

The Jammu and Kashmir Control of Building Operations Act, 1988

Act No. 15 of 1988

JK223

[Received the assent of the Governor on 31st August, 1988 and published in the Government Gazette dated 1st September, 1988].

LEGISLATIVE HISTORY 6

An Act to amend and consolidate the law relating to control of building operations in the State.

Be it enacted by the Jammu and Kashmir State Legislature in the Thirty-ninth Year of the Republic of India as follows:-

1. Short title, extent and commencement. - This Act may be called the Jammu and Kashmir Control of Building Operations Act, 1988.

(2) It extends to the whole of the State of Jammu and Kashmir.

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

2. Definitions. - In this Act, unless the context otherwise requires,-

(1) "Authority" means the Building Operations Controlling Authority constituted under section 3 of this Act:

(2) "boat" includes any vessel used or capable of being used on water as a means of conveyance or habitation or for commercial purposes and shall include also steam and motor launches:

(3) "building" means any shop, house, hut, outhouse, shed, superstructure, boat, house-boat and stable whether used for the purpose of human habitation or otherwise and whether of masonry, bricks, wood, mud, thatch, metal or any other material whatever and includes a wall and a well;

(4) "building line" means a line which is on either of the street alignment and to which the main external wall of a building abutting a street may law fully extend and beyond which no portion of the building shall extend as prescribed in the building bye-laws;

(5) "building operation" includes re-building operations, structural alterations of or additions to buildings and other operations, normally undertaken in connection with the construction of building:

(6) "Chief Executive Officer" means Chief Executive Officer appointed under the provisions of this Act and includes an officer empowered under this Act, to exercise, perform or discharge any of the powers, duties or functions of Chief Executive Officer:

(7) "development" with grammatical variations means the carrying out of building, engineering, quarrying or extraction of manufacture of building materials or other operations in, on, over or under the land, or erecting or re-erecting of any building on land or over water making any physical change in or on land and includes re-development;

(8) "engineering operations" includes the formation or laying out of means of access to a road or the laying out of main water supply or laying out of a drain or electric supply ;

(9) "erect or re-erect any building includes-

- (a) any material alteration or enlargement of any building :
- (b) mooring or installing of any boat or house-boat in the river or lake falling within the jurisdiction of any Authority :
- (c) the conversion by structural alteration into a place for human habitation of any building not originally constructed for human habitation :
- (d) the conversion into more than one place for human habitation of a building originally constructed as one such place:
- (e) the conversion of two or more places of human habitation into a greater number of such places;
- (f) such alteration of a building as affects an alteration in its drainage or sanitary arrangements or affects its stability :
- (g) the addition of any room, building, out-house or other structure to any building:
- (h) the construction of a wall adjoining any street or land not belonging to the owner of a wall, of a door opening on to such street; and
- (i) reconstruction of a building or a portion thereof, by means of props, commonly known as "PAND-PAND" in Kashmir Valley ;
- (10) "gazette" means the Government Gazette published under the authority of the Jammu and Kashmir Government;
- (11) "land" shall include land which is built upon or covered with water;
- (12) "local area" means any area declared to be a local area under sub-section (1) of section 3 of the Jammu and Kashmir Development Act, 1970, [x x x x x];
- (13) "Minister" means the Minister Incharge, Housing and Urban Development Department or any other Minister notified by the Government for purposes of this Act;
- (14) "occupier" means any person who for the time being pays or is liable to pay to the owner the rent or any portion of the rent and includes an owner living in or otherwise using his own land or building and also a rent free tenant ;
- (15) "owner" when used in reference to any land or building, includes the person for the time being receiving the rent of the land or building or of any part of the land or building whether on his own account or as agent or trustee for any person or society or/for any religious or charitable purpose, or as receiver who would so receive such rent after the land, building or part thereof, as the case may be, is let to a tenant;
- (16) "plan" means master plan and includes zonal plan prepared under the Jammu and Kashmir Development Act 1970; and
- (17) "regulations" means a regulation made under this Act, by the Authority constituted under section 3.

