

THE ASSAM EMBANKMENT AND DRAINAGE ACT, 1953*

(Assam act I of 1954)

Preamble

Section

1. Short title, extent and commencement
2. Definitions.
3. Right of entry upon private land and payment for damage.
4. Construction, removal or alterations of embankments or removal of obstructions.
5. Application for a drain or a new embankment or a sluice in a public embankment.
6. Procedure for enquiry.
7. Preparation of schemes for improvement of drains, embankments and flood protection
8. Calling for objections
9. Completion of scheme.
10. Disposal of claims to compensation.
11. Levy on settled lands under S. 9 by State Government.
12. Levy of rate or cess on works existing from before.
- 12-A Recovery as arrears of land revenue.
13. Preparation of schedule of lands.
14. Vesting of certain rights in the State.

*Published in the Assam gazette, dated the 3rd February, 1954.

15. Penalties for trespass on Embankments and drains.
16. Penalties for constructing, maintaining etc.on embankment or drain.
17. Repairing damages or preventing accidents.
18. Prior consultations with the Public works and Public Health Departments.
19. Certain persons deemed to be public servants.
20. Power to make rules.
21. India Railways Act, 1890 (Act IX of 1890) not affected.
22. Repeal.

(Passed by the Assembly)

[Received the assent of the President on the 22nd January, 1954]

**An Act to provide for better provision for the construction,
removal and upkeep of Embankments and for the drainage and
improvements of lands in Assam**

Preamble. Whereas it is expedient to replace the existing act by a new law with better provisions for the constructions, maintenance, management, and control of Embankment and for the drainage and improvement of lands in Assam;

It is here by enacted as follows:

COMMENTS

Preamble. This Act has repealed the Assam Embankment and drainage Act, 1941 and provides for the construction, removal and upkeep of Embankments and for the drainage and improvements of land in Assam and the Preamble under this Act provides that by virtue of its provisions for the construction, maintenance, management, removal and control of Embankments and for the better drainage and improvement of lands in Assam, have been made.

This Act, which is in force in the State of Assam, shows that flood control, drainage and construction of Embankment are possible without acquisition of private property. The Act recognizes both private and public Embankments.

While dealing with the repealed Act, it was held by the supreme Court in the case of The Deputy Commissioner and Collector, Kamrup v. Durga Nath Sharma [AIR 1968 SC 394], that this Act is in operation in Assam for the last 25 years and necessary measures for flood control and construction of embankments have been carried out under this Act. This Act shows that it is possible for the State to take all necessary measures for flood control and construction of Embankments with out arrogating to itself the power of acquiring private property with out payment of adequate compensation.

1. Short title, extent and commencement.

- (1) This Act may be called the Assam Embankment and Drainage Act, 1953.
- (2) It extends to the whole of Assam.
- (3) It shall come in to force on such date as the State Government may specify by notification in the official Gazette in that behalf.

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

- (i) "**Cattle**" includes also elephants, buffaloes, horses, ponies, mules, Asses, pigs, sheep and goats.
- (ii) "**Cost**" means the capital cost of a work including that of the connected survey but does not include any maintenance or interest charges.
- (iii) "**Court**" means a principal civil court of original jurisdiction.
- (iv) "**Deputy Commissioner**" means the Deputy Commissioner of the district in which any embankment or drain is situated or proposed and includes the additional Deputy Commissioner of the said District or any other officer empowered by the State Government to discharge the functions of a Deputy Commissioner under this Act.
- (v) "**Drain**" includes dongs and irrigation channels in the plains, a tunnel a culvert, a ditch a channel, a canal, a syphon, a sluice or artificial water course of any other descriptions and any other device for excluding, regulating or retaining water flood water or sub-soil water.

