

The West Bengal Town and Country (Planning and Development) Act, 1979¹

[West Bengal Act XIII of 1979]

[11th June, 1979]

An act to provide for the planned development of rural and urban areas in West Bengal and for matters connected therewith or incidental thereto.

WHEREAS it is expedient in the public interest to provide for the planned development of rural and urban areas in West Bengal and for matters connected therewith or incidental thereto;

It is hereby enacted in the Thirtieth Year of the Republic of India, by the Legislature of West Bengal, as follows —

CHAPTER I Preliminary

1. Short title, extent and commencement.—

- (1) This Act may be called the West Bengal Town and Country (Planning and Development) Act, 1979.
- (2) It extends to the whole of West Bengal, excluding any area to which the provisions of the Cantonments Act, 1924 (2 of 1924), apply.
- (3) It shall come into ²force on such date as the State Government may, by notification in the *Official Gazette*, appoint and different dates may be appointed for different areas.

1 As Published in the *Calcutta Gazette, Extraordinary*, dated 11.6.1979.

2 This Act came into force on 1st April, 1980 *vide* Notification No. 1873-T & CP/1R-6/80, dated 17.3.1980.

2. Definitions.—

In this Act, unless there is anything repugnant in the subject or context,—

- (1) "agriculture" includes horticulture, farming, growing of crops, fruits, vegetables, flowers grass, fodder and trees, or any kind of cultivation of soil, breeding and keeping of live-stock including cattle, horses, donkeys mules, pigs and poultry, and the use of land which is ancillary to the farming of land or any other agricultural purposes, but shall not include the use of any land attached to a building for the purpose of a garden to be used along with such building; and the expression "agricultural" shall be construed accordingly;
- (2) "amenities" includes roads and streets, open spaces, parks, recreational grounds, playgrounds, water and electric supply, street lighting, sewerage, drainage, public works and other utilities, services and conveniences;
- (3) "building operations" includes—
 - (a) erection or re-erection of a building or any part of it,
 - (b) roofing or re-roofing of a building or any part of a building or an open space,
 - (c) any material alteration or enlargement of any building,
 - (d) any alteration of a building as is likely to affect an alteration of its drainage or sanitary arrangements or materially affect its structural stability, and
 - (e) the construction of a door opening on any street or land not belonging to the owner of a building;
- (4) "¹[Kolkata] Metropolitan Area" means the ¹[Kolkata] Metropolitan Planning area as referred to in section 16 of this Act;
- (5) "commerce" means the carrying on of any trade, business or profession, sale or exchange of goods of any type whatsoever, and includes the running of, with a view to making profit, hospitals, nursing homes, infirmaries, educational institutions as also hotels, restaurants, boarding houses not attached to any educational institution and *sarais*; and the expression "commercial" shall be construed accordingly;
- (6) "commercial use" means the use of any land or building or part thereof for purposes of commerce or for storage of goods or as an office, whether attached to any industry or otherwise;
- (7) "development" with its grammatical variations means the carrying out of building, engineering, mining or other operations, in, on, over, or under land or the making of any material change in any building or land or in the use of any building or land and includes division of any land;
- (8) "Development Authority" means a Development Authority constituted under this Act and includes the ¹[Kolkata] Metropolitan Development Authority as referred to in section 17 of this Act;

²[(9) ***]

- (10) "industry" includes the carrying on of any manufacturing process as defined in the Factories Act, 1948 (69 of 1948), and the expression "industrial" shall be construed accordingly;
- (11) "industrial use" includes the use of any land or building or part thereof for purposes of industry;
- (12) "land" shall have the same meaning as in the Land Acquisition Act, 1894 (1 of 1894) and shall include land covered by water;

³[(12A) "Land" Use and Development Control Plan" means any Land Use and Development Control Plan prepared under this Act;]

- (13) "local authority" means a municipal corporation or committee or a board or any other authority legally entitled to, or entrusted by the State Government with, the control or management of a municipal or local fund or which is permitted by the State Government to exercise the powers of a local authority and includes a *Zilla Parishad*, a *Panchayat Samity* and a *Gram Panchayat* constituted under the West Bengal *Panchayat Act*, 1973 (West Ben. Act XLI of 1973).

Explanation.—The expression "local authority concerned" shall mean that authority if any land within its local limits falls in the area of a plan prepared or to be prepared under this Act;

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- 1. Substituted by s. 5 of the West Bengal Capital City (Change of Name) Act, 2001 (West Ben. Act XVIII of 2001) w.r.e.f. 1.1.2001 for "Calcutta".
 - 2. Omitted by s. 2(a) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994), which was earlier as follows: '(9) "Development Plan" means any Outline Development Plan or Detailed Development Plan prepared under this Act'.
 - 3. Inserted by s. 2(b) *ibid*.
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- (14) "local newspaper" in relation to a Planning Area means any newspaper published or circulated within the Planning Area;
- (15) "notification" means a notification published in the Official Gazette;
- (16) "occupier" includes—
 - (a) a tenant,
 - (b) an owner in occupation of or otherwise using his land.
 - (c) a licensee in occupation of any land, and
 - (d) any person who is liable to pay to the owner damages for the use and occupation of any land;
- (17) "operational construction" means any construction, whether temporary or permanent, which is necessary for the operation, maintenance, development or execution of any of the following services:
 - (i) railways
 - (ii) national highways,
 - (iii) national waterways,
 - (iv) major ports,
 - (v) airways and aerodromes,
 - (vi) posts and telegraphs, telephones, wireless, broadcasting and other like forms of communication
 - (vii) regional grid for electricity.
 - (viii) any other service which the State Government may, if it is of opinion that the operation, maintenance, development or execution of such other service is essential to the life of the community, by notification, declare to be a service for the purposes of this clause. *Explanation.*—For the removal of doubts, it is hereby declared that the construction of—
 - (i) new residential buildings not connected with operations like gate lodges, hospitals, clubs, institutions, schools, railway colony roads, drains, etc., in the case of railways, and
 - (ii) a new building, new structure or new installation or any extension thereof, in the case of any other service, shall not be deemed to be construction within the meaning of this clause;
- (18) "owner" includes a mortgagee in possession, a person who for the time being is receiving, or is entitled to receive, or has received, the rent or premium for any land whether on his own account or on account of, or on behalf of, or for the benefit of, any other person or as an agent, trustee, guardian or receiver for any other person or for any religious or charitable institution or who would so receive the rent or premium or be entitled to receive the rent or premium if the land were let to a tenant; and also includes the Head of a Department or an Undertaking of the Central or a State Government, the General Manager of a Railway, the Secretary or other principal officer of a local authority, statutory authority or company in respect of properties under their respective control;
- (19) "Planning Area" means any area declared to be a Planning Area under this Act and includes *[Kolkata]

Metropolitan Area;

- (20) "Planning Authority" means any Planning Authority constituted under this Act;
- (21) "prescribed" means prescribed by rules made under this Act;
- (22) "public place" means any place or building which is open to the use or enjoyment of the public whether it is actually used or enjoyed by the public or not land whether the entry is regulated by any charge or not;
- (23) "regulation" means a regulation made under this Act;
- (24) "residence" means the use for human habitation of any land or building or part thereof including gardens, grounds, garages, stables and out houses, if any, appertaining to such building; and the expression "residential" shall be construed accordingly.

¹[(25) "township" means a clearly delineated planned development project within a planning area having requisite basic urban-infrastructure facilities and amenities and conforming to development parameters as may be prescribed:

Provided that such township may be,—

- (i) residential township for predominantly residential purpose;
- (ii) special category of township like Institutional, Industrial or such others township as the State Government may notify;
- (iii) integrated township.]

CHAPTER II

State Town and Country Planning Advisory Board

3. State Town and Country Planning Advisory Board.—

- (1) The State Government, after the commencement of this Act, shall for the purpose of carrying out the functions assigned to it under this Act constitute by notification an Advisory Board to be called the West Bengal Town and Country Planning Advisory Board (hereinafter referred to as the Board).
- (2) The Board shall consist of a Chairman, two Vice-Chairmen and not more than 45 other members.

4. Composition of the Board.—

- (1) The Chief Minister of the State of West Bengal shall be the Chairman of the Board and he shall nominate two persons to be the Vice Chairmen.

* See foot note no. 1 on page no. 2.

1. Inserted by s. 2 of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 2008 (West Ben. Act X of 2008).

- (2) The other members shall be—
 - (i) the Mayor of the ¹[*[Kolkata] Municipal Corporation;]
 - (ii) one Member of Parliament to be nominated by the Chairman of the Board from amongst those elected from the State of West Bengal;
 - (iii) three Members of the West Bengal Legislative Assembly to be nominated by the Speaker of that Assembly;
 - (iv) the Chairman of three municipalities to be nominated by the State Government;
 - (v) the *Sabhadhipatis* of three *Zilla Parishads* to be nominated by the State Government;
 - (vi) the Chief Secretary to the Government of West Bengal;
 - (vii) not more than seven officers of the rank of Secretary to the State Government Departments dealing with metropolitan development, local Government, planning, health, industry, housing, finance, agriculture, community development, transport, education, power, public works, irrigation, panchayat and land and land reforms;
 - (viii) the Chairman of the West Bengal Housing Board;
 - (ix) the Engineer-in-Chief, Public Works Department, Government of West Bengal;
 - (x) the Chief Conservator of Forests and Wild Life, Government of West Bengal;
 - (xi) the Chief Executive Officer, [*[Kolkata] Metropolitan Development Authority;

- (xii) the Chairman of the West Bengal State Electricity Board;
- (xiii) the Chairman of the West Bengal Industrial Development Corporation;
- (xiv) representatives of the Central Government dealing with railways, steel and mines, civil aviation and transport and communications;
- (xv) non-officials to be nominated by the State Government who, in its opinion, have special knowledge or practical experience in matters relating to town and country planning, engineering, transport, industry, environmental engineering, geography, geology, sociology, municipal engineering, agriculture and economics;
- (xvi) the Secretary, Town and Country Planning Department, Government of West Bengal who shall be designated as the Member-Secretary of the Board.

5. Functions of the Board —

The Board shall, in accordance with the provisions of this Act and the rules made thereunder, advise the State Government in matters relating to planning, development, co-ordination and use of rural and urban land and such other connected functions as the State Government may, from time to time, assign to it.

* See foot note no. 1 on page no. 2.

1. Substituted by s. 2 of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1986 (West Ben. Act XXIH of 1986) for the words "Corporation of Calcutta".
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6. Term of office and conditions of service of the members of the Board—

- (1) The term of office and allowances of the nominated members of the Board shall be such as may be prescribed:
Provided that the State Government may, if it thinks fit, terminate the appointment of any nominated member before the expiry of his term of office.
- (2) A nominated member of the Board may resign his membership by giving notice in writing to the State Government. He shall cease to be a member on acceptance of such resignation.
- (3) Any vacancy by resignation, death or otherwise of a nominated member shall be filled by fresh nomination by the State Government.

7. Meeting of the Board—

- (1) The Board shall meet at least four times in a year at such time and place as it thinks fit and the meetings shall be held according to such procedure as may be prescribed.
- (2) The Chairman or in his absence a Vice-Chairman shall preside at a meeting of the Board. In case both the Vice-Chairmen are present the members present shall elect one of the Vice-Chairmen to preside at the meeting. In the absence of Chairman and both the Vice-Chairmen the members present shall elect any member present for presiding at the meeting.

8. Quorum.—

Thirty per cent of the members of the Board shall form a quorum for a meeting: Provided that no quorum shall be necessary for any adjourned meeting.

CHAPTER III

Declaration of Planning Areas and Constitution of Planning Authorities and Development Authorities

9. Declaration of Planning Areas, their amalgamation, sub-division and inclusion of any area in Planning Area.—

- (1) The State Government may, by notification, declare any area in West Bengal to which the provisions of this Act have come into force under sub-section (3) of section 1 to be a Planning Area for the purposes of this Act.
- (2) Every such notification shall define the limits of the area to which it relates.

- (3) The State Government may amalgamate two or more Planning Areas into one Planning Area, sub-divide a Planning Area into different Planning Areas and include such sub-divided areas in any other Planning Area.
- (4) The State Government may, by notification, direct that all or any of the rules, regulations orders, directions and powers made, issued, or conferred under this Act or deemed to have been made, issued or conferred under this Act and in force in any Planning Area at the time, with such exceptions, adaptations and modifications as may be considered necessary by the State Government, shall apply to the area amalgamated with, or included in, the other Planning Area under this section and such rules, regulations, orders, directions and powers with such exceptions, adaptations and modifications, if any, shall forthwith apply to the said area without further publication in the Official Gazette.
- (5) When Planning Areas are amalgamated or sub-divided, or such subdivided areas as included in other Planning Areas, the State Government shall, after consulting the Planning Authority or the Development Authority concerned, frame a scheme determining what portion of the assets of the Planning Authority or the Development Authority shall vest in the Planning Authority or the Development Authority concerned, and in what manner the properties and liabilities of the Planning Authority or the Development Authority shall be apportioned amongst them and on the scheme being published by notification, such fund, property and liabilities shall vest and be apportioned accordingly.

10. Power to withdraw Planning Area from the operations of this Act.—

- (1) The State Government may, by notification, withdraw from the application of this Act any Planning Area or part thereof.
- (2) When a notification is issued under sub-section (1) in respect of any Planning Area or part thereof—
 - (i) this Act and all notifications rules, regulations, orders, directions and powers issued, made or conferred under this Act shall cease to apply to the said area or part thereof;
 - (ii) the State Government shall, after consulting the local authority or authorities concerned, frame a scheme determining what portion of the fund of the Planning Authority or the Development Authority concerned shall vest in the State Government, and the local authority or authorities concerned and in what manner the properties and liabilities of the Planning Authority or the Development Authority concerned shall be apportioned between the State Government and the local authorities and on the scheme being published by notification, the fund, property and liabilities of the Authority concerned shall vest and be apportioned accordingly.

11. Constitution of Planning Authority and Development Authority.—

- (1) As soon as may be, after declaration of an area as a Planning Area, the State Government may, by notification, constitute for the purposes of this Act a Planning Authority for that area or a Development Authority in respect of the Planning Area or a part of it.
- (2) A Planning Authority or a Development Authority, if it is not a local authority or a Government department or agency, shall be body corporate having perpetual succession and a common seal with power to acquire, hold and dispose of property, both movable and immovable, and to enter into contracts and shall by its corporate name sue and be sued.
- (3) Every Planning Authority or Development Authority constituted under sub-section (1) shall consist of a Chairman and not more than thirteen but not less than seven other members to be appointed by the State Government.
- (4) The State Government may appoint a local authority or any other authority or Corporation (statutory or otherwise), or any officer of the State Government, as the Planning Authority or the Development Authority for the area within the jurisdiction of that authority.
- (5) The provisions of sub-section (3) of this section and section 12, 14 and 15 shall not apply to a Planning Authority or a Development Authority appointed under sub-section (4) and the provisions of the Act by which such authority is constituted shall continue to apply in respect of the area within the jurisdiction of that authority.

12. Term of office and terms and conditions of service of the Chairman and members of Planning Authority and Development Authority.—

- (1) The term of office and terms and conditions of service of the Chairman and other members of a Planning Authority or a Development Authority not being a local or statutory authority, shall be such as may be prescribed.

- (2) Any vacancy occurring in the office of the Chairman or any other member of an Authority referred to in sub-section (3) of section 11 shall be filled by fresh appointment by the State Government.

13. Powers and functions of Planning Authority and Development Authority.—

- (1) Subject to the provisions of this Act, and the rules made thereunder and any direction which the State Government may give from time to time—
- (i) a Planning Authority shall have the following powers and functions:
 - (a) to prepare a present Land Use Map;
 - (b) to prepare and enforce ¹[a Land Use and Development Control Plan;]
 - (c) ²[***]
 - (d) to prescribe use of land within its area;
 - (e) to perform any other function which is supplemental, incidental or consequential to any of the functions aforesaid or which may be prescribed;
 - (ii) a Development Authority shall have the following powers and functions:
 - (a) to prepare a present Land Use Map;
 - (b) to prepare and enforce ³[a Land Use and Development Control Plan;]
 - (c) ⁴[***]
 - (d) to prescribe use of land within its area;
 - (e) to prepare and execute development schemes;
 - (f) to co-ordinate development activities of all departments and agencies of the State Government or local authorities operating within the Planning Area;
 - (g) to carry out or cause to be carried out such works as are contemplated in the ⁵[Land Use and Development Control Plans;]
 - (h) to acquire, hold and manage such property, both movable and immovable, as the Development Authority may deem necessary for the purposes of any of its activities and to lease, sell or otherwise transfer any property held by it;
 - (i) to purchase by agreement or to take on lease or under any form of tenancy, any land and to erect thereon such buildings and to carry out such operations as may be necessary for the purpose of carrying on its undertakings;
 - (j) to enter into or perform such contracts as may be necessary for the performance of its duties and for exercise of its powers under this Act;
 - (k) to provide facilities for the consignment, storage and delivery of goods;
 - (l) to perform any other function which is supplemental, incidental or consequential to any of the functions aforesaid or which may be prescribed.
- (2) A Planning Authority or a Development Authority for performance of its functions, may appoint such number of officers and other employees on such terms and conditions as may be approved by the State Government.

