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THE TANKS IMPROVEMENT ACT, 1939

ACT NO. XV OF 1939

[12th October, 1939]

An Act to provide for the improvement of tanks in Bangladesh for purposes of irrigation.*

WHEREAS it is expedient to provide for the improvement of tanks in Bangladesh for purposes of irrigation;

It is hereby enacted as follows:-

Short title,
extent and
commencement

1. (1) This Act may be called the ¹[* * *] Tanks Improvement Act, 1939.

(2) It extends to the whole of Bangladesh.

(3) It shall come into force in such areas on such dates as the Government may, by notification in the *official Gazette*, direct.

Definitions

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

²[(a1) “agricultural land” includes land used for the growing of vegetables and the like and also waste land which is capable of cultivation but does not include a fruit garden, an orchard or any homestead land;]

(1) “authorised person” means the Collector, a local authority, co-operative society, or any other person who takes possession of a tank under the provisions of this Act and includes the successors-in-interest of such a person;

* Throughout this Act, unless otherwise provided, the words “Bangladesh” and “Government” were substituted for the words “East Pakistan” and “Provincial Government” respectively by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

¹ The word “Bengal” was omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² Clause (a1) was inserted by section 3 and the Second Schedule of the East Bengal Laws (Amendment and Repeal) Act, 1949 (East Bengal Act No. V of 1950).

- (2) “Collector” includes a ¹[Upazila Nirbahi Officer] and any officer appointed by the Government to exercise all or any of the functions of a Collector under this Act;
- (3) “co-operative society” means a society registered under the ²[* * *] Co-operative Societies Act, 1940;
- (4) “derelict tank” means a tank which has been declared to be a derelict tank under section 4;
- (5) “period of possession” means the period from the time when possession is first taken of a tank under section 5 or section 6 until the time when possession thereof is restored under section 21;
- ³[(5a) “person having control over a tank” does not include a person by whom the tank is held for a limited time and whose interest in the tank is not transferable;]
- (6) “prescribed” means prescribed by rules made under this Act;
- (7) “tank” means a reservoir, or place which has been used as a reservoir, for the storage of water whether formed by excavation or by the construction of one or more embankments or place where water naturally accumulates, and includes any part of a tank and the banks thereof except such portions of the banks as are homestead, garden or orchard lands.

3. If the Collector is of opinion that any tank has fallen into disrepair or disuse, he may serve a notice in the prescribed form and manner on the person having control over the tank requiring him to carry out within a period specified in the notice such improvements of the tank as the Collector considers necessary for the proper utilisation of the tank for purposes of irrigation and pisciculture.

Requisition by Collector to carry out improvements in certain tanks

¹ The words “Upazila Nirbahi Officer” were substituted for the words “Magistrate in-charge of a subdivision of a district” by section 2 of the Tanks Improvement (Amendment) Ordinance, 1986 (Ordinance No. III of 1986).

² The words, comma and figure “Co-operative Societies Act, 1912 or the Bengal” were omitted by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ Clause (5a) was inserted by section 3 and the Second Schedule of the East Bengal Laws (Amendment and Repeal) Act, 1949 (East Bengal Act No. V of 1950).

Declaration of a tank to be a derelict tank

4. (1) If the improvements referred to in section 3 are not carried out to the satisfaction of the Collector within the period specified in the notice issued under that section or within such further period as the Collector may, on application made to him in this behalf, think fit to allow, the Collector may, by a notice to the person having control over the tank, and otherwise published in the prescribed form and manner, declare the tank to be a derelict tank.

(2) Every notice issued under sub-section (1) shall state the boundaries of the tank which is declared to be a derelict tank or the number entered in the record-of-rights finally published¹[under Chapter IV of the State Acquisition and Tenancy Act, 1950] of the survey plot comprising such tank.

(3) A copy of every notice published under sub-section (1) shall be posted up in a conspicuous place near the tank, together with an intimation that any objections to the issue of the notice received by the Collector within one month from the date when it is so posted up, will be taken into consideration.

(4) On the expiry of the said period of one month, the Collector, after considering the objections, if any, shall confirm or withdraw the notice.

(5) A notice published under this section shall, unless and until it is withdrawn, be conclusive evidence of the fact that the tank to which it relates is a derelict tank within the meaning of this section.

Power to Collector in respect of a derelict tank

5. After the notice declaring a tank to be a derelict tank has been confirmed under section 4 the Collector, if he thinks fit, may at any time-

- (a) take possession of the tank and carry out the improvements, specified in the notice under section 3, or
- (b) authorise under section 6 a local authority, co-operative society, or any other person interested to take such action.

