

Jammu And Kashmir Development Act, 1970

19 of 1970

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Jammu And Kashmir Development Act, 1970

19 of 1970

Received the assent of the Governor on 31 st of October, 1970 and published in Government Gazette dated 31 st October, 1970 (Extra). An Act to provide for the development of the state

according to plan and for matters ancillary thereto. Be it enacted by the Jammu and Kashmir state legislature in the Twenty-first year of the Republic of India as follows:-

CHAPTER 1 PRELIMIARY

1. Short Title, Extent And Commencement :-

(1) This Act may be called the Jammu and Kashmir Development Act 1970.

2) It extends to the whole of the State.

3) It shall come into force on such date as the Government may, by notification in the Government Gazette appoint and different dates may be appointed for different parts of the State.

2. Definitions :-

In this Act, unless the context otherwise requires.

a) "amenity" includes road, street lighting, drainage, sewerage, public works and such other convenience as the Government may, by notification in the Government Gazette, specify to be an amenity for the purposes of this Act;

b) "building" includes any structure or erection which is intended to be used for residential, industrial, commercial or other purposes, whether in actual use or not;

c) "building operations" includes rebuilding operation, structural alteration of or additions to buildings and other operations normally undertaken in connection with the construction of building;

d) "development" with its grammatical variations means the carrying out of building, engineering quarrying or extraction or manufacture of building materials or other operations in, on, over or under land, or "erecting or reerecting" of any building or land and include redevelopment;

e) "local area" means any area declared to be local area undertaken in connection for the development;

f) "engineering operations" includes the formation of laying out of means of access to a road or the laying out of means of water supply or any other amenity:

g) "means of access" includes any means of access whether private or public, for vehicles or for foot passengers, and includes a road;

h) "regulation" means a regulation made under this Act by the Development Authority constituted under section;

i) "rule" means a rule made under this Act;

j) "to erect or re-erect" in relation to any building includes :-

- i) any material alteration or enlargement or any building;
 - ii) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;
 - iii) the conversion into more than one place for human habitation of any building originally constructed as one such place;
 - iv) the conversion of two or more places of human habitation into a greater number of such places;
 - v) such alteration of a building as affect any/ alteration of its drainage or sanitary arrangements or materially affect its security;
 - vi) the addition of any rooms, buildings, houses or other structures to any building; and
 - vii) the construction in a wall adjoining any street or land not belonging to the owner of the wall, of a door opening to such street or land; and
 - viii) reconstruction of building or a portion thereof ;
- k) "zone" means any of the divisions in which a local area may be divided for the purposes of development under this Act;
- l) the expression "land" and the expression "Person interested" shall have the meaning respectively assigned to them in section 3 of the Land Acquisition Act, 1990.

CHAPTER 2 DEVELOPMENT AUTHORITY AND ITS OBJECTS

3. Declaration Of Local Area And Constitution Of Development Authority :-

- 1) As soon as may be after the commencement of this act, the Govt. may, by notification in the Government Gazette, declare any area to be local area for purposes of this Act and constitute therefore an authority to be called the Development Authority (herein-after referred to as the Authority).
- 2) The Authority shall be a body corporate by the name of the Local Area having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to contract and shall in the said name sue and be used.

4. Members Of The Authority :-

- 1) The Authority shall consist of 9 members including a chairman, all of whom shall be appointed by the Government on such terms and conditions as the Government may specify.

2) The members of Authority appointed under sub-section (I) shall hold office for such time as the Government may be notification determine.

5. Appointment Of Staff :-

The Authority may appoint such officers and employees (including experts for technical work) as are necessary and may assign to them such duties and pay such salary and allowance as it may determine from time to time; Provided that the appointment of officers on posts carrying a maximum pay scale which exceeds Rs. 500/- per month shall be made after prior approval of the Government.

6. Objects Of The Authority :-

The objects of the Authority shall be to promote and secure the development of the local area for which it is constituted, according to plan and for that purpose the Authority shall have the power to acquire, hold, manage and dispose of land and other property, to carry out building, engineering and other operations, to execute works in connection with supply of water and electricity, disposal of sewerage and other services and amenities and generally to do anything necessary or expedient for purposes of such development and for purposes incidental thereto;

Provided that save as otherwise provided in this Act, nothing contained in this Act shall be construed as authorising the disregard by the Authority of any law for the time being in force.

CHAPTER 3 MASTER PLAN AND ZONAL DEVELOPMENT PLANS

7. Civic Survey And Master Plan For The Area :-

1) An Authority shall, as such as may be, carry out a survey and prepare a master plan for the Local Area in for which it is constituted.

2) The master plan shall:-

a) define the various zones into which the Local Area may be divided for the purposes of development and indicate the manner in which the land in each zone is proposed to be used (whether by the carrying out thereon of development or otherwise) and the stages by which any such development shall be carried out; and

b) serve as a basic pattern of frame-work within which the zonal development plans of the various zones of the Local Area may be prepared.

3) The master plan may provide for any other matter which is

necessary for the proper development of the Local Area.

8. Zonal Development Plans :-

1) Simultaneously with the preparation of the master plan or as soon as may be thereafter the Authority shall proceed with preparation of a zonal development plan (hereinafter referred to as the zonal plan) for each of the zones into which a Local Area may be divided and shall propose a date or dates from which development plan of each zone shall operate.

