

CHAPTER 278

FLOOD PROTECTION

Ordinance No. 4 of 1924, Act No. 22 of 1955.

AN ORDINANCE FOR THE PROTECTION OF AREAS SUBJECT TO DAMAGE FROM FLOODS.

[6th May, 1924.]

Short title. 1. This Ordinance may be cited as the Flood Protection Ordinance.

Interpretation. 2. In this Ordinance, unless the context otherwise requires—

“the Director” means the Director of Irrigation or any other person appointed to prepare and carry out a scheme under this Ordinance ;

“thoroughfare” has the same meaning as in section 40 of the Thoroughfares Ordinance.

Power to declare any area in Sri Lanka a flood area. 3. (1) The Minister may, by Order published in the Gazette, declare any area in Sri Lanka to be a flood area.

(2) While any such Order remains in force, the area indicated therein shall form a flood area, and be subject to the provisions of this Ordinance.

Preparation of scheme for protection of flood area. 4. (1) Where any area is declared to be a flood area, the Director shall prepare a scheme for the efficient protection of such area against floods, and also a statement of the estimated cost of the necessary work.

(2) The Director shall also delineate in distinguishing colours on a plan of such flood area the lands within the area liable to submergence and the dams, draining trenches, outfalls, sluices, locks, and other works which it is proposed to make or maintain, and, where it is expedient to change the position of any thoroughfare or portion thereof, shall delineate in distinguishing colours on the plan the best position and line for the proposed new thoroughfare.

5. (1) A copy of the scheme, together with the estimate of the cost of the necessary works and of the plan of the flood area, with the proper delineations thereon, shall be lodged at the office of the Director of Irrigation in Colombo, and also at the office of the Government Agent of the administrative district in which such flood area or any part thereof is situated and at such other places as may be named by the Minister.

Inspection of scheme and plan by persons interested.

(2) Notice that the documents and plan above referred to have been so lodged and are open for inspection shall be given by public advertisement in the Gazette and at least one newspaper published in Sri Lanka.

(3) The documents and plan shall remain open for the inspection of every person desiring to see the same on every day, not being a public holiday, during office hours, for three months after the date of the first publication of the notice.

(4) Any person whose lands are shown on any such plan as being liable to submergence or who considers that his property, whether situated within or outside of the flood area, would be injured by the carrying out of the scheme may, within such period of three months, lodge at the office of the Director in Colombo or of the Government Agent of the administrative district in which such flood area or any part thereof is situated his objections in writing to his lands being shown as so liable to submergence, or may state in writing the nature and extent of the damage he considers he would suffer if the scheme were carried out, furnishing full particulars in writing of such estimated damage.

(5) After the expiration of such period of three months, the Director shall forward the scheme, with the estimate and plan, and the objections to the scheme and statements of prospective damage, if any, with a full report thereon, to the Minister.

Powers of Minister on consideration of scheme.

6. (1) (a) The Minister, after considering the scheme referred to in section 5, with all the objections thereto, may make such order as to him may seem fit—

- (i) confirming, varying, altering, or rejecting any such scheme ;
- (ii) altering or extending the limits of any such flood area ;
- (iii) directing works to be carried out for the protection and drainage of the flood area ; or
- (iv) changing the position of any thoroughfare passing through such area or any portion thereof as to him may seem expedient.

(b) The Minister may, from time to time, make amending orders with respect to any of the matters hereinbefore in this subsection mentioned.

(2) Such order of the Minister and any amending order shall be published in the Gazette and at least one newspaper published in Sri Lanka.

(3) The Director is hereby authorized to, and, if Parliament provides the necessary funds, shall carry out and execute the works ordered or directed by the Minister and no person shall, except as in this section provided, be entitled to claim compensation for any alleged damage in consequence of such works being carried out.

(4) If any buildings, fences, growing crops, or trees are injured, destroyed, or cut down, or if the value of any land not previously liable to submergence is affected by being made so liable, in consequence of any such works being carried out, any person entitled to such buildings, fences, growing crops, or trees, or to such land may, within one month of such injury or destruction occurring, or of such trees being cut down, or of the order in subsection (2)

of this section mentioned being published, apply to a court having jurisdiction within the division in which the flood area is situated to have the amount of his claim for such damage ascertained and certified.

(5) (a) Every such application shall be made by petition in a summary way as provided for in Chapter XXIV of the Civil Procedure Code, and in any such petition the Attorney-General shall be named as the respondent.

(b) The court shall, after hearing the parties to any such petition, certify what is the estimated amount of damage which the applicant may have suffered or will suffer, and the amount certified shall be deemed part of the cost of the construction of the works and shall be paid in the same manner.

