

## THE KERALA HIGHWAY PROTECTION ACT, 1999

(Act 6 of 2000)

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## THE KERALA HIGHWAY PROTECTION ACT, 1999\*

(Act 6 of 2000)

*An Act to provide for the protection of highways and for the regulation of highway development in the State of Kerala.*

*Preamble.*—WHEREAS it is expedient to provide for the protection and development of highways and for the prevention of ribbon development along highways and encroachment and use of highways for purposes which will adversely affect the safety of traffic and proper condition of highways in the State of Kerala,

BE it enacted in the Fiftieth Year of the Republic of India as follows:

## CHAPTER I

**Preliminary**

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Highway Protection Act, 1999

(2) It extends to the whole of the State of Kerala

(3) It shall be deemed to have come into force on the 17th day of November, 1999

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

(a) “animal” means any domestic or captive animal;

(b) “appellate authority” means an appellate authority constituted under section 37,

(c) “building line” means a line on either side of a highway as may be determined by the competent authority under section 18;

(d) “competent authority” means any officer of the Government in Public Works Department appointed by Government by notification in the Gazette to be the competent authority for the purposes of this Act;

(e) “control line” means a line beyond the building line as may be determined by the competent authority under section 18;

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\* Received the assent of the Governor on 20th day of January, 2000 and published in the Kerala Gazette Extraordinary No 114 dated, 20th day of January, 2000.

(f) "encroachment" means occupation of a highway or part thereof for purposes other than traffic and any Act which causes damage to the highway and includes,—

- (i) unauthorised erection of a building or any other permanent or temporary structure, balcony, porches, facades or projections on, over or overhanging the highway,
- (ii) occupation of highway for stacking building materials or goods of any other description, for parking automobiles for maintenance and repair, for exhibiting articles for sale, for erecting poles, awnings, tents, pandals, arches, platforms, rostrums, hoardings, display boards, statues, monuments of all kinds, steps, ramps and other similar structures or stabling domestic animals and poultry and cultivation of any kind including horticulture or for any other purpose;
- (iii) excavation or embankment of any sort made or extended on any highway,
- (iv) dumping of waste and filthy materials which may cause hygienic and environmental hazards, letting of waste and polluted water or other effluents into the highway and using the highway for bathing, washing, watering and defecating;
- (v) blocking, closing, choking or restricting water flow along the sides of the highway or across it, either free flow or guided flow through drains, channels, conduits, sewers, cross drainage works such as culverts, weirs, undertunnels, bridges, or aqueducts; and
- (vi) blocking or closing of channels, streams or any water course which passes through any property, either private or public, and forming part of a natural water course which may result in accumulation of water on a highway causing damage to road crust;

(g) "Government" means the Government of Kerala

(h) "highway" means any road, way or land declared as a highway under section 3 and includes any land acquired or demarcated for construction of a highway,

(i) "highway authority" means the highway authority appointed under section 4,

(j) "national highway" means any national highway in the State included in the schedule to the National Highways Act, 1956 (Central Act 48 of 1956) or any highway declared as a national highway under sub-section (2) of section 2 thereof;



(k) "prescribed" means prescribed by rules made under this Act;

(l) "ribbon development" means growth of buildings and industrial and commercial establishments linearly along a highway with direct access to the highway;

(m) "right of way" in relation to a highway means the land within its boundaries,

(n) "standard width of highway" means the width of a highway as may be specified under section 17,

(o) "State" means the State of Kerala;

(p) "survey" includes all operations incidental to the determination, measurement and record of a boundary or boundaries for preparation and implementation of a highway scheme or highway development and includes a re-survey,

(q) "survey mark" means any mark or object erected, made, employed or specified by a highway authority to indicate or determine or assist in determining the position or level of any point or points;

(r) "vehicle" includes any wheeled conveyance drawn, propelled or driven by any kind of power including human, animal, motor, steam or electric power, and includes any barrow, plough or like vehicle

## CHAPTER II

### Highways and Highway Authorities

3 *Declaration of roads, ways or land as highway* —(1) The Government may, by notification in the Gazette, declare any road, way or land appurtenant thereto to be a highway and classify it as a State highway or a hill highway or a major district road or any other category of road

*Explanation.*—For the purpose of classification of highways under this section, important roads within a district or adjoining districts serving areas of production and market and connecting these with each other or with a State highway or a national highway shall be considered as a major district road and arterial routes of the State linking district headquarters and important cities or towns or important places of tourist interest or pilgrim centres within the State and connecting them with national highways or highways of neighbouring States shall be considered as a State highway.

(2) Every notification under sub-section (1) shall also be published by Government in at least two daily news papers having wide circulation in the area to which the notification relates

4. *Appointment of highway authorities.*—For the purpose of exercising the powers and performing the duties of a highway authority under this Act for any area or for a highway or part of a highway, the Government shall appoint, by notification, the Executive Engineer (Roads) or Executive Engineer (National Highways) of the Public Works Department as the highway authority of the respective area

5. *Powers and functions of highway authority.*—Subject to the provisions of this Act, the highway authority shall have the following powers and functions, namely —

- (a) to execute development schemes;
- (b) to control ribbon development,
- (c) to prevent and remove encroachment;
- (d) to exercise such powers and functions as are necessary and incidental to any or all of the above matters, and
- (e) to exercise such other powers and functions as may be prescribed.

