The Periyar Irrigation Tanks (Preservation) Act, 1934

Act 5 of 1934

Keyword(s):
Preservation in Efficient Condition, Periyar System of Irrigation, Tanks, Estate, Land Holder

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[1](TAMIL NADU) ACT No. V OF 1934[2].

[THE PERIYAR IRRIGATION TANKS (PRESERVATION) ACT, 1934.]

(*Received the assent of the Governor on the* 15*th March* 1934, *and that of the Governor-General on the* 17*th April* 1934; *the assent of the Governor-General was first published in the* Fort St. George Gazette *of the* 8*th May* 1934.)

An Act to provide for the preservation in efficient condition of tanks belonging to landholders which are used as part of the Periyar system of irrigation in the [3][State of Tamil Nadu].

WHEREAS it is expedient to provide for the preservation in efficient condition of tanks belonging to landholders which are used by the Government as part of the Periyar system of irrigation in the [3][State of Tamil Nadu];

AND WHEREAS the previous sanction of the Governor-General has been obtained to the passing of this Act; It is hereby enacted as follows :—

1. This Act may be called the Periyar Irrigation Tanks (Preservation) Act, 1934. Short title.

2. It extends to the whole of the Madura district. Extent.

3. In this Act, unless there is something repugnant in the subject or context, Definitions.

(*a*) 'Collector' means the Collector of the Madura district ;

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[1] These words were substituted for the word "Madras" by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.

[2] For Statement of Objects and Reasons, *See Fort St. George Gazette*, dated the 17th October 1933—Part IV, Page 210.

[3] This expression was substituted for the expression "Presidency of Madras" by the Tamil Nadu Adaptation of Laws Order, 1970, which was deemed to have come into force on the 14th January 1969.

(*b*) 'estate' and 'landholder' have the same meaning as in the [1][Tamil Nadu] Estates Land Act, 1908; and [1][Tamil Nadu] Act I of 1908.

(*c*) 'tank' means any tank situated wholly or partly in an estate and used by the Government as part of the Periyar system of irrigation.

Decision of disputes.

4. If any question arises as to whether any area is or forms part of a tank, it shall be decided by the Collector whose decision shall be final.

Preliminary order for repair of tank and service of such order on landholder.

5. Whenever it appears to the Collector that any tank is in a state of disrepair, he may pass a preliminary order specifying the measures which in his opinion are necessary for its repair and restoration to efficiency and cause plans and estimates of the cost of such measures to be prepared. The Collector shall send copies of such preliminary order, plans and estimates to the landholder of the estate in which the tank is situated, or if the tank is situated in more than one estate, to each landholder concerned, together with a notice in writing requiring him to appear before the Collector on a date to be specified in the notice, not being less than sixty days after the date of the notice, and show cause why the said order should not be confirmed.

The Collector shall cause a vernacular translation of such order and notice, together with a description in the vernacular of such measures and of the estimated cost of carrying them out, to be affixed in some conspicuous place or places in the village or villages in which the tank or its ayacut is situated and in such other village, if any, as he may think fit and shall cause intimation to be given of such affixture by beat of drum in the village or in each of the villages in which such affixture has been made.

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1 These words were substituted for the word "Madras" by the Tamil Nadu Adaptation of Laws Order, 1969, as amended by the Tamil Nadu Adaptation of Laws (Second Amendment) Order, 1969.

Objections before Collector.

6. On or before the date specified in the notice—

(i) the landholder or any of the landholders concerned may appear before the Collector, and raise any of the following objections, namely :—

(*a*) that he is not the landholder of any estate in which the tank is wholly or partly situated ;

(*b*) that the tank does not require repair ;

(*c*) that measures other than those proposed would be sufficient for the repair of the tank and its restoration to efficiency ; and

(*d*) that by law, local custom or contract any of the measures proposed should be carried out wholly or in part by or at the cost of some other person or persons ; and

(ii) the holder of any land irrigated by the Periyar System or any other person concerned may appear before the Collector and make such representations as he may think fit with regard to the nature of the measures proposed.

7. On the date specified in the notice or on any [illegible] by subsequent date to which he may adjourn the inquiry, [illegible] the Clolector shall hold such inquiry [illegible] as he thinks fit, and after such inquiry, if any, shall pass a final order confirming, cancelling or modifying the preliminary order, and in the last case, shall cause to be made such modifications in the plans and estimates as he may find necessary:

Provided that before modifying the preliminary order to the disadvantage of any party who has not appeared at the inquiry the Collector shall give a reasonable opportunity to such party to appear and show cause why the order should not be modified as proposed;

Provided further that in cases falling under sub-clause (*d*) of clause (i) of section 6, the Collector shall specify in the final order the extent to which the landholder's liability devolves on the person or persons concerned under the law, local custom or contract and the proportions, if any, in which each of such persons, if more than one, shall bear such liability.

Report by Collector to State Government and order by them.

8. (1) If the Collector confirms or modifies the preliminary order, he shall report the matter to the [1][State Government] who may cause to be carried out the measures specified in the order as confirmed or modified by him.

