

ACT No. XII OF 1866.

PASSED BY THE GOVERNOR-GENERAL OF INDIA IN COUNCIL.

(Received the assent of the Governor-General on the 23rd March 1866).

An Act to provide for the compulsory taking of rights to form and maintain private water-courses from public works of irrigation.

Preamble. WHEREAS it is expedient to provide for the compulsory taking of rights to form and maintain private water-courses through lands lying between public works of irrigation and the lands, mills, sewers, reservoirs or buildings of persons desiring water from such works for the purposes of irrigating, working or cleansing such lands, mills or sewers, or for bathing, drinking, manufacturing or other useful purposes; It is enacted as follows:—

Interpretation Clause. Number. "Section."
"Local Government."
"Collector."
"Canal Officer."

1. In this Act, words in the singular include the plural, and words in the plural include the singular; "Section" means a Section of this Act; and in every place in which this Act operates, "Local Government" means the person authorized by law to administer Executive Government in such place and includes a Chief Commissioner: "Collector" includes any Officer authorized to exercise the duties of a Collector of the land revenue of such place; and "Canal Officer" means the chief Officer invested by the Local Government with the immediate control of the District defined by the Local Government for the purposes of irrigation in which such place shall be situate.

Application to Canal Officer.

2. Whenever any person shall require the right to form and maintain, for any of the purposes aforesaid, a private water-course through the lands (hereinafter called the intervening lands) lying between a public work of irrigation and his own lands, mills, sewers, reservoirs or buildings, he shall apply in writing under his hand to the Canal Officer, stating

(1) The particulars of the right so required:

(2) That

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(2) That the applicant is willing to pay a reasonable sum for the purchase, rent or revenue thereof, to defray the expense of the survey, memoranda and plans required by this Act, to make reasonable compensation for any injury that may be caused to the intervening lands and to the crops thereon by the formation of the proposed water-course, and to construct and maintain such works connected therewith as may be necessary ; and

(3) That he has endeavoured unsuccessfully to enter into an agreement with the owners, tenants and occupiers of the intervening lands as to the amount of the purchase-money or rent and compensation aforesaid.

Stamp.

Such application shall bear a stamp of eight annas.

3. On receiving such application, the Canal Officer shall visit the intervening lands and make enquiry as to the expediency of forming the proposed water-course. If he is not satisfied of such expediency, he shall reject the application. But if he is satisfied of such expediency, he shall cause to be made at the applicant's expense a survey of the intervening lands and a memorandum and plan showing the direction, length, width and depth of the proposed water-course ; the bridges, aqueducts, drains or other works (if any) to be made in connection therewith, and the amount of land required therefor. Such memorandum shall also state that, in the opinion of the Canal Officer, the formation of the proposed water-course will be a benefit to the applicant, and will cause no disproportionate injury to the intervening lands, and it shall be subscribed by the Canal Officer and recorded in his Office.

Canal Officer to make local enquiry,

And either to reject application,

Or to cause survey, memorandum and plan to be made.

Memorandum to be subscribed and recorded by Canal Officer.

4. The Canal Officer shall forward the said plan together with a copy under his hand of such memorandum to the Collector, who shall furnish a copy under his hand of the memorandum to the Lumberdar or Sudder Malguzar of every village through which the proposed water-course is to pass.

5. The Collector shall also cause the contents of the said memorandum to be proclaimed in every such village in the local vernacular language, and shall at the same time cause notice to be published in the same language in every such village that any person

Plan and copy of memorandum forwarded to Collector, and copy of memorandum furnished by him to Lumberdars.

Proclamation of contents of memorandum.

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person interested in the lands to be traversed by the proposed water-course, and objecting to its formation, shall be at liberty to apply to him within fifteen days from the date of such proclamation.

