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The Assam Embankment and Drainage Act, 1953

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**THE ASSAM EMBANKMENT AND DRAINAGE ACT,
1953**

[ASSAM ACT No. I OF 1954]

An Act to provide for better provision for the construction, removal and upkeep of embankments and for the drainage and improvement of lands in Assam.

Preamble. WHEREAS it is expedient to replace the existing Act by Assam Act a new law with better provisions for the construction, main- VII of 1941. tenance, management, removal and control of embankment and for the drainage and improvement of lands in Assam.

It is hereby enacted as follows :

Short title, extent and commencement. 1. (1) This Act may be called the Assam Embankment and Drainage Act, 1953.

(2) It extends to the whole of Assam.

(3) It shall come into force on such date as the State Government may specify by notification in the Official Gazette in that behalf.

Definitions. 2. In this Act, unless there is anything repugnant in the subject or context,—

“Cattle”. (i) “Cattle” include also elephants, buffaloes, horses, ponies, mules, asses, pigs, sheep and goats.

“Cost”. (ii) “Cost” means the capital cost of a work including that of the connected survey but does not include any maintenance or interest charges.

“Court”. (iii) “Court” means a principal Civil Court of original jurisdiction.

“Deputy Commissioner”. (iv) “Deputy Commissioner” means the Deputy Commissioner of the district in which any embankment or drain is situated or proposed and includes the Additional Deputy Commissioner of the said district or any other officer empowered by the State Government to discharge the functions of a Deputy Commissioner under this Act.

“Drain”. (v) “Drain” includes dongs and irrigation channels in the plains, a tunnel, a culvert, a ditch, a channel, a canal, a syphon, a sluice or artificial water course of any other description and any other device for excluding, regulating or retaining water, rain water, flood water or sub-soil water.

“Embankment”. (vi) (a) “Embankment” means any embankment, public or private, constructed for the purpose of excluding, regulating or retaining water and includes all earthen or masonry-walls, dams, spillways, piers, groins, sluices, syphons, water-gauges, bench-marks and other works connected with any such embankment and land appurtenant thereto; but does

not include any "ali" or ridge surrounding or dividing a field or any public or private road.

(b) "Private Embankment" means any embankment which is not a public embankment. "Private Embankment".

(c) "Public Embankment" means an embankment vested in the State Government or under the control and administration of the State Government or any Local Board, Municipal Board or Town Committee. "Public Embankment".

(vii) "Embankment Officer" means the Executive Engineer of any Division and any other officer not below the rank of Executive Engineer whom the State Government may declare to be such. "Embankment Officer".

(viii) (a) "Occupier" means the person residing in or in possession of any house, land or place. "Occupier".

Regulation
I of 1886.

(b) "Owner" shall include proprietors and settlement holders as defined in the Assam Land and Revenue Regulation, 1886 and every intermediate tenant between the proprietor or settlement holder and the occupier and with respect to unsettled waste land, shall mean State Government. "Owner".

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

3. (i) Whenever it appears to the State Government that any embankment or drainage work is likely to be necessary in any locality, a notification to that effect shall be published in the Official Gazette, and the Deputy Commissioner shall cause public notice of the substance of such notification to be given at convenient places in the said locality on a date not less than 2 months in advance of taking up the execution of works. Right of entry upon private land and payment for damage.

(ii) Upon publication of the notification under sub-section (i) it shall be lawful for any officer generally or specially authorised by the State Government in this behalf and for his servants and workmen to enter upon, survey and take levels of any land, whether covered with water or not; to dig or bore into the sub-soil to make and set up suitable land marks, level marks and water gauges and do all acts necessary for investigation or survey of a scheme, or collection of information and data under this Act.

(iii) When for the purpose of such inquiry it appears to the officer authorised under sub-section (ii) that it is indispensable to cut down and clear away any part of any standing crop, fence, trees or jungle, he or any other person acting under his orders may do so provided that as far as possible cutting of crops should be avoided.

(iv) Every proprietor and settlement holder of any land and every person entitled to receive rent in respect of any land or occupying any land as a tenant shall on the written requisition of the Embankment Officer furnish direct such information or assistance as may be required by the Officer for

the purpose of collecting necessary data for any proposal under the Act :

Provided that if the aforesaid Officer or person acting under his orders proposes to enter into any enclosed court or garden attached to a dwelling house, he shall previously give the occupier of such court or garden at least 2 days' notice in writing of his intention to do so.

