

THE AZAD JAMMU AND KASHMIR
LAND PRESERVATION ACT, 1954.

(Passed under Council Order No. 319/54 dated 2-9-1954)

Whereas it is expedient to provide for the better preservation and protection of certain portions of the territories of Azad Kashmir ;

It is hereby enacted as follows :-

PRELIMINARY

1. Short title and Commencement:- (1) This Act may be called the Azad Jammu and Kashmir Land Preservation Act, 1954.

(2) Sections 8, 9 and 10 shall apply to Mirpur and Bhimber tehsils and area adjacent to Jhelum Valley and Brarkote-Domel road ; the remaining sections shall extend to the whole of Azad Jammu and Kashmir.

(3) It shall come into force at once.

2. Definitions:- In this Act unless a different intention appears from the subject or context :-

(a) the expression "land" means land within any local area preserved and protected or otherwise dealt with in manner in this Act provided and includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth;

(b)

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the expression "Kas" means a steam or torrent flowing through or from the mountain ranges and the pabbies within Jammu and Kashmir;

(c) the expressions "trees", "timber", "Forest produce" and "cattle", respectively, Shall have the meanings severally assigned thereto in section 2 of Jammu and Kashmir Forest Act No. II of 1930;

(d) the expression "person interested" includes all persons claiming any interest in compensation to be made on account of or by virtue of their being affected by any measures taken under this Act.

(e) "Deputy Commissioner" means the Deputy Commissioner of the District concerned.

(f) the expression "Divisional Forest Officer" means the Divisional Forest Officer in charge of the Division concerned or any person appointed to perform the functions of a Divisional Forest Officer under this Act.

(g) the expression "right holder" includes :-

(i) persons not being tenants or mortgagees having rights to or in land ; and

(ii) persons having rights of collection of forest produce or of grazing or pasture ; and

(h) the expression "erosion" includes the removal or replacement of earth, soil, stones or other materials by the action of wind or water or any other natural agent of change.

NOTIFICATIONS AND REGULATION OF AREA

Notification of areas:- Whenever it appears to the Azad Jammu and Kashmir Government that it is desirable to provide for the conservation of subsoil water or the prevention of erosion in any area subject to erosion or likely to become liable to erosion, the Government may by notification make a direction accordingly.

Powers to regulation, restrict or prohibit, by general or special order, within notified area, certain matters:- In respect of areas notified under Section 3 generally or the whole or any part of any such areas, the Azad Jammu and Kashmir Government may, by general or special order, temporarily regulate, restrict or prohibit :-

(a) the clearing or breaking up or cultivating of land not ordinarily under cultivation prior to the publication of the notification under section 3 ;

(b) the quarrying of stone or the burning of lime at places where such stone or lime had not ordinarily been so quarried or burnt prior to the publication of the notification under section 3 ;

(c) the cutting of trees or timber, or the collection or removal or subjection to any manufacturing process, otherwise than as described in clause (b) of this sub-section of any forest-produce other than grass, save for bonafide domestic or agricultural purposes of right holders in such areas ;

(d) the setting on fire of trees, timber or forest produce ;

(e) the admission, hoarding, pasturing or retention of sheep, goats or camels ;

(f) the examination of forest-produce passing out of such area ; and

(g) the granting of permits to the inhabitants of towns and villages situate within the limits or in the vicinity of any such area, to take any tree, timber or forest produce for their own use there-from, or to pasture sheep, goats or camels or to cultivate or erect buildings therein and the production and return of such permits by such persons.

Power in certain cases to regulate, restrict or prohibit by special order within notified area, certain further matters:-

In respect of any specified village or villages or part or parts thereof comprised within the limits of any area notified under section 3 the Azad Jammu and Kashmir Government may, by special order temporarily regulate, restrict or prohibit :

(a) the cultivating of any land ordinarily under cultivation prior to the publication of the notification under section 3 ;

(b) the quarrying of any stone or the burning of any lime at places where such stone or lime has ordinarily been so quarried or burnt prior to the publication of the notification under section, 3 ;

(c) the cutting of trees and timber or the collection or removal or subjection to any manufacturing process, otherwise than is described in clause (b) of this sub-section of any forest produce for any purpose ; and

(d) the admission, hoarding, pasturing or retention of cattle

generally other than sheep, goats and camels or of any class or description of such cattle.

