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Assam Irrigation Act, 1983

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ASSAM IRRIGATION ACT, 1983*

(Assam Act No. VIII of 1989)

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[Received the assent of the President on 11th April, 1989]

* Made in 1983 but received the assent of the President in 1989 and then published in the Assam Gazette, Extraordinary No. 68, dated 19-5-1989

**An Act to provide for the application and use of water for
purposes of irrigation**

Preamble. Whereas it is expedient to make provision for the application of water and the regulation of the use, supply and storage of water for the purposes of irrigation and matters ancillary thereto:

It is hereby enacted in the Thirty-fourth Year of the Republic of India as follows:

CHAPTER I

Preliminary

1. Short title, extent and commencement.

- (1) This Act may be called the Assam Irrigation Act, 1983.
- (2) It extends to the whole of Assam.
- (3) It shall come into force on such as the State Government may, by notification in the Official Gazette in this behalf, as point.

2. Definitions.

In this Act, unless there is anything repugnant in the subject to context-

- (1) **“Betterment contribution”** means the contribution leviable and realisable Chapter V of this Act;
- (2) **“Betterment Levy Officer”** means such officer as the State Government may appoint in respect of any irrigation scheme or supply scheme framed under this Act;
- (3) **“Chief Engineer”** means to the Government of Assam in the Irrigation Department or any other officer appointed to execute the powers of the Chief Engineer under this act.
- (4) **“Collector”** means the Deputy Commissioner of a District or any other officer appointed to exercise all or any of the powers of a Collector under this Act;
- (5) **“Cultureable commanded area”** means all lands within the irrigable command of an irrigation work which are fit for cultivation;
- (6) **“Divisional Irrigation Officer”** means an Executive Engineer of the Irrigation Department exercising

control over irrigation works or supply works or a portion of an irrigation work or a supply within his division;

(7) **“Drainage work”** includes-

- (i) Escape channel, from irrigation work,
- (ii) Natural or artificial drainage channels,
- (iii) Sluices,
- (iv) Weirs,
- (v) Groynes,
- (vi) Embankments,
- (vii) Flood Embankments,
- (viii) All other works connected with any of the above works.
- (ix) Any work in connection with a system of irrigation or reclamation made or improved by the State Government for the purpose of drainage of any area and includes a ‘Field drain’.

- (8) **‘Embankment’** means any embankment, constructed for the purpose of protecting lands from inundation or for the purpose of regulation or retention of water includes all earthen and masonry walls, dams, spillways, piers, groynes, sluices, syphons, water gauges, bench marks and other connected works and the land appurtenant thereto;
- (9) **‘Field Channel’** means a channel beyond an outlet from a point from where it runs in its own command, constructed by the owners or occupiers or constructed by the State Government on their behalf and at their cost to serve the various fields within a block of 40 hectares or as may be prescribed and maintained by such owners or occupiers and includes existing water-courses constructed or maintained by owners or occupiers the Government initially constructing field channels up to 5 to 8 hectare block at the project cost as prescribed;
- (10) **‘Field drain’** means the channel for the discharge of excess water from the field. This includes escape channels from the irrigation works and other similar works constructed and maintained by the owner or occupiers or the State Government of Assam at the cost of the owner.
- (11) **‘Flood embankment’** means any embankment constructed or maintained by the State Government in

connection with any system of irrigation work or reclamation work for the purpose of protecting lands from inundation.

- (12) **‘Irrigation Officer’** means a Sub-divisional Officer of the Irrigation Department exercising control over irrigation works or supply works or a portion of an irrigation work or supply work under this Act within his sub-division;
- (13) **‘Irrigation Scheme’** means a scheme prepared under the provisions of Act;
- (14) **‘Irrigation work’** means-
 - (i) any part of a river, stream, lake, natural collection of surface water or ground water;
 - (ii) all aqueducts, barrages, channels, canals, canal crossing, domestic water supply works, outlets, pipes, ponds, pumping installations, reservoirs, sluices, spring ponds, tanks and water courses, tanks and water courses;
 - (iii) All work and structures, connected with aqueducts, barrages, channels, canal crossing, domestic supply works, outlets, pipes, ponds, pumping installations, reservoirs, sluices, spring

ponds, tanks and water courses, tanks and water courses;

- (iv) All drainage works and well;
 - (v) All roads, buildings, machineries, fences, gates and other creations constructed for facilitating the construction of maintenance of aqueducts, barrages, channels, canal crossing, domestic supply works, outlets, pipes, ponds, pumping installations, reservoirs, sluices, spring ponds, tanks, water courses, drainage works, wells and all works connected with any one or more of the above works;
 - (vi) All lands held by the State Government for the purpose of such aqueducts, barrages, channels, canal crossing, domestic supply works, outlets, pipes, ponds, pumping installations, reservoirs, sluices, spring ponds, tanks, water-courses, roads, buildings, machineries, fences, gates and such other erections as may be notified by the State Government from time to time;
- (15) **‘Land under irrigable command’** means such lands as are irrigated, by flow or lift from an irrigation work or supply work being under its

command and shall include also such cultivated land which received, in the opinion of the Divisional Irrigation Officer, by percolation or otherwise from an irrigation work or by indirect flow, percolation or drainage from or through adjoining lands, an advantage beneficial to the crop;

(16) **‘Occupier’** includes every person occupying any land having any interest therein within the culturable commanded area of any irrigation work or supply work for the purpose of cultivating the same for the time being;

(17) **‘On –farm development’** includes any of the following works;

- (i) land levelling and land shaping including realignment of field boundaries;
- (ii) providing of falls, culverts, and farm roads in the field;
- (iii) land reclamation by use of engineering, biological and chemical measures, including leaching;
- (iv) contour bunding and nala bunding;
- (v) such other works as may be necessary or incidental to development of land or ground

or flow water potential and for optimising the utilisation of land and water resources;

- (18) **‘Outlet’** includes an opinion made for the purpose of delivering water from an irrigation work or any part thereof to a watercourse or field channel or directly to any land or block of land.
- (19) **‘Owner’** includes every person having interest in the ownership of land or property, and all rights and obligations under the provisions of this Act shall attach jointly and severally to every person having such joint interest in the owner ship;
- (20) **‘Prescribed’** means prescribed by rules made under this Act;
- (21) **‘Sewage effluent’** means the effluent from any sewage system or sewage disposal work and includes sullage from open drains;
- (22) **‘Superintending Irrigation Officer’** means the Superintending Engineer of the Irrigation Department or any other officer appointed to exercise all or any of the powers of a Superintending Engineer under this act in respect of any one or more irrigation scheme or supply scheme or part thereof;

- (23) **'Supply Scheme'** means supply scheme prepared under the provisions of this Act;
- (24) **'Supply works'** means a field channel and field drain;
- (25) **'Trade effluent'** includes any liquid, gaseous or solid substance which is discharged from an industry other than domestic sewage;
- (26) **'Vessel'** includes boats, rafts, timber and other floating bodies;
- (27) **'Water-course'** means any channel beyond an outlet to carry water from an outlet to any field channel, constructed at the cost of the State Government and maintained by the owners or occupiers;
- (28) **'Water-rate'** means water-rate leviable and realisable under Chapter V of this Act;
- (29) **'Well'** means a well sunk for the search or extraction of ground water and includes an open well, dug well, bored well, dug-cum-bored well, tube and filter point;

COMMENTS

In sub-S.(2) of S. 2 for the word “Betterment Contribution Officer” the words “Betterment Levy Officer” were substituted *vide* Assam Act No. II of 1991 with effect from 19th May, 1989.

In sub-S. (7) (i) of S. 2, after the words “Escape channel” the word “from irrigation work” were inserted deleting the coma (,) *vide* Assam Act No. II of 1991 with effect from 19th May, 1989. In sub-S. (9) the words from “the Government initially.....prescribed” were inserted, *ibid*.