2) A zonal development plan may :- a) contain a site-plan for the development of the zone and show the approximate locations and extents of land uses proposed in the zone for such things as public buildings and other public works and utilities, roads, housing recreation, industry, business, markets, schools hospitals and public and private open spaces and other categories of public and private uses;

b) specify the standards of population density and building density;

c) show every area in the zone which may in the opinion of the Authority, be required or declared for development or redevelopment; and

d) in particular, contain provisions regarding all or any of the following matters, namely;

i) the division of land/site into plots for the erection of buildings;

ii) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets and other public purposes;

iii) the development of any area into a township or colony and the restrictions and conditions subject to which such development may be undertaken or carried out;

iv) the erection of building on any site and the restrictions and conditions in regard to the open spaces to be maintained in or around buildings and height and character of building;

v) the alignment of building of any site;

vi) the architectural features of the elevation or frontage of any building to be erected on any site;

vii) the number of residential buildings which may be erected on any plot or site;

viii) the amenities to be provided in relation to any site or buildings on such site whether before or after the erection of buildings and the person or authority by whom or at whose expense amenities are to be provided;

- ix) the prohibitions or restrictions regarding erection of shops, workshops warehouse, or factories or buildings of a specified architectural feature or buildings designed for particular purposes in the locality;
- x) the maintenance of wall, fences hedges or any other structural or architectural construction and the height at which they shall be maintained;
- xi) the restrictions regarding the use of any site for purpose other than erection of buildings; and
- xii) any other matter which is necessary for the proper development of the zone or any area thereof according to plan and for preventing building being erected haphazardly in such zone or area.

9. Submission Of Plans To The Government For Approval :-

Every master plan and (zonal plan) shall, as soon as may be after its preparation, be submitted by the Authority to the Government along with a proposal relating the date of operation of the zonal plan and the Government may either approve the plan and the proposal without necessary modification or with such modifications as it may consider or reject the plan with directions to the Authority to prepare a fresh plan according to such directions.

10. Procedure To Be Followed In The Preparation And Approval Of Plans :-

- 1) Before preparing any plan finally and submitting it to the Government for approval, the Authority shall prepare a plan in draft and publish it by making a copy thereof available for inspection and publishing a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice.
- 2) The Authority shall also give reasonable opportunity to every local authority within whose local limits any land touched by the plan is situated to make any representation with respect to the plan.
- 3) After considering all objections, suggestions and representations that may have been received by the Authority, the Authority shall finally prepare the plan and submit it to the Government for its approval.
- 4) Provisions may be made by rules in this behalf with respect to the form and content of a plan and with respect to the procedure to

be followed and any other matter, in connection with the preparation, submission and approval of such plan

5) Subject to the foregoing provisions of this section, the Government may direct the Authority to furnish such information as the Government may require for the purposes of approving any plan submitted to it under this section.

11. Section 11 :-

Date of operation of Plan-Immediately after a master and a zonal plan and the date of its operation has been approved by the Government, the Government shall declare the area as a zone for purposes of this Act and shall also publish in the Government Gazette a notice indicating the approval of the plan and the date of its operation and name of the place where a copy of the plan may be inspected at all reasonable hours.

CHAPTER 4 MODIFICATIONS TO THE MASTER PLAN AND THE ZONAL DEVELOPMENT PLAN

12. Modifications To Plan :-

1) The Authority may make any modifications to the master plan or the zonal plan as it thinks fit being modifications which, in its opinion, do not effect important alterations in the character, of the plan and which do not relate to the extent of land uses or the standards of populations density.

2) The Government may make any modifications to the master plan or the zonal plan whether such modifications are of the nature specified in sub section (I) or otherwise.

3) Before making any modifications to the plan, the Authority or, as the case may be, the Government shall publish a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the proposed modifications before such date as may be specified in the notice and shall consider all objections and suggestions that may be received by the Authority or the Government.

4) Every modification made under the provision of this section shall be published in such manner as the Authority or the Government as the case may be, may specify and the modifications shall come into operation either on the date of the publication or on such other date as the Authority or the Government may fix.

5) When the Authority makes any modifications to the plan under subsection (I), it shall report to the Government the full particulars

of such modifications within thirty days of the date on which such modifications come into operation.

6) If any question arises whether the modifications proposed to be made by the Authority are modifications which effect important alterations in the character of the plan or whether they relate to the extent of land uses or the standards of population density, it shall be referred to the Government whose decision thereon shall be final.

7) Any reference in any other Chapter, except Chapter III, to the master plan or the zonal development plan shall be construed as a reference to the master plan or the zonal plan as modified under the provisions of this section.

12A. Adoption Of Scheme Sanctioned Under The Town Planning Act, 1963 As A Zonal Development Plan :- (I) Notwithstanding anything contained in this Act or in the Jammu and Kashmir Town Planning Act, 1963 or in any other law for the time being in force if at any time the Government decides that scheme sanctioned under the Jammu and Kashmir Town Planning Act, 1963 in respect of any area which is included in a local area under this Act may be adopted as a zonal development plan under this Act. the Government may, by notification in the Government Gazette;

a) declare the area covered under the plan so adopted as a zone for purposes of this Act.

b) adopt such scheme as a zonal development plan in respect of that area for purpose of this Act; and c) specify a date of operation of the zonal development plan so adopted and the name of the place where a copy of the plan may be inspected at all reasonable times.

2) the Government may by notification also direct that in respect of acquisition of immovable property, if any, required for the purpose of the said zonal development plan, the provisions of Chapter VI of the Jammu and Kashmir Town Planning Act, 1963 shall apply mutandis as if the said zonal development plan were a scheme for purposes of the said Chapter.

