

**STATE TOWN PLANNING
ACT, 1963**

**JAMMU AND KASHMIR
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THE JAMMU AND KASHMIR STATE TOWN PLANNING ACT, 1963

(Act No. XX of 1963)

[Received the assent of the Sadar-i-Riyasat on 30th March, 1963 and published in Government Gazette dated 30th March, 1963.]

An Act to provide for the development of the State according to plan and for matters ancillary thereto.

Be it enacted by the Jammu and Kashmir State Legislature in the Fourteenth Year of the Republic of India as follows.—

CHAPTER I

1. Short title, extent and commencement

(1) This Act may be called the Jammu and Kashmir State Town Planning Act, 1963.

(2) It shall extend to the whole State.

¹(3) It shall come into force on such date as the Government, may, by notification, appoint.

2. Definitions

In this Act, unless the context otherwise requires,—

(a) "Board" means the Development Board consisting of one or more persons or officers as the Government may appoint for the purposes of this Act in respect of any area;

(b) "Minister" means the Minister-in-charge, Roads and Buildings Department or any other Minister notified by the Government for purposes of this Act;

¹ Enforced w.e.f. 27th July, 1963 by S.R.O. 323 dated 27th July, 1963.

- (c) "owner" includes the person for the time being receiving or entitled to receive, whether on his own account or as agent, trustee, guardian, manager or receiver for another person, or for any religious or charitable purpose, the rents or profits of the property in connection with which the word is used;
- (d) "plan" means a map or a drawing illustrating a scheme and the boundaries of an area to which such a scheme is meant to apply;
- (e) "plot" means a continuous portion of land held in one ownership other than land used, allotted or reserved for any public or municipal purposes;
- (f) "prescribed" means prescribed by rules made under this Act;
- (g) "prescribed authority" means an officer appointed by the Government as such for purposes of this Act;
- (h) "reconstituted plot" means a plot which is in any way altered by the making of a town planning scheme otherwise than by the severance of land used, allotted or reserved for any public or municipal purposes;
- (i) "scheme" means a town planning scheme and includes a plan and its appendices relating to a town planning scheme;
- (j) "to erect" in relation to any building includes:
 - (i) any material alteration or enlargement of any building;
 - (ii) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation;
 - (iii) the conversion into more than one place for human habitation of a building originally constructed as one such place;
 - (iv) the conversion of two or more places of human habitation into a greater number of such places;
 - (v) such alterations of a building as affect an alteration of its drainage or sanitary arrangements, or materially affect its security;
 - (vi) the addition of any rooms, buildings, houses or other structures to any building; and

- (vii) the construction in a wall adjoining any street or land not belonging to the owner of the wall, of a door opening on to such street, or land;
- (k) "town-planning" includes town improvement.

CHAPTER II

3. Matters that may be dealt with in a scheme

A scheme may provide for all or any of the following matters:-

- (a) the laying out or relaying out of land, as either vacant or already built upon, as building sites or for any of the purposes mentioned in this section;
- (b) the construction, diversion, extension, alteration, improvement or closure of streets, roads and communications;
- (c) the construction, alteration, removal or demolition of buildings, bridges and other structures;
- (d) the acquisition by purchase, exchange or otherwise of any land or other immovable property within the area included in the scheme whether required immediately or not;
- (e) the redistribution of boundaries and the reconstitution of plots belonging to owners of property comprised in the scheme;
- (f) the disposal by sale, exchange, lease or otherwise of land acquired or owned by the Government or any other authority;
- (g) transport facilities;
- (h) water supply;
- (i) lighting;
- (j) drainage inclusive of sewage and of surface drainage and sewage disposal;
- (k) the allotment or reservation of land for streets, roads, squares, houses, buildings for religious and charitable purposes, open spaces, gardens, recreation grounds, schools, markets, shops, factories, hospitals, dispensaries, Government and Municipal buildings, afforestation and public purposes of all kinds;

