



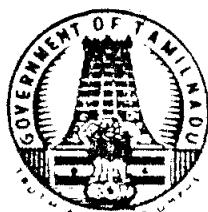
The Tamil Nadu Acquisition of Hoardings Act, 1985

Act 39 of 1985

Keyword(s):

Hoarding, Local Area, Private Place, Public Place

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**Part IV—Section 2
Tamil Nadu Acts and Ordinances.**

The following Act of the Tamil Nadu Legislature received the assent of the President on the 31st July 1985 and is hereby published for general information:—

ACT No. 39 OF 1985.

An Act to provide for the acquisition of the right, title and interests in hoardings and to prevent haphazard growth of hoardings and for matters incidental thereto.

WHEREAS there has been in the recent past haphazard growth of hoardings in different places which leads to traffic hazards and numerous accidents ;

AND WHEREAS it is necessary that hoardings should be put up only in convenient and select places ;

AND WHEREAS for achieving that objective it is necessary that only the Government or such other authorities as may be authorised by the Government should alone erect hoardings at such convenient and select places ;

(A Group) IV-2 Ex. (297)—1 [201]

AND WHEREAS, for fully achieving the said objective all existing hoardings should be acquired by the State Government for a public purpose ;

BE it enacted by the Legislature of the State of Tamil Nadu in the Thirty-sixth Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Tamil Nadu Acquisition of Hoardings Act, 1985.

(2) It extends to the whole of the State of Tamil Nadu.

(3) It shall,—

(i) be deemed to have come into force in the City of Madras on the 10th July 1985 ; and

(ii) come into force in any other local area in the State of Tamil Nadu, on such date as the Government may, by notification, appoint ; and different dates may be appointed for different local areas.

2. *Declaration as to the policy of the State.*—It is hereby declared that this Act is for giving effect to the policy of the State towards securing the principles specified in clauses (b) and (c) of Article 39 of the Constitution.

3. *Definitions.*—In this Act, unless the context otherwise requires,—

(a) “ amount ” means the amount payable under this Act for the acquisition of the hoarding ;

(b) “ Authorised Officer ” means an Authorised Officer appointed under section 12 ;

(c) “ date of the commencement of this Act ” in relation to the City of Madras means the 10th July 1985 and in relation to any other local area means, the date appointed by the notification issued under sub-section (3) of section 1 in relation to such other local area ;

(d) “ Government ” means the State Government ;

(e) “ hoarding ” means any screen of boards or framework or other support,—

(i) intended for exhibiting advertisement, or

(ii) on which any advertisement has been exhibited,

which is erected wholly or in part upon or over any land building, wall or structure, which or any part of which shall be visible

from some point in any public place or private place and includes all and every part of any such screen of boards, frame work or other support ;

(f) "local area" means the City of Madras and any area, whether urban or rural, declared by the Government, by notification, to be a local area for the purposes of this Act ;

(g) "person interested" in relation to any hoarding includes any person who has an interest in the hoarding and any other person who is affected by the vesting of the hoarding and claiming or entitled to claim an interest in the amount ;

(h) "private place" means any place other than a public place ;

(i) "public place" means any place (including a road, street or way, whether a thoroughfare or not, and a landing place) to which the public are granted access, or have a right to resort or over which they have a right to pass.

4. Transfer to, and vesting in, the Government of all hoardings.—

(1) Save as otherwise provided in this Act, on and from the date of the commencement of this Act in any local area, all hoardings in existence on the date of such commencement in such local area and the right, title and interests of any person in relation to such hoardings, shall stand transferred to and vest in the Government for a public purpose free from all encumbrances.

(2) Any person interested, shall have no claim on or in relation to such hoarding, except a claim to the amount payable in respect of such hoarding under this Act.

(3) If any question arises whether any hoarding was in existence on the date of the commencement of this Act in any local area, the burden of proving such question shall lie, on the person who claims to be a person interested in respect of such hoarding.

