

THE WEST PAKISTAN HILL TRACT IMPROVEMENT ORDINANCE,

1961.

(W. P. ORD. VIII OF 1961).

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THE, WEST PAKISTAN HILL TRACT IMPROVEMENT
ORDINANCE, 1961.

WEST PAKISTAN ORDINANCE VII OF 1961.

[22nd*April, 1961].

AN
ORDINANCE

to provide for the improvement of certain areas in the! [District of Hazara]

WHEREAS it isexpedient to provide for the improvement and
expansion of galies and other area in the hill tract in the *[District of Hazara].

NOW, THEREFOR, in pursuance of the Presidential Proclamation of the
seventh day of October, 1958, and having received the previous instructions of the
President, the Governor of West Pakistan is pleased, in exercise of allpowers
enabling him in that behalf, to make and promulgate, following Ordinance:—

CHAPTER 1
PRELIMINARY

1. (1) This Ordinance may be called the West Pakistan Hill Tract
Improvement Ordinance, 1961.

(2) It extends to the, *[District of Hazara].

(3) This section shall come into force, at once, and the remaining.
provisions of the Ordinance shall come into force in such area of the "[District of
Hazara] and on such dates as Government may, by notification in the official
Gazette, specify in this behalf.

2. (1) In this Ordinance, unless the context other-wise requires, the following

expressions shall have the meanings hereby respectively assigned to them, that is
to say:-

(a) "building line" means a line (in rear of the street alignment) up to

which the main wall of a building abutting on a projected street may

' The words "Distrit of Rawalpindi and Hazara" the words "District of Hazara" Sub-y W.P. Ord. No. XIX of 1970.

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4. The words "Distrit of Rawalpindi and Hazara" the words "District of Hazara" Sub-y W.P. Ord. No. XIX of 1970.

Preamble.

Short title
extent and
commence-
ment.

Definitions.

lawfully extend;

(b) "Chairman" means the Chairman of the Trust established under this Ordinance;

(c) "Collector" has the same meanings as are assigned to it in clause (c) of section 5 of the Land Acquisition Act, 1894;

(d) "Government" means the Government of [Khyber Pakhtunkhwa];

(e) "Land" includes land as defined in clause(a) of sections of the Land Acquisition Act, 1894;

(f) "Local area" means the area or part of the area to which this Ordinance has been applied;

(g) "Local Body" means a body constituted under any law, relating to Local Government, for the time being in force. 7[.]

(h) "prescribed" means prescribed by rules made under this Ordinance;

(i) "scheme" means a scheme framed under this Ordinance;

(j) "street alignment" means lines forming the boundaries of a street dividing the same from lands adjoining on either side;

(k) "Tribunal" means a tribunal constituted under section 45.

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(2) "general improvement scheme", "re-building scheme", "street scheme", "deferred street scheme", "development scheme", "expansion scheme", "housing accommodation scheme" and "re-housing scheme" have the same meanings as are assigned to them in the Punjab Town Improvement Act, 1922.

CHAPTER II

CONSTITUTION OF THE TRUST.

3. (1) As soon as may be after the coming into force of this Ordinance there shall be established a Trust to be known as the 1 .] Hazara (Hill Tract) the Trust.

' section 2, clause (d) the word "West Pakistan" the words "North-West Frontier Province" subs, by Adaptation of laws Order, 1975.and then the words "Khyber Pakhtunkhwa" substituted vide Khyber Pakhtunkhwa Act No.IV of 2011.

>. In section 2, clauses (g), after the words "in force" the words "but shall not include the Capital Development Authority", omitted by Khyber Pakhtunkhwa Adaptation of laws Order, 1975).

Improvement Trust (hereinafter referred to as the Trust) for carrying out the purposes of this Ordinance.

(2) The Trust shall be a body corporate, shall be entitled to acquire and hold property, shall have perpetual succession and a common seal and shall by the said name sue and be sued.

(3) The Trust shall, in respect of the "Specified Area as defined in the Capital Development Authority Ordinance, 1960, be deemed to be an "agency" as defined in the said Ordinance.

4. (1) The Trust shall consist of a Chairman and not more than six other Trustees appointed by Government.

Provided that three of such Trustees shall be nominees of the Central Government.

Provided further that Government may appoint any person or persons to perform the functions of the Trust until the Trust is constituted in accordance with the provisions of this Ordinance.

(2) One of the Trustees shall be the Financial Adviser of the Trust.

(3) The term of office of the Chairman shall be five years and that of a Trustee three years.

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

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

(6) The Trust may from time to time appoint committees of the Trust to enquire and report on any specified matters.

5. The Chairman and each Trustee shall receive such salary and allowances and be subject to such conditions of service as may be prescribed and shall perform such duties as are assigned to them under this Ordinance or any rules framed there under.

Appointment
and terms of
office of
Chairman and
Trustees and
appointment of
Committees.

Remuneration
and conditions
of service of
Chairs man and

Trustees.

1, (In chapter-II, section 3, sub-section (1), after the words ' 'Trust to be known as the", the words "Rawalpandi and" omitted by W.P. Ord XIX of 1970

6. Government may by notification remove the Chairman or any Trustee—

- (a) if he refuses or fails to discharge or becomes in the opinion of Government, incapable of discharging his responsibilities under this Ordinance; or
- (b) if he has been declared insolvent; or
- (c) if he has been disqualified for employment in, or has been dismissed from the service of Pakistan, or has been convicted of an offence involving moral turpitude; or
- (d) if he has knowingly acquired or continued to hold without the permission in writing of Government, directly or indirectly or through a partner, or any other person, any share or interest in any contract or employment with or by or on behalf of the Trust, or in any land or property which to his knowledge is likely to benefit or has benefited as a result of the operations of the Trust; or
- (e) if his continuance in office is, in the opinion of Government, unnecessary or undesirable.

Removal of
Trustees.

7. (1) The Trust shall meet at such time and place and in such manner as Meetings of the

may be prescribed:
Provided that at least one meeting shall be held every month:

Provided further that until rules are made in this behalf, such meetings shall be convened by the Chairman.

(2) The Chairman, or in his absence a Trustee authorised by him, and two other Trustees shall be present to constitute a quorum at a meeting of the Trust.

8. (1) A Trustee who has directly or indirectly, by himself or through any partner, employer, or employee, any share or interest in respect of any matter relating to the Trust, or has acted professionally, in relation to any such matter, or on behalf of any person having therein any share or interest as aforesaid, shall not vote or take any other part in any proceedings of the Trust or any committee appointed by it relating to such matter.

(2) If any Trustee, or any other member of a committee appointed by it, has directly or indirectly, any beneficial interest in any land situated in an area comprised in any improvement scheme framed under this Ordinance, or in any area in which it is proposed to acquire land for any of the purposes of this Ordinance

Trust.

Trustees, etc,
not to take part
in proceedings

in which they
are personally
interested.

- (a) he shall, before taking part in any proceeding at a meeting of the Trust or any committee appointed by it relating to such area, inform the person presiding at the meeting of the nature of such interest;
- (b) he shall not vote at any meeting of the Trust or any such committee upon any resolution or question relating to such land; and
- (c) he shall not take any other part in any proceeding at a meeting of the Trust or any such committee relating to such area, if the person presiding at the meeting considers it inexpedient that he should do so.

9. (1) The Chairman shall forward to Government a copy of the minutes of the proceeding of each meeting of the Trust, within ten days of the meeting.

(2) Government may require the Chairman to furnish it with any document, return, statement, estimate, statistics or other information regarding any matter under the control of the Trust. The Chairman shall comply with such direction without any undue delay.

CHAPTER-III ESTABLISHMENT AND DELEGATIONS.

10. (1) Subject to such rules as Government may make, the Trust may, from time to time, employ such servants as it may deem necessary and proper to assist in carrying out the purposes of this Ordinance on such terms and conditions as it may deem fit.

(2) The Chairman may make any appointment in case of emergency. Such action shall be reported to the Trust at its next meeting.

11. Subject to the provisions of sub-section (1) of section 10 and any rules for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Trust, and suspending or dismissing them or reducing them in rank for misconduct, and dispensing with their services for any reason other than misconduct, shall vest—

(i) in the case of officers and servants whose maximum monthly salary does not exceed five hundred rupees, in the Chairman, and

(ii) in other cases, in the Trust:

Supply of
information and
documents to
Government.

Power of Trust
to fix the
number and
salaries of
permanent
servants make

appointment of
temporary
servants in
cases of
emergency.

