

THE [KHYBER PAKHTUNKHWA] NEW IRRIGATION PROJECTS (PLANNED DEVELOPMENT) ACT, 1953.

(Act No. XIII of 1953)

CONTENTS.

PREAMBLE

SECTIONS:

1. Short title, extent and commencement.
2. Definitions.
3. Scheme for Development.
4. Preparation, Publication and Transmission notice of schemes, and supply of documents to applicants.
5. Notice of proposed acquisition of land.
6. Abandonment of scheme or its modification.
7. Republication of a scheme.
8. Notification of a scheme.
9. Inclusion of different localities in combined schemes.
10. Passing over of works to Local Authority.
11. Powers and duties of Government.
- 12.
13. Power to make surveys.
14. Power of entry.
15. Acquisition of land in urgent cases.
16. Development Fund..
- 17.
- 18.
- 19.
20. Power of Government to make rules.
21. Stamping signature on notice or bills.
22. Method of giving public notice.
23. Service of notice.
24. Disobedience to Act or to notice.

1 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

- 25.
- 26.
- 27.
- 28.
- 29.
- 30.
- 31.
- 32.
- 33,
- 34,
- 35.

2|Page

Powers of the Government to execute work on failure to comply with notice.

Liability of occupier to pay in default of owner.

Right of occupier to execute works in default of owner.

Recovery of cost of work by the occupier.

Penalty for obstructing contractor or removing Mark.

Penalty for unauthorised cultivation, etc.

Additional Powers of the Colonization Officer.

Authority for prosecution.

Recovery of dues.

General power to pay compensation.

Compensation for damage to Government Property.

THE [KHYBER PAKHTUNKHWA] NEW IRRIGATION PROJECTS
(PLANNED DEVELOPMENT) ACT, 1953.

(Act No. XIII of 1953).

(Received the assent of the Governor, [Khyber Pakhtunkhwa],
on the 9th December, 1953.)

AN
ACT

to provide for the speedy and planned development of the areas
brought under new irrigation projects and for the
levy of development fee.

WHEREAS it is expedient to provide for the speedy and planned
development of the areas brought under new irrigation projects and for the
levy of development fee;

It is hereby enacted as follows:—

1. (i) This Act may be called the *[Khyber Pakhtunkhwa] New Shorttitle,

Irrigation Projects (Planned Development) Act, 1953. extent and
commencement.

(ii) It extends to the Bannu district, provided that the Provincial
Government may, by notification, extend all or any of its provisions to
any other part of the "[Khyber Pakhtunkhwa].

(iii) It shall come in to force at once.

2. In this Act unless the context otherwise requires: — Definitions.

(i) "Collector" shall be a person appointed under this Act, and
shall have the meaning as in the Land Acquisition Act, 1894,
the Land Revenue Act and the *[Khyber Pakhtunkhwa] New
Irrigation Projects (Control and Prevention of Speculation in
Land] Act, 1950.

(ii) "Development Fee" shall means a fee imposed under the
provisions of this Act.

(iii) "Local Area" means an area to which this Act applies or is
extended.

1 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

2 Substituted by the act ibid.

3 Substituted by the act ibid.

4 Substituted by the act ibid.

5 Substituted by the act ibid.

- (iv)
- (vy)
- (vi)

"Scheme" means a scheme framed under this Act.

"Committee" means the Central Development Committee.

"Local Committee" means the Local Executive Committee.

(vii) "Local Authority" means a Local body within the meaning

of the '(Khyber Pakhtunkhwa] Municipal Act, 1950, or the Punjab District Boards Act, or any other Agency to be set up by Government to whom all or any of the functions under this Act may be entrusted.

(viii) "Government" means the Provincial Government.

- (ix)

The expressions "tree", "timber" and "cattle" have the meaning respectively assigned to them in the Forest Act, 1927.