Sub-section (10) of S. 2 was substituted *vide* Assam Act No. II of 1991 with effect from 19th May, 1989.

In Cl. (ii) of sub –S. (14) of S., after the words “and water course” the words “tanks and dams” were inserted *vide* Assam Act No. II of 1991 with effect from 19th May, 1989.

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CHAPTER II

Irrigation Scheme

3. Notification of intention to apply or regulate water for irrigation.

Whenever it appears expedient to the State Government that the water of any river (including tributary) or stream flowing in a natural channel or of any lake or any other natural collection of still water or ground water or water flowing in a channel where such water or part thereof, is received from an irrigation work constructed by the State Government, whether by percolation, regeneration, release or otherwise, should be applied or used for the purpose of any existing or projected irrigation work or for the regulation, supply or storage of water, the State Government may, by notification in the manner prescribed, express its intention to that effect specifying therein, the land or block of land to which the said water will be so applied or used.

4. Public notice of notification.

The Divisional Irrigation Officer or any other officer duly empowered by the State Government in this behalf shall

cause public notice stating the substance of the notification under the preceding section to be given in the manner prescribed.

5. Power to make enquiry or examination.

At any time after the public notice under the preceding S.4 is given, the Irrigation Officer may make, whenever he thinks it necessary to do so, an enquiry or examination in connection with the proposed application of water or the regulation of the use, supply and storage of water, as the case may be, and for that purpose Irrigation Officer or his subordinates so deputed shall have the following powers, namely:

- (a) to enter upon any land likely to be affected by the proposed irrigation;
- (b) to undertake surveys and take levels of any such land;
- (c) to dig and bore into the sub-soil of any such land;
- (d) to set up and maintain water gauge;
- (e) to close any channel temporarily;
- (f) to cut down trees and clear away any part of the standing crops, fences or jungles, when the enquiry or examination cannot otherwise be completed ;

- (g) to do so other things necessary for conducting the enquiry or examination; and
- (h) to exercise all powers and to do all things in respect of such lands as he might exercise or do so if the State Government had issued a notification under S.6 of the Land Acquisition Act, 1894, to the effect that the land was likely to be needed for a public purpose.

6. Findings and recommendations of Irrigation Officer.

After completion of the enquiry or examination, the Irrigation Officer shall record his findings and forward the same together with his recommendations to the Divisional Irrigation Officer who, in turn shall forward recommendations of the Irrigation Officer to the State Government.

7. Directions of the State Government for the preparing of Irrigation Scheme.

The State Government may, after going through the findings and recommendations mentioned in the preceding section, direct an irrigation scheme to be prepared by the Divisional Irrigation Officer.

8. Contents of an irrigation scheme.

On receipt of a direction under the preceding section, the Divisional Irrigation Officer shall prepare a scheme containing the following particulars namely:

- (i) existing irrigation works to be included in the irrigation scheme;
- (ii) additional items of works proposed to be constructed and the extent of reconstructions, additions or alternations of existing works proposed, if any.
- (iii) the area of land proposed to be irrigated;
- (iv) conditions and limitations of supply of water, if any;
- (v) volume of water proposed to be supplied, calculated either on area or volumetric basis;
- (vi) period and time during which the water is proposed to be supplied;
- (vii) authority competent to direct supply of water for purposes other than irrigation;

- (viii) estimated costs of constructions, additional constructions, re-constructions, additions or alternations proposed to be made;
- (ix) cost of constructions, additional constructions, re-constructions, additions or alternations proposed to be levied as betterment contribution;
- (x) Period during which and the yearly rate at which the betterment contribution is proposed to be levied;
- (xi) Whether it will be necessary to control the construction of wells for any purpose other than exclusively for domestic use, either on personal or community basis, in any area or areas within the culturable command such area of the irrigation work and, if so, the area or areas where such control is necessary, the limitations and conditions under which such control is proposed to be exercised;
- (xii) Whether it will be necessary to regulate the operation of the existing wells for any purpose other than exclusively domestic use, either on personal or community basis, in any area or areas within the culturable commanded area of the irrigation work and, if so, the area or areas in which regulation is

necessary, the limitations and conditions under which such control is proposed to be made;

- (xiii) Whether any land or block of land is to be transferred to any other area covered by another irrigation scheme and, if so, the land or block of land and the irrigation scheme to which the same is proposed to be transferred;
- (xiv) Whether any land or block of land will require temporary submersion and if so, the land or block of land which will require such submersion and the period for which such submersion is proposed to be made;
- (xv) Any other particulars as may be prescribed.

9. Publication of an irrigation scheme.

The State Government may, after receipt of an irrigation scheme from the Divisional Irrigation officer, cause such scheme to be published with or without modifications as may be decided, in such manner and in such form as may be prescribed.

10. Objections to an irrigation scheme.

As soon as possible after the publication of an irrigation scheme under the preceding section, the Collector or where the irrigation scheme affects persons in more than one district, the Commissioner of Divisions, shall invite objections to the scheme, if any, by proclamation issued in such manner as may be prescribed, from the public, Town Committees, Municipal Committees, Railway Administrations or any other authority likely to be affected by the irrigation scheme within such time as may be prescribed.

11. Notice of date, time and place of enquiry.

On receipt of objections, if any, the Collector or the Commissioner, as the case may be, shall publish a notice in such manner as may be prescribed, stating the date, time and place at which the enquiry will be held for the purposes of ascertaining the validity or otherwise of the objections received.

12. Forwarding of objections and recommendations to the State Government.

After the enquiry has been completed the collector or the Commissioner, as the case may be, shall forward the objections along with his recommendations to the State Government; provided that the Collector or the

Commissioner, as the case may be, shall, at time of enquiry into the objections, obtain the advice of the Divisional Irrigation Officer on technical points.

13. Preparation and publication of final scheme.

The State Government may after taking into consideration the objections and recommendations mentioned in the preceding section, direct the Divisional Irrigation Officer to be prepare the final irrigation scheme with such modifications, if any, as may be decided or without any modifications. The Divisional Irrigation Officer on receipt of such directions shall, after revising the irrigation scheme as per directions of the State Government where necessary, publish the scheme in the manner prescribed.

14. Powers of the Irrigation Officer to implement irrigation scheme.

After the final publication of an irrigation scheme under the preceding section it shall be lawful for the Irrigation Officer –

- (1) to do all things necessary for implementing the irrigation scheme;
- (2) to do all things necessary for the constructions, reconstructions, additions or alternations to irrigation work as provided in the irrigation scheme;

(3) where in his opinion it is necessary in the interest of proper irrigation to do so-

(i) to control the construction of wells for any purpose other than exclusively for domestic use, either on personal or community basis, in the area or areas specified in the irrigation scheme as provided therein, in the manner prescribed;

(ii) to regulate the operation of the purpose other than exclusively for domestic use, either on personal or community basis, in the area or areas specified in the irrigation scheme as provided therein, in the manner prescribed;

(iii) to transfer any area of land or block of land to the area under any other irrigation scheme as provided in the irrigation scheme in the manner prescribed;

(iv) to subject any land or block of land to temporary submersion as provided in the irrigation scheme, in the manner prescribed.