### CHAPTER III

#### **Development and Maintenance of Highway**

6. *Power to enter on land for survey in connection with a highway scheme.*—(1) The highway authority or any officer not below the rank of an Assistant Engineer of Public Works Department or any agency authorised by the highway authority in this behalf, may undertake a survey in connection with a highway scheme and may for this purpose,—

- (a) enter upon any land along with his workmen and survey team and take measurements and levels on it,
- (b) mark such levels, dig or bore into the subsoil and do all other acts necessary to ascertain whether the land is suitable or not;
- (c) set-out the boundaries of the proposed highway by placing survey marks and cutting trenches; and
- (d) cut down and clear any part of a standing crop, or fence in cases where survey cannot be completed, levels taken or boundaries marked otherwise

Provided that,—

- (i) no such entry into a building shall be made between sunset and sunrise;
- (ii) no dwelling house or place shall be so entered except with the consent of the occupier thereof or without giving the occupier at least forty eight hours' notice of the intention to make such an entry;
- (iii) reasonable opportunity and facility shall be allowed to the woman occupying any part of a dwelling house to withdraw; and
- (iv) due regard shall, so far as feasible, be paid to the social and religious customs and usages of the occupants of the premises entered into.

(2) The highway authority or the officer or the agency referred to in sub-section (1) shall in exercise of any power conferred by that sub-section do as little damage as may be possible and compensation for such damage, if any, shall be payable by the highway authority to the owner or occupier of such premises or both and in case of any dispute as to the sufficiency of the amount of compensation, the dispute shall be referred to the Collector of the concerned district and the Collector will take a decision thereon within thirty days.

7. *Preparation of scheme for highway development.*—(1) The highway authority may, of its own accord, or shall, on the written request by the competent authority, prepare a detailed scheme for the construction of a new highway or realignment or improvement of, or repairs to, an existing highway or part thereof and submit it to the competent authority for sanction in accordance with the provisions of this Act and the rules made thereunder.

(2) Such scheme may provide for,—

- (a) preparation of plans after having a survey made,
- (b) the acquisition of any land, which in the opinion of the highway authority is considered necessary for its execution;
- (c) the laying out or relaying out of all or any of the lands to be acquired;
- (d) the diversion or closure of any existing highway or a part of such highway;
- (e) the construction or reconstruction of the roadway including its widening, levelling, surfacing, bridging, sewerage, draining, water supply and street lighting arrangements, construction of over-bridges and underground pedestrian crosses and planting of trees on its sides;

(f) the laying out of foot-paths, cycle tracks and special traffic lanes for any kind or class of vehicles, the designing and setting of parking bays and petrol filling and service stations, the location of advertisement post and bill boards, and underground ducts for accommodating telecommunication cables, electric lines, water supply pipes and such other public utilities; and

(g) the lay out of access roads at suitable distance connecting the highway or the proposed highway with the adjoining properties.

(3) When a highway authority proposes to implement a new scheme or to realign an existing highway or part thereof, it shall notify the proposal in the Gazette and invite objections or suggestions with respect to the proposal before a date to be specified in the notification

(4) The notification shall also be published in two daily newspapers, of which one shall be in the local language, having wide circulation in the locality where the highway is situated, and copies of such notification shall also be prominently displayed at least in two conspicuous places in the locality.

(5) All objections and suggestions, received before the date specified in the notification, shall be considered by the highway authority before finalising its proposal and submitting it to the competent authority

(6) The highway authority shall, after finalisation of the proposal, submit the same to the competent authority for sanction.

(7) The competent authority may either accord sanction for the proposal, with or without modifications or reject the proposal and shall publish its decision in the Gazette

8. *Power to do certain acts for execution of the schemes.*—When the competent authority has sanctioned the highway scheme prepared under section 7 and provided the necessary finances for its execution, the highway authority shall proceed to carry out the work and may, for this purpose, —

(a) enter into and perform all such contracts on behalf of the competent authority as may be considered necessary,

(b) make arrangements for the acquisition of lands required for the scheme,

(c) turn, divert or close either temporarily or permanently any existing highway or portion thereof; and

(d) regulate, subject to such rules as may be prescribed in this behalf, the kind, number and speed of vehicles using any highway or part thereof, by means of barrier, diversion roads or other means.

9 *Maintenance of highway plans.*—(1) The highway authority shall, after having made a survey of each highway and its boundaries, prepare and maintain a plan as approved by the competent authority in respect of such highway

(2) A plan maintained under sub-section (1) shall show clearly the boundaries of the highway, the detailed measurements of road widths, the distance between boundary marks and sufficient measurements from fixed points to enable the re-fixation in position of boundary marks in case they have been displaced or tampered with.

10. *Demarcation of highway boundaries* —(1) The highway authority shall have the boundaries of the highways in its charge demarcated with reference to the plans maintained by it under sub-section (1) of section 9, by planting stones or other suitable marks of a durable nature at intervals all along the highway in such a manner that the imaginary line joining such stones or marks shall show the road boundary correctly.

(2) Where there are bends or links in the road boundary, the stone or marks shall be so located as to give the correct configuration of the boundary when they are joined by straight lines

(3) The boundary stones or marks, which may be given consecutive numbers, shall be maintained on the ground as if they constitute part of the highway.