Power of the
Chairman and
the Trust in
respect of the
servants of the
Trust.

Provided that any officer or servant, in receipt of a minimum monthly salary exceeding one hundred rupees, who is reduced, suspended or dismissed by the Chairman may appeal to the Trust, whose decision shall be final.

12. The Chairman shall exercise supervision and control over the acts and proceeding of all officers and servants of the Trust; and, subject to the foregoing sections, shall dispose of all questions relating to the service of the said officers and servants and their pay, privileges and allowances.

13. (1) The Chairman may, by general or special order in writing, delegate any of the Chairman's powers, duties or functions under this Ordinance or any rule made there under except those mentioned in sub-section (2) of section 9, to any officer of the Trust.

(2) The exercise or discharge by any officer of any powers duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations (if any) as may be specified in the said order, and also to control and revision by the Chairman, or the Trust.

14. (1) Government may delegate any of its powers and functions under this Ordinance to any officer it deems fit.

(2) The Trust may delegate any of its powers and functions to the Chairman or any officer of the Trust.

CHAPTER-IV SCHEMES UNDER THE ORDINANCE.

15. (1) The Trust may frame schemes for the development of any local area.

(2) The schemes to be framed by the Trust may include.—

(i) a general improvement scheme;

(ii) a re-building scheme;

(iii) a street scheme;

(iv) a deferred street scheme;

(v) a development scheme;

(vi) an expansion scheme,

(vii) a housing accommodation scheme; or

(viii) an are-housing scheme.

(3) Any resident house-owner, who is likely to be displaced by the execution

Control by
Chairman.

Delegation of

certain powers
and functions of
Chairman.

Delegation of
powers by
Government
and the Trust.

Schemes to be
framed under
the Ordinance.

of any scheme under this Ordinance may apply to the Trust to be re-housed and no such scheme shall be implemented until he has been provided with alternative accommodation or a re-housing scheme for the re-housing of such resident house-owner or owners as may apply under this sub-section has been completed.

(4) A scheme may provide for all or any of the following matters:—

@)

the acquisition under the Land Acquisition Act, 1894, as modified by this Ordinance, or the abandonment of such acquisition under section 47 and 49 of this Ordinance of any land or any interest in land necessary for or affected by the execution of the scheme, or adjoining any street, thoroughfare or open space to be improved or formed under the scheme;

(ii) the acquisition by purchase, lease, exchange or otherwise of

such land or interest in land;

(iii) the retention, letting on hire, lease, sale, exchange or disposal

otherwise of any land vested in or acquired by the Trust;

(iv) the demolition of buildings or portions of buildings that are

unfit for the purpose for which they are intended or that obstruct light or air or project beyond the building line;

(v) the relaying out of any land comprised in the scheme and the

redistribution of sites belonging to owners of property comprised in the scheme;

(vi) the prohibition of building activity in any specified areas for

a specified period not exceeding two years in all;

(vii) the laying out and alteration of streets;

(viii) the provision of open spaces in the interest of the residents of

(ix)

)

any locality comprised in the scheme or any adjoining locality and the enlargement or alteration of existing open spaces;

the raising, lowering, breaking up, afforestation or reclamation of any land vested in or to be acquired by the

Trust for the purposes of the scheme, and the reclamation or reservation of land for the production of fruit, vegetables, fuel, fodder, trees and the like and the provision of means of irrigation;

the draining, water-supply and lighting of streets altered or

16.

17.

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(xi)

constructed;

the provision of a system of drains and _ sewers;
the doing of all acts intended to promote the health of
residents of the area comprised in the scheme, including the
conservation and preservation, from injury or pollution of
streams and other sources and means of water-supply;

(xii) the demolition of existing buildings and the erection and re-

(xiii)

(xiv)

(xv)

(xvi)

(xvii)

erection of buildings by the Trust or by the owners or by the
Trust in default of the owners;

the advance to the owners of land comprised within the
scheme, upon such terms and conditions as to interest and
sinking fund and otherwise as may be prescribed under the
scheme of the whole or part of the capital requisite for the
erection of buildings or for the production of fruit,
vegetables, fuel, fodder, trees and the like or any other
purpose in accordance with the scheme;

the provision of facilities for communication;

the execution of any scheme or part of the scheme by any
Department of Government on such terms and conditions as
may be agreed upon between the Trust and the Department;

the management of lands belonging to Government on such
terms and conditions as may be mutually agreed upon;

all other matters which Government may deem necessary to
promote the general efficiency of a scheme or to improve the
locality comprised in such scheme.

Notwithstanding anything contained in any other law for the time being in
force whenever any street alignment has been prescribed by the Trust: in any
scheme under this Ordinance with the sanction of Government, the Local Body
concerned shall not have power to, prescribe any regular line for the street within

the line it's of the scheme, and any such line previously prescribed by the Local Body within such; limits shall cease to be the regular line of frontage of the street.

(1) Should any building or part of a building project beyond the regular line of a street, either existing or determined on for the future or beyond the front of the building on either a side thereof, the Trust may, whenever such building or part has been either entirely or in greater part taken down, or burnt down, or has fallen down, by a written notice, require such building or part when being rebuilt to be set back to or towards the said regular line or the front of the adjacent buildings and the portion of the land added to the street by such setting back or

Effect of
prescribing
street
alignment.

Powers of Trust
to set back or
forward
building
adjacent to the
street
alignment.

removal shall become part of the street and shall vest in the; Trust.

(2) The Trust may, on such terms as it may deem fit, require or allow any building to be set forward for the improvement of the line of the street.

(3) When any building is set back or forward in pursuance of a requisition made under the preceding sub-section the Trust shall forthwith make full compensation to the owner of the building for any damage or loss that he may sustain.

(4) If the additional land, which will be included in the premises of any person required or allowed to set forward a building, or part thereof, belongs to the Trust, the requisition or permission of the Trust to set forward the building shall be sufficient conveyance to the said owner of the said land, and the terms and conditions of the conveyance shall be set forth in the said requisition or permission.

18. (1) In the locality comprised in a scheme under this Ordinance no person shall, except with the written permission of the Trust, erect, re-erect, add to or alter any building so as to make the same project beyond a street alignment or building line duly prescribed by the Trust.

(2) In the locality comprised in a development scheme or any expansion scheme, if any person desires to erect, re-erect, add to or alter any building on his land so as to make the same project beyond a street alignment or a building line duly prescribed by the Trust, he shall apply to the Trust for permission to do so, and if the Trust refuses to grant permission to such person according to his application, and does not proceed to acquire such land within two years from the date of such refusal, it shall pay reasonable compensation to such person for any damage or loss sustained by him in consequence of such refusal.

19. (1) In the locality comprised in a deferred street scheme, the owner of any property affected by a street alignment duly prescribed by the Trust may, at any time after the scheme has been sanctioned by Government, give the Trust notice requiring it to acquire such property before the expiration of six months from the date of such notice, and the Trust shall acquire such property accordingly.

(2) In the locality comprised in a deferred street scheme, before proceeding to acquire any property affected by a street alignment duly prescribed by the Trust other than property regarding which it has received a notice under the preceding subsection, the Trust shall give six months' notice to the owner of its intention to acquire the property.

20. A scheme under this Ordinance may be framed upon a representation by a Local Body or a written representation signed by twenty-five or more inhabitants of a locality.

Prohibition of
building beyond
a street
alignment.

Acquisition of
property

affected by
deferred street
scheme.

Official
representation.

21. (1) The Trust shall consider every representation made under section 20 and if satisfied as to sufficiency of its grounds and of its own resources, shall decide whether a scheme under this Ordinance to carry such representation into effect should be framed forthwith or not, and in the case of official representation, shall forthwith intimate its decision to the Local Body.

(2) If the Trust decides that it is not necessary or expedient to frame a scheme under this Ordinance forthwith, it shall inform the Local Body of the reasons for its decision.

(3) If the Trust fails, for a period of twelve months after the receipt of any official representation made under section 20 to intimate its decision thereon to the Local Body the latter may, if it deems fit, refer the matter to Government.

(4) Government shall consider every reference made to it under sub-section (3), and—

(a) if it deems that the Trust ought to have taken a decision within the period mentioned in subsection (3) shall direct the Trust to take a decision within such further period as Government may deem reasonable, or

(b) if it deems that it is expedient that a scheme should forthwith be framed,

shall direct the Trust to proceed forthwith to frame a scheme, prescribing in the direction the type of scheme to be framed.

