

THE EMBANKMENT AND DRAINAGE ACT, 1952

(EAST BENGAL ACT NO. I OF 1953).

[7th January, 1953]

An Act to consolidate the laws relating to embankment and drainage and to make better provision for the construction, maintenance, management, removal and control of embankments and water courses for the better drainage of lands and for their protection from floods, erosion or other damage by water. 1 2

WHEREAS it is expedient to consolidate the laws relating to embankment and drainage and to make better provision for the construction, maintenance, management, removal and control of embankments and water courses for the better drainage and improvement of lands in the territories comprising the province of East Pakistan and for the protection of such lands from floods, erosion or other damage by water, it is enacted as follows:-

PART I

PRELIMINARY

Short title, extent and commencement

1. (1) This Act may be called the 3[* * *] Embankment and Drainage Act, 1952.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force on such date as the Government may, by notification in the official Gazette, appoint.

Repeal of former Acts

2. The enactments mentioned in the Schedule C to this Act shall be repealed to the extent mentioned in column 4 of that Schedule.

Definitions

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

(a) "Authority" means East Pakistan Water and Power Development Authority established under section 3 of the East Pakistan Water and Power Development Authority Ordinance, 1958;

(b) "Deputy Commissioner" means the Chief Officer in-charge of revenue administration of a district and such other person as may be specially appointed by the Government to perform the functions of a Deputy Commissioner under this Act;

(c) "embankment" includes every bank, dam, wall and dyke made or used for excluding water from or for retaining water upon any land; every sluice, spur, groyne, training wall, berm or other work annexed to, or portion of, any such embankment, every ban, dam, dyke, wall, groyne or spur made or executed for the protection of any such embankment or of any land from erosion or overflow by or of rivers, tides, waves or waters; and also all buildings, intended for purposes of inspection and

supervision, but does not include any ail or ridge surrounding or dividing a field or any public or private road;

(d) “Engineer” means the Engineer in-charge of a Division under Water Wing of the Authority or any Engineer specially appointed to perform the functions of an Engineer under this Act;

(e) “land” includes interests in land and benefits arising out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

(f) “owner”, used in relation to a land, means a person who has a right, title or interest in that land, and is either in actual possession of it or has an immediate right to actual possession thereof, and include his trustee, heirs, assigns, transferees and legal representatives, but does not include a person who, under the system generally known as adhi, barga or bhag, cultivates such land:

Provided that where any person is, under the terms of any contract between him and the Government or the Authority, liable to do any act or execute any work specified in Part II of this Act, for the benefit of any area, such person shall be deemed to be the owner in relation to any land in such area and shall be deemed to be in possession of such land;

(g) “prescribed” means prescribed by rules made under this Act;

(h) “public embankment” means an embankment vested in or maintained by the Government or the Authority;

(i) “public water-course” means a water-course vested in or under the charge of the Government or the Authority; and

(j) “water-course” includes a line of drainage, weir, culvert, pipe or other channel, whether natural or artificial, for the passage of water.

Vesting of public embankments, water-course, etc, in Government or Authority

4. (1) Every embankment, water-course and embanked tow-path maintained by the Government or the Authority, and all land, earth, pathways, gates, berms and hedges belonging to or forming part of, or standing on, any such embankment or water-course shall vest in the Government or the Authority, as the case may be.

(2) The embankments mentioned in Schedule A to this Act and every embankment and water course which may be restored to or included in such Schedule under section 37 or section 38 of this Act, and every embanked tow path as aforesaid, shall be held on behalf of the Government or the Authority; and all other public embankments and water courses shall, subject to the provision of section 65, be held by the Government or the Authority on behalf of the persons interested in the lands to be protected or benefited by such embankments or water courses, and all moneys received on account of such lands shall be credited to the cost of the construction and maintenance of such embankments and water courses respectively.

Lands used for obtaining earth, etc, to be at the disposal of Government or Authority and survey thereof

5. Except as otherwise provided in this Act, all plots or parcels of land which, before the commencement of this Act, have been used for the purpose of obtaining earth or other materials for the repair of any public embankment, water-course or embanked tow-path as aforesaid, or which by agreement have been substituted for such lands, shall be deemed to be at the disposal of the

Government or the Authority for such purpose, without payment of compensation for the use or removal of such earth or other materials. The Engineer may cause all such plots or parcels of land to be ascertained, surveyed and demarcated.

Notification

6. The Government may, from time to time, by notification in the official Gazette, declare the limits of any tract within which the provisions of clause (b) of sub-section (1) of section 56 shall take effect. As soon as possible after the said notification, the Engineer shall cause a translation of the notification in the vernacular to be published in the prescribed manner; and the said provisions shall take effect one month after the publication of such translation.