- (l) construction of houses;
- (m) the preservation of objects and buildings of archaeological or historic interest or of natural beauty or actually used for religious purposes or regarded by the public with special religious veneration;
- (n) the imposition of conditions and restrictions in regard to the character, number, architectural features and height of constructions to be allowed in specified areas, and the purposes to which buildings or specified areas may or may not be appropriated, and the provision and maintenance of sufficient open space about buildings;
- (o) the suspension, restriction or modification so far as may be necessary for the carrying out of the scheme, of any provision in the Jammu and Kashmir Municipal Act Svt. 2008 or the Jammu and Kashmir Town Area Act, Svt. 2011 or of any other law for the time being in force or any rule or bye-law made under either of the aforesaid Acts and in force in the area included in the scheme;
- (p) the advance to the owners of land or buildings, comprised within the scheme, upon such terms and conditions as may be provided by the scheme, of the whole or part of the amount required for the erection of buildings or for the carrying out of the works, alterations or improvements in accordance with the scheme;
- (q) such other matters not inconsistent with the objects of this Act as may be prescribed:

Provided that every scheme shall contain adequate provision for a plot for the purposes of building a residential house for a person who is displaced from his dwelling house by the execution of any scheme sanctioned under this Act.

4. Reconstituted plots

(1) The size and shape of every reconstituted plot shall be so determined as to render it, so far as may be suitable, for building purposes.

(2) In order to render original plots more suitable for building purposes, the scheme may contain proposals:-

- (a) to form a reconstituted plot by the alteration of the boundaries of an original plot;
- (b) to provide, with the consent of the owners, that two or more original plots, each of which is held in ownership in severalty or in joint ownership, shall thereafter, with or without alteration of boundaries, be held in ownership, in common as reconstituted plot;
- (c) to allot a plot to any owner dispossessed of land in furtherance of the scheme; and
- (d) to transfer the ownership of a plot from one person to another.

COMMENTS

Appellant applied for permission to construct a Hotel covering 3940 Sq. f.t. on 23rd June 1998. A part of the area i.e. 1700 Sq.f.t. was first constructed which was compounded. the second set of construction also pertain to same building. No refusal to grant permission was communicated to him. Whether permission be deemed to be granted under the circumstances ? Held, "No". It is further held that One part of the Construction was raised and compounded without the approval of the building plans submitted, the question of sanctioning and according the approval of the other part of the building plan did not arise as the same was to be deemed to have lived its life with the compounding of the other part of unauthorised construction. Therefore if the appellant wanted to raise fresh or additional construction she was bound to apply afresh under section 5 of the Act for obtaining building permission which has not been done, therefore, no question of deeming the grant of building permission arises in her favour. —2003 (1) JKJ 617

CHAPTER III

5. Power of Government to require the Board to make scheme

The Government may, in respect of any area after such inquiry as it may deem necessary, by notification in Government Gazette, require the Board, before a fixed date, to prepare and submit as hereinafter provided for its sanction a draft scheme with respect to any area in regard to which a town planning scheme may be made.

COMMENTS

Appellant applied for permission to construct a Hotel covering 3940 Sq. f.t. on 23rd June 1998. A part of the area i.e. 1700 Sq.f.t. was first constructed which was compounded. the second set of construction also pertain to same building. No

refusal to grant permission was communicated to him. Whether permission be deemed to be granted under the circumstances ? Held, "No". It is further held that One part of the Construction was raised and compounded without the approval of the building plans submitted, the question of sanctioning and according the approval of the other part of the building plan did not arise as the same was to be deemed to have lived its life with the compounding of the other part of unauthorised construction. Therefore if the appellant wanted to raise fresh or additional construction she was bound to apply afresh under section 5 of the Act for obtaining building permission which has not been done, therefore, no question of deeming the grant of building permission arises in her favour. —2003 (1) JKJ 617

6. Contents of draft scheme

- (1) Every draft scheme shall contain the following particulars:-
 - (a) a plan showing the lines of existing and proposed streets together with their existing and proposed section or profiles;
 - (b) the ownership of all lands and buildings in the area to which the scheme relates;
 - (c) a description of details of the scheme under such clauses of section 3 as may be applicable;
 - (d) an estimate of the net cost of the scheme;
 - (e) any other particulars or plans that may be prescribed or specially required by the Government.
- (2) Every draft scheme which includes a housing scheme shall also contain the following particulars-
 - (i) the approximate number and nature of the houses to be provided;
 - (ii) the approximate quantity of land to be acquired and the localities in which land is acquired;
 - (iii) the average number of houses per acre;
 - (iv) width of the proposed roads;
 - (v) area under spaces for public purposes including recreations; and
 - (vi) any other matter incidental to the housing scheme.

