

ASSAM ACT VII OF 1941

*THE ASSAM EMBANKMENT AND DRAINAGE
ACT, 1941[Published in the *Assam Gazette* of the 14th May 1941.]

An Act to provide for the construction, removal and upkeep of embankments and for the drainage and improvement of lands in Assam.

Preamble. WHEREAS it is expedient to make provision for the construction, maintenance, management, removal and control of embankments and for the better drainage and improvement of lands in Assam ;

And whereas the previous sanction of the Governor has been obtained to the introduction of this Bill ;

It is hereby enacted as follows :—

Short title, extent and commencement. 1. (i) This Act may be called the Assam Embankment and Drainage Act, 1941.

(ii) It extends to the whole of Assam.

(iii) It shall come into force on such date¹ as the [State]² Government may specify by notification in the official Gazette in that behalf.

Definitions. 2. In this Act, unless there is anything repugnant in subject or context,—

“Cattle.” (i) “Cattle” includes also elephants, buffaloes, horses, ponies, mules, asses, pigs, sheep and goats.

“Embankment”. (ii) (a) “Embankment” means any embankment, public or private, constructed for the purpose of excluding, regulating or retaining water and includes all earthen or masonry walls, dams, spilways, piers, groins, sluices, syphons, water gauges, bench-marks and other works subsidiary to any such embankment ; but does not include any “ail” or ridge surrounding or dividing a field or any public or private road.

“Public Embankment”. (b) “Public Embankment” means an embankment vested in the [Government]³ or under the control and administration of the [State]² Government or any Local Board, Municipality or Town Committee.

“Private Embankment”. (c) “Private Embankment” means any embankment which is not a public embankment.

“Drain”. (d) “Drain” includes *dongs* and irrigation channels in the plains, a tunnel, a culvert, a ditch, a channel, a canal, a syphon, a sluice or artificial water course of any other description

*For Statement of Objects and Reasons, see *Assam Gazette*, page 7, Part V—1930, and for Select Committee report *vide*, Page 37, Part V—1940.

1. 1st October, 1941 (see Notification No-145-ED., dated 13th September, 1941.)

2. Substituted by A. O., 1950 for “Provincial”.

3. Substituted by A. O., 1950 for “Crown”.

- and any other device for excluding, regulating or retaining water, rain water, flood water or sub-soil water ; but does not include the ordinary irrigation processes in hill and sub-montane districts.
- “Embankment officer”. (iii) “Embankment Officer” means the Executive Engineer of any Division and any other officer not below the rank of Executive Engineer whom the [State]¹ Government may declare to be such.
- “Owner”. (iv)(a) “Owner” shall include proprietor and settlement holders as defined in the Assam Land and Revenue Regulation, 1886 (Regulation I of 1886) and every intermediate tenant between the proprietor or settlement holder and the occupier and with respect to unsettled waste land, shall mean [State]¹ Government.
- “Occupier”. (b) “Occupier” means the person residing in or in possession of any house, land or place.
- “Local Area”. (c) “Local area” means an area notified as such by the [State]¹ Government in the Gazette to which section 13 of this Act would apply.
- “Prescribed”. (d) “Prescribed” means prescribed by rules made under this Act.
- “Cost”. (e) “Cost” means the capital cost of a work including that of the connected survey but does not include any maintenance or interest charges, or any contribution made by Government under section 7.

Right of entry upon private land and payment for damage. 3. (i) It shall be lawful for any officer generally or specially authorised by the [State]¹ Government in this behalf and for his servants and workmen to enter upon, survey and take levels of any land, whether covered with water or not ;

to dig or bore into the subsoil ; to mark levels by placing marks ; and to cut down and clear away any part of any standing crop, fence, or jungle whenever necessary for the completion of any survey :

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house, unless with the consent of the occupier thereof, without previously giving the occupier at least ten days' notice in writing of his intention to do so.