3. Government may, on the advice of the Committee, frame a scheme or schemes for the development of any local area or part thereof providing for all or any of the following matters:—

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(i)

(ii)

(iv)

(vy)

The acquisition under the *[Khyber Pakhtunkhwa] New Irrigation Projects (Control and Prevention of Speculation in Land) Act, 1950, of any land or any interest in land necessary for, or affected by the execution of the scheme;

The acquisition by purchase, lease, exchange or otherwise of such land or interest in land;

The retention, letting on hire, lease, sale, exchange or disposal otherwise of any land vested in or acquired by the Government;

The relaying of any land comprised in the scheme, and reservation of any land not exceeding one-fifth of the total area for the common purposes of the village or villages

comprised in the scheme, and the redistribution of the rest of the land among the owners of the property comprised in the scheme, and management of lands reserved for common purposes;

The layout and construction of towns, mandis, market places, villages and settlements including the demolishing of existing buildings, the erection and re-erection of buildings, by the Government or by the owners, or by the Government in default of owners;

1 Substituted vide Khyber Pakhtunkhwa Act. No. IV of 2011.

2 Substituted by the act ibid.

Scheme for
Development.

(vi)

(vii)

The provision of facilities for communications including the layout and alteration of roads, streets, foot paths, bridle-paths and waterways;

The provision of open spaces, planned field forests camp sites, graveyards and places of religious worship.

(viii) The breaking up, cultivation, afforestation or plantation of

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(xi)

(xii)

lands, and the raising, lowering of reclamation of any land for the production of food-grains, fruit, vegetable, fuel, fodder, the setting up of nurseries, seed farms, pastures and the like, and the provision of means of irrigation and irrigation channels by the Government or by the owners or by the Government in default of owners;

The draining, water supply and lighting of streets and sanitation of villages and settlements, towns, mandis and market places;

The provision of a system of drains or sewer for the improvement of ill-drained and in sanitary localities;

The provision of fisheries, poultry farms, live-stock farms, dairy farms, sheep-farms, bee-farms, sericulture farms and the like;

The installation, | management, maintenance, and encouragement of public utility undertakings, rural trades, and crafts, industries and works;

(xiii) The doing of all acts intended to promote the health, well

(xiv)

being and prosperity of the residents of a local area, including the conservation and preservation from injury or pollution of river, and other sources and means of water supply and establishment of educational institutions and dispensaries;

The execution of any scheme or part of the scheme by any

local authority on such terms and conditions as may be agreed upon between the Government and the Local Authority.

(xv) All other matters which the Provincial Government may deem necessary for the purposes of a scheme or for the development of a local area.

4. (1) When a scheme under this Act has been framed,

Government shall prepare a notice stating: —

@)

the fact that the scheme has been framed,

Preparation
Publication and
Transmission of
notice of schemes
and supply of
documents to

(ii) the boundaries of the locality comprised in the scheme, and

(iii) the place and time at which details of the scheme including a statement of the land proposed to be acquired or on which it is proposed to charge a development fee and a general map of the locality comprised in the scheme may be inspected.

(2) Government shall give the said notice adequate publicity in local area and 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 which shall not be less than thirty days, within which objections will be received.

5. (1) During the thirty days, next following the first day, on which any notice is published under Section 4 in respect of any scheme under this Act, Government shall serve a notice on:—

(i) Every person whom Government has reason to believe, after due enquiry, to be the owner of any immovable property which it is proposed to acquire for executing the scheme or in respect of which it is proposed to charge development fee;

(ii) The occupier or tenant (who need not be named) of such premises or land as Government propose to acquire for executing the scheme.

(2) Such notice shall:—

(a) state that Government proposes to acquire such property or to impose a development fee in respect of such property for the purposes of carrying out a scheme under this Act, and

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

(3) Every such notice shall be signed by an Officer appointed by Government in this behalf.

6. After the expiry of the period respectively prescribed in sub-section (2) of Section 4 and clause (b) of sub-section (2) of section 5, Government shall consider all objections and hear all parties making such objections if any and thereafter may abandon the scheme or make such modifications as may be deemed necessary.

7. If a scheme is modified by Government, it shall be re-published in accordance with Section 4, in every case in which the modification materially affects the scheme or involves the acquisition of any land not applicants.

Notice of proposed
acquisition of land.

Abandonment of
scheme or its
Modification.

Republication of a
scheme.

previously proposed to be acquired, or the levy of development fee on land which was not previously proposed to be liable to such development fee.

8. (1) When a scheme is finally adopted by Government it shall announce the fact by notification, and shall forthwith proceed to execute the scheme either itself or through the Local Committee in such manner as may be prescribed.

(2) A notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and shall not be called in question before any court.

9 Any number of localities in respect of which Government has framed or proposes to frame schemes under this Act may at any time be included in one combined scheme.

