

AZAD GOVERNMENT OF THE STATE OF JAMMU AND KASHMIR
LAW, JUSTICE AND PARLIAMENTARY AFFAIRS DEPARTMENT
MUZAFFARABAD

Dated the 23rd October, 1995.

No. 796-803/LD/Leg/95. The following Act of the Assembly received the assent of the President on the 16th day of October, 1995, is hereby published for general information:-

(ACT XIX OF 1995)

AN

ACT

to establish Bagh Development Authority

WHEREAS it is expedient to establish a Development Authority for making all arrangements for the planning and development of the area within the frame-work of Bagh Notified area;

It is hereby enacted as follows:-

CHAPTER-I

(Preliminary)

1. Short title, extend_and commencement:- (1) This Act may be called the Bagh Development Authority Act, 1995.

(2) It shall extend to Notified area of District Bagh.

(3) It shall come into force at once.

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

(a) 'Agency' means any department or organization of the

Government and includes a corporation, or other autonomous or semi-autonomous body set up by the Government;

(b) 'Authority' means the Bagh Development Authority established under Section 4;

(c) 'Board' means the Board constituted under Section 6;

(d) 'Building' includes any factory, industrial or business establishment, shop, godown, warehouse, house, outhouse, hut, hutment, shed, garage, stable, well or platform, any other structure, whether meant for residential or business purposes or not, made of masonry, bricks, wood, mud, thatch, metal or any other material, but does not include a temporary structure made for the purposes connected with

agriculture;

(e) 'Chairman' means the Chairman of the Authority;

(f) "Deputy Commissioner" means the Deputy Commissioner

of the Bagh District, and includes any other officer appointed by the Government to exercise all or any of the powers and discharge all or any of the functions of the Deputy Commissioner under this Act;

(g) "Government" means the Azad Government of the State of

Jammu and Kashmir;

(h) "Land" includes buildings and benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth;

(i) "Local Body" means the local body, or the municipal body as established under any law for the time being in force having jurisdiction in the area concerned, and includes an Improvement Trust within such area;

Gd) "Member" means a member of the Authority;

(k) "President" means the President of Azad Jammu and Kashmir;

O) "Rules" means rules made under this Act;

(m) "Scheme" means a planning scheme or a developments scheme made under this Act;

(n) "Notified Area" means the area notified under Section 3 of this Act.

Declaration of Notified Area:- The Government may, from time to time, by notification in the Official Gazette, declare any part or parts of Bagh District to be notified area.

CHAPTER-II

(CONSTITUTION OF THE AUTHORITY)

Constitution of the Authority:- (1) There shall be established an authority to be known as the Bagh Development Authority for carrying out the purposes of this Act.

(2) The Authority shall be a body corporate, having perpetual succession and a common seal, with powers subject to the provisions of this Act to acquire and hold property, both movable and immovable and shall by the said name sue and be sued.

Management:- (1) The general direction and administration of the Authority and its affairs shall vest in the Board which may exercise all powers and do all acts and thing which may be exercised or done by the Authority.

(2) The Board in discharging its functions shall act on sound principles of development, town planning and housing and shall be guided on questions of policy by such directions as the Government may from time to time give.

(3) If any question arises as to whether any matter is a matter of policy or not the decision of the Government shall be final.

Constitution of the Board:- (1) The Board shall consist of a Chairman, and not more than three members, to be appointed by the Government.

(2) The Government shall appoint a Financial Advisor from amongst the Members.

(3) The Chairman and other members shall hold office during the pleasure of the Government and unless sooner removed, the

Chairman shall hold office for a period of five years and other members shall hold office for a period of three years.

(4) Any person, ceasing to be the Chairman, or member of the Board, by reason of the expiry of the term of this office, shall be eligible for re-appointment for another term or for the shorter term as the Government may decide.

(5) No act proceeding of the Board shall be invalid merely on the ground of the existence of any vacancy ink, or any defect in the constitution of the Board.

(6) The Chairman or any member may at any time resign: Provided that his resignation shall not take effect until accepted by the Government.

7. Remuneration and condition of Service:- The Chairman and each member shall receive such salary and allowances and shall be subject to such conditions of service as may be determined by the Government.

