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IN INDIA

LAW & PRACTICE

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LAW & PRACTICE

Relating to

TOWN IMPROVEMENT TRUSTS

IN INDIA

CHAPTER I

THE PROBLEM:

1. Urban India.

India is still predominantly rural. Of the total population of 388,997,955 returned at the 1941 census, the rural enumeration was 339,301,902 (or 87.2 per cent.) and the urban enumeration 49,696,053 (or 12.8 per cent). According to the census of 1931, the urban population was only 11 per cent. of the total population. Compared to India as a whole, with this 11 per cent., the urban population was 49 per cent. in France, 50.8 per cent. in Northern Ireland, 53.7 per cent. in Canada, 56.2 per cent. in the United States of America and 80 per cent. in England and Wales. Table A on page 2 shows the distribution of population in groups of towns according to size and in the rural areas. Table B on page 3 shows the population of some of the principal cities of India.

TABLE A

Class of places	1941		1931		Per mille of total population					
	Places	Population	Places	Population	1941	1931	1921	1911	1901	1891
Total population ...	658,595	388,997,955	696,406	352,837,778	1,000	1,000	1,000	1,000	1,000	1,000
Urban areas	2,703	49,696,053	2,575	38,985,427	128	110	102	94	99	95
Towns having										
(*i*) 1,00,000 and over ...	58	16,533,141	38	9,674,032	42	27	26	22	22	22
(*ii*) 50,000 to 1,00,000 ...	Not available		65	4,572,113	Not available	13	11	9	12	11
(*iii*) 20,000 to 50,000 ...	Do.		268	8,091,288	Do.	23	19	18	17	16
(*iv*) 10,000 to 20,000 ...	Do.		543	7,449,402	Do.	21	19	20	22	19
(*v*) 5,000 to 10,000 ...	Do.		987	6,992,832	Do.	20	20	19	20	21
(*vi*) under 5,000 ...	Do		674	2,205,760	Do.	6	7	6	6	6
Rural areas	655,892.	339,301,902	696,831	313,852,351	872	890	898	906	901	915

1. *Indian Year Book*, 1942-43, p. 29; Jathar & Beri, *Indian Economics*, 7th Edn. Vol. II p 49.
2. Figures for 1941 exclude Burma and Aden. For comparison therefore figures for 1931 Census for India, excluding Burma and Aden, are as follows:—

		Places	Population (Million).
Total Population	...	666,924	338
Rural areas	... ...	664,444	300·7
Urban areas	...	2,480	37·4

(See *Census of India Report*. 1931, Vol, I, Part I. p. 46)

TABLE B[1] — POPULATION OF SOME OF THE PRINCIPAL CITIES IN INDIA

City	Population 1941	Population 1931	Percentage variation				
			1901 to 1911	1911 to 1921	1921 to 1931	1881 to 1931	1931 to 1941
Calcutta with Howrah †	2,488,183	1,48,582	+ 11·0	+ 4·3	+ 11·9	+ 79·2	+ 67
Bombay	1,489,883	1,161,383	+ 26·2	+ 20·2	− 1·2	+ 50·2	+ 28
Madras	777,481	647,230	+ 1·8	+ 1·6	+ 22·8	+ 59·1	+ 20
Delhi	521,849	347,539	+ 11	+ 8	+ 40	+ 104	+ 50
Lahore	671,659	429,747	+ 12·7	+ 23·2	+ 52·5	+ 187·7	+ 56
Lucknow	387,177	274,659	− 1·6	− 4·6	+ 14·2	+ 8·2	+ 39
Amritsar	391,010	264,840	− 6·0	+ 4·9	+ 65·3	+ 74·4	+ 48
Karachi	360,000	263,565	+ 30·2	+ 42·8	+ 21·5	+ 258·3	+ 36
Cawnpore *	487,324	243,755	− 12·0	+ 21·2	+ 12·6	+ 56·9	+ 99
Nagpur	301,957	215,165	− 21·0	+ 43·0	+ 48·0	+ 119·0	+ 45
Rawalpindi	181,000	119,284	− 1·4	+ 16·9	+ 17·9	+ 125·2	+ 52
Allahabad	260,630	183,914	− 0·2	− 8·4	+ 17·0	+ 14·9	+ 41
Ahmadabad	591,267	313,789	+ 16·6	+ 26·4	+ 14·5	+ 145·9	+ 88

1. *Indian Year Book 1942-43, p.35; Census Reports, 1941.*

† Since 1931 the Garden Reach Area with the exception of King George's dock has been separated from the jurisdiction of the Corporation of Calcutta. Corresponding figure for 1931 Census after excluding that area is 1,388,650 (See *Census of India Report, 1941*, Vol IV, pages 17, 18).

* Juhi Notified Area was added to Cawnpore City for the first time for 1941 Census, See *Census of India Report, 1941,*

In the great expanse of the Indian Empire, with its vast areas of agricultural, forest and pastoral lands, the towns thus at the first sight seem to be of little importance. Separated by wide distances[1] and containing but a small proportion of the total population, they might appear to play a minor part in the life of the country. This is, however, not the case. India has already over two thousand and seven hundred towns[2]; it has an urban population of over forty nine million and it is steadily increasing.

Quite apart from their size and number, towns play a very important part in the national life of a country. 'As the city is, so will the nation be. Its population supplies most of the leadership. Through its daily press the city dominates public opinion from outside its own bounds. It is stronger in its influence upon political thought than its ratio of population warrants. It sets the fashions in morals and in manners as in attire. The demeanour of the city is not, therefore, a matter of concern to itself alone. It is of vital concern to all who desire high national aspirations to be established and maintained, for the ideals of a nation are determined by the most influential among the various elements of its population. Being so determined, they are constantly in process of change. Hence the saying that although men may make cities, it is equally true that cities make men. He who makes the city

1. According to 1891 Census, taking India as a whole there was a town of not less than 20,000 inhabitants every 90 miles (average) — See Census of India 1891, *General Report*, page 43.

2. That is, places of not less than 5,000 inhabitants possessing definite urban characteristics. All municipalities and cantonments are also included under towns In some cases places with a population of less than 5,000 inhabitants have also been treated as towns. The urban population when only places with 5,000 inhabitants and over are treated as towns is 47,796,248 and the urban rural ratio 1 : 7 — See *Census of India*, 1941, Vol I, page 55.

   For census purposes, a city is (*a*) any town whose population is not less than 100,000 and (*b*) any other town which the Provincial Census Superintendent with the sanction of the Provincial Government has decided to treat as a city for Census purposes. — See *Census Report. 1941*, Vol. V (U. P.), page 25. Throughout this book, reference to cities is therefore reference only to bigger towns.

makes the nation and indeed it is the cities of the future that will determine the character of the world.' [1]

Towns have some times been described as the physical expression of a nation's civilisation. The physical form of a town does in many ways reflect fairly accurately the social condition of the people who live in it, their mode of life, their cultural achievement, their economic status, the kind of government they possess. The town reflects the characteristics because it arises out of them. Hence it is that towns have an added importance as the indicators of a country's development ; for every change in the civilisation or culture of the country has its first and most rapid effect on the towns ; they register most quickly each step in the national progress or decay. Established at suitable centres of communications they form the natural markets for the country's commerce ; for their convenience and amenities they are chosen as the seats of government administration, and with their facilities for higher education and easy intercourse they draw together the intellectual life of the country classes. In the words of Lewis Mumford, a great sociologist of modern times, 'the city as one finds it in history, is the point of maximum concentration for the power and culture of a community. It is the place where the diffused rays of many separate beams of life fall into focus, with gains in both social effectiveness and significance. The city is the form and symbol of an integrated social relationship ; it is the seat of the temple, the market, the hall of justice, the academy of learning. Here in the city the goods of civilisation are multiplied and manifolded ; here is where human experience is transformed into visible signs, symbols, patterns of conduct, systems of order. Here is where the issues of civilisation are focussed ; here too ritual passes on occasion into the active drama of a fully differentiated and self-conscious society'. [2]

1. *Encyclopaedia of Social Sciences.* (1935 Edn.) Vol. IX, page 481.

2. *The Culture of Cities*, p. 3.

It has been observed that 'in all ages and areas, from ancient Egypt to modern America, the highest development of human mentality, initiative and achievement has been in urban communities. So long as men remained in the pastoral or agricultural stages there was little stimulus to the differentiation of economic functions; the entire energies of men were absorbed in the task of raising food-supply. But with the city came the division of labour and possibilities for economic surplus; hence wealth, leisure, education, intellectual advance and the development of the arts and sciences'.[1]

2. Our towns.

What are the chief characteristics of our towns? Are they fulfilling our needs?

Perhaps next to the provision of a sufficiency of the proper food, our most essential necessity, and one which is nearly, if not quite, as primitive, is shelter. This necessity might have arisen originally out of the elementary need for protection from wind and rain or might have by gradual stages, resulted into what is called 'modern housing', which term, as is claimed, signifies not only a mere mechanical extension of streets or grouping together of individual comparative dwellings, but a visible organic form, an intergral social unit for living in relation to complete neighbourhood, designed and equipped as such.[2] There is no doubt that in every age and all over the world necessity for a dwelling house has always been felt by all. Infact, the history of human habitation is integrally bound up with the social and economic history of mankind, and a dwelling house does represent to a remarkable degree the social structure and the stage of development of the society at the time it is constructed.

The influence of a dwelling house on its occupants as well as on the society in general can never be overestimated. Man is the creature that environment has made him. Human life

1. *Encyclopaedia of Social Sciences* (1935 Edn.) Vol. III, page 474.
2. Catherine Bauer, *Modern Housing*, page 1.

requires the same minimal conditions for good health in whatever sphere it is found; and although the human being is extraordinarily adaptable to its surroundings and is often long-suffering before evil influences stamp their mark on him in one way or the other, yet sooner or later, perhaps only after many generations, the results of bad dwelling conditions emerge. Some visible signs of those conditions are high rate of infant mortality, increase in the number of fatal maternity cases and other female diseases, early deaths among adults, pale faces and enlarged livers of children, sickness all round, general depression and low vitality.

It is not ordinarily possible to estimate the effects of bad housing by any objective measure of health, such as comparative morbidity and mortality statistics, because of the difficulty of assessing the parts played by other social factors such as poverty and ignorance which are commonly associated with this question. At the same time, the fact is that unsatisfactory and insanitary human dwellings do exert an adverse effect on the health of the individual and of the community. For instance, the high morbidity and mortality caused by communicable diseases are without doubt partly attributable to bad housing conditions, because overcrowding and bad sanitation not only aid in the dissemination of infection but tend to lower the vitality of the individual also. This has been generally recognized by health authorities and administrators all over the world and for this reason the whole question of housing is one which is at present the subject of serious study by all civilized countries and by the international health organizations maintained by those countries. [1]

In England, it was the last Great War, with its compulsory medical examination of army recruits and conscripts to reveal just how powerful an influence environment could be. The cumulative effects on the masculine physique of generations of slum life, poverty, overcrowding, lack of fresh air

1. See Report of the Public Health Commissioner to the Government of India, 1936, Vol. I, p.125.

and sunlight, bad feeding and bad housing conditions generally were only thoroughly grasped when the collective results of these medical examinations were obtainable. That there had been a decrease in the stature and deterioration in the health of town-dwellers had, of course, been obvious for many years, but never before had it been possible to obtain so clear a conception of how the vitality of the race had been impaired by unhealthy living conditions. Then was coined the phrase "C3 nation", not one in three had it been possible to grade as A1; the raw-bone Englishmen of other days had degenerated very largely into diminutive weaklings [1]

The dwelling of the present day must not only secure shelter from wind and rain but also privacy, convenience, the absence of unwholesome conditions, and the presence of an environment which will enable the dweller to develop a good physique and permit his mental life to be as pleasant as possible. The needs of the town have to be considered from several particular points of view; from that of the street user in terms of traffic, from that of the child to whom recreation is both a pleasure and a right, from that of the public health officer in his fight against disease and physical deterioration. But all these aspects of town life and many others have as their common background the houses of the inhabitants. It is the surroundings of the houses, the means of access to and from them, and the light, air and open space round them that have to be considered. Houses form the material of which the town's structure is composed; and healthy and convenient houses benefit the citizens as much as a healthy and convenient town. The standard of housing influences for good or bad the whole standard of civic life'.[2]

What sort of houses are to be found in the average Indian town, particularly among the poorer classes who make up the great majority of the population? How far do they fall short of the minimum standard necessary for man's needs, light, air and space for health of the body, comradeship,

1. Martin, '*Slums and Slummers*', p. 17.
2. See Bogle, '*Town Planning in India*', p. 60.

security and recreation for healthy mind, in what essential requirements are our towns wanting, and what practical remedies are there or should be for the improvement of present conditions will form the subject of the following pages.

3. Overcrowding

Over-crowding in towns.

In most of our cities congestion and overcrowding exist to such an extent as to constitute a serious menace to public health. Overcrowding signifies: Congestion of people in rooms; 'extra' families in dwellings; contraction of room areas and of the number of rooms per dwelling; overstuffing of both rooms and dwellings into rookeries and tenements; overcoverage of land by buildings; and the endless multiplication of packed residential blocks, without benefit of even the slenderest intervening slice of open area — whether country, park, playground, grass plot, or mere breathing space.[1]

Table C below gives the density of population of some of the principal cities of India.

TABLE C[2]

City	Population 1941	Population 1931	Density per sq. mile 1931	Density per acre 1931
Calcutta with Howrah	2,488,183	1,485,582	24,354	38
Bombay	1,489,883	1,161,383	48,391	75
Madras	777,481	647,230	22,249	35
Delhi	521,849	347,539	58,273	91
Lahore	671,659	429,747	10,913	17
Lucknow	387,177	274,659	13,272	21
Amritsar	391,010	264,840	24,844	39
Cawnpore	487,324	243,755	24,756	39
Nagpur	301,957	215,165	7,897	12
Allahabad	260,630	183,914	12,118	20
Ahmedabad	591,267	313,789	24,138	37

The mean average density thus worked out is, however, not a true index of the extent of overcrowding in a city. Some

1. See Catherine Bauer, '*Modern Housing*', p. 7
2. Census of India Reports, 1941 and 1931.

parts of it are always more densely populated than others. Again, a city may include within its boundaries large open spaces and vacant lands or undeveloped areas, with the result that although the mean average density for the city as a whole may not be high, it may be quite alarming in certain parts of it. The case is best illustrated by the example of Bombay itself. The mean density of Bombay in 1931 was 48,000 persons per square mile or 75 persons per acre, but in most parts of the city the density was very much greater than the mean figure. In the Kamathipura quarter it was 385,280 per sq. mile or 602 persons per acre, in Nagpada II 407,040 per sq. mile or 636 per acre, and in the Kumbharwada quarter 465,280 persons per sq. mile or 727 persons per acre.[1] Compared to that the density of Belfast County Borough was 17,984 persons per square mile (1926) and the average density of a London County borough was 37,568 persons to the square mile, a density which reached its maximum in Southwark with 97,088 to the square mile. Leith (1931) had 35,000 persons per square mile and the Govan Ward of Glasgow, its most densely populated in 1931, had 36,230.[2] Likewise, according to 1931 census figures, the average density of Calcutta Municipality was 37,120 persons to a square mile; it was 19,840 for the whole of the city east of Hugli, and for Howrah 22,400. In the centre of Calcutta the highest density was reached in six wards which had 112,000 persons per square mile, or over, while there were another four with over 100,000.[3] Inside the walled city of Lahore there were 176,792 persons living at the time of 1931 Census at a density of 198,500 persons per square mile or 310 persons per acre, the mean density for the whole city being 17 persons per acre only.[4] Similarly, the mean density of Delhi Municipality was 58,273 persons per square mile or 91 persons per acres, while for Bazar Sita Ram

1. *Census of India Report*, 1931, Vol. I, Part I, p. 52.
2. *Ibid*, p. 56.
3. *Ibid*, p. 51.
4. *Ibid*, p. 54.

ward it was as high as 333 persons per acre.[1] Whereas the densities of Lucknow and Cawnpore Municipalities excluding Civil Lines were 23.2 and 27.0 persons to the acre respectively according to 1931 census, in parts of Yahiaganj Ward of Lucknow the density reached no less than 661 persons to the acre, and in Chak No. 95 Talaq Mahal of Anwarganj ward, Cawnpore, the density reached 1,229 persons per acre (though apart from Beconganj) in the same ward no other unit in Cawnpore had a density exceeding 300 persons per acre.[2]

The true extent of overcrowding in a city can therefore be much better gauged if we take a smaller unit, for instance a ward, and count the number of buildings standing per acre and the number ef occupants in relation to the number of living rooms in each building. To have an idea of the nature of overcrowding in some of the big cities of India, the following extracts from the Census of India Report 1931[3] will be illuminating:

"At least 36 per cent. of the population of the city (Bombay) suffer from gross overcrowding. Of all tenements 81 per cent. are one roomed and the average number of persons to each of these rooms is 4.01, but that gives little notion of the congestion at its worst, for 256,379 persons live in rooms occupied by 6 to 9 persons each, 80,133 in rooms of 10 to 19 persons each, and 15,490 in rooms occupied by 20 or more persons to each room. These alone comprise between them 30 per cent. of the city's population, and it can hardly be imagined that all those living at the density of less than 6 to one room are free from overcrowding, and 74 per cent. of the city's population — close on 800,000 persons that is, live in one-roomed tenements. Byculla, Sewri, Mazagaon, Parel and Nagpada II are the worst quarters, and 99

1. *Census of India Report*, 1931, Vol. I, Pt. 1, p. 19. *Reprot on the Administration* of Delhi Municipality, Vol. (Health) 1931, p. 3.

2. *Census of India Report*, 1931, Vol. XVIII, p 135.

3. Vol. I, Part I p. 52

per cent. of Byculla's population live in one-roomed tenements; in Mazagaon, where 88 per cent. live thus,

Figures of housing congestion in Bombay City.

No. of rooms per tenement.	Number of tenements	Per cent.	Number of occupants.	Per cent. of population.	Average per room.
1 room ...	197,516	81	791,762	74	4·01
2 rooms ...	26,231	11	131,872	12	2·51
3 rooms ...	7,416	3	44,821	4	2·01
4 rooms ...	6,169	2	42,013	4	1·70
5 rooms ...	2,953	1	22,302	2	1·50
6 and over ...	3,836	2	39,199	4	...

the average number per room is 4·95. For the vast majority of Bombay's population the available floor space per head is about 6 foot quare (? 6 square feet), and while very few of Bombay's population live in tenements of as many as three rooms "there is greater pressure on the floor space of three-roomed tenements then there is on the floor space of one-roomed tenements in London."

"A one-roomed tenement in Bombay normally varies from about 10 × 10 feet to about 12 × 15 feet, and the average per room is more than four persons who have therefore each on the average from 5 to 7 square feet of floor space.[1]

Overcrowding in Bombay City.

Number of persons in seven wards living.			Percentage of total population living 6 and over per room.
6-9 per room.	10-19 per room.	20 and over per room.	
256,300	79,000	15,500	26·4

Even more horrifying is the picture of the Kolar Gold Field, and the following is quoted from the Mysore State Census Report, 1931:—

"The standard size of a single room hut is, generally speaking, 9 feet by 9 feet except in Mysore Mine lines where

1. *Census of India Report*, 1931, Vol. I, Pt. 1, p. 57.

it is 12 feet by 9 feet. In Balaghat, it is 10 feet by 9 feet. There is a good deal of overcrowding. The following table gives some idea of its extent.

Total number of huts	One family.	Two families.	Three families.	Less than 4 persons.	4 to 6 persons.	6 to 8 persons.	8 to 10 persons.	More than 10 persons.
Single room huts. 6 827	6,591	235	1	3,440	3,522	749	106	10
Single room with kitchen or verandah, 1,850.	1,734	110	6	582	668	461	107	32

It will be seen that there is one instance of three families occupying a single hut and 235 cases of two families living in one hut. One hundred and twentyfive of these huts are the 9 feet ones and the ramainder 12 feet by 9 feet. In 42 cases families of more than ten persons live in one hut with or without kitchen ; over 850 single-room huts are occupied by six or more persons per hut." [1]

About Lucknow and Cawnpore, the Census Superintendent for the United Provinces thus wrote in 1931:—

"In Lucknow Municipality no less than 670 families of 8 persons or over are living each family in a single room, and..... a further 1,931 families of this size live each in 2 rooms. The corresponding figures for Cawnpore are 323 and 552 respectively. In the margin are given for Lucknow and Cawnpore the distribution of families according to the number of rooms they occupy. The commonest unit of occupation is one room, half the families in Lucknow and nearly two-third of the families in Cawnpore falling into this group. In

Municipality	Percentage of families who live in 1 room	2 rooms	3 rooms	4 rooms	5 or more rooms
Lucknow	50.4	28.9	10.7	5.2	4.8
Cawnpore	62.5	24.8	7.5	2.9	2.3

1. See *Census of India Report*, 1931, Vol. I, Part I, pp.57, 58.

Lucknow 90 per cent. of the families live in 3 rooms or less, and in Cawnpore this figure reaches 95 per cent.[1]

With these figures we may compare the number of rooms occupied by the families in the County of London in 1931, figures of which are given in the marginal table. The average family in this case is composed of 3.5 persons, the same size as that of Cawnpore.[2]

Percentage of families in London Administrative County occupying				
1 room	2 rooms	3 rooms	4 rooms	5 or more rooms.
12.2	21.5	25.1	18.4	22.8

The situation is even worse when examined in the light of the figures of the 1941 Census. The urban population has gone up considerably during the decade 1931-41 and after the year 1941, especially in big cities, while the number of houses has not increased proportionately, with the result that there is more congestion in these cities than recorded at the time of 1931 census. Thus observes the Census Commissioner in his general remarks on the 1941 population of India :

"India has been so often referred to as a land of villages that the real dimensions of its urban element are apt to be forgotten or not realized at all, and still more the rate of change of that urban element. That rate is high and is itself increasing, and I think it is time that it was realized that India is in for urbanisation on a big scale and that it will affect pronouncedly the really large towns rather than smaller ones. It is urbanisation too with all the drawbacks of lack of control, squatter's freedom and general squalor.

"The number of cities with a hundred thousand inhabitants or more was 35 in 1931 and is 58 now. The population

1. See *Census of India Report*, 1931, Vol. I, Part I, p. 51.
2. *Census of India Report*, 1931, Vol. I, Part I, p.53.
3. Census of India Report, 1931, Vol. I, part I, page 58.

living in cities of this size has increased over the decade from 9.1 to 16.5 million, a rise of 81 per cent. which is in notable contrast with the 15 per cent. increase over the whole country. We have not figures for other classes of towns to compare but indications are that the rate of growth is higher in the large units.

"Many causes are given for this increasing popularity of the cities. One of them of course is industrialization, which — in a complete economy — must tend to produce large aggregation. This is one among many other reasons for desiring a fifty year plan for the development of India's water power resources. Another and much more potent reason than is usually realised is the fact that city life has begun really to appeal to the ordinary middle class or lower middle class Indian, because for the first time accommodation within his means and to his taste has become available. The huge blocks of flats which in less than a decade have completely altered the face of Bombay and parts of Calcutta, with their amenities of running water, electric light and the city features of the town, the bus, the cinema, etc., have meant that every year sees an increase in the number of persons who seek to pass their retirement or their leisure in a city instead of their former home. The education question is also a powerful influence, for the best education is available only in the cities. Elsewhere it is sometimes not available at all and in a country like India where the middle classes attach so much value to education this is a powerful influence.

"Among minor causes suggested, one is the anti-money lender legislation in the Punjab and elsewhere. One effect of this, it is said, is to make things so different for the rural *bania* that he has realised the most he can from his outstanding debts and moved into the city to practise there or become a merchant".[1]

1. *Census of India Report, 1941*, Vol. I, pt. I, p. 26.

Bad effects of over-crowding

What does overcrowding lead to ?

Pure air is necessary for healthy life, and perfect health can only be maintained when, in addition to other requirements, *there is an abundant supply of pure air. Health and disease* are in direct proportion to the purity or otherwise of the atmosphere.

It has been calculated that the amount of fresh air that should be delivered per hour to an occupied room can be calculated by the following formula :

$$e/p=d$$

where $e=CO_2$ exhaled in an hour per head (0.6 cubic foot being taken as an average).

p=limit of respiratory CO_2 per cubic foot of air *i.e.,* (0.02 c.ft. per 100 c. ft. or 0.0002 in 1 cubic ft.)

d = amount of fresh air available in cubic feet per head per hour.

Therefore $0.6/0.0002=3000$, the number of cubic feet of air necessary for every individual of average weight per head per hour, CO_2 being taken as an indication.

An adult male requires about 3000 cubic ft. per hour.

A child „ „ 2000 „

In a mixed community 3000 cubic ft. for each person are required.[1]

Adequate floor space in dwellings for each person is thus an important factor for proper ventilation. Where the floor space is less it leads to overcrowding and consequently to defective ventilation, over-heating, excessive humidity and air stagnation. Limited floor space also favours the spread of *droplet infection* by shortening the path which the germs have to travel from one person to another. Those who work and

1. Ghosh, '*Hygiene and Public Health*,' 9th Edn., p. 87.

live in badly ventilated rooms suffer from headache, langour, debility and *anaemia*. By shortening the path of the buccal spray, overcrowding helps communication of bacteria from one individual to another. Thus the bacteria of respiratory passages of persons suffering from catarrhal or infectious diseases may penetrate in large numbers the respiratory passages of other persons in close proximity. It is not uncommon to find occurrence of multiple cases of respiratory troubles, *e.g.*, tuberculosis in a house which is crowded. Other diseases like measles, small-pox, influenza, etc., are associated with overcrowding. Another important feature of overcrowding is the greater incidence of contagious diseases such as scabies, ringworms and ophthalmia. Typhus fever being a louse-borne disease, is associated with overcrowding due to poverty, and low standard of living. Apart from its association with disease it has a bad social effect especially when persons of opposite sexes occupy the same sleeping room. The lack of privacy which perforce occurs has the effect of dragging every one down to the samel evel of squalor which has a degrading influence on children and adolescents.[1]

Tenement buildings

In Glasgow somewhat over 60 per cent. of the whole population lived in one or two-roomed houses in tenement buildings. Dr. Chalmers, the medical officer of health of the city reported that the mortality rates in these houses as compared with larger homes were as follows :—

One-roomed houses	...	25.9 per thousand
Two-roomed houses	...	16.5 „
Three-roomed houses	...	11.5 „
Four-roomed houses	...	10.8 „

That is to say, the one-roomed houses with a population of 104,000 persons, had a death rate more than double that of three-roomed houses, with a population of 160,000 persons.[2]

1. Ghosh, '*Hygiene and Public Health*', pp. 151, 152.

2. (Sir) John Robertson, '*Housing and Public Health*'. 1919 Edn.

Marked differences were found also in the mortality among infants living in different degrees of housing congestion. According to the following table the rate was highest, 135.7, for infants born in families which lived two or more persons per room, and lowest for infants born in families which lived less than one person to a room.

Less than 1 per room	...	52.1
1 and less than two	..	94.9
2 and over per room	..	135.7 [1]

At the Fifteenth Annual Conference of the National Association for the Prevention of Tuberculosis held at Newcastle in October, 1929, it was decided to investigate into the incidence of tuberculosis in certain Tyneside Districts and this investigation was entrusted to Dr. F. C. S. Bradbury. The conclusions reached by him regarding overcrowding as a causal factor of tuberculosis were as follows :

" A definite statistical association exists between overcrowding and tuberculosis in the areas studied. Evidence is submitted to show that overcrowding is a cause, and not simply an accompaniment or result of tuberculosis. The subject bristles with difficulties, on account of the irresponsibility of violating overcrowding as a separate factor. ... ..Overcrowding occupies a high position in the list of factors associated with tuberculosis, and although it is impossible to ascertain precisely what proportion of this association is due to overcrowding being a ***cause*** of tuberculosis, it is considered that the evidence submitted establishes overcrowding as a factor of definite importance in contributing to the prevalence of tuberculosis in the areas dealt with." [2]

On the evidence of the data collected in the inquiry, his conclusion is that tenement buildings contribute to the prevalence of tuberculosis by reason of the greater overcrowding which occurs in them than in separate dwellings and

1. R. M. Woodbury, '*Infant Mortality and its Causes*', 1226, Edn.

2. F. C. S. Bradbury ' *Causal Factors in Tuberculosis.*

that this evil is exaggerated by the relatively small size of the rooms which the tenements contain."[1]

In 1888 Dr. J. B. Russell, who was then Medical Officer of Health for the City of Glasgow, gave a lecture on the subject in which the following striking paragraph occurred

"But let us ask ourselves what life in one room can be, taken at its best. Return to those 126,000 men, women, and children whose house is one apartment, and consider whether, since the world began, man or angel ever had such a task set before them as this — the creation of the elements of a home, or the conduct of family life within four bare walls. You mistresses of houses with bedrooms and parlours, dining-rooms and drawing-rooms, kitchens and washing-houses, pantries and sculleries, how could you put one room to the uses of all ? You mothers with your cooks and housemaids, your nurses and general servants, how would you in your own persons act all of those parts in one room, where, too, you must eat and sleep and find your lying-in room and make your sick-bed ? You fathers, with your billiard-rooms, your libraries and parlours, your dinner-parties, your evening hours undisturbed by washing days, your children brought to you when they can amuse you, and far removed when they become troublesome, how long would you continue to be that pattern husband which you are — in one room ? You children, with your nurseries, your space to play in, without being trodden upon, your children's parties and your daily airings, your prattle which does not disturb your sick mamma, your special table spread with a special meal, your seclusion from contact with the dead and the still worse familiarity with the living, where would you preserve the dew and freshness of your infancy — in one room ? You grown-up sons, with all the resources of your fathers for indoor amusement, with your cricket fields, and football club and skating pond,

1. See also *Tuberculosis and Social Conditions in England* by P. D. Arcy Hurt and G. Payling published by Wright, 1939, a statistical study published by the National Association for the Prevention of Tuberculosis, London.

with your own bedroom, with space which makes self restrain easy and decency natural, how could you wash and dress, and sleep and eat, in one room? You grown-up daughters, with your bedrooms and your bathrooms, your piano and your drawing room, your little brothers and sisters to toy with when you have a mind to and send out of the way when you cannot be troubled, your every want supplied without sharing in menial household work, your society regulated, and no rude rabble of lodgers to sully the purity of your surroundings, how could you live and preserve 'the white flower of a blameless life' — in one room? You sick ones, in your hushed seclusion, how could you deport yourself in the racket and thoughtless noise of your nursery, in the heat and smells of your kitchen, in the steam and disturbance of your washing house, for you would find all these combined in a house of — one room?". [1]

Dr. Russell's diatribe though may appear to be harsh is not without justification.

4. Insanitary conditions and slums.

Crooked narrow alleys, flanked by two and even three storeyed houses, ill-ventilated and overcrowded, with very little space for access of free air, insufficient and almost inefficient drainage, want of proper water-supply for drinking purposes, lack of sufficient open spaces and playgrounds for children, overcrowded localities, bad thoroughfares, smoke nuisance and fouling of atmosphere by offensive trades, are some of the normal features of a town in India, and it is not uncommon to find in every big city in this country a number of 'plague spots', commonly designated by the term "slums". The appalling condition prevailing in these areas can only be judged by actually visiting one of these. Writing about slums in the city of Bombay, the Secretary of the Bombay Development Committee of 1914 said:

"It is not uncommon to find a continuous area of buildings, each occupying practically the whole site on which it

1. Sir John Robertson, "*The House of Health*", pp. 19-20.

stands. Each building may be surrounded almost entirely by a dark narrow gully, which in the absence of possibility of installing a proper drainage system, is an open drain containing the waste used for domestic purposes, and defiled also with urine, with excreta overflowing from the privy baskets, and with all kinds of refuse thrown out of windows. Except for some small dirty *chawks*, these gullies may constitute the only access of light and air to the rooms in the buildings. Most of the rooms have obviously no proper supply of light and air, and many of them are dark hovels in which no breath of fresh air ever reaches. Often small windows as look out on the narrow passage cannot be opened at all because of the foulness of the gullies, and because of the fear that rubbish and filth thrown out of the windows will enter the rooms. But lack of light and air is by no means the only fault of such dwellings. There is also the very imperfect drainage which results from the crowded nature of the sites, and the dampness of soil due to this insufficient drainage, and other causes. Dwelling rooms are too small and too low. Yards and compounds are not decently paved. Proper arrangements for disposal of refuse are absent".[1]

About the same city, Mr. Hallam Murray wrote :

"The mass of human beings, with hardly a stitch of clothing on their bodies, is in the poorer classes. The overcrowding is most dense in the gigantic lodging houses or *chawls* in which a large percentage of the population lives. A single *chawl* five to seven storeys high with its steep narrow stairs leading to a nest of small rooms, each inhabited by a whole family and opening on to a long dark narrow passage, may contain from five hundred to a thousand inhabitants. Every known rule of sanitation is disregarded in these houses which have the largest population to a square mile of any city in the world. Here in September 1896 a terrible visitation of the plague made its first appearance in India since the time of Aurengzeb and devastated Bombay, previously regarded as one of the healthiest of oriental cities".[2]

1. See Dr. R. K. Mukerjee '*Principles of Comparative Economics*', Vol. II, 1922, Edn., p. 281.

2. R. H. Hallam Murray, '*High Road to Empire*'

It is indeed horrifying to imagine that in 1931, 74 per cent. of the population of Bombay lived in one roomed houses and that too mostly in chawls of the description given above.

A sanitary and sociological survey of the northern portion of the city of Calcutta was made by Dr. H. M. Crake in 1911. In this area there were over 14,000 houses, the whole of which were examined as regards their height, age, stability, internal conditions, courtyard space, washing arrangements, sanitation, refuse disposal and house drainage. 'Of the whole of the houses examined less than twenty per cent. were found to be sanitary, even judged by the exceeding low Calcutta standard of what is a sanitary house.' More than 18 per cent. were found to be totally insanitary and unfit for human occupation and the houses between these two extremes were more or less defective.[1]

Referring to a *busti* in Calcutta, Dr. R. K. Mokerjee wrote in 1922:

"In a Chamar *busti* in Mechuabazar, Calcutta, which I visited, I witnessed overcrowding which is perhaps among the worst on record. The *busti* is divided into several unequal and unsymmetrical blocks. The ground space of each block is rented from the *zamindar* by a sub-lord, who erects the dingy close-built *busti* huts, collects the rents from each of the huts of the block and, after handing over to the *zamindar* the rent of the ground space, appropriates the surplus. Thus in one of these blocks, which measures 15 feet in length and 18 feet in breadth, there is an overcrowding of — 7 adults, 6 women, 3 boys, 6 girls. The rooms are constructed so as to utilize the ground space to the maximum and yield the highest amount as rents, without any reference to the drainage and ventilation. Each of the room earns a rent of Re. 1/- to Rs. 2/8-. In the block in question there are six rooms. The rooms vary a little in size. The mean size is 9

1. Report of E. P. Richards, M. I. C. E. to Calcutta Improvement Trust.

feet long, 6 feet broad and 5 feet high. In each room there is a cot and a rack and I find one or two ovens in addition. The room is very dark and even in the day time the things cannot be seen without a lamp. In the particular block there is an open space of 3 sq. ft. in the centre, where utensils are scoured. On one side I find also a cot There is also a *tulsi* plant in a tub, a marigold also in a tub, but placed on a bamboo roof. Some of the blocks have no privy attached to them, a few blocks sharing a privy in common ".[1]

And in Calcutta there are a number of such *bastis*, grossly overcrowded, highly insanitary, badly deficient in drainage, and without proper access to light and air.

No less dark was the picture depicted by the Royal Commission on Labour in India, about housing conditions of poor class people in general, and industrial workers in particular, in this country. They said :

"Although we were repeatedly informed that the workers' houses in urban and industrial areas were no worse than those to be found in agricultural villages, we neither accept this as a statement of fact nor think it relevant as a standard of comparison. In the villages the houses may be dark and unventilated and their surroundings insanitary but most of them have some sort of enclosure or courtyard which provides light, air and a certain degree of privacy. In the urban and industrial areas, on the other hand, cramped sites, the high value of land and the necessity for the worker to live in the vicinity of his work have all tended to intensify congestion and overcrowding. In the busiest centres the houses are built close together, eave touching eave, and frequently back to back in order to make use of all the available space. Indeed, space is so valuable that, in place of streets and roads, narrow winding lanes provide the only approach to the houses. Neglect of sanitation is often evidenced by heaps of rotting garbage and pools of sewage,

1. '*Principles of Comparative Economics*', 1922, Edn. Vol. II, p. 282.

whilst the absence of latrines enhances the general pollution of air and soil. Houses, many without plinths, windows and adequate ventilation, usually consist of a single small room, the only opening being a doorway often too low to enter without stooping. In order to secure some privacy, old kerosene tins and gunny bags are used to form screens which further restrict the entrance of light and air. In dwellings such as these, human beings are born, sleep and eat, live and die".[1]

I cannot resist the temptation of quoting from Mr. A. R. Burnett-Hurst who undertook, at the request of the Ratan Tata Foundation of the University of London, to study the economic conditions of the wage earning classes in Bombay (1916-19). About *chawls* he observed :

"There are, first, the dwelling houses which were originally built for one family, but which owing to the increasing demand for accommodation, have from time to time been extended and converted into tenements. They are chiefly to be found in the most densely populated sections of the city—in Kumbharwada, Kamatipura and second Nagapada — all of which had in 1921 a density of over 700 persons per acre. The owners of the property have by frequent extensions occupied every available inch of space to the sides and rear of the houses, and have then competed with one another in erecting additional floors, until the buildings have reached a height of four or five stories — a policy of "sweating" building sites. As a result, the houses have a tall narrow frontages and excessive depths ; many of the rooms, especially those in the centre and on the ground floor, lack sunshine and air. What makes the condition of these buildings worse is that large numbers of them are fitted with basket privies. Although Bombay possesses more sewers than any city in the East, there are many parts of it, especially the poorer quarters, where sewers are not laid, and consquently recourse

1. Report of the Royal Commission on Labour in India, 1931, pp. 271, 272.

is had to cess pits and privies. Narrow passages or gullies. from 1 to 5 ft. in width give the 'halalkhors' (sweepers) access to the baskets, and it is along these gullies that open drains are laid for carrying away the sullage. The gullies run along the side, or, more usually, the rear of the houses and not infrequently they are the only spaces which separate the row of houses in one street from that in another or adjoining buildings from one another. The contents of the basket receptacles in the privy frequently overflow into the open drains and foul the gullies. The stench which fills the air as the overflow travels along the drain can be better imagined than described. At times the cess pits also overflow or the drains become choked. The sweepers who are supposed to remove and convey the excreta twice daily to the night soil depots frequently shirk their duties and empty the contents of the baskets into the open drains. Add to this the practice of throwing all kinds of household refuse and filth into the gullies by the people in the rooms overlooking them, and one can form some slight conception of the strength of the smell. Much of the refuse accumulates and becomes stagnant, and the liquid filth percolates into the soil when the drains or the passage are in a bad state of repairs, as is frequently the case. Is it surprising then that the windows of rooms which overlook the gullies have to be kept closed to shut out the stench? The conditions under which the occupants of these rooms have to cook, eat and sleep can well be imagined when it is remembered that the only sources of light and ventilation are from the windows opening on to the gully and from the door by which they enter the room. The conclusion drawn from personal inspection of a large number of these tenements is that ground-floor rooms are invariably dark, dismal and unhealthy, and often permeated with obnoxious effluvia. Where the privies are not detached from the main building, the stench penetrates the whole structure".[1]

1. A. R. Burnett-Hurst *'Labour and Housing in Bombay'*, pp. 21. 22.

These evils are not confined to the larger towns or to the industrial towns only. Dr. R. K. Mukerjee thus describes some of the slums of Southern India: "The squalor, the degradation and the poverty in the slums of Calcutta and Bombay are far outstripped in the slums of Arlapet in Bangalore, and Terambur in Madras. In the Panchama slum near Binny's mill in Bangalore, the standard size for a room has been 8 ft. by 6 ft., the height at the apex being five feet. The door being two feet by one foot, I could squeeze myself with difficulty into the room, to learn to my surpirse that the denizens were three adults and two children and also a dog. The husband, the wife and the mother-in-law, as well as the children, were huddled together like beasts. There was also the hen-cover to the left of the aperture which served as the doorway, and numerous chicks flitted about in the dirt dumped in the yard.

* * *

"Whether in Calcutta or Bombay, Cawnpore, Bangalore or Poona, Ahmedabad or Madras, you are confronted in the *bustis* and *chawls* with living human misery, the dirt and disease of hell incarnate. Everywhere the standard size of a kennel is adopted, $8' \times 6' \times 5'$, and very often the side walls of the thatched shed admit both cold and rain. Everywhere there are unsymmetrical blocks of hundreds of these mud dens, or thatched sheds, the living places of two or three thousand souls, where there is the most appalling congestion, every inch of ground space being utilized to the utmost. In many of these huts father and mother, son and daughter-in-law, grown up men and women live and sleep together in the same room, mixed with chicks and dogs and ailing babies that are not better treated than the live-stock.

* * *

"The tragedy is, however, deeper when we see the rise of some of the most sordid slums of India in one of our most beautiful ancient temple cities. In Madura, in Ponnagaran, for instance, not very far from the temples of Meenakshi and

Sundareswar, there have developed some slum dwellings undescribable in their filth and squalor".[1]

What has been described above about Bombay, Calcutta and Madras is equally true about most of the cities in India, especially where industrial expansion has been going or for sometime past. Ahmedabad is perhaps the latest victim.

Life in slums.

It should not be difficult, from what has been described above, to form an idea of life in these slums. The breathing of a vicious atmosphere, the want of room for proper exercise, the lack of sufficient light and ventilation, have everywhere serious effects on bodily growth and development. It has been estimated that the average boy of a one-room home loses at least 4 inches in growth, and at least 11 lbs. in weight by comparison with the average boy reared in a home of four rooms.[2] The general dreariness, dinginess and dirtiness of the slums also steadily react upon the hopes and habits of the people and induce that lassitude of mind which reacts again upon the health of the body. All this leads not only to a physical waste of energy and general enervation, but also to a low standard of health and low resisting power, which play directly into the hands of immorality, intemperance, gambling and other vices rampant in all our slum areas. Indulgence causes more and more of the squalor, and thus the vicious circle with which we are so familiar in the social problem perpetuates its evil round.[3]

To know the people of the slums, to understand the mentality of the different types, to appreciate their failings and their extreme poverty, to watch their home-life, to observe the women with their child-bearing and child rearing, one must either live or continuously work in the

1. Dr. R K. Mukerjee, '*Principles of Comparative Economics*', Vol. II, (1922 Edn.); pp. 297-299.
2. Dr. R. K. Mokerjee, '*Principles of Comparative Economics*'. 1922, Edn., Vol. II, p. 302.
3. *Ibid.*, p. 302.

slums. Living in hovels, sweated in unhealthy surroundings and born in a depth of misery and degradation, the early development of the children in slums, mental and physical, cannot fail of being a reflection of such a squalid environment. Vice, immorality and crime among them become rife. Describing about the slums of England Martin observes :[1]

> "*With their home life a background of poverty, crime, intemperance, ignorance and disease, the children grow up with warped bodies and minds, animalism and cruelty uppermost in their nature. Their earliest recollections are displays of brutish passion, savagery and sensuality, drunken brawls, endless conjugal strife and loose living. All day long they are accustomed to no other language but foul blasphemy; but slum days, bad as they are, cannot compare with the nights. Dark passages, mysterious comings and goings, growing children forced to sleep with filth, in intimate nearness horrors unseen, their immature minds questioning the noises of the night sensing ill practices.*"

Notwithstanding hereditary influences, home-life is largely responsible for the physical and psychological make-up of child, adolescent and adult, and considering the slum environment as an instrument of evil, can we really expect slum-dwellers to be paragons of virtue? One of the biggest problems of our cities is thus the clearance of these slums.

Ventilation. Most of the old houses in our cities, especially those occupied by poor classes and workmen, are ill ventilated, narrow, dark and gloomy, and even some of the newly constructed houses do not come up to the modern accepted standards of ventilation. As already observed, the breathing of fresh air is as essential for the maintenance of health and life, as the drinking of pure water and the eating of good food. Statistics prove that impurity of air is one of the most important causes of ill-health.

Air is vitiated by (a) respiration of men and animals; (b) by combustion of coal, gas, oil, etc. (c) by fermentation and putrefaction of animal and vegetable organic matters; and (d) by contamination from various trade and manufacturing processes. Ventilation means the removal or dilution

1. *Slums and Slummers*, p. 76.

of the atmosphere which has become stagnant, warm and moist through these vitiating processes, by air which is drier, cooler and moving. This is known as *internal ventilation* as opposed to the term *external ventilation*, which means the ventilation of streets and buildings, and is dependent on the width of streets, the height of adjoining or opposite buildings, in fact with the amount of free air space around the buildings, and the ease with which light and air can enter into them. This external ventilation is of primary importance, for upon the purity or otherwise of outside air depends the possibility of good internal ventilation.

The principal object of ventilation is the stimulating effects of moving air upon the skin, which depends largely upon the evaporation of the air. Therefore ventilation to be satisfactory must conform to certain conditions, *viz.*, it must supply pure air from without, it must keep the air within the room at a proper temperature and maintain a continuous circulation, and prevent stagnation of the body heat on the one hand and uncomfortable chilling and drying of the body on the other. It must also be able to remove gases, odours, bacteria, dust, etc., which contaminates the air, and dilute and remove the vitiation produced by combustion.

The purity of the air in a dwelling house depends on the air space alloted to each individual, and the facilities renderd for adequate ventilation. Where these conditions are wanting, injury to health results. For instance, the immediate effect of breathing air vitiated by respiration in a room whery many persons are even temporarily huddled together, is headache, a sense of depression, drowsiness, nausea, and fainting. The long-continued breathing of stuffy air tends to produce a lowered condition of vitality, characterized by anaemia, lassitude, anorexia, dyspepsia, and depression of spirits, and is probably one of the causes of rickets in children.[1]

1. Turner and Goldsmith, '*Sanitation in India*,' 4th Edn. p. 363.

Proper ventilation of houses is therefore of utmost importance from the health view point, and even of greater importance is external ventilation. Every old town in India including many of its important cities, presents examples, of narrow streets, winding lanes, close aggregation of buildings, forming an insanitary labyrinth, which cannot be efficiently cleansed and in which the air is almost always stagnant. Persons living in such congested areas have a low vitality and are predisposed to various diseases. The air of such areas is specially injurious to infants and children, and furnishes one of the causes of high infantile mortality.[1]

Sunlight.

Sunlight, as is well known, is also essential to the well being of all living beings, both animal and vegetable. That part of the sunlight which is proved to be of healing and health-giving value is the so called actinic rays. The white light of the sun can be broken up by means of a prism into its various constituent parts. Some of the rays are red, others yellow, others green, and others blue. We get indeed all the colours of the rainbow. But in iddition to these coloured rays into which the prism breaks up white light there are numerous rays of different wave lengths quite invisible to the naked eye. These are the rays beyond the violet end of the spectum. and are therefore sometimes spoken of as ultra-violet rays. The plant requires the ultra-violet rays for its growth. The photographer makes use of them as "actinic" rays in his photographic processes. Many of the chemical reactions which take place in the world do so as a result of the action of actinic light. These ultra-violet rays are the great cleansers of the earth, they kill germs which happen to be on the surface, they accelerate oxidation of organic matter and they sweeten and purify everything which comes within their influence.[2]

It is, therfore, very important from the hygienic point of view that our houses should be so situated as to catch the

1. Turner and Goldsmith, '*Sanitation in India*', 4th Edn., p. 376.
2. Ghosh, '*Hygiene & Public Health*' 9th Edn. p. 379; Sir John Robertson, '*The House of Health*' p. 41.

largest possible amount of actinic rays and all our living rooms should receive sufficient light and sunshine. These rays should be enabled to get into the dwelling, where they will exert a powerful influence in maintaining good health. In the absence of sunlight the skin does not form vitamin D from the ergosterol, calcium metabolism is interfered with and bones become soft producing *rickets*. A similar condition known as *osteomalacia* also occurs in women who have borne children and are subjected to rigorous purdah system. Of course, in tropical countries too much of sunshine should be avoided especially in summer. That the living rooms in most of the old houses in our cities are dark and dreary, without proper sunlight, is a fact hardly requiring any proof.

There are two different forms of ventilation, *viz.*, natural and artificial. Natural ventilation depends on certain forces which are continually acting in nature, such as diffusion of gases, action of winds, and differences in weight and volume of masses of air of unequal temperature. It is considerably helped if houses are built with sufficient open space and have large number of windows opening direct into the outside air. *Cross ventilation* is very helpful in providing sufficient light and air in a room. It means free perflation between windows and other openings placed opposite each other. The "perflating" action of the wind is best utilized by having windows facing the current of the wind, and this action is increased when widnows or a window and door on opposite sides of a room are left open. Naturally cross ventilation is impossible in back to back houses or back to back living rooms and where narrow lanes are abutted by high buildings ventilation in the lower rooms becomes necessarily imperfect. Unfortunately this is marked feature of most of our cities and towns.

Roads and streets.

This brings us to the question of streets, parks, open spaces and playgrounds for children in our cities. Of the many parts that make up the structure of a town the street is perhaps the most important. The daily round of

work and play, of food and sleep, is only made possible by the existence of the street. Streets provide the communications necessary for the circulation of traffic; they form the open public space essential in built-up areas for the administration of law and order; they furnish routes for the public services, such as the telegraph, the telephone and the electricity; they enable drainage and water-supply to be laid to all parts of the town, and give the access necessary for the development of property. Clearly the efficiency of the town, as well as its character and beauty, will depend mainly on the design and lay out of the streets. [1]

Roads are primarily highways for traffic. They serve also a secondary purpose in affording sites for buildings. They should therefore be considered in relation to both these functions, and in the order of their relative importance. For the roads in a town to satisfy properly their primary function of highways, they must be so designed as to provide generally for easy access from any point in the town to any other But they should provide, in addition, special facilities for the ebb and flow of particular lines of traffic, such as that from the outskirts to the centre and back again, or that across the town from a residential quarter to a quarter occupied by works, factories or other places of employment, or to important railway stations, harbours, and other centres of industry. [2]

The natural growth of a town is from a small centre outwards in all directions, and this centre is usually the most important quarter where traffic is concentrated. In large towns there are usually several centres of activity of various kinds, such as shopping centres, groups of law courts, public buildings or educational institutions; often each centre combines some or all of these purposes. These centres should be connected to each other and to the more

1. See Bogle, '*Town Planning in India*', p. 21.
2. See (Sir) Raymond Unwin, '*Town Planning in Practice*', 6th Edn., p. 235.

important residential areas by through roads. Each town, therefore, should have a well designed street plan, including radial and lateral roads, so arranged as to facilitate traffic from the centre to the outskirts and from one part of the town to another. Between the radial roads and the laterals or beyond them, parts of the city will be undeveloped unless traversed by other roads. These roads will not carry such heavy traffic but will connect up the main roads and develop intermediate areas.

It has been estimated that for the main traffic roads a width of 100 feet, for the side-streets 80 feet, and for local and accessory streets 60 feet, would be suitable. No main street should have ordinarily less than 40 feet width though in smaller towns even a smaller width would be sufficient. For the normal Indian high-road about 18 feet would suffice, so that every traffic line has 9 feet. For a necessary later extension 25% in the main traffic streets and in the outer districts with cheap ground 50% should be provided for.[1] This is, however, a subject on which opinions differ and, in fact, each case will be governed by its own circumstances and requirements.

Apart from their traffic uses streets are essential rights-of-way for underground services — drains, sewers, and water and electricity supply mains and for telephones, also for providing a large part of the space necessary for light and air to buidings. Their design should be adjusted to these uses, as well as to those relating to traffic. The width of a street should therefore be sufficient for traffic as well as to ensure sufficient light and air to each dwelling abutting on it.

For the city of Bombay it has been prescribed that the height to which a building may be erected or raised shall be regulated by the width of the street on which it abuts, in accordance with the following rules, namely :—

(1) if the width of the street does not exceed twenty-six feet, the building shall not be erected or raised to a

1. *Town Planning and Housing in the World*, Chapter relating to India.

height greater than one and one-half times the width of the street ;

(2) if the width of the street exceeds twenty-six feet but does not exceed forty feet, the building shall not be erected or raised to a height greater than forty feet, and

(3) if the width of the street exceeds forty feet, the building shall not be erected or raised to a height greater than the width of such street ;

(4) where the building abuts upon more than one street, its height shall be regulated by the wider of such streets so far as it abuts upon such wider street, and also, to a distance of eighty feet from such wider street, so far as it abuts upon the narrower of such streets :

Provided that, if the face of the building is set-back from the street at any height not exceeding the height specified in sub-section (1), sub-section (2) or sub-section (3), as the case may be, such building may be erected or raised to a height greater than that so specified, but not so that any portion of the building shall intersect any of a series of imaginary straight lines drawn from the line of set-back, in the direction of the portion set back, at an angle of fortyfive degrees with the horizontal.[1]

The maximum height of buildings has been fixed at seventy feet.[2]

This standard might well be adopted by other cities also. There will be no difficulty in acting upon it in the case of new streets. But in the case of old streets, the difficulty of working to this standard is obvious. Old street systems designed for horse and other slow vehicular or pedestrian traffic and low buildings are not suitable for motor traffic and high buildings. As cities have grown in size the process of centralization has increased, resulting in greater

1. S. 349-B, the City of Bombay Municipal Act, 1888.

2. *Ibid*, S. 349-A.

concentration of traffic. The problem of adjusting an old street system to the needs of modern traffic and to the demands for higher and more bulky building especially in central parts of a city, present special difficulties.

Parks, open spaces and playgrounds.

Nearly all our cities lack in adequate provision of playgrounds, recreation grounds, parks and open spaces. This may appear to be paradoxic, as most of our cities have frequently large open spaces and vacant lands within their municipal boundaries, but these open spaces, generally concentrated at a few places outside the inhabited parts, though useful in their own way, do not serve the real purpose. It is essential that every town should have adequate open areas dedicated to public use, and that these should be well-distributed throughout different parts of the town and well-proportioned in relation to the requirements of each locality.

The open spaces required in a city may be classified into three types. Firstly, playgrounds for children. Little children require only a small playground, but these playgrounds must be numerous and evenly distributed throughout the populated areas, so that children do not walk far or be separted from their parents by any great distance. It has been found in America that if the playgrounds are more than a quarter of a mile from their homes the children prefer to play in the street with all its dirt and danger; and this applies with greater force in India where playgrounds are not so attractive or well-equipped.[1] Incidentally, these playgrounds will serve also as "lungs" for the populated parts of the city. It is to be observed that playgrounds for children are not a luxury but a necessity. They are a prevention of ill-health and ill-humour, and imbue the youth of the town with physical fitness that will repay the town a hundredfold.

The sports grounds form the second type. These may be more scattered but should be so distributed that each residential centre has its ground within easy reach. A hockey or football ground requires an area of a hundred by fifty five

1. See Bogle, '*Town Planning in India*', p. 32.

yards. With a number of low-lying or other grounds unsuitable for building, it should not be difficult with a little planning to provide in a city adequate number of such sports grounds. No comments are necessary on the part played by sports grounds towards the growth of healthy communities.

The third class of open spaces, parks and ornamental gardens, are a great asset to any town. Luckily many of our towns, although sadly lacking in the most important smaller playgrounds and parks, especially in the thickly inhabited parts, are well provided with bigger parks and gardens, generally outside the inhabited localities. With their flower beds and fountains, shady trees and beautiful lawns, they are no doubt a delight to visitors and a favourite rendezvous on holidays and festivals. Smaller ornamental gardens and parks in squares or at street corners will, however, be more useful and besides their utility for recreational purposes they will be of immense value in providing adequate ventilation and sunshine and also prevent the areas from being overcrowded. A town may be having sufficient open spaces in the form of large parks or maidans but these will be of little use to the inhabitants of the crowded localities in the heart of the city.

It is not possible to formulate mathematical standards for the calculation of the amount of open space that should be provided in towns, based on percentage of the area of a town or on the number of acres to be reserved in proportion to population. The variety of local conditions makes the adaptation of any general standards impracticable. In England it is widely held that at least ten per cent. of the area of a town should be devoted permanently to public open spaces, and there is also general agreement that the acreage in public parks and playgrounds in a given area should not be less than one acre to each 200 persons of the prospective population.[1] As regards playgrounds for children, the maximum effective area of each playground is generally considered to be that

1. Thomas Adams, '*Recent Advances in Town Planning*', p. 255.

contained in a circle drawn from the centre of each playground with a quarter mile radius. [1]

For Indian cities it has been estimated that there should be one acre of open space for every four hundered of the population and of this total open space, one tenth should be in the form of children's playgrounds, two fifths sports grounds, and one half parks or large reservations. [2]

Dangerous and offensive trades.

Another marked feature of our cities and towns is the carrying on of dangerous and offensive trades within their inhabited localities. Certain trades are a source of nuisance, because the smell or effluvia which they give off might act injuriously on the health of the people, or because the materials or process employed have an influence prejudicial either to the health of workmen or of the surrounding population.

As a rule, the most offensive effluvia are those given off in processes in which the materials used consist mainly of animal matter, *e.g.*, the manufacture of artificial manures, gut cleaning and scraping, and the preparation of sausage skins and the melting of fat. Certain processes dealing with vegetable substances can also be very objectionable, *e.g.*, the boiling of linseed oil, the manufacture of palmitic acid from cotton seed and palm oil.

Trade effluvia form an element of the atmospheric insalubrity of towns. Definite chemical substances, whose vapour is irritant or poisonous, are unquestionably dangerous. Effluvia of septic origin are unwholesome. If in connection with any trade the statement is made that it is a nuisance or injurious to health, it may mean "that exposure to the offensive effluvia causes bodily discomfort or other functional disturbance continuting or recurring as the exposure continues or recurs and tending by continuance or repetition to constitute,

1. Thomas Adams, '*Recent Advances in Town Planning*', p. 255.
2. Bogle, '*Town Planning in India*', p. 34.

though perhaps not a clearly defined form of disease, an appreciable impairment of general health and strength. Such a definition is applicable to those cases in which functional disturbances unquestionably arise as the result of the impression made by the offensive effluvia on the senses. The results may include loss of appetite, nausea, vomiting, diarrhœa, headache, giddiness, faintness and a general sense of malaise and depression. Or, on the other hand, it may mean that persons exposed to the effluvia are more deeply and permanently damaged in health, that their lives are shortened or passed in chronic ailment, and that they are more liable than other people to the invasion of definite forms of disease, or that diseases with them are liable to run a less favourable course than with other people."[1]

This definition includes deeper and more serious disturbance to health and includes workers in lead, phosphorous, arsenic and those working in atmosphere largely charged with the vapours of sulphuretted hydrogen, chlorine and carbonic acid, or with the exhalations from decomposing organic matters.[2]

Ballard, in his report to the Local Government Board, has adopted a classification of the various trades which may give rise to nuisance or be dangerous to health, and that classification is very simple and is as follows :—

(1) The keeping of animals (2) The slaughtering of animals (3) Branches of industry in which the matter dealt with are of (*a*) animal origin, (*b*) vegetable (c) mineral or (*d*) of mixed animal, vegetable and mineral origin.[3]

In dealing with offensive trades, it may be considered that should a nuisance arise, it is due to one or other of the following causes or to a combination thereof:—

1. The use of buildings unsuited structurally for the purpose.

1. Turner & Goldsmith, '*Sanitation in India*' 4th Edn., pp. 968,969.
2. *Ibid*, p. 969.
3. *Ibid*, p. 970.

2. **An untidy or filthy condition of the premises and utensils.**
3. **An improper method of receiving or disposing of offensive materials used in the trade.**
4. An improper method of receiving or disposing of offensive materials or products on the premises.
5. Removal from the premises of filthy material in improper receptacles.
6. The escape of offensive gases or vapours generated during some part or parts of the processes carried on, and their passage into the atmosphere surrounding the works.[1]

The effluvia arising from stables, cowsheds, tanneries, fat and tallow factories, gut scraping, bone boiling, paper making etc., are thus all very offensive, and proper arrangements for all these trades are highly desirable.

Trade dust

Certain industries give rise to a considerable amount of dust which has been associated with the production of various forms of ill-health. Constant inhalation causes irritation of the nasal passages and produces a condition of the lungs known as *pneumonoconiosis* which may be of different forms according to the nature of dust inhaled, *viz.*, *anthracosis* from coal dust, *silicosis* from stone dust, *asbestosis*, *siderosis* from iron dust, and *byssinosis* from cotton dust. Apart from its effects on the respiratory tract, dust of different industries also causes certain diseases of the throat, eyes and skin. Various micro-organisms are conveyed through dust, e.g. *tubercle* and anthrax. Lehmann has shown that only about 25 p. c. of the dust inhaled through the nose and mouth reaches the lung, the rest being swallowed, and if the dust contains any poisonous substance like lead, absorption will take place through the alimentary canal.[2]

1. Turner and Goldsmith, '*Sanitation in India*', 4th Edn., pp. 970, 971.
2. Ghosh '*Hygiene and Public Health*', 9th Edn., pp. 117, 118.

standing in the highway while calls are being made at neighbouring buildings. Usually shops or small workshops and factories will be found abutting on the approach roads, and the vehicles, cattle, mules, horses and donkeys standing and the public carrying on business there will create congestion and impede through traffic. This is often the cause of accidents and loss of life. Inside the towns the consequences of such a sort of congestion may not be serious as adequate arrangements for control of traffic generally exist. Outside the limits of the towns there is, however, no authority to check it, and consequences may be serious.

It is clear that one of the main attractions of this kind of development for the builder is the fact that as he is building along the edges of an existing road dedicated to the public he is not under the necessity of making any road or street himself to serve his building. Extra-municipal areas adjoining main roads leading to important towns have obviously other attractions also as building sites ; the occupants of buildings in such areas can enjoy many of the amenities of town life without sharing the burden of municipal taxation or being subject to the control that ensures good sanitation or well-ordered development. Land here will be comparatively cheap as compared with the lands within municipal limits. A speculator builder or owner of land can thus very conveniently, though highly detrimentally to the interests of the community in general, turn to advantage a highway constructed at public expense with a view to providing increased facilities for fast road traffic, by fringing or providing means for fringing, each side of it with a single row of tiny shops and houses or plots for the same, which he will be able to sell at comparatively low prices. Some of the suburbs growing up with our cities are highly abominable and hopelessly deficient even in the most essential services.

The problem here thus consists of four parts, *viz.* (*a*) betterment and control of the existing ribbon development, (*b*) avoiding ribbon developments in the future, (*c*) improving the existing suburbs and (*d*) preventing the recurrence of disorderly suburbs.

6. Need for planning

Looking at most of our towns to-day, at the vast drab areas of slums and mean streets and the dreary engulfing suburbs around them, one is forced to the conclusion that no body ever thought of planning them. As a matter of fact, no town is actually unplanned, for all are responsible to some form of artificial direction, good or bad; but most towns are misplanned for lack of conscious design directed to secure well co-ordinated social and economic results. Planning is the opposite of improvising. In simple terms it is organized foresight plus correcting hindsight.

'As a science city planning purports to discover the truth about the city in respect to its economic, social and physical conditions As an art city planning seeks to obtain an economically and socially wholesome arrangement of the ways of communication of land uses and of building and other structures. More specifically in one important respect it seeks to get that degree of space about buildings which is necessary for health (such as space for light, air and recreation) and simultaneously that degree of building concentration which is necessary for efficiency. Its purpose is best served by resisting congestion or development that is so scattered as to be wasteful.'[1] Planning of a city is therefore much more than street planning. In its broader sense it is 'the art of planning the physical development of urban communities with the general object of securing healthy and safe living and working conditions, providing efficient and convenient forms of circulation and advancing the general public welfare. It aims at the preservation of natural beauty as essential to healthy living conditions, and leads to the promotion of beauty in building or a byproduct of sound social and economic growth'.'[2]

The underlying economic principle that justifies city planning is expressed in the commonplace that prevention is

1. Encyclopaedia of Social Sciences, Vol. III, p. 486.
2. *Ibid*, p. 482.

better than cure. Its purpose is to know the city, including all its defects, and then to seek by planning to preserve what is good, to remove what is bad, and above all to prevent the recurrence of the bad.

To modern mind, the town is a utility of collective living. Sharp observes : "It is a utility of collective living not merely of a good social life but of a happy and healthy individual life as well. ..... Here we are immediately concerned not so much with the ideas and facts of collective living as with the possession of a satisfactory *utility* for that living. We are concerned with the physical shape and pattern of that utility rather than with the social, political and economic interplay and inter-relationship within the organism itself.

What, then, are the matters concerning the physical arrangement of the town that must be considered if we are to build good towns in the future ?

They are these : To lead a satisfactory life the individual citizen needs healthy and pleasant living conditions in and around his individual home. He also needs facilities for education, recreation, pleasure and social intercourse outside that home. Further, if he is to be able to enjoy those facilities properly, they must be provided in such relation to the particular spot where he lives that he can use them without unreasonable expenditure of energy or time or money in getting to them. Similarly his home needs to be sufficiently near his work-place for him not to be involved in unreasonable labour and loss in moving between the two places where he spends most of his life.

Those are some of the needs of the citizen individually. The needs of the citizens collectively — *i. e.*, of the community generally — are also those needs, considered collectively, and a few more besides. Thus the healthy and pleasant living conditions and the various facilities for one set of individuals must not be obtained at the sacrifice of those of another set, or in a way that is wasteful of the resources of the community as a whole. And since the community as well

as the individual has an organic life of its own, it is necessary that the physical form of the town should do nothing to hinder the development of that life. It should not, for example, do anything through the creation of physical barriers to hinder the social intermingling and co-operation of the various 'classes'. It should rather by its very form assist in the breaking down instead of the building up of those barriers which already exist.

The satisfaction of these requirements would go a long way towards making the town a functionally sound utility for living. But for the real fulfilment of his needs the citizen requires more than these merely functional provisions. It is necessary that his town should be more than merely comfortable to live in. It must be pleasing to look at. It cannot in fact, in the long run be comfortable to live in, unless it is also visually satisfying. Beauty, or at the least order and seemliness, is as necessary to a civilised life as health and convenience and mere organisational functionalism."[1]

Plan we must therefore. In the case of areas already built over scope for planning or more correctly replanning, *per se* will be limited though much improvement can be effected by carefully widening some of the existing roads and designing their frontages for building, by driving some new roads, by clearing slums and by providing parks, open spaces and playgrounds for children at suitale places. It will not be possible to plan the town *de novo*. But in the case of undeveloped sections lying vacant there is ample scope for free planning and it should not be difficult for an expert town planner with intimate knowledge of the city and a masterplan of it before him, to plan out so as to provide for the future growth of the city on healthy lines, and make it as far as possible, a *utility for collective living*. It must not also be forgotton that all attempts at planning will fail to yield the desired results unless ribbon development on

1. Thomas Sharp '*Town Planning*'. pp. 73, 74.

the fringes of the city is also checked. It will be disastrous to allow development of any town in piecemeal fashion without a co-ordinated plan, and it will be well to derive a lesson from the mistakes of the past and take up the question of planning of our towns before further mischief is done.

Social value of a city plan should not also be ignored. 'It should not only secure a well balanced distribution of buildings, more space about dwellings for penetration of light and air, and larger areas for public and private recreation in proximity to dwellings, the lessening of congestion, more convenient transportation facilities and greater freedom of movement for traffic ; but it should lead also to the development of a wholesome community background for social life as a result of well planned neighbourhood units, and greater sense of order and regard for beauty on the part of the entire population".[1]

7. Water-supply

Water is absolutely necessary for the maintenance of life, both animal and vegetable. It is, therefore, essential that every town should have arrangements for adequate supply of wholesome water for drinking as well as for other purposes. Certain diseases like cholera, typhoid fever, dysentry, etc. having their primary seat in the alimentary canal are carried through infected water used for drinking purposes. Water is occasionally responsible for carrying animal parasites, amoebæ and worms. It may cause derangement of metabolism resulting in such conditions as goitre. But the greatest danger in water is from pollution from human sources. As many diseases effect man alone, water may be a vehicle in carrying specific germs ; therefore every effort should be made to avoid human pollution. Since water is used raw, unlike foods which are mostly cooked, it is one of the most common sources of infection.

Wells form an important source of water supply in towns which are not on public water-supply. The chief source of pollution of the water in wells is from the surface washings.

1. Encyclopædia of Social Sciences Vol. III, p. 487.

Under ordinary circumstances the soil has sufficient filtering power to protect the water, except when it is overburdened with organic matter, when the possibility of the soil acting as a filter becomes less. This happens more frequently with shallow wells which are often situated close to open drains, privies and other collections of filth so that pollution may occur by percolation, or by establishing direct connection after a sudden rise of the subsoil water. Cracks and fissures may exist in the soil or sub-soil, or there may be rat holes ; these will allow impurities to get into the well without passing through the process of biological filtration. Trees often grow at the edge, plants sprout from the lining, and dead leaves fall and rot in the water, while birds build nests in the crevices. Unless fitted with a pump, every user brings his own vessel and rope for drawing water and the rope in the intervals of duty may *tether a cow or lie in some dirty corner.*[1]

Many town supplies are now obtained from tube-wells as these wells can be relied upon to yield supplies of good water, which if carefully distributed and protected can also supply bacteriologically pure water. In the case of these tube wells the contamination generally takes place during construction. The essential condition for bacteriological purity is that polluted surface water should not find any access to the strainer or the perforated part of the well. In places where the porous soil extends to great depths contamination can be avoided by sinking the well low enough so that even surface water may be filtered in passing through the deep layers of sand.

It is also necessary to sink tube-wells in such a manner that no crevices are left along its sides through which surface water may trickle down. To prevent possibility of contamination this space should be well grouted with cement or clay.

Springs, deep wells, upland surface water, natural lakes and rivers are the usual sources of supply for waters needed in towns for most purposes. By sinking a

1. See *Hygiene* and *Public Health* by *Ghosh*, 9th Edn. p. 29.

number of deep wells or tube-wells in a water-bearing stratum away from the town, in an unpolluted soil, good drinking water may be supplied by pumping the water directly into service pipes, or through the medium of storage tanks. In other cases water may be taken from a river or a stream, filtered, and then delivered by means of iron pipes laid underground. To prevent contamination it is necessary that there should be no leakage especially in towns which are on underground sewerage system also.

8. Conservancy and street-lighting

It is beyond the scope of the present book to deal with essential municipal services required in a city. A passing reference may, however, be made to two of these, namely, conservancy and street lighting, as these vitally affect the residents. It is of primary importance in any community of persons to make arrangements for the collection and removal of excreta; and on the efficiency with which these are removed depends the health of the people in as much as many organisms, chiefly those of cholera, typhoid and dysentery, find their way from the fæcal matter into the gut of the healthy human beings. Similarly, there should be proper arrangements for disposal of night soil. Conservancy is in fact one of the most difficult problems of a city and at the same time of the greatest importance. For safety of the public and free traffic it is also necessary that roads and streets should be well lighted.

9. Conclusion

Such is the problem of our towns. They are highly congested and a large percentage of their population are living under unhealthy conditions. There are slums of the worst type in them. Streets are narrow and tortuous, unfit for even normal traffic and inadequate for proper ventilation of houses abutting on them. Most of the houses occupied by the less fortunate section of the public are dark and dreary, without proper access for air and sunshine. The towns lack in open spaces, parks and playgrounds for children at suitable places and other public amenities essential for wholesome living.

They have grown up without a proper plan and with little hope for betterment in the future unless special efforts are made. Conservancy arrangements are still of the primitive type. Industrial and commercial expansion is going on at a considerable speed in them and unless development of the areas and housing of the working classes keep pace with it we are sure to face the same problems which England and other European countries had to face as the result of the Industrial revolution during the last century and which they have not been able to solve completely even up to this day inspite of persistent efforts over such a long period. We shall study now what steps have been taken in this country to solve this problem and to provide for the improvement and expansion of our towns.

Housing a social problem

Housing has become a social problem now. 'An examination of the histotry of culture would undoubtedly reveal that the shelter which men have at their disposal today is in many respects superior to what they ever had before. Men have lived in caves, in crude temporary camps, in crowded and unsanitary towns and cities, and some of them at least have survived to tell the tale. In past, housing under these circumstances did not loom large as a social problem because its adverse effects upon other phases of life, such as health, order, safety, and welfare, were not clearly perceived. 'In past, too, the objective conditions which we would now regard as poor housing did not come to be considered as problems because not very much was actually demanded or expected in the way of housing. The absence of the necessary material resources, the technology, and the knowledge of how to improve the situation, together with the absence of high standards or norms, tended to make housing a matter of indifference.

'In the modern world, however, where men have access to the technical information and where, in consequence of democratic ideas, education, advertising and propaganda, situations which would otherwise not be regarded as problems become problems, housing is likely to be prominent in any

inventory of community issues. Cultural and political doctrines have imbued men with conceptions as to their rights, social responsibilities, and expectations, so that the claims for decent housing on the part of individuals and the corresponding obligations of the community become vocal. Thus we have come to assume that certain minimum standards of housing are necessary and desirable objectives to be striven for, and have come to look upon the failure to reach these standards as social problems.

'In its simplest form the housing problem arises because men do not have what they or others consider suitable shelter. Looked at as shelter, what we want from housing is protection against the elements ; but since the dwelling is not merely a place where people sleep, housing, as it is conceived of in western civilization, calls for more than these minimal requirements. The dwelling must provide access to light and air, facilities for the preparation and consumption of food, bathing and toilet facilities, privacy, recreational activities, the physical safety of the person, conditions conducive to family life and the rearing of children, easy access to places of work and shopping centres, and the requisite educational, religious, and cultural institutions. Since the members of the household use the dwelling not merely as shelter from the elements but as a means which affects most of the activities that make up modern social life, there should be provided within as well as without the home those conveniences and amenities which, by tradition and expectation, we have come to include in our conception of an American standard of living.'

The above is what Mr. Louis Wirth writes[1] while describing the housing problem in the United States of America, but the ideas expressed are of general application and certainly those which we should strive to work to in this country also.

1. *Contemporary Social Problems*, edited by Louis Wirth, the University of Chicago Press, Chicago, Illinois., pp. 25, 26.

CHAPTER II.

TOWN IMPROVEMENT TRUSTS

10. Bombay Improvement Trust

Measures for the improvement of the City of Bombay.

The Bombay Improvement Trust was the first to be constituted for tackling the problem of the improvement of our cities. As long ago as in 1864, Dr. A. H. Leith, in a report on the sanitary state of the Island had recommended that advantage should be taken of the health-giving sea breezes to ventilate the town of Bombay by opening up avenues from 80 to 100 feet wide, running from the sea-shore on the west towards the east, and he had pointed out that several such avenues might be made with great benefit to health. Similar views from time to time had been expressed in annual municipal Administration Reports. The Extension Committee which reported in 1887 also made a series of recommendations for roads in their opinion necessary, "so that the town and Island may be traversed with the least possible interruption and that the prevailing winds may sweep freely through the whole fort, town and Island." In practice, however, hardly any such new roads were made by 1896 and in the densely populated localities where the evil of overcrowding was most serious, nothing had been done except such widening of existing streets as could be affected by the necessarily slow process of "set-backs." The subject was discussed from time to time, but financial considerations proved a bar to action and the Corporation devoted its time and resources prinicipally to the important matters of water-supply and drainage.

In the meantime the evil had become intensified. Between 30 and 40 per cent. of the population was concentrated in areas forming together between 3 and 4 per cent. of the area of the island and the density of the population in these areas was double and in parts more than three times that of the most crowded areas in London. The mortality per thousand of population in those districts from all causes in 1896 varied from 52.15 to 68.09, the rate for the whole city being 40.71 Over a large section of these districts the ground area per

person was under 10 sq. yds. and the overcrowding and consequent air pollution were appalling. The then Health Officer recorded that the six sections of highest mortality were the six most densely populated sections containing the darkest and dampest buildings, and that five out of the six were the sections of the worst drainage and soil pollution.

Plague in Bombay

In the early part of 1896, the overcrowded condition of the city attracted the special attention of His Excellency the Governor, who made a personal inspection of several of the localities and found a condition of things of which any real description would seem incredible. Matters, however, came to ahead under painful circumstances soonafter. Towards the latter part of the year a violent catastrophe overtook Bombay, necessitating two special pieces of legislation. This was the Bubonic Plague. The first genuine case of the bubonic type which occurred in Bhandup Street appears to have been reported to the Health Officer in August 1896 by a private practitioner. He could not make out the disease nor was the Health Officer able to diagnose the disease from the symptoms described by the private practitioner. The first to suggest that it was plague was Dr. Blaney who had an extensive practice in Mandvi. Within a few months the epidemic worked havoc among the population. It was not unusual for a person to die within a few hours of being attacked ; in many cases people walking along the streets fell down dead.

The Health Department did what it could to cope with the scourge. Every room in which a case occurred was thoroughly cleansed and disinfected. The other parts of the infected buildings were also flushed, the roof opened and all obstructions to light and air removed and systematic flushing and disinfection were carried out in the gullies, courtyards and drains. The house connections were overhauled, all rubbish, rags, and infected articles of small values were burnt and more precious ones fully disinfected. On the 6th October 1896, the Municipal Commissioner issued a notification stating that the ordinary provisions of the

Municipal Act of 1888 or any other law in force in Bombay were insufficient for the purposes of effectively preventing the spread of Bubonic plague and that he had therefore pursuant to the provisions of sections 434 of the Act prescribed certain temporary regulations to be observed by the public and all persons concerned. These regulations secured for the municipal executive the power to enter premises for cleansing and disinfecting any articles therein, whenever necessary, and to isolate infected houses. They prescribed that any person suffering from Bubonic fever wheresoever found and whether provided with proper lodging or accommodation or not, or whether living in a building occupied by more than one family or not and on a certificate signed by the Health Officer or by any bona fide medical practitioner that such person was suffering from the disease be liable to be removed to any hospital and building at which patients suffering from the disease were received for treatment.

The Epidemic Diseases Act, 1897.

The notification caused great consternation and provoked loud denunciations. The so-called hospitals were believed to be places of torture and centres for obtaining material for ruthless experiments. There was a general *sauve qui peut.* Thousands left the city. While exodus was at full flow, the railway stations were besieged by clamour-stricken people clamouring for tickets. Despite the continuous despatch of special trains huge crowds were left behind on the platforms. Business was paralysed, shops were closed, busy thoroughfares once streaming with life completely deserted. However, despite the migration of the people and the consequent reduction in the population, despite all the efforts of the municipality to check the ravages of the disease and to arrest its progress, it spread from east to west and then to the north, raising the daily mortality from 3 to 4 times the normal number. In the circumstances the Government of Bombay decided that they should lose no time in assuming control of plague operations. The Epidemic Diseases Act of 1897 was the first outcome of this decision. Under this Act an Executive Committee was appointed to carry out under the orders of the Government all the measures within the city of Bombay which were

considered necessary to check and to prevent the spread of plague.

The City of Bombay Improvement Act, 1898.

The other special agency introduced into the sphere of civic Government to suppress the outspread of plague in Bombay was the City of Bombay Improvement Trust. The havoc brought by the epidemic brought home to all concerned the urgent need for wholesale reconstruction of the city upon sanitary lines. It was realised that the real remedy of suppressing the outbreak of plague and of preventing its recurrence in future lay in striking at the root of the evil, the congested and insanitary localities and rookeries.

In an address to a deputation from the Chamber of Commerce in the month of February, 1897, the Governor of Bombay Lord Sandhurst referred to the urgent necessity for extensive sanitary improvements of the city, more especially in respect of the removal of insanitary dwellings and the prevention of overcrowding. His Excellency dwelt upon the evil of overcrowding as 'a premium on crime, misery and squalor and disease' and presaged as the outcome of the measures to be taken consequent on the dire outbreak of disease a healthier and still more prosperous and beautiful city.

Early in April 1897, the Government of Bombay devoted much thought to the question. They considered that in looking for a remedy they must seek one that should be permanent and continuous, one which should not be applied or be limited in operations merely to Bombay in its stricken condition for the time being but one which should secure also the future improvement of the city. Accordingly, a skeleton improvement scheme was formulated, designed particularly to ensure the betterment of the densely populated areas, removal of insanitary dwellings and prevention of over-crowding.

On the 28th of September of the same year the Government of Bombay laid before the Municipal Corporation and other public bodies definite proposals for the establishment of a special Improvement Trust constituted on much the same

lines as the Bombay Port Trust. 'Any scheme to be effective', observed the Government, 'must be on a thoroughly comprehensive scale and must provide not only for opening up crowded localities by the construction of new streets and acquiring frontages thereon for the erection of improved dwellings, and for the levelling up of low-lying areas, but also for improving existing insanitary dwellings and housing a very large number of poor class people in the new sanitary dwellings to be let out at an extremely low rate of rent. It must in addition provide room for the accommodation of the population to be displaced in the process of relieving congested areas and lastly room for the future expansion of the city.[1]

The cost of a scheme of so comprehensive a character must be very considerable and that aspect of the question would, it was apprehended, be regarded by the Corporation as a very serious one. The balance of their borrowing powers would have barely sufficed to meet the cost of essential drainage works and extension of water supply and other requirements of a more or less obligatory nature, incidental to the sound municipal administration of a large city. A scheme which would have rendered the city immune, as far as was sanitarily possible from the devastation of epidemic attacks of diseases was in fact outside the range of the duties of the Corporation. The municipal Executive had, moreover, a sufficiently burdensome task in administering the general affairs of the city and it was felt therefore that for the measures which the Government had then under contemplation, it was imperative both for general management and prompt executive action, that there should be a special agency with a separate staff at liberty to devote their entire energies to the particular task before them.

1. Letter No. 5242, dated, the 28th September 1897, from the Secretary to Government to the President of the Municipal Corporation for the City of Bombay — see *Bombay Government Gazette*, 1898, Pt. I. January-June, p. 62.

The Governor in Council fully recognised the success of municipal administration in Bombay, but he was of opinion that a scheme of the character proposed required persistent and long sustained efforts on systematic lines involving so many varied purposes with the prospect of almost infinite number of questions of details both in management and execution, and in which, moreover, large proprietary interests of Government would be involved, was essentially one that should be entrusted to a small administrative body, with special powers to raise funds, acquire property and execute necessary works. It was therefore proposed that a Board of Trustees should be constituted.

The Trust, which was to be composed partly of representative and partly of nominated members was to be endowed for a long period on certain terms with the use of valuable Government and municipal properties within the island, was to be subsidised from municipal revenues, and was to be entrusted with the work of (*a*) making new streets, (*b*) opening out crowded localities, (*c*) reclaiming lands from the sea to provide room for the expansion of the city, (*d*) constructing sanitary dwellings for the poor, and (*e*) provision of police accommodation.

The scheme having been generally approved by the municipal corporation, the Port Trust and the Chamber of Commerce was finally legalised by the passing of Act IV of 1898, to which the formal assent of the Governor-General in Council was given on August 30th in that year, and the term of office of the first trustees commenced by public notification from November 9th, 1898[1]. Earlier, moving the first reading of the City of Bombay Improvement Bill His Excellency the President said:

1. See Statement of Objects and Reasons of the City of Bombay Improvement Bill, 1898, published in the *Bombay Government Gazette*, January 29, 1898, Part V, p. 53; *Evolution of Local Self Government in Bombay* by Masani, pp. 313-323; *Gazetter of Bombay City and Island*, vol. III, p. 81.

"We dwell in a city which for density of population in a given area exceeds that of our great cities in the West, notably London. We have this city filled, nay crammed with people of various nationalities, creeds and castes, with their ancient customs and habits and beliefs, which make it extremely difficult to deal with them under circumstances of such an epidemic as the plague. We have experience of the results of efforts to extinguish such an epidemic, not withstanding the energy of the executive of the Municipal Corporation and of Plague Committees wherever they may be, and the rare patience of the suffering population. In looking for a remedy we considered we must look for one to be permanent and continuous, striking at the root of the evil, *viz.*, insanitary areas and crowded localities and it must be one which must not apply or limit itself merely to Bombay in its stricken condition of last year and to-day, but should have for its aim the improvement of future as well."[1]

During the course of proceedings on the Bill one of the members of the Council very aptly remarked:

"The plague will leave behind it many regretful memories but there will be one bright spot on which the people will love to dwell; and when all the present misfortunes and hardships are forgotten as events of a remote past, the City Improvement Act will be cherished as a blessing, and will leave Lord Sandhurst's name eternally associated with it."[2]

The city of Bombay Improvement Trust Transfer Act, 1925

The City of Bombay Improvement Act, 1898, was repealed by the City of Bombay Improvement Trust Transfer Act, 1925. The former Act, enacted with a view to make provision for the improvement and future expansion of the city of Bombay by means enumerated in the preamble to that Act was avowedly of a temporary nature and the Act itself contained a provision for the dissolution of the Board of Trustees created by the Act and for the transference of the Trust property to the Corporation. In 1925 it was considered that the time had come for the dissolution of this specially constituted board as an organization apart and distinct from the Municipal Corporation, and it was recognized that though the work this Board was constituted to do was not yet done, the Trust itself could come to an end though the Trust

(1) *Bombay Council Proceedings*, 1898, p. 8.
(2) *Ibid*, p. 19.

work should continue. The object of the Act was, therefore, to transfer to the Corporation the property of the Board, not absolutely for the general purposes of the Corporation but especially for the purpose of the improvement of the city and to confer upon the Corporation certain of the rights conferred upon the Board, while a specially constituted Committee of the Corporation called an 'Improvement Committee' was to carry on, subject to the control of the Corporation, the work of the Improvement Trust. Likewise, the property vesting in the Corporation was not to be merged in the general property of the Board but was to be kept distinct and apart while the revenues from all such property were to be applied for the purpose of the city improvement. All these things were provided for in the City of Bombay Improvement Trust Transfer Act, 1925.

Bombay Act XIII of 1933.

The City of Bombay Improvement Trust Transfer Act, 1925, was also repealed by the Bombay Act, XIII of 1933, which added Chapter XII-A to the City of Bombay Municipal Act, 1888, under the heading 'City Improvement'. Clauses 354 B to 354 X of that Act as so inserted thus form the basis of the schemes of city improvement now in the city of Bombay.

11. Calcutta Improvement Trust.

Improvement of Calcutta.

The next city to be tackled with was Calcutta. The starting point of the Improvement Scheme in this city was the Report of the Calcutta Building Commission in 1897. In the Resolution appointing this Commission it was stated that the sanitary officers deputed by the Medical Board to inquire into the condition of Calcutta had shown to what an extent overcrowding prevailed in Calcutta, and how the construction of buildings in the older part of the town impeded or rendered impossible any effective conservancy, and the Commission was directed to inquire into the history and operation of the existing law and bye-laws on buildings. They were further requested to inquire into the desirability of opening out the congested tracts of Calcutta and the most feasible plan of effecting this. On this point their recommendations were necessarily vague and they could only insist on the

desirability of opening out a number of fairly wide streets, and, where possible, creating open spaces as lungs to the locality.

The proposals were taken up by the Bengal Government and in July 1899, the Government of India were first addressed. The scheme set forth was to drive 15½ miles of roads through the congested portions in the north of Calcutta and to provide *incidentally open spaces where possible*. The estimated cost was five crores, and it was proposed that execution of these great works of improvement should be entrutsed to a special and separate body or Trust, and that the Land Acquisition Act should be amended in certain particulars. The cost of the scheme was to be met half by recoupment, that is to say, by taking up and sale of surplus lands lying along the road and the other half by loans on the security of a tax of 1 per cent on jute, but guaranteed by the Corporation.

The proposal for 15½ miles of road was not based on any survey or any definite scheme. It had its origin in a note pointing out that certain roads in certain directions were very desirable and 15½ miles was taken as a convenient approximation. The alterations were confined to these roads. The *bustees* were to be swept away to the width of the road or of the land to be taken up, but no attempt was foreshadowed to improve the congested areas still remaining between the streets or to provide for the transfer of the congested population elsewhere. The estimate of cost also was exceedingly uncertain.

The Government of India at once accepted the main features of the scheme but were unable for reasons partly connected with the currency policy to allow a tax on jute. Practically the whole correspondence of the next three years hinged upon the question how Calcutta could best meet the burden of the improvements, and how far and in what form assistance might properly be given to it. In 1900 the Government of India proposed to recommend to the Secretary of State that a grant of Rs. 50 lakhs be made from Imperial Revenues for the scheme, on the understanding that a Trust was formed to carry it out, and that the money which

had to be raised by loan should be raised on the security of the rates; and this offer was subsequently approved by the Secretary of State on condition that a scheme was framed causing the cost of the improvements to fall upon the municipality, and that adequate taxation was imposed to meet this cost. This offer did not remove all the defects, and the Government of Bengal proposed to reduce the scheme to more modest dimensions. Their proposal was not considered by the Government of India to meet the needs of the case and further correspondence ensued chiefly upon details of finance. Finally, in 1902, the Government of India forwarded to the Secretary of State the first definite scheme that had been before him. This was to construct 15½ miles of roads at a cost of Rs. 478 lakhs, of which Rs. 291 lakhs was expected to be recovered by recoupment and Rs. 50 lakhs was to be given from Imperial Revenues. The remainder was to be raised by loans for a term of 60 years and the Corporation was to meet the loan charges from their resources supplemented by a tax on petroleum; and on the expiry of 20 years the Corporation should take over from the Trust all its liabilities and the assets. The Secretary of State accepted the principle of this scheme with very considerable modifications and insisted that the responsibility of the Corporation should be definitely fixed, and they should be bound by legislation to pay a certain sum annually to the credit of the same, and proposed that 1½ per cent. of the total rateable values of all lands and buildings in the city should be paid annually to the Trust; that the proceeds of the tax on petroleum should also be paid direct to the Trust and the Corporation should be made responsible for any deficit.

At this stage the scheme was made public and criticisms were invited. The principles which had been worked out during the first five years were:—

(*i*) that the opening up of congested areas was necessary;

(*ii*) that this could best be done by a Trust;

(*iii*) that the principle of recoupment could be relied upon to meet a large part of the cost;

(*iv*) that the balance should fall primarily upon Calcutta, and that a substantial contribution must be made by the Corporation;

(*v*) that Government would help with a grant of Rs. 50 lakhs;

(*vi*) that the Corporation must assume the liabilities of the Trust when the latter was wound up; and

(*vii*) that some amendment of the Land Acquisition Act would be required.

There was a considerable discussion on the published scheme, but nothing more of importance was done till the beginning of 1904 when, as matters were progressing very slowly and it was recognized that the machinery of official correspondence was in some respects ill-adapted to effect an expeditious settlement of questions so intricate as those which arose in connection with the improvement of Calcutta, an advisory conference was held at which Sir Herbert Risley attended on behalf of the Government of India. The conference felt acutely the difficulty already alluded to arising from the necessarily vague nature of the scheme and limited their recommendations to the classes of work to be undertaken.

The Calcutta Improvement Act, 1911.

The recommendations of the Conference were of the utmost importance in the history of the scheme. They differed considerably from the principles hitherto laid down, especially as regards the scope of the Trust, and they formed the basis of the Calcutta Improvement Bill. The defect that the earlier proposals dealt only with a very limited portion of the overcrowding was clearly recognised and the new scheme was much more comprehensive. The new scheme proposed to tackle the areas outside the alignment of these roads, which were still the backbone of the scheme, to provide for more open space and to clear overbuilt areas. This at once raised the question which had hitherto been avoided of what was to become of the ejected population. If the congested areas were opened out, the inhabitants must go somewhere, and not

only that but care must be taken that the growth of population did not cause the areas to be again congested. The then surplus population as well as the growth of population in future had to be provided for if permanent good was to be done. There were not sufficient areas in Calcutta itself to provide for their accommodation, and it was necessary, therefore, that the Trust should look to the future expansion of Calcutta and should extend their operations to the suburbs in the direction in which this expansion would naturally take place. It followed therefore that the Trust must have power to make the suburbs, where the surplus population should be provided for accessible by constructing or subsidizing trams or other means of cheap conveyance. Further, although it was hoped that private enterprise would provide suitable accommodation, yet the past history of the congested areas showed that it was essential that the Trust should be in a position to enforce the restrictions and regulations that would be necessary for the sanitation and the amenities of life. It was realised that the Trust must have power to acquire land in suburban areas which they could sell or lease, imposing suitable conditions, and they must also have the power given to the Corporation of Calcutta of regulating buildings. All this was provided for in the scheme drawn up by the Conference.

The enlarged scope of the scheme necessarily meant a considerable increase in the cost. The amount required was roughly estimated to be Rs. 822 lakhs. This did not represent the actual cost of any definite scheme, but was roughly what was estimated to be required for any scheme of wide and permanent utility on these lines. It was proposed to spend Rs. 500 lakhs on new roads, Rs. 172 lakhs on open spaces and Rs. 150 lakhs on housing and expansion. Of this sum, Rs. 336 lakhs was to be recovered by recoupment, Rs. 50 lakhs was Government contribution, and the remainder was to be raised by loans.

The current expenses and the Sinking Fund for the loans were to be provided by a contribution from the Corporation, supplemented by the proceeds from certain taxes, among which were :—

a ½ per cent. tax on jute,
a terminal tax on passengers, and
a transfer duty on land in Calcutta.

The municipal contribution was to be a first charge on the rates, and was to be paid even if it were necessary to raise the rates above the legal maxim. The Conference also discussed the composition of the Trust and proposed a body of six trustees in addition to a President. The Chairman of the Corporation was to be an ex-officio Trustee, and two of the other Trustees were to be Commissioners of the Calcutta Municipality and one a member of the Bengal Chamber of Commerce, but all were to be appointed by Government.

The proposals of the Conference were accepted by the Government of Bengal and forwarded to the Government of India. Some discussion as to the practicability of some of proposed taxes followed, but eventually the sanction of the Secretary of the State was obtained to the proposal generally on the understanding that the scheme of taxation would be for 60 years ; and that although some of the loans would not fall due till after the expiration of 60 years, yet inasmuch as all the revenue would not be required in the first few years to meet interest and the sinking fund of loans, which would only be raised as required, the balance of the revenue would be invested, and thus be ready to meet all liabilities when the scheme of taxation was stopped. In 1905 the Government of India forwarded an analysis of the scheme as it then stood and the opinion of the public was invited on it. This scheme reproduced all the recommendations of the conference. The opinions of the interested public were collected and carefully considered and the following was proposed :—

(1) that the Corporation contribute to the Trust an annual sum equal to a 2% consolidated rate, estimated to yield Rs. 5.49 lakhs :

(2) that a transfer duty at Rs. 2/- per cent. be imposed on sales, gifts and usufructuary mortgages of immovable property in Calcutta, estimated to yield Rs. 2 lakhs a year ; and

(3) that if any year the sum of these two sources of revenue, fell short of Rs. 7.50 lakhs, the Corporation should make up the deficiency.

As regards the taxes necessary to make up the required balance of the revenue it was recognized that no increased taxation would be altogether popular and after much discussion and consultation with the interests concerned it was proposed to levy a jute tax and the terminal tax. This scheme of taxation appeared to Government to constitute equitable distribution of the general burden as was possible under the circumstances.

This scheme was sent to the Secretary of State, who in giving his sanction to it directed that some of the members of the Trust should be elected. He also sanctioned an annual subvention of Rs. 1½ lakhs by Government on the condition that the scheme of taxation became law in its entirety and was made effective for the full term of 60 years. The Improvement Scheme thus approved constituted the basis of the Calcutta Improvement Bill of 1910. This bill ultimately resulted into the Calcutta Improvement Act, 1911, under which the Calcutta Improvement Trust is constituted. The object of this Act, as stated in the Preamble [1] is 'to make provision for the improvement and expansion of Calcutta by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing buildings, acquiring land for the said purposes and for the re-housing of persons of the poorer and working classes displaced by the execution of improvement schemes.

12. Town Improvement Trusts in the United Provinces.

The history of the Improvement Trusts in the United Provinces begins in 1907. On the 30th March in that year Sir Sunder Lal delivered a speech in the Provincial Council

1. Extract from the speech of the Hon'ble Mr. Stephenson while moving for leave to introduce the Calcutta Improvement Bill, 1910—See *Proceedings of the Council of the Lieut. Governor of Bengal*, Vol. XLII, 1910, pp. 470 to 474.

in which he spoke on "opening up congested areas in our towns and providing model bastis for the poor." During the same year in their letter of 7th August, 1907, the Government of India in consequence of the Report of the Plague Commission of 1905 called the attention of the Local Government to the question of the provision of model dwellings and the preparation of "schemes for the demolition of insanitary areas and the opening out of congested quarters."

Inquiries were made in different cities as to the possibilities of carrying out these proposals and in letter No. 3419, dated the 11th November 1907 Sir John Hewett addressed the Government of India and pointed out the necessity not only for the measures mentioned above, but also for the construction of broad roads through the hearts of the congested areas, and since the general depression of municipal finances did not allow of the boards themselves undertaking these projects, he asked for assistance from the Government of India. It was considered that funds having been provided 'it will be necessary to form for each place an Improvement Trust and to vest in this Trust the amount provided by the Government. These objects being provided for by legislation the Trust for each place would proceed to investigate the direction in which the town requires particular attention and to prepare plans and other details for constructing one or more broad roads through the congested areas.' It was stated that a beginning had already been made at Cawnpore. It was hoped that by sale of frontages on the first road profits would be made, which could be utilized for further operations of the same character and for the erection of model dwellings. Shortly afterwards the Government of India sanctioned a recurring sanitation grant of Rs. 5 lakhs.

The Lieutenant Governor in G. O. No. 1906 of 11th May, 1908, thereupon called for a report from the cities of Lucknow, Cawnpore and Allahabad on the following matters :—

"(*a*) What new roads it is desirable to construct in order to open out congested areas. The roads proposed

should be shown on the map and estimate made of the cost. It will probably be expedient to take up more land than is required for the roads themselves, in order that sites along the roads may subsequently be re-sold. The Government would be glad to have full information regarding the financial results of any roads that have been made in this manner?

(*b*) What blocks of houses have been marked out in any particular manner, for example, by the recurrence of plague as being specially insanitary, what is their areas and population and what would be the cost of acquiring them?

(*c*) What land exists either belonging to Government or capable of acquisition, which would be suitable and convenient for the construction of more sanitary houses and what the cost of acquisition would be?"

Information having thus been acquired as to the needs of the towns and the necessary funds having been made available, the question arose as to the best means of administering them. It was originally proposed to constitute special managing committees of Trustees for this purpose. But as such Trustees could have no power under the Land Acquisition Act and no security on which to borrow, it was decided to constitute a Trust in favour of the Municipal Boards. A Trust deed was accordingly prepared, which was executed by the three municipal boards of Lucknow, Cawnpore and Allahabad in January, 1909. By that deed the municipal boards were each given a grant of Rs. 2½ lakhs (to be paid partly in 1908-09 and partly in 1909-10) to be held in trust for the purpose of acquiring land and carrying out schemes "for the construction of broad thorough-fares and other works for the relief of congested inhabited areas," the proceeds of sales of lands acquired to be treated as Trust property and separate account of all moneys received and expended on account of Trust being maintained. On the creation

of the Board of Trustees (*i.e.* an Improvement Trust) by subsequent legislation the Trust property was to be transferred to it. On the allotment of the first instalment of the grants mentioned above sub-committees of the municipal boards were formed to administer the Trust on behalf of the Board. The Chairmen of the municipal board were Chairmen of the Committees.

The United Provinces Town Improvement Act, VIII of 1919.