3) Every zonal development plan adopted under this section shall be deemed to have been validly prepared by the Development Authority and approved by the Government under this Act.

4) Upon the publication of a notification under sub-section (I) nothing in :-

a) the provisions of chapters III and IV of this Act; or

b) the provisions of the Jammu and Kashmir Town Planning Act,

1963 except so far as provided in this section; shall apply to any such zonal plan but in the application of the other provisions of this Act to such zonal plan.

i) in section 13 reference to section II shall be construed as reference to clause (a) of such section (I) of this section;

ii) in sub-section (3) of section 14, the words, brackets, figures and letter, in relation to any matter specified in clause (d) of sub-section (2) of section 8 or in relation to any other matter" shall be omitted; and

iii) section -16 shall cease to apply as soon as a notification under sub-section (2) of this section is issued.

CHAPTER 5 DEVELOPMENT

13. Permission To Be Taken For Development, Etc :-

After a notice approving the date of operation of plan is published under section 11, no person including the department of Government shall undertake or carry out development of any land or building in the Zone unless permission for such development has been obtained in writing from the Authority in accordance with the provisions of this Act;

Provided development of any land begun by a Department of Government or any local authority before the commencement of this Act may be completed by that Department or local authority.

14. Application For Permission :-

1) Every person including a Department of Government desiring to obtain the permission referred to in section 13 shall make an application in writing to the Authority in such form and containing such particulars in respect of the development to which the application relates as may be prescribed by regulations.

2) Every application under sub-section (I) shall be accompanied by such fee as may be prescribed by rules: Provided that no such fee shall be necessary in the case of an application made by a Department of the Government.

3) On receipt of an application for permission under sub-section (I) the Authority after making such inquiry as it considers necessary in relation to any matter specified in clause (d) of sub-section (2) of section 8 or in relation to any other matter shall, by order in writing if any, as may be the permission, subject to such conditions, if any, as may be specified in the order, or refuse to grant such permission.

Provided that before making an order refusing permission, the applicant shall be given a reasonable opportunity to show cause why the permission should not be refused.

4) where permission is refused, the grounds of such refusal shall be recorded in writing and communicated to the applicant in the manner prescribed by regulations.

5) The Authority shall keep in such form as may be prescribed by regulations a register of applications for permission under this section.

6) The said register shall contain such particulars including information as to the manner in which applications for permission have been dealt with as may be prescribed by regulations and shall be available for inspection by any member of the public at all reasonable hours on payment of such fee not exceeding rupees five as may be prescribed by regulations.

7) Where permission is refused under this section, the applicant or any person claiming through him shall not be entitled to get refund of the fee paid on the application for permission but the Authority may, on an application for refund being made within three months of the communication of the grounds of the refusal under sub-section (4) direct refund of such portion of the fee as it may seem proper in the circumstances of the case.

15. User Of Land And Buildings In Contravention Of Plans :-

After the coming into operation of a plan in a zone no person shall use or permit to be used any land or building in that zone otherwise than in conformity with such plan. Provided that it shall be lawful to continue to use, upon such terms and conditions as may be prescribed by regulations made in this behalf, any land or building for the purpose and extent for and to which it is being used upon the date on which such plan come into force.

CHAPTER 6 ACQUISITION AND DISPOSAL OF LAND

16. Compulsory Acquisition Of Land :-

1) If in the opinion of the Government, any land is required for the purpose of development, or for any other purpose under this Act, the Government may acquire such land under the provisions of the Land Acquisition Act, Samvat 1990.

2) Where any land has been acquired by the Government, the Government may, after it has taken possession of the land, transfer the land to the Authority for the purpose for which the land has

been acquired on payment by the Authority of the compensation awarded under that Act and the charges incurred by the Government in connection with the acquisition.

17. Disposal Of Land By The Authority :-

1) Subject to any direction given by the Government under this Act, the Authority may dispose of :-

a) any land acquired by the Government and transferred to it without undertaking or carrying out any development thereon; or
b) any such land after undertaking or carrying out such development as it thinks fit, to permanent residents of the state in such manner and subject to such terms and conditions as it considers expedient for securing the development of the area according to plan.

2) The powers of the Authority with respect to the disposal of land under sub- section (1) shall be so exercised as to secure, so far as practicable, that persons who are living or carrying on business or other activities on the land shall, if they desire to obtain accommodation on land belonging to the Authority and are willing to comply with any requirements of the Authority as to its development and use, have an opportunity to obtain thereon accommodation suitable to their reasonable requirements on terms and settled with due regard to the price at which any land has been acquired from them.

Provided that where the Authority proposes to dispose of by sale any land without any development having been undertaken or carried out thereon, it shall offer the land in the first instance, to the persons from whom it was acquired, if they desire to purchase it subject to such requirements as to its development and use as the Authority may think fit to impose.

3) Nothing in this Act shall be construed as enabling the Authority to dispose of land by way of gift, mortgage or charge, but subject as aforesaid, reference in this Act to the disposal of land shall be construed as reference to the disposal thereof in any manner whether by way of sale, exchange or lease or by the creation of any easement right or privilege or otherwise.

18. Nazul Land :-

1) The Government may, by notifications may be agreed upon between the Government and the Authority place at the disposal of the Authority all or all developed and undeveloped lands in the

zone or the local area vested in the Government (known and hereinafter referred to as "Nazul Land") for the purpose of development in accordance with the provisions of this Act.