8. Disqualification of the members:- No person, other than a Government servant, shall be or shall continue to be a member

who:-

(a) is, or at any time, has been convicted of an offence involving moral turpitude; or

(b) is, or at any time, has been adjudicated insolvent; or

(c) is found to be a lunatic or of un-sound mind; or

(d) is a minor; or

(e) has financial interest in any scheme or a conflicting

interest directly or indirectly between his interest as a member and his private interests and has failed to disclose such interest in writing to the Government; or

(f) if he is for the time being disqualified for membership of an elective body under any law for the time being in force.

9. Duties and functions of Chairman and other members:- (1) The Chairman and other members shall discharge such duties and perform such functions as are assigned to them by or under this Act.

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' Omitted by the Bagh Development Authority (Amdt.) Act, 2001 (Act XXII of 2001) dt. 16.12.2001. The original extract of subsection (2) of Sec. 9 is reproduced as under:-

“(2) Until the Board is duly constituted, the Chairman shall, subject to such directions as the Government may from time to time give, exercise the powers, discharge the duties and perform the functions of the

Board.”

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Headquarters of the Authority and Meetings of the Board:- (1)

Headquarters of the Authority shall be situated at Bagh.

(2) The meeting of the Board shall be held at such time and

place and in such manner as the regulations may provide:

Provided that until regulations are made in this behalf the meetings

of the Board shall be held at such time and places as determined by

the Chairman.

CHAPTER-III

(FUNCTIONS AND POWERS OF THE AUTHORITY)

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Master Plan and Master Programme:- The Authority may or if so directed by the Government shall prepare master plan and phased master programme for the development of any part of whole of the notified area of Bagh District and all such plans and programmes prepared from time to time shall be submitted to the Government for approval:

Provided that the Authority may issue interim development orders for areas for which master plan is being contemplated or is under preparation and restrict or prohibit by general or special order, any change in the use of land and alteration in buildings, structures and installations:

Provided further that the Authority may make necessary additions and alterations as per actual requirements in the approved Master Plan.

Power of the Authority:- (1) Subject to the other provisions of this Act and the rules, the Authority may take such measures and exercise such powers as may be necessary for the carrying out of the purposes of this Act.

(2) Without prejudice to the generality of the powers conferred by sub-section (1) the Authority may enter into an agreement with any person for the acquisition, purchase, lease or exchange of any land which the Authority is authorised to acquire or has any interest in such land.

(3) The Authority may- (a) with the previous sanction of the Government, acquire for carrying out the purposes of this Act and under the provisions of the Land Acquisition Act, 1894 (I of 1894), as in force in Azad Jammu and Kashmir;

(b) undertake any works in the notified area in pursuance of any scheme prepared under Section 13;

(c) incur any expenditure;

(d) procure plant, machinery, instruments and materials required for its use;

(c) enter into and perform all such contracts as it may consider necessary;

(f) sponsor, for the purpose of giving effect to any of the provisions of this Act limited liability companies under the

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companies Act, Cooperative Societies under the Cooperative Societies Act or Registered Societies under the relevant Act, and upon its request be represented on the Management of any such Company or Society;

(g) cause studies, survey, experiments and ___ technical researches to be made or contribute towards the cost of any such studies, survey, experiments or technical researches made by any other agency at the request of the Authority;

(h) cause removal of any works obstructing the execution of its schemes;

(6) seek and obtain advice and assistance for the preparation

of any planning scheme or for the execution of any schemes from any local body or agency and such local body or agency shall give the advice and assistance sought by the authority to the best of its ability, knowledge and judgment, and the additional expenditure, if any involved in giving such advice or assistance shall be borne by the Authority;

@) undertake any work or perform any function connected with or incidental to the purposes of this Act that may be assigned to it by the Government from time to time; and

(k) recover such development cess from the beneficiaries for improvement or development of any area as may be approved by the Government by a general or special order.

Execution of schemes etc, through local bodies and _agencies:-

(1) The Authority may require a local body or agency within

whose jurisdiction any particular area covered by a scheme lies:-

(a) to execute a scheme in consultation with the Authority;

(b) to take over and maintain any of the works and services in that area;

(c) to enforce regulation, on behalf of the Authority.