PART II

POWERS OF ENGINEER

Powers of the Engineer

7. Subject to the provisions of Part III, whenever it shall appear to the Engineer that any of the following acts should be done or works (including any work of repair) executed, that is to say:

(1) that any embankment which connects public embankments, or forms by junction with them part of a line of embankments, or that any embankment or water course which is necessary for the protection or drainage of the neighbouring areas, should be taken charge of and maintained by the Government or the Authority;

(2) that any embankment which connects public embankments or forms by junction with them part of a line of embankments or is necessary for the protection of the neighbouring areas, should be repaired;

(3) that any embankment, or any obstruction of any kind, which endangers the stability of a public embankment or the safety of any town or village, or which is likely to cause loss of property by interfering with any water course or with the general drainage or the flood drainage of any tract of land, should be removed or altered;

(4) that the line of any public embankment should be changed or lengthened, or that any public embankment should be renewed, or that a new embankment should be constructed in place of any public embankment, or that any embankment should be constructed for the protection of any lands or for the improvement of any water-course, or that a sluice in any public embankment should be made;

(5) that any sluice or water course should be made, or that any water course should be altered for the improvement of the public health, or for the protection of any village or cultivable land;

(6) that any road which interferes with the drainage of any tract of land should be altered, or that any water course under or through such road should be constructed;

he shall prepare or cause to be prepared estimates of the cost of such works, including such proportion of the establishment charges as may be chargeable to the works in accordance with the prescribed rules or as may be specially directed by the Government or the Authority, together with such plans and specifications of the same as may be required. He shall also prepare or cause to be prepared from the survey map of the district, a map showing the boundaries of the lands likely to be benefited or affected

by the said acts and works, and he shall issue a general notice of his intention to execute or cause to be executed such works.

General notice and filing of objection

8. Such general notice shall be in the prescribed form stating, as far as possible, the prescribed particulars of all lands which are likely to be affected by the proposed work and to be chargeable in respect of the expenses of executing the same and shall be published in the prescribed manner. A copy of the said estimates, specifications and plans together with a copy of the maps aforesaid, shall be deposited in the office of the Engineer and shall be open to the inspection of any person interested who shall be allowed to take copies thereof and to file objections, if any, against the execution of the proposed work, within thirty days from the date of the publication of such notice.

Hearing of objection

9. The Engineer shall, on the day appointed for the hearing, or on any subsequent day to which the hearing may be adjourned, hold an enquiry and hear the objections of any persons who may appear, recording such evidence as may be necessary.

Order after inquiry

10. (1) After holding such inquiry, the Engineer shall proceed as follows, that is to say,

(a) if he considers that the proposed act or work or any modification of the same should not be done or executed, or

(b) if he considers that the proposed act or work or any modification of the same should be done or executed, he shall record his decision to that effect and submit a report to the Project Director of the Authority to whom he is subordinate.

(2) The decision of the Engineer under clause (a) or clause (b) of sub section (1) shall be announced in the prescribed manner.

Appeal from order of the Engineer

11. Any person aggrieved by a decision of the Engineer under section 10 may, within thirty days from the date of its announcement, prefer an appeal to the Project Director of the Authority to whom the Engineer is subordinate. After the expiry of the said period, the Project Director of the Authority shall proceed to consider the report and the appeal, if any, and after making such further inquiry, as he may deem necessary, may record an order confirming, modifying or reversing the Engineer's decision and shall, as soon as possible, forward the report submitted by the Engineer, together with his remarks or order on appeal, if any, for the consideration of the Government or the Authority.

Order of the Government

12. On receipt of such report, Government or the Authority shall proceed to consider the same and shall pass such orders as it deems appropriate. Every order that the proposed work, or any modification thereof, be done or executed shall be notified by the Government in the official Gazette.

Special power conferable by Government

13. Notwithstanding anything contained in this Part, the Government or the Authority may, by a special order passed in respect of any act or work specified in section 7, or by a general order in respect of any class of such acts or works, authorise the Engineer to pass, after such enquiry as is prescribed in section 9, an order that such act or work or any modification thereof may be done or executed without previous reference to any superior authority; or the Government or the Authority may authorise the Project Director of the Authority to pass such order without previous reference to any superior authority:

Provided that every such order passed under the authorisation of the Government or the Authority, as the case may be, shall be subject to the provisions of section 67.

Alteration of road, etc, interfering with drainage

14. (1) Whenever an order shall have been passed in cases falling under clause (6) of section 7 directing that any road owned by a local authority, which interferes with the drainage of any tract of land, be altered, or that any water-course be constructed under or through such road, the Engineer may require such authority to make such alteration or construct such water course, and in the events of its failing to comply with such requisition in such manner and within such time as the Engineer may prescribe, the Engineer may cause the road to be altered or the water course to be constructed by the officers of the Government or the Authority.