Meanwhile the question of the improvement of towns by the opening up of congested areas, the provision of model dwellings and the planning of town extensions was discussed by the Sanitary Conference which sat at Nainital in September 1908. The Conference considered that "it is not only desirable but essential to lay down plans regulating the features of growing towns," and paragraph 29 of the Report of these proceedings runs as follows:—"On the question of the constitution of the authority to be in charge of schemes of town extensions it was pointed out that there are strong reasons for constituting a special body in each case. The work involved will be very great and cannot conveniently be undertaken by the municipal board concerned. It is, moreover, necessary that the Trust fund should not merge in municipal accounts. The Conference recommend therefore that Trusts should be constituted for towns contemplating large extension or improvement schemes with borrowed money; and consider that, although legislation for the constitution of Trusts as suggested may not be immediately necessary, it should be undertaken at an early date. The form it should take is sufficiently indicated by the City of Bombay Improvement Act (IV of 1898). It should be left to the Legislature to ensure the adequate representation of all local interests."

This extract from the proceedings of the Conference and the conditions in the Trust-deed that Trust property would be transferred to a Board of Trustees when created shows that legislation was contemplated from the first. The file on the subject runs on from 1909 to 1914 when a draft bill was prepared by Mr. Sim. The question was then held up for a time

pending decision of the question whether there should be a Town Planning Act for the whole of India. When this was decided in the negative in Government of India letter No. 544 of 14th December 1917, the question of legislation was again considered. The report of the Cawnpore Expansion Committee had by that time been received making far reaching proposals, the carrying out of which would obviously be beyond capacity of a Sub-Committee of the Municipal Board, while committees had been appointed to take similar action with regard to the cities of Lucknow and Allahabad. Accordingly in July 1918, a Rule 13 Committee of the Council was appointed to consider and formulate proposals for legislation in connection with the town planning and town improvement schemes.

The Committee consisted of three officials and four non-officials. Its report which was unanimous was forwarded to Government on the 8th September, 1918. As regards the necessity for legislation it stated as follows :—

"Special legislation is, in our opinion necessary on this subject for two main reasons, firstly, the work involved in these great schemes is so great that it cannot conveniently be undertaken by the municipal bodies concerned in addition to their own duties. There are also interests outside the board which ought to be represented. Secondly, in the absence of special legislation there are legal difficulties in the way of constituting separate committees to carry out the duties of Trusts. Such separate committees can neither acquire land nor borrow money. As to the urgency of the matter there can be no question. The congestion in the larger cities of the province is very great and there can be no hope of real advance in sanitation until these towns are opened out and partially re-planned. In particular, there can be no hope of a substantial reduction in the very high rate of infantile mortality. There are precedents in India for the legislation which we contemplate, and the draft Bill which we present is mainly based upon the provisions of the Calcutta and Bombay City Improvement Trust Acts, which we generally approve. We are happy to state that we have reached unanimous conclusions with regard to all the principles embodied in the draft Bill."

As regards the constitution of the Trust the report ran as follows :—"We understand that the present Act will only be applied to the larger towns, in which great schemes are contemplated which cannot be carried out without large

initial grants from Government. It is, therefore, in our opinion, reasonable that Government should retain the power of nominating a bare majority of the members of the Trust. As the Trust is an executive rather than a deliberative body, it appears essential that the number of the members of the Trust should be restricted so far as possible. We have therefore fixed the number as seven. The Chairman of the municipal board will be a trustee ex-officio and two other members will be nominated by Government and of the three other trustees to be nominated not more than one shall be a Government servant."

In forwarding the Bill to the Government of India the Local Government in their letter no. 197 of the 23rd September 1918 wrote :—" Sir Harcourt Butler has been greatly impressed by the urgent need for immediate legislation upon this subject in this province. The congestion in the larger cities is very great and they are being allowed to expand in a most haphazard manner without any control, so that their sanitary condition is daily growing worse. In many cases, the most important of which is Cawnpore, there is great need to provide facilities for expansion which are at present impeded by obstacles which have been allowed to grow up around the inhabited sites, such as net work of railways and the excavations due to the working of brick-kilns and similar industries. The Local Government has at present before it the report of a committee which has made recommendations for the immediate constitution of a Trust for the purpose of providing facilities for the expansion of Cawnpore and for the relief of congestion in that city. His honour has also found it necessary to point to local committees to make similar proposals with regard to the cities of Lucknow and Allahabad, while urgent action will also probably be necessary for the remaining cities of the province. Effective action is, however, impossible without fresh legislation for the purpose of constituting Improvement Trusts armed with adequate power." "The Bill enables the Local Government to constitute a Trust in cases where the work contemplated would be on so extensive a scale as to be beyond the powers

or the resources of the municipal board; while in the case of smaller schemes it arms the municipal board with power to obtain a more speedy settlement of claims for compensation for land acquired in connection with such schemes and provides for the compensation being fixed at a reasonable rate."

Allahabad, Cawnpore & Lucknow Improvement Trusts.

No important changes in the Bill were made in the Select Committee. It became law on the 5th November 1919, and Improvement Trusts were constituted in Lucknow and Cawnpore in December 1919 and in Allahabad in November, 1920.[1]

13. Lahore Improvement Trust.

The Punjab Town Improvement Trust Act, 1922.

The genesis of the Punjab Town Improvement Bill, 1921, which ultimately resulted into the Punjab Town Improvement Act, 1922, is to be found in a Government of India letter issued in 1917, expressing the hope that "in view of the demand among large classes for improved dwellings amid more sanitary surroundings and the necessity of inspecting and controlling developments by the application of well considered schemes" Provincial Governments should consider the question of legislation for this purpose. Towards the end of 1919 Col. Forster, I.M.S., Sanitary Commissioner, prepared a note advocating the creation of an Improvement Trust or Trusts with the following functions :—

(*i*) improving existing insanitary areas ;

(*ii*) preparing street schemes ;

(*iii*) providing housing accommodation for the poor classes and those dispossessed under an improvement scheme; and

(*iv*) town planning.

It was in the year 1919 that the U. P. undertook legislation on the subject and passed their Act — The U. P. Town Improvement Act, 1919. The Punjab Town Improvement Bill was drafted on the lines of the U. P. Town

1. See Freemantle Committee Report, 1924, U. P. Gazette, No. 22, 1924—Part VIII.

Improvement Act. The object of the Bill as declared, was to make provision for the improvement and expansion of towns by the creation of Trusts vested with statutory powers 'to enable them to acquire land and carry out such improvements and extensions as may be found requisite.'[1] In the words of the mover of the Bill in the Legislative Council, "in view of the fact that the Bill is designed to meet the need for urgent sanitary reform and for town expansion in our big cities through the agency of specially constituted Trusts, it undoubtedly supplies a keenly felt need. It is hoped that the Bill will prove a potent instrument for elevating the conditions of life in the great cities of Lahore and Amritsar and for ensuring the health and happiness of their citizens. As we all know the Municipal Committees of Lahore and Amritsar are overworked and the functions of the Trusts are rather of different nature and cannot be carried out by the municipal committees sitting in a large body. It is for this purpose that Trusts have been created in other provinces and are proposed to be created in this province to carry out sanitary improvements in big towns expeditiously and without delay.....

"We all know that there are dark, insanitary, dingy quarters in our great cities which are a slur on the good name of the Province. We all know that development schemes and expansion schemes are needed and therefore there is nothing to be gained by my repeating what is contained in the statements I have referred to."[2]

The Punjab Town Improvement Act came into force in 1923 but no action was taken under that Act to constitute a Trust until 1936 when the Lahore Improvement Trust was created. It was found necessary to amend the Act so as to apply to the Lahore municipality and this was done by the Punjab Town Improvement Amendment Act, 1936. Necessity for this

(1) Statement of Objects & Reasons, the Punjab Town Improvement Bill, 1921. See Punjab Gazette, 1921, Jan. to Dec., Part I-A, p. 162.

(2) From the speech of Hon'ble Khan Bahadur (afterwards Sir) Mian Fazl-i-Hussain, while moving the Bill in the Punjab Legislative Council. See Punjab Legislative Council Debates, Vol. II, 1921, pp. 110, 111.

amendment was thus stated in the statement of Objects and Reasons :—

"The Punjab Town Improvement Act, 1922, provides that an Improvement Trust shall consist of seven trustees of whom three shall be members of the Municipal Committee concerned. No Provision is made for the case of a Municipal Committee which has been suspended under section 238 of the Municipal Act. The Bill provides for this by giving the Local Government power to nominate three trustees in the place of the three members of the Municipal Committee until such time as the Municipal Committee is reconstituted." [1]

14. Nagpur Improvement Trust.

The Nagpur Improvement Trust was established at the beginning of the year 1937, by an Act of Legislature known as the Nagpur Improvement Trust Act. The Act came into force on the 1st January 1937 and the Trust was fully established and held its first meeting on the 28th February 1937.

This Act was the outcome of the report of a Committee appointed by Goverment on a proposal made by the Nagpur Municipal Committee in 1928 and that proposal again was the consummation of a series of discussions on the subject which had been going on for at least 12 or 15 years before that. As far back as 1915, Professor Patric Geddes and Mr. S. V. Lanchester, eminent town planners and architects, were invited to Nagpur to advise the Municipal Committee on the best method of improving the town. Professor Geddes again visited Nagpur early in 1916 during the tour of the cities and Town Planning Exhibition, and submitted a preliminary report on town planning in 1917. This visit was undertaken as the result of the deliberations of the Municipal Committee of schemes of improvement which had been prepared some time earlier than that by the various presidents. These earlier examinations of the problem, however, did not result

(1) See Punjab Gazette, Extraordinary, 1936, p. 157.

in any tangible scheme and it was not until 1928 that a definite proposal for the creation of a statutory Trust was made. On the 4th November 1928 the Municipal Committee unanimously resolved to prepare an exhaustive scheme of improvement and expressed the view that statutory Improvement Trust was necessary to carry it out. At the same time, it authorized its then president to negotiate with Government for this purpose. As a result of these negotiations a preliminary survey of the problem was made by the City Engineer, who submitted his report in 1930. In the same year Government recognized the importance of the problem and set up a committee to examine the question and report on the advisability of creating a town improvement trust for Nagpur, to prepare a Bill to implement the proposal, and to make suggestions for financing it.

Little, however, could be done for over three years, as unfortunately, the establishment of this committee coincided with the commencement of the great slump, and financial stringency prevented the committee from making that permanent examination of the working of trusts in other provinces, which was the necessary first step in tackling the problem. In 1934, however, the Commissioner, Nagpur division, finding in the course of his administration of Government's Nazul property the urgent need of some systematic scheme of town improvement, revived the Committee and obtained permission from Government to take a small deputation to the United Provinces to study the working of the Improvement Trusts of Lucknow, Allahabad, and Cawnpore. The deputation visited these cities in November 1934, and subsequently the Chairman was able to study the working of the Calcutta Improvement Trust also. The Committee proceeded vigorously with its examination of the subject and finally submitted its report to Government on the 30th April 1935, with a draft Bill accompanying it. As the result of this report, the Nagpur Improvement Trust Bill was introduced in the C. P. Legislative Council on 3rd August 1936 [1]. Its object was thus stated in the *Statement of Objects and Reasons* :

1. See *C.P. Legislative Council Debates*, 1936, Vol. 12, pp. 565 to 572.

"The population of Nagpur has increased by no less than 48 per cent., since 1921 and it is now estimated at nearly 2,36,000. Unfortunately this growth of population has not been accompanied by an orderly development of the extensions and communication of the town. The sanitary condition of the City is appalling and the result of congestion, bad drainage and unregulated housing is seen in the figures of vital statistics. The death rate exceeds that of Bombay, Madras, Rangoon and Poona. To remedy this state of affairs it has been deemed advisable to establish an Improvement Trust on the lines of similar trusts at Lucknow Allahabad, Cawnpore and Calcutta which should undertake the task of properly planned town improvement. The whole question of establishing a trust was considered by a committee presided over by the Commissioner, Nagpur Division, and a Bill has been drafted on its recommendations. The Bill contains special provisions to safeguard the interests of the public and provides for the establishment of a special tribunal to decide all disputes relating to the acquisition of property. The finances of the Trust will be derived in the first instance from contributions to be made by the municipality and Government but provision is also to be made empowering it to raise income partly by special taxation." [1]

Concluding his speech while moving the Bill for reference to a Select Committee, the Hon'ble Mr. B. G. Khaparde, said :

"In conclusion, I need only say that this Bill provides the House with an unique opportunity of enacting a progressive measure of real nation building character — a measure designed not merely to ameliorate the conditions in which two and a half lakhs of people in the capital city of the province live, but to encourage trade and commerce, to increase the prosperity of Nagpur and of the whole of the province, and to provide an example which, it is hoped, every considerable town in this province will be anxious to follow. The scheme is calculated above all to check the needless waste of human life and health, and I have no hesitation in declaring that it will form a landmark in the history of Nagpur and of the Central Provinces." [2].

Mr P. J. H. Stent, Chairman of the Improvement Trust Committee, and nominated member of the C. P. Legislative

1. *C. P. Gazette*, 1936. Part II, p. 372.
2. C. P. Legislative Council Debates, 1936, Vol. 12, p. 568.

Council while opposing the motion for circulation of the Bill for eliciting public opinion said :

"I had intended, Sir, to paint a picture of the condition of Nagpur, but this work has been done for me, and I do not think any member of this House would question the correctness of the picture which has been drawn. We hear much nowadays of the need for rural uplift. I am far from decrying the noble efforts that have been made to improve the lot of the villager, but Nagpur has a population of 2,40,000 people, the equivalent of very many villages. We cannot, I submit, in our zeal for the rural population ignore the claims of our urban population of this magnitude. A man should not be penalized for leaving his rural surroundings and coming into Nagpur in the hope of earning a little extra wherewith to feed himself and his family. He has a right to certain amenities, a certain minimum of comfort, if we can possibly find means to give it to him.

"I would appeal also to the civic pride of those members who belong to Nagpur and to the provincial patriotism of every member of the House. Nagpur is almost the geographical centre of India. It lies at the junction of two great railway arteries and there seems to be no reason why it should not become the commercial and industrial capital of India. I say, Sir, that there is no reason, except perhaps lack of enterprise and certainly lack of those civic amenities—water, drainage sanitation, wide roads and ample space which every industrial and commercial house has a right to expect. As soon as proper facilities are afforded, additional industries will be established and trading and commercial concerns will awake to the importance of Nagpur. Even the landlords who have been foremost in opposing this measure need have no fears for the future. With a rise in the general prosperity, their prosperity would also rise. I do not despair even of converting these gentlemen to support the Trust when it is established. When the Trust is fully established and functioning, when they realize that it is not the bogey their imagination has created but a beneficient institution which will bring them and all citizens prosperity, they will regret

their opposition and join us wholeheartedly in supporting the Trust.

"I wish, Sir, I had the eloquence of a Gokhle or of the Hon'ble member for Nagpur-cum-Kamptee to make this House share with me my vision of the great Nagpur of the future which the establishment of an Improvement Trust may translate from dream to reality. A beautiful Nagpur of broad roads with ample footpaths, shaded by trees, with proper drains and proper lighting, with playgrounds for little children, with playing fields for older children, with parks and gardens for people to take the air on summer evenings, a Nagpur of great industrial and commercial concerns which will bring trade and prosperity to the Province and provide employment for young men of every class and grade of society. These are not the dreams of a mere visionary. They are practical ideals which can only be realized by systematic town planning and improvement, including the provision of water and drainage, communications and housing. Man is after all, to a great extent, the creature of his environment. If the citizen lives in an evil-smelling alley, in a dark, unventilated house, without sufficient water, without drainage, without sanitation, his mind too will be dark and narrow, his habits dirty, his ideas limited and cramped. The perpetual irritation of discomfort and ugliness will warp the noblest soul. But give your citizen clean broad roads, a well planned, well ventilated house, however small and humble, water, drains, sanitation, lighting and open spaces for his recreation and every sort of civic amenity, at once his outlook changes; with better health and greater comfort, his mind broadens, his standard of living rises, his ideals, are ennobled, and he becomes an enlightened citizen of that greater India to which every patriotic looks forward. The Hon'ble members of this House are offered to-day an unexampled opportunity of inaugurating a constructive measure of the most far reaching importance which will, I confidently predict, be remembered in gratitude by generations yet to come."[1]

1. C. P. Legislative Council Debates, 1936, Vol. 12. pp. 625, 626.

Time alone will show how far the Trust realizes these ideals.

15. Delhi Improvement Trust.

The Delhi Improvement Trust was constituted in March, 1937, under the Government of India, Department of Education, Health and Lands Notification No. F. 23-10/37-H, dated the 2nd March 1937, extending under section 7 of the Delhi Laws Act, 1912 (XIII of 1912), to that part of the Province of Delhi which is described in the schedule attached thereto, the United Provinces Town Improvement Act, VIII of 1919, with certain modifications. This notification as amended by notifications No. F. 23-28/37-H., dated the 30th September 1937, No. F. 29-55 (5) 39 F. & L, dated the 22nd February 1940, No. F. 29-55 (6)/39-F & L., dated the 7th March 1940, (as corrected by Notification No. F. 29-19 (2)/40-F & L., dated the 16th July 1940) and No. F. 29-17/39-F & L., dated the 2nd April, 1940, in that Department, forms the basic law for this Trust. This was supplemented by extending under the same Act to this scheduled part of the Province of Delhi, with certain modifications, sections 32, 59 and 86 of the Rangoon Development Trust Act, 1920 (Burma Act V of 1920) under Notification No. F. 23-10/37-H, dated the 2nd March, 1937, section 78 of the Calcutta Improvement Act, 1911 under Notification No. F. 23(10) 37-H dated the 2nd March 1937, and sections 24,78-A to 78G, 79 and 80 of the same Act, under Notification no. F. 29-55 (4)/39- F & L, dated the 22nd February 1940.

Before deciding to constitute this Trust the Government of India placed on special duty Mr. A. P. Hume of the Indian Civil Service, who subsequently became first Chairman of the Trust, to study the housing problem in Delhi and to suggest measures of relief. The terms of reference were 'to ascertain (i) the nature and magnitude of the problem of congestion, (ii) the extent to which the measures already undertaken or now in progress provide a solution, (iii) the manner in and the extent to which (ii) need to be supplemented, (iv) the agency to which the supplemental measures should

be entrusted, and (v) the expenditure involved and the best way of providing it' The report was presented to the Government of India in June 1936. The main conclusions of the report may be very briefly summarized as follows :—

The report shows a two-fold problem of congestion, viz., congestion of people in houses and of houses on land. It further indicates an immediate excess population, for whom better accommodation ought to be provided, of 1,00,000 people and a probable increase in population during the next 15 years of 1,33,000 people, and that the city contains numerous well-defined slum areas of the meanest type and abounds in insanitary lanes and dwellings constituting a menace to the public health of the whole urban area of Delhi. The report then shows that there is provision on vacant Government land (Delhi city is fortunate in still possessing within and adjoining municipal limits on all sides large areas of Government owned land, which have now generally come to be included in the term "Nazul estates") and on land already included in municipal expansion schemes for about 41,000 people ; the total area thus available for new buildings, including shop sites, being given as 416 acres. The report next indicates measures to provide a total building area of 1160 acres sufficient to accommodate 106,000 people, these proposals entailing action in respect of land already the property of Government, new vacant lands to be acquired from private owners, and thickly populated areas within the city also to be acquired from private owners. The report particularly stresses that the development to full capacity of Government land and the provision of extra areas on the outskirts of Delhi to accommodate surplus population, will not afford adequate relief to the problem of congestion unless supplemented by vigorous action within the city to ameliorate insanitary conditions by the removal of slums. Finally, the report suggests that the only authority in the circumstances capable of carrying out the dual scheme of administration of a large Government estate (a) as an agent of Government, (b) in the interests of the city, and also of dishoused population, and town planning, is an Improvement Trust equipped with statutory authority.[1]

1. See Administration Report of the Delhi Improvement Trust for 1937-39.

CHAPTER III.

INCORPORATION OF TRUSTS.

16. All Trusts are bodies corporate.

Under the Calcutta Improvement Act 'the duty of carrying out the provisions of that Act vests, subject to the conditions and limitations therein contained, in a Board, called, "The Trustees for the Improvement of Calcutta", and that Board is 'a body corporate having perpetual succession and a common seal,' and is to sue and be sued by the said name'.[1] Similarly, under the U. P. Act, the duty of carrying out the provisions of that Act vests, subject to the conditions and limitation contained in that Act, in a Board called "The (name of town) Improvement Trust, and every such Board is a body corporate and has perpetual succession and a common seal, and can sue and be sued only by the said name"[2] Under this Act as extended to the Province of Delhi, this Board is called 'The Delhi Improvement Trust.'[3] The Punjab Town Improvement Act[4] and the Nagpur Improvement Trust Act[5] provide indentically with section 3 of the U. P. Town Improvement Act, for the incorporation of Trusts for the improvement of towns under those Acts.

All the Trusts constituted under the various Acts for the improvement of towns are thus corporate bodies and have perpetual succession and a common seal, and are to sue and be sued by the names assigned to them under those Acts. In this book we shall refer to all these Boards as Trusts for facility of reference.

17. Legal conception of a corporation.

"Persons", says Coke[1] "are of two sorts, persons natural created of God, . .. and persons incorporate or politique created

1. S. 3, Calcutta Improvement Act, 1911.
2. S. 3, U. P. Town Improvement Act, 1919.
3. S. 3, U. P. Town Improvement Act, VIII of 1919, as extended to the Province of Delhi.
4. S. 3, Punjab Town Improvement Act, 1922.
5. S. 3, Nagpur Improvement Trust Act, 1936.

by the policy of man (and therefore they are called bodies Politique)." A person in law is, according to Gierke's famous definition, a right and duty bearing unit.[2] Any being that is so capable is a person, whether a human being or not, and no being that is not so capable is a person, even though he be a man. "Persons", to use the words of Salmond,[3] "are the substances of which rights and duties are the attributes. It is only in this respect that persons possess judicial significance, and this personality receives legal recognition."

The person who holds a legal right or is subject to a legal duty is, as a rule, an individual. But it is clear that if several individuals join together for any purpose, there exists in their association something more than the mere individuals who compose it. 'When N persons' says Prof. Maitland, 'unite together for the purpose of acting in concert, jurisprudence, unless it wishes to pulverise the group, must see (n+1) persons. This (n+1)th person has variously been called a juristic person, a fictitious person, an artificial person, a moral person.

Corporation (from Latin *Corporare*, to form into a body, *corpus*, *corporis*) is thus an association of persons which in law is treated in many respects as if it were itself a person. Practical utility of this conception of law is obvious. Speaking about the boroughs of England, Prof. Jenks says: "There yet remained one more step to be taken before the borough organization could be considered complete. This was the recognition of the borough as a legal personality, a corporation, or as the lawyers called it, *persona ficta*. Until this point was established, there would be endless difficulties about power to a seal, power to sue, power to hold lands, power to make byelaws, power to use or be sued—about those ordinary business acts which an individual can do without question. Suppose, for example, a dying citizen left part of his land to the good town of 'X', who would be legally entitled to enforce performance of the will?

1. Co. Litt. 29.
2. Gierke, *Deutsches Privatrecht*, Vol. I, pp. 251 to 261.
3. Salmond on Jurisprudence.

The existing burgesses? Supposing one of them died, what about his heirs? Again, according to legal theory, if land belongs to several persons jointly, none of them can commit trespass upon it. In this way a handful of citizens might appropriate the whole benefit of the gift. It was not until the existence of the fictitious person, as corporation, comprising all the burgesses for the time being and yet in the eye of the law different from all of them, not until of the legal personality was recognized, that the position of the borough could be deemed really safe"[1].

Grant observes: "This unbroken personality, this beautiful combination of the legal characters of the finite being with the essentials of infinity appears to have been the primary object of the invention of corporations, an invention which perhaps more than any other human device has contributed to the civilization of Europe and the freedom of its states. By this means, municipalities were furnished with a form of Government that never wore out; charitable trusts were secured to the objects of them so long as such objects should continue to be found; the protection, improvement and encouragement of trades and arts were permanently provided for and learning and religion kept alive and cherished in time through which probably no other means can be mentioned that would appear equally well qualified to preserve them."[2]

According to English Law, some associations of persons can themselves be the bearers of rights and duties, can enter into contracts, can buy and sell land, can sue and be sued. They are very like individuals. They are in fact juristic or legal persons. On the other hand other associations lack these qualities. The law does not recognise in them any personality beyond the individual personalities of their members.

1. '*Outlines of English Local Government*', pp. 180-1.
2. '*Law of Corporations*', p.4.

Independent juristic personality can only be conferred upon an association, according to English law, by some act on the part of the State represented either by the Crown in the exercise of its prerogative rights, or by the sovereign power of Parliament. When this quality of personality is conferred upon an association, it is called a corporation, and a body of persons which has not received this gift of personality from the state is spoken of as an "unincorporated association." A club is an "unincorporated association" while a limited company is a corporation. In India corporations are the result of Legislative enactments, as the Trusts or Boards of Trustees for the improvement of towns are, as we have already seen.

Nature of a corporation.

A corporation is thus a person which exists in contemplation of law only, and not physically. The essential part of the notion involved in the term is its abstraction, the intangibility of its existence, its being composed of a physical being or beings, through which it manifests its capacities and powers, but from which it is totally distinct. This is the one important fact. The members of a corporation aggregate may, from their connection with such, have rights and privileges, and be under obligations and duties over and above those affecting them in their private capacity, but they get them by reflection as it were, from the corporation. They individually are not the corporation—cannot exercise the corporate powers, enforce the corporate rights, or be responsible for the corporate acts; while even at common law they can mutually sue or be sued by the corporation or each other.

Another essential element in the legal conception of a corporation is that its identity is continuous, that is, that the original member or members and his or their successors are one[1]. Where a liability or obligation is once binding on a corporation, it will bind the successors, even though they be not expressly named.

1. Grant, '*Law of Corporations*' (1850), p. 626.

According to Kyd, "a corporation is a collection of many individuals united into one body under special denomination, having perpetual succession under an artifical form, and vested by the policy of law with capacity of acting in several respects as an individual, particularly of taking and granting property, of contracting obligation and of suing and being sued, of enjoying privileges and immunities in common, and of exercising a variety of political rights more or less extensive according to the designs of its institution or the powers conferred upon it, either at the time of its creation or at any subsequent period of its existence."[1] Grant defines a corporation as a "continuous identity, endowed at its creation with capacity for endless duration residing in the grantees of it and their successors, its acts being determined by the will of the majority of existing body of its grantees or *their successors at any given time, acting within the limits* imposed by the constitution of their body politic, such will being signified to strangers by writing under the common seal; having a name and under such name a capacity for taking, holding and enjoying, but inalienably liberties, franchise, exemptions, and privileges; together with the rights and obligation of suing and being sued only under such name."[2] Adler in his '*Law of Corporations*' defines a corporation as a "legal personification under one name, of several individuals or of a succession of individuals combined together for some purpose; it is capable of indefinite duration and is endowed with certain rights and obligations, capacities and incapacities, which are distinct from those of the individuals composing it. Incorporation furnishes a means of establishing an institution which can continue long after the first members have died, the same privileges meanwhile attaching to the new members as to the old and the same property vesting in them without a fresh charter, or a new conveyance. Then there is the advantage of suing or being sued in the name of that abstraction, the corporation, instead of the name of each

1. Kyd on Corporations (1793), Vol. 1. p. 13; See also Halsbury, *Laws of England*, 2nd Edition, Vol. VIII. p. 3; Dillon's *Municipal Corporations*, Vol I., p. 57.
2. *Law of Corporations* (1850), p. 4.

individual member, an advantage which, it must be conceded, was greater formerly that it is now when a representative action can be brought in any division of the High Court." "A corporation aggregate", says Lord Coke, "is only an abstraction and rests only in intendment and consideration of law. It is invisible and immortal ; it has no soul ; neither is it subject to the imbecilities of the body."

Perpetual succession.

Every Trust or Board created under any of these Acts shall have perpetual succession. This simply means that the Trust or the Board has an unending existence or rather indefinite duration, irrespective of the life of particular individuals composing it, it has a continuous legal indentity however the individuals composing it may change. It does not, however, import that it must or will continue for ever, for it may be dissolved under the enactment of the legislature itself.[1]

As already noticed, the provision regarding perpetual succession is a necessary adjunct to the legal conception of a corporation as a juristic person and its advantages in the actual working of the corporation are obvious. The capacity to have perpetual succession renders many transactions, where a continuity of persons of inherence or incidence is necessary, possible. A corporation may be brought to an end in pursuance of a definite enactment of the legislature but so long as it is not dissolved under the Act it continues throughout as one and the same corporation notwithstanding the changes in the personnel of the group.

Common seal.

Any Trust created under these Acts shall also have a common seal. The having and using of a common seal is an incident of a corporation by which the body corporate is considered to express the aggregate intention, as it cannot do so by any personal act or oral discourse.[2]

1. See S. 177 Calcutta Improvement Act, 1911 ; S. 103, U. P. Town Improvement Act, 1919 ; S 103, U. P. Town Improvement Act 1919, as extended to the Province of Delhi ; S. 103, Punjab Town Improvement Act, 1922 ; S. 121 Nagpur Improvement Trust Act, 1936.

2. Bro. Ab. Corporation, 63 ; Y. B. 21 E. 4, 13 ; Dav. Rep. 44,48.

It is in fact an outward and visible sign of the incorporated body. A corporation sole does not need a common seal. The reason is that in the case of a corporate sole the individual who stands a representative of the corporation is competent to testify to all that the corporation sole has agreed to do or is going to do. The same argument does not apply to a corporation aggregate because the resolution of all the members is not the resolution of the corporation since the latter has in the eyes of the law an existence distinct from that of the former.

The term common seal seems to imply a single seal and not several seals changed or altered at the will of the body ; and the corporation has no common-law power to change the common seal [1].

The Improvement Trusts Acts do no provide specifically in what cases common seal is to be used. Section 26 (1) of the Calcutta Improvement Act, however, provides that every contract made by the Chairman on behalf of the Board shall be entered into in such manner and form as would bind the Chairman if such contract were made on his own behalf, except that the common seal of the Board shall be used (where necessary); and every such contract may in the like manner and form be varied or discharged. Sub-sections (3) to (5) of the same section further provide that the common seal of the Board shall remain in the custody of the Secretary to the Board, and shall not be affixed to any contract or other instrument except in the presence of a Trustee (other than the Chairman), who shall attach his signature to the contract or instrument in token that the same was sealed in his presence, that the signature of the said Trustee shall be in addition to the signature of any witness to the execution of such contract or instrument, and that a contract not executed as provided in this section shall not be binding on the Board.

Under the English Law, generally speaking, when the corporate seal appears fixed to a document it will be presumed

1. See Aiyangar's Law of Municipal Corporations, 2nd Edn., p. 3.

to have been regularly so affixed; and the party who impugnes its legality has the burden cast upon him of showing in what manner the annexation was illegal or irregular. Any person familiar with the design of the seal can prove it, and he need not have seen it affixed to the particular document.[1] But where the corporate seal has been affixed to an instrument without the authority of the corporate body, it is invalid and may be repudiated by them.[2] The due affixing of the corporate seal is sufficient to give validity to an instrument without a formal delivery.[3] Where, however, the corporate seal was regularly attached to a conveyance but at the same time the clerk was ordered to retain the conveyance in his hand until some accounts were settled with the purchasers, it was held that the conveyance did not pass the estate[4]. It appears that if a regular corporate resolution has been passed for granting an interest in the corporate property, and upon the faith of it expenditure has been incurred, the court will compel the corporation to make a legal grant in pursuance of the resolution although it is not under the corporate seal.[5]

To sue and be sued in the name of the Trust.

It is also provided that the Board or the Trust constituted under any of these Acts shall sue and be sued in the name assigned to it under the Act. This is also a necessary incidence of a corporation. A corporation must sue and be sued in its corporate name,[6] and not in the name of its Chairman or Secretary.[7] It cannot be sued through its agent,[8] nor in the name of its President.[9] It has been held in

1. *Moises* v *Thornton* (1799) 8 Term Rep. 307 See Arnold's *Law of Municipal Corporations*, 7th Edn, p. 279.
2. Anon (1700) 12 Mod. 423, Arnold, *Ibid.*
3. Arnold, *Ibid.*
4. Arnold, *Ibid*,
5. Arnold, *Ibid*; *Marshall* v. *Queensborough* (1823) 1 Sim Q. St. 520.
6. *Ram Das Sein* v. *Stephenson*, 10. W. R 366.
7. *Santan* v. *The Chairman, Municipal Board, Allahabad*, A. W. N. (1908), 165.
8. *Nobin Chander Paul* v *Stephenson*. *15 W. R. 534.*
9. *Syed Amir Saheb* v. *Venkata* Ram, I. L. R. 16 Mad. 296.

Mannikasundhan v. *Crooke* [1] that a suit brought against a corporate body (in this case a municipal committee) in the name of the wrong officer cannot by the subsequent substitution of the proper officer as defendant be deemed with reference to S. 22 of the Limitation Act, to have been instituted against such corporate body when such substitution is made.

It was held in *Jogendra Nath Banerjee* v. *Tollygunj Municipality* [2] that the mere fact that a suit was filed against the Chairman of a Municipal Committee and not against the Committee, was a technical flaw, and no importance should be attached to it if the Committee duly contested the suit. The Patna High Court has, however, taken a different view and has held that such a mistake is not merely a mistake of form but it goes to the very root of the action.[3] The same High Court has held that a suit filed by a municipal committee must be brought in the name of the committee and not in the name of its Chairman, and that the Chairman is not a legal entity, nor a corporation sole and he is not entitled to sue on behalf of the municipal committee.[4]

If a suit is filed against the Chairman of the "Municipal Commissioners," and subsequently the plaint is allowed to be amended so as to include the "Municipal Commissioners" as defendants, the effect of such an amendment is not to substitute or add a new party or to convert the suit into a new suit; and under such circumstances the amendment relates back to the date of the suit as originally filed.[5]

In a suit where the plaintiffs were stated in the plaint to be "the Commissioners of Pabna Town Municipality represented by the Chairman Mr. B." it was held that the

1. I. L. R. 2 All. 296.
2. A. I. R. 1939 Cal. 178-181 I. C. 762.
3. *Kali Prasad Sinha* v. *Badri Narain Sahu*, A. I. 1939 Pat. 236-182 I. C. 457.
4. *Kamakhya Niranjan Singh* v. *Chairman, Hazaribagh Municipality*, A. I. R. 1939 Pat. 499-181 I. C. 486.
5. *Municipal Commrs. of Dacca* v. *Ganga Mai*, A. I. R. 1940 Cal. 153-187 I. C. 605.

designation of the plaintiffs in the plaint was in substantial compliance with the provisions of S. 15 of the Bengal Municipal Act, 1932,[1] and that in any case if the Court was inclined to be meticulous, an amendment ought to be allowed.[2]

In all suits by or against municipal corporations, every individual councillor or member of the corporation must be regarded as a party to the proceedings.[3] But the suit will not become defective by reason of the death of one of them.[4]

A suit by a lessee of land for damages against a contractor of the Municipal Board is not a suit against the Municipal Board. The contractor is not a member or officer or servant of the Board.[5]

Code of Civil Procedure, 1908, the First Schedule, Order XXIX.

The Code of Civil Procedure, 1908, 1st Schedule, Order XXIX, provides as follows :—

r. 1. In suits by or against a corporation, any pleading may be signed and verified on behalf of the corporation by the secretary or other principal officer of the corporation who is able to depose to the facts of the case.

r. 2. Subject to any statutory provision regulating service of process, where the suit is against a corporation, the summons may be served—

(*a*) on the secretary, or on any director, or other principal officer of the corporation, or

(*b*) by leaving it or sending it by post addressed to the corporation at the registered office, or if there is no registered

1. S. 15 (2) of the Bengal Municipal Act, 1932, reads as follows :—
"Such Commissioners shall be a body corporate by the name of the Municipal Commissioners of the place by reference to which the Municipality is known, having perpetual succession and a common seal, and by that name shall sue and be sued"

2. *Municipal Commissioners* of *Pabna Town* v. *Anukul Chandra Maitra* A. I. R. 1939 Cal. 79-73 C. W. N. 194-180 I. C. 673.

3. *Ahmedabad Municipality* v. *Mohammad Jamal*, 3 Bom. 146; *Ganga Dhar* v. *Collector of Ahmednagar*, 1 Bom. 629.

4. *Blackburn* v. *Jepson*, 3 Suvan. 132.

5. *Muhammad Ghaxanfur* v. *Babu Lal*, 43 All. 614 (F. B.)

office then at the place where the corporation carries on business.

r. 3. The Court may, at any stage of the suit, require the personal appearance of the secretary or of any director, or other principal officer of the corporation who may be able to answer material questions relating to the suit.

CHAPTER IV.

CONSTITUTION OF TRUSTS

18. Agents of the corporations.

Trustees.

We have seen that all the Trusts constituted for the improvement of towns in India under the various Acts are corporate bodies. Although corporations are fictitious persons, the acts and interests, rights and liabilities attributed to them by the law are those of real or natural persons, for otherwise the law of corporations would be destitute of any relation to actual facts and of any serious purpose. Every corporation, therefore, involves in the first place some real person or persons whose interests are fictitiously attributed to it, and in the second place some real person or persons whose acts are fictitiously imputed to it A corporation, having neither soul nor body, cannot act save through the agency of some representative in the world of real men. For the same reasons it can have no interests, and therefore no rights, save those which are attributed to it as a trustee for or otherwise on behalf of actual human beings. For instance, whatever a company is reputed to do in law is done in fact by the directors or the shareholders as its agent and representatives. Whatever interests, rights or property it possesses in law are in fact those of its share-holders, and are held by it for their benefit. Every legal person, therefore, has corresponding to it in the world of natural persons certain agents or representatives by whom it acts and certain beneficiaries on whose behalf it exists and fulfills its functions. Every Town Improvement Act therefore provides for the constitution of a Trust for carrying out its provisions.

19. Constitution of Trusts

Calcutta.

The Board constituted under the Calcutta Improvement Act consists of eleven Trustees, namely,—

(*a*) a Chairman,
(*b*) the Chairman of the Corporation [1],
(*c*) three other members of the Corporation,
(*d*) a member of the Bengal Chamber of Commerce,
(*e*) a member of the Bengal National Chamber of Commerce, and
(*f*) four other persons. [2]

The Chairman and the four persons referred to in clause (*f*) above are appointed by the Provincial Government by notification. The Chairman of the Corporation (now the Chief Executive Officer) is a Trustee *ex-officio*. The three members of the Corporation referred to in clause (e) above are elected as follows, namely

(*a*) one by the Corporation,
(*b*) one by the Councillors elected by the constituencies other than the special constituencies, and
(*c*) one jointly by the Councillors appointed under clause (b) of section 5 of the Calcutta Municipal Act, 1923, and the councillors elected by the special constituencies.

The member of the Bengal Chamber of Commerce referred to in clause (d) above is elected by that Chamber, and the member of the Bengal National Chamber of Commerce referred to in clause (e) above by that Chamber. The Act prescribes that the Secretary to the Corporation, the Secretary to the Bengal Chamber of Commerce and the Secretary to the Bengal National Chamber of Commerce shall respectively make a return, in duplicate, to the Chairman, setting forth the name in full of every person elected in the above manner, and the said return shall be published by notification under the signature of the Chairman.

If any of the bodies of electors referred to above does not by such date as may be prescribed by rule in that behalf under

1. Now the Chief Executive Officer—see S. 557 (1) (a) of the Calcutta Municipal Act, 1923 (Beng. Act, III of 1923).
2. S. 4, Calcutta Improvement Act, 1911.

section 137 of the Act, elect a person to be a Trustee, the Provincial Government, by notification, is competent to appoint a person belonging to such body to be a Trustee, and any person so appointed is deemed to be a Trustee as if he had been duly elected by such body. [1]

United Provinces.

Under the U. P. Act, the Trust consists of seven Trustees, namely,—

(*a*) a Chairman

(*b*) the Chairman of the Municipal Board;

(*c*) two other members of the Municipal Board,

(*d*) three other persons.

The Chairman and the three other persons referred to are appointed by the Provincial Government by notification. The Chairman of the Municipal Board is a Trustee *ex-officio*. The two members of the municipal board referred to in clause (c) above are elected by the municipal board. If the municipal board does not, by such date as may be fixed by the Provincial Government, elect a person to be a Trustee, the Provincial Government is, by notification, competent to appoint a member of the municipal board to be a Trustee, and any person so appointed is deemed to be a Trustee as if he had been duly elected by the municipal board. Of the three persons referred to in clause (d) above, not more than one is to be a Government servant. For this purpose the term 'Government servant' does not include a Government treasurer, a person holding a purely honorary office, or a person who has retired from the service of Government. [2]

Punjab.

Under the Punjab Act also, the Trust is to consist of seven Trustees, namely,—

(*a*) a Chairman,

(*b* three members of the Municipal Committee, and

(*c*) three other persons.

1. Ss. 5 to 8, Calcutta Improvement Act, 1911.
2. U. P. Town Improvement Act, 1919, S. 4.

The Chairman and the three persons referred to in clause (c) are appointed by the Provincial Government by notification. The members of the Municipal Committee referred to in clause (b) above are elected by the Municipal Committee. If the Municipal Committee does not by such date as may be fixed by the Provincial Government, elect a person to be a Trustee, the Provincial Government is, by notification, to appoint a member of the Municipal Committee to be a Trustee, and any person so appointed is deemed to be a Trustee as if he had been duly elected by the Municipal Committee. Of the persons referred to in clause (c) above, not more than one is to be a "servant of the Crown". For this purpose also the term "servant of the Crown" does not include a Government treasurer, a person holding a purely honorary office or a person who has retired from the "service of the Crown". [1]

The Act, however, did not make provision for the case of a municipal committee which had been superseded under section 238 of the Punjab Municipal Act. This was provided for by the Punjab Town Improvement (Amendment) Act, 1936 (Punjab Act VIII of 1936) which added section 4A to the Punjab Town Improvement Act, 1922. Section 4A thus inserted reads as follows :—

"During the period of supersession of a Municipal Committee under section 238 of the Punjab Municipal Act, 1911, the three seats allotted to the Municipal Committee on the Trust under clause (b) of sub-section (1) of section 4 shall be filled by the Provincial Government by appointing any three persons by notification in the Gazette. The term of office of every Trustee so appointed shall be three years or until the Trust is dissolved, whichever period is less, provided that if the Municipal Committee is reconstituted three members of the Municipal Committee shall be elected or appointed in accordance with the provisions of section 4, and on their election or appointment the three trustees appointed by the Provincial Government under this section shall cease to be members of the Trust".

This amendment was necessitated when the Lahore Improvement Trust was constituted in 1936, as the Lahore

1. Punjab Town Improvement Act, 1922, S. 4.

Municipal Committee had been superseded by that time under section 238 of the Punjab Municipal Act. The City of Lahore Corporation Act, 1941, (Punjab Act No. XV of 1941) now applies to the City of Lahore in supersession to the Punjab Municipal Act but the Corporation has not been constituted so far. Under S. 7 of that Act, the work is carried on by an 'Administrator.' The proviso to S. 2 of the Lahore Corporation Act provides that the Lahore Improvement Trust constituted under the Punjab Town Improvement Act, 1922, shall exercise in the 'City of Lahore' the same powers and perform the same duties under the Punjab Town Improvement Act, 1922, and any other law for the time being in force, as if the Municipality of Lahore had not been withdrawn from the Punjab Municipal Act, 1911.

Central Provinces.

Section 4 of the Nagpur Improvement Trust Act, 1936, provides the following constitution for the Nagpur Improvement Trust :

"(1) The Trust shall consist of seven Trustees, namely,—
(a) a Chairman,
(b) the President of the Municipal Committee,
(c) the President of the Civil Station Sub-Committee,
(d) one member of the Municipal Committee, and
(e) three other persons appointed under sub-section (2).

(2) The Chairman and the three persons referred to in clause (e) of sub-section (1) shall be appointed by the Provincial Government by notification.

(3) The President of the Municipal Committee and the President of the Civil Station Sub-Committee shall be Trustees *ex-officio*.

(4) The member of the Municipal Committee referred to in clause (d) of sub-section (1) shall be elected by the Municipal Committee.

(5) If the Municipal Committee does not, within two months of the expiry of the term of a member elected under sub-section (4), elect a member to be a Trustee, the Provincial Government by notification appoint a member of the Municipal Committee, to be a Trustee, and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by the Municipal Committee.

(6) Of the three persons referred to in clause (e) of sub-section (1) not more than one shall be a Government servant.

Explanation. For the purpose of this section the term "Government servant" means a whole time, salaried servant of Government".

Section 4 of the U. P. Town Improvement Act, 1919, as extended to the Province of Delhi, reads a follows :— Delhi.

"4 (1) The Trust (The Delhi Improvement Trust) shall consist of seven Trustees, namely :—

(a) a Chairman ;

(b) an officer of the Central Public Works Department ;

(c) the Assistant Director of Public Health, Delhi. (now designated as the Chief Health Officer, Delhi).

(d) a Financial Adviser ;

(e) two members of the Municipal Committee ;

(f) one other person.

(2) The Chairman and the persons referred to in clauses (b), (d) and (f) of sub-section (1) shall be appointed by the Chief Commissioner by notification.

(3) The Assistant Director of Public Health, Delhi (now designated as the Chief Health Officer, Delhi) shall be an *ex officio* member of the Trust.

(4) The two members of the Municipal Committee referred to in clause (e) of sub-section (1) shall be elected by the Municipal Committee.

(5) If the Municipal Committee does not, by such date as may be fixed by the Chief Commissioner, elect a person to be a Trustee, and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by the Municipal Committee.

20. Disqualifications for being appointed or elected as a Trustee.

Under section 9 the Calcutta Improvement Act, 1911, a person is disqualified for being appointed or elected a Trustee if he — Calcutta.

(a) has been sentenced by any court for any non-bailable offence, such sentence not having been subsequently reversed or quashed, and such person's disqualification on account of such sentence not having been removed by an order which the Provincial Government is hereby empowered to make, if it thinks fit, in this behalf ; or

(b) is an undischarged insolvent ; or

(c) holds an office or place of profit under the Board ; or

(d) has directly or indirectly, by himself or by any partner, employer or employee, any share or

interest in any contract or emyloyment with, by, or on behalf of, the Board ; or

(e) is a director, or a secretary, manager or other salaried officer, of any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of, the Board.

(2) But a person shall not be disqualified as aforesaid, or be deemed to have any share or interest in such contract or employment as aforesaid, by reason only of his having a share or interest in —

(i) any sale, purchase, lease, or exchange of land, or any agreement for the same ; or

(ii) any agreement for the loan of money, or any security for the payment of money only ; or

(iii) any newspaper in which any advertisement relating to the affairs of the Board is inserted ; or

(iv) the occasional sale to the Board, to a value not exceeding two thousand rupees in any one financial year, of any article in which he trades ;

or by reason of his having a share or interest, otherwise than as director or secretary, manager or other salaried officer, in any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of, the Board.

There is no specific section in any other Act corresponding to this section of the Calcutta Improvement Act.

21. Term of office of Trustees and filling of casual vacancies.

Chairman.

Under the Calcutta Act the Chairman of the Trust must be a whole time officer.[1] He is to receive such monthly salary not exceeding three thousand rupees, as may be fixed by the Provincial Government, provided that, if he, after having held his office for three years, is re-appointed for a further period of not less than two years, the Provincial Government may direct

(1) Section 10, Calcutta Improvement Act, 1911.

that his monthly salary be increased to any sum not exceeding three thousand five hundred rupees. "Salary" excludes allowances to which the Chairman may be entitled and any contributions payable on his account under any general or special orders of the Government for regulating the transfer of Government servants to foreign service. The Provincial Government may also, if it thinks fit, direct the payment to the Chairman of a house-rent, and conveyance allowance, not exceeding five hundred rupees per mensem, in addition to his salary.[1] The term of office of the Chairman is to be not less than three years, as may be fixed by the Provincial Government.[2]

Under the U. P. Act, the term of office of the Chairman is ordinarily to be three years, but he may be removed from office by the Provincial Government at any time, and he is to receive such salary or remuneration as may be sanctioned by the Provincial Government. Under this Act as extended to the Province of Delhi, the Chairman may be removed from office by the Chief Commissioner at any time, and the salary or remuneration is to be sanctioned by the Governor-General-in-Council. Otherwise there is no change[3]

Under the Punjab Act, the term of office of the Chairman is to be three years, but when the Trust ceases to exist, the said term of office is to be deemed to expire on the date of the dissolution of the Trust. He is eligible for re-appointment and may be removed from office by the Provincial Government at any time.[4] The Chairman is to receive such salary as may be sanctioned by the Provincial Government.[5]

Under the Nagpur Improvement Trust Act, the term of office of the Chairman is to be five years, provided that he may be removed from his office by the Provincial Government at

1. Calcutta Improvement Act, 1911, Sec. 11.
2. Ibid. S. 17 (2) (a). See also Ss. 12 and 13 of the Act relating to absence on leave or deputation of Chairman and appointment of acting Chairman.
3. Ss. 6 & 9. U. P. Town Improvement Act, 1919.
4. S. 6. Punjab Town Improvement Act, 1922.
5. *Ibid*, S. 9.

any time. His salary or remuneration is to be sanctioned by the Provincial Government.[1]

Other Trustees.

The Chairman of the Corporation of Calcutta is a Truste *ex officio* of the Calcutta Improvement Trust. The term of office of other Trustees is three years. The Board may permit any Trustee, other than the Chairman of the Corporation to absent himself from meetings of the Board for any period not exceeding six months. If any Trustee is permitted by the Board to absent himself from meetings of the Board for any period exceeding three months, or if any Trustee other than the Chairman of the Corporation dies, or resigns the office of Trustee, or ceases to hold the office of Trustee on removal under section 15 of the Calcutta Improvement Act, the vacancy must be filled within one month, by a fresh appointment or election under section 5, section 7 or section 8, as the case may be. The term of office of a Trustee thus appointed or elected in place of a Trustee who has been permitted to absent himself from meetings of the Board will be the period of the absence of the latter Trustee. The term of office of the first Trustee appointed or elected under section 5, section 7, or section 8, other than the Chairman, is to commence on such day as may be appointed by the Provincial Government. Any Trustee is, if not disqualified for any of the reasons mentioned in section 9 (see page 95), be eligible for reappointment or re-election at the end of his term of office.[2]

Under the U. P. Act, the term of office of every Trustee elected under clause (c) of sub-section (1) of section 4 of the Act is three years or until he ceases to be a member of the municipal board, whichever period is less, and of every Trustee appointed under clause (d) of the said sub-section, three years. The term of office of first nominated and elected Trustees is to commence on such date as is notified in this behalf by the Provincial Government. A person ceasing to be a member by reason of the expiry of his term of

1. Ss. 6 & 9, Nagpur Town Improvement Act, 1936.
2. Ss. 14, 16 and 17, Calcutta Improvement Act, 1911.

office is, if otherwise qualified, eligible for re-election or re-nomination. When the place of a Trustee appointed by the Provincial Government becomes vacant by his resignation, removal or death, the Provincial Government must appoint a person to fill the vacancy. When the place of a Trustee elected by the Municipal Board under clause (c) of sub-section (1) of section 4 of the Act becomes vacant by his resignation, removal or death, the Provincial Government must appoint a person to fill the vacancy. When the place of a Trustee elected by the Municipal Board under clause (c) of sub-section (1) of section 4 of the Act becomes vacant by his resignation, removal or death, the vacancy must be filled, within two months of the existence of such vacancy being notified to the Board by the Trust, in the manner provided by sub-section (4) of the same section, provided that if the municipal board fails to elect a qualified person to fill the vacancy within the period prescribed above, it must be done by notification by the Provincial Government as provided for in sub-section (5) of the same section. The term of office of a Trustee thus appointed or elected shall be the remainder of the term of office of the Trustee in whose place he has been elected or appointed, provided that no person thus elected or appointed by or on behalf of the municipal board can continue to be a Trustee after he has ceased to be a member of the municipal board, but he may so continue not withstanding that the Trustee in whose place he was elected or appointed has ceased to be a member of the said board[1].

Under the Punjab Act also, the term of office of every Trustee elected under clause (b), sub-section (1) of section 4 is three years or until he ceases to be a member of the Municipal Committee, whichever period is less, and the term of office of every Trustee under clause (c) of the said sub-section is three years, but when the Trust ceases to exist the said term of office is deemed to expire on the date of the dissolution of the Trust.

1. Ss. 7, 8, 12, U. P. Town Improvement Act, 1919.

The term of office of appointed and elected Trustees is to commence on such date as is to be notified in this behalf by the Provincial Government and a person ceasing to be a Trustee by reason of the expiry of his term of office is, if otherwise qualified, to be eligible for re-election or re-appointment. As regards filling of casual vacancies, the Act prescribes that when the place of a Trustee appointed by the Provincial Government becomes vacant by his resignation, removal or death, the Provincial Government is to appoint a person to fill the vacancy. When the place of an elected Trustee becomes vacant by his resignation, removal or death, the vacancy is to be filled within two months of the existence of such vacancy being notified to the Municipal Committee by the Trust, in the manner provided by subsection (3) of section 4, provided that if the Municipal Committee fails to elect a qualified person to fill the vacancy within the period thus prescribed, the appointment will be made by the Provincial Government (see page 93). Every person thus appointed or elected to fill a casual vacancy is to hold his place for the time for and subject to the condition upon which it was tenable by the person in whose place he has been so appointed, or elected, and no longer; but he may, if otherwise qualified, be re-appointed or re-elected. No person elected or appointed by or on behalf of the Municipal Committee in a casual vacancy in the manner described above can continue to be a Trustee after he has ceased to be a member of the Municipal Committee but he may so continue notwithstanding that the Trustee in whose place he was elected or appointed has ceased to be a member of the said Committee.[1]

In the case of Municipal Committee superseded under section 238 of the Punjab Municipal Act, 1911, Sec. 4-A, as inserted by the Punjab Town Improvement (Amendment) Act, 1936 prescribes that 'during the period of supersession of a Municipal Committee under section 238 of the Punjab Municipal Act, 1911, the three seats allotted to the Municipal

1. Ss. 6, 7 & 8, Punjab Town Improvement Act, 1922.

Committee on the Trust under clause (b) of sub-section (1) of section 4, (see page 92) shall be filled by the Provincial Government by appointing any three persons by notification in the Gazette. The term of office of any trustee so appointed is to be three years or until the Trust is dissolved, whichever period is less, provided that if the Municipal Committee is reconstituted three members of the Municipal Committee are to be elected or appointed in accordance with the provisions of section 4, and on their election or appointment the three trustees appointed by the Provincial Government under this section will cease to be members of the Trust.

Under the C. P. Act, the term of office of an *ex officio* Trustee is five years, provided that he may be removed from his office by the Provincial Government at any time. The term of office of every Trustee elected under clause (d) of sub-section (1) of section 4 or appointed under sub-section (5) of that section of that Act is five years or until he ceases to be a member of the Municipal Committee, whichever period is less, and the term of office of every Trustee appointed under clause (e) of sub-section (1) of section 4 is five years. The provisions relating to the commencement of term of office of first Trustees and filling of casual vacancies are the same under this Act, as under the United Provinces Town Improvement Act, 1919.[1]

22. Resignation by Trustees

Any Trustee, other than an *ex officio* Trustee, may at any time resign his office, provided that his resignation cannot take effect until accepted by the Trust.[2] The Calcutta Improvement Act has no specific provision to this effect but the implication is there.[3]

23. Removal of Trustees

It is absolutely essential that the Trustees appointed to carry out the duties under the Town Improvement Acts should

1. Ss. 5, 6, 7, 8 and 12, Nagpur Improvement Trust Act, 1936.
2. S. 5, U. P. Town Improvement Act, 1919; S. 5, U. P. Town Improvement Act, as extended to the Province of Delhi. S. 7, Punjab Town Improvement Act, 1922; S. 5 Nagpur Improvement Act, 1936.
3. Cf. S. 16, Calcutta Improvement Act, 1911.

be persons of intergity and should be above board in all respects. The Acts therefore provide for their removal in certain cases.

Calcutta. In the case of the Calcutta Improvement Trust, the Provincial Government may, by notification, declare that any Trustee shall cease to be a Trustee.

(*a*) if he has acted in contravention of section 23[1], or

(*b*) if he has been absent from, or is unable to attend, the meetings of the Board for any period exceeding six consecutive months, or

(*c*) if he has, without the permission of the Board, been absent from the meetings of the Board for any period exceeding three consecutive months, or

(*d*) if he is a salaried servant of the Government, and if his continuance in office as a Trustee is, in the opinion of the Provincial Government, undesirable.

The Provincial Government *shall*, by notification, declare that Trustee shall cease to be a Trustee —

(*e*) if he has become disqualified for appointment or election as a Trustee for any of the reasons mentioned in section 9[2]; or

1. S. 23 of the Calcutta Improvement Act, 1911, reads as follows:—

"(1) A Trustee who —

(a) has directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as is described in sub-section (2) of section 9, in respect of any matter, or (b) has acted professionally, in relation to any matter on behalf of any person having therein any such share or interest aforesaid, shall not vote or take any other part in any proceeding of the Board or any Committee relating to such matter.

(2) If any Trustee, or any person associated with the Board under section 19, or any other member of a Committee appointed under this Act, has, directly or indirectly any beneficial interest in any land situated in an area in any improvement scheme framed under this Act, or in any area in which it is proposed to acquire land for any of the purpose of this Act,—

(i) he shall, before taking part in any proceeding at a meeting of the Board or any Committee relating to such area, inform the person presiding at the meeting of the nature of such interest, (ii) he shall not vote at any meeting of the Board or any Committe upon any resolution or question relating to such land, and (iii) he shall not take any other part in any proceeding at a meeting of the Board or any Committee relating to such area if the person presiding at the meeting considers it inexpedient that he should do so.

2. See notes on page 95.

(*ii*) if he was elected or appointed as being a member of the Corporation, the Bengal Chamber of Commerce or the Bengal National Chamber of Commerce and if he is, at the date of such notification, no longer a member of the Corporation or such Chamber, as the case may be.

Similarly, this section prescribes that if at any time it appears to the Provincial Government that the Chairman has shown himself to be unsuitable for his office, or has been guilty of any misconduct or neglect which renders his removal expedient, it may, by notification, declare that the Chairman shall cease to hold office as such.

Under the U. P. Act, the Provincial Government may U.P. remove from the Trust any Trustee, other than an *ex officio* Trustee, who -

(*a*) refuses to act, or becomes incapable of acting, or absents himself for more than three consecutive months from the meetings of the Trust or of any Committee of which he is a member and is unable to explain such absence to the satisfaction of the Trust, or

(*b*) is an undischarged insolvent or has compounded with his creditors, or

(*c*) has been sentenced by a criminal court to imprisonment for a term exceeding six months or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted or the offender pardoned, or

(*d*) has knowingly acquired or continued to hold without the permission in writing of the Provincial Government, directly or indirectly or by a partner, any share or interest in any contract or employment with, by or on behalf of the Trust, or

(*e*) has knowingly acted as a Trustee in a matter other than a matter referred to in clause (d) or (e) of subsection (2) in which he or a partner had, directly or

indirectly, personal interest, or in which he was professionally interested on behalf of a client, principal or other person, or

(*f*) has acted in contravention of section 17,[1] or

(*g*) being a legal practitioner, in any suit or other proceeding, acts or appears on behalf of any other person against the Trust, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Trust.

Provided that a person shall not be deemed for the purpose of sub-section (1) to acquire, or continue to have, any share or interest in a contract or employment by reason only of his —

(*a*) having a share or interest in any lease, sale or purchase of land or buildings or in any agreement for the same, provided that such share or interest was acquired before he became a Trustee, or

(*b*) having a share or interest in a newspaper in which an advertisement relating to the affairs of the Trust is inserted, or

(*c*) holding a debenture or otherwise being interested in a loan raised by or on behalf of the Trust, or

(*d*) being retained by the Trust as a legal practitioner, or

(*e*) having a share or interest in the occasional sale of an article in which he regularly trades to the Trust to a value not exceeding, in any one year, such amount as the Trust, with the sanction of the Provincial Government, may fix in this behalf.

The Provincial Government may also remove from the Trust a Trustee who in its opinion has so flagrantly abused in any manner his position as a Trustee as to render his continuance as a Trustee detrimental to the public interest.

1. Section 17 of the U. P. Town Improvement Act is the same as section 23 of the Calcutta Town Improvement Act, 1911.

It is, however, essential for the Provincial Government before proposing to take action under the foregoing provisions for removal of a Trustee to give him an opportunity of explanation, and when such action is taken, the reasons therefor are to be placed on record.

In the Act as extended to the Province of Delhi, the only modifications made in this section are that (i) "Chief Commissioner" has been substituted for "Provincial Government" and (ii) for the words "its opinion" in sub-section (3), the words "the opinion of the Chief Commissioner" have been substituted. Delhi.

Section 10 of the Punjab Town Improvement Act, 1922, reads as follows :— Punjab.

"The Provincial Government may by notification remove any Trustee—

(*a*) if he refuses to act or becomes, in the opinion of the Provincial Government, incapable of acting or has been declared an insolvent, or has been convicted of any such offence or subjected by a Criminal Court to any such order as implies, in the opinion of the Provincial Government, defect of character which unfits him to be a Trustee ; or

(*b*) if he has been declared by notification to be disqualified for employment in, or has been dismissed from the public service and the reason for the disqualification or dismissal is such as implies, in the opinion of the Provincial Government, a defect of character which unfits him to be a Trustee ; or

(*c*) if he has absented himself for more than three consecutive months from the meetings of the Trust or of any committee of which he is a member, and is unable to explain such absence to the satisfaction of the Provincial Government ; or

(*d*) if, in the opinion of the Provincial Government, he has flagrantly abused his position as a Trustee ; or

(*e*) if he has knowingly acquired or continued to hold without the permission in writing of the Provincial Government, directly or indirectly or by a partner, any share or interest in any contract or employment with, by or on behalf of the Trust ; or

(*f*) if he has knowingly acted as a Trustee in a matter other than a matter referred to in clause (iv) or clause (v) of the following proviso in which he or a partner had, directly or indirectly, a personal interest or in which he was professionally interested on behalf of a client, principal or other person ; or

(*g*) if he has acted in contravention of section 16 ; or

(*h*) being a legal practitioner, if he acts or appears on behalf of any other person in any criminal proceedings instituted by or on behalf of the Trust ; or

(*i*) in the case of a salaried servant of the Crown, if his continuance in office is, in the opinion of the Provincial Government, unnecessary or undesirable.

Provided that a person shall not be deemed, for the purpose of clause (*e*) to acquire, or continue to have, share or interest in a contract or employment by reason only of his —

(*i*) having a share or interest in any lease, sale or purchase of land or building, or in any agreement for the same provided that such share or interest was acquired before he became a Trustee, or

(*ii*) having a share in a joint stock company which shall contract with, or be employed by or on behalf of the Trust, or

(*iii*) having a share or interest in a newspaper in which an advertisement relating to the affairs of the Trust is inserted, or

(*iv*) holding a debenture or otherwise being interested in a loan raised by or on behalf of the Trust, or

(*v*) being retained by the Trust as a legal practitioner, or

(*vi*) having a share or interest in the occasional sale of an article in which he regularly trades to the Trust, to a value not exceeding in any one year, such amount as the Trust, with the sanction of the Provincial Government, may fix in this behalf.

Under the C. P. Act, the Provincial Government may remove from the Trust any Trustee, other than an *ex-officio* Trustee, who—

(*a*) refuses to act, or becomes incapable of acting as a Trustee, or absents himself without the permission of the Trust for more than three consecutive months from the meetings of the Trust or of any committee of which he is a member and is unable to explain such absence to the satisfaction of the Trust, or

(*b*) is an undischarged insolvent or has compounded with his creditors, or

(*c*) has been sentenced by a Criminal Court to imprisonment for a term exceeding six months or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted or the offender pardoned, or

(*d*) has acquired or continued to hold without the permission in writing of the Provincial Government, directly or indirectly or by a partner, any share or interest in any contract or employment with, by, or on behalf of the Trust or the municipal committee, or

(*e*) has acted as a Trustee in a matter other than a matter referred to in clause (iv) or clause (v) of the proviso to this sub section in which he had either directly or indirectly a personal interest, as a partner, employer, agent or counsel or

(*f*) has acted in contravention of section 20, or

(*g*) being a legal practitioner, in any suit or other proceeding, acts or appears on behalf of any other

person against the Trust, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Trust :

Provided that a person shall not be deemed for the purpose of this sub-section to acquire, or continue to have, any share or interest in a contract or employment by reason only of his—

(*i*) having a share or interest in any lease, sale or purchase of land or buildings, or in any agreement for the same provided that such share or interest was acquired before he became a Trustee, or

(*ii*) having a share in a joint stock company which shall contract with, or be employed by or on behalf of the Trust, or

(*iii*) having a share or interest in a newspaper in which an advertisement relating to the affairs of the Trust is inserted, or

(*iv*) holding a debenture or otherwise being interested in a loan raised by or on behalf of the Trust, or

(*v*) having a share or interest in the occasional sale of an article in which he regularly trades to the Trust to a value not exceeding, in any one year, such amount as the Trust, with the sanction of the Provincial Government, may fix in this behalf.

(2) The Provincial Government may remove from the Trust a Trustee who in its opinion has so flagrantly abused in any manner his position as a Trustee as to render his continuance as a Trustee detrimental to the public interest.

(3) Whenever the Provincial Government proposes to take action under the foregoing provisions of this section, an opportunity of explanation shall be given to the Trustee concerned, and, when such action is taken the reasons therefor shall be placed on record.

(4) A Trustee, who remains absent without the permission of the Trust for more than three consecutive months

from the area to which this Act extends, shall be deemed to have resigned his office.[1]

Disqualifications of Trustees arising out of contracts with the Trust.

A person is thus disqualified for being a Trustee if he has, directly or indirectly, by himself or by any partner, employer or employee, any share or interest in any contract or employment with, by, or on behalf of, the Trust, subject to the exceptions laid out in each case. A contract with a corporation though not under seal will disqualify.[2] A person is interested in a contract if he takes an assignment of it by way of security even before his election or appointment.[3] *An interest in a contract must be a pecuniary one* or, at least, a material interest, but it need not be a pecuniary advantage. In *England* v. *Inglis*[4] the defendant, who was a member of a municipal corporation, carried on business as a jeweller and optician. The optical department was managed by his son, who was not a partner but a paid employee. A contract was made between the son, in his own name, and the municipal-corporation for the supply of spectacles to the children of the schools controlled by the Corporation's Education Committee. The contract was carried out by the son, the spectacles were paid for by him with his own cheque, and he received payment in his own name from the Corporation and paid the amounts so received into his own banking account. The spectacles were supplied in cases bearing the son's name but the defendant's business address, some of the cases being taken at the expense of the defendant out of his stock. The son alone derived direct pecuniary benefit from the contract, but the shop was provided and the establishment expenses paid by the defendant.

1. S. 10, Nagpur Improvement Trust Act, 1936.

2. *K.* v. *Francis*, (1852) 18 Q. B. 526 = 16 J. P. 664.

3. *Hunnings* v. *Williamson* (1883) 11 Q. B. D. 533. A Trustee cannot avoid disqualification by taking a contract in the name of a nominee in order to conceal his own interest. See *Walsh* v. *Grimsby* (Times 30th Nov. 1900, where a father took a contract in the name of his sons; *Simpson* v. *Reedy* (1844) 12 M. & W. 736 (contract in the name of Trustee). A person who guarantees the performance of a contract is interested in the Contract—R. v. *Franklin*, 1870 6 Ir. R. C. L. 239.

4. (1920) 2 K. B. 636 = 84 J. P. 198.

and the fact that the spectacle cases bore his address, helped to advertise business with the consequent probability of increasing his customers. Under these circumstances, the Court held that the defendant had an interest in the contract, and was disqualified. He is interested none the less because the contract is not made directly with the Corporation but with a person who has so contracted.[1] Thus the mere letting of a horse and a cart at a fixed sum to a contractor for his work under a local authority was held to disqualify.[2] The disqualification has been held to extend to a person who had himself no contract with the Corporation, but is employed by the actual contractor to do work or supply goods.[3] It is immaterial that any definite price has not been agreed upon.[4] Nor is it material that the contract has been concluded through an agent.[5] The provision is for maintining the freedom and independence of the Corporation; and the mischief guarded against is the sapping of that freedom and independence by Trustees being admitted to profitable contracts. And if the Trustee is a member of a firm which contracts with the Corporation, he is disqualified.[6]

It is also immaterial that the amount involved is trifling or that the amount of remuneration has not been fixed.[7]

The exemptions from this provision have already been noted above and may he referred to. Usually a person is not disqualified for being deemed to have any share or interest in such a contract or employment by reason only of his having any share or interest in any lease, sale or purchase of land or any agreement for the same, or in any agreement for the

1. *Barnacle* v. *Clark*, (1900) 1 K. B. 279.
2. *Towsey* v. *White*, (1826) 5 B & C 125. See also *Whitely* v. *Burley*, (1898) 21 Q. B. D. 154.
3. See *Nutton* v. *Wilson*, (1889) 22 Q. B. 744; *Tomkins* v. *Jolifee*, (1887) 51 J. P. 247; *Cox* v. *Truscot* (1905) 69 J. P. 174
4. *Fletcher* v. *Hudson*, (1881) 7 Q. B. D. 611.
5. *Miles* v. *Mc Ilwraith*, (1883) 8 App. Cas. 120.
6. In the matter of *Sir Stuart Samuel*, (1912) 17 C. W. N. 735 P. C. See *Forbes* v. *Samuel*, (1913) 3 K. B. 706; *Bird* v. *Samuel* (1914) W. N. 78.
7. See *Rex* v. *Rowlands*, (1906) 2 K. B. 292.

loan of money only or in any newspaper in which any advertisement relating to the affairs of the Corporation is inserted, or in any Joint Stock Company which shall contract with or be employed by the Corporation, or in the occasional sale to the Corporation of any article in which he regularly trades.

Under the U. P. Act, the Punjab Act and the U. P. Act as extended to Delhi, it is necessary that to disqualify a person to be a Trustee on this ground he should have knowingly acquired or continued to hold such interest as would disqualify him under the Act. And the same may be regularised also by obtaining permission of the Provincial Government or the Chief Commissioner as the case may be. Under the Calcutta Act and the C. P. Act, the absence of knowledge of the Trustee is immaterial.[1]

24. Disabilities of Trusties removed by Provincial Government.

Under the U. P. Act, a Trustee removed under clause (a) or clause (c) of sub-section (1) of section 10, or under sub-section (3) of that section, is not eligible for further election or nomination for a period of three years from the date of his removal, and a Trustee removed under clause (b) of sub-section (1) of that section is not eligible until he has obtained his discharge or has paid his creditors in full, as the case may be. A Trustee removed under any other provision of that section is not eligible until he is declared to be no longer ineligible, and he may be so declared by an order of the Provincial Government.[2] The same provision exists in the U. P. Act as extended to Delhi.[3] There is a similar provision in the Punjab Act[4] and in the C. P. Act.[5]

1. See also *Nell* v. *Longbottom*, (1894) 1 Q. B. 767
2. S. 11, U. P. Town Improvement Act, 1919.
3. S. 11, U. P. Town Improvement Act, 1919, as extended to the Province of Delhi.
4. S. 11, Punjab Town Improvement Act, 1922.
5. S. 11, Nagpur Improvement Trust Act, 1936.

CHAPTER V.

CONDUCT OF BUSINESS.

25. Meetings of Trusts.

For conduct of business it is necessary that the Trust should meet regularly. Each Act therefore provides for it. Under the Calcutta Act, the Board is bound to hold an ordinary meeting once at least in every month, and the Chairman *may*, whenever he thinks fit, and *shall*, upon the written request of not less than two other Trustees, call a special meeting. The Chairman is bound to attend every meeting of the Board unless absent on leave or prevented by sickness or other reasonable cause No business shall be transacted at any meeting unless at least half of the existing number of the Trustees are present from the beginning to the end of the meeting. The person to preside at the meeting is the Chairman and, in his absence from any meeting, the Trustees are to choose one of their members to preside. All questions are to be decided by a majority of votes of the Trustees present, the person presiding having a second or casting vote in all cases of equality of votes. If a poll be demanded, the names of the Trustees voting, and the nature of their votes, are to be recorded by the person presiding. The minutes and the names of the Trustees present, and of the proceedings, at each meeting are to be kept in a book to be provided for the purpose, which is to be signed at the next ensuing meeting by the person presiding at such meeting and is to be open to inspection by any Trustee during office hours. [1]

Under the U. P. Act, and the same Act as extended to Delhi, the *quorum* necessary for transacting business at a meeting is three, and the remaining provisions are the same as in the Calcutta Act except that it is not obligatory for the Chairman to attend every meeting unless disabled to do so under the circumstances mentioned therein. In addition, it has been provided in this Act and the Act as ex-

1 S. 18, Calcutta Improvement Act, 1911.

tended to Delhi that no person shall be entitled to object to the minutes of any meeting unless he was present at the meeting to which they relate.[1] Under the Punjab Act, the *quorum* necessary for the transaction of business at an ordinary or special meeting is three, and when the business to be transacted is the formation of any scheme under Chapter IV of that Act, the quorum is six.[2] There is no provision in this Act regarding the procedure if poll is demanded. The other provisions are the same as in the U. P. Act.[3] The C. P. Act follows the U. P. Act in this respect.[4]

26. Powers and duties of Chairman.

On taking the chair, the Chairman becomes invested with *prima facie* authority to regulate and control the proceedings of the meeting for the purposes of that meeting. This includes a power to preserve order, to determine whether motions are in order, to exclude irrelevant motions, to regulate the discussion by calling on persons to speak, to decide points of order, to put questions to the meeting for decision to vote, to give a second or casting vote, if necessary, to declare the result, to grant a poll, to see that the minutes are properly framed, and to sign them, in certain events and under certain conditions to adjourn the meeting, to declare the business of the meeting at an end and the meeting closed and generally to decide all incidental questions that arise and are connected with the management of the meeting.[5]

In the exercise of this authority the Chairman must act *bona fide*, and if he does, his decision, even when not strictly correct, will be upheld by the Court provided that no substantial injustice has arisen therefrom. If, however,

1. S. 13, U. P. Town Improvement Act, 1919, and S. 13 U. P. Town Improvement Act, 1919, as extended to the Province of Delhi.
2. S. 12 (1) (b), Punjab Town Improvement Act, 1922.
3. S. 12, Punjab Town Improvement Act, 1922.
4. S. 16, Nagpur Improvement Trust Act, 1936.
5. See Blackwell's '*Public & Company Meetings*' 7th Edn., pp 61, 62.

the Chairman acts improperly or *mala fide*, his decisions are not binding and in a proper case the Court will interfere. In the case of *Reg.* v. *D'Oyley* and *others* [1] Lord Denman, C. J., said :—

"It is on him (the Chairman) that it devolves, both to preserve order in the meeting, and to regulate the proceedings so as to give all persons entitled a reasonable opportunity of voting. He is to do the acts necessary for these purposes on his own responsibility, and subject to his being called upon to answer for his conduct if he has done anything improperly." [2]

It has been held under the English law that a Chairman is not liable for a personal action for refusing to submit a resolution if his decision was honestly given and he was not actuated by malicious motives. The proper remedy for a person who considers that a ruling of a Chairman is erroneous is to move for an injunction restraining the Chairman from refusing to put the resolution and for a *mandamus* to compel him to convene a fresh meeting. [3]

Duty to preserve order.

In a statutory meeting, like any other meeting for political, social and other purposes, the Chairman has the power to preserve order. The law on this subject was stated clearly by the Privy Council in *Doyle* v. *Falconer* : [4]

"If a member of a Colonial House of Assembly is guilty of disorderly conduct in the House whilst sitting, he may be removed or excluded for a time or even compelled. If the good sense and conduct of the members of colonial legislatures prove as in the present case insufficient to secure order or decency of debate, the law would sanction the use of that degree of force which might be necessary to remove the person offending from the place of meeting and keep him excluded The same rule would apply, a *fortiori*, to obstructions caused by any person not a member. And whenever the violation of order amounts to a breach of the peace, or other legal offence, recourse may be had to the ordinary tribunals".

It is to be observed that a Chairman who removes or orders to the removal of a person from a meeting must be

1. (1840) 12A & E, 139 at p. 159
2. See also *re Inaian Zoedone Company*, 26 Ch. Div. 70.
3. *Bray* v. *Browne*, (1896), 41 Sol Jo. 159.
4. L. R. I. P. C. 340.

acting as Chairman and must not attempt to justify his conduct on other grounds *e.g.*, it is no defence to say that a person entitled to be present was a trespasser.[1] It is desirable in meeting of this character that the Chairman before resorting to extreme measures shall take the sense of the meeting.

Duty to regulate proceedings.

It is the duty of the Chairman to decide whether motions are relevant or not, to call on persons to speak and to put questions to the meeting for decision. In the performance of this duty it is necessary to bear in mind the following points :

(*a*) The Chairman can lawfully exercise his discretion as to the relevance or otherwise of a motion or an amendment to a motion, but if a question or an amendment to a question is material to the subject matter of the meeting, he cannot exclude it. In such an event the Court will set aside the Chairman's ruling. At a company meeting a share-holder moved an amendment to the motion before the meeting, but he did not put the amendment in writing. It was seconded, but the Chairman refused to put it to the meeting—he merely put the original motion which was passed. The Court of appeal held that the Chairman's ruling was wrong. Calton L. J. said :

> "I think that the Chairman was entirely wrong in refusing to put the amendment and that the resolutions which were passed cannot be allowed to stand because the Chairman under a mistaken idea as to what the law was which ought to have regulated his conduct prevented a material question from being brought before the meeting." [2]

Where the constitution of a corporate body provides that the decision of the Chairman shall be final unless challenged in the manner there provided,

1. See *Vaughan* v. *Hampson*, (1875) 33 L. T. 15.
2. *Henderson* v. *Bank of Australasia*, 45 Ch. Div. 330.

in that event the decision cannot bo impeached except upon evidence of bad faith. [1]

(*b*) The Chairman in giving his decision must comply with any statute or statutory rules or orders affecting his authority.

(*c*) It is desirable if the decisions of a Chairman appear incorrect, that they should be challenged at once at the meeting. The Chairman has *prima facie* authority to decide all incidental questions which arise at a meeting and require an immediate decision. The entry by him in the minute book of the result of a poll or of his decision on any other incidental question is, *prima facie,* although not conclusive, evidence of that result or the correctness of his decision and the *onus* of displacing that evidence is thrown on those who challenge the entry. It may be difficult if a decision is not challenged at once to obtain the evidence necessary to upset such a decision [1]

It is also desirable that where the party challenging the correctness of the Chairman's decision have an immediate remedy in their hands whether by custom or by statute that they should take advantage of it. For example, at a meeting of rate-payers for the granting of a church rate, the Chairman put the question to the meeting whether a rate should be granted or not. He declared on a show of hands that eleven voted for the rate and six against. No proper steps were taken to test the correctness of the Chairman's decision. Sir H. Jenner Fust said :—

'In order to protect those who may be affected by the declaration of the Chairman the law has pointed out or rather the general practice and custom of the country has provided a mode by which his error is to be corrected. In the first place, the majority as declared by the Chairman is *prima facie* evidence of the fact. Then what is to be done? If the other party is dissatisfied, they may call for a second show of hands and if that is unsatisfactory for a division, one party going to the right hand and the other to the left. There is still another mode which

1. *Re Hadleigh Castle Gold Mines Ltd.*, (1900) 2 Ch. 419 & *Arnot* v. *United African Lands Ltd.*, (1901) 1 Ch 518.

is by poll. Therefore I am of opinion that in this case, the remedy of the party was by demanding a poll. It war for the other party who said the majority was the other way to demand a poll.".[1]

Casting vote.

The Chairman of a meeting being a component member of the corporation has a vote like an ordinary member, unless for any reason he is specifically debarred from voting by statute. The casting vote is a second vote given to the person who occupies the chair. He has the right to use this only if there is an equality of votes, including his own ordinary vote. The Chairman may give his ordinary vote one way and his casting vote the other, if he pleases, but there is no obligation on him to give either an original or a casting vote. If the voting is equal and the Chairman refuses to give a casting vote, the motion, of course, is not carried.[2] It seems that a Chairman may, in certain circumstances, give a contingent casting vote only to come into operation if required. In the case of *Bland* v. *Buchanan*[3] both petitioner and respondent were candidates for the office of Mayor of a borough. The Mayor in office presided at the election. Sixteen votes including the Mayor's first vote were cast for the respondent and fifteen for the petitioner. The Mayor thinking that one of the votes given for the respondent might be impeached, purported to give a casting vote for the respondent. The casting vote was held valid in these circumstances.

27. Voting.

At common law voting at all meetings is by a show of hands. If any person demands, it is followed by a poll. In the absence of any special provision to the contrary in the constitution of a corporation or of any assembly meeting under statutory authority, the common law method must prevail. Voting by show of hands means counting the persons present who are entitled to vote and who choose to vote by holding up their hands.[4]

1. *Cornwall* v. *Woods*, 4 Notes of Eccles. & Mar. Cases, 555 Blackwell, p. 69.
2. Crew's '*meetings*', p. 110; Blackwell, p. 69.
3. (1901) 2 K. B. 75.
4. See Blackwell, p. 59.

Where the taking of a vote in a particular manner is authorized by the constitution of a corporation or by any statutory rule thereunder, any person having a legal right to be present at the meeting may, at the conclusion of the voting, demand a poll, unless the right is taken away by statute or special custom. The Chairman of a meeting is the proper person to grant a poll.

Poll

A poll is in the nature of an appeal by one of the parties dissatisfied with the decision of the Chairman upon the show of hands. Unless provided by the constitution, it is not incumbent upon the Chairman or upon the party declared by him to have a majority to order to demand a poll. The demand must come, if it is desired to challenge the Chairman's decision from the party dissatisfied. Otherwise the decision of the Chairman is *prima facie*, evidence of the correctness of the result [1]

The demand of the poll is in effect the abandonment of the result of the voting by show of hands and the real voting begins with the commencement of the poll.

Where by statute or custom, a particular majority is required, the Chairman's declaration that a resolution has been carried, when there has been no such majority, is not unimpeachable. Thus in the case of *R.* v. *Tralee Urban District Council* [2], on May 6, 1911, council resolved by 15 votes to 8 that salaried positions under the council "including that of the town clerk at present vacant", be filled by competitive examinations. On July 21, 1911, the Council resolved by 12 votes to 5, that the candidates to be elected town clerk must have passed a qualifying examination, and that the previous resolution be altered accordingly. On December 4, 1911, the Council resolved by 10 votes to 7 that there should be no such examinations and by 10 votes to 5 that a certain candidate be appointed. It was held that on an application for a writ of *mandamus* directing the council to appoint a clerk that the rule must be made absolute, on the ground that as only

1. *Cornwall* v. *Woods*, Notes of Eccles or Mar. Cases, 555.
2. (1913) Ir. K. B. 59.

17 members were present during the vote on December 4th there was not the two-thirds majority which was necessary for rescinding resolutions.

There is no common law right for members of an assembly to vote by proxy or substitute [1], and voting by proxy is not provided for under the Acts constituting the various Trusts for the improvement of towns in India.

Disqualification of voting from interest.

It is universally recognised that it is improper and illegal for a member of a Trust or a Municipal council to vote upon any question brought before the council in which he is personally interested. Nor a member or a councillor can vote on any question in which he has any pecuniary interest either directly or indirectly [2]. Under the Calcutta Act, a Trustee who (a) has directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as is described in sub-section (2) of section 9 of that Act, [3] in respect of any matter, or (b) has acted professionally, in relation to any matter, on behalf of any person having therein any such share or interest as aforesaid, cannot vote or take any other part in any proceeding of the Board or any Committee relating to such matter. Similarly, if any Trustee, or any person associated with the Board under Section 19 of that Act, or any other member of a Committee appointed under that Act, has, directly or indirectly, any beneficial interest in any land situated in an area comprised in any improvement scheme framed under that Act, or in an area in which it is proposed to acquire land for any of the purposes of that Act, he shall before taking part in any proceeding at a meeting of the Board or any Committee relating to such area, inform the person presiding at the meeting of the nature of such interest, and shall not vote at any meeting of the Board or any Committee upon any resolution or question relating to such land, and shall not take any other part in any proceeding at a meeting of the

1 Blackwell, p. 59

2. See *Nell* v. *Longbottom*, (1894) 1 Q. B. 767; *Bland* v. *Buchanan*, (1901) 2 K. B 75.

3. See page 95.

Board or any Committee relating to such area if the person presiding at the meeting considers it inexpedient that he should do so [1]. The same provision exists in the U. P. Act [2], in the U. P. Act a extended to Delhi [3], in the Punjab Town Improvement Act [4], and in the C. P. Act [5].

The 'interest' contemplated above must neither be too speculative and remote, nor a mere sentimental interest (such as that which a father may have in the prosperity of his son). But where there is a pecuniary advantage or a reasonable expectation of a pecuniary advantage, it must be regarded as an interest within the above meaning. If the interest is pecuniar, it is immaterial that the amount involved is trifling. If the interest is not pecuniary, it must at least be a 'material' interest. A councillor whose name stands as a share-holder on the register of a company and who has a beneficial interest in the shares, is disqualified from voting or taking part in the discussion of any matter pertaining to the said company. If the shares stand, not in his name, but in the name of a nominee of his, the beneficial interest being in him, he is similarly disqualified. Where, however, the shares stand in the name of a person who has no beneficial interest in them but is a mere Trustee, he cannot vote *at meetings of the comyany in which he holds the shares* in a manner inconsistent with the interest of the beneficiaries, the reason being that he derives his position which he holds as a member of the company from the legal ownership of the shares. But if such a person is also a member of a Municipal Corporation or an Improvement Trust, he is not disqualified from voting, or taking part in the discussion of any matter relating to the company *at the meetings of the Municipal or Trust Corporation*. He is under no obligation to vote at such meetings in a manner beneficial to the interests of the *cestui que trust*, for he does not own his membership

1. S. 23, Calcutta Improvement Act, 1911.
2. S. 17, U. P. Town Improvement Act, 1919.
3. S. 17, U. P. Town Improvement Act, 1919, as extended to the Province of Delhi.
4. S. 16, Punjab Town Improvement Act, 1922.
5. S. 20, Nagpur Improvement Trust Act, 1936.

of the corporation to the fact that he is a share-holder of that company. He commits no breach of the trust if he votes at meetings of the corporation in contravention of the interests of his beneficiary[1].

The vote of Trustees whose rights are in dispute must not be disallowed, because, if not *de jure* members, they are at any rate *de facto* members until disqualified[2]. No penalty is imposed in the event of a Trustee voting on a question in which he has an interest; and the Trust would have no power to remove him. Presumably, the Chairman, if clearly satisfied that a Trustee has a pecuniary interest in the matter, would be justified in refusing to take his vote[3]. When acting judicially, the presence of a person interested in the question discussed may vitiate the proceedings[4].

Validity of votes recorded.

The decision of the Chairman as to the result of the poll demanded at a meeting of the corporation is not conclusive. The question of the validity of a vote at a meeting of the corporation being a question of law and not one relating to the internal management of the corporation, can be decided by a court of law alone. Neither the corporation nor the Chairman has the power to decide that question. Where, therefore, Trustees or councillors disqualified from voting vote at a meeting of the corporation and by so voting create a majority, the minority can get relief by an action in a court of law. The Court cannot entertain the plea that the relief, if granted, would be rendered nugatory if the

1. See *Nariman* v. *Municipal Corporation of Bombay*, (1923), I. L. R. 47 Bom. 809. See also *Norton* v. *Taylor*, (1906) A. C. 378; *Laughton* v. *Port Erin Commrs.*; 1910) A. C. 565; *Nutton* v. *Wilson*, (1889) 22 Q. B. D. 744; *England* v. *Inglis*, (1920) 2 K. B. 636; *Holden* v. *Southwork Corporation*, (1921) 1 Ch. 550. See Aiyangar, p. 156.
2. See *Holden* v. *Southwork Corporation*, (1921) 1. Ch. 500.
3. See R. v. *Ryde Corporation*, (1873) 37 J. P. 725; *Murray* v. *Epsom Local Board*, (1897) 1. Ch. 35.
4. *R.* v. *London Country Council, Exparte Fermenia*, (1892) 1 Q. B. 190; See also Dillon's, Corporations, Vol. II, p. 875; Aiyangar, P. 157.

President of the corporation convened another meeting to nullify the effect of the decision of the Court. In *Naviman* v. *Municipal Corporation of Bombay*[1], at a meeting of the Bombay Municipal Corporation held on 19th February 1923, a proposition was moved: "That the fifth report, dated the 4th December, 1922, of the Tramways Committee, regarding the revision of the present scale of Tramway fares be approved and adopted". To that an amendment was moved: "That further consideration of the fifth report be postponed, to the April meeting of the Corporation." The amendment was put to the vote and on a poll being demanded was declared lost by the Chairman who gave his casting vote against the amendment. The plaintiff, one of the councillors of the corporation who had given his vote in favour of the amendment sued the corporation in his own name for a declaration that the announcement of the Chairman that amendment was lost was invalid and that the amendment was duly carried by reason of the incompetency to vote of some of the councillors who voted against the amendment. The plaintiff's main contentions were (1) that four of the councillors who voted aginst the amendment were disqualified from voting as they owned shares in the Bombay Tramway Company which they had nominally transferred to their relations to enable themselves to vote at the meeting of the corporation, (2) that one councillor was the editor of a newspaper in which were inserted the advertisements relating to the affairs of the Tramway Company and that as editor he held a pass from the Company which entitled him to travel in the cars of the Company free of charge, (3) that one of the councillors held shares in the company as trustee, and (4) that two of the councillors were holders of medallions which entitled them to travel on the rear platform of a car when the inside was full on payment of the usual fare. The plaintiff further prayed for an injunction restraining the corporation from acting upon the announcement of the Chairman. The Court held that those councillors whose shares stood in the names of their nominees were dis-

1. (1923) I. L. R. 47 Bom. 809.

qualified from voting ; but that the editor of the newspaper, the trustee, and the holders of the medallions had no such interest under clause (p) of Section 36 of the City of Bombay Municipal Act [1] as diqualified them from voting at meetings of the corporation where affairs relating to the Company were the subject matter of discussion. The Court held, therefore, on the facts, that the amendment was not lost and that the plaintiff was entitled to obtain the declaration and injunction prayed for by him.

28. Agenda

The order and nature of business to be transacted at a meeting is stated on an agenda paper, more familiarly called " The agenda ". It should, as a rule, be circulated with the notice to the members who are entitled to be present at a meeting, and often the notice and agenda form one document

Business cannot be discussed of which no notice is given and which is therefore not on the agenda, unless such business is of a purely informal nature In the case of the *King* v. *The Corporation of Dublin*[2] a special meeting of the Corporation was summoned on a requisition of seven rate-payers to consider the question of unemployment in the city and see what means could be adopted to alleviate it. At the meeting a resolution was passed authorising the city treasurer to arrange for £10,000 to be expended on useful works for the alleviation of unemployment. It was held that the notice of the meeting was insufficient to enable the meeting to pass such a resolution. The reason for this rule was clearly stated by Peterson J :— " It may be that a very important question is going to be considered at the meeting ; it may be on the

1. Clause (p) of S. 36 of the City of Bombay Municipal Act 1888, reads as follows :—
" A Councillor shall not vote or take part in the discussion of any matter before a meeting or ask any question under Section 66-A concerning any matter in which he has, directly or indirectly, by himself or by his partner any share or interest such as is described in clauses (g) to (l), both inclusive, of section 16 or in which he is professionally interested on behalf of a client, principal or other person."
2. (1911) 2 Ir. R. 24 ; and see R. v. *Macdonald*, (1913) 2 I. R. 55.

other hand that the only business is purely formal, paying some tradesman or something of that description. In the one case, the members would attend in force and in the other case, as it was a mere matter of form, the members would not attend beyond the necessary quorum. Accordingly, in my view, I think these regulations do require that the notice convening the meeting should contain sufficient description of the important business which the meeting is to transact, and that the meeting cannot in ordinary circumstances go outside the business mentioned in that notice".[1]

On the other hand the Chairman has no right to veto discussion upon a matter expressly mentioned in the notice convening the meeting ; a *mandamus* will be if he refuses discussion of such a question.[2]

29. Admission to the Public and Press.

Neither the public nor the rate-payers nor the repreeentatives of the press have any common law right to attend the meetings of the Committe or the Trust, unless the Committee or the Trust expressly or impliedly consents to such attendance.[3] There is no inherent right of the public or press to attend such meetings. In *Tenby Corporation* v. *Mason*[4] the defendant, a burgess and ratepayer of a town to which the Municipal Corporations Act, 1882, applied asserted his right to be present at the meetings of the Council of the borough (other than Committee meetings) in his capacity of (1) a ratepayer of the borough ; (2) reporter of a newspaper owned by him and published in the town and in the alternatives as a member of the public. The corporation of the town claimed a declaration of the council's right to exclude persons not members of the council (which the defendant was not) from their meetings and for an injunction restraining defendant

1. *Longfield Parish Council* v. *Wright*, (1918) 88 L. J. Ch, 119, 16 L. G. R. 865.
2. *R.* v. *Marylebone Licensing Justices* 46 L. J. Jo. 133.
3. See Aiyangar. P. 159 ; Blackwell, pp. 23 to 25, 33 and 34.
4. (1908) 1 Ch. 457.

from trespassing and being present at meetings of the Council. Held, that a meeting of the council of a Municipal Corporation was not a public meeting in the sense that any member of the public had a right to attend ; that there was no ground for implying against a municipal corporation a right which was not expressed in any statue nor supported by any authority ; and that the defendant had therefore no such right as was asserted by him either as a burgess or as a member of the public ; nor had he the right to attend as a newspaper reporter without the express or implied permission of the council.

When, however, the statute expressly requires the meetings of the council to be open to the public, the council cannot evade the provision by resolving itself into a committee of the whole.[1]

30. Adjournment of meetings.

The term 'adjournment' is applied both to an adjournment of the meeting itself and to the adjournment of the discussion of a particular question. An adjournment of a meeting may be either (1) to a more convenient place for the business in hand ; or (2) until a fixed time ; or (3) for an indefinite time, that is *sine die*. An adjournment of the discussion of a particular question may be either (1) for a fixed time, or (2) for an indefinite time.[2]

Power to meet and discuss necessarily involves power to adjourn in the several senses of the term. An adjournment may arise from the following causes :—

(1) From failure to make a meeting — *i. e.* quorum of members not present, although this is strictly a postponement. A meeting cannot be adjourned if there was in fact no meeting.

(2) From faiture to keep a meeting — If, while a meeting is in progress, it is pointed out by a member present that the requisite quorum is not present, the meeting stands adjourned.

1. 19 R. C. L. pp. 891-2 ; See Aiyangar, p. 159.
2. See Blackwell's '*Meetings*', pp. 54,55.

(3) A motion for adjournment — This may be a motion for the adjournment of the meeting or it may be simply a motion for the adjournment of the discussion then proceeding.

The meetings of public bodies invested with public duties cannot at common law be adjourned by the Chairman contrary to the wishes of the meeting. Usually the right to adjourn is in the meeting itself. In *Stoughton* v. *Reynolds*[1] Lord Hardwicke said:

"The right is in the assembly itself; for if they be an assembly, all consisting of equals, and there be no custom or rule of law to direct the adjournment, the right must be in the persons which constitute the assembly."

Referring to this decision in the subsequent case of *Wilson* v. *Mc Math*[2] Sir John Nicholl pointed out that it decided "that the question of adjournment should have been decided, as if generally is, by vote and not by the Chairman."

If the Chairman adjourns the meeting contrary to the wishes of the members and thereby interrupts business, the members can lawfully, in the absence of their proper Chairman elect another to act as his substitute and continue the business. The point was forcibly stated by Chitty J. in *National Dwellings Society* v. *Sykes*[3]: "But in my opinion, the power which has been contended for is not within the scope of the authority of the Chairman—namely, to stop the meeting at his own will and pleasure. The meeting is called for the particular purposes of the company. According to the constitution of the company a certain officer has to preside. He presides with reference to the business which is then to be transacted. In my opinion, he cannot say, after that business has been opened, 'I will have no more to do with it; I will not let this meeting proceed; I will stop it; I declare the meeting dissolved and I leave the chair'. In my opinion, that is not within his power. The meeting by itself can resolve to go on

1. 2 Stra. 1045.
2. 3 Phil. 83.
3. (1894) 3 Ch. 159.

with the business which the other chairman forgetful of his duty or violating his duty, has tried to stop because the proceedings have taken a turn which he himself does not like.'[1]

When the business for which the meeting was assembled has been completed the Chairman can lawfully adjourn the meeting. In the case of *R* v. *Gabarian*[2] Le Blanc J. said.

"Here the business which began under the mayor had been ended, for the mayor as presiding officer had decided that the votes being equal no election could be had and no objection was made to that decision, and then he directed proclamation to be made for dissolving the assembly, and no objection was made to that nor any notice given by any persons that they meant to proceed in making an election. Then when the mayor was gone away and a number of the burgesses also departed considering the assembly as dissolved, and the rest proceeded to make an election, this was not a continuation of the business begun before the mayor but an attempt to continue that which had been concluded.'

When public bodies have express statutory authority to make regulations respecting *inter alia* adjournments regulations so made must be strictly adhered to.[3]

31. Temporary association of members with the Trust for particular purposes

Each Act provides for association with the Board or the Trust, in accordance with the rules framed under it, of any persons whose assistance or advice it may desire in carrying out any of the provisions of the Act. Any person thus associated for any purpose has a right to take part in the discussions of the Board or the Trust relative to that purpose, but has no right to vote at a meeting of the Board or the Trust and is not a member of the Board or the Trust for any other purpose.[4]

1. See also *Shaw* v. *Thompson* 3 Ch. Div. 233
2. (1809) 11 East 77.
3. Blackwell, pp 54 to 59.
4. S. 19, Calcutta Improvement Act 1911; S. 14, U P. Town Improvement Act, 1919; S. 14 U P. Town Improvement Act, 1919, as extended to Delhi; S. 13, Punjab Town Improvement Act 1922; S 17, Nagpur Improvement Trust Act, 1936.

Like the Trustees, associated members of Trust or committee are not to take part in proceedings in which they are personally interested.[1]

32. Constitution, functions and meetings of committees.

The Trusts have power to appoint committees to carry out the various duties more expeditiously. Section 20 of the Calcutta Act empowers the Board to appoint from time to time committees, consisting of such persons of any of the following classes as they may think fit, namely :

(*i*) Trustees ; (*ii*) persons associated with the Board under section 19 ; (*iii*) other persons whose assistance or advice the Board may desire as members of committee.

No committee is to consist of less than three persons, and any committee can be dissolved by the Board at any time, and subject to the above provisions, its constitution can be altered. Every committee thus appointed is to conform to any instructions from time to time given to them by the Board, and all proceedings of any such committee are subject to confirmation by the Board.

The Board may—

(*a*) refer to such committee, for inquiry and report, any matter relating to any of the purposes of that Act, and

(*b*) delegate to such committee, by specific resolution, and subject to any rules made under that Act, any of the powers or duties of the Board.

The same provision exists in the U.P. Act, in the U.P. Act as extended to Delhi, in the Punjab Act, and in the C. P. Act.[2]

1. S. 23, Calcutta Improvement Act 1911 ; S 17, U. P. Town Improvement Act, 1919, S. 17, U. P. Town Improvement Act, 1919, as extended to Delhi ; S. 16 Punjab Town Improvement Act, 1922 ; S. 20, Nagpur Improvement Trust Act 1936.
2. S. 15, U. P. Town Improvement Act, 1919 ; S. 15, U. P. Town Improvement Act, 1919, as extended to Delhi ; S. 14, Punjab Town Improvement Act, 1922 ; S. 18, Nagpur Improvement Trust Act, 1936.

Meetings of committees.