1. Substituted by s. 3(a)(i) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "an Outline Development Plan;".

2. Omitted by s. 3(a)(ii) *ibid*, which was earlier as follows:
"(c) to prepare and enforce a Detailed Development Plan;".

3. Substituted by s. 3(b)(i) *ibid*, for the words "an Outline Development Plan;".

4. Omitted by s. 3(b)(ii) *ibid*, which was earlier as follows:
"(c) to prepare and enforce a Detailed Development Plan;".

5. Substituted by s. 3(b)(iii) *ibid*, for the words "development plans;".

¹[13A. Regulation of building operation with Planning Area.—

The State Government may, by notification, for such period and on such terms and conditions as may be specified, empower a Planning Authority or a Development Authority or any other authority to regulate building operation within the Planning Area, and to impose fees for such purposes, and in such manner, as may be prescribed.]

14. Meeting of Planning Authorities and Development Authorities.—

A Planning Authority or a Development Authority shall meet at such times and places and observe such rules of procedure in regard to the transaction of its business at its Meetings as may be determined by regulations.

15. Constitution of Advisory Council.—

- (1) Every Development Authority shall, subject to the provisions of section 22 of this Act, as soon as may be, constitute an Advisory Council, for the purpose of advising it on the formulation and co-ordination of plans for the development of the area within its jurisdiction.
- (2) The Advisory Council shall consist of not more than fifteen but not less than eight members as may be appointed by the State Government in this behalf.

CHAPTER IV

***[Kolkata] Metropolitan Development Authority**

16. *[Kolkata] Metropolitan Area.—

- (1) Notwithstanding the repeal of the '[Kolkata] Metropolitan Planning Area (Use and Development of Land) Control Act, 1965 (West Ben. Act XIV of 1965), by section 142 of this Act, the controlled area declared under that Act with such modifications as mentioned in the First Schedule to this Act shall be known as the *[Kolkata] Metropolitan Planning Area for the purposes of this Act.
- (2) The State Government may, if it thinks fit, by notification, enlarge, curtail or modify the *[Kolkata] Metropolitan Planning Area of any part thereof.

* See foot note no. 1 on page no. 2.

1. Inserted by s. 2 of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 2006 (West Ben. Act III of 2006) (w.r.e.f. 14.12.2005).

17. *[Kolkata] Metropolitan Development Authority.—

- (1) Notwithstanding the repeal of the *[Kolkata] Metropolitan Development Authority Act, 1972 (West Ben. Act XI of 1972), by section 142 of this Act, the '[Kolkata] Metropolitan Development Authority constituted under that act shall be known as the *[Kolkata] Metropolitan Development Authority under this Act and it shall be deemed to be a Development Authority for the purposes of this Act.
- (2) All the provisions of this Act relating to a Development Authority shall, if not inconsistent with the provisions in this Chapter, apply to the *[Kolkata] Metropolitan Development Authority.

18. Powers and functions of the *[Kolkata] Metropolitan Development Authority.—

Subject to the provisions of this Act and the rules made thereunder and any direction which the State Government may give, from time to time, the powers and functions of the '[Kolkata] Metropolitan Development Authority shall be as provided in section 13 of this Act.

19. Composition of the *[Kolkata] Metropolitan Development Authority.—

- (1) The *[Kolkata] Metropolitan Development Authority shall consist of the following members :—
 - ¹[(a) the Chief Minister of the State of West Bengal or any person nominated by him shall be the Chairman:
Provided that when there is no Council of Minister functioning in the State of West Bengal, the State Government shall nominate such person, as it may think fit, to be the Chairman of the Kolkata Metropolitan Development Authority;
 - (aa) one of the members of the Kolkata Metropolitan Development Authority, nominated by the Chief Minister of the State of West Bengal, shall be the Vice-Chairman;]
 - (b) the Chief Executive Officer of the *[Kolkata] Metropolitan Development Authority, *ex officio*;
 - (c) not more than three officers of the rank of Secretary to the State Government to be nominated by the State Government; and

* See foot note no. 1 on page no. 2.

1. Substituted by s. 3(1) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 2008 (West Ben. Act X of 2008) which was earlier as follows:

"(a) the Chief Minister of the State of West Bengal or any person nominated by him shall be the Chairman, and a Minister of the State of West Bengal to be nominated by the Chief Minister shall be the Vice-Chairman :

Provided that when there is no Council of Ministers functioning in the State of West Bengal, the State Government shall nominate such persons, as it may think

fit, to be the two members and the Chairman and Vice-Chairman respectively of the *[Kolkata] Metropolitan Development Authority;"

- ¹[(d) ²[not more than eight persons] to be nominated by the State Government of whom—
- (i) two shall be Councillors or Aldermen of the *[Kolkata] Municipal Corporation;
 - (ii) one shall be a Councillor or Alderman of the ³[Howrah Municipal Corporation; and]
 - ⁴[(iii) three shall be Councillors of any Municipality within the Kolkata Metropolitan Area,
 - (iv) two shall be the members of any *Panchayat Samiti* or *Zilla Parishad* within the Kolkata Metropolitan Area :]

Provided that when an order of supersession of the *[Kolkata] Municipal Corporation or the Howrah Municipal Corporation or the municipality, as the case may be, has been made and is in force, it shall be competent for the State Government to nominate, in place of the Councillors or Aldermen or Commissioners, as the case may be, such persons as have experience in or knowledge of administration of local self-government to be members of the *[Kolkata] Metropolitan Development Authority:

Provided further that on the revocation of the order of supersession as aforesaid, the members nominated under the first proviso shall, notwithstanding that the term of office of such members has not expired, cease to hold office and the vacancies shall be filled up in accordance with the provisions of clause (d).

- (2) The Vice-Chairman shall discharge such functions and exercise such powers as may be delegated to him by the Chairman and shall, during the absence of the Chairman, perform the functions and exercise the powers of the Chairman.
- (3) The members referred to in clause (d) of sub-section (1) shall hold office for a term of three years from the date of their nomination by the State Government and shall receive such allowances for attending the meetings of the *[Kolkata] Metropolitan Development Authority or any committee thereof, as may be prescribed:

⁵[Provided that every such member, on ceasing to be a Councillor or Alderman of the *[Kolkata] Municipal Corporation or the Howrah Municipal Corporation or Commissioner of a municipality within the *[Kolkata] Metropolitan Area, as the case may be, shall, notwithstanding that the term of office of such member has not expired, cease to hold office and the vacancy shall be filled up in accordance with the provisions of clause (d) of sub-section (1).]

*See foot note no. 1 on page no. 2.

- 1. Substituted by s. 3(a) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1986 (West Ben. Act XXIII of 1986).
 - 2. Substituted by s. 3(2)(a) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 2008 (West Ben. Act X of 2008) for the words "not more than five persons".
 - 3. Substituted by s. 3(2)(b) *ibid*, for the words "Howrah Municipal Corporation, and".
 - 4. Substituted by s. 3(2)(c) *ibid*, which was earlier as follows:
"(iii) two shall be Commissioners of any municipality within the Kolkata Metropolitan Area:"
 - 5. Proviso substituted by s. 3(6) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1986 (West Ben. Act XXIII of 1986).
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- (4) No act or proceeding of the *[Kolkata] Metropolitan Development Authority shall be deemed to be invalid merely by reason of any vacancy in, or defect initial or subsequent, in the constitution of that Authority.

20. Meeting of the *[Kolkata] Metropolitan Development Authority.—

- (1) The *[Kolkata] Metropolitan Development Authority shall meet at such places and at such times, and shall observe such rules of procedure in regard to the transaction of business at its meeting (including the quorum at its meetings) as may be prescribed.
- (2) The Chairman of the *[Kolkata] Metropolitan Development Authority or if for any reason he is unable to attend any meeting, the Vice-Chairman or, if for any reason both the Chairman and the Vice-Chairman are unable to attend any meeting, any other member elected by the members present shall preside at the

meeting.

21. Power to appoint Officers and Secretary and other staff.—

- (1) The State Government shall appoint a Chief Executive Officer who shall be a whole-time officer of the *[Kolkata] Metropolitan Development Authority.
- (2) The Chief Executive Officer shall discharge such functions and exercise such powers as may be assigned to him by the *[Kolkata] Metropolitan Development Authority.
- (3) The *[Kolkata] Metropolitan Development Authority may appoint a wholetime Secretary and such other staff as it may think fit for the exercise of its powers and discharge of its functions under this Act.
- (4) The expenditure on account of the salary and allowance of the Chief Executive Officer, Secretary and the other staff shall be defrayed out of the fund of the *[Kolkata] Metropolitan Development Authority.

22. Advisory Council—

- (1) The *[Kolkata] Metropolitan Development Authority shall, as soon as may be, after the commencement of the Act, constitute an Advisory Council, for the purpose of advising it on the formulation and co-ordination of plans for the development of the *[Kolkata] Metropolitan Area.
- (2) The Advisory Council shall consist of the following members :
 - (a) the Chairman of the *[Kolkata] Metropolitan Development Authority, *ex officio*, who shall be the President thereof;
 - (b) the Vice-Chairman of the *[Kolkata] Metropolitan Development Authority, *ex officio*;
 - (c) a representative of the *[Kolkata] Improvement Trust;
 - (d) a representative of the Howrah Improvement Trust;
 - (e) one person holding office, for the time being, as the ¹[Municipal Commissioner of the *[Kolkata] Municipal Corporation;]

* See foot note no. 1 on page no. 2.

1. Substituted by s. 4(a) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1986 (West Ben. Act XXIII of 1986) for the words "Commissioner of the Coporation of Calcutta;".

- (f) two persons with knowledge of town planning and architecture, to be nominated by the State Government;
 - (g) one representative of the Development of Health of the State Government;
 - (h) three representatives of the municipal corporations and other municipal authorities, other than the ¹*[Kolkata] Municipal Corporation] within the *[Kolkata] Metropolitan Area, to be nominated by the State Government;
 - (i) a representative of the *[Kolkata] State Transport Corporation, to be nominated by the State Government;
 - (j) a representative of the *[Kolkata] Tramways Company Limited, to be nominated by the State Government;
 - (k) one representative of the *[Kolkata] Electricity Supply Corporation Limited, to be nominated by the State Government;
 - (l) four Members of the West Bengal Legislative Assembly, to be nominated by the Speaker of that Assembly;
 - (m) two representatives of the Indian Railways of whom one shall be from the Metropolitan Transport Project (Railways). *[Kolkata]; and
 - (n) six other persons to be nominated by the State Government.
- (3) If for any reason the Chairman of the *[Kolkata] Metropolitan Development Authority is unable to attend any meeting of the Advisory Council, such meeting shall be presided over the Vice-Chairman. If both the Chairman and the Vice-Chairman are absent, the members present shall elect one amongst themselves to preside over the meeting.
 - (4) The Advisory Council shall meet as and when necessary and shail regulate its own procedure.
 - (5) The members of the Advisory Council shall hold office for such term, and shall receive such allowances for attending the meetings of the Advisory Council, as may be prescribed.

23. Constitution of committees.—

- (1) The *[Kolkata] Metropolitan Development Authority may constitute as many committees, consisting wholly of members of such Authority or wholly of other persons or partly of members of such Authority and partly of other persons and for such purpose or purposes, as it may think fit.
- (2) A committee constituted under this section shall meet at such place and at such time, and shall observe

such rules of procedure in regard to the transaction of business at its meetings, as may be determined by regulations made in this behalf.

- (3) The members of a committee, other than the members of the *[Kolkata] Metropolitan Development Authority, shall be paid such fees and allowances for attending its meetings and for attending to any other work of the *[Kolkata] Metropolitan Development Authority as may be determined by regulations made in this behalf.

* See foot note no. 1 on page no. 2.

1. Substituted by s. 4(b) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1986 (West Ben. Act XXIII of 1986) for the words "Coporation of Calcutta;".

24. Power of the *[Kolkata] Metropolitan Development Authority to give directions.—

- (1) Notwithstanding anything contained in any other law for the time being in force, the *[Kolkata] Metropolitan Development Authority may give such directions with regard to the implementation of any development project, as it may think fit, to an authority to which payment of any money from its fund has been made under this Act.
- (2) The *[Kolkata] Metropolitan Development Authority shall so exercise the powers of supervision referred to under this Act as may be necessary to ensure that each development project is executed in the interest of the overall development of the *[Kolkata] Metropolitan Area and in accordance with the approved development plan.

25. Power of the *[Kolkata] Metropolitan Development Authority to execute any plan.—

- (1) Where the *[Kolkata] Metropolitan Development Authority is satisfied that any direction given by it under sub-section (1) of section 24 with regard to any development project has not been carried out by the authority referred to therein or that any such authority is unable to fully implement any scheme undertaken by it for the development of any part of the *[Kolkata] Metropolitan Area, the *[Kolkata] Metropolitan Development Authority may itself undertake the works and incur any expenditure for the execution of such development projects or implementation of such schemes, as the case may be.
- (2) The *[Kolkata] Metropolitan Development Authority may also undertake any works in the *[Kolkata] Metropolitan Area as may be directed by the State Government and may incur such expenditure as may be necessary for the execution of such work.
- (3) Where any work is undertaken by the *[Kolkata] Metropolitan Development Authority under sub-section (1), it shall be deemed to be, for the purposes of any law for the time being in force, that authority referred to in sub section (1) of section 24.
- (4) The *[Kolkata] Metropolitan Development Authority may, for the purpose of carrying out the powers conferred by sub-sections (1) and (2), undertake survey of any area within the '[Kolkata] Metropolitan Area and for that purpose it shall be lawful for any officer of the '[Kolkata] Metropolitan Development Authority—
 - (a) to enter in or upon any land and to take level of such land;
 - (b) to dig or bore into the sub-soil;
 - (c) to mark levels and boundaries by placing marks and cutting trenches;
 - (d) where otherwise the survey cannot be completed and levels taken and boundaries marked, to cut down and clear away any part of any standing crop, fence or jungle;

Provided that before entering upon any land the '[Kolkata] Metropolitan Development Authority shall give notice of its intention to do so in such manner as may be specified in the regulations made under this Act.

* See foot note no. 1 on page no. 2.

26. Delegation.—

The *[Kolkata] Metropolitan Development Authority may, by order in writing and subject to such conditions as it may think fit to impose, delegate any of its powers, duties and functions under this or any other Act or any rule or regulation made thereunder to the Chairman, Vice-Chairman, Chief Executive Officer, Secretary or any other officer appointed under this Act.

27. Amendment of the *[Kolkata] Improvement Act, 1911, the Howrah Improvement Act, 1956, and the *[Kolkata] Metropolitan Water and Sanitation Authority Act, 1966.—

The *[Kolkata] Improvement Act, 1911 (Ben. Act V of 1911), the Howrah Improvement Act, 1956 (West Ben. Act XIV of 1956) and the *[Kolkata] Metropolitan Water and Sanitation Authority Act, 1966 (West Ben. Act XIII of 1966), shall stand amended to the extent and in the manner specified in the Second Schedule to this Act.

CHAPTER V

Preparation of present Land Use Map

28. Preparation of present Land Use Map and Land Register.—

Every Planning Authority or Development Authority shall, within one year after its constitution or within such time as the State Government may, from time to time, extend, prepare a present Land Use Map (hereinafter called the Map) and a Land Register (hereinafter called the Register) in such form as the concerned Authority may think fit indicating the present use of lands in the Planning Area :

Provided that the concerned Authority may prepare the Map and the Register in respect of any portion of the Planning Area but the Map or Maps with Register in respect of the entire Planning Area shall be completed within the said period of one year or within such time as the State Government may from time to time extend.

Explanation.—The predominant use to which the land is put on the date of preparation of the Map shall be considered to be the present land use by the Planning Authority or the Development Authority.

29. Notice of the preparation of the Map and the Register.—

- (1) After the preparation of the Map and the Register, the Planning Authority or the Development Authority shall publish a public notice of the preparation of the Map and the Register and of the place or places where copies of the same may be inspected, inviting objections in writing from any person with respect to the Map and the Register within thirty days of the publication of such notice.
- (2) After the expiry of the period of thirty days mentioned in sub-section (1), an officer designated by the Planning Authority or the Development Authority shall, after allowing a reasonable opportunity of hearing to objectors, if any, submit a report to the concerned authority.
- (3) The concerned authority shall consider the report submitted under subsection (2) and may make such modifications in the Map or the Register or both as it considers proper and adopt the Map and the Register with such modifications, if any.
- (4) Where a local authority or a statutory authority has been declared as the Planning Authority or the Development Authority for any area and it has prepared a similar Map or Register in respect of an area before the application of this Act to that area, the Map or the Register already prepared shall be deemed to be a Map or a Register, as the case may be, under section 28.
- (5) As soon as may be, after the adoption of the Map and the Register under sub-section (3), the Planning Authority or the Development Authority, as the case may be, shall publish a public notice of such adoption of the Map and the Register and the place or places where copies of the same may be inspected and shall submit copies of the Map and the Register to the State Government.
- (6) A copy of such notice shall also be published in the *Official Gazette*. Such publication in the *Official Gazette* in respect of the Map and the Register shall be conclusive evidence that the Map and the Register have been duly prepared and adopted.