(6) An appeal shall lie from any such certificate of a court in the same manner and subject to the same conditions as in the case of appeals arising within the ordinary jurisdiction of such court.

(7) All proceedings before any court or upon any appeal, as aforesaid, shall be liable to the same duties as are payable on ordinary proceedings in the said court or in respect of appeals therefrom.

7. The Government Agent of the administrative district in which the flood area is situated, or, if such flood area is situated in more districts than one, then such one of the Government Agents thereof as may be nominated by the Minister, shall be the flood authority for such area :

Flood authority.

Provided that where any flood area falls, either wholly or in part, within the limits of a Municipality, the Minister may order that the Mayor of the Municipal Council shall be substituted for the Government Agent as the flood authority for the flood area.

8. The flood authority shall maintain, and is hereby empowered, in accordance with the provisions of this Ordinance, to do all acts necessary to maintain, in good order, all such dams, draining trenches, outfalls, sluices, locks, and other works as are required for the protection of the flood area.

Duties of flood authority.

Regulations for management of flood area.

9. (1) The Minister may make regulations for the purpose of carrying out the provisions of this Ordinance, and particularly, but without detracting from the generality of the powers hereinbefore in this section contained—

- (a) for ensuring the maintenance of the drainage of the flood area ;
- (b) for ensuring the maintenance in good order of the works required for the purpose of protecting such area ;
- (c) for the recovery of flood rates by the seizure and sale of any land liable to such rates and of any crops and movable property being in or upon any such land, and for the cancellation of any such sale of land upon payment of arrears of flood rates due in respect of any such land ;
- (d) prescribing the duties to be performed and the powers to be exercised by inspecting officers.

(2) Such regulations may impose on the owner or occupier of any land in any such flood area all or any of the following obligations, that is to say :—

- (a) to keep clear, and of a specified width and depth, the portion of any draining trench bordering upon any such land ;
- (b) to make and keep clear drains of sufficient size and depth to carry off the water from any such land into the draining trenches.

(3) All such regulations shall be published in the Gazette and shall thereupon, subject to the provisions of the next succeeding subsection, be as legal, valid, effectual, and binding as if they had been enacted in this Ordinance.

(4) All such regulations shall be laid as soon as conveniently may be before Parliament, and may at any time within forty days after the date of their being so laid before Parliament, or at any of the three meetings of Parliament next succeeding such date, by resolution of

Parliament, be disallowed, amended, or otherwise dealt with as may be directed by the said resolution, but without prejudice to anything that may have been done thereunder.

(5) Any person not complying with any such regulation shall be guilty of a summary offence and be liable on conviction to a fine not exceeding one hundred rupees.

10. There may be appointed such number of persons to be inspecting officers as may be expedient.

Appointment of inspecting officers.

11. (1) The cost of preparing a scheme, executing works, and payment of compensation under the provisions of this Ordinance shall be defrayed out of such funds as may be provided for the purpose by Parliament, and the amount of such cost, together with interest thereon at the rate of six *per centum* per annum, shall be repaid by a yearly rate on all lands within the flood area shown on the plan referred to in section 4 of this Ordinance to be liable to submergence for such term as may be directed by the Minister with the concurrence of the Minister in charge of the subject of Finance.

Repayment of cost of executing works.

(2) In fixing any such rate the Minister shall take into consideration and give due effect to any amount which may be contributed by a vote of Parliament towards such cost as aforesaid.

(3) It shall be lawful for the Minister to agree with the owner of any land liable to pay any such yearly rate that such liability shall be compounded for a fixed sum, and upon such sum being paid to the Deputy Secretary to the Treasury such land shall become and be relieved from all further liability to pay any such rate.

12. The cost of maintaining the works sanctioned under this Ordinance, including the salary of any inspecting officers, of maintaining the drainage of any flood area, and of meeting the other expenses of carrying out the provisions of this Ordinance not otherwise expressly provided for may be defrayed by a yearly rate on all lands within the flood area shown on the plan referred to in section 4 of this Ordinance to be liable to submergence.

Defraying of cost of maintaining works.

Flood rate.

13. The amount of the yearly rates payable under section 11 and section 12 shall be added together, and shall be made one rate, to be called the "flood rate".

Manner of levying flood rate.

14. (1) The flood rate shall be levied upon the appraised value of all lands within the flood area shown on the plan referred to in section 4 of this Ordinance to be liable to submergence.

(2) It shall be lawful for a flood authority to appoint persons to appraise the value of such lands who shall, in making such appraisal, take into consideration the description, condition, and locality of such lands, and the probable effect thereon of carrying out the scheme for the protection of the flood area.