(v) The Officer so authorised shall pay or tender payment for all damages done as aforesaid within one month of such entry and in case of any dispute as to the sufficiency of the amount so paid or tendered or as to the right to receive such compensation, the matter shall be referred to the Deputy Commissioner for decision on an application being made by the person entitled to receive compensation within 6 months of the date on which the payment is tendered or made. Thereupon the Deputy Commissioner shall make a decision which shall be based on an enquiry held either by himself or by a Gazetted Officer not below the rank of an Extra Assistant Commissioner authorised by him in this behalf.

(vi) A person aggrieved by the decision of the Deputy Commissioner may within one month of the decision apply to the Deputy Commissioner for referring the matter to the Court.

Construction,
removal or
alteration of
embankments
or removal
of obstruction.

4. (i) The Embankment Officer shall have power to initiate a scheme for

(a) removing or altering any embankment or drain or any obstruction of any kind which in his opinion endangers the safety of any town or inhabited area, or is likely to cause damage to crop and extensive loss of property by interfering with the general drainage or the flood drainage of any tract of land ; and

(b) constructing any embankment or drain, which in his opinion will improve the land and cultivation of an area or the absence of which in his opinion endangers the safety of any inhabited area or cause flooding or failure of crops ;

(ii) For the purpose of initiating a scheme as above, the Embankment Officer shall make preliminary investigation and reconnaissance surveys as he finds necessary to come to a conclusion regarding the feasibility and soundness of the scheme before he submits the same to the State Government with his recommendations. He will also obtain the opinion of the District Heads of the Departments of Revenue, Agriculture and Public Health to the proposals, who shall furnish their opinion to the Embankment Officer when sought by him.

5. (i) (a) If any person or body of persons desires that a bridge, culvert, syphon, sluice or any other device be made in any public embankment for the purpose of drainage or irrigation; or

Application for a drain or a new embankment or a sluice in a public embankment.

(b) if within any local area to which section 16 (ii) has been applied, any person or body of persons desires that any new embankment or drain be constructed or that any existing embankment or drain be altered or removed ;

Such person or body of persons shall make an application in writing to the Deputy Commissioner of the District in which such embankment or drain is situated or proposed.

(ii) At the time of making such application an applicant unless he is applying on behalf of a body of persons or the general public, shall deposit the sum of Rs. 50 towards the expenses of survey, etc., necessary to investigate the soundness of the proposal. Provided that if during the enquiry it appears that the proposal is likely to benefit an individual only and the aforesaid sum of Rs. 50 has not already been paid, the Deputy Commissioner or the Embankment Officer may call upon such individual to deposit the said sum within a specified time and on his failure to do so, no action shall be taken on his application.

Fees on application.

6. (i) When an application has been made to the Deputy Commissioner under section 5, he shall forward the application to the Embankment Officer and if the Embankment Officer after necessary enquiry considers the petition as *bona fide* and the proposals put forward therein as sound, beneficial and feasible from technical point of view he shall forward the proposals to the State Government with his recommendations sending a copy to the Deputy Commissioner for information.

Procedure for enquiry.

(ii) The State Government may, in certain cases, receive such application direct from the public and forward such application to the Embankment Officer calling for report on the feasibility, soundness or otherwise of the proposal from technical point of view subject to his being satisfied after enquiry that the application is *bona fide* and the proposal embodied therein is likely to be beneficial.

7. Whenever from any action taken under sections 4, 5 and 6 it appears to the State Government that any embankment or drainage work is necessary for the improvement of any lands or for the proper cultivation or irrigation thereof or for protection from floods, other accumulation of water or from erosion by a river or for the improvement of the health of any tract, the State Government may cause a detailed survey for the Scheme to be made and a scheme for such embankment or drainage work to be drawn up by the Embankment Officer and published together with an estimate of its cost and a statement of such cost as the State Government propose to recover by imposition of betterment cess or water rate and the period during which such imposition will be in force. Provided that before taking

Preparation of Schemes for improvement of drains, embankments and flood protection.

any action under this section the State Government shall consult the Railway or any Local Body which is directly affected by any such scheme.

Calling
for objec-
tions.

8. As soon as possible after the publication of a scheme under section 7, a Deputy Commissioner or where the Scheme affects persons in more than one District, the Commissioner of Divisions, shall invite objections to the Scheme if any, by a proclamation, allowing one month's time, from the public and any Railway Administration, Local Board, Municipality or Town Committee likely to be directly affected. On receipt of any objections the Deputy Commissioner or the Commissioner, as the case may be, shall publish a notice stating the place, date and time at which an enquiry will be held for the purpose of ascertaining the validity or otherwise of the objections. After such enquiry has been completed, the Deputy Commissioner or the Commissioner, as the case may be, shall forward the objections alongwith his recommendations to the State Government.

