

SIKKIM

GOVERNMENT



GAZETTE

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GOVERNMENT OF SIKKIM
LAW DEPARTMENT
GANGTOK.

NOTIFICATION

No. 13/LD/1983.

Dated the 3rd October, 1983.

The following Act of the Sikkim Legislative Assembly having received the assent of the Governor on 1st day of October, 1983, is hereby published for general information:—

THE SIKKIM PUBLIC WORKS (LIABILITY OF GOVERNMENT AND
CONTRACTOR) ACT, 1983

(ACT NO. 11 OF 1983)

AN
ACT

[1.10.83]

to provide for liability of the Government and the contractor for certain damage caused to the property in the course of executing a public work and for matters connected therewith.

Be it enacted by the Legislature of Sikkim in the Thirty-fourth Year of the Republic of India as follows:—

1. (1) This Act may be called the Sikkim Public Works (Liability of Government and Contractor) Act, 1983.
- (2) It extends to the whole of Sikkim.
- (3) It shall come into force on such date as the State Government may, by notification, appoint.

*Short title, extent
and commencement.*

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

Definitions.

- (1) "avoidable damage" means cutting of trees, standing crops, damage to huts, camping or dumping materials on the land of another person without the authority of the owner of the said land and includes any other damage which, in the opinion of the Government, is not an unavoidable damage;
- (2) "Chief Engineer" means an officer of the Government appointed as such whether or not in the Public Works Department;
- (3) "Collector" means the District Collector and includes any Officer especially appointed by the Government to perform the functions of the Collector under this Act;

- (4) 'contractor' means a person or association of persons whether incorporated or not, who is entrusted with a public work;
- (5) "Government" means the Government of Sikkim;
- (6) 'land' includes benefits to arise out of land, and things attached to the earth or permanently fastened anything attached to the earth;
- (7) "notification" means a notification published in the Official Gazette;
- (8) "person interested" includes all persons claiming an interest in compensation to be made on account of the imposition of restrictions upon the use and enjoyment of land or on account of damage to any land under this Act;

Explanation.—A person shall be deemed to be interested in land if he is interested in an easement affecting the said land;

- (9) "prescribed" means prescribed by rules made under this Act;
- (10) "public work" means any work relating to construction of road, building, bridges or any other work entrusted by the Government to a contractor for execution;
- (11) "unavoidable damage" means,—
 - (a) damage caused due to rock cutting on steep slopes where it is not possible or practicable on the part of the contractor to contain debris by erecting suitable barriers;
 - (b) landslides not caused due to negligences on the part of the contractor;
 - (c) any other damage which, in the opinion of the Chief Engineer, for reasons to be recorded in writing, is not an avoidable damage.

Imposition of restrictions.

- 3. (1) Whenever it appears to the Government that it is necessary to impose restrictions upon the use and enjoyment of land in the vicinity of any public work or of any site intended to be used or to be acquired for any such work, it may, by notification, impose such restrictions on such land as it may deem necessary.
- (2) A sketch plan of the land in respect of which the notification referred to in sub-section (1) is issued shall be prepared on a scale not smaller than 6 inches to the mile indicating the boundaries of such land and the Collector shall cause public notice of the substance of such notification to be published at convenient places in the locality.
- (3) The notification referred to in sub-section (1) shall be conclusive proof that it is necessary to keep the land free from buildings and other obstructions specified therein.

Powers to do certain preliminary acts after publication of notification under section 3.

- 4. It shall be lawful for such officer as the Government may, by general or special order, authorise in this behalf, and for his employees, servants and workmen, at any time after the publication of the notification under section 3, to enter upon and survey and take levels of any land in such locality, to dig or bore into the sub-soils, to do all other acts necessary to ascertain whether any land, if so, what restrictions should be imposed on the use and enjoyment of the land, to set out the boundaries of the land upon the use and enjoyment of which restrictions are to be imposed, or of any part of such land, to mark such levels and boundary lines by placing marks and cutting trenches, and where the survey cannot be completed or the levels cannot be taken or the boundary lines cannot be marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that no person shall enter into any building or upon any enclosed courtyard or garden attached to a dwelling house unless with the consent of the occupier thereof or without previously giving such occupier at least seven days' notice in writing of its intention to do so.

Payment for damage.

- 5. The Officer authorised under section 4 (hereinafter referred to as the authorised officer) shall at the time of such entry pay, or tender payment for all avoidable damage done or proposed to be done and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector whose decision shall be final.