(5) The Trust shall comply with every direction given by Government under sub-section (4).

22. When framing a scheme in respect of any locality, regard shall be had to—

(a) the nature and the condition of adjoining localities and of the town as a whole;
(b) the direction in which the town appears likely to expand; and
(c) the claims of any other part of the local area likely to require a scheme.

23. (1) When a scheme has been framed, the Trust shall prepare a notice stating—

(i) the fact that the scheme has been framed;

Consideration
of official
representation.

Matters to be
considered
when framing
improvement
scheme.

Preparation

publication and
transmission of
notice as to
improvement

- (ii) the boundaries of the locality comprised in the scheme; and
- (iii) the place at which details of the scheme including a statement of the land proposed to be acquired and a general map of the locality comprised in the scheme maybe inspected at reasonable hours.

(2) The Trust shall—

(a) cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in a newspaper or newspapers with a statement of the period within which objection will be received; and

(b) send a copy of the notice to the Local Body concerned.

(3) The Chairman shall cause copies of all documents referred to in clause (iii) of sub-section (1) to be delivered to any applicant on payment of such fees as may be prescribed.

24. The Local Body to whom a copy of a notice has been sent under clause (b) of sub-section (2) of section 23 shall, within a period of thirty days from the receipt of the said copy, forward to the Trust any representation or suggestion which it may deem fit to make with regard to the scheme.

25. (1) During the thirty days next following the first day on which any notice is published under section 23 in respect of any scheme, the Trust shall serve a notice on—

(i) every person whom the Trust has reason to believe after due enquiry to be the owner of any immovable property which is proposed to be acquired in executing the scheme; and

(ii) the occupier (who need not be named) of such property.

(2) Such notice shall—

(a) state that the Trust proposes to acquire such property for the purposes of carrying out a scheme; and

(b) require such person, if he objects to such acquisition, to state his reasons in writing within a period of thirty days from the service of the notice.

schemes and
supply of
documents to
applicants.

Transmission to
Trust of
representation
by Local Body
as to
improvement.

Notice
proposed acquis
ition of land.

(3) Every such notice shall be signed by, or by the order of Chairman.

26. The President of the Local Body shall furnish the Chairman at his request and on payment of such fees as may be prescribed, with a copy of such information relating to a locality regarding which a notice has been published under section 23 as is available in the records of the Local Body.

27. (1) After the expiry of the periods respectively prescribed by clause (a) of sub-section (2) of section 23, by section 24 and by clause (b) of sub-section (2) of section 25, the Trust shall consider any objection, or representation received in connection with any scheme and after giving the maker of such objection or representation a reasonable opportunity of being heard either in person or through a representative, the Trust may either abandon the scheme or apply to Government for sanctioning the scheme with such modifications (if any) as the Trust may deem necessary to make:

Provided that in the case of a scheme, the total cost of which is less than one lakh of rupees and which does not involve acquisition of land under the Land Acquisition Act, 1894, it shall not be necessary to comply with the provisions of sections 23, 24, 25 and 26, nor shall it be necessary to apply to Government under section 27 for sanction:

Provided further that the Trust shall send a copy of such scheme to Government at least one month before it starts execution thereof.

(2) Every application submitted under sub-section(1) shall be accompanied by—

(i) plans and details of the scheme and an estimate of the cost of executing it;

(ii) a statement of the reasons for modifications (if any) made in the scheme as originally framed;

(iii) a statement of objection (if any) received under Section 23;

(iv) the representation (if any) received under section 24;

(v) a list of the names of all persons (if any) who have objected under clause (b) of sub-section (2) of section 25, to the proposed acquisition of their property and a statement of the reasons given for such objection; and

(vi) a statement of the arrangements made or proposed by the Trust for the re-housing of persons who are likely to be displaced by the execution of the scheme and for whose re-housing provision is required.

Furnishing of information available in records of the Local Body.

Abandonment

of schemes or
application to
Government to
sanction it.

(3) When any application has been submitted to Government under sub-section (1), the Trust shall cause notice of the fact to be published for two consecutive weeks in the Official Gazette and in a newspaper or newspapers.

28. (1) Government may sanction either with or without modification, or may refuse to sanction, or may return for reconsideration, any scheme submitted to it under section 27.

(2) If a scheme returned for reconsideration under subsection (1) is modified by the Trust, it shall be republished in accordance with section 23—

(a) in every case in which the modification affects the boundaries of the locality comprised in the scheme, or involves the acquisition of any land not previously proposed to be acquired; and

(b) in every other case, unless the modification is, in the opinion of Government, not of sufficient importance to require republication.

29. (1) Government shall notify the sanction, of every scheme, and the Trust shall forthwith proceed to execute such scheme; provided that it is not a deferred street scheme, development scheme, or expansion scheme and provided further that the requirements of sub-section (3) of section 15 have been fulfilled.

(2) A notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

(3) Government may itself frame a scheme and direct the trust to execute it on payment of the whole or part of the cost and the Trust shall comply with such direction.

30. A scheme may be altered by the Trust at any time between its sanction by Government and its execution:

Provided that—

(a) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than fifty thousand rupees or twenty percent of such cost, such alteration shall not be made without the previous sanction of Government;

(b) if any alteration involves the acquisition, other-wise than by agreement, of any land the acquisition of which has not been sanctioned by Government, the procedure prescribed in the foregoing sections of this Chapter shall, so far as applicable, be followed as if the alteration were a separate scheme.

Power to
sanction reject
or return
scheme.

Notification of

sanction of
scheme.

Alteration of
scheme after
sanction.

31. Any number of localities in respect of which the Trust has framed or has proposed to frame schemes under this Ordinance may, at any time, be included in one combined scheme.

32. As soon as or any time after any scheme has been carried out, the Trust may by a written requisition call upon a Local Body within whose jurisdiction any particular area covered by the scheme lies to take over and maintain any of the works and services in that area and in case of any dispute the matter shall be referred to the arbitration of the Commissioner whose decision shall be final and binding.

CHAPTER V

POWERS AND DUTIES OF THE TRUST WHERE A SCHEME HAS BEEN SANCTIONED.

33. (1) Whenever any building, or any street or other land, or any part thereof which is vested in a Local Body is required for executing any scheme under this Ordinance, the Trust shall give notice of it accordingly to the Local Body, and such building, street, land or part shall thereupon vest in the Trust, subject to the payment to the Local Body of such sum as may be required to compensate it for actual loss resulting from the transfer of such building, street, land or part thereof, to the Trust.

(2) If any question or dispute arises as to the sufficiency of the compensation paid or proposed to be paid under sub-section (1), the matter shall be referred to the Commissioner whose decision shall be final.

34. (1) Whenever any street or part thereof, which, is not vested in a Local Body or the Central or Provincial Government is required for executing any scheme, the Trust shall cause to be affixed, in a conspicuous place in or near such street or part, a notice signed by the Chairman—

(a) stating the purpose for which the street or part is required; and

(b) declaring that the Trust will, on or after a date to be specified in the notice, such date being not less than thirty days after the date of the notice, take over charge of such street or part, from the owner or owners thereof;

and shall simultaneously send a copy of such notice to the owner or owners of such street or part, or to the duly accredited agent of such owner or owners.

(2) After considering and deciding all objections (if any) received in writing before the date so specified, the Trust may take over charge of such street or part from the owner or owners thereof and the same shall thereupon vest in the Trust.

Inclusion of
different
localities in
combined
scheme.

Arrangement
with Local

Body.

Transfer to
Trust of
building or land
Vested Local
Body for
purposes of
scheme.

Transfer of
private street to
Trust for
purposes of
scheme.

(3) When the Trust alters or closes any street or part thereof which has vested in it under sub-section (2), it shall pay such sum as may be required to compensate the previous owners for actual loss resulting to them from such alteration or closure.

(4) If the alteration or closing of any such street or part causes special damage or substantial inconvenience to owners of property adjacent thereto, or to residents in the neighborhood, the Trust—

(i) shall forthwith provide some other reasonable means of access for the use of persons who were entitled, as of right, to use such street or part, as a means of access to any property or place; and

(ii) if the provision of such means of access does not sufficiently compensate any such owner or resident for such damage or inconvenience, shall also pay him reasonable compensation in money.