6. Any such person may within the time hereinbefore limited present a petition to the Collector, stamped with a stamp of the value of eight annas and setting forth his objections to the formation of the proposed water-course. The Collector may in his discretion either reject the petition, recording his reasons thereon, or make an enquiry, of which he shall give previous notice to the Canal Officer, as to the validity of the objections, and summon witnesses and require them to produce before him all such documents as he shall think fit. Persons so summoned shall be subject to the law for the time being in force as regards persons summoned before a Collector acting judicially.

Memorandum by
Collector.

7. If no objection shall have been made under the provisions of Section 6 ;

Or if the Collector shall think that the objections (if any) to the formation of the proposed water-course are insufficient and that such water-course should be formed ;

Or if he shall think that such objections are sufficient, and that it should not be formed ;

Or if he shall think that such objections exist, but that they may be obviated by the construction of bridges, aqueducts, drains or other such works, in addition to the works (if any) referred to in Section 3, and that the proposed water-course should be formed, proper provision being made for the construction and maintenance of such additional works (mentioning them),

He shall make, subscribe and record in his Office a memorandum to that effect.

Copy of Collector's
memorandum to be
sent to Canal Officer.

8. The Collector shall thereupon send the Canal Officer a copy under his hand of such memorandum.

Procedure thereon
when Canal Officer and
Collector agree that
water-course should be
formed.

9. If the Canal Officer shall agree with the Collector that the water-course should be formed, and that no additional works connected therewith are needed, he shall proceed according to the provisions in such case contained in Section 14.

10. If

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When Canal Officer and Collector agree that the water-course should not be formed.

10. If he shall agree with the Collector that the water-course should not be formed, he shall give notice thereof to the applicant, and all proceedings shall thereupon be stayed.

When Canal Officer and Collector agree that the water-course should be formed, provision being made as to additional works.

11. If the Canal Officer shall agree with the Collector that the water-course should be formed, proper provision being made for the construction and maintenance of the additional works mentioned in Section 7, he shall cause to be prepared at the expense of the applicant a memorandum and plan of the same works and shall record such memorandum and plan in his Office and shall forward to the Collector the plan and a copy of the memorandum.

Procedure in case Collector and Canal Officer disagree.

12. If the Canal Officer disagree with the Collector's memorandum under Section 7, he shall submit the copy thereof sent to him under Section 8, together with a statement of his own reasons for such disagreement, through the head of his own Department, to the Commissioner of the Division. If the Commissioner agree with the Canal Officer, the Commissioner's decision on the points in dispute shall be final. If the Commissioner disagree with the Canal Officer, the whole case shall be referred to the final decision of the Local Government.

Procedure where Collector is himself Canal Officer.

13. Where the Collector is himself the Canal Officer, he shall forward to the Commissioner of the Division all petitions presented under Section 6, who shall then proceed in the same manner, and with the same powers, as if he were a Collector acting under Section 6; and in every such case Sections 7, 8, 9, 10 and 11 shall be read as if for the word "Collector" the words "Commissioner of the Division" were substituted.

Procedure after thirty days from the giving of notice under Section 5.

14. At the expiration of thirty days from the giving of the notice mentioned in Section 5, if under the provisions hereinbefore contained it shall have been determined that the proposed water-course is to be formed, the Canal Officer shall enter upon the intervening lands and mark out the limits of the proposed water-course; and thereupon the Collector shall adjust the amount to be given as

Collector to fix compensation.

purchase-money, rent and revenue or any of them for the right and as compensation for the injury respectively mentioned in Section 2. In making such adjustment the Collector shall follow the

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the procedure and may exercise the powers prescribed for and conferred upon him by Act No. VI of 1857, Sections 4, 5, 6 and 7.

15. The Collector shall then require the applicant to pay such amount (if any) as shall be payable at once, and, if the said Collector shall think fit, to deposit with him such security as he shall deem sufficient for the due payment of the rent and revenue (if any) aforesaid, and for the construction and maintenance of the works (if any) connected with the said water-course. And, on compliance with such requirement, the Collector shall authorize the applicant to take and enjoy the right aforesaid.

Collector to require applicant to pay purchase-money.