7. Procedure to be followed in the preparation and approval of scheme

- (1) Before preparing any scheme finally and submitting it to the Government for approval, the Board shall prepare a plan in draft and

publish it by making a copy thereof available for inspection and publishing a notice in such form and manner as may be prescribed by rules made in this behalf inviting objections and suggestions from any person with respect to the draft plan before such date as may be specified in the notice.

(2) The Board shall also give reasonable opportunity to every local authority within whose local limits any land touched by the plan is situated, to make any representation with respect to the plan.

(3) After considering all objections, suggestions and representations that may have been received by the Board, the Board shall finally prepare the scheme and submit it to the Government for its approval.

(4) Subject to the foregoing provisions of this section, the Government may direct the Board to furnish such information as the Government may require for the purpose of approving any scheme submitted to it under this section.

8. Sanctioning of scheme by Government

(1) The Government may, after considering the objections and suggestions, if any, and making such inquiry as it thinks fit, sanction the scheme with or without modifications, or may refuse to sanction the scheme or return the scheme to the Board for consideration.

(2) The sanction of the Government to a scheme under sub-section (1) shall be published by notification in Government Gazette and such notification shall state at what place and time the scheme will be open to inspection of the public.

(3) A notification under sub-section (2) shall be conclusive evidence that the scheme has been duly made and sanctioned. The scheme shall have effect from the date of publication of such notification, and the execution of the scheme shall be commenced forthwith:

Provided that, where the scheme so provides, the execution of the scheme or any part thereof may be deferred until such time as may be fixed by the Government.

9. Variations or revocation of scheme

A scheme sanctioned under section 8 may at any time be varied or revoked by the Government by a subsequent or by a supplementary scheme published and sanctioned in accordance with this Act.

10. Permission to be taken for construction, etc. after publication of ¹[notification]

After the publication of a notification under section 5, no person shall erect or proceed with any building or work on, or enter into or carry out a contract in respect of land within the area so notified or included in any scheme, unless he has applied for and obtained permission ²[from the Minister or any officer or authority empowered by the Minister in this behalf] for so doing, notwithstanding any decree, order, judgement or any other law for the time being in force or any permission given under any law for the erection of any building or any matter relating to the said land.

11. Power of entry

The Board may authorise any person to enter into or upon any land or building with or without assistants or workmen for the purpose of:-

Survey or taking levels of such land or building;

- (a) making any inquiry, inspection, measurement; or
- (b) examining works under construction and ascertaining the course of sewers and drains;
- (c) digging or boring into the sub-soil;
- (d) setting out boundaries and intended lines of work;
- (e) making such levels, boundaries and lines by placing marks and cutting trenches;
- (f) ascertaining whether any land is being or has been developed in contravention of the scheme or without the permission referred to in section 10 or in contravention of any condition subject to which such permission has been granted; or

1 Substituted by Act No. XXI of 1978, s.3.

2 Substituted by Act No. XVI of 1975, s.3.

- (g) doing any other thing necessary for the efficient administration of this Act:

Provided that—

- (i) no such entry shall be made except between the hours of sunrise and sunset and without giving reasonable notice to the occupier, or if there be no occupier, to the owner of the land or building;
- (ii) sufficient opportunity shall, in every instance, be given to enable women, if any, to withdraw from such land or building;
- (iii) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the land or building entered.

CHAPTER IV

12. Penalties

Any person who erects or proceeds with any building, structure or work in contravention of the scheme or without the permission referred to in section 10 shall be punishable with fine which may extend to one thousand rupees and in the case of continuing offence with further fine which may extend to fifty rupees for every day during which the offence continues after conviction for the first commission of the offence.

