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Bihar Soil and Water Conservation and Land Development Act, 1970

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BIHAR SOIL AND WATER CONSERVATION AND LAND DEVELOPMENT ACT, 1970

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CHAPTER I

Preliminary

1. **Short title, extent and commencement**—(1) This Act may be called the Bihar Soil and Water Conservation and Land Development Act, 1970.

(2) It extends to the whole of the State of Bihar.

(3) It shall come into force on such date and in such areas, as the State Government may, by notification in the Official Gazette, appoint and it may appoint different date for different areas and for different provisions.

2. **Definitions**—In this Act, unless the context otherwise requires,—

(a) "Board" means the Bihar Soil and Water Conservation and Land Development Board constituted under Section 5;

(b) "Collector" means the Collector or the Deputy Commissioner of a district and

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includes any officer appointed by the State Government to exercise the powers and discharge the functions of a Collector under all or any of the provisions of this Act;

- (c) "District Committee" means the District Soil and Water Conservation and Land Development Committee constituted under Section 7;
- (d) "District Development Committee" means a District Development Committee constituted under the executive orders of the State Government for a district for which no Zila Parishad has been constituted;
- (e) "District Soil Conservation Officer" means the District Soil Conservation and Land Development Officer for the district and includes any officer appointed by the State Government to exercise the powers and discharge the functions of a District Soil Conservation Officer under this Act.
Provided that one person may be appointed to be the District Soil Conservation Officer for more than one district or more than one person may be appointed to be District Soil Conservation Officers in the same district;
- (f) "owner" means any person or persons holding land severally, or jointly or in common as a raiyat or an occupancy under raiyat of a mortgagee of such lands with possession;
- (g) "Panchayat Samiti" means a Panchayat Samiti constituted under the Bihar Panchayat Samities and Zila Parishads Act, 1961 (Bihar Act VI of 1962), and includes a Block Development Committee constituted under the executive orders of the State Government for an area for which no Panchayat Samiti has been constituted;
- (h) "plan" means a plan for the purpose of soil and water conservation and land development prepared under this Act;
- (i) "prescribed" means prescribed by rules made under this Act;
- (j) "Soil Conservation Officer" means the Soil Conservation Officer of the area and includes any officer appointed by the State Government to exercise the powers and discharge the functions of a Soil Conservation Officer under this Act;
- (k) "Subdivisional Officer" means the officer in charge of the subdivision of a district;
- (l) "waste land" means any land which for a period of not less than five continuous years has been lying waste on account of soil erosion, water logging, salinity, accumulation of sand, growth of weeds or any other cause or which for the period aforesaid has been lying uncultivated;
- (m) "work" means any work of public utility constructed, erected or carried out or to be carried out under a plan and includes a pasture or forest provided for or raised under a plan;
- (n) "Zila Parishad" means a Zila Parishad constituted under the Bihar Panchayat Samities and Zila Parishads Act, 1961 (Bihar Act VI of 1962), and includes a District Development Committee;
- (o) the expression "cattle", "forest produce", "timber" and "trees" have the meanings respectively assigned to them in the Indian Forest Act, 1927 (16 of 1927).

CHAPTER II

Notification of Areas and Control over them

3. **Notification of areas**—Whenever the State Government considers that in any area it is expedient to provide for the conservation of soil and water or for the prevention or mitigation of erosion of lands, it may, by notification in the Official Gazette, declare the area to be a notified area for the purposes of this Act.

4. **Power to regulate, restrict or prohibit certain matters within notified areas**—In respect of any notified area or part thereof, the State Government may, by order published in the Official Gazette, restrict or prohibit,—

- (a) the clearing or breaking up of land for cultivation or the cultivation of land;
- (b) the quarrying of stone or burning of lime, or manufacturing and burning of bricks;
- (c) the cutting of trees and timber, or the collection or removal or subjection to any manufacturing process of any forest produce for any purpose;
- (d) the setting on fire of trees, timber or forest produce;
- (e) the admission, herding, pasturing and retention of cattle including goats, sheep and pigs;
- (f) the erection of buildings in such area; and
- (g) any other act which hampers the preparation or execution of the plan.