35. (1) When any building or any street or other land, or any part thereof, has vested in the Trust under section 33 or section 34, no drain or water-work therein belonging to a Local Body shall vest in the Trust until another drain or water-work (as the case may be) is provided by the Trust to the satisfaction of the Local Body, in place of the former drain or work.

(2) If any question or dispute arises as to whether another drain or water-work is required, or as to the sufficiency of any drain or water-work provided by the Trust under sub-section (1), the matter shall be referred to the Commissioner, whose decision shall be final.

36. (1) The Trust may—

(a) lay out and make a new public street and construct tunnels and other works subsidiary to the same; and

(b) widen, lengthen, extend, enlarge, raise the level of or otherwise improve any existing public street if vested in the Trust; and

(c) turn, divert, discontinue or close any public street so vested; and

(d) provide within its discretion building sites of such dimensions as it deems fit, to abut on or adjoin any public street made, widened, lengthened, extended, enlarged, improved, or the level of which has been raised by the Trust under clauses (a), (b) and (c) or by Government, and

Provision of
drain or water
work to replace
another situated
on land vested
in the trust
under section

33 or section

34,

Power of Trust
to make and
deal with public
street.

(e) subject to the provisions of any rule prescribing the conditions on which property vested in the Trust may be transferred, lease, sell or otherwise dispose of any land used by the Trust for a public street and no longer required there for and in doing so impose any condition as to the removal of any building existing there on, as to the description of any new building to be erected thereon, as to the period within which such new building shall be completed, and as to any other matter that it deems fit.

(2) Whenever the Trust discontinues the public use of, or permanently closes, any street vested in it, or any part thereof, it shall pay reasonable compensation to every person who had an easement or right of way or light and air over, upon or from such street or part, and who by such discontinuance or closure has suffered special damage.

(3) In determining the compensation payable to any person under sub-section (2) the Trust shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other street at or about the same time that the public street or part thereof, on account of which the compensation is paid, is discontinued or closed.

37. Subject to such conditions as may be laid down, Government may, by notification, apply to the Trust any provisions of—

(i) — the Punjab Town Improvement Act, 1922, or

(ii) the law relating to Local Bodies for the time being in force.

38. In order to facilitate the movement of the population in, around and from any local area to which this Ordinance is applied, the Trust may from time to time—

(a) subject to any conditions it may deem fit to impose—

(i) guarantee the payment, from the funds at its disposal, of such sums as it may deem fit, by way of interest on capital expended on the construction, maintenance or working of means of locomotion, or

(ii) make such payments as it may deem fit from the said funds, by way of subsidy to persons undertaking to provide, maintain and work any means of locomotion;

(b) either singly or in combination with any other persons construct, maintain and work any means of locomotion, under the provisions of any law applicable thereto;

Application of
certain laws to
the Trust.

Power of the
Trust to

facilitate
movement of
population.

(c) construct or widen, strengthen or otherwise improve bridges; and

(d) arrange for the settlement of such population in other areas in the Province:

Provided that no guarantee or subsidy shall be made under clause (a), and no means of locomotion shall be constructed, maintained or worked under clause (b), without the previous sanction of Government.

39. The Trust may—

(a) cause a survey of any land to be made whenever it considers that a survey is necessary or expedient for carrying out any of the purposes of this Ordinance, or

(b) contribute towards the cost of any such survey made by any other local authority.

40. (1) The Chairman or any person authorised by him or by the Trust in writing

may, with or without assistants or workmen, enter into or upon any land in order—

(i) to make any inspection, survey, measurement, valuation or inquiry,

(ii) to take levels,

(iii) to dig or bore into sub-soil,

(iv) to set out boundaries and intended lines of work,

(v) to mark such levels, boundaries and lines by marks and cutting trenches, or

(vi) to do any other thing,

whenever it is necessary to do so for any of the purposes of this Ordinance or any rule made or scheme sanctioned there under or any scheme which the Trust intends to frame there under:

Provided that—

(a) except when it is otherwise specially provided by a rule, no such entry shall be made between sunset and sunrise;

(b) except when it is otherwise specially provided by a rule, no building

Power to make surveys or contribute towards their cost.

Power of entry.

which is used as a human dwelling shall be so entered, unless with the consent of the occupier or, if there be no occupier, the owner thereof, without giving the said occupier or owner, as the case may be, at least twenty-four hours previous notice in writing of the intention to make such entry;

(c) even when any premises may otherwise be entered without notice, reasonable warning and facility to withdraw shall be given to any female not appearing in public according to the customs of the country;

(d) due regard shall always be paid so far the exigencies of the occasion permit to the social and religious usages of the occupants of the premises entered.

(2) Whenever any person enters into or upon any land in pursuance of sub-

section (1), he shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid; and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Trust, whose decision shall be final.

(3) It shall be lawful for any person authorised under sub-section (1) to

make an entry for the purpose of inspection or search to open or cause to be opened a door, gate or other barrier

41.

(a) if he considers the opening there of necessary for the purpose of such entry, inspection or search, and

(b) if the occupier or owner, as the case may be is absent, or being present refuses to open such door, gate or barrier.

(1) If any question or dispute arises—

(a) between the Trust and the previous owner of any street or part thereof which has vested in the Trust under section 34 and has been altered or closed by it, as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of that section, or

(b) between the Trust and any person who was entitled as of right, to use as a means of access any street or part thereof, which has vested in the Trust under the said section. —

(i) as to whether the alteration or closing of such street or part causes special damage or substantial inconvenience to

Tribunal.

owners of property adjacent thereto or to residents in the neighborhood, or

(ii) as to whether the other means of access provided or proposed to be provided under subsection (4) of the said Section are reasonably sufficient, or

(c) between the Trust and any person as to the sufficiency of any compensation paid or proposed to be paid to him under section 17, section 18 or section 90,

the matter shall be determined by the Tribunal, hereinafter defined, if referred to it either by the Trust or by the claimant within a period of three months from the date on which the said person was informed of the decision of the Trust fixing the amount of compensation to be paid to him or of the rejection of his claim to compensation by the Trust, and the determination of the Tribunal shall be final:

Provided that the Tribunal shall not entertain the application of any claimant who has not applied to the Trust for compensation within three months of the date on which his claim to compensation accrued.

(2) The provisions of sections 5, 6 and 12 of the Limitation Act, 1908, shall be applicable in determining whether any claim shall be entertained.

(3) If a reference to the Tribunal be not made within the period prescribed by sub-section (1), the decision of the Trust shall be final.

(4) For the purpose of determining any matter referred to it under sub-section (1), the Tribunal shall have all the powers with regard to witnesses, documents and costs which it would have if the Land Acquisition Act, 1894, as modified by section 43 of this Ordinance were applicable to the case.

42. (1) Whenever a Local Body is satisfied—

(a) that any street laid out or altered by the Trust has been duly levelled, paved, metalled, flagged, channelled, seweraged and drained in the manner provided in the plans sanctioned by Government under this Ordinance, and

(b) that such lamps, lamp-posts, and other apparatus as the Local Body deem necessary for the lighting of such street and as ought to be provided by the Trust have been so provided, and

(c) that water and other sanitary conveniences ordinarily provided in the area in the jurisdiction of a Local Body have been duly provided in such

Vesting in
Local Body of
streets laid out
or altered and
open spaces by
the Trust under
a scheme.

street,

the Local Body after obtaining the assent of the Trust, or failing such assent, the assent of Government under sub-section (3) shall by notice affixed in some conspicuous position in such street declare the street to be a public street; and the street shall thereupon vest in and shall thenceforth be maintained, kept in repair, lighted, and cleansed by the Local Body.

(2) When any open space for purposes of ventilation or recreation has been provided by the Trust in executing any scheme, it shall, on completion, be transferred to the Local Body by resolution of the trust and shall thereupon vest in and shall thenceforth be maintained, kept in repair, lighted and cleansed by the Local Body:

Provided that the Local Body may require the Trust, before any such open space is so transferred, to enclose, level, turf, drain and lay out such space and provide footpaths therein and, if necessary, to provide lamps and other apparatus for lighting it.

(3) If any difference of opinion arises between the Trust and the Local Body in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the Commissioner, whose decision shall be final.

CHAPTER VI

ACQUISITION, ABANDONMENT OF ACQUISITION AND LEVY OF DEVELOPMENT FEE.

43. For the purpose of compulsory acquisition of land by the Trust, the Land Modification of Acquisition Act, 1894, shall be deemed to have been modified as indicated in the Act I of 1894. Schedule to this Ordinance.