¹ The words, comma and figure “under Chapter IV of the State Acquisition and Tenancy Act, 1950” were substituted for the words, comma and figure “under Chapter X of the Bengal Tenancy Act, 1885 or under chapter IX of the Sylhet Tenancy Act, 1936 as the case may be” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

6. (1) Any local authority or co-operative society, or any other person who, in the opinion of the Collector, has an interest in a derelict tank, may, if authorised by the Collector by an order in writing in this behalf, take possession of such tank and carry out the improvements specified in the notice under section 3.

Order for possession of, and improvements in, a derelict tank

(2) In making an order under sub-section (1) the Collector shall, except for sufficient reason to be recorded in writing, give preference to the sole owner or any co-sharer owner of the tank who has submitted an application stating that he is willing to carry out the said improvements or he may make an order in favour of more than one such co-sharer owner jointly.

(3) An order under sub-section (1) shall be in such form and shall contain such particulars and conditions as may be prescribed.

¹[6A. (1) If any authorised person considers it necessary for the purpose of carrying out the improvements in a derelict tank to take possession of any land adjoining such tank, he may,-

Order for possession of lands adjoining a derelict tank for carrying out improvements in such tank

- (a) if he is the Collector, take possession of such land by order in writing; and
- (b) if he is not the Collector, apply in the prescribed manner to the Collector to be empowered to take possession of such land and the Collector may, if he is satisfied after considering the application that such land is required for carrying out the improvements, empower the authorised person by order in writing to take possession of such land:

Provided that the Collector shall not take possession or empower any authorised person to take possession of such land without giving in the prescribed manner the person in possession of such land reasonable opportunity of making any representation he may like to make and without considering any representation so made.

¹ Section 6A was inserted by section 3 and the Second Schedule of the East Bengal Laws (Amendment and Repeal) Act, 1949 (East Bengal Act No. V of 1950).

(2) Every order made under sub-section (1) shall specify the boundaries of the land to which it relates or the number entered in the record-of-rights finally published ¹[under Chapter IV of the State Acquisition and Tenancy Act, 1950] of the survey plot comprising such land and shall be in such form as may be prescribed.]

Cancellation of order under section 6

7. (1) If any authorised person-

- (a) fails to carry out the improvements to the satisfaction of the Collector within such time as may be specified in the order under section 6, or
- (b) fails, in the opinion of the Collector, to proceed with the improvements with due diligence or to maintain the tank in proper condition, or
- (c) with or without the permission of the Collector gives up possession of the tank or abandons the work of improvement, or
- (d) is, in the opinion of the Collector, guilty of any serious negligence or misconduct in relation to the tank or to persons having any right or interest in the tank or in the use of water thereof, or
- (e) fails to comply with any order passed under section 26 or section 27,

the Collector may cancel the order made under section 6 as well as any order made under clause (b) of sub-section (1) of section 6A, and thereupon all rights and powers of the said authorised person in respect of the tank and in respect of any land of which possession is taken as a result of an order made under clause (b) of sub-section (1) of section 6A shall cease and determine, and the Collector shall take possession of the tank and such land.

(2) After taking possession of the tank and such land under sub-section (1) the Collector shall either appoint another authorised person to carry out the improvements or carry them out himself.

¹ The words, comma and figure “under Chapter IV of the State Acquisition and Tenancy Act, 1950” were substituted for the words, comma and figure “under Chapter X of the Bengal Tenancy Act, 1885 or under chapter IX of the Sylhet Tenancy Act, 1936 as the case may be” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

8. Subject to the provisions of this Act, an authorised person shall be entitled to remain in possession of a derelict tank for such period as the Collector may determine after consideration of the time necessary to compensate the authorised person for the cost incurred in the improvements carried out together with interest thereon at the rate of ¹[fifteen] *per centum per annum*, but not exceeding twenty years from the date on which he takes possession thereof under section 5 or section 6:

Authorised person to retain possession of a derelict tank for a period not exceeding twenty years

Provided that the Collector, upon application made or of his own motion, after considering the views of the authorised person, may at any time reduce the period of possession determined by him under this section or extend such period subject to the maximum limit of twenty years referred to in this section, according as it appears that the costs incurred-

- (a) by the Collector in carrying out the purposes of this Act in respect of the tank, and
- (b) by the authorised person in carrying out the required improvements in the tank,

will be recovered together with the interest thereon at the rate of ²[fifteen] *per centum per annum* within a period shorter than, or will not be recovered together with such interest within the period of possession so determined.

9. Notwithstanding anything contained in section 8, the Collector in his discretion may, at any time within the period determined under the said section, restore to possession of the tank the person recorded as entitled to possession thereof in the record-of-rights referred to in section 22 or his successors-in-interest, provided that-

Owner to be restored to possession on certain conditions

- (a) such person pays to the Collector so much of the costs incurred up to that time both by the authorised person in carrying out the required improvements in the tank and by the Collector in carrying out the purposes of this Act

¹ The word "fifteen" was substituted for the words "six and a quarter" by section 3 of the Tanks Improvement (Amendment) Ordinance, 1986 (Ordinance No. III of 1986).