COMMENTS

Punishment under Section 12 is in addition to action to be taken under Section 13— Remedy under S. 12 not available when High Court seized of matter.—*Fayaz Ahmad Bhat v. Srinagar Municipality & Ors.* 2004 (1) JKJ HC-116

¹[13. Order of demolition of building

(1) Where the erection of any building or structure has been commenced, or is being carried on, or has been completed in contravention of the scheme or without the permission referred to in section 10 or in contravention of any condition subject to which such

¹ Substituted by Act No. XXI of 1978, s. 3.

permission has been granted, the prescribed authority shall in addition to any prosecution that may be instituted under this Act, issue a notice in writing stating the reasons, calling upon the person to show cause within a period of-

- (a) three days if the erection of any building or structure has been commenced or is being carried on, and
- (b) seven days if the erection to any building or structure has been completed;

why the building should not be altered or demolished as he may deem necessary to remove the contravention.

(2) Notwithstanding anything to the contrary contained in this Act, the prescribed authority shall cause notice to be affixed on the outer door or some conspicuous part of the building whereupon the notice shall be deemed to have been duly served upon such person.

(3) If the person to whom notice has been given refuses or fails to show cause within the period specified under sub-section (1) or if after hearing that person and considering any evidence which he may produce in support of his claim within that period, the prescribed authority is satisfied that the erection of the building is in contravention of the provisions of this Act, he shall by order direct the person to demolish, alter or pull down the building or part thereof so far as is necessary to remove the contravention within ten days and if the person fails to comply with the direction, the prescribed authority shall after the expiry of the said period of ten days cause the building or part thereof to be demolished, altered or pulled down, as the case may be, and may for that purpose use such police force as may be necessary. The expenses of such demolition or alteration shall be recoverable from the owner as arrears of land revenue.

(4) Any person aggrieved by the order of the prescribed authority directing the person to demolish, alter or pull down the building or part thereof under sub-section (3), may prefer an appeal to the Minister or the authority appointed by him in this behalf within ten days after the date of aforesaid order of the prescribed authority. The memorandum of appeal need not be accompanied by a copy of order appealed against:

Provided that the Minister or the authority appointed by him in this behalf shall decide the appeal within ten days from the date the appeal is filed, failing which, it shall be presumed that the appeal has been accepted:

Provided further that the Minister or the authority appointed by him in this behalf may, either before or after the filing of the appeal, compound the offence and accept by way of compensation such sum as he or it may deem reasonable subject to such rules, regulations and orders as may be prescribed. Where an offence has been compounded no further action shall be taken against the aggrieved person in respect of the offence so compounded. The sum so accepted shall be recoverable as arrears of land revenue.

(5) An appeal against the order of the prescribed authority shall not operate as stay of proceedings under the order appealed against:

Provided that the Minister or the authority appointed by him in this behalf may stay the enforcement of that order if he is satisfied—

- (a) that substantial loss may result to the person applying for stay or execution unless the order is made; and
- (b) that sufficient security as the Minister or the authority may determine has been given by the applicant for due performance of the order as may be ultimately binding upon him.

(6) The decision of the Minister or the authority on the appeal shall be final and shall not be questioned in any court.

(7) The appellant shall have a right to appear by a counsel and the prescribed authority may be represented by such officer or person as the Government may appoint.]

COMMENTS

Appellant applied for permission to construct a Hotel covering 3940 Sq. f.t. on 23rd June 1998. A part of the area i.e. 1700 Sq.f.t. was first constructed which was compounded. the second set of construction also pertain to same building. No refusal to grant permission was communicated to him. Whether permission be deemed to be granted under the circumstances ? Held, "No". It is further held that One part of the Construction was raised and compounded without the approval of the building plans submitted, the question of sanctioning and according the approval of the other part of the building plan did not arise as the same was to be deemed to

have lived its life with the compounding of the other part of unauthorised construction. Therefore if the appellant wanted to raise fresh or additional construction she was bound to apply afresh under section 5 of the Act for obtaining building permission which has not been done, therefore, no question of deeming the grant of building permission arises in her favour. —2003 (1) JKJ 617

Punishment under Section 12 is in addition to action to be taken under Section 13— Remedy under S. 12 not available when High Court seized of matter.—*Fayaz Ahmad Bhat v. Srinagar Municipality & Ors.* 2004 (1) JKJ HC-116