- (1) Whenever a notification has been issued under section 3, it shall be lawful for the authorised officer or his employees, servants and workmen to enter and demolish any building or other construction on the surface, to cut down or grub up all or any trees, to remove or alter all or any of the barks, fences, hedges and ditches, to make underground and other drains, to fill up all excavations, and demolish all buildings and other constructions below the surface, and generally to level and clear the said land and to do all such acts for levelling and clearing the same as he may deem necessary or proper, but in such manner nevertheless that evidence of the boundaries held by different owners may be preserved.
- (2) In case of emergency, the Government may, by notification, declare that all or any powers conferred by sub-section (1) may be exercised at any time within one month after the publication of the notification under section 3 and such powers may be exercised accordingly.
- (3) Nothing in sub-section (1) shall preclude the authorised officer or his employees, servants and workmen from exercising at any time the said powers for the purpose of removing, wholly or in part, any building or other obstruction, maintained, created or added to, altered, planted, stacked, stored or otherwise accumulated in contravention of this Act or of any rules or order made thereunder.

Further powers exercisable after publication of notification under section 3.

7. On and from the date of publication of the notification under section 3, such of the following restrictions, as the Government may, in its discretion, declare therein, shall attach with reference to such land, namely :-

Nature of restrictions.

- (a) no variation shall be made in the ground-level, and no building, wall, bank or other construction above the ground shall be maintained, erected, added to or altered otherwise than with the previous written approval of the Government or any officer authorised by it in this behalf;
- (b) no wood, earth, stone, brick, gravel, sand or other material shall be stacked or stored or otherwise accumulated, and if any of such materials have been stacked or stored they shall be removed forthwith;
- (c) no live-hedges, rows or clumps of trees or orchards shall be maintained, planted, added to or altered otherwise than with the previous approval of the Government or any officer authorised by it in this behalf.

8. (1) Before the expiry of 3 months from the date of publication of the notification under section 3, the Collector shall issue a notice to all persons interested in such land giving the date and time on which an enquiry for assessment of damage is to be held.

Notice to persons interested.

- (2) Such notification shall be served in accordance with the provisions of the Code of Civil Procedure, 1908.
- (3) A person interested may, if he so desires, file a written objection before the Collector.
- (4) On the day so fixed under this section or any other date to which the enquiry is adjourned, the Collector shall proceed, enquire into the objections (if any) filed by any person interested in the land and determine the amount of damage and the interest of the person claiming the compensation and shall make an award under his hand of :-
 - (a) the true area of the land and the nature of damage;
 - (b) the compensation which, in his opinion, should be allowed for any damage caused or likely to be caused due to the execution of any public work or imposition of any restrictions;
 - (c) the apportionment of the compensation among all the persons known or believed to be interested in the land, of whom or of whose claims he has information, whether or not they appeared before him.
- (5) The Collector shall give immediate notice of the award made by him to such of the persons who are interested in the land but who are not present personally or by their representatives when the award was made.

5 of 1908

Adjournment of enquiry.

Power to summon and enforce attendance of witnesses, etc.

5 of 1908

Matters to be considered in determining the amount of compensation.

Matters not to be considered in determining the amount of compensation.

Compensation by whom payable.

9. The Collector may, for any cause he thinks fit, from time to time, adjourn the enquiry to a day to be fixed by him.

10. For the purpose of enquiry under this Act, the Collector shall have power to summon and enforce the attendance of witnesses including the persons interested or any of them and compel the production of documents by the same means and in the same manner as far as may be as is provided in the case of Civil Courts in the Code of Civil Procedure, 1908.

11. (1) In determining the amount of compensation to be awarded for damage caused, or likely to be caused, or for restrictions imposed under this Act, the Collector shall take into consideration —

- (a) the actual decrease in market value of the land owing to the publication of the notification under section 3;
- (b) the damage sustained by the person interested by reason of the removal of any standing crops, staking or storing of sand, stones or other materials required in executing the public work;
- (c) the damage, if any, sustained by the person interested by reason of ceasing to be able to use such land conjointly with his other land;
- (d) the damage, if any, sustained by the person interested by anything which injuriously affects his other property, moveable or immovable, in any other manner, or his earnings; and
- (e) if, in consequence of the imposition of restrictions, the person interested is compelled to change his residence or place of business the reasonable expenses incidental to such change.

(2) In addition to amount of award, the Collector shall in every case award a further sum equivalent to fifteen percent of such award.

12. (1) In determining the amount of compensation to be awarded for damage, caused or likely to be caused for restrictions imposed under this Act, the Collector shall not take into consideration—

- (a) the degree or urgency which has led to the damage or the imposition of restrictions;
- (b) disinclination of the person interested to submit to damage or restrictions;
- (c) any damage sustained by him, which, if caused by a private person, would not render such person liable to a suit;
- (d) any increase in the value of the other land of the person interested occurring or likely to occur from anything done under this Act; or
- (e) any outlay or improvements on, or disposal of, the land commenced, made or effected without the previous approval of the Government after the date of publication of the notification under section 3.