² The word "fifteen" was substituted for the words "six and a quarter" by section 3 of the Tanks Improvement (Amendment) Ordinance, 1986 (Ordinance No. III of 1986).

in respect of the tank as remains unrecovered after realisation by the authorised person under this Act of the fees referred to in section 17 or of any sum under any lease referred to in section 18, together with interest on the costs so remaining unrecovered at the rate of ¹[fifteen] *per centum per annum*, and

- (b) he undertakes to the satisfaction of the Collector to carry out any remaining improvements specified in the notice under section 3 within such period as the Collector may determine.

Authorised person to retain possession of land adjoining a tank during the period of possession of such tank

²[9A. An authorised person shall be entitled to remain in possession of any land adjoining a derelict tank of which possession is taken under section 6A as long as such person remains in possession of such derelict tank under section 8.]

Restoration of possession of land adjoining a derelict tank and the retaking of possession of such land

9B. (1) Notwithstanding anything contained in section 9A, if the person recorded as entitled to possession of any land adjoining a derelict tank in the record-of-rights referred to in section 22 or his successor-in-interest is not the person recorded as entitled to possession of such derelict tank in the record-of-rights referred to in the said section or his successor-in-interest, then the Collector may, at the request of the person so recorded as entitled to possession of such land or his successor-in-interest or of the authorised person at any time after the required improvements in the tank have been completed, by an order in writing, restore the possession of such land to the person so recorded as entitled to possession of such land or to his successor-in-interest, although the possession of the tank by the authorised person has not terminated, and when the possession of such land is so restored all rights in the land which existed prior to the time when possession was first taken of the land under section 6A shall be revived:

¹ The word “fifteen” was substituted for the words “six and a quarter” by section 3 of the Tanks Improvement (Amendment) Ordinance, 1986 (Ordinance No. III of 1986).

² Sections 9A, 9B and 9C were added by section 3 and the Second Schedule of the East Bengal Laws (Amendment and Repeal) Act, 1949 (East Bengal Act V of 1950).

Provided that before the Collector takes any action under this sub-section at the request of any person other than the authorised person, the Collector shall give the authorised person a reasonable opportunity of making any representation he may like to make and the Collector shall consider any representation so made.

(2) The person to whom the possession of such land has been restored under sub-section (1) shall not use it in such manner as may cause damage to the banks of the derelict tank or may affect the use of the tank for the purposes of irrigation and pisciculture.

(3) If the person referred to in sub-section (2) fails, in the opinion of the Collector, to comply with the provisions of that sub-section, the Collector may,-

- (a) again empower the authorised person by an order in writing to take possession of such land whereupon the authorised person shall forthwith take possession thereof, or
- (b) if he is the authorised person, himself again take possession of such land by order in writing,

and the authorised person so taking possession of such land again shall retain such possession as long as he remains in possession of the tank.

(4) Every order made under sub-section (3) shall specify the boundaries of the land to which it relates or the number entered in the record-of-rights finally published ¹[under Chapter IV of the State Acquisition and Tenancy Act, 1950] of the survey plot comprising such land and shall be in such form as may be prescribed.

¹ The words, comma and figure “under Chapter IV of the State Acquisition and Tenancy Act, 1950” were substituted for the words, comma and figure “under Chapter X of the Bengal Tenancy Act, 1885 or under chapter IX of the Sylhet Tenancy Act, 1936 as the case may be” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Restoration of possession of land adjoining a derelict tank on the restoration of possession of such tank under section 9

9C. When the possession of a derelict tank is restored by the Collector under section 9, the Collector shall at the same time restore the possession of any land adjoining such tank of which possession was taken under section 6A and has not already been restored under sub-section (1) of section 9B or of which possession was retaken under sub-section (3) of section 9B to the person recorded as entitled to possession of such land in the record-of-rights referred to in section 22:

Provided that where the person to whom the possession of the tank is restored under section 9 is not the person recorded as entitled to possession of such land in the said record-of-rights or his successor-in-interest, the possession of such land shall not be so restored until the improvements, if any, required to be carried out in the tank under clause (b) of the proviso to section 9 has been completed if the person to whom the possession of the tank is so restored agrees to pay the person so recorded as entitled to possession of such land the compensation which would have been payable by the authorised person under sub-section (1) of section 14A if such authorised person had continued to be in possession of such land.]

Authorised person not liable to pay rent or compensation

10. An authorised person shall not be liable to pay any rent or compensation in respect of his possession of a derelict tank or any land of which possession is taken under section 6A or is retaken under sub-section (3) of section 9B except as expressly provided in this Act.