Committees thus appointed may meet and adjourn as they think proper; but the Chairman may, whenever he thinks fit, call a special meeting of any committee, and shall call a special meeting of any committee upon the written request of not less than two members thereof. The person to preside at a meeting of a committee shall be the Chairman if he is a member of the committee, or, if he is not a member, then the members present shall choose one of their number to preside. No business can be transacted at any meeting of a committee unless at least half the number of the members of the Committee are present from the beginning to the end of the meeting, and all questions at its meeting are to be decided by a majority of votes of the members present, the person presiding having a second or casting vote in all cases of equality of votes.[1] Under the U. P. Act and the said Act as extended to Delhi the Chairman may attend any meeting of a committee whether he is a member of such committee or not, and is to preside at every such meeting at which he is present; and if he is absent, such one of the Trustees present as may be chosen by the meeting is to preside. Also, the quorum for a meeting is either two members or one fourth of the members constituting the committee.[2] The Punjab Act follows the U. P. Act except that it provides that if only one Trustee is present at a meeting of a committee he shall preside and that the quorum for a meeting is two members and when the committee consists of more than eight members not less than one-fourth of such members.[3] Under the C. P. Act, it is not obligatory on the part of the Chairman to call a meeting of the committee even upon the written request of two or more members thereof, and the quorum is two members or one-fourth of the members constituting the comittee whichever is greater. In other respects it follows the U. P. Act.[4]

1. S. 21, Calcutta Improvement Act, 1911.
2. S. 16, U. P. Town Improvement Act, 1919; and S. 16, U. P. Town Improvement Act, 1919, as extended to Delhi.
3. S. 15, Punjab Town Improvement Act, 1922.
4. S. 19, Nagpur Improvement Trust Act, 1936.

Any member of such committee also cannot take part in proceedings in which he is personally interested.[1]

33. Fees for attendance at meetings.

Under the Calcutta Act every Trustee (other than the Chairman), and every person associated with the Board under section 19 of that Act, is entitled to receive a fee of twenty rupees, and every member of a committee is entitled to receive a fee of ten rupees, for each meeting of the Board or the Committee—

(i) at which a quorum is present and business is transacted, and

(ii) which he attends from the beginning to the end thereof, or for such period as the person presiding at the meeting may consider sufficient to justify the payment of the fee.

This is subject to the proviso that the aggregate amount of fees payable to any person in respect of meetings of any kind held during any month shall not exceed such sum as may be prescribed by any rule made under section 137 of that Act in this behalf.[2]

Section 9 of the U. P. Act states that no Trustee, other than the Chairman, shall receive any salary or other remuneration from the funds of the Trust. This section as extended to Delhi provides for payment of a fee of twenty rupees to every Trustee (other than the Chairman) and every person associated with Trust under Section 14, if he is not a whole-time Government servant, and of Rs. ten to every member of a Committee appointed under Section 15, if he not the Chairman or a while-time Government servant, for each meeting of the Trust or the committee,

(i) at which a quorum is present and business is transacted, and

1. See f. n. at pp. 119, 120.
2. S. 22, Calcutta Improvement Act, 1911.

(ii) which he attends from the beginning to the end thereof, or for such period as the person presiding at the meetings may consider sufficient to justify the payment of the fee.

This is subject to the proviso that the aggregate amount of fees payable to any person in respect of meetings of any kind held during any month shall not exceed such sum as the Chief Commissioner may by order in writing prescribe.

Under section 9 of the Punjab Act each Trustee other than the Chairman is to receive such salary or remuneration as may be sanctioned by the Provincial Government. The C. P. Act follows the U. P. Act in this respect (Section 9).

34 Officers and servants of the Trust

Calcutta.

Section 30 of the Calcutta Improvement Act, prescribes that the Board shall from time to time prepare and shall maintain a statement showing strength and remuneration of staff, and section 31 of the same empowers the Board to make rules for fixing the amount and nature of the security to be furnished by any officer and servant of the Board from whom it may be deemed expedient to require security, for regulating the grant of leave of absence, leave allowances to the officers and servants of the Board, and for establishing and maintaining a provident or annuity fund and other similar matters connected with and relating to the staff. Subject to any directions contained in any statement prepared under section 30 and any rules made under section 31, and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Board, and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, vests—(a) in the case of officers and servants whose monthly salary does not exceed three hundred rupees—in the Chairman, and (b) in other cases—in the Board. This is subject to the proviso that any officer or servant in receipt of a monthly salary exceeding one hundred rupees who is reduced, suspended or dismissed by the Chairman may appeal to the Board, whose

decision shall be final.[1] All statements prepared under section 30, so far as they relate to officers carrying a salary of more than one thousand rupees *per mensem*, and all rules made under section 32 and relating to any officer appointed to hold an office carrying a salary of more than one thousand rupees *per mensem*, except orders granting leave to, or suspending, any such officer, are subject to the previous sanction of the Provincial Government.[2]

U. P. & Delhi

The corresponding sections in the U.P. Act are 18 and 19. Section 18 of the Act states that 'subject to such rules as the Provincial Government may make preventing the conditions under which members of the staff appointed by the Trust to offices requiring professional skill may be appointed, suspended or dismissed, a trust may from time to time fix the number and salaries of such permanent servants as it may think necessary and proper to assist in carrying out the purposes of this Act. Sub-section (2) of the same empowers the Chairman to appoint, in cases of emergency, such temporary servants as in his opinion may be required for the purposes of this Act, and to direct that the salaries of such temporary servants fixed as the emergency may require shall be paid from the Trust fund. This power is subject to the proviso that the Chairman shall not act in contravention of any order of the Trust prohibiting the employment of temporary servants for any particular work, and that every appointment thus made shall be reported at the next following meeting of the Trust. Section 19 of this Act is the same as section 32 of the Calcutta Act referred to above. In extending these sections of the U. P. Act to Delhi no change has been made.

Punjab

The Punjab Act follows more or less the U.P. Act except that there is no power given to the Chairman to appoint temporary servants in cases of emergency, and Chairman's power of appointing, promoting and granting leave to officers and servants of the Trust, and reducing, suspending, or dismissing

1. S. 32, Calcutta Improvement Act, 1911.
2. S 33, Calcutta Improvement Act, 1911.

them for misconduct and dispensing with their services for any reason other than misconduct extends only to officers and servants whose maximum monthly salary does not exceed one hundred rupees, and that any officer or servant, in receipt of a minimum monthly salary exceeding fifty rupees who is reduced, suspended or dismissed by the Chairman may appeal to the Trust, whose decision shall be final.[1]

C.P. The C.P. Act also follows the U.P. Act except that the Chairman's power of appointing, promoting and granting leave to officers and servants of the Trust, and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct extends only to officers and servants whose monthly salary does not exceed one hundred and fifty rupees, and that any officer or servant in receipt of a monthly salary exceeding fifty rupees who is reduced, suspended, or dismissed by the Chairman may appeal to the Trust, whose decision shall be final.[2]

Control by Chairman. The Chairman exercises supervision and control over the acts and proceedings of all officers and servants of the Board or the Trust, and subject to the provisions explained above, is to dispose of all questions relating to the service of the said officers and servants, and their pay, privileges and allowances.[3]

Delegation of certain of Chairman's functions Each Act provides for delegation of certain of Chairman's functions to any officer of the Board.[4] The exercise or discharge by any officer of any powers duties or functions thus delegated to him is always subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman.[4]

1. Ss. 17, 18, Punjab Town Improvement Act, 1922
2. Ss. 21, 22, Nagpur Improvement Trust Act, 1936
3. S. 34, Calcutta Improvement Act 1911, S. 20 U.P. Town Improvement Act, 1919; S. 20 U.P. Town Improvement Act, 1919 as extended to Delhi; S. 19 Punjab Town Improvement Act, 1922, and S. 23, Nagpur Improvement Trust Act 1936.
4. See, S. 35, Calcutta Improvement Act, 1911; S. 21 U. P. Town Improvement Act, 1922; S. 21, U. P Town Improvement Act 1919, as extended to Delhi; S. 20, Punjab Town Improvement Act 1922; S. 24 Nagpur Improvement Trust Act, 1936.

The powers, duties or functions conferred or imposed upon or vested in an officer by statute must be exercised performed and discharged by him unless he has powers to delegate any of them, in which case it is only the delegated official that can exercise, perform and discharge any of the powers, duties or functions delegated to him and no one else can.[1] The delegation can only be by a written order.[2] Where any question arises, the delegation should be duly proved.[3] In delegating powers by the Chairman the provisions of the statute should be carefully observed or else the delegation would be void.[4]

35. Supply of information and documents to Government.

Section 22 of the U. P. Act makes it obligatory for the Chairman to forward to the Provincial Government a copy of the minutes of the proceedings of each meeting of the Trust, within ten days from the date on which the minutes of the proceedings of such meeting were signed as prescribed in clause (g) of sub-section (1) of section 13, and if the Provincial Government so directs in any case, the Chairman shall forward to it a copy of all papers which were laid before the Trust for consideration at any meeting. The Provincial Government may also require the Chairman to furnish it with :—

(*a*) any return, statement, estimate, statistics, or other information regarding any matter under the control of the Trust, or

1. *Queen Empress* v. *Nadir Shaw*, Rat. Un. Cr. C. 987. See also *Kissorilal* v *Corporation of Calcutta*, (1910) 37 Cal. 585; 32 P.R. 1881 Cr.

2. *Kherode Prasad* v. *Chairman, Howrah Municipality*, (1893) (1. L. R. 20 Cal 448. See also *Queen Empress* v. *Mokunda*, (1893), 20 Cal. 662; *Chairman, Puri Municipality* v. *Kisori Lal*, (1896) C. W. N. CC X LIV.

3. *Harendra Nath* v. *Chairman, Birnagar Municipality*, (1905) 1 C. L. J. R. 51.

4. *Shivshanker* The justices of *the Peace for the City of Bombay*, (1868) 5 Bom. H. C. R. 145; *Superintendent and Remembrancer of legal affairs, Bengal* v. *Mul* (1921) 34 Cal. L. J. R. 203 7 L. S. G. R. 157.

(*b*) a report on any such matter, or

(*c*) a copy of any document in the charge of the Chairman.

The Chairman is to comply with every such requisition without unreasonable delay.

There is a similar provision in the U. P. Act as extended to Delhi, in the Punjab Act,[1] and in the C. P. Act.[2]

1. S. 21, Punjab Town Improvement Act, 1922.
2. S. 25, Nagpur Improvement Trust Act, 1936.

CHAPTER VI.

IMPROVEMENT SCHEMES.

36 Types of improvement schemes.

The various Town Improvement Trust Acts provide for the framing and execution of the following types of improvement schemes :—

Calcutta Improvement Act, 1911.

An 'improvement scheme' is defined under the Calcutta Improvement Act as meaning 'a general improvement scheme or a street scheme, or both, but does not include a projected public street referred to in section 63 of that Act.[1] The various types of improvement and re-housing schemes under the said Act are :

(*i*) a general improvement scheme[2] ;

(*ii*) a street scheme[3] ;

(*iii*) a rehousing scheme[4] ;

(*iv*) a projected public street scheme[5].

Any number of areas in respect of which improvement schemes have been, or are proposed to be framed, may at any time be included in one combined scheme.[6]

U. P. Act, 1919, and the U. P. Act as extended to the Province of Delhi and the Nagpur Improvement Trust Act, 1936.

Under the U. P. Town Improvement Act and the said act as extended to the Province of Delhi and the Nagpur Improvement Trust Act, the various types of improvement schemes that can be framed and executed are :

(*a*) a general improvement scheme ;

(*b*) a rebuilding scheme ;

(c) a re-housing scheme ;

(*d*) a street scheme ;

1. S. 2 (f), Calcutta Improvement Act, 1911.
2. S. 36, Calcutta Improvement Act, 1911.
3. *Ibid*, S. 39. 4. *Ibid*, S. 52. 5. *Ibid*. S. 63. 6. *Ibid*, S. 51.

(*e*) a deferred street scheme ;

(*f*) a development scheme ;

(*g*) a housing accommodation scheme ; and

(*h*) a town-expansion scheme.

An improvement scheme may combine any two or more of such types, or of any special features thereof.[1]

The Punjab Town Improvement Act, 1922, provides for the following schemes for the purpose of carrying out the provisions of that Act, namely :— Punjab Town Improvement Act, 1922

(*i*) a general improvement scheme ;

(*ii*) a rebuilding scheme ;

(*iii*) a street scheme ;

(*iv*) a deferred street scheme ;

(*v*) a development and expansion scheme ;

(*vi*) a housing accommodation scheme ;

(*vii*) a re-housing scheme.[2]

Under the Punjab Act also, a scheme may combine one or more types of schemes or any special features thereof.[3]

Chapter XII-A of the City of Bombay Municipal Act, 1888, provides for schemes for the improvement of the city of Bombay.

37. Framing of an improvement scheme.

An improvement scheme may be framed by the Trust either of its own accord or upon an official representation from the local authority concerned.[4] Under the Calcutta Act an

Suo motu by the Trust or upon official representation from the local authority concerned.

1. S. 24, U. P. Town Improvement Act, 1919 ; S. 24, U. P. Town Improvement Act, 1919, as extended to the Province of Delhi, S. 27, Nagpur Improvement Trust Act, 1936.
2. Ss. 22, 23, 24, 25, and 26, Punjab Town Improvement Act, 1922.
3. *Ibid*, S. 28 (1).
4. S. 36, Calcutta Improvement Act, 1911 ; S 33 U. P. Town Improvement Act, 1919 ; S. 33 U. P. Town Improvement Act, 1919, as extended to the Province of Delhi ; S. 33 Punjab Town Improvement Act, 1922 ; S. 36, Nagpur Improvement Trust Act, 1936.

official representation for framing a general improvement scheme can be made by the Corporation (a) of their own motion or (b) on a written complaint by the Health Officer of the Corporation or (c) in respect of any area comprised in a municipal ward,—on a written complaint signed by twenty five or more residents of such ward who are liable to pay either the owner's share or the occupier's share of the consolidated rate leviable under the Calcutta Municipal Act, 1923. If the Corporation decide not to make an official representation on any complaint made to them under clause (b) or clause (c), they are to send a copy of such complaint to the Board of the Trust, with a statement of the reasons for their decision.[1]

The Board is to consider every official representation thus made, and, *if satisfied as to the truth thereof and to the sufficiency of their resources*, are to decide whether a general improvement scheme to carry such representation into effect should be framed forthwith or not, and are *forthwith* to intimate their decision to the Corporation. If the Board decide that it is not necessary or expedient to frame a general improvement scheme forthwith, they are to inform the Corporation of the reasons for their decision. If the Board fail, for a period of twelve months after the receipt of an official representation made in the manner aforesaid to intimate their decision thereon to the Corporation, or if the Board intimate to the Corporation, their decision that it is not necessary or expedient to frame general improvement scheme forthwith, the Corporation may, if they think fit, refer the matter to the Provincial Government. The Provincial Government is to consider every reference thus made to it and (a) if it considers that the Board ought, under all the circumstances, to have passed a decision within a period of twelve months, is to direct the Board to pass a decision within such further period as the Provincial Government may think reasonable, or (b) if considers that it is under all the circumstances expedient that a scheme should forthwith be framed, are to direct the Board to proceed forthwith to frame a scheme.

1. S. 37, Calcutta Improvement Act, 1911.

The Board is to comply with every direction given by the Provincial Government in this respect.[1]

It is to be observed that the Corporation can make an official representation for framing a general improvement scheme only and not any street scheme or any other scheme. A street scheme may be framed by the Board, whenever they are of opinion that for the purpose of (a) providing building sites, or (b) remedying defective ventilation, or (c) creating new, or improving existing means of communication and facilities for traffic, or (d) affording better facilities for conservancy, it is expedient to layout new streets or to alter existing streets (including bridges, causeways and culverts). They may pass a resolution to that effect and shall then proceed to frame a street scheme for such area as they may think fit.[2]

The U. P. Town Improvement Act, the U. P. Town Improvement Act, as extended to the Province of Delhi, the Punjab Town Improvement Act and the Nagpur Improvement Trust Act also make the same provision in this respect as the Calcutta Act.[3] Under these Acts, however, a street scheme also is included in the term 'improvement scheme', so that official representation can be made by the local authority concerned for framing a street scheme also.

38. Matters to be provided for by improvement schemes.

An *improvement scheme* under the Calcutta Improvement Act, *must* provide for — Calcutta.

(*a*) the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion, be required for the execution of the scheme ;

(*b*) the laying out or re-laying out of the land in the said area :

1. S. 38, Calcutta Improvement Act, 1911.
2. S. 39, Calcutta Improvement Act, 1911.
3. Ss. 33 and 34, U.P. Town Improvement Act ; Ss. 33 and 34 of of the U. P. Act as extended to the Province of Delhi ; Ss. 33 and 34, Punjab Town Improvement Act ; Ss. 36 and 37, Nagpur Improvement Trust Act.

(*c*) such demolition, alteration or reconstruction of buildings, situated on land which it is proposed to acquire in the said area, as the Board may think necessary ;

(*d*) the construction of any buildings which the Board may consider it necessary to erect for any purpose other than sale or hire ;

(*e*) the laying out or alteration of streets (including bridges, causeways and culverts), if required ; and

(*f*) the levelling, paving, metalling, flagging, channelling, sewering and draining of the said streets, and the provision therein of water, lighting and other sanitary conveniences ordinarily provided in a municipality.[1]

An improvement scheme *may* provide for—

(*a*) the acquisition by the Board of any land, in the area comprised in the scheme, which will in their opinion, be affected by the execution of the scheme ;

(*b*) raising, lowering or levelling any land in the area comprised in the scheme ;

(*c*) the formation or retention of open spaces ; and

(*d*) any other matters consistent with the Town Improvement Act which the Board may think fit.[2]

It has been further prescribed by the Act that when framing an improvement scheme in respect of any area, regard shall be had to—

(*a*) the nature and the conditions of neighbouring areas and of Calcutta as a whole ;

(*b*) the several directions in which the expansion of Calcutta appears likely to take place ; and

(*c*) the likelihood of improvement schemes being required for other parts of Calcutta.[3]

1. S. 41 Calcutta Improvement Act, 1911.
2. S. 42, Calcutta Improvement Act, 1911.
3. S. 40, Calcutta Improvement Act, 1911.

Under the U.P. Town Improvement Act and the said Act as extended to Delhi, an improvement scheme may provide for all or any of the following matters :— U. P. and Delhi

(*a*) The acquisition by purchase, exchange, or otherwise of any property *necessary for or affected by* the execution of the scheme.

(*b*) The re-laying out of any land comprised in the scheme.

(*c*) The redistribution of sites belonging to owners of property comprised in the scheme.

(*d*) The closure or demolition of dwellings or portions of dwellings unfit for human habitation.

(*e*) The demolition of obstructive buildings or portions of buildings.

(*f*) The construction and re-construction of buildings.

(*g*) The sale, letting, or exchange of any property comprised in the scheme.

(*h*) The construction and alteration of streets and back lanes.

(*i*) The draining, water-supply, and lighting of streets so constructed or altered.

(*j*) The provision of open spaces for the benefit of any area comprised in the scheme or any adjoining area, and for the enlargement of existing open spaces and approaches.

(*k*) The sanitary arrangements required for the area comprised in the scheme, including the conservation and prevention of injury or contamination to rivers or other sources and means of water-supply.

(*l*) The provision of accommodation for any class of the inhabitants.

(*m*) The advance of money for the purpose of the scheme.

(*n*) The provision of facilities for communication.

(*o*) The reclamation or reservation of land for market gardens, afforestation, the provision of fuel and grass-supply, and other needs of the population.

(*p*) Any other matter for which, in the opinion of the Provincial Government (Chief Commissioner in the case of the Delhi Improvement Trust), it is expedient to make provision with a view to the improvement of any area in question or the general efficiency of the scheme.

Punjab. An improvement scheme under the Punjab Act may provide for all or any of the following matters :—

(*i*) The acquisition under the Land Acquisition Act, 1894, as modified by this Act, or the abandonment of such acquisition under sections 56 and 57 of this Act, of any land or any interest in land necessary for or effected by the execution of the scheme, or adjoining any street, thoroughfare, or open space to be improved or formed under the scheme.

(*ii*) The acquisition by purchase, lease, exchange or otherwise of such land or interest in land.

(*iii*) The retention, letting on hire, lease, sale, exchange or disposal otherwise of any land vested in or acquired by the Trust.

(*iv*) The demolition of buildings or portions of buildings that are unfit for the purpose for which they are intended and that obstruct light or air or project beyond the building line.

(*v*) The relaying out of any land comprised in the scheme and the redistribution of sites belonging to owners of property comprised in the scheme.

(*vi*) The laying out and alteration of streets.

(*vii*) The provision of open spaces in the interests of the residents of any locality comprised in the scheme or any adjoining locality and the enlargement or alteration of existing open spaces.

(*viii*) The raising, lowering or reclamation of any land vested in or to be acquired by the Trust for the purposes for the scheme, and the reclamation or reservation of land for the production of fruits,

vegetables, fuel, fodder and the like for the residents of the local area.

(*ix*) The drainage, water supply and lighting of streets altered or constructed.

(*x*) The provision of a system of drains and sewers for the improvement of ill-drained and insanitary localities.

(*xi*) The doing of all acts intended to promote the health of residents of the area comprised in the scheme, including the conservation and preservation from injury or pollution of rivers and other sources and means of water supply.

(*xii*) The demolition of existing buildings and the erection and re-erection of buildings by the Trust or by the owners or by the Trust in default of the owners.

(*xiii*) The advance to the owners of land comprised within the scheme upon such terms and conditions as to interest and sinking fund and otherwise as may be prescribed under the scheme of the whole or part of the capital requisite for the erection of buildings in accordance with the scheme.

(*xiv*) The provision of facilities for communication.

(*xv*) All other matters which the Provincial Government may deem necessary to promote the general efficiency of a scheme or to improve the locality comprised in such scheme.[1]

C. P. An improvement scheme under the Nagpur Improvement Trust Act may provide for all or any of the matters referred to in Section 23 of the C. P. Town Improvement Act, and in addition to it may also provide for the recovery of betterment contributions from owners of properties improved by a Trust Scheme.[2]

1. Section 28 Punjab Town Improvement Act, 1922.
2. Section 26, Nagpur Improvement Trust Act, 1936

39. Acquisition of any property "necessary for or affected by" the execution of the scheme — principle of recoupment.

Land is a necessary item for the execution of any improvement scheme. The Improvement Trust Acts therefore provide, as we have already seen, not only for the acquisition of any property *necessary for* the execution of any improvement scheme under the Acts, but also of any property *affected by* the execution of any such scheme.

What does the expression "affected by" legally mean ?

This question came up for decision before the Judicial Committee of the Privy Council in *Trustees for the Improvement of Calcutta* v. *Chandra Kanta Ghosh*,[1] a case under the Calcutta Improvement Act, 1911. In this case the appellants were the Board of Trustees empowered to make and responsible for carrying out improvement schemes for the city of Calcutta under the Calcutta Improvement Act, 1911. They duly passed resolutions and framed a scheme for the widening of a road and for the acquisition of certain land for this purpose. Among other land proposed to be acquired under and for the purpose of carrying out the scheme was certain land that did not form part of the road itself as proposed to be laid out, but was adjacent thereto, and was required for the purpose of laying out the area with new roads, and of forming building sites under sections 39 (a) and 41 of the Act. Objections to the scheme were duly invited under the Act and the respondent sent in an objection praying that his land might not be acquired for various reasons, but his objection was overruled by the Board. The scheme was thereafter duly sanctioned by the Local Government and the sanction was duly notified in the Calcutta Gazette under S. 49 of the Act. Sanction was given by the Government for the acquisition of the respondent's land. The respondent then made an application to the Board under S. 78 of the Act, requesting to know the amount required for abandoning the acquisition of his land (treating it as land 'affected' by

1. I. L. R. XLVII Cal. 500 P. C.

but not required for the execution of the scheme) and his application was duly considered by a special committee of the Board and was rejected on the ground that the land was required for the lay-out ; and that rejection was duly notified to the respondent by the Chairman of the Board. Thereupon the respondent instituted a suit against the appellants praying on various grounds for a declaration that the proposed acquisition was illegal and *ultra vires* and for an injunction and other relief.

In the plaint the respondent put forward the plea (a) that the land in question was neither required for the execution of the scheme nor affected by it ; (b) that it already formed good building sites and could not therefore be required for providing them ; (c) that the action of the appellants in including it in the area comprised in the scheme was *not bona fide* for the purposes of the Act, and the proceedings adopted by the Board with a view to its acquisition were illegal and *ultra vires ;* (d) *that the only motive for the proposed acquisition was to compulsorily acquire the land at a small price with a view to sell it again at a much higher price, a purpose which was not contemplated by the Act.* Both the courts in India decided in favour of the respondent, and held that the word "affected" did not mean "beneficially affected or improved in value", nor did it mean "prejudicially affected or impaired in value", but signified "acted upon physically."[1]

On behalf of the appellants it was contended before the Judicial Committee of the Privy Council that the High Court was in error in holding that no lands could be included in a street scheme except lands required for making the street or so much of the land outside as was originally part of the lands so required ; but the land in question was and is in fact needed for "laye-out" and "building sites" and therefore "required for the execution of the scheme", and was also "affected" by the execution of it, and could therefore be compulsorily acquired

1. See *Trustees for the Improvement of Calcutta v. Chandra Kanta Ghosh*, I. L. R. 44 Cal. 219=36 I. C. 749.

either under section 41 or section 42 of the Calcutta Improvement Act, 1911. Both these questions, it was submitted, concluded with the sanction of the Local Government. With regard to sections 41, 42, 68, 69, 78, 81 and 122, the Act clearly authorised the compulsory acquisition of "affected" land for the purpose of recoupment. The meaning of "affected" in section 42 was affected in value or otherwise and not only "physically and materially" affected. The High Court wrongly held (a) that "acquire" in sections 41 and 42 did not necessarily include compulsory acquisition; (b) that section 69 did not authorise the compulsory acquisition of land except for the objects and purposes of the Act mentioned in the preamble; (c) that sections 78 and 81 only applied to cases where the scheme as originally sanctioned was altered or mistaken, and (d) that because recoupment was not specifically mentioned in the preamble, or in the operative part of the Act as an "object" or "purpose" it was therefore not authorised.

On behalf of the respondent it was contended that the land was not required for the scheme under S. 41 as framed for widening the road and that had been held by the Lower Courts, that there was no power to take land for recoupment as it was not given by the Act, that such a provision if intended to be given, would have been given in express terms which had not been done, that S. 42 (a) did not bring into a scheme any land which was not part of the scheme for carrying out its execution: it did not refer to the value of land, but to the land which was affected by the scheme and that 'affect' had the same meaning as the expression 'injuriously affected' which was used in the Lands Clauses Act, 1845.

It was held by the Privy Council that whenever the Local Government did sanction an improvement scheme they were in duty bound to announce the fact by notification, and the publication of a notification was conclusive evidence that the scheme had been duly framed and sanctioned. This provision did not affect the right of the respondent to institute a suit to have it declared that the Board in framing the scheme acted *ultra vires* or that the scheme as sanctioned did not authorise the appellants to acquire by compulsion the land in

question. It was observed—"It was urged on behalf of the respondents that lands had been included by the Board within the area of the scheme, not because they were wanted for any of the purposes of the Act, but with the object of exacting an exemption fee from the owners, although the Board were actually not anxious to acquire the buildings, and would possibly, or probably, have failed to make a profit if they had actually acquired and re-sold the land. Under S. 78, owners may apply to the Board requesting that the acquisition of their land should be abandoned in consideration of the payment of sum to be fixed by the Board in that behalf. The object of this section is probably to give an opportunity to owners of land to request the abandonment of its compulsory acquisition, and it only comes in operation when land has been properly included in a scheme as required for purposes of the Act.

On the construction of S. 42 (a) of the Calcutta Improvement Act, 1911, their Lordships held that there was no limitation or restriction either in that section or in S. 78, and there was no ground for implying any limitation as affecting the authority of the Board of Trustees for the acquisition of the land. The result in the opinion of their Lordships was that none of the limitations to the usual and normal meaning of the word 'affected' in S. 42 was admissible and that there was no reason, either in the general purposes of the Act or in the special context, that the word should not be construed in its ordinary sense, and that as so construed, S. 42 authorised the acquisition of the land of the respondent, which was inserted in the scheme, because in the opinion of the Board it would be enhanced in value by its execution.

The matter again came before a Full Bench of the Calcutta High Court in *Mani Lall Singh* v. *Trustees for the Improvement of Calcutta*[1] and it was held (Chatterjee J. dissenting) that section 42 (a) of the Act authorised the Board

1. A. I. R. 1919 Cal. 551 (F.B.).

of Trustees to acquire land compulsorily for purposes of recoupment. *i.e.* by selling or otherwise dealing with the land under section 81 of that Act or by abandoning the land in consideration of the payment of a sum under section 78.

Per Fletcher J.—The word "affected" in section 42 (a) means affected in any way; and the expression "by the execution of the scheme" means through or owing to the execution of the scheme.

Betterment means that persons whose property has clearly been increased in market value by an improvement effected by local authorities should specially contribute to the cost of the improvement.

Powers of recoupment are powers given to municipal or other public body to take land beyond what is necessary for actual execution of the scheme so that some part at least of the improved value may be secured by the improving public body in case of the burden upon the rate payers. The vesting of a local authority with power to acquire land for the purpose of recoupment cannot be described at the present day as vesting the Board with arbitrary and unlimited powers of interference with private persons. The question as to whether a particular statute authorises recoupment or betterment must be determined solely on a consideration of the terms of the statute and if it does so authorise, it must also be determined whether compulsory powers have been conferred for carrying into effect such powers.

Per Richardson J.—The phrase "land affected by the execution of the improvement scheme" in section 42 (a) suggests land affected for the better and though the words may be wide enough to include land prejudicially affected should the Board choose to acquire such land, they specially include and signify land beneficially affected.

The words "by the execution of the scheme", which qualify the words "affected" refer not only to the period of

construction but also to the period immediately following, when the improvement scheme is completed and in operation and a "going concern".

Per Chatterjee J. (dissenting)— The words "land required for the scheme" in section 41 (a) means the land which is actually required for what may be called the engineering or construction works, for instance, in street scheme the land necessary for laying out the street.

The word "affected" in section 42 (a) of the Act has no reference to value. In that section it is used in the sense of acted upon physically.

In England the principle of recoupment is well known. "Municipal and other public bodies are some times given powers to take land beyond that which is necessary for the actual execution of the proposed works in order that some part at least of the improved value of the adjoining lands may be secured in case of the burden upon the rate-payers. These lands are said to be authorised to be taken for the purpose of recoupments as the public body is empowered to sell or lease them at what may be an enhanced value."[1]

All the Acts provide for transfer to the Board or the Trust for purpose of improvement scheme of any building or land vested in the Corporation or any other local authority.[2] It was held in the *Corporation of Calcutta* v. *The Calcutta Improvement Trust*,[3] that the provisions of S. 54 (1) of the Calcutta Improvement Act[4] did not apply to land which was affected by the execution of the scheme and which was included for the purpose of recoupment only. It was further held that

1. Halsbury — Laws of England. Vol. VI. p. 25.
2. Vide notes on page *infra*.
3. A. I. R. 1924 Cal. 85 = 50 Cal. 531 = 75 I. C. 346.
4. Corresponding to S. 45 (1) of the U. P. Town Improvement Act, 1919; S. 45 (1) of the U. P. Town Improvement Act, as extended to the Province of Delhi; S. 45 (1) of the Punjab Town Improvement Act, 1922; and S. 48 (1) of the Nagpur Improvement Trust Act, 1936.

the Court ought to give the material words in S. 54 (1) their natural meaning ; and if their natural meaning was applied to these words, they did not comprise lands which had been included by the Improvement Trust in the scheme not because they were required for the execution of the scheme but because in their opinion they were 'affected by the execution of the scheme', and were included for the purpose of recoupment only, and that the provisions of S. 62 (5) were not inconsistent with that construction.[1]

40. Re-laying out of land comprised in the Scheme.

All the Improvement Trust Acts except the Calcutta Improvement Act, enact that an 'improvement scheme' may provide for the redistribution of sites belonging to owners of property comprised in the scheme. That is what in fact is known in England as 'systematic pooling of ownership without public ownership'. It is an admitted fact that if we are to plan to the best purpose without wholesale acquisition, some form of pooling seems essential in order that large areas of land may be dealt with as units thus rendering possible the allocation of each part to the most useful purpose. Framing of an improvement scheme comprising acquisition of a large area by the Trust is one system of pooling. Voluntary pooling might be practicable here and there but would not provide a general solution. There would surely be many recalcitrant owners; there would be no assurance that the pooling would be for suitable areas even where it did take place and difficulties of management would almost certainly arise. We are left, therefore, with compulsory pooling unless wholesale acquisition is to be resorted to.

1. S. 62 (5) of the Calcutta Improvement Act, 1911, reads as follows:—

"When any public street or square vested in the Board, or any part thereof, is permanently closed under sub-section (1), the Board may sell, or lease so much of the same as is no longer required." Cf. S. 48 (5) of the U. P. Town-Improvement Act, 1919; S. 48 (5) of the U. P. Town Improvement Act, 1919, as extended to the Province of Delhi; S. 48 (1) (e) of the Punjab Town Improvement Act, 1922; S. 51 (5) Nagpur Improvement Trust Act, 1936.

and that is provided for by this provision of law. The Trust would map out areas for which ownership should be pooled. Each owner would have a share in the pool equivalent to the value of his property, the value being independently determined where not agreed. Gibbon has observed :[1]

"This is the compulsory pooling by the Local Authority of areas of land divided into plots too inconvenient, for good redevelopment, and, after its planning, the redivision of the land among the owners in proportion to their several interests. Years ago planners used to praise a measure of this kind which had been adopted in Frankfort-on-Maine (Germany) and known as Lex Adickes, after the energetic Burgomaster of the city. The law was intended for areas badly needing redevelopment which could not be satisfactorily effected so long as the separate ownership continued as they were, which was very much the case in the centre of Frankfort.

The law was found to be too cumbrous and did not prove so useful as expected at Frankfort or elsewhere, either in its orginal form or as later modified in order to ease difficulties. In our own Act of 1932[2] much simpler way is adopted for these cases, that of enabling Local Authorities to acquire the land. In any event any measure of this kind is not more than a plaster, though it can be a useful plaster. It is intended for exceptional cases whereas some measure is needed for the general difficulties arisisng from the multiplicity of separate ownership".

The Trust Acts, however, do not provide for a "redistribution scheme" corresponding to one contained in Section 42 of the Ceylon Ordinance, No. 19 of 1915[3] from which source this provision in those Acts seems to have been derived. It

1. 'Problems of Town and Country Planning', p. 35.
2. Town and Country Planning Act, 1932.
3. An Ordinance to amend the Laws relating to the Housing of the People and to provide for the Improvement of Towns. The Ordinance is cited as "The Housing and Town Improvement Ordinance, No. 19 of 1915." The references are to the Ordinance as amended up to 1938.

will be of some interest to know how the scheme works under that Ordinance. Section 42 of the Ordinance reads as follows :—

Redistribution scheme

"42.—(1) In any case in which any Board of Improvement Commissioners or any local authority shall be of opinion that in connection with improvement scheme it is desirable to make arrangements for a redistribution of sites, it may frame a scheme (herein-after called a "redistribution scheme") for the said purpose.

(2) A redistribution scheme shall, so far as practicable, and subject to the requirements of special cases, be based upon the following principles :—

(*a*) the amalgamation for the purpose of the redistribution of all sites, whether belonging to private owners or the Crown, together with all roads, streets, or other open spaces dedicated to public use or customarily used by the public ;

(*b*) the allotment of an equivalent area in respect of such roads, streets, and open spaces, together with such additional area as may be necessary for the purpose of forming roads, streets, and open spaces for the service of the redistributed sites ;

(*c*) the assignment to each site owner of a site equivalent or proportionate in extent and value, or both combined, to his original site ;

(*d*) the preservation to each site owner of such special advantages in the way of position, frontage, or otherwise as were attached to his original site ;

(*e*) the concentration of all sites belonging to the same owner into a single site.

(3) The owner of any site which by virtue of the smallness of its extent would under the scheme be rendered useless as a building site may call upon the authority framing the scheme to acquire such site.

(4) A redistribution scheme may provide—

(*a*) for the demolition of any building whose continued existence would be inconsistent with the scheme ;

(*b*) for the payments of compensation in respect of such demolition, or alternatively for the advance to the owner, upon such terms and conditions as to interest and sinking fund and otherwise as may be prescribed in the scheme, of such sum as may be necessary to assist him to erect another building upon the site defined as belonging to him under the scheme, and if he shall so require, a further sum not exceeding one year's rental of the demolished building ;

(*c*) for the extinction of any existing servitude and the provision of any new servitude necessary for the enjoyment of any site assigned to any owner under the scheme ;

(*d*) for the payment of compensation to any individual owner for any special disadvantage in the site assigned to him under the scheme ;

(*e*) for the payment of an equivalent by any individual owner in respect of any special advantage in the site assigned to him under the scheme, and for the disposal of the sum so paid :

(*f*) for the acquisition of any site or part of a site the acquisition of which would facilitate the making or the operation of the scheme.

5. All sums advanced under paragraph (b) of the last preceding sub-section shall be recoverable in the same manner and by the same process as a rate, in such number of annual instalments as may be specially provided in the scheme.

6. If in the course of any proceedings for the purpose of the preparation, sanction, or execution of any scheme under this section any question arises in respect of the title to any land or building affected by the scheme, or any rights thereto or any interests therein between or among two or more persons, or if any other question arises which in the opinion of the

Chairman it is expedient to refer for judicial determination, the Chairman, if he is unable to adjust such question by agreement, may refer it for determination to the District Court, and such question shall thereupon be determined by the District Court without the assistance of assessors, but otherwise in the same manner as a similar question arising in a reference to the District Court under the Land Acquisition Ordinance, and all the provisions of that Ordinance relating to the determination on such a reference shall, with the necessary modifications, apply to the determination of the question so referred.

7. Upon any scheme under this section being sanctioned by the Governor in Executive Council or upon any date specified in the scheme in that behalf, the various sites respectively assigned to the various owners under such scheme in lieu of their original sites shall vest in such owners in the same shares and to the extent of the same interests as the original sites, and all the right, title, and interests of such owners in the original sites shall be extinguished, and the sites assigned to such owners, together with all buildings erected or to be erected thereon, shall be subject to the same encumbrances, charges, trusts, *fideicommissa*, and all other restrictions on alienation or liabilities (other than servitudes extinguished under the scheme) as the original sites.

8. It shall be the duty of the authority framing the scheme to issue to all owners of the sites to whom sites shall have been assigned under the scheme in lieu of their original sites, a certificate under the seal of the authority with two plans attached certifying that the assigned site shown in one of the plans has been assigned to the owner thereof under the scheme in lieu of the original site belonging to such owner as shown in the other plan, and every certificate so issued shall be a sufficient document of title, and in all legal proceedings such a certificate purporting to be so sealed shall be presumed to be genuine until the contrary is shown."

41. Closure or demolition of dwellings or portions of dwellings unfit for human habitation.

Again, the U. P. Act, the Nagpur Improvement Trust Act and the U.P. Act as extended to Delhi provide for the closure or demolition of dwellings or portions of dwellings unfit for human habitation in any scheme. This provision is also based on a similar provision in the Ceylon Ordinance. The Punjab Act also provides for the demolition of buildings or portions of buildings that are unfit for the purpose for which they are intended and that obstruct light or air or project beyond the building line.

What should be the standard for declaring a dwelling to be unfit for human habitation? Section 98 (1) of the Ceylon Ordinance prescribes that 'any room which does not comply with rule 3 of the Schedule (to the Ordinance) shall for the purposes of the Ordinance be deemed to be unfit for human habitation. Rule 3 of the the schedule is to the following effect :—

"Every habitable room in a domestic building must comply with the following conditions:—

(a) it must have an average height of at least 10 ft. and shall in no place be less than 7 feet in height;

(b) it must have a clear superficial area of not less than 120 square feet;

(c) at least one side must be an external wall abutting on the open air;

(d) it must have opening either directly or through an open verandah into an external space, either windows, or doors and windows having an aggregate opening of not less than one-seventh of the superficial floor area of the room.

Provided that where there are both doors and windows the aggregate opening of the windows shall not be less than one fifteenth of such area:

An "open verandah" for the purpose of this rule means a verandah whose exterior face is not obstructed to the extent of more than one-third at any point in its length.

(e) every window necessary for the purpose of compliance with, paragraph (d) hereof must open on to a standard light plane

and the whole space above such plane must be open to the sky and free from any obstruction other than eaves or sunshades projecting to an extent of not more than one and a half feet from the face of the building, or such further or other architectural embellishments and amenities as may be authorized by local by-laws, or in the absence of such by-laws, as may be allowed by the Chairman.

A "standard light plane" for the purpose of this rule means a plane drawn upwards and outwards from the exterior face of the building at the floor level of the room at an angle of $63\frac{1}{2}^{0}$ to the horizontal, and not impinging on any building, wall, or other obstruction.

In any case in which there is any obstruction other than an obstruction authorised under the last preceding paragraph over any plane so drawn, the plane may be drawn from the line of intersection of the plane of the floor level of the room and the perpendicular plane of the extreme edge of the obstruction".

For the purposes of this Ordinance, "window" includes an opening for ventilation which is so placed as to admit both light and air without obstruction.

In England, according to the views of the Ministry of Health, a fit house should be (1) free from serious dampness ; (2) satisfactorily lighted and ventilated ; (3) properly drained and provided with adequate sanitary conveniences and with a sink and suitable arrangements for disposing of slop water ; (4) in good general repair ; and should have (5) a satisfactory water supply, (6) adequate washing accommodation ; (7) adequate facilities for preparing and cooking food ; and (8) a well ventilated store for food.[2]

The conditions in England and Wales are however different from those in India though the general principles governing the matter in discussion are the same. In *Estate & Trust Agencies Ltd.* v. *Singapur Improvement Trust*[3] it has been held that among the matters which generally render a

1. S. 2, Ordinance No. 13 of 1931.
2. See 'Manual of Unfit Houses and Unhealthy areas' Vol. I, pt. 2. para I, Chapter 5.
3. A. I. R. 1937 P. C. 265.

home unfit for human habitation are a structure which is unsafe, verminous condition of the materials, a pertiferous atmosphere, a state of things dangerous to health ; or such a rotten or decayed condition of the building that rebuilding will be cheaper than extensive repairs.

No standard of fitness for human occupation of any room or house is prescribed by any of the Improvement Trust Acts in India or by any of the corresponding corporation or Municipal Acts. Each authority, therefore, will have to draw up regulations for its guidance for determining factors for fitness of buildings for human habitation on the lines indicated above. Compliance or not with the local building bye-laws will help a good deal in determining whether a building is fit for human occupation or not.

'Closing order' under the Ceylon Ordinance

No doubt an 'improvement scheme' under the U. P. Town Improvement Act or under any of the other three Acts referred to above may provide for the closure or demolition of dwellings or portions of dwellings unfit for human habitation, but there is no provision in these Acts corresponding to a 'closing order' or a 'demolition order' under the Ceylon Ordinance. Under that Ordinance, if on the representation of the Health Officer of the local authority or other information given, any dwelling house used for human habitation appears to the Chairman to be unfit for human habitation, it is his duty to apply to the Police Magistrate to make a mandatory order prohibiting the use for human habitation of such dwelling house until such dwelling house is rendered fit for that purpose ; and the Police Magistrate, upon serving a notice, upon the owner of such dwelling house, has power to make such order accordingly. Where a closing order has been made, the Chairman is to affix in a conspicuous place in or on the dwelling house a notice calling upon one or more tenants occupying such dwelling house to quit the premises on or before the expiration of the calendar month next succeeding the date of the notice. A 'closing order' becomes operative, notwithstanding any appeal that may be entered against it, from the expiration

of the period fixed by such notice or if the premises in question are earlier vacated, from the date when they are so vacated, or if the premises are vacant at the date when the order is made, from the date of the order. If the Chairman is satisfied that the dwelling house in respect of which any closing order has been made is or has been rendered fit for human habitation, he may by certificate under his hand authorize such dwelling-house to be used for human habitation. If on the application of any owner of a dwelling house the Chairman refuses to grant such a certificate, the owner may apply to the Police Magistrate to determine the 'closing order'. Where an appeal is made against a 'closing order', and such appeal is dismissed or is abandoned, the appellant is to be liable to a fine not exceeding twenty rupees a day during the non-compliance with the order unless he satisfies the court before which proceedings are taken for imposing the fine that there was substantial ground for the appeal, and that the appeal was not brought merely for the purpose of delay; and where the appeal is heard the court of appeal may on dismissing the appeal, impose the fine as if it were the court, before which the summons was returnable.[1]

The Ordinance also prescribes that where a 'closing order' is made under the above provisions, the Police Magistrate, if he is satisfied that the dwelling house in respect of which the order is made cannot be rendered fit for human habitation without the removal, alteration or demolition in whole or in part of any partition, compartment, or other structure or erection, or for the execution of such alterations or structural operations as he may specify, may in the closing order direct the owner to carry into effect all or any of the following things:

(*a*) the removal, alteration, or demolition, of the whole or part of any partition, compartment, or other structure or erection complained of;

(*b*) the execution of such alterations or structural operations as may be so specified.[2]

1. S. 76, Ceylon Ordinance, No. 19 of 1915.
2. *Ibid*, S. 77.

The Ordinance, however, lays down that a closing order made in respect of any dwelling-house shall not prevent such dwelling house being used for purposes other than those of human habitation, provided such use is authorised in writing by the Chairman or the Police Magistrate.[1]

As regards marking of closed premises, the Ordinance provides that where a closing order has been made in pursuance of the provisions laid down above, the Chairman of the local authority may cause to be marked upon the door of the dwelling house in respect of which such closing order is made, in a conspicuous manner in English, Sinhalese, or Tamil such words or letters as shall best indicate to the persons in the neighbourhood that such a dwelling house is unfit for human habitation and no person shall remove or obscure any words or letters so marked so long as the closing order may remain in force.[2]

Order for demolition

The Ordinance also prescribes that subject to the power to use the premises for other purposes referred to above, where a closing order in respect of any dwelling house has remained operative for a period of three months, the Chairman may take into consideration the question of the demolition of the dwelling house and if he is satisfied :—

(*a*) that the dwelling house has not been rendered fit for human habitation, and that the necessary steps are not being taken with all due diligence to render it so fit, or

(*b*) that the continuance of any building being or being part of the dwelling house is a nuisance or dangerous or injurious to the health of the public or of the inhabitants of the neighbouring dwelling houses,

he may apply to the Police Magistrate to make a mandatory order authorising the Chairman to demolish the

1. S. 78, Ceylon Ordinance, No. 19 of 1915.
2. *Ibid.*, S. 79.

building and the Police Magistrate on serving a notice on the owner of the building, may, if he is satisfied to the same effect, make order accordingly.

If any owner undertakes to execute forthwith the works necessary to render the dwelling house fit for human habitation and the Police Magistrate considers that it can be so rendered fit for human habitation, the Police Magistrate may if he thinks fit postpone the operation of the order for such time not exceeding six months as he thinks sufficient for the purposes of giving the owner an opportunity of executing the necessary work.

Offences

To enforce these provisions of law, there is a penal section in the Ordinance. According to it, any person who while a closing order is operative in respect of any dwelling house lets or leases for the purposes of human habitation such dwelling house, or allows such dwelling house to be used for human habitation, is to be liable on summary conviction to a fine not exceeding Rs. 50/- for each day or part of a day on which such dwelling house is inhabited. Similarly, any person who while such order is operative removes or obscures any words or letters marked upon any door under section 79 referred to above shall be liable on summary conviction to a fine not exceeding Rs. 100/-; and in the event of a repetition of the offence to imprisonment for a period not exceeding 6 months. Any person inhabiting a dwelling house in respect of which a closing order has been made who, after expiration of the time fixed in the notice referred to in section 76 (2) continues to inhabit such dwelling house and any person who after a dwelling house has been vacated under a closing order or such closing order continues operative shall inhabit such dwelling house, is guilty of an offence and liable to a fine of Rs. 5/- for each day or part of a day on which the offence is committed or continues.

1. S. 80, Ceylon Ordinance, No. 19 of 1915.
2. *Ibid*, S. 81.

There is no specific provision in the U. P. Town Improvement Act or in any other Town Improvement Act corresponding to a "closing order" or a "demolition order" under the Ceylon Ordinance referred to above. But action on the same lines as laid down in the Ceylon Ordinance can be taken under these Acts also for the closure or demolition of insanitary dwellings. For instance, a general improvement scheme under section 25 of the U. P. Act, read with clause (d) of section 23 of that Act, may provide for the closure or demolition of any insanitary buildings, and the same procedure as laid down in sections 74 to 78 of the Ceylon Ordinance with the necessary modifications, may be followed under this Act also. Under S. 78 of that Act a notice can be served on the owner or occupier of such building in the manner laid down in the Ordinance, and it can be enforced under section 79 of that Act which is the penal section. Sections 80 to 87 of the same give the Trust powers to execute works on failure to comply with a notice. There are corresponding provisions in the U. P. Act as extended to the Province of Delhi and in the Nagpur Improvement Trust Act also[1]. Clause (iv) of section 28 (2) of the Punjab Town Improvement Act, 1922, is more comprehensive in asmuchas it provides that an improvement scheme under that Act may provide for the demolition of buildings or portions of buildings that are *unfit for the purpose for which they are intended and that obstruct light or air or project beyond the building line.* In this Act also there is no provision for any kind of 'demolition order' corresponding to the provision in the Ordinance to that effect but if demolition of any building is provided in a scheme framed under this Act, it can be enforced under sections 79 to 88 of the Act.

1. Ss. 23 (d), 25, 78 to 87 of the U. P. Town Improvement Act, VIII of 1919, as extended to the Province of Delhi; Ss. 26 (e), 28, 95, 96, 97 to 99 of the Nagpur Improvement Trust Act, 1936. See also S. 116 of the Punjab Municipal Act, 1911; S. 278, U. P. Municipalities Act, 1916; and S. 122 of the C. P. Municipalities Act, 1922 for powers of the local authorities constituted under those Acts to declare buildings unfit for human habitation.

42. Demolition of obstructive buildings or portions of buildings.

The U. P. Act, the U. P. Act as extended to Delhi, the Punjab Act and the C. P. Act also provide for the demolition of obstructive buildings or portions of buildings in any improvement scheme.[1] This provision has also been taken from the Ceylon Ordinance, of course, without the corresponding sections of that Ordinance prescribing the procedure of dealing with such buildings. S. 63 of the Ordinance prescribes that 'if the Health Officer of any local authority finds that any building or any part of any building within the administrative limits of the authority, whether in itself unfit for human habitation or not is so situate by reason of its proximity to or contact with any other building or buildings that it causes one of the following effects, that is to say—

(*a*) it stops or impedes ventilation, or otherwise makes or conduces to make such other building or buildings or any part of such buildings to be in a condition unfit for human habitation or dangerous or injurious to health; or

(*b*) it prevents proper measures from being carried into effect for remedying any nuisance injurious to health or other evils complained of in respect of such buildings,

in any such case the Health Officer shall represent to the local authority the particulars relating to such first-mentioned building stating that in his opinion it is expedient that the obstructive building or any part thereof should be demolished. The Ordinance also provides that any four or more inhabitant householders may make to the local authority a representation as respects any building to the like effect as that of the Health Officer.[2] The local authority on receiving

1. S. 23, clause (*e*) U.P. Town Improvement Act, 1919; S. 23, clause (*e*) U.P. Town Improvement Act, 1919 as extended to Delhi; S. 28 (2) clause (*iv*) Punjab Town Improvement Act, 1922; S. 26, clause (*f*) Nagpur Improvement Trust Act, 1936.

2. S. 64, Ceylon Ordinance, No. 19 of 1915.

any such representation either from the Health Officer or from the inhabitant householders shall

(*a*) cause a report to be made to it respecting the circumstances of the building and the cost of demolishing the building or part thereof and acquiring the land ; and

(*b*) on receiving such report is to take into consideration the representation and the report ; and

(*c*) if it decides to proceed, shall cause a copy of both the representation and the report to be given to the owners of the land on which the obstructive building stands, with notice of the time and place appointed for the consideration thereof. Every such owner is at liberty to attend before the Chairman of the local authority at the time and place aforesaid and state his objections, and after hearing the report of the Chairman upon such objections, the local authority is to make an order either allowing the objections or directing that such obstructive building or part thereof shall be demolished. Any owner aggrieved by any such order may appeal to the Tribunal of Appeal. [1]

Where an order is made under the above provisions for the demolition of an obstructive building or part of an obstructive building, and either no appeal is made against the order or an appeal is made and either fails or is abandoned, the authority making the order may acquire the land on which the obstructive building or the part in question is erected.[2] The owner concerned may, within one month after notice of the proposed acquisition is served upon him, declare that he desires to retain the site of the said building or the said part thereof, and undertake either to demolish it or to permit the authority proposing to acquire the land to demolish it, and in any such case the owner shall retain the site and shall receive

1. S. 65, Ceylon Ordinance, No. 19 of 1915.
2. S. 66, Ceylon Ordinance, No. 19 of 1915.

compensation from the authority for the demolition of the building or the part of the building in question.[1]

The Ordinance makes it clear that it shall not be competent for the owner of any building to insist on his entire holding being taken where part only of the building is proposed to be taken as obstructive, and where such part proposed to be taken can in the opinion of the court or tribunal determining the amount of compensation, be severed from the remainder of the building without material detriment thereto. This is subject to the proviso that compensation may always be awarded in respect of the severance of the part so proposed to be taken, in addition to the value of that part.[2]

TYPES OF SCHEMES

43. General improvement schemes

A 'general improvement scheme' is for the improvement and planning of any area declared to be insanitary. Under the Calcutta Act, whenever it appears to the Board, whether upon an official representation made under section 37 of the Act or without such a representation, (*a*) that any buildings in any area which are used, or are intended or are likely to be used, as dwelling places, are unfit for human habitation, or (*b*) that danger to the health of the inhabitants of buildings in any area or in any neighbouring buildings, is caused by (*i*) the narrowness, closeness and bad arrangements and condition of streets or buildings or groups of buildings in such area, or (*ii*) the want of light, air, ventilation or proper conveniences in such area or (*iii*) any other sanitary defects in such area, and that the most satisfactory method of dealing with the evils connected with such buildings and the sanitary defects in such buildings and the sanitary defects in such area is a general improvement scheme for the re-arrangement and re-construc-

1. Ceylon Ordinance, No. 19 of 1915, S. 67.

2. *Ibid*, S. 68. Under the Improvement Trust Acts referred to above, a part of the house cannot be acquired if the owner desires that the whole of the house be acquired. On the contrary, for the purpose of those Acts, land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house is to be deemed to be part of the house.

tion of the streets and buildings, or some of them, within such area, the Board may pass a resolution to the effect that such area is an unhealthy area, and that a general improvement scheme ought to be framed in respect of such area, and may then proceed to frame such a scheme.[1] The matters which are to be considered when framing improvement schemes and which must be provided for or may be provided for in any such scheme, have already been noted[2] and may be referred to.

There is a similar provision for the framing of a general improvement scheme in the U.P. Act,[3] in the said Act as extended to Delhi,[4] in the Punjab Act,[5] in the C.P. Act,[6] and also in the Ceylon Ordinance.[7]

It may be observed that the relevant section in each Act has been so worded that it is possible for the Trust to avoid general demolition, and to proceed piecemeal by removing or re-constructing buildings unfit for human habitation or which obstruct the light and ventilation of the area. No hard and fast rule can be suggested as to what form the scheme should take. This will depend on the particular features of the area concerned.

44. Re-building schemes

A 're-building scheme' is designed to provide for the re-planning and re-building of houses in insanitary areas with the voluntary co-operation of the inhabitants. To this end it provides that assistance may be given to owners to enable them to re-build their houses in accordance with the scheme. Section 26 (1) of the U. P. Act provides that when it appears to the Trust that any area is an insanitary area within the meaning of the preceding section and that, regard being had to the

1. S. 36, Calcutta Improvement Act, 1911.
2. Sections, 40, 41, and 42, Calcutta Improvement Act, 1911. See notes on pages 139 & 140.
3. S. 25 U.P. Town Improvement Act, 1919.
4. S. 25 U.P. Town Improvement Act, 1919, as extended to Delhi.
5. S. 22 (1), Punjab Town Improvement Act, 1922.
6. S. 28, Nagpur Improvement Trust Act, 1936.
7. S. 41, Ceylon Ordinance, No. 19 of 1915.

comparative value of the buildings in such area and of the sites on which they are erected, the most satisfactory method of dealing with the area or any part thereof is a re-building scheme, it shall frame a scheme in accordance with the provisions of this section. Sub-section (2) of the same further states that a re-building scheme may provide for —

(*a*) the reservation of streets, back lanes, and open spaces and the enlargement of existing streets, back lanes, and open spaces to such an extent as may be necessary for the purposes of the scheme ;

(*b*) the re-laying out of the sites of the area upon such streets, back lanes, or open spaces so reserved or enlarged ;

(*c*) the payment of compensation in respect of any such reservation or enlargement, and the construction of the streets, back lanes, and open spaces so reserved or enlarged ;

(*d*) the demolition of the existing buildings and their appurtenances by the owners, or by the Trust in default of the owners, and the erection of buildings in accordance with the scheme by the said owners or by the Trust in default of the owners upon the sites as defined under the scheme ;

(*e*) the advance to the owners, upon such terms and conditions as to interest and sinking fund and otherwise as may be prescribed under the scheme, of such sums as may be necessary to assist them to erect new buildings in accordance with the scheme ;

(*f*) the acquisition by the Trust of any site or building comprised in the area included in the scheme.

A scheme of this description if sympathetically worked out is likely to be very popular and may be easily carried out by co-operation between the inhabitants and the Improvement Trust.

The same provision exists in the U.P. Act as extended to Delhi[1] and in the C.P. Act.[2] There is a similar provision in the Punjab Act.[3] The Calcutta Act does not specifically refer to any re-building scheme as such but most of the matters that can be provided for in a re-building scheme under the U.P. Act, can be provided for in an improvement scheme under the Calcutta Act under sections 41 and 42 of that Act.

45. Re-housing schemes

A 're-housing scheme' provides for the construction of houses for persons displaced by the execution of any improvement scheme. It is essential that schemes of this nature should proceed *pari passu* with any demolition scheme. The Calcutta Act empowers the Board to frame schemes for the construction, maintenance and management of such and so many dwellings and shops as they may consider ought to be provided for persons of the poorer and working classes who (*a*) are displaced by the execution of any improvement scheme sanctioned under this Act, or (*b*) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the Provincial Government for sanction, under the Act. Every re-housing scheme is to be submitted to the Provincial Government who may either sanction it, with or without modification, or refuse to sanction it. The Act, however, specifically prescribes that the Board shall not themselves construct dwellings or shops under a re-housing scheme unless they are satisfied, after due inquiry, that no other person is willing and able to construct them and is prepared to construct, maintain and manage them under the control of the Board.[4]

Under the U. P. Act[5] and the said Act as extended to Delhi[6] a Trust may frame a re-housing scheme of the same description and under similar circumstances as under the

1. S. 26, U. P. Town Improvement Act, 1919, as extended to Delhi.
2. S. 29, Nagpur Improvement Trust Act, 1936.
3. S. 22 (2), Punjab Town Improvement Act, 1922.
4. S. 52, Calcutta Improvement Act, 1911.
5. S. 27, U. P. Town Improvement Act, 1919.
6. S. 27, U. P. Town Improvement Act, 1919 as extended to Delhi.

Calcutta Act, but unlike the latter Act it is not necessary for the Trust under the former Acts to satisfy themselves first, before constructing dwellings and shops, that the same cannot be done through any private agency. The C. P. Act follows the U. P. Act in this respect.[1] The Punjab Act also follows more or less the U. P. Act,[2] and in addition it provides that 'any resident house-owner who is likely to be displaced by the execution of any scheme under the Act, may apply to the Trust to be re-housed, and no such scheme shall be put into execution until a re-housing scheme as provided for in the Act for the re-housing of such resident houseowners as may apply under this provision has been completed.' The demolition of a portion of a dwelling house which renders the remaining portion uninhabitable is deemed to be displacement of the person or persons residing in the said dwelling house.[3] The Ceylon Ordinance follows the Calcutta Act.[4]

46 Street-schemes.

A 'street-scheme' provides for the widening and improving of existing streets, and the acquisition of frontage sites. In the case of Calcutta, whenever the Board are of opinion that for the purpose of—(a) providing building-sites, or (b) remedying defective ventilation, or (c) creating new, or improving existing, means of communication and facilities for traffic, or (d) affording better facilities for conservancy, it is expedient to lay out new streets or to alter existing streets (including bridges, causeways and culverts), the Board may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as they may think fit.[5] The Act also provides that no street laid out or altered by the Board shall be of less width than — (a) forty feet, if the street be intended for carriage traffic, or (b) twenty feet, if the street be intended for foot traffic only. This is subject to

1. S. 30, Nagpur Improvement Trust Act, 1936.
2. S. 26, Punjab Town Improvement Act, 1922.
3. *Ibid*, S 27.
4. S. 45, Ceylon Ordinance, No. 19 of 1915.
5. S. 39, Calcutta Improvement Act, 1911.

the proviso that (i) the width of an existing street need not be increased to the minimum required as laid down above, if the Board consider it impracticable to do so ; and (ii) nothing in the above provisions shall be deemed to prevent the Board from laying out service passages for sanitary purposes of any width less than twenty feet.[1] Sections 41 and 42 of the Act prescribe what matters may be provided for in such a scheme.

A 'street-scheme' under the U. P. Act, under the said Act as extended to Delhi and under the C. P. Act.[2] is of the same description as under the Calcutta Act. Such a scheme under these Acts may within the limits of the area comprised in the scheme provide for —

(a) the acquisition of any land which will, in the opinion of the Trust, be necessary for its execution ;

(b) the re-laying out of all or any of the lands so acquired including the construction and reconstruction of buildings by the Trust or by any other person and the laying out, construction and alteration of streets and thoroughfares ;

(c) the draining, water-supply, and lighting of streets and thoroughfares so framed or altered ;

(d) the raising, lowering or reclamation of any land vested in or to be acquired by, the Trust for the purposes of the scheme ;

(e) the formation of open spaces for the better ventilation of the area comprised in the scheme ;

(f) the acquisition of any land adjoining any street, thoroughfare, or open space to be formed under the scheme.[3]

1. Calcutta Improvement Act, 1911, S. 53.
2. S. 28 (1), U. P. Town Improvement Act, 1919 ; S. 28 (1) U P Town Improvement Act, 1919, as extended to Delhi ; S. 31 (1), Nagpur Improvement Trust Act, 1936.
3. S. 28 (2), U. P. Town Improvement Act, 1919 ; S 28 (2) U. P. Town Improvement Act, 1919, as extended to Delhi ; S. 31 (2), Nagpur Improvement Trust Act, 1936.

Under the Punjab Act also the Trust may for the same purposes as in the other Acts referred to above, pass a resolution to frame a street scheme, and shall then proceed to frame such a scheme which shall prescribe improved alignment for streets, thoroughfares and open spaces for such local area or part as the Trust may deem fit.[1]

Projected public street scheme under the Calcutta Act.

In certain cases it may be necessary to provide for the widening of any street by altering the existing line to an improved line to be prescribed by the Board, but it may not be considered expedient immediately to acquire the properties lying within the proposed improved line. The Board is empowered in such cases to frame a 'projected public street' scheme by making plans in regard to any area within the Calcutta Municipality or in the neighbourhood of the said Municipality, of proposed public streets showing the direction of such streets, the streets alignment and building line (if any) on each side of them, their intended width and such other details as may appear desirable. When such a plan has been prepared, the Board is to give a notice stating (a) the fact that such plan has been made, (b) particulars of the land (shown in such plan) through which the proposed public street shall pass, (c) the place at which the said plan and particulars may be seen at reasonable hours, and (d) the period (which shall be not less than sixty days) within which objections to the said plan may be submitted to the Board. The notice is to be published weekly for two consecutive weeks in the *Calcutta Gazette* and in local newspapers, and in such other manner as the Board may direct, and a copy of it is to be forwarded to any person whose name appears in the Municipal Assessment-book as being primarily liable to pay the owner's share of the consolidated rate, or the rate on the annual value of holdings, as the case may be, in respect of any land included within the proposed public street. A copy of the notice and of the plan to which it relates is also to be forwarded to the Chairman of the Corporation and, if any

1. S. 23 (1), Punjab Town Improvement Act, 1922.

area in the neighbourhood of the Calcutta Municipality is included in such plan, to the Chairman of the local authority administering any portion of such area. Any person can get a copy of the said notice and plan on payment of the prescribed fee.

The next step is to consider by the Board on or after a date (not being less than sixty days from the date of the first publication of the notice) to be fixed by it in this behalf, (*a*) all objections in writing received from any person affected by the proposed public street contemplated by such plan, and (*b*) any representation in regard to such street made to the Board by the corporation or the aforesaid local authority. Thereupon the Board may either withdraw the plan or apply to the Provincial Government for sanction thereto with such modifications (if any) as the Board may consider necessary. While applying for sanction, the Board is to forward to the Provincial Government a full statement of all objections and representations made to them as referred to above, and the notice of the fact that such a plan of a proposed public street has been submitted to the Provincial Government is to be published for two consecutive weeks in the *Calcutta Gazette* and in local newspapers. The Provincial Government may sanction, either with or without modification, or may refuse to sanction, any plan of a proposed public street, submitted to it, and when a plan is so sanctioned, the fact shall be announced by notification, and the publication of such notification shall be conclusive evidence that the plan has been duly made and sanctioned. The proposed public street to which such notification refers shall then be deemed to be a '*projected public street*', and shall be so deemed until (*a*) such street has been declared, under section 65 or section 66 of the Act, as the case may be, to be a public street, or (*b*) the said notification has been cancelled by another notification. Such cancellation, however, shall not affect the validity of any action taken by the Board in pursuance of the said notification.

Thereafter the legal position will be as follows:

If any person desires to erect, re-erect or add to any wall (exceeding ten feet in height) or building which falls within the street alignment or building line of a projected public street shown in any plan sanctioned by the Provincial Government, he shall submit an application in writing to the Chairman for permission so to do. No such application, however, will be necessary for permission to erect or re-erect, between a building line and the street alignment,—(*a*) a porch or balcony, or, (*b*) along not more than one-third of the frontage an outhouse not exceeding fifteen feet in height. The person concerned also shall not be relieved from the liability to obtain such sanction as it may be necessary to obtain under any law for the time being in force from any local authority. The Chairman cannot refuse an application if the applicant executes an agreement binding himself and his successors in interest to remove, without compensation any wall or building to which that application relates, in the event of the Board (*a*) deciding (at any time after an improvement scheme has been sanctioned under section 48 for an area within which such building or wall is situated) that the said wall or building, or any portion thereof, ought to be removed, and (*b*) calling upon the owner for the time being, by written notice to remove the same within a time (not being less than sixty days from the date of the service of the notice) to be specified in the said notice. If the Chairman does not within thirty days from the receipt of an application aforesaid grant or refuse the permission applied for thereunder, such permission shall be deemed to have been granted.

If the Chairman refuses permission to any person to erect, re-erect or add to any wall or building as aforesaid which falls (*i*) within the street alignment, or (*ii*) between the street alignment and the building line, of a projected public street, the owner of the land on which it was sought to erect, re-erect or add to such wall or building, may call upon the Board, at any time within three months from the date of such refusal either—(*a*) to pay him compensation for any damage sustained

by him in consequence of such refusal, or (*b*) to acquire so much of his land as falls within the street alignment, or between the street alignment and the building line, as the case may be. The Board shall thereupon in case (*a*), make full compensation to the said owner for any damage which he may be found to have sustained in consequence of such refusal, and in case (*b*) forthwith take steps to acquire the said land. In the case of such land as falls within the street alignment only, it is, however, optional with the Board to acquire the same in lieu of paying compensation therefor.

An appeal lies to the Board from any refusal by the Chairman to grant an application under the provisions mentioned above.[1]

Deferred street-scheme under the U.P. Act, the Punjab Act, the C.P. Act and the U.P. Act as extended to Delhi.

In the case of other Trusts, the provision for the framing of a 'deferred street scheme' vests in them powers to provide for the ultimate widening of any street by altering the existing line to an improved line to be prescribed by the Trust within which building or re-building is prohibited, in case in which it is not considered expedient immediately to acquire the properties lying within the proposed improved line. Accordingly, S. 29 (1) (a) of the U. P. Act provides that whenever the Trust is of opinion that it is expedient for any purpose mentioned in Section 28 of the Act (see notes on page 169 to provide for the ultimate widening of any street by altering the existing alignments of such street to improved alignments to be prescribed by the Trust, but that it is not expedient immediately to acquire all or any of the properties lying within the proposed improved alignments, the Trust, if satisfied of the sufficiency of its resources, may pass a resolution to that effect, and shall forthwith proceed to make a scheme to be called a "deferred street scheme" prescribing an alignment on each side of such street. No person then can erect, re-erect, add to or alter any buildihg or wall so as to make the same project beyond the prescribed alignment of the street except with the written permission of the Trust.

1. S. 63, Calcutta Improvement Act, 1911.

The 'deferred street scheme' shall provide for —

(*a*) the acquisition of the whole or any part of any property lying within the prescribed street alignments;

(*b*) the relaying out of all or any such property including the construction and re-construction of buildings by the Trust or by any other person and the formation and alteration of the street;

(*c*) the draining and lighting of the street so formed and altered.

The owner of any property included in a 'deferred street scheme' may at any time after the scheme has been sanctioned by the Provincial Government, give the Trust notice requiring it to acquire such property before the expiration of six months from the date of such notice and the Trust shall acquire such property accordingly. Before proceeding to acquire any property within the limits of the scheme other than property regarding which it has received a notice as referred to above, the Trust shall give six months' notice to the owner of its intention to acquire the property.

It has also been prescribed that upon the scheme being sanctioned by the Provincial Government and notwithstanding anything contained in the Municipalities Act, the Municipal Board shall not have power to prescribe a regular line of the street within the limits of the scheme and any such regular line previously prescribed within such limits, shall cease to be the regular line of the street.[1]

The same provision exists in the U. P. Act as extended to Delhi[2] and in the C. P. Act.[3] Section 23 (2) of the Punjab Town Improvement Act, 1922, similarly provides that whenever it appears to the Trust that for any of the purposes mentioned in sub-section (1) within its local area or part thereof it is expedient to provide for the ultimate widening

1. S. 29, U. P. Town Improvement Act, 1919.
2. S. 29, U. P. Town Improvement Act, 1919, as extended to Delhi.
3. S. 32, Nagpur Improvement Trust Act, 1936.

of any existing street by altering the existing alignments to improved alignments to be prescribed by the Trust, but that it is not expedient immediately to acquire all or any of the properties lying within the proposed improved alignments, the Trust, if satisfied of the sufficiency of its resources, may pass a resolution to that effect, and forthwith proceed to frame a "Deferred Street Scheme" prescribing an alignment on each side of such street. The Act further prescribes that notwithstanding anything contained in the Municipal Act, whenever any street alignment has been prescribed by the Trust in any scheme under this Act with the sanction of the Provincial Government, the Municipal Committee shall not have power to prescribe a regular line for the street within the limits of the scheme, and any such line previously prescribed by the Committee within such limits shall cease to be the regular line or line of the frontage of the street[1].

To give effect to the scheme, the Trust should have power to set back or forward buildings adjacent to the street alignment. S. 30 of the Act therefore states that 'should any building or part of a building project beyond the regular line of a street, either existing or determined on for the future, or beyond the front of the building or either side thereof the Trust may, whenever such building or part has been either entirely or in greater part taken down, or burnt down or has fallen down, by written notice, require such building or part when being re-built to be set back to or towards the said regular line or the front of the adjacent buildings; and the portion of the land added to the street by such setting back or removal shall become part of the street and shall vest in the Trust.' It further states that the Trust may on such terms as it may deem fit require or allow any building to be set forward for the improvement of the line of the street, and when any building is set back or forward in pursuance of a requisition thus made, the Trust shall forthwith make full compensation to the owner of the building

1. S. 29, Punjab Town Improvement Act, 1922.

for any damage or loss that he may sustain. The Act also declares that if the additional land, which will be included in the premises of any person required or allowed to set forward a building, or part thereof, belongs to the Trust, the requisition or permission of the Trust to set forward the building shall be sufficient conveyance to the said owner of the said land, and the terms and conditions of the conveyance shall be set forth in the said requisition or permission.

Under the Act, no person shall, except with the written permission of the Trust, erect, re-erect, add to or alter any building so as to make the same project beyond a street alignment or building line duly prescribed by the Trust.[1]

As regards acquisition, the Act provides that in the locality comprised in a 'Deferred Street Scheme', the owner of property affected by a street alignment duly prescribed by the Trust may, at any time after the scheme has been sanctioned by the Provincial Government, give the Trust notice requiring it to acquire such property before the expiration of six months from the date of such notice, and the Trust shall acquire such property accordingly. In such locality, before proceeding to acquire any property affected by a street alignment duly prescribed by the Trust other than property regarding which it has received a notice referred to above, the Trust shall give six months' notice to the owner of its intention to acquire the property.[2]

47. Street-schemes under the Ceylon Ordinance.

There is an elaborate system of street schemes prescribed under the Ceylon Ordinance[3], and it will be helpful to study its details.

Street Scheme

In respect of street-schemes, S. 47 of the Ordinance provides as follows :—

"47. (1) Whenever any Board of Improvement Commissioners or any local authority is of opinion that for

1. S. 31 (1). Punjab Town Improvement Act, 1922.
2. Ibid, S. 32.
3. No. 19 of 1915.

the purpose of providing building sites, or of remedying the defective ventilation of any part of its administrative limits, or of creating new or increasing the existing means of communication and facilities for traffic between various parts of the said limits, or for improving or extending the amenities of the said limits, it is expedient to form new public streets or thoroughfares, or to alter existing public streets or thoroughfares in any part of the said limits, it may frame a scheme (herein called a "street scheme") for the purpose aforesaid.

(2) A street scheme may within the limits of the area comprised in the scheme provide for —

(a) the acquisition of any land which will, in the opinion of the authority framing the scheme, be necessary for its execution ;

(b) the relaying out of all or any of the lands so acquired, including the construction and reconstruction of buildings, and the laying out, construction and alteration of streets and thoroughfares ;

(c) the draining, water supply, and lighting of streets and thoroughfares so formed or altered ;

(d) the raising, lowering, or reclamation of any land vested in or to be acquired by the authority for the purposes of the scheme ;

(e) the formation of open spaces for the better ventilation of the area comprised in the scheme ;

(f) the acquisition of any land adjoining any street, thoroughfare, or open space to be formed under the scheme.

(3) The owners of any properties fronting on any street, thoroughfare, or open space constructed under a street scheme shall not, unless account shall have been taken of the increased value accruing to such properties under section 84 (a), be entitled to make any use of the frontage of their properties abutting upon the street or open space without the consent of the authority framing the scheme. It shall be a condition of

such consent that the owners shall pay to the authority a sum assessed by the Chairman of the authority equivalent to half the increase in value accruing to such property by the execution of the scheme.

(4) If any owner shall use or cause or permit to be used any such frontage without the said consent, he shall become liable on receiving notice from the Chairman in that behalf to pay to the authority the sum so assessed, and such sum may be recovered in the same manner and by the same process as a rate.

(5) Any person aggrieved by the assessment of any sum under sub-section (4) hereof or by any notice under sub-section (4) hereof may appeal to the Tribunal of Appeal.

Street intersection scheme.

Regarding a 'street intersection scheme', the Ordinance provides :

48. (1) Where in any area already in whole or in part occupied by buildings any local authority or any Board of Improvement Commissioners is of opinion that with a view to afford facilities for the building development of such area it is desirable that such area should be intersected by a new street or new streets, the local authority or the Board of Improvement Commissioners may at the request or with the consent of the owners of not less than two-thirds of the frontages of the proposed new street or streets make a scheme (herein called a "street intersection scheme") for the said purpose.

(2) A street intersection scheme shall be based upon the following principles :—

(a) all land necessary for providing access to the proposed new street from existing streets shall be acquired by the authority framing the scheme;

(b) all other land necessary for the purpose of the proposed new street shall be deemed to be dedicated by the owners for the purpose of the street;

(c) compensation shall be payable in respect of all buildings or income-producing trees situated upon the lands so dedicated which it may be necessary to remove for the purpose of the construction of the street ;

(d) the authority framing the scheme shall defray the cost of the construction of the street :

Provided that the authority may make it a condition of its framing the scheme that a proportion of the said cost shall be borne by the owners of the properties fronting upon the new street, in such proportion as may be determined by the scheme.

(3) Where a street intersection scheme involves unequal contributions by the owners of properties fronting upon the street in respect of land dedicated for the purpose of the street, the scheme may provide for the equalization of such contributions, and for the recovery and payment from and to such owners of such sums as may be necessary to give effect to such equalization.

(4) Where the construction of any street has been carried out under this section, the authority framing the scheme may, by notice published in the Government Gazette and exhibited in any part of such street, declare the same to be a public street, and thereupon the same shall be repairable and maintainable by the local authority to the extent to which any such construction has been carried out.

For widening of streets, the Ordinance provides :

Street widening scheme.

49. (1) In any case in which any Board of Improvement Commissioners or any local authority is satisfied :—

(a) that in regard to any street situated in an area wholly or mainly residential in character, it is desirable to provide for the widening of the street or any part thereof ,

(b) that the line of the existing building frontage on either side of the street is wholly or mainly at

an appreciable distance from the street line on that side of the street ;

(c) that the widening of the street to the extent contemplated could be effected without undue depreciation of the amenities of the residences situated upon such street.

it may frame a scheme for the widening of such street, hereinafter called a " street widening scheme".

(2) A street widening scheme may provide —

(a) for the inclusion within the street of strips of the property situated upon the street or any part thereof to the extent necessary to give effect to the scheme ;

(b) for the clearance of the included strips ;

(c) for the restoration along the new street line at the expense of the authority framing the scheme of all boundary walls, fences or hedges demolished or removed for the purposes of the scheme ;

(d) for the payment of compensation in respect of the demolition of any building or part of a building, or the removal of any income-producing tree on the included strips ;

(e) for the acquisition of any property which shall have been rendered useless as a building site, or which the authority framing the scheme may deem it equitable to acquire by reason of the effect of the scheme ;

(f) for the construction of the street and the payment of the cost thereof by the authority framing the scheme, or of such proportion of such cost as may be agreed upon between such authority and the owners of the properties fronting or abutting on the street.

There is a provision for a ' back lane scheme ' also.

Back lane scheme.

50. (1) Where in any area already in whole or in part occupied or likely to be occupied by buildings any local authority or any Board of Improvement Commissioners is of opinion that back lanes should be provided for the scavenging of such area, it may make a scheme (herein called a "back lane scheme" for the purpose of providing back lanes of a width not less than ten feet and not exceeding twenty feet for such area.

(2) For the purpose of any such scheme the authority framing the scheme shall acquire :—

(a) any land covered with buildings which it is necessary to acquire for the purpose of providing access to any proposed back lane from any existing street or back lane ; and

(b) any other land covered with buildings situated within the lines of the proposed back lanes.

No compensation shall be payable in respect of any other land within the lines of the proposed back lanes, but all such land shall be deemed to be dedicated by the owners for the purpose of the proposed back lanes :

Provided that compensation shall be payable in respect of any income-producing trees growing on or within the said lines which it shall be necessary to remove for the purposes of the scheme.

(3) Where the acquisition of any land within the lines of the proposed back lanes (not being land required for the purpose of providing access from any existing street or back lane), or the setting apart of any land for the purpose of the back lanes, would cause a severance of land belonging to the owner from other land forming part of the same holding, no compensation shall be paid for such severance ; but if any portion of the land so severed shall have been rendered useless as a building site on account of the severance, and if the owner so requires, the authority framing the scheme shall acquire such portion.

(4) The construction of the proposed back lanes shall be undertaken by the authority executing the scheme, and the cost of such construction shall be apportioned by the Chairman of such authority among the several owners of the land served by the said back lanes in such manner as may be determined in the scheme, and such proportionate share due by any owner may be recovered in the same manner and by the same process as a rate.

(5) When any back lane is formed under this Ordinance, the owner of any premises abutting on such back lane or having a right of way thereto shall provide to the satisfaction of the Chairman a means of access and egress to and from his premises to such back lane for scavenging purposes, and if the owner fails to provide the same within a reasonable time, the Chairman or any officer authorised by him in that behalf may enter the premises and do whatever may be necessary to provide the same, and the amount of the expenses so incurred shall be recoverable from the owner in the same manner and by the same process as a rate.

(6) No person shall erect or maintain or permit to be erected or maintained any obstruction in or over any back lane, and the local authority may, where any such obstruction exists, take down and remove the same.

(7) Any back lane formed under this Ordinance after the completion of the first construction thereof shall be maintained and repaired by the local authority.

48. Development Schemes.

A 'development scheme' provides for the regulation by the Trust of areas not yet built over but which are in the course of development or over which the town is likely to expand in the near future. Section 30 of the U. P. Act provides that in regard to any area to which this Act is extended, the Trust may, from time to time, prepare a scheme of proposed public streets with plans showing the directions of such streets, the street alignment and building line on each side of them, their intended width and such other details as

may appear desirable. This is what corresponds to a 'projected public street' scheme under the Calcutta Act. When any such scheme has been sanctioned and notified by the Provincial Government under Section 42 of the Act, the street to which it refers, is to be deemed a projected public street. Thereafter, if any person desires to erect, re-erect, add to, or alter any building or a wall, so as to make the same project beyond the street alignment or building line shown in any plan so adopted, he will have to apply to the Trust for permission to do so. If such permission is refused, and the Trust does not proceed to acquire such land within one year from the date of such refusal, it will have to pay a reasonable compensation to such person for any damage sustained by him in consequence of such refusal. When any building, wall, or part thereof projecting beyond or adjacent to the street alignment or building line shown in any plan adopted as aforesaid, has fallen down, or been burnt down, or taken down, the Chairman may, by written notice, require or permit the same to be set-back or forwarded, as the case may be, to or towards such street alignmment or building line. When any building or wall is thus set-back or forwarded, the Trust will have to make forthwith full compensation to the owner of the building, wall, for any damage that he may sustain thereby. The Act prescribes that if the additional land which will be included in the premises of any person required or permitted in the manner aforesaid to set forward a building, wall, or part thereof belongs to the Trust, a requisition or permission of the Chairman to set forward the building shall be sufficient conveyance to the said owner of the said land ; and the terms and conditions of the conveyance shall be set forth in the said requisition or permission.

The Act also provides that if, when the Chairman requires a building, wall, or part thereof to be setforward, the owner thereof is dissatisfied with any terms and conditions of the conveyance, the Chairman shall, upon the application of the said owner, at any time within 15 days after the said terms and conditions are communicated to him,

refer the case for the determination of the Tribunal, whose decision shall be final.

The Act further states that upon any development scheme referred to above being sanctioned by the Provincial Government and notwithstanding anything contained in the Municipalities Act, the Municipal Board shall not have power to prescribe a regular line of the street even in the limits of the scheme, and any such regular line previously prescribed within such limits shall cease to be the regular line of the street.

The provision of law described above is also very useful though it is purely designed to provide for the future. It is absolutely impossible for the Trust to deal with every area atonce and take up its development forthwith and at the same time, as we know, the evils of wrong building and overcrowding may spring up at any time. The above provision therefore takes power to look ahead and to say that under certain conditions the holders of the property should not be permitted so to misuse it as to cause damage to the community.

It is to be observed that in both cases the compensation to be paid by the Trust for their refusal in one case, to grant permission to any person to erect on his land any building or wall, and in the other case by their compelling the owner to setback his building or wall, is in fact not for any damage that may be sustained in consequence thereof, but for the loss of his land, for in both cases, the effect of the order of the Trust is that the owner is thenceforth prevented from utilizing or making any use of his land which has fallen within the street alignment or building line. It would, therefore, be reasonable for the Trust to pay the market value of so much of the land as its owner is prevented from using.

The same provision exists in the U. P. Act as extended to Delhi[1] and in the C. P. Act.[2] Under the Punjab Act it is

1. S. 30, U. P. Town Improvement Act, 1919, as extended to Delhi.
2. S. 33, Nagpur Improvement Trust Act, 1936.

provided that the Trust may, for the purpose of development of any locality within the municipal limits contained in its local area, prepare a "Development Scheme", and that a 'Development Scheme' may provide for the layout of the locality to be developed, the purposes for which particular portions of such locality are utilized, the prescribed street alignment and the building line on each side of the street proposed in such locality, the drainage of insanitary localities and such other details as may appear desirable.[1]

The powers of the Trust to set back or forward buildings adjacent to the prescribed street alignment have already been referred to above.[2] The Punjab Act further provides that in the locality comprised in a development scheme, if any person desires to erect, re-erect, add to, or alter any building on his land so as to make the same project beyond a street alignment or a building line duly prescribed by the Trust, he shall apply to the Trust for permission to do so, and if the Trust refuses to grant permission to such person according to his application, and does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal.[3]

49. Housing accommodation schemes.

The "housing accommodation scheme" allows the Trust to provide housing accommodation for any class of the inhabitants where it is of opinion that such provision is expedient and in the public interest. The Calcutta Act does not provide for such a scheme. Section 31 of the U. P. Act, however, provides that whenever the Trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants of any area to which the Act is extended, the Trust may

1. S. 24, Punjab Town Improvement Act, 1922.
2. See notes on page 175.
3. S. 31 (2), Punjab Town Improvement Act, 1922.

frame a scheme to be called a "housing accommodation scheme" for the purpose aforesaid. What form the scheme will take will depend on the requirements of each case. The same provision exists in the U. P. Act as extended to Delhi[1] and in the C. P. Act.[2] Under the Punjab Act this provision[3] is subject to a *proviso*, namely, that if the Provincial Government are satisfied that within the Trust area it is necessary to provide housing accommodation for industrial labour, the Provincial Government may by order require the Trust to frame a scheme under this section and to do all things necessary under the Act for executing the scheme so made; and if the Trust fail within such time as may be prescribed to frame a scheme to the satisfaction of the Provincial Government and to execute it, the Provincial Government may either by order require the Municipality to frame and execute a scheme, or themselves frame a scheme and take up steps as are necessary to execute it. In that case all expenses incurred by the Provincial Government or by the Municipality in the exercise of the powers conferred upon them by this section shall, in the first instance, be paid out of the Provincial revenues, but the amount so spent shall be recoverable from the Trust as if it were a debt due to the Provincial Government, and the Provincial Government may attach the rents and other income of the Trust. The provisions of section 72 of the Act are to apply to all moneys so paid, *i. e.*, it shall constitute a charge upon the property of the Trust.

50. Town expansion schemes.

A reference has already been made to the growing up along with our cities and towns, disorderly suburbs, hemmed round by ribbon growths along the main roads. One may find sporadic buildings cropping up in these areas, devoid of

1. S. 31, U. P. Town Improvement Act, 1919, as extended to Delhi.
2. S. 34, Nagpur Improvement Trust Act, 1936.
3. S. 25, Punjab Town Improvement Act, 1922.

even most essential services and without any amenity or public convenience. The Trust may find it difficult for the time being to furnish the precise plans and estimates for the development of such areas, and yet in the public interest it may be absolutely necessary to have control over buildings in such areas. A 'town expansion scheme' is designed to achieve that control.

Section 32 of the U. P. Act prescribes that whenever the Trust is of opinion that it is expedient and for the public advantage to control and provide for the future expansion of a Municipality in any area to which this Act is extended, the Trust may frame a scheme (to be called a 'town expansion scheme'). Such scheme shall show the method in which it is proposed to layout the area to be developed and the purposes for which particular areas are to be utilized. For the purposes of this scheme, full particulars relating to the scheme, and building plans and estimates of the cost of executing it are not required to be furnished but the Trust will be required to supply such details as the Provincial Government may consider necessary. When such scheme has been sanctioned and notified by the Provincial Government under section 42 of the Act, if any person desires to erect, re-erect, add to, or alter any building or wall within the area comprised in the said scheme, he will have to apply to the Trust for permission to do so. If the Trust refuses to grant such permission to any person, and if it does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal.

The section as it stands seems to apply to areas lying outside municipal limits only in view of the words "and provide for the future expansion of a municipality in any area" occurring in sub-section (*1*). In Delhi, however, it was found that there were certain areas which, though lying within the Municipal limits, had not yet become urbanised and were cut off from inhabited areas and that their development could not

be taken up by the Trust all at once, and at the same time it was necessary to have control over building in these areas in advance of the provision of essential services. A 'town expansion scheme' under section 32 of the Act appeared to be most suitable for this purpose. Accordingly, in extending this section of the U. P. Act to Delhi, sub-section 1 (a) was added and certain changes were made in sub-section (1). Sub-section (1) and sub-section 1 (a) of the same as applicable to Delhi read as follows :—

1. "Whenever the Trust is of opinion that it is expedient and for the public advantage to control and provide for the future expansion or development of a Municipality or Notified Area in any area to which this Act is extended, the Trust may frame a scheme to be called a ('town expansion scheme').

1 (a). Such a scheme shall ordinarily be framed in respect of any area wholly without the limits of the Municipality or Notified Area, but may, in special circumstances, and with the previous sanction of the Chief Commissioner, be framed in respect of an area which lies wholly within, or partly within, and partly without, the said limits ; provided that the Chief Commissioner shall, before giving his sanction to any such scheme, satisfy himself that a development scheme under section 30 in respect of the area would not be suitable."

The Punjab Act empowers the Trust, if it is of opinion, that it is expedient and for the public advantage, to promote and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto, within the local area of the Trust to prepare an 'expansion scheme'. Such scheme may provide for the layout of the locality to be developed, the purposes for which particular portions of such locality are to be utilized, to prescribe street alignments and building line on each side of the street proposed in such locality, the drainage of insanitary localities and such other details as may appear desirable.[1] The Act further prescribes[2] that in the locality comprised in an expansion scheme, if any person desires to erect, re-erect,

1. S. 24, Punjab Town Improvement Act, 1922.
2. *Ibid*, S. 31.

add to, or alter, any building on his land so as to make the same project beyond the street alignment or a building line duly prescribed by the Trust he shall apply to the Trust for permission to do so and if the Trust refuses to grant permission to such person according to his application, and does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage or loss sustained by him in consequence of such refusal.

The C. P. Act follows the U. P. Act in this respect.[1] while there is no provision corresponding to it in the Calcutta Act.

51. Procedure to be followed in framing schemes.

As already noted[2], an improvement scheme may be framed by the Trust either of its own accord or on official representation from the local authority concerned or under the directions of the Provincial Government. In framing any improvement scheme, regard shall be had to — (*a*) the nature and the conditions of neighbouring areas and of the town as a whole; (*b*) the several directions in which the expansion of the town appears likely to take place; and (c) the likelihood of improvement scheme being required for other parts of town[3].

Preparation, publication and transmission of notice as to improvement schemes, and supply of documents to applicants

When any improvement scheme has been framed, the Trust shall prepare a notice, stating —

(*a*) the fact that the scheme has been framed,

(*b*) the boundaries of the area comprised in the scheme, and

(*c*) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire and, in

1. S. 35, Nagpur Improvement Trust Act, 1936.
1. See notes on pages 137 to 139.
2. S. 40, Calcutta Improvement Act, 1911; S. 35, U. P. Town Improvement Act, 1919; S. 35, U. P. Town Improvement Act, 1919, as extended to Delhi; S. 35, Punjab Town Improvement Act, 1922; S. 38, Nagpur Improvement Trust Act, 1936.

the case of the Trusts where betterment fee is leviable, of the land in regard to which it is proposed to recover a betterment fee, may be seen at reasonable hours.

The Trust shall—(*a*) cause the said notice to be published weekly for three consecutive weeks in the Government Gazette and in a local newspaper or newspapers (if any) with a statement of the period within which objections will be received, and (*b*) send a copy of the notice to the Chairman of the local authority concerned. (The Punjab Act requires that a copy of the notice would be sent to the Municipal Officer of Health also.)

The Chairman shall cause copies of all documents referred to in clause (*c*) above to be delivered to any applicant on payment of such fee as may be prescribed by rule under the Act[1].

Transmission to Trust of representation by the local authority as to improvement scheme.

The Acts prescribe that the Chairman and in the case of the Punjab, the Medical Officer of Health also, of the local authority concerned to whom a copy of the notice has been sent in pursuance of the provisions stated above, shall, within a period of sixty days from the receipt of the said copy, forward to the Trust any representation which the local authority concerned may think fit to make with regard to the scheme.[2] The local authority concerned will thus have full opportunity to express its views regarding the scheme, and the same will be duly taken into consideration by the Trust before proceeding to give final shape to the scheme.

Notice of propoesd acquisition of land or recovery of betterment fee

The next step to be taken is to serve notices of proposed acquisition of land or recovery of betterment fee. In this respect, all the Acts except the Punjab Act, prescribe that

1. S. 43, Calcutta Improvement Act, 1911; S. 36 U. P. Town Improvement Act, 1919; S. 36 U. P. Town Improvement Act, 1919, as extended to Delhi. S. 36, Punjab Town Improvement Act, 1922; S. 39, Nagpur Improvement Trust Act, 1936.
2. S. 44, Calcutta Act; S. 37, U. P. Act as extended to Delhi; S. 37, Punjab Act; S. 40, C. P. Act.

during the thirty days next following the first day on which any notice is published in the Gazette in respect of any improvement scheme, the Trust shall serve a notice on —

(a) every person whose name appears in the Municipal assessment list as being primarily liable to pay any tax assessed upon the annual value of any building or land which it is proposed to acquire in executing the scheme (or, where betterment fee is leviable, in regard to which they propose to recover a betterment fee) and

(b) the occupier (who need not be named) of each premises or building, entered in the municipal assessment book which the Trust proposes to acquire in executing the scheme. Such notice must—

(a) state that the Trust proposes to acquire such land (or to recover such betterment fee) for the purpose of carrying out an improvement scheme, and

(b) require such person, if he dissents from such acquisition (or from the recovery of such betterment fee) to state his reasons in writing within a period of sixty days from the service of the notice.

Every such notice is to be signed by, or by the order of the Chairman.[1]

The Punjab Act prescribes[2] that 'during the thirty days next following the first day on which a notice is published in respect of any scheme under section 36 of the Act, the Trust shall serve a notice on,—(1) every person whom the Trust has reason to believe after due inquiry to be the owner of any immovable property which it is proposed to acquire in executing the scheme, (2) the occupier (who need not be named) of such premises as the Trust proposes to acquire in executing the scheme. It further prescribes that such notice shall—(a) state that the Trust

1. S. 45, Calcutta Act; S. 38 U. P. Act, S. 38 U. P. Act as extended to Delhi; S. 41 C. P. Act.
2. S. 38, Punjab Town Improvement Act, 1922.

proposes to acquire such property for the purposes of carrying out a scheme under this Act, and (b) require such person, if he objects to such acquisition, to state his reasons in writing within a period of 60 days from the service of the notice, and that such notice shall be signed by or by the order of the Chairman.[1]

Furnishing of information available in Municipal records

As particulars of the persons to whom notices of proposed acquisition of land or recovery of betterment fee are to be gathered from the assessment list of the local authority concerned, the Acts provide that the Chairman of the local authority shall furnish the Chairman of the Trust at his request and on payment of such fees as may be prescribed under the rules, with a copy of, or extracts from, the municipal assessment book or list.[2] Section 39 of the Punjab Act also prescribes that the President of the Municipal Committee shall furnish the Chairman at his request and on payment of such fees as may be prescribed by rule made under section 73 with a copy of such information relating to a locality regarding which the notice has been published under section 36 as is available in the municipal records.

Abandonment of an improvement scheme or application to Provincial Government to sanction it.

After the expiry of the periods respectively prescribed as referred to above, in respect of any improvement scheme, the Trust shall proceed to consider any objection, representation, and statement of dissents received from the persons or authorities concerned, and after hearing all persons making any such objection, representation or dissent, who may desire to be heard, the Trust may either abandon the scheme or apply to the Provincial Government for sanction to the scheme with such modifications, if any, as the Trust may consider necessary. It is usual to appoint a date for hearing such objections and to give a public notice to this effect.[3]

1. S. 38, Punjab Town Improvement Act, 1922.
2. S. 46 Calcutta Act; S. 39 U.P. Act; S. 39, U.P. Act as extended to Delhi; S. 42, C.P. Act.
3. S. 47(1), Calcutta Act; S. 40(1), U.P. Act; S. 40(1), U.P. Act as extended to Delhi; S. 43(1), C.P. Act; S. 40(1), Punjab Act.

Every application to be submitted to the Provincial Government for sanction must be accompanied by —

(a) a description of, and full particulars relating to the scheme, and complete plans and estimates of the cost of executing the same;

(b) a statement of the reasons for any modifications made in the the scheme as originally framed;

(c) a statement of objections (if any) received as referred to above;

(d) any representation received from the local authority concerned in pursuance of the above provisions of law;

(e) a list of the names of all persons (if any) who have dissented from the proposed acquisition of their land or from the proposed recovery of a betterment fee, and a statement of the reasons given for such dissent; and

(f) a statement of the arrangements of the proposed scheme by the Trust for the re-housing of persons (of the poorer and working classes who are likely to be displaced by the execution of the scheme, in the case of Calcutta) and (who are likely to be displaced by the execution of the scheme, for whose rehousing provision is required, in the case of other Trusts).[1]

In addition to this, the C. P. Act also requires that a description of the street, square, park, open space, or other land, or any part thereof, which is the property of, and managed by Government required for the scheme should also be sent along with the application,[2] and that a copy of the application, together with copies of all the documents and statements referred to above shall be forwarded to the Commissioner, Nagpur Division.[3]

1. S. 47 (2), Calcutta Act; S. 40 (2), U. P. Act; S. 40 (2), U. P. Act as extended to Delhi; S. 40 (2), Punjab Act; S. 43 (2) C. P. Act.
2. S. 43 (2), C. P. Act.
3. S. 43 (3), C. P. Act.

When any such application is submitted to the Provincial Government, the Trust is bound to cause notice of the fact to be published for two consecutive weeks in the Government Gazette, and any local newspaper or newspapers. The object presumably is that the public should know when a scheme has been submitted to Government for orders, in order that they may approach Government and make their representations on the subject, if necessary.[1]

It is to be observed that the Trust in submitting an improvement scheme to Government for sanction is to state what arrangements have been made or are proposed for the rehousing of persons likely to be displaced by the execution of the scheme. This implies that the Government will consider whether the arrangements or proposed arrangements are sufficient and satisfactory and if in its opinion they are unsatisfactory, it will not approve of the scheme. This is an important element in a scheme, as without it, it is useless to attempt to remove overcrowding and congestion by merely pulling down the houses that are built too closely together, as in the absence of satisfactory arrangements for alternative sites, the people will be merely driven elsewhere and cause greater overcrowding in the locality to which they remove.

Power of Provincial Government to sanction; reject or return improvement scheme.

The Provincial Government may sanction, either with or without modifications, or may refuse to sanction, any improvement scheme submitted to it in the manner explained above. Except in the case of Calcutta, the Provincial Government may also return the scheme to the Trust for reconsideration. If the scheme returned for reconsideration is modified by the Trust it will have to be republished in the same manner as a new scheme— (a) in every case in which the modification affects the boundaries of the areas comprised in the scheme, or involves acquisition of any land not previously proposed to

1. S. 47 (3), Calcutta Act; S. 40 (3), U. P. Act; S. 40 (3), U. P. Act as extended to Delhi; S. 43 (4), C. P. Act; S. 40 (3), Punjab, Act.

be acquired, and (b) in every other case, unless the modification is in the opinion of the Provincial Government not of sufficient importance to require republication.[1]

Intimation of sanction to an improvement scheme.

Whenever the Provincial Government sanctions an improvement scheme, it shall announce the fact by notification, and except in the case of a 'deferred street scheme', 'development scheme', or 'town expansion scheme,' referred to above, the Trust shall forthwith proceed to execute the same. The Acts prescribe that the publication of a notification by the Provincial Government sanctioning any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.[2] Under the C.P. Act when the Provincial Government sanctions an improvement scheme, it may also order that any street, square, park, open space, or other land, or any part thereof, which is the property of, or managed by Government, shall, subject to such conditions as it may impose, vest in the Trust for the purpose of the scheme.