3. Constitution of the Authority. - (1) With the commencement of this Act, the authorities for the purpose of this Act in any Local Area, Municipal Area, Town Area, Notified Area or Area notified under the Jammu and Kashmir State Town Planning Act, 1963 shall be as under:-

(2) The Authority in respect of-

- (a) 'Municipal area' notified under the J&K Municipal Act, Samvat 2008;
- (b) 'Local area' not included in the Municipal Area;
- (c) 'Town Area' notified under the J&K Town Area Act, Samvat 2011;
- (d) 'Notified Area' specified under section 283 of the Jammu and Kashmir Municipal Act, Samvat 2008;
- (e) Area notified under the Jammu and Kashmir Town Planning Act, 1963 which is not a 'Local Area', 'Town Area' or 'Notified Area';

shall be appointed by the Government from time to time by notifying in the Government Gazette.]

4. Control of development and building operation. - No person shall undertake or carry out the development of any site in any Municipal Area, Local Area, Town Area, Notified Area or Area Notified under the Jammu and Kashmir State Town Planning Act, 1963, or erect or re-erect any building or make or extend any excavation or lay out any means of access to a road in such area except with the previous permission of the Authority concerned in writing.

5. Application for permission. - (1) Every person desiring to obtain the permission, referred to in section 4 shall make an application in writing to the Authority or through any agency authorised, in such form and containing such information as may be prescribed by regulations made under this Act.

(2) The Authority shall, within a period of 7 days of the receipt of application under sub-section (1) decline to accept a plan as sufficient for purposes of granting sanction under this Act if it does not bear the signature and seal of a Registered Architect or a Draftsman registered with the Authority.

(3) On receipt of such application the Authority, after making such enquiry as it considers necessary, keeping in view the area and the laws, rules and regulations applicable therein, shall by an order in writing, either grant the permission, subject to such conditions, if any, as may be specified in the order or refuse to grant such permission, under the State Town Planning Act, 1963 or any Master Plan.

(4) Where the permission is refused, the grounds of such refusal shall be communicated to the applicant in writing within a period of 30 days.

6. Power of entry on building or land. - The Authority may authorise any person to enter into or upon any site or building with or without assistants or workmen for the purpose of:-

(a) making any enquiry, inspection, measurement or survey or taking levels on such site or building or both;

(b) examining works under construction or ascertaining the course of sewers or drains;

(c) ascertaining whether any site is being or has been developed or any building is being or has been erected without the permission referred to in section 4 or in contravention of any condition subject to which such permission has been granted:

Provided that:-

(i) no entry shall be made except between the hours of sun-rise and sun-set and without giving not less than twenty four hours written notice to the occupier, or if there is no occupier to the owner of the building or land ;

(ii) sufficient opportunity shall in every instance be given to enable women, if any, to withdraw from such land or building.

7. Order of demolition of buildings in certain areas. - (1) Where the erection or re-erection of any building has been commenced or is being carried on or has been completed without the permission referred to in section 4 or in contravention of any condition subject to which any permission has been granted, the Authority shall issue a notice in writing calling upon the person to show cause within a period of 48 hours, why the building should not be altered or demolished as may be deemed necessary to remove the contravention.

(2) The Authority shall cause the notice to be affixed on the outer door of some conspicuous part of the building whereupon the notice shall be deemed to have been duly served upon the owner or the occupier of the building.

(3) If the person to whom the notice has been given refuses or fails to show cause within a period specified under sub-section (1) or if after hearing that person, the Authority is satisfied that the erection or re-erection of the building is in contravention of the provisions of this section, the Authority 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 a period not exceeding five days as may be specified in the order and if the person fails to comply with the direction, the Authority may itself cause the erection or re-erection to be demolished after the expiry of the said period and may for that purpose use such Police Force as may be necessary which shall be made available to him by the Police Department on requisition.