*See foot note no. 1 on page no. 2.

30. Power of State Government in case of default of the Planning Authority or Development Authority to prepare the Map or the Register.—

- (1) If no Map or Register is prepared by the Planning Authority or the Development Authority within the period referred to in section 28 or if at any time the State Government is satisfied that the Planning Authority or the Development Authority is not taking necessary steps to prepare the Map and the Register, the State Government may direct any of its officers to prepare or cause to be prepared the Map and the Register.

- (2) After preparation of the Map and the Register, the said officer shall submit the same to the State Government and the State Government shall follow the procedure laid down in section 29 as if it is the authority concerned.
- (3) Any expenses incurred under this section in connection with the preparation and the publication of the Map and the Register with respect to a Planning Area shall be paid by the concerned authority.

CHAPTER VI

Preparation of ¹[Land Use and Development Control Plans] and Procedure for their Statutory Approval

31. ²[Land Use and Development Control Plan.]—

- (1) A Planning Authority or Development Authority shall, within two years of the declaration of a Planning Area, prepare a plan (hereinafter called the ³[Land Use and Development Control Plan] for the Planning Area and forward a copy thereof to the State Government;
 Provided that the concerned authority may prepare the plan in respect of any portion of the Planning Area, but the plan in respect of the entire Planning Area shall be completed within a period of three years or within such time as the State Government may from time to time extend.
- (2) The ¹[Land Use and Development Control Plan] in any area shall be a written statement,—
 - (a) formulating the policy and the general proposals including maps of the Planning Authority or the Development Authority in respect of the development and general use of land in that area including measures for the improvement of the physical environment;
 - (b) stating relationship between these proposals and general proposals for the development and general use of land in neighbouring areas which may be expected to affect the area; and
 - (c) containing such other matters as may be prescribed or directed by the State Government.
- (3) A ¹[Land Use and Development Control Plan] in any area shall contain or be accompanied by such maps, diagrams, illustrations and descriptive matters as the Planning Authority or the Development Authority thinks appropriate for the purpose of explaining or illustrating the proposals in the plan and such diagrams, illustrations and descriptive matters shall be treated as parts of the plan.
- (4) The ¹[Land Use and Development Control Plan] may also—
 - (a)(i) indicate broadly the manner in which the Planning Authority or the Development Authority proposes that land in such area should be used;
 - (ii) indicate areas or buildings requiring preservation and conservation for historical, architectural, environmental and ecological and religious purposes;
 - (b) allocate areas or zones of land for use—
 - (i) for residential, commercial, industrial, agricultural, natural scenic beauty, forest, wild life, natural resources, fishery and landscaping;
 - (ii) for public and semi-public open spaces, parks and playgrounds;
 - (iii) for such other purposes as the Planning Authority or the Development Authority may think fit;
 - (c) indicate, define or provide for-
 - (i) the existing and proposed national highways, arterial roads, ring roads and major streets;
 - (ii) the existing and proposed lines of communications, including railways, transports, airports, canals and linkage between towns and villages;
 - (iii) the existing and proposed amenities, services and utilities, systems for water supply including improvement of lakes, rivers, fountains and the like, sewerage, drainage and waste disposal, generation and distribution of electric power and distribution of gas;

1. Substituted by s. 4(a) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "Development Plan".

2. Substituted by s. 4(b)(i) *ibid*, for the words "Outline Development Plan.".

3. Substituted by s. 4(b)(ii) *ibid*, for the words "Outline Development Plan.".

1. Substituted by s. 4(b)(ii) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "Outline Development Plan.".

- (d) include regulations (hereinafter called zoning and sub-division regulations) to control within each zone the location, height, number of storeys and size of buildings and other structures, the size of yards, courts and other open spaces and the use of buildings, structures and land and sub-division of land and the street alignments, set-back distances, embankments, constructional activities destroying natural scenic beauty and provide for amenities in hill areas and coastal areas and such other issues as may be considered appropriate by the Authority;
- (e) locate cluster of villages and huts and designate land for *hats*, markets, cottage industry, livestock, pasture festivals, fairs, *melas* and like community facilities and conservation of trees and forests;
- (f) indicate areas or zones for catchment, soil conservation, plantation, unsafe for any construction, subsidence for any reason including operation of mines, earthquake-prone area and control of natural disaster.
Explanation.—The expression "mine" has the same meaning as defined in the Mines Act, 1952 (35 of 1952);
- (g) designate land as subject to acquisition for any public purposes.

¹[32. [...]]

1. Omitted by s. 4(c) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) which was earlier as follows:

"32. Preparation of Detailed Development Plan.-

- (1) Within three years of the declaration of a Planning Area, a Planning Authority or a Development Authority shall prepare and forward to the State Government a Detailed Development Plan for the Planning Area or any of its parts:
Provided that the Detailed Development Plan in respect of the entire Planning Area shall be prepared within a period of five years or within such time as the State Government may, from time to time, extend.
- (2) In formulating its proposals in a Detailed Development Plan, the concerned Authority shall secure that proposals conform generally to the Outline Development Plan, if there be any, and shall have regard to any information and any other considerations which appear to it to be relevant, or which may be prescribed, or which the State Government may in any particular case direct it to take into account.
- (3) A Detailed Development Plan shall consist of a map and a written statement and shall—
 - (a) formulate, in such detail as the Planning Authority or the Development Authority thinks appropriate, the proposals of the Planning Authority or the Development Authority for the development and other use of land or for any description of development or other use of such land (including in either case such measures as such authority thinks fit for the improvement of the physical environment and the management of traffic), and
 - (b) contain such matters as may be prescribed or as the State Government may, in any particular case, direct.
- (4) Different Detailed Development Plan may be prepared for different purposes for the same part of any area.
- (5) A Detailed Development Plan for any area shall contain, or be accompanied by, such maps and diagrams as the Planning Authority or the Development Authority thinks appropriate.
- (6) The Detailed Development Plan may also—
 - (a) indicate, define and provide for—
 - (i) all or any of the particulars indicated in section 31;
 - (ii) areas reserved for agriculture, public and semi-public open spaces, parks, playgrounds and other recreational uses, green belts and natural reserves;
 - (iii) comprehensive allocation of areas of zones for residential, commercial, industrial, agricultural and other purpose;
 - (iv) major road and street network and traffic circulation pattern for present and future requirements;
 - (v) major road and street improvements;
 - (vi) areas reserved for public building and institutions and for new civic development
 - (vii) areas for future development and expansion, and areas for new housing;
 - (viii) amenities, services and utilities; and
 - (ix) all such matters as may be prescribed or may be directed by the State Government to be indicated, defined and provided for;
 - (b) include zoning regulation to regulate within each zone, the location, height, number of storeys, and size and number of buildings and other structures, the size of yards, courts and other open spaces and the use of buildings, structures and land;
 - (c) indicate, define and provide for—
 - (i) all such matters including planning standards, gross and net densities and guiding principles as the Planning Authority or Development Authority may consider expedient to be indicated, defined and provided for in the development plan;
 - (ii) detailed development of specific areas for housing, shopping centres, industrial areas, civic centres and educational and cultural institutions;
 - (iii) detailed redevelopment or renewal of specific areas for housing, shopping centres, industrial areas,

- (iv) civic centres, educational and cultural institutions and other related purposes;
- (v) a phased development programme along with the stages of development of the plan proposed together with financial implications of each stage;
- (d) designated land as subject to acquisition for any public purpose, and in particular, but without prejudice to the generality of this provisions, for the purpose of—
 - (i) the Union of India, the State of the local authority or any other authority established by law and public utility concerns;
 - (ii) dealing satisfactorily with the areas of bad layout or obsolete development and slum area and provisions for relocation of population;
 - (iii) the provisions for open spaces, parks and playgrounds;
 - (iv) securing the use of the land in the manner specified in the development plan;
 - (v) any of the matters as are referred to in this sub-section."

33. ¹[Land Use and Development Control Plan] prepared prior to the application of this Act to be deemed ¹[Land Use and Development Control Plan] under this Act.—

If any local or statutory authority has been declared a Planning or a Development Authority for a Planning Area and the said authority has prepared a ²[Land Use and Development Control Plan] similar to that contemplated in this Act, for the Planning Area before this Act has been brought in force in that area, the ²[Land Use and Development Control Plan] already prepared may be deemed to be a ²[Land Use and Development Control Plan] under section 31 or section 32 of this Act, according to the nature of the plan, provided it includes the features of a plan contemplated in this Act.

34. Power of State Government to direct preparation of ³[Land Use and Development Control Plan].—

- (1) Where by virtue of the provisions of this Act, a ⁴[Land Use and Development Control Plan] to be prepared,—
 - (a) if within the period prescribed or within such period which the State Government has extended, no ⁴[Land Use and Development Control Plan] has been prepared; or
 - (b) if at any time the State Government is satisfied that the Planning Authority or the Development Authority is not taking steps necessary to prepare such a ⁴[Land use and Development Control Plan] within that period, the State Government may direct any office of the State Government to prepare the ⁴[Land Use and Development Control Plan].
- (2) After the preparation of the ⁴[Land Use and Development Control Plan], the said officer shall submit the ⁴[Land Use and Development Control Plan] to the State Government and he shall follow the procedure and exercise the powers of the Planning Authority or the Development Authority, as the case may be.
- (3) Any expenses incurred under this section in connection with the preparation and publication of the ⁴[Land Use and Development Control Plan] for the Planning Area of any Planning Authority or Development Authority shall be paid by the concerned authority.

35. Approval of the State Government to the publication of notice of preparation of ⁵[Land Use and Development Control Plan].—

As soon as may be after the ⁶[Land Use and Development Control Plan] has been submitted to the State Government, but not later than the time prescribed, the State Government shall direct the Planning Authority or the Development Authority to make such modifications in the ⁶[Land Use and Development Control Plan] as the State Government thinks fit and thereupon the concerned authority shall make the modifications.

1. Substituted by s. 4(d)(i) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "Development Plan."
2. Substituted by s. 4(d)(ii) ibid, for the words "development plan."
3. Substituted by s. 4(e)(i) ibid, for the words "Development Plan."
4. Substituted by s. 4(e)(ii) ibid, for the words "development plan."
5. Substituted by s. 4(f)(i) ibid, for the words "Development Plan."
6. Substituted by s. 4(f)(ii) ibid, for the words "development plan."

36. Public notice of the preparation of the ¹[Land Use and Development Control Plan].—

- (1) After the modifications, if any, the Planning Authority or the Development Authority shall publish a public notice in the *Official Gazette* and in one or more local newspapers, of the preparation of the ²[Land Use and Development Control Plan] and the place or places where copies of the same may be inspected, inviting objections in writing from any person with respect to the ²[Land Use and Development Control Plan] within a period of sixty days ³[from the date of publication of the public notice in the *Official Gazette* or from the date of publication of the public notice in the newspaper, whichever is later].
- (2) The notice of preparation of the ²[Land Use and Development Control Plan] as provided under the preceding sub-section, shall, notwithstanding anything contained in the Land Acquisition Act, 1894 (1 of 1894), be deemed to be a declaration duly made under section 4 of the said Act.
- (3) After the expiry of the period mentioned in sub-section (1), the concerned authority shall appoint a Committee consisting of three of its members, to consider the objections filed under sub-section (1) and submit report within such time as the Planning Authority or the Development Authority may fix in this behalf.
- (4) The Committee so appointed shall have power to invite any other person and such a person shall have a right to take part in the discussions of the Committee relevant to that purpose but shall not have a right to vote at a meeting and shall not be a member for any other purpose.
- (5) The Committee so appointed shall afford a reasonable opportunity of being heard, to any person, including representatives of Government Departments, or local authorities who has or have filed any objection, and who has or have made a request for being so heard.
- (6) As soon as may be, after the receipt of the report from the Committee, ⁴[but not later than such time as may be prescribed,] the Planning Authority or the Development Authority shall consider the report and may make such modifications in the ²[Land Use and Development Control Plan] as it considers proper, and shall submit the ²[Land Use and Development Control Plan] with or without modifications together with the report of the Committee to the State Government.

37. Approval of the State Government.—

- (1) As soon as may be, after the receipt of the ⁵[Land Use and Development Control Plan], together with the report of the Committee, ⁶[but not later than such time as may be prescribed,] the State Government may either approve the ⁵[Land Use and Development Control Plan] with or without modification or return the ⁵[Land Use and Development Control Plan] to the concerned authority to modify the plan or to prepare a fresh plan in accordance with such directions as the State Government may issue in this behalf.
- (2) After modification in the plan or preparation of a fresh plan in accordance with the directions of the State Government under sub-section (1), the same shall be submitted to the State Government for approval and the State Government shall intimate its decision ¹[within such time of the receipt of the plan as may prescribed.]

1. Substituted by s. 4(g)(i) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "Development Plan".

2. Substituted by s. 4(g)(ii) *ibid*, for the words "development plan".

3. Substituted by s. 4(g)(iii) *ibid*.

4. Substituted by s. 4(g)(V) *ibid*, for the words "but not later than sixty days".

5. Substituted by s. 4(h)(i)(A) *ibid*, for the words "development plan".

6. Substituted by s. 4(h)(i)(B) *ibid*, for the words "but not later than sixty days".

38. Coming into operation of the ²[Land Use and Development Control Plan].—

- (1) Immediately after the ³[Land Use and Development Control Plan] has been approved by the State Government, the Planning Authority or the Development Authority shall publish a public notice in the *Official Gazette* and in a local newspaper or newspapers, of the approval of the ³[Land Use and Development Control Plan] and the place or places where copies of the ³[Land Use and Development Control Plan] may be inspected.
- (2) The publication of the notice in the *Official Gazette* of the approval of the ³[Land Use and Development Control Plan] shall, notwithstanding anything contained in the Land Acquisition Act, 1894 (1 of 1894), be deemed to be a declaration duly made under section 6 of the said Act.
- (3) The ³[Land Use and Development Control Plan] shall come into operation from the date of publication of the aforesaid notice in the *Official Gazette*.

⁴[(4)***]

- (5) The ³[Land Use and Development Control Plan] contains zoning and sub-division regulations as referred to in clause (d) of sub-section (4) of section 31, it shall be the duty of the Corporation or the Commissioners of the municipality or any other local authority, within whose jurisdiction such area or zone is situate, to enforce such regulatory measures in supersession of the rules and regulations, if any, applicable to such area or zone.

39. References to High Court questioning the validity of the ⁵[Land Use and Development Control Plan].—

- (1) Within one month of the coming into operation of the ⁶[Land use and Development Control Plan], any person aggrieved by it may make an application to the High Court questioning the validity of the ⁶[Land Use and Development Control Plan] or any provisions contained therein on the following grounds:—
- (a) that is not within the powers conferred by this Act, or
 - (b) that any requirement of this Act, or any rules made thereunder have not been complied within relation to the making of the ⁶[Land Use and Development Control Plan].

1 Substituted by s. 4(h)(ii) of the West Bengal Town And Country (Planning and Development) (Amendment) Act. 1994 (West Ben. Act XXVI of 1994) for the words "within sixty days of the receipt of the plan".

2 Substituted by s. 4(i)i) *ibid*, for the words "Development Plan".

3 Substituted by s. 4(i)(ii) *ibid*, for the words "development plan".

4 Omitted by s. 4(i)(iii) *ibid*, which was earlier as follows:

"(4) After the coming into operation of the Detailed Development Plan, the Outlined Development Plan shall stand modified or altered to the extent the proposals in the Detailed Development Plan are at variance with the Outlined Development Plan".

5 Substituted by s. 4(j)i) *ibid*, for the words "Development Plan".

6 Substituted by s. 4(j)(ii) *ibid*, for the words "Development Plan".

- (2) The High Court, after giving an opportunity to the authority concerned and the State Government to be heard,—
- (a) may stay, until the final determination of the proceedings, the operation of any provisions contained therein so far as it affects any property of the applicant; and
 - (b) if satisfied that the ¹[Land Use and Development Control Plan] or any provision contained therein is not within the powers conferred by this Act, or that the interest of the applicant has been substantially prejudiced by a failure to comply with any requirement of this Act or rules, may quash the plan or any provision contained therein generally or in so far as it affects any property of the applicant.
- (3) Subject to the above provisions of this section, a ¹[Land Use and Development Control Plan] shall not, either before or after it has been approved, be questioned in any manner, in any legal proceedings whatsoever.