Violation of building permission — Order for demolition — Plea that it would constitute punishment on tenants without hearing them since they be rendered jobless — No person can claim any interest in an illegality committed by his principal.—*Fayaz Ahmad Bhat v. Srinagar Municipality & Ors.* 2004 (1) JKJ HC-116

14. Power to stop building operations

(1) Where the erection of any building in any area has been commenced in contravention of the scheme or without the permission, referred to in section 10, or in contravention of any condition subject to which such permission has been granted, but such erection has not been completed, the prescribed authority may, in addition to any prosecution that may be instituted under this Act, make an order requiring the building operations in relation to such erection to be discontinued on and from the date of the service of the order.

(2) Where such building operations are not discontinued in pursuance of the requisition under sub-section (1), the prescribed authority may require any police officer to remove the person by whom the erection of the building has been commenced and all his assistants and workmen from the place of the building within such time as may be specified in the requisition and such police officer shall comply with the requisition accordingly.

(3) After a requisition under sub-section (2) has been complied with, the prescribed authority may by a written order depute a police officer or any other officer to watch the place in order to ensure that the erection of the building is not continued.

¹(4) Any person failing to comply with an order under sub-section (1) shall be punishable with fine which may extend to two thousand

¹ Substituted by Act No. XXI of 1978, s.4.

rupees and when the non-compliance is a continuing one with a further fine which may extend to one hundred rupees for every day during which the non-compliance continues after the service of the order and such fine shall be recoverable as arrears of land revenue.]

(5) No compensation shall be claimable by any person for any damage which he may sustain in consequence of the discontinuance of the erection of any building.

15. Offences by companies

(1) If the person committing an offence under this Act is a company, every person, who, at the time offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any director, manager, secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation. — For the purposes of this section-

- (a) "company" means a body corporate and includes a firm or other association of individuals; and
- (b) "director" in relation to a firm means a partner in the firm.

CHAPTER V

16. Power of Government to levy betterment charge

(1) Whereas a consequence of any scheme having been executed in any area, the value of any property in that area, in the opinion of

the Government, has increased or will increase, the Government shall be entitled to levy upon the owner of the property or any person having an interest therein a betterment charge in respect of the increase in value of the property resulting from the execution of the scheme.

(2) Such betterment charge shall be an amount equal to one-third of the amount by which the value of the property on the completion of the execution of the development scheme is estimated as if the property were clear of buildings, exceeds the value of the property prior to such execution estimated in like manner.

17. Assessment of betterment charge

(1) When it appears to the Government that any particular scheme is sufficiently advanced to enable the amount of the betterment charge to be determined, the Government may, by an order made in this behalf, declare that for the purpose of determining the betterment charge the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to the owner of the property or any person having an interest therein that the Government propose to assess the amount of the betterment charge in respect of the property under section 16.

(2) The Government shall then assess the amount of the betterment charge payable by the person concerned after giving such person an opportunity to be heard and such person shall, within three months from the date of receipt of the notice in writing of such assessment, inform the Government by a declaration in writing that he accepts the assessment or dissents from it.

(3) When the assessment proposed by the Government is accepted by the person concerned within the period specified in sub-section (2), such assessment shall be final.

(4) If the person concerned dissents from the assessment or fails to give the Government the information required by sub-section (2) within the period specified therein, the matter shall be determined by the arbitrator in the manner provided in section 18.

18. Settlement of betterment charge by arbitrators

(1) For the determination of the matter referred to in sub-section (4) of section 17, the Government shall appoint an arbitrator who shall have knowledge of the valuation of land.

(2) The arbitrator shall follow such procedure as may be prescribed by rules made in this behalf.

(3) If the arbitrator dies, resigns or is removed under sub-section (4), or refuses, or neglects, in the opinion of the Government, to perform his duties or becomes incapable of performing the same, then the Government shall forthwith appoint another fit person to take the place of such arbitrator.

(4) If the Government is satisfied after such enquiry as it thinks fit—

(a) that the arbitrator has misconducted himself, the Government may remove him from his office;

(b) that the award of the arbitrator has been improperly procured or that the arbitrator has misconducted himself in connection with such award, the Government may set aside the award.