(2) The expenses of such alteration or construction shall be borne by the local authority concerned so far as the same shall have been incurred on account of insufficient provisions having been made at the time of the construction of the said road for the natural drainage then existing, and the remainder of the expense, if any, shall be charged upon, and recovered from the owners of the lands benefited, in accordance with the provisions of this Act. If any dispute arises as to the apportionment of expenses under this clause between such authority and the owners of the lands benefited, the dispute shall be decided by the Government or the Authority, whose decision shall be final.

Application for construction of sluice embankment, water courses, etc

15. (1) (a) If any person desires that a bridge, culvert, syphon or sluice be made in any public embankment for the purpose of drainage, or

(b) if, within any area which has been included in a notification under section 6, any person desires that any new embankment be erected, that any existing embankment be lengthened, enlarged, repaired or removed, or that the line of any embankment be altered, or that any new water-course be made, or that any water course be obstructed or diverted, he may make an application in writing to the Engineer.

(2) The application shall contain such particulars of the lands likely to be benefited or affected by the work as may enable the engineer to judge of the advantage which may be derived from the project.

(3) If it should appear to the Engineer that the work applied for is one which may be executed with advantage, the procedure mentioned in the 7th and following sections of this Act shall be followed in respect of the proposed work.

Power of removal of houses, trees, etc

16. Whenever the Engineer shall be of opinion that the removal of any trees, houses, huts or other buildings, situated between a public embankment and the river, is necessary, or that land is required for widening an existing embanked tow path, or for construction of a new embanked tow-path, he shall make a report to that effect to the Deputy Commissioner of the District concerned, accompanied by a detailed statement of the trees, houses, huts or other buildings to be removed or of the land required. The Deputy Commissioner shall submit such report to the Government or the Authority through the Commissioner of the Division in order that proceedings may be taken for obtaining possession of such trees, houses, huts and buildings or land in accordance with the provisions of the Land Acquisition Act, 1894, or other law for the time being in force for the acquisition of land for public purposes.

Procedure where land likely to be benefited or affected are in different areas

17. If any works proposed to be undertaken in accordance with this Act, or the lands which are likely to be benefited or affected by such works, are situated within the limits of different Divisions under the Water Wing of the Authority, the Engineer of any Division within which any portion of such works or land is situated may apply to the Project Director of the Authority of the Circle concerned for authority to proceed in such matter; and the Project Director of the Authority of the Circle, with the concurrence of any other Project Director of the Authority within whose Circle any such lands are situated, may give authority to such Engineer, or to any other Engineer within whose Division any portion of such lands is situated, to carry out all or any proceedings under this Act in respect of all the lands benefited or affected by such works.

Power to make repairs

18. The Engineer may make any repairs in, and may do all acts necessary and proper for the maintenance of, any public embankment, public water course or any other work executed or taken charge of under the provisions of this Act or of any previous similar Act.

Construction of temporary dam, road-way or water courses

19. (1) Whenever any person desires that a temporary road-way should be made over, or that temporary water course should be made through, any public embankment, or that a temporary dam should be constructed in any embanked river or public water course, he shall apply to the Engineer or to any person appointed in that behalf by the Engineers.

(2) Such Engineer or person shall communicate the application with his opinion to the Project Director of the Authority of the area concerned and shall await the Project Director of the Authority order in respect thereof, unless he thinks that there is special reason for the immediate execution of the work, in which case he may execute the same or cause it to be executed without waiting for the orders of the Project Director of the Authority.

(3) The proposed work shall be executed by an officer of the Government or the Authority on the applicant's depositing the amount estimated by the Engineer to be necessary to defray the expenses of, and incidental to, making and removing such road way, or of, and incidental to, making, closing or removing such water course or dam. If the amount deposited is found afterwards to exceed the amount required, such excess shall be returned to the said applicant.

Opening and shutting of sluices

20. Sluices constructed in any public embankment shall be opened or shut only by or with the general or special permission of the Engineer or of the officer in the immediate charge of the embankment, under such orders, either general or special, as he may receive from the Engineer.

Power to enter into and survey lands

21. (1) It shall be lawful for the Engineer, or any person whom he may authorise in writing in that behalf, in order to carry out any of the purposes of this Act, to enter upon and survey, and take levels of any land; to dig or bore into the sub soil; to do all other acts necessary to ascertain whether the land is adapted to the purpose projected by such Engineer; to set out the boundaries of the land proposed to be taken and the intended line of the work proposed to be made thereon; to mark such levels, boundaries and line, by placing marks and cutting trenches; and, where otherwise the survey cannot be completed or the levels taken, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that the Engineer or such person shall not enter into any building or upon any enclosed courtyard or garden attached to a dwelling house without previously giving the occupier thereof at least seven days' notice in writing of his intention to do so, except with the written consent of such occupier.