10. As soon as any scheme has been carried out by Government or at a later date, Government may by written requisition call upon a local authority within whose jurisdiction any particular area covered by the scheme lies, to take over and maintain any of the works in that area and the local authority shall be bound to comply with such requisition.

11. (1) Government may subject to such rules as may be described undertake any work and incur any expenditure for the improvement and development of a local area, and

(2) Set up a committee and a local committee consisting of such members and of such number as Government may decide; and the committee so appointed shall advise Government on all or any of matters referred to in Section 3, but shall have no financial powers.

(3) Without prejudice to the generality of powers conferred by the preceding sub-sections the Government may:—

(a) grant land vested in it to any person on any condition it thinks fit, and for this purpose issue a statement or statements of conditions on which Government is willing to grant land to tenants;

(b) resume the land so granted, or in the alternative impose a penalty not exceeding five hundred rupees where the tenant is proved to the satisfaction of Government, to have committed a breach of the conditions of the tenancy:

Provided that before an order is made under this clause, the tenant shall be given an opportunity to appear and state his objections;

Provided further that in case of resumption, the tenant shall be liable to restore possession forthwith, but shall be

Notification of a scheme.

Inclusion of different localities in combined schemes.

Passing over of works to Local Authority.

Powers and duties of Government.

entitled to compensation for the standing crops and for improvements made by him during the tenancy.

(c) notwithstanding anything contained in any enactment for the time being in force, prepare and execute a scheme for consolidation of holdings in any local area by redistribution of titles of any of the lands therein, and order of payment of compensation to any person who has received an allotment under any such scheme of consolidation of less market value than his original holding, to be paid by all or any of the other persons affected by the said scheme, and in such proportion as Government may decide.

Note.—The duties of the Consolidation Officer under the said Act shall be performed by such officer as may be appointed by Government in this behalf:—

(d) regulate by general or special order the use of land and restrict or prohibit the carrying of any offensive or unwholesome trade unhealthy or harmful agricultural practice or the construction of any building or structure;

(e) advance money by way of loan to any person for the purpose of furthering any of the objects of this Act, on conditions as provided in the Agriculturist Loans Act, 1884 or Land Improvement Loans Act, 1883;

(f) promote and undertake research on any matter in furtherance of this Act:

(g) appoint a Colonization Officer with such powers as may be delegated to him under the rules for:—

(i) the levelling, terracing and embankment of fields,
(ii) the construction of earth works in fields or ravines,
(iii) the provisions of drains for storm water,

(iv) the draining of streams, and

(v) the execution of such other works as are necessary to protect the land from the erosive action of wind or water or for the development of such area or for the exploitation of its mineral or water resources;

(h) direct that any work which has been required to be done by any person under the preceding clause, and which remains undone, shall, after due notice to such person and consideration of any objection raised by him, be executed by Government, and specify the portion in which the risk

and expense shall be borne by such person, or by any other person who is held by Government upon due enquiry after reasonable notice to him, to be responsible for the execution of such work in whole or in part;

(i) regulate, restrict or prohibit by general or special order in respect of any area;

(i) _ the clearing or breaking up of land for cultivation,

(ii) the quarring of stones and the burning of lime or charcoal,

(iii) the admission, herding, parking and retention of cattle, or other animals,

(iv) the felling, girdling, lopping, tapping or burning of any tree or timber, and

(v) _ the kindling, keeping or carrying of any fire;

(j) direct the growing of a particular kind or type of crops or trees in a particular area, and prescribe the rotation of crops to be followed;

(k) undertake the breaking of land, planting of trees, construction of water course, and do all necessary acts to bring land included in the scheme under cultivation, and

() make or order arrangements for the marketing of the produce and manufactures.

(4) Any general order made under this section shall be published in such manner as may be prescribed.

12. All actions by any Department or Government in connection with the development of the resources made available by a project shall be taken on the advice of the Committee.

13. The Colonization Officer may cause a survey of land to be made when he considers that a survey is necessary or expedient for the carrying out of any of the purposes of this Act.

14. (1) The Colonization Officer or any person authorised by him in writing in this behalf, may enter upon and survey any land, erect pillars for the determination of areas and intended lines of works, made borings and excavations for the discovery of water or any minerals, construct channels and aqueducts for securing the flow of water, and do all other acts which may be necessary to carry out all or any of the purposes of this Act:

Power to make surveys.

Power of entry.