Possession by an authorised person not to affect the rights or liabilities of other persons

11. Save as otherwise expressly provided in this Act, the possession of a derelict tank or of any land adjoining a derelict tank under this Act by an authorised person shall not affect the right or liability of any other person to receive or pay rent in respect of the said tank or land or in respect of any right or interest therein:

Provided that where rent in respect of the tank was, at the time when possession was first taken of the tank under this Act, payable by any person solely in respect of a right to use the water of the tank for irrigation purposes the liability to pay such rent shall cease and determine from the date on which such possession was taken.

12. (1) Where a derelict tank is, at the time of the taking of possession thereof by an authorised person, in the actual possession of the owner of the tank, the authorised person shall, at such times and in such manner as may be prescribed, pay to such owner such rent as the Collector, after such inquiry as he thinks fit, may determine:

Authorised person to pay rent to owner and compensation to person other than the owner dispossessed by him

Provided that where the authorised person is the owner of the tank in actual possession thereof, no such payment of the rent determined by the Collector under this sub-section shall be necessary; but the amount of such rent shall be included in and form part of the costs incurred or likely to be incurred by the authorised person in carrying out the required improvements in the tank.

(2) Where a derelict tank is, at the time of the taking of possession thereof by an authorised person, in the actual possession of any person other than the owner of the tank, the authorised person shall, at such times and in such manner as may be prescribed, pay to the person dispossessed by him such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent which the person so dispossessed is liable to pay in respect of the tank, and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of the interference with his possession.

13. Where, at the time of the taking of possession of derelict tank by an authorised person, any person has a right, on payment of any rent or charge, to catch fish in the tank or to take fruits from trees on, or other produce from, the banks of the tank, the authorised person shall, at such times and in such manner as may be prescribed, pay to the said person such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent or charge which the said person continues to be liable to pay to the owner or any tenant of the tank and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of the interference with the exercise of his right.

Authorised person to pay compensation to persons who have right to fish in the tank, etc., on payment

Authorised person to pay compensation to cultivators who hold a lease of the bed of such tank

14. (1) Where the bed or any part of the bed of a tank has been leased out to cultivators for agricultural purposes the authorised person shall pay compensation to such cultivators, and thereupon such lease shall be terminated. The amount of compensation payable to each cultivator shall be such amount as the Collector, after such inquiry as he thinks fit, deems fair and equitable but not less than the *salami* paid by such cultivator for the lease.

(2) The amount of compensation determined by the Collector under sub-section (1) shall be paid in the prescribed manner and within the prescribed time to the authorised person by the landlord who granted the lease. If the landlord makes default in such payment the same shall be recoverable from the landlord by the Collector as a public demand and paid by him to the authorised person.

Payment of compensation to persons having rights in lands adjoining a tank of which possession is taken under this Act

¹[**14A.** (1) Where the owner of a derelict tank is not the owner of any land adjoining such tank of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, the authorised person shall, at such times and in such manner as may be prescribed, pay to the person in possession of such land at the time of taking or retaking possession thereof such compensation as the Collector, after such inquiry as he thinks fit, may determine. Such compensation shall not be less than the amount of the rent which the person so dispossessed is liable to pay in respect of the land and shall be deemed to be a full and complete satisfaction for all loss suffered by such person as a result of the interference with his possession.

(2) Where the owner of a derelict tank is also the owner of any land adjoining such tank of which possession is taken under section 6A, or retaken under sub-section (3) of section 9B, the authorised person shall-

- (a) in the case where such land is in the actual possession of the owner thereof, pay at such times and in such manner as may be prescribed to such owner such rent as the Collector, after such inquiry as he thinks fit, may determine:

¹ Section 14A was added by section 3 and the Second Schedule of the East Bengal Laws (Amendment and Repeal) Act, 1949 (East Bengal Act No. V of 1950).

Provided that where the authorised person is the owner of such land in actual possession thereof, no such payment of the rent determined by the Collector under this clause shall be necessary; but the amount of such rent shall be included in and form part of the costs incurred or likely to be incurred by the authorised person in carrying out the required improvements in the tank; and

- (b) in other cases, pay at such times and in such manner as may be prescribed to any person to whom such land has been leased out and who holds such land as lessee at the time such possession is taken or retaken and to every other person having at that time, on payment of any rent or charge, any right in such land, such compensation as the Collector, after such inquiry as he thinks fit, may determine, and such compensation shall not be less than the amount of the rent or charge, which the person to whom the compensation is paid continues to be liable to pay to the owner or the tenant of such land and shall be deemed to be a full and complete satisfaction for all loss suffered by every such person as a result of the interference with the exercise of his right.]