- (vi) (a) **"Embankment"** means any Embankment, public or private, constructed for the purpose of excluding, regulating or retaining water and includes all earthen or masonry walls, dams, spillways, piers, groins, sluices, siphons, water gauges, benchmarks and other works connected with any such Embankment and land appurtenant thereto; but does not include any "ail" or ridge surrounding or dividing a field or any public or private road.
- (b) **"Private Embankment"** means any Embankment, which is not public Embankment.
- (c) **"Public Embankment"** means any Embankment vested in the State Government or under the control and administration of the State Government or under the control and administration of the State Government or any Local board, Municipal board or Town Committee.
- (vii) **"Embankment Officer"** means the Executive Engineer of any division and any other officer not below the rank of Executive Engineer whom the State government may declare to be such
- (viii) (a) **"Occupier"** means the person residing in or in possession of any house, land or place.
- (b) **"Owner"** shall include proprietors and settlement holders as defined in the Assam Land Revenue regulation, 1886 (Regulation I of 1886) and every intermediate tenant between the proprietor or settlement holder and the occupier and with respect to unsettled waste land, shall mean State Government.

- (ix) **“Prescribed”** means prescribed by rules made under this Act.
- (x) **“Rate”** means either water rate or betterment cess or both levied under S. 11 of this act.

COMMENTS

The word "**proprietor**" has been defined in S. 3 (f) in the Assam Land and Revenue Regulation as follows:

‘Proprietor’ means the owner of any estate permanently settled or entered on the Deputy Commissioners register of revenue - free estates".

The words "**settlement holders**" have been defined in S. 3 (h) of the regulation, which is as follows:

‘Settlement-holder’ means any person, other than a proprietor, who has entered in to an engagement with the government to pay land revenue and a land - holder":

Clause (x) has been inserted by Assam Act XXIV of 1962.

Section 2 of the repealed act is reproduced here for convenience sake

"2. Definitions. In this act, unless there is anything repugnant in the subject or context, -

- (i) **‘Cattle’** includes also elephant, buffaloes, horses, ponies, mules, asses, sheep and goats.

- (ii) (a) **'Embankment'** means any Embankment, public or private constructed for the purpose of excluding, regulating, retaining water and includes all earthen or masonry walls, dams, spillways piers, groins, sluices, siphon water gauges, bench-marks and other works subsidiary to any such embankment; but does not include any "ail" or ridge surrounding or dividing a field or any public or private road;
 - (b) **'Public Embankment'** means an Embankment vested in the Government or under the control and administration of the State Government or any Local Board, Municipality or Town Committee;
 - (c) **'Private Embankment'** means any Embankment that is not a public embankment;
 - (c) **'Drain'** includes dongs and irrigation channel in the plain a tunnel, a culvert, a ditch, a channel, a canal, a siphon, a sluice or artificial water course of any other description and any other device for excluding, regulating or retaining water, rainwater, flood water, or sub-soil water; but does not include the ordinary irrigation processes in hill and sub-mountain districts;
- (iii) **'Embankment Officer'** means the executive engineer of any division and any other officer to below the rank of Executive Engineer whom the State government may declare to be such;
- (iv) (a) **'Owner'** shall include proprietor and settlement holder as defined in Assam Land and revenue Regulation, 886 (Regulation I of 1886) and every intermediate tenant between the proprietor or settlement holder and

the occupier and with respect to unsettled waste land, shall mean State Government;

- (b) **'Occupier'** means the person residing in or in possession of any house, land and place;
- (c) **'Local area'** means an area notified by the State Government in the Gazette to which s. 13 of this Act would apply;
- (d) **'Prescribed'** means prescribed by rules made under this act;
- (e) **'Cost'** means the capital cost of a work including that of the connected survey but does not include any maintenance or interest charges, or any contribution made by Government under S. 7.

3. Right of entry upon private land and payment for damage

- (i) Whenever it appears to the State Government that any Embankment or drainage work is likely to be necessary in any locality, a notification to that effect shall be published in the official Gazette, and the Deputy Commissioner shall cause public notice of the substance of such notification to be given at convenient places in the said locality on a date not less than two months in advance of taking up the execution of works.
- (ii) Upon publication of the notification under sub-s. (i) it shall be lawful for any officer generally or specially authorised by the State Government in this behalf and for his servants and workmen to enter upon, survey and take levels of any land whether covered with water or not ; to dig or bore in to the sub-soil to make and set up suitable landmarks, level marks and water gauges and do all acts necessary for investigation

of survey of a scheme, or collection of information or data under this Act .