40. Amendment of ²[Land Use and Development Control Plan].—

- (1) At any time after the date on which the ³[Land Use and Development Control Plan] for an area comes into operation, and at least once in every 10 years after that date, the concerned authority shall, after carrying out such fresh surveys as may be considered necessary, prepare and submit to the State Government a ³[Land Use and Development Control Plan] for any alterations or additions considered necessary.
- (2) The provisions of sections 36, 37 and 38 shall, *mutatis mutandis*, apply to such a ³[Land Use and Development Control Plan].

41. Changes in the ⁴[Land Use and Development Control Plan].—

At any time after the date on which the ⁵[Land Use and Development Control Plan] for an area comes into operation, the Planning Authority or the Development Authority may, with the previous approval of the State Government, make such changes in the ⁵[Land Use and Development Control Plan] as may be necessitated by topographical and cartographical errors and omissions, details of proposals not fully indicated in the plan or changes arising out of the implementation of the proposals in the ⁵[Land Use and Development Control Plan]:

Provided that—

- (1) all such changes are in the public interest, and
- (2) all such changes are notified to the public.

42. Annulment of the ⁶[Land Use and Development Control Plan].—

- (1) The State Government may, in the public interest for any other sufficient reason annul any ¹[Land Use and Development Control Plan] or a portion thereof or any provision contained therein.
- (2) Immediately after the annulment of the ¹[Land Use and Development Control Plan] or any portion thereof or any provision contained therein, the State Government shall publish a public notice of the said annulment.

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1. Substituted by s. 4(j)(ii) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "development Plan".
 2. Substituted by s. 4(k)(i) *ibid*, for the words "Development Plan".
 3. Substituted by s. 4(k)(ii) *ibid*, for the words "Development Plan".
 4. Substituted by s. 4(i)(i) *ibid*, for the the words "Development Plan".
 5. Substituted by s. 4(i)(ii) *ibid*, for the words "Development Plan".
 6. Substituted by s. 4(m)(i) *ibid*, for the words "development plan".
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²[42A. Validation of plan prepared or adopted prior to the coming into force of the West Bengal Town and Country (Planning and Development) (Amendment) Act, 1994.—

Any plan, by whatever name called, prepared or adopted by any Planning Authority or Development Authority under any provision of this Act prior to the coming into force of the West Bengal Town and Country (Planning and Development) (Amendment) Act, 1994, shall, on the coming into force of the West Bengal Town and Country (Planning and Development) (Amendment) Act, 1994, be deemed to be a Land Use and Development Control Plan prepared or adopted, as the case may be, under this Act, as amended by the West Bengal Town and Country (Planning and Development) (Amendment) Act, 1994.]

43. Power to acquire land under the Land Acquisition Act, 1894.—

Any land required, reserved or designated in a ³[Land use and Development Control Plan] or a Development Scheme under Chapter VIII shall be deemed to be land needed for a public purpose within the meaning of the Land Acquisition Act, 1894 (1 of 1894) and may be acquired under the said Act.

CHAPTER VII Control of Development and Use of Land

44. Use and development of land to be in conformity with ⁴[Land Use and Development Control Plan].—

After the coming into operation of any ⁵[Land Use and Development Control Plan] in any area, no person shall use or permit to be used any land or carry out any development in that area otherwise than in conformity with such ⁵[Land Use and Development Control Plan];

Provided that the Planning Authority or the Development Authority may allow the continuance, for a period not exceeding 7 years, of the use, upon such terms and conditions as may be imposed by the concerned authority, of any land for the purpose and to the extent, for and to which it is being used on the date on which such ⁵[Land Use and Development Control Plan] comes into operation.

45. Prohibition of development without payment of development charges and without permission.—

After the coming into force of this Act to any area and subject to the provisions relating to the development charge and other provisions of this Act, no development, institution or change of use, of any land shall be undertaken or carried out in that area—

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1. Substituted by s. 4(m)(ii) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "development plan".
 2. Substituted by s. 4(n) *ibid*.
 3. Substituted by s. 4(o) *ibid*, for the words "Development Plan".
 4. Substituted by s. 5(a) *ibid*, for the words "Development Plan".
 5. Substituted by s. 5(b) *ibid*, for the words "Development Plan".
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- (a) without obtaining a certificate from the concerned authority certifying that the development charge as leviable under this Act has been paid or that no such development charge is leviable; and
- (b) without obtaining the permission in writing as provided for hereinafter: Provided that no such permission shall be necessary—
 - (i) for the carrying out such works for the maintenance, improvement or other alteration of any building, which affect only the interior of the building or which do not materially affect the external appearance of the building;
 - (ii) for the carrying out by the Central or the State Government or any local authority of any works required for the maintenance or improvement of a highway, road or public street, being works carried out on land within the boundaries of such highway, road or public street;
 - (iii) for the carrying out by the Central or the State Government or any local authority or any works for the purpose of inspecting, repairing or renewing any drains, sewers, mains, pipes, cables or other apparatus including the breaking open of any street or other land for that purpose;
 - (iv) for the excavation (including wells) made in the ordinary course of agricultural operations;
 - (v) for the construction of unmetalled road intended to give access to land solely for agricultural purposes;
 - (vi) for normal use of land which has been used temporarily for other purposes;
 - (vii) incase of land, normally used for one purpose and occasionally used for any other purpose, for the use of land for that other purpose on occasions;
 - (viii) for use, for any purpose incidental to the use of a building for human habitation, or any other building or land attached to such building.

46. Permission for development.—

- (1) Any person or body (excluding a department of the Central or the State Government or any local authority) intending to ¹[carry out any development or township project on any land] shall make an application in writing to the Planning Authority or Development Authority for permission in such form and containing such particulars and accompanied by such documents and plans as may be prescribed.
- (2) On such application having been duly made, and on payment of the development charge as may be assessed under Chapter IX—
 - (a) the Planning Authority or the Development Authority may pass an order—
 - (i) granting permission unconditionally; or
 - (ii) granting permission subject to such conditions as it may think fit; or
 - (iii) refusing permission;
 - (b) Without prejudice to the generality of clause (a) of this sub-section the concerned authority may impose conditions-
 - (i) to the effect that the permission granted is only for a limited period and that after the expiry of that period, the land shall be restored to its previous condition or the use of the land permitted shall be discontinued;
 - (ii) for regulating the development or use of any other land under the control of the applicant or for the carrying out of works on any such land as may appear to the authority expedient for the purpose of the permitted development.

1. Substituted by s. 4 of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 2008 (West Ben. Act X of 2008) for the words "carry out any development on any land".

- (3) (i) The concerned authority in dealing with the applications for permission shall have regard to—
 - (a) the provisions of the ¹[Land Use and Development Control Plan,] if it has come into operation; and
 - ²[(b) the regulations, if any, made under section 139 and applicable to the land on which the development is intended to be carried out, the building rules, if any, of a *Panchayat* or Municipality in so far as they are not inconsistent with the regulations as aforesaid and are applicable to such land, the provisions of Land Use and Development Control Plan as forwarded to the State Government under section 31 or as modified thereafter, and any other

material consideration.

Explanation.—"Panchayat" has the same meaning as in clause (d) of article 243, and "Municipality" has the same meaning as in clause (e) of article 243P, of the Constitution of India.]

- (ii) The provision of sub-section (1) shall not apply to applications under sub-section (5).
- (4) When permission is granted subject to conditions or is refused, the grounds of imposing such conditions or such refusal shall be recorded in the order and the order shall be communicated to the applicant.
- (5) In the case of a department of the Central or the State Government or any local authority (where the local authority is not also the Development Authority) intending to carry out any development other than operational constructions (which shall always be outside the purview of the Planning or Development Authority), on any land, the concerned department or authority as the case may be, shall notify in writing to the Development Authority of its intention to do so, giving full particulars thereof and accompanied by such documents and plans as may be directed by the State Government from time to time, at least, one month prior to the undertaking of such development.
- (6) Where the concerned authority raises any objection in respect of the conformity of the proposed development either to any ¹[Land Use and Development Control Plan] under preparation, or to any of the building bye-laws in force at the time, or due to any other material consideration under sub-section (7), the department or the authority, as the case may be, shall—
- (a) Either make necessary modifications in the proposals for development to meet the objections, or
- (b) Submit the proposals for development together with the objections raised by the concerned authority to the State Government for decision. When proposals and objections have been submitted, no development shall be undertaken until the State Government has finally decided on the matter.
- (7) The State Government on receipt of the proposals for development together with the objections of the concerned authority, shall either approve the proposals with or without modifications or direct the concerned authority to make such modifications in the proposals as it considers necessary in the circumstances.

1. Substituted by s. 6(a)(i) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "development plan,".

2. Substituted by s. 6(a)(ii) *ibid*, which was earlier as follows:
"(b) any other material consideration."

47. Appeal against grant of permission subject to conditions or refusal of permission.—

- (1) Any applicant aggrieved by an order passed under section 46, or if no order is passed under that section, may appeal, within one month of the communication of that order to him or after the expiry of the period of three months from the date of submitting the application, as the case may be, in the manner and accompanied by such fees as may be prescribed, to the State Government or any officer of the State Government appointed in this behalf.
- (2) The State Government or the said officer, on receiving the appeal and after giving a reasonable opportunity of hearing to the appellant and the concerned authority, may dismiss the appeal or allow the appeal and pass order—
- (a) granting permission unconditionally; or
- (b) granting permission subject to such conditions as may be considered fit; or
- (c) removing the conditions subject to which permission has been granted and imposing other conditions, if any, as may be considered fit.

48. Lapse of permission.—

- (1) Every, permission for any development granted under this Act shall remain in force for a period of one year from the date of such permission.
- (2) The concerned authority may, on application made in this behalf before **the expiry** of the aforesaid period, extend the same for such times as it may **think proper**, but the total period shall in no case exceed three years.
- (3) If any permission lapses under sub-section (1) or (2), such lapse shall **not** bar any subsequent application for fresh permission under this Act.

49. Obligation to acquire land on refusal of permission or on grant of permission in certain cases.—

- (1) Where any person, interested in the land and aggrieved by an order in appeal under section 47 refusing permission or granting permission subject to conditions, claims—
 - (a) that the land has become incapable of reasonably beneficial use in the existing state, or
 - (b) that the land, in a case where permission to develop has been granted subject to conditions, cannot be rendered capable of reasonably beneficial use by carrying out the permitted development in accordance with the conditions,
he may within three months and the manner prescribed serve on the State Government a notice (hereinafter referred to as an acquisition notice) requiring the State Government to acquire his interest in the land and a copy of the notice shall at the same time be served on the authority concerned.
- (2) After receiving the notice, the State Government shall appoint a person who shall, after giving reasonable opportunity of hearing to the person serving the acquisition notice and the authority concerned, submit his report thereon to the State Government.
- (3) The State Government, on a consideration of the report—
 - (a)
 - (i) if satisfied that the conditions specified in clause (a) or (b) of sub-section (1) are not fulfilled, or
 - (ii) if the order appealed against was passed on the ground of not complying with any provisions of this Act, rules or regulations that may be applicable, shall pass an order refusing to confirm the notice;
 - (b) if satisfied that the conditions specified in clause (a) or (c) of subsection (1) are fulfilled regarding the land or any part of the land, shall pass an order,—
 - (i) confirming the notice; or
 - (ii) directing the concerned authority to grant such permission to develop the land or grant the permission subject to such conditions as will keep the land capable of reasonably beneficial use.
- (4) If within the period of one year from the date on which an acquisition notice is served under sub-section (1), the State Government does not pass any order under sub-section (3), the notice shall be deemed to have been confirmed at the expiration of that period.
- (5) Upon confirmation of the notice either under clause (b) of sub-section (3) or under sub-section (4), the State Government shall proceed to acquire the land or that part of any land regarding which the notice has been confirmed within one year of the confirmation.

50. Compensation for refusal of permission or grant of permission subject to conditions in certain cases.—

- (1) Where an order in appeal under section 47 refusing to grant permission or granting permission subject to conditions, relates to any of the following developments—
 - (a) re-erection of a building which has been destroyed or demolished so long as the cubic content of the original building is not exceeded by more than one-tenth;
 - (b) enlargement, improvement or other alteration of any building which was in existence on the date, the development plan relating to the area comes into operation for the first time, so long as the cubic content of the original building is not exceeded by more than one-tenth;
 - (c) carrying out on land used for the purposes of agriculture, of any building or other operation required for that purpose, other than operations for the erection, enlargement, improvement or alteration of a building for human habitation or of building used for the purpose of marketing of the produce of land;
 - (d) where any part of any building or other land which on the date of coming into operation for the first time of the development plan relating to the area is used for a particular purpose, the use for that purpose of any additional part of the building or land not exceeding one-tenth of the cubic content, of the part of the building used for that purpose on that day, or, as the case may be, one-tenth of the area of the land so used on that date, the owner may, within the time and in the manner prescribed, claim upon the concerned authority, if he has not served an acquisition notice, or if the acquisition is not confirmed by the State Government under section 49 for an amount for such refusal or for

grant of permission subject to conditions;

Provided that no amount shall be claimable if such refusal or grant of permission subject to conditions was based on any provision of any development plan.

- (2) When a claim is received by such officer of the concerned authority as may be appointed in this behalf he shall, after giving an opportunity of hearing to the applicant, make a report to the concerned authority.
- (3) (i) On receipt of the report referred to in sub-section (2), the concerned authority shall consider it and assess the amount and offer it to the owner.
(ii) The amount shall be equal to—
 - (a) where permission is refused, the difference between what would have been the value of land if the permission had been granted and the value of the land in its existing state;
 - (b) where permission is granted subject to conditions, the difference between what would have been the value of the land if the permission had been granted unconditionally and what would be the value of the land with permission granted subject to conditions.
- (4) If the owner does not accept the amount and gives notice, within thirty days from the date of offer, of his refusal to accept, the concerned authority shall refer the matter for the adjudication of the Court and the decision of the Court shall be final and binding on the owner and the authority.

Explanation.—The expression "Court" means a principal Civil Court of original jurisdiction, and includes any other Civil Court empowered by the State Government to perform the function of the Court under this Act within the pecuniary and local limits of its jurisdiction.

51. Power of revocation and modification of permission to develop.—

- (1) If it appears to the Planning Authority or the Development Authority that it is expedient, having regard to the ¹[Land Use and Development Control Plan] prepared or under preparation or to be prepared and to any other material consideration, that any permission to develop land granted under this Act or any other law, should be revoked or modified, the Planning Authority or the Development Authority may, by order, revoke or modify the permission to such extent as appears to it to be necessary:

Provided that—

- (a) where the permission relates to the carrying out of building or other operations, no such order shall,—
 - (i) affect such of the operations as have been previously carried out;
 - (ii) be passed after these operations have been completed;
 - (b) where permission relates to a change of use of land, no such order shall be passed at any time after the change has taken place.
- (2) When permission is revoked or modified by an order made under subsection (1), if the owner claims from the Planning Authority or the Development Authority within thirty days from the date of revocation or modification, an amount for the expenditure incurred in carrying out the works after the grant of permission and in accordance with such permission, which has been rendered abortive by the revocation or modification, the Planning Authority or the Development Authority shall, after giving the owner a reasonable opportunity of hearing by an officer appointed by it in this behalf, and after considering the officer's report assess and offer such amount to the owner as it thinks fit.
 - (3) If the owner does not accept the amount and gives notice, within thirty days from the date of offer, the Planning Authority or the Development Authority shall refer the matter for the adjudication of the Court and the decision of the Court shall be final and binding on the owner and the concerned authority.

Explanation.—The expression "Court" has the same meaning as in section 50.

52. Penalty for unauthorised development or for use otherwise than in conformity with the ²[Land Use and Development Control Plan].—

- (1) Any person who, whether at his own instance or at the instance of any other person, commences, undertaking or carries out development, or changes use of any land or building,—
 - (a) in contravention of any ³[Land Use and Development Control Plan];
 - (b) without obtaining a certificate regarding development charge under clause (a) of section 45;
 - (c) without permission as required under this Act;
 - (d) in contravention of any condition subject to which such permission has been granted;
 - (e) after the permission for development has been revoked under section 51; or
 - (f) in contravention of the permission which has been modified under section 51;

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1. Substituted by s. 7 of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "development plan".
 2. Substituted by s. 8(a) ibid, for the words "Development Plan".
 3. Substituted by s. 8(b) ibid, for the words "development plan".
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shall be punishable with simple imprisonment for a term which may extend to six months or with fine which may extend to five thousand rupees or with both, and in the case of a continuing offence with a further fine which may extend to five hundred rupees for every day during which the offence continues.