2) No development of any Nazul land shall be undertaken or carried out except by or under the control supervision of the Authority after such land has been placed at the disposal of the Authority under sub-section (I).

3) After any such Nazul land has been developed, by or under the control and supervision of, the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Government in this behalf.

4) If any Nazul land placed at the disposal of the Authority under sub-section (I) is required at any time thereafter by the Government, the Authority shall, by notification in the Government Gazette, place it at the disposal of the Government upon such terms and conditions as may be agreed upon between the Government and the Authority.

CHAPTER 7 FINANCE, ACCOUNTS AND AUDIT

19. Fund Of The Authority :-

1) The Authority shall have and maintain its own fund to which shall be credited :-

- a) all moneys received by the Authority from the Central or State Government by way of grants, loans, advances or otherwise;
- b) all money borrowed by the Authority from source other than the Government by way of loans or debentures;
- c) all fees and charges received by the Authority under this Act;
- d) all money received by the Authority from the disposal of lands, buildings and other properties, movable and immovable; and
- e) all moneys received by the Authority by way of rents and profits or in any other manner or from any other source;

2) The funds shall be applied towards meeting the expenses incurred by the Authority in the administration of this Act and for no other purposes.

3) The Authority may keep in current account of the Jammu and Kashmir Bank or any other Bank approved by the Government in this behalf such sum of money out of its fund, as may be prescribed by rules, and any money in excess of the said sum shall be invested in such manner as may be approved by the Government. 4) The Government may, make such grants, advances and loans to the Authority, as the Government may deem

necessary, for the performance of the functions of the Authority under this Act, and all grants loans and advances made shall be on such terms and conditions as the Government may determine.

5) The Authority may borrow money by way of loans or debentures from such sources and on such terms and conditions as may be approved by the Government.

6) The Authority shall maintain a sinking fund for repayment of money borrowed under sub-section (5) and shall pay every year into the sinking fund such sum as may be sufficient for repayment within the period fixed for all the moneys so borrowed.

7) The sinking fund or any part thereof shall be applied in or towards, the discharge of the loan for which such fund was created, and until such loan is wholly discharged it shall not be applied for any other purposes.

20. Budget Of The Authority :-

The Authority shall prepare in such form and at such time every year as may be prescribed by rules a budget in respect of the financial year next ensuring showing the estimated receipts and expenditure of the Authority and shall forward to the Government such number of copies thereof as may be prescribed by rules.

21. Accounts And Audit :-

1) The Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form as the Government may by rules prescribe in consultation with such auditor as the Government may by order specify.

2) The Accounts of the Authority shall be subject to audit annually by the said auditor and any expenditure incurred by the Auditor in connection with such audit shall be payable by the Authority to the said Auditor.

3) The Auditor and any person appointed by him in connection with the audit of accounts of the Authority shall have the same right, privilege and authority in connection with such audit as the Accountant General of Jammu & Kashmir has in connection with the audit of Government accounts and in particular shall have the right to demand the production of books, accounts, connected vouchers and other documents and papers and to inspect the office of the Authority.

4) The accounts of Authority as certified by the said Auditor or any other person appointed by him in this behalf together with the

audit report other on shall be forwarded annually to the Government and the Government shall cause a copy of the same to be laid before both Houses of the Legislature.

22. Pension And Provident Funds :-

1) The Authority shall constitute for the benefit of its whole time paid members and of its officers and other employees in such manner and subject to such conditions as may be prescribed by rules, such pension and provident funds as it may deem fit.

2) Where any such pension or provident fund has been constituted, the Government may declare that the provisions of the Provident Funds Act, Svt. 1998 shall apply to such fund as if it is a Government Provident Fund.

CHAPTER 8 SUPPLEMENTAL AND MISCELLANEOUS PROVISIONS

23. Powers Of Entry :-

The Authority may authorise any person to enter into or upon any land or building with or without assistants or workmen for the purpose of :-

- a) making any enquiry, inspection, measurement or survey or taking levels of such land or building;
- b) examining work under construction and ascertaining the course of sewers and drains;
- c) digging or boring into the sub-soil;
- d) setting out boundaries lines of work;
- e) making such levels, boundaries and lines by placing marks and cutting trenches;
- f) ascertaining whether any land is being or has been developed in contravention of the master plan or zonal plan or without the permission referred to in section 13 or in contravention of any condition subject to which such permission has been granted; or
- g) doing any other thing necessary for the efficient administration of this Act; Provided that :-
 - i) no such entry shall be made except between the hours of sunrise and sunset without giving reasonable notice to the occupier, or if there be no occupier, to the owner of the land or building;
 - ii) sufficient opportunity shall in every instance be given to enable women (if any) to withdraw from such land or building;
 - iii) due regard shall always, be had, so far as may be compatible with the exigencies of the purpose for which the entry is made to the social and religious usages of the occupants of the land or

building entered.

24. Penalties :-

1) Any person who whether at his own instance or at the instance of any other person or any body) undertakes or carries out development in contravention of the zonal plan or without the permission, referred to in section 13 or in contravention of any condition subject to which such permission, has been granted, shall be punishable with fine which may extend to Rs.5,000/- and in the case of continuing offence, with further fine which may extend to Rs.200/ for everyday during which such offence continues after conviction for the first commission of the offence.

2) Any person who uses any land or building in contravention of the provision of section 15 or in contravention of any terms and conditions prescribed by regulations under the proviso to that section shall be punishable with fine which may extend to three thousand rupees, and in the case of a continuing offence, with further fine which may extend to one hundred and fifty rupees for everyday during which such offence continues after conviction for first commission of the offence.