The Deputy Commissioner or the Commissioner, as the case may be, at the time of hearing the objections, shall obtain the advice of the Embankment Officer on technical points.

Completion
of scheme.

9. After taking into consideration any objections and recommendations made under section 8, the State Government may direct that the Scheme drawn up under section 7 with such consequential modifications as Government deem necessary, be put into operation and completed forthwith or within such period as may be fixed.

Disposal of
claims to
compensation.

10. (i) Whenever any :—

- (a) obstruction is removed or embankment or drain removed, constructed or altered under section 4 (i) (a) and (b) ; or
- (b) embankment or drainage work carried out under section 9 ; or
- (c) emergent work undertaken under section 16(v) and in direct consequence thereof there has occurred stoppage or diminution of supply of water in any existing drain or accumulation or diminution of water in any place, resulting in deterioration in the productivity of any land or any other loss or damage arising from any of the causes referred to in clauses (a), (b) and (c) which is capable of being estimated ; or
- (d) right of fishery, right of drainage, right of use of water or other right of property, other than those as mentioned above has been injuriously affected; any person feeling aggrieved by any of the causes referred to in clauses (a), (b), (c) and (d) may claim compensation before the Deputy Commissioner within two years from the date of physical completion of the work as notified by the State Government and

the Deputy Commissioner shall award such compensation as he considers fair and reasonable after enquiry in the prescribed manner.

In determining the amount of such compensation regard shall be had to the diminution of the market value at the time of occurrence of loss or damage of the property in respect of which compensation is claimed; and where such market value is not ascertainable the amount of compensation may be reckoned by taking into account the extent of diminution of estimated annual net profit of such property.

(ii) An appeal against the decision of the Deputy Commissioner shall lie to the Court but no appeal shall be entertained unless it is made within 90 days of the date of the Deputy Commissioner's decision.

(iii) No claim for compensation shall be entertained after the expiry of two years from the date of the completion as notified unless the Deputy Commissioner is satisfied that the claimant had sufficient cause for not making the claim within such period :

Provided that no compensation shall be awarded for any damage caused by :—

- (a) deterioration of climate or soil ;
- (b) stoppage of irrigation or of the means of drifting timber or watering cattle ;
- (c) displacement of labour ;
- (d) stoppage or diminution or increase of percolation or floods.

11. For all works carried out under section 9 the State Government may, unless they decide otherwise in specific cases, levy on settled land an annual water rate or betterment cess and on unsettled Government waste land improved by the works, a premium payable on settlement of such land, and an annual water rate or betterment cess so as to realise the initial cost of the Scheme in full or in part and that of its maintenance in the manner as Government may prescribe. The total annual water rate, betterment cess or premium to be levied under a scheme shall be fixed as nearly as possible so as not to exceed the following limits :—

- (i) Six per cent per annum on the first cost of the said works adding thereto the estimated yearly cost of maintenance and supervision of the same.
- (ii) Such rate may be varied from time to time within such maximum by the State Government.
- (iii) Any rate chargeable under the Act shall be termed either "Water rate" or "Betterment Cess" as the case may be and shall be recoverable in the same manner as land revenue :

Provided that if the State Government be satisfied that due to any unforeseen circumstances or natural causes any area or part thereof falling under a Scheme ceases to receive

any benefit in full or part from such Scheme the State Government may by a notification in the Official Gazette abate or reduce the betterment cess or water rate for so much of the area as may be determined.

Levy of
rate or
cess on
works
existing
from before.

12. It shall be lawful for the State Government to levy a similar Water Rate or Betterment Cess on land improved by Embankment and Drainage Schemes executed by the Government before the commencement of this Act and take action under section 13 for such lands as if this Act has been in force from before.

Preparation
of Schedule
of lands.

13. As soon as possible after a Scheme comes into operation under this Act the State Government shall get a Schedule of lands chargeable under the Scheme as required under section 11 prepared by the Deputy Commissioner.

The Deputy Commissioner shall in consultation with the Embankment Officer cause to be prepared from cadastral or other maps of the district a map showing the boundaries of land that has been improved under the Scheme and a Schedule of estates shown therein together with rates proposed to be charged per bigha according to the degree of benefit derived.

The Deputy Commissioner shall publish the Schedule mentioned above, in such places as may be deemed necessary and then invite objections, if any, by a proclamation allowing one month's time. On receipt of any objection the Deputy Commissioner shall publish a notice stating the place, date and time at which the enquiry will be held for the purpose of ascertaining the validity of the objections. Any person aggrieved by the decision of the Deputy Commissioner may appeal to the Commissioner within one month from such decision. After the period of limitation and in case there is an appeal, after the decision of the Commissioner, the Deputy Commissioner shall forward the Schedule with any consequential modifications made therein to the State Government for approval.