11. *Annual check of highway boundaries.*—It shall be the duty of the highway authority to conduct annual check of the boundaries of the highway in its charge with a view to locate and remove of encroachments, if any

## CHAPTER IV

### **Prevention of unauthorised occupation of Highway and Removal of Encroachments**

12. *Highway deemed to be Government property* —Notwithstanding anything contained in any other law for the time being in force all lands forming part of a highway which has not already been vested in the Government shall, for the purpose of this chapter, be deemed to be Government property.



13 *Prevention of unauthorised occupation of highway.*—No person shall occupy or continue to occupy any highway or part of a highway for purposes other than traffic or do any act which involves any of the activities mentioned in clause (f) of section 2.

14. *Power to give direction to take certain measures.*—(1) Notwithstanding anything contained in any other law for the time being in force, where the highway authority is satisfied that any act which involves any of the activities mentioned in clause (f) of section 2 or sub-section (1) of section 19 done by any person before the commencement of this Act has caused or is likely to cause accumulation of water in the highway or obstruction to the free flow of any water course or other damage to the highway, the said authority may direct such person in writing to take such measures as may be necessary to remove any obstruction or to provide for free flow of water.

(2) Any person who has been issued a direction under sub-section (1) shall comply with it within fifteen days from the date of its receipt and such person, if fails to comply with the direction, shall be deemed to have contravened the provisions of section 13 of section 19, as the case may be.

15. *Removal of encroachment*—(1) Where, as a result of the annual check of highway boundaries made under section 11 or otherwise, the highway authority is satisfied that an encroachment has taken place on the highway under its jurisdiction, it shall serve a notice on the person responsible for the encroachment to remove the encroachment within such time as may be specified in the notice and if the person fails to comply with the notice the highway authority or the officer authorised by it in this behalf shall cause the encroachment to be removed, with the assistance of police, if required.

(2) Whenever an encroachment is made for the purpose of exposing articles for sale or for opening temporary booth for vending or publicity or for other like purposes, the highway authority shall with the help of police, if necessary, have such encroachment summarily removed.

16. *Recovery of cost of removal of encroachment*—Whenever a highway authority or the officer authorised by it remove any encroachment or carry out any protective work in respect of such encroachment, the actual expenditure incurred for such removal or protective work together with fifteen per cent of such amount as overhead charges, shall be recovered from the person responsible for the encroachment, in the manner as may be prescribed.



### **Prevention of Ribbon Development along Highways and Control of Access**

17. *Standard width of highway.*—The Government may, by notification in the Gazette, specify the standard width for each category of highway.

18. *Building lines and control lines.*—(1) The competent authority shall determine building lines and control lines in respect of any category of highway in such a way that the distance between the middle of a highway and the building line or that between the building line and the control line shall be fixed with due regard to the requirements of safety and convenience of traffic and of future development of the highway

*Explanation.*—For the purpose of this sub-section middle of a highway means, in relation to any highway for the improvement of which plans have been prepared by the highway authority, the middle of the highway as proposed to be improved in accordance with the plans, and where no such plans have been prepared, the point half way between the boundaries of the highway.

(2) The building lines and control lines as determined for any category of highway or part thereof shall be published in the Gazette and in two daily news papers by the competent authority

19. *Restriction on use of land between the highway boundary and building line*—(1) Notwithstanding anything contained in any other law for the time being in force or in any agreement or other instrument, no person shall,—

(a) construct, form or lay out any means of access to or from a highway, or a compound wall without a written permission of the highway authority, or

(b) erect or re-erect any building or materially alter the outside structural features of any existing building including any additions; or

(c) alter the level of land by lowering, raising, digging or filling up except with the written permission of the highway authority; or

(d) construct, form or lay out any works,

upon land lying in between the boundary of a highway and the building lines determined in respect of that highway:

Provided that these restrictions shall not apply to any work in connection with the repair, renewal, enlargement or maintenance or improvement of any sewer, drain, electric line, pipe, duct or other apparatus, constructed in or upon the land before the date of commencement of this Act

(2) Where any building or any part thereof lies within the area between the building line and the boundary of a highway, the highway authority may, whenever such building or part thereof is to be rebuilt for any reason, by notice require that such building be set back to the building line

20. *Restriction on use of land between building line and control line.*— Notwithstanding anything contained in any law for the time being in force, no person shall, except with the previous permission in writing of the highway authority,—

(a) erect or re-erect any building or structure or alter the level of land by lowering, raising, digging or filling up, or construct, form or lay out any means of access to a highway upon land lying in between the building line and the control line, or

(b) make any change in the use or purpose for which any building, constructed upon land in between the building line and the control line, was originally intended or authorised by the competent authority

21. *Application for permission*—(1) Every person desiring to obtain the permission referred to in section 19 or section 20 shall make an application in writing to the highway authority in such form with such information and together with such fees as may be prescribed,

(2) On receipt of an application under sub-section (1) the highway authority shall, after making such enquiries as it may deem fit, by order in writing, either,—

(a) grant permission, subject to such conditions, if any, as may be specified in the order; or

(b) refuse to grant such permission:

Provided that the highway authority shall not ordinarily refuse permission for the erection of a building or structure, or alteration of level of land or a means of access to a highway which conforms to the requirements of safety and convenience of traffic on the adjoining highway, or the re-erection of a building or structure which was in existence on the date of commencement of this Act unless such re-erection involve any material alteration to the outside structural features of the building or structure.