(2) The Engineer or other person so authorised shall, at the time of such entry, tender payment for all necessary damage to be done as aforesaid, and in case of dispute as to the sufficiency of the amount so tendered, he shall at once refer the dispute to the Deputy Commissioner whose decision thereon shall be final.

Power to take earth, etc, from land

22. Whenever it is deemed requisite to repair any embankment or water course, or embanked tow path maintained by the Government or the Authority, it shall be lawful for the Engineer, or any person authorised in writing in that behalf, to enter in and upon the lands mentioned in section 5, and to take possession of, appropriate and remove any earth or other material from such lands, and to use the same for the purposes of such repairs.

Lands rendered unfit for cultivation

23. When any such land is rendered permanently unfit for cultivation by any such act as aforesaid, the Government shall, upon application for that purpose made by the owner thereof, acquire such lands under the provisions of the Land Acquisition Act, 1894, or other law for the time being in force for the acquisition of land for public purposes.

PART III

PROCEDURE IN CASES OF IMMINENT DANGER TO LIFE OR PROPERTY

Proceedings in emergencies

24. Whenever the Engineer shall be of opinion that any delay in the execution of any act or work specified in section 7 would be attended with grave danger to life or property, he may forthwith execute or cause to be executed such act or work:

Provided that he shall without delay prepare or cause to be prepared the estimates, specifications and plans of such act or work together with a copy of the map as provided in section 7, and shall cause general notice to be given that the act or work mentioned therein has already been commenced; and thereupon such proceedings and inquiries shall be had as in and by Part II of this Act are directed.

Restoration of land, etc

25. Whenever it may have been determined in the final order to be passed on any such enquiry that anything done by the Engineer under the last preceding section was unnecessary, any person who shall have sustained damage by the execution of such works shall receive compensation from the Government or the Authority to be assessed according to the provisions contained in Part IV of this Act; and, on receipt of any application to that effect by the Engineer from any person so affected, the land or the embankments or drainage shall, so far as any alteration thereof shall appear to have been unnecessary, be, at the expense of the Government or the Authority, restored as nearly as possible to the state in which they were when the Engineer commenced to act under the provisions of this Part.

Proceedings in case of lands in different Divisions under Water Wing of Authority

26. If any portion of the land likely to be affected by any work to be undertaken under this Part lies within another Division under the Water Wing of the Authority, the Engineer who causes the work to be executed shall, when commencing upon it, give notice of the same to the Engineer of such other Division under the Water Wing of the Authority; and the provisions of section 17 shall be applicable to all proceedings connected with the work and the cost thereof.

PART IV

ACQUISITION OF LANDS AND COMPENSATION

Acquisition of land

27. Whenever, in the course of proceedings under this Act, save as hereinafter provided, it appears that land is required for any of the purposes thereof, proceedings shall be forthwith taken for the acquisition of such land in accordance with the provisions of the Land Acquisition Act, 1894, or other law for the time being in force for the acquisition of land for public purposes.

Compensation for damages

28. Subject to the provisions of section 5, whenever any land other than land required or taken by the Engineer, or any right of fishery, right of drainage, right to the use of water or other right of property, shall have been injuriously affected by any act done or any work executed under the due exercise of the powers or provisions of this Act, the person in whom such property or right is vested may prefer a claim by petition to the Deputy Commissioner for compensation:

Provided that the refusal to execute any work for which application is made shall not be deemed to be an act on account of which a claim for compensation can be preferred under this section.

Limitation to claims or damages

29. No claim under the last preceding section shall be entertained which shall be made later than two years next after the completion of the work by which such right is injuriously affected.

Procedure for compensation

30. When any such claim is made, proceedings shall be taken for determining the amount of compensation, if any, which should be made and the person to whom the same should be payable, as far as possible, in accordance with the provisions of the Land Acquisition Act, 1894, or other law for the time being in force for the acquisition of land for public purposes.

Matters to be and not to be considered in determining compensation

31. In every such case which is referred to the judge and assessors or to arbitrators for the purpose of determining whether any, and if so, what amount of compensation should be awarded, the judge and assessors or the arbitrators-

(i) shall take into consideration-

(a) the market value of the property or right injuriously affected at the time when the act was done or the work executed,

(b) the damage sustained by the claimant by reason of such act or work injuriously affecting the property or right,

(c) the consequent diminution of the market value of the property or right injuriously affected when the act was done or the work executed, and

(d) whether any person has derived, or will derive, benefit from the act or work in respect of which the compensation is claimed or from any work connected therewith, in which case they shall set off the estimated value of such benefit, if any, against the compensation which would otherwise be decreed to such person; but

(ii) shall not take into consideration-

(a) the degree of urgency which has led to the act or work being done or executed, and

(b) any damage sustained by the claimant, which if caused by a private person, would not in any suit instituted against such person justify a decree for damages.

