.

63. Orders under the Act not to be questioned in any Court

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No order made in exercise of any power conferred by or under this Act shall be called in question in any court except as provided in this Act.

64. Effect of orders inconsistent with other enactments :-

Any order made under this Act shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.

CHAPTER 11

Miscellaneous provisions

65. Service of notice :-

Every notice issued under this Act shall be served as prescribed by rules.

66. Method of giving public notice :-

Subject to the provisions of this Act, every public notice required under this Act shall be deemed to have been given if it is published in some local newspapers (if any) or a paper of general circulation in the area and posted upon a notice board to be exhibited for public information at the building in which the meetings of the Local Authority are ordinarily held or by publishing it in the official Gazette.

67. Formal defects in assessments and demands :-

No assessment list or other list, notice or other such document specifying, or purporting to specify with reference to any charge or fee, any person's property, thing or circumstances shall be invalid only by reason of a clerical or technical mistake in the name, residence, place of business or occupation of the person or in the description of property, thing or circumstances and it shall be sufficient if the person, property, thing or circumstances is described sufficiently for the purpose of identification, and it shall not be necessary to name the owner or occupier of any property liable in respect of the charge.

68. Powers and duties of police in respect of offences and

assistance to authorities :-

Every police officer, mauzadar or officer of the Local Authority shall give immediate information to the Authority of an offence coming to his knowledge which has been committed under this Act, or against any rule made under this Act and shall be bound to assist all members, officers and servants of the Authority in the exercise of their lawful authority.

69. Decision of disputes between Authorities :-

Should a dispute arises between the Authority and any other Local Authority on any matter in which they are jointly interested, such dispute shall be referred to the State Government whose decision shall be final.

70. Power to enter into land for inspection, etc. :-

For the purpose of making or execution of any Scheme, the Authority or person appointed by the State Government, their subordinates and contractors may enter into or upon any land, in order

- (a) to make any inspection, survey, measure valuation or enquiry;
- (b) to take levels ;
- (c) to dig or bore into the sub-soil;
- (d) to set out boundaries and intended lines of work;
- (e) to mark levels, boundaries and lines by marks and cutting trenches; or

71. Mode of proof of the records of the Authority :-

A copy of receipt, application, plan, notice, order, entry in a register, or other document in the possession of the Authority shall, if duly certified by the lawful keeper thereof or other person authorised by the Authority in his behalf be received as prima facie evidence of the entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent as the original entry or document would, if produced, have been admissible to prove such matters.

72. Power of Authority to make agreements :-

The Authority shall be competent to make any agreement with any person in respect of any matter, which is to be provided for in a Scheme, and unless it is otherwise expressly provided therein, such

agreement shall take effect on and after the day on which the Scheme comes into force.

73. Power of the State Government to make rules :-

(1) The State Government may, after previous publication in the official Gazette, make rules for carrying out the purposes of this Act.

(3) All rules made under this section shall be laid for not less than fourteen days before the Assam Legislative Assembly, as soon as possible after they are made and shall be subject to such modification as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

74. Power of the Authority to make bye-laws :-

(2) The power to make bye-laws under this Act shall be subject to the conditions of previous publication.

(3) No such bye-law shall come into force until it is approved by the State Government.

(4) The State Government may cancel their confirmation of any such bye-law and thereupon the bye-law shall cease to have effect.

75. Supersession of the Authority :-

If, at any time the State Government is satisfied that the Authority constituted under S. 8-B of this Act is not competent to perform, or persistently makes default in the performances of the duties imposed on it by or under this Act or any other law or exceeds or abuses its powers, it may, by notification stating reasons, declare the Authority to be superseded and on such supersession, the proviso to sub-S. (1) of S. 8-A of this Act shall apply.