(3) Where the highway authority refuses to grant permission the reasons therefor shall be recorded and communicated to the applicant.

(4) Where an application for permission has been refused due to any defect of the application, the applicant may submit a fresh application to the highway authority rectifying the defects and the highway authority shall consider the application afresh and pass an order thereon.

(5) If after the expiration of a period of two months from the submission of application under sub-section (1) or sub-section (4), no order in writing has been passed by the highway authority, permission shall be deemed to have been granted as applied for:

Provided that no such permission shall be deemed to have been granted if the application is for the construction, formation or laying out of any means of access.

(6) The highway authority shall maintain a register containing sufficient particulars of all permissions granted or refused by it under this section and the register shall be made available for perusal, free of charge, by all persons interested and such persons shall be entitled to obtain extracts therefrom on payment of such fees as may be prescribed.

(7) Any person aggrieved by an order of the highway authority under sub-section (2) or sub-section (4) may within thirty days from the date of receipt of such order, prefer an appeal to the appellate authority and the appellate authority shall take a decision thereon and communicate the same to the appellant in writing within one month of the date of receipt of the appeal.

(8) Any person aggrieved by an order of the appellate authority under sub-section (7) may, within thirty days from the date of receipt of such order, prefer a revision before the Government.

## CHAPTER VI

### Supplemental Provisions

22. *Removal of structure which obstruct the view or distract the attention of persons using highway.*—(1) Where a highway authority is of opinion that it is necessary for the prevention of danger arising from obstruction of view or distraction of attention of persons using a highway, especially at any bend or corner of a highway, the highway

authority may serve notice upon the owner or occupier of land alongside or at the bend or corner of such highway to alter or remove altogether, as the case may be, within such time and in such manner as may be specified in the notice. the structure, the height or character of any existing wall not being a wall forming part of a permanent structure, fence, hedge, tree, advertisement post, bill board or any other object thereon, so as to eliminate or minimise the apprehended danger

(2) If any person, upon whom a notice has been served under sub-section (1) objects to comply with any requirement of such notice, he may, within fourteen days of its receipt, sent to the highway authority his objection in writing stating the grounds thereof

(3) The highway authority shall, within fourteen days of the receipt of the objection, consider the grounds advanced and shall, by order in writing, either withdraw the notice or amend or confirm it

(4) Any person aggrieved by an order under sub-section (3) may prefer an appeal within seven days of the date of receipt of such order to the appellate authority whose decision in the matter shall be final.

(5) If any person fails to comply with the notice served on him under sub-section (1) as amended or confirmed under sub-section (3) or finally decided under sub-section (4) the highway authority may, without prejudice to any other action which may be taken against him, take action to alter or remove the object causing obstruction or distraction of view at its own expense and such expenditure together with fifteen per cent overhead charges thereon, shall be recovered from such person in the manner as may be prescribed.

23. *Regulation of traffic when highway is deemed unsafe.*—If at any time it appears to a highway authority that any highway in its charge or any portion thereof is, or has been rendered unsafe for vehicular or pedestrian traffic by reason, of damage or otherwise, it may, in such manner as may be prescribed, either close the highway or any portion thereof to all traffic or to any class of traffic, or regulate the class, number and speed of vehicles using the highway

24 *Prohibition of heavy vehicles on certain highways, etc*—Where the highway authority is satisfied that the surface of any highway or a portion thereof or any bridge, culvert or causeway built on or across any highway is not designed to carry vehicles of which the laden weight exceeds a certain limit, it may, in such manner as may be prescribed, prohibit or restrict the plying of such vehicles on or over such highway or part of highway or such bridge, culvert or causeway.



25. *Restriction of traffic where highway is temporarily closed.*—(1) Where, in pursuance of clauses (c) and (d) of section 8, section 23 and section 24, the highway authority desires to close temporarily any highway or part of it to traffic or to restrict or regulate traffic thereon in any manner, it shall in writing request the authority authorised to control traffic under any law for the time being in force to enforce such restrictions or regulations in the said manner

(2) Where such a request has been received from a highway authority, the authority referred to under sub-section (1) shall take all necessary measures to enforce the said restrictions or regulations in accordance with the provisions of this Act

26. *Consent of highway authority required to do certain acts on highway*—(1) Any person or authority or agency intending to construct, place, maintain or carry any cable, wire, pipe, drain, sewer or channel of any kind through, across, along, under, in or over any highway, shall obtain prior consent in writing of the highway authority

(2) The authority competent to give consent under sub-section (1) shall be the highway authority and it shall ensure that as far as possible any such construction is carried out along the extreme edge of the right of way and may impose such conditions as it may consider necessary and levy such charges, as it may deem fit, for any land forming part of the highway occupied by, or applied to, the proposed work

(3) Where any person constructs or carries out any work in contravention of sub-section (1) or sub-section (2), the highway authority may arrange for the removal of such work and restoration of the highway to its former condition, in accordance with the provisions of section 15 as if the work constitutes an encroachment on the highway and such expense as the highway authority may incur for this purpose, together with fifteen per cent overhead charges thereon, shall, without prejudice to any other action that may be taken against such person under this Act, be recovered from him in such manner as may be prescribed

27. *Prevention of damage to and repair of highway*—(1) No person shall wilfully or negligently cause or allow any vehicle or animal in his charge to cause any damage to any highway

*Explanation*—For the purposes of this section habitual parking of vehicle for repairs or for any other purpose, letting animals to graze on highway and keeping animals and poultry to stay on the highway land shall be deemed to be acts causing damage to the highway.