44. (1) Government may by notification declare any locality comprised in a Acquisition of local area to be required immediately for any of the purposes of this Ordinance, and 2nd in urgent direct the Trust to undertake in respect of such locality all or any such matters as “***

may be included in a scheme under section 15.

(2) After a notification has been issued under sub-section (1) in respect of any locality, the Trust may apply to the Collector who after giving such reasonable notice to the owners and occupiers as may be prescribed, shall deliver possession of any land in such locality to the Trust and the land shall thereupon, notwithstanding anything contained in the Land Acquisition Act, 1894, vest absolutely in the Trust free from all encumbrances subject only to payment of compensation under the Land Acquisition Act, 1894, as modified by this Ordinance.

(3) The Trust shall in respect of any such locality do all such acts as it may be required to do by the notification and shall proceed to frame a scheme under section 15 as soon as may be possible.

45. (1) For purposes of performing the functions of the Court in reference to the Tribunal. acquisition of land for the Trust under the of Land Acquisition Act, 1894, as modified by this Ordinance, Government may by a notification, constitute one or

more Tribunals, and may define the local limits of their jurisdiction.

(2) The Tribunal shall consist of one or more members to be appointed by Government and if there are more members than one, one of them shall be appointed by Government as the Presiding Officer.

(3) The Tribunal shall be deemed to be the Court and the Presiding Officer shall be deemed to be the Judge for the purpose of compulsory acquisition under the Land Acquisition Act, 1894.

(4) The Presiding Officer shall have the powers of a Civil Court under the Code of Civil Procedure, 1908, to summon and enforce the attendance of witnesses and to compel the production of documents by them.

(5) Government may, on ground of inefficiency, misconduct or for any other good and sufficient reasons, as its discretion remove the Presiding Officer or any member or all of them.

(6) Government may, by notification, frame rules providing for.—

(a) the method of filling the vacancies caused by removal, resignation or incapacity of the Presiding Officer or members;

(b) the employment by the Presiding Officer of such ministerial staff as may be necessary to carry out the work of the Tribunal, and their scales of pay and other conditions of service;

(c) the emoluments allowances to be paid to the Presiding Officer and the members;

(d) the grant of leave, promotion or taking of disciplinary action by the Presiding Officer in respect of the ministerial staff under him; and

(e) generally for the conduct of business before the Tribunal.

(7) For the purpose of the award to be made by the Tribunal under the Land Acquisition Act, 1894, the following 1894 rules shall apply, that is to say—

(a) if there is disagreement between the Presiding Officer and members of the Tribunal regarding measurement of land, or the amount of compensation, the opinion of the majority shall

prevail;

(b) the decision on question of law and procedure shall rest solely with the Presiding Officer;

(c) the Presiding Officer shall not be bound to consult the members as regards the determination of persons to whom compensation is to be paid, or apportionment thereof and may, in his discretion dispose of any such question singly and in that case his decision shall be deemed to be the decision of the Tribunal.

(8) Every award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894, and shall be enforced by the Court of the Senior Civil Judge or Senior subordinate judge, as the case may be, of the District in which the land under acquisition is situated as if it were the decree of that court.,

46. (1) Subject to the provision of sub-section (2) an appeal shall lie to the High Court in any of the following cases, namely :—

(a) where the decision is that of the Presiding Officer of the Tribunal sitting alone in pursuance of clause (c) of sub-section (7) of section 45;

(b) where the decision is that of the Tribunal; and

(i) the Presiding Officer of the Tribunal grants a certificate that the case is a fit one for appeal; or

(ii) the High Court grants special leave to appeal:

Provided that the High Court shall not grant such special leave unless the Presiding Officer has refused to grant a certificate under sub-clause (i) and the amount in dispute is not less than ten thousand rupees.

(2) An appeal under clause (b) of sub-section (1) shall lie only on one or more of the following grounds, namely:

(i) the decision being contrary to law or to some usage having the force of law;

(ii) the decision having failed to determine some material issue of law or usage having the force of law;

(iii) a substantial error or defect in procedure which may possibly have

Appeals.

produced error or defect in the decision of the case upon merits.

Subject to the foregoing provisions, the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall, so far as may be, apply to appeals under this section.

(4) Every order passed by the High Court on appeal under this section shall be enforced by the Court of the Senior Civil Judge a] within the limits of whose jurisdiction the award or order appealed from was made, as if it were a decree of that Court.

(5) An appeal under this section shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of Article 156 of the First Schedule to the Limitation Act, 1908.

47. (1) An owner of land comprised in any scheme sanctioned by Government or any other person having interest therein, may apply to the Trust that the acquisition of land which is not required for the Execution of the scheme be abandoned. The Trust may admit for consideration such application if it is made at any time before the Collector has made an award under section 11 of the Land Acquisition Act, 1894,. If the application is admitted, the Trust shall intimate this fact to the Collector who shall thereupon stay further proceedings connected with the acquisition of land in respect of which the application is admitted and the same shall not be re-opened until so desired by the Trust.

(2) The Trust may, in its discretion, allow such application on payment of such fee and fulfillment of such terms and conditions as it may impose in this behalf.

(3) If any application under sub-section (1) is rejected by the Trust or the fee imposed under sub-section (2) is not paid by the person concerned within the period specified in that behalf by the Trust, the Trust shall intimate the fact to the Collector who shall take up the proceedings for acquisition of the land from the stage at which they had been stayed.

48. (1) When by the execution of any scheme any land in the area comprised therein or adjoining it which is not required for the execution thereof will in the opinion of the Trust, be increased in value or will obtain benefit from the execution of the scheme the Trust may, while framing the scheme, provide that in lieu of

1 In section 46, sub-section (4) after the words, "Senior Civil Judge", the words "or Senior Subordinate Judge, as the case may be," omitted by W. P. Ord. No. XIX of 1970.

Abandonment
of acquisition.

Development
Fee.

acquisition of such land a development fee shall be paid by the owner thereof or any person having interest therein.

(2) The Trust may at any time after the sanction of the scheme under section 28 by resolution declare that for the purpose of levy of development fee the scheme shall be deemed to have been executed and shall thereupon proceed to assess the demand in accordance with the rules framed by Government under subsection (4).

(3) In fixing the amount of development fee to be charged in respect of any land or class of land, the Trust shall also take into consideration the actual expenditure incurred in the execution of the scheme and the degree to which the land or any part of the land has or will be benefited thereby.

(4) Government may frame rules providing for—

(a) the manner in which the demand for the development fee shall be assessed and distributed on the land comprised in the scheme and the person or persons by whom the fee shall be payable;

(b) the acceptance by the Trust of a satisfactory and sufficient security in lieu of immediate payment of development fee by an owner of land or any person interested therein;

(c) the mode by which the development fee shall be realised and the number of installments to be allowed in this connection and interest chargeable on balances outstanding from time to time; and

(d) the mode of preferring appeal from assessment by the Trust and the authority to which the appeal shall lie.

49. If any land in respect of which any payment has been accepted under the provisions of section 47 or section 48 be subsequently required for any of the purposes of this Ordinance, the payment or any other act done in connection therewith under the rules framed under sub-section (4) of section 48 shall not be deemed to prevent the acquisition of the land in pursuance of afresh declaration under section 6 of the Land Acquisition Act, 1894.

CHAPTER VII FINANCE.

50. (1) There shall be a fund to be known as "Trust Fund" vested in the Trust, which shall be utilised by the Trust to meet charges in connection with its functions, under this Ordinance, including, the salaries and other remunerations of the Chairman, Trustees and the Presiding Officer and members of the Tribunal and any officers and servants duly appointed under this Ordinance.

Fresh
acquisition.

Trust Fund.

(2) All sums received by the Trust shall forthwith be credited to the Trust Fund.

51. The Trust may, with the previous sanction of Government, levy in any local area or part thereof, any tax, fees, cesses or tolls on roads, land and buildings which Government has power to impose.

52. (1) Government may allow any grant-in-aid to the Trust for carrying out its duties and functions under this Ordinance.

(2) Any Local Body may, and when so required by Government shall, grant such amount of money to the Trust as may be specified.

53. The Trust shall be deemed to be a local authority under the Local Authorities Loans Act, 1914, for the purpose of borrowing money under that Act, and the making and execution of any scheme under this Ordinance shall be deemed to be a work which the Trust is legally authorised to carry out.