15. (1) During the period of possession no person shall without the permission of the authorised person use or occupy the tank or use the water thereof except for drinking and other domestic purposes or catch fish in the tank or take fruits from trees on, or other produce from, the banks of the tank, except such portions of the banks as are homestead, garden or orchard lands.

Permission of the authorised person necessary to use or occupy the tank, etc.

(2) During the period any land, of which possession is taken under section 6A or retaken under sub-section (3) of section 9B, remains in the possession of an authorised person, no person shall without the permission of the authorised person use or occupy such land or take fruits from trees on, or other produce from, such land.

¹[**16.** During the period of possession all rights to use the water of the tank for irrigation purposes shall vest in the authorised person and no person shall use the water of the tank for such purposes except with the permission of the authorised person.

Rights to use the water of the tank

¹ Sections 16, 16A, 16B and 17 were substituted for the original sections 16 and 17 by section 3 and the Second Schedule of the East Bengal Laws (Amendment and Repeal) Act, 1949 (East Bengal Act No. V of 1950).

Maximum
irrigation area

16A. (1) When the possession of any tank has been taken under section 5 or section 6 the Collector shall determine in the prescribed manner the maximum area of land to the limits of which irrigation from the said tank may practicably be extended (hereinafter referred to as the maximum irrigation area) and the Collector shall publish a notice in the prescribed form and manner defining the limits of the maximum irrigation area so determined.

(2) Every person possessing agricultural land within the maximum irrigation area shall, subject to the provisions of sub-sections (3) and (4), be liable to pay a fee annually during the period of possession to the authorised person at the rate fixed and in the manner provided under section 17 and such liability shall not cease either by reason of such person not using water for irrigation purposes from the tank to which the maximum irrigation area relates or by reason of permission to use such water being refused under sub-section (2) of section 16B.

(3) Any person concerned may, within thirty days of the date of the publishing of the notice referred to in sub-section (1), apply in the prescribed form and manner and on payment of the prescribed fee to the Collector for-

- (a) including any land within the maximum irrigation area,
- (b) excluding any land from the maximum irrigation area, and
- (c) exempting any land or part of any land from liability to pay the fees referred to in sub-section (2) on the ground that such land cannot practicably be irrigated from the tank to which the maximum irrigation area relates, or cannot be benefited by such irrigation or that such land is not agricultural land,

and the Collector after giving the applicant a reasonable opportunity of being heard may pass such order as to such inclusion, exclusion or exemption as he thinks fit.

(4) The Collector may, of his own motion at any time after the expiry of thirty days from the date of publishing of the notice referred to in sub-section (1), include within the maximum irrigation area any land which was not agricultural land at the time of publication of such notice but has subsequently

been converted into agricultural land, or otherwise revise the limits of the maximum irrigation area or exempt any land or part of any land within such maximum irrigation area from liability to pay the fees referred to in sub-section (2) and the Collector shall modify the list referred to in sub-section (1) of section 16B accordingly:

Provided that before any order for such inclusion, revision or exemption is passed all persons concerned shall be given a reasonable opportunity of making any representation which they may like to make and the Collector shall consider such representation.

16B. (1) As soon as may be after the Collector has disposed of any applications made under sub-section (3) of section 16A, he shall prepare a list in the prescribed form and manner of the persons who are liable to pay the fees referred to in sub-section (2) of that section and such list shall specify the amount of agricultural land within the maximum irrigation area in respect of which each such person is to pay such fee and the amount of such fee which such person is to pay annually to the authorised person.

Preparation of list

(2) The Collector shall publish the list referred to in sub-section (1) and every modification of such list in the manner prescribed and shall, where the authorised person is not the Collector, forward a copy of such list and every modification of such list to the authorised person who shall permit every person whose name is entered in the list to use the water of the tank for the irrigation of the land of such person as long as the amount of the fee payable by such person is duly paid and not otherwise.

(3) If any dispute arises between persons entered in the list prepared under sub-section (1) as to any matter in respect of the use of water by such persons from the tank for the irrigation of their lands the authorised person shall decide the dispute and his decision, subject to the provisions of section 26, shall be final.

17. (1) Every person whose name is included in the list referred to in sub-section (1) of section 16B or his successor-in-interest shall pay annually and in the prescribed manner and on the dates prescribed to the authorised person the fees fixed according to the provisions of this section.

Payment and rate of fees

(2) If the fees payable under sub-section (1) are not paid within fifteen days from the due date fixed for such payment, interest on the amount of the fees so outstanding shall be payable at the rate of ¹[fifteen] *per centum per annum* calculated from the date on which such payment became due until the date on which the amount of the fees so outstanding is paid or recovered, as the case may be.