5. Principles and method of determining the amount payable for the hoarding.—(1) For the vesting of the hoarding under section 4, every person interested shall be entitled to receive such amount as may be determined in the manner hereinafter set out, that is to say,—

(a) where the amount can be fixed by agreement, it shall be determined in accordance with such agreement ;

(b) where no such agreement can be reached, the Government shall appoint as arbitrator a person who is not below the rank of a Deputy Collector ;

(c) the Government may, in any particular case, nominate a person having expert knowledge as to the nature of the hoarding to assist the arbitrator and where such nomination is made, the person interested may also nominate an assessor for the same purpose ;

(d) at the commencement of the proceedings before the arbitrator, the Government and the person interested, shall state what in their respective opinion is the amount payable ;

(e) the arbitrator, shall, after hearing the dispute, make an award determining the amount, which appears to him just and reasonable, and also specifying the person or persons to whom the amount shall be paid and in making the award he shall have regard to the circumstances of each case, and the provisions of the Schedule so far as it is applicable ;

(f) where there is any dispute as to the person or persons who are entitled to the amount, the arbitrator shall decide such dispute and if the arbitrator finds that more persons than one are entitled to the amount he shall apportion the amount amongst such persons ;

(g) nothing in the Arbitration Act, 1940 (Central Act X of 1940) shall apply to the arbitrations under this section.

(2) Every award made by the arbitrator under clause (e) of sub-section (1) shall also state the amount of costs incurred in the proceedings before him and by what persons and in what proportions such amount is to be paid.

6. *Notice of determination of amount under section 5 to be given to all persons interested.*—Reasonable notice in respect of the amount determined under section 5 shall be given to all the persons interested.

7. *Manner of payment of amount for the hoarding acquired.*—(1) The amount determined under section 5 shall be given by the Government to the person interested.

(2) Where the amount has been fixed by agreement, it shall be paid in accordance with the terms of the agreement within a period of three months from the date of the agreement.

(3) Where the amount has been determined by an award of the arbitrator under section 5 and where no appeal has been preferred under section 8, the amount shall be paid within a period of three months from the date of the award.

(4) Where any person aggrieved by an award has preferred an appeal under section 8, eighty per cent of the amount as determined by the award of the arbitrator shall be paid within a period of three months from the date of the award, and the balance amount, if any, due in accordance with the order of the Tribunal under section 8 shall be paid within a period of three months from the date of such order.

8. *Appeal from awards in respect of amount.*—(1) Any person aggrieved by an award may prefer an appeal to the Tribunal.

(2) The Government may constitute as many Tribunals as may be necessary for the purposes of this Act.

(3) The Tribunal shall consist of one person only who shall be a judicial officer not below the rank of a Subordinate Judge.

9. *Powers of the Tribunal.*—On receipt of any appeal, the Tribunal shall after—

(i) giving the parties an opportunity of making their representations ;

(ii) making if necessary, such enquiry as it deems fit; and

(iii) considering all the circumstances of the case,

make such order as it deems just and equitable.

10. *Time for appeal.*—No appeal under section 8 shall be preferred after the expiry of thirty days from the date on which the award appealed against was received by the appellant:

Provided that the Tribunal may in its discretion allow further time not exceeding thirty days for preferring any such appeal if it is satisfied that the appellant had sufficient cause for not preferring the appeal in time.

11. *Arbitrator to have certain powers of civil court.*—The Arbitrator while holding arbitration proceedings under this Act shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (Central Act V of 1908) in respect of the following matters, namely :—

(a) summoning and enforcing the attendance of any person and examining him on oath,

(b) requiring the discovery and production of any document or other material object which is producible as evidence,

- (c) reception of evidence on affidavits,
- (d) requisitioning any public record or a copy thereof from any court or office,
- (e) issuing commissions for the examination of witnesses or documents.

12. *Appointment of Authorised Officers.*—(1) The Government may appoint such number of officers as may be considered necessary and possessing such qualifications as may be prescribed, as Authorised Officers for the purposes of this Act.

(2) The Authorised Officer shall carry out such functions and duties as may be assigned to him by the Government for carrying into effect the provisions of this Act.

(3) Any person aggrieved by any order of the Authorised Officer under this Act may, within thirty days from the date of such order prefer an appeal to the Government or any officer specially empowered by the Government in this behalf :

Provided that the Government or the officer so empowered may entertain the appeal after the expiry of the said period of thirty days if they are, or he is, satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

13. *Power to obtain information.*—The Government or the Authorised Officer or any other officer specially empowered in this behalf by the Government may with a view to carrying out the purposes of this Act by order require any person to furnish to such officer as may be specified in the order, such information in his possession as may be specified relating to any hoarding. Such information shall be furnished by such person within the time specified in such order.