- (iii) When for the purpose of such inquiry it appears to the officer authorised under sub-S (iii) that it is indispensable to cut down and clear away any part of any standing crop, fence, trees or jungle, he or any other person acting under his orders may do so provided that as far as possible cutting of crops should be avoided.
- (iv) Every proprietor and settlement holder of any land and every person entitled to receive rent in respect any land or occupying any land as a tenant shall on the written requisition of the Embankment Officer furnish such information or direct assistance as may be required by the officer for the purpose of necessary data for any proposal under the Act:

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

- (v) The Officer so authorised shall pay or tender payment for all damages done as aforesaid within one month of such entry and in case of any dispute as to the sufficiency to the amount so paid or tendered or as to the right to receive such compensation the matter shall be referred to the Deputy Commissioner for decision on an application being made by the person entitled to receive compensation within six months of the date on which the payment is tendered or made. There upon the Deputy Commissioner shall make a decision which shall be based on an inquiry held either by

himself or a Gazetted Officer not below the rank of an extra assistant Commissioner authorised by him is this behalf.

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

COMMENTS

Section 3 of the repealed act is reproduced here for convenience sake:

- "3.** (i) It shall be lawful for any officer generally or specially authorised by the State Government in this behalf and for his servants and workmen to enter upon, survey and taken levels of any land, whether covered with water or not; to dig or bore in to the sub-soil; to mark levels by placing marks; and to cut down and clear away any part of any standing crop fence, or jungle whenever necessary for completion of any survey:

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

- (ii) The officer so authorised shall at the time of such entry pay or tender payment for all damages done as aforesaid and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall refer forth with the dispute to the Deputy Commissioner whose decision which shall be based on any enquiry held either by himself or a Gazetted officer not below the rank of Extra Assistant Commissioner depute by him, shall be final. Nothing in this sub-

section shall debar the person injured from applying direct to the Deputy Commissioner for compensation. No claim under this subsection made later than six months after the damage occurred shall be entertained"

4. Construction, removal or alterations of embankments removal of obstructions.

- (i) The Embankment Officer shall have the power to initiate a scheme for -
 - (a) removing or altering any Embankment or drain or any obstruction of any kind which in his opinion endangers the safety of any town or inhabited area, or is likely to cause damage to crop and extensive loss of property by interfering with the general drainage or the flood drainage of any tract of land; and
 - (b) constructing any embankment or drain, which in his opinion will improve the land and cultivation of any area and the absence of which in his opinion endangers the safety of any inhabited area or cause flooding or failure of crops.
- (ii) For the purpose of initiating a scheme as above, the Embankment Officer shall make preliminary investigation and reconnaissance surveys as he finds necessary to come to a conclusion regarding the feasibility and soundness of the scheme before he submits the same to the state government with the recommendations. He will also obtain the opinion of the district Heads of the department of Revenue, agriculture and Public Health to the proposals, who shall furnish their opinion to the Embankment Officer when sought by him.

COMMENTS

This section authorises the Embankment Officer to remove obstruction endangering the safety of any town or inhabited area, damage to crop or loss of property and also construct any Embankment or drain. Section 4 of the repealed Act is reproduced herein below:

- "4. (i) **The Embankment Officer shall have power-**
- (a) to remove any obstruction of any kind which in his opinion endangers the stability of any Embankment or drain;
 - (b) to remove or alter any Embankment or drain or any obstruction of any kind which in his opinion endangers the safety of any town or village or is likely to cause loss of property by interfering with the general drainage or the flood drainage of any tract of land, and
 - (c) to construct any embankment or drain the absence of which in his opinion, endangers the safety of any town or village.
- (ii) Except as hereinafter provided the Embankment Officer shall, before exercising his powers under Sub-S (i) above, apply to the Deputy Commissioner for permission stating the nature of the action proposed to be taken and reasons therefore. Thereupon the Deputy Commissioner shall publish a general notice to all persons likely to be affected and after considering any objection that may be received, may refuse or grant permission either absolutely or subject to such conditions as he may think fit to impose. Any person

aggrieved by the Deputy Commissioner order may within thirty days thereof appeal to the State Government whose decision shall be final.