(2) The total cost of carrying out such measures (including the charges on account of establishment and tools and plant at such percentages on the actual cost of the work done as the [1][State Government] may from time to time prescribed) shall be divided between the [1][State Government] and the landholder or landholders and the other persons concerned, if any, in accordance with the following provisions :—

(*a*) There shall first be determined the [2][aggregate of (i) the total average area in the estate or estates concerned] on which, during the three faslis immediately preceding the fasli in which the preliminary order was passed, the [1][State Government] have levied water-cess for the use of water issuing from the tank otherwise than through its surplus works, whether at the rate prescribed for the irrigation of dry land with Periyar water or at the rate prescribed for the irrigation of wet land in whole inam and zamindari villages with

[1] The words "Provincial Government" were substituted for the words "Local Government" by the Adaptation Order of 1937 and the word "State" was substituted for "Provincial" by the Adaptation Order of 1950.

[2] These words, brackets and figure were substituted for the words "total average area" by section 2 (i) of the Periyar Irrigation Tanks (Preservation) (Amendment) Act, 1942 (Madras Act XVI of 1942), re-enacted permanently by section 2 of, and the First Schedule to, the Tamil Nadu Re-enacting and Repealing (No. 1) Act, 1948 (Tamil Nadu Act VII of 1948).

such water [1][and (ii) the total average area of ryotwari wet lands, if any, held under, and of ryotwari wet and dry lands, if any, irrigated with permission from, such tank during the three faslis aforesaid];

(*b*) Each landholder concerned shall bear such proportion of the said total cost as one half of the average area of the lands in his estate on which during the said three faslis the [2][State Government] have levied water-cess for the use of water so issuing at the rate prescribed for the irrigation with Periyar water of wet lands in whole inam and zamindari villages, bears to [3][the aggregate area] as determined under clause (*a*) :

Provided that in cases falling under sub-clause (*d*) of clause (i) of section 6, the liability of the landholder concerned shall, to the extent specified in the Collector's final order under section 7, be borne by the persons and in the proportions specified in such order.

(*c*) The [2][State Government] shall bear the balance of the said total cost.

Illustrations.

(1) A tank is wholly situated in the estate of a landholder. There is no law, local custom or contract excluding the liability of the landholder. The average area on which water-cess was levied during the three

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[3] These words were substituted for the words "total average area" by section 2 (iii) of the Periyar Irrigation Tanks (Preservation) (Amendment) Act, 1942 (Madras Act XVI of 1942), re-enacted permanently by section 2 of, and the First Schedule to, the Tamil Nadu Re-enacting and Repealing (No. I) Act, 1948 (Tamil Nadu Act VII of 1948).

faslis immediately preceding that in which the preliminary order is passed consists of 50 acres on which water-cess was levied at the rate prescribed for the irrigation of dry lands and 30 acres on which water-cess was levied at the rate prescribed for the irrigation of wet lands in whole inam and zamindari villages. The landholder should bear $\frac{\frac{1}{2} \text{ of } 30}{30+50}$, i.e., 3/16 of the total cost and the Government should bear the remainder, namely, 13/16.

(2) The facts are the same as in Illustration (1), except that a contract is proved by which the ryots holding the wet lands are bound to bear a share of the cost in proportion to their holding. Twenty acres of the wet lands are held by the ryots and the remaining ten by the landholder. The Government have to bear 13/16 of the total cost as in Illustration (1), the ryots 2/16 and the landholder 1/16.

(3) A tank is situated partly in the estate of landholder *A* and partly in that of landholder *B*. There is no law, local custom or contract excluding the liability of either landholder. The average area on which water-cess was levied during the three faslis immediately preceding consists of 50 acres on which the cess was levied at the rate prescribed for dry lands, 20 acres in the estate of landholder *A* on which the cess was levied at the rate prescribed for wet lands in whole inam and zamindari villages, and 10 acres in the estate of landholder *B* on which the cess was levied at the rate prescribed for such wet lands. Landholder *A* will bear $\frac{\frac{1}{2} \text{ of } 20}{50+20+10}$ or 2/16 of the total cost, landholder *B* will bear $\frac{\frac{1}{2} \text{ of } 10}{50+20+10}$ or 1/16 of the total cost and the Government will bear the remainder, namely, 13/16.

(4) A tank is situated in the estates of several landholders. During the three faslis immediately preceding, water-cess has been levied on the whole ayacut at the rate prescribed for the irrigation of wet lands in whole inam and zamindari villages. There is no law, local custom or contract excluding the liability of any landholder. One-half of the total cost will be borne by the Government and the other half by the several landholders in proportion to the areas lying within their respective estates on which such water-cess has been levied.

[1][NOTE.—In Illustrations (1) to (4), it is assumed (*a*) that there are no ryotwari wet lands under the tank, and (*b*) that there are no ryotwari wet or dry lands irrigated with permission from the tank.