Provided that when the affected land does not vest in Government, powers conferred by this sub-section shall be exercised in such manner as to cause the least interference and damage to the rights of owners or occupiers therein.

(2) If any damage is caused to the land in pursuance of sub-section (1), the Colonization Officer shall assess the amount of compensation to be paid to the owner or occupier and in case of dispute as to the sufficiency of the amount, the matter shall be referred to the Government 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 open a door, gate or other barrier;

(a) If he considers the opening thereof 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 gate, door or barrier:

Provided that if the entry is to be made into a residential house the provisions of Sections 102 and 103 Criminal Procedure Code shall be applicable as far as possible.

15. (1) Government may, by notification in the Official Gazette Acquisition of land declare any locality comprised in a local area to be acquired immediately 1 Urgent cases. for re-settlement of persons, or for development, or for any other purposes,

and undertake in respect of such locality all or any such matters as may be

included in a scheme under this Act.

(2) After a notification has been issued under sub-section (1), in respect of any locality the Colonization Officer after giving such reasonable notice to the owners and occupiers as may be prescribed, shall take possession of any land in such locality and the land shall thereupon, notwithstanding anything contained in any other enactment for the time being in force vest absolutely in Government free from all encumbrances subject to only payment of compensation to be assessed by Government on the recommendation of the Colonization Officer:

Provided when a person is dispossessed of land under this section and has no other land or enough land to sustain him, Government shall compensate him to the extent possible by granting him land elsewhere under the scheme.

(3) When the possession of any land has been delivered to Government under sub-section (2), it shall do all such acts in respect thereof in order to comply with the directions contained in the notification issued under sub-section (1).

16. There shall be a fund to be known as "Development Fund" which Development Fund.

shall be utilized for the execution of schemes under this Act, and shall consist of such moneys as Government makes available to it.

17. Government may on the advice of the Committee levy in any local area or part thereof any tax, fee, or cess which the Provincial Legislature has power to impose:

Provided that Government may exempt any person from the payment of all or part of any such tax, fee, or cess which may be due from him on such conditions as it may impose.

18. Government may on the advice of the Committee further impose or increase a tax on the annual value of buildings or lands situate within a local area and enhance the rate of land revenue and abiana within a local area to such extent as may be necessary.

19. The Government may allocate the whole or part of any tax, fee or cess levied under Sections 17 and 18 to the fund.

20. In addition to the powers conferred by any other provisions of this Act, Government may, by notification in the '[Gazette], but always subject to pre-publication, make rules consistent with this Act:—

(i) As to the authority on which the money may be paid from the development fund,

(ii) for fixing the fees payable for copies of, or extracts from the record prepared by Government,

(iii) as to the accounts to be kept and the manner in which such accounts shall be kept,

(iv) as to the powers and functions which the committee, a local committee or a local authority may have,

(v) as to the preparation of estimates of income and expenditure and the authority by whom and the conditions subject to which such, estimates may be sanctioned;

(vi) as to the returns, statements and reports to be submitted;

(vii) to prescribe and define the mutual relations, to be observed between Government and other local authorities in any

matter in which they are jointly interested; and

(viii) as to powers and functions which the Colonization Officer will exercise.

1 Now refers to the Official Gazette of West Pakistan see W.P. Act XVI of 1957.

21. Every notice or bill issued by Government under this Act, shall be signed by the Colonization Officer, and every such notice or bill shall be deemed to be properly signed, if it bears the facsimile of the signature of the Colonization Officer or is printed thereupon.

22. Subject to the provisions of this Act, every public notice required under this Act shall be deemed to have duly given if it is published in some newspaper and posted upon a notice board to be exhibited for public information outside the office of the Colonization Officer.

23. (1) Every notice other than a public notice, and every bill, issued under this Act shall, unless it is under this Act otherwise expressly provided, 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 leaving the notice or bill at his last known place of abode, or 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 building or land to which it relates.

(2) When a notice is required or permitted under this Act 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 cases not otherwise specially provided for in this Act, shall be effected either:—

(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 then to any one of them; or

(b) if such owner, occupier or tenant cannot be found, then by giving or tendering the notice to an adult male member or servant of his family ordinarily residing with him or by causing the notice to be affixed on some conspicuous part of the building or land to which it relates.

(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 male member or servant of his family ordinarily residing with him shall be deemed to be service upon the minor.