CHAPTER III

Constitution of the Board and the District Committees

5. **Constitution of the Board**—(1) The State Government may, for the purpose of carrying out the provisions of this Act, by notification in the Official Gazette, constitute, for the State of Bihar, a Board called the Bihar Soil and Water Conservation and Land Development Board.

(2) The Board shall consist of the following members—

- (a) the Minister in charge of Agriculture, and if there is no Minister in charge of Agriculture, any person nominated by the Governor, who shall be the Chairman;
- (b) the Chairman of the State Panchayati Raj Board established under the Bihar Panchayat Samities and Zila Parishads Act, 1961 (Bihar Act VI of 1962), if any;
- (c) the Development Commissioner;
- (d) the Agricultural Produce Commissioner;
- (e) the Director of Agriculture;
- (f) the Director of Soil Conservation;
- (g) the Chief Conservator of Forests;
- (h) the Chief Engineer (Irrigation);
- (i) five members of the Bihar Legislative Assembly and two members of the Bihar Legislative Council to be nominated by the State Government.

(3) The Director of Soil Conservation shall be the Secretary of the Board.

(4) The Board may invite any other person or persons to attend meetings of the Board.

(5) The term of office of the members referred to in clause (i) of sub-section (2) shall be three years or such shorter period as the State Government may fix:

Provided that if a member nominated under clause (i) of sub-section (2) is unable by reason of his death, resignation or otherwise to complete his full term of office, the vacancies so caused shall be filled by fresh nomination and the person nominated to fill a casual vacancy shall hold office only for the remainder of the term for which the member, whose place he takes, was nominated.

(6) If there is a difference of opinion amongst the members of the Board regarding any matter under this Act, the decision of the majority of the members present shall prevail:

Provided that when their opinion is equally divided, the Chairman shall exercise a casting vote.

(7) A non-official member may at any time, by notice in writing to the Chairman, resign his office.

(8) All communications and orders of the Board shall be issued by the Secretary or by such officers subordinate to him as may be authorised by the Board in this behalf.

(9) No act or proceeding of the Board shall be deemed to be invalid by reason merely of any vacancy in or any defect in the constitution of the Board.

Functions of the Board—The functions of the Board shall be—

- (a) to make recommendations to State Government regarding policies for soil and water conservation measures in the State;
- (b) to make recommendations to the State Government as to the areas for which soil and water conservation and land development plans may be prepared;
- (c) to consider and approve draft plans to be placed before the Board under the rules made by the State Government under Section 28;
- (d) to perform such other functions as may be specified in this Act or in the rules made thereunder.

Constitution of District Committee—(1) For every district in which this Act shall be in force the State Government shall by a notification in the Official Gazette, constitute a committee called the District Soil and Water Conservation and Land Development Committee consisting of the following members—

- (i) the Collector, who shall be the Chairman;
- (ii) the Adhyaksha, Zila Parishad;
- (iii) the District Soil Conservation Officer;
- (iv) the District Agricultural Officer;
- (v) the Divisional Forest Officer or Officers;
- (vi) the Subdivisional Officer of the Subdivision to which the scheme relates;
- (vii) four members of the Zila Parishad to be nominated by the Adhyaksha from among the members of the Standing Committee constituted under clause (ii) of sub-section (1) of Section 42 of the Bihar Panchayat Samities and Zila Parishads Act, 1961 (Bihar Act VI of 1962), or four non-official members of the District Development Committee to be nominated by the Committee where no Zila Parishad has been constituted.

(2) The Committee may invite any person or persons to attend meetings of the Committee.

(3) In the absence of the Collector the Committee shall elect a Chairman for the meeting.

(4) The District Soil Conservation Officer shall be the *ex-officio* Secretary of the District Committee.

(5) If there is a difference of opinion amongst the members of the District Committee, the decision of the majority of the members present shall prevail.

Provided that when their opinion is equally divided the Chairman shall exercise a casting vote.

(6) (a) A member referred to in clause (vii) of sub-section (1) may, at any time, by notice in writing to the Collector resign his office.

(b) A casual vacancy caused by the resignation of a member under clause (a) or otherwise shall be filled by fresh nomination.