14. *Power to enter and inspect.*—The Authorised Officer or any other officer empowered in this behalf by the Government by general or special order, may after reasonable notice enter any premises and inspect the hoarding with a view to carrying out the purposes of this Act.

15. *Service of orders and notices.*—(1) Subject to the provisions of this section, and any rules that may be made under this Act, every order or notice made or issued under this Act shall,—

- (a) in the case of any order or notice of a general nature or affecting a class of persons, be published in the *Tamil Nadu Government Gazette* ;

(b) in the case of any order or notice affecting a corporation or firm, be served in the manner provided for the service of summons in rule 2 of Order XXIX or rule 3 of Order XXX, as the case may be, in the First Schedule to the Code of Civil Procedure, 1908 (Central Act V of 1908) ; and

(c) in the case of any order or notice affecting an individual person (not being a corporation or firm) be served on such person—

(i) by delivering or tendering it to that person, or

(ii) if it cannot be so delivered or tendered by delivering or tendering it to any officer of such person or any adult male member of the family of such person, or by affixing a copy thereof on the outer door or on some conspicuous part of the premises in which that person is known to have last resided or carried on business or personally worked for gain; or failing service by these means,

(iii) by post.

(2) Where the ownership of the hoarding is in dispute or where the persons interested in the said hoarding are not readily traceable and the order or notice cannot be served without undue delay, the order or notice may be served, by publishing it in the *Tamil Nadu Government Gazette*, and where possible, by affixing a copy thereof on any conspicuous part of the hoarding.

16. *Protection of action taken in good faith.*—(1) 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 in pursuance of this Act or any rule or order made thereunder.

(2) No suit or other legal proceeding shall lie against the Government, or any other officer for any damage caused or likely to be caused by anything which is in good faith done or intended to be done in pursuance of this Act or any rule or order made thereunder.

17. *Bar of jurisdiction of civil courts.*—Save as otherwise expressly provided in this Act, no civil court shall have jurisdiction in respect of any matter which the Government are, or an arbitrator or Authorised Officer is, empowered by or under this Act to determine, and no injunction shall be granted by any court or other authority in respect of any action taken or to be taken in pursuance of any power conferred by or under this Act.

18. *Prohibition for erection of hoardings by any person other than the Government, etc.*—Notwithstanding anything contained in the Madras City Municipal Corporation Act, 1919 (Tamil Nadu Act IV

of 1919) or the Madurai City Municipal Corporation Act, 1971 (Tamil Nadu Act 15 of 1971) or the Coimbatore City Municipal Corporation Act, 1981 (Tamil Nadu Act 25 of 1981) or in any other law for the time being in force, on and from the date of the commencement of this Act no person other than the Government or any other authority or officer specially authorised by the Government, in this behalf, shall erect any hoarding in any public place or any private place :

Provided that where any person erects any hoarding in any public place or any private place within the City of Madras on and after the 10th July 1985 and before the date of the publication of this Act in the *Tamil Nadu Government Gazette*, any officer specially authorised by the Government in this behalf shall after giving an opportunity to the person interested, remove such hoarding and no amount shall be paid in respect of the hoarding so removed.

19. *Penalty for offences.*—Whoever contravenes,—

(a) in the City of Madras on or after the date of the publication of this Act in the *Tamil Nadu Government Gazette* ; and

(b) in any other local area on or after the date appointed by the notification issued under sub-section (3) of section 1 in relation to such other local area,

any provision of this Act or any rule or order made under this Act, or obstructs the lawful exercise of any power conferred by or under this Act, shall be punished with imprisonment for a term which may extend to three years or with fine, or with both.

20. *Offences by companies.*—(1) Where an offence under this Act has been committed by a company, every person who, at the time the offence was committed, was incharge of, and was responsible to, the company, for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly :

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

(2) Notwithstanding anything contained in sub-section (1), where any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any director, manager, secretary or other officer of the company, such

director, manager, secretary or other officer shall be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation.—For the purposes of this section,—

(a) “company” means any 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.

21. *Certain persons to be public servants.*—Every arbitrator, Authorised Officer and every other officer empowered by the Government, while exercising any power or performing any duty under this Act shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code (Central Act XLV of 1860).