- (2) Any person who continues to use or allows the use of any land or building in contravention of the provisions of a ¹[Land Use and Development Control Plan] without having been allowed under section 44 or where the continuance of such use has been allowed that section, continues such use after the period for which the use has been allowed or without complying with the terms and conditions under which the continuance of such use is allowed, shall be punishable with simple imprisonment for a term which may extend to six months or with a fine which may extend to two thousand rupees or with both, and in the case of a continuing offence with a further fine which may extend to two hundred and fifty rupees for every day during which such offence continues.

53. Notice regarding unauthorised development or use otherwise than in conformity with the ¹[Land Use and Development Control Plan.]—

- (1) Where any development of land has been or is being carried out as mentioned in section 52, the Planning Authority or the Development Authority shall serve on the owner a notice requiring him, within a period of one month after the service of the notice, to take such steps as may be specified in the notice, which shall be—
 - (a) in cases specified in clause (a), (c) or (e) of sub-section (1) of section 52 to restore the land to its condition before the said development took place;
 - (b) in a case specified in clause (b) of sub-section (1) of section 52 to pay the development charge and such penalty, if any, as may be prescribed;
 - (c) in cases specified in clause (d) or (f) of sub-section (1) of section 52 to secure compliance with the conditions or with the permission as modified.
- (2) In particular, any such notice may, for the purpose aforesaid, require—
 - (a) the demolition or alteration of any building or works;
 - (b) the carrying out on land, of any building or other operations; or
 - (c) the discontinuance of any use of land;Provided that in case the notice relates to the discontinuance of any use of land, the Planning Authority or the Development Authority shall serve a notice on the occupier also.
- (3) Any person aggrieved by such notice may, within the period specified in the notice—
 - (a) apply for permission under section 46 for the retention on the land of any buildings or works or for the continuance of any use of the land, to which the notice relates; or
 - (b) apply to the concerned authority for reconsideration and withdrawal of the notice.
- (4)(a) The notice shall be of no effect pending the final determination or withdrawal of the application.
 - (b) (i) The provisions of sections 45, 46 and 47 shall apply to such application with such modifications as may be necessary.
 - (ii) If permission is granted on an application made under clause (a) of sub-section (3), the notice shall not take effect, or if such permission is granted for the retention only of some buildings or works or for the continuance of use of only a part of the land, the notice shall not take effect regarding such buildings or works or such part of the land, but shall have full effect regarding other buildings or works or other parts of the land.
- (5) The authority or any officer of the authority, appointed in this behalf, may dismiss the application or accept it by quashing or varying the notice as he may think fit.
- (6) If within the period specified in the notice or within such period after the disposal or withdrawal of the application under sub-section (3), the notice or so much of it as continues to have effect, or the notice with variation made under sub-section (5) is not complied with, the Planning Authority or the Development Authority may—

1. Substituted by s. 9 of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994)

- (a) prosecute the owner for not complying with the notice and in case where the notice required the discontinuance of any use of land, any other person also who uses the land or causes or permits the land to be used in contravention of the notice; and
 - (b)(i) in the case a notice requiring the demolition or alteration of any building or works or carrying out of any building or other operations, itself cause the restoration of the land to its condition before the development took place and secure the compliance with the conditions of the permission or with the permission as modified, by taking such steps as the Planning Authority or the Development Authority may consider necessary including demolition or alteration or any building or works or carrying out of any building or other operations;
 - (ii) the Planning Authority or the Development Authority may recover the cost of any expenses incurred by it in this behalf from the owner as arrears of land revenue.
- (7) Any person prosecuted under clause (a) of sub-section (6) shall be punishable with simple imprisonment for a term which may extend to six months or with a fine which may extend to two thousand rupees, or with both, and in the case of a continuing offence, with a further fine which may extend to two hundred rupees for every day during which such offence continues.

54. Power to stop unauthorised development.—

- (1) Where any development of land as mentioned in section 52 is being carried out but has not been completed, the Planning Authority or the Development Authority may serve on the owner and the person carrying out the development a notice requiring the development of land to be discontinued from the time of the service of such notice.
- (2) Where such notice has been served, the provisions of clause (b) of subsection (4) and sub-section (5) of section 53 shall apply with such modifications as may be necessary;
Provided that the provisions of clause (a) sub-section (4) of section 53 shall not apply and in spite of the filing of application under clause (a) of (b) of subsection (3) of section 53 the notice shall continue to have full effect.
- (3) If such notice is not complied with forthwith, the Planning Authority or the Development Authority, or such officer of the concerned authority, who may be authorised in this behalf, may require any police officer to remove such person and all assistants and workmen from the land at any time after the service of such notice and such police officer shall comply with the requisition accordingly.
- (4) After the requisition under sub-section (3) has been complied with, the Planning Authority or the Development Authority, or such officer of the concerned authority who may be authorised in this behalf, may, if it or he thinks fit, depute, by a written order, a police officer or any officer or employee of the Planning Authority or the Development Authority to watch the land in order to ensure that the development is not continued.
- (5) Where a police officer or an officer or employee of the Planning Authority or Development Authority has been deputed under sub-section (4) to watch the land, the cost of such deputation shall be paid by the person at whose instance such development is being continued or to whom notice under sub-section (1) was given and shall be recoverable from such person as arrears of land revenue.

55. Power to require removal of unauthorised development or use.—

- (1) If it appears to the Planning Authority or the Development Authority that it is expedient in the interest of the proper planning of its areas (including the interest or amenities), having regard to the ¹[Land Use and Development Control Plan] prepared, or under preparation, or to be prepared, and to any other material consideration—
 - (a) that any use of land should be discontinued; or
 - (b) that any conditions should be imposed on the continuance thereof, or
 - (c) that any building or works should be altered or removed, the Planning Authority or the Development Authority may, by notice served on the owner:-
 - (i) require the discontinuance of that use; or
 - (ii) impose such conditions, as may be specified in the notice, on the continuance thereof; or
 - (iii) require such steps, as may be specified in the notice, to be taken for the alteration or removal of any buildings or works, as the case may be, within such period, being not less than one month, as may be specified therein, after the service of the notice.

¹ Substituted by s. 10 of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the

- (2) Any person aggrieved by such notice may, within the period specified in the notice, apply to the authority for the cancellation of the notice.
- (3) If an application is filed under sub-section (2) the provisions of subsections (4) and (5) of section 53 shall apply, with such modifications as may be necessary.
- (4) If any person—
 - (a) who has suffered damage in consequence of the compliance with the notice, by the depreciation of any interest in the land to which he is entitled or by being disturbed in his enjoyment of the land, or
 - (b) who has carried out any works in compliance with the notice, claims, from the Planning Authority or the Development Authority within the time and in the manner prescribed, for an amount in respect of that damage, or of any expenses reasonably incurred by him for complying with the notice, the provisions of sub-sections (3) and (4) of section 50 shall apply with such modifications as may be necessary.
- (5)(a) If any person interested in the land in respect of which a notice is issued under this section, claims that by reason of the compliance with the notice, the land will become incapable of reasonably beneficial use, he may within the period specified in the notice or within such period after the disposal of the appeal, if any, filed under sub-section (2) and in the manner prescribed, serve on the State Government, an acquisition notice requiring his interest in the land to be acquired.
- (b) When a notice is served under clause (a) the provisions of subsections (2) to (5) of section 49 shall apply with such modifications as may be necessary.

1 Substituted by s. 11 (a) of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "Development Plan".

2 Substituted by s. 11 (b) *ibid*, for the words "development plan".

56. Interim provisions pending preparation of ¹[Land Use and Development Control Plan].—

Where the Planning Authority or the Development Authority, in the exercise of its functions and powers with respect to any area under it, is required to have regard to the provisions of ²[Land Use and Development Control Plan] before such ²[Land Use and Development Control Plan] has become operative, the concerned authority shall have regard to the provisions which, in its opinion, will be required to be included for securing the proper planning of the concerned area.

CHAPTER VIII Development Schemes

57. Preparation of development schemes.—

A Development Authority may, as soon as may be, after the ¹(Land Use and Development Control Plan) has been approved by the State Government, for the purpose of implementing the proposals contained in the ¹(Land Use and Development Control Plan), prepare one or more development schemes for the area within its jurisdiction or any part thereof.

58. Scope of the development scheme.—

- (1) A scheme may be made in accordance with the provisions of this Act in respect of any land which is—
 - (a) in the course of development,
 - (b) likely to be used for building and other purposes, or
 - (c) already built upon.

Explanation.—The expression 'land likely to be used for building and other purposes' shall include any land likely to be used as, or for the purpose of providing open spaces, roads, streets, parks, pleasure or recreational grounds, parking spaces, or for the purpose of executing any work upon or under the land incidental to a scheme, whether in the nature of a building work or not.
- (2) Such schemes may make provisions for all or any of the following matters.—
 - (a) the laying out or re-laying out of land, either vacant or already built upon;

- (b) the filling up or reclamation of low lying swamp or land to which damage has been caused by subsidence due to operation of mines or unhealthy areas or levelling up of land;
- (c) the laying out of new streets or roads, construction, diversion, extension, alteration, improvement and stepping up of streets, roads and communications;
- (d) the reconstitution of plots;
- (e) the construction, alteration or removal of buildings, bridges or other structures;
- (f) the allotment or reservation of land for roads, open spaces, gardens, recreation grounds, schools, markets, industrial and commercial activities, green belts and dairies, transport facilities and public purposes of all kinds;
- (g) the undertaking of housing schemes for different income groups, commercial areas, industrial estates, provision of community facilities like schools, hospitals, and similar types of developments;
- (h) drainage inclusive of sewerage, surface or sub-soil drainage and sewage disposal;
- (i) lighting;
- (j) water supply;
- (k) the preservation and protection of objects of historical importance or natural beauty and of buildings actually used for religious purpose;
- (l) the imposition of conditions and restrictions in regard to the open space to be maintained about buildings, the percentage of building area for a plot, the number, height and character of buildings allowed in specified areas, the purposes for which buildings or specified areas may or may not be appropriate, the sub-division of plots, the discontinuance of objectionable uses of land in any area in reasonable periods, parking space and loading and unloading space for any building and the size of projections and advertisement signs;
- (m) the suspension, to the extent necessary, for the proper carrying out of the scheme, of any rule, bye-law, regulation, notification or order made or issued under any Act of the State Legislature or any of the Acts which the State Legislature is competent to amend;
- (n) acquisition by purchase, exchange or otherwise of any property necessary for or effected by the execution of the scheme; and
- (o) such other matters not inconsistent with the objects of this Act, as may be directed by the State Government.

1. Substituted by s. 12 of the West Bengal Town And Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "development plan".

59. Contents of the scheme.—

The scheme shall contain, so far as may be necessary, the following particulars:—

- (a) the area, ownership and tenure of all existing plots covered by the scheme;
- (b) the land allotted or reserved under clause (f) of sub-section (2) of section 58 with a general indication of the uses to which such land is to be put and the terms and conditions subject to which such land is to be put to such uses;
- (c) a full description of all the details of the scheme under such clause of sub-section (2) of section 58 as may be necessary;
- (d) the laying out or re-laying out of the land either vacant or already built upon;
- (e) the filling up or reclamation of low lying swamp or land to which damage has been caused by subsidence due to operation of mines or unhealthy areas or levelling up of land;
- (f) the extent to which it is proposed to alter the boundaries of the existing plots in accordance with the proposed scheme;
- (g) an estimate of the total cost of the scheme and the net cost to be borne by the Development Authority; and
- (h) any other particulars which may be prescribed.

60. Reconstitution of plot scheme.—

- (1) In a scheme reconstituting the plots, the size and shape of every reconstituted plot shall be determined, so far as may be, to render it suitable for building purposes, and where a plot is already built upon, to ensure that the buildings, as far as possible, comply with the provisions of the scheme as regards open

spaces.

- (2) For the purpose of sub-section (1), the scheme may contain proposals—
 - (a) to form a final plot by reconstitution of an existing plot by alteration of the boundaries of the existing plot, if necessary;
 - (b) to form a reconstituted plot from an existing plot by the transfer wholly or partly of the adjoining lands;
 - (c) to provide, with the consent of the owners, that two or more existing plots each of which is held in joint ownership or in severally shall thereafter with or without alteration of boundaries, be held in ownership in common as a constituted plot;
 - (d) to allot a reconstituted plot to any person if dispossessed of land in furtherance of the same; and
 - (e) to transfer the ownership of an existing plot from one person to another.

61. Publication of the scheme.—

- (1) As soon as may be, after the scheme under section 57 has been prepared, the Development Authority shall publish the scheme in the *Official Gazette* and in one or more local newspapers specifying the place or places where copies of the same may be inspected, and inviting objections in writing from any person with respect to the scheme within such period as may be specified in the notice which shall not be less than two months from the date of publication of the notice in the *Official Gazette*:
Provided that no such notice shall be required where land covered by the scheme has already been acquired and the execution of the scheme does not affect the interest of any person.
- (2) Simultaneously with the publication of the scheme the Development Authority shall submit copies of the notice and of the scheme to the State Government drawing particular attention to the provision in the scheme, if any, referring to clause (m) of sub-section (2) of section 58.
- (3) The publication of the scheme as provided under sub-section (1) of this section shall, notwithstanding anything contained in the Land Acquisition Act, 1894 (1 of 1894), be deemed to be a declaration duly made under section 4 of the said Act.

62. Power of the State Government to require the Development Authority to make scheme.—

- (1) Notwithstanding anything contained in this Act the State Government may, after making such inquiry as it deems necessary, by notification, direct the Development Authority to make and publish in such- manner as the State Government may direct, a scheme in respect of any land in regard to which a development scheme may be made.
- (2) If the Development Authority fails to make the scheme within three months from the date of direction given under sub-section (1) or within such time as the State Government may extend from time to time, an officer shall be appointed by the State Government to make and publish and submit the scheme for the land to it and thereafter the provisions of this Act shall, as far as may be, apply to the making of such scheme.

63. Power of State Government to suspend rules, bye-laws, etc.—

- (1) Where the Development Authority has published the scheme under sub-section (1) of section 61, the State Government may, on an application of the Development Authority, by order published in the *Official Gazette*, suspend to such extent only, as may be necessary for the purpose of implementing the scheme, any rule, bye-law, regulation, notification or order made or issued under any law which the Legislature of the State is competent to amend.
- (2) Any order issued under sub-section (1) shall cease to operate in the event of the scheme being withdrawn by the said authority either on its own motion or under the directions of the State Government under section 71.

64. Procedure in case of disputed claims to land.—

- (1) Where there is a disputed claim as to the ownership of any piece of land included in an area in respect of which the scheme has been published under sub-section (1) of section 61 and any entry in the records of rights or mutation register relevant to such disputed claims is inaccurate or inconclusive, an enquiry may

be held on a submission being made by the Development Authority at any time prior to the date of final publication of the scheme under section 70, by such officer as the State Government may appoint for the purpose of deciding who shall be deemed to be owner for the purpose of this Act.

- (2) The decision under sub-section (1) shall not be subject to appeal but it shall not operate as a bar to a regular suit.
- (3) Such decision shall be corrected, modified or rescinded as may be necessary to give effect to the decree or order of the Civil Court after the same has been brought to the notice of the Development Authority either by the Civil Court or by any person affected by such decree or order.
- (4) Such decision shall, in the event of the Civil Court passing a decree or order which is inconsistent therewith, be corrected, modified or rescinded in accordance with such decree or order as may be practicable after such decree or order has been brought to the notice of the Planning Authority or the Development Authority either by the Civil Court or by any person affected by such decree or order,
- (5) Where such a decree of the court is passed after the scheme has been published, such scheme shall be deemed to have been suitably varied by reason of such decree.

65. Restrictions on use and development of land after the publication of the scheme.—

- (1) On or after the date on which the scheme is published in the Official Gazette under sub-section (1) of section 61 —
 - (a) no person shall within the area included in the scheme erect or proceed with any building work, remove, pull down, alter, make additions to or make any substantial repair to any building, part of a building, a compound wall or any drainage work or remove any earth, stone or material, or sub-divide any land or change the use of any land or building unless such person has applied for and obtained necessary permission from the Development Authority in the form prescribed.
 - (b) the Development Authority on receipt of an application referred to in clause (a) shall at once furnish the applicant with a written acknowledgment of its receipt and may, after an enquiry, either grant or refuse such permission or grant it subject to such conditions as the Development Authority may think fit to impose. If the Authority communicates no decision to the applicant within three months from the date of such acknowledgment, the applicant shall be deemed to have been granted such permission;
 - (c) if any person contravenes the provisions contained in clause (a) or clause (b), the Development Authority may direct such person by notice in writing to stop any work in progress and after making inquiry in the prescribed manner, remove, pull down, or alter any building or other work or restore the land in respect of which such contravention is made to its original condition; and
 - (d) any expenses incurred by the concerned Authority under clause (c) shall be a sum due to such Authority under this Act from the person in default or the owner of the plot.
- (2) No person shall be entitled to any compensation in respect of any damage, loss or injury resulting from any action taken by the Development Authority under sub-section (1) of this section except in respect of a building or work begun or a contract entered into before the date on which the Development Authority published the scheme under sub-section (1) of section 61 or the notification under sub-section (1) of section 62 was published by the State Government and only in so far as such building or work has proceeded at the time of the publication of the scheme;

Provided that such claim to compensation in the excepted cases shall be subject to the conditions of any agreement entered into between such person and the concerned Authority.
- (3) Where under clause (a) of sub-section (2) of section 58 or under section 59, the purposes to which,—
 - (a) any plot of land may not be used has been specified, such plot of land shall, within such period of not less than one year, as may be specified in the scheme, cease to be used for the purposes and shall be used only for the purpose specified in the scheme;
 - (b) any existing building may not be used has been specified, such building shall, within such period of not less than three years as may be specified in the scheme cease to be used for any purpose other than the purposes specified in the scheme; and
 - (c) any plot of land with existing building may not be used has been specified in the scheme and the existence of such buildings is inconsistent with the provisions of the scheme, such buildings shall, within such period of not less than ten years as may be specified in the scheme, cease to exist;

Provided that such period shall not be less than the reasonable life of the buildings.
- (4) Any person aggrieved by the decision of the Development Authority under this section may, within sixty days from the date of the decision, appeal to the Authority as may be prescribed and the order of such Authority in the appeal shall be final.
- (5) The provisions of section 50 shall, *mutatis mutandis*, apply in relation to the unauthorised development or use of land included in a development scheme.