After such approval of the rates and schedule of the lands with or without any modifications, found necessary by the State Government, the rates will become payable from such date as may be specified.

Vesting of
certain
right in the
State.

14. The right of access to and maintenance of any embankment or drain or portion thereof, constructed, improved or repaired under any provision of this Act, shall vest in and be under the control and administration of the State Government.

Penalties
for trespass
on embank-
ments or
drains.

15. (i) Any person who without the permission of the Embankment Officer—

- (a) grazes any cattle or allows any cattle belonging to him or in his charge to trespass on any public embankment or drain or
- (b) cuts or uproots or otherwise damages any trees, shrubs or grass growing on any public embankment or drain or

- (c) takes any vehicle over or across any public embankment or drain or
- (d) damages or obstructs any embankment or drain constructed, repaired or maintained under the provisions of this Act or
- (e) constructs, removes or alters any embankment or drain in such manner as will adversely affect the area served by the scheme under this Act

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

(ii) No person shall, without due authority, cut through any embankment or drain or destroy or attempt to destroy, any such embankment or drain or open or shut or obstruct any sluice in any such embankment or drain or any public water course ; and every person who commits any breach of the provisions of this sub-section shall be liable to imprisonment of either description which may extend to a term of three years and to a fine which may extend to one thousand rupees.

16. (i) Whenever it appears to the State Government¹ that in any area any public or private embankment, drain or other works ancillary thereto require to be protected, maintained or improved or that extension, construction, removal, repairs or alteration of any such works should be regulated in public interest, the Government may, by notification in the official gazette, apply the provision of this section to such area.

(ii) Any person who, without the permission of the Deputy Commissioner or the Embankment Officer constructs, removes, alters or damages any embankment or drain, within the limits of any local area to which this section has been applied shall be punished with imprisonment of either description which may extend to a term of three years and to a fine which may extend to one thousand rupees.

(iii) The Deputy Commissioner or the Embankment Officer may by notice require any person, who constructs or alters any embankment or drain in contravention of the provisions of sub-section (ii) above to remove the same within a reasonable time to be specified in the notice.

(iv) If any embankment or drain the removal of which has been required by notice under sub-section (iii) is not removed within the time specified in the notice, the Deputy Commissioner or the Embankment Officer may cause the same to be removed.

(v) In case of grave and imminent danger to life or property the Embankment Officer or Deputy Commissioner may forthwith get unauthorised embankment or drain or any obstruction to an embankment or drain removed and notify the persons concerned thereafter.

¹Penalties for constructing, maintaining, etc., an embankment or drain.

Notice for removal of embankment or drain and penalties for neglect of such removal.

(vi) The cost of the removal of any embankment or drain removed under the provision of sub-section (iv) shall be recoverable as an arrear of land revenue either from the person who constructed or altered the embankment or drain or who caused it to be constructed or altered or jointly and severally from both such persons as the Deputy Commissioner may determine.

17. In case of any accident happening or being apprehended to any embankment or drain, any Embankment Officer or any person acting under his general or special orders in this behalf may enter upon any land adjacent to such embankment or drain and may execute all works which may be necessary for the purpose of repairing damages or preventing such accident.

In every such case the Embankment Officer or person acting under his general or special orders shall tender compensation to the owner or occupier of the said land for all damages done thereto. If such tender is not accepted the Embankment Officer shall refer the matter to the Deputy Commissioner who shall proceed to award compensation for the damages done in accordance with the provisions of sub-section (v) of section 3 of this Act.

Prior consultation with the Public Works and Public Health Departments.

18. (i) In deciding on all questions involving technical matters under the provisions of this Act, the Deputy Commissioner shall first consult the Public Works Department.

(ii) Before any capital work is undertaken the Public Health Department shall be consulted.

Certain persons deemed to be public servants.

19. Every person authorised to function under any Act XLV provision of this Act shall be deemed to be a "public servant" of 1860 within the meaning of the Indian Penal Code.

Power to make rules.

20. The State Government may subject to the condition of previous publication make rules generally to carry out the provisions of this Act and in particular to regulate the following matters :—

- (a) 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 in which any order or public notice issued under the provisions of this Act shall be published ;
- (c) the manner in which assessment and recovery of costs under this Act shall be made.

Indian Railways Act, 1890 (Act IX of 1890) not affected.

21. Nothing in this Act shall affect the provisions of the Act IX of 1890. Indian Railways Act, 1890.

Repeal.

22. The Assam Embankment and Drainage Act, 1941 is hereby repealed. Assam Act VII of 1941.