- (iii) In case of grave and imminent to life or property, the Embankment Officer may forthwith commence the execution of any work under sub-S. (i) and then apply for permission under sub-S.(ii) above. Before the Embankment Officer beings any emergency work under this section he shall intimate his proposal to the railway administration, Local Boards, Municipalities and Town Committees within the area affected by such work. But in any such case, if it should appear that anything done by the Embankment Officer was unnecessary, any person who has sustained damage by the execution of the work shall be entitled to make a claim to compensation for the decision of the deputy commissioner. No claim under this sub-section made later than six months after the damage occurred shall be entertained. An appeal against the deputy commissioner's decision shall lie to the district judge but no appeal shall be entertained unless it is made within sixty days of the deputy commissioner's decision when the claim is upheld the applicant is entitled to have the land, embankment or drain restored as nearly as possible to its original state, regard being had to the amount of the work which the Deputy Commissioner or the District Judge, as the case may be, considers to have been necessary, at the expenses of government:

Provided that no suit or criminal prosecution shall lie against the embankment officer for anything done or omitted to be done by him good faith under this Act".

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

- (i) (a) If any person, or body of person, desires that a bridge, culvert, siphon, sluice or any other device be made in any public embankment for the purpose of drainage or irrigation; or
- (b) If within any local area to which S. 16 (ii) has been applied, any person or body of person desires that any new embankment or drain be constructed or that any existing Embankment or drain be altered or removed;

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

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

COMMENTS

This section deals with the application by any person or body of person for a drain or a new embankment or a sluice in a public embankment and prescribes detailed procedure for dealing with such an application section of the repealed Act is reproduced herein below:

- "5. (i) (a) If any person desires that a bridge, culvert, siphon or sluice be made in any public Embankment for the purpose of drainage or irrigation; or
- (b) If within any local area to which S.13 has been applied any person desires that nay new embankment or drain be constructed or that nay existing embankment or drain be altered or removed;

He shall make and application in writing to the Deputy Commissioner of the district in which such embankment or drain is situated

- (ii) At the time of making such application the applicant (s) shall deposit with the Deputy Commissioner the sum of Rupees ten towards the expenses of surveys, etc. necessary for investigating the soundness of the proposal."

6. Procedure for enquiry.

- (i) When an application has been made to the Deputy commissioner under s. 5, he shall forward the application to the Embankment officer and if the Embankment Officer after necessary enquiry considers the petition as *bona fide* and the proposal put forward therein as sound, be beneficial and

feasible from technical points of view he shall forward the proposals to the State Government with his recommendations sending a copy to the Deputy commissioner for information.

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

COMMENTS

Under this section provisions have been made for and enquiry whenever an application is received under S. 5.

Section 6 of the repealed act read as follows:

"When an application has been made to the Deputy Commissioner under s. 5 he shall forward the proposal to the State Government. "

7. Preparation of scheme for improvement of drains, embankment and flood protection.

Whoever from any action taken under S. 4, 5 and 6 it appears to the State government that any embankment of drainage work is necessary for the improvement of any lands or for the proper cultivation water or irrigation thereof or for protection from floods, other accumulations of water or from erosion by a river or for the improvement of the health of any tract the State Government may, cause a detailed survey of the Scheme to be made and a scheme

for such embankment and drainage work to be drawn up by the Embankment Officer and published together with an estimate of its cost and statement of the proportion of such cost as the State Government propose to recover by imposition of betterment cess or water rate and the period during which such imposition will be in force; Provided that before taking any action under this section, the State Government shall consult the railway or any Local body which is directly affected by any such scheme.