Power to require execution of works and taking of measures:- In respect of areas notified under section 3 generally or the whole or any part of any such area, the Azad Jammu and Kashmir Government may, by general or special order, direct :-

(a) the levelling, terracing, drainage and embanking of fields ;
(b) the construction of earth-works in fields and revines ;

(c) the provision of drains for storm water ;

(d) the protection of land against the action of wind or water ;
(e) the training of streams ; and

(f) the execution of such other works and the carrying out of such other measures as may, in the opinion of the Azad Jammu and Kashmir Government, be necessary for carrying out the purposes of this Act.

Necessity or regulation restriction or prohibition to recited in the order under sections 4 or 5 and 5-A publication of order:- Every order made under sections 4, 5 or 5S-A shall be published in the official gazette and shall set forth that the Azad Jammu and Kashmir Government is satisfied, after due inquiry, that regulations, restrictions, prohibitions or directions contained in the order are necessary for the purpose of giving effect to the provisions of this Act.

Proclamation of regulations, restrictions and prohibitions and preference of objections relating to rights or concessions which are restricted or extinguished:- (1) When in respect of any area, a notification has been published under section 3, and:-

(a) upon such publication any general order, made under section 4 or section 5-A becomes applicable to such area ; or

(b) any special order under sections 4,5 or 5-A is made in respect of such area ;

the Divisional Forest Officer in consultation with the Deputy Commissioner shall cause public notice of the provisions of any such order restrict or prohibit the exercise of any existing rights shall also publish in the language of the country and in every town and village the boundaries of

which include any portion of the area within or over which the exercise of any such rights is so restricted or prohibited, a proclamation stating the regulations, restrictions and prohibitions which have been imposed, by any such order, within the limits of such area or in any part or parts thereof fixing a period of not less than three months from the date of such proclamation, and requiring every person whose rights or concessions are to be restricted or prohibited, within such period either to present to such officer a written notice specifying, or to appear before him and state, the nature and particulars of his objections and claims in respect thereof.

(2) Any objection or claim not preferred within the time fixed in the proclamation made under sub-section (1) shall be rejected :

Provided that with the previous sanction of the Commission, the Divisional Forest Officer and the Deputy Commissioner may admit any such objection or claim as if it had been made within such period.

Enforcement of order made under section 5-A:- (1) When an order has issued under section 5-A the Divisional Forest Officer with the concurrence of Deputy Commissioner may by notice require the owner or occupier of the land to execute such works or take such measures as may be specified in the notice.

(2) Every such notice shall state the time within which the works are to be executed or measures are to be taken.

(3) A person aggrieved by an order contained in such notice as aforesaid may, within thirty days from the service of such notice or within such longer period as the Deputy Commissioner may allow in this behalf, serve a notice of his objections on the Divisional Forest Officer in such manner as may be provided by the rules made under this Act.

(4) If and in so far as an objection under this section is based on the ground of some informality, defect or error in or in connection with the notice, the Divisional Forest Officer shall with the concurrence of the Deputy Commissioner dismiss the objection, if he is satisfied that the informality, defect or error was not a material one.

(5) If the objection is brought on all or any of the following grounds :-

- (a) that the notice might lawfully have been served on the occupier of the land in question instead of on the owner, or on the owners instead of on the occupier, and that it would have been equitable for it to have been so served ;
- (b) that some other person being the owner, occupancy tenant, mortagagee with possession or lessee or farm-holder or possessing some other right in or over the land to be benefited ought to contribute towards the expense of executing any works or taking any measure required ;

- (c) where the work or measure is work or measure for the common benefit of the land in question and other land, that some other person being the owner or occupier of land to be benefited, ought to contribute towards the expenses of executing any works or taking any measures required ;

the objector shall serve a copy of his notice of objection on such other person referred to, and on the hearing of the objection the Divisional Forest Officer may with the approval of the Deputy Commissioner, make such order as he thinks fit with respect to the person by whom any work is to be executed or measure is to be taken and the contribution to be made by any other persons towards the cost of the work or measure or as to the proportions in which any expenses which may become recoverable by the Divisional Forest Officer under sub-section (6) are to be borne by the objector and such other person :

Provided that no such order be made unless the person who is likely to be affected thereby has been given a reasonable opportunity of being heard :

Provided further that in the case of a difference of opinion between the Deputy Commissioner and Divisional Forest Officer the opinion of the Deputy Commissioner shall prevail.