15. Additional canal crossings.

Any five or more of the owners or occupiers of lands within the culturable command area of any irrigation work may, in writing, apply to the Divisional Irrigation Officer for constructing any suitable means, for the crossing of the

canal therein and on receipt of which the Divisional Irrigation Officer shall cause an enquiry to be made into the genuineness of the need, and if after such enquiry he finds the need of constructing such means to be genuine he shall record his findings and forward the same together with his recommendations to the Chief Engineer, through the Superintending Irrigation Officer, and the Chief Engineer after considering the recommendation may issue such directions as may be deemed fit and proper:

Provided that when the Chief Engineer directs the construction of any such means of crossing a canal, the applicants alongwith other owners or occupiers of lands within the culturable commanded area of the irrigation work shall deposit half the estimated cost of constructions of such means of crossing in such manner and within such period as may be prescribed;

Provided further that unless the amount is so deposited the constructions shall not be made, and if the estimated cost exceeds cost, half the difference shall be refunded and if the actual cost exceeds the estimated costs, half the difference of the excess amount shall be recovered from the persons at whose request the crossing is constructed.

CHAPTER III

Supply scheme

16. Supply scheme for supply works.

The Divisional Irrigation Officer, either on his own motion or on the application of any one or more of the owners or occupiers of any land within the culturable commanded area of any irrigation work, may prepare a supply scheme to provide for the supply and distribution of water from an irrigation work through the supply works to the land within the culturable commanded area of an irrigation work.

17. Contents of a supply scheme.

Any supply scheme prepared under the preceding section shall contain the following particulars, namely:

- (1) constructions, expansions, improvements, alternations or alignments of any supply work proposed to be made;
- (2) proposed re-allotment, if any, of the areas served by any supply work;
- (3) land to be occupied for the deposit of soil from the supply work clearances;

- (4) site or sites of outlets in the irrigation work from which water is proposed to be delivered to the supply work;
- (5) estimated costs of the constructions, additions, alternations, realignments and other works connected therewith interests;
- (6) area of the land required for the supply works;
- (7) a sketch plan of the area proposed to be covered by the supply scheme;
- (8) the particulars of the lands and owners or occupiers thereof to be benefited or affected or likely to be benefited or affected by the supply scheme;
- (9) other persons to be benefited or affected or likely to be benefited or affected by the supply scheme;
- (10) estimated cost of implementing the supply scheme;
- (11) any other particulars that may be prescribed.

COMMENTS

In sub-S. (1) of S.17,for the words “reconstructions, additions” the words “expansions, improvements” were

substituted *vide* Assam Act No. II of 1991 with effect from 19th May, 1989.

18. Publication of draft supply scheme.

Every supply scheme prepared shall be published in such form and in such manners as may be prescribed.

19. Submission of objections.

Any owner, occupier and other person to be benefited or affected or likely to be benefited or affected by the supply scheme any, within 21 days from the date of such publication, submit objections or suggestions with respect to any one or more of the matters included in the scheme, in such manner as may be prescribed, to the Divisional Irrigation Officer.

20. Approval or rejection of supply scheme.

The Divisional Irrigation Officer on considering the objections and situations and after giving an opportunity of being heard to those who have expressed desire for such hearing, may approve the supply scheme with or without modifications as may be deemed fit, and approved, he shall publish the scheme in such manner and in such form as may be prescribed or may reject the scheme.

21. Appeal against order of Divisional Irrigation Officer.

Any person aggrieved by an order passed by the Divisional Irrigation Officer under the proceeding section may, within 30 days from the date of publication of the supply scheme, appeal to the Superintending Irrigation Officer, who may after disposal of the appeal, direct the Divisional Irrigation Officer to publish the supply scheme prepared by him with such modifications, if any, as he may direct.

22. Revision by Superintending Irrigation Officer.

When no appeal has been preferred under S.21 above, the Superintending Irrigation Officer may of his own motion at any time within a period of 30 days from the date of publication under s.21 above, call for the records from the Divisional Irrigation Officer and may pass such order or orders as he may deem it:

Provided that no order affecting any owner, occupier or other person affected or likely to be affected adversely by any order proposed to be passed shall be passed without affording such owner, occupier or person an opportunity of being heard.

23. Owner or occupier to execute supply scheme.

- (1) At any time after publication of the supply scheme with or without modification under S. 20 or 21 , as the case may be, the Divisional Irrigation Officer, shall call upon the owners or occupiers of the land falling within the supply scheme to execute or get execute the works, at their own cost in the manner as may be prescribed, and within such period of times as may be specified.

Government to execute supply scheme due to failure of owner or occupier.

- (2) In the event of failure of any or all of the said owners or occupiers to execute the works within the period of time so specified or in the event of any or all of the owners or occupiers informing in writing the said officer prior to the expiry of the said period of time that they are unable to execute or get executed the works as required, the works may be carried out at the cost of the State Government and the cost of the works so executed shall be recoverable from the owners or occupiers who fail or decline to execute or get executed the works as required:

Provided that notwithstanding anything contained in sub-Ss. (1) and (2) above, the State Government may, in the interest of higher agricultural production, or speedy economic development of any local area or any class of people, or to

avoid undue delay in the utilisation of irrigation potential already created, direct the execution of supply works of the supply scheme at the cost of Government subject to recovery of the cost from the owner or occupiers of lands falling within supply scheme.

24. Determining the amount to be recovered from owner or occupier .

In respect of any supply work of any supply scheme executed at the cost of Government under the provision of S. 23, the Divisional Irrigation Officer shall determine the share of construction to be recovered from such owner or occupier in such manner as may be prescribed.

25. Owner or occupier to maintain supply works properly.

- (1) It shall be the duty of owners or occupiers to maintain supply works in a proper state of repair at their own cost.

Government to take over maintenance of supply works due to proper maintenance.

- (2) If the Divisional Irrigation Officer is of the opinion that any supply works or part thereof is not properly maintained, he shall, after providing an opportunity to the owner or occupier concerned to carry out maintenance or repair as may be found necessary, carry out such repair or maintenance at the cost of the

State Government and recover such cost from the owner or occupier who has failed to carry out the maintenance or repair after due notice, in the manner prescribed.

26. Recovery of dues as arrear of land revenue.

Any dues payable under Ss. 23,24 and 25 if not paid by the due date shall be recoverable as arrear of land revenue under the Bengal Public Demand Recovery Act, 1913 (Act 3 of 193).

27. Publication of draft scheme on on-farm development works.

- (1) Notwithstanding anything contained to the contrary in this Act and subject to the rules that may be made by the State Government in this behalf, an officer designated by the State Government may, on his own motion or on the application of not less than fifty percent of the owners or occupiers of lands in the culturable command area, prepare a draft scheme to provide for on-farm development of a group or block of fields.
- (2) Every scheme prepared under sub-S (1) shall, among other matters, set out the cost of the on-farm development works, a sketch plan of area proposed to be covered by the scheme, and particulars of the

owners or occupiers to be benefited by the said scheme.

- (3) Every scheme shall, as soon as may be after its preparation, be published in such form and manner as may be prescribed, inviting objections and suggestions with respect thereof within twenty-one days of the publication.
- (4) After consideration of such objections and suggestions, if any, the said officer shall approve the scheme, either as it was originally published or in such modified form as he may consider fit, and publish the same.
- (5) The officer designated by the State Government in this behalf may, at any time or on an application by person aggrieved by the approved scheme made within a period of thirty days from the date of publication of particulars of the scheme under sub-S. (4), revise the scheme approved by the said officer.

Provided that such revision shall not be made without affording the person affected an opportunity of being heard.

- (6) An owner or occupier aggrieved by the order of the said officer in respect of a scheme which has not been approved, may prefer an appeal within thirty days of the passing of the order to such officer designated by

the State Government in this behalf whose decision shall be final.

- (7) After a scheme has been approved by the said officer under sub S. (4) or where an appeal is pending before an officer under sub-S. (6), after it has been disposed of by him, the scheme shall be published in such manner as may be prescribed and upon such publication it shall be executed or got executed by the owners or occupiers in the group or block of fields at their cost, within such period of time as may be specified by the said officer.
- (8) In the event of the failure of any or all of the siad owners or occupiers to execute the works within the said period of time specified by the said officer or in the event of any or all of the owners or occupiers informing in writing the said officer prior to the expiry of the period of time that they are unable to execute or get executed the work as required, the works may be carried out by the State Government or by an agency appointed by the State Government in this behalf, and cost of the works so executed by the State Government or by the said agency, as the case may be, shall be recoverable by the State Government or the said agency, as the case may be, from the owners or occupiers who fail or indicate their inability to execute the works as required.