The Acts declare that whenever the Provincial Government sanctions an improvement scheme and announces this fact by notification, the publication of the said notification is a conclusive evidence that the scheme has been duly framed and sanctioned. This provision is analogous to section 6 (3) of the Land Acquisition Act, 1894, which prescribes that a declaration under that section shall be conclusive evidence that the land is needed for a public purpose or for a company, as the case may be. This has been interpreted to mean that when the publication of such declaration has been proved, it shall also be regarded as proved that the land is needed for a public purpose or for a company, as the case may be, and the Court shall not allow evidence for the purpose of disproving it, *vide* section 4 of the Indian Evidence Act.[3] This, however, does

1. S. 48, Calcutta Act; S. 41, U. P. Act; S. 41, U. P. Act as extended to Delhi; S. 41, Punjab Act; S. 44, C. P. Act.
2. S 49. Calcutta Act; S. 42, U. P. Act; S. 42, U. P. Act as extended to Delhi; S. 42, Punjab Act; S. 45, C. P. Act.
3. See notes on pages 113 to 118 of the Author's 'Compulsory Acquisition of land in British India', (1942 Edn.).

CHAPTER VII

EXECUTION OF SCHEMES.

52. Powers and duties of the Trust where a scheme has been sanctioned.

The lands falling in scheme areas may broadly be classified under four heads, viz (1) those vesting in the local authority concerned ; (2) forming any street or square or part thereof which is not vested in the local authority concerned; (3) Government lands and (4) private lands.

Transfer to Trust for purposes of improvement scheme, a building or land vested in the local authority.

As regards transfer to the Trust, for purposes of an improvement scheme any building or land vested in the local authority concerned, the Acts provide that whenever any building, or any street, square or other land, or any part thereof, which is vested in the local authority concerned, is required for executing any improvement scheme, the Trust shall give notice accordingly to the Chairman of the local authority and such building, street, square, land, or part thereof, shall thereupon vest in the Trust, subject in the case of any building to the payment to the local authority of such sum as may be required to compensate it for actual loss resulting from the transfer thereof to the Trust.[1] The Calcutta Act also provides for payment to the Corporation or to the Municipality concerned compensation for any land not being a street or square, thus taken over.[2] The Act, however, provides that when any land vests in the Board under the above provisions, and the Board makes declaration to the Corporation that such land will be retained by the Board until it revests in the Corporation as part of a street or open space, under a declaration made by the Corporation under sub-section (1) of section 65 of the Act or a

1. S. 54 (1), Calcutta Act; S. 45 (1), U. P. Act; S. 45 (1), U. P. Act as extended to Delhi; S. 45 (1), Punjab Act; S. 48 (1) C. P. Act. See also *Corporation of Calcutta* v. *The Calcutta Improvement Trust* (A. I. R. 1924 Cal. 85) cited at p. 149, as to municipal land required by the Trust for recoupment only.
2. S. 54 (2), Calcutta Improvement Act, 1911.

resolution passed by the Board under sub-section (2) of section 65 of the Act, as the case may be, no compensation shall be payable by the Board to the Corporation in respect of that land.[1] Where no such declaration is made to the Corporation, or to the Commissioners, as the case may be, the Board shall pay to the local authority concerned as compensation for the loss resulting from the transfer of such land or building to the Board, a sum equal to the market value of the said land or building at the time when the general declaration in respect of other lands included in the scheme is made unde the provisions of section 6 of the Land Acquision Act, 1894, as amended by the Calcutta Improvement Act, and where any building situated on land in respect of which a declaration has been made by the Board in the manner described above, is vested in the Board under the above provisions, like compensation shall be payable in respect of such building by the Board.[2] The Act also provides that if in any case where the Board had made a declaration to the Corporation in respect of any land in the above manner, the Board retain or dispose of the land contrary to the terms of the declaration, so that the land does not revest in the Corporation as contemplated under such declaration, like compensation shall be payable by the Board to the Corporation in respect of such land for the loss resulting from the non-transfer of such land to the Corporation, such compensation not to be less than the market value which would have been payable for the said land under the provisions of sub-section (3) referred to above.[3] If any question of dispute arises—(*a*) as to whether compensation is payable under sub-section (3) or sub-section (4) or (*b*) as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) or sub-section (4), or (*c*) as to whether any building or street or square or other land or any part thereof is required for the purpose of the scheme, the matter is to be referred to the Provincial Government, whose decision shall be final.[4]

1. Calcutta Improvement Act, 1911, S. 54 (3).
2. S. 54 (3), Calcutta Improvement Act, 1911.
3. *Ibid*, S. 54 (4).
4. *Ibid*, S. 54 (5).

The other Acts also provide that if any question of dispute arises as to the sufficiency of the compensation paid or proposed to be paid to the local authority concerned under the above provisions, the matter shall be referred to the Provincial Government whose decision shall be final.[1] The C. P. Act makes provision for payment to the local authority concerned compensation for any permanent roofed building only if taken over by the Trust for the purpose of any improvement scheme.[2]

Transfer of private street or square to Trust for purposes of an improvement scheme

Whenever any street or square or part thereof which is not vested in the Trust or in the local authority concerned is required for executing any improvement scheme, the Trust is to cause to be affixed on a conspicuous place in or near such street, square or a part thereof, a notice signed by the Chairman and (*a*) stating the purpose for which the street, square or part thereof, is required, and (*b*) declaring that the Trust will, on or after the date to be specified in the notice take over charge of such street, square or part from the owner thereof, and is to send simultaneously a copy of such notice to the owner of such street, square or part. After consideration and deciding all objections (if any) received in writing before the date so specified, the Trust may take over charge of such street, square or part, from the owner thereof; and the same shall thereupon vest in the Trust. When the Trust alters or closes any street or square or part thereof which is vested in it in the above manner, it shall pay reasonable compensation to the previous owner for the loss of his rights therein. If the alteration or closing of any such street, square, or part, causes damage or substantial inconvenience to owners of properties *adjacent* thereof or to the residents in the neighbourhood, the Trust (a) shall forthwith provide some other reasonable means of access for the use of persons who were entitled to such street, square or part as a means of access to any property or place and (b) if the provision of

1. S. 45 (2), U. P. Act; S. 45 (2) U. P. Act as extended to Delhi, S. 45 (2) Punjab Act; S. 48 (2) C. P. Act.
2. S. 48 (1), Nagpur Improvement Trust Act, 1936.

such means or access does not sufficiently compensate any such owner or resident for such damage or inconvenience, it shall also pay him reasonable compensation in money[1]. The C.P. Act does not provide for payment of compensation if the alteration or closing of any such street, square, or part, causes damage or substantial inconvenience to the owners of property adjacent thereto or to residents in the neighbourhood.

Provision of drain or water work to replace another situated on land vested in the Trust.

When any building or any street, square, or other land, or any part thereof vested in the Trust under the provisions referred to above, no Municipal drain or water work therein shall vest in the Board until another drain or water work (as the case may be), if required, has been provided by the Trust, to the satisfaction of the local authority concerned in place of the former drain or work. If any question of dispute arises as to whether another drain or water work is required, or as to sufficiency of any drain or water work provided by the Trust, the matter is to be referred to the Provincial Government, whose decision shall be final.[2]

The Calcutta Town Improvement Act, 1911, also provides for the following :—

Bar to application of certain sections of the Calcutta Municipal Act 1899, to streets vested in the Board.

57. Sections 337, 338, and 355, and clause (c) of section 354, of the Calcutta Municipal Act, 1899,[3] shall not apply to any street which is vested in the Board.

Sections 345 and 346 of the said Act,[4] shall not apply when any drain, pavement or surface referred to in the said section 345 is opened or broken up by the Board or when

1. S. 55, Calcutta Act ; S. 46, U. P. Act ; S. 46, U. P. Act as extended to Delhi ; S. 46, Punjab Act ; S. 49, C.P. Act.
2. S. 56, Calcutta Act ; S. 47, U. P. Act ; S. 47, U. P. Act as extended to Delhi ; S. 47, Punjab Act ; S. 50, C. P. Act.
3. Repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act III of 1923) and these references should now be construed as refereneee to that Act.
4. These references should now be construed as references to the Calcutta Municipal Act, 1923 (Ben. Act III of 1923)

any public street is under construction by the Board.

Repair and watering of streets vested in the Board.

58. Whenever the Board allow any street vested in them to be used for public traffic—

(a) they shall, as far as practicable, keep the street in good repair and do all things necessary for the safety and convenience of persons using it, and

(b) they shall cause the street to be watered, if they consider it necessary to do so for the public convenience.

Guarding and lighting when street vested in the Board is opened or broken up, or when street is under construction and speedy completion of work.

59. Whenever any drain in, or the pavement or surface of, any street vested in the Board is opened or broken up by the Board for the purpose of carrying on any work,

or whenever the Board allow any street which they have under construction to be used for public traffic;

the Board shall cause the place to be fenced and guarded and to be sufficiently lighted during the night, and shall take proper precautions for guarding against accident by shoring up and protecting adjoining buildings,

and shall, with all convenient speed, complete the said work, fill in the ground, and repair the said drain, pavement or surface, and carry away the rubbish occasioned thereby or complete the construction of the said street, as the case may be.

Prevention or restriction of traffic in street vested in the Board, during progress of work.

60. (1) When any work referred to in section 59 is being executed by the Board in any public street vested in them, or when any other work which may lawfully be done is being executed by the Board in any street vested in them, the Board may direct that such street shall during the progress of such work, be either wholly or partially closed to traffic generally or to traffic of any specified description.

(2) When any such direction had been given, the Board shall set up in a conspicuous position in or near the street an order prohibiting traffic to the extent so directed, and shall fix

such bars, chains or posts across or in the street as they may think proper for preventing or restricting traffic therein, after notifying in local newspapers their intention to do so.

Provision of facilities, and payment of compensation, when work is executed by Board in public street vested in them.

61. (1) When any work is being executed by the Board in any public street vested in them, the Board shall, so far as may reasonably be practicable, make adequate provision for —

(a) the passage or diversion of traffic ;

(b) securing access to all premises approached from such street ; and

(c) any drainage, water-supply or means of lighting which is interrupted by reason of the execution of the work.

(2) The Board shall pay reasonable compensation to any person who sustains special damage by reason of the execution of any such work.

Power of Trust to turn or close a public street or square vested in it.

The Trust, may — (a) turn, divert, discontinue the public use of, or permanently close any public street vested in it or any part thereof, or (b) discontinue the public use of, or permanently close any public street vested in it, or any part thereof. Whenever the Trust discontinues the public use of, or permanently closes, any public street vested in it, or any part thereof, it shall pay reasonable compensation to every person who was entitled, otherwise than as a mere licensee, to use such street or part as a means of access and has suffered damage from such discontinuance or closing. Whenever the Trust discontinues the public use of, or permanently closes, any public square vested in it, or any part thereof, it shall pay reasonable compensation to every person, (a) who was entitled otherwise than as a mere licensee to use such square or part as a means of access, or (b) whose immoveable property was ventilated by such square or part, and who has suffered damage. —(i) In case (a) from such discontinuance or closing or (ii) in case (b) from the use to which the Trust has put such square

or part. In determining the compensation payable to any persons under these provisions, the Trust shall make allowance for any benefit accruing to him from the construction, provision, or improvement of any other public street or square at or about the same time that the public street or square or part thereof on account of which the compensation is paid, is discontinued, or closed. When any public street or square vested in the Trust or any part thereof is permanently closed under these provisions, the Trust may sell or lease so much of the same as is no longer required.[1] S. 48 of the Punjab Town Improvement Act, 1922, provides as follows:—

48 (1) The Trust may :—

(a) lay out and make a new public street, and construct tunnels and other works subsidiary to the same, and

(b) widen, lengthen, extend, enlarge, raise the level of or otherwise improve any existing public street if vested in the Trust, and

(c) turn, divert, discontinue or close any public street so vested, and

(d) provide within its discretion building sites of such dimensions as it deems fit, to abut on or adjoin any, public street made, widened, extended, enlarged, improved, or the level of which has been raised by the Trust under clauses (a), (b) and (c) or by the Provincial Government, and

(e) subject to the provisions of any rule prescribing the conditions on which property vested in the Trust may be transferred, lease, sell or otherwise dispose of any land used by the Trust for a public street and no longer required therefor, and in doing so impose any condition as to the removal of any building existing thereon, as to the description of any new building to be erected thereon, as to the period within which such new building shall be completed, and as to any other matter that it deems fit.

1. S. 62, Calcutta Act ; S. 48, U. P. Act ; S. 48, U. P. Act as extended to Delhi ; S. 51 C. P. Act.

(2) Whenever the Trust discontinues the public use of, or permanently closes, any street vested in it, or any part thereof, it shall pay reasonable compensation to every person who had an easement or right of way or light and air over, upon or from such street or part, and who by such discontinuance or closure has suffered special damage.

(3) In determining the compensation payable to any person under sub-section (2), the Trust shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other street at or about the same time that the public street or part thereof, on account of which the compensation is paid, is discontinued or closed.

53. Powers under the Municipalities Acts vested in the Trusts.

It has also been considered expedient to provide for the temporary exercise by the Trust of certain powers vested in the Municipalities, for instance, with regard to the regulation of buildings, in the areas covered by sanctioned improvement schemes, for the period during which the schemes remain in force. Accordingly, section 49 (1) of the U. P. Act provides that 'the provisions of sections 178 to 186 and 189 to 204, 203 to 216, 218 to 224, 236, 256, 257, 261, 265, 266, 267, (except in respect of cleansing and disinfecting) 268 to 270 and 278 of the U. P. Municipalities Act, shall, so far as may be consistent with the tenor of this Act, apply to all areas in respect of which an improvement scheme is in force; and for the period during which such scheme remains in force all references in the said sections to the Board or to the Chairman, or any officer of the Board shall be construed as referring to the Trust, which, in respect of any such area, may alone exercise and perform all or any of the powers and functions which under any of the said sections may have been exercised and performed by the Board or by the Chairman or by any officer of the Board; provided that the Trust may delegate to the Chairman or to any officer of the Trust all or any of the powers

conferred by this section.' Similarly, section 49 (1) of the U. P. Act as extended to Delhi, confers on the Trust powers under the various sections of the Punjab Municipal Act enumerated therein and under the by-laws framed by the local authority concerned under clause (b) of section 188, sub-section (3) of section 189, and section 190 of the said Municipal Act, so far as may be consistent with the tenor of the Trust Act. Section 49 (1) of the Punjab Town Improvement Act and section 52 (1) of the Nagpur Improvement Trust Act are also to the same effect.

As regards the areas lying outside the municipal limits, section 49 (2) of the U. P. Act provides that the Trust may make by-laws for any area comprised in an improvement scheme which is outside the limits of the municipality—(a) generally for carrying out the purposes of the Act, and (b) in particular and without prejudice to the generality of the aforesaid powers the Trust may make by-laws regarding any of the matters referred to in section 298 of the Municipalities Act. It further enacts that the provisions of sections 299 and 301 of the Municipalities Act shall, so far as may be consistent with the tenor of this Act, be applicable to all by-laws made by a Trust under this sub-section, and all references in the said sections to the Board shall be construed as referring to the Trust. In the said Act as extended to Delhi, the only changes made are that references are to the Punjab Municipal Act and that Chapter X is to be read for section 298 and sections 199 to 202 for sections 299 and 301. Sub-section (2) of section 49 of the Punjab Act similarly provides that the Trust may make by-laws for any locality outside the limits of the Municipality comprised in a scheme under this Act — (a) generally for carrying out the purposes of this Act and (b) in particular and without prejudice to the generality of the aforesaid powers regarding any of the matters referred to in sections 188, 189, 190, of the (Punjab) Municipal Act. In the C. P. Act,[1]

1. S. 52 (2), Nagpur Improvement Trust Act, 1936.

which follows the U. P. Act, the references are to sections 179 and 180 of the C. P. Municipal Act in clause (b), and to sections 178 and 179 of the said Act in place of sections 299 and 301 of the U. P. Municipal Act in the latter Act.

It is to be observed that the above provisions of law give exclusive power to the Trust to exercise and perform all or any of the powers and functions which under the provisions specified might have been exercised and performed by the Municipality or by the President or by any officer of the Committee concerned, or in other words, the municipality or its President or any officer of the said Committee concerned will cease to exercise powers and functions under the said provisions in the areas to which the above provisions will apply.

For the purposes of these provisions the scheme is held to remain in force upto the time the last plot has been disposed of by the Trust and built over. In *Daulat Khan* v. *Emperor*[1], the applicant obtained a plot of land for building purposes from the Improvement Trust. He executed an agreement in which the conditions under which the applicant was to build were given. One of the conditions was that no balcony or any projection over the footpath or any portion of the road or lane would be made without the special sanction of the Trust. The applicant thereafter constructed a house with a balcony projecting over the footpath. A notice was served on the applicant under section 79 of the U. P. Act to remove the balcony but he failed to comply with it. Thereafter he was prosecuted and convicted under section 185 of the U. P. Municipalities Act. Against his conviction he put an application for revision in the High Court. The street in which the applicant's house was had been transferred to the Municipal Board under the provisions of section 54 of the Act and admittedly vested in the Municipal Board. The applicant obtained permission for the construction of the balcony from the Municipal Board. *Held*, "the question is

1. A. I. R. 1937 All. 496.

whether this permission of the Municipal Board can exonerate him from the conditions under which he had acquired the land and affected the powers of the Improvement Trust. The Improvement Trust has not yet dissolved and the scheme is still in force in the area in which the house in dispute is. Under section 49 of the U. P. Act the applicant should have obtained permission from the Improvement Trust and not from the Municipal Board. It has been urged on behalf of the applicant that since the road on which the house abuts now vests in the Municipal Board, the permission from the Municipal Board was sufficient. As it would appear from section 49 of the Town Improvement Act, it does not affect the vesting of any road in the Municipal Board which puts an end to the powers of the Improvement Trust. So long as an improvement scheme remains in force in any area, permission for construction has to be obtained from the Trust and not from the Municipal Board. The roads may be vested in the Municipal Board for the purposes of sanitation, lighting, and repairs. The vesting of the roads or any lane in the Municipal Board does not affect the powers given to the Trust under section 49 of the Act, so long as an improvement scheme remains in force in the area in which the road or lane may be. The applicant has committed against the provisions of the Town Improvement Act and also against his own agreement. He has been rightly convicted."

Any offence committed under the Municipal Act before coming into force of an improvement scheme is punishable at the instance of the Trust, if it falls within the jurisdiction of the Trust. It has been held in *Kundan Lal* v. *Lucknow Improvement Trust*[1] that the whole object of section 49 of the Town Improvement Act is to invest the Trust with the powers possessed by the Municipal Board with relation to the offence mentioned in section 49. It is immaterial whether the Act which constitutes the offence was committed before the scheme came into force or after it. It was observed in this

1. A. I. R. 1924 Oudh. 399.

case—"The contention is that the Improvement Trust had no authority under section 49 to use the power vested in the Municipal Board under the Municipalities Act with reference to offences falling under the sections mentioned in section 49 of the Town Improvement Act unless the offence was committed after the area to which the offence relates came under the control of the Trust. I do not agree with this contention. In my opinion the Trust was vested with powers which the Municipal Board possessed under the sections of the Municipalities Act mentioned in section 49 of the Town Improvement Act, from the date of the improvement scheme coming into force in respect of the area in relation to which the offence was committed. It is immaterial whether the Act which constitutes an offence was committed before the scheme came into force or after it".

Confusion is likely to arise in the working of a 'town expansion scheme' under the U. P. Act or under the said Act as extended to Delhi, in relation to the powers vested in the Trust under section 49 (2) of the said Acts and the position needs to be clarified. In these cases, for instance, the Delhi Improvement Trust has double control on buildings, namely, *firstly*, under section 32 (4) of the Trust Act, and *secondly*, under the provisions of the Punjab Municipal Act. According to section 32 of the Trust Act, a person is not entitled to erect or re-erect any building in any area covered by a sanctioned 'town expansion scheme' unless he obtains permission of the Trust to do so. If an application is made to that effect, there is no period prescribed under the Act during which the application must be disposed of by the Trust. On the other hand, if a person intends to erect or re-erect any building in an area within the limits of the municipality or in any area outside Municipal limits to which the provisions of the Municipalities Act have been applied, as in the case of sanctioned improvement scheme under section 49 (2) of the Trust law, he has to give notice in writing to the Committee concerned under section 189 of the Punjab Municipal Act, and if the Committee neglect or omit within sixty days of the receipt from any person of a notice of such person's

intention to erect or re-erect a building, such erection, or re-erection, shall, unless the land on which it is proposed to erect or re-erect such buildings belongs to or vests in the committee, shall be deemed to have been sanctioned. The case *Mohd. Ishaq* v. *Emperor*[1] related to a building in an area covered by the Serai Rohilla Town Expansion Scheme of the Delhi Improvement Trust. The scheme was sanctioned and notified by the Chief Commissioner under section 42 of the U. P. Act as extended to Delhi in 1938. Mohd. Ishaq applied for permission to build on 21st November, 1939. No reply having been received upto 18th May 1940, he started building the house which was completed shortly afterwards. The Improvement Trust served a notice on him under section 89 of the Trust law calling upon him to demolish the building. On his not complying with the notice he was sent up for trial and was convicted under section 79 of the said Act and sentenced to a fine of Rs. 10/-. The case was tried summarily and the finding of the learned Magistrate was that the petitioner had built a house without permission of the Improvement Trust. The petitioner filed a revision in the High Court. The conviction was set aside and the learned Judge held that where in such a case a person applies to the Trust for permission to erect or re-erect a building and the Trust neither refuses nor grants permission within a reasonable time the provisions of section 193 (4) of the Punjab Municipal Act, apply to the case by virtue of section 49 of the U. P. Town Improvement Act as extended to Delhi, there being nothing in section 193 (4) of the Punjab Municipal Act inconsistent within the tenor of the U. P. Act, VIII of 1919. It was observed by the learned Judge in this case :—

"It was pointed out that according to section 32 of that Act (U. P. Town Improvement Act as extended to Delhi) no person is entitled to erect or re-erect any building unless he obtains permission from the Trust, there being no provision corresponding to sub-section (4) of section 193 in that section. Under section 89, the Chairman of the Trust has the power to have a building demolished if it is built without permission of the Trust. With reference to the above contentions it

1. A. I. R. 1941 Lah. 431.

may be pointed out that neither section 32 nor any other section of the Act makes any provision for a case where the Trust neither refuses nor grants permisson within a reasonable time after permission to erect or re-erect has been applied for. Such provision is to be found in sub-section (4) of section 193 of the Punjab Municipal Act. According to section 49, that sub-section will apply if it is consistent with the tenor of the U. P. Act, VIII of 1919. As there is no provision at all in the latter Act for a case of the kind referred to above, I do not think why sub-section (4) of section 193 of the Punjab Municipal Act should not be held to be applicable by virtue of section 49 of the U. P. Act, VIII of 1919".

With all respects to the views of the learned Judge expressed in this case, it is difficult to understand how a notice for building under section 189 of the Punjab Municipal Act is identical with the application for permission to build under section 32 of the Trust Act. Under the Trust Act, if an application for permission to build is refused by the Trust it makes it liable to pay compensation for any damage sustained by the person concerned in consequence of such refusal, if it does not proceed to acquire such land within one year from the date of such refusal. No such liability is to be incurred by the local authority concerned in not passing orders on a notice under section 189 of the Municipal Act within the prescribed period of sixty days. It is obvious that a person intending to build on a plot of land falling in a sanctioned Town Expansion Scheme has first to obtain sanction of the Trust to build under section 32 of the Trust Act and then to obtain its sanction to the building plans under the provisions of sections 189 to 193 of the Punjab Municipal Act which powers are vested in the Trust under section 49 of the Trust Act. Sanction under both the provisions of law must be obtained before a building can be constructed in an area falling in a 'town expansion scheme'. The case is analogous to the case of a lessee of the Trust lands who in building on a plot of land under the lease has not only to comply with the provisions of the Municipal Act and the by-laws thereunder but also with the conditions of the lease, and the fact that he got the building plans sanctioned by the Improvement Trust under the provisions

of the Punjab Municipal Act, will not absolve him from getting his building plans sanctioned under the terms of the lease and complying with the conditions of the lease. It therefore appears that s. 193 (4) of the Punjab Municipal Act will not apply to an application under s. 32 of the Trust Act and such an application will not be sanctioned *ipso facto* if the Trust does not pass any orders within sixty days of the receipt of such application.

The same remarks apply to the provisions under the C. P. Act[1] and under the Punjab Act[2].

54. Facilities for movement of the population.

With a view to facilitate the movement of the population in and around an area to which the Acts apply, the Calcutta Act, the U.P. Act, the U. P. Act as extended to Delhi, the Punjab Act, and the C. P. Act,[3] empower the Trust, subject to any condition it may think to impose, (1) to (a) guarantee the payment from the funds at its disposal, of such sums as it may think fit, by way of interest on capital expended on the construction, maintenance or working of means of locomotion ; or (b) make such payments as it may think fit from the said funds, by way of subsidy to persons undertaking to provide, maintain, and work, any means of locomotion, or (2) either singally or in combination with any other persons, to construct, maintain and work, any means of locomotion, under the provisions of any law applicable thereto or (3) to construct or widen, strengthen, or otherwise improve, bridges. This is subject to the proviso that no guarantee or subsidy shall be made and no means of locomotion shall be constructed, maintained or worked, under sub-section (2) above without the sanction of the Provincial Government.

55. Powers to make surveys or contribute towards their cost.

The Trust may — (a) cause a survey of any land to be made, whenever it considers that a survey is necessary or ex-

1. Ss. 35 and 52 (2) of the Nagpur Improvement Trust Act, 1936.
2. Ss. 31, 49 (2), Punjab Town Improvement Act, 1922.
3. S. 149, Calcutta Act ; S. 50, U. P. Act ; S. 50, U.P. Act as extended to Delhi ; S. 51, Punjab Act ; S. 53, C. P. Act.

pedient for carrying out any of the purposes of the Act, or (b) contribute towards cost of any such survey made by any other local authority.[1]

56. Power of entry.

The Acts also empower that the Chairman may, with or without assistants or workmen, enter into or upon any land, in order — (a) to make any inspection, survey, measurement, valuation, or inquiry, (b) to take levels, (c) to dig or bore into the sub-soil, (d) to set out boundaries and intended lines of work, (e) to mark such levels, boundaries and lines by placing marks and cutting trenches or (f) to do any other thing, whenever it is necessary to do so for any of the purposes of the Act or any rule made or scheme sanctioned thereunder or any scheme which the Trust intends to frame thereunder. This is subject to the following provisos : —

(1) Except when it is otherwise specially provided by a rule (under the Calcutta Act that this exception does not exist) no such entry shall be made between sunset and sunrise.

(2) Except when it is otherwise provided by rule, (this exception does not exist under the Calcutta Act) no building which is used as a human dwelling (in the case of Calcutta — no dwelling-house, and no public building or hut which is used as a dwelling-place) shall be so entered, unless with the consent of the occupier thereof without giving the said occupier atleast twenty-four hours previous written notice of the intention to make such entry.

(3) Sufficient notice shall in every instance be given even when any premises may otherwise be entered without notice to enable the inmates of any apartment appropriated to families to remove to some part of the premises where their privacy need not be disturbed.

(4) Due regard shall also be had, so far as may be compatible with the exigencies of the purpose for which the

1. S. 167, Calcutta Act ; S. 51, U. P. Act ; S. 51, U. P. Act as extended to Delhi ; S. 52, Punjab Act ; S. 54, C. P. Act.

entry is made, to the social and religious usages of the occupants of the premises entered.

Whenever the Chairman enters into or upon any land in pursuance of the above mentioned provisions, he shall at the time of such entry pay or tender payment for all necessary damages to be done as aforesaid ; and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall atonce refer the dispute to the Trust whose decision shall be final. All the Acts with the exception of the Calcutta Act also prescribe that it shall be lawful for any person authorised in the above manner to make an entry for the purposes of inspection or search to open or cause to be opened a door, gate, or other barrier — (a) if he considers the opening thereof necessary for the purpose of such entry, inspection, or search, and (b) if the owner or occupier is absent, or being present refuses to open such door, gate or barrier.[1]

57. Reference of disputes to Tribunal.

Section 64 of the Calcutta Act provides that 'if any question or dispute arises—(a) between the Board and the previous owner of any street or square or part thereof which has vested in the Board under section 55 and has been altered or closed by them, as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of that section, or (b) between the Board and any person who was entitled otherwise than as a mere licensee, to use as a means of access any street or square or part thereof which has vested in the Board under section 55,

(i) as to whether the alteration or closing of such street, square, or part causes damage or substantial inconvenience to owners of property adjacent thereto or to residents in the neighbourhood, or

(ii) as to whether the other means of access provided or proposed to be provided under sub-section (4) of the said section 55 are reasonably sufficient, or

1. S. 168, Calcutta Act ; S. 52, U. P. Act ; S. 52, U. P. Act as extended to Delhi; S. 53, Punjab Act ; S. 55, C. P. Act.

(iii) as to the sufficiency of any compensation paid or proposed to be paid under sub-section (4), or

(c) between the Board and any person as to the sufficiency of any compensation paid or proposed to be paid to him under section 61, section 62, or section 63,

the matter shall be determined by the Tribunal, if referred to it, either by the Board or by the claimant, within the period of three months from — in case (a) or in case (b) — the date on which the street or squre or part thereof was altered or closed by the Board, or in case (c) — the date on which the said person was informed of the decision of the Board fixing the amount of compensation to be paid to him.' According to this section, the determination of the Tribunal *shall be final.*

This section further prescribes that if a reference to the Tribunal be not made within the period prescribed by sub-section (1) the decision of the Board shall be final.

For the purpose of determining any matter referred to above, the Tribunal shall have all the powers with regard to witnesses, documents, and costs, which it would have if the Land Acquisition Act, 1894, as modified by section 71, of the Act, were applicable to the case.[1]

The U. P. Act makes a similar provision for reference to the Tribunal of disputes in respect of the matters enumerated in clauses (a) and (b) of sub-section (1) of section 64 of the *Calcutta Act,* and of any *dispute between the* Trust and any person as to the sufficiency of any compensation paid or proposed to be paid to him under section 26, 30, 32, 48 or 101 of the U. P. Act, if referred to it either by the Trust or by the claimant within a period of three months from the date on which the said person was informed of the decision of the Trust fixing the amount of compensation to be paid to him or of the rejection of his claim to *compensation* by the Trust, and that the determination of the Tribunal shall be final.

1. S. 64 (3), Calcutta Improvement Act, 1911.

The Tribunal cannot entertain the application of any claimant who has not applied to the Trust for compensation within three months of the date on which his claim to compensation accrued.[1] This Act likewise provides that if a reference to the Tribunal be not made within the period prescribed by sub-section (1), the decision of the Trust shall be final.[2] For the purpose of determining any matter referred to above, the powers of the Tribunal with regard to witnesses, documents, and costs, are the same as under the Land Acquisition Act, 1894, as modified by section 58 of the Act. No change has been made in this section of the Act as extended to Delhi.[3] The C. P. Act follows the U. P. Act.[4] The Punjab Act also follows the U. P. Act and in addition provides that the provisions of sections 5, 6 and 12 of the Limitation Act shall be applicable in determining whether any claim shall be entertained.[5]

58. Vesting in local authority of streets laid out or altered, and open spaces provided by the Trust under an Improvment Scheme.

In the case of Calcutta, section 65 of the Calcutta Improvement Act, 1911, provides that 'whenever the General Committee (now the Corporation of Calcutta) are satisfied—

(a) that any street laid out or altered by the Board has been duly levelled, paved, metalled, flagged, channelled, sewered, and drained, in the manner provided in the plans sanctioned by the Provincial Government under section 48, and

(b) that such lamps, lamp-posts and other apparatus as the General Committee consider necessary for the lighting of such street and as ought to be provided by the Board have been so provided, and

1. S. 53 (1), U. P. Town Improvement Act, 1919.
2. *Ibid*, S. 53 (2).
3. S. 53, U. P. Town Improvement Act, 1919, as extended to Delhi.
4. S. 56, Nagpur Improvement Trust Act, 1936.
5. S. 54, Punjab Town Improvement Act, 1922.

(c) that water and other sanitary conveniences ordinarily provided in a Municipality have been duly provided in such street,

the General Committee shall make a report to the Corporation, and the Corporation shall thereupon, after informing the Board of their intention to do so, by written notice affixed in some conspicuous position in such street, declare the street to be a public street; and the street shall thereupon vest in the Corporation, and shall thenceforth be maintained, kept and repaired, lighted and cleansed by the Corporation.'

The section further provides that 'when any open space for purposes of ventilation or recreation has been provided by the Board in executing an improvement scheme, it shall, on completion, be transferred to the Corporation by resolution of the Board, and shall thereupon vest in, and be maintained at the expense of the Corporation. This is subject to the proviso that the General Committee may require the Board before any such open space is so transferred, to enclose, level, turf, drain, and layout such space, and provide footpath therein and if necessary, to provide lamps, and other apparatus for lighting it. The section also provides that if any difference of opinion arises between the Board and the General Committee in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the Provincial Government, whose decision shall be final.

Section 54 of the U. P. Act is the same as section 65 of the Calcutta Act except that it is modified so as to make it clear that in case of dispute between the Municipal Board and the Trust a street shall not vest in the Municipal Board until the matter has been settled by the Provincial Government under sub-section (3). Sub-section (1) of this section therefore specifically provides that the assent of the Trust or failing such assent, the assent of the Provincial Government shall be necessary before a street vests in the Municipal Board in pursuance of the provisions of this

sub-section. No change has been made in this section of the U.P. Act as extended to Delhi.

It is to be noted that under the above provisions it is not compulsory for the local authority concerned to take over a scheme as soon as it has been finished in accordance with the original sanctioned plans. There have been numerous cases where the local authorities concerned have either refused to take over, or caused considerable delays in taking over the schemes thus completed on some ground or the other. The matter was brought to the notice of the Crosthwaite Committee appointed in 1929 to report on the working of the Town Improvement Trusts in the United Provinces and their recommendation was that section 54 should be redrafted so as to make it compulsory for the Board to take over a scheme as soon as it has been finished in accordance with the original sanctioned plans. The question was again examined in 1935 by the Sale Committee and their observations were as follows :—

"We regret that relations between the Trusts and Municipal Boards are not so cordial as they might be. A considerable number of disputes have arisen in all three cities (Allahabad, Cawnpore, and Lucknow) especially about taking over of Trusts' schemes and completed roads, drains, watermains, parks, etc., by the Municipal Boards and these have led to lengthy correspondence lasting into one case (that of Bairana scheme in Allahabad) as long as seven years. So far the trouble is perhaps mainly due to the fact that under section 36 of the Town Improvement Act, the Trusts are only bound to communicate to the Municipal Boards in advance the bare outlines of a scheme without any details, so that there is at present no opportunity for previous discussion of such matters as watersupply, drainage, provision of open spaces, sanitary conveniences, and so on. Also the wording of section 54 of the Town Improvement Act appears to be unsatisfactory, in that it makes the Municipal Board a sole judge of the completeness of any scheme. We recommend that in future a Trust should supply the Municipal Board with full particulars of a scheme before it is sent up to Government for sanction under section 40 of the Town Improvement Act The Municipal Board should be required to reply within three months and should then put forward any suggestion it may wish to make regarding the provisions of open spaces, sanitary conveniences, graveyards, markets, and so on. Some of the schemes cover a very large area and actual planning out can consequently only be done in

stages. In such cases the scheme might be divided into regular parts. We hope that when Municipal Boards are consulted in advance regarding the details of schemes, and appropriate specifications are drawn up, fewer difficulties would arise than at present. But we also suggest, that, in order to avoid delay, and to secure prompt decision of such disputes as may still arise between the two bodies, and cannot be settled by direct discussion, the Town Improvement Act should provide for arbitration. We recommend that when such dispute is reported by either body, Government may appoint a Commissioner of the Division, as an arbitrator. He should have power to consult either body as far as might be necessary and to take the advice of special departments of Government like the Public Health Engineering Department, and his decision should be final." [1]

Their recommendation regarding amendment of section 54 of the U. P. Act was: "This section needs to be redrafted *so as to make it compulsory for a Board to take over a scheme* or a completed road, drain, water-main or a park as soon as it has been finished in accordance with the original plans sanctioned by Government under section 40. Adequate safeguards for the interests of the Municipal Board will have been made if the amendments proposed above in section 40 are accepted. If, inspite of previous consultation under that section, their is disagreement about the completion of a scheme which cannot be settled by direct discussion between the two bodies, we propose that the Commissioner of the Division should be empowered to act as an arbitrator after taking such expert advice of specialist departments like the Public Health Engineering Department, as he may require.

This section should also provide for transfer of portions of larger schemes, after completion".[2]

The Punjab Act follows the U. P. Act in this matter.[3] The lagislature of the Central Provinces, however, took advantage of the observations of the two Committees of the

1. Para. 19 of the Report of the Town Improvement Trusts Committee, 1935.
2. *Ibid*, p. 74.
3. S. 55, Punjab Town Improvement Act, 1922.

U. P. Government appointed to report on the working of the Trusts in that Province as referred to above, and section 57 of the C. P. Act provides as follows: –

1. Whenever the Trust is satisfied :—

(*a*) that any street laid out or altered by the Trust has been duly levelled, paved, metalled, flagged, channelled, sewered, and drained in the manner provided in the plans sanctioned by the Provincial Government under this Act, and

(*b*) that such lamps, lamp-posts, and other apparatus *as the Trust may consider necessary* for the lighting of such street have been so provided, and

(*c*) that water and other sanitary conveniences ordinarily provided in the Municipality have been duly provided in such street,

the Trust may call upon the municipal committee, by a notice in writting, to take over the management of such street within a period specified in the notice, which shall not be less than one month and, on receiving such a notice, the municipal committee shall, subject to the provisions of sub-section (3), by a written notice affixed in some conspicuous place in such street, declare the street to be a public street; and the street shall thereupon vest in the municipal committee and shall thenceforth be maintained, kept in repair, lighted, and cleansed by the municipal committee.

2. When any open space for purposes of ventilation or recreation has been provided by the Trust in executing any improvement scheme, it shall, on completion, be transferrd to the municipal committee by resolution of the Trust and shall thereupon vest in, and be maintained at the expense of, the municipal committee :

Provided that the municipal committee may require the Trust, before any such open space is so transferred, to enclose, level, drain, and lay out such space and provide foot paths therein.

3. If any difference of opinion arises between the Trust and the Municipal Committee in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the Provincial Government, whose decision shall be final.

4. The Provincial Government may resume the management of any street or open space which was, at the commencement of this Act, the property of Government or has since been acquired by Government and was vested in the Trust under clause (b) of sub-section (1) of section 45.

59. Government property held by the Delhi Improvement Trust.

The following provisions govern the Government property held by the Delhi Improvement Trust :—

Power of the Trust to hold Government property.

Section 54 A of the Trust Act provides that 'the Government may, upon such terms as may be agreed upon between the Government and the Trust, place at the disposal of the Trust any properties, or any funds or dues, of the Government and thereupon the Trust shall hold or realize such properties, funds and dues in accordance with such terms. It also provides that if any immoveable property thus held by the Trust is required by the Government for administrative purposes, the Trust shall transfer the same to the Chief Commissioner upon payment of all costs incurred by the Trust in acquiring, reclaiming, or developing the same, together with the interest thereon, at such rate as may be fixed by the Chief Commissioner, calculated from the day on which this Act comes into force or from the date on which such costs were incurred, which ever is later, and that the transfer of such immoveable property shall be notified in the Gazette and such property shall thereupon vest in the Chief Commissioner from the date of the Notification.

Recovery of dues.

As regards recovery of dues, section 54 (b) of the Act provides ' that any sum of money due to or claimable by the Trust in respect of any properties, funds, or dues, placed at the disposal of the Trust under the above provisions may be

recovered by the Trust as if it was an arrear of land revenue, and that the Chief Commissioner may by notification prescribe by whose orders and on whose application such money may be recovered.'

Under the above provisions all Nazul lands in Delhi, have been placed under the charge of the Delhi Improvement Trust, on the terms and conditions embodied in a written agreement.

CHAPTER VIII.

ACQUISITION AND DISPOSAL OF LAND

60. Power of the Trusts to purchase or take on lease land.

All the Acts constituting the various Trusts for the improvement and planning of towns in India empower them to acquire land for carrying out the purposes of the said Acts. Any land which the Trust is authorised to acquire, or any interest in such land, may either be purchased or taken on lease by them by an agreement, or they may acquire it under the provisions of the Land Acquisition Act, 1894, as modified by the Trust Acts. Previous sanction of the Provincial Government is, however, necessary for such acquisition.[1]

It has been held in *Anant Ram Banerji* v. *Secretary of State*[2] that the Board of Trustees for Improvement of Calcutta have power to enter into a contract for settling the price of the land with the owner before proceedings under the Land Acquisition Act are started. In the land acquisition proceedings, the Collector is under no obligation to disregard the contract, and proceed to determine the market value under section 11 of the Act. He should rather accept the contract and make an award on its basis. If a reference is made by the Collector under section 18 of the Act, the improvement Tribunal is not bound to take evidence of market value and to award compensation on its basis. The contract between the owner and the Board is a perfectly valid one and which can be enforced in a Civil Court to prevent the owner from

1. Ss 68, 69, Calcutta Act; Ss 55, 56, U P. Act; Ss. 55, 56, U P Act as extended to Delhi; Ss. 58, 59, C. P. Act. In the Punjab Act there is no specific provision laying down that previous sanction of the Provincial Government will be necessary for acquiring land by the Trust under the Land Acquisition Act, though it is implied as every improvement scheme of the Trust will require sanction of the Provincial Government.—See sections 58 and 59 of the Punjab Act.

2. A. I. R. 1937 Cal. 680 = 41 C. W. N. 1291.

leading any evidence relating to the market value before the improvement tribunal or for proceedings upon any other footing than that of the contract.

61. Modification of the Land Acquisition Act, 1894, for the purpose of acquiring land for Trust Schemes.

Tribunal to be constituted.

Section 70 of the Calcutta Act provides that a Tribunal shall be constituted, as provided in section 72, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894.

Other modifications in the Act.

Section 71 of the same declares that for the purpose of acquiring land under the said Act for the Board —

(*a*) the Tribunal shall (except for the purposes of section 54 of that Act[1]) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act ;

(*b*) the said Act[1] shall be subject to the further modifications indicated in the Schedule;

(*c*) the president of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and

(*d*) the award of the Tribunal shall be deemed to be the award of the court under the said Land Acquisition Act, 1894, and shall be final.[2]

The U. P. Act, the U. P. Act as extended to Delhi, the Punjab Act and the C. P. Act[3] also provide the same.

1. i. e., the Land Acquisition Act, 1894

2. As to appeals to the High Court from decisions of the President of the Tribunal, see the Calcutta Improvement (Appeals) Act, 1911, and the U.P. Town Improvement (Appeals) Act, 1920 and the said Act as extended to Delhi, *infra*.

3. Ss 57, 58, U P. Act; Ss. 57, 58, U. P. Act as extended to Delhi; Ss. 58, 59, Punjab Act; Ss. 60, 61, C. P. Act.

The above provisions are mandatory. Where the acquisition officer referred a question arising under the Improvement Trust Act to the District Judge although a question arising in respect of the acquisition of the same land by the Improvement Trust had already been before the Improvement Trust Tribunal and the District Judge without the slightest jurisdiction proceeded to consider whether he had jurisdiction or not and decided that the Tribunal constituted under the U. P. Town Improvement Act, 1919, had ceased to exist, it was held that the Judge had no jurisdiction to consider whether it had or it had no jurisdiction and that his decision was in direct breach of the provisions of sections 56 to 59 of the Trust Act.[1]

Tribunal-Land Acquisition proceedings-Revision by High Court.

It has been held under the Calcutta Act that in dealing with the acquisition of property, the Calcutta Improvement Trust Tribunal is acting as a 'Court' under the Land Acquisition Act and under S. 115, C. P. Code as well as under S. 107 of the Government of India Act (1919), and the High Court is entitled to interfere with the order passed by the President of the Tribunal.[2]

62. Land Acquisition Tribunals — Constitution.

Tribunal to consist of a President & two assessors.

As already referred to above, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Trusts under the Land Acquisition Act, 1894, there is constituted a Tribunal. The Tribunal consists of a President and two assessors. Under the Calcutta Improvement Act, the President can be either (a) a member of the Judicial Branch of the Imperial or Provincial Civil Service, of not less than ten years' standing in such service who has, for at least three years, served as District Judge or held judicial office not inferior to that of a Sub-ordinate Judge or (b) a barrister, advocate or pleader of not less than ten years' standing, who has practised as an advocate or pleader in the

President.

1. *Sukhrani Kunwar* v. *Bhukhan*. A. I. R. 1923 All 286=71 I C. 628.
2. *Adhar Kumar Mitra* v. *Sri Sri Ishwar Radha Madan Mohan Jiu*, A. I. R. 1933 Cal. 660=139 I. C. 180=36 C. W. N. 370.

Calcutta High Court.[1] Under the U. P. Town Improvement Act, the necessary qualifications for appointment as President are the same as under the Calcutta Improvement Act, except that the Subordinate Judge if to be appointed as the President must be of the first grade and in the case of a barrister, advocate or pleader, he must not be of less than ten years' standing who has practised as an advocate or pleader in the High Court of Judicature at Allahabad or the Court of Judicial Commissioner of Oudh.[2] Under this Act, as extended to the Province of Delhi, the only change is that instead of a barrister, advocate or pleader of not less than ten years' standing who has practised as an advocate or pleader in the High Court of Judicature at Allahabad or the Court of the Judicial Commissioner of Oudh, as eligible for appointment as President, a barrister, advocate or pleader of not less than ten years' standing who has practised as an advocate or pleader in the High Court of Judicature at Lahore or in the Court of the District Judge at Delhi is qualified for this appointment.[3] Under the Punjab Town Improvement Act, the President can be either (a) a member of the Judicial Branch of the Indian or Punjab Civil Service of not less than ten years' standing in such service who has for at least three years served as District Judge or for at least five years held judicial office not inferior to that of a Senior Subordinate Judge, or (b) a barrister, advocate or pleader of not less than ten years' standing who has practised as an advocate or pleader in the High Court of Judicature at Lahore.[4] Under the Nagpur Improvement Trust Act, the qualifications necessary for appointment as President are the same as under the U.P. Town Improvement Act except that in the case of a barrister, advocate or pleader, he must have practised as an advocate or pleader in the High Court of Judicature at Nagpur.[5]

1. S. 72 (2) Calcutta Improvement Act, 1911.
2. S. 59 (2), U. P. Town Improvement Act, 1919.
3. S. 59 (2), U. P. Town Improvement Act, 1919, as extended to Delhi.
4. S. 60 (2), Punjab Town Improvement Act, 1922.
5. S. 62 (2), Nagpur Improvement Trust Act, 1936.

The President is to be appointed by the Provincial Government concerned, or in the case of the Delhi Improvement Trust, by the Chief Commissioner, Delhi.

Assessors.

One of the assessors is to be appointed by the Provincial Government, or the Chief Commissioner in the case of Delhi, and the other assessor is to be appointed in the case of Calcutta by the Corporation, or in default of the Corporation, by the Provincial Government, under the U. P. Town Improvement Act, by the Municipal Board, or in default of appointment by the Municipal Board within two months of their being asked by the Provincial Government to make such appointment, by the Provincial Government, in the case of Delhi by the Municipal Committee, Delhi, or in default of appointment by the Committee within two months of their being asked by the Chief Commissioner to make such appointment, by the Chief Commissioner.[1] Under the Punjab Town Improvement Act, and the Nagpur Improvement Trust Act the other assessor is to be appointed by the Municipal Committee or in default of appointment by the Municipal Committee within two months of their being required by the Provincial Government to make such appointment, by the Provincial Government.[2]

No person, however, is eligible for appointment as a member of the Tribunal if he is a Trustee, or is disqualified for being appointed a Trustee in the case of Calcutta Improvement Trust for any of the reasons mentioned in section 9 of the Calcutta Improvement Act, 1911, or in the case of other Trusts, if he were a Trustee, be liable to removal by the Provincial Government under section 10 of the other Trust Acts.[3]

Term of members of the Tribunal.

The term of office of each member of the Tribunal is two years; but any member is eligible for reappointment at the end of that term provided that he is not disqualified for

1 S. 59 (3), U. P. Town Improvement Act, 1919 as extended to Delhi.

2 S. 60 (3), Punjab Act; S. 62 (3), C.P. Act.

3 S. 72 (3), Calcutta Act; S. 58 (3), U. P. Act; S. 58 (3), U. P. Act as extended to Delhi; S. 60 (3), Punjab Act; S. 62 (3), C. P. Act.

appointment as such. Except under the Punjab Act, the Provincial Government or the Chief Commissioner, as the case may be, may cancel the appointment of any person as a member of the Tribunal on the ground of incapacity or misbehaviour, or for any other good and sufficient reason.[1] Under the Punjab Act, the Provincial Government may remove any member of the Tribunal who would if he were a Trustee be liable to removal by the Provincial Government under section 10 of the Act.[2]

When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other unavoidable cause, the authority which appointed him is forthwith to appoint a fit person to be a member in his place. Where the authority so appointing was the Corporation or the Municipal Board or the Municipal Committee, and the local authority concerned fails to make a fresh appointment within the period of two months of being required to do so by the Provincial Government, the appointment may be made by the Provincial Government. No such period is prescribed under the Calcutta Improvement Act, and the Provincial Government is not required to ask the Corporation to make such appointment.[3]

All appointments to be notified.

All appointments made in respect of the Tribunal under the Calcutta Act are to be published by notification.[4]

Remuneration of members of Tribunals.

Each member of the Tribunal is entitled to receive remuneration, either by way of monthly salary or by way of fees or partly in one of those ways and partly in the other, as the Provincial Government, or the Chief Commissioner in the case of the Delhi Improvement Trust, may prescribe.[5]

1. S. 72, Calcutta Act; S. 58, U.P. Act; S. 58, U. P. Act as extended to Delhi; S. 62, C.P. Act.
2. S. 60 (5), Punjab Town Improvement Act, 1922.
3. f. n. (1); see also S. 60 of the Punjab Town Improvement Act, 1922.
4. S. 72 (7), Calcutta Improvement Act, 1911.
5. S. 73, Calcutta Act, 1911; S. 60, U. P. Act; S. 60, U.P. Act, as extended to Delhi; S. 61, Punjab Act; S. 63, C. P. Act.

Officers & servants of Tribunals.

The President of the Tribunal is to prepare from time to time a statement showing —

(a) the number and grades of the clerks and other officers and servants, who he considers should be maintained for carrying on the business of the Tribunal,

(b) the amount of the salary to be paid to each such officer and servant.

In the case of Calcutta, the statement shall also show the contributions payable under section 146 in respect of each such officer and servant. Under the Calcutta Act, the President of the Tribunal shall, from time to time, also make rules for regulating the grant of leave of absence, leave allowances, etc., to the officers and servants of the Tribunal and for establishing and maintaining a provident or annuity fund.

All such statements are subject to the previous sanction of the Provincial Government or the Chief Commissioner, as the case may be. Subject to any directions contained in any statement prepared as aforesaid, and to rules made under the relevant sections of the Act applicable, the power of appointing, promoting and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them vests in the President of the Tribunal.[1]

Mode of payment.

The remuneration prescribed for members of the Tribunal and the salaries, leave, allowances and acting allowances prescribed for officers and servants of the Tribunal are to be paid by the Trust concerned to the President of the Tribunal for distribution.[2]

Rules for Tribunal.

S. 76 of the Calcutta Improvement Act empowers the President of the Tribunal to make, from time to time, with the previous sanction of the Provincial Government, rules not repugnant to the Code of Civil Procedure, 1908, for the

1. S. 74, Calcutta Act, 1911; S. 61, U. P. Act; S. 61, U. P. Act, as extended to Delhi; S. 62, Punjab Act; S. 64, C. P. Act.
2. S. 75, Calcutta Act; S. 62, U. P. Act; S. 62, U. P. Act, as extended to Delhi; S. 63, Punjab Act; S. 65, C. P. Act.

conduct of business by the Tribunal. All such rules are to be published by notification. Under the U. P. Act and the Punjab and the Central Provinces Acts this power vests in the Provincial Government and in the case of the Delhi Improvement Trust in the Chief Commissioner. In all these cases also the rules are required to be published by notification.[1] Under the C.P. Act all such rules are subject to the condition of previous publication.[2]

Award of Tribunal.

All the Acts except the Punjab Act and the C. P. Act prescribe that for the purpose of determining the award to be made by the Tribunal under the Land Acquision Act, 1894, —

(*a*) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of members of the Tribunal is to prevail;

(*b*) questions relating to the determination of the persons to whom compensation is payable or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary, and when so tried and decided, the decision of the President is to be deemed to be the decision of the Tribunal; and

(*c*) notwithstanding anything contained in clauses (*a*) and (*b*) above, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.[3] Can this provision be interpreted to mean that the decision of the President on any question of law and procedure will be the decision of the Tribunal and therefore final as part of the award of the Tribunal? The drafting of clause (*c*) is not very happy on this point though this appears to be the intention. The C. P. Act has made this point clear by definitely prescribing that 'notwithstanding anything contained

1. S. 63, U. P. Act; S. 63, U. P. Act as extended to Delhi; S. 64, Punjab Act;
2. S. 66, C. P. Act.
3. S. 77 (1) Calcutta Act; S. 64 (1), U. P. Act; S. 64 (1), U. P. Act as extended to Delhi.

in clauses (*a*) and (*b*) the decision of the President of the Tribunal on all questions of law and procedure shall be final.'[1] There is no clause (*c*) in the Punjab Act and clause (*b*) reads: 'notwithstanding anything contained in the foregoing clause, the decision on all questions of law and title and procedure shall rest solely with the President of the Tribunal, and such questions may be tried and decided by the President in the absence of assessors unless the President considers their presence necessary '.[2]

It has been held under the Calcutta Act that for the purposes of clause (*b*) above, the President of the Tribunal is a tribunal by himself. In *Saraswati Debi* v. *Bahadur Lal Missir*,[3] the dispute was as regards a sum of Rs. 7, 245 in respect of which the Land Acquisition Collector made a joint award in favour of two persons B, claimant No. 1, and S, claimant No. 2, widow of one G. This sum was awarded as the value of certain structures which had been acquired on behalf of the Calcutta Improvement Trust. The President by his order directed the whole of the compensation to be paid to claimant No. 1 on the footing of the mortgage which he had set up. It appeared that before the Land Acquisition Collector claimant No. 1 claimed compensation as owner of the structures but before the Tribunal he changed his case and based his claim on a mortgage executed in his favour by G. It was contended by claimant No. 2 that G at the time of execution of the document was minor. On appeal it was held, that s. 35 (3), clause (b) of the Indian Registration Act was very far short of a statutory presumption arising in favour of the mortgagee, that at the time of the execution the mortgagor was major and not minor, that the burden of proving minority of G at the time of execution of the mortgage deed was on claimant No. 2, and that the mortgage was found on the evidence to be executed by a minor and consequently void, and consequently the claim put forward on the basis of the mortgage failed.

1. S. 67 (1) C. P. Act.
2. S. 65 (1) Punjab Act.
3. 68 Cal. L. J. 28.

In all questions relating to measurement of land, the amount of compensation, costs and questions relating to the determination of persons to whom compensation was payable or the apportionment of compensation had to be decided in accordance with the opinion of the majority of the members of the Tribunal, and in case of disagreement, the President alone cannot assess the compensation.[1] Where neither of the two assessors would agree as to the correctness of the amount of compensation suggested by the Chairman and wished to hear further evidence on the matter it was held that there was a disagreement between the members and though the Chairman was to regulate the procedure, he could at least have ruled that no further evidence should be admitted and called upon the assessors to fix the compensation, and that where he had not done so, and proceeded straight away to fix the compensation himself, his decision could not be sustained.

Meaning of award.

A decision on or determination by the tribunal of any matter which has no reference to compensation in some form or other does not come under the definition of 'award'. No appeal, therefore, lies from an order of the tribunal rejecting a reference made to it under s. 49 (1) of the Land Acquisition Act.[2]

It has been held that the President of the Calcutta Improvement Tribunal is a Civil Court having power to make an order for costs and an inherent power to execute such order for costs made by him[3].

Execution of award of the Tribunal.

Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by the Court of Small Causes of Calcutta in the case of the Calcutta Improvement Board, and under the U. P. Town Improvement Act, and U. P. Town Improvement Act as extended to the

1. *Secy. of State* v. *Karim Bux*. 1938 A. W. R. (H.C.)=1939 All. 130=180 I.C. 882, 883.
2. *Mahesh Misser* v. *Province of Bengal*, A. I. R. 1939 Cal. 733=70 Cal. L. J. 81.
3. *Bala Krishna* v. *K. Roy*, A. I. R. 1921 Cal. 413=29 C. W. N. 30=65 I. C. 177.

Province of Delhi, by a Court of Small Causes within the local limits of whose jurisdiction it was made, as if it were a decree of that Court[1]. Under the Punjab Town Improvement Act,[2] this power vests in a Court of Small Causes, or if there be no such court, by the Senior Sub-Judge within the local limits of whose jurisdiction it was made, and under the Nagpur Improvement Trust Act[3] in a competent Civil Court within the local limits of whose jurisdiction it was made.

It is to be observed that the Court competent to enforce the award of the Tribunal or any order made by the Tribunal for the payment of money is not to be deemed to be a transferee Court, and the procedure laid down in O.21, R. 6, Civil Procedure Code, will have no application to the award. The party in whose favour that has been made need not, therefore, obtain a certificate of non-satisfaction to get it executed by the Court of Small Causes.[4]

It has been held that the Tribunal constituted by the Calcutta Improvement Act, as amended by the Calcutta Improvement (Appeals) Act, 1911, is a "Court" within the meaning of section 195 of the Criminal Procedure Code. The word "Court" in this section has a wider meaning than "Court of Justice" under section 20 of the Code, and includes a tribunal entitled to deal with a particular matter and authorized to receive evidence bearing thereon in order to enable it to arrive at a determination upon the question.[5]

63. Application of Act to acquisition by other local authorities.

Section 66 of the U. P. Act provides that 'where a municipal board or other local authority acquires land for

1. S. 77 (2), Calcutta Act; S. 64 (2), U. P. Act; S. 64 (2), U. P. Act as extended to Delhi.
2. S. 65 (2), Punjab Act.
3. S. 97 (2), C. P. Act.
4. *Asmaboo Kushan Hussain* v. *Province of Bengal*. A. I. R. 1942, Cal. 569=46 C. W. N. 927=203 I. C. 429.
5. *Nanda Lal Ganguli* v. *Khetra Mohan Ghosh* I. L. R. XLV. Cal. 585; L. L. R. 27. Bom. 424, distinguished.

any of the purposes mentioned in clauses (a) and (c) of sub-section (1) of section 8 of the Municipalities Act:[1]—

(*a*) the modifications of the Land Acquisition Act contained in the schedule of this Act shall, so far as they are applicable, apply to every such acquisition ;

(*b*) the Provincial Government may constitute a Tribunal in accordance with section 59, and the provisions of sections 56 to 64, and of section 72 so far as they relate to the Tribunal shall thereupon apply to such acquisition.

It further enacts that if the Provincial Government does not constitute a Tribunal in accordance with clause (b) of sub-section (1), all references to the Tribunal in the Schedule shall be construed as referring to the Court.

This section has not been extended to Delhi. There is no corresponding provision in the Calcutta Act or in the C. P. Act. Section 66 of the Punjab Act reads as follows :—

"66. (1) Whenever a Municipal Committee or other local authority acquires land for the purposes of —

(*i*) laying out new public streets in any locality whether previously built upon or not ; or

(*ii*) constructing new buildings and laying out of compounds attached thereto, abutting on such new public streets in any locality, whether previously built upon or not; or

(*iii*) reclaiming unhealthy or insanitary localities—

(*a*) the modifications of the Land Acquisition Act contained in the schedule of this Act, shall, so far as they are applicable, apply to every such acquisition ;

(*b*) the Provincial Government may constitute a Tribunal in accordance with section 60 and the provisions

1. The purposes mentioned in clauses (a) and (c) of sub-section (1) of section 8 of the U. P. Municipalities Act are as follows:—

(a) laying out, in areas whether previously built or not, new public streets, and acquiring land for that purpose and for the construction of buildings, and their compounds, to abut on such streets

(c) reclaiming unhealthy localities.

of sections 57 to 66 and of section 73 so far as they relate to the Tribunal, shall thereupon apply to such acquisition.

2. If the Provincial Government does not constitute a Tribunal in accordance with clause (b) of sub-section (1), all references to the Tribunal in the Schedule shall be construed as referring to the Court."

64. Abandonment of acquisition.

Section 48 of the Land Acquision Act, 1894, empowers the Government to withdraw from the acquisition of any land of which possession has not been taken, except in the case provided for in section 36 of that Act (temporary occupation of waste or arable land). Whenever the Government withdraws from any such acquisition the Collector is to determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings under the Act, and this amount is to be paid to the person interested together with all costs reasonably incurred by him in the prosecution of those proceedings. The provisions of part III of that Act apply, so far as may be, to the determination of compensation payable under that section.

Section 49 (1) of the same Act further prescribes that the provisions of that Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desires that the whole of such house, manufactory or building shall be so acquired. The owner may, however, at any time before the Collector has made his award by notice in writing withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired. Clause 15 of the Schedule to the U. P. Town Improvement Act has further added that for the purposes of sub-section (1) of section 49 of this Act, in its application to acquisition of any land for the purposes of that Act, land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house. The same amendment occurs in the U. P. Town Improvement Act as

extended to the Province of Delhi and in the Punjab Town Improvement Act.[1]

65. Abandonment of acquisition in consideration of special payment.

Section 78 of the Calcutta Improvement Act further gives persons interested liberty to retain the land in any area comprised in an improvement scheme but *which is not required for the execution of the scheme* in consideration of the payment by them of a sum to be fixed by the Board in that behalf. It is not in essence the betterment principle adopted in the English Acts, but it is on the same lines as in England. The Hon'ble Mr. Bompas elucidating this provision of law observed during the debate on the Calcutta Improvement Bill, as follows—

"There are, so far as I know, three possible methods by which a body or a local authority, carrying out improvements may expect some return from the land which is benefited by its improvements. One is the betterment system which, after a prolonged fight, has been more or less adopted in England, and which has there proved more or less a failure. Under that system you impose a rate calculated on the rise in value of the land benefited by your improvement. No one has suggested that that principle should be applied in Calcutta. There is another system which at one time was advocated by Sir Herbert Risley in connection with this Bill (The Calcutta Improvement Bill). And that is the system under which you impose a rate on the frontages abutting on the land acquired, not calculated upon the extent of the benefit derived by that land but calculated on the cost which you have incurred in making improvements. That system was strongly advocated but was finally abandoned in deference to public opinion in Calcutta. Most of the associations consulted in it, and finally the Secretary of State thought that it should be dropped. We are then left with the principle of recoupment, which is a system always enforced in Calcutta and to which the people are accustomed, and which in principle has been accepted by

1. Clause (15) of the Schedule to the Punjab Town Improvement Act, 1922.

everybody, who has spoken in Council on this subject. The Bill provides that we can take up excess land, the increased value of which is entirely due to the capital which we have expended in making the road. Then we can re-sell it. This is a system which is extensively followed by the Calcutta Corporation. But it is quite possible that, instead of buying or acquiring this land and selling it when it has risen in value, we may shorten that complicated process by coming to an arrangement with the actual owner. It will be seen in clause 68 (new 81) of the Bill that when the Board comes to dispose of the land we are giving the right of pre-emption to the former owner. If we are not going through the process of acquiring land and keeping it for several years and then reselling it, when the price has gone up, to the former owner, the question arises whether the same object cannot be attained by a short cut. This clause is intended to give the Board the power to make an arrangement with the previous owner who, for the payment of a certain sum, can retain his land. It will be purely a matter of bargain between the Trust and the owner as to what the latter has to pay in order that the land may not be acquired. This is a process which is sure to have the approval of the land owners. For, it must be remembered that in many cases the owner of the land is anxious to avoid acquisition, and the Board on its part is anxious to avoid the expense and risk and locking up of capital involved in making acquisition. The whole of this complicated clause is to regulate negotiations between the Board and the owner. Of course, the owner has a right to say that somebody must judge between them. But that is not the question here. Here we merely say that we may negotiate with the owner and abstain from acquiring a land which he is anxious to retain."

Section 78 of the Calcutta Improvement Act, 1911, runs as follows:—

Section 78, Calcutta Improvement Act, 1911.

"78. (1) In any case in which the Provincial Government has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the

Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.

(2) The Board shall admit every such application if it—

(*a*) reaches them before the time fixed by the Collector, under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(*b*) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

(3) If the Board decide to admit any such application, they shall forthwith inform the Collector; and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the Board shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(4) Within the said period of three months, or, with the permission of the Board, at any time before the Collector has taken possession of the land, under section 16 of the Land Acquisition Act, 1894, the person from whom the Board have arranged to accept the sum so fixed may, if the Board are satisfied that the security offered by him is sufficient, execute an agreement with the Board, either—

(*i*) to pay the said sum three years after the date of the agreement, or

(*ii*) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at such rate not exceeding six per cent. per annum as the Provincial Government may fix by notification, and to make the first annual payment of such interest four years after the date of the agreement.

Provided that the Board may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(5) When any agreement has been executed in pursuance of sub-section (4), or when any payment has been accepted in pursuance of the proviso to that sub-section, in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(6) Every payment due from any person under any agreement executed under sub-section (4) shall be a charge on the interest of that person.

(7) If any instalment of interest payable under an agreement executed in pursuance of clause (ii) of sub-section (4) be not paid on the date on which it is due, the sum fixed by the Board under sub-section (3) shall be payable on that date, in addition to the said instalment.

(8) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (4), any person may pay off the charge created thereby, with interest at the rate fixed under the provisions of that clause up to the date of such payment.

(9) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (4), no suit with respect to such agreement shall be brought against the Board by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land.

(10) Notwithstanding any thing contained in clause (ii) of sub-section (4) or in sub-section (8) the rate of interest payable, under the provisions of that clause or that sub-section, as the case may be, shall be, or continue to be, four per cent. per annum in cases where the sum, in consideration of which the acquisition of the land has been abandoned, has been fixed under sub-section (3) before the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, and the agreement in respect of the payment of the same is executed before, on or within two months after, that date.

(11) Notwithstanding anything contained in clause (ii) of sub-section (4) or in sub-section (8) the rate of interest

payable under the provisions of that clause or that sub-section as the case may be, shall be, or continue to be, six per cent. per annum in cases where the sum, in consideration of which the acquisition of the land has been abandoned has been fixed under sub-section (3) on or after the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, but before the date of the Calcutta Improvement (Amendment) Act, 1934, and the agreement in respect of the payment of the same is executed during the period commencing with the date of commencement of the Calcutta Improvement (Amendment) Act, 1923, and ending two months after the date of the commencement of the Calcutta Improvement (Amendment) Act, 1934."

Scope of section 78 of the Calcutta Improvement Act, 1911

Some comments on this provision of law seem necessary. As already pointed out,[1] every improvement scheme under the Calcutta Improvement Act *must* provide for the acquisition by the Board of any land, in the area comprised in the scheme, *which will in their opinion be required for the execution of the scheme*, and *may* provide for the acquisition of any land in the area comprised in the scheme, which will in their opinion, be affected by the execution of the scheme. What land should be regarded as "required for" the execution of the scheme and what land should be regarded as merely "affected by" it? Any land in a scheme required for roads, open spaces, public buildings, and the like will obviously fall in the "required for" category. There may be certain lands in a scheme which are not required for any road, open space, public building and the like, but are necessary for the proper lay-out of the surplus land for disposal or may be unsuitable for building after the scheme is completed. Can such lands also be included in the "required for" category? The answer appears to be in the positive. Under section 78 (1) of the Act, the owner of the land, or any person having interest therein, may apply to the Board for abandonment of acquisition of such land only as is not required for the execution of the scheme. It obviously contemplates such lands only as do not

1. See notes on pages 139, 140.

fall in the 'required for' category referred to above. For abandonment of acquisition of such lands, the persons concerned are legally entitled to apply under these provisions.

The Board is *bound to admit* every application for abandonment of acquisition of any land not required for the scheme if it—(a) reaches them before the time fixed by the Collector, under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and (b) is made by all persons who have interests in the land greater than a lease for years having seven years to run. The Board is *not bound to admit* any application made after the due date or if all persons interested within the meaning of clause (b) do not join in, though it is obvious that the Board are at their discretion fully competent to admit such an application also. If there is an application put in by certain persons and before the expiry of limitation other persons join the first applicant, all their applications are to be complied with. But if only one or two share-holders apply it is waste of time to wait and see that others may also join them subsequently.

Consideration of abandonment of acquisition will be a sum to be fixed by the Board in this behalf. The Act does not lay down any principle, on which this sum is to be determined. As the structure of this section shows, this will necessarily be a question of bargain between the Trust and the person concerned and there is no reason why the Trust should assess it at a very high rate which may not be acceptable to the person concerned. It is understood that the general basis of terms for abandonment of acquisition by the Calcutta Improvement Trust is for the Trust to take 50 per cent. of the expected increase in value of the land due to the operations of the Trust. This is, however, for the Trust to decide. No hard and fast rule can be suggested, and even the expression '50 per cent. of the expected increase in the value of the land due to the operations of the Trust' is rather indefinite inasmuch as it will depend on the estimate of the increase in the value of the property on which the Trust and the person concerned may well differ.

Mode of payment

As regards payment of the sum agreed upon, there are three courses open to the person concerned, viz, he may, if the Board is satisfied that the security offered by him is sufficient, execute an agreement with the Board, either (i) to pay the said sum three years after the date of the agreement, or (ii) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at such rate not exceeding six per cent. per annum as the Provincial Government may fix by notification and to make the first annual payment of *such interest four years after the date of the agreement*. He may also pay in cash and according to the proviso to sub-section (4), the Board may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid. This is obviously a concession to the owner of the land. If he can borrow the money in the open market or from a friend on better terms than are offered by the Board, he is at liberty to do so, and he can pay off the Board's charge at any moment. There is nothing compulsory about this; he can accept the Board's terms if, as they probably would be, they were the most favourable that he could obtain. A margin of three years is allowed so as to enable the party concerned to receive benefit from improvement before making payment. Sub-section (8) further provides that any time after an agreement has been executed in pursuance of clause (ii) of sub-section (4), any person may pay off the charge created thereby, with interest, at the rate fixed under the provisions of that clause, up to the date of such payment.

Other provisions

Sub-section (9) lays down that when an agreement in respect of any land has been executed by any person in pursuance of sub-section (4), no suit with respect to such agreement shall be brought against the Board by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land. The object of this sub-section is to safeguard the interests of the Board. The Board after satisfying itself enters into agreement with one person. And then another person turns up and says what

right have you to enter into this agreement with him? I want the land acquired. It is to guard against such possibilities that this provision has been inserted. If the Board is liable to be constantly sued by some aggrieved co-sharer to have these *agreements set aside then it will be very shy of entering into* such agreements and the people cannot reap fullest advantage of the provisions of this section.

In actual practice it is, however, to be found that it is very difficult to bring a case strictly within the four corners of section 78 (1) of the Act. The scope of the section can therefore be very well extended by reading it along with section 24 of the Act, and the Board is fully empowered to enter into and perform any contract as they may consider necessary or expedient for carrying out any of the purposes of the Act. As a matter of fact, in Calcutta majority of the cases of abandonment of acquisition are dealt with under section 78 of the Act read with section 24 of the same, and with suitable amalgamations, the owner is offered an "arrangement" which may in fact involve abandonment of acquisition of a portion or the whole of his land, and in addition to it a sale to him of some surplus land. And such an "arrangement" is sanctified by a regular contract under section 24 of the Act. Such a contract has already been upheld by the Courts as perfectly valid.

Scope of section 78 of the Calcutta Improvement Act read with section 24 of the Act.

In the Trustees for the Improvement of Calcutta v. *Mst. Meherunnessa* [1] defendant's premises were notified for acquisition as required for the execution of a scheme framed by the Calcutta Improvement Trust. The defendant who was the owner of the said premises applied for exemption of a portion thereof from acquisition under the provisions of section 78, Calcutta Improvement Act. This application was refused by the Trustees. Subsequently, an agreement was entered into under which the portion in respect of which the defendant had no objection was to be acquired

1. A. I. R. 1932 Cal. 178.

by the trustees on payment of a certain sum, and the acquisition of the portion in respect of which exemption was asked for was abandoned on condition that the defendant paid the Board a sum of Rs. 4,500, a small plot of land out of another premises which the Board had acquired would be conveyed by the Trustees to the defendant for Rs. 1,680, that is to say, for the total amount of Rs. 6,180/, the defendant would execute in favour of the trustees a yearly rent charge of Rs. 280/13- charged upon and payable out of the two parcels of land, which the defendant would continue to possess, as well as on all structures which might be erected thereon. In pursuance of this agreement, the trustees abandoned the acquisition of the portion for which exemption was asked for, and executed a conveyance in favour of the defendant in respect of the portion of the premises that she was to get, and the defendant on the other hand executed a deed in favour of the trustees creating a perpetual yearly rent charge of Rs. 180/13/- payable on the 1st day of April every year, the first of each payments to be made on 1st April, 1923. The deed further provided that if the amount remained unpaid for 15 days after the due date, then the whole amount of Rs. 6,180 would be recoverable with interest at the rate of 6½ per cent. per annum and the trustees would be able to recover the same by getting into possession and selling the premises charged by private contract or public auction. The defendant defaulted in paying the rent which fell due on 1st April 1924 and the plaintiff asked for recovery of Rs. 280/131- being the amount in default and also of the said amount of Rs. 6,180 together with interest at the rate of 6½% per annum from 16th April 1924 to date of suit and also with further interest for the period thereafter and also for realization of the decretal amount, should the defendant fail to pay off the same within a time to be fixed, by sale of the premises charged. It was held that such an agreement did not come under section 78 of the Act and therefore procedure under section 79 of the same was not the procedure for its enforcement, and that section 24 of the Act conferred very wide powers on the Board to enter into and perform all such contracts as they may consider expedient for carrying out any

of the purposes of the Act, and that on the basis thereof the Board must be held to be fully competent to enter into an agreement of the present nature, there being no prohibitory provision in the Act itself or any where else, and that the agreement was not *ultra vires* of the powers of the Trust and was enforceable in Court as a valid contract under section 24 of the Improvement Act. It was further held that if an acquisition of certain premises was not justified by the provisions of the Act, the trustees, a statutory body, could not notify their intention to make the acquisition and under colour of proceedings taken under the Act enter into transaction either for their benefit or to their prejudice.

The following observations of the learned Chief Justice of the Calcutta High Court in appeals from original decrees Nos. 51 and 52 of 1928 may be usefully quoted :—

"As I read section 78, it is a provision inserted in view of the wide powers of acquisition conferred upon the Trust, power which extend not merely to land which is actually required for the execution of a scheme but to land which will in the opinion of the Trust be affected by the execution of the scheme, under sections 41 (a) and 42 (a). The section gives a right to the owner of land which is not required for the execution of the scheme. If he comes in time and if all the owners join together, the Trust is required by the section to refrain from compulsory acquisition of the property provided that a betterment fee, as it may be called, is either paid or secured to them in the manner set forth in the section. It is difficult to say what can be meant by the legislature when it says of the owner that he may execute an agreement with the Board either (1) to pay the said sum three years after the date of the agreement or (2) to leave such sum outstanding as a charge on his interest in the land subject to the payment in perpetuity of interest at the rate of 4 per cent. per annum and to make the first annual payment of such interest four years after the date of the agreement. This may mean that the owner has a right to free his land from acquisition provided that he is willing to execute an agreement in one or other of those senses. Perhaps however it means, less than this. In any case the purpose of the section is to give a right to the owner upon certain conditions. If in this case the plaintiffs did not satisfy the conditions, and there is no evidence whatever that they did, then the Trust was in no way obliged to permit them to have the benefit of the section and I should be very slow indeed to hold that there was anything illegal on the part of the Trust in coming to an arrangement with the owner outside the section, an arrangement the terms of which

appear eminently fair..... ..... In my judgment it would be a lamentable result of a failure on the part of the owner to comply with the conditions prescribed by section 78 if the Trust were to be unable to deal with the matter at all except upon the basis of that section".

Similarly, it has been held in *Mahesh Missir* v. *Province of Bengal*,[1] that there is nothing in the Land Acquisition Act or the Calcutta Improvement Act which prevents the acquiring authority from abandoning a portion of the land in respect of which proceedings under the Act have been taken. Section 78 of the Calcutta Improvement Act lays down only one particular method of abandoning acquisition. Under section 24 of that Act very comprehensive powers are given to the Board of Trustees and they can enter into and perform any contract which they might consider necessary for carrying out the purposes of the agreement. The Board is not, therefore, prevented from abandoning any portion of the land intended to be acquired in pursuance of a contract entered into under the provisions of section 24 of the Act. It has been further held in *Secretary of State* v. *Mahip Sha*[2] that it is permissible to the Board of Trustees of the Calcutta Improvement Trust to abandon a portion of the land in respect of which notice under section 9 of the Land Acquisition Act was given, for acquisition. There is nothing in either section 78 of the Calcutta Improvement Act or in section 48 of the Land Acquisition Act preventing such piece-meal acquisition. Where such abandonment is by agreement with the owner of the land, a monthly tenant cannot claim compensation for the machineries which lie on the exempted portion of the land.

Sections 78 and 24, Calcutta Act as extended to Delhi,

Section 78 of the Calcutta Act has been extended to Delhi under section 7 of the Delhi Laws Act, 1912, by Government of India Notification F No. 23—(10)—37—H dated the 2nd March, 1937, with the words "Local Government", and "the Board" substituted by the words "Chief Commissioner" and "the Trust" respectively and other consequential changes

1. A. I. R. 1939 Cal. 733=I. L. R. (1939) 2 Cal. 349=70 Cal. L. J. 81.
2. 41 C. W. N. 437.

and sub-sections (10) and (11) omitted. The said section as so modified reads as section 64-A of the U. P. Act as extended to Delhi. Section 24 of the Calcutta Act has been extended to Delhi under Act. No. F. 29—55 (4) 39-F. U. L. dated the 22nd February, 1940, and reads as section 22-B of the latter Act.

The corresponding provision in the Punjab Act is to the following effect:— Punjab Act

"56 (1) Whenever in any locality comprised in any scheme under this Act the Provincial Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme the owner of such land, or any person having an interest therein, may make an application to the Trust requesting that the acquisition of such land be abandoned in consideration of the payment by him of a sum to be fixed by the Trust in that behalf.

(2) The Trust shall admit every such application if it—

(a) reaches it before the time fixed by the Collector, under section 9, of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by any person who either owns the lands, is mortgagee thereof, or holds a lease thereof, with an unexpired period of seven years

(3) The Trust may admit any such application presented by any other person having an interest in the land.

(4) On the admission by the Trust of any such application, it shall forthwith inform the Collector, and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the Trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(5) Within the said period of three months, or with the permission of the Trust at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, the person from whom the Trust has agreed to accept the sum so fixed may if the Trust is satisfied that the security offered by him is sufficient, execute an agreement with the Trust, either:—

(i) to pay the said sum three years after the date of the agreement, or

(ii) to leave the said sum outstanding as a charge on his interest in the land subject to the payment of interest at a rate to be agreed upon by such person and the Trust until the said sum has been paid in full and to make the first annual payment of such interest four years after the date of the agreement:

Provided that the Trust may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(6) When any agreement as been executed in pursuance of sub-section (5) or when any payment has been accepted in pursuance of the proviso to that sub-section in respect of any land, proceedings for the acquisition of the land shall be deemed to be abandoned.

(7) Every payment due from any person under any agreement executed under sub-section (5) shall be a charge on the interest of that person.

(8) If any instalment of interest payable under an agreement executed in pursuance of clause (ii) of sub-section (5) be not paid on the due date, the sum fixed by the Trust under sub-section (4) shall be payable on that date, in addition to the said instalment.

(9) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (5) any person may pay in full the charge created thereby, with interest, at the agreed rate, up to the date of such payment.

(10) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (5), no suit with respect to such agreement shall be brought against the Trust by any other person (except an heir, executor, or administrator of the person first aforesaid) claiming to have an interest in the land.

(11) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (5), and any sum payable in pursuance of that sub-section is not duly paid, the same shall be recoverable by the Trust (together with interest up to the date of realization, at the agreed rate), from the said person or his successor-in-interest in such land in the manner provided by section 222 of the Municipal Act and, if not so recovered the Chairman may, after giving public notice of his intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter".

The same provision in the C. P. Act is to the following effect :

" S. 68 (1) Wherever in any area comprised in any improvement scheme under this Act the Provincial Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Trust, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Trust in that behalf.

(2) The Trust shall admit every such application if it —

(a) reaches it before the time fixed by the Deputy Commissioner under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by any person who has an interest in the land or holds a lease thereof, with an unexpired period of seven years.

(3) On the admission by the Trust of any such application, it shall forthwith inform the Deputy Commissioner and the Deputy Commissioner shall thereupon stay for a period of

three months all further proceedings for the acquisition of the land and, the Trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(4) Within the said period of three months, or, with the permission of the Trust, at any time before the Deputy Commissioner has taken possession of the land under section 16 of the Land Acquisition Act, 1894, the person from whom the Trust has agreed to accept the sum so fixed may, if the Trust is satisfied that the security offered by him is sufficient, execute an agreement with the Trust, either —

(i) to pay the said sum three years after the date of the agreement, or

(ii) to leave the said sum outstanding as a charge on his interest in the land subject to the payment of interest at the rate to be agreed upon by such person to the Trust until the said sum has been paid in full, and to make the first annual payment of such interest four years after the date of the agreement :

Provided that the Trust may, at any time before the Deputy Commissioner has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(5) When any agreement has been executed in pursuance of sub-section (4), or when any payment has been accepted in pursuance of the proviso to that sub-section in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(6) Every payment due from any person under any agreement executed under sub-section (4) shall be a charge on the interest of that person.

(7) If any instalment of interest payable under an agreement executed in pursuance of clause (i) of sub-section (4) be not paid on the date on which it is due the sum fixed by the Trust under sub-section (3) shall be payable on that date, in addition to the said instalment.

(8) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (4), any person may pay in full the charge created thereby, with interest, at the agreed rate, up to the date of such payment.

(9) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (4), no suit with respect to such agreement shall be brought against the Trust by any other person (except an heir, executor or administrator of the person first aforesaid claiming to have an interest in the land."

66. Betterment fee.

One hears frequently of compensation being payable by a responsible authority to property owners in respect of injurious affection which they have suffered by the coming into force of the provisions which a planning authority has thought fit to insert in its planning scheme. But whilst it is likely that a scheme will benefit the community as a whole at the expense of the individual, it is also possible that its provisions will be a source of benefit to a particular individual over and above the benefit which as a member of the general public, he receives from the scheme. As an example, a scheme may provide for the making of a broad highway on the site of an old and narrow street. The widening may be affected by taking land from one side only of the old street. Compensation will be payable in respect of the acquisition of the land necessary for the widening and will be payable by the responsible authority to the land owners concerned. On the other hand, the buildings standing on the opposite side of the street will find themselves one side flanking a broad new highway, the making of which may have the effect of transforming into a main shopping centre that which was previously a mean insignificant street. Instantly the letting value of the old shops will rise, not as a result of any efforts on the part of their owners but as a result of the improvements carried out by the responsible authority acting under the provisions of its town planning scheme. Such improvements will not have been carried out without expense to the responsible authority and if compensation has

been payable by the authority to the owners of the property on the one side of the old street, it is only proper that something should be payable to the authority by the owners of the property on the other side in view of the increase in value which will have accrued to their property as a result of the improvements carried out by the responsible authority acting under this scheme.

It was on similar considerations that the Calcutta Improvement (Amendment) Act, 1931, inserted sections 78 (A) to 78 (G) in the Calcutta Improvement Act, 1911 relating to the charging of betterment fee by the Board. The Hon'ble Mr. Vijey Prasad Singh Roy while presenting the Report of the Select Committee on the Calcutta Improvement (Amendment) Bill, 1931, which ultimately became the Calcutta Improvement (Amendment) Act of 1931, while touching on the broad principles underlying the measures introduced by this Act observed :

"Whenever the value of a property is increased at public expense, it is a universally accepted principle that a portion of the increase should be secured to the public. This principle is embodied in the Calcutta Improvement Act and the Calcutta Municipal Act in the provisions relating to the exemption of lands from acquisition. Any owner of property which will be benefited by execution of an improvement scheme, but will not be required for its execution now applies to the authorities of the Calcutta Improvement Trust or the Calcutta Corporation, as the case may be, for the exemption of his property from acquisition on payment of an exemption fee which represents a portion of the increased value of the property. But under section 78 of the Calcutta Improvement Act under which the owner may apply for exemption there is no provision of an exemption being offered by the Trust. So if an owner does not do so, the Trust must either acquire the property or give it up altogether. The Trustees cannot now offer exemption on receipt of a betterment fee. By the amendment of S. 78 it is now proposed to invest the Trust with that power, so that the Trust will now have the option to acquire

or to exempt any property. This power is specially required to take up costly improvement schemes in highly built up and expensive areas like Bara Bazzar which have been held up for a long time for the want of a provision like this."

The provisions relating to charging of betterment fee by the Board as inserted in the Calcutta Improvement Act, 1911, by the amending Act of 1931 are as follows :—

Assessment of betterment fee by Board

"78 A (1) When by the making of any improvement scheme, any scheme, any land in the area comprised in the scheme which is not required for the execution thereof will, in the opinion of the Board, be increased in value, the Board in framing the scheme, may, in lieu of providing for the acquisition of such land, declare that a betterment fee shall be payable by the owner of the land or any person having an interest therein in respect of the increase in value of the land resulting from the execution of the scheme.

(2) Such betterment fee shall be an amount equal to one-half of the increase in value of the land resulting from the execution of the scheme, and shall be calculated upon the amount by which the value of the land on the completion of the execution of the scheme estimated as if the land were clear of buildings exceeds the value of the land prior to the execution of the scheme estimated in like manner.

Assessment of betterment fee by Board.

78 B (1) When it appears to the Board that an improvement scheme is sufficiently advanced to enable the amount of the betterment fee to be determined, the Board shall by a resolution passed in this behalf declare that for the purpose of determining such fee the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to every person on whom a notice in respect of the land to be assessed has been served under clause (i) of sub-section (1) of section 45 that the Board propose to assess the amount of the betterment fee payable in respect of such land under section 78 A.

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

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

(4) If the person concerned dissents from the assessment made by the Board or fails to give the Board the information required by sub-section (2) within the period specified therein, the matter shall be determined by arbitrators in the manner provided by section 78 C.

Settlement of betterment fee by arbitrators.

78 C (1) For the determination of the matter referred to in sub-section (4) of section 78B, the Provincial Government shall constitute a panel of arbitrators consisting of two parts, the first part of which shall be composed of persons having special knowledge of the valuation of land and the second part of other suitable persons.

(2) When the Board have, in accordance with the provisions of section 78B, assessed the amount of betterment fee payable by all persons in respect of land in the area comprised in the scheme, the Board shall serve a notice on all those persons who have dissented from the assessment made by the Board, requiring them to meet at such time and place as may be fixed by the Chairman for the purpose of electing an arbitrator.

(3) For each scheme there shall be a body of two arbitrators, one of whom shall be elected by vote by the persons present at the meeting referred to in sub-section (2) from one part of the panel, and the other shall be appointed by the Provincial Government from the other part of the panel :

Provided that for the purposes of a particular scheme the Provincial Government may, prior to the election referred to in this sub-section, if it thinks fit, modify either part of the panel.

(4) *In the event of a difference of opinion on any matter* between the two arbitrators, a third arbitrator shall be selected by lot from the first part of the panel, and the matter shall be decided by the votes of the majority of the three arbitrators,

(5) If an arbitrator dies, resigns, becomes disqualified, is removed under sub-section (6), or refuses to perform or in the opinion of the Provincial Government neglects to perform or becomes incapable of performing his functions, the authority who elected or appointed him shall forthwith elect or appoint a fit person to take the place of such arbitrator.

(6) If the Provincial Government is satisfied after such inquiry as it thinks fit that the arbitrator has misconducted himself, it may remove him.

(7) When the arbitrators have made their award under section 78C they shall sign it and forward it to the Board, and such award shall subject to the provisions of sub-section (8) be final and conclusive and binding on all persons.

(8) If the Provincial Government is satisfied after such inquiry as it thinks fit that an award has been improperly procured, or that an arbitrator has misconducted himself in connection with an award the Provincial Government may set aside the award.

78D. The Board shall pay to each arbitrator a fee to be determined by the Provincial Government in respect of the whole of the scheme for which his services are utilized. **Fee of arbitrators.**

78E. Notwithstanding anything contained in any other enactment the proceedings of arbitrators under section 78C shall be governed by rules to be made in this behalf under section 137. **Proceedings of arbitrators.**

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

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

(4) If the person concerned dissents from the assessment made by the Board or fails to give the Board the information required by sub-section (2) within the period specified therein, the matter shall be determined by arbitrators in the manner provided by section 78 C.

Settlement of betterment fee by arbitrators.

78 C (1) For the determination of the matter referred to in sub-section (4) of section 78B, the Provincial Government shall constitute a panel of arbitrators consisting of two parts, the first part of which shall be composed of persons having special knowledge of the valuation of land and the second part of other suitable persons.

(2) When the Board have, in accordance with the provisions of section 78B, assessed the amount of betterment fee payable by all persons in respect of land in the area comprised in the scheme, the Board shall serve a notice on all those persons who have dissented from the assessment made by the Board, requiring them to meet at such time and place as may be fixed by the Chairman for the purpose of electing an arbitrator.

(3) For each scheme there shall be a body of two arbitrators, one of whom shall be elected by vote by the persons present at the meeting referred to in sub-section (2) from one part of the panel, and the other shall be appointed by the Provincial Government from the other part of the panel ;

Provided that for the purposes of a particular scheme the Provincial Government may, prior to the election referred to in this sub-section, if it thinks fit, modify either part of the panel.

(4) In the event of a difference of opinion on any matter between the two arbitrators, a third arbitrator shall be selected by lot from the first part of the panel, and the matter shall be decided by the votes of the majority of the three arbitrators.

(5) If an arbitrator dies, resigns, becomes disqualified, is removed under sub-section (6), or refuses to perform or in the opinion of the Provincial Government neglects to perform or becomes incapable of performing his functions, the authority who elected or appointed him shall forthwith elect or appoint a fit person to take the place of such arbitrator.

(6) If the Provincial Government is satisfied after such inquiry as it thinks fit that the arbitrator has misconducted himself, it may remove him.

(7) When the arbitrators have made their award under section 78C they shall sign it and forward it to the Board, and such award shall subject to the provisions of sub-section (8) be final and conclusive and binding on all persons.

(8) If the Provincial Government is satisfied after such inquiry as it thinks fit that an award has been improperly procured, or that an arbitrator has misconducted himself in connection with an award the Provincial Government may set aside the award.

Fee of arbitrators.

78D. The Board shall pay to each arbitrator a fee to be determined by the Provincial Government in respect of the whole of the scheme for which his services are utilized.

Proceedings of arbitrators.

78E. Notwithstanding anything contained in any other enactment the proceedings of arbitrators under section 78C shall be governed by rules to be made in this behalf under section 137.

Provided that every party to such proceedings shall be entitled to appear before the arbitrators either in person or by his authorised agent.

Board to give notice to persons liable to payment of betterment fee.

78F. When the amount of all betterment fees payable in respect of land in the area comprised in the scheme has been determined under section 78B or section 78C, as the case may be, the Board shall, by a notice in writing to be served on all persons liable to such payment, fix a date by which such payment shall be made, and interest at the rate of six per cent. per annum upon any amount outstanding shall be payable from that date.

Agreement to make payment of betterment fee a charge on land.

78G. (1) Any person liable to the payment of a betterment fee may, at his option, instead of making a payment thereof to the Board, execute an agreement with the Board to leave the said payment outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at the rate of six per cent. per annum, the first annual payment of such interest to be made one year from the date referred to in section 78F.

(2) Every payment due from any person in respect of a betterment fee and every charge referred to in sub-section (1) shall, notwithstanding anything contained in any other enactment and notwithstanding the existence of any mortgage or other charge whether legal or equitable created either before or after commencement of the Calcutta Improvement (Amendment) Act, 1931, be the first charge upon the interest of such person in such land.

(3) The provisions of sub-sections (7), (8) and (9) of section 78 relating, in the case of the payments mentioned in that section, to the non-payment of instalments of interest, the paying off of the charge with interest, and the restrictions in respect of suits against the Board shall apply, *mutatis mutandis*, to the payment of the money payable under an agreement made in pursuance of sub-section (1) and of the interest payable in respect thereof."

In estimating the value of land after the execution of an improvement scheme, all the relevant factors, such as the construction of new roads, widening of existing roads and the provision of open spaces will be taken into consideration.

Recovery of money payable in pursuance of sections 78, 78B, 78C, or 78G.

All money payable in respect of any land by any person under an agreement executed in pursuance of sub-section (4) of section 78, or by any person in respect of a betterment fee under section 78B or section 78C or by any person under an agreement executed in pursuance of section 78 G, sub-section (1), is recoverable by the Board together with interest, due up to the date of realization, which, in the case of betterment fees under section 78B or 78C, is to be at the rate of six per cent. per annum, from the said person or his successor in interest in such land, in the manner provided by the Calcutta Municipal Act, 1923, for the recovery of the consolidated rate[1]. If not so recovered, the Chairman may, after giving public notice of his intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.[2]

Board to appoint persons for enforcement of process for recovery of dues.

The Board may direct by what authority any powers or duties incident under the Calcutta Municipal Act, 1923, to the enforcement of any process for the recovery of the consolidated rate shall be exercised and performed when the process is employed under section 79.[3]

Object of the Calcutta Improvement (Amendment) Act, 1931.

The object of the Calcutta Improvement (Amendment) Bill, which ultimately became the Calcutta Improvement (Amendment) Act, 1931, was thus stated :—

"The object of this Bill is to introduce into the operations of the Calcutta Improvement Trust the procedure of recoupment through betterment fees as an alternative to that at present

1. See sections 189 to 213, Calcutta Municipal Act, 1923.
2. Section 79, Calcutta Improvement Act, 1911.
3. Section 79 A, Calcutta Improvement Act, 1911.

provided by powers of acquisition and exemption. The present system has been found unsuitable for the improvement of a closely built over area such as 'Bara Bazar' where, should exemption not be claimed, it is beyond the financial capacity of the Trust to lock up capital in acquiring large blocks of valuable house property. The whole question was examined by a Special Sub-Committee of the Calcutta Improvement Trust, and it is in accordance with their recommendations which have the approval of the Improvement Trust that a Bill has now been framed for empowering the Trust to levy a betterment fee from property the value of which has increased by the operation of the Trust, in lieu of proceeding to acquisition with the alternative of exemption. The Bill provides for the levy of a betterment fee calculated at 50 per cent. of the difference between the value of the land on the completion of the execution of the scheme estimated as if the land were clear of buildings and the value of the land prior to the execution of the scheme estimated in like manner"[1].

For the purposes of the act, "betterment fee" is defined as meaning the fee prescribed by section 78 A in respect of an increase in value of land resulting from the execution of an improvement scheme[2].

Sections 78A to 79A of the Calcutta Act as extended to Delhi.

Sections 78A to 79A of the Calcutta Improvement Act, 1911, have been extended to Delhi, under section 7 of the Delhi Laws Act, 1912 (Act XIII of 1912), under Government of India, *Department of Education, Health & Lands, Notification* No, F. 29-55 (4)/39-F & L., dated the 22nd February, 1940, with practically no modification in the principle or procedure regarding levying of betterment fees in the areas falling within the boundaries of the Delhi Improvement Trust schemes. The only substantial change is in section 79 of the Act where the words and figures "in the manner provided by the Punjab Municipal Act, 1911, as extended to the Province of Delhi, for the recovery of taxes, and for the purposes of such recovery

1. The Calcutta Gazette, 1930, Part IV, p. 140.
2. Clause (1 a), S. 2, Calcutta Improvement Act, 1911.

the Trust shall be deemed to be the Committee" have been substituted for the words and figures "in the manner provided by the Calcutta Municipal Act, 1923, for the recovery of the consolidated rate" in the Calcutta Act. These sections read as sections 64B, 64C, 64D, 64E, 64F, 64G, 64H and 64-I respectively of the U. P. Town Improvement Act, 1919, as extended to Delhi.

"Betterment fee" for the purposes of this Act also has the same meaning as under the Calcutta Act[1]

Under the C. P. Act this fee is termed as "betterment contribution."[2] This Act does not provide for settlement of betterment fee by arbitrators. Sections 69 to 74 of this Act relating to the levying of 'betterment contribution' read as follows: C. P. Act.

Payment of betterment contribution

"69 (1) When by the making of any improvement scheme, any land in the area comprised in the scheme which is not required for the execution thereof will, in the opinion of the Trust, be increased in value, the Trust, in framing the scheme, may in lieu of providing for the acquisition of such land, declare that a betterment contribution shall be payable by the owner of the land or any person having an interest therein in respect of the increase in value of the land resulting from the execution of the scheme.

(2) Such betterment contribution shall be an amount equal to one-half of the increase in value of the land resulting from the execution of the scheme, and shall be calculated upon the amount by which the value of the land on the completion of the execution of the scheme estimated as if the land were clear of buildings exceeds the value of the land prior to the execution of the scheme estimated in like manner.

1. Government of India, Department of Education, Health & Lands, Notification No. F. 29-55 (5)/39 F. & L., dated the 22nd February, 1940; Clause (Ia), section 2, U. P. Town Improvement Act, 1919, as extended to Delhi.
2. Clause (a), section 2, Nagpur Improvement Trust Act, 1936.

(3) No betterment contribution shall be payable by Government in respect of any land which is the property of, or managed by, Government or by a local authority or any public institution in respect of any land belonging to such authority or institution if, and so long as, such land is used for a public, charitable or religious purpose.

Assessment of betterment contribution by Trust.

70. (1) When it appears to the Trust that an improvement scheme is sufficiently advanced to enable the amount of the betterment contribution to be determined, the Trust shall, by a resolution passed in this behalf, declare that for the purpose of determining such contribution the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to every person on whom a notice in respect of the land to be assessed has been served under clause (a) of sub-section (1) of section 41 that the Trust proposes to assess the amount of the betterment contribution payable in respect of such land under section 69.

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

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

(4) If the person concerned dissents from the assessment made by the Trust or fails to give the Trust the information required by sub-section (2) within the period specified therein, the matter shall be determined by the Tribunal appointed under section 60 in such manner as it thinks fit.

Trust to give notice to persons liable to payment of betterment contribution.

71. When the amount of all betterment contribution payable in respect of land in the area comprised in the scheme has been determined under section 70, the Trust shall, by a notice in writing to be served on all persons liable to such payment fix a date by which such payment shall be made, and

interest at the rate to be agreed upon by such persons upon any amount outstanding shall be payable from that date.

72. (1) Any person liable to the payment of a betterment contribution may, at his option, instead of making a payment thereof to the Trust execute an agreement with the Trust to leave the said payment outstanding as a charge on his interest in the land, subject to the payment of interest at the rate to be agreed upon by such person until the said sum has been paid in full, the first annual payment of such interest to be made one year from the date referred to in section 71.

Agreement to make payment of betterment contribution a charge on land.

(2) Every payment due from any person in respect of betterment contribution and every charge referred to in sub-section (1) shall, notwithstanding anything contained in any other enactment and notwithstanding the existence of any mortgage or other charge whether legal or equitable created either before or after the commencement of this Act, be the first charge upon the interest of such person in such land.