COMMENTS

This section contemplates the preparation and execution of schemes for improvement of drains, embankments and flood protection.

Section 7 of the repealed Act has been reproduced herein below:

“7 Whenever it appears to the State Government that any embankment or drainage work is necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof, or for protection from flood or other accumulations of water, or from erosion by a river (whether the lands to be so protected are in the immediate vicinity of the place where the work is considered necessary, or otherwise) the State Government, after consultation with the Railway Administration, any Local Board, Municipality or Town Committee regarding all schemes within a notified local area, and in all other areas without such consultation, may cause a scheme for such embankment or drainage work to be drawn by the Embankment Officer and published together with an estimate of its cost and statement of the proportion of such cost which the government proposes to defray, and a schedule of the lands which it is proposed to make chargeable.

8. Calling for objections.

(1) As soon as possible after the publication of the scheme under S. 7, the Deputy Commissioner or where the scheme affects persons in more than one Districts, the State Government shall by a proclamation, invite the objections to the scheme to be submitted to the Deputy Commissioner or the State Government, as the case may be, allowing one month's time from the public and any Railway Administration, Panchayat, Municipality or Town Committee likely to be affected.

(2) On receipt of any objection under sub-S. (1), the Deputy Commissioner or where the scheme affects persons in more than one Districts, the State Government shall publish a notice stating the place, date and time at which an enquiry will be held by the Deputy Commissioner or the State Government, as the case may be, for the purpose of ascertaining the validity or otherwise of the objection:

Provided that the State Government may, by general or special order authorize any person to make the enquiry if the scheme affects the person in more than one District.

(3) After the enquiry has been completed the Deputy Commissioner or where the enquiry is held by any person authorised by the State Government under the preceding sub-section the person so authorised shall forward the objections along with his recommendations to the State Government.

(4) The Deputy Commissioner or the person so authorised by the State Government under sub-S. (2), as the case may be,

shall at the time of holding the enquiry, obtain the advice of the Embankment Officer on technical points.

COMMENTS

This section deals with calling of objections to the scheme published under S. 7 and has now been amended by Assam Act XVIII of 1966 and the amended section reads as follows:

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

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

Under S. 8 of the repealed Act, provisions were made for power to enter and survey etc. Such specific provisions as in the repealed Act have not been made in the new Act, except as provided differently under the provisions therein. For the convenience of a comparative study S. 8 of the repealed Act is reproduced herein below:

- “8**
- (i) The person authorised by the State Government to draw up such a scheme may, with his servants and workmen, enter upon any lands adjacent to any embankment or drain or on which any embankment or drain is proposed to be made, and undertake surveys or levels thereon; and dig and bore into the sub-soil; and make and set up suitable land-marks, level arks and water gauges and do all acts necessary for the preparation of the scheme contemplated under this Act; and
 - (ii) where otherwise such enquiry cannot be completed such officer or other person acting under his orders may cut down and clear away any part of any standing crop, fence or jungle;
 - (iii) every proprietor and settlement holder of any land and every person entitled to receive rent in respect of any land or occupying any land as a tenant, shall, on the written requisition of the Embankment Officer, furnish, personally or otherwise, as the Embankment Officer directs, such information or assistance as may be required by that officer for the purpose of preparing the scheme:

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

- (iv) In every case of entry under this section the aforesaid officer shall, at the time of such entry, tender compensation for any damage which may be occasioned by any proceeding under this section; and, in case of disputes to the sufficiency of the amount so tendered he shall forthwith refer the same for decision by the Deputy Commissioner and such decision which shall be based on the enquiry, held either by himself

or by a Gazetted Officer not below the rank of Extra Assistant Commissioner deputed by him, shall be final.