54. (1) In places where there is a Government treasury or sub-treasury or a bank to which the Government treasury business has been made over all moneys at the credit of the Trust shall be kept in such treasury, sub-treasury or bank. In other places such moneys shall be kept in such custody as may be prescribed.

(2) Nothing in the foregoing provisions of this section shall be deemed to preclude the Trust from investing any such moneys as are not required for immediate expenditure, in any of the Government securities and loans or placing them in fixed deposit with a bank approved by Government.

55. If any money borrowed under section 53 or any interest or cost due in respect thereof is or are not repaid according to the conditions of the loan, Government shall itself make such payment and may attach the rents and other income of the Trust; and thereupon the provisions of section 5 of the Local Authorities Loans Act, 1914, shall, with all necessary modifications, be deemed to apply.

56. Government may further impose or increase a tax on the annual value of buildings or land situated within the local area and enhance the rate of land revenue and Abiana within the local area to such extent as may be necessary for the purpose of recovery of a payment made under section 55.

57. All moneys paid by Government on behalf of the Trust shall constitute a charge upon the property of the Trust.

Power to levy
tax.

Grants in aid.

Power of the
Trust to borrow
money.

Custody and

investment of
Trust Fund.

Procedure the
Trust fails to
make any
payment in
respect of loans.

Procedure if the
Trust fails to
make any
payment due to
Government.

Payment by
Government to
be a charge on
the property of
the Trust.

58.

31| Page

All funds of the Trust shall be operated upon by the Chairman through

Personal Ledger Account System with the Government treasury or bank as prescribed under section 54, and all payments will be made through cheques.

59.

(1) The Trust shall maintain complete and accurate books of accounts in

such form as may be prescribed.

(2) The accounts of the Trust shall be audited annually by the Local Audit

Office or such other office as may be appointed by Government, from time to time.

60.

The Trust shall submit to Government, by the prescribed date, a statement of

estimated receipts and expenditure in respect of each financial year for approval by Government.

61.

CHAPTER VIII

RULES AND BYE-LAWS.

(1) In addition to the power conferred by any other provisions of this

Ordinance, Government may, by notification in the Official Gazette, make rules consistent with this Ordinance on all or any of the following matters, namely:—

(i) regulating the conduct of business at a meeting of the Trust or Committee;

(ii) constituting of Committees charged with specific functions;

(iii) prescribing the authority of the basis of which money may be paid from the Trust Fund;

(iv) fixing the fees payable for copies of, or extracts from, the records furnished by the Chairman;

(v) terms and conditions of officers and servants of the Trust;

(vi) the accounts to be kept by the Trust, the manner in which such accounts shall be audited and published and the powers of the auditors in respect of disallowance and surcharge;

(vii) the authority by which, the conditions subject to which, and the

mode in which contracts may be entered into and executed on behalf of the Trust;

(viii) the preparation of estimates of income and expenditure of the Trust and the authority by which, and the conditions on which such estimates may be sanctioned;

Operations and audit of funds.

Account books to be maintained by the Trust.

Statement of receipts and expenditure to be submitted to Government.

Power of Government to make rules.

(ix) establishing and maintaining a provident or annuity fund for compelling all or any of the officers in service of the Trust or of the Tribunal (other than any servant of Government in respect of whom a contribution is paid under section 81) to contribute , to such fund at such rates and subject to such conditions as may be prescribed by such rules;

(x) determining the conditions under which the officers and servants of the Trust or of the Tribunal, or any of them, shall, on retirement, receive gratuities or compassionate allowances;:

Provided that it shall be at the discretion of the Trust or of the Presiding Officer of the Tribunal, as the case may be, to determine whether all such officers and servants or any, and if so which of them, shall become entitled on retirement to any such gratuities or compassionate allowances as aforesaid;

(xi) regulating the grant of subsidies to the Trust by Government, the conditions under which they may be earned or forfeited and the arrangements for their repayment; and

(xii) generally on all matters connected with the carrying out of the provisions of this Ordinance.

62. The Trust may, from time to time, with the previous approval of Government and consistent with this Ordinance and the rules made there under make bye-laws.—

(i) for fixing the amount of security to be furnished by any officer or servant of the Trust from whom it may be deemed expedient to require security;

(ii) for regulating the delegation of powers or duties of the Trust to Committees or to the Chairman;

(iii) for the guidance of persons employed by the Trust under this Ordinance;

(iv) for the management, use and regulation of dwellings constructed under any scheme; and

(v) generally for discharging the functions and responsibilities of the Trust under this Ordinance.

Power of the
Trust to make
bye laws.

63. The Chairman shall cause the bye-laws made under section 62 to be printed and shall cause printed copies thereof to be delivered to any applicant on payment of such fees as may be prescribed.

64. Government may, at any time, of its own motion or on the recommendation of the Trust after previous publication of its intention, amend, alter or annul any bye-laws or a part thereof, made by the Trust under section 62.

CHAPTER IX PROCEDURE AND PENALTIES.

65. Every notice or bill issued by the Trust under this Ordinance shall be signed by the Chairman, or by any other Trustee or any officer or servant of the Trust specially or generally authorized by the Trust or so authorised by the Chairman under subsection (1) of section 13, and every such notice or bill shall be deemed to be properly signed, if it bears the facsimile of the signature of the Chairman or such Trustee, officer or servant stamped or printed thereon.

66. Subject to the provisions of this Ordinance, every public notice required under this Ordinance shall be deemed to have been duly given if it is published in some newspaper and posted upon a notice board to be exhibited for public information at the building in which the meetings of the Trust are ordinarily held.

67. (1) Every notice other than a public notice, and every bill issued under this Ordinance shall, unless it is otherwise expressly provided under this Ordinance, be served or presented—

(a) by giving or tendering the notice or bill, or sending it by registered post, to the person to whom it is, addressed; or

(b) if such person cannot be found, then by giving or tendering it to some adult male member or servant of his family, ordinarily residing with him or by causing it to be affixed on some conspicuous part of the last known place of his residence or the building or land to which it relates.

(2) When a notice is required or permitted under this Ordinance to be served upon an owner, occupier or tenant, as the case may be, of a building or land it shall not be necessary to name the owner, occupier or tenant therein, and the service thereof, in a case not otherwise specifically provided for in this Ordinance, shall be effected—

(a) by giving or tendering the notice, or sending it by post, to the owner, occupier or tenant, or if there be more owners, occupiers or tenants than one, to any one of them; or

Printing and
sale of copies of
bye laws.

Power of
Government to
cancel bye-laws

made under
section 62.

Stamping and
signing on
notices or bills.

Method of
giving public
notices.

Service of
notice.

(b) if such, owner, occupier or tenant cannot be found, then by adopting the procedure as laid down under clause (b) of sub-section (1).

(3) Whenever the person on whom a notice or bill is to be served is a minor, service upon his guardian or upon an adult member or servant of his family ordinarily residing with him shall be deemed to be service upon the minor.

68. When under this Ordinance or a notice issued there under the public or any person is required to do or to refrain from doing,, anything, a person who fails to comply with such requisition shall, if such failure is not an offence punishable under any other section, be liable on conviction by a Magistrate to a fine not exceeding five hundred rupees for every such failure and in the case of a continuing breach, to a further fine which may extend to fifty rupees for every day after the date of the last conviction during which the offender is proved to have persisted in the breach:

Provided that when the notice fixes a time within which a certain act is to be done and no time is specified in this Ordinance, it shall rest with the Magistrate to determine whether the time so fixed was a reasonable time within the meaning of this Ordinance.

69. If a notice has been given by the Trust under this Ordinance to a person requiring him to execute a work in respect of any property, movable or immovable, public or private, or to provide or do or refrain from doing anything within a time specified in the notice and if such person fails to comply with such notice, then the Trust may cause such work to be executed or such thing to be provided or done, and may recover all expenses incurred by it on such account from the said person.

70. (1) If the person to whom the notice mentioned in section 69 has been given is the owner of the property in respect of which it is given, the Trust may (whether any action or other proceedings has been brought or taken against such owner or not) require the occupier or tenant (if any) of such property or a part thereof under such owner, to pay to the Trust instead of paying to the owner the rent payable by him in respect of such property as it falls due, up to the amount recoverable from the owner under section 69; and any such payment made by the occupier or tenant to the Trust shall be deemed to have been made to the owner of the property.

(2) For the purpose of deciding whether action should be taken under sub-section (1) the Trust may require an occupier or tenant of property to furnish information as to the sum payable by him as rent on account of such property and as to the name and address of the person to whom it is payable; and if the occupier or tenant refuses to furnish such information he shall be liable for the whole of the expenses as if he were the owner.