- (6) The restrictions imposed by this section shall cease to operate in the event of the scheme being withdrawn by the Planning Authority or the Development Authority on its own or on the direction of the State Government under section 71.

66. Possession of land in advance of development scheme.—

- (1) Where the Development Authority thinks that in the interest of the public it is necessary to undertake forthwith any of the works included in a scheme for a public purpose, the said Authority shall make an application to the State Government that the land required for the scheme shall vest in the Authority provided there is no building on it.
- (2) The State Government may, if satisfied that it is urgently necessary in the public interest to empower the Development Authority to enter on such land for the purpose of executing any of such work, direct such Authority by notification to take possession of the land.
- (3) The said Authority shall then give a notice in the prescribed manner to the person interested in the land, the possession of which is to be taken requiring him to give possession of the land to the said Authority or any person authorised by it in this behalf within a period of one month from the date of service of the notice; and if no possession is delivered within the period specified in the notice, such Authority shall take possession of the land. Such land shall thereupon, notwithstanding anything contained in this Act, vest absolutely in the said Authority free from all encumbrances.

67. Magistrate to enforce delivery of possession of land.—

- (1) If the Development Authority is opposed or obstructed in taking possession of the land under section 66, it shall apply to the Commissioner of Police, *[Kolkata], or to the District Magistrate of the District, within whose jurisdiction the land is situated, to enforce the delivery of the possession of the land to the said Authority. The Commissioner of Police, *[Kolkata], or the District Magistrate, as the case may be, shall take or cause to be taken such steps and use or cause to be used such force as may be reasonably necessary for securing the delivery of possession of the land to the Authority.
- (2) For the avoidance of doubt, it is hereby declared that the power to take Steps under sub-section (1) includes the power to enter upon any land or other property whatsoever.

* See foot note no. 1 on page no. 2.

68. Persons interested in land of which possession is taken entitled to interest.—

Where possession of the land is taken by the Development Authority under sections 66 or 67, the person interested in such land shall be entitled to interest at the rate of six *per cent per annum* on the amount payable to him under the scheme in respect of the said land from the date on which such possession is taken till the date on which the amount is paid to him by the concerned Authority.

69. Consideration of objections and submission of scheme to the State Government.—

After the expiry of the period specified in sub-section (1) of section 61 the Development Authority shall examine the scheme in the light of the objections that may be received, giving a reasonable opportunity of being heard to all such interested persons who have filed objections and who have made requests for being so heard in the manner prescribed and make such amendments in the scheme as may be considered proper and shall, as soon as may be, but not later than the time prescribed by the rules, prepare the scheme with or without modifications and submit it to the State Government together with a copy of the objections received by it and its decisions thereon.

70. Public notice of the scheme.—

- (1) Simultaneously with the submission of the scheme to the State Government, the Development Authority shall publish notice in the Official Gazette and in a local newspaper of the scheme and the place or places where copies of the scheme may be inspected.
- (2) The public notice under sub-section (1) shall specify a date (which shall not be earlier than one month after the date of the publication of the notice) on which the scheme shall take effect and come into force: Provided that the State Government may, from time to time, by notification, postpone such date, by such

period not exceeding three months at a time as it thinks fit.

- (3) The publication of the notice under sub-section (1) shall be—
- (a) conclusive evidence that the scheme has been duly prepared and adopted: and
 - (b) notwithstanding anything contained in the Land Acquisition Act, 1894 (1 of 1894), deemed to be a declaration duly made under section 6 of the said Act.

71. Withdrawal of scheme by the Development Authority.—

- (1) If at any time before the publication of the notice of the scheme under section 70, a representation is made to the Development Authority in this behalf by a majority of the owners in the area that the scheme should be withdrawn, the Development Authority shall invite from all persons interested in the scheme objections to such representation.
- (2) After receiving the objections, if any, and after making such inquiry as it may think fit, the Development Authority may, by notification, withdraw the scheme or any part thereof and upon such withdrawal, no further proceedings shall be taken in regard to such scheme or such part.
- (3) Simultaneously with such withdrawal, the Development Authority shall submit to the State Government the copy of the notice withdrawing the scheme and a report of its enquiry made in this behalf.
- (4) At any time before the publication of notice of the scheme under section 70 the State Government, if it is satisfied that it is in the public interest, may direct the concerned Authority to withdraw the scheme or part thereof. "Thereupon the said Development Authority shall withdraw the scheme or such part by a notification. Upon such withdrawal no further proceedings shall be taken in regard to such scheme or such part thereof.

72. Effect of scheme.—

On and after the day on which a scheme comes into force—

- (a) all lands required by a Development Authority shall, unless it is otherwise determined in such scheme, vest absolutely in the said Authority free from all encumbrances;
- (b) all rights in the existing plots which have been reconstituted shall determine, and the reconstituted plots shall become subject to the rights settled by the Development Authority;
- (c) the said Authority shall hand over possession of the reconstituted plots to the owners to whom these are allotted in the scheme.

73. Determination of certain matters by the Development Authority.—

- (1) As soon as may be after publication of the notice of the scheme in the *Official Gazette* under sub-section (1) of section 70, but not later than the time prescribed by rules, the Development Authority shall, in accordance with the procedure that may be prescribed, proceed to—
 - (a) define, demarcate and decide the areas allotted to, or reserved, for the public purpose or purposes of the said Authority, and also the reconstituted plots;
 - (b) decide the person or persons to whom a reconstituted plot is to be allotted; when such plot is to be allotted; and when such plot is not to be allotted to persons in ownership in common, decide the shares of such persons;
 - (c) estimate the value of and fix the difference between the values of the existing plots and the values of the reconstituted plots included in the scheme, in accordance with the provisions contained in clause (f) of sub-section (1) of section 87;
 - (d) estimate the compensation payable for the loss of the area of the existing plot in accordance with the provisions contained in clause (f) of sub-section (1) of section 87 in respect of any existing plot which is wholly acquired under the scheme;
 - (e) determine whether the areas allotted or reserved for the public purpose or purposes of the Development Authority are beneficial wholly or partly to the owners or residents within the area of the scheme;
 - (f) estimate the proportion of the sums payable as compensation on each plot used, allotted or reserved for public purpose or for the purposes of the Authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public, which shall be included in the costs of the scheme;
 - (g) determine the proportion of contribution to be levied on each plot used, allotted or reserved for purposes of the Development Authority which is beneficial partly, to the owners or residents within

- the area of the scheme and partly to the general public;
- (h) determine the amount of exemption, if any, from the payment of the contribution, that may be granted in respect of plots or portions thereof exclusively used or occupied for religious or charitable purposes on the date of publication of the notice of the scheme under section 70;
 - (i) estimate the value of reconstituted plots included in the scheme and the increment to accrue in respect of such plots in accordance with the provisions of section 88.
 - (j) calculate the proportion in which the increment in respect of the reconstituted plots included in the scheme shall be liable to contribution to the cost of the scheme in accordance with the provisions contained in section 89;
 - (k) Calculate the contribution to be levied on each reconstituted plot included in the scheme;
 - (l) determine the amount to be deducted from or added to, as the case may be, the contribution leviable from a person in accordance with the provisions contained in section 90;
 - (m) provided for the total or partial transfer of any right in an existing plot to a reconstituted plot or provide for the extinction of any right in an existing plot in accordance with the provisions contained in section 91;
 - (n) where a plot is subject to a mortgage with possession or a lease, decide the proportion of compensation payable to or contribution payable by the mortgagee or lessee on one hand and the mortgagor or lessor on the other;
 - (o) estimate, with reference to claims may before it, after the notice given by it in the prescribed manner, the amount to be paid to the power of any property or right injuriously affected by the making of a scheme in accordance with the provisions contained in section 92;
 - (p) determine the period in which the works provided in the scheme shall be completed by the Development Authority;

Provided that the Development Authority may make variations from the scheme subject to the condition that any variation estimated by it to involve an increase of ten *per cent* in the total cost of the scheme or rupees one lakh, whichever is lower, shall require the sanction of the State Government:

Provided further that no substantial variation shall be made without the consent of the State Government and without hearing any objections which may be revised by the owners concerned.

- (2) The State Government may, if it thinks fit, whether the period prescribed by rules for deciding all the matters stated in sub-section (1) has expired or not, extend from time to time by notification in the *Official Gazette*, the period for deciding the matter referred to.

74. Appeal—

- (1) (a) From every decision of the Development Authority in matters arising out of clauses (a), (b), (c), (n) and (o) of sub-section (1) of section 73, an appeal shall lie within one month from the date of the decision, to the authority to be prescribed.
- (b) Any person aggrieved by the order of the prescribed authority under clause (a) may prefer an appeal within sixty days from the date of the order of the prescribed authority, to the District Judge within the local limits of whose jurisdiction the area included in the scheme is situated.
- (c) The District Judge may hear the appeal or transfer the appeal filed before him to an Additional District Judge for disposal.
- (d) The District Judge or the Additional District Judge, as the case may be, may after hearing the parties either direct the concerned Authority to reconsider its proposals or accept, modify, vary or reject the proposals of such Authority and shall decide all matters arising out of the different clauses of sub-section (1) of section 73 and referred to in clause (a) of this sub-section.
- (e) The decision of the District Judge or the Additional District Judge, as the case may be, shall be final and binding on all the parties and a copy of such decision shall be sent to the concerned Authority.
- (2)(a) Any decision of the Development Authority under clauses (d) to (m) (both inclusive) and clause (p) of sub-section (1) of section 73 shall be forthwith communicated to the party concerned and any party aggrieved by such decision may within sixty days from the date of communication of the decision, appeal to the Tribunal of Appeal, appointed under section 75, for decision.
- (b) The provisions of section 5, 12 and 14 of the Limitation Act, 1963 (36 of 1963), shall apply to appeals submitted under this section.

75. Tribunal of Appeal.—

- (1) As soon as may be, after the Development Authority has decided all the matters referred to in sub-section (1) of section 73, the State Government shall, if necessary, appoint a Tribunal of Appeal, hereinafter referred to as the Tribunal, to hear and decide appeals arising out of matters referred to in clause (a) of sub-section (2) of section 74.
- (2) The Tribunal shall consist of a Chairman and two Assessors.
- (3) The Chairman shall be an officer of the rank of District Judge or such Judicial Officer as may be appointed by the State Government.
- (4) The Chairman shall appoint fit and proper persons as Assessors who shall, as far as possible, have knowledge, or experience of town planning, valuation of land or civil engineering.
- (5) The Chairman and the Assessors shall be appointed members of the Tribunal for such period as the State Government may, by notification, specify for deciding appeals preferred against the decision under clauses (d) to (m) (both inclusive) and clause (p) of sub-section (1) of section 73.
- (6) The State Government may, if it thinks fit, remove for incompetence or misconduct or for any other good and sufficient reasons, any Assessor appointed under sub-section (4).
- (7) If any Assessor is removed or dies or refuses or neglects to act or becomes incapable of acting, the Chairman shall appoint forthwith a fit and proper person to take the place of such Assessor.

76. Place where Tribunal may sit.—

The Tribunal may sit either at the headquarters of the Chairman or at any other place within the local limits of his jurisdiction which he may deem convenient for the consideration and decision of any matter before such Tribunal.

77. Decision of questions of law and other question.—

All questions of law and procedure shall be decided by the Chairman. All other questions shall be decided by the Chairman and the two Assessors or by a majority.

78. Powers of Tribunal to decide matter finally.—

- (1) The Tribunal shall, after hearing, either confirm the proposals of the Development Authority or direct it, where necessary, to reconsider, vary or modify its proposals.
- (2) Every decision of the Tribunal shall be final and binding on all the parties including the Development Authority. A copy of the decision of the Tribunal shall be sent to such Authority.

79. Tribunal not to be Court.—

Nothing contained in this Act shall be deemed to constitute the Tribunal to be a Civil Court.

80. Remuneration of Assessors and payment of incidental expenses of Tribunal.—

- (1) The Assessors shall, save where they are salaried Government Officers, be entitled to such remuneration, either by way of monthly salary or by way of fees or partly in one way and partly in the other, as the State Government may, from time to time decide:
Provided that, in exceptional cases where the scheme is a large one or the work involved is complicated, the State Government may authorise the Chairman and the Assessors, even if they are salaried Government Officers, to receive such special salary or remuneration, as the State Government may, by order, decide from time to time.
- (2) The salary of the Chairman of the Tribunal or an Assessor who is a salaried Government Officer, and any remuneration payable under sub-section (1) of this section and all expenses incidental to the working of the Tribunal shall, unless the State Government otherwise determines, be defrayed out of the funds of the Development Authority and shall be added to the cost of scheme.

81. Decision of the Development Authority to be final in certain matters.—

- (1) Where no appeal has been preferred under section 74, the decision of the Development Authority shall be final and binding on the parties.
- (2) Where an appeal has been preferred under section 74 and a copy of the decision in appeal is received by the concerned Authority, it shall then, where necessary, make variations in the scheme in accordance with such decision and may also rectify such errors or omissions, if any, as may have been brought to its notice after publication of notice of the scheme and shall also forward such scheme or schemes together with a copy of its decisions and a copy of the decisions in appeal to the State Government.

82. Power of the Development Authority of evict summarily.—

- (1) On and after the day on which a scheme comes into force, any person continuing to occupy any land which he is not entitled to occupy under the scheme may, in accordance with the prescribed procedure, be summarily evicted by the Development Authority or any of its officers authority in that behalf.
- (2) If the Development Authority is opposed or obstructed in evicting such persons or taking possession of land from such persons, the Commissioner of Police, *[Kolkata] or the District Magistrate, within whose jurisdiction the land is situated, shall, on the application of the Authority, enforce the eviction of such persons or secure delivery of possession of the land to such Authority.

83. Power to enforce scheme.—

- (1) On and after the day on which the notice of a scheme has been published under section 70, the Development Authority may, after giving the prescribed notice.—
 - (a) remove, pull down, or alter any building or other work in the area included in the scheme which contravenes the scheme or in the erection of which or carrying out of which, any provision of the scheme has not been complied with;
 - (b) execute any work which is the duty of any person to execute under the scheme, in any case where it appears to the concerned Authority that delay in the execution of the work would prejudice the efficient operation of the scheme.
- (2) Any expenses incurred by Development Authority under this section may be recovered from the person in default or from the owner of the existing plot in the manner provided for the recovery of sums due to the Authority under the provisions of this Act.
- (3) If any action proposed to be taken under sub-section (1) of this section by the Development Authority is questioned, the matter shall be referred to the State Government or any officer authorised by the State Government in this behalf; and the decision of the State Government or of the officer, as the case may be, shall be final and binding on all persons.

84. Power to vary scheme on ground of error, irregularity or infirmity.-

- (1) If after the scheme has come into force the Development Authority considers that the scheme is defective on account of an error, irregularity or infirmity or that the scheme needs variation or modification of a minor nature, the Development Authority shall prepare and publish by notification a draft of such variation.
- (2) The draft variation published under sub-section (1) shall state every amendment proposed to be made in the scheme, and if any such amendment relates to a matter specified in any of the clauses of sub-section (2) of section 58, the draft variation shall also contain such other particulars as may be prescribed.
- (3) The draft variation shall be open to inspection of the public at the office of the Development Authority during the office hours.
- (4) Not later than one month of the date of publication of the draft variation, any person affected thereby may communicate in writing his objection to the Development Authority.
- (5) After receiving the objections under sub-section (4) the concerned Authority shall, after making such enquiry as it may think fit, publish the variation with or without modification by notification.
- (6) From the date of the publication of the variation, such variation shall take effect as if it were incorporated in the scheme.