On payment, applicant to be authorized to take right.

16. On receiving such authority from the Collector, it shall be lawful for the applicant, with such workmen, cattle and things as may be necessary, to enter upon the intervening lands and make the proposed water-course within the limits so marked out as aforesaid, and either to remove all or any of the clay, sand, gravel and stones which shall be taken out of the said water-course, or to use all or any parts thereof in making the said water-course and the works connected therewith, and to use such water-course for the purpose of conveying water from the said public works of irrigation in the direction of and into his lands, mills, sewers, reservoirs or buildings, as the case may be, at the place indicated in the plan mentioned in Section 3 ; and from time to time, with such workmen, cattle and things as aforesaid, to enter upon the said intervening lands and inspect, repair and cleanse the said water-course, and from time to time for the purposes aforesaid to place upon the same lands and to remove such materials, machinery and other things as he shall think fit.

Applicant may enter with workmen, &c.

17. It shall be lawful for the Local Government from time to time to prescribe Rules, consistent with the provisions of this Act, upon all or any of the subjects next hereinafter mentioned ; (that is to say) :—

Power to Local Government to make Rules.

(1.)—The formation of the water-course and the works (if any) connected therewith, in a proper and workmanlike manner :

(2.)—The removal of the clay, sand, gravel and stones excavated in the formation of the water-course, and not used as aforesaid :

(3.)—The time for the completion of the water-course and the works (if any) connected therewith :

(4.)—The

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(4.)—The cleansing of the water-course and the maintenance and repair of the water-course and works (if any) connected therewith :

(5.)—The avoidance of unnecessary damage to the surface of the adjoining lands and the crops for the time being thereon and the compensation for such damage (if any) :

(6.)—The prevention of injury to the water-course and of interference with the flow of water through the same :

(7.)—The making good of such injury and the restoration of the flow of water :

(8.)—The adjustment of the rights in the water-course of the persons for whose benefit it is formed or to whose benefit it may afterwards be extended :

(9.)—In case the water-course be discontinued, the conditions on which the owner of the intervening lands may enter upon the ground within its limits, and the conditions on which the persons mentioned in paragraph (8) of this Section may be discharged from the further payment of rent or revenue in respect of the water-course.

Such Rules, when they shall have received the sanction of the Governor-General of India in Council, and when they shall have been published in the Official Gazette, shall be read with and taken as part of this Act.

18. No suit shall lie in respect of the compulsory taking, prior to the passing of this Act, of any land for the formation of a private water-course for any of the purposes mentioned in the preamble to this Act. But in every such case it shall be lawful for the Collector within one year from the passing or extension of this Act, on the application of the person from whom the land was so taken, his representatives or assigns, to adjust, in manner hereinbefore referred to, the amount to be given as purchase-money, rent or revenue for the said land; and, on failure, within thirty days after such adjustment shall have been notified to the person who shall have taken such land, his representatives or assigns, to pay the said purchase-money, or to give security to the satisfaction of the Collector for the due payment of the said rent or revenue, the Collector may replace the person from whom the land was so taken, his representatives or assigns, in possession of the

Bar of suits for the compulsory taking, prior to this Act, of land for private water-courses.

Procedure in such cases.

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of the land aforesaid. The Collector may also award to him or them such compensation as the Collector shall think fit for the injury (if any) done to such land by the formation of the water-course, and the amount of such compensation may be recovered in such manner as the Local Government shall provide.

19. This Act applies to the Territories respectively under the Government of the Lieutenant Governor of the North-Western Provinces and the Lieutenant Governor of the Punjab. But it may be extended, *mutatis mutandis*, to any other part of British India by an order of the Local Government notified in the Official Gazette; and from the date of any such extension, so much of any Act, Regulation or Rule having the force of law, which shall be in operation in the Territories to which such extension shall have been made, as shall be inconsistent with this Act or with any Rule prescribed by such Government pursuant to Section 17, shall cease to have effect in such Territories.

Present extent of Act.
Act may be extended.