Disobedience to
Ordinance or to
notice.

Power of the
Trust to execute
works on failure
to comply with

notice.

Liability of
occupier to pay
in default of
owner.

71. Whenever an owner of a building or land in the local area defaults in the execution of a work required to be done under this Ordinance in respect of the said building or land, the occupier or tenant thereof, shall cause completion or execution of such work with the approval of the Trust and expenses thereon shall be paid by the owner; or the amount shall be deducted by the occupier or tenant out of the rent from time to time becoming due from him to such owner.

72. (1) If, after receiving information of the intention of the owner of any building or land to take any action in respect thereof in compliance with a notice issued under this Ordinance the occupier or tenant refuses to allow such owner to take such action, the owner may apply to Magistrate.

(2) The Magistrate upon proof of such refusal may by order in writing require the occupier or tenant to give the owner reasonable facility for executing such works with respect to such building or land, as may be necessary for compliance with the notice and may also if he deems fit, order the occupier or tenant to pay to the owner the costs relating to such application or order.

(3) If, after the expiration of eight days from the date of the Magistrate's order, the occupier or tenant continues to refuse to allow the owner to execute such work, the occupier or tenant shall be liable upon conviction to a fine which may extend to twenty-five rupees for every day during which he has so continued to refuse.

(4) Every owner, during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in the execution of such works.

73. When the occupier or tenant of a building or land has, in compliance with a notice issued under this Ordinance executed a work for which the owner of such building or land is responsible either in pursuance of the contract of tenancy or by law, he shall be entitled to recover from the owner by deduction from the rent payable by him or otherwise the reasonable cost of such work.

74. (1) When a person, by reason of his receiving or being entitled to receive the rent of immovable property as trustee or agent of a person or society, would, under this Ordinance, be bound to discharge any obligation imposed by this Ordinance on the owner of the property for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, in his hands funds belonging to the owner sufficient for the purpose.

(2) When an agent or trustee has claimed and established his right to relief under this section, the Trust may give him notice to apply to the discharge of such obligation as aforesaid the moneys which come to his hand on behalf or for the use

Right of
occupier to
execute work
in default of
owner.

Procedure

upon
opposition to
execution by
occupier.

Recovery of
cost of work by
the occupier.

Relief to agents
and trustees.

of the owner, and should he fail to comply with such notice, he shall be deemed to be personally liable to discharge such obligation.

75. If any person, without lawful authority —

(a) removes any fence or any article used for propping or supporting any building, wall or other thing, or removes or extinguishes any light set up at any place where the surface of a street or other ground has been opened or broken up by the Trust for the purpose of carrying out any work; or

(b) infringes any order given, or removes any bar, chain or post fixed by the Trust for the purpose of closing any street or traffic,

he shall be punished with fine which may extend to one hundred rupees.

76. If any person—

(a) obstructs or molests any person with whom Trust has; entered into a contract under this Ordinance in the performance or execution of the contract by such person; or

(b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorised under this Ordinance, he shall be punished with fine which may extend to two hundred rupees or with imprisonment for a term which may extend to two months.

77. When the Chairman is satisfied that any person has taken or is in possession of land comprised in any scheme or any other land owned by or vested in the Trust, to which he has no right or title, the Chairman or any person authorised by him, in addition to any other powers he may possess, may forthwith, with the use of such force as may be necessary, and without payment of any compensation there for, re-enter upon the land, and, on behalf of the Trust, resume possession of the land including crops, trees and buildings standing thereon.

78. If any person, without permission of the Chairman—

(a) clears or breaks up for cultivation or cultivates any land or occupies, possesses or puts to any use any land or building which is owned by or is in possession of the Trust and is not included in any tenancy or allocated residential enclosures, or which has been set a part for the common purpose of a town

Penalty for
removing fence
etc.

Recovery of
cost of work by
the occupier.

Power of trust
in case of

squatters and
trespassers.

Penalty for
unauthorized
possession
cultivation or
other uses etc.

or a village community or section of the same or for a road, canal or watercourse; or

- (b) erects any building on any such land ; or
- (c) fells or otherwise destroys trees standing on such land; or
- (d) otherwise encroaches on any such land; or
- (e) makes any excavation or constructs a water channel on any such land,

he shall be punished on conviction by a Magistrate with a fine which may extend to two hundred rupees.

Explanation—The felling of trees planted by an owner or tenant on any village road or water-course traversing his holding is not an offence under this section.

79. When the Chairman is satisfied that an act punishable under section 78 has been committed he may in lieu of proceeding against the offender under that section or after conviction of the offend under that section.

(i) in the case of an offence under clause (a) of section 78, confiscate the crops growing on any land cultivated in contravention of this Ordinance or, if the crops have been cut, recover from the offender such sum as he may assess to represent the value thereof;

(ii) in the case of an offence under clause (c) of section 78, recover such sum as he may assess to represent the value of the tree or trees destroyed;

(iii) in the case of an offence under clause (b) (d) or (e) of section 78, cause the building or other encroachment to be demolished or removed or the excavation of channels to be filled up and realise the cost of so doing from the offender.

CHAPTER-X SUPPLEMENTAL PROVISIONS.

80. Every Trustee and every officer and servant of the Trust, and the Presiding Officer and every member, officer and servant of: the Tribunal, shall be deemed to be public servant within the meaning of section 21 of the Pakistan Penal Code.

81. The Trust shall be liable to pay such contributions for the leave, allowances

Additional
power of the
Chairman in
regard to
offerne.

Trustees
members etc

deemed public
servants.

Contribution by
the Trust to

and pensions of any Government servant employed as Chairman, Trustee or as an officer or servant of the Trust or as Presiding Officer or member or officer or servant of the Tribunal as may be required by the conditions of his service under Government to be paid to him or on his behalf.

82. The Chairman or any person generally or specially authorised by him may apply to the Collector for the recovery of any sum due under this Ordinance or by agreement made under this Ordinance and the Collector shall thereupon proceed to recover the sum due as if it were an arrear of land revenue.

83. No court shall take cognizance of any offence punishable under this Ordinance, except on the complaint of the Chairman or some person authorised by the Trust or by the Chairman by general or special Order in this behalf.

84. The Chairman may, subject to the control of the Trust—

(i) institute, defend or withdraw from legal proceeding under this Ordinance;

(ii) compound any offence under this Ordinance;

(iii) admit, compromise or withdraw any claim made under this Ordinance; and

(iv) obtain such legal advice and assistance as he may, from time to time, deem necessary or expedient to obtain or as he may be desired by the Trust to obtain, for any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Trust or any officer or servant of the Trust.

85. No suit shall be maintainable against the Trust or any Trustee or any officer or servant of the Trust or any person acting under the direction of the Trust or of the Chairman or of any officer or servant of the Trust in respect of anything which is in good faith done or intended to be done in pursuance of this Ordinance.

86. (1) No suit shall be instituted against the Trust or any Trustee, any officer or servant of the Trust or any person acting under the direction of the Trust or of the Chairman or of any officer or servant of the Trust, in respect of an act purporting to be done under this Ordinance until the expiration of two months next after notice in writing has been, in the case of the Trust left at its office, and in any other case delivered to or left at the office or place of residence of the person to be sued, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of residence of the intending plaintiff; and in case the suit is filed the plaint shall contain a statement

wards leave
allowance and
pension of
Government
servants.

dues.

Authority for
prosecution.

Power of
Chairman as to
institution etc of
legal
proceedings and
obtaining legal
advice.

Indemnity.

Notice of suit
against Trust
etc.

that such notice has been so delivered or left.

(2) If the Trust or other person referred to in sub-section (1) shall before the action is commenced have tendered, in the opinion of the court, sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered and shall also pay all costs incurred by defendant after such tender.

(3) No such action as is described in sub-section (1) shall, unless it is an action for the recovery of immovable property or for declaration of the title thereto, be commenced otherwise than within six months next after the accrual of the cause of action:

Provided that nothing in sub-section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by giving of the notice or the postponement of the commencement of the suit or proceedings.

87. A copy of any receipt, plan, notice, order, entry in a register, or other document in the possession of the Trust, shall if duly certified by the legal keeper thereof or other person authorised by the Trust in this behalf be received as *prima facie* evidence of the existence of the entry or document shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent, as the original entry or the document would if produced, have been admissible to prove such matters.