(3) The provisions of sub-sections 7), (8) and (9) of section 68 relating, in the case of the payments mentioned in that section, to the non-payment of instalments of interest, the paying in full of the charge with interest, and the restrictions in respect of suits against the Trust shall apply, *mutatis mutandis*, to the payment of the money payable under an agreement made in pursuance of sub-section (1) and of the interest payable thereof.

Recovery of money payable in pursuance of section 68, 70 or 72.

73. All money payable in respect of any land by any person under an agreement executed in pursuance of sub-section (4) of section 68, or by any person in respect of a betterment contribution under section 70, or by any person under an agreement executed in pursuance of sub-section (1) of section 72 shall be recoverable by the Trust (together with interest, up to the date of realization at the agreed rate) from the said person or his successor in interest in such land, in the manner provided by Chapter XIX of the Municipalities Act, and, if not so recovered, the Chairman may, after giving public notice of his intention to do so and not less than one month

after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance, if any, to the defaulter.

Trust to appoint persons for enforcement of processes for recovery of dues.

74. The Trust may direct by what authority any power or duty under the Municipalities Act, for the enforcement of any process for the recovery of taxes shall be exercised and performed when that process is employed under section 73.

There is no provision for levying of betterment fee under the U. P. Act or under the Punjab Act.

67 Acquisition on fresh declaration.

It is to be observed that agreement for abandonment of acquisition of payment of betterment fee shall not bar acquisition of property under a fresh declaration. Section 80 of the Calcutta Act provides that 'if any land, in respect of which an agreement has been executed or a payment has been accepted in pursuance of sub-section (4) of section 78, or in respect of which the payment of a betterment fee has been accepted in pursuance of sub-section (3) of section 78B or has been made after its determination under section 78C, or in respect of which an agreement for such payment has been executed under section 78G, be subsequently required for any of the purposes of this Act, the agreement on payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894. The same section has been extended to Delhi under section 7 of the Delhi Laws Act, 1912, without any substantial modification, and reads as section 64-J of the U. P. Act as extended to Delhi.[1] Similarly, section 57 of the Punjab Act provides that 'if any land in respect of which an agreement has been executed, and a

1. Government of India (F. H. & L) Notification No. F. 29-55 (4)/39-F. & L., dated the 22nd February, 1940.

payment has been accepted, in pursuance of sub-section (5) of section 56, be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act 1894. Section 75 of the C. P. Act providing for this is the same as section 80 of the Calcutta Act.

68. Disposal of land.

Power to dispose of land-right of pre-emption under the Calcutta Act

All the Trusts have full power to dispose of their lands. Under the Calcutta Act, the Board may retain, or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by them under the Act.[1] A sort of right of pre-emption, however, has been provided in favour of the original owners, for the Act provides that whenever the Board decide to lease or sell any land acquired by them under it, from any person, they — (a) shall give notice by advertisement in local newspapers, and (b) shall offer to the said person, or his heirs, executors or administrators, a prior right to take on lease or to purchase such land, at a rate to be fixed by the Board, *if the Board consider that such a right can be given without detriment to the carrying out of the purposes of this Act.* If in any case two or more persons claim to exercise a right offered under clause (b) above to take on lease or to purchase any land, the right shall be exercisable by the person who agrees to pay the highest sum for the land, not being less than the rate fixed by the Board under that clause, to the exclusion of the others.[2]

Section 65 of the U. P. Act simply provides that 'subject to any rules made by the Provincial Government under section 72 of this Act, the Trust may retain, or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by it under this Act. This section

1. S. 81 (1), Calcutta Improvement Act, 1911.
2. *Ibid*, S. 81 (2), (3).

has been extended to Delhi without any modification. There is no specific provision to this effect in the Panjab Act. The C. P. Act follows the U. P. Act.[1]

Whether the Trust should sell land lease-hold or free-hold is an interesting question of some importance and will be referred to in the concluding chapter.

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1. S. 76, Nagpur Improvement Trust Act, 1936.

CHAPTER IX

COMPENSATION & DAMAGES

Compensation for Compulsory Acquisition of Land for Trust Schemes

69. Compensation for land acquired under the Land Acquisition Act, 1894.

In determining the amount of compensation to be awarded for land acquired under the Land Acquisition Act, 1894, the following matters are to be taken into consideration, namely :— Section 23, (1), Land Acquisition Act, 1894

firstly, the market-value of the land at the date of publication of the notification under section 4, sub-section (1) ;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land ;

fourthly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings ;

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

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the

publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

Section 24, Land Acquisition Act. 1894.

The following are *not* to be taken into consideration :—

firstly, the degree of urgency which has led to the acquisition ;

secondly, any disinclination of the person interested to part with the land acquired ;

thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit ;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6 by or in consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

sixthly, any increase in the value of the other land of the person interested likely to accrue from the use to which the land required will be put ;

seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of the Collector after the date of the publication of the notification under section 4, sub-section (1).

Market-value'.

The primary thing, therefore, in determining the amount of compensation to be awarded for land acquired under the Land Acquisition Act, 1894, is to determine its market-value at the date of publication of the notification under section 4 (1) of the Act. The Legislature has not defined the term '*market-value*'. This was advisedly done, as the Select Committee observed : "The section as drafted in the Bill, contained a definition of market-value to which exception has been widely taken, as inapplicable to any part of the country. We agree

with the Lieutenant-Governor of the Punjab and the High Court of Bengal that no attempt should be made to define strictly the term in the Act and that the *price which a willing vendor might be expected to obtain in the market from a willing purchaser, should be left for the decision primarily of the Collector and ultimately of the Court.*"

The term, however, has been frequently defined by the Courts. It has been stated to be "the price that would be paid by a willing purchaser to a willing seller, where both are actuated by the business principles prevalent at the time in the locality" [1]; "the value which a parcel of land would realise if sold in the market; the seller must be a willing seller, a forced sale affords no criterion of market-value-the purchaser must be a prudent purchaser, one who makes his offer after making necessary enquiries as to the value of the land [2]; "the price that an owner willing, and not obliged to sell might reasonably expect to obtain from a willing purchaser with whom he was bargaining for the sale and purchase of the land"; "the price which would be obtainable in the market for a concrete parcel of land with its particular advantages and its particular drawbacks being estimated rather with reference to any abstract legal rights" [4]; "the price which that land would fetch when offered for sale to a seller not being obliged to sell and the buyer being under necessity of buying it." [5]

1. *Mst. Brijrani* v. *D.C. Sitapur*, 57 I. C. 301; *Ali Qadar* v. *Secretary of State*, 1930 Oudh 223; *Ali Akbar* v. *Secretary of State*, 1926 Oudh 477.

2. *Government of Bombay* v. *Merwan Moondigar*, 1924 Bom. 161.

3. Per Jenkins C. J. in *Kailas Chandra* v. *Secy of State*, 17 Cal. L.J. 39 (at p. 35) = 18 I.C. 628 quoted with approval in *Mohini Mohan Bannerjee* v. *Secretary of State*, 67 I. C. 25; *Manmath Mallick* v. *Secretary of State*, 1924 Cal. 574; *Khushi Ram Deomal* v. *Assistant Collector Shikarpur*, 1925 Sind 112; *The Collector* v. *the Manager Kurala Estate*, 1926 Bombay 223.

4. *Bombay Improvement Trust* v. *Jalalbuy*, I. L. R. 33 Bom. 483; *Raghunath Das* v. *Collector of dacca*, 11 Cal. L.J. 612 = 6 I.C. 45.

5. *Manmatha Nath Mullick* v. *Secy. of State*, 1924 Cal. 575; *Reddier* v. *Secy. of State*, 1928 Rang. 65; *Sadhu Charan* v. *Secretary of State*, 55 I.C. 150.

'Potential value'.

It would be evident from what has been stated above that the market-value does not mean simply the value which the land has from the manner in which it is being actually used for the time being, but it includes all future possibilities on which a prudent purchaser would calculate and vendor would base his expectations, both parties actuated by business principles. For instance, a person may purchase a garden near a town which may not be yielding a very good return but which if cut down, levelled and laid out into plots for residential houses may be expected to fetch a very high price. In this case, the price which the purchaser would be prepared to pay for this garden will be more than its value merely as a garden, and the seller also will not be satisfied and will not be agreeable to sell it if he is offered its price merely as a garden with no possibility of its more profitable use in near future. The garden is said to have "potential value" and this term includes what have been variously called 'future utility', 'probable use of the land in a more lucrative manner', 'special adaptability,' 'better lay-out' and so forth. It may appear in various forms, for instance, by putting the land to better use for a purpose to which it is adopted, or by developing the land in a better manner with a view to securing more profit, or by disposing of the land after a better layout, or by division of a large area into plots of suitable sizes or by amalgamation of a small area with other lands of the owner. The presumption must always be that a man makes the best use of his property, *i. e.*, that in his wordly affairs, to use the Roman Law phraseology, he exercises vigilant care (*exacta diligentia*) of a prudent man of business (*diligens pater familias*).[1]

The principle has been fully accepted in England. "Tribunals assessing compensation may take into account not only the present purpose to which in the course of events it might within a reasonable period be applied, just as an

1. *Prabhu Dayal* v. *Secy. of State*; 1931 Lah. 364.
2. Halsbury, Laws of England, 2nd Edn. Vol. VI p. 45 (see *Regina* v. *Brown* (1867) 2 Q.B. 630 (at p. 631), 11 Digest 125, 160.

owner might do if he were bargaining with a purchaser in the market. This value for future purposes is generally referred to as the potential value of the land. The principle is applicable whether the owner has acquired the land in order to use it for some particular purpose or whether he has no such present intention." In the well known case of *Lucas and Chesterfield Gas and Water Board, in re*.[1] Fletcher Moulton J., thus stated the principle: "The owner receives for the lands he gives up, their equivalent, *i.e.*, that which they were worth to him in money. This property is, therefore, not diminished in amount but to that extent is compulsorily changed in form. But the equivalent is estimated on the value to him and not on the value to the purchaser; and hence it has from the first been recognised as an absolute rule that this value is to be established as it stood before the scheme was authorised by which they are put to public uses. Subject to that he is entitled to be paid the full price for his lands and any and every element of value which they possess must be taken into consideration in so far as they increase the value to him." These observations were followed by the Privy Council in *Cedars Rapids Manufacturing and Power Co.* v. *La Coste*[2] where the same principle was enunciated in the form of the following propositions: "(1) The value to be paid for is the value to the owner as it existed at the date of the taking, not the value to the taker. (2) The value to the owner consists in all advantages which the land possesses, present or future, but it is the present value alone of such advantages that falls to be determined." In *Fraser* v. *Fraserville*[3], after a review of the authorities the law on the subject was again summarized as follows:—"The value to be ascertained is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and

1. (1909) 1 K. B. 16=99 L. T. 767=72 J. P. 437.
2. 110 L. T. 873=1914 A. C. 569.
3. 1917 A. C. 187=116 L. T. 258.

with all its possibilities excluding any advantage due to the carrying out of the scheme for which the property is compulsorily acquired."

Vaughan Williams L. J. observed in *Buellfa and Merthyr Dare Steam Collieries Ltd. and Pontypridd Water Works Co.*[1]: "The true rule is that, in assessing compensation, the umpire may and ought to take into consideration every circumstance which is in existence as a fact at the moment when the notice to treat is given, and not only those circumstances, but also the probable use which might be made of the property. If, for instance, he has to assess the value of land which is used as agricultural land, he is entitled to take into consideration its adaptability for building land, because that is a fact which is in existence at the time the notice to treat is given. If after the notice to treat has been given and before the assessment, some inherent value in the land is discovered, which was neither expected nor discovered at the time, that circumstance would properly be taken into consideration, because it was, although unknown, a fact existing which affected the value of the property. But when it is proposed to take into account a contingency which cannot be anticipated and cannot be measured, that is quite different thing and I think such a contingency ought not to be taken into consideration at all."

In India also the principle of "potential value" has been accepted in determining the market-value of land for purposes of assessment of compensation under the Land Acquisition Act, 1894. In *Prem Chand Burral* v. *Collector of Calcutta*[2], the Calcutta High Court held that the 'potential value', 'special adaptability', or 'better layout for profitable disposition' and the like were the elements that necessarily came in, when applying "the current price of similar land in the neighbourhood," that is, what other people

1. 1902 2 K. B. at p. 140.
2. (1876) 2 Calcutta 103.

had paid for similar land when thrown in the market. The buyer would look ahead and calculate on the reasonable possibilities of the land to yield a better (the best) income by proper utilization according to its suitability or special adaptability, according to prevailing demands, or by suitable development. He will not confine only to the consideration of the return obtained with a reference to the uses to which the land may be applied at the time, that is, merely to its "present disposition". Again, the same court in *R. H. Wernicke* v. *Secy. of State*[1] quoted with approbation the view expressed in a case of the Supreme Court of Tennessee that "in estimating the market-value of the property, all of the capabilities of the property, and all of the legitimate uses to which it may be applied or for which it is adapted are to be considered and not merely the condition it is in and the use to which it is at the time applied by the owner". In *Mohini Mohan Banerji* v. *Secretary of State*[2], the principle was again explained thus :—"Tribunals assessing compensation must take into account not only the present purpose to which the land is applied, but also any other more beneficial purpose to which in the course of events it might within a reasonable period be applied, just as an owner might do if he were bargaining with a purchaser in the market."

The principle enunciated in *Fraser* v. *Fraserville*[3] was quoted with approval by their Lordships of the Privy Council in *Narsinghdas* v. *Secretary of State*[4] in which they observed : "It is the value to the seller of the property in its actual condition at the time of expropriation with all its existing advantages and with all its possibilities excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired." Their lordships of the Privy Council again observed in *Vyricherla Narayna Gajapatirajin* v. *Revenue Divisional Officer, Aizagapatam* :[5]

1. (1909) 13 C. W. N. 1046.
2. 1921 Cal. 193=67 I. C. 25=25 C. W. N. 1002.
3. (1917) A. C. 187=116 L. T. 258.
4. 1925 P. C. 91=6 Lah. 69=52 I. A. 133.
5. 1939 P. C. 98.

"There is not in general any market for land in the sense in which one speaks of a market for shares or a market for sugar or any like commodity. The value of any such article at any particular time can readily be ascertained by the prices being obtained for similar articles in the market. In the case of land, its value in general can also be measured by a consideration of the prices that have been obtained in the past for land of similar quality and in similar positions, and this is what must be meant in general by the market-value in section 23. But some time it happens that the land to be valued possesses some unusual and it may be unique features as regards its position or its potentialities. In such a case the arbitrator in determining its value will have no market-value to guide him and he will have to ascertain as best as may be from the materials before him, what a willing vendor might reasonably expect to obtain from a willing purchaser for the land in that particular position and with these particular potentialities. For it has been established by numerous authorities that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined [that time under the Indian Act being the date of the notification under section 4 (1)], but also by reference to the uses to which it is reasonably capable of being put in the future. No authority indeed is required for this proposition It is self-evident one. No one can suppose in the case of land which is certain, or even likely, to be used in the immediate or reasonably near future for building purposes, that the owner, however willing a vendor, will be content to sell the land for its value as waste or agricultural land as the case may be. It is plain that in ascertaining its value, the possibility of its being used for building purposes would have to be taken into account. It is equally plain, however, that the land must not be valued as though it had already been built upon, a proposition that is embodied in section 24 (5) of the Act and is sometimes expressed by saying that it is the possibilities of the land and not its realized possibilities that must be taken into consideration."

A few instances of 'potential value' may be cited. In *Collector of Poona* v. *Kashinath Khasgiwala*[1] where the land acquired was originally devoted to agricultural purposes, compensation was awarded on the footing of the most lucrative use of the land and it was not disputed that the most advantageous way was to use it for building purposes. This principle was applied in *In the matter of the Land Acquisition Act, Munji Khetsey*[2] where the land acquired lay in the vicinity of a town where building was going on and there was a fair probability of the owner being able, owing to its situation, to sell or lease his lands for building purposes. So in a case where it was contended that the sanitary conditions of a certain locality were not satisfactory and that people who could afford to live in more fashionable parts of the town would not generally reside in the site acquired, it was held that the fact that when the sites were reclaimed, they could be rendered suitable for house sites was sufficient to assess their value on the basis of building sites.[3]

When agricultural land was situate at the extreme end of the Civil Station of Multan, on the road leading from the city to the Cantonments and adjacent to various houses and Government buildings, it was decided in an appeal that that site could not be treated on acquisition as agricultural land but should be treated as building site, because in acquisition an allowance should be made for the probable use which would have given the dispossessed owner the best return and not merely its present use or disposition.[4] In *Secretary of State* v. *Nanak*[5] certain land was being used for brick making and was fetching a rent of Rs. 40/-. The land had been dug up considerably during the 10 years before the acquisition, but the advent of the railway had made it very suitable for building purposes, situate as it was on the main road

1. 10 Bom. 585.
2. 15 Bom. 279.
3. *Thareesamm* v. *Secy. of State*, 1924 Mad. 252 = 77 I. C. 347.
4. *Secy. of State* v. *Chunni Lal*, 1931 Lah. 207.
5. 35 I. C. 283 = 126 P. L. R. 1916.

between the Railway station and the city. Had it not been acquired by Government its probable use in the near future would have been for building purposes. In such circumstances it was held that value should be assessed according to the rate given for building sites near the city.

A simple case is that of a piece of land situate close to or in the midst of a town area, possessing thus a near prospect of being used as a building site, though for the time being it is used as a garden or for other agricultural purposes. The land in such circumstances is to be valued as a potential building site.[1] Another simple case is of a vacant piece of land in a town without any building or a structure on it. Such land does not ordinarily yield any actual profit, and if let out for no better use than bare land, may yield only an insignificant return. As a rule such land in a town is attractive to builders and house occupiers and as explained in *Bhujabalappa* v. *Collector of Dharwar*[2], in such circumstances the owner of the site is entitled to the benefit of its situation and the likelihood that it will be adapted for like use.

Extent to which potential value should be taken into consideration under the Land Acquisition Act, 1894.

The doctrine of 'potential value', however, must be accepted with certain limitations. It always implies a certain amount of doctrine about future probability, and this has sometimes led to claims founded on schemes of utilization or adaptation of too speculative a character of impractical imagination or of very remote possibility. These elements must, therefore, be kept in mind in applying this doctrine to the question of determining the market-value. The market-value is, as already noted, the value which the vendor may reasonably expect from his property if thrown in the market for sale, and the key note of the doctrine of 'potential value' is that the owner of a property, when he throws it in the market for sale, would always base his demands

1. See *Atma Ram, Bhagwant Ghadgay* v. *Collector of Nagpur*, 1929 P. C. 92 =114 I. C. 587.
2. (1899) 1. Bom. L. R. 454.

on the potentialities of his property, while a prudent purchaser will calculate only such probabilities as are immediate and capable of practical realization.

Remote contingencies not to be taken into account.

The probability must be strong and such as would induce an ordinary prudent man to invest in land on the good faith of such probability materializing within a reasonable time.[1] A land may possess certain potentialities, but it does not follow that those potentialities have any present value; for any demand or signs of enterprise for exploitation of the potentialities may be non-existent. If they are so remote that no purchaser would designate them in his mind so as to give definite values to them, they must be discarded.[2] When except for a small portion, the land in dispute had no value as a building site because the demand for building was limited, the value of the land should be assessed on the basis of what it was worth as an agricultural land. When the demand is strictly limited and there is no immediate future probability of the land being used as a building site, and the shops and houses surrounding them were not being tenanted, it is correct to say that the land in dispute had no potential value.[3]

Existence of market necessary.

The potential purpose must be such for which there are other possible purchasers in the market conditions.[4] Existence of cases of other similar lands in the locality for the purpose contended or of purchases for such purpose, would *prima facie* indicate that there is a demand and the probability. Where there is no proof of the existence of a market by sales or enquiries for purchase, the consideration of an imaginary market, such as might be created if the land had been put in the market for sale at the time of acquisition, cannot altogether be ruled out, for there may be other circumstances (e.g. a vacant piece of land in the midst of a building area) which may show that more profitable uses and a higher value on

1. *Dhani Ram* v. *Supdt. Dehra Dun* (1890) 10 All. W.N. 129.
2. *In re. Sorabji Jamsedji Tata* (1908) 10 Bom. L.R. 696.
3. *Tara Singh* v. *Secy. of State*, A.I.R. 1933 Lah. 508.
4. *Thareesamma* v. *Dy. Collector, Cochin*, A.I.R. 1924 Mad. 252.

that account was a reasonable probability. What is to be guarded against is that "it is not idle speculation or impractical imagination," but that it is a matter of prudent business consideration such as would prevail with an intending purchaser at the imaginary market which would have obtained if the land had been announced for sale at the time of acquisition.

70. Acquisition of land for schemes under the Calcutta Improvement Act, 1911 — compensation payable

Market-value for purposes of assessment of compensation to be determined according to the disposition of land at the date of the publication of declaration under section 6 (1) of the Land Acquisition Act, 1894-other factors to be taken into consideration

The term 'market-value' of land as on the date of the notification under s. 4 (1) of the Land Acquisition Act, 1894, occurring in clause *first* of section 23 (1) of the said Act, is modified, in its application to determination of compensation for lands acquired for the Calcutta Improvement Board in pursuance of the provisions of the Calcutta Improvement Act, by the qualifying expression "according to the disposition of the land at the date of the publication of the declaration relating thereto under section 6 (1)." The other factors to be taken into consideration are :

(i) if it be shown that, before the declaration relating to the land under reference under section 6 of the Land Acquisition Act was published, the owner of the land had taken active steps and incurred expenditure to secure a more profitable disposition of the same, further compensation based on his actual loss, may be paid to him ;

(ii) if the market-value has been increased or decreased owing to the land falling within or near the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded ;

(iii) if any person without the permission of the Chairman required by section 63, sub-section (8), has erected, re-erected or added to any wall (exceeding ten feet in height or building within the street alignment or building line of a projected

1. Vide Article 9 (3) (a) of the Schedule to the Calcutta Improvement Act, 1911.

public street, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded;

(iv) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid declaration was published, such increase shall be disregarded, unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;

(v) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ; and

(vi) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such over-crowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from over-crowding.[1]

Amendment of section 24 of the Land Acquisition Act, 1894.

Clause *seventhly* of section 24 of the Land Acquisition Act, 1894, has also been amended[2] so as to read as follows :—

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date of the publication of the declaration under section 6, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

The following new section has been inserted by the modification[3] namely, :—

1. Clauses (b) to (e) of section 9 (3), of the schedule to the Calcutta Improvement Act, 1911.
2. Vide clause (10) of the schedule to the Calcutta Improvement Act, 1911.
3. Vide clause (11) of the schedule to the Calcutta Improvement Act, 1911.

Further provisions for determining compensation-new section added to the Land Acquisition Act, 1894.

"24-A. In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely :—

(1) When any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under section 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;

(2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state ;

(3) if, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building *minus* the cost of demolishing the building.

71. Market-value of land according to its 'disposition'

This qualifying expression restricting the 'market-value' of the land to its disposition at the date of the publication of the declaration relating thereto under section 6, originated in clause (c) of section 557 of the old Calcutta Municipal Act, III of 1899, which was the first legislation in which it was introduced. During the debates which led to the Act of 1899, the opposing members put forward forcibly the inequitable results which might arise, especially in the cases of vacant, undeveloped or under-developed lands out of literal

interpretation of these words.[1] On the side of Government the Hon'ble Mr. Oldham, while frankly admitting that the clause was "a deliberate attempt to change the law", proceeded to explain that all that was intended was to avoid a too wide an application of the general principle laid down in *Prem Chand Burral's case*[2], as for instance, to justify the owner of land in the suburbs of Calcutta (Ballyganj) to claim "the utmost possible prospective value which the land might some day possibly be worth." Taken so, he said, the land " must be taken at a reasonable value ; it must be taken at its immediate and probable value in the market. The market-value still remains the same." As an illustration, the Hon'ble Mr. Handley cited a case of " a filthy bustee occupied by sweepers and buffaloes, and when this bustee was removed and the case came into court, the first witness that stepped into the witness box was an engineer, and he produced a beautiful plan on paper with most beautiful residential houses for Europeans which he said might be let at Rs. 300/- or Rs. 325/- a month, and on this basis he advanced an enormous claim to this land." The limitation of "disposition" at the time the land is purchased (acquired) meant "as he (Hon'ble Mr. Handley) understood "such purpose to which it might reasonably be put or to which the owner had such intention of putting it : not a fancy idea that might arise when the land was taken up by Government to enhance its price and to put a fictitious price upon the land by putting up some schemes which never had any existence except on paper. " The Hon'ble Mr. Bolton observed that *Prem Chand Burral's case* was decided under the old Act of 1870, and, while "a fresh ruling under the new Act of 1894 should be awaited," the proposed clause (c) was desirable "to emphasise the fact that any disposition of the property subsequent to the declaration should not be taken into account in awarding compensation." The Hon'ble Mr. Baker referred to the other

1. See *'Proceedings of the Council of the Lieut. Governor of Bengal' 1899* (Vol. XXXI —speeches by the Hon'ble Mr. (afterward Sir) Ashutosh Mukhopadhey, Hon'ble Mr. Surendra Nath Bannerjee ; Hon'ble Mr. Baikuntha Nath Sen and Hon'ble Jatra Mohan Sen.

2. *Prem Chand Burral* v. *Collector of Calcutta* (1876) 2 Cal. 103.

provision *viz.* clause (d) of the section, which gave the benefit of a presumptive valuation to the owner at 25 times the municipal assessment (annual value) observing that vacant or waste lands were not certainly assessed by the Municipality at *nil*, and any case of hardship would be met by this provision.

Whatever the intention of the framers of this legislation and whatever the interpretation they had in their minds regarding it as evidenced from the proceedings of the Council the language adopted, viz, "according to the disposition of the land at the date of the declaration thereto," — was quite unambiguous and when this clause came up for interpretation before the Calcutta High Court in *Harish Chandra* v. *Neogy*[1] it was held that clause (c) of section 557 of the old Calcutta Municipal Act "precluded any valuation based on the most advantageous disposition of land, *e.g.* a valuation of *bustee* land on the supposition of its adaptability for use as building land to carry expensive structures, which is the advantageous use to which land can be put in Calcutta. The court, however, found a way to determine a fair amount, from clause (d) of that section *viz.* by giving 25 years' purchase on the municipal assessment valuation.[2]

Calcutta Improvement Act, 1911.

This restrictive clause was later carried into the Calcutte Improvement Act of 1911 [Schedule. Article 9 (3) (a)], and also in the Calcutta Municipal Act of 1923, but a provision corresponding to clause (d) of section 557 of the old Municipal Act was not included. Whether it was an oversight or was intentional, it is difficult to say : for there was no discussion on this point when the Act of 1911 or the Act of 1923 was passed.

1. (1903) 11 C.W.N. 875 followed in *Manindra Chandra Nandi* v. *Secretary of State* (1914) 41 Cal. 967. In *Adidhar Ghosh* v. *Secy. of State*, (1930 P.C. 249) the acquisition took place prior to 1923 and the High Court determined the value under clause (d) of the Calcutta Municipal Act, 1899, and it was approved by the Privy Council.

2. In fact in this case prices obtained in sales of neighbouring lands were considered, and emphasised, and it was only as accident that the value so obtained tallied with 25 years' purchase of the Municipal Assessment valuation of the annual value.

The plain meaning of the words employed in the statute viz. "according to the disposition of the land at the date of the publication of the declaration relating thereto under section 6" would exclude altogether consideration of its potential value in fixing its market-value for the purposes of the said Acts. In practice, however, the Calcutta Improvement Trust or the Calcutta Municipal Corporation does not seem to have insisted on a strict interpretation of this restrictive provision. In fact, in *Madan Mohan Burman* v. *Secretary of State*,[1] it was held by the Calcutta High Court that in the valuation of the *bustee* land it was wrong to exclude evidence of a sale of piece of land in the neighbourhood in which there was a pucca building. In *Hindustan Co-operative Insurance Society* v. *Secretary of State*,[2] a Co-operative Insurance Society purchased a large tract of land and proceeded to develop the same by driving roads through it with a view to sell it in plots. Originally the society had been devising schemes for the development of the property and were not aware of any scheme of the Calcutta Improvement Trust affecting their property but when they came to know of the scheme by which the Trust proposed to construct a hundred feet wide sewer road affecting their property they decided that their own scheme for the development of their own property should be made to run in co-operation with the scheme of the Trust. Some plots abutting on the land were sold by the Society and the land was described as land kept for "proposed drainage road of the Trust". Later on the declaration under S. 6. Land Acquisition Act, was published in respect of the scheme of the Trust by which the strip of land left undisposed of by the society together with other lands adjoining it were declared for acquisition. It was held that the mere fact that the society knew before the date of declaration that the Improvement Trust was going to acquire the land for the purposes of building a road and therefore kept it open and did not dispose of it by sale could not be considered as disposition of the land

1. A. I. R. 1925 Cal. 481.
2. A. I. R. 1930 Cal. 230 = 56 Cal. 989 = 121 I C. 737.

as a road. The real disposition of the land was that it was part of a scheme for sites by driving roads through the area inorder to give access to the plot.

These decisions, howsoever equitable and in accord with the original intention of the framers of the Calcutta Municipal Act, 1899, in which this restrictive clause appeared for the first time, with all respects, do not appear to be in consonance with the language of the statute as interpreted in *Harish Chandra* v. *Neogy*.[1]

In *Manindra Chandra Nandi* v. *Secy. of State*[2] it was observed :—

" It seems to me that sub-section (c) of section 557 of the Calcutta Municipal Act precludes evidence being given of other purposes to which *bustee* lands can be put in future. Then comes sub-section (d) of section 557. Sub-section (d) provides that " the market-value of the land or building shall, until the contrary is shown, be presumed for the purposes of the said clause first of sub-section (1) of section 23, which means section 23 of the Land Acquisition Act of 1894, to be twenty five times the annual value of the property, as entered in the assessment book prescribed by this Act." That of course is a rebuttable presumption because the sub-section states that that presumption is to be made only until the contrary is shown, and it is only until the contrary is shown that the court is entitled to presume that twenty five times the annual value of the property as entered in the assesment book is the value of the property within the meaning of sub-section (c). The only point in this case is therefore whether the learned judge of the court below rightly excluded the evidence as appears, first of all, from p. 141 of the printed paper book relating to the under-tenants and the rents paid by them for land and structures thereupon. In my opinion, the learned judge rightly refused to admit evidence relating to

1. (1903) 11 C. W. N. 875.
2. I. L. R. 41 Cal. 867.

the under-tenants and the rents paid by them; and that matter is not relevant for the purpose of ascertaining the market value as defined by sub-section (c) of section 557. The other evidence, which the learned judge rejected was the question put to a valuer with regard to sales of other lands in the neighbourhood which were not *bustee* lands. In ordinary cases under section 23 of the Land Acquisition Act, that evidence would have been admissible but the case of *Harish Chandra Neogy* v. *the Secretary of State for India* to which I have already referred, shows quite clearly that, in the opinion of the learned Judges in that case, such evidence is not admissible; and with that opinion I agree. It seems to me that the learned Judge was perfectly justified in refusing to allow these questions to be put to the witness Krishna Chunder Banerjee as appears from pages 143 and 144 of the paper book before us. That being so, the learned Judge, in my opinion, proceeded on a correct basis to arrive at the value of this land as provided by section 557 of the Calcutta Municipal Act."

In *Secretary of State* v. *Bhupati Nath*[1], a certain land which was approached by what was called a sewered ditch from street A and also by what was referred to as common passage from street B, this common passage not, however, skirting the plot along any of its frontages, but merely debouching on it at one corner, was acquired by the Improvement Trust. The President of the Tribunal valued the land as a third belt plot on street B, although it was actually cut off from street B frontage by a large piece of land in different ownership. It was held that the President should have discarded all notions of the plot being a third plot on street B and valued it according to actual disposition at the material date, and that propinquity and easy access, rather than frontage on street B, were the elements to be taken into account in valuing the land.

1 68 Cal. L. J. 90.

Other factors to be taken into consideration-unlawful use of the house; overcrowding.

The other factors to be taken into consideration in determining the market-value for the purpose of assessing the amount of compensation payable for land acquired for the Board under the Calcutta Improvement Act have been noted above and may be referred to. One of the factors prescribed is that if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses, and another factor is that if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding is to be disregded and the market-value is to be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger of overcrowding.[1]

The object of these rules is thus to remove from the consideration in determining the market-value for the purpose

1. Cf. Rule 4 of the Rules for assessment of compensation laid down in S. 2 of the English Acquisition of Land (Assessment of Compensation Act), 1919 (9 & 10 Geo. 5, c. 57) which reads as follows:—

"Where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which would be restrained by any court, or is contrary to law, or is detrimental to the health of inmates of the premises or to the public health, the amount of that increase shall not be taken into account. Cf also S. 74 (3) of the Housing Act, 1936 which provides as follows: "Where land is purchased compulsorily by a local authority under this section, the compensation payable in respect thereof shall be assessed in accordance with the Acquisition of land (Assessment of compensation) Act, 1919, subject to observance of the rules specified in the fourth schedule to this Act." The Fourth Schedule to that Act provides as follows: "1. If the arbitrator is satisfied with respect to any premises that the rental thereof was enhanced by reason of their being used for illegal purposes, or being overcrowded within the meaning of Part V of this Act, the compensation shall, so far as it is based on rental, be based on the rental which would have been obtainable if the premises were occupied for legal purposes, and were not so overcrowded".

2. If the arbitrator is satisfied that any premisss are in a state of defective sanitation or are not in a reasonably good repair, the compensation shall be the estimated value of the premises if put into a sanitary condition, or reasonably good repair, less the estimated expense of putting them into such condition or repair."

of assessment of compensation any increased value owing to the premises being used for purposes not permitted by law or contrary to public policy or detrimental to the health of inmates. For example, the premises might be used for the purpose of business, whereas the covenants in the lease limited its use to residential purposes only. Again, the premises might be used as a brothel, and a larger rental might be paid to the landlord by reason of such user. Compensation based on such increased rental might possibly be claimed by the person or persons interested in the premises, but the above rule would render such claim unarguable. The second rule referred to would apply to to a case where premises are acquired compulsorily, and it is shown that the rental of the premises was enhanced by reason of the premises being used for the accommodation of a large number of persons, in fact, the number causing such overcrowding as to be detrimental to the health of the inmates. It is submitted that compensation to be awarded should be, as stated above, if it is leased on rental, on the rental which would have been obtainable if the premises were occupied for lawful purposes and only by the number of persons whom the premises were, under all the circumstances of the case, fitted to accommodate without such overcrowding[1]. The Act, however, does not state which purposes are unlawful or contrary to public policy or what is the standard of overcrowding, so that these points will have to be determined in each and every case individually on merits.

72. Acquisition of land for schemes under the United Provinces Town Improvement Act, 1919.

'Market-value' of land for purposes of assessment of compensation according to its 'use'.

Under the United Provinces Town Improvement Act, 1919,[2] the 'market-value' of the land for the purpose of assessment of compensation payable for land acquired for schemes under that Act, is qualified as follows, namely :—

1. See Gordon's '*Compulsory Acquisition of Land*, 2nd Edn. pp. 121, 122, Cripps *on Compensation*, 8th Edn.; pp. 268, 269.
2. Vide clause 10 (3) of the Schedule to the U. P. Town Improvement Act, VIII of 1919.

"For the purposes of clause *first* of sub-section (1) of this section [Section 23 (1) of the Land Acquisition Act, 1894]—

(a) the market-value of the land shall be the market-value *according to the use* to which the land was put at the date with reference to which the market-value is to be determined under that clause ;

(b) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on this actual loss may be paid to him ;

(c) if any person, without the permission of the Trust required by clause (b) of sub-section (1) of section 29 or by sub-section (3) of section 30 or by sub-section (4) of section 32 of the U. P. Town Improvement Act, 1919, has erected, re-erected, added to or altered any building or wall so as to make the same project beyond the street alignment or building line shown in any plan finally adopted by the Trust under section 30, or within the area specified in sub-section (4) of section 32, as the case may be, then any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded ;

(d) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;

(e) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ; and

(f) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding

shall be disregarded and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from over-crowding;

(g) when the owner of the land or building has after the passing of the United Provinces Town Improvement Act, 1919, and within two years preceding the date with reference to which the market-value is to be determined, made a return under section 158 of the United Provinces Municipalities Act, 1916,[1] of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the court may otherwise direct, and the market-value may be determined on the basis of such rent:

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement.

Amendment of section 24 of the Land Acquisition Act, 1894.

For clause *seventhly* of section 24 of the Land Acquisition Act, 1894, the following has been substituted, namely,—

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market value is to be determined,

1. Section 158 of the United Provinces Municipalities Act, 1916, reads as follows:—

"158 (1) the board may, by written communication, call upon an inhabitant of the Municipality to furnish such information as may be necessary in order to ascertain:—

(a) whether such inhabitant is liable to pay a tax imposed under this Act;

(b) at what amount he should be assessed;

(c) the annual value of the building or land which he occupies and the name and address of the owner.

(2) If an inhabitant so called upon to furnish information omits to furnish it, or furnishes information which is untrue, he shall be liable upon conviction to a fine which may extend to one hundred rupees

unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair." [1]

This amendment follows the line of the amendment introduced by the Calcutta Improvement Act.

Addition of new section 24-A.

After section 24 of the Land Acquisition Act, the following section has been inserted, namely :

"24-A. In determining the amount of compensation to be awarded for any land acquired for the Trust under this Act, the Tribunal shall also have regard to the following provisions, namely :—

(1) when any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;

(2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state ;

(3) if in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building". [2]

1. Vide section 11 of the Schedule to the U. P. Town Improvement Act, 1919.

2. Section 12 of the Schedule to the U. P. Town Improvement Act, 1919.

Market value of land according to its 'use.'

It is thus clear that in assessing compensation payable for land acquired under the Land Acquisition Act, 1894, as amended by the schedule to the U. P. Act for the improvement schemes under this Act, the main item is the determination of the market-value of the land, according to the use to which it was put at the date with reference to which it is to be determined. Under clause (2) of the said schedule, the first publication of a notice of an improvement scheme under section 36 of the Act is equivalent to the notification under sub-section (1) of section (4) of the Land Acquisition Act. Accordingly, for purprses of assessment of compensation for land required for the execution of an improvement scheme under this Act, the market value is to be determined according to the use to which the land was put on the date of the first publication of a notice regarding the scheme under section 36 of the Act.

The expression "market value according to the use" came up for interpretation before a full Bench of the Allahabad High Court in *Secretary of State* v. *Makhan Das*.[1] In that case an area of land, 5 bighas, 11 biswas and 1 biswanis, belonging to Makhan Das was compulsorily acquired by the Cawnpore Improvement Trust. For purposes of compensation this area was divided into three portions, one leased to a mill, a second let out in small building sites to labourers who had erected huts to live in, and third portion measuring 2 bighas, 10 biswas, 17 biswanis—vacant-land on which there were a few scattered trees. At the material date the third portion was being put to no use whatsoever. According to the owner this land had never been applied to agricultural purposes since he got possession of it some 30 years before. The Land Acquisition Officer, however, treated this portion as agricultural land and assessed compensation accordingly. This award was sustained by the Tribunal. It was held by the Full Bench that the correct interpretation of section 23 of sub-section (1), Land Acquisition Act, as amended by para. 10, clause 3, of the

1. A. I. R. 1928 All. 147 (F. B)=50 All. 470=107 I. C. 587 reversing the view taken in A. I. R. 1927 All. 752.

schedule to the United Provinces Town Improvement Act, 1919, is that the market value of the land to be acquired is to be calculated exclusively in accordance with the use to which the land is being put on the date on which the notice issued under section 29 or section 36 of the said Town Improvement Act and where on such date the land to be acquired is not being put to any use its maket value may be nil.
Lindsay J., observed:—

"In the cases to which section 23, sub-section (1), clause (1) has been applied it has always been held that the potential value of the land should be taken into account. To quote from the judgment of the House of Lords in *Fraser* v. *City of Fraserville.*[1]

> The seller is entitled to the value to him of the property in its actual condition at the time of its expropriations with all its existing advantages and with all its possibilities, excluding any advantage due to the carrying out of the scheme for the purpose for which the property is compulsorily acquired.

These principles cannot be applied to cases arising under the United Provinces Town Improvement Act for, as pointed out, the expression "market-value" has under this Act a narrower meaning. "Market-value" is to be assessed in accordance with the use to which the land is being put at the date when the notice issues under section 36 of the Act. It is, therefore, not possible for the purposes of this Act to take into account any potential value of the land: no valuation can be made with reference to what has been called "the most advantageous disposition of the land". The consideration of potential value being excluded, the question is what factors can be considered when assessing the market-value according to the use to which the land was put at the material date.

The basis of compensation should be the value to the owner at the date of the notification and prima facie this would depend upon the profit which on that date the owner is deriving

1. (1917) A. C. 187=86 L. J. P. C. 91=116 L. T. 258=33 T. L. R. 179.

from the land and that profit could be estimated from the u to which at the point of time the land was being actually put. No great difficulty could arise in dealing with a case where at the material date the land is actually being used. But what is to be said in a case where on this date the land is not being used for any apparent purpose which bring in profit to the owner? Is it to be taken that in the absence of immediate profit the land is of no value to the owner, that its market-value is nil and that, in consequence, the Improvement Trust can expropriate the owner without paying him compensation?

That is a conclusion to be avoided, if possible, for it involves the inference that the Legislature has conferred upon the Trust authorities a power of confiscation. There is no express provision to the effect in the Act. It remains to be considered whether the existence of a power of confiscation must be inferred by necessary implication.

The market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause.

The language of the section is rigid. The governing words are "according to the use to which the land was put, etc." The determining factor is the actual use of land at the date in question, and any use of the land prior to that date is to be disregarded. In view of this phraseology it appears to be impossible, for the purpose of assessing the market-value to resort to any other facts such, for example, as the history of the land, its physical features or its situation; for while data of this nature might otherwise be of weight as indicating the value of the land to the owner, they could only be of service in estimating a potential value based upon the use to which the land might most profitably be put. But the section expressly excludes all considerations of potential use by laying down that the determining factor in the assessment of the market value is the actual use to which the land is being

put on the date of the notification: and from the conclusion appears to be that either intentionally or through inadvertence the Legislature has declared that in certain conditions the marke-value of the land on the material date may be nil."

The same principle is reiterated in *Devidin* v. *Secretary of State*[1] in which it has been held that under section 23 of the Land Acquisition Act, as amended by the schedule to the Trust Law, the only matter to be taken into consideration by the Land Acquisition Collector and the Tribunal in calculating the market-value of the land to be acquired is the use to which the land is put by the owner at the date of the notification under section 36. United Provinces Town Improvement Act, and income which is derived by the owners of the property by means of that use. It has been further held that section 23 expressly excludes all considerations of potential value and hence in assessing the market-value any factor other than the use to which the land is being put such as the history of the land, its physical features or situation cannot be taken into account. In this case capitalization of rents of kachha houses at $16\frac{2}{3}$ years' purchase giving a return of 6% per annum was held appropriate.

In *Ali Akbar* v. *Secretary of State*[2] it was observed that when a certain person owns agricultural land, or land available for building purposes and a Town Improvement Trust proposes to acquire that land because it abuts on an avenue which they propose to construct, the proprietor is entitled to the market value of the land as it stood before the avenue is constructed. In a later passage it was noted that "in all cases however the Tribunal should look at the use to which the proprietor was putting the property, the limitations that attached to that use, and the income that he was making out of it if he was making any income". If he was "it is not usually of great advantage to examine the prices at which land in the locality has sold

1. A. I. R. 1942 All. 186.
2. A. I. R. 1926 Oudh 477=95 I. C. 7=1 Luck. 260; see also A. I. R. 1935 Oudh 364.

unless a very shrewd discrimination is made as to the difference and peculiarities of each site and the circumstances of each transaction.

The U. P. Act as extended to Delhi.

These provisisions of the U. P. Act have been extended to Delhi with one modification only, namely, omission of clause (g) of sub-section (3) of section 10 of the schedule to the Act. The law applicable for determining the market-value of land for assessment of compensation under the U. P. Act as extended to Delhi came up for interpretation before the Lahore High Court also in *Governor General for India in Council* v. *Haji Mohd. Saddiq*.[1] In that case the Delhi Improvement Trust acquired a small plot of land, 88 sq. yds. situated in the Delhi Municipal area from the respondents under the Land Acquisition Act, 1894, as amended by the United Provinces Town Improvement Act, VIII of 1919, as extended to the Province of Delhi. The Collector awarded a total sum o Rs. 937/- to the owners. The owners objected to the award on the ground that the market value of the property was Rs. 2,000/-, that the Collector had ignored the price they paid for it and that the potential value had been ignored. There being difference of opinion between the President and the assessors as to the amount of compensation to be paid, by majority compensation was assessed at Rs. 20/- per sq. yd. On appeal to the High Court by the Trust it was held that the potential value of the land could not be taken into consideration in determining its market-value for the purpose of assessment of compensation though the evidence relating to the price at which the plot in question was purchased or as to the prices at which other plots in the locality were sold were relevant to the point. It was observed:—"The learned President of the Tribunal, relying on I. L. R. 50 All. 470[2] has held that he ascertained the market value by taking into account only the revenue which was produced by the letting of the land existing at the date of notification. I cannot accept

1. R. F. A. No. 197, of 1942.
2. *Secretary of State* v. *Mukhan Das*, A. I. R. 1928 All. 147 (F. B.) cited at page 289.

this view, which leads clearly to the conclusion that the market value of a vacant plot in the centre of a prosperous town is nothing. The only question which I have to examine is whether the basis of valuation adopted by the assessors is wrong. The evidence before them dealt with two points:— (a) the price at which the plot was bought in 1934, and (b) the price of similar plots in the neighbourhood recently sold. No evidence was produced by the appellant of the mrket value of the land, nor was evidence given of any facts which might have shown that any of those prices were based on the potential value of the land. I do not think that it was open to the assessors to assume that these prices took into account some unascertained proportion, representing potential value; no material was supplied to them to enable them to determine what (if any) proportion of the market-value as ascertained by them was due to potential value. The assessors having considered the evidence before them, and arrived at a finding supported by the evidence, I do not see how it is open to me to hold that they have reached a wrong conclusion; as they have taken the minimum figure given in the evidence, no scope for reduction of the award on the ground that it is exessive remains. Nor do I think that the learned Judge was entitled to ignore the only evidence of market-value on the record or to assume without expert evidence that the prices proved as having been paid included potential value. I refuse to interfere with the award because I have no evidence on which I can do so; if it had been shown that the market price as ascertained has been inflated by the introduction of any such element as potential value, I should have been constrained to exclude the amount due to that element".

With all respects to the learned Judge deciding this case, it is submitted that the view taken above does not appear to be in consonance with the law applicable. No reason was given for not accepting the view taken by the learned Judges constituting the Full Bench of the Allahabad High Court responsible for the decision in *Secretary of State* v. *Makhan Das*[1]. In fact, the learned Judges therein themselves

1. A. I. R. 1928 All. 147 (F. B.)

pointed out that the law as it stands may work in certain cases to the detriment of owners of lands and may prove really hard but as aptly remarked therein, it is for the Legislature to see to that, the proper function of the Courts being to interpret the law as it stands. 'Market-value according to the use', in the plain meaning of the words used, would mean no more than the value of the land if sold in the market subject to its future use being restricted to its present use, and obviously therefore the prices of other lands in the locality will not be relevant to the issue of the market-value of a plot according to its use. The 'use' of the plot being reflected in the rental value derived from it, it will form the only proper basis of determining its market value according to it use. To consider how far this law is equitable so far as the interests of owners of lands are concerned is beyond the scope of the present work.

The Punjab Act and the C. P. Act.

The law on the subject under the Punjab Act is about the same as under the U. P. Act with clause (f) of sub-section (3) of section 10 of the Schedule to the U. P. Act omitted.[1] The C. P. Act follows the U. P. Act in all material points.[2]

73. Compensation for insanitary and defective houses and houses unfit for human habitation.

Under section 24-A of the Land Acquisition Act 1894, as inserted by the various Trust Acts, for determining compensation for lands acquired for the Trust schemes, as referred to above, no separate estimate of the value of any interest acquired after the date with reference to which the market-value is to be determined, will be made so as to increase the amount of compensation to be paid for such land. Also, if in the opinion of the Tribunal any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair,

1. Paras. 2, 10, 11 and 12 of the schedule to the Punjab Town Improvement Act, 1922.
2. Paras. 2, 10, 11 and 12 of the schedule to the Nagpur Improvement Trust Act, 1936.

the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state. Again, if in the opinion of the Tribunal, any building, *which is used or is intended or is likely to be used for human habitation*, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, *minus* the cost of demolishing the building.

These provisions of law will be of general application in schemes relating to clearance of slum areas. Under the English Housing Act, 1936, slum areas can be declared "a clearance area" under section 25. The local authority can secure clearance by ordering demolition of all buildings which are by reason of disrepair or sanitary defects unfit for human habitation, or by reason of their arrangement or by the narrowness or bad arrangement of streets dangerous or injurious to the health of the inhabitants of the area. An alternative method of clearance is for the local authority to purchase the land comprised in the area and themselves undertaking or securing the demolition of the buildings in that area. The price to be paid for the land thus acquired is in accordance with the ordinary law of acquisition as modified by section 40 of the Housing Act, 1936, which provides that the compensation to be paid for land including any buildings thereon purchased as being land comprised in a clearance area shall be the value at the time the valuation is made of the land as a site cleared of buildings and available for development in accordance with the requirements of the building bye-laws for the time being in force in the district. An exception however is made in favour of houses which are not condemned on the ground that they are unfit for habitation, but merely have to be removed because of its bad arrangement in relation to other buildings and for this type of property the ordinary law of land

acquisition applies. The net result is that slum clearance in England is done without loss and the liabilities of a local authority are merely confined to rehousing.

This legislation clearly recognizes that there is something anti-social in the rack renting of slum property and that whenever the State requires its removal full compensation for land is not paid and no compensation is paid at all for structures. To a lesser degree the Trust Law referred to above recognizes the same principle.

74. Compensation to be awarded when land not acquired within two years.

There is no period prescribed under the Land Acquisition Act, 1894, during which the land acquisition proceedings must be completed by the Collector and award made. The Trust Acts, however, prescribe that if within a period of two years from the date of the publication of the declaration under section 6 in respect of any land, the Collector has not made an award under section 11 of the Land Acquisition Act with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay. And the provisions of Part III of the said Act shall apply so far as may be, to the determination of the compensation payable on this account.[1] Normally compensation payable for this will be the amount of interest for the belated period at a reasonable rate, say 6 per cent. per annum.

Under the U. P. Act, the U. P. Act as extended to Delhi, the Punjab Act and the C. P. Act, the issue of a notice for acquisition in pursuance of a deferred street scheme, and in the case of anyother scheme the publication of a notification by the Government sanctioning the scheme, is to be

1. S. 13 of the schedule to the Calcutta Act; S. 14 of the schedule to the U. P. Act; S. 14 of the schedule to the U. P. Act as extended to Delhi; S. 14 of the schedule to the Punjab Act; S. 14 of the schedule to the C. P. Act.

substituted for and has the same effect as a declaration by the Provincial Government under section 6 of the Land Acquisition Act unless a declaration under that section in respect of the land concerned has previously been made and is still in force.[1]

75. Other important amendments of the Land Acquisition Act as applicable to acquisition of land for Trust schemes.

Section 13 of the schedule to the Calcutta Act also provides that no compensation shall be payable in pursuance of section 48 or section 48-A (of the Land Acquisition Act) when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of a payment, in pursuance of sub-section (4) of section 78 of the Calcutta Improvement Act, 1911.[2]

The U. P. Act, the U. P. Act as extended to Delhi, and the Punjab Act introduce an amendment to section 49 of the Land Acquisition Act to the effect that for the purposes of sub-section (1) of section 49 of the said Act, land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house.[3]

Additional compensation for compulsory acquisition

Under the Land Acquisition Act, 1894, in addition to the market-value of the land as provided in section 23 (1) of the Act, the Court is bound in every case to award a sum of fifteen per centum on such market-value, in consideration of the compulsory nature of the acquisition.[4] This has been modified by the U. P. Act and the U. P. Act as extended to Delhi by

1. S. 2 (2) of the schedule to the U. P. Act; S. 2 (2) of the schedule to the U. P. Act as extended to Delhi; S. 2 (2) of the schedule to the Punjab Act; S. 2 (2) of the schedule to the C. P. Act.
2. See notes on pages 236 to 240.
3. S. 15 of the schedule to the U. P. Act and the said Act as extended to Delhi; S. 15 of the schedule to the Punjab Act.
4. S. 23 (2), Land Acquisition Act, 1894.

adding that this provision shall not apply to any land acquired under the said Acts, except—

(*a*) land acquired under sub-section (4) of section 29 of the Act, and

(*b*) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto, and

(*c*) gardens not let to tenants but used by the owners as a place of resort.[1]

Under the Punjab Act this provision of the Land Acquisition Act does not apply to any land acquired under the said Act so that in the case of acquisition under the Punjab Town Improvement Act additional compensation is not payable on account of compulsory acquisition.[2] Sub-section (2) of section 10 of the schedule to the C. P. Act provides that sub-section (2) of section 23 of the Land Acquisition Act shall not apply to any land acquired under the Nagpur Improvement Trust Act, 1936, except—

(*a*) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto, and

(*b*) gardens not let to tenants but used by the owners as a place of resort.

Costs.

There is no provision of payment of costs of proceedings before the Collector in a case of land acquisition under the Land Acquisition Act, 1894. The C. P. Act, however, makes provision for payment of costs by the Collector which in his opinion should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen per centum mentioned in sub-section (2) of section 23 of the Land Acquisition Act, as

1. S. 10 (2) of the schedule to the C. P. Act, and the said Act as extended to Delhi.
2. S. 10 (2) of the schedule to the Punjab Town Improvement Act, 1922.

having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector. The Collector may, however, disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant.[1] The same has been extended to Delhi without any modification.[2] This provision also exists in the Punjab Act[3] and in the C. P. Act.[4] There is no such provision in the Calcutta Act.

Transfer of land to Trust.

All the Acts provide that in every case referred to in section 16 or section 17 of the Land Acquisition Act, 1894, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Trust; and the land shall thereupon vest in the Trust, subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition.[5]

Amendment of section 17 of the Land Acquisition Act.

In section 17, sub-section (3), after the figures "24" the words, figures and letter "or section 24A" shall be deemed to be inserted. And to the said section 17 the following shall be deemed to be added, namely—

"4. Sub-section (1) and (3) shall apply also in the case of any area which if stated in a certificate granted (by a salaried Presidency Magistrate or a Magistrate of the first class in the case of Calcutta, a district magistrate or magistrate of the first class, under the U. P. Act and the said Act as extended to Delhi, and a magistrate of the first class, under the Punjab Act) to be unhealthy."

1 Section 3 of the schedule to the U. P. Town Improvement Act, 1919.

2. Section 3 of the schedule to the U. P. Act as extended to Delhi.

3. Section 3 of the schedule to the Punjab Town Improvement Act, 1922.

4. Section 3 of the schedule to the Nagpur Improvement Trust Act, 1936.

5. Section 5 of the schedule to the Calcutta Act; Section 6 of the schedule to the U. P. Act and the said Act as extended to Delhi; Section 6 of the schedule to the Punjab Act; Section 6 of the schedule to the C. P. Act

"5. Before granting any such certificate, the magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them."

"6. When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land compensation shall be paid to such person for such dispossession.[1]"

The C. P. Act adds the following as sub-section (5) to section 17 of the Land Acquisition Act—

"5. When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being sudddenly dispossessed of such land, compensation shall be paid to such person for such dispossession.[2]"

The other amendments are minor and call for no special remarks.

76 Compensation for other damages.

General power of Trusts to pay compensation.

Section 161 of the Calcutta Act provides that 'in any case not otherwise expressly provided for in this Act, the Board may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested, by the Act, or any rule made or scheme sanctioned hereunder, in the Board or the Chairman or any officer or servant of the Board'. Section 101 of the U. P. Act and of the said Act as extended to Delhi similarly provide that 'in any case not otherwise expressly provided for in this Act, the Trust may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the

1. Section 4 of the schedule to the Calcutta Act; Section 5 of the schedule to the U. P. Act and the said Act as extended to Delhi; Section 5 of the schedule to the Punjab Act.
2. S 5 (2) of the schedule to the Nagpur Improvement Trust Act, 1936.

powers vested under this Act in the Trust or the Chairman or any officer or servant of the Trust'. The same provision exists in the Punjab Act[1] and in the C. P. Act.[2]

Damages defined.

Damages represent the pecuniary recompense recoverable by process of law, by a person who has sustained any injury through the wrongful act or omission of another[3] In considering the legal import of the term 'damage' it is necessary to bear in mind that the injury for which action at law, may have been caused by the defendant, or by any one for whose acts or omissions the law holds the defendant responsible, and that the injury complained of may be the result of a breach of contract, or tort.[4]

Damages distinguished from compensation.

There is an evident distinction, almost etymological in nature between the terms damages and compensation, which is not to be ignored. While the term damages is used in reference to pecuniary recompense awarded in separation for a loss or injury caused by a wrongful act or omission, the term compensation is used in relation to a lawful act which caused the injury in respect of which an indemnity is obtained under the provisions of a particular statute. "The expression compensation is not ordinarily used as equivalent for damages. It is used in relation to a lawful act which has caused injury.[5]

It is not within the scope of this work to deal exhaustively with all questions relating to the law of damages and compensation. Some of the more important cases, however, deserve mention.

Wrongful interference with property.

Wrongful interference with the immoveable property of another is a legal wrong for which an action for damages

1. S. 102, Punjab Town Improvement Act, 1922.
2. S. 119, Nagpur Improvement Trust Act, 1936.
3. See Halsbury Laws of England, 2nd Edn., Vol. X, p 82; Arnold, "Damages and Compensation",
4. *Ibid*; see also *C. Kameswara Rao*, 'Law of Damages and Compensation', pp. 22-23.
5. Per Esher M. R. in *Dixon* v. *Calenoff* (1892), 1 Q.B. 458; see also *Muhammad Maxaharal Ahad* v. *Muhammad Aximuddin*, 1923 Cal. 507 at p. 511.

lies, and the wrong may be a trespass, or nuisance according to the nature of the resulting injury. The word 'trespass' denotes the commission of a wrongful or unlawful act, and in its wide sense includes the disturbance of the property of another whether it be moveable or immoveable or against the person, and in each case the wrong-doer is liable in damages to the person who has sustained the injury.[1]

In order to maintain an action of trespass, the plaintiff must establish, (1) that he is in actual or constructive possession at the date of trespass[2], and, (2) that the defendant has unlawfully disturbed his possession, the entry contemplated being again either actual or constructive.[3] The foundation of trespass being the commission of an illegal act without legal authority as against the property of another the illegality and the wrongfulness of the act must be proved to sustain an action.[4] And where there is an infringement of a legal right it is not necessary to prove legal damage, and an action is maintainable without proof of actual damage[5].

Every unlawful entry upon land is, in the eye of law, an injury to the land, although the trespass consists merely in the act of walking over it. Similarly, every injury to the possession of the occupier is an injury to the property also; and so, if a man is unlawfully turned out of his dwelling house, it is, in point of law, an injury to the house.[6]

It is also well established that pecuniary compensation is not an adequate or proper remedy for the injury caused by trespass, and courts of law would in proper cases restrain the defendant by means of an injunction in addition to giving

1. Rao, p. 495.
2. *Midnapore Zamindari Co.*, v. *Ram Kanai Singh*, A. I. R. 1926 Pat. 130; *Currimbhoy & Co*, v. *Creet*, 1930 Cal. 113.
3. *Merest* v. *Harvey*, (1814) 5 Taunt 442.
4. *Danai Das* v. *Govinda Gedi*, 38 I. C. 132.
5. *Jiwan Ram* v. *Hussain Bakhsh*, A. I. R. 1927 Lah. 534.
6. *Lane* v. *Dixon* (1847) 3 C. B. 776.

damages.[1] For instance, no man can, by merely trespassing upon the land of another, and constructing costly buildings upon it, claim a right to retain possession of it. He has no right to compel the real owner to receive compensation for the land instead of the land itself.[2]

The measure of damage will vary according to the nature of the injury inflicted. For instance, where the trespass consists of a mere wrongful entry without causing actual damage, as by a man walking over another's ground, the damages recoverable will, in the absence of aggravating circumstances be merely nominal.[3] On the other hand, trespass committed under aggravating circumstances will give a colour and character to it, such as insult, annoyance, malice or oppression, will justify the grant of exemplary damages.[4] For instance, the law attaches a certain amount of sanctity to the privacy of a person's dwelling, and zealously guards the peaceful possession by every man of his dwelling house with extreme care and watchfulness. Persons who are disturbed in the enjoyment of their houses by a wilful trespasser are awarded substantial damages though no actual damage is proved to have been caused.[5]

In cases where the plaintiff suffers no actual loss, the claim for damages cannot be made on the ground that the defendant had been benefitted by the trespass. Since damages are always measured by the loss which the plaintiff has sustained, and by the advantage gained or the benefit derived by the defendant from the wrongful user, and allowance for the value of such advantage or benefit should not be made in favour of the plaintiff.[6]

1. *Jatalal Hirochand* v. *Lalubai Dalpatbhai*, I. L. R. 28 Bom. 298; *Gurunwami Raja* v. *Perumal Raja*, 1929 Mad. 815; see Rao, p. 497.
2. *Ganga Din* v *Jagal Tiwari*, 25 I. C. 198; *Jiwan Ram* v *Hussain Bukhsh*, 1927 Lah. 534; *Bene Ram* v. *Kundanlal* I. L. R. 21 All. 496. P. C.
3. *Kumud Kanta Chakravaty* v. *Bignold*, A. I. R. 1923 Cal. 306.
4. *Jagannath* v. *Debi Sahai*, 13 I. C. 493.
5. Rao, p. 500.
6. Ibid, p. 502

An act of trespass may not be a mere entry upon the land of another, but may take the form of a physical injury of any kind which constitutes "mischief" under the Indian Penal Code. Thus when a man enters upon and digs and removes the earth, or cuts down timber, and other trees, or sets fire to any thing standing upon the land or buildings, or demolishes houses, or intentionally floods the land, or takes out legal attachments and removes standing crops, the trespasser is liable to pay the damages according to the nature of the injury. This is itself an aggravated form of trespass in which the damages claimable are not confined to a nominal sum.

The measure of damages in such cases is ordinarily the depreciation in the selling value of the land as a consequence of the injury and not the cost of restoration. It is only in a case where no adequate compensation could otherwise be made, that a decree for restoration should be passed, especially in a case where the cost of restoration is much more than the depreciation in the value of the land.[1] In other words, if the nature of the damage is such that an ordinary prudent man having no one to look to for damages, would restore the soil to its former condition, the measure will be the cost of restoration; and if the damage is such that no such prudent man would restore it at his own expense the measure is the difference between the market value before and after the injury and not the cost of restoration.[2] If, however, restoration is a prudent course to be adopted in the circumstances, and is a necessary consequence of the injury, cost of restoration may be awarded, as where a road way is cut or laid down.[3] In such cases, it is more prudent to fill the excavation and claim the cost incurred. Where the injury consists in wrongfully constructing building upon the plaintiff's land, the damage to be awarded, is the sum which would be required in removing the building.[4]

1. *Krishnalal Saha* v. *Radhika Mohan Das*, A. I. R. 1931 Cal. 462.
2. *Jones* v. *Gooday*, (1841) 8 M. & W. 146.
3. *Wednesbury Corporation* v. *Lodge Holes Colliery Co*, (1907) I. K. B. 78.
4. *Sikkinder Rowther* v. *Abbuboker Rowther*, 21 I. C. 45.

So also, where the defendant built upon a party wall and increased the burden on the servient tenement, the measure of damages is the amount which will induce the defendant to abate the nuisance.[1] Where the damage done is capable of being ascertained in terms of annual income, the proper method of calculating compensation payable for it is to capitalize the net annual income at a proper rate.

Dispossession.

To constitute dispossession, there must be a complete ouster, that is to say, the plaintiff must be completely kept out of possession. An isolated act of trespass cannot, therefore, amount to dispossession. On the general principle that a plaintiff is entitled to recover the loss sustained by him through the wrongful act of the defendant, the damages sustained in the case of dispossession of land or other immoveable property is the amount of profit which the plaintiff would have naturally got if it had not been wrongfully retained by the defendant.[2] Such profits are called "mesne profits". "Mesne profits" of preperty are defined to be 'those profits which the person in wrongful possession of such property actually received or might, with ordinary diligence, had received therefrom together with interest on such profits, but shall not include profits due to the improvements made by the person in wrongful possession.[3]

With regard to the question of assessing "mesne profits" there is a twofold basis for the calculation. One is, what the person in wrongful possession had really realized, or might by good management had realised from the property; and the other is, what the person in possession would have realized if the possession remained in him. But the statutory definition of mesne profits disregards the latter basis of calculation. The test laid down in the definition, is not what a person has lost by exclusion, but what the trespasser has or might reasonably have, made by his wrongful possession. What the plaintiff who has been deprived of possession might or would have made with reasonable diligence, can only be

1. *Forbes* v. *Meer Mohammad*, 6 M. H C. R. 112.
2. *Tavasi* v. *Arumugam*, 28 I. C. 1.
3. C. P. C., Section 2, sub-section (12).

relevant as an evidence of what the trespasser might with reasonable diligence have received.[1]

A claim for damages for use and occupation only arises when it is shown that the occupation was by permission or sufferance,[2] *i.e.*, when an immoveable property has been occupied by a person with the express or implied permission of the owner.[3] Where a vendor remains in possession even after the sale, such permission will be implied, and he is therefore liable for damages for use and occupation. Such permission is also implied in the case of a tenant holding over after the expiry of the term, or a lessee who enters under a lease invalid for want of registration, or a person who obtained an invalid assignment or lease, in short, every person who lawfully enters upon the property but has no title to retain it.[4]

The ordinary measure of damages for use and occupation is a fair occupation rent payable for the land,[5] and there is always a presumption of an agreement to pay a reasonable rent, arising from the defendant's occupation of the plaintiff's property.[6] Such rent is determined upon the rate fixed in the contract of lease, if any[7], and though it is inadmissible for proving the contract, it may be looked into for the purpose of establishing what damages the landlord has sustained.[8]

If a tenant holds over after notice to quit has been served upon him and continues in possession even after a further notice and claiming damages of use and occupation at a certain rate if the house is not vacated after certain time he is bound to pay the damages so claimed, for the period of

1. *Harry Kempson Gray* v. *Bhaju Mian*, A. I. R. 1930 p. c. 82.
2. *Maung. Po. Shein* v. *Mohammad Thambi*, 30 I. C. 753.
3. *Puppademitrian* v. *Rose Holliday*, 21 I. C. 3.
4. Rao, p. 528, and authorities cited therein.
5. *Darsan Singh* v. *Bhavani Koer*. 19 I. C. 974.
6. *Gaya Prasad* v. Baij Nath, I. L. R. 19 All. 176; *Jawahri Mal* v. *Jagan Nath*, 1930 Lah. 915.
7. *Jawahari Mal* v. *Jagan Nath*, 1930 Lah. 915.
8. *Yoo Joo Sien* v. *Maung Ba Tin*, 31 I. C. 893.

such occupation.[1] But his liability is limited to the period during which he actually remained in possession.[2]

In England some time double the rent has been held payable by a tenant who contumaciously holds over. The same rule is applied in a series of cases in the Punjab, where it has been distinctly held that in considering what sum should be allowed for use and occupation or for damages for contumaciously holding over, the whole circumstances of the tenancy, and the sufficiency in point of time of a notice to quit may properly be taken into consideration and double the rent may some times be taken as a proper standard.[3]

Nuisance.

Another set of cases will fall under the wrong known as "nuisance". This wrong is based upon the application of the maxim "*sic utere tuo ut alienum non laedas*" (so use thine own as not to injure another's). An instance of this is an action by the owner of premises adjoining a highway to which he has a right of access from the premises. A right of immediate access from private property to a public highway is recognized in law as a proper right, distinct from the right of the owner of the property to use the highway itself as one of the public.[4] Such a right is the incident to the occupation of tenements adjoining a highway and an obstruction caused to the exercise of such rights may be restrained by an injunction, and the owner or occupier has a right of action for damages sustained.[5]

1. *Madan Mohan* v. *Bohra Ram*, 1934 All. 115; *Scott* v. *Jyotis Saroop*, 11 I. C. 270.
2. *Govind Ram* v. *Hari Mohan*, 1934 Lah. 175.
3. *Mul Raj* v. *Inder Singh*, 1928 Lah. 554; *Rure Khan* v. *Ghulam Mohammad*, 1924 Lah. 643; *Narrain Das* v. *Dharam Das*, 1932 Lah 275.
4. *Hanuman Prashad* v. *Raghunath Prashad*, 1924 All. 715; M. C. *Delhi* v. *Mahd, Ibrahim*, 1935 Lah. 196.
5. *Fritz* v. *Hobson*, (1880) 4 Ch. D. 542.; *Bhagwan Das* v. *Town Magistrate, Budaun*, A.I. R. 1929 All. 767.

CHAPTER X

PROCEDURE AND PENALTIES.

77. Stamping signatures on notices or bills.

The Trust Acts provide that every notice or bill, which is required by the Act or by any rule made thereunder to bear the signature of the Chairman or of any Trustee or of any officer or servant of the Trust or Board, shall be deemed to be properly signed if it bears a *facsimile* of the signatures of the Chairman, or of such other Trustee, or of such officer or servant as the case may be, stamped thereupon.[1] The Punjab Act also provides that no notice issued by the Trust under the Act or any rule or bye-law made thereunder shall be invalid for defect of form.[2] Under this Act the *facsimile* of the signature of the Chairman or of any Trustee, officer or servant, may be either stamped or printed on such notice or bill.[2]

78. Method of giving public notice.

Every public notice given under the Calcutta Act or any rule made thereunder shall be in writing over the signature of the Chairman, and shall be widely made known in the locality to be affected thereby, by affixing copies thereof, in conspicuous public places within the said locality, or by publishing the same by beat of drum or by advertisement in local newspapers, or by any two or more of these means, and by any other means that the Chairman may think fit.[3] Further, whenever it is provided by this Act or any rule made thereunder that a notice shall be given by advertisement in local newspapers, or that a notification or any information shall be published in local newspapers, such notice, notification, or

1. S. 165, Calcutta Act; S. 76, U. P. Act; S. 76, U. P. Act as extended to Delhi; S. 93, C. P. Act.
2. S. 77, Punjab Town Improvement Act, 1922.
3. S. 163, Calcutta Improvement Act, 1911,

information shall be inserted, if practicable, in at least two English newspapers and two vernacular newspapers.[1]

Section 77 of the U. P. Act states that 'subject to the provisions of the Act, every public notice required under the Act shall be deemed to have been given if it is published in some local newspaper (if any) and posted upon a notice board to be exhibited for public information at the building in which the meetings of the Trust are ordinarily held. The same provision exists in the U. P. Act as extended to Delhi, in the Punjab Act, and in the C. P. Act.[2]

79. Service of notice.

Under the Calcutta Act, when any notice, bill or other document, is required by the Act or any rule made thereunder, to be served upon, or issued or presented to any person, such service, issue, or presentation shall be effected—(a) by giving or tendering such document to such person ; or (b) if such person is not found, by leaving such document at his last known place of abode in Calcutta, or by giving or tendering the same to some adult male member or servant of his family, or (c) if such person does not reside in Calcutta, and his address elsewhere is known to the Chairman, by forwarding such document to him by registered post under cover bearing the said address ; or (d) if none of the means aforesaid be available, by causing a copy of such document to be affixed on some conspicuous part of the land (if any) to which the document relates.[3]

The U. P. Act provides that every notice other than the public notice, and every bill, issued under the Act, shall, unless it is under the Act otherwise expressly provided, be served or presented—(a) by giving or tendering the notice or bill or sending it by post, to the person to whom it is addressed, or (b) if such person is not found, then by leaving

1. Calcutta Improvement Act, 1911, S. 164.
2. S. 77, U. P. Act as extended to Delhi ; S. 78, Punjab Act ; S. 94, C. P. Act.
3. S. 166, Calcutta Improvement Act, 1911.

the notice or bill at his last known place of abode, if within the Municipal limits, or by giving or tendering it to some adult male member or servant of his family, or by causing it to be fixed on some conspicuous part of the building or land (if any) to which it relates. It further states that when a notice is required or permitted under the Act to be served upon an owner or occupier of a building or land, it shall not be necessary to name the owner or occupier therein and the service thereof, in cases not otherwise specially provided for in the Act, shall be effected either—(a) by giving or tendering the notice, or sending it by post, to the owner or occupier, or if there be more occupiers or owners than one, to any one of them, or (b) if no such owner or occupier is found, then by giving or tendering the notice to an adult male member or servant of his family, or by causing the notice to be fixed on some conspicuous part of the building or land to which the same relates. As regards minors, the Act provides that whenever a person to whom a notice or bill is to be served is a minor, service upon the guardian or upon an adult male member or servant of his family shall be deemed to be service upon the minor.[1] The same provision exists in the U. P. Act as extended to Delhi, in the Punjab Act, and in the C. P. Act.[2]

80. Disobedience to Act or to notice.

Section 79 of the U. P. Act provides that where under the Act or a notice issued thereunder, any person is required to do or to refrain from doing anything, a person who fails to comply with such requisition, shall, if such failure is not an offence punishable under any other section, be liable on conviction by a magistrate to a fine not exceeding five hundred rupees for every such failure and in the case of a continuing breach, to a further fine which may extend to five rupees for every day after the date of first conviction during which the continuance is proved to have persisted in the breach. The same provision exists in the U. P. Act as extended to Delhi

1. S. 78, U. P. Town Improvement Act, 1919.
2. S. 78, U. P. Act as extended to Delhi ; S. 79, Punjab Act ; S. 95, C. P. Act.

and in the C. P. Act.[1] In the Punjab Act this provision is subject to a *proviso*, namely, that when the notice fixes a time within which a certain act is to be done, and no time is specified in the Act, it shall rest with the Magistrate to determine whether the time so fixed was a reasonable time within the meaning of the Act.[2]

81. Powers of Trust to execute works on failure to comply with notice.

If a notice has been given under the Act to a person requiring him to execute a work in respect of any property, moveable or immoveable, public or private, or to do or refrain from doing anything within a time specified in the notice, and if such person fails to comply with such notice, then the Trust may cause such work to be executed or such thing to be provided or done, and may recover all expenses incurred by it on such account from the said person in the manner provided by the Municipal Act applicable to the locality.[3]

82. Liability of occupier to pay in default of owner.

If the person on whom a notice has been served in pursuance of the provisions referred to above is the owner of the property in respect of which it is served, the Trust may, whether any action or other proceeding has been brought or taken against such owner or not require the person, if any, who occupies such property or a part thereof under such owner, to pay to the Trust instead of to the owner the rent payable by him in respect of any such property as it falls due, up to the amount recoverable from the owner under the above provision; and any such payment made by the occupier to the Trust shall, in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been made to the owner of the property. It is also provided that for the purpose of deciding whether action should be taken in the manner stated above, the Trust may

1. S. 79, U. P. Act as extended to Delhi; S. 96, C. P. Act.
2. S. 80, Punjab Town Improvement Act, 1922.
3. S. 80, U. P. Act; S. 80, U. P. Act as extended to Delhi; S. 81, Punjab Act; S. 98, C. P. Act.

require an occupier of property to furnish information as to the sum payable by him as a rent on account of such property and as to the name and address of the person to whom it is payable; and if the occupier refuses to furnish such information he shall be liable for the whole of the expenses as if he were the owner. All money recoverable by the Trust under these provisions shall be recoverable in the manner provided by the Municipal Act in force in the locality.[1]

83. Right of occupier to execute works in default of owners.

Whenever the default is made by the owner of a building or land in the execution of a work required under the Act to be executed by him, the occupier of such building or land may, with the approval of the Trust, cause such works to be executed and expense thereof shall in the absence of any contract to the contrary be paid to him by the owner, or the amount to be deducted out of the rent from time to time becoming due from him to such owner.[2]

84. Procedure upon opposition to execution by occupier.

If, after receiving information of the intention of the owner of any building or land to take any action in respect thereof in compliance with a notice issued under the Act, the occupier refuses to allow such owner to take such action, the owner may apply to a Magistrate. The Magistrate upon proof of such refusal may make an order in writing requiring the occupier to allow the owner to execute all such works, with respect to such building or land, as may be necessary for compliance with notice, and may also, if he thinks fit, order the occupier to pay to the owner the cost relating to such application or order. If, after the expiration of eight days from the date of the Magistrate's order, the occupier continues to refuse to allow the owner to execute such work, the occupier shall be liable upon conviction to a fine which may extend to twenty-five rupees for every day during which he has so continued to

1. S. 81, U. P. Act ; S. 81, U. P. Act as extended to Delhi ; S. 87, Punjab Act ; S. 98., C. P. Act.
2. S. 82, U. P. Act ; S. 82, U. P. Act as extended to Delhi ; S. 83, Punjab Act ; S. 99, C. P. Act.

refuse. Every owner, during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such works.[1]

85. Recovery of cost of work by the occupier.

When the occupier of a building or land has, in compliance with a notice issued under the Act executed a work for which the owner of such building or land is responsible, either in pursuance of the contract of tenancy or by law, he shall, in the absence of any contract to the contrary, be entitled to recover from the owner by deduction from the rent payable by him or otherwise the reasonable cost of such work.[2]

86. Recovery of expenses of removal by the Trust

Under the U. P. Act the expenses incurred by the Trust in affecting any removal under section 265 of the U. P. Municipalities Act as applied by section 49 of the United Provinces Town Improvement Act, or in the event of a written notice under section 278 of that Act not being complied with, under section 80 of the Trust Act, shall be recoverable by sale of the materials removed, and if the proceeds of such sale do not suffice, the balance shall be recoverable from the owner of the said material in the manner provided by Chapter VI of the Municipalities Act.[3] In the said section as extended to Delhi, references are to sections 114, and 171 of the Punjab Municipal Act and to sub-section (4) of section 222 of the said Act.[4] A similar provision exists in the Punjab Act[5] and in the C. P. Act.[6] There is no corresponding provision in the Calcutta Act.

1. S. 83, U. P. Act; S. 83, U. P. Act as extended to Delhi; S. 84, Punjab Act; S. 100, C. P. Act. There is no corresponding provision in the Calcutta Act.
2. S. 84, U. P. Act; S. 84, U. P. Act as extended to Delhi; S. 85, Punjab Act; S. 101, C. P. Act. There is no corresponding provision in the Calcutta Act.
3. S. 85, U. P. Town Improvement Act, 1919.
4. S. 85, U. P. Act as extended to Delhi.
5. S. 86, Punjab Town Improvement Act, 1922.
6. S. 102, Nagpur Improvement Trust Act, 1936.

87. Relief to agents and trustees.

When a person, by reason of his receiving, or being entitled to receive, the rent of immoveable property as trustee or agent of a person or society would, under the Act, be bound to discharge an obligation imposed by the Act on the owner of the property and for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has or but for his own improper act or default might have had, in his hands funds belonging to the owner sufficient for the purpose. When an agent or trustee has claimed to establish his right to such relief, the Trust may give him a notice to apply to the discharge of such obligation as aforesaid the first moneys which come to his hands on behalf, or for the use, of the owner, and should he fail to comply with such notice he shall be deemed to be personally liable to the discharge of such obligation.[1]

88. Application of certain provisions of the Municipal Act.

Section 87 of the U. P. Act states that whenever in this Act or in any section of the Municipalities Act made applicable by section 49 of this Act, it is provided that any sum shall be recoverable in the manner provided by Chapter VI of the Municipalities Act, then in applying the provisions of that Chapter all references to the board shall be construed as referring to the Trust and all references to the municipal office, a municipal officer or the municipal fund shall be construed as referring to the office of the Trust, to an officer of the Trust and the funds of the Trust, respectively. This section as extended to Delhi reads :—"Wherever, in this Act it is provided that any sum may be recovered under sub-section (4) of section 222 of the Municipalities Act, then in applying the provisions of that sub-section the Trust shall be deemed to be the Committee". Section 88 of the Punjab Act provides that 'whenever in this Act or in any section of the Municipal Act made applicable by section 49 of this Act, it is provided that any sum shall be

1. S. 86, U. P. Act; S. 86, U. P. Act as extended to Delhi; S. 87 Punjab Act; S. 103, C. P. Act. There is no corresponding provision in the Calcutta Act.

recoverable in the manner provided by section 222 of the Municipal Act, then in applying the provisions of that section all references to the Municipal Committee shall be construed as referring to the Trust'. Section 104 of the C. P. Act reads as follows :—

"Whenever in this Act or in any section of the Municipalities Act made applicable by section 52 it is provided that any sum shall be recoverable in the manner provided by Chapter XIX of the Municipalities Act, then in applying the provisions of that Chapter all references to the Committee shall be construed as referring to the Trust and all references to the Municipal Office, a Municipal Officer or the Municipal fund shall be construed as referring to the office of the Trust, to an officer of the Trust and the Trust Fund respectively."

89. Removal of wall or building and recovery of expenses under the Calcutta Act.

Section 174-A of the Calcutta Improvement Act provides that when a written notice, issued under section 93, sub-section (9),[1] for the removal of a wall or building, or, any portion thereof, is not complied with, by the owner thereof for the time being as provided in section 171-A, the Chairman may proceed to remove such wall, building or portion, and the expenses incurred in effecting such removal shall be recoverable by sale of the materials or other things removed.

90. Penalties under the Calcutta Improvement Act.

The Calcutta Improvement Act, 1911, provides for the following penalties :—

Punishment for acquiring share or interest in contract etc., with the Board.

If any Trustee, or any officer or servant of the Board, knowingly acquires, directly or indirectly, by himself or by any partner, employer, or employee, otherwise than as such Trustee, officer or servant, any share or interest in any contract or employment with, by or on behalf of, the Board, not being a share or interest such as, under sub-section (2)

1. See notes on pages 170 to 173.

of section 9[1], it is permissible for a Trustee to have without being thereby disqualified for being appointed a Trustee, he shall be deemed to have committed an offence punishable by section 168 of the Indian Penal Code.[2]

Penalty for removing fence etc., in street.

If any person, without lawful authority,—

(a) removes any fence or shoring-timber, or removes or extinguishes any light, set up under section 59, or

(b) infringes any order given, or removes any bar, chain or post fixed, under section 60, sub-section (2), he shall be punishable with fine which may extend to fifty rupees.[3]

Penalty for building within street alignment or building line of a projected public street.

If any person, without the permission of the Chairman required by section 63, sub-section (8), erects, re-erects, or adds to any wall (exceeding ten feet in height) or building which falls within the street alignment or building line of a projected public street shown in any plan sanctioned by the Provincial Government under the said section, he shall be punishable—

(a) with fine which may extend, in the case of a masonry building or a wall, to five hundred rupees, and, in the case of a hut, to fifty rupees, and

(b) with further fine which may extend, in the case of a masonry building or a wall, to one hundred rupees, and, in the case of a hut, to ten rupees, for each day after the first during which the projection continues.[4]

Penalty for failure to remove wall or building in respect of which agreement has been executed.

If the owner for the time being of any wall or building in respect of which an agreement has been executed as provided in section 63, sub-section (9) fails—

(a) to remove such wall or building, or any specified portion thereof, when so required by notice, issued under that sub-section, or

1. See notes on page 96.
2. S. 169, Calcutta Improvement Act, 1911.
3. Ibid, S. 170.
4. Ibid, S. 171.

(b) within fifteen days from the receipt of such notice, to authorize the Chairman, by permission in writing, to remove the said wall, building or portion,

he shall be punishable—

(i) with fine which may extend, in the case of a masonry wall or building, to one hundred rupees, and, in the case of a hut, to twenty rupees; and

(ii) with further fine which may extend, in the case of a masonry wall or building, to ten rupees, and, in the case of a hut, to five rupees, for each day after the first during which the failure continues.[1]

Penalty for failure to comply with requisition made by another.

If any person fails to comply with any requisition made under section 131, he shall be punishable—

(a) with fine which may extend to one hundred rupees; or

(b) in case of a continuing failure, with fine which may extend to fifty rupees for each day after the first during which the failure continues.[2]

Penalty for obstructing contractor or removing mark.

If any person—

(a) obstructs or molests any person with whom the Chairman has entered into a contract on behalf of the Board, in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue or in consequence of this Act or any rule made thereunder, or

(b) removes any mark set up for the purpose of indicating any level or direction necessary to the execution of works authorized by this Act, or any rule made or scheme sanctioned hereunder,

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.[3]

1. S. 171 A, Calcutta Improvement Act, 1911.
2. Ibid, S. 173.
3. Ibid, S. 174.

91. Penalties under the U. P. Act, the U. P. Act as extended to Delhi, the Punjab Act and the C. P. Act.

The U. P. Act, the U. P. Act as extended to Delhi, the Punjab Act, and the C. P. Act, provide for the following penalties :—

Penalty for removing fence etc., in streets.

If any person, without lawful authority,—

(a) removes any fence, or any timber used for propping or supporting any building, wall or other things, or extinguishes any light set up at any place where the surface of a street or other ground has been opened or broken up by the Trust for the purposes of carrying out any work, or

(b) infringes any order given, or removes any bar, chain or post fixed by the Trust for the purposes of closing any street to traffic,

he shall be punishable with fine which may extend to fifty rupees.[1]

Power to prevent or demolish building in contravention of the provisions of th Act.

If any person without the permission of the Trust, erects, re-erects, adds to or alters any building or wall so as to make the same project beyond the street alignment prescribed under (section 29 of the U. P. Act or of the U. P. Act as extended to Delhi, or section 32 of the C. P. Act) or the street alignment or building line shown in any plan finally adopted by the Trust under (section 30 of the U. P. Act or section 30 of the U. P. Act as extended to Delhi or section 30 of the C. P. Act) or erects or re-erects, adds to, or alters any building line in the area specified in sub-section (4) of (section 32 of the U. P. Act or section 32 of the U. P. Act as extended to Delhi or section 35 of the C. P. Act), the Chairman of the Trust, may, by a written notice—(a) direct that the building, alteration or addition be stopped, and (b) require such building, alteration, or addition, to be altered or demolished as he may deem necessary.[2]

1. S. 88, U. P. Act ; S. 88, U. P. Act as extended to Delhi ; S. 89, Punjab Act ; S. 105, C. P. Act.

2. S. 89, U. P. Act as extended to Delhi ; S. 106, C. P. Act.

The C. P. Act also provides that if any person on whom the said notice has been served neglects or refuses to carry out the order or requisition in the manner and within the period specified in the notice, the Chairman may have such alterations or demolition carried out, and may recover the cost incurred thereon from the owner or the person on whom the notice was served in the manner provided by Chapter XIX of the Municipalities Act.[1]

The Punjab Act provides that if any person without the permission of the Trust, erects, re-erects, adds to, or alters any building so as to make the same project beyond a street alignment, or building line, or erects, re-erects, adds to, or alters any building in contravention of section 30 or 31, the Chairman of the Trust may, by a written notice—(a) direct that the building, alteration, or addition, be stopped and (b) require such building, alteration, or addition, to be altered or demolished as he may deem necessary.[2]

Penalty for obstructing contractor or removing mark.

If any person—(a) obstructs, or molests any person with whom the Trust has entered into a contract in the performance or execution by such person of his duty or any thing which he is empowered 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 authorized under the 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.[3]

92. Compensation to be paid by offenders for damage caused by them under the Calcutta Act.

Section 162 of the Calcutta Improvement Act, 1911, provides as follows :—

"162 (1) If, on account of any act or omission, any person has been convicted of an offence against this Act or any rule made thereunder, and, by reason of the same act or

1. S. 106, Nagpur Improvement Trust Act, 1936.
2. S. 90, Punjab Town Improvement Act, 1922.
3. S. 90, U. P. Act; S. 90 U. P. Act as extended to Delhi; S. 91, Punjab Act; S. 107, C. P. Act.

omission of the said person, damage has occurred to any property of the Board, compensation shall be paid by the said person for the said damage, notwithstanding any punishment to which he may have been sentenced for the said offence.

(2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the Magistrate before whom he was convicted of the said offence.

(3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said Magistrate, as if it were a fine inflicted by him on the person liable therefor".

CHAPTER XI.

TAXATION & FINANCE.

93. Calcutta Improvement Trust.

The Calcutta Improvement Trust derives its finance mainly from the following sources :—

Duty on transfers of property.

Section 82 of the Calcutta Improvement Act, 1911, provides that the duty imposed by the Indian Stamp Act, 1899, on instruments of sale, gift and usufructuary mortgage, respectively, of immoveable property shall, in the case of instruments affecting immoveable property situated in the Calcutta Municipality and executed on or after the commencement of this Act (i. e., the 2nd January, 1912), be increased by two *per centum* on the value of the property so situated, or (in the case of an usufructuary mortgage) on the amount secured by the instrument, as set forth in the instrument. It further prescribes that for the purposes of this section, section 27 of the said Indian Stamp Act, 1899, shall be read as if it specifically required the particulars referred to therein to be set forth separately in respect of — (a) property situated in the Calcutta Municipality, and (b) property situated outside the Calcutta Municipality, respectively. For the purposes of this section, section 64 of the Indian Stamp Act is to be read as if it referred to the Board as well as the Government. All collections resulting from the said increase are, after deducting incidental expenses, (if any), to be paid to the Board at such time as may be prescribed under the rules applicable.

The total receipts from the duty on transfer of property amounted to Rs. 5,87, 415 during the year 1938-39, and the total amount realized by the Board up to the end of the year, 1938-39 was Rs. 1,47,96,452 under this head.[1]

1. Vide Annual Report of the Calcutta Improvement Trust, for the year 1938-39, page 14.

Section 83 of the Calcutta Act provides as follows :—

Terminal Tax on passengers.

"83. (1) Every passenger brought to or taken from any station in the Calcutta Municipality or the Howrah Municipality by railway, and every passenger brought to or taken from any landing place in Port of Calcutta, within five miles from Government House, by inland steam-vessel, shall pay a tax of half-an-anna in respect of each journey so made by him. Provided as follows :—

(a) the said tax shall not be payable by any passenger brought from, or taken to, any place situated within a radius of thirty miles from Government House ;

(b) the Provincial Government may, by notification, either—

(i) reduce the said radius to any distance less than thirty miles, in its application either to passengers generally or to passengers of any specified class, or

(ii) cancel proviso (a), or

(iii) reduce the said tax to any lower rate, either in respect of passengers generally or in respect of passengers making frequent journeys ;

(c) the said tax may, in the case of passengers taking suburban season tickets, be calculated at the rate of six annas *per mensem* for each such ticket, or at such lower rate as the Provincial Government may prescribe by notification.

(2) The said tax shall be collected by means of a surcharge on fares, by the administration of the railway, or the owner of the vessel, by which the passengers are carried, and shall be paid to the Board at such time as may be prescribed by rule made under section 86, after making such deduction as the Provincial Government may approve to meet any expenses incurred in connection with the collection of the tax.

(3) The owner of every inland steam-vessel referred to in sub-section (1) shall prepare and deliver, or cause to be prepared and delivered, to the Chairman, each quarter, a return in the form prescribed by rule made under section 86, of all passengers, carried by such vessel, by whom the tax imposed by that sub-section is payable; and shall subscribe, at the foot of such return, a declaration of the truth thereof.

(4) Every such return shall be delivered to the Chairman or posted to his address within fifteen working days, or at most within thirty days, after the end of the quarter to which it relates.

Explanation—The expression 'working day' as used in this sub-section, means every day except a public holiday as defined in section 25 of the Negotiable Instruments Act, 1881.

(5) If this Act is directed to come into force during a quarter, the first of the said returns shall be made for the unexpired portion of that quarter.

(6) The expression "administration" and the expressions "owner" and "inland steam-vessel", as used in this section, have the same meanings as in the Indian Railways Act, 1890, and the Inland Steam-vessels Act, 1884, respectively.[1]

The receipts from the terminal tax amounted to Rs. 2,32,868 during the year 1937-38 and in the year 1938-39 were Rs. 7,765 more than the previous year.[2]

Custom duty on exports of jute from Calcutta by sea.

A customs duty shall be levied and collected on all jute exported by sea from the Port of Calcutta to any other port, whether beyond or within India, at such rate, not exceeding, (a) in the case of raw jute (including jute cuttings and rejections), two annas per bale of four hundred pounds, and (b) in the case of manufactured jute, twelve annas per ton of two thousand two hundred and forty pounds, as the

1. S. 83, Calcutta Improvement Act, 1911.
2. Annual Report of the Calcutta Improvement Trust, 1938-39, pp. 14,15.

Provincial Government may prescribe by notification: Provided that the said duty shall not be levied or collected in respect of jute, whether raw or manufactured, exported under any contract which was made before the fifteenth day of August, 1911, and the existence of which was established to the satisfaction of the Customs Collector before the fifteenth day of September, 1911. At the close of each quarter, or as soon thereafter as may be convenient, the duty collected under the above provision shall, after deducting the expenses of collection (if any), be paid by the Customs Collector to the Board.[1]"

The Act also provides that section 5 of the Indian Tariff Act, 1894, shall not apply to jute (whether raw or manufactured) passing by land out of Calcutta.[2]

The receipts from duty on jute amounted to Rs. 11,99,842 in the year 1938-39 against Rs. 13,74,300 for the year 1937-38.[3]

Section 88 of the Calcutta Act provides as follows:—

Contribution from Municipal Funds.

"88—(1) The Chairman of the Corporation shall pay from the Municipal Funds to the Board on the first day of each quarter, so long as the Board continue to exist, a sum equivalent to one-half per cent. per quarter on the annual rateable valuation determined under Chapter XII of the Calcutta Municipal Act, 1899 (repealed and re-enacted by the Calcutta Municipal Act, 1923) as it stood on the first day of the last preceding quarter: Provided as follows:—

(a) in the case of property vested in the Commissioners for the Port of Calcutta, the said percentage shall be calculated upon nine-tenths of the annual rateable valuation of such property, and

(b) if this Act is directed to come into force during a quarter, the amount of the first of such payments

1. S. 84, Calcutta Improvement Act, 1911.
2. *Ibid*, section 85.
3. Annual Report of the Calcutta Improvement Trust, 1938-39, p. 15.

shall bear such proportion to the sum payable hereunder as the unexpired portion of that quarter bears to the whole quarter.

(2) If in any financial year the sums due to the Board under section 82 (duty on transfer of property) and sub-section (1) of this section aggregate less than seven-and-a-half lakhs of rupees, the Chairman of the Corporation (now the Chief Executive Officer) shall pay to the Board, from the Municipal Funds, such further sum as may be required to make up the said sum of seven-and-a-half lakhs of rupees.

(3) The payments prescribed by sub-sections (1) and (2) shall be made in priority to all other payments due from the Corporation, except those referred to in section 140 of the said Calcutta Municipal Act, 1899 (repealed and re-enacted by the Calcutta Municipal Act, 1923).

(4) If any payment prescribed by sub-section (1) or sub-section (2) cannot be made without increasing the maximum authorised by clause (a) of section 147 of the said Calcutta Municipal Act, 1899, (repealed and re-enacted by the Calcutta Municipal Act, 1923) then that maximum may be increased to such extent as may be necessary to secure the due making of such payment."

The Municipal contribution amounted to Rs. 19,55,913 during the year 1938-39 ; and the total contribution up to the end of the year 1938-39 was Rs. 3,94,69,727.[1]

Power of Board to borrow money.

Ths Board may from time to time borrow, at such rate of interest, and for such period, and upon such terms, as to the time and method of repayment and otherwise, as the Provincial Government may approve, any sum necessary for the purpose of :—

(a) meeting expenditure debitable to the capital account under section 123, or

(b) repaying any loan previously taken under this Act :

1. Annual Report of the Calcutta Improvement Trust, 1938-39, p. 15.

Provided that no loan exceeding in amount twenty five lakhs of rupees shall be taken by the Board, unless the terms, including the date of flotation of such loan have been approved by the Government of India.[1]

Loans from Banks.

Whenever the borrowing of any sum has been approved under the above provisions, the Board may, instead of borrowing such sums or any part thereof from the public, take credit from any bank on a cash account to be kept in the name of the Board, to the extent of such sum or part; and, with the previous sanction of the Provincial Government may grant mortgages of all or any property vested in the Board by way of securing the payment of the amount of such credit or of the sums from time to time advanced on such cash account with interest.[2] Further provisions relating to borrowing money are as follows:—

Diversion of borrowed money to purposes other than those first approved.

(1) When any sum of money has been borrowed under section 89 or section 91 for the purpose of meeting particular expenditure or repaying a particular loan, no portion thereof shall be applied to any other purpose without the previous sanction of the Provincial Government.[3]

Form, signature, exchange, transfer and effect of debentures.

(2) Whenever money is borrowed by the Board on debentures, the debentures shall be in such form as the Board, with the previous sanction of the Provincial Government, may from time to time determine. All debentures shall be signed by the Chairman and one other Trustee. The holder of any debenture in any form prescribed as referred to above may obtain in exchange therefor upon such terms as the Board may from time to time determine, a debenture in any other form so prescribed. Every debenture issued by the Board shall be transferable by endorsement, unless some other mode of transfer be prescribed therein. The right to sue in respect of moneys secured by debentures by the Board shall vest

1. S. 89, Calcutta Improvement Act, 1911.
2. S. 91, Calcutta Improvement Act, 1911.
3. *Ibid*, S. 92.

in the respective holders of the debentures for the time being without any preference by reason of some of such debentures being prior in date to others.[1]

Signature of coupons attached to debentures

(3) All coupons attached to debentures issued under the Act shall bear the signature of the Chairman; and such signature may be engraved, lithographed or impressed by any mechanical process. When any debenture or security issued under this Act is payable to two or more persons jointly, and either or any of them dies, then, notwithstanding any thing in section 45 of the Indian Contract Act, 1872, the debenture or security shall be payable to the survivor or survivors of such persons: Provided that nothing in this section shall affect any claim by the representative of a deceased person against such survivor or survivors.[2]

Receipt by joint-holder for interest or dividend

Where two or more persons are joint holders of any debenture or security issued under the Act, any one of such persons may give any effectual receipt for any interest or dividend payable in respect of such debenture or security, unless notice to the contrary has been given to the Board by any other of such persons.[3]

94. Trusts constituted under the United Provinces Town Improvement Act, 1919.

The Trusts constituted under the U. P. Town Improvement Act, 1919, are financed mainly by loans from Goverment, supplemented occasionally by grants-in-aid. For this purpose, section 67 of the Act states that 'a Trust as defined in the Act shall be deemed to be a local authorithy, as defined in the Local Authorities Loans Act, 1914, for the purpose of borrowing money under that Act, and the making and execution of any improvement scheme mentioned in the Act shall be deemed to be a work which such local authority is legally authorized to carry out. There is no local taxation or contribution from the Municipal Funds for financing the Trusts, with

1. Calcutta Improvement Act, 1911, S. 93.
2. S. 95, Calcutta Improvement Act, 1911.
3. *Ibid*, S. 96.

the result that the Trusts are expected to meet their expenditure from the surplus realized by disposal of lands developed by them after defraying costs of acquisition and development. The observations of the Rule 13 Committee appointed by the U. P. Legislature to consider the draft Town Improvement Bill were as follows :—

"With reference to finance, we have recognized that in the conditions of municipal finance in these provinces, these schemes cannot be carried out without substantial Government aid. Such aid indeed was given on a large scale in the cases of Bombay and Calcutta. We have not considered it advisable to incorporate the provision in the Calcutta Act imposing a duty on certain transfers of immoveable property within the Municipality. The duty would cause much discontent and the proceeds would be negligible. We considered the possibility of providing for the imposition of a terminal tax on passengers. In principle, we have no objection whatever to this tax, but in view of the difficulties that would be met in obtaining the sanction of the Government of India and of the railway authorities to any such tax, we did not consider it advisable to embody this proposal. We have constituted the Trust a local authority for purposes of borrowing".[1]

95. Delhi Improvement Trust

Section 67 of the U. P. Act has been extended to Delhi with one major modification only, namely, that this applies to the undertaking of any work under section 22A of the said Act as extended to Delhi also. The Delhi Improvement Trust also is thus a local authority as defined in the Local Authorities Loans Act, 1914, for the purpose of borrowing money under that Act for the undertaking of any work under section 22A of the Act, and the making and execution of any improvement scheme under the Act.