24. When a notice is issued under this Act, requiring the public or any person 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

Stamping,
Signature on notice

or bills.

Method of giving
public notice.

Service of Notice.

Disobedience to Act
or to notice.

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 Act, it shall rest with the Magistrate to determine whether the time so fixed was a reasonable time within the meaning of this Act.

25. If a notice has been given by Government under this Act 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 Colonization Officer may cause such work to be executed or such thing to be provided or done, and may recover all expenses incurred by him on such account from the said person.

26. (1) If a person to whom the notice mentioned in Section 23, has been given, is the owner of the property in respect of which it is given, Government may (whether any action or other proceedings have been brought or taken against such owner or not) require the person if any, who is the occupier or tenant of such property or a part thereof under such owner, to pay to Government 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 25 and any such payment made by the occupier or tenant to Government shall be deemed to have been made by the owner of the property.

(2) For the purpose of deciding whether action should be taken under sub-section (1), Government 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.

27. Whenever default is made by the owner of a building or land in the execution of a work required under this Act to be executed by him, the occupier or tenant of such building or land may, with the approval of Government cause such work to be executed and the expenses thereof shall be paid by the owner, or the amount may be deducted out of the rent from time to time becoming due from him to such owner.

28. When the occupier or tenant of a building or land has, in compliance with a notice issued under this Act, 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 the reasonable cost of such work.

execute works on
failure to comply
with notice.

Liability of occupier
to pay in default of
owner.

Right of occupier to
execute works in
default of owner.

Recovery of cost of
work by the
occupier.

29. If any person:—

(a) obstructs, or molests any person with whom Government has entered into a contract under this Act, in the performance or execution of the contract by such person, or

(b) removes any mark setup for the purpose of indicating any level or direction necessary to the execution of works authorised under this Act,

he shall be punishable with fine which may extend to two hundred rupees or with imprisonment for a term which may extend to two months.

30. If any person, in contravention of the provisions of this Act, or the rule framed thereunder or any general or special order issued:—

(a) clears or breaks up for cultivation or cultivates any land which is owned by or in the possession of Government and is not included in any tenancy or allocated residential enclosure, or which has been set apart for the common purposes of a town or a village community or section of the same or for a road, canal or water-course; or

(b) — erects any building on any such land; or

(c) — fells or otherwise destroys standing trees on such land; or

(d) otherwise encroaches on any such land; or

(e) makes an excavation or constructs a water channel on any such land; or

(f) does any other act in contravention of any direction by the Government,

he shall be punishable with a fine which may extend to two hundred rupees.

31. When the Colonization Officer is satisfied that an act punishable under Section 30 has been committed, he may, in addition to any other penalty provided under this Act proceed as follows:—

(i) in the case of an offence under Section 30, sub-section (a) confiscate the crops growing on any land cultivated in contravention of this Act, or if the crops have been cut, recover such sum as he may assess as the value thereof from the offender;

Penalty for
obstruction
contractor or
removing mark.

Penalty for

unauthorized
cultivation etc.

Additional powers
of the Colonization
Officer.

(ii) in the case of an offence under Section 30, sub-section (c), recover such sum as he may assess as the value of the tree or trees destroyed;

(iii) in the case of an offence under Section 30, sub-sections (b), (d) or (e), cause the building or other encroachment to be demolished or removed or the excavation or channels to be filled up and levy the cost of so doing from the person responsible for such act; and

(iv) order that irrigation water shall not be allowed to him for such time as may be mentioned in the order.

32. No court shall take cognizance of any offence punishable under this Act, except on the complaint of the Colonization Officer or some person authorised by him in this behalf.

33. The Colonization Officer or any person generally or specially authorised by him, may recover any sum due under this Act or by agreement made under this Act as if it were an arrear of land revenue.

34. In any case not otherwise expressly provided for in this Act, Government may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested under this Act, in Government, or the Colonization Officer, or any officer or servant of Government.

35. (1) If on account of any act or omission, any person has been convicted of any offence under this Act, and by reason of such act or omission damage has occurred to any property of Government, compensation shall be paid by the said person for the said damage notwithstanding any punishment to which he may have been sentenced 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 and under this section be not paid, the same shall be recovered, under a warrant from the said Magistrate, as if it were a fine imposed by him other person liable thereof.

Authority for
Prosecution.

Recovery of dues.

General power to
pay compensation.

Compensation for
damage to
Government

property.