(7) All communications and orders of the District Committee shall be issued by the Secretary or by such officer subordinate to him as may be authorised by the District Committee in this behalf.

(8) No act or proceedings of the Committee, shall be deemed to be invalid by reason merely of any vacancy in, or any defect in the constitution of, the Committee.

Functions of the District Committee—The functions of the District Committee shall be—

- (a) to make recommendations to the Board as to the areas in the district for which plans may be prepared;
- (b) to consider the recommend plans for areas in the district to be placed before the Committee in accordance with the rules framed under Section 28 and subject to such conditions as may be prescribed, approve the same;
- (c) to carry out the directions issued by the State Government or the Board from time to time with regard to plans;
- (d) to perform such other functions pertaining to soil and water conservation and land development as may be specified in this Act or in the rules made thereunder.

CHAPTER IV

Preparation of Soil and Water Conservation and Land Development Plans

9. Matter for which the plan may provide—A plan may provide for all or any of the following matters, namely:—

- (i) prevention or mitigation of erosion of soil;
- (ii) preservation and improvement of soil;
- (iii) reclamation of waste, saline or water-logged land;
- (iv) improvement in the methods of cultivation;
- (v) construction of earth and masonry works in fields gullies and ravines;
- (vi) training of stream and water courses;
- (vii) land levelling, preparation of channels for irrigation and drainage and application of other water management practices in the irrigation commands;
- (viii) cultivation of waste or fallow land;
- (ix) prohibition or control of grazing or reservation of land for pasture and deep cultivation by tractors in areas subject to erosion;
- (x) planning and preservation of trees, shrubs and grasses for afforesting uncultivable land or providing shelter belts against wind erosion or for any other purpose;
- (xi) regulation or prohibition of the setting on fire of vegetation;
- (xii) improvement of water supply;
- (xiii) retirement of any land from cultivation of its continuance under agriculture is prejudicial to that land or some other land;
- (xiv) prevention from breaking up marginal and sub-marginal lands for purposes of cultivation;
- (xv) consolidation of holdings of cultivators of an area for the better use of land;
- (xvi) any other matter which may be prescribed.

10. Preparation of plants—(1) A draft plan shall be prepared by the Soil Conservation Officer of the area containing the following particulars namely:—

- (a) the object of the plan;
- (b) the boundaries and approximate area of the land to be included in the plan;
- (c) the persons, including the Government, who will be affected by the plan;
- (d) the work or kind of work to be carried out under the plan and the cost thereof;
- (e) the agency or the agencies through which the work shall be carried out;

- (f) the total amount to be recovered from owners;
- (g) the general rate per acre per annum at which such amount is to be recovered from owners;
- (h) the period within which the amount is to be recovered;
- (i) the work which, in his opinion, shall be maintained and repaired individually or jointly and the name of every such person; and
- (j) such other particulars as may be prescribed.

(2) The draft plan so prepared shall be placed before the District Committee which may approve the plan with or without modification or may reject it and cause to be prepared another draft plan, provided that the District Committee shall not approve or recommend any plan which has not received the consent of at least 50 per cent of the owners of the land included in the plan.

11. Publication of draft plan—(1) Copies of every draft plan prepared under sub-section (1) of Section 10 together with the connected maps and plans, if any, shall be published in the draft stage by District Soil Conservation Officer and shall be made available by him for inspection by the public free of charge, in the offices of Gram Panchayats, Panchayat Samities and Sub-divisional Officers within whose jurisdiction the lands proposed to be included in the draft plan are situated and in his own office.

(2) A general notice in the prescribed form shall be published in the Official Gazette and in such newspapers, if any, circulating in the locality as the District Soil Conservation Officer may direct—

- (a) intimating that the draft plan has been prepared, that copies thereof have been kept and may be inspected by the public free of charge at the places aforesaid and that copies of the draft plan may be obtained on payment of the cost thereof which shall be specified in the notice, from the District Soil Conservation Officer or the Subdivisional Officer or Block Development Officer and also from any other officer specified in the notice; and
- (b) requiring any person affected by the draft plan who wishes to object to it or to any part thereof, to submit his objections in writing to the District Soil Conservation Officer or to appear before him with his objections within thirty days of the publication of the notice.