22. *Act to override other laws, etc.*—Save as otherwise provided in this Act, the provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any decree or order of any court, tribunal or other authority.

23. *Utilisation of acquired hoardings.*—It shall be open to the Government to remove any hoarding acquired under this Act or to use or permit the use of such hoarding in public interest in such manner as they deem fit.

24. *Exemptions.*—Nothing contained in this Act shall apply to,—

(a) any hoarding belonging to,—

(i) the Central Government;

(ii) any State Government;

(iii) any company or other authority owned or controlled by the Central Government or any State Government; or

(iv) any such institution as may be approved by the Government in this behalf; or

(v) any hoarding on which is exhibited any advertisement which relates to,—

(i) the trade or business carried on within the land or building, upon or over, which such hoarding is erected or to any sale

or letting of such land or building or any effects therein or to any sale, entertainment or meeting, to be held upon or in such land or building; or

(ii) the name of the land or building, upon or over which the hoarding is erected or to the name of the owner or occupier of such land or building.

25. Power to exempt.—Where the Government, of their own motion or otherwise, are satisfied that the application of the provisions of this Act would cause undue hardship to any class of persons owning the hoardings, the Government may, by order, exempt, whether prospectively or retrospectively, and subject to such conditions, if any, as may be specified in the order, such hoardings from all or any of the provisions of this Act.

26. Committee for selecting places where hoardings can be erected.—(1) There shall be constituted a Committee for each local area whose duty shall be to select places for erection of hoardings.

(2) Every such Committee shall consist of—

(a) an officer of the police department not below the rank of a Deputy Commissioner of Police or a Superintendent of Police ;

(b) a representative of the local authority concerned ;

(c) not more than five other official members ;

to be appointed by the Government.

(3) The Government shall appoint one of the members specified in sub-section (2) to be the Chairman of the Committee.

(4) Every Committee shall, in selecting places, for erection of hoardings have regard to the following matters, namely :—

(a) the location of the proposed hoarding ;

(b) the effect of such hoarding on moving traffic ; and

(c) such other matters as may be prescribed.

27. Power to make rules.—(1) The Government may 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 procedure to be followed in arbitration proceedings and appeals under this Act ;

(b) the principles to be followed in apportioning the cost of the proceedings before the arbitrator and an appeal under the Act;

(c) the manner of service of notices and orders;

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

(3) All rules made under this Act shall be published in the *Tamil Nadu Government Gazette* and unless they are expressed to come into force on a particular day, shall come into force on the day on which they are so published.

(4) Every rule made under this Act shall, as soon as possible after it is made, be placed on the table of both Houses of the Legislature, and if, before the expiry of the session in which it is so placed or the next session, both Houses agree in making any modification in any such rule or both Houses agree that the rule should not be made, the rule shall thereafter have effect only in such modified form or be of no effect, as the case may be, so however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that rule.

THE SCHEDULE.

(See section 5.)

PRINCIPLES FOR DETERMINING THE AMOUNT.

1. In respect of every hoarding, the amount to be paid shall be the market value of such hoarding as on the date of the commencement of this Act.

2. In the case of any lease or licence in respect of the place where the hoarding has been erected or in respect of the hoarding itself, the persons interested shall be paid an amount equal to the income that would have been derived by them during the unexpired period of lease or licence, if the provisions of this Act had not come into force:

Provided that where any such lease or licence has expired on or before the date of the commencement of this Act, the persons interested shall be paid an amount equal to the income that would have been derived by them for a period of one month if the provisions of this Act had not come into force:

Provided further that in the case of any hoarding which has been erected on any land without the consent of the owner and the hoarding is in existence on the date of the commencement of this Act and where any lease or licence has been entered into in respect of such hoarding, no amount shall be paid to any person interested in such lease or licence, whether the period of lease or licence has expired or not.

Explanation I.—For the purposes of the second proviso, a 'hoarding' shall be deemed to have been erected without the consent of the owner, if the consent of the owner though obtained initially, has not been expressly obtained in writing for the renewal of the lease or licence.

Explanation II.—For the purposes of the second proviso, 'owner' includes any person deriving rights through him.

(By order of the Governor)

S. VADIVELU,
Commissioner and Secretary to Government,
Law Department.