(3) When any appraisal is completed, such appraisal shall be lodged at the kachcheri or at the office of the Municipality, as the case may be, and notice that such appraisal has been so lodged shall be published in the Gazette and at least one newspaper published in Sri Lanka. Subject to any fresh appraisal made as hereinafter provided, such first-named appraisal shall be final and conclusive.

(4) It shall be lawful for the owner of any land who considers that the same has been appraised at an excessive amount, within one month from the day of such appraisal being lodged as aforesaid, to give notice to the flood authority in writing that he requires a fresh appraisal to be made; and in such notice he shall name a person to act on his behalf as an appraiser.

(5) The authority shall, within one week from the receipt of such notice, appoint another appraiser, and such appraisers shall forthwith proceed to make a new appraisal.

(6) In case of a difference of opinion occurring between the appraisers so appointed with regard to the value of the property required to be newly appraised, such appraisers shall appoint an umpire, whose decision shall be final.

(7) If such appraisers cannot agree upon an umpire, the flood authority or the owner may apply to the Judge of the District

Court having jurisdiction in the district in which the land is situated to appoint such umpire as aforesaid.

(8) The Minister may, subject to the provisions of section 9 of this Ordinance, make regulations providing for the procedure to be adopted by appraisers in making fresh appraisements and generally for the carrying out of the purposes of this section.

15. The flood rate shall be determined in the manner following:—

Mode of determining amount of flood rate.

(a) the flood authority shall, on or before the first day of January in each year, by writing signed by such authority, fix the rate for the ensuing year, and shall, on or before the said day, give public intimation thereof by notice to be published in the Gazette and one newspaper published in Sri Lanka;

(b) any person objecting to the proposed rate may file his objections in writing at the office of the flood authority on or before the first day of March following;

(c) the flood authority, as soon as may be practicable, shall forward to the Minister the said notice fixing the rate and all objections thereto;

(d) on receiving the said notice, and the objections in writing, if any, the Minister with the concurrence of the Minister in charge of the subject of Finance may finally determine what the rate shall be, and the rate so determined shall be the flood rate for the current year; and

(e) the production of the Gazette containing an official intimation that the rate and the amount thereof have been determined by the Minister with the concurrence of the Minister in charge of the subject of Finance shall be conclusive evidence that the rate has been duly made.

16. The flood rate shall be payable in such instalments as may from time to time be appointed by the flood authority.

Payment of flood rate in instalments.

Proof of amount due.

17. A statement purporting to be signed by the flood authority shall, without proof of the signature, be prima facie evidence that the amount stated is payable in respect of the rate.

Change of thoroughfares.

18. (1) If it becomes necessary for the purposes of any scheme under this Ordinance to change the position of any thoroughfare passing through a flood area or any portion thereof, the Minister with the concurrence of the Minister in charge of the subject of Highways may order such thoroughfare or portion thereof to be stopped up and another course for such thoroughfare or portion thereof, to be substituted.

(2) If in the execution of any such order it becomes necessary to take possession of the land of any person, it shall be lawful for the Director, subject to the approval of the Minister, to make an agreement with the owner, for the compensation to be paid for such land, and for any buildings, fences, growing crops, or trees, thereon, either by allowing him to possess the ground, or part of the ground, of the former thoroughfare, or by the grant of other land in exchange or by payment of money or by any two or more of such methods.

(3) The land of any private person taken possession of in pursuance of such agreement shall vest in the State without any formal transfer thereof, and the certificate of the Director that any person has been allowed to possess any part of the ground of the former thoroughfare or such other land, together with a survey thereof, shall be a sufficient proof of the right of such person to the same.

(4) If the Director cannot agree with such owner as to the compensation to be made, or if the owner cannot be found, or if it be not thought advisable to enter into any such agreement, then proceedings may be taken for obtaining possession of such land, and for compensating the owner, in the manner hereinafter in this Ordinance provided.

19. The Director, any inspecting officer, and any flood authority, accompanied by the assistants, servants, workmen, and labourers employed by or under such Director, inspecting officer, or flood authority, may, at all times and with all necessary and proper vehicles and animals and other means, enter upon any land, and there severally do and perform all acts, matters, and things necessary for the purpose of carrying out the provisions of this Ordinance or for the effectual preparation of any scheme thereunder.

Power of entry.

20. Where under this Ordinance any land or building or part of any land or building is required for the purposes of this Ordinance, and the amount of the compensation in respect thereof is not settled by agreement, the Minister, upon the application of the Director or of the flood authority seeking to make the acquisition, may declare that the land or building or the part of the land or building is required for a public purpose, and may order proceedings to obtain possession of the same for the Government and to determine the compensation to be paid to the party interested under the Land Acquisition Act.

Acquisition of land for purposes of Ordinance.