(3) A special notice shall be sent to the Panchayat Samities concerned requiring them to submit such suggestions or objections as they may like to make within thirty days of the receipt of the special notice.

(4) The general notice shall also be published by beat of drums in the village or villages to which the draft plan relates.

12. District Soil Conservation Officer to consider objections and submit report to the District Committee.—The District Soil Conservation Officer shall inquire into the objections received or recorded by him and submit them to the District Committee together with his report thereon and his recommendation, if any, for modification of the draft plan.

13. Sanction of draft plans—(1) After considering the objections and the report and the recommendations of the District Soil Conservation Officer and any further report which the District Committee may require from him, the District Committee may accord its approval or, as the case may be, forward the draft plan to the Board with its recommendations.

(2) The Board may approve the draft plan placed before it under the rules with or without modifications or may reject it and direct that in lieu thereof a fresh draft plan be prepared and submitted for its approval.

(3) The draft plan as approved by the District Committee of the Board, as the case may be, shall be submitted by the Board to the State Government for sanction and thereafter the

State Government may sanction the draft plan with or without modifications or may reject it and direct that a fresh plan be prepared and submitted for its sanction.

(4) The plan as sanctioned by the State Government, shall be published in the prescribed manner and copies thereof shall be made available in the offices of the Gram Panchayat, the Panchayat Samities, the Subdivisional Officer and the District Soil Conservation Officer within whose jurisdiction the land included in the scheme are situated.

(5) Publication of notices in the prescribed manner shall be treated as final notice for fulfilment of the provisions of this Act.

(6) On and from the date of the publication of the plan under sub-section (4) the plan shall come into force and shall have effect.

(7) The State Government may, for the purpose of carrying out the objects of the plan, make regulations requiring any person or persons or the public generally to take certain actions or to refrain from doing certain acts in respect of any matters supplementary and incidental to the plan.

Comments

Draft—Draft signifies a cheque or bill of exchange, or other negotiable instrument; also the rough copy of a legal document before it has been engrossed.

14. Subsequent changes and correction of errors in the plan—Notwithstanding anything contained in Section 13—

- (i) the Director of Soil Conservation may make such changes in the plan as are at any stage necessitated by the changes that may occur in the land due to any unforeseen circumstances:

Provided that no such change shall be made to the prejudice of any owner without allowing him an opportunity of being heard:

Provided further that such changes shall be placed before the Board at its next meeting for its approval;

- (ii) the District Soil Conservation Officer, may, if satisfied that a clerical or arithmetical error exists in the plan, correct the same in the prescribed manner, either on his own motion or on the application of an interested person:

Provided that such changes shall be placed before the District Committee at its next meeting for approval.

CHAPTER V

Execution of Plan and Maintenance, Repairs and use of Work carried out under this Plan

15. Direction to execute work—(1) The District Soil Conservation Officer may by notice, require any owner to carry out at his own cost any work which under the plan is to be carried out by the owner at his own cost, in the manner and within the period mentioned in the notice.

(2) Where an owner intimates in writing to the District Soil Conservation Officer that he is unable to carry out the work within the time aforesaid or if the work is not carried out to the satisfaction of the District Soil Conservation Officer by the date fixed in that behalf or within such further time as he may allow, the District Soil Conservation Officer shall get the work carried out and, subject to such conditions as may be prescribed, in this behalf, recover the expenses incurred from the owner as arrears of land revenue:

Provided that the District Soil Conservation Officer shall get the work carried out in such a case after serving notice on the owner and giving him an opportunity to be heard.

(3) Notwithstanding anything contained in sub-sections (1) and (2) where the Collector is of the view that it will be in the interests of general public to have a work carried out by the District Soil Conservation Officer, he may direct the District Soil Conservation Officer to carry out work and cost of such work shall, subject to such provisions as may be prescribed in this behalf, be recovered by the District Soil Conservation Officer as arrears of land revenue from the owner or from the owners in such proportion, as the Collector, may fix after taking into consideration the benefits or likely benefits to the land of each owner from that work and other relevant matters.

(4) If the costs are not paid by the owner within the prescribed time, such owner shall also be liable to pay such interest thereon as may be prescribed.