85. Power to vary development scheme.—

A development scheme may, at any time, be varied by a subsequent scheme made and published in accordance with this Act:

Provided that, when a scheme is so varied, the provisions of this Act shall, as far as may be, apply to such variation and making of subsequent scheme; and the date of publication of the varied scheme shall, for the purposes of sections 63, 65, 87, 88 and 90 be deemed to be the date of publication of the scheme referred to in those sections.

86. Apportionment of cost of scheme withdrawn.—

In the event of a development scheme being withdrawn the costs of the scheme shall be borne by the Development Authority or be paid to such Authority by the owners concerned, in such proportions as the State Government may in each case determine.

87. Cost of development scheme.—

- (1) The cost of a development scheme shall include—
 - (a) all sums payable by the Development Authority which are not specifically excluded from the cost of the scheme;
 - (b) all sums spent or estimated to be spent by the Development Authority in the making and in the execution of the scheme, the estimates for works included in the scheme being made on the date the notice of the scheme is published under section 70;
 - (c) all sums payable as compensation for land received or allotted for any public purpose of purposes of the Development Authority which is solely beneficial to the owners or residents within the area of the scheme;
 - (d) such portion of the amount payable for land reserved or allotted for any public purpose or purposes of the Development Authority which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public, as is attributable to the benefit accruing to the owners or residents within the area of the scheme from such reservation or allotment;
 - (e) all legal expenses incurred by the Development Authority in the making and in the execution of the scheme;
 - (f) the amount by which the total of the value of the existing plots exceeds the total of the value of the plots each of such plots being estimated at its market value on the date of the publication of the scheme under section 61 with all the buildings and works thereon on that date and without reference to improvements contemplated in the scheme other than improvements to the alteration of its boundaries.
- (2) If in any case the total of the values of the plots included in the final scheme exceeds the total of the values of the existing plots, each of such plots being estimated in the manner provided in clause (f) of sub-section (1), then the amount of such excess shall be deducted in arriving at the costs of the schemes as defined in sub-section (1).

88. Calculation of increment.—

For the purposes of this Act, the increment shall be deemed to be the amount by which, on the date of the publication of the scheme under section 61, the market value of any plot with reference to the improvements contemplated in the scheme, on the assumption that the scheme has been completed, would exceed on the same date the market value of the same plot estimated without reference to such improvement:

Provided that in estimating such value, the value of buildings or other works erected or in course of erection on such plot shall not be taken into consideration.

89. Contribution towards cost of scheme.—

- (1) The cost of the scheme shall be met wholly or in part by contribution to be levied by the Development Authority on each plot included in the scheme calculated in proportion to the increment which is estimated to accrue in respect of such plot by the Development Authority:
Provided that—
 - (a) no such contribution shall exceed the increment estimated by the Development Authority to accrue in respect of each plot;
 - (b) where a plot is subject to mortgage with possession or to a lease, the Development Authority shall determine in what proportion the mortgagee or lessee on the one hand and the mortgagor or lessor on the other hand, shall pay such contribution;
 - (c) no such contribution shall be levied on a plot used, allotted or reserved, for a public purpose or purposes of the Development Authority, such plot being solely for the benefit of the owners or

- residents within the area of the scheme;
- (d) the contribution levied on a plot used, allotted or reserved for a public purpose or purposes of the Development Authority, which is beneficial partly to the owners or residents within the area of the scheme and partly to the general public, shall be calculated in the proportion of the benefit estimated to accrue to the general public from such use, allotment or reservation.
- (2) The owner of each plot included in a scheme shall be primarily liable for the payment of the contribution leviable in respect of such plot.

90. Certain amount to be added to or deducted from contribution leviable from person.—

The amount by which the total value of reconstituted plots included in a scheme with all the buildings and works thereon allotted to the person falls short of or exceeds the total value of the existing plots with all the buildings and works thereon of such person shall be deducted from or added to, as the case may be, the contribution leviable from such person each of such plots being estimated at its market value on the date of publication of the scheme under section 61 and without reference to improvements contemplated in the scheme other than improvement due to the alteration of its boundaries.

91. Transfer of rights from existing to reconstituted plot or extinction of such rights.—

Any right in an existing plot which, in the opinion of the Development Authority, is capable of being transferred wholly or in part, without prejudice to the making of a development scheme to a reconstituted plot shall be so transferred and any right in an existing plot which, in the opinion of the Development Authority is not capable of being so transferred shall be extinguished:

Provided that an agricultural lease shall not be transferred from an existing plot to a reconstituted plot without the consent of all the parties to such lease.

92. Damage in respect of property or right injuriously affected by scheme.—

The owner of any property or right which is injuriously affected by the making of a development scheme shall, subject to provisions of section 91, if he makes a claim before the Development Authority within sixty days of the receipt of the notice from such Development Authority, be entitled to obtain an amount in respect thereof from the said Authority or from any person benefited or partly from such Authority and partly from such person as the said Authority may in each case determine.

93. Exclusion of limitation of damage in certain cases.—

- (1) No amount shall be payable in respect of any property of private right of any sort which is alleged to be injuriously affected by reason of any provisions contained in the development scheme, if under any other law for the time being in force applicable to the area for which such scheme is made, no amount is payable for such injurious affection.
- (2) Property or a private right of any sort shall not be deemed to be injuriously affected by reason of any provision contained in development scheme, which with a view to securing the amenity of the area included in such scheme of any part thereof, imposes any conditions and restrictions in regard to any of the matters specified in clause (b) of section 59.

94. Provision for cases in which amount payable to owner exceeds amount due from him.—

If the owner of a plot attracted by a scheme is not provided with another plot in the scheme or if the contribution to be levied from him under section 90 is less than the total amount to be deducted therefrom under any of the provisions of this Act, the net amount of his loss shall be payable to him by the Development Authority in cash or in such other way as may be agreed upon by the parties.

95. Provision for cases in which value of development plots is less than the amount payable by owner.—

- (1) If for any cause the total amount which would be due to the Development Authority from the owner of a plot to be included in the scheme exceeds the value of such plot estimated on the assumption that the scheme has been completed, the said Authority shall direct that owner of such plot to make payment of such excess amount to it.
- (2) If such owner fails to make such payment within the prescribed period, the said Authority shall acquire the plot of such defaulter by paying the value of such plot estimated at its market value on the date of publication of the scheme under section 61 and without reference to improvements contemplated in the scheme, and apportion the compensation among the owner and other persons interested in the plot, and thereupon the plot included in the scheme shall vest absolutely in the said Authority free from all encumbrances, but subject to the provisions of this Act:

Provided that the payment made by such Authority on account of the value of the existing plot shall not be included in the costs of the scheme.

96. Payment by adjustment of account.—

All payments due to be made to any person by a Development Authority shall, as far as possible, be made by an adjustment in such person's account with such Authority in respect of the reconstituted plot concerned or of any other plot in which he has an interest and failing such adjustment, he shall be paid in cash or in such other way as may be agreed upon by the parties.

97. Payment of net amount due to Planning Authority or Development Authority.—

- (1) The net amount payable under the provisions of this Act by the owner of a plot included in a scheme may at the option of the contributor be paid at a time or in annual instalments not exceeding ten. If the owner elects to pay the amount by instalments, interest at six *per cent per annum* shall be charged on the net amount payable. If the owner of a plot fails to elect the option on or before the date specified in a notice issued to him in that behalf by the Development Authority, he shall be deemed to have elected the option of paying contribution by instalments and the interest in the contribution shall be calculated from the date specified in the notice, being the date before which he was required to make an election as aforesaid:

Provided that, where an owner elects to pay the amount at a time but fails to do so interest at six *per cent per annum* shall be payable by him to the said Authority, from the date specified in the notice to the date of payment.

- (2) Where two or more plots included in a scheme belong to the same owner, the net amount payable by such owner under the provisions of this Act shall be distributed over his several reconstituted plots in proportion to the increment which is estimated to accrue in respect of each constituted plot unless the owner and the said Authority agree to a different method of distribution.

98. Power of Development Authority to make agreement.—

- (1) A Development Authority shall be competent to make any agreement with any person in respect of any matter which is to be provided for in the development scheme subject to the power of the State Government to modify or disallow such agreement and unless it is otherwise expressly provided therein, such agreement shall take effect on and after the day on which the development scheme comes into force.
- (2) Such an agreement shall not in any way affect the determination of the matters as standing in section 73 or the rights of third parties, but it shall be binding on the parties to the agreement:

Provided that if any agreement contains any provisions which are inconsistent with the scheme as published by the Development Authority under section 61, such an agreement shall be void:

Provided further that, if the agreement is modified by the State Government, either party shall have the option of avoiding it if it so elects.

99. Recovery of arrears.—

Any sum due to a Development Authority under the provision of this Act or any rule or any regulation made thereunder shall be a first charge on the plot on which it is due, subject to the prior payment of the land revenue, if any, due to the State Government thereon and if it is not paid on demand on the day on which it becomes due or on the day fixed by the said Authority, it shall be recoverable by such Authority as arrears of land revenue.

100. Disposal of surplus amount.—

Where after completing and meeting all the costs of a scheme as provided in this Act, any amount from the sums paid to the Development Authority remains as surplus, such Authority shall, in consultation with the owners of the plots, spend the same amount for providing further amenities within the area of the scheme.

101. Execution of works in the scheme by the Development Authority.—

- (1) The Development Authority shall complete all the works provided in a scheme within the period prescribed:
Provided that, in exceptional circumstances on application by the said Authority, the State Government may, by order in writing specifying these circumstances, grant to such Authority further extension of time as it may think fit.
- (2) If the Development Authority fails to complete the work within the prescribed period or within the period extended under the proviso to sub-section (1) the State Government may appoint any of its officers to complete such works at the cost of the said Authority.

CHAPTER IX

Levy, Assessment and Recovery of Development Charge

102. Levy of development charge.—

- ¹[(1) In accordance with the provisions of this Act, and the rules made thereunder and with the previous sanction of the State Government, every Planning Authority or Development Authority shall, by notification, levy a charge (hereinafter called the development charge) on the carrying out of any development or change of use of land, for which permission is required under Chapter VII, in the whole or any part of the Planning Area, at rates not exceeding those notified under section 103 :

Provided that the rates may be different for different parts of the Planning Area.

Explanation.—For the purposes of this sub-section, 'development' shall, in addition to those mentioned in clause (7) of section 2, also include the institution of use of any land specified in clause (a) of section 103.]

- (2) The charge shall be leviable on any person who undertakes or carries out such development or changes any such use.
- (3) Notwithstanding anything contained in sub-sections (1) and (2) no development charge shall be levied on development, or change of use, of any land vested in or under the control or possession of the Central Government, the State Government or any local authority.
- (4) The State Government may, by rules, provide for the examination from the levy of development charge of any development or change of any use of any land specified in the rules.

1. Substituted by s. 2 of the West Bengal Town and Country (Planning and Development) (Second Amendment) Act, 2006 (West Ben. Act XXXI of 2006) (w.e.f. 9.1.2007) which was earlier as follows :

"(1) In accordance with the provisions of this Act, and the rules made thereunder and with the previous sanction of the State Government, every Planning Authority or Development Authority shall, by notification published in the *Official Gazette*, levy a charge (hereinafter called the development charge) on the carrying out of any development or change of use of land, for which permission is required under Chapter VII, in the whole or any part of the Planning Area, at rates not exceeding those specified in section 103 :

Provided that the rates may be different for different parts of the Planning Area."

¹[103. Rates of development charges.—

The State Government shall, by notification, fix up the rates of development charge for the following :—

- (a) for the institution of use—
 - (i) for residence,
 - (ii) for industry,
 - (iii) for commerce,
- (b) for change of use—
 - (i) from agriculture to residence,
 - (ii) from agriculture to industry,
 - (iii) from agriculture to commerce,
 - (iv) from residence to industry,

- (v) from residence to commerce,
- (vi) from industry to residence,
- (vii) from industry to commerce; and

(c) for carrying out any other development under this Act.]

1. Substituted by s. 3 of the West Bengal Town and Country (Planning and Development) (Second Amendment) Act, 2006 (West Ben. Act XXXI of 2006) (w.e.f. 9.1.2007) which was earlier as follows :

103. Rates of development charges.—

The development charge shall not exceed—
for the institution of use—

- | | |
|--------------------|---------------------------|
| (i) for residence | Rs. 10.00 per sq. metre |
| (ii) for industry | Rs. 50.00 per sq. metre |
| (iii) for commerce | Rs. 200.00 per sq. metre; |

for change of use—

- | | |
|--|--|
| (i) from agriculture to residence | Rs. 15.00 per sq. metre |
| (ii) from agriculture to industry | Rs. 55.00 per sq. metre |
| (iii) from agriculture to commerce | Rs. 205.00 per sq. metre |
| (iv) from residence to industry | Rs. 40.00 per sq. metre |
| (v) from residence to commerce | Rs. 190.00 per sq. metre |
| (vi) from industry to residence | Rs. 40.00 per sq. metre |
| (vii) from industry to commerce | Rs. 150.00 per sq. metre |
| for carrying out development by
erection or re-erection of any
building or works | Rs. 5 per cubic metre of the
content of such building or
works." |

104. Assessment of development charge.—

- (1) Any person who intends to carry out any development or to change any use of any land for which permission under Chapter VII is necessary, whether he has applied for such permission or not, or who has commenced the carrying out of any such development or has carried out such development or change of any such use, shall apply to the Planning Authority or the Development Authority for the assessment of development charge payable in respect thereof.
- (2) The said Authority shall, on such application being made or, if no such application is made, after serving a notice on the person liable for development charge, determine whether or not, and if so, what development charge is leviable in respect of that development or use or change in use.
- (3) The said Authority shall after giving a reasonable opportunity of hearing to the person who has made an application under sub-section (1) or who has been served with notice under sub-section (2) assess the amount of development charge:

Provided that—

- (a) where permission under Chapter VII has not been granted for carrying out the said development, the Planning Authority or the Development Authority may postpone the assessment of the development charge;
- (b) where the application relates to the carrying out of any development, the said Authority may refuse to assess the development charge payable in respect thereof unless it is satisfied that the applicant has an interest in the land sufficient to enable him to carry out such development, or that the applicant is able to obtain such interest and that the applicant will carry out the development within such period as the said Authority considers appropriate;
- (c) where the application relates to the change of any use, the said Authority may refuse to assess the amount of development charge in respect thereof unless it is satisfied that the change of use will be effected within such period as the said Authority considers appropriate;
- (d) the Planning Authority or the Development Authority shall deliver or serve a copy of each order on the applicant or the person concerned, and
- (e) such order or assessment, subject to the provisions of section 105, shall be final and shall not be questioned in any Court.

105. Appeals against assessment.—

- (1) Any person liable for such development charge dissatisfied with the order of assessment may within thirty days from the date of the order appeal to the State Government.

- (2) On an appeal made under sub-section (1), an officer of the State Government appointed in this behalf shall, after giving a reasonable opportunity of hearing to such person and the Planning Authority or Development Authority concerned, pass such order as he deems fit.

106. Development charge to be charged on land and to be recoverable as arrears of land revenue.—

- (1) If any development of land is commenced or carried out or any use is changed without payment of the amount of the development charge, such development charge shall, subject to prior payment of the land revenue, if any, be a first charge upon the land involved and also in any other land in which such person has any interest.
- (2) The development charge shall be recoverable as arrears of land revenue.

¹[106A. Levy of civic amenity charge.—

- (1) Notwithstanding anything contained in the foregoing provisions of this chapter, every Planning Authority or Development Authority may, in accordance with the provisions of this Act and the rules made thereunder and with the previous sanction of the State Government, by notification levy a charge (hereinafter called the civic amenity charge) for extending such civic amenity to the whole or any part of the Planning Area and at such rate as may be prescribed.
- (2) The civic amenity charge shall be recoverable as arrears of land revenue.
- Explanation.—*For the purposes of this section, "civic amenity" shall have the same meaning as in the West Bengal Government Township (Extension of Civic Amenities) Act, 1975 (West Ben. Act XLII of 1975).

1. Inserted by s. 2 of the West Bengal Town and Country (Planning and Development) (Second Amendment) Act, 1993 (West Ben. Act VII of 1993).

CHAPTER X

Finance, Accounts and Audit

107. Fund of the Planning Authority or Development Authority.—

- (1) Every Planning Authority or Development Authority (other than the *[Kolkata] Metropolitan Development Authority) shall have and maintain its own fund to which shall be credited—
- (a) all moneys received by the said Authority from the State Government by way of grants, loans, advances or otherwise;
- (b) all development charges or other charges or fees received by the said Authority under this Act or rules or regulations made thereunder, and
- (c) all moneys received by the said Authority from any other source.
- (2) Every such Authority may keep in current account in any branch of the State Bank of India, or any other Bank approved by the State Government in this behalf, such portion of its fund as may be prescribed and any money in excess of the said sum shall be invested in such manner as may be approved by the State Government.