(2) The expenditure incurred on the execution of any schemes,

or on the taking over or maintenance of any work or the enforcement or regulations, under this Section, shall be borne as may be agreed to between the Authority and the local body or agency, and in the event of disagreement as may be determined by the Government.

Regulatory Functions of the Authority:- (1) The Government may, when it is considered expedient or conducive to better

performance of different functions under this Act declare subject to such restrictions and modifications as may be prescribed by a notification in the Official Gazette that specified regulatory functions or powers under the provisions of relevant Act, shall be

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performed or exercised by the Authority or its Chairman.

(2) The Authority or the Chairman may delegate subject to any limitations any powers exercisable by it or him under sub-section (1) to any officer or servant of the Authority.

Removal etc. of building after hearing:- The Authority shall not order or cause any building in notified area, to be removed or

demolished unless an opportunity of being heard has been given to the owner or occupier thereof, and his objections, if any, have been duly considered and the Authority is satisfied that removal or demolition of the building is essential to the execution of its schemes.

CHAPTER-IV

(ESTABLISHMENT)

Employment of Officer_and Servants etc:- (1) The Authority may, from time to time, employ such officers, servants, experts or

consultants as it may consider necessary for the performance of its functions, on such terms and conditions as it may deem fit:

Provided that salaried officers and servants of '[BPS-16] and above shall not be appointed except with the previous sanction of the Government.

*[(2) No post in the Authority shall be created without prior financial concurrence.”

Recruitment, conditions of service _and_ disciplinary powers:- Authority may lay down the procedure for the appointment, of its officers, servants, experts and consultants and shall be competent to take disciplinary actions against them *[with the prior approval of the administrative department].

Members, Officers, Experts, Public Servants:- The Chairman,

' In subsection (1) of Sec. 16 for the words and figures “BPS-19” the words and figure “BPS-16” subs. by Ibid.

2 Subs. by Ibid. The original extract of the subsection (2) of Sec. 16 is reproduced as under;-

“(2) Subject to the proviso to sub-section (1), the Chairman may, in case of urgency, appoint such officers, servants, experts or consultants on

such terms and conditions as he deem fit;

Provided that every appointment made under this sub-section shall be reported to the Authority without un-reasonable delay.”

3 Ins. Ibid.

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Members, Officers, Experts and Consultants of the Authority shall, when acting or purporting to act in pursuance of any of the provisions of this Act be deemed to be Public Servants within the meaning of Section 21 of the Azad Penal Code (Act XLV of 1860).

Indemnity:- No suit, prosecution or other legal proceedings shall lie against the authority, the Chairman, any member, officer, servants, experts or consultant of the Authority in respect of any thing done or intended to be done, in good faith under this Act.

Delegation of Powers to Chairman etc:- The Authority may, by general or special order, delegate to the Chairman, or a member or an officer of the Authority, any of its powers, duties or functions under this Act subject to such conditions as it may think fit to impose.

CHAPTER-V

(FINANCE)

Bagh Development Authority Funds:- (1) There shall be formed a fund to be known as the Bagh Development Authority Fund, which shall vest in the Authority and shall be utilized by the authority to meet charges in connection with its functions under this Act including the payment of salaries and other remunerations to the Chairman, members, officer, servants, experts and consultants of the Authority.

The Authority Fund shall consist of:-

(a) Annual development grants and other grants made by the Government from time to time for the execution of its schemes and conduct of its

business;

(b) loans obtained from the Government;

(c) sale proceeds of movable and immovable property

and receipts for services rendered;

(d) loans raised by the Authority with the special or general sanction of the Government;

(e) Bank loans and borrowings from financial institutions;

(f) all others sums receivable by the Authority.

Budget:- (1) In accordance with the time schedule to be laid down by the Government from time to time each year, the Authority

shall submit '[within the 1st quarter of every financial year] to the Government for approval a statement of estimated receipts and expenditure in rupees in respect of the next financial year.

(2) In the manner prescribed by the Government the Authority

'Ins. by Ibid.

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shall also submit to the Government of approval a statement of estimated receipts and expenditure in foreign exchange in respect of the next financial year.