3) Any person who obstructs the entry of a person authorised under section 23 to enter into or upon any land or building or molests such person after such entry shall be punishable with imprisonment for a term which may extent to one thousand rupees, or with both.

25. Order Of Demolition Of Building :-

1) where any development has been commenced or is being carried on or has been completed in contravention of a zonal plan or within the permission, referred to in section 13, or in contravention subject to which such permission has been granted, any officer of the Authority empowered by it in this behalf 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 thereof or by the person at whose instance the development has been commenced or is being carried out or has been completed, within such period (not been less than five days, and more than fifteen days from the date on which a copy of the order of removal, with at brief statement of the reasons therefor has been delivered to the owner or that person) as may be specified in the order and on his failure to

comply with the order, the officer of the Authority may remove or cause to be removed the development and the expenses of such removal shall be recovered from the owner or the 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 or the person concerned has been given a reasonable opportunity to show cause why the order should not be made.

2) Any person aggrieved by an order under sub-section (I) may appeal to the Government against that order within thirty days from the date thereof, and the Government may, after hearing the parties to the appeal, either allow or dismiss the appeal or may reverse or vary any part of the order.

3) The decision of the Government on the appeal and subject only to the such decision the order under sub- section (I), shall be final and shall not be questioned in any court.

26. Power To Stop Development :-

1) Where any development in a any area has been commenced in contravention of a zonal plan, or without the permission, referred to in section 13 or in contravention of any conditions subject to which such permission has been granted, the Authority empowered by if in this behalf may, in addition to any prosecution that may be instituted under this Act and without prejudice to the provisions of section 25, 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 in not discontinued in pursuance of the order under sub-Section(I), the Authority or the officer of the Authority or the competent authority, as the case may be, may require any police officer to remove the person by whom the development has been commenced and 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-section (2) has been complied with, the Authority or the officer or the Authority as the case may be, may depute by a written order a police or an officer or employee of the Authority to watch the place in order to ensure that the development is not continued.

4) Any person failing to comply with an order sub-section (I) shall

be punishable with fine which may extend to two hundred rupees for everyday during which the non compliance continues after the service of the order.

5) No compensation shall be claimable by any person for any damage which he may sustain in consequence of the removal of any development under section 25 or the discontinuance of the development under this section.

27. Offences By Companies :-

1) If the person committing any offence under this Act is a company, every person, who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company as well as the company shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence

2) Notwithstanding anything contained in sub-section (I), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary, or other officer of the company, such director, manager, secretary or other officer shall be liable to be proceeded against and punished accordingly. Explanation:- For the purposes of this section "Company" means a body corporate and includes a firm or other association of individuals.

28. Fines When Realised To Be Paid To Authority :-

All fines realised in connection with prosecutions under this Act shall be paid to the Authority.

29. Composition Of Offences :-

1) Any offence made punishable by or under this Act, may, either before or after the institution of proceedings, be compounded by the Authority or any person authorised by the Authority by general or special order in this behalf.

2) Where an offence has been compounded, the offender, if in custody, shall be discharged and no further proceedings shall be

taken against him in respect of the offence compounded.

30. Default Powers Of Authority :-

1) The Authority after holding a local enquiry or upon report from any of its officers or other information in its possession, is satisfied that any amenity in relation to any land or building in a zone has been provided in relation to any land or building which in the opinion of the Authority is to be provided, it may, after affording a reasonable opportunity to show cause, serve upon the person providing or responsible for providing the amenity a notice requiring him to provide the amenity or carry out the development within such time as may be specified in the notice.

2) If any amenity is not provided or any such development is not carried out within the time specified in the notice, then the Authority may itself provide the amenity or carry out the development or have it provided or carried out through such agency as it deems fit. Provided that before taking any action under this sub-section, the Authority shall afford reasonable opportunity to the person providing or responsible for providing the amenity to show cause as to why such action should not be taken.

3) All expenses incurred by the Authority or the Agency employed by it in providing the amenity or carrying out the development together with interest at such rate as the Government may by order fix from the date when a demand for the expenses is made until payment may be recovered by the Authority from the person providing or responsible for providing the amenity, as arrears of land revenue.

31. Power Of Authority To Require Local Authority To Assume Responsibility For Amenities In Certain Cases :-

Where any area has been developed by the Authority, the Authority may require the local authority or a department of the Government within whose local limits the area so developed is situated, to assume responsibility for the maintenance of the amenities which have not been provided of the amenities which in its opinion should be provided in the area, on terms, and conditions agreed upon between the Authority and that local authority or the department as the case may be.

32. Power Of Levy Betterment Charges :-

1) Where in the opinion of the authority as a consequence of and

development having been in any zone, the value of any property in that zone or executed by the Authority in any area other than the zone, which has been benefited by the development, has increased or will increase, the Authority shall be entitled to levy upon the owner of the property or any person having an interest therein a betterment charge in respect of the increase in value of the property resulting from the execution of the development.

Provided that no betterment charge shall be levied in respect of lands owned by Government or any local authority.

2) such betterment charge shall be an amount :-

i) in respect of any property situated in a zone equal to one-third of the amount, and

ii) in respect of property situated in any other area, not exceeding one-third of the amount. By which the value of the property on the completion of the execution of the development estimated as if the property were clear of buildings, exceeds the value of the property prior to such execution estimated in like manner.

Provided that in levying betterment charges on any property under clause(ii) the Authority shall have regard to the extent and nature of benefit accruing to property from the development and such other factors as may be prescribed by rules made in this behalf.