- (9) The share of the individual owners or occupiers of the cost of the works executed in the said group or block of fields by the State Government or by the said agency, as the case may be, shall be as determined by the State Government or by the said agency, as the case may be.

CHAPTER IV

Regulation of irrigation

28. Supply of water.

Supply of water from any irrigation or supply work shall be made in accordance with the terms of irrigation and supply schemes and the rules framed under this Act.

29. Factors to taken into consideration in determining supply of water.

While considering the application of any person for the supply of water from any irrigation work or supply work, regard shall be had to the availability of water, the total area of land for which water is to be supplied to the applicant, the regularity in the payment of water-rates by the applicant in the past, the crops to be grown on the land under the notice published under S. 36 below and other relevant factors, as may be prescribed.

30. Application for supply of water.

Every person desiring to have supply of water from an irrigation work or supply work shall submit a written application in such manner and form and within such time as may be prescribed to the Irrigation Officer.

31. Disposal of application.

After considering every application the Irrigation Officer shall pass an order either granting the application or rejecting the same in such form and containing such particulars as may be prescribed.

32. Right of supply to be attached to land and property.

The right to be supplied with water from any irrigation work or supply for the purpose of irrigating any particular land or other immovable property shall be deemed to be attached to such land and shall pass on the transferor on the transfer of such or immovable property, as the case may be .

33. Purpose of growing particular crops to continue till maturity only.

For the purpose of growing any one or more particular crops for which water from any irrigation work or supply work is supplied shall continue only until such crops are matured.

34. Supply of water not to be stopped.

The supply of water from any irrigation work to any supply work or to any person who is entitled to such shall not be stopped, except-

- (a) when and so long as it is necessary to stop such supply for the purpose of executing any work under this Act,
- (b) when and so long as any field channel by which such supply is received is not maintained so as to prevent wasteful escape of water therefrom;
- (c) when and so long as it is necessary to do so in order to prevent the wastage or misuse of water otherwise;
- (d) when and so long as it is necessary to do so in order to supply in rotation the requirement of other persons entitled to the supply of water;
- (e) when and so long as it is necessary to do so diminution in the supply of water in the irrigation work due to any natural or seasonal cause; and
- (f) within the periods fixed from time to time by the Divisional Irrigation Officer of which due notice has been given in the prescribed manner.

COMMENTS

In Cl. (d) of S. 34, the words “the requirement of “ were inserted in between the words “rotation” and “other” in place of word “to”, *vide* Assam Act No. II of 1991 with effect from 19th May, 1989.

35. Declaration to regulate crops.

Whenever the State Government is satisfied that for better cultivation of lands and due preservation of the water resources of any irrigation work, it is expedient and desirable in the public interest to regulate the kind of crop that should be grown on lands within the culturable commanded area of any irrigation work and the period of sowing and planting of such kinds of crop, Government having regard to soil characteristics, climate, rainfall and water availability may, by notification, make a declaration to the effect.

COMMENTS

In S. 35, the term beginning with the word ‘it’ and ending with the word “effect” appearing after the words “such kind of crop” were substituted by the words “Government having regard to soil characteristics, Climate, rainfall and water availability may, by notification, make a declaration to that effect”. *Vide* Assam Act No. II of 1991 with the effect from 19th May.

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36. Notice of crops to be grown.

At any time after a declaration has been under the preceding section, the Irrigation Officer, with approval of the Divisional Irrigation Officer, may specify by notice, published in such manners as may be prescribed, the kind of crop shall be grown, the land on which a particular kind of crop shall be grown and the period during which sowing and planting of such crop in such land shall be done.

37. Presumption in case persons growing unauthorised crops cannot be found.

When a person who has grown or allowed the growing of an unauthorised crop cannot be found, notwithstanding anything in the Indian Evidence Act, the occupier or where there is no occupier other than the owner, the owner shall be presumed to have grown or allowed growing of such crop or to have sowing or planting or allowed the sowing or planting of such crop.

38. Determination of crops to be grown on lands in any particular year.

Notwithstanding anything contained in S. 36 but subject to such directions as may be issued from time to time by the State Government, the Irrigation Officer may in any year, having regard to the quantity of water available in any irrigation work under his control, determine by order

published in such manner within such time as may be prescribed, the areas or lands within the culturable commanded area of the irrigation Work to be cultivated with other than the crops notified under S.36 above and regulate the supply of water for such areas or lands accordingly.

39. Remission of water-rates.

If, in consequence of a decision of the Irrigation Officer under the preceding section, any person entitled to be supplied with water from any irrigation work under scheme framed under this Act is not supplied with water, the person shall be entitled to such remission of water-rate as may be determined by the Irrigation Officer for the loss suffered by the person for not being supplied with water.

CHAPTER V

Levy of water-rate and betterment contribution

40. Liability to pay water-rate.

Whenever-

- (a) water is supplied, made available or used for the purposes of irrigation or any other purpose from any irrigation work of the State Government; and
- (b) water from any irrigation work, by direct flow or percolation or by indirect flow, percolation or drainage from or through adjoining land, irrigates any land under cultivation or flows into a reservoir and thereafter by direct flow or percolation or by indirect flow, percolation or drainage from or through adjoining land irrigates any land under cultivation and in opinion of the Divisional Irrigation Officer such irrigation is beneficial to crop on such land,

the State Government shall be entitled to levy a separate charge for such water (hereinafter referred to as water-rate) and the State Government may prescribe the rates at which such water-rates shall be levied, which may be-

- (i) different in respect of water supplied, made available or used having regard to the costs of operation and maintenance of irrigation or drainage work,
- (ii) different in respect of water supplied, made available or used for different purposes;
- (iii) different in respect of water supplied, made available or used for irrigation of any land with reference to the crop or crops grown or which may be grown on such lands;
- (iv) different in respect of the quantity and timeliness of supply of water or the number of watering;

41. Assessment of water rate.

The Irrigation Officer shall prepare an assessment of the water rates for the lands in respect of which water was supplied, made available or used from an irrigation work, and serve the assessment notice on such owner or occupier.

42. Appeal against assessment order.

An appeal against the assessment order of the Irrigation Officer shall lie to the Divisional Irrigation Officer in the prescribed manner within thirty days of the passing of the order.

43. Service of notice of demand.

As soon as an assessment is made under S.41 or where an appeal has been preferred and disposed of under S.42, the Irrigation Officer shall reserve a notice of demand in the prescribed manner for the amount of water-rates assessed.

44. Liability to pay water-rate within a fixed period.

Any person, on whom a notice of demand has been served under S. 43, shall be liable to pay the same within the period fixed by the State Government in his behalf.

45. Penalty rate for unauthorised use or waste of water.

(1) If water supplied through any irrigation work is used in an unauthorised manner and if the person by whose act or neglect such use has occurred, cannot be found after such enquiry as the Irrigation Officer may be deem sufficient, the Irrigation Officer after giving not less than one month's notice to the owners and occupiers of all lands benefited thereby and after

hearing their representations, if any, make an order for the recovery of such charges as may be specified by the State Government not exceeding thirty times the water-rates for such use, from such owners and occupiers, in such proportion as he may find just, in addition to any penalty he may incur under this Act for such unauthorised use.

Water rate to be charged in addition to penalty.