Under section 54-A of the U. P. Town Improvement Act, 1919, as extended to Delhi, the Government have placed at the disposal of the Trust all the lands comprised in the 23 Nazul estates, subject to the terms of an agreement between

1. See U. P. Gazette, Part VII, dated 28th September, 1918.

the Government and the Trust, by which, amongst other things, the Trust is required to use its best endeavours for the improvement and development of the Nazul estate with special reference to the requirements and improvements of Delhi. On the financial side the agreement stipulates that nett profits from the Nazul estates shall be utilized to finance (a) the development of these estates, (b) in part, the Delhi Sewage Disposal Scheme, and (c) a scheme for the control of malaria. By nett profits is meant the sum which will be at the disposal of the Trust annually after paying to Government every year the sum of rupees two lakhs, which figure represented the assumed nett income from the Nazul estates in 1935-36. The Trust account is consequently maintained in two parts : A—Nazul and B—Trust ; the balances in each are independent, and the total charges for Trust administration are distributed between the two accounts under a formula approved by Government which is mainly based on the total value of effective Income/Expenditure in the two accounts. The Trust's liability for the anti-malaria works is determined at Rs. 14.79 lakhs and is booked to Account A—Nazul and financed by loans repayable with interest as a first charge on the profits of the Nazul estate. A major portion of this amount has already been spent on approved works. The liability for the sewage disposal scheme is likewise determined by the list of approved works, and half the total expenditure after deducting the grant-in-aid of Rs. 21.40 lakhs is booked to Account A—Nazul and the other half to Account B—Trust, and is financed by a loan repayable with interest as a charge against the profits in the respective accounts.

Expenditure on development and town improvement schemes is allocated to account A-Nazul or account B-Trust, according as the primary object is the development of Nazul or Trust land. Ordinarily a work or scheme which covers a larger area of Nazul than of acquired land is allocated to Nazul account, and a work or scheme which covers a larger area of acquired than of Nazul land is allocated to Trust account. Land acquired for a Nazul account scheme is paid for finally from the Nazul account and treated as an addition

to the Nazul estate. When a Trust scheme includes Nazul land, or when land acquired on Nazul account is transferred to a Trust scheme, adjustments are made from or to the Nazul account for the purpose of determining the final profit or loss position on a gross area basis.

Keeping in view the distinction between the Nazul development account and the Trust account, it will be seen that the sources of income to these accounts are also separate and distinct. In practice the main sources of income to the Trust Development account, that is for execution of town improvement and slum clearance schemes on land which has to be acquired, are(1) loans from Goverument ; and (2) proceeds from sale of land. The sources of finance in the Nazul Development account are (i) surplus Nazul revenue after paying a lump sum of rupees two lakhs a year to Government (ii) proceeds from sale of land, and (iii) loans from Government.

In the case of the Delhi Improvyment Trust also there is no contribution made to the Trust by any local authority, and, except for subsidy for poor class re-housing schemes, to which a reference will be made in the concluding Chapter, there has been no grant-in-aid from Government.[1]

96. Trusts constituted under the Punjab Town Improvement Act, 1922.

Sections 67 and 68 of the Punjab Town Improvement Act, 1922, provide as follows :—

" 67. A Trust under this Act shall be deemed to be a local authority under the Local Authorities Loans Act, 1914, for the purpose of borrowing money under that Act, and the making and execution of any scheme under this Act shall be deemed to be a work which such local authority is legally authorized to carry out.

1. See Administration Report of the Delhi Improvement Trust, 1937—1939, pages 4 to 9.

68. (1) The Municipal Committee shall pay to the Trust so long as the Trust is concerned with the improvement of a locality within the limits of the municipality an amount per annum equal to two per cent. of the gross annual income of such Committee.

(2) In case of dispute as to what is the gross annual income of a Committee, the matter shall be referred to the Provincial Government, whose decision shall be final.

Lahore Improvement Trust

The income of the Lahore Improvement Trust consists of :

(i) Loans from Government.

(ii) Grant-in-aid from Government for Trust establishment for five years with effect from 1938—39 up to a maximum of Rs. 60,000 in any one year.

(iii) Contribution from the Lahore Municipality of 2 per cent. per annum of its gross income.

(iv) Income from lease or sale of Trust lands.

The actual contribution from the Committee amounted to Rs. 74, 354 during the year 1941—42.[1]

97. Nagpur Improvement Trust

Trust Fund

The Nagpur Improvement Trust Act, 1936, makes provision for the formation of a Trust Fund for the Trust and prescribes that all sums received by or on behalf of the Trust under the Act or otherwise shall be placed to the credit of the said Fund.[2] It further lays down that subject to the provisions of the Act, the Trust Fund shall be applicable only to the payment of the charges and expenses incidental to the several matters specified in the Act, and to any other purpose for which by or under the Act powers are conferred or duties imposed upon the Trust.[3]

1. See Administration Report of the Lahore Improvement Trust, 1941—42, pages 6, 30 and 31.
2. S. 81, Nagpur Improvement Trust Act, 1936.
3. Ibid, S. 82.

Contribution from Municipal Fund.

Section 83 of the Act provides that the municipal committee shall pay from the municipal fund to the Trust on the first day of each quarter, so long as the Trust continues to exist, a sum equivalent to half per cent per quarter on the annual rateable valuation of houses within the Nagpur Municipality as it stood on the first day on the last preceding quarter, and that if in any financial year the sums due to the Trust under this section aggregate less than one lakh of rupees, the municipality shall pay to the Trust from the municipal fund such further sum as may be required to make upon the said sum of one lakh of rupees. It further prescribes that these payments are to be made in priority to all other payments due from the Municipality, except sums under clause (a) of sub-section (1) of section 63 of the Municipalities Act and that, if the Municipality makes a default in the payment of any sum under this section, the Provincial Government may make an order directing the person having custody of the balance of the municipal fund to make such payment either in whole or in such part as is possible from such balance: Provided that no order shall be made by the Provincial Government directing payment of any other sum until an opportunity has been given to the Municipal Committee to show cause why such order should not be made unless the Provincial Government considers that the Municipal Committee has already stated or had already ample opportunity of stating, its case.

Duty on transfer of property

Section 77 of the Act provides as follows:—

"(1) The duty imposed by the Indian Stamp Act, 1899, on instruments of sale, gift and usufructuary mortgage, respectively, of immoveable property shall, in the case of instruments affecting immoveable property situated within the limits of the Nagpur Municipality and executed on or after the commencement of this Act, be increased by one-half per centum on the value of the property so situated, or in the case of an usufructuary mortgage on the amount secured by the instrument, as set forth in the instrument.

(2) For the purpose of this section, section 27 of the Indian Stamp Act, 1899, shall be read as if it specifically

required the particulars referred to therein to be set forth separately in respect of—

(a) property situated in the Nagpur Municipality, and

(b) property situated outside the Nagpur Municipality, respectively.

(3) For the purposes of this section, section 64 of the Indian Stamp Act, 1899, shall be read as if it referred to the Trust as well as to the Government.

(4) All collections resulting from the said increase shall, after deducting incidental expenses, if any, be paid to the Trust at such time as may be prescribed by rule made under section 80."

Taxes which may be imposed

With the previous sanction of the Provincial Government, the Trust may, by resolution of a meeting specially convened for the purpose, impose any of the following taxes, for the purposes of this Act, namely,—(a) a tax on manufactured goods exported from any place within the Nagpur Municipality by road; (b) a tax on cotton or cotton-seeds exported from any place within the Nagpur Municipality by road.

The following procedure has been laid down by section 79 of the Act for imposing these taxes :—

(1) The Trust may at a special meeting pass a resolution and propose the imposition of any tax under section 78.

(2) When such a resolution has been passed the Trust shall publish, in accordance with the regulations made under this Act, a notice defining the class of persons or description of property proposed to be taxed, the amount or rate of tax to be imposed and the system of assessment to be adopted.

(3) Any inhabitant of the Nagpur Municipality objecting to the proposed tax may, within thirty days from the publication of the notice, submit his objection in writing to the Trust.

(4) The Trust shall take the proposals and all objections received thereto into consideration at a special meeting and

may modify the proposals so as not to affect their substance, and may then forward them to the Provincial Government along with all objections received, its decisions thereon and its reasons therefor. If the Trust decides to modify the proposals so as to affect their substance, it shall publish them again in the manner prescribed in sub-section (2).

(5) The Provincial Government, on receiving such proposals, may sanction or refuse to sanction the same, or sanction them subject to such modifications as it may think fit, or return them to the Trust for further consideration.

(6) No modification affecting the substance shall be made under sub-section (5), unless and until the modification has been accepted by the Trust.

(7) If any proposals for taxation have been sanctioned under sub-section (5), the Provincial Government may by notification direct the imposition of the tax as sanctioned from such date as may be specified in such notification, and thereupon the tax shall come into effect as from the date so specified.

(8) A notification of the imposition of a tax under this section shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act.

Loans

As regards power of Trust to borrow money, section 84 of the Act provides that the Trust shall be deemed to be a local authority as defined in the Local Authorities Loans Act, 1914, for the purpose of borrowing money under that Act, and the making and execution of an improvement scheme mentioned in the Act shall be deemed to be a work which such Local Authority is legally authorised to carry out.

Thus the Nagpur Improvement Trust is financed mainly from the following sources:—

(1) Contribution from municipal fund.
(2) Stamp duty.
(3) Taxes which may be imposed under section 78 of the Act.
(4) Loans.

Besides this, there is a contribution from Government of the sale and lease proceeds of Nazul property of a certain sum for a specified period, and a transfer to the Trust fund of the Municipal share of Nazul income. During the year 1940-41, the receipts from these sources were as follows[1] :—

(1) Municipal contribution ...	Rs.	1,07,000	0	0
(2) Municipal share of Nazul property		26,560	3	0
(3) Government contribution ...		17,070	0	0
(4) Stamp duty		4,966	6	0

98. Payment of loans and enforcement of liabilities.

Calcutta.

Under the Calcutta Act, all payments due from the Board for interest on, or the repayment of loans, shall be made in priority to all other payments due from the Board.[2] Every loan taken by the Board under section 89 shall be repaid within the period approved by the Provincial Government under that section, and, subject to the provisions of section 125, sub-section (2), by such of the following methods as may be so approved, namely :—

(*a*) from a sinking fund established under section 99 in respect of the loan, or

(*b*) by paying equal yearly or half-yearly instalments of principal, or of principal and interest, throughout the said period, or

(*c*) if the Board have, before borrowing money on debentures, received, by public notice a power to pay off the loan by periodical instalments and to select by lot the particular debentures to be discharged at particular periods—then by paying such instalments at such periods, or

(*d*) from money borrowed for the purpose under section 89, clause (b), or

1. See Annual Report of the Nagpur Improvement Trust for the year ending 31st March, 1941.
2. Section 97, Calcutta Improvement Act, 1911.

(*e*) partly from the sinking fund established under section 99 in respect of the loan, and partly from money borrowed for the purpose under section 89, clause (b).[1]

Sinking fund.

As regards sinking fund, the following provisions exist in the Act :—

(*i*) Whenever the Provincial Government have approved the repayment of a loan from a sinking fund the Board shall establish such a fund and shall pay into it in every year, until the loan is repaid, a sum so calculated that, if regularly paid throughout the period approved by the Provincial Government under section 89, it would, with accumulations in the way of compound interest, be sufficient, *after payment of all expenses, to pay off the loan* at the end of that period. The rate of interest on the basis of which the sum referred to above shall be calculated shall be such as may be prescribed by the Provincial Government.[2]

(*ii*) Notwithstanding anything contained in section 99, if at any time the sum standing at credit of the sinking fund established for the repayment of every loan, is of such amount that, if allowed to accumulate at the rate of interest prescribed under sub-section (2) of that section, it will be sufficient to repay the loan at the end of the period approved by the Provincial Government under section 89, then, with the permission of the Provincial Government, further annual payment into such fund may be discontinued.[3]

(*iii*) All money paid into any sinking fund shall as soon as possible be invested, under the orders of the Board, in

1. Calcutta Improvement Act, 1911, S. 98.
2. *Ibid*. S. 99.
3. Section 100, Calcutta Improvement Act, 1911.

(*a*) Government securities, or

(*b*) securities guaranteed by the Government, or

(*c*) Calcutta Municipal debentures, or

(*d*) debentures issued by the Commissioners for the Port of Calcutta, or

(*e*) debentures issued by the Board,

in the joint names of the Secretary to the Government of Bengal in the Financial Department and the Accountant General of Bengal, to be held by them as trustees for the purpose of repaying from time to time the debentures issued by the Board.

All dividends and other sums received in respect of any such investment shall, as soon as possible after receipt, be paid into the appropriate sinking fund and invested in the manner prescribed by sub-section (1).

Any investment made under this section may from time to time, subject to the provisions of sub-section (1), be varied or transferred.[1]

(*iv*) The aforesaid trustees may from time to time apply any sinking fund, or any part thereof, in or towards the discharge of the loan or any part of the loan for which such fund was established; and until such loan is wholly discharged shall not apply the same for any other purpose.[2]

(*v*) The aforesaid trustees shall, at the end of every financial year transmit to the Chairman a statement showing:—

(*a*) the amount which has been invested during the year under section 101,

(*b*) the date of the last investment made previous to the transmission of the statement,

(*c*) the aggregate amount of the securities held by them,

1. Calcutta Improvement Act, 1911, S. 101.

(*d*) the aggregate amount which has, up to the date of the statement, been applied under section 102 in or towards repaying loans, and

(*e*) the aggregate amount already paid into each sinking fund.

Every such statement shall be laid before the Board and published by notification.[1]

(*cc*) The said sinking fund shall be subject to annual examination by the Accountant-General, Bengal, who shall ascertain whether the cash and the current value of the securities at credit of such funds are actually equal to the amount which would have accumulated had investments been regularly made and had the rate of interest as originally estimated been obtained therefrom. The board shall forthwith pay into any sinking fund any amount which the Accountant-General may certify to be deficient, unless the Government of India specially sanction a gradual readjustment.[2]

Enforcement of liabilities.

Sections 105 to 107 of the Calcutta Act provide as follows:—

"105—(1) If the Board fail:—

(*a*) to pay any interest due in respect of any loan taken in pursuance of section 89, or

(*b*) to make any payment prescribed by section 98, section 99, or subsection (2) of section 104, or

(*c*) to make any investment prescribed by section 101,

the Accountant-General of Bengal shall make such payment or set aside and invest such sum as ought to have been invested under the said section 101, as the case may be;

1. Section 103, Calcutta Improvement Act, 1911.
2. Ibid, S. 104.

And the Chairman of the Corporation shall forthwith pay from the Municipal Funds to the said Accountant-General a sum equivalent to the sum so paid or invested by him;

And the Provincial Government may attach the rents and other income of the Board; and thereupon the provisions of sub-section (2) of section 141 of the Calcutta Municipal Act, 1899, shall, with all necessary modifications, be deemed to apply.

(2) Whenever the Chairman of the Corporation has made any payment to the Accountant-General under sub-section (1), the Provincial Government shall reimburse the Corporation out of the rents and income attached under that sub-section, and if such rents and income prove insufficient for that purpose the Corporation may, with the previous sanction of the Provincial Government, increase the maximum authorized by clause (a) of section 147 of the Calcutta Municipal Act, 1899, to such extent as may be necessary for the purpose of making up the deficiency:

Provided that no such increase shall be made, unless the taxes imposed by sections 83 and 84 are levied at the maximum rates respectively prescribed by those sections.

106. If the Chairman of the Corporation fails to make any payment as required by section 88 or section 105, the Provincial Government may attach the Municipal Funds or any of them;

and thereupon the provisions of sub-section (2) of section 141 of the Calcutta Municipal Act, 1899, shall, with all necessary modifications, be deemed to apply, and the Provincial Government may further require the Corporation to increase the maximum authorized by clause (a) of section 147 of that Act, to such extent as may be necessary for the purpose of making such payment:

Provided that no such increase shall be made, in consequence of any failure of the Chairman of the Corporation to

make any payment as required by section 105, unless the taxes imposed by sections 83 and 84 are levied at the maximum rates respectively prescribed by those sections.

107. All moneys paid by the Chairman of the Corporation under sub-section (1) of section 105 and not reimbursed by the Provincial Government under sub-section (2) of that section, and all moneys payable under sub-section (1) of section 105 and levied under section 106, shall constitute a charge upon the property of the Board."

Regarding custody and investment of Trust funds, payments in respect of loans, and allied matters under the U. P. Act, sections 68 to 71 of the Act provide as follows :— U. P. Act.

"68—(1) In places where there is a Government treasury or sub-treasury, or a bank to which the Government treasury business has been made over, all moneys at the credit of the Trust shall be kept in such treasury, sub-treasury or bank.

(2) In places where there is no such treasury or sub-treasury or bank, such moneys may be kept with a banker or person acting as a banker, who has given such security for the safe custody and repayment on demand of the sum so kept as the Provincial Government may in each case think sufficient.

(3) Provided that nothing in the foregoing provisions of this section shall be deemed to preclude a Trust from, with the previous sanction of the Provincial Government, investing any such moneys which are not required for immediate expenditure in any of the securities described in section 20 of the Indian Trusts Act, 1882, or placing them in fixed deposit with a Presidency Bank.

69. (1) If the Trust fails to repay any loan taken in pursuance of section 67, or any interest or costs due in respect thereof, according to the conditions of the loan, the Accountant-General of the United Provinces shall make such payment; and the Chairman of the municipal board shall forthwith pay from the municipal fund to the said Accountant-General a sum equivalent to the sum so paid by him;

and the Provincial Government may attach the rents and other income of the Trust; and thereupon the provisions of section 5 of the Local Authorities Loans Act, 1914, shall, with all necessary modifications, be deemed to apply.

(2) Whenever the Chairman of a municipal board has made any payment to the Accountant-General under sub-section (1), the Provincial Government shall, so far as possible, reimburse the municipal board out of the rents and income attached under that sub-section.

70. If the Chairman of a municipal board fails to make any payment as required by section 69 the Provincial Government may attach the municipal fund;

and thereupon the provisions of section 5 of the Local Authorities Loans Act, 1914, shall, with all necessary modifications, be deemed to apply, and the Provincial Government may further require the municipal board to impose or increase the rate of the tax on the annual value of buildings or lands or both described in section 128 (1) (i) of the Municipalities Act, to such extent as may be necessary for the purpose of making such payment.

71. All moneys paid by the Chairman of the municipal board under sub-section (1) of section 69 and not reimbursed by the Provincial Government under sub-section (2) of that section, and all moneys payable under sub-section (1) of section 69 and levied under section 70, shall constitute a charge upon the property of the Trust."

U. P. Act as extended to Delhi.

Sections 69 to 71 of the U. P. Act have not been extended to Delhi and section 68 of that Act as extended to Delhi reads as follows :—

"68. All moneys at the credit of the Trust shall be kept in the Government Treasury :

Provided that the Trust may, with the previous sanction of the Chief Commissioner, invest any such moneys as are not required for immediate expenditure in any of the securities prescribed in section 20 of the Indian Trusts Act, 1882.

Punjab Act.

Section 69 of the Punjab Act relating to custody and investment of Trust funds is the same as section 68 of the U. P. Act. Sections 70, 71, and 72 relating to the other matters are to the following effect :—

"70. If any money borrowed under section 67 or any interest or costs due in respect thereof is or are not repaid according to the conditions of the loan, the Provincial Government shall itself make such payment and may attach the rents and other income of the Trust ; and thereupon the provisions of section 5 of the Local Authorities Loans Act, 1914, shall, with all necessary modifications, be deemed to apply.

71. The Provincial Government may further impose or increase a tax on the annual value of buildings or lands or of both described in section 61 (B) (a) of the Municipal Act, to such extent as may be necessary for the purpose of recovering a payment made under section 70.

72. All moneys paid by the Provincial Government shall constitute a charge upon the property of the Trust."

C. P. Act.

The corresponding provisions for the Nagpur Improvement Trust are contained in sections 85 to 88 of the Nagpur Improvement Trust Act, 1936, and are as follows :—

"85. All moneys at the credit of the Trust Fund shall be kept in the Government treasury ;

Provided that nothing in this section shall be deemed to preclude the Trust from investing, with the previous sanction of the Provincial Government, any such moneys as are not required for immediate expenditure in any of the securities described in section 20 of the Indian Trusts Act, 1882, or placing them in fixed deposit with a Bank approved by Government.

86. (1) If the Trust fails to repay a loan taken in pursuance of section 84 from a lender other than the Provincial Government, or any interest or costs due in respect of such loan, according to the conditions of the loan, the Accountant General of the Central Provinces, if required by the Provincial Government, shall make such payment; and the municipal committeee shall forthwith pay from the municipal fund to the said Accountant General a sum equivalent to the sum so paid by him.

(2) If the Trust fails to repay a loan taken from the Provincial Government in pursuance of section 84, or any interest or costs due in respect of such loan, according to the conditions of the loan, the municipal committee shall forthwith pay from the municipal fund to the Provincial Government a sum equivalent to the sum due from the Trust.

(3) If the Trust fails to repay any loan, the Provincial Government may attach the rents and other income of the Trust; and thereupon the provisions of section 5 of the Local Authorities Loans Act, 1914, shall with all necessary modifications, be deemed to apply.

(4) If the municipal committee makes default in the payment of any sum required to be paid by it under sub-section (1) or sub-section (2) the Provincial Government may make an order directing the person having the custody of the balance of the municipal fund to make such payment either in whole or in such part as is possible from such balance:

Provided that no order shall be made by the Provincial Government directing payment of any sum until an opportunity

has been given to the municipal committee to show cause why such order should not be made unless the Provincial Government considers that the municipal committee has already staed, or had already ample opportunity of stating, its case.

(5) Whenever any amount paid by the Accountant General under sub-section (1) is not repaid to him by the municipal committee under the said sub-section or by the person having the custody of the balance of municipal fund under sub-section (4) or whenever the municipal committee has made any payment to the Accountant General under sub-section (1) or to the Provincial Government under sub-section (2) or whenever the person having the custody of the municipal fund has made any payment to the Accountant General or to the Provincial Government under sub-section (4), the Provincial Government shall, so far as possible, reimburse the Accountant General or the Municipal Committee or such person, as the case may be, out of the rents and income attached under sub-section (3).

87. If the municipal committee fails to make any payment as required by section 86, the Provincial Government may attach the municipal fund ; and thereupon the provisions of section 5 of the Local Authorities Loans Act, 1914, shall, with all necessary modifications, be deemed to apply, and the Provincial Government may further require the municipal committee to impose, or increase the rate of the tax under clause (a) of sub-section (1) of section 66 of the Municipalities Act on the annual value of buildings or lands or of both, to such extent as may be necessary for the purpose of making such payment.

88. All moneys paid by the municipal committee under sub-section (1) or sub-section (2) of section 86 and not reimbursed by the Provincial Government under sub-section (5) of that section, and all moneys payable under sub-section (1) or sub-section (2) of section 86 and levied under section 87, shall constitute a charge upon the property of the Trust."

CHAPTER XII.

RULES, REGULATIONS AND SUPPLEMENTAL PROVISIONS.

RULES.

90. Power of making rules.

Calcutta Act-power of the Provincial Goverment to make rules.

Section 86 of the Calcutta Act empowers the Provincial Government to make rules for carrying out the purposes of Chapter V of the Act, and in particular, and without prejudice to the generality of the foregoing power,—(a) for regulating the collection of taxes imposed by First Chapter, and the payment thereof to the Board; and (b) for prescribing the form of the return required by section 83, sub-section (3), and particulars to be contained therein, and the manner in which the same is to be verified.

In addition to the above power, the Provincial Government may make rules—

(1) for regulating elections under sub-sections (1), (2) and (3) of section 7;

(2) for prescribing the maximum sum which may be paid to any person by way of fees under section 22;

(3) for fixing the charge to be made for a copy of, or extracts from, the municipal assessment book furnished to the Chairman under section 46; and

(4) for determining the qualifications and disqualifications of the conditions and mode of election, selection or appointment of, an arbitrator and for regulating the proceedings of arbitration under section 78 C;

(5) for prescribing the form of abstracts of accounts referred to in sections 129 and 136.[1]

1. S. 137, Calcutta Improvement Act, 1911.

Power of the Board to make rules.

In addition to the power conferred by section 31,[1] the Board may from time to time make rules (not inconsistent with any rules made by the Provincial Government or the President of the Tribunal under the Act) for carrying out the purposes of the Act. In particular, and without prejudice to the generality of the foregoing power, the Board may make rules—

(*a*) for associating members with the Board under section 19;

(*b*) for appointing persons (other than Trustees and persons associated with the Board under section 19) to be members of Committees under section 20;

(*c*) for regulating the delegation of powers or duties of the Board to Committee under section 20;

(*d*) for the guidance of persons employed by them under this Act;

(*e*) for prescribing the fees payable for copies of documents delivered under section 43, sub-section (3), or clause (iv) of sub-section (2) of section 63;

(*f*) for facilitating the taking of a census and securing accurate returns thereof;

(*g*) for the maintenance and management of dwellings and shops constructed under re-housing schemes.

In making any such rule, the Board may provide that a breach of it shall be punishable—

(*i*) with fine which may extend to five hundred rupees; or

(*ii*) in case of a continuing breach, with fine which may extend to fifty rupees for every day during which the breach continues after receipt of written notice from the Chairman to discontinue the breach.[2]

1. See notes on page 131.
2. S. 138, Calcutta Improvement Act ; 1911.

Conditions precedent to the making of rules.

Section 139 of the Act prescribes that the power to make rules under section 86, section 137 or section 138 is subject to the condition of the rules being made after previous publication, and to the following further conditions, namely :—

(*a*) a draft of the rules shall be published by notification and in local newspapers ;

(*b*) such draft shall not be further proceeded with until after the expiration of a period of one month from such publication, or such longer period as the Provincial Government or (in the case of rules made under section 138) the Board may appoint ;

(*c*) for one month at least during such period, a printed copy of such draft shall be kept at the Board's office for public inspection, and every person shall be permitted at reasonable time to peruse the same, free of charge ;

(*d*) printed copies of such draft shall be delivered to any person requiring the same, on payment of a fee of two annas for each copy.

Other conditions.

Further, no rule made under section 138 shall have any validity unless and until it is sanctioned, with or without modification, by the Provincial Government.[1] And when any rule has been made under section 86 or section 137, and when any rule has been made under section 138, and duly sanctioned it shall be published by the Provincial Government by notification and such publication shall be conclusive proof that the rule has been duly made.[2]

The Act makes it obligatory for the Chairman to cause all rules made under section 86, section 137 or section 138 and for the time being in force to be printed, and to cause printed

1. *Ibid*, S. 140.
2. S. 141, Calcutta Improvement Act, 1911.

copies thereof to be delivered to any applicant on payment of a fee of two annas for each copy. Notice of the fact of copies of rules being obtainable at the said price, and of the place where and the person from whom the same are obtainabln, shall be given by the Chairman by advertisement in local newspapers.[1] Copies in English and Bengali, of all rules made under section 137 or section 138 shall be hung and affixed in some conspicuous part of the Board's office and in such places of public resort affected by the rules as the Chairman may think fit.[2]

The Provincial Government may at any time, by notification, cancel any rule made by the Board under section 138.[3]

Budget estimates, banking and investments and accounts.

Sections 108 to 114 of the Calcutta Act relate to budget estimates and sections 115 to 119 of the same to banking and investments. Sections 120 to 136 relate to accounts. These are more or less matters of office procedure and require no comments, and may be referred to in Appendix A.

Section 87 of the same Act provides as follows :—

Punishment for certain offences.

"87. The offences mentioned in column 1 of the following table shall be punishable to the extent mentioned in column 2 thereof with reference to such offences, respectively :—

1	2
(1) Omitting to make any return required by section 83, sub-section (3), or refusing to sign or complete the same.	Fine not exceeding one thousand rupees.
(2) Making, and delivering, any such return containing any statement not true to the best of the information and belief of the person making the same.	The penalty provided in the Indian Penal Code, section 199 for making a false statement in a declaration.
(3) Otherwise contravening any rule made under section 86.	Fine not exceeding five hundred rupees.

1. Calcutta Improvement Act, 1911, S. 142.
2. Ibid, S. 143.
3. Ibid, S. 144.

U. P. Act. Sections 72 to 75 of the U.P. Act provide as follows :—

"72. (1) In addition to the power conferred by section 63, the Provincial Government may make rules consistent with this Act and applicable to all or any Trust—

(a) as to the authority on which money may be paid from the Trust funds,

(b) for prescribing the fees payable for a copy of or extracts from the municipal assessment list furnished to the Chairman under section 39,

(c) as to the conditions on which officers and servants of the Trust appointed to offices requiring professional skill may be appointed, suspended or dismissed,

(d) as to the intermediate office or offices (if any) through which correspondence between the Trust and the Provincial Government or officers of that Government shall pass,

(e) as to the accounts to be kept by the Trust, as to the manner in which such accounts shall be audited and published, and as to the powers of auditors in respect of disallowance and surcharge,

(f) as to the authority by whom, the conditions subject to whom and the mode in which contracts may be entered into and executed on behalf of the Trust,

(g) as to the preparation of estimates of income and expenditure of the Trust and as to the authority by whom, and the conditions subject to which, such estimates may be sanctioned,

(h) as to the returns, statements and reports to be submitted by Trust,

(i) to prescribe and define the mutual relations to be observed between the Trust and other local authorities in any matter in which they are jointly interested,

(j) for regulating the grant of leave of absence, leave allowances and acting allowances to the officers and servants of the Trust and of the Tribunal.

(*k*) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers in the service of the Trust or of the Tribunal (other any than servant of the Government in respect of whom a contribution is paid under section 93 to contribute to such fund at such rates and subject to such conditions as may be prescribed by such rules and for supplementing such contributions out of the funds of the Trust:

Provided that a Government servant employed as officer or servant of the Tribunal shall not be entitled to leave or leave allowances otherwise than as may be prescribed in any general or special orders of the Government,

(*l*) for determining conditions under which the officers and servants of the Trust or of the Tribunal or any of them, shall on retirement receive gratuities or compassionate allowances and the amount of such gratuities and compassionate allowances:

Provided that it shall be at the discretion of the Trust or of the Tribunal, as the case may be, to determine whether all such officers or servants or any, and, if so, which of them, shall become entitled on retirement to any such gratuities of compassionate allowances as aforesaid,

(*m*) generally for the guidance of Trust and public officers in all matters connected with the carrying out of the provisions of this Act.

(2) The powers of the Provincial Government to make rules under this section is subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Gazette.

Power of the Trust to make rules.

73. Every Trust may, from time to time, with the previous sanction of the Provincial Government, make rules consistent with this Act and with any rules made under this Act by the Provincial Government—

(a) for fixing the amount of security to be furnished by any officer and servant of the Trust from whom it may be deemed expedient to require security,

(b) for associating members with the Trust under section 14,

(c) for appointing persons (other than Trustees and persons associated with the Trust under section 14), to be members of committees under section 15,

(d) for regulating the delegation of powers or duties of the Trust to committees or to the Chairman,

(e) for the guidance of persons employed by it under this Act,

(f) for prescribing the fees payable for copies of documents delivered under sub-section (3) of section 36 or under section 74,

(g) for the management, use, and regulation of dwellings constructed under any improvement scheme,

(h) generally for carrying out the purpose of this Act.

Printing & sale of copies of rules.

74. (1) The Chairman shall cause all rules made under section 72 or section 73 and for the time being in force to be printed and shall cause printed copies thereof to be delivered to any applicant on payment of such fee as may be prescribed.

(2) Notice of the fact of copies of rules being obtainable at the said price and of the place where and the person from whom the same are obtainable shall be given by the Chairman by advertisement in a local newspaper or newspapers (if any).

Power of Provincial Government to cancel rules made under section 78.

75. The Provincial Government may, after previous publication of its intention, rescind any rule made by the Trust which it has sanctioned, and thereupon the rule shall cease to have effect.

In extending sections 72, 73, 74, and 75 of the U. P. Act to Delhi practically no change has been made except that the words "Chief Commissioner" have been substituted for "Provincial Government", with consequential modifications in the text. U. P. Act as extended to Delhi.

The Punjab Act also follows more or less the U. P. Act.[1] Section 89 of the C. P. Act relating to the power of the Provincial Government to make rules is also more or less the same as section 72 of the U. P. Act. Section 90 of the C. P. Act, however, is more elaborate than section 73 of the U. P. Act and reads as follows:— Punjab Act and the C. P. Act.

"90. The Trust may from time to time, with the previous sanction of the Provincial Government, make regulations consistent with this Act and with any rules made under this Act:— Power to make regulations.

(*a*) for fixing the amount of security to be furnished by any officer or servant of the Trust from whom it may be deemed expedient to require security;

(*b*) for associating members with the Trust under section 17;

(*c*) for appointing persons other than Trustees and persons associated with the Trust under section 17 to be members of committees;

(*d*) for regulating the delegation of the powers or duties of the Trust to committees or to the chairman;

(*e*) for the guidance of persons employed by it under this Act;

(*f*) for prescribing the fees payable for copies or extracts of documents delivered under sub-section (3) of section 39 or for copies of rules and regulations printed under section 91;

(*g*) for the management, use, and regulation of dwellings constructed under any improvement scheme;

(*h*) for regulating the erection, re-erection and alteration of buildings in any area covered by any improvement

1. Sections 73 to 76, Punjab Town Improvement Act, 1922.

scheme under this Act, and in particular without prejudice to the generality of the foregoing power:—

(*i*) for the materials and methods of construction to be used for external and partition walls, roofs, floors, fireplaces, chimneys, drains, latrines, privies, urinals and cess-pools,

(*ii*) the position of fireplaces, chimneys, drains, latrines, privies, urinals and cess-pools,

(*iii*) the free passage or way front of the building,

(*iv*) the level and width of foundation, the level of the lowest floor and the stability of the structure,

(*v*) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on,

(*vi*) the ventilation and the space to left about the building to secure the free circulation of air and for the prevention of fire,

(*vii*) the line of frontage where the building abuts on street,

(*viii*) the number and height of the storeys of which the building may consist, and

(*ix*) the means to be provided for egress from the building in case of fire;

(*j*) generally for carrying out the purposes of this Act."

Sections 91 and 92 of the C. P. Act follow the lines of sections 74 and 75 of the U. P. Act, with sub-section (2) of section 74 of the latter Act omitted.

The rules made under any of these Acts must be consistent with the Act itself.[1] They must not be *ultra vires* or unreasonable. If they exceed the jurisdiction of the authority framing the rules and the limitation imposed upon it by the

1. See also *Radhakrishna* v. *Municipal Committee* Amroati, (1918) 44 I. C. 744.

statute, then the rules will be *ultra vires*.[1] But before a rule framed by a Rule making authority is declared *ultra vires* the Court must be satisfied not only that it had no power to act under the power under which it purported to act but also that it had no power at all under any law to so act.[2] The Provincial Government cannot delegate its power to make rules within its jurisdiction to the Trust.[3] Where the Act provides that the said rules should be made only after previous publication, it does not matter if the rules finally published differ in some details from the draft rules previously published.[4]

Interpretation.

It has been held that rules and bye-laws made under statutary powers enforceable by penalties are construed like other provisions encroaching on the ordinary rights of persons. They must, on pain of invalidity, be not unreasonable, nor in excess of the statutory power authorizing them, nor repugnant to that statute or to the general principles of laws.[5] If there is a conflict between one of these rules and a section of the Act, it must be dealt with in the same spirit as a conflict between two sections of the Act would be dealt with. If reconciliation is impossible, the subordinate provision must give way, and probably the rule would be treated as a subordinate to the section.[6]

SUPPLEMENTAL PROVISIONS.

100. Legal proceedings.

Calcutta Act.

Under the Calcutta Act, notwithstanding anything contained in the Code of Criminal Procedure, 1898, all offences against the said Act or any rule made thereunder shall, where-

1. *Chairman of Gaya Municipality* v. *Sukhan Singh*, (1917) 37 I. C. 854.
2. See *Secretary of State* v. *Appa Rao*, 76 I. C. 212=(1923) 45 Mad. L. J. R. 156.
3. See *Queen Empress* v. *Murian Chetty*, (1849), I. L. R. 17 Mad. 118.
4. See *Gurcharan* v. *Har Sarup*, (1912), I. L. R. 34 All. 391.
5. Maxwell on the Interpretation of Statutes, 7th Edn., p. 255, and the authorities cited therein.
6. *Ibid*, pp. 44, 45, citing *Institute of Patent Agents* v. *Lockwood*, (1894) A. C., at p. 360.

ever committed, be cognizable by a Presidency Magistrate, and no Magistrate shall be deemed to be incapable of taking cognizance of any such offence by reason only of being liable to pay any tax imposed by this Act or of his being benefitted by the funds to the credit of which any fine imposed by him will be payable[1]. No person shall be liable to punishment for any offence against the Act or any rule made thereunder unless complaint of such offence is made before a Presidency Magistrate within three months next after the commission of such offence.[2] If any person, who has been summoned to appear before a Presidency Magistrate to answer a charge of an offence against the Act or any rules made thereunder which is punishable with fine only, fails to appear at the time and place mentioned in the summons, the Magistrate may, if the service of the summons is proved to his satisfaction, and if no sufficient cause is shown for the non-appearance of such person, hear and determine the case in his absence.[3]

Power of Chairman as to institution of legal proceedings and obtaining legal advice.

Under this Act the Chairman may, subject to the control of the Board—

(*a*) institute, defend or withdraw from, legal proceedings under the Act or any rule made thereunder;

(*b*) compound any offence agaist the Act or any rule made thereunder which, under any law for the time being in force, may lawfully be compounded;

(*c*) admit, compromise or withdraw any claim made under the Act or any rule made thereunder; and

(*d*) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the Board to obtain, for any of the purposes referred to in the foregoing clauses, or for securing the lawful exercise or discharge of any power or duty vested in or

1. S. 151. Calcutta Improvement Act, 1911.
2. Ibid, S. 152.
3. Ibid, S. 153.

imposed upon the board or any officer or servant of the board.[1]

Indemnity to Board, etc.

The Act also provides that no suit shall be maintainable against the Board, or any Trustee, or any officer or servant of the Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of anything lawfully and in good faith and with due care and attention done under the Act or any rule made thereunder.[2]

Notice of suit against Board, etc.

No suit can be instituted against the Board, or any Trustee, or any officer or servant of the Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of any act purporting to be done under the Act or any rule made thereunder, until the expiration of one month next after written notice has been delivered or left at the Board's office or the place of abode of such officer, servant or person, stating the cause of action, the name and place of abode of the intending plaintiff, and the relief which the claims, and the plaint must contain a statement that such notice has been so delivered or left.[3]

U. P. Act.

Section 94 of the U. P. Act provides that 'unless otherwise provided, *no court shall take cognizance* of any offence punishable under this Act, except on the complaint of, or upon information received from, the Trust or some person authorised by the Trust or special orders in this behalf'. Powers of the Chairman as to institution etc., of legal proceedings and obtaining legal advice, and the provision regarding indemnity to Trust, or any trustee, or any officer or servant of the Trust, or any person acting under their direction, are the same as under the Calcutta Act.[4]

1. 154, Calcutta Improvement Act, 1911.
2. Ibid, S. 155.
3. Ibid, S. 156.
4. Sections 95 and 96, U. P. Town Improvement Act, 1919.

Notice of suit against Trust, etc.

The U. P. Act also provides that 'no suit shall be instituted against the Trust or any trustee, or any persons associated with the Trust under section 14 or any member of a Committee appointed under section 15, or any officer or servant of the Trust, or any person acting under the direction of the Trust or of the Chairman or of any officer or servant of the Trust, in respect of an act purporting to be done under this Act, until the expiration of two months next after notice in writing has been, in the case of a Trust, left at its office, and in any other case delivered to or left at the office or place of abode of the person to be sued, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the intending plaintiff'; and the plaint shall contain a statement that such notice has been so delivered or left. It further provides that if the Trust, or other person referred to above shall, before the action is commenced, have tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered and shall also pay all costs incurred by the defendant after such tender. Also, that no action such as is described above, shall, unless it is an action for the recovery of immoveable property[1] or for a declaration of title thereto, be commenced otherwise than within six months next after accrual of the cause of action. This is subject to the proviso, that nothing in sub-section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the commencement of the suit or proceeding.[2]

U. P. Act. as extended to Delhi.

Sections 94 to 97 of the U. P. Act have been extended to Delhi with only one modification, namely, that the power of the Chairman to institute legal proceedings, etc., is subject to the control of the Chief Commissioner, and not of the Trust, as under the U. P. Act.[3]

1. U. P. Town Improvement Act, 1919, S. 97 (1).
2. Ibid. S. 97 (2), (3) and (4).
3. Sections 94 to 97, U. P. Town Improvement Act, 1919, as extended to Delhi.

Regarding these matters, the Punjab Act follows the U. P. Act.[1] The C. P. Act also follows the U. P. Act except that the proviso contained in sub-section (4) of section 97 of the latter Act does not exist in the former Act, and the C. P. Act specifically provides that no court inferior to that of a Magistrate of the second class shall try any offence against this Act.[2]

Punjab Act and C. P. Act.

101. Evidence.

Section 159 of the Calcutta Act prescribes that whenever, under the Act or any rule made thereunder, the doing or the omitting to do anything or the validity of anything depends upon the approval, sanction, consent, concurrence, declaration, opinion or satisfaction of—(a) the Board or the Chairman, or (b) any officer or servant of the Board, a written document, signed in case (a) by the Chairman, and in case (b) by the said officer, or servant, purporting to convey or set forth such approval, sanction, consent, concurrence, declaration, opinion or satisfaction shall be sufficient evidence of such approval, sanction, consent, concurrence, declaration, opinion or satisfaction.

Under the U. P. Act and the said Act as extended to Delhi, a copy of any receipt, application, plan, notice, order, entry in a register, or other document in the possession of the Trust shall, if duly certified by the legal keeper thereof or other person authorized by the Trust in this behalf, be received as *prima facie* evidence of the entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent as, the original entry or document would if produced, have been admissible to prove such matters. No trustee or officer or servant of the Trust shall in any legal proceeding to which the Trust is not a party be required to produce any register or document the contents of which can be proved

1. Sections 95 to 98, Punjab Town Improvement Act, 1922.
2. Sections 111 to 115, Nagpur Improvement Trust Act, 1936.

under the preceding section by a certified copy, or to appear as a witness to prove the matters and transactions recorded therein, unless, by order of the Court made for special cause.[1]

Sections 99 and 100 of the Punjab Act are the same as sections 98 and 99 respectively of the U. P. Act and and so also sections 116 and 117 of the C. P. Act.

102. Validation.

The Acts provide that—

(1) no act done or proceeding taken under the Act shall be questioned on the ground merely of—

(*a*) the existence of any vacancy in, or any defect in the constitution of, the Trust or any Committee; or

(*b*) any person having ceased to be a Trustee; or

(*c*) any Trustee, or any person associated with the Trust under the relevant section, or any other member of a committee appointed under the Act, having voted or taken part in any contravention of the relevant section, or

(*d*) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or

(*e*) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Trust, the minutes of the proceedings of which have been duly signed as prescribed in the relevant section, shall be taken to have been duly convened and to be free from all defect and irregularity.[2]

103. Status of Trustees and officers and servants of the Trusts.

Every Trustee, and every officer and servant of the Trust, and every member and officer and servant of the Tribunal,

1. Ss. 98, 99, U. P. Town Improvement Act, 1919, and of the said Act, as extended to Delhi.
2. S. 160, Calcutta Act; S. 100, U. P. Act; S. 100, U. P. Act as extended to Delhi; S. 101 Punjab Act; S. 118, C. P. Act.

shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.[1]

104. Contributions towards leave allowances and pensions of Government servants.

The Acts also provide that the Trust shall be liable to pay such contributions for the leave-allowances and pensions of any Government servant employed as Chairman or as an officer or servant of the Trust, or as a member or officer or servant of the Tribunal, as may be prescribed in any general or special orders of the Government for regulating the transfer of Government servants to foreign service.[2]

105. Extension of Acts to areas in the neighbourhood of the Calcutta Municipality.

Sections 147 and 148 of the Calcutta Act provide as follows:—

"147. (1) When any provision of this Act has been extended to any area under section 1, sub-section (3), the Provincial Government may, by notification published in the Calcutta Gazette and in such other manner (if any) as it may consider necessary, extend to such area the Calcutta Municipal Act, 1899[3], or any portion thereof, subject to such restrictions and modifications (if any) as may be specified in such notification.

(2) When the said Calcutta Municipal Act 1899[3], or any portion thereof, is extended under sub-section (1) to any area, then—

(*a*) the Bengal Municipal Act, 1884[4], or the Bengal Local Self Government Act of 1885, as the case may be, or the corresponding portion of such Act, as the case may be, if in force in such area, shall be deemed to be repealed therein, and,

1. S. 145, Calcutta Act; S. 92, U. P. Act; S. 92 U. P. Act as extended to Delhi; S. 93, Punjab Act; S. 109 C. P. Act.
2. S. 146, Calcutta Act; S. 93, U. P. Act; S. 93 U. P. Act as extended to Delhi; S. 94, Punjab Act; S. 100, C P. Act.
3. See now the Calcutta Municipal Act, 1923.
4. See now the Bengal Municipal Act, 1932.

(*b*) except as the Provincial Goverment may otherwise, by notification, direct, all rules, by-laws, regulations, orders, directions, and powers made, issued or conferred under the portions of the said Calcutta Municipal Act, 1899, which have been so extended and in force at the date of such extension, shall apply to the said area, in supersession of all corresponding rules, by-laws, regulations, orders, directions and powers (if any) made, issued or conferred under the said Bengal Municipal Act, 1884, or the said Bengal Local Self-Government Act of 1885, as the case may be.

148. (1) Before finally publishing any notification under section 1, sub-section (3), or section 147, sub-section (1), the Provincial Government shall publish a draft of the same in the Calcutta Gazette.

2. Any ratepayer or inhabitant of area affected by such draft may, if he objects to the draft, submit his objection in writing to the Provincial Government within six weeks from its publication, and the Provincial Government shall take such objection into consideration."

106 Calcutta Improvement Trust and the Police.

Co-operation of the Police.

Section 157 of the Calcutta Act provides that 'the Commissioner of Police and his subordinates shall be bound to co-operate with the Chairman for carrying into effect and enforcing the provisions of this Act, and that it shall be the duty of every police-officer who is subordinate to the Commissioner of Police—(i) to communicate without delay to the proper officer or servant of the Board any information which he receives of a design to commit or of the commission of any offence against this Act or any rule made thereunder and (ii) to assist the Chairman or any officer or servant of the Board reasonably demanding his aid for the lawful exercise of any resting in the Chairman or in such officer or servant under this Act or any such rule.

Arrest of offenders.

Section 158 of the Act further provides that every Police-Officer shall arrest any person who commits in his view, any

offence against this Act or any rule made thereunder if the name and address of such person be unknown to him, and if such person, on demand, declines to give his name and address which such officer has reason to believe to be false, and that no person so arrested shall be detained in custody after his true name and address are ascertained, or without the order of a Magistrate, for any longer time, not exceeding at the most twenty four hours from the arrest, than is necessary for bringing him before a Magistrate. It further states that on the written application of the Chairman, any Police Officer above the rank of constable shall arrest any person who obstructs any officer or servant of the Board in the exercise of any of the powers conferred by this Act or any rule made thereunder.

107. Dissolution of Trusts.

Calcutta Act.

Section 177 of the Calcutta Act relates to the ultimate dissolution of the Board, and transfer of their assets and liabilities to the Corporation. It lays down that 'when all schemes sanctioned under the Act have been executed, or have been so far executed as to render the continued existence of the Board, in the opinion of the Provincial Government, unnecessary, the Provincial Government may, by notification declare that the Board shall be dissolved from such date as may be specified in this behalf in such notification; and the Board shall be deemed to be dissolved accordingly, and that from the said date—

(*a*) all properties, funds and dues which are vested in or realizable by the Board and the Chairman, respectively, shall vest in and be realizable by the Corporation and the Chairman of the Corporation, respectively; and

(*b*) all liabilities which are enforceable against the Board shall be enforceable only against the Corporation; and

(*c*) for the purpose of completing the execution of any scheme, sanctioned under this Act, which has not been fully executed by the Board, and of realizing

properties, funds and dues referred to in clause (a), the functions of the Board and the Chairman under this Act shall be discharged by the Corporation and the Chairman of the Corporation, respectively, and

(*d*) the Corporation shall keep separate accounts of all moneys respectively received and expended by them under this Act, and until all loans raised thereunder have been repaid, and until all other liabilities referred to in clause (b) have been duly met.

U.P. Act and the U.P. Act as extended to Delhi and the Punjab Act.

The U. P. Act and the Punjab Act follow the Calcutta Act in regard to this matter[1] Section 103 of the U. P. Act as extended to Delhi reads as follows :—

"103. (1) When all schemes sanctioned under this Act have been executed, or have been so far executed as to render the continued existence of the Trust, in the opinion of the Chief Commissioner unnecessary, the Chief Commissioner may by notification declare that the Trust shall be dissolved from such date as may be specified in this behalf in such notification; and the Trust shall be deemed to be dissolved accordingly.

(2) From the said date—

(*a*) (i) all properties, funds, and dues placed at the disposal of the Trust under sub-section (1) of section 54-A, and

(ii) all properties, funds and dues exchanged for, derived from, or otherwise attributable to, the properties, funds and dues referred to in sub-clause (i) which on the said date, are held by or realizable by the Trust, shall vest in, and be realizable by, the Chief Commissioner ; and

(*a a*) all properties, funds and dues, other than those referred to in clause (*a*), which, on the said date are vested in or realizable by the Trust and

1. S. 103, U. P. Act; S. 103, Punjab Act.

the Chairman respectively shall vest in and be realizable by the Municipal Committee or Notified Area Committee and the Chairman of such committee respectively, and

(*b*) all liabilities which are enforceable against the Trust shall be enforceable only against the Chief Commissioner or Municipal Committee or Notified Area Committee as the case may be, and

(*c*) for the purpose of completing the execution of any scheme, sanctioned under this Act, which has not been fully executed by the Trust, and of realizing properties, funds, and dues referred to in clause (a), and clause (*a a*) the functions of the Trust and the Chairman under this Act shall be discharged by the Chief Commissioner or the Municipal Committee or Notified Area Committee and the Chairman of such committee as the case may be ; and

(*d*) the Municipal Committee or Notified Area Committee shall keep separate accounts of all moneys respectively received and expended by it under this Act, until all loans raised hereunder have been repaid, and until all other liabilities referred to in clause (b) have been duly met."

C. P. Act.

The C. P. Act also follows the Calcutta Act, except that the following proviso has been added to clause (a) of sub-section (2), namely :—

"Provided that the Provincial Government may resume the management of any street, square, park, open space or other land, which was at the commencement of this Act the property of Government or has since been acquired by Government, and was vested in the Trust under sub-section (1) of section 45".[1]

1. Section 121, Nagpur Improvement Trust Act, 1936.

APPEALS.

101. Appeals from the orders of Land Acquisition Tribunals.

The Calcutta Improvement (Appeals) Act, 1911.

Section 54 of the Land Acquisition Act provides that "subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals fron original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid, an appeal shall lie to His Majesty in Council subject to the provisions contained in section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof."

The Trust Acts make the awards of the Tribunals constituted under them to be final, or in other words no appeal lies against such award. Limited right of appeal has, however, been allowed by the Calcutta Improvement (Appeals) Act, 1911 (Act XVIII of 1911). Sections 3 to 6 of that Act read as follows:—

"3. (1) Notwithstanding anything contained in the Calcutta Improvement Act, 1911, an appeal shall lie to the Court in any of the following cases, namely:—

(*a*) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (b) of section 77 of the said Act;

(*b*) where the decision is that of the Tribunal, and

(*i*) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(*ii*) the Court grants special leave to appeal:

Provided that the Court shall not grant such special leave unless the President has refused to grant a certificate under sub-clause (i) and the amount in dispute is five thousand rupees or upwards.

(2) An appeal under clause (b) of sub-section (1) shall only lie on one or more of the following grounds, namely :—

(*i*) the decision being contrary to law or to some usage having the force of law;

(*ii*) the decision having failed to determine some material issue of law or usage having the force of law;

(*iii*) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

Proceedings of such appeals.

4. Subject to the provisions of section 3, the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall so far as may be apply to appeals under this Act.

Execution of orders of Court.

5. The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the Court on appeal under this Act, as if it were a decree made by himself.

Period of limitation of such appeals.

6. An appeal under section 3 shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of Article 156 of the First Schedule to the Indian Limitation Act, 1908."

According to No. 156 of the First Schedule to the Indian Limitation Act, 1908, limitation is ninety days from the date of the decree or order appealed from.

The U. P. Town Improvement (Appeals) Act, 1920

Similarly, there is a provision for appeals from the awards by the Tribunal constituted under the U. P Town Improvement Act, 1919, and sections 2 to 6 of the United Provinces Town Improvement (Appeals) Act, 1920, provide as follows :—

"3. (1) Notwithstanding anything contained in the United Provinces Town Improvement Act, 1919, and subject to the

provisions of sub-section (2), an appeal shall lie to the High Court in any of the following cases, namely :—

(*a*) Where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (b) of section 64 of the said Act :

(*b*) Where the decision is that of the Tribunal, and

(*i*) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(*ii*) the High Court grants special leave to appeal :

Provided that the High Court shall not grant any special leave unless the President has refused to grant a certificate under sub-clause (i) and the amount in dispute is not less than five thousand rupees.

(2) An appeal under clause (b) of sub-section (1) shall only lie on one or more of the following grounds, namely :—

(*i*) the decision being contrary to law or to some usage having the force of law ;

(*ii*) the decision having failed to determine some material issue of law or usage having the force of law ;

(*iii*) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

Procedure in such appeals.

4. Subject to the provisions of section 3, the provisions of the Code of Civil Procedure, 1908, with respect to apeals from original decrees shall, so far as may be, apply to appeals under this Act.

5. Every order passed by the High Court on appeal under this Act shall be enforced by a Court of Small Causes within the local limits of whose jurisdiction the award or order appealed against was made, as if it were a decree of that Court. **Execution of orders of High Court.**

6. An appeal under section 3 shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of Article 156 of the First Schedule to the Indian Limitation Act, 1908." **Period of limitation for such appeals**

Delhi.

The United Provinces Town Improvement (Appeals) Act, 1920, has been extended to Delhi, with one modification only, namely, that in section 2 of the said Act, for clause (1) the following clause shall be substituted:—(1) "High Court means the High Court of Judicature at Lahore; and".

There is no similar provision in the Punjab or in the C. P.

CHAPTER XIII.

LIABILITIES OF TOWN IMPROVEMENT TRUSTS.

109. Trusts and doctrine of *ultra vires*.

When a natural person acts by an agent, the authority of an agent is conferred and its limits are determined, by the will and consent of the principal. In general, only those acts of the agent are imputed by the law to the principal, which are within the limits of the agent's authority as thus created and circumscribed. But in the case of corporations it is necessarily otherwise. A legal person is as incapable of conferring authority upon an agent to act on his behalf, as of doing the act in *propria persona*. The authority of the agents and representatives of a corporation is therefore conferred, limited and determined, not by the consent of the principal but by the law itself. It is the law that determines who shall act for a corporation and within what limits his activity must be confined. Any act itself beyond its legally appointed limits will not be imputed to the Corporation, even though done in its name and on its behalf. It is said to be *ultra vires* of the Corporation and as corporate act itself null and void.

A Town Improvement Trust constituted under any of the Acts referred to before being only a legal person,[1] the appellation "person" is applicable to it only by analogy; and the analogy fails when it is thus clearly stated that this legal person is wanting in much that belongs to a natural person, that its course of existence is marked out from its birth; that it has been called into being for certain special purposes; that it has not all the powers and capacities, and only those, which are expressly given it, or are absolutely requisite for the due carrying out of those purposes; and that all the

1. See notes on page 79.

obligations it affects to assume which do not arise from or out of the pursuit of such purposes, are null and void. This is the basis of the general doctrine of *ultra vires*.[1] The term '*ultra vires*' literally means 'beyond the powers of the corporation itself'. The true meaning of what is meant by *ultra vires* is that a corporation has certain powers only, and that it can be bound only when acting, whether directly or by agent, within the limits of these powers.[2] It is now well settled that the answer to the question whether a corporation created by a statute has a particular power depends exclusively or whether that power has been expressly given to it by the statute regulating it or can be implied from the language used. The question is simply one of construction of language, and not of presumption.[3] It is for the corporation to show that it has affirmatively an authority to do the particular act in question.[4]

The chief cardinal principles involved in making up the doctrine of *ultra vires* are thus stated by Brice[5]:—

1. A Corporation has all the capacities for engaging in transactions which are expressly given it by the constituting instruments.

2. A Corporation has all the capacities for engaging in transactions which are impliedly given it by reasonable implication from the language of the constituting instruments.

3. A Corporation has all the capacities or powers for management which are given it by its constituting instruments, either expressly or by reasonable inference therefrom.

4. Capacities or powers for management may be given by wide general language.

1. Brice on *Ultra Vires*; pp. 37-40.
2. Brice, p 46.
3. See Riche v. Ashbury Railway Carriage Co., (1875), L. R. H. L. 653, and the cases following it. See also *Dundee Harbour Trustees* v. *Nicol* (1915) A. C. 550.
4. A. G. V. Fulham Corpn: (1921) 1 ch. 440.
5. Brice on Ultra Vires, p. 60.

5. Corporations have no capacities or powers other than those indicated in the four previous propositions, and they cannot legally or validly engage in other transactions.

6. Courts in dealing with corporations will look to those capacities and powers only which they actually possess at the time.

7. Corporations cannot be rendered directly liable upon *ultra vires* transactions, but must account for benefits received therefrom.

8. Special proceedings rendered necessary by unexpected circumstances, would be *ultra vires*, but will sometimes be upheld as necessitated and therefore rendered justifiable by the circumstances.

9. Formalities are generally not imperative but merely directory, and therefore the absence of them can be set up against those persons only who were cognisant of the defect.

10. Franchises and special privileges or powers in the nature of franchises cannot be delegated.

11. Special powers of whatever description can be used only *bona fide* for the purposes for which created.

12. The capacities and powers of the governing body, and a *fortiori* those of the subordinate agents of a corporation, cannot be greater and will generally be much more restricted, than those of the corporation.

13. Any party to an *ultra vires* transaction may set up the defence thereof, and any one corporation may call upon the Courts to restrain the Corporation from engaging therein.

Distinguished from breach of Trust and illegality

Ultra vires ought to be distinguished from two other matters which are closely connected with it, viz., breach of trust and illegality. In breach of trust, a breach of duty is involved and this invalidates the whole proceeding. There is no lack of power, and indeed frequently the act when done,

for example, a transfer of property for valuable consideration, is perfectly good, both at law and in equity, the purchaser being unaware of the breach of trust, although previously thereto, while the matter was *in fieri*, it might have been prevented. In *ultra vires*, it is no question of trust, but simply of power. If this exists the corporation may carry out the transaction contemplated; and the Courts refuse to recognize anything like a trust relation as existing between a corporation and its members or to deal with the latter as having actually or by analogy any of the rights of *cestuis que trustent*.[1]

Ultra vires must also be discriminated from illegality. Illegality approaches very near to, and indeed in many cases is the same as *ultra vires*. What is outside the powers of a corporation, what is *ultra vires*, is illegal in the same sense as it is illegal for an agent to misrepresent his powers. But as the two terms express different legal facts and principles, as they, though equally denoting that an act is forbidden, denote that it is forbidden for very different reasons it is highly advisable to retain and employ each but taking care that each shall be used in its proper signification.[2]

Remedies.

The distinction must not be neglected between things done "wholly without jurisdiction" and things done without jurisdiction though erroneously and irregularly done. The words are those of Baron Parke in *Calder* v. *Halket*[3]; in the former class of cases, the acts done would be wholly *ultra vires*. Before want of jurisdiction can be predicated in this class of cases, a vice must be clearly established which infects the whole proceedings. There must be an illegality as opposed to an irregularity.[4] A corporation may be restrained by an injunction from doing an act which is beyond its powers.[5]

1. Brice, p. 18.
2. Brice, p 43.
3. (1839), 2 M. I. A. 293
4. See Subramania Ayyar's case (1901), L. R. 28 I. A. 257; *Ear Mohamed* v. *Heyat Mohamed*, (1917) 22 C. W. N. 342.
5. *A. G.* v. *Manchester Corporation* (1906), 1 Ch. 653.

It has been held as a general proposition under the English law that 'where officers of a corporation actively participate in an act which is beyond the powers of the corporation to perform, they are, each to the extent of his participation, liable personally for the consequences.[1] Under the Trust Acts, the Trusts, or any trustee, or any officer or servant of the Trust, or any person acting under their direction, are indemnified against any suit in respect of anything lawfully and in in good faith and with due care and attention done under the Act.[2]

110. Contracts with Trusts

Section 24 of the Calcutta Act empowers the Board to enter into and perform all such contracts as they may consider necessary or expedient for carrying out any of the purposes of the Act. Every such contract shall be made on behalf of the Board by the Chairman; provided that —

(a) a contract involving an expenditure exceeding one thousand rupees and not exceeding one lakh of rupees shall not be made by the Chairman without the previous sanction of the Board ; and

(b) a contract involving an expenditure exceeding one lakh of rupees shall not be made by the Chairman without the previous sanction of the Board and the Provincial Government.

Section 25 of the Act further prescribes that every estimate for the expenditure of any sum for carrying out any of the purposes of the Act shall be subject to the approval of the authority who is empowered by sub-section (1) to make or sanction the making of a contract involving the expenditure of a like sum, and that sub-sections (1) and (2) shall apply to

1. *Cullerne* v. *London* and *Suburban General Permanent Building Society*, (1890) 25 Q. B. D. 485; *Young* v. *Naval Military* and *Civil Service Co-operative Society of South Africa, Ltd.*, (1905), 1 K. B. 687. In America, however, the officers are not liable, unless they are guilty of actual fraud.
See Dillon, Vol 1. pp 776-7.
2. See notes on page 357.

every variation or abandonment of a contract or estimate, as well as to an original contract or estimate. Section 26 of the Act lays down that every contract made by Chairman on behalf of the Board shall be entered into in such manner and form as would bind the Chairman if such contract were made on his own behalf, except that the common seal of the Board shall be used (where necessary); and every such contract may in the like manner and form be varied or discharged. Also that every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees shall be in writing, and shall be sealed. The common seal of the Board shall remain in the custody of the Secretary to the Board, and shall not be affixed to any contract or other instrument except in the presence of a Trustee (other than the Chairman), who shall attach his signature to the contract or instrument in token that signature was sealed in his presence. The signature of the said Trustee shall be in addition to the signature of any witness to the execution of such contract or instrument. It definitely prescribes that a contract not executed as provided in this section shall not be binding on the Board.

Section 24 of the Calcutta Act has been extended to Delhi under Notification No. F. 29-55 (4)/39-F & L, dated the 22nd February, 1940, and reads as section 22-B of the U. P. Act as extended to Delhi. There is no specific provision in any other Act relating to contracts and the matter is governed by the general law applicable.

At common law the contracts of corporations must in general be under seal. To this, however, there are some exceptions. One of them is where the whole consideration has been executed and the corporation has accepted the executed consideration, in which case the corporation is liable on an implied contract to pay for the work done, provided that the work was necessary for carrying out the purposes for which corporation exists.[1] The exception is based on the injustice

1. Section 25 (1), Calcutta Improvement Act, 1911.

of allowing a corporation to take the benefit of work without paying for it.[1] This exception may in certain cases be excluded by statute. Where contracts with a corporation are required by the Act creating it to be executed in a particular form, as, for instance, under seal, the question in such cases is whether the Act is imperative and not subject to any implied exception when the consideration has been executed in favour of the corporation. If the Act is imperative and the contract is not under seal, the fact that the consideration has been executed on either side does not entitle the party who has performed his part to sue the other on an implied contract for compensation. This may work hardship, but the provision of the Act being imperative, and not merely directory, it must be complied with.[2] In other cases section 65 of the Contract Act will apply. Where a contract which fails to comply with the statutory formalities is only executory, neither party can enforce performance against the other.[3]

111. Torts.

A Corporation aggregate is liable to be sued for any tort, provided that (1) it is a tort in respect of which an action would be against a private individual; (2) the person by whom the tort is actually committed is acting within the scope of his authority and in the course of his employment on the Corporation's behalf; and (3) the act complained of is not one which the corporation would not, in any circumstances, be authorized by its constitution to commit.[4] A Corporation may, from its own inadvertence or the malice or negligence of its agents, do or concur in acts or proceedings which in law are torts or crimes. For its wrongs to the public, it may be prosecuted; and for its torts against individuals, it may be sued in a civil

1. *Lawford* v. *Billericay Rural District Council* (1903), 1 K.B. 772.
2. *Clarke* v. *Cuckfield Union* (1852) 21 L. J. Q. B. 349; 351; 91 R.R. 891.
3. See notes on pages 350 to 355 of Pollock & Mulla 'Indian Contracts & Specific Relief Acts, 7th Edn.'
4. Halsbbury's Laws. Vol. 8, pp. 386—7. See also Amer. Encycleo. Vol. 28, pp. 280, etc. Dillon Vol. IV, pp. 2637, etc.

action for damages.[1] Accordingly, it has been held that an action would lie against a corporation for conversion, trespass, wrongful distress, assault, negligence, nuisance, false imprisonment, infringement of a patent, keeping a dangerous animal, breach of trust, and even for fraud and for torts involving malice such as malicious prosecution and libel. A corporation may also be sued for a fraudulent misrepresentation. But it is not liable for corrupt practices or for maintenance. As a corporation can only act through a natural person, the relationship of principal and agent or of master and servant must be established before the corporation can be fixed with any liability.[2]

The corporation is an invisible, intangible being existing only in contemplation of law. It must therefore act through its members or agents. It does not often occur that a tort is committed directly by a corporation, that is to say, by the majority of its members. If the act is not *ultra vires*, the corporation is liable. Usually, however, the tort is committed by one of its agents. In such a case, the corporation will be liable only if the person by whom the tort is committed is acting within the scope of his authority and in the course of his employment on behalf of the corporation. Nothing like a definite rule applicable to every set of circumstances can be stated. In any particular case the corporate business, the position of the agent, the nature of his duties, must all be considered in order to determine whether or not his authority to bind his principal extended to the wrong in question.[3]

If the wrongful act complained of arises out of proceedings which are themselves altogether *ultra vires*, the corporation itself would not be liable. As observed by Erle, C. J. "an action for a wrong does lie against a corporation when

1. Amer Encyclo. Vol. 28, pp. 1256, etc; 19 R. C. L. pp. 1081, etc. See Aiyangar's *Law of Municipal Corporations*, 2nd Edn. p. 198.
2. See Aiyangar, pp. 199, 200 and the authorities cited therein.
3. Ibid, pp, 200, 201.

the thing done is within the purpose of the incorporation and when it has been done in such a manner as would constitute what would be an actionable wrong if done by a private individual".[1] It is well settled that when a municipal corporation undertakes a function not delegated to it by the Legislature, it is not liable for negligence or misconduct in the performance of that function.[2]

Where a corporation, in the exercise of powers conferred upon it by statute, does not act which would be actionable if done by an individual, the corporation will be exempt from liability, if from the terms of the statute it is clear that the Legislature intended to authorize the doing of the act in question, and to render it not actionable. Where a local body exercised the powers conferred upon it by statute with a certain result which clearly fell within the provisions of the statute, the fact that the authority did so with some ulterior motive could not and did not invalidate the proceeding; and the statement in a statute of an object for the exercise of statutory powers cannot be construed as a limitation upon the exercise of the powers given by the express words of the Act.[3]

The onus of proving that corporations have express or implied authority for doing a particular work without being liable for any damage caused thereby lies upon those who seek to interfere with private rights; and they are bound to show that the statute under which they purport to act does take away such rights with sufficient clearness.[4]

Similarly, a corporation can sue for any tort in the same way as an individual except for torts of a purely personal nature.[5]

1. *Green* v. *London General Omnibus Co., Ltd.*, (1859), 29, L. J. C. p. 17, See Aiyangar, p. 204.
2. Aiyangar, p. 204.
3. Ibid. p. 206; see also *Abdul Rahim* v. *Municipal Commissioner of Bombay*, (1918) I. L. R. 42 Bom. 462.
4. Ibid, p. 208; see *Clowes* v. *Staffordshire Potteries* Waterworks Co., L. R. 8 Ch. 125.
5. Ibid, p. 215.

Where the law imposes a duty on any person or body of persons and they fail or neglect to perform that duty, they are answerable in damages to those to whom their failure or neglect injures[1]. An action will not lie against individual corporators for an act erroneously done by them in their corporate capacity, at least not without proof of malice[2]. For a tort committed by a corporation it could only be sued as a body[3]. But it is only corporators who are parties to the failure or neglect of duty who can be held answerable in damages[4].

It is to be observed that the above general statement of law must be read subject to the provisions of the various Acts constituting the Trusts to which a reference has already been made.[5]

1. *Fergusson* v. *Kinnoull*, (1842) 9 Cl. & F. 251, H. L.
2. *Harman* v. *Tappenden*, (1801) 1 East 555.
3. See *Mill* v. *Hawker*, (1874) L. R. 9 Ex. 309; (1875) L. R. 10 Ex. 92.
4. See Fergusson's case *supra*. See also *Venkatanarayan* v. *Ponnuswami*, (1917) 33 Mad. L. J. R. 660
5. See notes on page 357.

CHAPTER XIV.

ENDS AND MEANS.

112. Planning for the future.

What emerges from the examination of the provisions of the various Town Improvement Trust Acts in the previous chapters is that given expert staff and adequate funds it should not be difficult for any Trust constituted under the Acts, with a foresight and resolute will, to carry out schemes for the improvement of any city and its future development on proper lines. These provisions can easily be extended to other towns as well and for comparatively smaller towns similar provisions can be inserted in the local Municipal Acts, as will be found in the City of Bombay Municipal Act. A city is a living organism and is ever changing. Each town, therefore, with over 10,000 inhabitants, and all fast-growing smaller ones, must have a detailed plan for its future growth, including traffic routes, parks, and open spaces, which should be revised in every detail at least every ten years. And this Master Plan must then be strictly followed in carrying out all new building. In fact, the making and maintenance of this plan should be a statutory obligation of the local authority concerned. It will be necessary to have at the Provincial Headquarters, as is the case in some of the Provinces, a small body of experts to help and advise municipalities, to draw up standard plans, to supervise local activities and to suggest new lines of development. It should be the duty of the Provincial Governments to see that the recommendations of this body are carried out, that the town planning regulations are actually followed, and to afford financial assistance where required.[1]

Planning an urgent necessity

The necessity of planning our towns is immediate and urgent. The urban population has been increasing at a rapid

1. See Second Report of Reconstruction Committee, para. 24, p. 53.

rate and there has been a constant drift of rural workers into the cities and towns. In most of the towns, the problems of housing and town-planning have assumed serious dimensions and a large proportion of the urban population is now living in insanitary and unhealthy conditions. Our industrial towns were never planned for industry with the result that factories grew up without proper zoning and when workers in large numbers came into them the authorities were not prepared to receive them with proper houses and they were compelled to work and live under deplorable conditions. The example of Jamshedpur tells us how planning can be helpful towards congenial growth of industrial towns and suburbs, and the example of New Delhi shows that much of the evil of congestion and overcrowding can be avoided if the authorities concerned exercise a rigid control over housing conditions and if they are alive to the danger of haphazard development.

General considerations in planning

Town-planning is the job of an expert and no pretension will be made to describe what lines it should take. A few general remarks as suggested to a layman may not, however, be out of place here.

Cities must satisfy the demands of all the complex functions of human existence. They are centres of human organisation, of the arts, of knowledge, of industry, of trade; but they are still primarily places to live in. Family life is the basis of a happy existence. Town-planning can certainly help to make a happy family life possible by considering the wants of the ordinary family. The father will want to be near his workplace, his wife near her social group and a market for household shopping and a school and a hospital. The whole family will want to be near a park or any other open space and to have opportunities for social life. It may not be possible to attain ideal conditions in the planning of an existing city; much, however, can still be accomplished if this is kept in view.

Again, man may enjoy an almost infinite number of pleasures; pleasures of the mind, of music, of drama, of painting, of architecture, of the beauties of nature, of landscape, of trees and

flowers ; pleasure of company, of conversation and the meeting of friends ; pleasures of physical fitness, of playing games ; pleasures of relaxation, of shower baths and swimming pools. In future planning this aspect of human life should not be lost sight of and adequate provision for these should be made. The city must be planned with a sense of the fun of life.

Work is that part of our life when we are making our contribution to the community. This may be producing in a factory, distributing from ware-houses or shops, administering in an office, running a home, or working as an artist, craftsman or specialist. Owing to their collective nature, the centres of production, distribution and administration are the town-planner's main problem. They must be zoned in relation to each other and to the residential areas, and must be linked together by easy means of communication.

And we must plan for health. Health does not mean " not being ill ". It means being glad to be alive. It means also growing up to a state of maximum development. Adequate food, maternal and child welfare, early diagnosis of disease and the cure of illness are primarily the concern of the medical profession. But environment plays a very important part in health, and this is a problem for the town-planner.[1]

The child also must be given due consideration in planning our towns. The play-park is the child's introduction to social life. Small children cannot walk far. It must therefore be as near his home as possible. Schools and especially nursery schools, cheerful not forbidding places, should similarly be as near home as possible. 'To-day's children are the adults of to-morrow. Every handicap they have is a handicap to future civilisation. Planning for the child of to-day is laying the foundations of the society of to-morrow'.[2]

Positive planning required

Experience has shown that regulative planning, howsoever useful in its own way, cannot lead to substantial improvement of our cities and towns. Any future planning must

1. See 'Living in Cities' by Ralph Tubbs, p. 46.
2. Ibid, p. 47.

therefore be *positive* planning: not merely planning that restricts and controls, but planning that performs. And it must be planning for the city as a whole, that is planning not only of the land-utilisation activities of private persons, but those of local authorities and government departments as well. Planning must be co-ordinated so as to result in harmony and maximum utility for collective living. A town-planner may to a certain extent be handicapped by the features of the existing city; but no doubt by a keen insight and strong commonsense he will be able to produce a very good picture to be transfigured eventually into healthy living conditions. And one thing he must always remember; he is planning not only for the present conditions but for those which will obtain fifty or more years hence.

113. The home in relation to the town.

The family's basic need is for space: indoor space and outdoor space; space for relaxation and for conversation; space for children to romp in; space for solitude as well as for sociality; space for storage; space for domestic animals; space for cooking; space for living. For proper planning the house therefore needs sufficient space. And plan for privacy. No one likes being watched. The house is one's own retreat.

"The reality of the building does not consist of walls and roof but in the space within to be lived in." So said the Chiness Philosopher *Lao Tze in 500 B. C. Primarily conditioned* by the nature of work done in them, these spaces must be beautiful as well as functional. If entirely enclosed, space feels static; its beauty lies in its proportion. Space only partially enclosed by walls is dynamic, for there is a sense of flow, of movement. Its beauty then depends on the smoothness of flow and the relationship of the spaces connected. Cultivate your awareness of space—buildings will have a new interest.[1]

114. Prevention and abatement of overcrowding.

We have already noticed that overcrowding is a serious menace to public health. What then is the minimum requirement

1. Ralph Tubbs, p. 38.

The over crowding standard in England and Ceylon.

of an individual or a family as regards space for healthy living? Except in the City of Bombay Municipal Act, no standard has been laid down by any statutory law, rule or regulation in India. Section 58 of the Housing Act, 1936, and the fifth schedule thereto set out the over-crowding standard for a dwelling-house (defined in S. 68) in England and Wales. The statutory law in that country provides for two things, viz (1) There must be sufficient sleeping accommodation in a house to secure proper sex separation, and (2) a standard of capacity, fixing in relation to the accommodation in any particular house, the maximum number of persons, irrespective of sex, who may be permitted to sleep in that house at one time. The fifth schedule to the Act provides the following standard —

" For the purpose of Part IV (abatement of overcrowding) of this Act, the expression " the permitted number of persons " means, in relation to any dwelling house, either —

(a) the number specified in the second column of Table I in the annex hereto in relation to a house consisting of the number of rooms of which that house consists, or

(*b*) the aggregate for all the rooms in the house obtained by reckoning, for each room therein of the floor area specified in the first column of Table II in the annex hereto, the number specified in the second column of that Table in relation to that area,

whichever is the less:

Provided that in computing for the purposes of the said Table I the number of rooms in a house, no regard shall be had to any room having a floor area of less than 50 square feet.

ANNEX.

Table I.

Where a house consists of —

(*a*)	One room ...	2.
(*b*)	Two rooms ...	3.
(*c*)	Three rooms ...	5.
(*d*)	Four rooms ...	7½.
(*e*)	Five rooms or more	10, with an additional 2 in respect of each room in excess of five.

Table II.

Where the floor area of a room is —	
(*a*) 110 sq. ft. or more ...	2.
(*b*) 90 sq. ft. or more, but less than 110 sq. ft.	1½.
(*c*) 70 sq. ft. or more, but less than 90 sq. ft.	1.
(*d*) 50 sq. ft. or more, but less than 70 sq. ft.	½.
(*e*) Under 50 sq. ft.	Nil.

Section 99 of the Ceylon Housing and Town Improvement Ordinance of 1915 prescribes that 'for the purposes of this Ordinance and of any other Ordinance regulating the powers of any local authority a room shall be deemed to be "overcrowded" or "so overcrowded as to be dangerous or prejudicial to the health of the inhabitants thereof", unless for each person over ten years of age residing in the room there is a floor space of thirty-six square feet and a free air space of three hundred and sixty cubic feet, and for each child under ten years of age residing in the room a floor space of eighteen square feet and a free air space of one hundred and eighty cubic feet.' Rule 3 of the schedule to the Ordinance further lays down that 'every habitable room in a domestic building must have a clear superficial area of not less than 120 square feet'. "Inhabited room" for the purposes of that Ordinance means 'a room in which some person passes the night, or which is used as a living room, and includes a room in respect of which in the circumstances of the case there is a probable presumption (until the contrary is shown) that some person passes the night therein, or that it is used as a living room'. "Habitable room" means a room constructed or adapted to be inhabited.

Survey.

'Under the Housing Act, 1936, it is the duty of every local authority before such dates as may be fixed by the Minister as respects their district, to cause an inspection thereof to be made with a view to ascertaining what dwelling-houses therein are overcrowded, and to prepare and submit

to the Minister of Health a report showing the result of the inspection and the number of new houses required in order to abate overcrowding in their district, and, unless they are satisfied that the required number of new houses will be otherwise provided, to prepare and submit to the Minister proposals for the provision thereof. The local authority on their own initiative, or under the direction of the Minister, shall also cause a further inspection to be made and prepare and submit a report and proposals aforesaid. When the direction is from the Minister, the local authority is to perform the said duties by the date fixed by him.[1]

Over-crowding offences.

By Section 59 (1) of the Act overcrowding after the appointed day is made an offence on the part of the occupier who causes it, and of the landlord who permits it. An offence is punishable by a fine not exceeding five pounds, with a further fine not exceeding two pounds per day in respect of each day on which the offence continues after conviction.

Section 59 (2) gives special protection to persons who are in occupation on the appointed day. Where there has been no change of occupier since the appointed day, and no addition to the occupants except by births, then notwithstanding that the house is overcrowded, no offence is committed by the occupier unless he refuses an offer of "suitable alternative accommodation" (defined in Section 68), or declines to take reasonable steps to get rid of some person who is not a member of his family (such as a lodger or sub-tenant) to whom suitable alternative accommodation has been offered. The removal of such a person might abate the overcrowding entirely; in any case it would ameliorate the conditions, and might justify the local authority in postponing further action until more urgent cases had been disposed of.

Section 59 (3) contains safeguards to cover the case where a family living in uncrowded conditions becomes overcrowded in course of time owing to increases in the number or ages of the children. These safeguards are general and

1. S. 56, Housing Act, 1936.

apply to all occupiers whether or not they were in occupation on the appointed day. An occupier whose dwelling becomes overcrowded in the circumstances mentioned, provided that he has not subsequently increased the overcrowding by taking in additional persons, should apply to the local authority for alternative accommodation, and if he does so and does not refuse suitable accommodation which is offered to him, or fail in the particular case where it would be reasonable and practicable to ameliorate the overcrowding by the displacement of some lodger or sub-tenant (not a member of his family), will not be guilty of an offence.

Section 59 (4) gives the further safeguards where a house is overcrowded solely because a member of the occupier's family who does not normally live in the house is temporarily residing with him. This provision is to protect an occupier where a son or a daughter or other member of the family returns home for a short stay.

Section 59 (5) sets out the two cases in which a landlord can be prosecuted for an overcrowding offence. They are :—

(a) where a landlord or his agent is informed in writing by the local authority that his tenant is committing an overcrowding offence, and the landlord does not take steps, including, if necessary an application to the Court to obtain possession, to put an end to the offence, and

(b) where on the letting of a house the landlord, or person letting it on his behalf, had reasonable cause to believe that it would be overcrowded, or did not enquire the number, age and sexes of the persons who were going to occupy it.

Power to obtain information relating to overcrowding.

Section 64 of the Act makes it the duty of a landlord or his agent under penalty of a £ 2 fine, to inform the local authority within seven days when it comes to his knowledge after the appointed day that his house is overcrowded. This does not apply to overcrowding which existed on the appointed day or to overcrowding which has been notified to the landlord

by the local authority or is covered by licence, but aims to secure the early notification of any fresh overcrowding which may occur.

Section 66 (3) of the Act provides that a local authority may serve notice on the occupier of a dwelling-house requiring him to furnish them within 14 days with a statement in writing of the number, ages and sexes of the persons sleeping in the house, and, if the occupier makes default in complying with the requirements or furnishes a statement which to his knowledge is false in any material particular, he is liable on summary conviction to a fine not exceeding £ 2.

Enforcing of the overcrowding provisions.

Section 66 of the Act provides that it shall be the duty of a local authority to enforce the overcrowding provisions in their area and that only a local authority can prosecute for an overcrowding effence. There is one exception to this. Where a local authority are themselves the landlord of the houses and are guilty of an overcrowding offence, it is open to any person, with the consent of the Attorney General, to take proceedings.

Section 66 (2) gives a local authority power to obtain vacant possession of a house which is overcrowded in such circumstances as to constitute an offence, if the occupier, after 14 days' notice in writing from the local authority, has not abated the overcrowding. In these circumstances the local authority may apply to a Court of Summary Jurisdiction for an order for vacant possession to be given to the landlord. Cases may arise in which a tenant complies with the authority's notice for a short time but then again overcrowds the house, but the local authority will be able, if the offence is repeated at any time within 3 months after the date of the first notice, without serving any fresh notice, to make an application to the Magistrate. The expenses of the proceedings will be recoverable by the local authority from the landlord, on whom, but for this special provision, onus of taking the proceedings would have fallen.

Definitions.

"Appointed day" is defined in Section 68 of the Act as meaning, in relation to any matter to which the Minister has appointed a day under Section 97 of the Housing Act, 1935, that day, and, in relation to any other matter such day

as the Minister may appoint under the above provisions, and the Minister may fix different days for different purposes and different provisions of this part of the Act and sub-section (2) of Section 6 of the Act and for different localities. "Dwelling house" means any premises used as a separate dwelling of members of the working class or of a type suitable for such use. "Room" does not include any room of a type not normally used in the locality either as a living room or as a bed-room. "Suitable alternative accommodation" means, in relation to the occupier of a dwelling house, a dwelling house, as to which the following conditions are satisfied,that is to say -

(*a*) the house must be a house in which the occupier and his family can live without causing it to be overcrowded ;

(*b*) the local authority must certify the house to be suitable to the needs of the occupier and his family as respects security of tenure and proximity to place of work and otherwise. and to be suitable in relation to his means ; and

(*c*) if the house belongs to the local authority, they must certify to be suitable to the needs of the occupier and his family as respects extent of accommodation having regard to the standard specified in paragraph (b) of Section 136 of the Act.

Other miscellaneous provisions

Section 60 of the Act relates to the power of Minister to increase the permitted number temporarily to meet exceptional conditions and Section 61 of the Act relates to the power of the local authority to authorise the temporary use of a house by persons in excess of the permitted number. Section 62 of the Act relates to entries in rent books, information and certificates with respect to the permitted number. It is the duty of the local authority on the application of the landlord or occupier of a dwelling house to inform him in writing of the permitted number of persons in relation to his house. Section 63 of the Act empowers a local authority to publish information for the assistance of landlords and occupiers of dwelling houses as to their rights and duties in regard to the new overcrowding provisions.

Proposals for re-housing—State & Local authorities' contributions.

Section 57 (1) of the Act provides that unless a local authority are satisfied that the necessary accommodation shown by their report to be required for the abatement of overcrowding will be otherwise provided, the local authority must prepare and submit to the Minister proposals for providing such accommodation. Sections 106 and 107 of the Act provide for the financial assistance to local authorities in connection with the provision of such accommodation. Under section 106, the local authority receives payment of contributions towards any expenses incurred by them in providing for the working classes housing accommodation required for the purpose of the abatement of overcrowding in so far as such accommodation is provided with the approval of the Minister in blocks of flats on sites the cost of which as developed exceeds £ 1500 per acre, being blocks of flats the erection of which has been, or is, begun on or after 1st day of February, 1935. A contribution on this account is the approximate sum as defined in the Sixth Schedule to the Act, payable annually for a period of 40 years, in respect of each flat which is with the approval of the Minister provided for the purposes of such accommodation as aforesaid in such a block as aforesaid. A local authority to whom the Minister has undertaken to make a contribution according to the above provisions, shall also make out of the general rate fund in respect thereof the contribution specified in relation thereto in the Eighth Schedule to the Act. For new plots or houses on undeveloped or less expensive sites the subsidy varies in amount up to a maximum of £ 5 a year at the discretion of the Minister and according to the financial circumstances of the area. It is a condition of the right of a local authority to receive any Exchequer contribution that the authority shall make out of the general rate fund the contributions specified in that schedule.

The State and rate contributions for these various types of buildings are set out in the following table :—

	Yearly State grant per dwelling.	Statutory amount per year from Rates.	Period of State and Rate contributions.
Flats on expensive sites where cost per acre is :—	£ s. d.	£ s. d.	Years.
Between £ 1,500 & £ 4,000 ...	6 0 0	3 0 0	40
Between £ 4,000 & £ 5,000 ...	7 0 0	3 10 0	40
Between £ 5,000 & £ 6,000 ..	8 0 0	4 0 0	40
Over £ 6,000	Additional £ 1 for each increase of £2,000 or part of £ 2,000	Half State grant	40
Normal cases	up to £ 5	up to £ 2 10s.	20

These grants apply to houses completed by March 31,1938, and have been further extended so as to apply to houses completed up to December 31, 1938. For houses completed after that date, under the Housing (Financial Provisions) Act, 1938, the subsidy for normal cases is an annual contribution from the State of £ 5 10s. per dwelling for 40 years, the contribution of the local authority being provided by annual instalments over a period of 40 years and is equivalent of half the Exchequer contribution (e. g. £ 2 15s. per dwelling payable during 40 years where the State contribution is £ 5 10s for the same period). Special provision is made in sub-section (2) of section 1 in respect of flats built on expensive sites, the Exchequer contribntion being graded according to the cost of site per acre, as set out in the schedule to the Act of 1938, and the contribution of the local authority being half of that on the same lines as explained above.

Rents at which houses for alternative accommodation are available.

In the United Kingdom the execution of housing policy devolves primarily on the local authorities. They are empowered to raise capital on their own account. Their borrowing powers are practically unlimited, since the Public Health Act, 1875, restricting loan indebtedness to three times the rateable value of the district, does not apply to loans for housing purposes. The larger and stronger municipalities are able to borrow through the public issue of stock, or through banks and insurance companies while the smaller regularly have recourse to the Public Works Loan Board. The interest charged by this body is determined by the rate at which the Government can borrow. During the twenties, it was about 6 % ; it was then successively reduced, attaining 4½ % in 1931 and 3¼ % in November 1934. During 1937, it was raised to 3⅝ %. Experience shows that the rate of interest charged by the Public Works Loan Board largely determines the rate applied by other large lenders to local authorities With regard to the interest charges on their loans, the local authorities are, therefore, in an advantageous position, as they can borrow at a lower rate than private enterprise co-operating with a building society. In addition, they can generally borrow for sixty years, whereas building societies' loans are normally granted for twenty years only.[1]

The houses built by local authorities are, in England and Wales, generally one-family houses, while, in Scotland, tenement blocks containing four dwellings in two stories are generally preferred. Large blocks of flats are erected only where it is necessary to accommodate people from clearance areas on expensive sites, as for example, in London and other large towns. On the larger estates, where development has taken place on the outskirts of the big cities, it has been found necessary to create community centres with assembly halls, workshops, libraries, spaces for outdoor games, etc.[2]

1. See 'Urban & Rural Housing' — League of Nations Report, 1939, p. 40.
2. Ibid, p. 41.

As regards the size and standard of the dwellings built by local authorities, in England and Wales the most usual type consists of three bedrooms and a living room, a separate bathroom, a kitchen and a scullery. The superficial area of dwellings of this type is generally 730-760 square feet. Larger dwellings have only been erected in small numbers, but a considerable proportion of the new dwellings are of the two-bedroom type. A certain number of one-bedroom type dwellings have been built, generally for aged couples. According to the standard of occupation adopted for the rehousing of overcrowded families, the normal three-bedroom non-parlour type with a superficial area of 760 square feet or thereabouts is adequate for working-class families of not more than five persons. For a family of six persons, the same type of dwelling, but with a total superficial area of about 850 square feet, is sufficient, while, for families of seven and eight persons, four bedroom dwellings with an area of 1,050 and 1,130 square feet respectively are required.[1]

At 3⅝% rate of interest on local authorities' loan for housing purposes, the economic rents may be computed as shown by the following table[2] :—

	All-in-cost of house		
	£ 450	£ 400	£ 350
	£. s. d.	£. s. d.	£. s. d.
1. Annual loan charges for sixty years.	18 9 0	16 8 0	14 7 0
2. Repairs, management, empties, insurance, etc.	5 10 0	5 10 0	5 10 0
3. *Net rent per annum*	23 19 0	21 18 0	19 17 0
Rent per week (Approx.)	9 3	8 5	7 8
Rates per week (Approx.)	2 10	2 10	2 10
Rent with rates per week.	12 1	11 3	10 6

1. 'Urban and Rural Housing,' p. 41. Cf. Ministry of Health : Circular 1539, Housing Act 1935 (addressed to housing authorities).

2. Ibid. p. 42; Cf. the National Housing and Town Planning Council, *Facts and Figures regarding the Present Housing Situation in England and Wales* (revised April 1938).

The economic rent of a three-bedroom non-parlour cottage of the usual type built by local authorities, at an all-in-capital cost of about £ 410 (building cost, £ 350+ cost of land and development, £ 60), may be estimated at an average of about 11s. 4d. per week (inclusive of rates). The weekly rent (inclusive of rates) of a privately built house of the same type may average about 15s. 10d., the difference being accounted for by higher capital charges. The rents charged by local authorities are, however, reduced by the amount of the subsidies from the Government and from rates. How this is done will be explained under para. 115 below.

Provisions for prevention and abatement of overcrowding in India.

In India the Municipal Acts contain certain provisions regarding over-crowded buildings, and prescribe that if the local authority considers that any dwelling-house, or any room in such a house, is so overcrowded as to be dangerous or injurious to the health of the inhabitants thereof, it may take steps to abate such overcrowding. Section 379A (4) of the City of Bombay Municipal Act, 1888, lays down that a room used exclusively as a dwelling shall be deemed to be overcrowded within the meaning of the section when the number of adult inmates is such that the amount of floor space available for each adult inmate is less than 25 superficial feet and for each person under the age of ten years less than twelve and one-half superficial feet, or when the air space for each adult inmate is less than 250 cubic feet, two children under ten years of age counting as one adult. And a room not exclusively used as a dwelling shall be deemed to be overcrowded under that section when the number of adult inmates is such that the amount of floor space available for each adult inmate is less than 30 superficial feet, and for each person under the age of 10 years less than 15 superficial feet, or when the air space for each adult inmate is less than 300 cubic feet, two children under 10 years of age counting as one adult. Section 384 of the Calcutta Municipal Act, 1923, also relates to the same matter but no standard of overcrowding is laid therein although section 478 (40) of the Act empowers the Corporation to frame

1. 'Urban and Rural Housing,' p. 42.

byelaws for determining what amount of superficial and cubic space shall be deemed for that purpose to be necessary for each occupant of a building or room. There are similar provisions in the other Municipal Acts also[1] but so far little attempt has been made to lay down overcrowding standards or to enforce these provisions for abatement of overcrowding. It is highly desirable that the local authorities should take early steps to frame the necessary byelaws and organise machinery to enforce these useful provisions and that the Legislature should supplement them in such manner as may be found necessary in the interest of public health. It is, however, to be observed that in India it is not the statutory obligation of a local authority to arrange for alternative accommodation for occupants to be dishoused in pursuance of these provisions, and unless some thing is done on the lines of the English Act towards providing alternative accommodation, these provisions in the Municipal Act will be of little use. It is time now that the Provincial Governments take up this matter and have necessary legislation on the subject.

115. Slums must be cleared

"I have been horrified by what I have seen" said the Governor of Bengal in a statement on his return to Government House after his recent tour of the "bustee areas" of Calcutta. "A human being cannot allow other human beings to continue to exist under these conditions. These conditions should be improved, and neither politics nor vested interests should be allowed to stand in the way. The people of Calcutta have a right to ask in six months' time what has been done about it".[2]

What the Governor of Bengal has expressed about Calcutta is true about all our big cities and towns. A reference has already been made to this feature of the city life in India in Chapter I. It is indeed a slur on humanity to tolerate

1. Section 275, Madras Municipal Act, 1919; S. 396 (24) City of Lahore Corporation Act, 1941; S. 188 (d), Punjab Municipal Act, 1911; S. 368, Bengal Municipal Act, 1932.
2. News Item, U.P.I. dated Dec. 1, 1944.

these slums, if one may be permitted to say so, and any step taken towards the clearance of these slums will be a step forward in the direction of advancement of civilization. On whom this responsibility should legitimately fall? Who is to pay for it? What is to be done for the rehousing of lakhs of souls inhabiting these slums? What measures should be taken to prevent city areas from further degenerating into slums? These are the important questions which will come up for examination before deciding any programme of slum clearance.

Slums are not confined to India alone. Practically no city in the world is free from these blighted areas, and every country has tried to solve the problem in its own way. In England, the Housing Act of 1930, marks a turning point in the policy of the public authorities with regard to slum clearance, which previously had made comparatively small progress. Up to that year, the attention of public authorities had been mainly devoted to the general shortage of dwellings. It was hoped that the increased supply of working-class accommodation would indirectly contribute to an improvement in housing conditions among slum dwellers by a kind of "filtering up" process. But although, from the end of the last war up to 1930, more than a million and a quarter new houses were added to the total available accommodation, disappointingly little improvement had taken place in the worst cases of overcrowding and unhealthy conditions.[1]

The Housing Act of 1930 has now been consolidated into and forms part of the Housing Act of 1936, and it has simplified the procedure for slum clearance a good deal. Insanitary dwellings may be dealt with either in groups or individually, the legal provision being somewhat different in cases where a scheme has to be applied to an entire area, or where individual dwellings or houses are to be demolished (or improved).

If the houses in an area are totally unfit for human habitation by reason of disrepair or sanitary defects, or are by

1. See 'Urban and Rural Housing', League of Nations Report, 1939, pp. 35, 36.

reason of their bad arrangement, or the narrowness or bad arrangement of the streets, dangerous or injurious to the health of the inhabitants of the area, and if the demolition of all the buildings is the most satisfactory method to deal with the conditions in such an area, it may be declared a *slum clearance* area by the local authorities. On obtaining the Minister's approval, local authorities may proceed, either by making a *clearance order*, which requires the owners to demolish the buildings and clear the site or by themselves acquiring the area and arranging for demolition.[1] The demolition of houses by the owners was an entirely new mode of procedure introduced by the Housing Act, 1930, and is intended to enable local authorities to obtain the clearance of slums at no capital cost to themselves (except that of establishing the inhabitants elsewhere). The cleared site remains the property of the owners but the development can be controlled by the local authority.[2] The acquisition of the area for clearance by the authorities may be effected either by agreement with the owners or by means of a compulsory purchase order made and submitted to the Minister and confirmed by him in accordance with the provisions of the First Schedule to the Act.[3] The compensation paid to the owners will naturally be the value of the site thus cleared of buildings.[4] Any houses or other buildings properly included in the clearance area only on the ground that by reason of their bad arrangement in relation to other buildings or the narrowness or bad arrangement of the streets, they are dangerous or injurious to the health of the inhabitants of the area, shall be excluded from the clearance order, which means that they must be purchased at their market value where necessary.[5] This applies equally to buildings not intended or used for human habitation and to buildings adjoining the area, if their acquisition is necessary for satisfactorily dealing with the site or its development.[6]

1. S. 25, Housing Act, 1936.
2. Ibid, S. 26.
3. Ibid, S. 29 (1)
4. Ibid, S. 40 (2).
5. Schedule III to the Housing Act, 1936.
6. Ibid, Schedule I, See also 'Urban and Rural Housing', p 36.

For securing the demolition of individual unfit houses, the Act provides for a method which may also apply to small groups of houses as an alternative to the clearance area procedure. A *demolition order* is made by the local authorities in respect of working-class houses unfit for human habitation and incapable of being made fit at reasonable cost. The local authorities first discuss with the owners the possibility of reconditioning, and can in this way often enforce repairs in cases where this seems to be sufficient.[1] Section 9 of the Act also empowers a local authority to require repair of any insanitary house which is occupied or is of a type suitable for occupation, by persons of the working classes, by a notice, and on the failure of the person having an interest in the said house as free-holder, mortgagee, lessee, or otherwise, to do the work and recover the cost from the person concerned.[2]

Re-housing of people dishoused from slum areas.

One important innovation in the Act of 1930 was the statutory obligation for local authorities to find accommodation for people displaced from slum areas, and this is repeated in the Housing Act of 1936[3]. Before dealing with a clearance area, a local authority must undertake to carry out or to secure the carrying out by voluntary societies of such rehousing operations as may be considered necessary in advance of the displacements which from time to time become necessary as the demolition of buildings in the area proceeds.

The Housing Act, 1930, in order that houses might be let at rents which persons of the poorer classes could afford to pay, provided for a Government grant of £ 2 5s. (in Scotland, £ 2 10s.) per annum for a period of forty years for each person (adult or child) who had been displaced and for whom suitable accommodation had been provided, the local authorities being also required to contribute from the rates a sum of £3 15s. (in Scotland, £4 10s., subject to reduction in special cases) per dwelling per annum for a like period. Supplementary

1. S. 11, Housing Act, 1936.
2. Ibid, S. 10.
3. S. 25 (1), proviso ; S. 45

subsidies could be added if part of a condemned building was not in fact, insanitary, and on this account had to be purchased at the market value. In special cases where rehousing could only be carried out on expensive land, the price of which exceeded £. 3,000 per acre, and in tenement blocks of more than three storeys, the state contribution could be increased to £. 3 10s., per person. These financial provisions were subsequently incorporated in the Consolidating Act of 1936[1].