(2) While making the award under this Act the Collector shall indicate therein whether the damage is avoidable or unavoidable.

13. (1) Where the damage is unavoidable the compensation shall be paid by the Government or any other person or agency on whose behalf the work is being executed, to the persons interested in accordance with the award made by the Collector and where the damage is avoidable it shall be payable by the contractor within such time as may be specified in the notice issued by the authorised officer.

(2) The authorised officer shall issue or cause to be issued a notice upon the contractor calling upon him to deposit with such officer the amount of the award within such time and in such manner as may be specified in notice.

(3) Where the contractor fails to comply with the notice issued under subsection (2), it shall be lawful for the authorised officer to recover the amount on account of damage as given in the award from the payments due to the contractor or from the earnest money or security deposit of the said contractor lying with the Government whether or not under the said contract.

- (4) The authorised officer may pay to the person interested the amount of compensation on execution of indemnity bond by the person concerned.
- (5) It shall be the duty of the Government to make available to the authorised officer the amount of compensation payable for unavoidable damage and the authorised officer shall distribute the said amount in the manner specified in sub-section (4).
- (6) Where any amount of compensation lies undisbursed with the authorised officer, he shall keep the same in deposit in the bank as may be directed by the Government.
14. (1) Where the payments due to a contractor in respect of any public work, or the earnest money or security deposits of such contractor are found by the authorised officer to be insufficient to meet the amount stated in the award, such authorised officer shall prepare a certificate of dues and send the same to the Judicial Magistrate of the first Class of the area in which the land is situated. *Procedure where the payments due to contractor are insufficient.*
- (2) The Judicial Magistrate of the first Class to whom such certificates is sent shall forthwith realise the amount due from the contractor as if it were a fine imposed by him and upon recovery of the amount, transmit the same to the authorised officer.
15. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 3, by the officer therein mentioned and in the cases of any other notice, by an order of the Collector. *Services of notices.*
- (2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.
- (3) When such person cannot be found, the services may be made on any adult male member of his family residing with him; and, if no such adult male can be found, the notice may be served by affixing a copy on the outer door of the house in which the person therein ordinarily dwells or carries on business, or by fixing a copy thereof at some conspicuous place in the Court House and also in same conspicuous part of the land upon which restrictions are to be imposed :
- Provided that, if the Collector so directs, a notice may be sent by registered post in a letter addressed to the person named therein at his last known residence, address or place of business, and service of it may be proved by the production of the addressee's receipt or postal receipt.
16. (1) Any person aggrieved by the award made by the Collector under this Act may, within 30 days from the date of the knowledge of award, prefer an appeal to the Government in the form of a Memorandum giving the grounds of such appeal: *Appeal.*
- Provided that the Government may admit the appeal after the expiry of period of 30 days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the time prescribed.
- (2) No appeal shall be disposed of unless after giving the person concerned an opportunity of being heard.
- (3) The decision of the Government under this section shall be final and an appeal against such decision shall, notwithstanding anything to the contrary contained in any other law, lie to the High Court only.
17. No award made or appeal preferred under this Act shall be chargeable with stamp duty and no person claiming under any such award shall be liable to pay fee for a copy of the said award or decision of the Government. *Exemption from duty and fees.*
18. No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act or the rules made thereunder. *Protection of action taken in good faith.*

Offence by companies.

19. (1) If the person committing an offence under this Act, or the rules thereunder is a Company, every person, who at the time the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

- (2) Notwithstanding anything contained in sub-section (1) where the offence under this Act or the rules made thereunder has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director or manager, Secretary or other officer of the company such director, manager, Secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

- (a) “company” means any body corporate and includes a firm or other association of individuals; and
(b) “director” in relation to a firm means a partner in the firm.

Penalties.

20. Whoever contravenes the provisions of this Act or any rules, or notification made thereunder shall be liable to be punished with imprisonment for a term which may extend to six months or to a fine which may extend to rupees two thousand.

Power to remove difficulties.

21. If any difficulty arises in giving effect to any of the provisions of this Act the Government may, by order, remove such difficulty:

Provided that no such order shall be made after the expiration of period of two years from the date of commencement of this Act.

Power to make rules.

- 22 The Government may, by notification, make rules for the purpose of giving effect to the provisions of this Act.

Validation of acts done or payments realised before the commencement of this Act.

23. All things done, actions taken or payments realised from a contractor for any damage in respect of a public work entrusted to that contractor before the commencement of this Act shall be, and shall always be deemed to be legal and valid notwithstanding anything to the contrary contained in this Act.

B. R. PRADHAN,

Secretary to the Government of Sikkim,
Law Department.

F. No. 16 (185)/LD/83.