(5) An award which has not been set aside by the Government under clause (b) of sub-section (4) shall be final and shall not be questioned in any Court.

(6) The provisions of the Jammu and Kashmir Arbitration Act, Svt. 2002 shall not apply to arbitration under this section.

19. Payment of betterment charge

(1) The betterment charge levied under this Act shall be payable in such number or instalments and each instalment shall be payable at such time and in such manner as may be fixed by rules made in this behalf.

(2) Any arrear of betterment charge shall be recoverable as an arrear of land revenue.

20. Service of notices, etc

All notices, orders and other documents required by this Act or any rule made thereunder to be served upon any person shall be served in the prescribed manner.

21. Public notice how to be made known

Every public notice given under this Act shall be in writing over the signature of the prescribed officer and shall be widely made known in the locality to be affected thereby by affixing copies thereof

in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in local newspapers or by any two or more of these means, and by any other means that the prescribed officer may think fit.

22. Notices, etc. to for reasonable time

Where any notice, order or other document issued or made under this Act or any rule made thereunder requires anything to be done for the doing of which no time is fixed in this Act or the rule, the notice, order or other document shall specify a reasonable time for doing the same.

23. Sanction of prosecution

No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Government.

24. Protection of action taken in good faith

No suit, prosecution or other legal proceeding shall lie against any person for any thing which is in good faith done or intended to be done under this Act or any rule made thereunder.

25. Power to delegate

The Government may, by notification in the Government Gazette, direct that any power exercisable by it under this Act except the power to make rules may also be exercised by such officer or local authority as may be mentioned therein, in such cases and subject to such conditions, if any, as may be specified therein.

CHAPTER VI

26. Modification of Land Acquisition Act

Immovable property required for the purposes of a town-planning scheme shall be deemed to be land needed for a public purpose within the meaning of the State Land Acquisition Act, Svt. 1990, and may be acquired—

- (a) under the said Act, or
- (b) under the said Act as modified in the manner hereinafter provided in this Chapter.

27. Notification under section 5 to have effect as declaration under sections 4 and 6 of Land Acquisition Act

In cases falling under section 26 (b) a notification under section 5 shall, notwithstanding anything contained in the State Land Acquisition Act, Svt. 1990, operate in respect of any land required for the purposes of the scheme as a declaration under sections 4 and 6 of the said Act and no further declaration shall be necessary, but it shall not be incumbent on the Government or officer authorised in that behalf to take immediate steps for the acquisition of such land:

Provided that ¹[if the proceedings for acquisition of land are not commenced] within three years from the date of notification it shall cease to have effect as a declaration under sections 4 and 6 of the State Land Acquisition Act, Svt. 1990.

28. Sections 15, 23 and 24 of Land Acquisition Act superseded

(1) The provisions of sections 15, 23 and 24 of the State Land Acquisition Act, Svt. 1990 shall have no application in cases falling under clause (b) of section 26.

(2) In such cases, the Collector and the Court shall, in determining the amount of compensation to be awarded for the land acquired take into consideration-

- (a) the market value of the land on the date of the publication of a notification under section 5;
- (b) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof;
- (c) the damage, if any, sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from his other land, or by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings:

¹ Substituted by Act No. XIII of 1976, s.2.

Provided that this clause shall not apply in the case of offensive industries, which must, under the provisions of the scheme, be removed;

- (d) if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change;

Provided that this clause shall not apply in the case of the offensive industries which must, under the provisions of the scheme, be removed.

(3) But the Collector and the Court shall not, in cases falling under clause (b) of section 26 take into consideration—

- (a) the degree of urgency which has led to the acquisition or its compulsory character;
- (b) any disinclination of the person interested to part with the land acquired;
- (c) any damage sustained by him, which, if caused by a private person, would not render such person liable to a suit;
- (d) any damage which is likely to be caused to the land acquired after the date of the publication of a notification under section 5 by or in consequence of the use to which it will be put;
- (e) any increase to the value of the land acquired, commenced, made or effected after the date of the publication of the notification referred to in clause (d) unless they are covered by a permission obtained under section 10;
- (f) any outlay or improvements on, or disposal of, the land acquired which, having regard to the time at which they were made and other circumstances appear to have been commenced, made or effected with intent to obtain increased compensation;
- (g) the special suitability of adaptability, if any, of the land for any purpose, is one to which it could be applied only in pursuance of statutory powers or for which there is no market apart from the special needs of a particular

purchaser or the requirements of a Government Department or any local or public authority.