Section 8-A of the repealed Act which dealt with such objections, is reproduced herein below:

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

9. Completion of scheme.

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

COMMENTS

This section deals with the completion of the scheme after considering the objections etc. Section 9 of the repealed Act is reproduced below:

- “9.** (i) After taking into consideration any objections and recommendations made under the proceeding section the State Government may direct that the scheme drawn up under S. 7, with such consequential modifications as the Government deem necessary be put into operation and completed forthwith, or within such period as may be directed.
- (a) An annual rate may be charged on the occupier or, if there is no occupier, the owner of all lands proposed to be made chargeable under S. 7 so as to liquidate the cost of the scheme within a period not exceeding twenty years as Government may prescribe. Such rate shall not be varied by the State Government:

Provided that no rate shall be levied on land in temporary settled districts of Assam which is liable to periodic enhancement of revenue within ten years of completion of the improvements effected under this Act.

- (b) Any rate charged under this Act shall be recoverable as if it was an arrear of land revenue.

The State Government shall take into account the degree of benefit accruing to the assesses when deciding upon the date from which the rate shall be levied”.

10. Disposal of claims to compensation.

- (i) Whenever any –
 - (a) obstruction is removed or embankment or drain removed, constructed or altered under S. 4 (i) (a) and (b); or
 - (b) embankment or drainage work carried out under S. 9; or
 - (c) emergent work undertaken under S. 16 (v) and in direct consequence thereof there has occurred stoppage or diminution of supply of water in any existing drain or accumulation or diminution of water in any place, resulting in deterioration, in the productivity of any land or any other loss or damage arising from any of the causes referred to in Cls. (a), (b) and (c) which is capable of being estimated; or
 - (d) right of fishery, right of drainage, right of use of water or other right of property, other than those as mentioned above, has been injuriously affected;

any person feeling aggrieved by any of the causes referred to in Cls. (a), (b), (c) and (d) may claim compensation before the Deputy Commissioner within two years from the date of physical completion of the work as notified by the State Government and the Deputy Commissioner shall award such compensation as he considers fair and reasonable after enquiry in the prescribed manner.

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

Provided that where, in the opinion of the Deputy Commissioner there is likely to be delay in determination of the compensation, the Deputy Commissioner may at his discretion, determine provisionally the amount which in his opinion is likely to be finally determined as compensation and make, an account, payment up to 60 per centum of the amount after taking such securities as the Deputy Commissioner thinks fit;

Provided further that where loss, damage or deterioration is manifest e.g., where because fall between the rivers and embankment rendering them unsafe and inhabitable, the Deputy Commissioner may, on his own accord, determine the compensation immediately after the directions are issued by the State Government under S. 9. In determining the amount of such compensation regard shall also be had to the acquisition of alternative land and of shifting the houses to such alternative land. In case alternative land is provided to the affected person by the State Government no compensation shall be payable for the land affected.

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

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

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

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

COMMENTS

This section deals with the disposal of claim to compensation.

Section 10 of the repealed Act is reproduced herein below:

- “10.** (i) Whenever any –
- (a) obstruction is removed or embankment or drain removed, constructed or altered under S. 4 (i) (a), (b) and (c); or
 - (b) embankment or drainage work carried out under S. 9; or
 - (c) emergent work undertaken under sub-S. 4 (iii); or

- (d) right of fishery, right of drainage, right of use of water or other right of property, other than as mentioned above, has been injuriously affected.

A claim to compensation for any loss arising there from may be made within three years of the completion of the work before the Deputy Commissioner who shall award such compensation as he considers, fair and reasonable. An appeal against the Deputy Commissioner's decision shall lie to the District Judge, but no appeal shall be entertained unless it is made within sixty days' of the date of the Deputy Commissioner's decision. The District Judge's decision shall be final.

- (ii) No such claim be entertained after the expiry of three years from the occurrence of the loss complained of, unless the Deputy Commissioner is satisfied that the claimant had sufficient cause for not making the claim within such period.

The proviso at the end of Cl, (i) has been inserted by Assam Act XVIII of 1966.