(3) Such Revenue Authority as may be appointed by the Government in this behalf shall fix, in respect of any tank of which possession is taken under this Act and for which the maximum irrigation area has been determined by the Collector, the rate or rates at which fees to be paid to the authorised person under sub-section (1) shall be calculated and different rates may be so fixed for classes of agricultural lands of different descriptions or having different advantages.

(4) The rate to be fixed under sub-section (3) for any class of agricultural land shall be such that-

- (a) all costs incurred or likely to be incurred-
 - (i) by the authorised person in carrying out the required improvements in the tank, and
 - (ii) by the Collector in carrying out the purposes of this Act in respect of the tank,

will be recovered together with interest thereon at the rate of ²[fifteen] *per centum per annum* within such period as is determined by the Collector under section 8 as the period for which the authorised person is entitled to remain in possession of the said tank, and

- (b) the rate of fees payable in respect of any land for the irrigation of which any person had, at the time when possession was taken of the tank under this Act, no right to use the water of the tank exceeds by fifty *per centum* the rate of fees payable in respect of the land for the irrigation of which a person had such a right.

¹ The word "fifteen" was substituted for the words "six and one quarter" by section 4 of the Tanks Improvement (Amendment) Ordinance, 1986 (Ordinance No. III of 1986).

² The word "fifteen" was substituted for the words "six and one quarter" by section 4 of the Tanks Improvement (Amendment) Ordinance, 1986 (Ordinance No. III of 1986).

(5) The Revenue Authority appointed under sub-section (3) may revise the rate or rates of fees fixed under this section in respect of any tank.

(6) Any sum due to the authorised person under this section shall be recoverable as a public demand.]

18. (1) During the period of possession the authorised person may, subject to the provisions of this Act and the previous permission of the Collector, lease to any person for a period not extending beyond the period of possession any part of the banks of the tank or any right to take fruit from trees on, or other produce from, such banks or any right to rear and catch fish in the tank.

Power of authorised person to lease out the tank, etc.

(2) During the period any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B remains in the possession of an authorised person, such authorised person may, subject to the provisions of this Act and the previous permission of the Collector, lease to any person for a period not extending beyond the said period of possession any part of the said land or any right to take fruits from trees on, or other produce from such land.

(3) Any sum due to the authorised person under any lease granted under this section shall be recoverable as a public demand.

(4) All sums realised by the authorised person under any lease granted under this section shall be applied to the recovery of all costs incurred or likely to be incurred by the authorised person in carrying out the required improvements in the tank and by the Collector in carrying out the purposes of this Act in respect of the tank together with interest on such costs at the rate of ¹[fifteen] *per centum per annum*.

19. Except as provided in this Act, no transfer by sale, gift, will, mortgage, lease or any contract or agreement of any right acquired by an authorised person under the provisions of this Act in respect of a derelict tank or in respect of any land of which possession is taken under section 6A or retaken under section (3) of section 9B shall be valid.

Bar to transfer of tank except as provided in this Act

¹ The word "fifteen" was substituted for the words "six and a quarter" by section 5 of the Tanks Improvement (Amendment) Ordinance, 1986 (Ordinance No. III of 1986).

Bar to acquisition of occupancy rights in lands leased out under section 18

¹[**19A.** Notwithstanding anything contained in the ²[State Acquisition and Tenancy Act, 1950] no person shall acquire any occupancy right in any part of the banks of, or in any land adjoining, a tank leased out to such person under section 18 and no person who has held any part of the banks of any tank under a lease under section 18 at any time since the commencement of this Act shall be deemed to have acquired any occupancy right therein.]

Authorised person to maintain tank in proper condition

20. Every authorised person who takes possession of a derelict tank under the provisions of this Act shall maintain the same in proper condition, and if, in the opinion of the Collector, he fails to do so the provisions of sections 5 and 6 shall be applicable as if the maintenance of the tank in proper condition were an improvement specified in the notice under section 3 or the Collector may, if he thinks fit, arrange for the maintenance of the tank in proper condition and recover the cost thereof from the authorised person.

Authorised person to maintain land adjoining a tank of which possession is taken by him in proper condition

³[**20A.** Every authorised person who under section 6A takes possession of any land adjoining a derelict tank or who under sub-section (3) of section 9B retakes possession of such land shall maintain such land in proper condition and if, in the opinion of the Collector, he fails to do so, the Collector may, if he thinks fit, arrange for the maintenance of such land in proper condition and recover the cost thereof from the authorised person.]

Restoration of possession of tank

21. When the possession of a derelict tank is finally terminated in accordance with the provisions of section 8, the tank shall be restored to the possession of the persons who were recorded as entitled to possession thereof in the record-of-rights referred to in section 22, or their successors-in-interest

¹ Section 19A was inserted by section 3 and the Second Schedule of the East Bengal Laws (Amendment and Repeal) Act, 1949 (East Bengal Act No. V of 1950).