- (2) If water supplied through a water-course and field channel be suffered to run to waste and if, after enquiry, the person through whose act or neglect such water was suffered to run to waste cannot be discovered, the person or all the persons chargeable in respect of the water supplied through such water course or for such channels shall, in addition to any penalty he may incur under this Act for such waste, be liable or jointly liable, as the case may be, for the charges, not exceeding three times the water-rates as may be specified by the State Government.

Appeal against decision of Irrigation Officer.

- (3) Any person aggrieved by the decision of the Irrigation Officer made under this section may prefer an appeal

to the Divisional Irrigation Officer within 30 days of the date of such decision.

Decision of Divisional Irrigation Officer final.

- (4) The decision made by the Irrigation Officer under this section subject to any order passed by Divisional Irrigation Officer on appeal from such decision, if any, shall be final.

Recovery of water-rate in addition to penalty.

- (5) All charges for the unauthorised use or waste of water may be recovered, as water-rates, in addition to any penalty incurred on account of such use or waste.

46. Liability to pay betterment contribution.

- (1) There shall be levied a tax called betterment contribution from the owner who is benefited by the construction, reconstruction, addition or alteration of any irrigation work by the State Government.

Explanation. Any land shall be deemed to be benefited notwithstanding that the benefit is not enjoyed; provided that such non-enjoyment is due solely to the action or inaction on the part of the person or persons interested in such land.

Notification of commencement, completion of construction and availability of Water.

- (2) For the purpose of levy of betterment contribution, the Betterment Contribution Officer or any officer empowered on his behalf shall, by notification, specify the dates of commencement and completion of the construction, reconstruction, addition or alternation of any irrigation work, depending upon the date on which water is made available to such lands.

47. Limit of betterment contribution.

- (1) The amount of betterment contribution payable in respect of any land referred to in S. 46 shall be an amount equal to such fraction of the total cost as may be prescribed by the State Government, of construction, reconstruction, addition or alteration of the irrigation work.

Provided that the State Government may prescribe different fraction of the total cost of construction, reconstruction, addition or alternation of an irrigation work and different rates per hectare for different lands covered by different projects for the purposes of betterment contribution;

Provided further that no betterment contribution shall be leviable in respect of any land-

- (a) for a period not less than five years from the date of which water is made;
- (b) which is unarable;

Statement showing the land under irrigable command.

- (2) As soon as may be, after the publication of notice under sub-S.(2) of S. 46 in respect of any irrigation work, the Betterment Contribution Officer or any officer empowered under this Act shall prepare a statement showing the lands under the irrigable command of the irrigation work in respect of which the betterment contribution according to the provisions of sub. S. (1) is payable and the nature and extent of irrigability of different lands.

Issue of public notice along with the statement.

- (3) The statement so prepared alongwith a public notice shall be published in the village and the Block office and in such other manner as may be prescribed and such notice shall require the owners of lands under the culturable commanded area of the irrigation work to appear before the Betterment Contribution Officer either personally or by agent at a time and place mentioned therein at such time not being earlier than

one month from the date of publication of the notice,
and to state –

- (a) their objections-
 - (i) to the inclusion of lands in the statements as lands under the irrigable command of the irrigation work;
 - (ii) to the inclusion of the lands in the statement as lands of any specified nature and extent or irrigability;
- (b) in respect of payment of betterment contribution, the basis on which they claim that the amount of betterment contribution has to be computed and such statement shall be made in writing and signed by the party or his agent.

Service of notice to owner or his agent.

- (4) The Betterment Contribution Offices shall also serve notice to the same effect on the owner of such land or his agent authorised to receive service on his behalf, who resides within the revenue district in which the land is situated and in case any owner resides elsewhere and has no such agent, the notice shall be sent to him by registered post.

Power to hold to enquiry.

- (5) On the date fixed under sub-S. (3) or on such other date to which an enquiry may be adjourned, the Betterment Contribution Officer shall, after holding an enquiry in the manner prescribed and after giving an opportunity of being heard to every person who has made statement under sub-S. (3), make an order specifying-
- (a) the amount of betterment contribution payable in respect of the said lands; and
 - (b) the date from which such betterment contribution shall be payable.

Revision of rate after every four years.

- (6) At the end of every four years the year in which the betterment contribution is finally determined under sub-S. (1) any future instalment of such contribution may be revised on the same basis as provided in that sub-section.

Power to exempt.

- (7) If, in the opinion of the State Government, the enforcement of all or any of the provisions of this Chapter will cause hardship in any case or cases, the Government may, by notification, setting out the ground therefore, exempt either permanently or for a specified period such case, from all or any of the provisions of this Chapter, subject to such condition, if any, as the Government deem fit to impose.

48. Demand notice on owner.

The betterment contribution shall become payable under this Chapter on a written notice of demand therefore, issued by the betterment Contribution Officer or any officer as the State Government may authorised being served on the owner:

Provided that no notice of demand shall be served on an owner until an order made under sub-S. (5) of S.47 becomes final;

Provided further that where, before the commencement of this Act five years or more have elapsed from the date of completion of the constructions, reconstruction, additions or alterations of the work, such notice may be served at any time after such commencement.

49. Instalments not to exceed twenty.

- (1) The owner of any land, in respect of which any betterment contribution is payable, shall pay it in such annual instalments not exceeding twenty as may be prescribed:

Provided that if, on or before the date on which the first instalment is payable or at subsequent date within a period of two years from the date the owner pays, the entire contribution, as the case may be, he shall be entitled to a rebate as may be prescribed on such contribution or balance of contribution, as the case may be.

- (2) Contribution payable under this Act in respect of any land shall be deemed to be revenue deemed due upon the said land.

50. Rebate for payment of betterment contribution.

Any person having interest in a land may, notwithstanding that he is owner of such land, pay the betterment contribution payable by owner in respect of such land and shall, if such person pays, the entire betterment contribution within a period of two years from the date on which the owner becomes liable to pay the betterment contribution, be entitled to a rebate as may be prescribed.

CHAPTER VI

Obtaining labour and materials for irrigation work on emergencies

51. Prevention of sudden damage, injury or interruption apprehended.

(1) Whenever the Divisional Irrigation Officer or any officer action under his general or special orders in this behalf, apprehends any serious damage to any irrigation or supply work which is likely to cause sudden or extensive public injury or serious interruption of the established course of irrigation and that to prevent such damage, injury or interruption in his opinion, immediate repairs of the irrigation work or supply work is to be undertaken and executed but labour necessary for the purpose cannot be obtained within a reasonable time, the Divisional Irrigation Officer may-

(c) by public proclamation by beat of drum, require every owner or occupier of land within the culturable commanded area of the irrigation work and resident within 8 kilometres of the place where the work is to be executed and whose name appears in the list mentioned in sub-S. (3) below to attend in person or through authorised persons at such place to carry out

such duties as he may allot to each of them in connection with the execution of the work necessary for preventing the damage, injury or interruption already suffered;

- (b) enter upon or into immovable property in the neighbourhood of the irrigation work or supply work requiring such repairs and take possession, appropriate cut or remove any tree, timbers, bamboos, ropes, straw, earth, stones and other materials required for preventing the damage, injury or interruption apprehended of for otherwise protecting the irrigation work or supply work:

Provided that the person under whose order such tree, timbers, bamboos, ropes, straw, earth, stones and other materials are so taken possession of appropriated, cut or removed shall simultaneously prepare an inventory of all such things in the manner prescribed and that for such possessions, appropriation, cutting or removal the owners, and for other losses and damages sustained by any person in consequence of such actions, the person sustaining such loss or damage shall be paid compensation at such rates or in accordance with such principles, as may be prescribed.

- (2) All persons executing the repair works or participating in such repair works under Cl(a) of the preceding subsection shall be entitled to the payment at rates which

shall not be less than the higher rates for the time being paid in the neighbourhood for similar nature of works.