(2) Where, in contravention of sub-section (1), any damage has been caused to any highway, the highway authority shall have the damage repaired and the expenses involved, together with fifteen per cent overhead charges, shall, without prejudice to any other action that may be taken against the person responsible for the contravention, be recovered from him in such manner as may be prescribed.

28 *Acquisition of land for highway*—Where any land is required for the execution of a highway scheme or for removal of any encroachment or for any purpose of this Act, the highway authority may acquire such land, by free surrender by the owner of such land or by purchase by negotiation after following such procedure as may be prescribed or by acquisition under the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894)

29. *Application of certain provisions to lands adjacent to the national highways*—It shall be lawful for the competent authority to determine a building line and a control line outside the right of way of a national highway in the manner as may be prescribed and the provisions contained in sections 6, 18, 19, 20, 21, 22, 31 and 35 of the Act shall *mutatis mutandis* apply to the land lying outside the right of way and within the control line of the national highway.

## CHAPTER VII

### Offences, Penalties and Procedure

30. *General provision for punishment of offences*—Whoever contravenes any provision of this Act or the rules made thereunder, shall, if no other penalty is provided for the offence, on conviction, be punishable with fine which may extend to five hundred rupees or if having been previously convicted for the same offence, with fine which may extend to two thousand rupees

31. *Disobedience of orders, obstruction and refusal of information*—Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction or obstructs any functions that such person or authority is required or empowered under this Act, to discharge, or being required by or under this Act, to supply any information which he fails or supplies any information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, on conviction be punishable with fine which may extend to two thousand rupees.



32. *Penalty on contravention of restriction relating to laying of means of access or erecting any building, etc.*—(1) Whoever constructs or lay out any means of access or erects or re-erects any building or structure or does any other work in contravention of the provisions of sub-section (1) of section 19 or sub-section (1) of section 20 shall, on conviction, be punishable with fine which may extend to five thousand rupees

(2) In the case of a continuing offence a fine upto one thousand rupees may be imposed for each day for which the offence continues.

33. *Penalty for encroachment*—Whoever occupies or encroaches on any highway land in contravention of the provisions of section 13 shall, on conviction, be liable to pay a fine which may extend to two thousand and five hundred rupees for the first offence, and further fine which may extend to a lumpsum penalty of five thousand rupees plus a daily levy not exceeding five hundred rupees for each day for which the offence continues

34. *Penalty for causing damage to highway*—Whoever wilfully causes or allows vehicle or animal in his charge to cause any damage to any highway shall, on conviction, be punishable with fine which may extend to ten thousand rupees

35. *Power to compound offences.*—The highway authority may, either before or after the institution of the proceedings, compound an offence against any provision of this Act or the rules made thereunder in the manner as may be prescribed.

## CHAPTER VIII

### Miscellaneous

36. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for carrying out all or any of the purposes of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the preparation of schemes for the development of new highways or improvement or repair of existing highways;

(b) the standards that have to be followed in granting permission for access to highway;

(c) the form of application for use of land between building line and control line and the fee to be paid in respect thereof;

(d) the prevention of obstruction of view or distraction of attention of persons using highway, and of annoyance, danger or injury to the public;

(e) the proper maintenance of boundary marks demarcating highway boundaries;

(f) the prevention of obstruction, encroachment and nuisances on or near highway and or damage to highway;

(g) the form of application required to be made and the form of notice and the bills required to be served on persons, the charges to be made for the supply of copies of plans or extracts and the rent or fee or other charges to be imposed or levied under the provisions of this Act,

(h) the general guidance of the highway authority in the discharge of its functions under this Act,

(i) the construction or laying of public utility lines along or across the highway,

(j) any other matter which is to be, or may be prescribed

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the 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 Legislative Assembly makes any modification in the rule or decides that the rules should not be made, the rule 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 under that rule.

37. *Constitution of appellate authority*—(1) The Government may, by notification in the Gazette, constitute as many appellate authorities as may be necessary for the purpose of this Act.

(2) The Government may, by notification in the Gazette, authorise any officer not below the rank of Superintending Engineer in the Public Works Department to exercise the powers of the appellate authority in such areas as may be specified therein

38 *Service of notice*.—(1) Every notice under this Act shall be served or presented,—

(a) by delivering or tendering it or sending it by registered post to the person to whom it is addressed or to his agent; or

(b) if such person or his agent is not found, then by leaving it at his usual or last known place of abode or by delivering or tendering it to some adult member of his family or by causing it to be fixed on some conspicuous part of the building or land, if any, to which it relates.

(2) If the person to whom a notice is to be served is a minor service upon his guardian or upon an adult member or servant of his family shall be deemed to be service upon the minor

39 *Power to delegate*—The highway authority may, with the previous approval of Government, by notification in the Gazette, delegate any of its powers or duties under clauses (c) and (d) of section 8 or sections 11, 22, 23, 24 or 25 of this Act to any officer or authority subordinate to it, subject to such conditions, if any, as may be specified in such notification.