(4) All expenses incurred for such demolition shall be recoverable from the owner and/or the occupier in the same manner as arrears of land revenue.

8. Power to seal unauthorised construction. - (1) It shall be lawful for the Authority concerned, at any time, before or after making an order of demolition under section 7 to make an order directing the sealing of such erection, re-erection or work or of premises in which such erection, re-erection or work is being carried on or has been completed for the purpose of carrying out the provisions of this Act, or for preventing any dispute as to the nature and extent of such erection or work.

(2) Where any erection, re-erection or work or any premises in which any erection, re-erection or work is being carried out, has or, have been sealed, the authority concerned may for the purpose of demolishing such erection or work in accordance with the provisions of this Act, order such seal to be removed.

(3) No person shall remove such seal except,-

(a) under an order made by the Authority concerned under sub-section (2); or

(b) under an order made in an appeal under this Act.

9. Penalties. - (1) Any person who undertakes or carries out the development of any site or erect or re-erects any building or makes or extends any excavation or lays out any means of access to a road without the permission referred to in section 4 or in contravention of any condition subject to which such permission has been granted [or obstructs the authority under section 8] shall be punishable with fine which may extend to ten thousand rupees and in the case of continuing offence, with a further fine which may extend to five hundred rupees for every day during which such offence continues after conviction for the first commission of the offence.

(2) Any person who obstructs the entry of a person authorised under section 6 to enter into or upon any building or land or molests such person alter such entry shall be punishable with fine which may extend to one thousand rupees.

(3) If the person committing an offence under this Act, is a company, every person who at the time the 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.

(4) Notwithstanding anything contained in sub-section (3) 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, or 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 purpose of this section-

(a) "company" means a body corporate and includes a firm or other association of individuals ;

(b) "director" in relation to a firm means a partner in the firm.

10. Offence to be cognizable. - The Code of Criminal Procedure, Samvat 1989 shall apply to an offence punishable under section 9 as if it were a cognizable offence-

(i) for the purpose of investigation of such offences; and

(ii) for the purpose of all matters other than-

(a) matters referred to in section 57 of the Code; and

(b) arrest of a person except on the complaint of, or upon information received from the Authority concerned :

Provided that no offence of the contravention of any condition subject to which sanction was accorded for the erection or re-erection of any building shall be cognizable, if such contravention relates any deviation from any plan of such erection or re-erection sanctioned by the Authority concerned.

11. Lapse of sanction after three years. - (1) Every sanction for the erection or re-erection of any building issued by the Authority shall remain in force for three years from the date of such sanction, but such lapse shall not bar for any subsequent application for fresh sanction under the foregoing provisions of this Act:

Provided the Minister shall always have power to revoke any sanction for erection or re-erection of any building at any time before the commencement of erection or re-erection of any building.

(2) Every order made by the Minister concerned under this section shall be final and shall not be called in question in any original suit, application or proceeding and no injunction shall be granted by any court in respect of any action under this Act.

(3) The provisions of this section shall have effect notwithstanding anything to the contrary contained in this Act or in any other law for the time being in force.

12. Powers to stop building operations and removal of persons thereof. - (1) Where any building operation has been commenced or is being carried on in contravention of the provisions of this Act or any rule, or regulation laws made thereunder, or without the permission referred to in section 4 but such erection has not been completed, the Authority may by a written notice require that such building operations be discontinued on and from the date of the service of the notice.

(2) Where such building operations are not discontinued the Authority may direct all persons engaged in any capacity in the work of erecting or re-erecting building in question or part thereof to remove themselves and shall take such measures as will prevent such persons from again entering into or remaining upon such building or part thereof except with a proper permission which may be issued by the Authority.

(3) Where such building operations are not discontinued even after issuance of directions under sub-section (2) the Authority may require any Police Officer to remove the persons 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.

(4) No person shall be entitled to any compensation for any damage, which he may sustain in consequence of the discontinuance of the erection or re-erection of any building.

(5) All expenditure incurred in the enforcement of the provisions of this section shall be recoverable from the person concerned.