(5) The facts are the same as in Illustration (1), but in addition 10 acres of ryotwari wet lands are held under the tank and 10 acres of ryotwari wet and dry lands are irrigated with permission from the tank. In this case, the landholder should bear $\frac{\frac{1}{2} \text{ of } 30}{30+50+20}$ or $\frac{3}{20}$ of the total cost, and the Government should bear the remainder, namely, $\frac{17}{20}$.

(6) The facts are the same as in Illustration (5) except that a contract is proved by which the ryots holding wet lands under the landholder are bound to bear a share of the cost in proportion to their holding. Out of the 30 acres on which water-cess was levied at the rate prescribed for irrigation of wet lands in whole inam and zamindari villages, 20 acres are held

[1] This note and illustrations (5) to (8) were added by section 2 (iv) of the Periyar Irrigation Tanks (Preservation) (Amendment) Act, 1942 (Madras Act XVI of 1942), re-enacted permanently by section 2 of, and the First Schedule to, the Tamil Nadu Re-enacting and Repealing (No. I) Act, 1948 (Tamil Nadu Act VII of 1948).

by the ryots and the remaining 10 acres by the landholder. The Government have to bear $\frac{1}{20}$ of the total cost as in Illustration (5), the ryots $\frac{2}{20}$ and the landholder $\frac{1}{20}$.

(7) The facts are the same as in Illustration (3) but in addition 30 acres of ryotwari wet lands are held under the tank and 10 acres of ryotwari wet and dry lands are irrigated with permission from the tank. Landholder *A* will bear $\frac{\frac{1}{2} \text{ of } 20}{50+20+10+40}$ or $\frac{2}{24}$ of the total cost, landholder *B* will bear $\frac{\frac{1}{2} \text{ of } 10}{50+20+10+40}$ or $\frac{1}{24}$ of the total cost, and the Government will bear the remainder, namely, $\frac{21}{24}$.

(8) The facts are the same as in Illustration (4). The extent of the lands in the estates of the several landholders is 400 acres and in addition 150 acres of ryotwari wet lands are held under the tank and 50 acres of ryotwari wet and dry lands are irrigated with permission from the tank. The several landholders in the estates have to pay $\frac{\frac{1}{2} \times 400}{400+200}$ or $\frac{1}{3}$ of the total cost in proportion to the areas lying within their respective estates on which water-cess has been levied and the Government will have to bear the remainder, namely, $\frac{2}{3}$.]

Service of notice on landholder or other person to pay amount of cost due from him.

9. After such measures as may have been ordered by the [1][State Government] under section 8 have been carried out, the Collector shall cause to be served upon every landholder or other person concerned, a memorandum showing the total cost of carrying out the same and the portion of such cost for which he is liable under section 8, together with an order directing him to pay the said portion either in a lump sum within a specified time or in specified instalments.

Recovery of amount of cost.

10. Any amount payable by a landholder or other person under an order under section 9 shall be recoverable as an arrear of land revenue.

Right of suit of landholder, etc., in certain cases.

11. (1) Any landholder aggrieved by an order under section 9 served on him may, within six months from the date on which such order was served, institute a suit in a Civil Court to have such order set aside or modified on any of the following grounds, namely :—

(*a*) that he is not the landholder of any estate in which the tank is wholly or partly situated; or

(*b*) that by law, local custom or contract any of the measures should have been carried out by, or at the cost of, some other person; or

(*c*) that the portion of the cost for which he has been made liable has been wrongly calculated :

Provided that a landholder who has been served with a preliminary order under section 5 shall not be entitled to institute a suit on the ground specified in clause (*a*) or clause (*b*), unless he has raised such ground in the proceedings before the Collector under section 6 or section 7.

(2) Any person other than a landholder aggrieved by an order under section 9 served on him may, within six months from the date on which such order was served, institute a suit in a Civil Court to have such

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order set aside or modified on any of the following grounds, namely :—

(*a*) that he is not bound to carry out any of the measures by law, local custom or contract; or

(*b*) that the portion of the cost for which he has been made liable has been wrongly calculated:

Provided that no such person shall be entitled to institute a suit on the ground specified in clause (*a*), unless he has raised such ground in the proceedings referred to in section 6 or section 7, having had a reasonable opportunity to do so.

Procedure in case of emergency.

12. Whenever it appears to the Collector that any tank is in such a state of disrepair as to be in imminent danger of breaching, he may by summary order cause to be carried out the measures of repair which in his opinion are necessary to prevent the tank from breaching and shall without delay inform every land-holder and other person concerned of the action which he is taking. The provisions of this Act shall thereupon apply as though such repairs had been ordered to be executed by the [1][State Government] under section 8.

Service of notice or other document.

13. Every notice, order or other document required by this Act to be served on, or sent to, any person, shall, if practicable, be served personally on such person or, if he cannot be found, the notice, order or document may be left at his usual or last known place of abode with an adult member of his family or an adult servant or agent, or may be sent by registered post, or may be affixed to some conspicuous part of his usual or last known place of abode and shall thereupon be deemed to have been duly served or sent.

Powers of entry and inspection.

14. The Collector or any officer appointed by him in that behalf may, for the purposes of this Act, at any time, enter upon any land and inspect or cause to be inspected any tank situated therein.

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