108. Fund of the *[Kolkata] Metropolitan Development Authority.—

- (1) There shall be a fund for the *[Kolkata] Metropolitan Development Authority to which shall be credited—
- (a) such moneys as may be paid to it by the State Government under the Taxes on Entry of Goods into *[Kolkata] Metropolitan Area Act, 1972;
- (b) all moneys borrowed by it;
- (c) such other moneys as may be received by it from the State Government or from any other authority or source.
- (2) The *[Kolkata] Metropolitan Development Authority shall maintain a sinking fund for the repayment of money borrowed by it, and shall every year deposit into the said fund such moneys as may be paid to it by the State Government under the Taxes on Entry of Goods into *[Kolkata] Metropolitan Area Act, 1972.
- (3) The money paid into the sinking fund shall be invested in such manner and in such securities as may be prescribed.

- (4) The sinking fund or any part thereof shall be applied in, or towards, the discharge of the loan or part thereof for which such fund was created, and until such loan or part thereof is wholly discharged, the money standing to the credit of the fund shall be applied for no other purpose.

* See foot note no. 1 on page no. 2.

109. Grants and advances by State Government.—

The State Government may make such grants, advances and loans to any Planning Authority or Development Authority (including the *[Kolkata] Metropolitan Development Authority) as it may deem necessary for the performance of the functions under this Act and all such grants, loans and advances made shall be on such terms and conditions as the State Government may determine.

110. Budget of the Planning Authority or Development Authority.—

Every Planning Authority or Development Authority shall prepare every year, in such form and within such time as may be approved by the State Government, a budget in respect of the next financial year, showing the estimated receipts and expenditure of such Authority.

111. Accounts and Audit.—

- (1) Every Planning Authority or Development Authority shall maintain proper accounts and other relevant records and prepare an annual statement of accounts including the balance sheet in such form as may be approved by the State Government.
- (2) The audit of the accounts of the Planning Authority or Development Authority shall be made by such person as may be appointed by the State Government.
- (3) The audit shall be made in such manner as may be prescribed.
- (4) The auditor shall submit his report to the concerned Authority and shall forward a copy thereof to the State Government.

112. Annual reports.—

As soon as may be after the close of a year, the Planning Authority or the Development Authority shall prepare a report of its activities during the preceding year and submit it to the State Government in such form and on or before such date as may be prescribed.

113. Constitution of provident fund.—

- (1) Every Planning Authority or Development Authority shall constitute, for the benefit of its whole-time paid members, officers and other employees, in such manner and subject to such conditions as may be prescribed, such provident funds as it may deem fit.
- (2) Where any such provident fund has been constituted, the State Government may declare that the provisions of the Provident Funds Act, 1925 (19 of 1925), shall apply to such fund as if it were a Government Provident Fund.

114. Power of the Planning Authority, Development Authority and the *[Kolkata] Metropolitan Development Authority to borrow money.—

An Authority constituted or deemed to have been constituted under this Act may, from time to time, borrow at such rate of interest and for such period and upon such terms, as the State Government may approve, any sum of money required for carrying out the purposes of this Act or servicing any loan obtained by it.

* See foot note no. 1 on page no. 2.

CHAPTER XI

Supplemental and Miscellaneous Provisions

115. Power of entry.—

- (1) Any officer of the Planning Authority or the Development Authority authorised in this behalf may enter into or upon any land or building with or without assistance of workmen for the purpose of—
 - (a) making any enquiry, inspection, measurement or survey or taking levels of such land or building;
 - (b) setting out boundaries and intended lines of works;
 - (c) specifying such levels, boundaries and lines by placing marks and cutting trenches;
 - (d) examining works under construction and ascertaining the course of sewers and drains;
 - (e) digging or boring into the sub-soil;
 - (f) ascertaining whether any land is being or has been developed in contravention of any provision of this Act or rules or regulations made thereunder; and
 - (g) doing any other thing necessary for the efficient administration of this Act:

Provided that—

- (i) in the case of any building used as a dwelling-house, or upon any enclosed part of garden attached to such a building, no such entry shall be made without giving the occupier at least twenty-four hours' notice in writing of the intention to enter, unless such occupier agrees;
 - (ii) sufficient opportunity shall 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 entry, to the social and religious usages of the occupants of the land or building.
- (2) The power of the officer under sub-section (1) shall extend only to the Planning Area of the concerned Authority and such other area which the State Government may have directed to be included in the development plan.
- (3) Any person who obstructs the entry of a person empowered or authorised under this section to enter into or upon any land or building or molests such person after such entry shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to one thousand rupees, or with both.

116. Service of notices.—

All documents including bills, notices and orders required by this Act or any rule or regulation made thereunder to be served upon or issued or presented to any person shall, save as otherwise provided in this Act or rule or regulation, be effected—

- (a) by giving or tendering the said document to such person; or
- (b) if such person is not found, by leaving such document at his last known place of abode or by giving or tendering the same to some adult member or servant of his family; or
- (c) if his address elsewhere is known, by forwarding such document to him by registered post under a cover bearing the same address; or
- (d) if none of the means as aforesaid is available, by causing a copy of such document to be affixed on some conspicuous part of the land or building, if any, to which the document relates.

117. Public notice how to be made known.—

Every public notice given under this Act or rules or regulations made thereunder shall be in writing over the signature of such officer who may be authorised in this behalf by any Planning Authority or Development Authority 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 proclaiming the same by beat of drum or by advertisement in a local newspaper and by such other means which the concerned authority thinks fit.

118. Notices, etc., to fix reasonable time.—

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

119. Authentication of orders and documents of the Planning or Development Authority.—

All permissions, orders, decisions, notices and other documents of the Planning Authority or the Development Authority shall be authenticated by the signature of the Secretary of the concerned authority or such other officer as may be authorised by the Planning Authority or the Development Authority in this behalf.

120. Mode of proof of records of the Planning Authority or Development Authority.—

A copy of any receipt, application, plan, notice, order, entry in a register, or other document in the possession of any Planning Authority or Development Authority, if duly authenticated by the person authorised by the concerned Authority, shall be received and admitted as evidence of the matters and transactions, therein recorded to the same extent, as the original entry or document would, if produced, have been admissible to prove such matters.

121. Restriction on the summoning of officers and employees of the Planning Authority or Development Authority.—

No officer or employee of any Planning Authority or Development Authority shall, in any legal proceedings to which such Authority is not a party, be required to produce any register or document the contents of which can be proved under the preceding section by a certified copy, or to appear as witness to prove the matters and transactions recorded therein, unless by order of the Court made for special cause.

122. Offences by companies.—

- (1) 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 its business 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 its commission.
- (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 officers 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; and
- (b) "director" in relation to a firm means a partner in the firm.

123. Penalty for obstruction or removing mark.—

If any person—

- (a) obstructs, or molests any person engaged or employed by any Planning Authority or Development Authority, or any person with whom any such Authority has entered into a contract, in the performance or execution by such person of his duty or of anything which he is empowered or required to do under this Act, or
- (b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorised under this 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.

124. Sanction of prosecution.—

No prosecution for any offence punishable under this Act shall be instituted except with the previous sanction of the Planning Authority or the Development Authority concerned or any officer authorised by such authority in this behalf.

125. Composition of offences.—

- (1) The Planning Authority or the Development Authority concerned or any person authorised in this behalf may, either before or after the institution of the proceedings, compound any offence made punishable by or under this Act.
- (2) The composition of an offence under sub-section (1) shall have the effect of an order of acquittal.

126. Right to appear by recognised agent.—

Every party to any proceeding before the Tribunal constituted under this Act, shall be entitled to appear either in person or by his agent authorised in writing in that behalf.

127. Power to compel attendance of witness, etc.—

For the purpose of this Act, any Authority or an officer appointed under the provisions of this Act to discharge the function of the Authority or the Tribunal may summon and enforce the attendance of witnesses including the parties interested or any of them and compel them to give evidence and compel the production of documents by the same means and as far as possible in the same manner as is provided in the case of Civil Court by the Code of Civil Procedure, 1908 (5 of 1908).

128. Jurisdiction of courts.—

No court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try an offence punishable under this Act.

129. Fine when realised to be paid to Planning Authority or Development Authority.—

All fines realised in connection with prosecution under this Act shall be paid to the Planning Authority or the Development Authority concerned.

130. Members, officers and employees to be public servants.—

Every member, and every officer or other employee of a Planning Authority or Development Authority shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (45 of 1860).

131. 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 any rule or regulation made thereunder.

132. Finality of orders.—

Save as otherwise expressly provided in this Act, every order passed or direction issued by the State Government or order passed or notice issued by any Planning Authority or Development Authority shall be final and shall not be questioned in any suit or other legal proceeding.

133. Validation of acts and proceedings.—

- (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—
 - (a) the existence of any vacancy, initial or subsequent, in or any defect in the constitution of any Planning Authority or Development Authority;
 - (b) any person having ceased to be a member;
 - (c) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or
 - (d) any omission, defect or irregularity not affecting the merits of the case.
- (2) Every meeting of any Planning Authority or Development Authority shall be presumed to have been duly convened and to be free from all defects and irregularities.

134. Power to delegate.—

Any Planning Authority or Development Authority may, by resolution, direct that any power exercisable by it under this Act or rules or regulations made thereunder¹ [(except the powers to make regulations)] may also be exercised by any local authority or any officer of the State Government with previous consent of the State Government, or any officer of the Planning Authority, Development Authority or local authority as may be mentioned therein, in such cases and subject to such conditions, if any, as may be specified therein.

135. Control by the State Government.—

- (1) Every Planning Authority or Development Authority shall carry out such directions as may be issued from time to time by the State Government for the efficient administration of this Act.
- (2) If in, or in connection with, the exercise of its powers and discharge of its functions by any Planning Authority or Development Authority, any dispute arises between the Planning Authority, Development Authority, the local authority and the State Government, the decision of the State Government on such dispute shall be final.

1. Substituted by s. 3 of the West Bengal Town and Country (Planning and Development) (Second Amendment) Act, 1993 (West Ben. Act VII of 1993) for the words: "(except the power to prepare any development plan or development scheme to make regulations)".

136. Returns and information.—

Every Planning Authority or Development Authority shall furnish to the State Government such reports, returns and other information as the Government may from time to time require.

137. Overriding effect.—

- (1) The provisions of this Act and the rules and regulations made thereunder shall have effect notwithstanding anything inconsistent therewith contained in any other law.
- (2) Notwithstanding anything contained in any other law—
 - (a) when permission for development in respect of any land has been obtained under this Act, such development shall not be deemed to be unlawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under any other law for such development has not been obtained; this shall not, however, be construed as exemption to the application for permission and of payments of such fees and charges as required by such other law,
 - (b) when permission for such development has not been obtained under this Act, such development shall not be deemed to be lawfully undertaken or carried out by reason only of the fact that permission, approval or sanction required under such other law for such development has been obtained.
- (3) Notwithstanding the provisions of sub-sections (1) and (2), the provisions of the West Bengal Slum Areas (Improvement and Clearance) Act, 1972 (West Ben. Act X of 1972), if in conflict with the provisions of this Act, shall prevail.

138. Power to make rules.—

- (1) The State Government may, by notification, make rules for carrying out the purposes of this Act.
- (2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely:—
 - (a) the functions and powers of the Planning Authority and Development Authority;
 - ¹[(aa) regulation of building operation within the Planning Area by a Planning Authority or a Development Authority or any other authority under section 13A;]
 - (b) the term of office and conditions of service of the members of the Planning Authority and Development Authority;
 - (c) the qualifications and disqualifications for being chosen as, and for being, members of the Planning and Development Authorities;
 - (d) the matters in which and the purpose for which any Planning or Development Authority may associate with itself any person under the provisions of this Act;
 - (e) the control restriction in relation to the appointment of officers and other employees of Planning and Development Authorities;
 - (f) the form and content of the ²[Land Use and Development Control Plan] ³[* * *] and the

- Development Scheme and the procedure to be followed in connection with the preparation, submission and approval of such plans, schemes and the form and the manner of publication of the notice relating to such plan and scheme;
- (g) the periodical amendment of ¹[Land Use and Development Control Plans,] the period on the expiration of which such an amendment may be taken up, procedure to be followed in making such amendment;
 - (h) the form in which any application for permission for development shall be made, the particulars to be furnished in such application and documents and plans which shall accompany such application;
 - (i) the form of registration of application and the particulars to be contained in such register;
 - (j) the manner of filing, and the fees to be paid for and the procedure to be followed in, appeals;
 - (k) the manner in which an acquisition notice is to be served, and claim for compensation is to be made, the time within which such claim is to be made and the procedure to be followed for assessment of compensation;
 - (l) procedure for the levy of development charges and exemption from it on any development or change of any use of any land;
 - (m) the manner in which application for the assessment of development charge is to be made;
 - (n) the sum of money that may be kept in current account;
 - (o) the form of the budget of Planning and Development Authorities, the date on or before which it shall be prepared, the manner of preparing it and the number of copies that have to be sent to the State Government;
 - (p) the form of the annual statement of accounts and balance sheet;
 - (q) the form of the annual report of the Planning and Development Authorities and date on or before which it shall be submitted to the State Government;
 - (r) the manner and the constitution of provident funds the wholtime paid members and officers and other employees of Planning and Development Authorities and the conditions subject to which such funds may be constituted;
 - (s) the documents of which copies may be granted and the fees for such copies; and
 - (t) any other matter which has to be or may be prescribed by rules.

-
1. Inserted by s. 3 of the West Bengal Town and Country (Planning and Development) (Amendment) Act, 2006 (West Ben. Act III of 2006) (w.r.e.f. 14.12.2005).
 2. Substituted by s. 13(a)(i) of the West Bengal Town and Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "Outline Development Plan".
 3. Omitted by s. 13(a)(ii) *ibid* for the words "Detailed Development Plan".
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139. Power to make regulations.—

Any Planning Authority or Development Authority may, with the previous approval of the State Government, made regulations consistent with this Act and the rules made thereunder, to carry out the purposes of this Act and without prejudice to the generality of this power such regulations may provide for,—

- (a) the time and place of holding and procedure to be followed in meetings of the Planning Authority, Development Authority and Advisory Committee, and the number of members necessary to form a quorum therein;
- (b) the powers and duties of the officers and employees of the Planning Authority and Development Authority;
- (c) the salaries, allowances and conditions of service of its officers and employees;
- (d) the terms and conditions for the continuance of use of any land used otherwise than in conformity with a development plan; and
- (e) any other matter which has to be or may be prescribed by rules.

-
1. Substituted by s. 13(b) of the West Bengal Town and Country (Planning and Development) (Amendment) Act, 1994 (West Ben. Act XXVI of 1994) for the words "development plans,".

140. Laying of rules before State Legislature.—

All rules made under this Act shall be laid for not less than thirty days, before the State Legislature, as soon as may be, after they are made and shall be subject to such modifications as the Legislature may make during the session in which they are so laid or the session immediately following.

141. Dissolution of Planning and Development Authorities.—

- (1) Where the State Government is satisfied that the purposes for which any Planning Authority or Development Authority was established under this Act have been substantially achieved so as to render the continued existence of such authority unnecessary, it may, by notification, declare that the authority in question shall be dissolved with effect from such date as may be specified in the notification, and the concerned authority shall stand dissolved accordingly.
- (2) With effect from the date specified in sub-section (1)—
 - (a) all properties, funds and dues which are vested in, or realisable by, the Planning or the Development Authority shall vest in or be realisable by the State Government;
 - (b) all liabilities which are enforceable against the concerned authority shall be enforceable against the State Government; and
 - (c) for the purpose of realising properties, funds and dues referred to in clause (a), the functions of the Planning or Development Authority shall be discharged by the State Government.

142. Repeal and Savings.—

- (1) The *[Kolkata] Metropolitan Development Authority Act, 1972 (West Ben. Act XI of 1972), and the *[Kolkata] Metropolitan Planning Area (Use and Development of Land) Control Act, 1965 (West Ben. Act XIV of 1965) shall stand repealed with effect from the date on which the *[Kolkata] Metropolitan Planning Area as referred to in section 16 of this Act is declared to be a Planning Area under sub-section (1) of section 9 of this Act.
- (2) The Durgapur (Development and Control of Building Operations) Act, 1958 (West Ben. Act XXVII of 1958) shall stand repealed with effect from the date on which the Durgapur are as defined in that Act is declared to be a Planning Area under sub-section (1) of section 9 of this Act.
- (3) Notwithstanding repeal of the Acts referred to in sub-sections (1) and (2), anything done or any action taken under the provisions of the said Acts or rules or regulations made thereunder, shall be deemed to have been done or taken under the provisions of this Act; and all such rules or regulations shall, if not inconsistent with the provisions of this Act, continue in force till rules or regulations are made under this Act.

* See foot note no. 1 on page no. 2.

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