- (3) The Divisional Irrigation Officer in consultation, with the Collector shall prepare a list of person liable to carry out the duties as aforesaid and may from time to time add to, or alter such list or any part thereof, in the manner prescribed.

CHAPTER VII

Drainage and prevention of water logging

52. Removal or modification of obstruction.

Wherever it appears to the State Government that any obstruction put to any irrigation work or supply work is likely to cause any injury to such irrigation or supply work or any public inconvenience or is likely to endanger public health, in and around the irrigation work the Irrigation Officer, after giving such notice as may be prescribed to the person causing or having control over the obstruction, may, if the obstruction is not removed or modified within such time as may be specified in the notice, himself remove or modify the obstruction and recover the costs of such removal or modification from the person causing or having control over the obstructions:

Provided that in case of extreme urgency, nature of which shall be recorded, the Irrigation Officer may remove or modify the obstruction without any such notice, but in such cases also the costs shall be recoverable from the person or persons causing or having control over the obstructions.

CHAPTER VIII

Claims, compensations and awards

53. Bar to suit for setting aside or modifying irrigation and supply scheme etc.

No civil Court shall entertain any suit or proceeding for setting aside or for modifying an irrigation scheme or supply scheme framed under this Act or to enforce the construction or the alternation of any means for crossing a canal.

Explanation.

Suitable means of crossing canals include means for the passage of traffic and water.

54. Payment of compensation for loss or damage.

No person shall be entitled to any compensation for any loss or damage arising out of the exercise of any powers conferred by this Act unless the loss or damage caused is substantial contribution of being ascertained.

55. No compensation in certain cases.

Without prejudice to the preceding section, no person shall be entitled to any compensation or refund of any betterment contribution in respect of any loss or damage arising from-

- (a) deterioration of climate or soil, or
- (b) stoppage of navigation or of the means of floating timber or of watering cattle, or
- (c) absence or inadequacy of any means of crossing a canal, or
- (d) failure, stoppage or diminution of the supply of water from an irrigation or supply work where such failure or stoppage is due to-
 - (i) any cause beyond the control of the State Government or any other officer in-charge of the irrigation work or supply work;
 - (ii) the execution of any work connected with the constructions, reconstructions, additions, alternations or repairs of any irrigations or supply work;

- (iii) measures taken by the Irrigation Officer for regulating the proper flow of water in any irrigation work or supply work or for maintaining the established course of irrigation;
- (iv) the exercise of the powers conferred by S.5 : and
- (v) one or more of the cause specified in S. 30:

Provided, however, that person suffering any loss or damage in consequence of the stoppage or diminution in the supply of water to his lands due to any of the causes specified in Cl. (d) above shall be entitled to such remission of the water-rate payable by him, as may be prescribed.

56. Entertainment of claim after specified period.

No claim for compensation under this Act for any loss or damage shall be entertained after the expiration of one year from the time when the loss or damage be complained of occurs:

Provided that the Divisional Irrigation Officer, on sufficient cause being shown to his satisfaction by the claimant for not making the claim within such period, may condone the delay and entertained the claim within such time as may be prescribed.

57. Payment of compensation in case of utilisation etc.

- (1) In every case of entry upon any land or building or the utilisation of materials under the provisions of this Act, the Irrigation Officer or the person making the entry or utilisation shall ascertain and record, in the manner prescribed, the extent of the damage, if any, caused by the entry, or in the execution of any work, to any crop, tree, building or other property and the value of the materials taken or utilised and within one month from the date of such entry compensation shall be offered by the Irrigation Officer to the person or persons entitled to such compensation, in the manner prescribed.
- (2) If the compensation so offered is refused to be accepted within a week of such offer, the Irrigation Officer shall forthwith refer the matter together with a note on such refusal to the Collector or a functionary as delegated by the district administration, for the purpose of determining the amount of compensation.

COMMENTS

In sub-S. (2) of S. 57, for the words “Divisional Irrigation Officer” the words “Collector or a functionary as delegated by the district administration” were substituted *vide* Assam Act No. II of 1991 with effect from 19th May, 1989.

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58. Determination of compensation in other cases.

- (1) All claims for compensation under this Act other than claims of the nature for compensation under preceding section above shall be made to the Collector or a functionary delegated by the district administration.
- (2) The Collector or a functionary delegated by the district administration shall enquire into all claims for compensations including claims for compensations and which has been referred to him under the preceding section and determine the amount of compensation in every case. In determining the amount of compensation the Collector or a functionary delegated by the district administration shall be guided by the provisions of Ss. 23 and 24 of the Land Acquisition Act, 1894 (Act I of 1894) as amended from time to time:

Provided that regard shall be had to the diminution in the market value at the time of awarding compensation of the property in respect of which compensation is claimed and where such market value is not ascertainable the amount of the diminution of the annual net profits of such property caused by the exercised of the powers conferred by this Act.

COMMNETS

In sub-Ss. (1) and (2) of S. 58, for the words “Divisional Irrigation Officer” the words “Collector or a functionary as delegated by the district administration” were substituted. At the end of sub-S. (2), the colon was deleted and words “as amended from time to time” were inserted *vide* Assam Act No. II of 1991 with effect from 19th May, 1989.

59. Compensation when payable.

All sums of money payable for compensation awarded under this Chapter shall be made as per provisions of the Land Acquisition Act, 1984, as amended from time to time.

COMMENTS

In S.39, the term beginning with the word “become” occurring after the word “shall” was substituted by the words “be made as per provisions of the Land Acquisition Act, 1894 as amended from time to time” *vide* Assam Act No. II of 1991 with effect from 19th May, 1989.

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CHAPTER IX

Statement of disputes

60. Application in case of disputes about supply of water.

Whenever there is any difference between two or more persons with regard to their mutual rights and liabilities in respect of the use of any water course or supply work or as to the distribution or supply of water from any supply work or water-course to any land or block of land, any such person may apply in the manner prescribed to the Irrigation Officer stating the points of dispute.

61. Notice of disputes.

On receipt of an application under the preceding section, the Irrigation Officer shall give notice to the other persons to the dispute stating therein the date, time and place on which he shall proceed to enquire into the matter.

62. Enquiry on disputes.

On the day fixed for the enquiry the Irrigation Officer shall proceed to make the enquiry in such manner as may be prescribed, and after giving an opportunity of being heard to all the person present on the date, time and place fixed, shall record his findings and pass such order as he may deem fit

and proper, regarding the claims of the different persons in respect of the dispute:

Provided that the Irrigation Officer before passing any order shall make all reasonable attempts to bring about a compromise amongst the persons in dispute.

On the failure of the Irrigation Officer to bring about a compromise, he shall pass an interim order as regards the use or maintenance of a water course of field channel or field drain pending the disposal of the dispute and he shall forward the dispute to the Divisional Irrigation Officer along with his findings and the Divisional Irrigation Officer shall pass an order thereon after giving a hearing to the parties.

No order passed under this section shall be liable to be called in question in any Civil Court.