Explanation. - For the purpose of this section, the building operation shall include erection or re-erection of any building or any development or the engineering operation in any area.

13. Appeals. - (1) An appeal against the order of an Authority made under [section 5 or] section 7 shall lie to such person as the Government may, by notification in the Government Gazette, appoint in this behalf (hereinafter called 'the Appellate Officer') within seven days after the date of the aforesaid order of the Authority. The memorandum of appeal need not be accompanied by copy of order appealed from.

(2) Where any appeal is preferred from an order of an Authority, the appellate officer shall not stay the enforcement of that order unless the Authority concerned is given an opportunity of being heard :

Provided that where the erection or re-erection of any building was not completed on the day on which an order was made under section 7 for the demolition of such building the appellate officer shall not make any order for the stay of enforcement of such order unless such security, as may be sufficient in the opinion of the appellate officer, has been given by the appellant for not proceeding with such construction, erection or work pending the disposal of appeal.

(3) Every appeal under this section shall be disposed of by the appellate officer as expeditiously as possible.

(4) The costs of any appeal under this section shall be in the discretion of the appellate officer.

14. Bar of Jurisdiction. - No court shall have jurisdiction to -

(a) make any interim order whether by way of injunction or stay or in any other manner against the order of the Authority concerned or the appellate officer.

(b) entertain any suit or proceeding in respect of demolition of any building.

15. Finality of orders. - Save as otherwise provided in this Act every order made by an Authority or the appellate officer shall be final and shall not be called in question in any suit, application or execution proceeding.

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

17. Protection of action taken in good faith. - No suit, prosecution or other legal proceeding shall lie against any person for anything which is in good faith done or intended to be done under this Act or the regulations made thereunder.

18. Effect of provisions of the Act inconsistent with other laws. - The provisions of this Act shall apply to the erection or re-erection of buildings alongside public roads regulated under the prevention of Ribbon Development Act, Samvat 2007.

19. Power to make regulation. - (1) The Authority, with the previous approval of the Government, may, by notification in the Government Gazette, make regulations to carry out the purposes of this Act:

Provided that the Government may make the first regulations under this section and any regulation so made may be altered or rescinded by the Authority concerned in exercise of the powers conferred by this section.

(2) In particular and without prejudice to the generality of the foregoing power, such regulations may provide for all or any of the following matters, namely:-

(a) the summoning and holding of meeting of the Authority, the time and place where such meetings are to be held, the procedure to be followed by the Authority and the number of members necessary to form a quorum;

(b) the manner of authentication of orders and other instruments the of Authority ;

(c) the from in which an application under sub-section (1) of section 5 shall be made and the information to be furnished in such application ;

(d) the regulation of the laying out of means of access to road;

(e) the principles under which applications for permission under this Act may be granted;

(f) the officers or local authorities to whom powers may be delegated under section 16;

(g) any other matter which has to be, or may be, prescribed.

20. Repeal and saving. - Save as otherwise provided in section 18, if, immediately before the commencement of this Act there is in force any provision of law corresponding to the provisions of the Act that provision of law shall stand repealed on the said date:

Provided that the repeal shall not affect-

(a) the previous operation of any provision of law so repealed or anything duly done or suffered thereunder; or

(b) any right, privilege, obligation or liability acquired, accrued or incurred under any provision of law so repealed; or

(c) any penalty, forfeiture or punishment incurred in respect of any offence committed against any provision of law so repealed ; or

(d) any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, penalty, forfeiture or punishment as aforesaid ;

and any such investigation, legal preceding or remedy may be instituted, continued, or enforced and any such penalty, forfeiture or punishment may be imposed, as if this Act had not been passed:

Provided further that, subject to the preceding proviso, anything done or any action taken (including any order made, notice issued or permission granted) under any provision of the aforesaid laws shall be deemed to have been done or taken under the corresponding provisions of this Act and shall continue to be in force accordingly unless and until superseded by anything done or any action taken under this Act.