16. Liability of persons whose lands are not included—(1) If in consequence of any work carried out under the plan, any person other than the owner of the land on which the work is done, is likely to be benefited, such person shall pay such amount and within such time as the Collector may determine, to the owner of the land, if the work is carried out by him or to the State Government, if the work is carried out by the District Soil Conservation Officer.

Provided that before any person is required to pay any such contribution, he shall be given a reasonable opportunity for making his representation, if any, in regard to the matter.

Provided further that any contribution may be waived by the State Government in whole or in part in respect of any work carried out in land owned by it.

(2) If default is made in the payment of such contribution within the time determined in that behalf in pursuance of sub-section (1), the Collector or any Officer authorised by him in this behalf shall recover it from the defaulter and pay the same to the owner of the land or to the State Government, as the case may be.

17. Preparation of statements—(1) The District Soil Conservation Officer shall, on completion of the work, prepare a statement for any specified area giving the following particulars:—

- (i) the name of owner or owners;
- (ii) the work done;
- (iii) the cost thereof;
- (iv) the total amount to be recovered from the owners;
- (v) the general rate per acre per annum at which such amount is to be recovered from owners;
- (vi) the period within which the amount is to be recovered;
- (vii) the work which, in his opinion, shall be maintained and repaired individually or jointly and the name of every such person;
- (viii) in the case of any survey number or subdivision of survey number for which the owner is not liable to repair or maintain works therein, or if the cost is to be recovered from an owner at a rate other than the general rate, a list of such survey numbers or subdivisions and the rate at which the cost is to be recovered from the owners of such survey numbers or subdivisions;
- (ix) a map showing the work carried out in the village;

(x) such other matters as may be prescribed.

(2) When a statement is prepared under this section, any rights and liabilities shown therein shall be entered in a record to be prepared for the purpose and kept in such manner as may be prescribed in the office of District Soil Conservation Officer and the Panchayat Samiti as a permanent record and shall be open to public inspection and copies whereof shall be provided on payment of prescribed fees.

18. Obligation of persons to maintain and repair works—Every person shown in the statement prepared under Section 17 as liable to maintain or repair any work, shall to the satisfaction of the District Soil Conservation Officer and within such time as the District Soil Conservation Officer may fix, maintain or repair the work on his own land and on any other land in respect of which he is shown as liable in the said statement.

(2) If any person fails to maintain or repair the work within the time fixed by the District Soil Conservation Officer under sub-section (1), the District Soil Conservation Officer shall get the work maintained or repaired by the Panchayat Samiti or through any other agency if the Panchayat Samiti fails to execute the work and recover the cost thereof from such person.

(3) Any dispute as to the liability or the amount of cost shall be decided by the Collector.

CHAPTER VI

Penalty

19. Penalty—Any person who without proper authority damages or obstructs any work under a plan or contravenes any of the provisions of this Act or any rule or order made thereunder shall, on conviction, be liable to imprisonment for a term which may extend to six months or to a fine which may extend to one thousand rupees or to both and where the offence is a continuing one to further fine which shall not be less than rupees twenty-five for every day during which the offence continues after the date of the first conviction.

CHAPTER VII

Miscellaneous

20. Sums payable under this Act recoverable as public demand—Any sum payable to the State Government under this Act, shall be recoverable as a public demand under the Bihar and Orissa Public Demands Recovery Act, 1914 (Bihar and Orissa Act IV of 1914).

21. Procedure and powers of inquiry—(1) Any officer or authority empowered to make an inquiry under this Act shall, where no specific provision has been made therefor, make the inquiry in the manner provided in the law shall, as far as may be, apply to an inquiry under this Act.

(2) Any officer or authority referred to in sub-section (2) shall have the same power of summoning and enforcing the attendance of any person and examining him on oath and compelling the production of documents as are vested in Revenue Officers under the law referred to in that sub-section.

22. Power to enter upon survey and mark out land—(1) Any person authorised generally or specially in this behalf by the State Government or the Collector may along with his staff and workmen for the purpose of exercising any power or performing any function or duty conferred or imposed or entrusted by or under this Act, and after giving such notice as may be prescribed, to the owner, occupier or any person interested in any land enter upon, survey and mark out such land and do all acts necessary for such purpose.