33. Assessment Of Betterment Of Charge By Authority :-

1) when it appears to the Authority that any particular development plan is sufficiently advanced to enable the amount of the betterment charge to be determined, the Authority may, by an order made in this behalf, declare that for the purpose of determining the betterment charge the execution of the plan shall be deemed to have been completed and shall thereupon give notice in writing to the owner of the property or any person having an interest therein that for the Authority proposes to assess the amount of the betterment charge in respect to the property under section 32.

2) The Authority shall then assess the amount of betterment charges payable by the person concerned after giving such person an opportunity to be heard and such person shall, within three months from the date of receipt of the notice in writing of such assessment from the Authority, inform the Authority by a declaration in writing that he accepts the assessment or dissents from it.

3) When the assessment proposed by the Authority is accepted by

the person concerned within the period specified in sub-section (2) such assessment shall be final.

4) If the person concerned dissents from the assessment or fails to give the authority the information required by sub-section (2) within the period specified the matter shall be determined by an arbitrator in the manner provided in section 34.

34. Settlement Of Betterment Charges By Arbitrators :-

1) For the determination (I) of section 33, the Government shall appoint an arbitrator who shall have special knowledge of the valuation of land.

2) The arbitrator shall, for the purpose of determining any matter referred to him, have the same power as are vested in a civil court under the Code of Civil Procedure Svt.1977 when trying a suit, in respect of the following matters namely :-

a) summoning and enforcing the attendance of any person and examining him on oath;

b) requiring the discovery and production of documents;

c) administering to any party to the arbitration such interrogatories as may, in the opinion of the arbitrator, be necessary.

3) If the arbitrator dies, resigns, or is removed under sub-section(4) or refuses, or neglects in the opinion of the Government to perform his duties or becomes incapable of performing the same then the Government shall forthwith appoint another fit person to take the place of such arbitrator.

4) If the Government is satisfied after such inquiry as it thinks fit :-

a) that the arbitrator has misconducted himself, the Government may remove him from his office;

b) that the award of the arbitrator has been improperly procured or that any arbitrator has misconduct himself in connection with such award, that Government may set aside the award.

5) An award which has not been set aside by the Government under clause (b) of sub-section (4) shall be final and shall not be questioned in any court.

6) The provisions of the Arbitration Act, Svt. 2002, shall not apply to arbitration under this section.

35. Payment Of Betterment Charge :-

1) The betterment charge levied under this Act shall be payable in such number of installments and each installment shall be payable at such time and in such manner as may be fixed by regulations

made in this behalf.

2) Any arrear of betterment charge shall be recoverable as an arrear of land revenue.

36. Mode Of Recovery Of Moneys Due To Authority :-

Any money due to the authority on account of fees or charge, or from the disposal of lands, buildings or other properties, movable or immovable, or by way of rents and profits may, if the recovery thereof is not expressly provided for in any other provision of this Act, be recovered by the Authority as arrears of land revenue.

37. Control By Government :-

1) The Authority shall carry out such direction as may be issued to it from time to time by the Government for the efficient administration of this Act.

2) If in, or in connection with, Authority under this Act any difference or dispute arises between the Authority and the Government, the decision of the Government on such differences or dispute shall be final.

3) The Government may, at any time, either on its own motion or on application made to it in this behalf, call for the records of any case disposed of or order passed by the Authority for the purpose of satisfying itself as to the legality or propriety of any order passed or direction issued and may pass such order or issue such direction in relation thereto as it may think fit;

Provided that the Government shall not pass an order prejudicial to any person without affording such person a reasonable opportunity of being heard.

38. Returns And Information :-

1) The Authority shall furnish to the Government such reports, returns and other information as the Government may from time to time require.

2) Without prejudice to the provision of sub-section (I) the Government or any officer authorised by the Government in this behalf may call for reports, returns and other information from the Authority in regard to the implementation of the master plan or the zonal plan.

3) Any person authorised by the Government or the officer referred to in subsection (2) may enter into or upon any land with or without assistants or workmen for ascertaining whether the

provisions of the master plan or the zonal plan are being or have been implemented, or whether the development is being or has been carried out in accordance with such plan.

4) No such entry shall be made except between the hours of sunrise and sunset and without giving reasonable notice to the occupier, or if there be no occupier, to the owner of the land or building.

39. Service Of Notices, Etc :-

1) All notices, orders and other documents required by this Act or any rule or regulation made there under to be served upon any person shall, save as otherwise provided in this Act or such rule or regulation, be deemed to be duly served;

a) where the person to be served is a company, if the document is addressed to the Secretary of the company at its registered office or at its principal office or place of business and is either:-

i) sent by registered post, or

ii) delivered at the registered office or at the principal office or place of business of the company;

b) where the person to be served is a partnership, if the document is addressed to the partnership at its principal place of business, identifying it by the name or style under which its business is either;

i) sent by registered post, or

ii) delivered at the said place of business;

c) where the person to be served is a public body or a corporation or society or other body, if the document is addressed to the Secretary, treasurer or other head officer of that body, corporation or society at its principal office, and is either;

i) sent by registered post, or

ii) delivered at that office;

d) In any other case, if the document is addressed to the person to be served and:-

i) is given or tendered to him, or

ii) if such person cannot be found, is affixed on some conspicuous part of his last known place of residence or business, if within the state or is given or tendered to some adult members of his family or is affixed on some conspicuous part of the land or building to which it relates, or

iii) is sent by registered post to that person.