(3) The Authority shall obtain specific sanction of the Government in respect of each individual scheme to be financed out of the Bagh Development Authority Fund:

Provided that the Authority may without reference to the Government execute any scheme, the provisional estimated cost of which does not exceed rupees 50 lacs and specific provision for which exists in its annual estimates or receipts and expenditure.

Accounts and Audit:- (1) The Authority shall maintain accounts in such manner as may be prescribed by rules framed by it with the approval of the Government.

(2) The Authority shall in the manner prescribed by the Government appoint Auditors for auditing its accounts.

(3) The Auditors appointed under sub-section (2) shall send three copies of the Audit Report to the Authority which shall forward two copies thereof with its comments to the Government.

(4) The Authority shall comply with such directions as the Government may give for the rectification of any matter objected in the audit.

CHAPTER-VI

(PENALTY AND PROCEDURE)

Penalty:- Whoever contravenes any provision of this Act or of any rules or regulations made or scheme sanctioned thereunder shall, if no other penalty is provided for such contravention, be punishable with imprisonment which may extend to three months or fine, or with both.

Causing damage to property:- Whoever willfully causes damage or allow damage to be caused to any property which vests in the Authority or unlawfully converts it to his own use or to that of any other person shall be punishable with imprisonment for a term which may extend to three months or with fine, or with both.

Disobedience of orders:- Whoever, without lawful excuse, fails or refuses to comply with any direction or order issued by the Authority under this Act shall be guilty of an offence punishable under Section 24.

Attempts and abetments:- Whoever attempts to commit or abets the commission of an offence punishable under this Act shall be deemed to have committed that offence.

Summary trial of offences:- Any Magistrate empowered for the time being to try in a summary way the offences specified in sub-

section (1) of Section 260 of the Code of Criminal Procedure 1898,
may if such Magistrate thinks fit, on application being made in this
behalf by the prosecution, try any offence punishable under this

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Act in accordance with provision contained in Section 262 to 268 of the said Code.

Cognizance_of_ offences by Courts:- No Court shall take cognizance of any offence punishable under this Act except on a complaint in writing made by the Authority or by an officer authorised for the purpose by the Authority.

CHAPTER - VII

(MISCELLANEOUS)

Submission of yearly reports and returns etc:- (1) The Authority shall submit to the Government, as soon as possible after the end of every financial year but before the last day of December next following, a report on the conduct of its affairs for that year.

(2) The Government may after giving sufficient notice to the Authority, require it to furnish the Government with:-

(a) any return, statement, statistics, or other information

regarding any matter under the control of the Authority;

(b) a report on any subject with which the Authority is concerned; or

(c) a copy of any document in the charge of the Authority, and the authority shall comply with every such requisition.

Power to dispose of land:- (1) The Authority may retain or may lease, sell, exchange, rent out or otherwise transfer any land vested in it, subject to such terms and conditions as it may impose in this behalf.

(2) Notwithstanding anything contained in any other law for the time being in force a certificate of title issued by the Authority in respect of any lease, sale, exchange or transfer of any piece of land within specified areas shall be sufficient proof of the said title and shall be admissible in evidence of that title in any Court proceedings.

(3) The Authority may charge such fees for the issue of certificate of title under sub-section (2), as it may fix from time to time with previous sanction of the Government.

Recovery of dues etc:- Any sum due to the Authority from and any sum wrongly paid to, any person under this Act shall be recoverable as arrears of land revenue.

Summarily ejectment of unauthorised occupants:- The Deputy Commissioner or any person authorised by him or the Authority in this behalf may, after giving '[ten days]' notice, summarily eject any person in unauthorized occupation of any land or property vested in the Authority and may, for such ejectment, use such force including police force as may be necessary.

' For the words "fifteen days" the words "ten days" subs. by Ibid.

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Removal of building etc. erected or_ used in contravention of this Act:- (1) If any building, structure, work or land is erected,

constructed or used in contravention of the provisions of this Act or of any rule, regulation or order made thereunder, the Deputy Commissioner, or any person empowered in this behalf by the Authority, may, by order in writing, require the owner, occupier user or person in control of such building, structure, work or land to remove, demolish or so alter the building, structure or work, or to desist from using or to so sue the land, as to be in accordance with the said provisions.