11. Levy on settled lands under S.9 by State Government.

For all works carried under S. 9 the State Government may unless they decide in specific cases, levy on settled lands either an annual water rate or betterment cess or both and on unsettled Government cess land improved by the works, a premium payable on settlement of such land, and either on annual water rate or betterment cess or both, so as to realize the initial cost of Scheme in full or in part and that of its maintenance in the manner as Government may prescribe. The total of either of the annual water rate or betterment cess or both or premium to be levied under a

scheme shall be fixed as nearly as possible so as not to exceed the following limits:

- (a) Ten percent per annum on the first cost of the said works adding there to the estimated yearly cost of maintenance and supervision of the same.
- (b) Such rate may be varied from time to time within such maximum as may be determined by the State Government.

Provided that if the State Government is satisfied that due to any unforeseen circumstances or natural causes any area or part thereof falling under a Scheme ceases to receive any benefit in full or part from such Scheme, the State Government may, by notification in the official Gazette abate or reduce the annual water rate or betterment cess or both for such of the area as may be determined.

COMMENTS

This section has been amended by Assam Act XXIV of 1962, whereby for the words “an annual water rate or betterment cess” wherever occurring, the words, “either an annual water rate or betterment cess or both” have been substituted, and for the words. “annual water rate, betterment cess,” the words, “of either of the annual water rate or betterment cess or both,” have been substituted. In item (i) for the words “six” the word “ten” has been substituted. Item No. (iii) has been deleted.

12. Levy of rate or cess on works existing from before.

It shall be lawful for the State Government to levy a similar water rate or betterment cess on land improved by Embankment and Drainage Schemes executed by the Government before the

commencement of this Act and take action under S. 13 for such lands as if this Act has been in force from before.

12-A. Recovery of arrears of land revenue.

Any rate or premium chargeable under the Act, if not paid on demand, shall be recoverable as an arrear of land revenue

COMMENTS

This section has been inserted by Assam Act XXIV of 1962.

13. Preparation of schedule of lands.

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

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

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

appeal, after the decision of the Commissioner, the Deputy Commissioner shall forward the schedule with any consequential modifications made therein to the State Government for approval.

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

14. Vesting of certain rights in the State.

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

COMMENTS

This section is similar to S. 11 of the repealed Act.

15. Penalties for trespass on embankments and drains.

- (I) Any person who, without the permission of the Embankment Officer –
 - (a) grazes any cattle or allows any cattle belonging to him or in his charge to trespass on any public embankment or drain, or
 - (b) cuts or uproots or otherwise damages any trees, shrubs or grass growing on any public embankment or drain, or

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

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

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

COMMENTS

This section deals with penalties for trespass on embankments and drains.

Section 12 of the repealed Act, similar to the present section, is reproduced here:

“12. (i) Any person who, without the permission of the Embankment Officer –

(a) grazes any cattle or allows any cattle belonging to him or in his charge to trespass on any public embankment or drain;

(b) cuts or roots out any trees, shrubs or grass growing on any public embankment or drain; or

(c) takes any vehicle over or across any public embankment or drain; or

(d) damages or obstructs any embankment or drain constructed, repaired or maintained under the provisions of this Act.

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

(ii) No person shall, without due authority, cut through any embankment or drain or destroy or attempt to destroy, any such embankment or drain or open or shut or every person who shall commit any breach of the provisions of this subsection shall be liable to imprisonment of either description for a term not exceeding six months or to a fine not exceeding two hundred rupees, or with both.”