(ii) The officer so authorised shall at the time of such entry pay or tender payment for all damage done as aforesaid and in case of dispute as to the sufficiency of the amount so paid or tendered, he shall refer forthwith the dispute to the Deputy Commissioner whose decision which shall be based on an enquiry, held either by himself or by a gazetted officer not below the rank of Extra Assistant Commissioner deputed by

¹. Substituted by A. O., 1950 for “Provincial”.

him, shall be final. Nothing in this sub-section shall debar the person injured from applying direct to the Deputy Commissioner for compensation. No claim under this sub-section made later than six months after the damage occurred shall be entertained.

Construction,
removal or
alteration
of embank-
ment or
removal of
obstructions.

4. (i) The Embankment Officer shall have power:—

- (a) to remove any obstruction of any kind which in his opinion endangers the stability of any embankment or drain;
- (b) to remove or alter any embankment or drain or any obstruction of any kind which in his opinion endangers the safety of any town or village or is likely to cause loss of property by interfering with the general drainage or the flood drainage of any tract of land, and
- (c) to construct any embankment or drain the absence of which, in his opinion, endangers the safety of any town or village.

(ii) Except as hereinafter provided the Embankment Officer shall, before exercising his powers under sub-section (i) above, apply to the Deputy Commissioner for permission stating the nature of the action proposed to be taken and the reasons therefor. Thereupon the Deputy Commissioner shall publish a general notice to all persons likely to be affected and after considering any objection that may be received, may refuse or grant permission either absolutely or subject to such conditions as he may think fit to impose. Any person aggrieved by the Deputy Commissioner's order may within thirty days thereof appeal to [State]¹ Government whose decision shall be final.

(iii) In case of grave and imminent danger to life or property the Embankment Officer may forthwith commence the execution of any work under sub-section (i) and then apply for permission under sub-section (ii) above. Before the Embankment Officer begins any emergency work under this section he shall intimate his proposals to the Railway Administration, Local Boards, Municipalities and Town Committees within the area affected by such work. But in any such case, if it should appear that anything done by the Embankment Officer was unnecessary, any person who has sustained damage by the execution of the work shall be entitled to make a claim to compensation for the decision of the Deputy Commissioner. No claim under this sub-section made later than six months after the damage occurred shall be entertained. An appeal against the Deputy Commissioner's decision shall lie to the District Judge but no appeal shall be entertained unless it is made within six.

¹ Substituted by A.O. 1950 for "Provincial."

days of the date of the Deputy Commissioner's decision. Where the claim is upheld, the applicant is entitled to have the land, embankment or drain restored as nearly as possible to its original state, regard being had to the amount of the work which the Deputy Commissioner or the District Judge, as the case may be, considers to have been necessary, at the expense of Government :

Provided that no suit or criminal prosecution shall lie against the Embankment Officer for anything done or omitted to be done by him in good faith under this Act.

Application for a drain or a new embankment or a sluice in a public embankment.

5. (i) (a) If any person desires that a bridge, culvert, syphon or sluice be made in any public embankment for the purpose of drainage or irrigation, or

(b) If within any local area to which section 13 has been applied, any person desires that any new embankment or drain be constructed or that any existing embankment or drain be altered or removed ;

He shall make an application in writing to the Deputy Commissioner of the District in which such embankment or drain is situated.

(ii) At the time of making such application the applicant(s) shall deposit with the Deputy Commissioner the sum of Rupees ten towards the expense of surveys, etc., necessary for investigating the soundness of the proposal.

Procedure for enquiry and realisation of cost.

6. When application has been made to the Deputy Commissioner under section 5 he shall forward the proposals to the [State]¹ Government.

Preparation of schemes for improvement of drains, embankments and flood protection.

7. Whenever it appears to the [State]¹ Government that any embankment or drainage work is necessary for the improvement of any lands, or for the proper cultivation or irrigation thereof, or for protection from floods or other accumulations of water, or from erosion by a river (whether the lands to be so protected are in the immediate vicinity of the place where the work is considered necessary, or otherwise) the [State]¹ Government, after consultation with the Railway Administration, any Local Board, Municipality or Town Committee regarding all schemes within a notified local area, and in all other areas without such consultation, may cause a scheme for such embankment or drainage work to be drawn up by the Embankment Officer and published together with an estimate of its cost and a statement of the proportion of such cost which the Government proposes to defray, and a schedule of the lands which it is proposed to make chargeable.