In exercising powers under this sub-section the Divisional Forest Officer and the Deputy Commissioner shall have regard :-

- (a) as between an owner and an occupier, to the terms and conditions, whether contractual or statutory, of the tenancy and to the nature of works and measures required ; and

(b) in any case, to the degree of benefit to be derived by the different persons concerned.

(6) Notwithstanding anything to the contrary in any law for the time being in force, no person required by a notice or an order under this section to execute any work or to take any measure shall be required to obtain the consent of any other person before complying with such notice or order.

(7) Subject to such right of objection as aforesaid and the right of appeal under section 17, if the person required by the notice to execute work or to take measures fails to execute the works or take the measures indicated within the time thereby limited, the Divisional Forest Officer with the concurrence of Deputy Commissioner may himself or by an agent execute the works or take measures and recover from that person the expense reasonably incurred by him in so doing :-

(a) provided that it shall not be necessary for the Divisional Forest Officer to wait for the decision of any objection other than an objection under clause (a) of sub-section (5) of an appeal against any decision on such objection, before taking action under this sub-section ;

(b) provided further that the maximum amount that shall be recoverable in respect of any land in regard to which the work has been executed or the measure taken shall not exceed :-

(i) where the work is required to be executed or the measure to be taken by the owner, ten times the land revenue assessed on all the lands owned by him in Azad Jammu and Kashmir Territory ;

(ii) where the work is required to be executed by the occupier, ten times the land revenue assessed on all the lands occupied by him in the estate in which such land is situated.

(8) If the cost of any work executed or any measure taken by any person remains unpaid by the person from whom it is due after the date specified in a notice issued in this behalf by the Divisional Forest Officer or such other date as is fixed by him, such cost shall be recoverable as an arrear of land revenue and a certificate issued by the Divisional Forest Officer and endorsed

by the Deputy Commissioner in this behalf shall be final and conclusive evidence of the sum so recoverable and the person liable for the same.

(9) Every order issued under this section shall be published in such manner as may be prescribed in the rules made under this Act and upon such publication every person affected thereby shall, unless the contrary be proved, be deemed to have had due notice thereof.

(10) The Divisional Forest Officer and the Deputy Commissioner may by general or special order authorise any forest and revenue officer subordinate to them to enquire into any objection that may be brought under this section :

Provided that no final order on any such objection shall be passed except by the Divisional Forest Officer and the Deputy Commissioner and the opinion of the Deputy Commissioner shall in case of a difference of opinion prevail.

(11) In making an order on objections brought under this section the Divisional Forest Officer and the Deputy Commissioner shall be guided by such rules, if any, as the Azad Jammu and Kashmir Government may make in this behalf.

(12) For the purpose of this section, the expression "Estate" shall have the meaning assigned thereto in the Land Revenue Act in force in Azad Kashmir.

CONTROL OVER THE BEDS OF STREAMS (KAS).

Action when Azad Kashmir Government considers it desirable to take measures to regulate the beds of KAS.

Vesting of such beds in Azad Jammu and Kashmir Government:- (1) Whenever it appears to the Azad Jammu and Kashmir Government that it is desirable that measures should be taken in the bed of any KAS for the purpose of :-

(a) regulating the flow of water within and preventing the widening or extension of such bed ; or of

(b) reclaiming or protecting any land situate within the limits of such beds ;
the Government may, either proceed at once in manner in

subsection (2) provided, or, in the first instance, by notification specifying the nature and extent of the measures to be taken and the locality in and the time within which such measures are to be so taken, require all persons possessing proprietary or occupancy rights in land situate in such locality to themselves carry out the measures specified in such notification accordingly.