40. *Persons deemed to be public servants*.—All persons acting by the authority of the Government or of any highway authority while exercising their powers and performing their duties and functions under this Act or the rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

41 *Protection of action taken in good faith*.—No suit, prosecution or other legal proceedings shall lie against the Government or any authority or any person for anything which is in good faith done or intended to be done under or in pursuance of this Act or rules made thereunder:

42 *Offences by companies*—(1) Where the person committing any offence under this Act is a company, the company as well as every person who is in charge of, and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly.

Provided that nothing contained in the 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 had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent

or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly

*Explanation* —For the purpose of this section,—

(a) 'Company' means any body corporate and includes a firm or other organisation or association of persons or a co-operative society

(b) 'director' in relation to a firm, means a partner in the firm.

43 *Cognizance of offences.*—No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a highway authority or any other officer authorised by the Government in this behalf

44. *Police officers to assist highway authorities* —Every police officer shall forthwith furnish information to the nearest highway authority, or to the nearest officer subordinate to the highway authority, of any offence coming to his knowledge which has been committed against this Act or the rules made thereunder and shall be bound to assist the highway authority and its officers and servants in the exercise of their lawful authority.

45 *Duties of Village officials to report to highway authority* —Every Village Officer, Village Assistant or other village official by whatever name called, shall forthwith inform the nearest police station or the nearest highway authority whenever he becomes aware that any survey marks showing the building line or control line determined in respect of a highway has been destroyed, damaged, removed, displaced or otherwise tampered with or that any damage to any highway or encroachment on any highway land has been made

46 *Power to utilise highway land for purposes other than road purpose.*—The highway authority may utilise temporarily, for purposes, other than road purposes, the land forming part of a highway which is not immediately required for the purposes of traffic in such manner as may be prescribed.

47. *Saving as regards land under the control of Central Government.*—Nothing in this Act shall apply to lands vested in or under the control of Central Government or to any area falling within the limits of a Cantonment Board, Major Port Trust or other authority under the administrative control of the Central Government.

(3) Where the highway authority refuses to grant permission the reasons therefor shall be recorded and communicated to the applicant

(4) Where an application for permission has been refused due to any defect of the application, the applicant may submit a fresh application to the highway authority rectifying the defects and the highway authority shall consider the application afresh and pass an order thereon

(5) If after the expiration of a period of two months from the submission of application under sub-section (1) or sub-section (4), no order in writing has been passed by the highway authority, permission shall be deemed to have been granted as applied for:

Provided that no such permission shall be deemed to have been granted if the application is for the construction, formation or laying out of any means of access.

(6) The highway authority shall maintain a register containing sufficient particulars of all permissions granted or refused by it under this section and the register shall be made available for perusal, free of charge, by all persons interested and such persons shall be entitled to obtain extracts therefrom on payment of such fees as may be prescribed.

(7) Any person aggrieved by an order of the highway authority under sub-section (2) or sub-section (4) may within thirty days from the date of receipt of such order, prefer an appeal to the appellate authority and the appellate authority shall take a decision thereon and communicate the same to the appellant in writing within one month of the date of receipt of the appeal.

(8) Any person aggrieved by an order of the appellate authority under sub-section (7) may, within thirty days from the date of receipt of such order, prefer a revision before the Government.

## CHAPTER VI

### Supplemental Provisions

22. *Removal of structure which obstruct the view or distract the attention of persons using highway.*—(1) Where a highway authority is of opinion that it is necessary for the prevention of danger arising from obstruction of view or distraction of attention of persons using a highway, especially at any bend or corner of a highway, the highway



authority may serve notice upon the owner or occupier of land alongside or at the bend or corner of such highway to alter or remove altogether, as the case may be, within such time and in such manner as may be specified in the notice, the structure, the height or character of any existing wall not being a wall forming part of a permanent structure, fence, hedge, tree, advertisement post, bill board or any other object thereon, so as to eliminate or minimise the apprehended danger.

(2) If any person, upon whom a notice has been served under sub-section (1) objects to comply with any requirement of such notice, he may, within fourteen days of its receipt, sent to the highway authority his objection in writing stating the grounds thereof

(3) The highway authority shall, within fourteen days of the receipt of the objection, consider the grounds advanced and shall, by order in writing, either withdraw the notice or amend or confirm it

(4) Any person aggrieved by an order under sub-section (3) may prefer an appeal within seven days of the date of receipt of such order to the appellate authority whose decision in the matter shall be final.