¹. Substituted by A.O., 1950 for "Provincial"

Power to enter and survey, etc.

8. (i) The person authorised by the [State]¹ Government to draw up such a scheme may with his servants and workmen enter upon any lands adjacent to any embankment or drain or on which any embankment or drain is proposed to be made, and undertake surveys or levels thereon ; and dig and bore into the sub-soil ; and make and set up suitable land-marks, level marks and water gauges ; and do all acts necessary for the preparation of the scheme contemplated under this Act ; and

Power to clear land.

(ii) where otherwise such enquiry cannot be completed such officer or other person acting under his orders may cut down and clear away any part of any standing crop, fence or jungle ;

Information or assistance to be furnished.

(iii) Every proprietor and settlement-holder of any land and every person entitled to receive rent in respect of any land or occupying any land as a tenant, shall, on the written requisition of the Embankment Officer, furnish, personally or otherwise, as the Embankment Officer directs, such information or assistance as may be required by that officer for the purpose of preparing the scheme.

Notice of intended entry into courtyard and gardens attached to the dwelling houses.

Provided that, if such aforesaid officer or person acting under his orders proposes to enter into any enclosed court or garden attached to a dwelling house, he shall previously give the occupier of such court or garden at least ten days' notice in writing, of his intention to do so.

Compensation for damage caused by entry.

(iv) In every case of entry under this section the aforesaid officer shall, at the time of such entry, tender compensation for any damage which may be occasioned by any proceeding under this section ; and, in case of dispute as to the sufficiency of the amount so tendered he shall forthwith refer the same for decision by the Deputy Commissioner and such decision which shall be based on an enquiry, held either by himself or by a gazetted officer not below the rank of Extra Assistant Commissioner deputed by him, shall be final.

8A. As soon as possible after the publication of a scheme under section 7, a Deputy Commissioner or, where the scheme affects persons in more than one district, the Commissioner of Divisions shall invite objections by a proclamation allowing one month's time for their receipt from the public, and any Railway Administration, Local Board, Municipality or Town Committee likely to be affected. On receipt of any objections the Deputy Commissioner or the Commissioner as the case may be shall publish a

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notice stating the place, date and time at which an enquiry will be held for the purpose of ascertaining the validity of the objections. After such enquiry has been completed the Deputy Commissioner or the Commissioner as the case may be shall forward the objections along with his recommendations to the [State]¹ Government.

Completion of scheme. 9. (i) After taking into consideration any objections and recommendations made under the preceding section the [State]¹ Government may direct that the scheme drawn up under section 7, with such consequential modifications as Government deem necessary, be put into operation and completed forthwith, or within such period as may be directed.

Rates. (ii) An annual rate may be charged on the occupier or, if there is no occupier, the owner of all lands proposed to be made chargeable under section 7 so as to liquidate the cost of the scheme within a period not exceeding twenty years as Government may prescribe. Such rate shall not be varied by the [State]¹ Government.

Provided that no rate shall be levied on land in temporary settled districts of Assam which is liable to periodic enhancement of revenue within ten years of completion of the improvements effected under this Act.

Recovery of rate. (iii) Any rate charged under this Act shall be recoverable as if it was an arrear of land revenue.

The [State]¹ Government shall take into account the degree of benefit accruing to the assessee when deciding upon the date from which the rate shall be levied.

Disposal of claims to compensation.

10. (i) Whenever any :—

(a) obstruction is removed or embankment or drain removed, constructed or altered under section 4(i) (a), (b) and (c) or

(b) embankment or drainage work carried out under section 9 or

(c) emergent work undertaken under sub-section 4(iii) or

(d) right of fishery, right of drainage, right of uses of water or other right of property, other than as mentioned above, has been injuriously affected

a claim to compensation for any loss arising therefrom may be made within three years of the completion of the work before the Deputy Commissioner who shall award such compensation as he considers fair and reasonable. An appeal against the Deputy Commissioner's decision shall lie to the District Judge, but no appeal shall be entertained unless it is made within sixty days of the date of the Deputy Commissioner's decision. The District Judge's decision shall be final.