2) Any document which is required or authorised to be served on

the owner or occupier of any land or building may be addressed, "the owner or the occupier" as the case may be, of that land building (naming that land or building) without further name or description, and shall be deemed to be duly served:-

a) if the document so addressed is sent or delivered in accordance with clause (d) of sub-section (I) or

b) if the document so addressed or a copy thereof so addressed is delivered to some person on the land or building or, where there is no person on the land or building to whom it can be delivered, is affixed to some conspicuous part of the land or building.

3) Where a document is served on a partnership in accordance with this section, the document shall be deemed to be served on each partner.

4) For the purpose of enabling any document to be served on the owner of any property, the Authority may by notice in writing require the occupier (if any) of the property to state the name and address of the owner thereof.

5) Where the person on whom a document is to be served is a minor, the service upon his guardian or any adult member of his family shall be deemed to be service upon the minor.

6) A servant is not a member of the family within the meaning of this section.

40. Public Notice How To Be Made Know :-

Every public notice given under this Act shall be in writing over the signature of such officer of the Authority as it may direct and shall be widely made known in the locality be affected thereby affixing copies thereof in conspicuous public places within the said locality and announcing the same by beat of drum or by advertisement in local newspaper or by all these means and by any other means that the aforesaid officer may think fit.

41. Notice, Etc. To Fix Reasonable Time :-

Where any notice, order or other document issued or made under this Act or any rule or regulation made thereunder requires anything to be done for the doing of which no time is fixed in this Act or the rule or regulation, the notice, order or other document shall specify a reasonable time for doing the same.

42. Authentication Of Orders And Documents Of The Authority :-

All permission, order, decisions, notices and other documents of the Authority, shall be authenticated by the signature of such officer of

the Authority as may be authorised by the Authority in this behalf.

43. Members And Officers To Be Public Servants :-

Every member and every officer and other employees of the Authority shall be deemed to be a public servant within the meaning of section 21 of the Ranbir Penal Code.

44. Sanction Of Prosecution :-

No prosecution for any offence punishable under this Act, shall be instituted except with the previous sanction of the Authority or any officer authorised by the Authority in this behalf.

45. Magistrates Power To Impose Enhanced Penalties :-

Notwithstanding anything contained in section 32 of the Code of Criminal Procedure, 1989, it shall be lawful for any court of a judicial Magistrate of the first class to pass any sentence authorised by this Act in excess of its powers under the said section.

46. Protection Of Action Taken In Good Faith :-

No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or any rule or regulation made thereunder.

47. Power To Delegate :-

1) The Authority may, by notification in the Government Gazette, direct that any power exercisable by it under this Act, except the power to make regulations, may also be exercised by such officer or local authority and in such cases and subject to such conditions, if any as may be specified therein.

2) The Government may, by notification in the Govt. Gazette, direct that any power exercisable by it under this Act, except the power to make rules, may also be exercised by such officer as may be mentioned therein, in such cases and subject to such conditions, if any, as may be specified therein.

48. Notice To Be Given Of Suits :-

1) No suit shall be instituted against the Authority, or any member thereof, or any of its officers or other employees, or any person action under the directions of the Authority or any member or any person officer or other employees of the Authority in respect of any act done or purporting to have been done in pursuance of this Act or any rule or regulation made thereunder until the expiration of two months after notice, and in any other case, delivered to, or left

at the office or place of abode of, the person to be sued and unless such notice states explicitly the cause of action, the nature of relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff and unless the plaint contains a statement that such notice has been so left or delivered.

2) No suit such as is described in sub-section (I) shall unless it is a suit for recovery of immovable property or for a declaration of title thereto, be instituted after the expiry of six months from the date on which the cause of action arises.

49. Savings :-

Nothing in this Act shall apply to :-

- a) the carrying out by any local authority or by any department of Government of any works for the purpose of inspecting, repairing or renewing any drains, sewers, main pipes, cables or other apparatus including the breaking open of any street or other land for that purpose;
- b) the erection of a building, not being a dwelling house if such building is required for the purposes subservient to agriculture;
- c) the construction of a canal, water course, and drainage work as defined in the Jammu and Kashmir State Canal and Drainage Act, Svt. 1963, by any local authority or the department of the Government;
- d) the excavations (including wells) made in the ordinary course of agricultural operations;
- e) the construction of unmetalled road intended to give access to land solely for agricultural purposes; and
- f) the carrying out of works for the maintenance of any building which effect only the interior of the building and which do not materially effect the external appearance of the building.

50. Plans To Stand Modified In Certain Cases :-

1) Where any land situated in any area is required by the master plan or a zonal plan to be kept as an open space or unbuilt upon or is designated in any such plan as subject to compulsory acquisition, then if at the expiration of five years from the date of operation of the plan under section 11 or where such land has been so required or designated by any amendment, the land is of such plan, from the date of operation of such amendment not compulsorily acquired, the owner of the land may serve on the Government a notice requiring his interest in the land to be so acquired.

2) If the Government fails to acquire the land within a period of six

months from the date of receipt of the notice, the master plan, or as the case may be the zonal plan shall have effect after the expiration of the said six months as if the land were not required to be kept as an open space or unbuilt upon or were not designated as subject to compulsory acquisition.

51. Power To Make Rules :-

1) The Government, after consultation with the Authority, may, by notification in the Government Gazette, make rules to carry out the purposes of this Act;

Provided that consultation with the Authority shall not be necessary on the first occasion of the making of rules under this section, but the Government shall take into consideration any suggestions which the Authority may make in relation to the amendment of such rules after they are made.