Acquisition of land in emergency

32. Notwithstanding anything contained in any other law for the time being in force, whenever any land or earth from any land is required for the purposes of any works commenced in pursuance of the provisions of section 24 or for the purposes of section 18 in cases where the Deputy Commissioner shall be of opinion that proceedings for the acquisition of such land, according to the provisions of section 27, would cause delay, he shall cause a proclamation to be issued in the prescribed form giving notice thereof at convenient places in the locality in which such land is situated, whereupon the land shall, subject to the claims for compensation, vest absolutely in the Government or the Authority, free from all encumbrances. The Deputy Commissioner may take actual possession of the land as soon as it so vests in the Government or the Authority.

Claims for compensation in case of acquisition of lands in emergency

33. Whenever any land vests in the Government or the Authority under the provisions of the next preceding section, the Deputy Commissioner shall cause a general notice to be issued in the prescribed form at convenient places on or near the land so vested, stating that the Government or the Authority shall take possession of the land, and that claims to compensation for all interests in such lands shall be made to him.

Service of special notice

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

Determination of compensation for acquisition of land in emergency

35. After service of such notices, proceedings shall be had and taken to determine the amount of compensation to be payable in respect of such land, in accordance with the provisions of the Land Acquisition Act, 1894, or any other law for the time being in force for the acquisition of land for public purposes.

PART V

COST OF WORKS, PROCEEDINGS, ETC.

1. Ascertainment of costs

Embankment in Schedule A

36. (1) The provisions of section 39 and the remaining sections of this Part following it shall not apply-

(i) to any embankment mentioned in Schedule A to this Act; or

(ii) to any embankment or water course which may, under the proviso to section 37, be restored to, or, under section 38, be included in such Schedule save so far as any works or repairs are to be done or executed therein or in relation thereto under the provisions of section 15 or of section 19; or

(iii) to any of such embankments as may hereafter be erected for the protection of lands which, at the commencement of this Act, are protected by the embankments mentioned in the aforesaid Schedule, save so far as the erection of such embankment may protect lands not protected by embankments mentioned in the aforesaid Schedule.

(2) All sums payable in respect of any works or repairs executed in or in relation to the embankments or water-course included in the aforesaid Schedule, except under the provisions of section 15 or of section 19, shall be paid by the Government.

Exclusion from Schedule A

37. If the Government is satisfied, after such enquiry as it may think proper, that it is no more necessary for the public interest to retain any embankment mentioned in Schedule A or any embankment or water-course included therein under the next succeeding section, it may, by notification in the official Gazette, exclude the same from the said Schedule:

Provided that the Government may, if it is subsequently considered necessary, restore the same to the aforesaid Schedule.

Addition to Schedule A

38. The Government may, by notification in the official Gazette, direct that any embankment not included in Schedule A, or any water course, be included therein.

Estimates and specifications to be prepared

39. Subject to the provisions of Part III, before the Engineer undertakes the execution of any repairs under section 18 or of any work other than any new work of which the estimates, specifications and plans have been prepared and deposited in the Engineer's Office for public inspection as provided in sections 7 and 8, he shall prepare the specifications and estimates of the expenses to be incurred in respect of such repairs or work including such proportion of the establishment charges as the Government or the Authority shall direct.

Preparation of further estimates and specification

40. Whenever it appears that the actual expenses to be incurred in respect of any work (including new work) will exceed by one tenth of the estimates of such work, the Engineer shall forthwith prepare further estimates, and if necessary, further specifications.

Estimates, etc, open to inspection

41. All specifications and estimates prepared under the two last preceding sections together with vernacular translations thereof shall be deposited in the office of the Engineer. Any person interested in such works and repairs may examine and take copies of such specifications and estimates.

General notice of receipt of estimates, etc, and objections

42. A general notice of any such specifications and estimates shall be published in the prescribed manner, and in such general notice shall be specified all lands chargeable for, or likely to be affected by, the said works or repairs. Should any objection in regard to such specifications and estimates be preferred by any person within thirty days of publication of such notice, the Engineer shall pass such orders as may appear to him reasonable and proper.

Preparation of accounts and Engineer's certificate

43. As soon as possible after the completion of any works or repairs, the Engineer shall prepare accounts of the actual expenses incurred in executing any works or repairs or of any portion of the actual expenses which may be dealt with separately under this and the following sections, and transmit the same to the Deputy Commissioner.