Limitation of such claims.

(ii) No such claim shall be entertained after the expiry of three years from the occurrence of the loss complained of, unless the Deputy Commissioner is satisfied that the claimant had sufficient cause for not making the claim within such period.

¹, Substituted by A. O., 1950 for "Provincial".

Vesting of certain rights in the [Government]².

11. The right of access to and maintenance of any embankment or drain or portion thereof constructed, improved or repaired under any section of this Act shall vest in the [Government]² and be under the control and administration of the [State]¹ Government.

Penalties for trespass on embankments or drains.

12. (i) Any person who, without the permission of the Embankment Officer--

- (a) grazes any cattle or allows any cattle belonging to him or in his charge to trespass on any public embankment or drain or
- (b) cuts or roots out any trees, shrubs or grass growing on any public embankment or drain or
- (c) takes any vehicle over or across any public embankment or drain or
- (d) damages or obstructs any embankment or drain constructed, repaired or maintained under the provisions of this Act

shall be punished with imprisonment of either description for a term which may extend to six months, or with fine which may extend to two hundred rupees, or with both.

(ii) No person shall, without due authority, cut through any embankment or drain or destroy or attempt to destroy, any such embankment or drain or open or shut or obstruct any sluice in any such embankment or drain or any public water course ; and every person who shall commit any breach of the provisions of this sub-section shall be liable to imprisonment of either description for a term not exceeding six months or to a fine not exceeding two hundred rupees, or to both.

Penalties for constructing, maintaining, etc., an embankment or drain.

13. Any person who, without the permission of the Deputy Commissioner constructs, removes, alters or damages any embankment or drain, within the limits of any local area to which this section may from time to time be applied by a notification in the Official Gazette by the [State]¹ Government, shall be punished with imprisonment of either description for a term which may extend to six months, or with a fine which may extend to two hundred rupees, or with both.

Notice for removal of embankment or drain and penalties for neglect of such removal.

14. (i) The Deputy Commissioner may by notice require any person, who constructs or alters any embankment or drain in contravention of the provisions of section 13, to remove the same within a reasonable time to be specified in the notice.

(ii) If any embankment or drain of which the removal has been required by notice under sub-section (i) is not removed within the time specified in the notice, the Deputy Commissioner may cause the same to be removed.

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(iii) The cost of the removal of any embankment or drain removed under the provision of sub-section (ii) shall be recoverable as an arrear of land revenue either from the person who constructed or altered the embankment or drain or who caused it to be constructed or altered or jointly and severally from both such persons as the Deputy Commissioner may determine.

Prior consultation with the Public Works and Public Health Departments. 15. (i) In deciding questions which he is required to do under the provisions of this Act the Deputy Commissioner shall first consult the Public Works Department on all questions involving technical matters.

(ii) Before any capital work is undertaken the Public Health Department shall be consulted.

Certain persons deemed to be public servants. 16. Every person authorised by an Embankment Officer to act under section 7 shall be deemed to be a "public servant" within the meaning of the Indian Penal Act XLV 1860. Code.

Power to make rules. 17. The [State]¹ Government may subject to the condition of previous publication make rules generally to carry out the provisions of this Act and in particular to regulate the following matters:—

(a) the proceedings of any officer who, under any provisions of this Act, is required or empowered to take action in any matter ;

(b) the manner in which any order or public notice issued under the provisions of this Act shall be published ;

(c) the area in respect of which the Deputy Commissioner shall consult the Railway Administration and Local Bodies with regard to applications under section 5 ;

(d) the manner in which apportionment of costs under this Act shall be made ; and

(e) the rates chargeable under the provision of this Act.

Indian Railways Act, 1890 (Act IX of 1890) not affected.

18. Nothing in this Act shall affect the provisions of the Indian Railways Act, 1890.

Act IX 1890.

1. Substituted by A.O., 1950 for "Provincial".