2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely :-

- a) the salaries, allowances and conditions of service of the whole time paid members of the Authority;
- b) the control and restrictions in relation to appointment of officers and other employees;
- c) the stages by which the development of any particular zone may be carried but;
- d) the form and content of the master plan and a zonal plan the procedure to be followed in connection with the preparation, submission and approval of such plans and the forms and the manner of publication, of the notice relating to any such plan in draft;
- e) the local inquiries and other hearings that may be held before a plan is approved;
- f) the form and manner in which notice under sub-section (3) of section 12 shall be published;
- g) the fee to be paid on an application for provision under sub-section (2) of section 4 and the factors and circumstances to be taken into consideration in determining such fee;
- h) the manner in which Nazul lands shall be deal with after development;
- i) the factors to be taken into consideration in determining the rate of betterment change in respect of property situated in any local area;

- j) the procedure for referring any matter to the Government under section 31 for settlement of terms and condition subject to which a local authority may be required to assume responsibility for amenities in any area;
- k) the procedure to be followed by arbitrators in the Department determination of betterment change;
- l) the sum of money that may be kept in current account;
- m) the procedure to be followed for borrowing moneys by way of loans or debentures and their repayment;
- n) the form of the budget of the Authority and the manner of preparing the same;
- o) the form of the balance sheet and statement of accounts;
- p) the form of the annual report and the date on or before which it shall be submitted to the Government;
- q) the manner of constitution of the pension and provident funds for whole time paid members and officers and other employees of the Authority and the conditions subject to which such funds may be constituted;
- r) any other matter which has to be, or may be, prescribed by rules.

52. Power To Make Regulations :-

- 1) The Authority may, with the previous approval of the Government, make regulations consistent with this Act and the rules made thereunder to carry out the purposes of this Act and without prejudice to the generality of this power, such regulations may provide for:-
 - a) the summoning and holding of meetings of the Authority, the time and place where such meetings are to be held, the conduct of business at such meetings and the number of members necessary to form a quorum thereat;
 - b) power and duties of the officers of Authority;
 - c) the salaries, allowances and conditions of service of the officers and employees;
 - d) the procedure for carrying out of the functions of the Authority under Chapter III.
 - e) the form in which any application for permission under sub-section (I) of 14 shall be made and the particulars to be furnished in such applications;
 - f) the terms and conditions subject to which use of lands and buildings in contravention of plans may be continued;

- g) the manner of communicating the grounds of refusal of permission for development;
- h) the form of the register of the applications for permission and the particulars to be contained in such register;
- i) the management of the properties of the Authority;
- j) the time and manner of payment of betterment charge; and
- k) any other matter which has to be or may be prescribed by regulations.

2) Until the Authority is established under this Act, any regulation, which may be made under sub-section (I) may be made by the Government and any regulation so made may be altered or rescinded by the Authority in exercise of its powers under sub-section (I).

53. Dissolution Of The Authority :-

1) Where the Government is satisfied that the purposes for which the Authority was established under this Act have been substantially achieved or that there are good grounds which render the continued existence of the Authority unnecessary, the Government Gazettee, declare that the Authority shall be dissolved with effect from such date as may be specified in the notification, and the Authority shall be deemed to be dissolved accordingly.

2) From the said date:-

- a) all properties, funds and dues which are vested in, or realisable by, the Authority shall vest in, or be realisable by the Government;
- b) all Nazul lands placed at the disposal of the Government;
- c) all liabilities which are enforceable against the Authority shall be enforceable against the Government; and
- d) for the purpose of carrying out by the Authority and for the purpose of realising properties, funds and dues referred to in clause (a) the functions of the Authority shall be discharged by the Government.

54. Cessation Of The Provisions Of Certain Acts :-

1) As from the date of operation of plan in a zone, fixed under section 11:-

- a) the provisions of the Jammu and Kashmir Town Planning Act, 1963;
- b) Chapter XXI of the Jammu and Kashmir Municipal Act, 2008;
- c) Clause (4) of section 45 and section 46 of the Jammu and Kashmir Town Area Act, 2001; Shall cease to apply in the zone in

which the plan is operated for such period as the Government may by notification specify.

2) Notwithstanding the provisions of sub-section (I):-

a) anything done or any action taken (including permission for erection, re-erection or development granted) under the provisions of any of the aforesaid laws shall continue in force and be deemed to have been done or taken under the provisions of this Act unless and untill it is superseded by the competent authority under this Act;

b) all suits, prosecutions and other legal proceedings instituted or which might have been instituted for or against the municipality or Town Area Committee or any other authority under the said provisions of the aforesaid Acts may be continued or instituted by, for or against the Municipality, Town Area Committee or the authority, as the case may by.

55. Power To Remove Difficulty :-

If any difficulty arises in giving effect to the said provisions of this Act in their application to a zone or a local area, the government made by order make such provision or give such directions not inconsistent with the provisions of this Act as appears to the Government to be necessary or expedient for removing the difficulty.

56. Repeal And Saving :-

1) The Jammu and Kashmir Development Ordinance, 1970 (IV of 1970) is hereby repeated.

2) Notwithstanding such repeal, any thing done or any action taken (including any appointment, delegation order, scheme, permission, notification, rule, regulation or from made, granted or issued) under the said Ordinance shall be deemed to have been done, taken, made, granted or is sued under the provisions of this Act as if this Act has come into force on the 15 th day of September, 1970.