(5) If any person fails to comply with the notice served on him under sub-section (1) as amended or confirmed under sub-section (3) or finally decided under sub-section (4) the highway authority may, without prejudice to any other action which may be taken against him, take action to alter or remove the object causing obstruction or distraction of view at its own expense and such expenditure together with fifteen per cent overhead charges thereon, shall be recovered from such person in the manner as may be prescribed

23 *Regulation of traffic when highway is deemed unsafe*—If at any time it appears to a highway authority that any highway in its charge or any portion thereof is, or has been rendered unsafe for vehicular or pedestrian traffic by reason, of damage or otherwise, it may, in such manner as may be prescribed, either close the highway or any portion thereof to all traffic or to any class of traffic, or regulate the class, number and speed of vehicles using the highway

24 *Prohibition of heavy vehicles on certain highways, etc*—Where the highway authority is satisfied that the surface of any highway or a portion thereof or any bridge, culvert or causeway built on or across any highway is not designed to carry vehicles of which the laden weight exceeds a certain limit, it may, in such manner as may be prescribed, prohibit or restrict the plying of such vehicles on or over such highway or part of highway or such bridge, culvert or causeway



25. *Restriction of traffic where highway is temporarily closed*—(1) Where, in pursuance of clauses (c) and (d) of section 8, section 23 and section 24, the highway authority desires to close temporarily any highway or part of it to traffic or to restrict or regulate traffic thereon in any manner, it shall in writing request the authority authorised to control traffic under any law for the time being in force to enforce such restrictions or regulations in the said manner.

(2) Where such a request has been received from a highway authority, the authority referred to under sub-section (1) shall take all necessary measures to enforce the said restrictions or regulations in accordance with the provisions of this Act

26 *Consent of highway authority required to do certain acts on highway*—(1) Any person or authority or agency intending to construct, place, maintain or carry any cable, wire, pipe, drain, sewer or channel of any kind through, across, along, under, in or over any highway, shall obtain prior consent in writing of the highway authority

(2) The authority competent to give consent under sub-section (1) shall be the highway authority and it shall ensure that as far as possible any such construction is carried out along the extreme edge of the right of way and may impose such conditions as it may consider necessary and levy such charges, as it may deem fit, for any land forming part of the highway occupied by, or applied to, the proposed work

(3) Where any person constructs or carries out any work in contravention of sub-section (1) or sub-section (2), the highway authority may arrange for the removal of such work and restoration of the highway to its former condition, in accordance with the provisions of section 15 as if the work constitutes an encroachment on the highway and such expense as the highway authority may incur for this purpose, together with fifteen per cent overhead charges thereon, shall, without prejudice to any other action that may be taken against such person under this Act, be recovered from him in such manner as may be prescribed

27. *Prevention of damage to and repair of highway*—(1) No person shall wilfully or negligently cause or allow any vehicle or animal in his charge to cause any damage to any highway.

*Explanation*—For the purposes of this section habitual parking of vehicle for repairs or for any other purpose, letting animals to graze on highway and keeping animals and poultry to stay on the highway land shall be deemed to be acts causing damage to the highway.

(2) Where, in contravention of sub-section (1), any damage has been caused to any highway, the highway authority shall have the damage repaired and the expenses involved, together with fifteen per cent overhead charges, shall, without prejudice to any other action that may be taken against the person responsible for the contravention, be recovered from him in such manner as may be prescribed.

28. *Acquisition of land for highway*—Where any land is required for the execution of a highway scheme or for removal of any encroachment or for any purpose of this Act, the highway authority may acquire such land, by free surrender by the owner of such land or by purchase by negotiation after following such procedure as may be prescribed or by acquisition under the provisions of the Land Acquisition Act, 1894 (Central Act 1 of 1894)

29. *Application of certain provisions to lands adjacent to the national highways*—It shall be lawful for the competent authority to determine a building line and a control line outside the right of way of a national highway in the manner as may be prescribed and the provisions contained in sections 6, 18, 19, 20, 21, 22, 31 and 35 of the Act shall *mutatis mutandis* apply to the land lying outside the right of way and within the control line of the national highway.

## CHAPTER VII

### Offences, Penalties, and Procedure

30. *General provision for punishment of offences*—Whoever contravenes any provision of this Act or the rules made thereunder shall, if no other penalty is provided for the offence, on conviction, be punishable with fine which may extend to five hundred rupees or if having been previously convicted for the same offence, with fine which may extend to two thousand rupees

31. *Disobedience of orders, obstruction and refusal of information.*—Whoever wilfully disobeys any direction lawfully given by any person or authority empowered under this Act to give such direction or obstructs any functions that such person or authority is required or empowered under this Act, to discharge, or being required by or under this Act, to supply any information which he fails or supplies any information which he knows to be false or which he does not believe to be true, shall, if no other penalty is provided for the offence, on conviction, be punishable with fine which may extend to two thousand rupees

32 *Penalty on contravention of restriction relating to laying of means of access or erecting any building, etc.*—(1) Whoever constructs or lay out any means of access or erects or re-erects any building or structure or does any other work in contravention of the provisions of sub-section (1) of section 19 or sub-section (1) of section 20 shall, on conviction, be punishable with fine which may extend to five thousand rupees

(2) In the case of a continuing offence a fine upto one thousand rupees may be imposed for each day for which the offence continues.

33 *Penalty for encroachment*—Whoever occupies or encroaches on any highway land in contravention of the provisions of section 13 shall, on conviction, be liable to pay a fine which may extend to two thousand and five hundred rupees for the first offence, and further fine which may extend to a lumpsum penalty of five thousand rupees plus a daily levy not exceeding five hundred rupees for each day for which the offence continues.

34. *Penalty for causing damage to highway*—Whoever wilfully causes or allows vehicle or animal in his charge to cause any damage to any highway shall, on conviction, be punishable with fine which may extend to ten thousand rupees.