(2) If any order under sub-section (1) in respect of any buildings structure, work or land is not complied within such time as may be specified therein, the Deputy Commissioner, or any person empowered in this behalf by the Authority, may, after giving the person affected by the order an opportunity of being heard, remove, demolish or later the building structure or work, or stop the use of the in so doing, may use such force including police force as may be necessary and may also recover the cost thereof from the person responsible for the erection, construction or use of the building, structure, work or land in contravention of the provisions as aforesaid.

Removal of encroachments, etc:- (1) The Deputy Commissioner or any other person authorised by the Authority in this behalf may after giving '[ten days notice] direct any person to remove any movable or immovable encroachment made by him without any lawful authority or any land or property vesting in the Authority.

(2) If any direction under sub-section (1) is not complied within such time as may be specified therein, the Deputy Commissioner or any person empowered in this behalf by the Authority, may get the encroachment removed and in so doing may use such force including police force as may be necessary and may also recover the cost thereof from the person responsible for the encroachment:

Provided that the Authority may instead of requiring the removal of encroachment accept by way of compensation such sum consisting of penalty and market price of the land or property encroached upon as it may be prescribed by a general or special order:

Provided further that the Authority may require an encroachment to be altered partially so far as is necessary to avoid contravention of a scheme approved by it.

' For the words "reasonable opportunity of being heard" the words "ten days notice" subs. by Ibid.

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Police assistance:- The Officer incharge of a police station shall render such police assistance as the Deputy Commissioner or any person empowered in this behalf by the Authority may require in the discharge of his function under this Act.

Jurisdiction of Court barred:- Save as otherwise provided by this Act or by the Azad Jammu and Kashmir Interim Constitution Act, 1974, no Court or other Authority shall have Jurisdiction to question the legality of anything done or any action taken under this Act by or at the instance of the Authority.

Admissibility of documents or entry as evidence:- A copy of any receipt, application, plan, notice order or to other document or of any entry in a register, in the possession of the Authority shall, if duly certified by the Legal Keeper thereof or other person authorised by the Authority in this behalf, be admissible in evidence of the existence of the document of entry, and shall be admitted as evidence of the matter and transactions therein recorded in every case where, and to the same extent to which the original document or entry would, if produced, have been admissible to prove such matters.

Power to make rules:- Government may by notification in the Official Gazette make rules to carry out the purposes of this Act.

Power_to_make Regulations:- The Authority may, with the previous sanction of the Government make regulations to provide for all matters, not provided for in the rules for which provision is necessary or expedient for carrying out the purposes of this Act and the said rules.

Repealed_consequential Provisions:- Notification issued under No. 1259-1440/Works/80 dated 2-4-1980 concerning Central controlling Authority and Notification No. 3129-3229/Works/80 dated 23-8-1980 concerning the District Controlling Authority shall stand repealed to the extent of Bagh Notified area. All powers of the Central/District Controlling Authority constituted under the said notification shall vest in the Authority established under this Act.

(2) The Authority may, with the approval of the Government, constitute an allotment committee consisting of such number of

members as may be determined by the Government.

(3) The Allotment Committee constituted under sub-section (2) shall have all the powers of allotment exercisable by the Authority under the provisions of the Act or Rules or Regulations framed thereunder.

Dissolution of Authority and transfer of its assets and liabilities

to the Government and other Agency, determined by the Government:- (1) The Government may, by notification in the

Official Gazette, declare that the Authority shall be dissolved on

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such date as may be specified in such notification, and the Authority shall stand dissolved accordingly.

(2) On and from the said date:-

(a) All properties, funds and dues placed at the disposal of the Authority, by the Government;

(b) All properties, funds and dues, exchanged or, derived from or otherwise attributable to the properties, funds and dues, referred to in clause (a) which immediately before the said date, were held by or were realizable by the Authority shall vest in, and be realizable by, the Government.

Consultation with the Financial Advisor:- Save as provided in the rules regulation the Financial Advisor shall be consulted on every proposal of expenditure and when the opinion differs from the majority opinion of the Board, the decision of the majority shall prevail, however such cases shall be reported by the Chairman in writing to the Government.

Repeal:- The Bagh Development Authority Ordinance, 1995 (Ordinance XXII of 1995) is hereby repealed.

Sd/- (Syed Shakir Shah)
Deputy Secretary (Law).