CHAPTER X

Safety of irrigation works

63. Prohibition in certain thing in irrigation or supply works.

No person shall-

- (i) conduct mining or quarrying operations requiring the use of explosive within a distance of one kilometre from the boundaries of any irrigation work or supply work without the prior written permission of the Irrigation Officer;
- (ii) deposit any produce of mines in or near any channel or other work, whether natural or artificial, through which rain or other water flows into any irrigation work or supply work;
- (iii) no person shall without permission of Irrigation Officer pollute or discharge sewage effluent or trade effluent in the water of any irrigation work or supply work which may cause injury to irrigation work or supply work or may deteriorate the quality of water of the irrigation

works or may give to the growth of any weeds in the irrigation works;

- (iv) have the right to fish or ply any vessel in a reservoir, pond or tank or across or along a canal or channel of any irrigation work or supply work without the previous written permission of the State Government or such officer as may be authorised in this behalf by the State Government and subject to such terms and conditions as may be prescribed and such other limitations as may be laid down by the authority giving the permission in each particular case and to the payment of such fees as may be prescribed;
- (v) obstruct the proper functioning of the various means of cross-drainage works, such as, aqueducts, culverts, super-passages, siphons, weirs and allied works constructed for the safety of any irrigation work or supply work except with the previous written permission of the Irrigation Officer;
- (vi) use any water from any irrigation work or supply work without obtaining necessary permission under S. 31 of this Act or for purpose other than those for which supply of water is made;
- (vii) sell, sub-let or otherwise transfer except with the previous permission of the Superintending Irrigation Officer his right to use any water received from any

irrigation work or supply work to any other person other than cultivating tenant under him for the purpose of irrigating the lands in his occupation as such cultivating tenant;

(viii) after the publication of a notice under S. 36, grow or allow any crop other than the crops specified in the notice to be grown or sown or planted or allow the sowing or planting of any crop during any period other than during the period specified in such notice on any land within the culturable commanded area of the irrigation work;

(ix) allow any water supplied from any irrigation work or supply work to run to waste.

64. Prohibition of certain things except when duly authorised.

No person other than the Irrigation Officer or any other person duly authorised by the Irrigation Officer or any other person duly authorised by the Irrigation Officer in this behalf-

(i) shall have the right to operate a sluice-gate, regulator or flood gate of a reservoir, canal or channel of any irrigation work or supply work;

- (ii) shall let out water from a channel or canal of any irrigation work or supply work by cutting the bund, constructing a sluice or outlet or by any other contrivance;
- (iii) construct any earthen or masonry pond or weir on any channel or stream flowing above any irrigation work or supply work;
- (iv) shall otherwise interfere with an irrigation or supply work, empowered by the Irrigation Officer in this behalf.

COMMENTS

In Cl (iii) of S. 64 for the word “wire’ the word “weir” was substituted *vide* Assam Act No. II of 1991 with effect from 19th, 1989.

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65. Liability of owner to maintain bunds etc.

- (1) Every owner whose reservoir, pond, tank or well is situated above any irrigation work or supply work shall maintain the bunds and all arrangements or release of surplus water of such reservoir, pond, spring-pond, tank or well in such a safe and efficient condition as to ensure safety to the irrigation work or supply work.

- (2) If in the opinion of the Irrigation Officer the condition of the any bund or surplusings arrangements of any one or more of the works referred to in the preceding sub-section is likely to endanger the irrigation work or supply work below, the Irrigation Officer shall serve a notice upon the owner concerned to bring such bunds or surplusings arrangements to a reasonably safe and efficient condition within such time as may be specified in the notice.
- (3) If the owner fails to comply with the directions of the notice within the time specified or does any repairs to them which in the opinion of the Irrigation Officer are not satisfactory, he may carry out the necessary repairs himself and the costs incurred for the same shall be recoverable from the said owner.

66. Enquiry or examination for ensuring application and regulation of water.

Whenever in the opinion of the State Government it appears necessary to make an enquiry or examination for ensuring the proper application of water or the regulation of the use, supply and storage of water of any irrigation or supply work or for the proper maintenance and managements of any irrigation or supply work or for taking measurement of lands irrigated by the supply of water from any irrigation or supply work for the purpose of assessment or apportionment of the betterment contributions of water-rates leviable under this

Act, the Irrigation Officer or the Betterment Contribution Officer, as the case may be, duly empowered in this behalf shall have all the powers mentioned in S.5 of this Act as may be required to be exercised for the purpose of making such enquiry or examination either by himself or through his subordinates authorised by him.

67. Power to prevent apprehended damages.

In case when any damage is apprehended to any irrigation work or supply work whether by accident or by floods, the Irrigation Officer duly empowered in this behalf may, either by himself or through his subordinates, take all such measures as may be necessary for preventing the accident or damage and for that purpose may, in addition to other powers, regulate the floods by operating gate or gates or gates waste-weir on the dam.

68. Notice to occupiers etc.

When any such Irrigation Officer proposes for the purpose of exercising his powers under the preceding two sections to enter into any building or enclosed court or garden attached to a dwelling house not supplied with water from an irrigation work and not being, adjacent to a flood embankment, he shall give to the occupier of such building, court or garden such reasonable prior notice, as the urgency of the case will allow.

CHAPTER XI

Offences, penalties and recoveries

69. Offences and penalties.

Whoever voluntarily or without any lawful authority from any officer authorised in this behalf-

- (1) causes any damage, alterations, enlargement or obstruction to any irrigation work or supply work;
- (2) causes any vessel to enter or navigate in any irrigation or supply work otherwise than in accordance with the rules framed;
- (3) interferes with, increases or decreases the level and supply of water in, or the flow of water from, through, over or under, any irrigation work or supply work;
- (4) neglects, while navigating on any irrigation work or supply work, to take proper precautions for the safety of the irrigation work or supply work or of any vessel therein;
- (5) destroys or removes or moves any level-marks or water-gauge fixed by the authority of a public servant in any irrigation work or supply work;

- (6) renders unfit or diminishes the usefulness of the water of any irrigation work or supply work for the purpose of which it is generally used;
- (7) neglects while using a field channel, to take proper precautions for the prevention of waste of the water thereof or interferes with the authorised distribution of water therefrom;
- (8) neglects, without reasonable cause, to carry out or to continue to carry out duties in connection with the execution of any repair or work when lawful bound to do under S.52.
- (9) opens, shuts or obstructs or attempts to open, shut or obstruct any sluice or outlet or any other similar contrivance in any irrigation work or supply work;
- (10) allows cattle to graze or to be gathered or any animal or vehicle to pass through any irrigation work or supply work.
- (11) Grows or allows to grow any crop in contravention of a notification under S. 36;

(12) Contravenes any of the provisions of this Act or any rules made thereunder;

shall be liable, on conviction, for offences mentioned in Cl. (1) to (8) to a fine which may extend to rupees one thousand or to imprisonment which may extend to one year or with both for offences mentioned in Cls. (9) to (12) to a fine which may extend to rupees five hundred or to imprisonment which may extend to two months or with both;

Provided that for second or subsequent offence under Cls. (1) to (8) fine imposed shall not be less than rupees two hundred and under Cls. (9) to fine shall not be less than rupees fifty;

Provided further that in case of a continuing offence daily fine not exceeding rupees fifty during the period of continuance of the offence shall also be imposed.

70. Penalties for violation of prohibitions.

(1) Any person violating the provisions of Cl (vi) of S. 63 shall, in addition to other penalties to which he is or may be liable under this Act be also liable to pay water-rate at such rates as may be determined by the Irrigation Officer, not being less than ten times or more than thirty times the water rates he would have been

otherwise required to pay had he applied for the water so used and obtained permission for the same.

- (2) Any person violating the provisions of Cl. (vii) of (viii) of S. 63 shall in addition to other penalties to which he is or may be liable under this Act, be also liable to pay water-rate at such rate as may be determined by Irrigation Officer, not being less than five times and not being more than ten times the water-rate he would have been otherwise required to pay for the water-rate he would have been otherwise required to pay for the water used for the purposes.

71. Recovery of water-rates.

If the person or persons, using any water in any irrigation work or supply work in an unauthorised manner or for the purpose other than those for which any supply of water is made of allowing any water supplied from any irrigation work or supply work to run to waste, cannot be found, the Irrigation Officer, after giving not less than one month's notice to the owners and occupiers of all lands benefited by such use of lands for the irrigation of which the water was supplied and after hearing their objections, if any, make an order for the recovery of such charges as may be prescribed for such use or waste, from the owners or occupiers using the water or allowing the water to run to waste, as the case may be.