35 *Power to compound offences.*—The highway authority may, either before or after the institution of the proceedings, compound an offence against any provision of this Act or the rules made thereunder in the manner as may be prescribed.

## CHAPTER VIII

### Miscellaneous

36 *Power to make rules*—(1) The Government may, by notification in the Gazette, make rules for carrying out all or any of the purposes of this Act

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely—

(a) the preparation of schemes for the development of new highways or improvement or repair of existing highways;

(b) the standards that have to be followed in granting permission for access to highway,

(c) the form of application for use of land between building line and control line and the fee to be paid in respect thereof,

(d) the prevention of obstruction of view or distraction of attention of persons using highway, and of annoyance, danger or injury to the public;

(e) the proper maintenance of boundary marks demarcating highway boundaries,

(f) the prevention of obstruction, encroachment and nuisances on or near highway and or damage to highway,

(g) the form of application required to be made and the form of notice and the bills required to be served on persons, the charges to be made for the supply of copies of plans or extracts and the rent or fee or other charges to be imposed or levied under the provisions of this Act,

(h) the general guidance of the highway authority in the discharge of its functions under this Act;

(i) the construction or laying of public utility lines along or across the highway,

(j) any other matter which is to be, or may be prescribed.

(3) Every rule made under this Act shall be laid, as soon as may be after it is made, before the 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 Legislative Assembly makes any modification in the rule or decides that the rules should not be made, the rule 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 under that rule.

37. *Constitution of appellate authority*—(1) The Government may, by notification in the Gazette, constitute as many appellate authorities as may be necessary for the purpose of this Act

(2) The Government may, by notification in the Gazette, authorise any officer not below the rank of Superintending Engineer in the Public Works Department to exercise the powers of the appellate authority in such areas as may be specified therein.

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(a) by delivering or tendering it or sending it by registered post to the person to whom it is addressed or to his agent; or

(b) if such person or his agent is not found, then by leaving it at his usual or last known place of abode or by delivering or tendering it to some adult member of his family or by causing it to be fixed on some conspicuous part of the building or land, if any, to which it relates.

(2) If the person to whom a notice is to be served is a minor service upon his guardian or upon an adult member or servant of his family shall be deemed to be service upon the minor

39. *Power to delegate.*—The highway authority may, with the previous approval of Government, by notification in the Gazette, delegate any of its powers or duties under clauses (c) and (d) of section 8 or sections 11, 22, 23, 24 or 25 of this Act to any officer or authority subordinate to it, subject to such conditions, if any, as may be specified in such notification

40. *Persons deemed to be public servants*—All persons acting by the authority of the Government or of any highway authority while exercising their powers and performing their duties and functions under this Act or the rules made thereunder shall be deemed to be public servants within the meaning of section 21 of the Indian Penal Code, 1860 (Central Act 45 of 1860).

41. *Protection of action taken in good faith.*—No suit, prosecution or other legal proceedings shall lie against the Government or any authority or any person for anything which is in good faith done or intended to be done under or in pursuance of this Act or rules made thereunder

42. *Offences by companies*—(1) Where the person committing any offence under this Act is a company, the company as well as every person who is in charge of, and responsible to the company for the conduct of its business at the time of the commission of the offence shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly

Provided that nothing contained in the 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 had exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company, and it is proved that the offence has been committed with the consent



or connivance of, or that the commission of the offence is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

*Explanation* —For the purpose of this section,—

(a) 'Company' means any body corporate and includes a firm or other organisation or association of persons or a co-operative society

(b) 'director' in relation to a firm, means a partner in the firm.

43. *Cognizance of offences.*—No court shall take cognizance of any offence punishable under this Act except on a report in writing of the facts constituting such offence made by a highway authority or any other officer authorised by the Government in this behalf.

44. *Police officers to assist highway authorities* —Every police officer shall forthwith furnish information to the nearest highway authority, or to the nearest officer subordinate to the highway authority, of any offence coming to his knowledge which has been committed against this Act or the rules made thereunder and shall be bound to assist the highway authority and its officers and servants in the exercise of their lawful authority.

45. *Duties of Village officials to report to highway authority* —Every Village Officer, Village Assistant or other village official by whatever name called, shall forthwith inform the nearest police station or the nearest highway authority whenever he becomes aware that any survey marks showing the building line or control line determined in respect of a highway has been destroyed, damaged, removed, displaced or otherwise tampered with or that any damage to any highway or encroachment on any highway land has been made.

46. *Power to utilise highway land for purposes other than road purpose.*—The highway authority may utilise temporarily, for purposes, other than road purposes, the land forming part of a highway which is not immediately required for the purposes of traffic in such manner as may be prescribed

47. *Saving as regards land under the control of Central Government.*—Nothing in this Act shall apply to lands vested in or under the control of Central Government or to any area falling within the limits of a Cantonment Board, Major Port Trust or other authority under the administrative control of the Central Government.



48. *Mode of recovery of sums payable to highway authority.*—Any sum payable to the highway authority under this Act shall, without prejudice to any other mode of recovery, be recoverable on behalf of the highway authority as an arrear of public revenue due on land.

49. *Repeal and saving.*—(1) The Kerala Highway Protection Ordinance, 1999 (6 of 1999), is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken under the said Ordinance shall be deemed to have been done or taken under this Act.