(2) If the whole or any part of the bed of any Kas be unclaimed, or if, in the opinion of the Azad Jammu and Kashmir Government the measures deemed necessary under sub-section (1) are of such a character, in regard to extent and cost, that the interference of the Azad Jammu and Kashmir Government is absolutely necessary, or in the event of the owner or occupier of any portion of the bed of any Kas failing to comply with the requirements of any notification issued under sub-section (1), the Government may, by notification declare that the whole or part of the area comprised within the limits of the bed of any kas shall vest in Azad Jammu and Kashmir Government for the purposes of this Act for such period and subject to such conditions (if any) as may be specified in the notification :

Provided that no such declaration shall be made in respect of or shall affect any land included within the limits of the bed of any such Kas, which at the date of publication of the notification making such declaration, is cultivated or cultivatable, or fields any produce of substantial value.

(3) When the owners or occupier of such locality are unable to agree among themselves regarding the carrying out of such measures the decisions of those paying the larger amount of land revenue shall be held to be binding on all.

(4) The Azad Jammu and Kashmir Government may, from time to time by like notification, extend the period during which any such area shall remain vested in Azad Jammu and Kashmir Government.

Effect of notification to suspend or extinguish private rights in the area notified under section 8:- Upon the making of any declaration under sub-section (2) of section 8 all private rights of whatever kind existing in or relating to any land comprised within the area specified in the notification containing such declaration at the time of the publication thereof shall be suspended for the period specified in the declaration and for such

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further period (if any) to which such period may at any time be extended : 5

Provided that, as far as circumstances admit, such rights of way and water shall be reserved, in respect of every such area, as may be necessary to meet the reasonable requirements and convenience of the persons (if any) who, at the time of the making of such declaration possessed any such rights over such area.

Power to Divisional Forest officer to delimit the bed and to decide what constitutes such bed:- (1) The Divisional Forest Officer and the Deputy Commissioner shall for the purpose of every notification issued under subsection (2) of section 8, fix the limits of the area comprised within the beds, of the Kas to

which such notification is to apply.

(2) Upon the publication of a notification containing any declaration under sub-section (2) of section 8, it shall be lawful for the Divisional Forest Officer and the Deputy Commissioner to :-

(a) take possession of the area specified in such declaration ;
(b) eject all person therefrom ; and to

(c) deal with such area, while it remains vested in Azad Jammu and Kashmir Government as if it were absolute property of Azad Jammu and Kashmir.

Bar of compensation or acts done under sections 8, 9 or 10:-
No person shall be entitled to any compensation for any thing at any time done, in good faith in exercise of any power conferred by section 8, section 9 or section 10.

POWER TO ENTER UPON AND DELIMIT NOTIFIED

AREAS AND BEDS

Power to enter upon survey and demarcate local areas notified under section 3 or section 8:- It shall be lawful for the Divisional Forest Officer and the Deputy Commissioner and their subordinate officers, servants, caretakers and workmen; from time to time, as occasion may require :-

(a) to enter upon and survey any land comprised within any

local area in regard to which any notification has .been issued under section 3 or section 8 (or in regard to which a notification is proposed to be issued under section 5-A) ;
 (b) to erect bench-marks on and to delimit and demarcate the boundaries of any such area ; and

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(c) to do all other acts and things which may be necessary in order adequately to preserve or protect any land or to give effect to all or any of the provisions of this Act :

Provided that reasonable compensation to be assessed and determined in the manner in this Act provided, shall be made in respect of any damage or injury caused to the property of any person in carrying out any operations under the provisions of this section, but no such compensation shall be payable in respect of any thing done under the said provisions within the limits of any area notified under section 8.

INQUIRY INTO OBJECTIONS AND CLAIMS AND AWARD OF COMPENSATION

Inquiries into Objections and claims and award of compensation:- (1) The Deputy Commissioner and the Divisional Forest Officer shall :-

- (a) fix a date for inquiring into all objections and claims under section 7 and may, in their discretion from time to time adjourn the enquiry to a date to be fixed by them ;
- (b) record in writing all statements made under section 7 ;
- (c) inquire into all claims and all objections duly preferred under section 7; and
- (d) make an award upon each such claim, setting out therein the nature and extent of the right claimed, the person or persons making such claim, the extent (if any) to which and the person or persons in whose favour the right claimed is established, the extent to which it is to be restricted or prohibited and the nature and amount of the compensation, if any, awarded.