88. No Chairman, Trustee or officer or servant of the Trust shall, in any legal proceedings to which the Trust is not a party, be required to produce any register or document the contents of which can be proved under the last preceding section by a certified copy or to appear as a witness to prove the matters and transactions recorded therein unless the court for special reasons so orders.

89. (1) No act done or proceedings taken under this Ordinance shall be questioned on the ground merely of—

(a) the existence of any vacancy in, or any defect in the constitution of, the Trust or any committee; or

(b) any person having ceased to be a Trustee, or

(c) any Trustee or any other member of a committee appointed under this Ordinance, having voted or taken any part in any proceeding in

contravention of this Ordinance; or

(d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or

(e) any omission, defect or irregularity not affecting the merits of the

Mode of proof
of the Trust
records.

Restriction on

the summoning
of the Trust
servants to
produce
documents.

Validation of
acts and
proceeding.

case.

(2) Every meeting of the Trust, the minutes of the proceedings of which have been duly signed, as provided by or under this Ordinance, shall be taken to have been duly convened and to be free from all defects and irregularities.

90. In any case not otherwise expressly provided for in this Ordinance the Trust may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested under this Ordinance in the Trust or the Chairman or any officer or servant of the Trust.

91. (1) If on account of any act or omission, any person has been convicted of any offence under this Ordinance, and by reason of such act or omission, damage has occurred to any property of the Trust, compensation shall be paid by the said person for the said damage notwithstanding any punishment which he may have been awarded for the said offence.

(2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the court before whom he was convicted of the said offence.

(3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said court, as if it were a fine imposed by it on the person liable there for.

General power
of the Trust to
pay

compensation.

Compensation
for damage to
Trust's

property.

THE SCHEDULE

(Referred to in section 43)

FURTHER MODIFICATIONS IN THE LAND ACQUISITION ACT,
1894, HEREINAFTER CALLED "THE SAID ACT".

1. After clause (e) of section 3 of the said Act the following shall be deemed to be inserted, namely:—

"(ee) The expression "local authority" includes the 'Tomitted] Hazara Hill Tract Improvement Trust constituted under the West Pakistan Hill Tract Improvement Ordinance, 1961."

2. (1) The first publication of notice of any improvement scheme under section 23 of this Ordinance shall be substituted for and have the same effect as publication, in the Official Gazette and in the locality, of a notification under sub-section (1) of section 4 of the said Act, except where a declaration under section 4 or section 6 of the said Act has previously been made and is still in force.

(2) Subject to the provisions of clauses 10 and 11 of this Schedule, the issue of a notice under sub-section (1) of section 19 in the case of land acquired under that sub-section, and in any other case of the publication of a notification under section 29 shall be substituted for and have the same effect as a declaration by the Provincial Government under section 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force.

3. The full-stop at the end of section 11 of the said Act shall be deemed to be changed to a semi-colon, and the following shall be deemed to be added, namely:— "and

(iv) the costs which in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen per centum mentioned in sub-section (2) of section 23, as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

The Collector may disallow, wholly or in part costs incurred by any person if he considers that the claim made by such person for compensation is extravagant."

1, Omitted by W. P. Ord No. XIX of 1970.

Amendment of
section 3.

Notification
under section 4
and declaration
under section 6
to be replaced
by notification
under section

23 and 29 of
this Ordnance.

Amendment of
section 11.

4. In section 15 of the said Act, for the word and figures "and 24" the figures, word and letter "24 and 24-A preceded by a comma, shall be deemed to be substituted.

5. (1) In sub-section (3) of section 17 of the said Act after the figures "24" the words, figures, and letter or section 24-A" shall be deemed to be inserted.

(2) To the said section 17 the following shall be deemed to be added, namely:—

"(5) Sub-section (1) and (3) shall apply also to an area certified to be unhealthy by any Magistrate of the first class.

(6) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in subsection (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

(7) When proceedings have been taken under this section for the acquisition pf any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dis-possession.".

6. After section 17 of the said Act the following shall be deemed to be inserted, namely:—

"17-A. In every case referred to in section 16 or section 17 the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Trust and the land shall there upon vest in the Trust subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition.".

7. The full-stop at the end of sub section (1) of section 18 of the said Act shall be deemed to be changed to a comma, and the words "or the amount of the costs allowed" shall be deemed to be added.

8. After the words "amount, of compensation" in clause (c) of section 19 of the said Act, the words "and of costs (if any)" shall be deemed to be inserted.

9. After the words "amount of the compensation" in clause (e) of section 20 of the said Act, the words "or costs" shall be deemed to be inserted.

10. (1) in clause First and clause sixthly of sub-section (1) of section 23 of the said Act, for the words "publication of the notification under section 4, sub-section (1) "and the words" publication of the declaration under section 6" shall be deemed to be substituted—

Amendment of
section 15.

Amendment of
section 17.

Transfer of land
to Trust.

Amendment of
section 18.

Amendment of
section 19.

Amendment of
section 20.

Amendment of
section 23.

(a) if the land is being acquired under sub-section (2) of section 19 of this Ordinance, the words "issue of the notice under sub-section (2) of section 19 of the West Pakistan Hill Tract Improvement Ordinance, 1961" and

(b) in any other case, the words "first publication of the notification under section 23 of the West Pakistan Hill Tract Improvement Ordinance 1961".

(2) At the end of clause First of sub-section (1) of section 23 of the said Act, as modified the following proviso shall be deemed to be added, namely :—

"provided that for all schemes prepared within a period of three years from the coming into force of the T sees] Hazara Hill Tract Improvement Ordinance, 1961, the date shall be deemed to be the date of enforcement of the said Ordinance".

(3) The full stop at the end of sub-section (2) of section 23 of the said Act shall be deemed to be changed to a colon and the following proviso shall be deemed to be added:—

"Provided that this sub-section shall not apply to any land acquired under the West Pakistan Hill Tract Improvement Ordinance, 1961."

(4) At the end of section 23 of the said Act, the following shall be deemed to be added, namely:—

"(3) For the purposes of clause first of sub-section (1) of this section—

(a) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause;

(b) if it be shown that before such date, the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him;

1. In section-10, in schedule, sub-section (2) in the proviso the words "Rawalpindi and" omitted by W.P. Ord. No. XIX of 1970.

(c) if any person without the permission of the competent authority has erected, re-erected, added to or altered any building or wall so as to make the same project beyond a street alignment or building line duly prescribed by the said authority then any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded;

(d) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under the West Pakistan Hill Tract Improvement Ordinance, 1961, or any other law;

(e) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if put to ordinary use; and

(f) when the owner of the land or building has, after the promulgation of the West Pakistan Hill Tract Improvement Ordinance, 1961, and within two years preceding the date with reference to which the market-value is to be determined, made a return under any enactment in force of the rent of the land or building, shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct, and the market-value may be determined on the basis of such rent; provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value was to be determined the Court may take into consideration and increase in the letting-value of the land due to such addition or improvement.".

11. For clause seventhly of section 24 of the said Act, the following shall be Amendment of deemed to be substituted, namely:— section 24.

"Seventhly,, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any buildings in a proper state of repair."

12. After section 24 of the said Act the following shall be deemed to be

inserted, namely:

"24-A. In determining the amount of compensation to be awarded for any land acquired for the Trust under this Act, the Tribunal shall also have regard to the following provisions, namely:—

(a) When any interest in any land acquired under this Act has

been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land.

(b) If, in the opinion of the Tribunal, any building is in a

defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state.

(c) If, in the opinion of the Tribunal any building which is used

or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building.".

13. (1) After the words "the compensation" in sub-section (1) of section 31 of the said Act, and after the words "the amount of compensation" in sub-section (2) of that section, the words "and cost (if any)" shall be deemed to be inserted.

(2) After the words "any compensation" in the concluding proviso to sub-section (2) of section 31 of the said Act, the words "or cost" shall be deemed to be inserted.

14. After section 48 of the said Act, the following shall be deemed to be

inserted, namely:—

"48-A. (1) If within a period of two years, from the date of the publication of the declaration under section 6 in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible of the

Further
provisions for

determining
compensation.

Amendment of
section 31.

Insertion of
section 48-A.

Compensation
to be awarded
when land not
acquired within
two years.

delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.".

15. After sub-section (I) of section 49 of the said Act, the following shall be deemed to be inserted, namely:—

"Explanation—For the purposes of this subsection land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

Amendment of
section 49.