72. Order for repairing of damages etc.

When any person is convicted of an offence under S. 69, the Court may order that the person convicted shall remove or cause to be removed the obstruction, repair or cause to be repaired the damage or replace or cause to be replaced or repaired the landmark, level mark, water-gauge or apparatus in respect of which the conviction has taken place within such time as may be specified in such order.

73. Penalty for abetments and attempts.

Whoever abets any offence punishable under this Act or attempts to commit any such offence shall be punished as if he had committed the offence abetted or attempted.

74. Liability to be prosecuted under other laws.

Nothing contained in this Act shall prevent any person from being prosecuted under any other law for the time being in force for any act or omission made punishable under that other law.

75. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (Act II of 1974), the offences mentioned in S. 69 from (1) to (6) shall be cognizable and the offences mentioned in serials (7) to (12) shall be non-cognizable.

COMMENTS

Section 75 was substituted *vide* Assam Act No. II of 1991 with effect from 19th May, 1989.

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76. Power to remove or take into custody of persons damaging irrigation or supply works.

Notwithstanding anything contained in the Code of Criminal Procedure, 1973, any officer in charge of any irrigation work or supply work, may remove therefrom or may into custody without a warrant any person who within his view-

- (a) willfully damages, alters, enlarges or obstructs irrigation work or supply work;
- (b) without proper authority interferes with the supply or flow of water, in or from any irrigation work or supply work so as to endanger, damage or render less useful such irrigation work or supply work;

Provided that when any person is taken into custody he shall be taken to a Magistrate, or in the absence of any Magistrate, to the nearest police station, without undue delay.

77. Power to order reward.

- (1) Any court sentencing any person to pay any fine under the provisions of S. 69 above or any Court confirming such sentence whether in appeal or revision, may direct that the whole or any part of such fine may be paid by way of reward to any person who gave information leading to the direction of such offences or to the conviction of the offender.
- (2) The amount directed to be so paid under the preceding section by any court shall not be paid until the period specified for presentation of the appeal or revision, as the case may be, has elapsed, or if any appeal or revision is preferred, till after the final disposal of such appeal or revision.

78. Power to compound.

Any Irrigation Officer duly empowered in this behalf may accept before the institution of a prosecution under this Act, from any person against whom a reasonable belief exists that he has committed an offence punishable under this Act or the rules made thereunder, a sum of money as may be prescribed but not exceeding two hundred rupees, by way of composition of such offence.

CHPATER XII

Appeals

79. Appeals.

- (1) Any person aggrieved by any order passed by an Irrigation Officer under S. 31, 39, 70 or 80 may, within a period of 30 days from the date of passing the order, appeal to the Divisional Irrigation Officer, in the manner prescribed.
- (2) Any person aggrieved by an order passed by a Divisional Irrigation Officer under S. 52 or 65 may, within a period of 30 days from the date of passing the order, appeal to the Superintending Irrigation Officer, in the manner prescribed.
- (3) Any person aggrieved by an order passed by a Betterment Contribution Officer S.46 or 51 may, within a period of 30 days from the date of passing the order, appeal to such authority and in such manner as may be prescribed.
- (5) The appellate authority before whom an appeal is filed under any of the above provisions, after giving an opportunity to the appellate and other persons likely to be affected by any order passed by him in the manner

prescribed, shall pass such order as such authority may think just and proper.

- (5) Every order passed by an Irrigation Officer, Divisional Irrigation Officer or Betterment Contribution Officer under the provisions of this Act in the first instance shall be final unless an appeal against such order has been filed under any of the above provisions in which case the order passed by the appellate authority shall be final.
- (6) No civil Court or other authority shall question the validity or correctness of any order which has become final under the provisions of this Act.

CHAPTER XIII

Acquisition of land

- 80.** (1) All lands required for construction, expansions, improvements, alterations or realignment of any irrigation work or supply work under this Act shall be acquired and taken possession of under the provisions of Land Acquisition Act, 1894 as amended from time to time, and the provisions of the said Act shall apply to the determination of the amount of compensations and other matter relating to the acquisition of the said lands, rights and interest.
- (2) The amount of compensation payable to the persons for the acquisition of lands for any irrigation work or supply work shall be paid within a period not exceeding three years from the date of acquisition:

Provided that any amount payable by any owner under sub-S. (3) below may be adjusted against any amount payable to such owner as compensation under this section.

- (3) The total cost of acquisition of lands under sub-S. (1) above for any supply work shall be recovered from the owners or occupiers of lands to be benefited by such supply work, on the basis of lands benefited within a

period of six months from the date of acquisition in such number of instalments, as may be prescribed. If any owner or occupier of such lands liable to pay any instalment makes any default in payment thereof by the due date, the amount in default shall be recoverable as public demand under the Bengal public Demand Recovery Act, 1913 (Act 3 of 1913) on a certificate being given by the Divisional Officer.

COMMENTS

Sub-section (1) of S. 80 was substituted *vide* Assam Act No. II of 1991 with effect from 19-5-1989.

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CHAPTER XIV

Miscellaneous

81. Betterment contribution and water-rates to be realisable as public demand.

Betterment contribution, water-rates and other charges and dues payable, realisable or recoverable under this Act if not paid on or before the date by which they are payable shall be realisable as public demand under the Bengal Public Demand Recovery Act, 1913 (Act 3 of 1913) on a certificate being given by the Betterment Contribution Officer of the Irrigation Officer.

82. Power to frame rules.

- (1) The State Government may, by notification, make rules for the purpose of carrying into effect the provisions and purposes of this Act.
- (2) Every rule made under this Act shall be laid as soon as may be after it is made, before the Assam Legislative Assembly while it is in session for a total period of fourteen days, which may be comprised in one session or in two successive sessions, and if, before the expiry of the session in which it is so laid or the session immediately following, the Assam

Legislative Assembly agree in making any modification in the rule of the Assam Legislative Assembly agree that the rule should not be made, the rules shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done or omitted to be done under that rule.

CHAPTER XV

Validation and savings

83. Repeal and savings and validation.

On the coming into force of this Act, the Assam Embankment and Drainage Act, 1953 (Assam Act I of 1954) hereinafter called the 1953 Act, shall stand repealed to the extent to which provisions have been made in this Act:

Provided that-

- (1) no such repeal shall affect the validity of anything already done under the 1953 Act;
- (2) all schemes of embankment and drainage framed for the purpose of improvement of land or for the proper cultivation or irrigation of any land, whether implemented or still under implementation, and all works done or to be done, notifications issued, orders passed, appointments made, permissions or sanctions granted, fees or rates levied, contracts entered into, suits instituted, proceeding taken under the 1953 Act shall continue to be valid and be in force so far they are not inconsistent with any of the provisions of this

Act as if implemented or under implementation, done, issued, passed, made, granted, levied, entered into instituted or taken under the appropriate provisions of this Act;

- (3) all embankments and drains constructed or under construction, all bridges, culverts, syphons, sluices or other devices made or under making shall be deemed to have been validity constructed or under construction, made or under making under the provisions of this Act;
- (4) all schemes of canal, drainage, embankment and irrigation framed by the State Government and implemented or under implementation shall be deemed to have been validity framed, implemented or under implementation as if this Act was in force in respect of any such scheme and shall not be called in question on the ground that the procedures prescribed in this Act or in the 1953 Act were not complied or on any other ground;

Provided that if the land , on which canal, culverts, drains, embankments, syphons and other devices were constructed, were not acquired under any law, proceedings for the acquisition of such lands shall be commenced within a period of six months from the date of commencement of this Act;

- (5) any person, who was liable to pay any rate or other charges under the provisions of the 1953 Act or who would have been liable to pay such rates or charges in respect of schemes if this Act was in force, shall to pay rates or charges under the provisions of this Act.

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