This system, based as far as the State subsidy is concerned on the number of persons rehoused, was to be continued up to the end of 1938. For houses completed after that date, under the *Housing (Financial Provisions)* Act, 1938, it is replaced by an annual contribution from the State of £. 5 10s. per dwelling for 40 years, this being subject to an increase up to £. 6 10s., having regard to the financial position of the District in relation to the past and future expenditure on housing. For blocks of flats erected on expensive sites, there is an annual contribution per flat, graded according to the cost of the site (including the cost of development) from £ 11 for forty years, where the cost of developed site ranges between £ 1,500 and £ 4,000 per acre, to a maximum of £ 26 for the same period, where it exceeds £ 28.000 per acre. The contribution of the local authorities under the new Act will normally be provided by annual instalments over a period of 60 years, and will be equivalent of half the Exchequer contribution (*e. g.* £ 2 15s. per dwelling payable during forty years where the State contribution is £ 5 10s, for the same period). Summary of results achieved under the Housing Act, 1930, is given below:—

1. S. 105 and Clause (5) of the Eighth Schedule to the Act.
2. 'Urban and Rural Housing', League of Nations Report, 1939. p 38

	Clearance areas.	Individual unfit dwellings.	Totals.
England and Wales (up to March 31st, 1938).			
Dwellings demolished ...	118,387	61,425	
Dwellings closed ...	—	23,1925	203,004
Persons displaced ...	530,404	274,415	804,819
Dwellings made fit for habitation	—	169,039	654,247
Scotland (up to December 31st, 1937).			
Dwellings demolished or closed	—	—	60,883
Persons displaced ...	57,152	226,220	283,372

The total number of dwellings completed since 1930 for rehousing the slum population was nearly 200,000 in England and Wales (by the end of march 1938) and about 50,000 in Scotland (by the end of 1937). The Government grants in respect of these houses amounted in England and Wales during the financial year 1937/38, to £ 1·7 million, and in Scotland, during 1937, to about half a million pounds.[1] A reference has already been made to the types of houses constructed by the local authorities, all-in-costs of houses and their economic rents. From the figures given on page 394 it would appear that for a three-bedroom non-parlour cottage of the usual type built by local authorities at an all-in capital cost of about £ 410, the weekly economic rent (inclusive of rates) at 3½ % rate of interest on local authorities' loans for housing purposes will be about 11s. 4d. Allowing for the Government subsidy for providing alternative accommodation for the slum population, a local authority can normally obtain a grant of £. 11 5s. per year (for 40 years) for a three-bedroom non-parlour cottage accommodating five persons. The local authority adds £. 3 15 s. per year out of the rates, so that total contribution from the State and the municipality amounts

1. 'Urban and Rural Housing', p. 39.

to £. 15 per year, or about 5s. 9d. per week. If this amount is deducted from the economic rent, it will be seen that the normal type of house built by local authorities for the rehousing of persons displaced from the slums can be let at about 5s. 7d. per week (inclusive of rates), the contribution of the community amounting in fact to about half the economic rent (inclusive of rates).[1]

Rents, however, are not always fixed in this way. The Housing Act of 1930 empowered the local authorities to let a portion of new houses built for rehousing purposes at rents which the displaced persons could afford to pay. The authorities were thus enabled to grant rent rebates, subject to the condition that the aggregate net income from rents, together with the contributions from the Exchequer and the rates, covered the annual expenses. The Government grant, together with the prescribed rate charge is a pool out of which such rebates, or other special arrangements, are to be financed. Under these provisions, some authorities have devised rent rebate schemes with a view to charging what each tenant is able to pay, having regard to his income, the number and age of his children, the income of earning children or other members of the family, etc. According to an enquiry made in 1936 by the New Fabian Research Bureau and covering some forty-three municipalities in England and Wales, the statutory maximum rent (inclusive of rates) was 17s. 2d.; the minimum (not counting rebate) 6s. 6d. The maximum rebate allowed varied between 6s. 5d. and 2s., and the average rebate per dwelling in each town varied between 3s. 6d. and 0.74d. Most authorities seem, however, to give rebates only in individual cases, at the discretion of the Housing Committee, without any formal scheme having been drawn up. In some instances it has been arranged with the Public Assistance Committee that persons enjoying poverty relief shall not pay in the new dwellings more than they paid for their old accommodation so that no extra charges fall upon the Public Assistance Committee through rehousing. The Government encouraged

1. See 'Urban and Rural Housing', League of Nations Report, 1939, pp. 42, 43.

the adoption of the differentiated rents, the main advantage of such a system being that it prevents abuse at the expense of the public purse on the part of the persons who can afford to pay an economic rent, and enables the authorities to make appropriate grants in aid of the genuinely needy.[1]

Slum clearance in India.

Perusal of Chapter VI will show that a Trust constituted under any of the Town Improvement Trust Acts in force in India can frame and execute an improvement scheme which *inter alia* mey provide for the clearance of any slum area as a whole or for demolition of any individual dwelling or portion of any dwelling unfit for human habitation or for the demolition of any obstructive building or portion of building. There is, however, nothing in these Acts to correspond to a *Clearance Order* or a *Demolition Order* under the Housing Act, 1936, with the result that compensation will have to be paid for all buildings thus demolished. There is hardly any specific provision in these Acts for securing the improvement of insanitary houses which do not require to be demolished but improved only, at the cost of the owner. Though it is provided that in determining the amount of compensation to be awarded for any land acquired for the Trust under these Acts the Tribunal shall also have regard to the following provisions, namely, that if in their opinion, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state, and also that, if in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials, *minus* the cost of demolishing the building,[2] in actual practice it will be found that the Trusts will be

1. 'Urban and Rural Housing', League of Nations Report, 1939, pp. 43, 44.
2. See notes on pages 288 and 295-297.

called upon to pay full compensation for all buildings to be thus demolished, with the result that they find the cost of slum clearance prohibitive. This explains to a large extent the existence of slums even in those cities where the Trusts have been working for the last many years. Under the existing law in fact it amounts to, in a sense, payment of premium to private owners to perpetrate these slums, and it is for serious consideration whether the law should not be altered and brought on the lines of the English Housing Act, 1936, with such amendments as the local circumstances may call for.

Even the Municipal Acts in force in India lack adequate provisions for dealing with insanitary buildings unfit for human habitation. It is no doubt provided in these Acts that if for any reason any dwelling house or building intended for human habitation appears to the Municipal authority to be unfit for human habitation, steps may be taken to prohibit further use of the building for such purpose; and when any order of prohibition or closing order has been made, no owner or occupier of such building shall use the same or suffer the same to be used for human habitation until the causes for passing the order have been removed.[1] These are, however, restrictive measures rather than positive, and are not useful for tackling properly any big slum area. It is doubtful if under the existing laws the Municipal Committees in India have any power to frame any slum clearance scheme and incur expenditure on acquiring these areas and the insanitary buildings standing thereon and proceed to re-develop such areas.

Section 188 (4) of the Housing Act, 1936, explains the consideration to be applied when deciding whether a house is fit for human habitation, and is as follows:—

"In determining for the purposes of this Act whether a house is fit for human habitation, regard shall be had to the

1. Section 378, City of Bombay Municipal Act, 1888; Sections 381, 382, Calcutta Municipal Act, 1923, Sections 270, 272-7, City of Madras Municipal Act, 1919; Section 279, City of Lahore Corporation Act, 1941; S. 116 Punjab Municipal Act, 1911; S. 278, U. P. Municipalities Act, 1916; S. 122, C.P. Municipalities Act, 1916, etc., etc.

extent, if any, to which by reason of disrepair or sanitary defects the house falls short of the provisions of any bye-laws in operation in the district or of any enactment in any local Act in operation in the district dealing with the construction and drainage of new buildings and the laying out and construction of new streets or of the general standard of housing accommodation for working classes in the district".

No attempt seems to have been made in this country under the Municipal Acts or otherwise to lay down regulations for determining the fitness of buildings for human habitation, though it is very necessary to do so. If the necessity of slum clearance in our cities and towns is recognized, the earlier the Municipal Acts are amended so as to make provision for adequate measures for the same, the better.

It must be remembered that no scheme of slum-clearance or abatement of overcrowding can be successful until proper arrangements are made for the re-housing of the population dishoused as the result of the execution of such a scheme. Section 45 of the Housing Act, 1936, specifically prescribes that a local authority who have passed a resolution declaring any area to be a clearance area or an improvement area, shall, before taking any action under that resolution which will necessitate the displacement of any persons of the working classes, undertake to carry out or to secure the carrying out of such re-housing operations, if any, within such period as the Minister may consider to be reasonably necessary. It further prescribes that, in so far as suitable accommodation is not available for persons who will be displaced from working-class houses in the carrying out of re-development in accordance with a re-development plan, it shall be the duty of the local authority to provide, or to secure the provision of such accommodation in advance of the displacements from time to time becoming necessary as the re-development preceeds'. There is no such statutory obligation on the Trusts or the Municipal authorities in India, and in the absence of it the slum-dwellers it dishoused will go to live in other congested localities and create more slums. The local authorities in India also should

be under obligation to make housing arrangements for this class of population, and unless this is done no programme of slum-clearance will be successful. This, of course, involves, as we shall presently see, necessary funds and the sources of providing that should be explored.

116. The housing problem.

Generally, there are two different aspects of the housing problem in our cities and towns: (1) shortage of housing: (2) the unsatisfactory character of existing housing accommodation as regards hygiene and public health.

The outstanding feature of a housing shortage is that the number of dwellings available is definitely less than the number of families wanting them. The dearth of dwellings is obviously due to the inelasticity of the demand. If supply is less than demand, some families have to share a dwelling with another family, or to find what accommodation they can in furnished rooms, in premises not intended for habitation, in tin-sheds and other temporary structures put up on vacant lands. The other aspect of the problem relates to the quality and utilisation of existing dwellings. It is determined by the acceptance of certain minimum standards regarding internal and external equipment, sanitary arrangements, density of occupation, etc., for healthy living. Naturally, the greater the shortage, the more overcrowding will there be and the more defective dwellings will have to be used. But, even if the demand for housing as it manifests itself in the market is completely satisfied, serious overcrowding and insanitary conditions may still prevail. Both these aspects of the problem are therefore required to be considered separately. It is to be observed that minimum standards of housing are insisted upon as it seems impossible to solve the housing problem merely by the operation of supply and demand, partly because the income of a great many families is inadequate to enable them to obtain housing with the minimum conditions of health, and comfort, and partly because many families fail to appreciate the importance of these conditions and consequently make no effort to obtain

suitable housing even when they can afford to pay the rent for it.[1]

In India ownership of a house gives the owner a status to which great value is attached in society. Home owning is therefore an essential characteristic of Indian life and this should be encouraged and facilitated as far as possible. When people own the houses in which they live, they are likely to put a relatively larger amount of their income into housing than when they rent; consequently the standard they adopt will be much higher than in the case of rented dwellings, and such houses will certainly lead to better living conditions. But it cannot be imagined that every dwelling house in a city or a town will be owned by its occupier. Every family cannot afford to have their own house, and many families and persons have to live in a city or a town not as permanent residents but only for some time in connection with their trade, profession or calling. A builder landlord must, therefore, come into the picture.

The object of investment is twofold :—

(1) to obtain interest on the capital invested,

(2) to provide security for that capital.

The rate of interest will be the one which can usually be obtained from capital which is invested in property for which rent is paid. In this respect building is a security like any other security such as a Government Promissory Note, a Bank share, or a share in some commercial undertaking. Securities differ according to the degree of certainty with which the money invested in them will be returned. That is to say, some are safer than others. Obviously a person investing money will expect a higher rate of interest from an investment which is not safe. The safest and most certain securities are those which are guaranteed by the respective Governments. These are regarded as first class securities.

1. See 'Urban and Rural Housing', League of Nations Report, pp. (vi) and (vii).

The purchase of property is a fairly safe form of investment though not so safe, as the purchase of Government securities. One will, therefore, expect a higher return on investment in property, than that from Government securities. The second item is an annuity or an annual sinking fund or amortisation which invested, say in Government securities, will amount to the cost of building (not of the site) during the period of the life of the building.

Rent as related to the cost of building may be represented by the following formula :—

$$Y = x(lz' + mz'' + nz''')(1 - k) + k$$

Where Y represents the gross rental of the building, x the rate of interest and amortisation applicable to the total capital invested, z' the price of the land, z'' labour costs, z''' the cost of materials (all these quantities being expressed as functions of certain initial values); l, m, and n are the proportions of the original cost of the building represented respectively by the price of the land and the costs of labour and materials; $l+m+n$ being equal to unity; and k is the expenditure on upkeep and management (excluding interest and amortisation), which is assumed to be constant and is expressed as a fraction of the initial gross rental.[1]

To keep the rental of the building as low as possible it is thus obvious that the figures x, z', z'' and z''' should be the minimum. Certain important factors in the cost of construction — in particular, the cost of labour — are very rigid and hardly any reducation may be possible in them. It may be possible to reduce cost of materials introducing into building industry mass production, standardisation, the assembling of standardised parts by experts, and the like, but still much requires to be done in this country before anything substantial can be achieved in this direction. This leaves us with the two remaining factors, namely, cost of land and rate of interest and amortisation of capital invested in house property.

1. See 'Urban & Rural Housing'; League of Nations Report, 1939, Page xiv.

The importace of land for housing is recognised in every country. Money to build with, land to build on. These are the two main neeeds and much of the success of the housing efforts in some of the European countries is due to the existence of suitable inexpensive urban land on which the new estates could be built. If the value of land is high all-in-cost of the building also will be comparatively high ; the gross-rental will then go up and to recover that it will mean either higher rents from the tenants or more tenants for the same accommodation, leading to overcrowding and insanitary conditions. For proper housing condition it is therefore absolutely essential that suitable building-lands at reasonable rates within the reach of all should be available. It is possible only if speculation in urban land is reduced to the minimum and the Town Improvement Trusts and the Municipalities are empowered themselves to own land, and use it to the public advantage. Improvements in transport will enable the local authorities to open up new areas for residential purposes and by proper planning and co-ordinating in a rational way, residental areas, industrial and commercial centres, communications and transport, and public services, it should not be difficult for them, given the necessary powers in the case of municipal authorities, to provide sufficient building land at reasonably low rates.

The most important factor, however, towards reducing the gross rental is the rate of interest and amortisation of the capital invested. In view of the importance of this factor, efforts have for a long time been made in many courtries to improve the organisation of real-estate credit. The yield required of capital invested in house property depends on the conditions prevailing in the capital market, and private building activity will naturally be governed by that. It will generally be fairly high. The crux of the problem is to make available money for building at as low a rate of interest as possible. In most of the European countries, a considerable proportion of mortgage credit consists of loans made by private agreements between individuals. Furthermore, as the first mortgages on urban properties are generally very safe investments, they

are in great demand among certain financial organisations for which safety is of primary importance — *e. g.* savings banks, pensions funds, insurance societies, etc. In every country, there are also private organisations which have specialised in this kind of operation. Their organisation differs considerably from one country to another; they are some times of a semi-public character. The following are some of the important classes :—

1. *Private mortgage banks*, generally founded in the form of limited liability companies and guided essentially by private business considerations. They obtain capital by issuing bonds and accepting deposits and are found especially in the Netherlands and Belgium. The Canadian loan corporations are similar organisations.

2. *The Crédit foncier de France*, which, in view of the privileges granted to it by the State and the close supervision which the State exercises over its activities, must be considered a semi-public organisation. Funds are obtained by the issue of bonds and to some extent by the acceptance of deposits made by the public. To cover its administrative cost, the Crédit foncier is authorised to charge a fixed rate of commission on loans.

3. *The co-operative mortgage societies* which have developed in the Scandinavian countries and Finland. They consist of associations of owner-borrowers; their operations are supervised by the State, which partly guarantees them. Funds are obtained by the sale of bonds, guaranteed not only by mortgages held by the associations, but also, in varying degree, by the joint responsibility of the members. The societies do not operate for profit; the borrowers only pay a contribution for the cost of administration, in addition to the interest paid to the bondholders.

4. *Building societies*, in the United Kingdom, to which are closely akin the *savings and loan associations* of the United States of America. Their object is to promote saving and the building or acquisition of small houses by the

members. The funds are derived from members' shares and deposits by the members or the public. The rapid disencumbrance of the mortgaged properties by the repayment of the loans is one of the essential principles of these organisations. The rates of interest are fixed on a commercial basis.[1]

State intervention in the organisation of real-estate credit.

In some countries, the State has intervened to set up an organisation capable of "mobilising" mortgage loans and regularising the rate of interest on such loans. The Crédit foncier de France, already referred to, was founded with this object in the middle of the last century, and has since served as a model for a large number of private mortgage banks in various countries. In Sweden and Finland, the State has collaborated in the creation of semi-public institutions issuing mortgage bonds ; for the organisation of these institutions, the co-operative principles have been adopted which have already been applied for a long time in Denmark with excellent results.

Owing to the guarantees with which they are provided, the bonds issued by the above institutions are first-class investments. By means of judicious issue operations, it is usually possible to obtain funds in the best possible circumstances, having regard to the conditions prevailing on the financial market, and to fix a rate of interest for mortgage loans which only slightly exceeds the actual yield of State bonds.

In the United States, the home mortgage market has recently been organised on somewhat different lines. The Federal Government has contributed towards the creation of a national reserve fund administered by the Federal Home Loan Bank System, from which the various private institutions supplying home mortgage loans, while continuing their activities on the same basis as before, will be able to obtain supplementary short or long-term advances. The fund is supplied by the issue of debentures. On the other hand, certain types of long-term mortgages are insured by the Federal

1. See 'Urban & Rural Housing' ; League of Nations Report, 1939, p. xxi.

Housing Administration and efforts are made to create a market for insured mortgages by means of national mortgage societies, which will buy such assets and, in order to raise funds, may issue their own debentures[1].

While the building societies in the United Kingdom generally have been granting first-mortgage loans on the value of the property, up to 75% (or even 90% under the "builders' pool" system), the private or semi-public organisations of other countries usually grant only 40%, 50% or 60% on a first mortgage. But the assessed value often amounts to only 80% or 90% of the actual cost of new buildings, so that first-mortgage loans cover less than half the cost. As builders and purchasers of dwelling-houses may not possess the additional capital, they may seek for a second, or even a third, mortgage. In many countries, it is very difficult to obtain such loans. Usually, they can only be obtained subject to an additional guarantee signed by one or more persons, and the rates of interest are very high. In several countries, private builders obtain loans from landowners, future tenants, architects, dealers in building materials and even workers, so as to increase the funds at their disposal[2].

In some countries, the State has intervened to increase the proportion of the marketable value of property on which the mortgage institutions normally grant loans. This is the case in the United States, where, for the past few years, the insurance system applied by the Federal Housing Administration enables loans to be guaranteed equivalent to 80% and even 90% of the value of the property. In Sweden, the State has collaborated in setting up a special institution on a co-operative basis for the granting of second-mortgage loans covering the amount between 50% and 75% of the value of the property[3].

1. See 'Urban and Rural Housing', League of Nations Report, 1939, pp. (xxii) and (xxiii).
2. Ibid, p. (xxiii).
3. Ibid.

In order to promote the building of workers' and middle-class dwellings the public authorities have often guaranteed second-mortgage loans. In every country, this is one of the commonest ways in which the municipalities participate in housing policy. Such a guarantee sometimes covers additional credits as well, so that the cost price of the new property may be secured up to 90% by the mortgage loans. The municipal guarantee often enables a considerable reduction of the interest payable by the building company to be made. Furthermore, second — or third — mortgage loans are sometimes granted by the State and the municipalities to the building organisations[1].

Credit facilities in India.

In India the system of real-estate credit on the lines of European countries referred to above is yet in infancy, or we may even say, has not yet started. About four or five building societies have been no doubt formed during the last few years in the form of limited companies but they have not yet started functioning and it is not possible at this stage to state how far their operations will go towards easing the housing problem in India. Their success will no doubt largely depend on how far they are able to reduce the cost of building by means of standardization of building materials and its production on mass scale, and on what is the maximum period of credit they are going to allow and at what rate. Obviously, it will not be possible for these societies to go very far in allowing long term for credit at the cheapest rates possible of interest unless they can raise capital by floating debentures guaranteed by Government, and this again will not be possible unless there is special legislation to that effect. A Building Societies Act on the lines of the English Acts but suitable for conditions in India is suggested.

Co-operative Building Societies in India.

We are, however, familiar with Co-operative Building Societies in this country, though their field of activity has been very limited so far. These societies have been formed under the Co-operative Societies Act, 1912. The

1. 'Urban and Rural Housing', page (xxiv).

pioneer in this movement was Rao Bahadur Talmaki and the first Co-operative Housing Society in India was the Sarasvat Co-operative Housing Society of Bombay which was registered in March 1915. The Society situated in the heart of Bombay city and perhaps still working most successfully as a model society, was initiated by Rao Bahadur Talmaki for members of his own community. It works on the pure co-partnership tenancy system. Inspite, however, of the success of this pioneer society, it took several years before others could be started. The movement has been gaining strength gradually in this province as well as in other provinces in India, and a more recent instance of successful building on co-operative lines is that of Model Town near Lahore.

Co-operative societies to facilitate housing may be of three types. There is first of all a type of society where the members are builders and build houses as producers with a view to their sale in the open market. All Building Societies in England are a type of this class of society. Such societies of course are primarily concerned only with the interest of their members, the builders. Indirectly, however, they may be of benefit to the consumers, as all co-operative producers' societies are, by the fact that they deal directly with the consumer, that they carry out their work inspired by better ideals than the capitalist builder and that as a society they guarantee the quality of their work.

From the point of view of the consumer, housing society may belong to one of two remaining types. There is the society which lends money to its members specifically in order that they may build houses. In principle it makes no difference whether this money is lent to the member in cash and he is left to make his own arrangement for the building or whether it is spent on behalf of the consumer in building a house and the house is then handed over to him when it is ready. It is in reality a credit society distinguished only from other credit societies by the objects for which it lends, the duration of the loan, and the security it demands. In England the majority of co-operative societies for housing belong to this

type. The other type of housing society is that in which the property continues to belong to the society, and the member obtains only the occupancy under limitations which preclude him from making a profit by its sale or transfer and which enforce the solidarity of his interests with those of the society as a whole. Within this type there are sub-classes according as the principles are more or less strictly enforced upon its members. The purest type of this society is that which is known as the co-partnership-tenancy society. According to the plan on which these societies are formed in India, adopted as a judicious mingling of the principles followed by most of English societies and by the French society "La Securite" in Paris, the property in the whole estate remains absolutely with the society as a whole. The member contributes in the first instance by shares and then pays rent so calculated as to cover not only the economic rent of his tenement or house but also amortisation or sinking fund payment which at the end of 25 years or 40 years, as the case may be, repays the whole value of the building. At the end of that period, therefore, he is credited with further shares in the society equivalent to the value that he has paid up and it is anticipated that the normal interest on these shares should be equal to the economic rent which he has to pay. He will therefore at the end of that period be in the position of occupying the building free of rent or nearly so as a tenant of the society of which he is himself a member and therefore a controlling authority. This is a type of society which most fully calls forth co-operative feeling, unselfishness, brotherhood and idealis m.

In another type the tenant member holds his tenement from the society as a lease-holder, and the lease contains strict conditions against sub-letting, transfer or other forms of profiteering. The lease-holder is at liberty either to pay the full cost of the house on occupation, in which case he has only a nominal rent to pay qua lease-holder, or he may pay for the value of the house by instalments as the co-partnership tenant does until at the end of 25 or 40 years he has extinguished the cost and obtains a lease of a nominal rent.

Co-operative Housing movement has a great future in India and deserves encouragement and stimulation in every respect. The ownership of his dwelling-place by an individual is a step, and an important step, towards his economic freedom. The house-owner takes a justifiable pride in his property, and is ever conscious of the fact that all he spends in money and labour thereon serves but to bind him more closely to the home of his choice. Home-ownership is a civic and national asset. The sense of citizenship is more keenly felt and appreciated, and personal independence opens up many an avenue of wider responsibility and usefulness. And apart from material benefits, there are ethical and moral benefits as well. The man who has something to protect and improve — a stake of some sort — naturally turns his thoughts in the direction of sane, ordered and perforce economical, view of life. In the words of one of the Prime Ministers of England "if anything can afford the means of personal growth, it is the ownership of the home, however small, but one's own". Home-ownership through Co-operative Housing Societies should therefore be encouraged as "it leads to citizenship in the true sense of that word". To achieve this end it is suggested that each province should have a central body like a Provincial Co-operative Bank and it should raise money by floating debentures guaranteed by Government for a sufficiently long-term credit. This central body should then advance money to primary co-operative housing societies which should be organised for this purpose and the primary societies should then cater for their members. The same result can be achieved, though on different lines, by allowing the Town Improvement Trusts to raise loans by floating debentures guaranteed by Government, or by Government advancing loans to the Trusts at as low a rate of interest as possible, and then the Trusts building houses on lands developed by them and giving them to persons on easy lease-purchase terms spread over a fairly long period and at as low a rate of interest as possible, with necessary safeguards so as to eliminate least element of speculation and profiteering. The local authorities also may perhaps be invested with similar powers by special legislation in due course of time. It is hoped that this subject

will receive due consideration in any scheme of post-war planning in this country.

Subsidy for housing poor class families.

The most difficult problem in every country in Europe has been to arrange for proper houses for families with low incomes and who cannot therefore afford to pay economic rents, much less to purchase the houses. In India also the most difficult part of the problem is to house properly poor class families, and unless this is solved, slums cannot be cleared and overcrowding will persist. And the number of such families in each city is quite large. What then is the solution?

A reference has already been made to the subsidies out of Government Exchequer and rates for working-class dwellings in England required for persons displaced as the result of slum clearance and development schemes and for abatement of overcrowding. The effect of these subsidies is that the economic rent of a dwelling house (inclusive of rates) is reduced to about half, and this an average working-class family can well afford to pay. It is not possible within the scope of this book to describe the various measures adopted in England and other countries in Europe for providing suitable accommodation for families with low incomes at rents which they can afford to pay, and the part played by the municipal authorities in this activity. This I leave for a separate treatment. In India, perhaps the only-State subsidised scheme for housing poor-class families is the one undertaken by the Delhi Improvement Trust. This scheme provides for re-housing families with incomes below Rs. 30 p.m. each dishoused as the result of the improvement schemes of the Trust, under the U. P. Town Improvement Act, 1919, as extended to Delhi. Suitable houses have been built by the Trust for such families out of loans taken from Government to be repaid in 20 years and these have been made available to the families concerned either on lease-purchase instalments spread over 20 years or on monthly tenancy at fixed rates which an average family can well afford to pay and which is normally not more than what each family was paying before displacement. The difference between the economic rent or lease-purchase instal-

ment and the actual amount paid by the family is subsidised by Government out of the Entertainment Tax levied in Delhi. So far about 525 houses have been constructed by the Trust under this scheme and it is hoped that as soon as building material is readily available the Trust will go ahead with building more houses. Let us hope that in near future there will be founded in each city a Housing Fund for this purpose, administered by a Trust constituted under one of the Town Improvement Trust Acts in force or by the local municipal authority, from contributions by Governemt, the municipal authority and other vested interests, like factory-owners, railway companies, etc. It is to be observed that in the absence of any compulsory provision in the Factories Act enjoining upon the factory-owners to make arrangements for housing their labour, most of their labourers live in inhabited parts of the cities and are thus responsible to a large extent for creating insanitary and unhygienic conditions and overcrowding, and there is no reason why such interests should not be made responsible, by necessary legislation, for making arrangements for housing the labour engaged by them.

117. State interference with the use of private property and compensation.

In its widest signification, to use the language of Austin, "ownership" means a right over a determinate thing indefinite in point of time, unrestricted in point of disposition and unlimited in point of duration. The component rights of ownership thus fall under three heads-possession, enjoyment and disposition. In actual life, however, we do not always find the rights of ownership uncontrolled under all the three heads. The ownership of land, as accepted today, involves duties to the community as well as rights in the individual owner. It may involve complete surrender of the land to the State or it may involve submission to a limitation of rights of users of the land without surrender of ownership or possession being required. There is a difference in principle between these two types of public interference with the rights of private ownership. Where property is taken over, the intention

is to use those rights, and the common law of England as well as the statutory law in India does not recognise any right of requisitioning property by the State without liability to pay compensation to the individual for the loss of his property. In the second type of case, where the regulatory power of the State limits the use which an owner may make of his property, but does not deprive him of ownership, whatever rights he may lose are not taken over by the State; they are destroyed on the ground that their existence is contrary to the national interest or the interest of the community at large. In such circumstances no claim for compensation lies at common law. Cases exist where this common law principle is modified by statute and provision is made for payment of compensation. The justification is usually that without this modification real hardship would be suffered by the individual whose rights are effected by the restrictions but there is no right to compensation unless that right is either expressly or impliedly conferred by statute[1].

In England as well as in India owners of property have been compelled for the last many years, without compensation, to comply with certain requirements regarding their property such as, for example, maintaining or improving its sanitary equipment, observing certain standards of construction, providing adequate air space along buildings and streets of sufficient width, and using certain lands for particular purpose only or not using certain lands for certain purposes. The underlying reason for such provisions is, obviously, that compliance with certain requirements is essential to the interest of the community and that accordingly the private owner should be compelled to comply with them even at cost himself. All the restrictions, whether carrying a right to compensation or not, are imposed in the public interest, and the essence of the compensation problem as regards the imposition of restrictions appears to be this : at what point does the public interest become such that a private individual ought to be called on to comply, at his own cost, with a

1. See para, 32, Uthwatt Committee's Report, 1942 (Cmd. 6386).

restriction or requirement required to secure that public interest? The history of interference with rights of owners of property is thus in a way the history of the imposition of obligations without compensation. Even the principle underlying the appropriation by State of private property rests upon the famous maxim *salus populi est suprema lex* which means that the welfare of the people or the public is the paramount law.

Likewise, there arises the question how far public activities of the State or any local authority benefit the private owners and whether they should be called upon to contribute anything to the State or to the local authority concerned in consideration of the benefits that they derive. The subject of the payment of compensation and recovery of betterment in respect of the public control of the use of land is thus of considerable importance. In England the Uthwatt Committee was appointed in January 1941 "to make an objective analysis on the subject of the payment of compensation and recovery of betterment in respect of public control of the use of land" and "to advise..... what steps should be taken ..... to prevent the work of restriction ..... being prejudiced". The Committee issued an Interim Report in April 1941 (Cmd. 6291) and a final report in August 1941 (Cmd. 6386). This Final Report contains a great many detailed recommendations for amending the existing law relating to the assessment of compensation and contains masterly analysis of the abstruse problems lying at the root of any effective system of town and country planning. The Report is under consideration of the authorities concerned and a report on it presented to Parliament by the Minister of Town and Country Planning is contained in Cmd. 6537. It is anticipated that in India also this subject will come up for detailed examination in all its aspects before the Health Survey and Development Committee recently appointed by the Government of India for Post-War Planning, and something on the lines of the Uthwatt Committee Report will be produced in this country also for consideration of the Government.

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THE CALCUTTA IMPROVEMENT ACT, 1911

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THE CALCUTTA IMPROVEMENT ACT, 1911.

(BENGAL ACT V OF 1911).[1]

As modified up to date.

(*20th September, 1911*).

An Act to provide for the improvement and expansion of Calcutta.

WHEREAS it is expedient to make provision for the improvement and expansion of Calcutta by opening up congested areas, laying out or altering streets, providing open spaces for purposes of ventilation or recreation, demolishing or constructing buildings, acquiring land for the said purposes and for the re-housing of persons of the poorer and working classes displaced by the execution of improvement schemes and otherwise as hereinafter appearing;

AND WHEREAS it is expedient that a Board of Trustees should be constituted and invested with special powers for carrying out the objects of this Act;

AND WHEREAS the sanction of the Governor General has been obtained, under section 5 of the Indian Councils Act, 1892, to the provisions of this Act, which affect Acts passed by the Governor General of India in Council;

AND WHEREAS the sanction of the Governor General has also been obtained, under section 43 of the Indian Councils Act, 1861, to the enactment of the provisions of Chapter V of this Act, relating to taxation;

It is hereby enacted as follows:—

CHAPTER I.

PRELIMINARY.

Short title, commencement and extent.

1. (*1*) This Act may be called the Calcutta Improvement Act, 1911.

(*2*) It shall come into force on such day[1] as the Provincial Government may, by notification, direct.

[1]LOCAL EXTENT.—This Act (except sections 82 to 86) extends only to the Calcutta Municipality—*see* s. 1 (*3*).

Section 82 originally extended throughout Bengal as constituted in the year 1911, *i.e.*, to (*1*) the present Presidency of Fort William in Bengal except Eastern Bengal, and (2) the Province of Bihar and Orissa.

(3) Except as otherwise hereinafter provided, this Act shall extend only to the Calcutta Municipality; but any provision which extends only to the Calcutta Municipality may be extended by the Provincial Government, entirely or in part, by notification,[2] under the procedure prescribed by section 148, to any specified area in the neighbourhood of that Municipality.

Definitions.

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

[3][(*1a*) " betterment fee " means the fee prescribed by section 78A in respect of an increase in value of land resulting from the execution of an improvement scheme;]

(*a*) " the Board " means the Board of Trustees for the Improvement of Calcutta, constituted under this Act;

[4][(*aa*) "building line" means a line (in rear of the street alignment) up to which the main wall of a building abutting on a projected public street may lawfully extend;]

(*b*) " the Calcutta Municipality " means " Calcutta " as defined in clause (7) of section 3 of the Calcutta Municipal Act, 1899;

(*c*) " Chairman " means the Chairman of the Board;

(*d*) " the Corporation " means the Corporation of Calcutta constituted under the said Calcutta Municipal Act, 1899[5];

(*e*) " the General Committee " means the General Committee constituted under the said Calcutta Municipal Act, 1899[6];

(*f*) " improvement scheme " means a general improvement scheme or a street scheme, or both, [7] but does not include a projected public street referred to in section 63];

(*g*) " land " has the same meaning as in clause (*a*) of section 3 of the Land Acquisition Act, 1894;

This section has since been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), s. 3, Sch. I.

Section 83 extends to—(*1*) railway stations in the Calcutta and Howrah Municipalities, and (2) certain landing-places in the Port of Calcutta;

Section 84 extends to the Port of Calcutta;

Section 85 extends to Calcutta;

Section 86 has the same local extent as sections 82, 83 and 84. So far as it effects s. 82, it has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), s. 3, Sch. I.

Several sections of the Act (*e.g.*, ss. 40 to 52, 54 to 56, 63, 66, 149, 163, 167, 168,) contemplate that operations of the Board of Trustees constituted under it may be carried on in areas beyond the Calcutta Municipality, and section 1 (*3*) gives power to extend provisions of the Act to such areas.

[1]*i.e.*, the 2nd January, 1912, *see* notification No. 1148, dated the 30th October, 1911.

[2]For notifications issued under section 1 (*3*), *see* the Bengal Local Statutory Rules and Orders, 1924, Vol. I, Part VI, pages 1319-1320.

[3]Clause (*1a*) was inserted by the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931), s. 2.

[4]Clause (*aa*) was inserted by the Calcutta Improvement (Amend- Act, 1915 (Ben. Act III of 1915), s. 2 (*a*).

(*h*) " municipal assessment-book " means the assessment-book kept under section 164 of the Calcutta Municipal Act, 1899[4], or the valuation and rating list prepared under section 103 of the Bengal Municipal Act, 1884[1];

(*i*) " notification " means a notification published in the *Calcutta Gazette*:

(*k*) " Secretary to the Board " means the person for the time being appointed by the Board to discharge the functions of Secretary to the Board;

(*l*) the " Tribunal " means the Tribunal constituted under section 72;

(*m*) " Trustee " means a Member of the Board; and

(*n*) the expressions[2] * * * " drain ", " public street " and "street alignment" have the same meaning as in clauses[2] * (*16*), (*37*) and (*47*), respectively, of section 3 of the Calcutta Municipal Act, 1899[5].

CHAPTER II.

THE BOARD OF TRUSTEES.

Creation and incorporation of Board.

3. The duty of carrying out the provisions of this Act shall, subject to the conditions and limitations hereinafter contained, be vested in a Board, to be called, "The Trustees for the Improvement of Calcutta", and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

Constitution of the Board.

4. The Board shall consist of eleven Trustees, namely,—

(*a*) a Chairman,

(*b*) the Chairman of the Corporation,

(*c*) three other members of the Corporation,

(*d*) a member of the Bengal Chamber of Commerce,

(*e*) a member of the Bengal National Chamber of Commerce, and

Appointment of Trustees.

(*f*) four other persons.

5. The Chairman and the four persons referred to in clause (*f*) of section 4 shall be appointed by the Provincial Government by notification.

[5]Repealed and re-enacted by the Calcutta Municipal Act, 1923 (Ben. Act, III of 1923) and these references should now be construed as references to that Act.

[6]*See* section 557B of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923), as added by the Calcutta Municipal Amendment Act, 1926 (Ben. Act V of 1926).

[7]These words enclosed in square brackets were added by the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915), s. 2 (*b*).

[1]Repealed and re-enacted by the Bengal Municipal Act, 1932 (Ben. Act XV of 1932) and these references should now be construed as references to that Act.

[2]The words " building line," and the figure and brackets " (*3*)," were repealed by the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915), s. 2 (*c*).

Ex- Officio Trustee

6. The Chairman of the Corporation[1] shall be a Trustee *ex-officio*.

Election of other Trustees.

7. (*1*) The three members of the Corporation referred to in clause (*c*) of section 4 shall be elected as follows, namely,—

(*a*) one by the Corporation,

[2][(*b*) one by the Councillors elected by the constituencies other than the special constituencies, and

(*c*) one jointly by the Councillors appointed under clause (*b*) of section 5 of the Calcutta Municipal Act, 1923, and the Councillors elected by the special constituencies].

(*2*) The member of the Bengal Chamber of Commerce referred to in clause (*d*) of section 4 shall be elected by that Chamber.

(3) The member of the Bengal National Chamber of Commerce referred to in clause (e) of section 4 shall be elected by that Chamber.

(4) The Secretary to the Corporation, the Secretary to the Bengal Chamber of Commerce and the Secretary to the Bengal National Chamber of Commerce shall respectively make a return, in duplicate, to the Chairman, setting forth the name in full of every person elected under this section; and the said return shall be published by notification under the signature of the Chairman.

Appointment in default of election.

8. If any of the bodies of electors referred to in section 7 does not, by such date as may be prescribed by rule made in that behalf under section 137, elect a person to be a Trustee, the Provincial Government shall, by notification, appoint a person belonging to such body to be a Trustee; and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by such body.

Disqualifications for being appointed or elected a Trustee

9. (*1*) A person shall be disqualified for being appointed or elected a Trustee if he—

(*a*) has been sentenced by any Court for any non-bailable offence [3], such sentence not having been subsequently reversed or quashed, and such person's disqualification on account of such sentence not having been removed by an order which the Provincial Government is hereby empowered to make, if it thinks fit, in this behalf; or

(*b*) is an undischarged insolvent [4]; or

(*c*) holds any office or place of profit under the Board; or

(*d*) has, directly or indirectly, by himself or by any partner, employee or employee, any share or interest in any contract or employment with, by, or on behalf of, the Board; or

(*e*) is a director, or a secretary, manager or other salaried officer, of any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of, the Board.

[1]Now the Chief Executive Officer—*See* s. 557 (1) (*a*) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

[2]These clauses in square brackets were substituted by the Calcutta Improvement (Amendment) Act, 1926 (Ben. Act II of 1926,) s. 2.

[3]For a definition of the term "non-bailable offence." See the Code of Criminal Procedure, 1898 (Act V of 1898), s. 4 (*b*).

[4]For discharge of an insolvent, *see* the Presidency-towns Insolvency Act, 1909 (III of 1909), Ss, 38 and 39, and the Provincial Insolvency Act, 1920 (V of 1920), Ss. 41 and 42, in the General Acts, Vols. IV and VI, respectively.

(2) But a person shall not be disqualified as aforesaid, or be deemed to have any share or interest in such contract or employment as aforesaid, by reason only of his having a share or interest in—

(*i*) any sale, purchase, lease, or exchange of land, or any *agreement* for the same ; or

(*ii*) any agreement for the loan of money, or any security for the payment of money only ; or

(*iii*) any newspaper in which any advertisement relating to the affairs of the Board is inserted ; or

(*iv*) the occasional sale to the Board, to a value not exceeding two thousand rupees in any one financial year, of any article in which he trades ;

or by reason only of his having a share or interest otherwise than as director, or secretary, manager or other salaried officer, in any incorporated company which has any share or interest in any contract or employment with, by, or on behalf of, the Board.

The Chairman to be a whole-time officer.

10. While any person is holding the office of Chairman he shall not hold any other salaried office, and, subject to any exceptions permitted by the Provincial Government, shall devote his whole time and attention to his duties under this Act.

Remuneration of Chairman.

11. (1) The Chairman shall receive such monthly salary not exceeding three thousand rupees, as may be fixed by the Provincial Government:

Provided that, if the Chairman, after having held his office for three years, is re-appointed for a further term of not less than two years, the Provincial Government may direct that his monthly salary be increased to any sum not exceeding three thousand five hundred rupees.

(2) The word "salary," as used in this section, excludes allowances to which the Chairman may be entitled and any contribution payable on his account under any general or special orders of the Government for regulating the transfer of Government servants to foreign service.

(3) The Provincial Government may, if it thinks fit, direct the payment to the Chairman of a house-rent and conveyance allowance, not exceeding five hundred rupees ***per mensem,*** in addition to his salary.

Leave of absence or deputation of the Chairman.

12. (1) The Provincial Government may, after consultation with the Board, grant leave of absence to the Chairman or depute him to other duties, for such period as it thinks fit.

(2) The allowance (if any) to be paid to the Chairman while absent on leave or deputation shall be such amount, not exceeding his salary, as may be fixed by the Provincial Government :

Provided that, if the Chairman is a servant of the Crown, the amount of such allowance shall be such as he may be entitled to under the conditions of his service under the Crown relating to transfer to foreign service.

Appointment, etc., of acting Chairman.

13. (1) Whenever the Chairman is granted leave of absence or deputed to other duties, the Provincial Government may appoint a person to act as Chairman.

(2) The salary and house-rent and conveyance allowance (if any) of any person appointed to act as Chairman shall be fixed by the Provincial Government, subject to the provisions of section 11.

(3) Any person appointed to act as Chairman shall exercise the powers and perform the duties conferred and imposed by and under this Act on the Chairman and shall be subject to the same liabilities, restrictions and conditions as the Chairman.

Leave of absence to other Trustees.

14. The Board may permit any Trustee, other than the Chairman or the Chairman of the Corporation[1] to absent himself from meetings of the Board for any period not exceeding six months.

Removal of Trustees.

15. (*1*) The Provincial Government may, by notification, declare that any Trustee shall cease to be a Trustee—

(*a*) if he has acted in contravention of section 23, or

(*b*) if he has been absent from, or is unable to attend, the meetings of the Board for any period exceeding six consecutive months, or

(*c*) if he has, without the permission of the Board, been absent from the meetings of the Board for any period exceeding three consecutive months, or

(*d*) if he is a salaried servant of the Government, and if his continuance in office as a Trustee is, in the opinion of the Provincial Government, undesirable.

(*2*) The Provincial Government shall, by notification, declare that a Trustee shall cease to be a Trustee—

(*i*) if he has become disqualified for appointment or election as a Trustee for any of the reasons mentioned in section 9; or

(*ii*) if he was elected or appointed as being a member of the Corporation, the Bengal Chamber of Commerce or the Bengal National Chamber of Commerce and if he is, at the date of such notification, no longer a member of the Corporation or such Chamber as the case may be.

(*3*) If at any time it appears to the Provincial Government that the Chairman has shown himself to be unsuitable for his office, or has been guilty of any misconduct or neglect which renders his removal expedient, it may, by notification, declare that the Chairman shall cease to hold office as such.

Filling of casual vacancies in certain cases.

16. If any Trustee be permitted by the Board to absent himself from meetings of the Board for any period exceeding three months,

or if any Trustee, other than the Chairman of the Corporation[1], dies, or resigns the office of Trustee, or ceases to hold the office of Trustee in pursuance of a notification published under section 15,

the vacancy shall be filled, within one month, by a fresh appointment or election under section 5, section 7 or section 8, as the case may be.

Term of Office of Trustees.

17. (*1*) The term of office of the first Trustees appointed or elected under section 5, section 7 or section 8, other than the Chairman, shall commence on such day as may be appointed by the Provincial Government.

(*2*) Subject to the provisions of section 15, the term of office of Trustees (other than the Chairman of the Corporation) shall be as follows:—

(*a*) the Chairman—such period, not less than three years, as may be fixed by the Provincial Government;

(*b*) a Trustee appointed or elected in pursuance of section 16 in the place of a Trustee who has been permitted to absent himself from meetings of the Board—the period of the absence of the latter Trustee;

(*c*) other Trustees—three years.

[1]Now the Chief Executive Officer — *See* section 557 (*1*) (*a*) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

(3) Any Trustee shall, if not disqualified for any of the reasons mentioned in section 9, be eligible for reappointment or re-election at the end of his term of office.

Conduct of Business.

Meetings of Board.

18. The Board shall meet, and shall from time to time make such arrangements with respect to the place, day, hour, notice, management and adjournment of their meetings, as they may think fit, subject to the following provisions, namely:—

(*a*) an ordinary meeting shall be held once at least in every month:

(*b*) the Chairman may, whenever he thinks fit, and shall, upon the written request of not less than two other Trustees, call a special meeting;

(*c*) the Chairman shall attend every meeting of the Board unless absent on leave or prevented by sickness or other reasonable cause;

(*d*) no business shall be transacted at any meeting unless at least half of the existing number of the Trustees are present from the beginning to the end of the meeting;

(*e*) the person to preside at a meeting shall be the Chairman, or, in his absence from any meeting, the Trustees present shall choose one of their number to preside;

(*f*) all questions shall be decided by a majority of votes of the Trustees present, the person presiding having a second or casting vote in all cases of equality of votes;

(*g*) if a poll be demanded, the names of the Trustees voting, and the nature of their votes, shall be recorded by the person presiding;

(*h*) minutes of the names of the Trustees present, and of the proceedings, at each meeting shall be kept in a book to be provided for the purpose, which shall be signed at the next ensuing meeting by the person presiding at such meeting and shall be open to inspection by any Trustee during office hours.

Temporary association of members with the Board for particular purposes.

19. (*1*) The Board may associate with themselves, in such manner and for such period as may be prescribed by rules made under section 138, any persons whose assistance or advice they may desire in carrying out any of the provisions of this Act.

(*2*) A person associated with themselves by the Board under sub-section (*1*) for any purpose shall have a right to take part in the discussions of the Board relative to that purpose, but shall not have a right to vote at a meeting of the Board, and shall not be a member of the Board for any other purpose.

Constitution and functions of Committees.

20. (*1*) The Board may from time to time appoint Committees, consisting of such persons of any of the following classes as they may think fit, namely:—

(*i*) Trustees,

(*ii*) persons associated with the Board under section 19,

(*iii*) other persons whose assistance or advice the Board may desire as members of Committee:

Provided that no Committee shall consist of less than three persons.

(*2*) The Board may—

(*a*) refer to such Committees, for inquiry and report, any matter relating to any of the purposes of this Act, and

(*b*) delegate to such Committees, by specific resolution, and subject to any rules made under section 138, any of the powers or duties of the Board.

(*3*) The Board may at any time dissolve, or, subject to the provisions of sub-section (*1*), alter the constitution of, any such Committee.

(*4*) Every such Committee shall conform to any instructions from time to time given to them by the Board.

(*5*) All proceedings of any such Committee shall be subject to confirmation by the Board.

Meetings of Committees.

21. (*1*) Committees appointed under section 20 may meet and adjourn as they think proper; but the Chairman may, whenever he thinks fit, call a special meeting of any Committee, and shall call a special meeting of any Committee upon the written request of not less than two members thereof.

(*2*) The person to preside at a meeting of a Committee shall be the Chairman if he is a member of the Committee, or, if he is not a member, then the members present shall choose one of their number to preside.

(*3*) No business shall be transacted at any meeting of a Committee unless at least half the number of the members of the Committee are present from the beginning to the end of the meeting.

(*4*) All questions at any meeting of a Committee shall be decided by a majority of votes of the members present, the person presiding having a second or casting vote in all cases of equality of votes.

Fees for attendance at meetings.

22. Every Trustee (other than the Chairman), and every person associated with the Board under section 19, shall be entitled to receive a fee of twenty rupees, and every member of a Committee shall be entitled to receive a fee of ten rupees, for each meeting of the Board or the Committee—

(*i*) at which a quorum is present and business is transacted, and

(*ii*) which he attends from the beginning to the end thereof, or for such period as the person presiding at the meeting may consider sufficient to justify the payment of the fee:

Provided that the aggregate amount of fees payable to any person in respect of meetings of any kind held during any month shall not exceed such sum as may be prescribed by any rule made under section 137 in this behalf.

Trustees and associated members of Board or Committee not to take part in proceedings in which they are personally interested.

23 (*1*) A Trustee who—

(*a*) has directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as is described in sub section (*2*) of section 9, in respect of any matter, or

(*b*) has acted professionally, in relation to any matter, on behalf of any person having therein any such share or interest as aforesaid,

shall not vote or take any other part in any proceeding of the Board or any Committee relating to such matter.

(*2*) If any Trustee, or any person associated with the Board under section 19, or any other member of a Committee appointed under this Act, has, directly or indirectly, any beneficial interest in any land situated in an area comprised in any improvement scheme framed under this Act, or in an area in which it is proposed to acquire land for any of the purposes of this Act,—

(*i*) he shall, before taking part in any proceeding at a meeting of the Board or any Committee relating to such area inform the person presiding at the meeting of the nature of such interest,

(*ii*) he shall not vote at any meeting of the Board or any Committee upon any resolution or question relating to such land, and

(*iii*) he shall not take any other part in any proceeding at a meeting of the Board or any Committee relating to such area if the person presiding at the meeting considers it inexpedient that he should do so

Power to make and perform contracts.

24. The Board may enter into and perform all such contracts as they may consider necessary or expedient for carrying out any of the purposes of this Act.

Execution of contracts and approval of estimates.

25. (*1*) Every such contract shall be made on behalf of the Board by the Chairman :

Provided that—

(*a*) a contract involving an expenditure exceeding one thousand rupees and not exceeding one lakh of rupees shall not be made by the Chairman without the previous sanction of the Board ; and

(*b*) a contract involving an expenditure exceeding one lakh of rupees shall not be made by the Chairman without the previous sanction of the Board and the Provincial Government.

(*2*) Every estimate for the expenditure of any sum for carrying out any of the purposes of this Act shall be subject to the approval of the authority who is empowered by sub-section (*1*) to make or sanction the making of a contract involving the expenditure of a like sum.

(*3*) Sub-sections (*1*) and (*2*) shall apply to every variation or abandonment of a contract or estimate, as well as to an original contract or estimate.

Further provision as to execution of contracts, and provision as to seal of Board.

26. (*1*) Every contract made by the Chairman on behalf of the Board shall be entered into in such manner and form as would bind the Chairman if such contract were made on his own behalf, except that the common seal of the Board shall be used (where necessary); and every such contract may in the like manner and form be varied or discharged.

(2) Every contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees shall be in writing, and shall be sealed.

(3) The common seal of the Board shall remain in the custody of the Secretary to the Board, and shall not be affixed to any contract or other instrument except in the presence of a Trustee (other than the Chairman,) who shall attach his signature to the contract or instrument in token that the same was sealed in his presence.

(4) The signature of the said Trustee shall be in addition to the signature of any witness to the execution of such contract or instrument.

(5) A contract not executed as provided in this section shall not be binding on the Board.

Tenders.

27. (*1*) At least seven days before the Chairman enters into any contract for the execution of any work or the supply of any materials or goods which will involve an expenditure exceeding one thousand rupees, he shall give notice by advertisement, in local newspapers inviting tenders for such contract.

(*2*) In every such case the Chairman shall place before the Board the specifications, conditions and estimates and all the tenders received, specifying the particular tender (if any) which he proposes to accept.

(*3*) In every case in which the acceptance of a tender would involve an expenditure exceeding one *lakh* of rupees, the Board shall submit to the Provincial Government the specifications, conditions and estimates.

and all the tenders received, specifying the particular tender (if any) the acceptance of which they proposed to sanction.

(4) Neither the Board nor the Provincial Government shall be bound to sanction the acceptance of any tender which has been made; but the Board, within the pecuniary limits of their powers as prescribed in section 25, sub-section (1), or the Provincial Government, may sanction the acceptance of any of such tenders which appears to them upon a view of all the circumstances, to be the most advantageous or may direct the rejection of all the tenders submitted to them.

Security for performance of contract.

28. The Chairman shall take sufficient security for the due performance of every contract involving an expenditure exceeding one thousand rupees.

Supply of documents and information to the Government

29. (1) The Chairman shall forward to the Provincial Government a copy of the minutes of the proceedings of each meeting of the Board, within ten days from the date on which the minutes of the proceedings of such meeting were signed as prescribed in section 18, clause (h).

(2) If the Provincial Government so directs in any case, the Chairman shall forward to it a copy of all papers which were laid before the Board for consideration at any meeting.

(3) The Provincial Government may require the Chairman to furnish it with—

(a) any return, statement, estimate, statistics or other information regarding any matter under the control of the Board, or

(b) a report on any such matter, or

(c) a copy of any document in the charge of the Chairman.

Officers and Servants.

Statement of strength and remuneration of staff.

30. The Board shall from time to time prepare, and shall maintain, a statement showing—

(a) the number, designations and grades of the officers and servants (other than employees who are paid by the day or whose pay is charged to temporary work) whom they consider it necessary and proper to employ for the purposes of this Act.

(b) the amount and nature of the salary, fees and allowances to be paid to each such officer and servant, and

(c) the contributions payable under section 146 in respect of each such officer and servant.

Board to make rules.

31. The Board shall from time to time make rules—

(a) fixing the amount and nature of the security to be furnished by any officer or servant of the Board from whom it may be deemed expedient to require security;

(b) for regulating the grant of leave of absence, leave-allowances and acting allowances to the officers and servants of the Board; and

(c) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Board (other than any servant of the Crown in respect of whom a contribution is paid under section 146) to contribute to such fund, at such rates and subject to such conditions as may be prescribed by such rules, and for supplementing such contributions out of the funds of the Board;

Provided that a servant of the Crown employed as an officer or servant of the Board shall not be entitled to leave or leave-allowances otherwise than as may be prescribed by the conditions of his service under the Crown relating to transfer to foreign service.

Power of appointment, etc., in whom vested.

32. Subject to any directions contained in any statement prepared under section 30 and any rules made under section 31, and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Board, and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct shall be vested—

(*a*) in the case of officers and servants whose monthly salary does not exceed three hundred rupees—in the Chairman, and

(*b*) in other cases—in the Board;

Provided that any officer or servant in receipt of a monthly salary exceeding one hundred rupees who is reduced, suspended or dismissed by the Chairman may appeal to the Board, whose decision shall be final.

Sanction of Provincial Government required to certain statements, rules and orders.

33. (*a*) All statements prepared under section 30, so far as they relate to officers carrying a salary of more than one thousand rupees *per mensem*.

(*b*) all rules under clause (*b*) or clause (*c*) of section 31, and

(*c*) all orders passed by the Board under section 32, and relating to any officer appointed to hold an office carrying a salary of more than one thousand rupees *per mensem*, except orders granting leave to, or suspending, any such officer,

shall be subject to the previous sanction of the Provincial Government.

Control by Chairman.

34. The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the Board; and, subject to the foregoing sections, shall dispose of all questions relating to the service of the said officers and servants, and their pay, privileges and allowances.

Delegation of certain of Chairman's functions.

35. (*1*) The Chairman may, by general or special order in writing, delegate to any officer of the Board any of the Chairman's powers, duties or functions under this Act or any rule made hereunder, except those conferred or imposed upon or vested in him by sections 18, 21, 29, 55, 108, 112, 116, 118, 154 and 158:

Provided as follows:—

(*a*) the Chairman shall not delegate his power under section 25 to make on behalf of the Board any contract involving an expenditure exceeding one thousand rupees;

(*b*) the Chairman shall not delegate his power under section 32 to make appointments to offices carrying a salary of more than one hundred rupees *per mensem*;

(*c*) the Chairman shall not delegate to any officer his power under section 32 to grant leave to, or to reduce, suspend, dismiss, or dispense with the services of, any employee, unless such employee was appointed by such officer by virtue of a delegation of the Chairman's powers of appointment conferred by that section.

(2) The exercise or discharge by any officer of any powers, duties or functions delegated to him under sub-section (*1*) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman.

CHAPTER III.

IMPROVEMENT SCHEMES AND RE-HOUSING SCHEMES.

When general improvement scheme may be framed.

36. Whenever it appears to the Board, whether upon an official representation made under section 37 or without such a representation,—

(*a*) that any buildings in any area which are used, or are

intended or are likely to be used as dwelling-places, are unfit for human habitation, or

(*b*) that danger to the health of the inhabitants of buildings in any area, or in any neighbouring buildings, is caused by—

(*i*) the narrowness, closeness and bad arrangement and condition of streets or buildings or groups of buildings in such area, or

(*ii*) the want of light, air, ventilation or proper conveniences in such area, or

(*iii*) any other sanitary defects in such area,

and that the most satisfactory method of dealing with the evils connected with such buildings and the sanitary defects in such area is a general improvement scheme for the re-arrangement and re-construction of the streets and buildings, or some of them, within such area,

the Board may pass a resolution to the effect that such area is an unhealthy area, and the general improvement scheme ought to be framed in respect of such area.

and may then proceed to frame such a scheme.

Authority for making an official representation for a general improvement scheme.

37. (1) An official representation referred to in section 36 may be made by the Corporation—

(a) of their own motion ; or

(b) on a written complaint by the Health Officer of the Corporation ; or

(c) in respect of any area comprised in a municipal ward,— on a written complaint signed by twenty-five or more residents of such ward who are liable to pay either the owner's share or the occupier's share of the consolidated rate leviable under the Calcutta Municipal Act, 1899.

(2) If the Corporation decide not to make an official representation on any complaint made to them under clause (b) or clause (c), they shall cause a copy of such complaint to be sent to the Board, with a statement of the reasons for their decision.

Consideration of official representations.

38. (1) The Board shall consider every official representation made under section 37, and if satisfied as to the truth thereof and to the sufficiency of their resources, shall decide whether a general improvement scheme to carry such representation into effect should be framed forthwith or not, and shall forthwith intimate their decision to the Corporation.

(2) If the Board decide that it is not necessary or expedient to frame a general improvement scheme forthwith, they shall inform the Corporation of the reasons for their decisions.

(3) If the Board fail, for a period of twelve months after the receipt of any official representation made under section 37 to intimate their decision thereon to the Corporation,

or if the Board intimate to the Corporation their decision that it is not necessary or expedient to frame a general improvement scheme forthwith,

the Corporation may, if they think fit, refer the matter to the Provincial Government.

(4) The Provincial Government shall consider every reference made to it under sub-section (3), and

(a) if it considers that the Board ought, under all the circumstances, to have passed a decision within the period mentioned in

sub-section (3), shall direct the Board to pass a decision within such further period as the Provincial Government may think reasonable, or

(b) if it considers that it is under all the circumstances, expedient that a scheme should forthwith be framed, shall direct the Board to proceed forthwith to frame a scheme.

(5) The Board shall comply with every direction given by the Provincial Government under sub-section (4).

When street scheme may be framed.

39. Whenever the Board are of opinion that, for the purpose of—

(a) providing building-sites, or

(b) remedying defective ventilation, or

(c) creating new, or improving existing, means of communication and facilities for traffic, or

(d) affording better facilities for conservancy,

it is expedient to lay out new streets or to alter existing streets (including bridges, causeways and culverts), the Board may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as they may think fit.

Maters to be considered when framing improvement schemes.

40 When framing an improvement scheme in respect of any area, regard shall be had to—

(a) the nature and the conditions of neighbouring areas and of Calcutta as a whole:

(b) the several directions in which the expansion of Calcutta appears likely to take place; and

(c) the likelihood of improvement schemes being required for other parts of Calcutta.

Matterss which must be provided for in improvement schemes.

41. Every improvement scheme shall provide for—

(a) the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion, be required for the execution of the scheme;

(b) the laying out or re-laying out of the land in the said area;

(c) such demolition, alteration or reconstruction of buildings, situated on land which it is proposed to acquire in the said area, as the Board may think necessary;

(d) the construction of any buildings which the Board may consider itnecessary to erect for any purpose other than sale or hire;

(e) the laying out or alteration of streets (including bridges, causeways and culverts), if required; and

(f) the levelling, paving, metalling, flagging, channelling, sewering and draining of the said streets, and the provision therein of water, lighting and other sanitary conveniences ordinarily provided in a Municipality.

Matters which may be provided for in improvement schemes.

42. Any improvement scheme may provide for—

(a) the acquisition by the Board of any land, in the area comprised in the scheme, which will, in their opinion, be affected by the execution of the scheme;

(b) raising, lowering or levelling any land in the area comprised in the scheme;

(c) the formation or retention of open spaces; and

(d) any other matters consistent with this Act, which the Board may think fit.

Preparation, publication and transmission of notice as to improvement scheme, and supply of documents to applicants.

43. (1) When any improvement scheme has been framed, the Board shall prepare a notice, stating,—

(*a*) the fact that the scheme has been framed,

(*b*) the boundaries of the area comprised in the scheme, and

(*c*) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire [1][and of the land in regard to which it is proposed to recover a betterment fee], may be seen at reasonable hours.

(2) The Board shall—

(*i*) cause the said notice to be published weekly for three consecutive weeks in the *Calcutta Gazette* and in local newspapers, with a statement of the period within which objections will be received, and

(*ii*) send a copy of the notice to the Chairman of the Corporation[2] and to the Chairman of any Municipality constituted under the Bengal Municipal Act, 1884[3], in which any portion of the area comprised in the scheme is situated

(3) The Chairman shall cause copies of all documents referred to in clause (*c*) of sub-section (1) to be delivered to any applicant on payment of such fee as may be prescribed by rule made under section 138.

Transmission to Board of representation by Corporation or Municipality as to improvement scheme.

44. The Chairman of the Corporation[3], and the Chairman of any Municipality to whom a copy of a notice has been sent under clause (*ii*) of section 43 shall, within a period of sixty days from the receipt of the said copy, forward to the Board any representation which the Corporation or Municipality may think fit to make with regard to the scheme.

Service of notice as to proposed acquisition of land or recovery of betterment fee.

45. (1) During the thirty days next following the first day on which any notice is published under section 43 in respect of any improvement scheme, the Board shall serve a notice on—

(*i*) every person whose name appears in the municipal assessment-book as being primarily liable to pay the owner's share of the consolidated rate, or the rate on the annual value of holdings, as the case may be, in respect of any land which the Board propose to acquire in executing the scheme [4][or in regard to which they propose to recover a betterment fee] and

(*ii*) the occupier who need not be named of each premises or holding, entered in the municipal assessment-book, which the Board propose to acquire in executing the scheme

(2) Such notice shall—

(*a*) state that the Board propose to acquire such land [5][or to recover such betterment fee] for the purpose of carrying out a general improvement scheme or a street scheme, as the case may be, and

[1]These words in square brackets were inserted by the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act. VIII of 1931), s. 3.

[2]Now the Chief Executive Officer. *See* s. 557 (1) (*a*) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

[3]See foot-note 1 on page 430 *ante*.

[4]These words in square brackets were inserted by the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931), s. 4 (1).

[5]These words in square brackets were inserted by section 4 (2) of the same Act.

(*b*) require such person, if he dissents from such acquisition [1][or from the recovery of such betterment fee] to state his reasons in writing within a period of sixty days from the service of the notice.

(3) Every such notice shall be signed by, or by the order of the Chairman.

Furnishing of copy of, or extracts from, the municipal assessment-book.

46. The Chairman of the Corporation [2], and the Chairman of any Municipality constituted under the Bengal Municipal Act, 1884[3], in any part of which this section is for the time being in force, shall, respectively, furnish the Chairman, at his request, with a copy of, or extracts from, the municipal assessment-book at such charges as may be fixed by rule made under section 137.

Abandonment of improvement scheme, or application to Provincial Government to sanction it.

47. (1) After the expiry of the periods respectively prescribed under section 43, clause (i) and by sections 44 and section 45, clause (b), in respect of any improvement scheme, the Board shall consider any objection, representation and statement of dissent received thereunder, and after hearing all persons making any such objection, representation or dissent who may desire to be heard, the Board may either abandon the scheme or apply to the Provincial Government for sanction to the scheme, with such modifications (if any) as the Board may consider necessary.

(2) Every application submitted under sub-section (1) shall be accompanied by—

(a) a description of, and full particulars relating to the scheme, and complete plans and estimates of the cost of executing the scheme;

(b) a statement of the reasons for any modifications made in the scheme as originally framed;

(c) a statement of objections (if any) received under section 43;

(d) any representation received under section 44;

(e) a list of the names of all persons (if any) who have dissented, under section 45, clause (b), from the proposed acquisition of their land [4][or from the proposed recovery of a betterment fee] and a statement of the reasons given for such dissent; and

(f) a statement of the arrangements made or proposed by the Board for the re-housing of persons of the poorer and working classes who are likely to be displaced by the execution of the scheme.

(3) When any application has been submitted to the Provincial Government under sub-section (1), the Board shall cause notice of the fact to be published for two consecutive weeks in the *Calcutta Gazette* and in local newspapers.

Power to sanction or reject improvement scheme.

48. The Provincial Government may sanction[1], either with or without modification, or may refuse to sanction, any improvement scheme submitted to it under section 47.

[1]These words in square brackets were inserted by section. 4 (3) of the same Act, that is, Act VIII of 1931.

[2]Now the Chief Executive Officer. *See* s. 557 (*a*) of the Calcutta Municipal Act, 1923 (Ben Act III of 1923).

[3]*See* foot-note 1 on page 430 *ante*.

[4]These words in square brackets were inserted by the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931), s. 5.

Notification of sanction to improvement scheme.

49. (1) Whenever the Provincial Government sanctions an improvement scheme, it shall announce the fact by notification, and the Board shall forthwith proceed to execute the scheme

(2) The publication of a notification under sub-section (1), in respect of any scheme, shall be conclusive evidence that the scheme has been duly framed and sanctioned.

Alteration of improvement scheme after sanction.

50. At any time after any improvement scheme has been sanctioned by the Provincial Government, and before it has been carried into execution, the Board may alter it:

Provided as follows:

(*a*) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than five *per cent* of such cost, such alteration shall not be made without the previous sanction of the Provincial Government;

(*b*) if any alteration involves the acquisition, otherwise than by agreement, of any land the acquisition of which has not been sanctioned by the Provincial Government, the procedure prescribed in the foregoing sections of this Chapter shall, so far as applicable, be followed, as if the alteration were a separate scheme;

[2][(*c*) if, owing to changes made in the course of a scheme, any land not previously liable under the scheme to the payment of a betterment fee, becomes liable to such payment, the provisions of sections 43, 45 and 47 shall, so far as they are applicable, be followed in any such case.]

Combination of improvement schemes.

51. Any number of areas in respect of which improvement schemes have been, or are proposed to be, framed, may at any time be included in one combined scheme.

Re-housing persons displaced by improvement schemes.

52. (*1*) The Boards may frame schemes (herein called re-housing schemes) for the construction, maintenance and management of such and so many dwellings and shops as they may consider ought to be provided for persons of the poorer and working classes who—

(*a*) are displaced by the execution of any improvement scheme sanctioned under this Act, or

(*b*) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the Provincial Government for sanction, under this Act.

(*2* Every re-housing scheme shall be submitted to the Provincial Government who may either sanction it, with or without modification, or refuse to sanction it.

(*3*) The Board shall not themselves construct dwellings or shops under a re-housing scheme unless they are satisfied, after due inquiry, that no other person, is willing and able to construct them and is prepared to construct, maintain and manage them under the control of the Board

Width of streets.

53. No street laid out or altered by the Board shall be of less width than—

(*a*) forty feet, if the street be intended for carriage traffic, or

(*b*) twenty feet, if the street be intended for foot traffic only:

[1]For notifications sanctioning certain street schemes, *see* the Bengal Local Statutory Rules and Orders, 1924; Vol. I, Part VI, page 1320, *et seq.*

[2]Clause (c) was added by the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931), s. 6.

Provided as follows:—

(*i*) the width of an existing street need not be increased to the minimum required by this section, if the Board consider it impracticable to do so;

(*ii*) nothing in this section shall be deemed to prevent the Board from laying out service passages for sanitary purposes of any width less than twenty feet.

Transfer to the Board for purposes of improvement scheme of building or land vested in the Corporation or in the Commissioners of a Municipality.

54. (*1*) Whenever any building, or any street, square, or other land, or any part thereof, which—

(*a*) is situated in the Calcutta Municipality and is vested in the Corporation, or

(*b*) is situated in any part of any Municipality constituted under the Bengal Municipal Act, 1884[2], in which this section is for the time being in force, and is vested in the Commissioners of that Municipality,

is within the area of any improvement scheme and is required for the purpose of such scheme, the Board shall give notice accordingly to the Chairman of the Corporation[1] or the Chairman of such Municipality, as the case may be, and such building, street, square, other land or part, shall thereupon vest in the Board subject in the case of any building or any land, not being a street or square, to the payment of compensation, if any, to the Corporation or to such Commissioners, as the case may be, under sub-section (*3*).

(*2*) Where any land vests in the Board under the provisions of sub-section (*1*) and the Board make a declaration to the Corporation that such land will be retained by the Board only until it revests in the Corporation as part of a street or an open space, under a declaration made by the Corporation under sub-section (*1*) of section 65 or a resolution passed by the Board under sub-section (2) of section 65, as the case may be, no compensation shall be payable by the Board to the Corporation in respect of that land.

(*3*) Where any land or building vests in the Board under sub-section (*1*) and no declaration is made by the Board that the land will be so retained, the Board shall pay to the Corporation, or to the Commissioners, as the case may be, as compensation for the loss resulting from the transfer of such land or building to the Board, a sum equal to the market value of the said land or building at the time when the general declaration in respect of other lands included in the scheme is made under the provisions of section 6 of the Land Acquisition Act, 1894[2], as amended by this Act, and where any building situated on land in respect of which a declaration has been made by the Board under sub-section (*2*), is vested in the Board under sub-section (*1*), like compensation shall be payable in respect of such building by the Board.

(*4*) If, in any case where the Board have made a declaration to the Corporation in respect of any land under sub-section (*2*), the Board retain or dispose of the land contrary to the terms of the declaration, so that the land does not revest in the Corporation as contemplated under such declaration, like compensation shall be payable by the Board to the Corporation in respect of such land for the loss resulting from the non-transfer of such land to the Corporation, such compensation not to be

[1]This section was substituted for the original section by the Calcutta Improvement (Amendment) Act, 1923 (Ben. Act IX of 1923), s. 2.

[2]*See* foot-note 1 on page 430 *ante*.

[1]Now the Chief Executive Officer. *See* s 557 (*1*) (*a*) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

[2]General Acts, Vol. III.

less than the market value which would have been payable for the said land under the provisions of sub-section (3).

(5) If any question or dispute arises—

(a) as to whether compensation is payable under sub-section (3) or sub-section (4), or

(b) as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) or sub-section (4), or

(c) as to whether any building or street, or square or other land, or any part thereof is required for the purposes of the scheme,

the matter shall be referred to the Provincial Government, whose decision shall be final.

Transfer of private street or square to Board for purposes of improvement scheme.

55. (1) Whenever any street or square or part thereof which is not vested in the Board or in the Corporation or in the Commissioners of any Municipality constituted under the Bengal Municipal Act, 1884[1], is required for executing any improvement scheme, the Board shall cause to be affixed in a conspicuous place in or near such street, square or part, a notice signed by the Chairman, and

(a) stating the purpose for which the street, square or part is required, and

(b) declaring that the Board will, on or after a date to be specified in the notice, take over charge of such street, square or part from the owner thereof;

and shall simultaneously send a copy of such notice to the owner of such street, square or part.

(2) After considering and deciding all objections (if any) received in writing before the date so specified, the Board may take over charge of such street, square or part from the owner thereof; and the same shall thereupon vest in the Board.

(3) When the Board alter or close any street or square or part thereof which has vested in them under sub-section (2), they shall pay reasonable compensation to the previous owner for the loss of his rights therein.

(4) If the alteration or closing of any such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto, or to residents in the neighbourhood, the Board—

(i) shall forthwith provide some other reasonable means of access for the use of persons who were entitled to use such street, square or part as a means of access to any property or place, and,

(ii) if the provision of such means of access does not sufficiently compensate any such owner or resident for such damage or inconvenience, shall also pay him reasonable compensation in money.

Provision of drain or water-work to replace another situated on land vested in the Board under section 54 or section 55.

56. (1) When any building, or any street, square or other land, or any part thereof, has vested in the Board under section 54 or section 55, no municipal drain or waterwork therein shall vest in the Board until another drain or waterwork (as the case may be) if required, has been provided by the Board to the satisfaction of the General Committee[1] or of the Commissioners of the Municipality constituted under the Bengal

[1]See foot-note 1 on page 430 *ante*.

[1]Now the Corporation of Calcutta. *See* s. 557 (2) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

Municipal Act, 1884[1], as the case may be, in place of the former drain or work.

(2) If any question or dispute arises as to whether another drain or waterwork is required, or as to the sufficiency of any drain or waterwork provided by the Board, under sub-section (1), the matter shall be referred to the Provincial Government, whose decision shall be final.

Bar to application of certain sections of the Calcutta Municipal Act, 1899, to streets vested in the Board.

57. (1) Sections 337, 338 and 355, and clause (c) of section 354, of the Calcutta Municipal Act, 1899[2], shall not apply to any street which is vested in the Board.

(2) Sections 345 and 346 of the said Act[3] shall not apply when any drain, pavement or surface referred to in the said section 345 is opened or broken up by the Board or when any public street is under construction by the Board.

Repair and watering of streets vested in the Board

58. Whenever the Board allow any street vested in them to be used for public traffic,—

(a) they shall, as far as practicable, keep the street in good repair and do all things necessary for the safety and convenience of persons using it, and

(b) they shall cause the street to be watered, if they consider it necessary to do so for the public convenience.

Guarding and lighting when street vested in the Board is opened or broken up, or when street is under construction and speedy completion of work.

59. Whenever any drain in, or the pavement or surface of, any street vested in the Board is opened or broken up by the Board for the purpose of carrying on any work,

or whenever the Board allow any street which they have under construction to be used for public traffic,

the Board shall cause the place to be fenced and guarded and to be efficiently lighted during the night, and shall take proper precautions for guarding against accident by shoring up and protecting adjoining buildings,

and shall, with all convenient speed, complete the said work, fill in the ground, and repair the said drain, pavement or surface, and carry away the rubbish occasioned thereby or complete the construction of the said street, as the case may be

Prevention or restriction of traffic in street vested in the Board, during progress of work.

60. (1) When any work referred to in section 59 is being executed by the Board in any public street vested in them, or when any other work which may lawfully be done is being executed by the Board in any street vested in them, the Board may direct that such street shall, during the progress of such work, be either wholly or partially closed to traffic generally or to traffic of any specified description.

(2) When any such direction has been given, the Board shall set up in a conspicuous position in or near the street an order prohibiting traffic to the extent so directed, and shall fix such bars, chains or posts across or in the street as they may think proper for preventing or restricting traffic therein, after notifying in local newspapers their intention to do so.

Provision of facilities, and payment of compensation when work is executed by Board in public street vested in them.

61. (1) When any work is being executed by the Board in any public street vested in them, the Board shall, so far as may reasonably be practicable, make adequate provision for—

(a) the passage or diversion of traffic;

[1]See foot-note 1 on page 430 *ante*.

[2]See foot-note 5 on page 430 *ante*.

[3]These references should now be construed as references to the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

(*b*) securing access to all premises approached from such street ; and

(*c*) any drainage, water-supply or means of lighting which is interrupted by reason of the execution of the work.

(2) The Board shall pay reasonable compensation to any person who sustains special damage by reason of the execution of any such work.

Power of Board to turn or close public street or square vested in them.

62. (1) The Board may—

(*a*) turn, divert, discontinue the public use of, or permanently close, any public street vested in them, or any part thereof, or

(*b*) discontinue the public use of, or permanently close, any public square vested in them, or any part thereof.

(2) Whenever the Board discontinue the public use of, or permanently close, any public street vested in them, or any part thereof, they shall pay reasonable compensation to every person who was entitled, otherwise than as a mere licensee, to use such street or part as a means of access and has suffered damage from such discontinuance or closing.

(3) Whenever the Board discontinue the public use of, or permanently close, any public square vested in them, or any part thereof, they shall pay reasonable compensation to every person—

(*a*) who was entitled, otherwise than as a mere licensee, to use such square or part as a means of access, or

(*b*) whose immovable property was ventilated by such square or part,

and who has suffered damage,—

(*i*) in case (*a*), from such discontinuance or closing, or

(*ii*) in case (*b*), from the use to which the Board have put such square or part.

(4) In determining the compensation payable to any person under sub-section (2) or sub-section (3), the Board shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other public street or square at or about the same time that the public street or square or part thereof, on account of which the compensation is paid, is discontinued, or closed.

(5) When any public street or square vested in the Board, or any part thereof, is permanently closed under sub-section (1), the Board may sell, or lease so much of the same as is no longer required.

Projected public streets.

[1]63. (1) The Board may from time to time in regard to any area—

(*a*) within the Calcutta Municipality, or

(*b*) in the neighbourhood of the said Municipality,

make plans of proposed public streets showing the direction of such streets, the street alignment and building line (if any) on each side of them, their intended width and such other details as may appear desirable.

(2) When a plan of a proposed public street has been made under sub-section (1), the Board shall prepare a notice stating—

(*a*) the fact that such plan has been made,

[1]This section 63 was substituted for the original section by the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915) s. 3.

(*b*) particulars of the land (shown in such plan) through which the proposed public street will pass,

(*c*) the place at which the said plan and particulars may be seen at reasonable hours, and

(*d*) the period (which shall be not less than sixty days) within which objections to the said plan may be submitted to the Board ;

and the Board shall thereupon—

(*i*) cause the said notice to be published weekly for two consecutive weeks in the *Calcutta Gazette* and in local newspapers, and in such other manner as the Board may direct, and

(*ii*) forward a copy of the said notice to any person whose name appears in the municipal assessment-book as being primarily liable to pay the owner's share of the consolidated rate, or the rate on the annual value of holdings, as the case may be, in respect of any land included within the proposed public street, and

(*iii*) forward a copy of the said notice and of the plan to which it relates to the Chairman of the Corporation[1] and, if any area in the neighbourhood of the Calcutta Municipality is included in such plan, to the Chairman of the local authority administering any portion of such area, and

(*iv*) cause copies of the said notice and plan to be delivered to any applicant on payment of such fee as may be prescribed by rule made under section 138.

(3) On or after a date (not being less than sixty days from the date of the first publication of the notice) to be appointed by the Board in this behalf, the Board shall consider—

(*a*) all objections in writing received from any person affected by the proposed public street contemplated by such plan, and

(*b*) any representation in regard to such street made to the Board by the Corporation or the aforesaid local authority ;

and the Board may thereupon either withdraw the plan or apply to the Provincial Government for sanction thereto with such modifications (if any) as the Board may consider necessary.

(4) If the Board apply for sanction as provided in sub-section (3), they shall simultaneously forward to the Provincial Government a full statement of all objections and representations made to them under the said sub-section.

(5) When a plan of a proposed public street has been submitted to the Provincial Government under sub-section (3), the Board shall cause notice of the fact to be published for two consecutive weeks in the *Calcutta Gazette* and in local newspapers.

(6) The Provincial Government may sanction, either with or without modification, or may refuse to sanction, any plan of a proposed public street submitted to it under sub-section (3).

(7) Whenever the Provincial Government sanctions a plan of a proposed public street, it shall announce the fact by notification, and the publication of such notification shall be conclusive evidence that the plan has been duly made and sanctioned ;

[1]Now the Chief Executive Officer, *See* s. 557 (*l*) *a*) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

and the proposed public street to which such notification refers shall be deemed to be a projected public street, and shall be so deemed until—

(*a*) such street has been declared, under section 65 or section 66 as the case may be, to be a public street, or

(*b*) the said notification has been cancelled by another notification :

Provided that such cancellation shall not affect the validity of any action taken by the Board in pursuance of the said notification.

(8) If any person desires to erect, re-erect or add to any wall (exceeding ten feet in height) or building which falls within the street alignment or building line of a projected public street shown in any plan sanctioned by the Provincial Government under this section, he shall submit an application in writing to the Chairman for permission so to do :

Provided as follows :—

(*i*) no such application shall be necessary for permission to erect or re-erect, between a building line and the street alignment,—

(*a*) a porch or balcony, or,

(*b*) along not more than one-third of the frontage an outhouse not exceeding fifteen feet in height ;

(*ii*) nothing in this sub-section shall relieve any person from the liability to obtain such sanction as it may be necessary to obtain under any law for the time being in force from any local authority.

(9) The Chairman shall in no case refuse an application submitted under sub-section (8) if the applicant executes an agreement binding himself and his successors in interest to remove, without compensation, any wall or building to which that application relates, in the event of the Board—

(*a*) deciding (at any time after an improvement scheme has been sanctioned under section 48 for an area within which such building or wall is situate) that the said wall or building, or any portion thereof, ought to be removed, and

(*b*) calling upon the owner for the time being, by written notice, to remove the same within a time (not being less than sixty days from the date of the service of the notice) to be specified in the said notice.

(10) If the Chairman does not, within thirty days from the receipt of an application submitted under sub-section (8), grant or refuse the permission applied for thereunder, such permission shall be deemed to have been granted.

(11) If the Chairman refuses permission to any person to erect, re-erect or add to any wall or building as aforesaid which falls—

(*i*) within the street alignment, or

(*ii*) between the street alignment and the building line of a projected public street,

the owner of the land on which it was sought to erect, re-erect or add to such wall or building, may call upon the Board, at any time within three months from the date of such refusal either—

(*a*) to pay him compensation for any damage sustained by him in consequence of such refusal, or

(*b*) to acquire so much of his land as falls within the street alignment, or between the street alignment and the building line, as the case may be ;

and the Board shall thereupon—

in case (*a*), make full compensation to the said owner for any damage which he may be found to have sustained in consequence of such refusal, and

in case (*b*), forthwith take steps to acquire the said land:

Provided that, in the case of such land as falls within the street alignment only, it shall be optional with the Board to acquire the same in lieu of paying compensation therefor.

(12) An appeal shall lie to the Board from any refusal by the Chairman to grant an application under this section.

Reference of disputes to Tribunal.

64. (1) If any question or dispute arises—

(*a*) between the Board and the previous owner of any street or square or part thereof which has vested in the Board under section 55 and has been altered or closed by them, as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of that section, or

(*b*) between the Board and any person who was entitled, otherwise than as a mere licensee, to use as a means of access any street or square or part thereof which has vested in the Board under section 55,

(*i*) as to whether the alteration or closing of such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto or to residents in the neighbourhood, or

(*ii*) as to whether the other means of access provided or proposed to be provided under sub-section (4) of the said section 55 are reasonably sufficient, or

(*iii*) as to the sufficiency of any compensation paid or proposed to be paid under the said sub-section (4), or

(*c*) between the Board and any person, as to the sufficiency of any compensation paid or proposed to be paid to him under section 61, section 62 or section 63,

the matter shall be determined by the Tribunal, if referred to it, either by the Board or by the claimant, within a period of three months from—

in case (*a*) or case (*b*)—the date on which the street or square or part thereof was altered or closed by the Board, or

in case (*c*)—the date on which the said person was informed of the decision of the Board fixing the amount of compensation to be paid to him;

and the determination of the Tribunal shall be final.

(2) If a reference to the Tribunal be not made within the period prescribed by sub-section (1), the decision of the Board shall be final.

(3) For the purpose of determining any matter referred to it under sub-section (1), the Tribunal shall have all the powers with regard to witnesses, documents and costs which it would have if the Land Acquisition Act, 1894[1], as modified by section 71 of this Act, were applicable to the case.

Vesting in Corporation of streets laid out or altered, and open spaces provided, by the Board under an improvement scheme.

65. (1) Whenever the General Committee[2] are satisfied—

(*a*) that any street laid out or altered by the Board has been duly

[1]General Acts, Vol. III.

[2]Now the Corporation of Calcutta. *See* s. 557 (2) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

levelled, paved, metalled, flagged, sewered and drained in the manner provided in the plans sanctioned by the Provincial Government under section 48, and

(b) that such lamps, lamp-posts and other apparatus as the General Committee[2] consider necessary for the lighting of such street and as ought to be provided by the Board have been so provided, and

(c) that water and other sanitary conveniences ordinarily provided in a Municipality have been duly provided in such street,

the General Committee[2] shall make a report to the Corporation and the Corporation shall thereupon, after informing the Board of their intention to do so, by written notice affixed in some conspicuous position in such street, declare the street; and the street shall thereupon vest in the Corporation, and shall thenceforth be maintained, kept in, repaired, lighted and cleansed by the Corporation.

(2) When any open space for purposes of ventilation or recreation has been provided by the Board in executing any improvement scheme, it shall, on completion, be transferred to the Corporation by resolution of the Board, and shall thereupon vest in and be maintained at the expense of the Corporation :

Provided that the General Committee[1] may require the Board before any such open space is so transferred, to enclose, level, turf, drain and lay out such space and provide footpaths therein, and if necessary, to provide lamps and other apparatus for lighting it.

(3) If any difference of opinion arises between the Board and the General Committee[1] in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the Provincial Government whose decision shall be final

Application of section 65 to other Municipalities.

66. If section 65 be extended, by notification, under section 1, sub-section (3), to any Municipality in the neighbourhood of the Calcutta Municipality it shall be construed as if the references therein to the General Committee and the Corporation were references to the Commissioners of the former Municipality.

Power of Board to retain service passages.

67. Notwithstanding anything contained in section 65 or section 66, the Board may retain any service passage, which they have laid out for sanitary purposes, and may enter into an agreement with the Corporation or any other person for the supervision, repair, lighting and general management of any passage so retained.

CHAPTER IV

ACQUISITION AND DISPOSAL OF LAND.

Acquisition by Agreement.

Power to purchase or lease by agreement.

68. The Board may enter into an agreement with any person for the purchase or leasing by the Board from such person of any land which the Board are authorized to acquire, or any interest in such land.

[1] Now the Corporation of Calcutta. *See* s. 557 (2) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

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

69. The Board may, with the previous sanction of the Provincial Government, acquire land under the provisions of the Land Acquisition Act, 1894, for carrying out any of the purposes of this Act.

Tribunal to be constituted.

70. A Tribunal shall be constituted, as provided in section 72, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Board under the Land Acquisition Act, 1894.

Modification of the Land Acquisition Act, 1894.

71. For the purpose of acquiring land under the said Act[2] for the Board,—

(*a*) the Tribunal shall (except for the purposes of section 54 of that Act) be deemed to be the Court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act;

(*b*) the said Act[2] shall be subject to the further modifications indicated in the Schedule;

(*c*) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908; and

(*d*) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall be final[1].

Constitution of Tribunal.

72. (*1*) The said Tribunal shall consist of a President and two assessors.

(*2*) The President of the Tribunal shall be either—

(*a*) a member of the Judicial Branch of the Imperial or Provincial Civil Service, of not less than ten years' standing in such service who has, for at least three years, served as District Judge or held judicial office not inferior to that of a Subordinate Judge; or

(*b*) a barrister, advocate or pleader of not less than ten years' standing, who has practised as an advocate or pleader in the Calcutta High Court.

(*3*) The President of the Tribunal and one of the assessors shall be appointed by the Provincial Government, and the other assessor shall be appointed by the Corporation, or, in default of the Corporation, by the Provincial Government:

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or is, for any of the reasons mentioned in section 9, disqualified for appointment as a Trustee.

(*4*) The term of office of each member of the Tribunal shall be two years; but any member shall, subject to the proviso to sub-section (*3*), be eligible for reappointment at the end of that term.

(*5*) The Provincial Government may, on the ground of incapacity or misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as a member of the Tribunal.

[1]As to appeals to the High Court from decisions of the President of the Tribunal, *see* the Calcutta Improvement (Appeals) Act, 1911 (XVIII of 1911).

(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any other unavoidable cause, the Provincial Government or (if the person whose place is to be filled was appointed by the Corporation) the Corporation, or, in default of the Corporation, the Provincial Government, shall forthwith appoint a fit person to be a member in his place.

(7) All appointments made under this section shall be published by notification.

Remuneration of members of Tribunal.

73. Each member of the Tribunal shall be entitled to receive such remuneration, either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the Provincial Government may prescribe.

Officers and servants of Tribunal.

74. (1) The President of the Tribunal shall, from time to time, prepare a statement showing—

(a) the number and grades of the clerks and other officers and servants whom he considers should be maintained for carrying on the business of the Tribunal,

(b) the amount of the salary to be paid to each such officer and servant, and

(c) the contributions payable under section 146 in respect of each such officer and servant.

(2) The President of the Tribunal shall, from time to time, make rules—

(i) for regulating the grant of leave of absence, leave-allowances and acting-allowances to the officers or servants of the Tribunal; and

(ii) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers or servants of the Tribunal (other than any servant of the crown in respect of whom a contribution is paid under section 146) to contribute to such fund, at such rates and subject to such conditions, as may be prescribed by such rules, and with the sanction of the Board for supplementing such contributions out of the funds of the Board:

Provided that a servant of the crown employed as an officer or servant of the Tribunal shall not be entitled to leave or leave-allowances otherwise than as may be prescribed by the conditions of his service under the Crown relating to transfer to foreign service.

(3) All statements prepared under sub-section (1), and all rules made under sub-section (2), shall be subject to the previous sanction of the Provincial Government.

(4) Subject to any directions contained in any statement prepared under sub-section (1) and any rule made under sub-section (2), and for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

Payments by Board on account of Tribunal.

75. The remuneration prescribed under section 73 for members of the Tribunal, and the salaries, leave-allowances and acting-allowances prescribed under section 74 for officers and servants of the Tribunal, shall be paid by the Board to the President of the Tribunal for distribution.

Power to make rules for Tribunal.

76. (*1*) The President of the Tribunal may, from time to time, with previous sanction of the Provincial Government, make rules[1], not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by the Tribunal.

(*2*) All such rules shall be published by notification.

Award of Tribunal how to be determined.

77. (*1*) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894,—

(*a*) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail;

(*b*) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary; and when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal; and

(*c*) notwithstanding anything contained in the foregoing clauses, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

(*2*) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by the Court of Small Causes of Calcutta as if it were a decree of that Court.

Abandonment of Acquisition.

Abandonment of acquisition in consideration of special payment.

78. (*1*) In any case in which the Provincial Government has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Board, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Board in that behalf.

(*2*) The Board shall admit every such application if it—

(*a*) reaches them before the time fixed by the Collector, under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(*b*) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

(*3*) If the Board decide to admit any such application, they shall forthwith inform the Collector; and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the Board shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(*4*) Within the said period of three months, or, with the permission of the Board, at any time before the Collector has taken possession of the land, under section 16 of the Land Acquisition Act, 1894, the person from whom the Board have arranged to accept the sum so fixed may, if the Board are satisfied that the security offered by him is sufficient, execute an agreement with the Board, either—

(*i*) to pay the said sum three years after the date of the agreement, or

[1]For rules issued under s. 76 (*1*), see the Bengal Local Statutory Rules and Orders, 1924, Vol. III, p. 1990.

(*ii*) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest [1][at such rate not exceeding *six per cent. per annum* as the Provincial Government may fix by notification,] and to make the first annual payment of such interest four years after the date of the agreement :

Provided that the Board may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(5) When any agreement has been executed in pursuance of sub-section (4), or when any payment has been accepted in pursuance of, the proviso to that sub-section, in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(6) Every payment due from any person under an agreement executed under sub-section (4) shall be a charge on the interest of that person.

(7) If any instalment of interest payable under an agreement executed in pursuance of clause (*ii*) of sub-section (4) be not paid on the date on which it is due, the sum fixed by the Board under sub-section (3) shall be payable on that date in addition to the said instalment.

(8) At any time after an agreement has been executed in pursuance of clause (*ii*) of sub-section (4), any person may pay off the charge created thereby, with interest, [2][at the rate fixed under the provisions of that clause] up to the date of such payment.

(9) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (4), no suit with respect to such agreement shall be brought against the Board by any other person except an heir, executor or administrator of the person first aforesaid claiming to have an interest in the land.

[3](10) Notwithstanding anything contained in clause (*ii*) of sub-section (4) or in sub-section (8), the rate of interest payable under the provisions of that clause or sub-section, as the case may be, shall be, or continue to be, four *per cent. per annum* in cases where the sum, in consideration of which the acquisition of the land has been abandoned, has been fixed under sub-section (3) before the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, and the agreement in respect of the payment of the same is executed before, on or within two months after, that date.

[4](11) Notwithstanding anything contained in clause (*ii*) of sub-section (4) or in sub-section (8) the rate of interest payable under the provisions of that clause or that sub-section, as the case may be, shall be or continue to be, six *per cent, per annum* in cases where the sum, in consideration of which the acquisition of the land has been abandoned, has been fixed under sub-section (3) on or after the date of the commencement of the Calcutta Improvement (Amendment) Act, 1923, but before

[1]These words in square brackets were substituted for the words "at the rate of six *per cent. per annum*" by the Calcutta Improvement (Amendment) Act, 1934 (Ben. Act II of 1935), s. 2 (*a*).

[2]These words in square brackets were substituted for the words "at the rate of six *per cent per annum*" by section 2 (*b*) of the same Act.

[3]This sub-section was inserted by the Calcutta Improvement (Amendment) Act, 1923 (Ben. Act II of 1935), s. 2 (*c*).

[4]This sub-section was added by the Calcutta Improvement (Amendment) Act, 1934 (Ben. Act II of 1935), s. 2(*c*).

the date of the commencement of the Calcutta Improvement (Amendment) Act, 1934, and the agreement in respect of the payment of the same is executed during the period commencing with the date of the commencement of the Calcutta Improvement (Amendment) Act, 1933, and ending two months after the date of the commencement of the Calcutta Improvement (Amendment) Act, 1934.

[1] *Betterment fee*

Payment of betterment fee.

[1]**78A.** (1) When by the making of any improvement scheme, any land in the area comprised in the scheme which is not required for the execution thereof will in the opinion of the Board, be increased in value, the Board, in framing the scheme, may, in lieu of providing for the acquisition of such land, declare that a betterment fee shall be payable by the owner of the land or any person having an interest therein in respect of the increase in value of the land resulting from the execution of the scheme

(2) Such betterment fee shall be an amount equal to one half of the increase in value of the land resulting from the execution of the scheme, and shall be calculated upon the amount by which the value of the land on the completion of the execution of the scheme estimated as if the land were clear of buildings exceeds the value of the land prior to the execution of the scheme estimated in like manner.

Assesment of betterment fee by Board.

78B. (1) When it appears to the Board that an improvement scheme is sufficiently advanced to enable the amount of the betterment fee to be determined, the Board shall by a resolution passed in this behalf declare that for the purpose of determing such fee the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to every person on whom a notice in respect of the land to be assessed has been served under clause (*i*) of sub-section (1) of section 45 that the Board propose to assess the amount of the betterment fee payable in respect of such land under section 78A.

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

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

(4) If the person concerned dissents from the assessment made by the Board or fails to give the Board the information required by sub-section (2) within the period specified therin, the matter shall be determined by arbitrators in the manner provided by section 78C.

78C. (1) For the determination of the matter referred to in sub-section (4) of section 78B, the Provincial Government shall constitute a panel of arbitrators consisting of two parts, the first part of which shall be composed of persons having special knowledge of the valuation of land and the second part of other suitable persons.

Settlement of betterment fee by arbitrators.

[1]This sub-heading and sections 78A, 78B, 78C, 78D, 78E, 78F and 78G were inserted by the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931), s. 7.

(2) When the Board have, in accordance with the provisions of section 78B, assessed the amount of betterment fee payable by all persons in respect of land in the area comprised in the scheme, the Board shall serve a notice on all those persons who have dissented from the assessment made by the Board, requiring them to meet at such time and place as may be fixed by the Chairman for the purpose of electing an arbitrator

(3 For each scheme there shall be a body of two arbitrators, one of whom shall be elected by vote by the persons present at the meeting referred to in sub-section (2) from one part of the panel, and the other shall be appointed by the Provincial Government from the other part of the panel :

Provided that for the purposes of a particular scheme the Provincial Government may prior to the election referred to in this sub-section, if it thinks fit, modify either part of the panel

(4) In the event of a difference of opinion on any matter between the two arbitrators a third arbitrator shall be selected by lot from the first part of the panel, and the matter shall be decided by the votes of the majority of the three arbitrators

(5) If an arbitrator dies, resigns becomes disqualified, is removed under sub-section (6), or refuses to perform or in the opinion of the Provincial Government neglects to perform or becomes incapable of performing his functions, the authority who elected or appointed him shall forthwith elect or appoint a fit person to take the place of such arbitrator

(6) If the Provincial Government is satisfied after such inquiry as it thinks fit that the arbitrator has misconducted himself it may remove him.

(7) When the arbitrators have made their award under section 78C, they shall sign it and forward it to the Board and such award shall subject to the provisions of sub-section (8) be final and conclusive and binding on all persons

(8) If the Provincial Government is satisfied after such inquiry as it thinks fit that an award has been improperly procured, or that an arbitrator has misconducted himself in connection with an award the Provincial Government may set aside the award.

Fees for arbitrators

78D The Board shall pay to each arbitrator a fee to be determined by the Provincial Government in respect of the whole of the scheme for which his services are utilized.

Proceedings of arbitrators.

78E. Notwithstanding anything contained in any other enactment the proceedings of arbitrators under section 78C shall be governed by rules to be made in this behalf under section 137 :

Provided that every party to such proceedings shall be entitled to appear before the arbitrators either in person or by his authorized agent.

Board to give notice to persons liable to payment of betterment fee.

78F. When the amount of all betterment fees payable in respect of land in the area comprised in the scheme has been determined under section 78B or section 78C, as the case may be, the Board shall, by a notice in writing to be served on all persons liable to such payment, fix a date by which such payment shall be made, and interest at the rate of six *per cent. per annum* upon any amount outstanding shall be payable from that date.

(4) All collections resulting from the said increase shall, after deducting incidental expenses (if any), be paid to the Board at such time as may be prescribed by rule made under section 86.

Terminal Tax on Passengers.

Terminal tax on passengers by railway or inland steam-vessel.

83. (1) Every passenger brought to or taken from any station in the Calcutta Municipality or the Howrah Municipality by railway, and every passenger brought to or taken from any landing place in the Port of Calcutta, within five miles from Government House, by inland steam vessel,

shall pay a tax of half-an-anna in respect of each journey so made by him :

Provided as follows :—

(*a*) the said tax shall not be payable by any passenger brought from, or taken to any place situated within a radius of thirty miles, from Government House ;

(*b*) the Provincial Government may, by notification, either—

(*i*) * [1], reduce the said radius to any distance less than thirty miles in its application either to passengers generally or to passengers of any specified class, or

(*ii*) * * * * * [2] cancel proviso (*a*) or

(*iii*) reduce the said tax to any lower rate, either in respect of passengers generally or in respect of passengers making frequent journeys ;

(*c*) the said tax may, in the case of passengers taking suburban season tickets, be calculated at the rate of six annas *per mensem* for each such ticket, or at such lower rate as the Provincial Government may prescribe by notification.

(2) The said tax shall be collected by means of a surcharge on fares, by the administration of the railway, or the owner of the vessel, by which the passengers are carried, and shall be paid to the Board at such time as may be prescribed by rule made under section 86, after making such deduction as the Provincial Government may approve to meet any expenses incurred in connection with the collection of the tax.