² The words, comma and figure “State Acquisition and Tenancy Act, 1950” were substituted for the words, comma and figure “Bengal Tenancy Act, 1885 or under chapter IX of the Sylhet Tenancy Act, 1936 as the case may be” by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

³ Section 20A was added by section 3 and the Second Schedule of the East Bengal Laws (Amendment and Repeal) Act, 1949 (East Bengal Act No. V of 1950).

and any land possession of which was taken under section 6A but has not been previously restored under section 9B or section 9C or possession of which has been retaken under sub-section (3) of section 9B shall be restored to the possession of the persons who are recorded as entitled to possession thereof in the record-of-rights referred to in section 22 or their successors-in-interest and all rights in the tank including all rights to use the water for the purposes of irrigation which existed prior to the time when possession was first taken of the tank under section 5 or section 6 and all rights in such land which existed prior to the time when possession of the land was taken under section 6A or retaken under sub-section (3) of section 9B, as the case may be, excepting any rights for which compensation has been paid under section 14, shall be revived.

22. (1) The Collector shall prepare in the prescribed form and manner a record-of-rights in respect of all tanks which are declared to be derelict tanks under this Act, and a record-of-rights in respect of the lands adjoining such tanks of which possession is taken under section 6A or retaken under sub-section (3) of section 9B and during the period of possession of any such tank or during the period for which any such land remains in the possession of an authorised person he may, on application or of his own motion, from time to time, add to or alter in the prescribed manner any entry in the record-of-rights in respect of such tank or such land.

Record-of-rights in respect of derelict tanks

(2) Every entry in the record-of-rights referred to in sub-section (1) shall be evidence of the matter referred to in such entry, and shall be presumed to be correct in every particular for the purposes of this Act until it is proved by evidence to be incorrect.

23. (1) The persons to whom possession of a tank or possession of any land adjoining a tank has been restored under section 21 and their successors-in-interest shall, subject to any subsisting contact be responsible for maintaining the tank or such land in proper condition; and if, in the opinion of the Collector, the tank falls into disrepair or the land is not kept in proper condition, the Collector may, of his own motion, or on the application of any person interested in the tank, serve a notice in the prescribed form and manner on such persons or their successors-in-interest, requiring them to carry out such repairs to the tank or such improvements in the land as the Collector considers to be necessary.

Person to whom possession of a tank is restored to maintain it in proper condition

(2) If the repairs or the improvements referred to in sub-section (1) are not carried out to the satisfaction of the Collector, within six months from the date of service of the notice mentioned in sub-section (1), the Collector may himself carry out the repairs or such improvements or may authorise any person to carry them out.

Costs

24. All costs incurred by the Collector in carrying out the purposes of this Act in respect of a tank of which possession is taken under section 6 or in respect of any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B shall be paid by the authorised person and all costs of carrying out the repairs of a tank or the improvements in any land under section 23 shall be paid by the person responsible under sub-section (1) of the said section for the maintenance of the tank or such land in proper condition at such times and in such manner as may be prescribed, and on default in payment thereof the same shall be recoverable by the Collector as a public demand.

Decision of disputes

25. (1) During the period of possession all disputes relating to the exercise of any rights in respect of a tank or the use of the water thereof by the authorised person shall be decided by the Collector in such manner as may be prescribed.

(2) During the period of any land of which possession is taken under section 6A or retaken under sub-section (3) of section 9B remains in the possession of an authorised person, all disputes relating to the exercise of any rights in respect of such land shall be decided by the Collector in such manner as may be prescribed.

Appeal against action of authorised person

26. Any person aggrieved by any action or decision of an authorised person, other than the Collector, may appeal to the Collector who after giving such authorised person an opportunity to be heard in the matter, shall pass such order thereon as he thinks fit.

Other appeals

27. (1) Any person aggrieved by any order passed by a Collector, other than the Collector of the district, under this Act may appeal in the prescribed manner to the Collector of the district.

(2) Any person aggrieved by any order passed, on appeal or otherwise, by the Collector of the district may appeal in the prescribed manner to the Commissioner.

(3) Any person aggrieved by any order passed by a Commissioner under this Act may appeal in the prescribed manner to the ¹[Government]:

Provided that where an order passed by the Collector of the district on appeal has been confirmed by the Commissioner no appeal under this sub-section shall lie except on a point of law.

28. Notwithstanding anything contained in any other Act the procedure to be followed by the Collector of the district, Commissioner or ²[Government] in any proceedings under section 27 shall be in accordance with rules made under this Act.