The Engineer shall sign a certificate stating the amount of all such expenses, and specifying the boundaries of the lands which are benefited or affected by the said works or repairs, and stating generally how and to what extent the lands so specified, or any part of them, are affected.

Any such certificate may be amended at any time before the Deputy Commissioner has made an order charging or apportioning the amount under section 49.

On receipt of such certificate or amended certificate, the Deputy Commissioner shall cause a statement to be prepared of the lands which are benefited or protected by such works and repairs, and, except as otherwise provided in this Act, the said amount shall be recoverable from the owners of such lands in the manner hereinafter provided.

Copies of the said account, certificate and statement shall be deposited in the office of the Deputy Commissioner and may there be examined and copies taken by any person interested.

Notice of receipt of accounts and objections

44. General notice of the receipt and deposit of such accounts, certificates and statements in the office of the Deputy Commissioner shall be given in the manner prescribed.

If, within thirty days of such general notice being given, any interested person objects to the accounts on the ground that the work charged for has not been performed, or that the whole sum charged has not been expended, or that the rates of charge are higher than those mentioned in the estimates, the Deputy Commissioner shall enquire into such objection and pass such orders thereon as may appear to him reasonable and proper.

Total sum payable

45. The Deputy Commissioner shall add to the amount appearing in the said certificate all sums which have been paid or have become payable in respect of the said works and repairs, whether as compensation, costs and expenses under, and incidental to, any proceedings taken or directed to be taken under any provision of this Act, and shall then make an order specifying the total sum found payable and in respect of works done under section 14 or section 19, the persons, by whom, or in respect of the other works, the lands in respect of which the same is payable.

If the order is made in respect of work done under section 14 or section 19, the same shall forthwith be served upon the persons liable to pay; otherwise the Deputy Commissioner shall proceed according to the provisions hereinafter made.

Interest may be charged upon any sum paid as compensation from the date of payment thereof at five per centum, or at such other rate not exceeding five per centum, per annum, as the Government or the Authority may from time to time determine.

2. Liability for costs, apportionment and recovery thereof

Persons liable to pay

46. The total sum found payable under section 45, save so far as is provided in this Act, shall, within a period not exceeding twenty years as the Commissioner of the Division may fix, be paid to the Deputy Commissioner by the owners of the lands benefited or protected by the repairs or works executed and by the persons deemed to be owners under the proviso to clause (f) of section 3.

Notice to be given before apportionment

47. So soon as the total sum payable as aforesaid has been ascertained, the Deputy Commissioner shall cause general notice to be given in the prescribed manner, specifying the lands in respect of which any portion of such total sum will be chargeable. In addition, the Deputy Commissioner shall cause special notices to the same effect to be served, in the prescribed manner, on the owners of lands. Such notices shall make it known that an enquiry will be held on the date and at the place therein named for the purpose of apportioning amongst such owners the said total sum, with interest and the cost of apportionment.

Inquiry

48. (1) In any such enquiry, the Deputy Commissioner shall—

(a) hear the objection of any person who may appear and claim that—

(i) his land, or part of it, has not been benefited, or

(ii) the land shown in his name does not belong to him in whole or in part; and

(b) take down in writing the names of all persons who may claim, or who may be alleged by any party interested to be owners of any lands mentioned in such notice.

(2) In default of appearance of any person referred to in clause (b) of the preceding sub section, the Deputy Commissioner shall issue and serve a notice in the prescribed manner calling on him to appear at the date and place therein mentioned, and to show cause against being included in the order of apportionment to be made therein, and shall adjourn the enquiry till such date.

Apportionment amongst owners of lands

49. At such or any subsequently adjourned inquiry, the Deputy Commissioner shall charge the owners concerned with the total amount payable and shall apportion the same amongst them, either—

(a) rateably in proportion to the respective benefits derived by such lands from such repairs or works; or

(b) in proportion to the areas of lands benefited or protected thereby.

Payment of amount apportioned

50. The amount charged and apportioned under the next preceding section shall be payable in equal instalments on such days as the Commissioner of the Division may direct:

Provided that not more than four instalments shall be payable in any one year.

Interest payable on amount apportioned

51. Interest shall be charged from the date of apportionment on the amount apportioned, less any instalment of such amount paid from time to time. The interest so charged shall be at the rate of five

per centum, or at such rate, not exceeding five per centum, per annum, as the Government or the Authority may from time to time determine.

Apportionment of further expenses

52. If after the apportionment of the expenses of any works and repairs as above prescribed, any expenses not included in such apportionment shall be found to have been paid or to have become payable on account of the said works or repairs, whether as compensation or otherwise, the Deputy Commissioner may proceed to apportion such further expenses in the manner in this Part provided.