16. Penalties for constructing, maintaining, etc., an Embankment or drain.

- (i) Whenever it appears to the State Government that in any area any public or private embankment, drain or other works ancillary thereto require to be protected, maintained or improved or that extension, construction, removal, repair or alteration of any such work should be regulated in public interest, the Government may, by notification in the official Gazette, apply the provisions of this section to such area.
- (ii) Any person who without the permission of the Deputy Commissioner or the Embankment Officer constructs, removes, alters, damages any embankment or drain, within the limits of any local area to which this section has been applied shall be punished with imprisonment of either description which may extend to a term of three years and to a fine which may extend to one thousand rupees.
- (iii) The Deputy Commissioner or the Embankment Officer may, by notice, require any person who constructs or alters any embankment or drain in contravention of the provisions of sub-S. (ii) above to remove the same within a reasonable time to be specified in the notice.
- (iv) Notice for removal of embankment or drain and penalties for neglect of such removal. If any embankment or drain the removal of which has been required by notice under sub-S (iii) is not removed within the time specified in the notice, the Deputy Commissioner or the Embankment Officer may cause the same to be removed.
- (v) In case of grave and imminent danger to life or property the Embankment Officer or the Deputy Commissioner may

forthwith get unauthorized embankment or drain removed and notify the persons concerned thereafter.

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

COMMENTS

This section prescribes penalties for constructing, maintaining, etc, an embankment or drain and also for removal of such constructions.

Sections 13 and 14 of the repealed Act, similar to the provisions herein contained, are reproduced below, for the convenience of the comparative study:

- “13.** Any person, who without the permission of the Deputy Commissioner constructs, removes, alters or damages any embankment or drain, within the limits of any local area to which this section may, from time to time, be applied by a notification in the official Gazette by the State Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with a fine which may extend to two hundred rupees, or with both.

- 14.** (i) The Deputy Commissioner may, by notice, require any person who constructs or alters any embankment or drain in contravention of the provisions of s.13, to remove the same within a reasonable time to be specified in the notice.

- (ii) If any embankment or drain of which the removal has been required by notice under sub-S (i) is not removed within the time specified in the notice, the Deputy Commissioner may cause the same to be removed
- (iii) The cost of the removal of any embankment or drain removed under the provisions of sub-S (ii) shall be recoverable as an arrear of land revenue either from the person who constructed or altered the embankment or drain or who caused it to be constructed or altered jointly and severally from both such persons as the Deputy Commissioner may determine.

17. Repairing damages or preventing accidents.

In case of any accident happening or being apprehended to any embankment or drain, any Embankment Officer or any person acting under his personal or special orders in this behalf may enter upon any land adjacent to such embankment or drain and may execute

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

18. Prior consultation with the Public Works and Public Health Departments

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

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

COMMENTS

This section is similar to S. 15 of the repealed Act.

19. Certain persons deemed to be public servants.

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

COMMENTS

This section is similar to S. 16 of the repealed Act.

20. Power to make rules.

The State Government may, subject to the condition of previous publication, make rules generally to carryout the provisions of this Act and in particular to regulate the following matters:

- (a) the proceedings of any officer who, under any provisions of this Act, is required or empowered to take action in any matter;
- (b) the manner in which an order or public notice issued under the provisions of this Act shall be published;
- (c) the manner in which assessment and recovery of costs under this Act shall be made.

COMMENTS

This section is similar to S. 17 of the repealed Act and is reproduced below:

“17. The State Government may, subject to the conditions of previous publication, make rules generally to carryout the provisions of this Act and in particular to regulate the following matters:

- (a) the proceedings of any officer who, under any provisions of this Act, is required or empowered to take action in any matter:
- (b) the manner in which any order or public notice issued under the provisions of this Act shall be published;
- (c) the area in respect of which the Deputy Commissioner shall consult the Railway Administration and local bodies with regard to applications under S. 5;
- (d) the manner in which apportionment of costs under this act shall be made; and
- (e) the rates chargeable under the provisions of this Act.

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

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

22. Repeal.

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

Adapted by Meghalaya

The Assam Embankment and Drainage Act, 1953 has been adapted by the Meghalaya Adaptation of Laws Order (No. 4), 1971, with same amendments, and the application of this Assam Act has been extended to Shillong, and is now named as Meghalaya Embankment and Drainage Act, vide Meghalaya Adaptation of Laws Order (No. 2), 1973.

=====