(4) In cases falling under clause (b) of section 26 if the market value of any land or building is specially high by reason of the use thereof in a manner which could be restrained by any Court, or is contrary to law or public policy, or is detrimental to the health of the inmates of the building or to the public health, the amount of the increased value due to such user shall be disregarded in determining the amount of compensation.

CHAPTER VII

29. Power of Government to make rules

(1) The Government may, subject to previous publication, make rules consistent with this Act, either generally or for any particular area, to carry out all the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, the Government shall have the power to make rules in respect of the following matter:-

- (a) the manner of publication of the notifications under section 5 and of the draft scheme under section 7;
- (b) the further particulars or plans for inclusion in schemes under section 3 and section 6;
- (c) the scale of all plans made under this Act, the particulars to be shown in them, the manner in which such particulars shall be shown, the colouring of such plans and all such matters;
- (d) what streets or roads and improvements thereto provided in a scheme shall be made or carried out ¹[x x x];
- (e) the kinds of expenditure connected with town planning which shall be met out of current revenue and those that shall be met out of loans of other capital receipts;
- (f) the manner in which all documents and plans prepared under this Act shall be made accessible to the public;

¹ Omitted by Act XXI of 1978, s.5.

- (g) the procedure to be adopted for securing co-operation on the part of the Municipal authorities with the owners or persons interested in property proposed to be covered in a scheme by such means as may be expedient, the summoning and procedure of such conferences and all such matters;
- (h) the procedure to be observed by the Board and the prescribed authority in cases where owners commit default, or delay the carrying out of works or improvements, for carrying out such works or improvements and for recovering the cost from the owners liable therefor;
- ¹[(hh) the manner in which offences of minor nature may be compounded and the assessment of compensation therefor;]
- (i) the securing of reasonable speed in the preparation or adoption of schemes by the Board and the procedure to be followed for enabling the Government to act in the case of default of dilatoriness on the part of the Board or the prescribed authority, in making, adopting or executing a scheme and to recover from such Board the expenses of such action;
- (j) the calculations, assessment and collection of the betterment contribution;
- (k) the regulation of the procedure before the arbitrator;
- (l) the powers to be exercised by the prescribed authority with respect of appointments ²[x x x];
- (m) the constitution of general town planning fund, its administration and the accounts to be kept therefor;
- (n) the extent to which the proceedings and acts of the Boards under this Act shall be regulated by the provisions of any Municipal or local laws applicable to such authorities;
- (o) inquiries and reports as to the beginning and the progress and completion of works and other action under any scheme;

1 Clause (hh) inserted by Act XXI of 1978, s.5.

2 Omitted by Act XXI of 1978, s.5.

- (p) sanitary principles and building regulations to be observed in drawing of schemes;
- (q) the funds which shall be transferred by the Board to the prescribed authority, the administration of such funds, the accounts to be kept in respect thereof and their audit;
- (r) matters other than those referred to in the foregoing clauses which are expressly required or allowed by this Act to be prescribed;
- (s) any other matter for which the Government deem fit, rules should be made.

(3) In making any rule, the Government may provide that breach thereof shall be punishable with fine which may extend to one hundred rupees.

30. Repeal and saving

(1) The Jammu and Kashmir Town Planning Act, Svt. 1997 is hereby repealed.

(2) Notwithstanding such repeal, anything done or any action taken (including any notification, order, scheme, permission or rule made, granted or issued) under the said Act shall continue in force and be deemed to have been done or taken under the provisions of this Act unless and until it is superseded by anything done or any action taken under this Act.

(3) All suits, prosecutions and other proceedings instituted under the Jammu and Kashmir Town Planning Act, Svt. 1997 shall be continued as if instituted under this Act.