Final order of apportionment and publication thereof

53. (1) On the completion of any charge or apportionment under this Act, the Deputy Commissioner shall make an order specifying-

- (i) the lands in respect of which any sum charged or apportioned is payable;
- (ii) the sums payable in respect of each of the instalments of such sums; and
- (iii) the dates on which such sums are payable.

(2) The Deputy Commissioner shall cause such order to be published in the manner prescribed for the information of all persons concerned.

Recovery of sums apportioned

54. If any sum payable to the Deputy Commissioner, or any instalment thereof, be not, pursuant to the said order, paid the same with interest may be recovered as a public demand under the provisions of the 4[* * *] Public Demands Recovery Act, 1913, or any similar Act for the time being in force. Any such sum shall be a charge on the lands in respect of which it is apportioned, other than the lands in relation to which a person is deemed to be owner under the proviso to clause (f) of section 3, and shall not be avoided by any transfer of such lands.

PART VI

PENALTIES

Penalty for obstructing persons in exercise of powers under this Act

55. Whoever wilfully obstructs any person duly authorised under this Act in removing or levelling any embankment, house, hut or other building, or in the lawful exercise of any of the powers conferred by this Act, shall be liable to imprisonment of either description for a term which may extend to six months, or to fine which may extend to two hundred rupees.

Penalty for unauthorised interference and abetment thereof

56. (1) Any person,-

- (a) who, without the previous permission of the Engineer, erects, or causes or wilfully permits to be erected, any new embankment, or adds to any existing embankment, or obstructs or diverts, or causes or wilfully permits to be obstructed or diverted, any water course, if such act interferes or is likely to interfere with, counteract or impede any public embankment or any public water-course;

(b) who, within the limits of the tract included in any prohibitory notification under section 6, without the previous permission of the Engineer, erects, or causes or wilfully permits to be erected, any new embankment, or adds to any existing embankment, or obstructs or diverts, or causes or wilfully permits to be obstructed or diverted any water course; and

(c) who abets any such act as is mentioned in clauses (a) and (b), shall be liable, on conviction, to fine which may extend to five hundred rupees or, in default of payment, to imprisonment of either description for a period not exceeding six months.

(2) This section shall not render unlawful the repair of a breach or cut in an embankment so as to restore the embankment to the same dimensions as it had immediately before such breach occurred or cut was made; provided that-

(i) such cut was not made under the orders of the Engineer;

(ii) such repair is made within one year after such breach occurred or cut was made; if, however, the repair cannot be completed within this period, the sanction of the Engineer shall be obtained to the completion thereof;

(iii) such breach or cut forms a gap or, if unrepaired may form a gap between two portions of an existing embankment which were continuous before the breach occurred or cut was made;

(iv) the part of the embankment, in which the breach occurred or cut was made, was not erected or added to in contravention of this section or of any law for the time being in force.

Penalty for injuring embankment, etc

57. Whoever, without due authority in this behalf, cuts through or attempts to cut through any public embankment, or destroys or attempts to destroy any such embankment, or opens or shuts or obstructs any sluice in any such embankment or any public water course, shall be liable to imprisonment of either description for a term which may extend to one month or to fine which may extend to two hundred rupees.

Penalty for diverting rivers or grazing cattle on embankments

58. Whoever, without the permission of the officer in immediate charge of the embankments, makes any dam or other obstruction for the purpose of diverting or opposing the current of a river or water course wherein or whereon there are public embankments; or,

When required by the Engineer, refuses or neglects to remove any such dam or obstruction so made by him; or, without the permission of the Engineer or of the officer in immediate charge of the embankment previously obtained, cuts or otherwise alters the banks of any embanked river or water course or removes the earth from any public embankment or drives stakes into it, or, by any other wilful act, destroys or diminishes the efficiency of such embankment, or causes or knowingly and wilfully permits any cattle to graze upon any such embankment, or tethers or causes or wilfully permits any cattle to be tethered upon any such embankment or root up any grass or other vegetation growing on any such embankment, shall be liable to imprisonment of either description for a term which may extend to six months or to fine which may extend to two hundred rupees.

Removal of obstruction and repair of damage

59. The Magistrate, while convicting any person of an offence under any of the three last preceding sections, may order that such person shall remove the embankment or obstruction, or repair the damage, in respect of which conviction is held, within a period fixed by such order.

If such person neglects or refuses to obey such order within the period fixed, the Magistrate may cause such embankment or obstruction to be removed and such damage to be repaired by the Engineer; and the cost of such removal or repair shall be levied from such person, in addition to any other penalty, in manner provided in sections 386, 387 and 389 of the Code of Criminal Procedure, 1898.

PART VII

MISCELLANEOUS

Powers regarding examination of witnesses, etc

60. In any enquiry or appeal under this Act, the Engineer, the Project Director of the Authority, the Deputy Commissioner and the Authority shall have the same powers as those conferred on Courts by the Code of Civil Procedure, 1908, of summoning and examining of Act witnesses and compelling the Production of documents.