(2) For the purposes of every such inquiry the Deputy Commi

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ssioner and the Divisional Forest Officer may jointly exercise all or any of the powers of a Civil Court in the trial of suits under the Code of Civil Procedure.

The Deputy Commissioner and the Divisional Forest Officer shall announce their award to such persons interested or their representatives as are present and shall record the acceptance of those who accept it. To such as are not present the Deputy Commissioner and the Divisional Forest Officer shall cause immediate notice to be given.

METHOD OF AWARDING COMPENSATION AND EFFECT OF SUCH AWARD

(1) In determining the amount of compensation, the Deputy Commissioner and the Divisional Forest Officer shall be guided so far as may be, by the provisions of the Land Acquisition Act, in force in the State at the time and as to matter which cannot be dealt with under these provisions, by what is just and reasonable in the circumstances of each case.

(2) The Deputy Commissioner or the Divisional Forest Officer may with the sanction of the Government and the consent of the person entitled, instead of money award compensation in land or by reduction in revenue or in any other form.

(3) If, in any case, the exercise of any right is prohibited for a time only, compensation shall be awarded only in respect of the period during which the exercise of such right is so prohibited.

PROCEDURE, RECORDS AND APPEAL.

Records of rights in respect of notified area:- (1) For every area, notified under section 3 or section 8, the Deputy Commissioner and the Divisional Forest Officer shall prepare a record setting forth the nature, description, local situation and extent of all rights, mentioned in sections 4, section 5 and section 5-A :-

(a) existing within such area at the time of the publication of the notification relating thereto under section 3 or section 8;

(b) regulated, restricted, suspended or prohibited by any order under section 4 or section 5 or section 5-A.

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(2). When any award is made under sections 13 and 14, its effect upon any right shall also be recorded therein.

Mode of proclaiming, notifications and of serving notices, order and processes issued under this Act:- (1) Upon the publication of a notification issued under any of the provisions of this Act, the Deputy Commissioner and the Divisional Forest Officer shall cause public notice of the substance thereof to be given, at convenient places in the locality to which such notification relates.

(2) The procedure prescribed in sections 20, 21 and 22 of the Land Revenue Act, as in force in Azad Kashmir, shall be followed as far as may be, in proceedings under this Act.

Appeal, review and revision:- Every order passed and every award made by the Deputy Commissioner and the Divisional Forest Officer under this Act, shall for the purposes of appeal, review and revision, respectively be deemed to be the order of a Collector within the meaning of sections 13, 14, 15 and 16 of the Land Revenue Act, in force in Azad Kashmir:

Provided that nothing in this Act contained shall be deemed to exclude the jurisdiction of any Civil Court to decide any dispute arising between the persons interested in any compensation awarded as to the apportionment or distribution thereof amongst such persons or any of them.

PENALTIES, BAR OF SUITS AND RULES

Penalty for offences:- Any person who, within the limits of any local area notified under section 3, commits any breach of any regulation made, restriction or prohibition imposed (order passed) or requisition made under sections 4, 5, 5-A or 7-A, shall be punished with imprisonment for a term which may extend to one month, or with a fine which may extend to one hundred rupees, or with both.

Application of provisions of Jammu and Kashmir Forest Act of 1930:- The provisions of sections 26, 28, 29, 30, 31, 32, 33, 34, 35, 37, 38, 39, 42 and 43 of Jammu and Kashmir Forest Act No. 2 of 1930 and section 19 of Kuth Act of 1930 shall, so far as applicable, be read as part of this Act, and for the purposes of those provisions, every offence punishable under section 18, shall be deemed to be a "forest offence", and every officer

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employed in the management of any area notified under section 3 or section 8, as caretaker or otherwise shall be deemed to be a forest officer.

Bar of suits:- No suit shall lie against the Azad Jammu and Kashmir Government for anything done under this Act, and no suit shall lie against any public servant for anything done, or purporting to have been done, by him, in good faith under this Act.

The Azad Jammu and Kashmir Government may make rules, consistent with this Act :-

(a) regulating the procedure to be observed in any inquiry or proceeding under this Act ; and
(b) generally for the purpose of carrying into effect all or any of the provisions of this Act.

(2) All rules made under this section shall be published in the Azad Jammu and Kashmir Government Gazette.