- (2) In particular he may—
- take levels;
 - dig or bore into the sub-soil;
 - place, erect or make on any land any peg or mark including trenches or boundaries which he deems to be necessary;
 - do all other acts necessary to ascertain whether the land is suited for such purpose;
 - where otherwise the survey cannot be completed, cut down and clear away any part of the standing crop, fence or jungle but only to the extent necessary.
- (3) Payment in respect of any damage caused to the property or rights of any person in carrying out any operations under the provisions of this Act shall be made to the person—
- where an agreement has been entered into with the person concerned, in accordance with the agreement; and
 - in other cases in accordance with Section 5 of the Land Acquisition Act, 1894 (I of 1894).

23. Appeal.—Any person aggrieved by an order passed under Section 15, Section 16 or Section 18 may appeal within such period and in such manner, as may be prescribed to—

- the Commissioner of the Division, if the order has been passed by the Collector or the Deputy Commissioner of the district;
- the Collector or the Deputy Commissioner of the District, if the order has been passed by any officer other than the Collector or the Deputy Commissioner of the district.

24. Powers authorised to execute work to be deemed as public servant.—Every person who is appointed or authorised to exercise any power or to perform any function or duty conferred or imposed by or under this Act, shall be deemed to be a public servant within the meaning of Section 21 of the Indian Penal Code (45 of 1860), and every person who is required to submit any opinion or particular shall be deemed to be legally bound to do so within the meaning of the said Code.

25. Registration of documents or maps in connection with scheme not required.—

(1) Nothing in the Indian Registration Act, 1908 (16 of 1908), shall be deemed to require the registration of any document or map prepared, made or sanctioned in pursuance of this Act in connection with any plan which has come into force.

(2) All such documents and maps made shall, for the purposes of Sections 48 and 49 of the said Act, be deemed to be registered in accordance with the provisions of that Act.

(3) All documents and maps relating to such schemes shall be accessible to the public in the manner prescribed.

26. Delegation of powers.—The State Government may delegate to any officer or authority subordinate to it any of the powers, functions or duties required to be discharged under this Act.

27. Provisions of this Act to prevail.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.

28. Powers to make rules.—(1) The State Government may, by notification in the Official Gazette, make rules for the purposes of carrying into effect the provisions of this Act.

- (2) Without prejudice to the generality of the foregoing power, such rules may provide for—
- the procedure for and the manner of declaring a person to be an owner;
 - matters relating to the establishment and constitution of the Board and the District Committee;
 - the procedure (including quorum) for the conduct of business by the Board and the District Committee;
 - the categories of plans to be placed before the District Committee and the Board;
 - functions of the District Soil Conservation Officer and allocation of business to the District Soil Conservation Officers in the same district;
 - the particulars to be set out in the draft plan;
 - the time within which the cost of work carried out by the District Soil Conservation Officer shall be paid by the owner and the interest on such costs;
 - the form in which and the intervals at which report of progress in work shall be submitted by a District Soil Conservation Officer;
 - the form of statement of rights and liabilities of the owners;
 - the statements, returns, registers and other records, required to be maintained by or under this Act;
 - the form and manner of service or publication of notices under this Act or the rules made thereunder;
 - filing and disposal of objections and appeals under this Act and the procedure to be followed in regard thereto;
 - the duties of any officer or authority having jurisdiction under this Act and the procedure to be followed by such officer or authority; and
 - other matters which are to be or may be prescribed.

(3) All rules made under this Act shall, as soon as may be after they are made, be laid before each House of the State Legislature while it is in session, for a total period of fourteen days extending in its one session or more than one successive sessions and shall, unless some later date is appointed, take effect from the date of their publication in the Official Gazette, subject to such modifications or annulments as the two Houses of the Legislature may agree to make; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done thereunder.

29. Protection of action taken under the Act.—(1) No suit, prosecution or other proceeding shall lie against any person for anything done or intended to be done in good faith in pursuance of this Act or any rule made thereunder.

(2) Save as otherwise expressly provided by or under this Act, no suit or other legal proceeding shall lie against the State Government for any damage caused by anything done or intended to be done in good faith in pursuance of this Act or any rule made thereunder.