Procedure in proceedings under section 27

29. No decree nor order of a Civil Court shall operate to disturb, curtail or otherwise modify the possession under this Act of a tank or of any land adjoining such tank by the authorised person, or, during the period of possession of such tank or during the period for which any such land remains in the possession of an authorised person, to annul or alter any order or decision of the Collector or any other Revenue authority made or purporting to have been made under the provisions of this Act.

Order of Civil Court not to operate during period of possession

30. No suit shall lie in any Civil Court for compensation in respect of any injury, damage or loss resulting from anything done under this Act.

Bar to jurisdiction of Civil Courts

31. The Collector, subject to any rules made under this Act, may at any time enter upon any land with such officers or servants as he considers necessary, and make a survey or take measurements thereof or do any other acts which he considers to be necessary for carrying out any of his duties under this Act.

Power to enter land to make survey, etc.

¹ The word "Government" was substituted for the words "Board of Revenue" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The word "Government" was substituted for the words "Board of Revenue" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Power to compel production of statements and documents

32. (1) Subject to rules made under this Act the Collector may, for the purposes of this Act, by notice, require any person to make and deliver to him a statement or to produce records or documents in his possession or control relating to any land or tank at a time and place specified in the notice.

(2) Every person required to make or deliver a statement or to produce any record or document under this section shall be deemed legally bound to do so within the meaning of sections 175 and 176 of the ¹[Penal Code].

Power to enforce attendance of witnesses and production of documents

33. For the purposes of an inquiry under this Act the Collector shall have power to summon and enforce the attendance of witnesses, including any of the persons interested in the tank or in the land adjoining such tank, and to compel the production of documents by the same means and, so far as may be, in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908.

Power to authorise subordinate officer to exercise Collector's powers

34. The Collector may, by order in writing, authorise any officer subordinate to him to exercise the powers of the Collector under clause (a) of section 5 or clause (a) of sub-section (1) of section 6A, clause (b) of sub-section (3) of section 9B or under section 31.

Penalty

35. Whoever contravenes any of the provisions of section 15, or sub-section (1) of section 16 shall be punished with fine which may extend to ²[five hundred Taka].

No reduction of revenue for anything done under this Act

36. The proprietor of a tank or of any land adjoining a tank shall not be entitled to claim, on account of anything done under the provisions of this Act any reduction in the revenue payable by him to the Government.

Power to make rules

37. (1) The Government may make rules for carrying out the purposes of this Act.

¹ The words "Penal Code" were substituted for the words "Pakistan Penal Code" by section 3 and the Second Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

² The words "five hundred Taka" were substituted for the words "one hundred taka" by section 5 of the Tanks Improvement (Amendment) Ordinance, 1986 (Ordinance No. III of 1986).

(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 forms of notices under section 3, sub-section (1) of section 4 and sub-section (1) of section 23, of orders under sub-section (1) of section 6, sub-section (1) of section 6A and sub-section (3) of section 9B, and of record-of-rights under sub-section (1) of section 22;
- (b) the manner of serving notice under section 3 and sub-section (1) of section 23 and of publishing notice under sub-section (1) of section 4;
- (c) the particulars and conditions to be specified in an order under sub-section (1) of section 6;
- ¹[(cc) the manner of making an application under clause (b) of sub-section (1) of section 6A and of giving reasonable opportunity to the person in possession of the land to make any representation under the proviso to the said sub-section;]
- (d) the time and manner of payment of compensation under section 12, section 13, sub-section (2) of section 14 and sub-section (1) and (2) of section 14A, and of costs under section 24;
- ²[(dd) the manner of determining the maximum irrigation area and the form and the manner of publishing the notice defining the limits of the maximum irrigation area under sub-section (1) of section 16A, and the form and manner of the application and the fee payable under sub-section (3) of that section;
- (ddd) the form of the list and the manner of its preparation under sub-section (1) of section 16B and the manner of publication of the list and every modification thereof under sub-section (2) of that section;

¹ Clause (cc) was inserted by section 3 and the Second Schedule of the East Bengal Laws (Amendment and Repeal) Act, 1949 (East Bengal Act No. V of 1950).

² Clauses (dd), (ddd), (dddd) were inserted by section 3 and the Second Schedule of the East Bengal Laws (Amendment and Repeal) Act, 1949 (East Bengal Act No. V of 1950).

- (dddd) the manner and the dates of payment of fees under sub-section (1) of section 17;]
 - (e) the manner of preparing the records-of-rights under sub-section (1) of section 22, and of adding or altering any entry therein;
 - (f) the manner of deciding disputes under sub-sections (1) and (2) of section 25;
 - (g) the manner of making an appeal and the procedure to be followed in any proceedings under section 27;
 - (h) the procedure and conduct of the Collector and of officers and servants referred to in section 31;
 - (i) the exercise of powers under sub-section (1) of section 32 to enforce the making and delivery of statements and production of documents.
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