Bar to impeachment of proceedings

61. No proceedings under this Act shall be impeached or affected by reason of any mistake in the name of any person thereby rendered liable to pay any sum of money, or in the description of any land in respect of which such person is rendered liable to pay, provided the provisions of this Act and the rules made thereunder are in substance and effect complied with; and no proceedings under this Act shall, for want of form, be quashed or set aside in any Court of Justice.

Appeals from orders

62. Every order passed by the Engineer in respect of applications made under section 15 and every order passed by the Engineer under section 42, shall be appealable to the Project Director of the Authority concerned, and every order passed by the Deputy Commissioner under section 44 or section 53, shall be appealable to the Commissioner of the Division; but no appeal shall lie under this section against any order unless the same be presented within thirty days from the date of the order.

General control of Engineers and Project Directors

63. The powers conferred on the Engineer under this Act shall be exercised subject to the general control and orders of the Project Director of the Authority, to whom he is subordinate, and the powers of the Project Director of the Authority shall be exercised subject to the general control and orders of the Commissioner, Water Development of the Authority.

General control

64. All the powers of a Deputy Commissioner under this Act shall be exercised under the general control and orders of the Commissioner of the Division, and all the powers of the Commissioner shall be subject to the similar control and orders of the Board of Revenue.

Disposal of land not required

65. Whenever the maintenance of any public embankment, or the retention of any land appropriated to the purposes thereof, may no longer be required, such land shall be disposed of by the Deputy Commissioner in such manner and subject to such conditions as may be prescribed.

Delegation of powers of Collector and Engineer

66. (1) The Deputy Commissioner or Engineer may delegate any of his powers to any officer subordinate to him, but any order passed by such officer in exercise of any of the delegated powers shall, on the presentation of a petition by the aggrieved person within thirty days of such order, be subject to revision by the Deputy Commissioner or Engineer, as the case may be.

(2) An order passed by the Deputy Commissioner or Engineer under sub section (1) shall be subject to the foregoing provisions of this Act as if it were an original order passed by them.

Power of revision of the Government

67. Any order passed by any authority under any provision of this Act shall be subject at any time to be varied or set aside by the Government.

Public servant

68. All officers empowered to act under any provision of this Act and all persons authorised by such officers shall be deemed to be public servants within the meaning of section 21 of the 5[* * *] Penal Code.

Jurisdiction

69. All offences created by this Act shall be enquired into and tried by a Magistrate of the first or second class.

Bar to suits, appeals and applications

70. Notwithstanding anything contained elsewhere in this Act or in any other law for the time being in force, no civil Court shall entertain any suit, appeal or application relating to any act or work, the execution whereof is or has been proposed or undertaken by the Engineer under the provision of section 24.

Savings

71. (1) The cost payable in respect of any act, work or repair which has, before the commencement of this Act, been completed under the provisions of the enactments repealed by section 2, shall, notwithstanding such repeal, be recoverable under the provisions of the enactments so repealed.

2) Any act or work of the nature referred to in section 7, or any repair commenced under the provisions of the enactments repealed by section 2, which remains pending on the date of the

commencement of this Act, shall be deemed to have been commenced under the corresponding provision of this Act and shall be continued, so far as may be, in accordance with the provisions of this Act.

Indemnity

72. 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.

Power of Government to make rules

73. (1) The Government may, after previous publication, make rules to carry out the purposes of this Act.

(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 regulation of the proceedings of any officer who, under any provision of this Act, is required or empowered to take action in any matter;

(b) the manner of demarcation of plots or parcels of land under section 5;

(c) the form of any notice, notification, proclamation or order required to be served or published under this Act and the manner of service or publication thereof;

(d) the fixation of the proportion of establishment charges under sub section (6) of section 7;

(e) the person by whom, the time, place or manner at or in which anything for the doing of which provision is made in this Act, shall be done;

(f) the fee payable for taking copies of estimates, specifications, statement and other documents; and

(g) the amount of any charge made under this Act.

Excluding from operation of the Act

74. Nothing in this Act shall apply to any embankment, land or water course which is under the operation of any of the Acts mentioned in Schedule B to this Act.

1 Throughout this Act, the word "Bangladesh" was substituted for the words "East Pakistan" by Article 5 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972)

2 Throughout this Act, the word "Government" was substituted for the words "Provincial Government" by Article 8 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972)

3 The word "Bengal" was omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972)

4 The word "Bengal" was omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972)

5 The word "Pakistan" was omitted by Article 6 of the Bangladesh (Adaptation of Existing Laws) Order, 1972 (President's Order No. 48 of 1972)