(3) The owner of every inland steam-vessel referred to in sub-section (1) shall prepare and deliver, or cause to be prepared and delivered, to the Chairman, each quarter, a return in the form prescribed by rule made under section 86, of all passengers, carried by such vessel, by whom the tax imposed by that sub-section is payable ; and shall subscribe, at the foot of such return, a declaration of the truth thereof.

(4) Every such return shall be delivered to the Chairman or posted to his address within fifteen working days, or at most within thirty days, after the end of the quarter to which it relates.

Explanation —The expression "working day," as used in this sub-section, means every day except a public holiday as defined in section 25[1] of the Negotiable Instruments, Act 1881.

(5) If this Act is directed to come into force during a quarter, the first of the said returns shall be made for the unexpired portion of that quarter.

[1] The words "with the previous sanction of the Government of India" were omitted by the Devoultion Act, 1920 (XXXVIII of 1920), s. 2, and First Schedule.

(6) the expression "administration" and the expressions "owner" and "inland steam-vessel," as used in this section, have the same meanings as in the Indian Railways Act, 1890, and the Inland Steam-vessels Act, 1884[1], respectively.

(7) After the commencement of Part III of the Government of India Act, 1935, a tax on passengers by railway shall only be leviable under this section if it was levied immediately before that date and shall only be leviable until provision to the contrary is made by the Central Legislature.

Customs Duty on Jute.

Customs duty on exports of jute from Calcutta by sea

84. (1) A customs duty shall be levied and collected on all jute exported by sea from the Port of Calcutta to any other port, whether beyond or within India, at such rate, not exceeding —

(a) in the case of raw jute (including jute cuttings and rejections), two annas per bale of four hundred pounds, and

(b) in the case of manufactured jute, twelve annas per ton of two thousand two hundred and forty pounds,

as the Provincial Government may prescribe by notification[2]:

Provided that the said duty shall not be levied or collected in respect of jute, whether raw or manufactured, exported under any contract which was made before the fifteenth day of August, 1911, and the existence of which was established to the satisfaction of the Customs Collector before the fifteenth day of September, 1911.

(2) At the close of each quarter, or as soon thereafter as may be convenient, the duty collected under sub-section (1) shall after deducting the expenses of collection (if any), be paid by the Customs Collector to the Board.

(3) After the commencement of Part III of the Government of India Act, 1935, a duty shall only be leviable under this section if it was levied immediately before that date, and shall only be leviable until provision to the contrary is made by the Central Legislature.

Section 5 of the Indian Tariff Act, 1894, not to apply to jute.

85. Section 5 of the Indian Tariff Act, 1894[3], shall not apply to jute (whether raw or manufactured) passing by land out of Calcutta

Supplemental Provisions.

Power to Provincial Government to make rules.

[4]**86.** (1) The Provincial Government may make rules[5] for carrying out the purposes of this Chapter.

[1]Repealed and re-enacted by the Inland Steam-vessels Act, 1917 (I of 1917), and this reference should now be construed as a reference to that Act.

[2]For a notification issued under section 84 (1), *see* the Bengal Local Statutory Rules and Orders, 1924, Vol. III, p. 1995.

[3]Repealed and re-enacted by the Indian Tariff Act, 1934 (XXXIII of 1934) and these references should now be construed as references to that Act.

[4]Section 86, in so far as it affects section 82, has been extended to Eastern Bengal by the Bengal Laws Act, 1914 (Ben. Act I of 1914), s. 3, Sch. I, printed in the Bengal Code, Ed. 1913-15, Vol. III, pp. 859, 861.

[5]For rules made under section 86, *see* the Bengal Local Statutory Rules and Orders, 1924, Vol. I, Part VI, page 1328.

(2) In particular, and without prejudice to the generality of the foregoing power, the Provincial Government may make rules—

(a) for regulating the collection of taxes imposed by this Chapter, and the payment thereof to the Board;

(b) for prescribing the form of the return required by section 83, sub-section (3), and the particulars to be contained therein, and the manner in which the same is to be verified.

Punishment for offences.

87. The offences mentioned in column 1 of the following table shall be punishable to the extent mentioned in column 2 thereof with reference to such offences, respectively:—

1	2
(1) Omitting to make any return required by section 83, sub-section (3), or refusing to sign or complete the same.	Fine not exceeding one thousand rupees.
(2) Making and delivering any such return containing any statement not true to the best of the information and belief of the person making the same.	The penalty provided in the Indian Penal Code[1], section 199 for making a false statement in a declaration.
(3) Otherwise contravening any rule made under section 86.	Fine not exceeding five hundred rupees.

CHAPTER VI.

FINANCE.

Municipal Contributions.

Contributions from Municipal Funds.

88. (1) The Chairman of the Corporation[1] shall pay from the Municipal Funds to the Board on the first day of each quarter, so long as the Board continue to exist, a sum equivalent to one-half *per cent.* per quarter on the annual rateable valuation determined under Chapter XII of the Calcutta Municipal Act, 1899, as it stood on the first day of the last preceding quarter:

Provided as follows:—

(a) in the case of property vested in the Commissioners for the Port of Calcutta, the said percentage shall be calculated upon nine-tenths of the annual rateable valuation of such property, and

(b) if this Act is directed to come into force during a quarter, the amount of the first of such payments shall bear such proportion to the sum payable hereunder as the unexpired portion of that quarter bears to the whole quarter.

(2) If in any financial year the sums due to the Board under section 82 and sub-section (1) of this section aggregate less than seven and-a-half lakhs of rupees, the Chairman of the Corporation shall pay to the Board, from the Municipal Funds, such further sum as may be required to make up the said sum of seven and-a-half lakhs of rupees.

[1]Now the Chief Executive Officer. *See* s. 557 (1) (*a*) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923.)

(3) The payments prescribed by sub-sections (1) and (2) shall be made in priority to all other payments due from the Corporation, except those referred to in section 140 of the said Calcutta Municipal Act, 1899[1].

(4) If any payment prescribed by sub-section (1) or sub-section (2) cannot be made without increasing the maximum authorised by clause (*a*) of section 147 of the said Calcutta Municipal Act, 1899, then that maximum may be increased to such extent as may be necessary to secure the due making of such payment.

Loans.

Power of Board to borrow money.

89. The Board may from time to time borrow, at such rate of interest, and for such period, and upon such terms, as to the time and method of repayment and otherwise, as the Provincial Government may approve, any sum necessary for the purpose of—

(*a*) meeting expenditure debitable to the capital account under section 123, or

(*b*) repaying any loan previously taken under this Act :

90. (*Manner and time of borrowing money.*) *Rep. by the Devolution Act, 1920 (XXXV III of 1920) S. 2 and the First Schedule.*

Loans from Banks.

91 Whenever the borrowing of any sum has been approved under section 89, the Board may, instead of borrowing such sum or any part thereof from the public, but subject to any direction given by the Provincial Government under section 90, take credit from any Bank, on a cash account to be kept in the name of the Board, to the extent of such sum or part ;

and, with the previous sanction of the Provincial Government may grant mortgages of all or any property vested in the Board by way of securing the payment of the amount of such credit or of the sums from time to time advanced on such cash account with interest.

Diversion of borrowed money to purposes other than those first approved.

92. When any sum of money has been borrowed under section 89 or section 91 for the purpose of meeting particular expenditure or repaying a particular loan, no portion thereof shall be applied to any other purpose without the previous sanction of the Provincial Government

Form, signature, exchange, transfer and effect of debenture.

93. (1) Whenever money is borrowed by the Board on debentures, the debentures shall be in such form as the Board, with the previous sanction of the Provincial Government, may from time to time determine.

(2) All debentures shall be signed by the Chairman and one other Trustee.

(3) The holder of any debenture in any form prescribed under sub-section (1) may obtain in exchange therefor, upon such terms as the Board may from time to time determine, a debenture in any other form so prescribed.

(4) Every debenture issued by the Board shall be transferable by endorsement, unless some other mode of transfer be prescribed therein.

(5) The right to sue in respect of moneys secured by debentures issued by the Board shall vest in the respective holders of the debentures for the time being, without any preference by reason of some of such debenturers being prior in date to others.

[1]Now the Chief Executive Officer. *See* s. 557 (1) (*a*) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923.)

Signature of coupons attached to debentures.

94. All coupons attached to debentures issued under this Act shall bear the signature of the Chairman; and such signature may be engraved, lithographed or impressed by any mechanical process.

Payments to survivors of joint payees.

95 When any debenture or security issued under this Act is payable to two or more persons jointly, and either or any of them dies, then, notwithstanding anything in section 45 of the Indian Contract Act, 1872, the debenture or security shall be payable to the survivor or survivors of such persons:

Provided that nothing in this section shall affect any claim by the representative of a deceased person against such survivor or survivors.

Receipt by joint holder for interest or dividend.

96. Where two or more persons are joint holders of any debenture or security issued under this Act, any one of such persons may give an effectual receipt for any interest or dividend payable in respect of such debenture or security, unless notice to the contrary has been given to the Board by any other of such persons.

Priority of payment for interest and repayment of loans.

97. All payments due from the Board for interest on, or the repayment of loans, shall be made in priority to all other payments due from the Board.

Repayment of loans taken under section 89.

98 Every loan taken by the Board under section 89 shall be repaid within the period approved by the Provincial Government under that section, and, subject to the provisions of Section 125, sub-section (2), by such of the following methods as may be so approved, namely:—

(*a*) from a sinking fund established under section 99 in respect of the loan, or

(*b*) by paying equal yearly or half-yearly instalments of principal, or of principal and interest, throughout the said period, or

(*c*) if the Board have, before borrowing money on debentures, reserved, by public notice a power to pay off the loan by periodical instalments and to select by lot the particular debentures to be discharged at particular periods—then by paying such instalments at such periods, or

(*d*) from money borrowed for the purpose under section 89, clause *b*), or

(*e*) partly from the sinking fund established under section 99 in respect of the loan, and partly from money borrowed for the purpose under section 89, clause (*b*).

Establishment and maintenance of sinking funds.

99 (1) Whenever the Provincial Government have approved the repayment of a loan from a sinking fund the Board shall establish such a fund and shall pay into it in every year, until the loan is repaid, a sum so calculated that, if regularly paid throughout the period approved by the Provincial Government under section 89, it would, with accumulation in the way of compound interest, be sufficient, after payment of all expenses, to pay off the loan at the end of that period.

(2) The rate of interest on the basis of which the sum referred in sub-section (1) shall be calculated shall be such as may be prescribed by the Provincial Government.

Power to discontinue payments into sinking fund.

100. Notwithstanding anything contained in section 99, if at any time the sum standing at credit of the sinking fund established for the repayment of any loan, is of such amount that, if allowed to accumulate at the rate of interest prescribed under sub-section (2) of that section, it will be sufficient to repay the loan at the end of the period approved by the Provincial Government under section 89, then, with the permission of the Provincial Government, further annual payments into such funds may be discontinued.

Investment of sinking funds.

101. (1) All money paid into any sinking fund shall as soon as possible be invested, under the orders of the Board, in—

(*a*) Government securities, or

(*b*) securities guaranteed by the Central or any Provincial Government, or

(*c*) Calcutta Municipal debentures, or

(*d*) debentures issued by the Commissioners for the Port of Calcutta, or

(*e*) debentures issued by the Board,

in the joint names of the Secretary to the Government of Bengal in the Financial Department and the Accountant-General of Bengal, to be held by them as trustees for the purpose of repaying from time to time the debentures issued by the Board.

(2) All dividends and other sums received in respect of any such investment shall, as soon as possible after receipt, be paid into the appropriate sinking fund and invested in the manner prescribed by sub-section (1).

(3) Any investment made under this section may from time to time, subject to the provisions of sub-section (1), be varied or transposed.

Application of sinking funds.

102. The aforesaid trustees may from time to time apply any sinking fund, or any part thereof, in or towards the discharge of the loan or any part of the loan for which such fund was established; and until such loan is wholly discharged shall not apply the same for any other purposes.

Annual statements by trustees.

103 (1) The aforesaid trustees shall, at the end of every financial year, transmit to the Chairman a statement showing—

(*a*) the amount which has been invested during the year under section 101,

(*b*) the date of the last investment made previous to the transmission of the statement,

(*c*) the aggregate amount of the securities held by them,

(*d*) the aggregate amount which has, up to the date of the statement, been applied under section 102 in or towards repaying loans, and

(*e*) the aggregate amount already paid into each sinking fund.

(2) Every such statement shall be laid before the Board and published by notification.

Annual examination of sinking funds.

104. (1) The said sinking funds shall be subject to annual examination by the Accountant-General, Bengal, who shall ascertain whether the cash and the current value of the securities at credit of such funds are actually equal to the amount which would have accumulated had investments been regularly made and had the rate of interests as orignally estimated been obtained therefrom.

(2) The Board shall forthwith pay into any sinking fund any amount which the Accountant-General may certify to be deficient, unless the Provincial Government specially sanction a gradual readjustment.

Enforcemnent of Liabilities.

Procedure if Board fail to make any payment or investment in respect of loans

105. (1) If the Board fail—

(*a*) to pay any interest due in respect of any loan taken in pursuance of section 89, or

(*b*) to make any payment prescribed by section 98, section 99 of sub-section (2) of section 104, or

(*c*) to make any investment prescribed by section 101,

the Accountant-General of Bengal shall make such payment or set aside and invest such sum as ought to have been invested under the said section 101, as the case may be ;

and the Chairman of the Corporation[1] shall forthwith pay from the Municipal Funds to the said Accountant-General a sum equivalent to the sum so paid or invested by him ;

and the Provincial Government may attach the rents and other income of the Board ; and thereupon the provisions of sub-section (2) of section 141 of the Calcutta Municipal Act, 1899[2], shall, with all necessary modifications, be deemed to apply.

(2) Whenever the Chairman of the Corporation[1] has made any payment to the Accountant-General under sub-section (1), the Provincial Government shall reimburse the Corporation out of the rents and income attached under that sub-section, and if such rents and income prove insufficient for that purpose the Corporation may, with the previous sanction of the Provincial Government, increase the maximum authorized by clause (*a*) of section 147 of the Calcutta Municipal Act, 1899[2], to such extent as may be necessary for the purpose of making up the deficiency :

Provided that no such increase shall be made, unless the taxes imposed by sections 83 and 84 are levied at the maximum rates respectively prescribed by those sections.

Procedure if Chairman of Corporation fails to make any payment due to Board or Accountant-General.

106. If the Chairman of the Corporation[1] fails to make any payment as required by section 88 or section 105, the Provincial Government may attach the Municipal Funds or any of them ;

and thereupon the provisions of sub-section (2) of section 141 of the Calcutta Municipal Act, 1899[2], shall, with all necessary modifications, be deemed to apply, and the Provincial Government may further require the Corporation to increase the maximum authorized by clause (*a*) of section 147 of that Act[3], to such extent as may be necessary for the purpose of making such payment :

Provided that no such increase shall be made, in consequence of any failure of the Chairman of the Corporation[1] to make any payment as required by section 105, unless the taxes imposed by sections 83 and 84 are levied at the maximum rates respectively prescribed by those sections.

Payments under section 105 to be a charge on the Property of the Board

107. All moneys paid by the Chairman of the Corporation[1] under sub-section (1) of section 105 and not reimbursed by the Provincial Government under sub-section (2) of that section, and all moneys payable under sub-section (1) of section 105 and levied under section 106, shall constitute a charge upon the property of the Board.

[1]Now the Chief Executive Officer. *See* s. 557 (1) (*a*) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

[2]*See* foot-note 5 on page 430 *ante*.

[3]This reference should now be construed as a reference to the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

Budget Estimates.

Estimates of income and expenditure to be laid annually before the Board.

108. (1) The Chairman shall, at a special meeting to be held in the month of February in each year, lay before the Board an estimate of the income and expenditure of the Board for the next ensuing financial year.

(2) Every such estimate shall make provision for the due fulfilment of all the liabilities of the Board and for the efficient administration of this Act.

(3) Every such estimate shall differentiate capital and revenue funds, and shall be prepared in such form, and shall contain such details, as the Provincial Government or the Board may from time to time direct.

(4) Every such estimate shall be completed and printed, and a copy thereof sent, by post or otherwise, to each Trustee at least ten clear days before the date of the meeting at which the estimate is to be laid before the Board.

Sanction of Board to estimates.

109. The Board shall consider every estimate so laid before them, and shall sanction the same, either without alteration or with such alterations as they may think fit.

Approval of Provincial Government to estimates.

110. (1) Every such estimate, as sanctioned by the Board, shall be submitted to the Provincial Government, who may, at any time within two months after receipt of the same,—

(*a*) approve the estimate, or

(*b*) disallow the estimate or any portion thereof, and return the estimate to the Board for amendment.

(2) If any estimate is so returned to the Board, they shall forth. with proceed to amend it, and shall re-submit the estimate, as amended, to the Provincial Government, who may then approve it.

Transmission of copy of estimate to Chairman of Corporation.

111. A copy of every such estimate shall, when approved by the Provincial Government, be sent by the Board to the Chairman of the Corporation.[1]

Special provisions as to the first estimate after the constitution of the Board.

112. (1) A special meeting of the Board shall be held as soon as may be expedient after the day appointed under section 17, sub-section (1), and the Chairman shall at such special meeting lay before the Board an estimate of the income and expenditure of the Board for the portion of the financial year which on the said day had not expired.

(2) The provisions of section 108, sub-sections (2) to (4), and sections 109 to 111 shall apply to the said estimate.

Supplementary estimates.

113. (1) The Board may, at any time during the year for which any estimate has been sanctioned, cause a supplementary estimate to be prepared and laid before them at a special meeting.

(2) The provisions of section 108, sub-sections (3) and (4), and sections 109 to 111 shall apply to every supplementary estimate.

Adherence to estimate, and maintenance of closing balance.

114. (1) No sum shall be expended by or on behalf of the Board unless the expenditure of the same is covered by a current budget-grant or can be met by re-appropriation or by drawing on the closing balance.

(2) The closing balance shall not be reduced below one lakh of rupees without the previous sanction of the Provincial Government.

[1]Now the Chief Executive Officer. *See* s. 557 (1) (*a*) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

(3) The following items shall be excepted from the provisions of sub-sections (1) and (2), namely,—

(*a*) re-payments of moneys belonging to contractors or other persons and held in deposit, and of moneys collected by, or credited to, the Board by mistake;

(*b*) payments due under decree or order of a Court passed against the Board or against the Chairman *ex-officio*, or under an award of the Tribunal;

(*c*) sums payable under a compromise of any suit or other legal proceeding or claim effected under section 154;

(*d*) sums payable under this Act by way of compensation; and

(*e*) payments required to meet some pressing emergency.

(4) Whenever any sum exceeding five thousand rupees is expended under clause (*e*) of sub-section (3), the Chairman shall forthwith report the circumstances to the Provincial Government, and shall at the same time explain how the Board propose to cover the expenditure.

Receipt of moneys, and deposit in Bank of Bengal.

115. All moneys payable to the Board shall be received by the Chairman, and shall forthwith be paid into the Bank of Bengal to the credit of an account which shall be styled "The Account of the Trustees for the Improvement of Calcutta."

Investment of surplus money.

116. (1) Surplus moneys at the credit of the said account may from time to time be—

(*a*) deposited at interest in the Bank of Bengal or in any other Bank in Calcutta approved by the Provincial Government in this behalf, or

(*b*) invested in any of the securities or debentures mentioned in section 101, sub-section (1), of this Act or in section 20 of the *Indian Trusts Act*, 1882.

(2) All such deposits and investments shall be made by the Chairman on behalf of, and with the sanction of, the Board; and, with the like sanction, the Chairman may at any time withdraw any deposit so made, or dispose of any securities, and re-deposit or re-invest the money so withdrawn or the proceeds of the disposal of such securities.

Payments by cheque.

117. (1) No payment shall be made by the Bank of Bengal out of the account referred to in section 115, except upon a cheque.

(2) Payment of any sum due by the Board exceeding one hundred rupees in amount shall be made by means of a cheque, and not in any other way.

Signature of orders under section 116 and cheques.

118. All orders for making any deposit, investment, withdrawal or disposal under section 116, and all cheques referred to in section 117, must be signed—

(*a*) by the Chairman and the Secretary to the Board, or

(*b*) in the event of the illness or occasional absence from Calcutta of the Chairman or the Secretary, then by the Secretary or the Chairman as the case may be, and by a Trustee other than the Chairman.

Duty of Chairman and others before singing cheque.

119. Before the Chairman or any other Trustee or the Secretary to the Board signs a cheque under section 118, he must satisfy himself that the sum for which such cheque is drawn either is required for a purpose of work specifically sanctioned by the Board or is an item of one of the excepted descriptions specified in section 114, sub-section (3).

Accounts.

Definition of "cost of management."

120. (1) The expression "cost of management," as used in following sections in this Chapter, means—

(*a*) the salary and house-rent and conveyance allowance (if any) of the Chairman or acting Chairman, and the allowances and contributions referred to in section 11, sub-section (2) ;

(*b*) all fees paid under section 22, for attendance at meetings ;

(*c*) the salaries, fees and allowances of, and the contributions paid under section 146 in respect of, officers and servants of the Board who are included in statements prepared under section 30 ;

(*d*) the remuneration of other employees of the Board, except employees who are paid by the day or whose pay is charged to temporary work ;

(*e*) all payments made under section 75 and section 146 on account of the Tribunal ; and

(*f*) all office expenses incurred by the Board or the Tribunal.

(2) The expression "office expenses", in clause (*f*), means expenses incurred for carrying on office work, and includes the rent of offices, the provision of furniture therefor, and charges for printing and stationery.

Keeping of capital account and revenue account.

121. (1) The Board shall keep a capital account and a revenue account.

(2) The capital account shall show separately all expenditure incurred by the Board on each improvement scheme and each re-housing scheme.

Credits to capital account.

122. There shall be credited to the capital account—

(*a*) all sums (except interest) received by way of special payments or betterment fees in pursuance of sections 78, 78A or 79 ;

(*b*) all moneys received on account of loans taken by the Board in pursuance of section 89 or section 91 ;

(*c*) the proceeds of the sale of any land vested in the Board which was purchased out of any loan taken in pursuance of section 89 or section 91 ;

(*d*) where land was purchased out of an advance from the revenue account, the portion of the proceeds of the sale of such land which remains after crediting to the revenue account the amount of such advance ;

(*e*) the proceeds of the sale of any movable property (including securities for money invested from the capital account) belonging to the Board ;

(*f*) all lump sums received from any Government in aid of the capital account ;

(*g*) all *premia* received by the Board in connection with leases for any term exceeding forty years ;

(*h*) all sums (if any) which the Provincial Government directs, under section 125, sub-section (2), to be credited to the capital amount ; and

(*i*) all moneys resulting from the sale of securities by direction of the Provincial Government under section 126.

Application of capital account.

123. The moneys credited to the capital account shall be held by the Board in trust, and shall be applied to—

(*a*) meeting all costs of framing and executing improvement schemes and re-housing schemes;

(*b*) meeting the cost of acquiring land for carrying out any of the purposes of this Act;

(*c*) meeting the cost of constructing buildings required for carrying out any of the purposes of this Act;

(*d*) the repayment of loans from money borrowed in pursuance of section 89, clause (*b*);

(*e*) making payments in pursuance of section 149, otherwise than for interest or for expenses of maintenance or working

(*f*) making, or contributing towards the cost of making, surveys, in pursuance of section 167;

(*g*) meeting such proportion of the cost of management as the Board may, with the sanction of the Provincial Government, prescribe in this behalf; and

(*h*) *temporarily making good the deficit (if any) in the revenue* account at the end of any financial year.

Credits to revenue account.

124. There shall be credited to the revenue account—

(*a*) all interest received in pursuance of [1][sections 78,78G or 79];

(*b*) all proceeds received by the Board of taxes imposed by Chapter V

(*c*) all sums contributed from Municipal Funds which are received by the Board under section 88;

(*d*) all damages received by the Board under section 162;

(*e*) all annually recurring sums received from the Government in aid of the funds of the Board;

(*f*) all *premia* received by the Board in connection with leases for any term not exceeding forty years;

(*g*) all rents of land vested in the Board; and

(*h*) all other receipts by the Board which are not required by section 122 to be credited to the capital account.

Application of revenue account.

125. The moneys credited to the revenue account shall be held by the Board in trust, and shall be applied to—

(*a*) meeting all charges for interest and sinking fund due on account of any loan taken in pursuance of section 89, clause (*a*), or section 91, and all other charges incurred in connection with such loans;

(*b*) paying all sums due from the Board in respect of rates and taxes imposed under the Calcutta Municipal Act, 1899[2], upon land vested in the Board;

(*c*) paying the cost (if any) of maintaining a separate establishment for the collection of the rents and other proceeds of land vested the Board;

[1]These words, figures and letter in square brackets were substituted for the words and figures "section 78 or section 79" by the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931), s. 12.

[2]See foot-note 5 on page 430 *ante*.

[1](cc) paying the fees prescribed for arbitrators under section 78D ;

(*d*) paying all sums which the Provincial Government may direct to be paid to any auditor under section 132 ;

(*e*) making payments in pursuance of section 149, for interest or for expenses of maintenance or working ;

(*f*) paying the cost of management, excluding such proportion thereof as may be debited to the capital account under clause (*g*) of section 123 ; and

(*g*) paying all other sums due from the Board, other than those which are required by section 123 to be disbursed from the capital account.

(2) The surplus (if any) remaining after making the payments referred to in sub-section (1) shall,

subject to the maintenance of a closing balance of one *lakh* of rupees, and

except as provided in 127, and

unless the Provincial Government otherwise directs,

be invested, in the manner prescribed in section 101, towards the service of any loans outstanding after the expiry of sixty years from the commencement of this Act.

Power to direct sale of securities in which any surplus of the revenue account is invested.

126. If, at any time after any surplus referred to in section 125, sub-section (2), has been invested, the Provincial Government is satisfied that the investment is not needed for the service of any loan referred to in that sub-section, it may direct the sale of the securities held under the investment.

Advances from revenue account to capital account.

127. (1) Notwithstanding anything contained in section 125 the Board may advance any sum standing at the credit of the revenue account for the purpose of meeting capital expenditure.

(2) Every such advance shall be refunded to the revenue account as soon as may be practicable.

Advances from capital account to revenue account.

128. (1) Any deficit in the revenue account at the end of any financial year may be made good by an advance from the capital account.

(2) Every such advance shall be refunded to the capital account in the following financial year.

Submission of abstracts of accounts to Provincial Government.

129. The Board shall submit to the Provincial Government, at the end of each half of every financial year, an abstract of the accounts of their receipts and expenditure.

Annual audit of accounts.

130. The accounts of the Board shall, once in every financial year, be examined and audited by such auditor as the Provincial Government may appoint in this behalf.

Powers of auditor.

131. The auditor so appointed may,—

(*a*) by written summons, require the production before him of any document which he may consider necessary for the proper conduct of the audit ;

(*b*) by written summons require any person having the custody or control of, or being accountable for, any such document to appear in person before him ; and

[1]This clause (cc) was inserted by the Calcutta Improvement Amendment) Act, 1931 (Ben. Act VIII of 1931), s. 13.

(c) require any person so appearing before him to make and sign a declaration with respect to any such document, to answer any question, or to prepare and submit any statement.

Remuneration of auditor.

132. The Board shall pay to the said auditor such remuneration as the Provincial Government may direct.

Reports and information to be furnished by auditor to the Board.

133. The said auditor shall—

(a) report to the Board any material impropriety or irregularity which he may observe in the expenditure, or in the recovery of moneys due the Board, or in the accounts, and report the same to the Provincial Government,

(b) furnish to the Board such information as they may from time to time require concerning the progress of his audit, and

(c) within fourteen days after the completion of his audit, forward his report upon the accounts to the Chairman.

Board to remedy defects pointed out by auditor.

134. It shall be the duty of the Board forthwith to remedy any defects or irregularities that may be pointed out by the auditor.

Auditor's report to be sent to each Trustee and considered by Board.

135. The Chairman shall cause the report mentioned in section 133, clause (c), to be printed and shall forward a printed copy thereof to each Trustee, and shall bring such report before the Board for consideration at their next meeting.

Publication and transmission of an abstract of the accounts.

136. As soon as practicable after the receipt of the said report, the Board shall prepare an abstract of the accounts to which it relates, and shall publish such abstract by notification, and shall send a copy of the abstract to the Chairman of the Corporation[1] and to the Provincial Government.

CHAPTER VIII.

RULES.

Further powers to Provincial Government for making rules.

137. In addition to the power conferred by section 86, the Provincial Government may make rules[2] —

(1) for regulating elections under sub-sections (1), (2) and (3) of section 7 ;

(2) for prescribing the maximum sum which may be paid to any person by way of fees under section 22 ;

[3](3a) for determining the qualifications and disqualifications of, the conditions and mode of election, selection or appointment of, an arbitrator and for regulating the proceedings of arbitrators under section 78C ;

(4) for prescribing the form of the abstracts of accounts referred to in sections 129 and 136.

Further powers to Board for making rules.

138. (1) In addition to the power conferred by section 31, the Board may from time to time make rules (not inconsistent with any rules made by the Provincial Government or the President of the Tribunal under this Act) for carrying out the purposes of this Act.

[1]Now the Chief Executive Officer. *See* s. 577 (1) (*a*) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1923).

[2]For rules made under section 137, *see* the Bengal Local Statutory Rules and Orders, 1924, Vol I. Part VI, p. 1328.

[3]This clause (3a) was inserted by the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931), s. 14.

(2) In particular, and without prejudice to the generality of the foregoing power, the Board may make rules[1] —

(*a*) for associating members with the Board under section 19;

(*b*) for appointing persons (other than Trustees and persons associated with the Board under section 19) to be members of Committees under section 20;

(*c*) for regulating the delegation of powers or duties of the Board to Committees under section 20;

(*d*) for the guidance of persons employed by them under this Act;

(*e*) for prescribing the fees payable for copies of documents delivered under section 43, sub-section (3), [2] or clause (*iv*) of sub-section (*2*) of section 63];

(*f*) for facilitating the taking of a census and securing accurate returns thereof;

(*g*) for the maintenance and management of dwellings and shops constructed under re-housing schemes.

(3) In making any rule under sub-section (1) or sub-section (2), the Board may provide that a breach of it shall be punishable —

(*i*) with fine which may extend to five hundred rupees, or

(*ii*) in case of a continuing breach, with fine which may extend to fifty rupees for every day during which the breach continues after receipt of written notice from the Chairman to discontinue the breach

Conditions precedent to the making of rules under section 86, 137 or 138.

139. The power to make rules under section 86, section 137 or section 138 is subject to the condition of the rules being made after previous publication[3], and to the following further conditions, namely,—

(*a*) a draft of the rules shall be published by notification and in local newspapers;

(*b* such draft shall not be further proceeded with until after the expiration of a period of one month from such publication, or such longer period as the Provincial Government or (in the case of rules made under section 138) the Board may appoint;

(*c*) for one month at least during such period, a printed copy of such draft shall be kept at the Board's office for public inspection, and every person shall be permitted at any reasonable time to peruse the same, free of charge;

(*d*) printed copies of such draft shall be delivered to any person requiring the same, on payment of a fee of two annas for each copy.

Sanction of Provincial Government required to rules made under section 138.

140. No rule made under section 138 shall have any validity unless and until it is sanctioned, with or without modification, by the Provincial Government.

[1]For rules issued under s. 138 (2), *see* the Bengal Local Statutory Rules and Orders, 1924, Vol. III, p. 2006.

[2]These words, figures, letters and brackets in square brackets were added by the Calcutta Improvement (Amendment) Act, 1915 Ben. Act III of 1915), s. 4.

[3]As to previous publication, *see* the Bengal General Clauses Act, 1899 (Ben. Act I of 1899), s. 24, in the Bengal Code, Ed. 1913-15, Vol. III, p. 182.

Publication of rules.

141. When any rule has been made under section 86 or section 137, and when any rule has been made under section 138 and duly sanctioned, it shall be published by the Provincial Government by notification, and such publication shall be conclusive proof that the rule has been duly made.

Printing and sale of copies of rules.

142. (1) The Chairman shall cause all rules made under section 86, section 137 or section 138 and for the time being in force to be printed, and shall cause printed copies thereof to be delivered to any applicant on payment of a fee of two annas for each copy.

(2) Notice of the fact of copies of rules being obtainable at the said price, and of the place where and the person from whom the same are obtainable, shall be given by the Chairman by advertisement in local newspapers.

Exhibition of copies of rules.

143 Copies, in English and Bengali, of all rules made under section 137 or section 138 shall be hung or affixed in some conspicuous part of the Board's office and in such places of public resort affected by the rules as the Chairman may think fit.

Power of Provincial Government to cancel rules made under section 121.

144. The Provincial Government may at any time, by notification, cancel any rule made by the Board under section 138.

CHAPTER VIII.

SUPPLEMENTAL PROVISIONS

Status of Trustees, etc.

Trustees etc., deemed public servants.

145. Every Trustee, and every officer and servant of the Board, and every member and officer and servant of the Tribunal, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Contributions towards leave-allowances and pensions of Government servants.

Contributions by Board towards leave-allowances and pensions of Government servants employed under this Act.

146. The Board shall be liable to pay such contributions for the leave-allowances and pensions of any servant of the Crown employed as Chairman or as an officer or servant of the Board, or as a member or officer or servant of the Tribunal, as may be required, by the conditions of his service under the Crown, to be paid by him or on his behalf.

Extension of Acts to areas in the neighbourhood of the Calcutta Municipality.

Power to Extend the Calcutta Municipal, Act, 1899, to areas, near Calcutta, to which provisions of the present Act have been extended

147. (1) When any provision of this Act has been extended to any area under section 1, sub-section (3), the Provincial Government may, by notification published in the *Calcutta Gazette* and in such other manner (if any) as it may consider necessary, extend to such area the Calcutta Municipal Act, 1899[1], or any portion thereof, subject to such restrictions and modifications (if any) as may be specified in such notification.

(2) When the said Calcutta Municipal Act, 1899[1], or any portion thereof, is extended under sub-section (1) to any area, then—

(*a*) the Bengal Municipal Act, 1884, or the Bengal Local Self-Government Act of 1885, as the case may be, or the corresponding portion of such Act, as the case may be, if in force in such area, shall be deemed to be repealed therein, and,

[1] *See* foot-note 5 on page 430 *ante*.

(*b*) except as the Provincial Government may otherwise, by notification, direct, all rules, by-laws, regulations, orders, directions and powers made, issued or conferred under the portions of the said Calcutta Municipal Act, 1899, which have been so extended and in force at the date of such extension, shall apply to the said area, in supersession of all corresponding rules, by-laws, regulations, orders, directions and powers (if any) made, issued or conferred under the said Bengal Municipal Act, 1884[1], or the said Bengal Local Self-Government Act of 1885, as the case may be.

Publication of notifications under sections 1 (3) and 147 (1) in draft, for criticism.

148. (1) Before finally publishing any notification under section 1, sub-section (3) or section 147, sub-section (1), the Provincial Government shall publish a draft of the same in the *Calcutta Gazette*.

(2) Any ratepayer or inhabitant of the area affected by such draft may, if he objects to the draft, submit his objection in writing to the Provincial Government within six weeks from its publication, and the Provincial Government shall take such objection into consideration.

Facilities for movement of the population.

Power of the Board for facilitating movement of the population.

149. With a view to facilitating the movement of the population in and around the Calcutta Municipality, the Board may from time to time,—

(1) subject to any conditions they may think fit to impose,—

(*a*) guarantee the payment, from the funds at their disposal, of such sums as they may think fit, by way of interest on capital expended on the construction, maintenance or working of means of locomotion; or

(*b*) make such payments as they may think fit from the said funds, by way of subsidy to persons undertaking to provide, maintain and work means of locomotion; or

(2) either singly or in combination, with any other person, construct, maintain and work any means of locomotion, under the provisions of any law applicable thereto, or

(3) construct, or widen, strengthen or otherwise improve bridges:

Provided that no guarantee or subsidy shall be made under clause (1), and no means of locomotion shall be constructed, maintained or worked under clause (2), without the sanction of the Provincial Government.

Telegraph and Railways Acts.

Saving of Telegraph & Railways Acts.

150. Nothing in this Act shall be deemed to affect the provisions of the Indian Telegraph Act, 1885, or the Indian Railways Act, 1890.

Legal Proceedings.

Cognizance of offences.

151. Notwithstanding anything contained in the Code of Criminal Procedure, 1898,

all offences against this Act or any rule made hereunder shall, wherever committed, be cognizable by a Presidency Magistrate;

[1]See foot-note 1 on page 430 *ante*.

and no such Magistrate shall be deemed to be incapable of taking cognizance of any such offence by reason only of being liable to pay any tax imposed by this Act or of his being benefited by the funds to the credit of which any fine imposed by him will be payable.

Limitation of time for prosecution.

152 No person shall be liable to punishment for any offence against this Act or any rule made hereunder unless complaint of such offence is made before a Presidency Magistrate within three months next after the commission of such offence.

Power to hear case in absence of accused when summoned to appear.

153 If any person, who has been summoned to appear before a Presidency Magistrate to answer a charge of an offence against this Act or any rule made hereunder which is punishable with fine only, fails to appear at the time and place mentioned in the summons, the Magistrate may, if service of the summons is proved to his satisfaction, and if no sufficient cause is shown for the non-appearance of such person, hear and determine the case in his absence.

Powers of Chairman as to institution, etc., of legal proceedings and obtaining legal advice.

154 The Chairman may, subject to the control of the Board,—

(*a*) institute, defend or withdraw from, legal proceedings under this Act or any rule made hereunder;

(*b*) compound any offence against this Act or any rule made hereunder which, under any law for the time being in force, may lawfully be compounded;

(*c*) admit, compromise or withdraw any claim made under this Act or any rule made hereunder; and

(*d*) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the Board to obtain for any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Board or any officer or servant of the Board.

Indemnity to Board, etc.

155. No suit shall be maintainable against the Board, or any Trustee, or any officer or servant of the Board, or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of anything lawfully and in good faith and with due care and attention done under this Act or any rule made hereunder.

Notice of suit against Board, etc.

156. No suit shall be instituted against the Board, or any Trustee, or any officer or servant of the Board or any person acting under the direction of the Board or of the Chairman or of any officer or servant of the Board, in respect of any act purporting to be done under this Act or any rule made hereunder,

until the expiration of one month next after written notice has been delivered or left at the Board's office or the place of abode of such officer, servant or person, stating the cause of action, the name and place of abode of the intending plaintiff, and the relief which he claims;

and the plaint must contain a statement that such notice has been so delivered or left.

Police.

Co-operation of the Police.

157. (1) The Commissioner of Police and his subordinates shall be bound to co-operate with the Chairman for carrying into effect and enforcing the provisions of this Act.

(2) It shall be the duty of every police-officer who is subordinate to the Commissioner of Police—

(*ii*) to communicate without delay to the proper officer or servant of the Board any information which he receives of a design to commit or of the commission of any offence against this Act or any rule made hereunder, and

(*iii*) to assist the Chairman or any officer or servant of the Board reasonably demanding his aid for the lawful exercise of any power vesting in the Chairman or in such officer or servant under this Act or any such rule.

Arrest of offenders.

158. (1) Every police-officer shall arrest any person who commits, in his view, any offence against this Act or any rule made hereunder, if the name and address of such person be unknown to him, and if such person, on demand, declines to give his name and address, or gives a name or address which such officer has reason to believe to be false

(2) No person so arrested shall be detained in custody after his true name and address are ascertained, or without the order of a Magistrate, for any longer time, not exceeding at the most twenty-four hours from the arrest, than is necessary for bringing him before a a Magistrate.

(3) On the written application of the Chairman, any police-officer above the rank of constable shall arrest any person who obstructs any officer or servant of the Board in the exercise of any of the powers conferred by this Act or any rule made hereunder.

Evidence.

Proof of consent etc., of Board or Chairman or officer or servant of Board.

159 Whenever, under this Act or any rule made hereunder, the doing or the omitting to do anything or the validity of anything depends upon the approval, sanction, consent, concurrence, declaration, opinion or satisfaction of—

(*a*) the Board or the Chairman, or

(*b*) any officer or servant of the Board,

a written document, signed, in case (*a*) by the Chairman, and in case (*b*) by the said officer or servant, purporting to convey or set forth such approval, sanction, consent, concurrence, declaration, opinion or satisfaction, shall be sufficient evidence of such approval, sanction, consent, concurrence, declaration, opinion or satisfaction.

Validation.

Validation of acts and proceedings.

160. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—

(*a*) the existence of any vacancy in, or any defect in the constitution of, the Board or any Committee ; or

(*b*) any person having ceased to be a Trustee ; or

(*c*) any Trustee, or any person associated with the Board under section 19, or any other member of a Committee appointed under this Act, having voted or taken any other part in any proceeding in contravention of section 23 ; or

(*d*) the failure to serve a notice under section 45 on any person, where no substantial injustice has resulted from such failure ; or

(*e*) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Board, the minutes of the proceedings of which have been duly signed as prescribed in section 18, clause (*h*), shall be taken to have been duly convened and to be free from all defect and irregularity.

Compensation.

General power of Board to pay compensation.

161. In any case not otherwise expressly provided for in this Act, the Board may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested, by this Act or any rule made or scheme sanctioned hereunder in the Board or the Chairman or any officer or servant of the Board.

Compensation to be paid by offenders for damage caused by them.

162. (1) If, on account of any act or omission, any person has been convicted of an offence against this Act or any rule made hereunder, and, by reason of the same act or omission of the said person, damage has occurred to any property of the Board, compensation shall be paid by the said person for the said damage, notwithstanding any punishment to which he may have been sentenced for the said offence.

(2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the Magistrate before whom he was convicted of the said offence.

(3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said Magistrate, as if it were a fine inflicted by him on the person liable therefor.

Public Notices and Advertisements.

Public notices how to be made known.

163. Every public notice given under this Act or any rule made hereunder shall be in writing over the signature of the Chairman,

and shall be widely made known in the locality to be affected thereby, by affixing copies thereof in conspicuous public places within the said locality, or by publishing the same by beat of drum or advertisement in local newspapers, or by any two or more of these means, and by any other means that the Chairman may think fit.

Newspapers in which advertisements or notices to be published.

164. Whenever it is provided by this Act or any rule made hereunder that notice shall be given by advertisement in local newspapers, or that a notification or any information shall be published in local newspapers, such notice, notification or information shall be inserted, if practicable, in at least two English newspapers and two vernacular newspapers.

Signature and Service of notice or bills.

Stamping signature on notices or bills.

165. Every notice or bill, which is required by this Act or by any rule made hereunder to bear the signature of the Chairman or of any other Trustee or of any officer or servant of the Board, shall be deemed to be properly signed if it bears a *facsimile* of the signature of the Chairman or of such other Trustee or of such officer or servant, as the case may be, stamped thereupon.

Service how to be effected.

166 When any notice, bill or other document is required by this Act or any rule made hereunder to be served upon or issued or presented to any person, such service, issue or presentation shall be effected—

(*a*) by giving or tendering such document to such person ; or

(*b*) if such person is not found, by leaving such document at his last known place of abode in Calcutta, or by giving or tendering the same to some adult male member or servant of his family ; or

(*c*) if such person does not reside in Calcutta, and his address elsewhere is known to the Chairman, by forwarding such document to him by registered post under cover bearing the said address ; or

(*d*) if none of the means aforesaid be available, by causing a copy of such document to be affixed on some conspicuous part of the land (if any) to which the document relates.

Surveys.

167. The Board may— Power to make surveys, or contribute towards their cost.

(*a*) cause a survey of any land to be made, whenever they consider that a survey is necessary or expedient for carrying out any of the purposes of this Act, or

(*b*) contribute towards the cost of any such survey made by any other local authority.

Power of Entry.

168. (1) The Chairman may, with or without assistants or workmen, enter into or upon any land, in order— Power of entry.

(*a*) to make any inspection, survey, measurement, valuation or inquiry,

(*b*) to take levels,

(*c*) to dig or bore into the sub-soil,

(*d*) to set out boundaries and intended lines of work,

(*e*) to mark such levels, boundaries and lines by placing marks, and cutting trenches, or

(*f*) to do any other thing,

whenever it is necessary to do so for any of the purposes of this Act or any rule made or scheme sanctioned hereunder or any scheme which the Board intend to frame hereunder:

Provided as follows:—

(*a*) no such entry shall be made between sunset and sunrise;

(*b*) no dwelling-house, and no public building or hut which is used as a dwelling-place, shall be so entered, unless with the consent of the occupier thereof, without giving the said occupier at least twenty-four hours' previous written notice of the intention to make such entry;

(*c*) sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to females to remove to some part of the premises where their privacy need not be disturbed;

(*d*) due regard shall always be had, so far as may be compatible with the exigencies of the purpose, for which the entry is made, to the social and religious usages of the occupants of the premises entered.

(2) Whenever the Chairman enters into or upon any land in pursuance of sub-section (1), he shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid; and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Board, whose decision shall be final.

Penalties.

169. If any Trustee, or any officer or servant of the Board, knowingly acquires, directly or indirectly, by himself or by any partner, employer or employee otherwise than as such Trustee, officer or servant, any share or interest in any contract or employment with, by, or on behalf of, the Board, Punishment for acquiring share or interest in contract, etc. with the Board.

not being a share or interest such as, under sub-section (2) of section 9, it is permissible for a Trustee to have without being thereby disqualified for being appointed a Trustee,

he shall be deemed to have committed the offence made punishable by section 168 of the Indian Penal Code[1].

Penalty for removing fence, etc., street.

170. If any person, without lawful authority,—

(*a*) removes any fence or shoring-timber, or removes or extinguishes any light, set up under section 59, or

(*b*) infringes any order given, or removes any bar, chain or post fixed, under section 60, sub-section (2),

he shall be punishable with fine which may extend to fifty rupees.

Penalty for building within street alignment or building line of a projected public street.

171 [2][If any person, without the permission of the Chairman required by section 63, sub-section (8), erects, re-erects, or adds to any wall (exceeding ten feet in height) or building which falls within the street alignment or building line of a projected public street shown in any plan sanctioned by the Provincial Government under the said section], he shall be punishable—

(*a*) with fine which may extend, in the case of a masonry building or a wall, to five hundred rupees, and, in the case of a hut, to fifty rupees, and

(*b*) with further fine which may extend, in the case of a masonry building or a wall, to one hundred rupees, and, in the case of a hut, to ten rupees, for each day after the first during which the projection continues.

Penalty for failure to remove wall or building in respect of which agreement has been executed.

[3]**171A.** If the owner for the time being of any wall or building in respect of which an agreement has been executed as provided in section 63, sub-section (9), fails—

(*a*) to remove such wall or building, or any specified portion thereof, when so required by notice issued under that sub-section, or,

(*b*) within fifteen days from the receipt of such notice, to authorize the Chairman, by permission in writing, to remove the said wall, building or portion,

he shall be punishable—

(*i*) with fine which may extend, in the case of a masonry wall or building, to one hundred rupees, and, in the case of a hut, to twenty rupees; and

(*ii*) with further fine which may extend, in the case of a masonry wall or building, to ten rupees, and, in the case of a hut, to five rupees, for each day after first during which the failure continues.

172. (*Penalty for failure to set back building or wall on requisition*). *Rep. by the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915), s. 7.*

[1]Not printed in the General Acts but published separately by the Government of India.

[2]These words in square brackets were substituted for the words "If any person, without the permission of the Board, erects, re-erects, adds to, or alters any building or wall so as to make the same fall within the street alignment or building line shown in any plan finally adopted by the Board under section 63," by the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915), s. 5.

[3]Section 171A was inserted by section 6 of the same Act.

Penalty for failure to comply with requisition made by auditor.

173. If any person fails to comply with any requisition made under section 131, he shall be punishable—

(*a*) with fine which may extend to one hundred rupees ; or

(*b*) in case of a continuing failure, with fine which may extend to fifty rupees for each day after the first during which the failure continues

Penalty for obstructing contractor or removing mark.

174. If any person—

(*a*) obstructs or molests any person with whom the Chairman has entered into a contract on behalf of the Board, in the performance or execution by such person of his duty or of anything which he is empowered or required to do by virtue or in consequence of this Act or any rule made hereunder, or

(*b*) removes any mark set up for the purposes of indicating any level or direction necessary to the execution of works authorized by this Act or any rule made or scheme sanctioned hereunder,

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.

[1]*Recovery of expenses.*

Removal of wall or building and recovery of expenses.

[1]**174A.** When a written notice, issued under section 63, sub-section (9), for the removal of a wall or building, or any portion thereof, is not complied with by the owner thereof for the time being as provided in section 171A, the Chairman may proceed to remove such wall, building or portion, and the expenses incurred in effecting such removal shall be recoverable by sale of the materials or other things removed.

Disposal of Fines and damages.

Fines, damages and proceeds of confiscations to be paid to Board

175 Omitted by the Government of India (Adaptation of Indian Laws) order, 1937.

Suspension or abolition, and re-imposition, of taxation or Municipal contributions.

176. (1) Whenever the Provincial Government considers that any duty or tax imposed by Chapter V, or any payment required by section 88, or any portion of any such duty, tax or payment, as the case may be is not required for the purposes of this Act, it may, by notification [2]* * * —

(*a*) suspend, for any specified period, the levy of such duty or tax or any specified portion thereof, or the making of such payment or any specified portion thereof, or

(*b*) abolish such duty, tax or payment, or any specified portion thereof, from a date to be specified in the notification.

(2) If at any time the Provincial Government considers that any duty, tax or payment, or any portion thereof, which has been suspended or abolished under sub-section (1) is required for the purposes of this Act, it may, by notification, [2]* * * cancel, such suspension or abolition, wholly or in part, as it may think fit, from a date to be specified in the notification.

[1]This heading and section 174A were inserted by the Calcutta Improvement (Amendment) Act, 1915 (Ben. Act III of 1915), s. 8.

[2]The words "with the previous sanction of Government of India" were omitted by the Devolution Act, 1920 (XXXVIII of 1920), s. 2 and First Schedule.

Dissolution of Board.

177. (1) When all schemes sanctioned under this Act have been executed, or have been so far executed as to render the continued existence of the Board, in the opinion of the Provincial Government, unnecessary, the Provincial Government may, by notification * * *[1], declare that the Board shall be dissolved from such date as may be specified in this behalf in such notification: and the Board shall be deemed to be dissolved accordingly.

(2) From the said date—

(*a*) all properties, funds and dues which are vested in or realizable by the Board and the Chairman, respectively, shall vest in and be realizable by the Corporation and the Chairman of the Corporation[2], respectively; and

(*b*) all liabilities which are enforceable against the Board shall be enforceable only against the Corporation; and

(*c*) for the purpose of completing the execution of any scheme, sanctioned under this Act, which has not been fully executed by the Board, and of realizing properties, funds and dues referred to in clause (*a*), the functions of the Board and the Chairman under this Act shall be discharged by the Corporation and the Chairman of the Corporation[2], respectively; and

(*d*) the Corporation shall keep separate accounts of all moneys respectively received and expended by them under this Act, until all loans raised hereunder have been repaid, and until all other liabilities referred to in clause (*b*) have been duly met.

THE SCHEDULE.

(*Referred to in section 71.*)

FURTHER MODIFICATIONS IN THE LAND ACQUISITION ACT, 1894.

1. After clause (e) of section 3 the following shall be deemed to be inserted, namely—

"(e) the expression "local authority" includes the Board of Trustees constituted under the Calcutta Improvement Act, 1911."

2. *Rep. by the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922), s. 2.*

3. In section 15, for the word and figures "and 24" the figures, word and letter "24 and 24A" shall be deemed to be substituted.

4. (1) In section 17, sub-section (3), after the figures "24" the words, figures and letter "or section 24A" shall be deemed to be inserted.

(2) To the said section 17 the following shall be deemed to be added, namely :—

[1]The words "with the previous sanction of the Government of India" were omitted by the Devolution Act, 1920 (XXXVIII of 1920), s. 2 and First Schedule.

[2]Now the Chief Executive Officer. *See* s. 557 (1) (*a*) of the Calcutta Municipal Act, 1923 (Ben. Act III of 1922).

"(4) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by a salaried Presidency Magistrate or a Magistrate of the first class to be unhealthy.

"(5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

"(6) When proceedings have been taken under this section for the acquisition of any land, any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession."

5. After section 17 the following shall be deemed to be inserted, namely :—

"17A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Board ; and the land shall thereupon vest in the Board, subject to the liability of the Board to pay any further costs which may be incurred on account of its acquisition."

6, 7, 8 and 9 (1). *Rep. by the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922), s. 2.*

9. (2) At the end of section 23 the following shall be deemed to be added, namely :—

"(3) For the purposes of clause *first* of sub-section (1) of this section,—

(*a*) the market-value of the land shall be deemed to be the market-value according to the disposition of the land at the date of the publication of the declaration relating thereto under section 6 ;

(*b*) if it be shown that, before such declaration was published, the owner of the land had taken active steps and incurred expenditure to secure a more profitable disposition of the same, further compensation, based on his actual loss, may be paid to him ;

[1][(*bb*) if the market-value has been increased or decreased owing to the land falling within or near to the alignment of a projected public street, so much of the increase or decrease as may be due to such cause shall be disregarded;

[1](*bbb*) if any person without the permission of the Chairman required by section 63, sub-section (8), of the Calcutta Improvement Act, 1911, has erected, re-erected or added to any wall (exceeding ten feet in height) or building within the street alignment or building line of a projected public street, then any increase in the market-value resulting from such erection, re-erection or addition shall be disregarded ;]

(c) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid declaration was published such increase shall be disregarded, unless it be proved that the improvement was made ***bona fide*** and not in contemplation of proceedings for the acquisition of the land being taken under this Act ;

[1]These clauses (bb) and (bbb) were inserted by the Calcutta Improvement (Amendment) Act III of 1915 (Ben. Act III of 1915), **s. 9.**

(*d*) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary uses; and

(*e*) if the market-value of any building is specially high in consequence of the building being so over-crowded as to be dangerous to the health of the inmates, such over-crowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from over-crowding."

Amendment of section 24.

10. For clause *seventhly* of section 24 the following shall be deemed to be substituted, namely :—

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date of the publication of the declaration under section 6, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

New section 24A.

11. After section 24 the following shall be deemed to be inserted, namely :—

"24A. In determining the amount of compensation to be awarded for any land acquired for the Board under this Act, the Tribunal shall also have regard to the following provisions, namely :—

(1) when any interest in any land acquired under this Act has been acquired after the date of the publication of the declaration under section 6, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land;

(2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, *minus* the estimated cost of putting it into such condition or state;

(3) if, in the opinion of the Tribunal, any building, which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation shall not exceed the value of the materials of the building, *minus* the cost of demolishing the building."

12. *Rep. by the Calcutta Improvement (Amendment) Act, 1922 (Ben. Act I of 1922), s. 2.*

New sections 48A and 48B.

13. After section 48 the following shall be deemed to be inserted, namely :—

"48A. (1) If, within a period of two years from the date of the publication of the declaration under section 6, in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act shall apply, so far as may, be to the determination of the compensation payable under this section.

"48B. No compensation shall be payable in pursuance of section 48 or section 48A when proceedings for the acquisition of land have been abandoned on the execution of an agreement, or the acceptance of a payment, in pursuance of sub-section (4) of section 78 of the Calcutta Improvement Act, 1911."

14. *Rep. by the Calcutta Improvement (Amendment) Act, 1931 (Ben. Act VIII of 1931), s. 15.*

APPENDIX B.

THE UNITED PROVINCES TOWN IMPROVEMENT ACT, 1919.

(U. P. Act No. VIII of 1919)

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THE UNITED PROVINCES TOWN IMPROVEMENT ACT, 1919

(Received the assent of the Lieutenant-Governor of the United Provinces of Agra and Oudh on the 11th October, 1919, and of the Governor-General on the 5th November, 1919, and was published under section 18 of the Government of India Act, 1915, on the 29th November, 1919).

An Act for the improvement of certain areas

Preamble.

Wherens it is expedient to make provision for the improvement and expansion of towns in the United Provinces, and wherens the previous sanction of the Governor-General has been obtained under sub-section (2) of section 79 of the Government of India Act, 1915; It is hereby enacted as follows:

CHAPTER I

PRELIMINARY

Title, extent and commencement.

1. (1) This Act may be called the United Provinces Town Improvement Act, 1919.

(2) It extends to the territories for the time being administered by the Lieutenant-Governor of the United Provinces.

(3) This section and section 66 shall come into force at once. The Provincial Government may, by notification, direct that the rest of the Act shall come into operation in the whole or any part of any municipality, and in any area adjacent thereto, on such date as may be specified in such notification.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,—

(1) words and expressions not defined in this Act have the same meaning as in the United Provinces Municipalities Act, 1916, as from time to time amended (hereinafter called the Municipalities Act);

(2) "building line" means a line (in rear of the street alignment) up to which the main wall of a building abutting on a projected public street may lawfully extend;

(3) "land" has the same meaning as in clause (a) of section 3 of the Land Acquisition Act, 1894;

(4) "rule" means a rule made under section 72 or section 73;

(5) "street alignment" means a line dividing the land comprised in and forming part of a street from the adjoining land;

(6) "tribunal" means a tribunal constituted under section 59;

(7) all references to anything done, required, authorized, permitted, forbidden; or punishable; or to any power vested, under this Act, shall include anything done, required, authorized, permitted, forbidden; or punishable; or any power vested—

(a) by any provision of this Act; or

(b) by any rule or scheme made under the provisions of this Act; or

(c) under any provision of the Municipalities Act which the Trust has by virtue of this Act power to enforce.

CHAPTER II

CONSTITUTION OF TRUSTS

Creation and incorporation of Trust.

3. The duty of carrying out the provisions of this Act in any local area shall, subject to the conditions and limitations hereinafter contained, be vested in a board to be called "The (name of town) Improvement Trust", hereinafter called "the Trust"; and every such board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue and be sued.

Constitution of Trust.

4. (1) The Trust shall consist of seven Trustees, namely—

(a) a Chairman;

(b) the Chairman of the municipal board;

(c) two other members of the municipal board;

(d) three other persons,

(2) The Chairman and the three persons referred to in clause (d) of sub-section (1) shall be appointed by the Provincial Government by notification.

(3) The Chairman of the municipal board shall be a Trustee *ex-officio*.

(4) The two members of the municipal board referred to in clause (c) of sub-section (1) shall be elected by the municipal board.

(5) If the municipal board does not, by such date as may be fixed by the Provincial Government, elect a person to be a Trustee, the Provincial Government shall, by notification, appoint a member of the municipal board to be a Trustee, and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by the municipal board.

(6) Of the three persons referred to in clause (d) of sub-section (1) not more than one shall be government servant.

Explanation—For the purposes of this section the term "person in the service of the Crown" does not include a Government treasurer, a person holding a purely honorary office, or a person who has retired from the service of the Crown.

Resignation of Trustee.

5. Any Trustee, other than an *ex officio* Trustee, may at any time resign his office, provided that his resignation shall not take effect until accepted by the Trust.

Terms of office of Chairman.

6. The term of office of the Chairman shall ordinarily be three years, provided that he may be removed from office by the Provincial Government at any time.

Term of office of other Trustees.

7. Subject to the foregoing provisions the term of office of every Trustee elected under clause (c) of sub-section (1) of section 4 shall be three years or until he ceases to be a member of the municipal board, whichever period is less, and of every Trustee appointed under clause (d) of the said sub-section shall be three years.

Commencement of term of office of first Trustees.

8 (1) The term of office of the first nominated and elected Trustees shall commence on such date as shall be notified in this behalf by the Provincial Government.

(2) A person ceasing to be a member by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for re-election or re-nomination.

Remuneration of Chairman.

9 No Trustee, other than the Chairman, shall receive any salary or other remuneration from the funds of the Trust. The Chairman shall receive such salary or remuneration as may be sanctioned by the Provincial Government.

Removal of Trustees.

10. (1) The Provincial Government may remove from the Trust any Trustee, other than an *ex officio* Trustee, who—

(a) refuses to act, or becomes incapable of acting, or absents himself for more than three consecutive months from the meetings of the Trust or of any committee of which he is a member and is unable to explain such absence to the satisfaction of the Trust, or

(b) is an undischarged insolvent or has compounded with his creditors, or

(c) has been sentenced by a criminal court to imprisonment for a term exceeding six months or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted or the offender pardoned, or

(d) has knowingly acquired or continued to hold without the permission in writing of the Provincial Government, directly or indirectly or by a partner, any share or interest in any contract or employment with, by, or on behalf of the Trust, or

(e) has knowingly acted as a Trustee in a matter other than a matter referred to in clause (d) or (e) of sub-section (2)

in which he or a partner had, directly or indirectly, a personal interest, or in which he was professionally interested on behalf of a client, principal or other person, or

(f) has acted in contravention of section 17, or

(g) being a legal practitioner, in any suit or other proceeding, acts or appears on behalf of any other person against the Trust, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Trust.

(2) Provided that a person shall not be deemed for the purpose of sub-section (1) to acquire, or continue to have, any share or interest in a contract or employment by reason only of his—

(a) having a share or interest in any lease, sale or purchase of land or buildings or, in any agreement for the same, provided that such share or interest was acquired before he became a Trustee, or

(b) having a share in a joint stock company which shall contract with, or be employed by or on behalf of the Trust, or

(c) having a share or interest in a newspaper in which an advertisement relating to the affairs of the Trust is inserted, or

(d) holding a debenture or otherwise being interested in a loan raised by or on behalf of the Trust, or

(e) being retained by the Trust as a legal practitioner, or

(f) having a share or interest in the occasional sale of an article in which he regularly trades to the Trust to a value not exceeding, in any one year, such amount as the Trust, with the sanction of the Provincial Government, may fix in this behalf.

(3) The Provincial Government may remove from the Trust a Trustee who in its opinion has so flagrantly abused in any manner his position as a Trustee as to render his continuance as a Trustee detrimental to the public interest.

(4) Provided that when the Provincial Government proposes to take action under the foregoing provisions of this section an opportunity of explanation shall be given to the Trustee concerned, and, when such action is taken, the reasons therefor shall be placed on record.

Disabilities of Trustees removed under section 10.

11. (1) A Trustee removed under clause (a) or clause c) of sub-section (1) of section 10, or under sub-section (3) of that section, shall not be eligible for further election or nomination for a period of three years from the date of his removal.

(2) A Trustee removed under clause (b) of the sub-section (1) of section 10 shall not be so eligible until he has obtained his discharge or has paid his creditors in full, as the case may be.

(3) A Trustee removed under any other provision of section 10 shall not be so eligible until he is declared to be no longer ineligible, and he may be declared by an order of the Provincial Government.

Filling of casual vacancies.

12. (1) When the place of a Trustee appointed by the Provincial Government becomes vacant by his resignation, removal or death, the Provincial Government shall appoint a person to fill the vacancy.

(2) When the place of a Trustee elected under clause (c) of sub-section (1) of section 4 becomes vacant by his resignation, removal or death, the vacancy shall be filled, within two months of the existence of such vacancy being notified to the board by the Trust, in the manner provided by sub-section (4) of the same section, provided that if the municipal board fails to elect a qualified person to fill the vacancy within the period prescribed above, the provisions of sub-section (5) of section 4 shall apply

(3) The term of office of a Trustee appointed or elected under this section shall be the remainder of the term of office of the Trustee in whose place he has been elected or appointed :

Provided that no person elected or appointed under sub-section (2) shall continue to be a Trustee after he has ceased to be a member of the municipal board, but he may so continue notwithstanding that the Trustee in whose place he was elected or appointed has ceased to be a member of the said board.

CHAPTER III

PROCEEDINGS OF THE TRUST AND COMMITTEES

Meetings of Trust.

13. (1) The Trust shall meet together and shall from time to time make such arrangements not inconsistent with this Act, with respect to the place, day, hour, notice, management, and adjournment of such meetings, and generally with respect to the transaction of business, as it may think fit, subject to the following provisions, namely—

(a) an ordinary meeting shall be held once at least in every month ;

(b) the Chairman may, whenever he thinks fit, and shall upon the written request of not less than two Trustees, call an extra meeting ;

(c) no business shall be transacted at any meeting unless at least three Trustees are present ;

(d) every meeting shall, if the Chairman be present, be presided over by him ; if he is absent, by such one of the Trustees present as may be chosen by the meeting ;

(e) all questions shall be decided by a majority of votes of the Trustees present and voting, the person presiding having a second or casting vote in all cases of equality of votes ;

(f) if a poll be demanded, the names of the Trustees voting and the nature of their votes shall be recorded by the person presiding ;

(g) minutes shall be kept of the names of the Trustees present and of the proceedings at each meeting in a book to be provided for this purpose, which shall be signed at the next ensuing meeting by the person presiding at such meeting, and shall be open to inspection by any Trustee during office hours

(2) No person shall be entitled to object to the minutes of any meeting unless he was present at the meeting to which they relate.

Temporary association of members with the Trust for particular purposes.

14. (1) The Trust may assbciate with itself, in such manner and for such period as may be prescribed by rules made under section 73, any persons whose assistance or advice it may desire in carrying out any of the provisions of the Act.

(2) A person associated with itself by the Trust under sub-section (1) for any purpose shall have a right to take part in the discussions of

the Trust relative to that purpose, but shall not have a right to vote at a meeting of the Trust and shall not be a member of the Trust for any other purpose.

Constitution and functions of committees.

15. (1) The Trust may from time to time appoint committees, consisting of such persons of any of the following classes as it may think fit, namely—

(i) Trustees ;

(ii) persons associated with the Trust under section 14 ;

(iii) other persons whose assistance or advice the Trust may desire as members of committees ;

provided that no committee shall consist of less than three persons.

(2) The Trust may—

(a) refer to such committees, for inquiry and report, any matter relating to any of the purposes of this Act, and

(b) delegate to such committees by specific resolution, and subject to any rules made under section 73, any of the powers or duties of the Trust.

(3) The Trust may at any time dissolve, or, subject to the provisions of sub-section (1), alter the constitution of, any such committee.

(4) Every such committee shall conform to any instructions from time to time given to it by the Trust.

Meetings of committees.

16. (1) Committees appointed under section 15 may meet and adjourn as they think proper; but the Chairman may, whenever he thinks fit, call an extra meeting of any committee, and shall call an extra meeting of any committee upon the written request of not less than two members thereof.

(2) The Chairman may attend any meeting of a committee whether he is a member of such committee or not, and shall preside at every such meeting at which he is present ; if he is absent, such one of the Trustees present as may be chosen by the meeting shall preside.

(3) All questions at any meeting of a committee shall be decided by a majority of votes of the members present and voting, the person presiding having a second or casting vote in all cases of equality of votes.

(4) No business shall be transacted at any meeting of a committee when either less than two members or less than one-fourth of the members constituting the committee are present.

Trustees and associated members of Trust or committee not to take part in proceedings in which they are personally interested.

17. (1) A Trustee who—

(a) has, directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as is described in sub-section (2) of section 10, in respect of any matter, or

(b) has acted professionally, in relation to any matter, on behalf of any person having therein any such share or interest as aforesaid,

shall not vote or take any other part in any proceedings of the Trust or any committee relating to such matter.

(2) If any Trustee, or any person associated with the Trust under section 14, or any other member of a committee appointed under this Act, has, directly or indirectly, any beneficial interest in any land situated in an area comprised in any improvement scheme framed under this Act, or in any area in which it is proposed to acquire land for any of the purposes of this Act,—

(i) he shall, before taking part in any proceeding at a meeting of the Trust or any committee relating to such area, inform the person presiding at the meeting of the nature of such interest,

(ii) he shall not vote at any meeting of the Trust or any committee upon any resolution or question relating to such land, and

(iii) he shall not take any other part in any proceeding at a meeting of the Trust, or any committee relating to such area if the person presiding at the meeting considers it inexpedient that he should do so.

Officers and servants

Power of Trust to fix number and salaries of it servants.

18 (1) Subject to such rules as the Provincial Government may make prescribing the conditions under which members of the staff appointed by the Trust to offices requiring professional skill may be appointed, suspended or dismissed, a Trust may from time to time fix the number and salaries of such permanent servants as it may think necessary and proper to assist in carrying out the purposes of this Act.

Appointment of temporary servants in cases of emergency.

(2) The Chairman in cases of emergency may appoint such temporary servants as in his opinion may be required for the purposes of this Act, and may direct that the salaries of such temporary servants fixed as the emergency may require shall be paid from the Trust fund :

Provided that—

(i) he shall not act under this sub-section in contravention of any order of the Trust prohibiting the employment of temporary servants for any particular work, and

(ii) every appointment made under this sub-section shall be reported at the next following meeting of the Trust.

Power of appointment etc.

19. Subject to the provisions of section 18 and to any rules for the time being in force, the power of appointing, and granting leave to officers and servants of the Trust, and reducing, suspending, or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, shall be vested—

(a) in the case of officers and servants whose monthly salary does not exceed three hundred rupees in the Chairman, and

(b) in other cases in the Trust :

Provided that any officer or servant in receipt of a monthly salary exceeding one hundred rupees who is reduced, suspended, or dismissed by the Chairman may appeal to the Trust, whose decision shall be final.

Control by Chairman.

20. The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the Trust ; and, subject to the foregoing sections, shall dispose of all questions relating to the service of the said officers and servants and their pay, privileges, and allowances.

Delegation of certain of Chairman's functions.

21. (1) The Chairman may, by general or special order in writing delegate to any officer of the Trust any of the Chairman's powers, duties or functions under this Act or any rule made thereunder, except those conferred or imposed upon or vested in him by sections 13, 16, 22, 46, and 95.

(2) The exercise or discharge by any officer of any powers, duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman.

Supply of information to Government

22. (1) The Chairman shall forward to the Provincial Government a copy of the minutes of the proceedings of each meeting of the Trust, within ten days from the date on which the minutes of the proceedings of such meeting were signed as prescribed in clause (g) of sub-section (1) of section 13.

(2) If the Provincial Government so directs in any case, the Chairman shall forward to it a copy of all papers which were laid before the Trust for consideration at any meeting.

(3) The Provincial Government may require the Chairman to furnish it with—

(a) any return, statement, estimate, statistics or other information regarding any matter under the control of the Trust, or

(b) a report on any such matter, or

(c) a copy of any document in the charge of the Chairman.

The Chairman shall comply with every such requisition without unreasonable delay.

CHAPTER IV

Improvement Schemes

23. An improvement scheme may provide for all or any of the following matters :

(a) The acquisition by purchase, exchange, or otherwise of any property necessary for or affected by the execution of the scheme.

(b) The re-laying out of any land comprised in the scheme.

(c) The re-distribution of sites belonging to owners of property comprised in the scheme.

(d) The closure or demolition of dwellings or portions of dwellings unfit for human habitation.

(e) The demolition of obstructive buildings or portions of buildings.

(f) The construction and re-construction of buildings.

(g) The sale, letting, or exchange of any property comprised in the scheme.

(h) The construction and alteration of streets and back lanes.

(i) The draining, water-supply, and lighting of streets so constructed or altered.

(j) The provision of open spaces for the benefit of any area comprised in the scheme or any adjoining area, and for the enlargement of existing open spaces and approaches.

(k) The sanitary arrangements required for the area comprised in the scheme, including the conversion and prevention of injury or contamination of rivers or other sources and means of water-supply,

(l) The provision of accommodation for any class of the inhabitants.

(m) The advance of money for the purposes of the scheme.

(n) The provision of facilities for communication.

(o) The reclamation or reservation of land for market gardens, afforestation, the provision of fuel and grass-supply, and other needs of the population.

(p) Any other matter for which, in the opinion of the Provincial Government, it is expedient to make provision with a view to the improvement of any area in question or the general efficiency of the scheme.

Types of improvement schemes.

24 An improvement scheme shall be of one of the following types, or may combine any two or more of such types, or of any special features thereof, that is to say,—

(a) a general improvement scheme ;

(b) a re-building scheme ;

(c) a re-housing scheme ;

(d) a street scheme ;

(e) a deferred street scheme ;

(f) a development scheme ;

(g) a housing accommodation scheme ; and

(h) a town-expansion scheme.

General improvement scheme.

25. Whenever it appears to the Trust—

(a) that any buildings in any area which are used or are intended or likely to be used as dwelling-places are unfit for human habitation, or

(b) that danger to the health of the inhabitants of buildings in any area, or in any neighbouring buildings is caused by—

(i) the narrowness, closeness, or bad arrangement and condition of streets or buildings or groups of buildings or

(ii) the want of light, air, ventilation or proper conveniences in such area, or

(iii) any other sanitary defects in such area,

the Trust may pass a resolution to the effect that such an area is an insanitary area, and that a general improvement scheme ought to be framed in respect of such area, and may then proceed to frame such a scheme.

Re-building scheme.

26. (1) When it appears to the Trust that any area is an insanitary area within the meaning of the preceding section and that, regard being had to the comparative value of the buildings in such area and of the sites on which they are erected, the most satisfactory method of dealing with the area or any part thereof is a re-building scheme, it shall frame a scheme in accordance with the provisions of this section.

(2) A re-building scheme may provide for —

(a) the reservation of streets, back lanes, and open spaces and the enlargement of existing streets, back lanes, and open spaces to such an extent as may be necessary for the purposes of the scheme ;

(b) the re-laying out of the sites of the area upon such streets, back lanes, or open spaces so reserved or enlarged ;

(c) the payment of compensation in respect of any such reservation or enlargement, and the construction of the streets, back lanes, and open spaces so reserved or enlarged ;

(d) the demolition of the existing buildings and their appurtenances by the owners, or by the Trust in default of the owners and the erection of buildings in accordance with the scheme by the said owners or by the Trust in default of the owners upon the sites as defined under the scheme ;

(e) the advance to the owners, upon such terms and conditions as to interest and sinking fund and otherwise as may be prescribed under the scheme, of such sums as may be necessary to assist them to erect new buildings in accordance with the scheme ;

(f) the acquisition by the Trust of any site or building comprised in the area included in the scheme.

Re-housing scheme.

27. The Trust may frame schemes (herein called re-housing schemes) for the construction, maintenance, and management of such and so many dwellings and shops as it may consider ought to be provided for persons who—

(a) are displaced by the execution of any improvement scheme sanctioned under this Act, or

(b) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the Provincial Government for sanction under this Act.

Street scheme.

28. (1) Whenever the Trust is of opinion that, for the purpose of—

(a) providing building sites, or

(b) remedying defective ventilation, or

(c) creating new or improving existing means of communication and facilities for traffic, or

(d) affording better facilities for conservancy,

it is expedient to lay out new streets or alter existing streets (including bridges, causeways and culverts), the Trust may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as it may think fit.

(2) A street scheme may within the limits of the area comprised in the scheme provide for—

(a) the acquisition of any land which will, in the opinion of the Trust, be necessary for its execution ;

(b) the re-laying out of all or any of the lands so acquired, including the construction and re-construction of buildings by the Trust or by any other person and the laying-out, construction and alteration of streets and thoroughfares ;

(c) the draining, water-supply, and lighting of streets and thoroughfares so framed or altered ;

(d) the raising, lowering, or reclamation of any land vested in, or to be acquired by, the Trust for the purposes of the scheme ;

(e) the formation of open spaces for the better ventilation of the area comprised in the scheme ;

(f) the acquisition of any land adjoining any street, thoroughfare, or open space to be formed under the scheme.

Deferred street scheme.

29. (1) (a) Whenever the Trust is of opinion that it is expedient for any purpose mentioned in section 28 to provide for the ultimate widening of any street by altering the existing alignments of such street to improved alignments to be prescribed by the Trust, but that it is not expedient immediately to acquire all or any of the properties lying within the proposed improved alignments, the Trust, if satisfied of the sufficiency of its resources, may pass a resolution to that effect, and shall forthwith proceed to make a scheme to be called a "deferred street scheme" prescribing an alignment on each side of such street.

(b) No person shall erect, re-erect, add to or alter any building or wall so as to make the same project beyond the prescribed alignment of the street except with the written permission of the Trust.

Particulars to be provided for in a deferred street scheme.

(2) The deferred street scheme shall provide for :

(a) the acquisition of the whole or any part of any property lying within the prescribed street alignments ;

(b) the re-laying out of all or any such property including the construction and re-construction of buildings by the Trust or by any other person and the formation and alteration of the street ;

(c) the draining and lighting of the street so formed and altered.

(3) The owner of any property included in a deferred street scheme may, at any time after the scheme has been sanctioned by the Provincial Government, give the Trust notice requiring it to acquire such property before the expiration of six months from the date of such notice and the Trust shall acquire such property accordingly.

(4) Before proceeding to acquire any property within the limits of the scheme other than property regarding which it has received a notice under sub-section (3), the Trust shall give six months' notice to the owner of its intention to acquire the property.

(5) Upon the scheme being sanctioned by the Provincial Government and notwithstanding anything contained in the Municipalities Act, the municipal board shall not have power to prescribe a regular line of the street within the limits of the scheme and any such regular line previously prescribed within such limits shall cease to be the regular line of the street.

Development scheme.

30. (1) In regard to any area to which this Act is extended, the Trust may, from time to time, prepare a scheme of proposed public streets with plans showing the direction of such streets, the street alignment and building line on each side of them, their intended width and such other details as may appear desirable.

(2) When any such scheme has been notified under section 42 the street to which it refers shall be deemed to be a projected public street.

(3) If any person desires to erect, re-erect, add to or alter any building or wall so as to make the same project beyond the street alignment or building line shown in any plan so adopted, he shall apply to the Trust for permission to do so.

(4) If the Trust refuses to grant permission to any person to erect on his land any building or wall to project as aforesaid, and if it does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal.

(b) the several directions in which the expansion of the town appears likely to take place ; and

(c) the likelihood of improvement schemes being required for other parts of the town.

Preparation, publication and transmission of notice as to improvement schemes, and supply of documents to applicants.

36. (1) When any improvement scheme has been framed, the Trust shall prepare a notice, stating—

(a) the fact that the scheme has been framed,

(b) the boundaries of the area comprised in the scheme, and

(c) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire, may be seen at reasonable hours.

(2) The Trust shall—

(a) cause the said notice to be published weekly for three consecutive weeks in the Official Gazette and in a local newspaper or newspapers (if any) with a statement of the period within which objections will be received, and

(b) send copy of the notice to the Chairman of the municipal board.

(3) The Chairman shall cause copies of all documents referred to in clause (c) of sub-section (1) to be delivered to any applicant on payment of such fees as may be prescribed by rule under section 73.

Transmission to Trust of representation by municipal board as to improvement scheme.

37. The Chairman of any municipal board to whom a copy of a notice has been sent under clause b) of sub-section (2) of section 36, shall, within a period of sixty days from the receipt of the said copy, forward to the trust any representation which the municipal board may think fit to make with regard to the scheme.

Notice of proposed acquisition of land.

38. (1) During the thirty days next following the first day on which any notice is published under section 36 in respect of any improvement scheme, the Trust shall serve a notice on—

(a) every person whose name appears in the municipal assessment list as being primarily liable to pay tax assessed upon the annual value of any building or land which it is proposed to acquire in executing the scheme, and

(b) the occupier (who need not be named) of each premises, entered in the municipal assessment list which the Trust proposes to acquire in executing the scheme.

(2) Such notice shall—

(a) state that the Trust proposes to acquire such land for the purposes of carrying out an improvement scheme, and

(b) require such person, if he dissents from such acquisition, to state his reasons in writing within a period of sixty days from the service of the notice.

(3) Every such notice shall be signed by, or by the order of, the Chairman.

Furnishing of copies or extracts from the municipal assessment book.

39. The Chairman of the municipal board shall furnish the Chairman of the Trust, at his request, with a copy of, or extracts from, the municipal assessment list on payment of such fees as may be prescribed by rule made under section 72.

Abandonment of improvement scheme, or application to Provincial Government to sanction it.

40. (1) After the expiry of the periods respectively prescribed under clause (a) of sub-section (2) of section 36, by section 37, and by clause (b) of sub-section (2) of section 38, in respect of any improvement scheme, the Trust shall consider any objection, representation and statement of dissent received thereunder, and after hearing all persons making any such objection, representation or dissent, who may desire to be heard, the Trust may either abandon the scheme or apply to the Provincial Government for sanction to the scheme with such modifications (if any) as the Trust may consider necessary.

(2) Every application submitted under sub-section (1) shall be accompanied by—

(a) a description of, and full particulars relating to, the scheme, and complete plans and estimates of the cost of executing the scheme;

(b) a statement of the reasons for any modifications made in the scheme as originally framed;

(c) a statement of objections (if any) received under section 36;

(d) any representation received under section 37;

(e) a list of the names of all persons (if any) who have dissented, under clause (b) of sub-section (2) of section 38, from the proposed acquisition of their land, and a statement of the reasons given for such dissent; and

(f) a statement of the arrangements made or proposed by the Trust for the re-housing of persons likely to be displaced by the execution of the scheme, for whose re-housing provision is required.

Provided that the compliance of clause (a) of this sub-section shall not be necessary, when a Trust applies to the Provincial Government for the sanction of a general improvement scheme as specified in section 25, but the Trust shall be bound to furnish to the Provincial Government such particulars relating to the scheme as the Government may ask by a general or special order.

(3) When any application has been submitted to the Provincial Government under sub-section (1), the Trust shall cause notice of the fact to be published for two consecutive weeks in the Official Gazette and in a local newspaper or newspapers (if any).

Power to sanction, reject or return improvement scheme.

41. (1) The Provincial Government may sanction, either with or without modification, or may refuse to sanction, or may return for reconsideration, any improvement scheme submitted to it under section 40.

(2) If a scheme returned for reconsideration under sub section (1) is modified by the Trust, it shall be re-published in accordance with section 36—

(a) in every case in which the modification affects the boundaries of the area comprised in the sheme, or involves the acquisition of any land not previously proposed to be acquired, and

(b) in every other case, unless the modification is, in the opinion of the Provincial Government, not of sufficient importance to require republication.

Notification of sanction of improvement scheme.

42. (1) Whenever the Provincial Government sanctions an improvement scheme it shall announce the fact by notification, and except in the case of a deferred street scheme, development scheme, or town expansion scheme, the Trust shall forthwith proceed to execute the same.

(2) The publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

Alteration of improvement scheme after sanction.

43. At any time after an improvement scheme has been sanctioned by the Provincial Government and before it has been carried into execution, the Trust may alter it :

Provided as follows :—

(a) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than Rs. 50,000 or 5 per cent. of such cost, alteration shall not be made without the previous sanction of the Provincial Government ;

(b) if any alteration involves the acquisition, otherwise than by agreement, of any land the acquisition of which has not been sanctioned by the Provincial Government, the procedure prescribed in the foregoing sections of this chapter shall, so far as applicable, be followed as if the alteration were a separate scheme.

Combination of improvement schemes.

44. Any number of areas in respect of which improvement schemes have been or are proposed to be framed, may at any time be included in one combined scheme.

CHAPTER V

POWERS AND DUTIES OF THE TRUST WHERE A SCHEME HAS BEEN SANCTIONED

Transfer to Trust, for purposes of improvement scheme, of building or land vested in municipal board.

45. (1) Whenever any building, or any street, square or other land, or any part thereof which is vested in the municipal board, is required for executing any improvement scheme, the Trust shall give notice accordingly to the Chairman of the municipal board, and such building, street, square, land or part shall thereupon vest in the Trust, subject in the case of any building to the payment to the municipal board of such sum as may be required to compensate it for actual loss resulting from the transfer thereof to the Trust.

(2) If any question or dispute arises as to the sufficiency of the compensation paid or proposed to be paid under sub-section (1), the matter shall be referred to the Provincial Government, whose decision shall be final.

Transfer of private street or square to Trust for purposes of improvement scheme.

46. (1) Whenever any street, or square or part thereof which is not vested in the municipal board is required for executing any improvement scheme, the Trust shall cause to be affixed, in a conspicuous place in or near such street, square or part, a notice signed by the Chairman—

(a) stating the purpose for which the street, square or part is required, and

(b) declaring that the Trust will, on or after a date to be specified in the notice, such date being not less than thirty days after the date of the notice, take over charge of such street, square or part from the owner thereof ;

and shall simultaneously send a copy of such notice to the owner of such street, square or part.

(2) After considering and deciding all objections (if any) received in writing before the date so specified, the Trust may take over charge of such street, square or part from the owner thereof; and the same shall thereupon vest in the Trust.

(3) When the Trust alters or closes any street or square or part thereof which has vested in it under sub-section (2), it shall pay reasonable compensation to the previous owner for the loss of his rights therein.

(4) If the alteration or closing of any such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto, or to residents in the neighbourhood, the Trust—

(i) shall forthwith provide some other reasonable means of access for the use of persons who were entitled to use such street, square or part as a means of access to any property or place, and

(ii) if the provision of such means of access does not sufficiently compensate any such owner or resident for such damage or inconvenience, shall also pay him reasonable compensation in money.

Provision of drain or water-work to replace another situated on land vested in the Trust under section 45 or section 46.

47. (1) When any building, or any street, square or other land, or any part thereof, has vested in the Trust under section 45 or section 46, no municipal drain or water-work therein shall vest in the Trust until another drain or water-work (as the case may be), if required, has been provided by the Trust, to the satisfaction of the municipal board, in place of the former drain or work.

(2) If any question or dispute arises as to whether another drain or water-work is required or as to the sufficiency of any drain or water-work provided by the Trust under sub-section (1), the matter shall be referred to the Provincial Government, whose decision shall be final.

Power of Trust to turn or close public street or square vested in it.

48. (1) The Trust may—

(a) turn, divert, discontinue the public use of, or permanently close, any public street vested in it, or any part thereof, or

(b) discontinue the public use of, or permanently close, any public square vested in it, or any part thereof.

(2) Whenever the Trust discontinues the public use of, or permanently closes, any public street vested in it, or any part thereof, it shall pay reasonable compensation to every person who was entitled, otherwise than as a mere licensee, to use such street or part as a means of access and has suffered damage from such discontinuance or closing.

(3) Whenever the Trust discontinues the public use of, or permanently closes, any public square vested in it, or any part thereof, it shall pay reasonable compensation to every person—

(a) who was entitled, otherwise than as a mere licensee, to use such square or part as a means of access, or

(b) whose immoveable property was ventilated by such square or part, and who has suffered damage—

(i) in case (a) from such discontinuance or closing, or

(ii) in case (b) from the use to which the Trust has put such square or part.

(4) In determining the compensation payable to any person under sub-section (2) or sub-section (3), the Trust shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other public street or square at or about the same time that the public street or square or part thereof, on account of which the compensation is paid, is discontinued or closed.

(5) When any public street or square vested in the Trust, or any part thereof, is permanently closed under sub-section (1), the Trust may sell or lease so much of the same as is no longer required.

Powers under the Municipalities Act vested in the Trust.

49. (1) The provisions of sections 178 to 186, 189 to 194, 203 to 216, 218 to 224, 236, 256, 257, 261, 265, 266, 267 (except in respect of cleansing and disinfecting), 268 to 270 and 278 of the Municipalities Act shall, so far as may be consistent with the tenor of this Act, apply to all areas in respect of which an improvement scheme is in force; and for the period during which such scheme remains in force all references in the said sections to the board or to the *Chairman*, or to any officer of the board, shall be construed as referring to the Trust which, in respect of any such areas, may alone exercise and perform all or any of the powers and functions which under any of the said sections might have been exercised and performed by the board or by the Chairman or by any officer of the board:

Provided that the Trust may delegate to the Chairman or to any officer of the Trust all or any of the powers conferred by this section.

(2) The Trust may make by-laws for any area comprised in an improvement scheme which is outside the limits of the municipality

(a) generally for carrying out the purpose of this Act, and

(b) in particular and without prejudice to the generality of the aforesaid powers the Trust may make by-laws regarding any of the matters referred to in section 298 of the Municipalities Act.

The provisions of sections 299 and 301 of the Municipalities Act shall, so far as may be consistent with the tenor of this Act, be applicable to all by-laws made by a Trust under this sub-section, and all references in the said sections to the board shall be construed as referring to the Trust.

Facilities for movement of the population

Powers of the Trust for facilitating movement of the population.

50. With a view to facilitating the movement of the population in and around any area to which this Act is applied, the Trust may from time to time,—

(1) subject to any conditions it may think fit to impose,—

(a) guarantee the payment, from the funds at its disposal, of such sums as it may think fit, by way of interest on capital expended on the construction, maintenance or working of means of locomotion, or

(b) make such payments as it may think fit from the said funds, by way of subsidy to persons undertaking to provide, maintain, and work any means of locomotion, or

(2) either singly or in combination with any other persons construct, maintain, and work any means of locomotion, under the provisions of any law applicable thereto, or

(3) construct, or widen, strengthen or otherwise improve, bridges:

Provided that no guarantee or subsidy shall be made under sub-section (1), and no means of locomotion shall be constructed, maintained, or worked under sub-section (2), without the sanction of the Provincial Government.

Surveys

Power to make surveys or contribute towards their cost.

51. The Trust may—

(a) cause a survey of any land to be made, whenever it considers that a survey is necessary or expedient for carrying out any of the purposes of this Act, or

(b) contribute towards the cost of any such survey made by any other local authority.

Power of entry

Power of entry.

52. (1) The Chairman may, with or without assistants or workmen, enter into or upon any land, in order—

(a) to make any inspection, survey, measurement, valuation or enquiry,

(b) to take levels,

(c) to dig or bore into the sub-soil,

(d) to set out boundaries and intended lines of work,

(e) to mark such levels, boundaries, and lines by marks and cutting trenches, or

(f) to do any other thing,

whenever it is necessary to do so for any of the purposes of this Act or any rule made or scheme sanctioned hereunder or any scheme which the Trust intends to frame hereunder :

Provided as follows :

(a) except when it is otherwise specially provided by a rule no such entry shall be made between sunset and sunrise ;

(b) except when it is otherwise specially provided by a rule no building which is used as a human dwelling shall be so entered, unless with the consent of the occupier, thereof, without giving the said occupier at least twenty-four hours previous written notice of the intention to make such entry ;

(c) sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to females to remove to some part of the premises where their privacy need not be disturbed ;

(d) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

(2) Whenever the Chairman enters into or upon any land in pursuance of sub section (1), he shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid ; and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Trust, whose decision shall be final.

(3) It shall be lawful for any person authorized under sub-section (1) to make an entry for the purpose of inspection or search to open or cause to be opened a door, gate or other barrier—

(a) if he considers the opening thereof necessary for the purpose of such entry, inspection or search, and

(b) if the owner or occupier is absent, or being present refuses to open such door, gate or barrier.

Reference of disputes to Tribunal.

53. (1) If any question or dispute arises—

(a) between the Trust and the previous owner of any street or square or part thereof which has vested in the Trust under section 46 and has been altered or closed by it,

as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of that section, or

(b) between the Trust and any person who was entitled otherwise than as a mere licensee, to use as a means of access any street or part thereof which has vested in the Trust under section 46—

(i) as to whether the alteration or closing of such street square or part causes damage or substantial inconvenience to owners of property adjacent thereto or to residents in the neighbourhood, or

(ii) as to whether the other means of access provided or proposed to be provided under sub-section (4) of the said section 46 are reasonably sufficient, or

(iii) as to the sufficiency of any compensation paid or proposed to be paid under the said sub-section (4) or,

(c) between the Trust and any person as to the sufficiency of any compensation paid or proposed to be paid to him under section 26, 30, 32, 48 or 101, the matter shall be determined by the Tribunal, if referred to it either by the Trust or by the claimant within a period of three months from the date on which the said person was informed of the decision of the Trust fixing the amount of compensation to be paid to him or of the rejection of his claim to compensation by the Trust, and the determination of the Tribunal shall be final :

Provided that the Tribunal shall not entertain the application of any claimant who has not applied to the Trust for compensation within three months of the date on which his claim to compensation accrued.

(2) If a reference to the Tribunal be not made within the period prescribed by sub-section (1), the decision of the Trust shall be final.

(3) For the purpose of determining any matter referred to it under sub-section (1), the Tribunal shall have all the powers with regard to witnesses documents, and costs which it would have if the Land Acquisition Act, 1894, as modified by section 58 of this Act, were applicable to the case.

Vesting in municipal board of streets laid out or altered, and open spaces provided by the Trust under improvement scheme.

54. (1) Whenever the municipal board is satisfied—

(a) that any street laid out or altered by the Trust has been duly levelled, paved, metalled, flagged, channelled, sewered, and drained in the manner provided in the plans sanctioned by the Provincial Government under this Act, and

(b) that such lamps, lamp-posts, and other apparatus as the municipal board may consider necessary for the lighting of such street and as ought to be provided by the Trust have been so provided, and

(c) that water and other sanitary conveniences ordinarily provided in a municipality have been duly provided in such street,

the municipal board, after obtaining the assent of the Trust, or failing such assent, the assent of the Provincial Government under sub-section (3), shall by a written notice affixed in some conspicuous position in such street, declare the street to be a public street ; and the street shall thereupon vest in the municipal board, and shall thenceforth be maintained, kept in repair, lighted, and cleansed by the municipal board.

(2) When any open space for purposes of ventilation or recreation has been provided by the Trust in executing any improvement scheme, it shall, on completion, be transferred to the municipal board by resolution of the Trust and shall thereupon vest in, and be maintained at the expense of, the municipal board ;

Provided that the municipal board may require the Trust, before any such open space is so transferred, to enclose, level, turf, drain, and lay out such space and provide footpaths therein, and, if necessary, to provide lamps and other apparatus for lighting it.

(3) If any difference of opinion arises between the Trust and the municipal board in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the Provincial Government, whose decision shall be final.

CHAPTER VI

ACQUISITION AND DISPOSAL OF LAND

Acquisition by agreement

Power to purchase or lease by agreement.

55. The Trust may enter into an agreement with any person for the purchase, leasing or exchange by the Trust from such person of any land which the Trust is authorized to acquire, or any interest in such land.

Compulsory acquisition

Power to acquire land under the Land Acquisition Act, 1894

56. The Trust may, with the previous sanction of the Provincial Government, acquire land under the provisions of the Land Acquisition Act, 1894, as modified by the provisions of this Act, for carrying out any of the purposes of this Act.

Tribunal to be constituted.

57. A Tribunal shall be constituted, as provided in section 59, for the purpose of performing the functions of the court in reference to the acquisition of land for the Trust, under the Land Acquisition Act, 1894.

Modification of the Land Acquisition Act, 1894.

58. For the purpose of acquiring land under the said Act for the Trust—

(a) the Tribunal shall (except for the purposes of section 51 of that Act) be deemed to be the court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act ;

(b) the said Act shall be subject to the further modifications indicated in the Schedule :

(c) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means and (so far as may be) in the same manner, as is provided in the case of a civil court under the Code of Civil Procedure, 1908 ; and

(d) the award of the Tribunal shall be deemed to be the award of the court under the said Land Acquisition Act, 1894, and shall be final.

Constitution of Tribunal

59. (1) The Tribunal shall consist of a President and two assessors.

(2) The President of the Tribunal shall be either—

(a) a member of the Judicial branch of the Imperial or Provincial Civil Service, of not less than ten years' standing in such service, who has for at least three years served as District Judge or held judicial office not inferior to that of a Civil Judge of the first grade ; or

(b) a barrister, advocate or pleader of not less than ten years' standing who has practised as an advocate or pleader in the High Court of Judicature at Allahabad or the Court of the Judicial Commissioner of Oudh or the Chief Court of Oudh.

(3) The President of the Tribunal and one of assessors shall be appointed by the Provincial Government and the other assessor shall be appointed by the municipal board within two months of their being asked by the Provincial Government to make such appointment, by the Provincial Government :

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or would, if he were a Trustee, be liable to removal by the Provincial Government under section 10.

(4) The term of office of each member of the Tribunal shall be two years ; but any member shall, subject to the proviso to sub-section (3), be eligible for re-appointment at the end of that term.

(5) The Provincial Government may, on the ground of incapacity or misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as member of the Tribunal.

(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any unavoidable cause, the authority which appointed him shall forthwith appoint a fit person to be a member in his place. Where the authority so appointing was the municipal board and the municipal board fails to make a fresh appointment within two months of being asked to do by the Provincial Government, the appointment may be made by the Provincial Government.

Remuneration of members of Tribunal.

60. Each member of the Tribunal shall be entitled to receive such remuneration, either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the Provincial Government may prescribe.

Officers and servants of Tribunal.

61. (1) The President of the Tribunal shall, from time to time, prepare a statement showing—

(a) the number and grades of the clerks and other officers and servants who he considers should be maintained for carrying on the business of the Tribunal,

(b) the amount of the salary to be paid to each such officer and servant.

(2) All statements prepared under sub-section (1) shall be subject to the previous sanction of the Provincial Government.

(3) Subject to any directions contained in any statement prepared under sub-section (1), and to rules made under section 72, the power of appointing, promoting, and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

Mode of payment.

62. The remuneration prescribed under section 60 for members of the Tribunal, and the salaries, leave allowances and acting allowances prescribed under this Act for officers and servants of the Tribunal, shall be paid by the Trust to the President of the Tribunal for distribution.

Power to make rules for Tribunal.

63. (1) The Provincial Government may from time to time make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by Tribunals established under this Act.

(2) All such rules shall be published by notification.

Award of Tribunal.

64. (1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894,—

(a) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail;

(b) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary; and, when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal; and

(c) notwithstanding anything contained in the foregoing clauses, the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by a Court of Small Causes within the local limits of whose jurisdiction it was made as if it were a decree of that Court.

Disposal of land

Power to dispose of land.

65. Subject to any rules made by the Provincial Government under section 72 of this Act, the Trust may retain, or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by it under this Act.

Application of Act to acquisition by other local authorities.

66. (1) Wherever municipal board or other local authority acquires land for any of the purposes mentioned in clauses (a) and (c) of sub-section (1) of section 8 of the Municipalities Act—

(a) the modifications of the Land Acquisition Act contained in the Schedule of this Act shall, so far as they are applicable, apply to every such acquisition;

(b) the Provincial Government may constitute a Tribunal in accordance with section 59, and the provisions of sections 56 to 64, and of section 72 so far as they relate to the Tribunal, shall thereupon apply to such acquisition.

(2) If the Provincial Government does not constitute a Tribunal in accordance with clause (b) of sub-section (1), all references to the Tribunal in the Schedule shall be construed as referring to the Court.

CHAPTER VII

FINANCE

Power of Trust to borrow money.

67. A Trust as defined in this Act shall be deemed to be a local authority, as defined in the Local Authorities Loans Act, 1914, for the purpose of borrowing money under that Act, and the making and execution of any improvement scheme mentioned in this Act shall be deemed to be a work which such local authority is legally authorized to carry out.

Custody and investment of Trust funds.

68. (1) In places where there is a Government treasury or sub-treasury, or a bank to which the Government treasury business has been made over, all moneys at the Trust shall be kept in such treasury or bank.

(2) In places where there is no such treasury or sub-treasury or bank, such moneys may be kept with a banker or person acting as a banker, who has given such security for the safe custody and repayment on demand of the sum so kept as the Provincial Government may in each case think sufficient.

(3) Provided that nothing in the foregoing provisions of this section shall be deemed to preclude a Trust from, with the previous sanction of the Provincial Government, investing any such moneys which are not required for immediate expenditure in any of the securities described in section 20 of the Indian Trusts Act, 1882, or placing them in fixed deposit with a Presidency Bank.

Procedure if the Trust fails to make any payments in respect of loans of the Trust.

69. (1) If the Trust fails to repay any loan taken in pursuance of section 67, or any interest or costs due in respect thereof, according to the conditions of the loan, the Accountant General of the United Provinces shall make such payment;

and the Chairman of the municipal board shall forthwith pay from the municipal fund to the said Accountant General a sum equivalent to the sum so paid by him;

and the Provincial Government may attach the rents and the other income of the Trust; and thereupon the provisions of section 5 of the Local Authorities Loans Act, 1914, shall, with all necessary modifications, be deemed to apply.

(2) Whenever the Chairman of a municipal board has made any payment to the Accountant General under sub-section (1), the Provincial Government shall, so far as possible, reimburse the municipal board out of the rents and income attached under that sub-section.

Procedure if Chairman of board fails to make any payment due to Accountant General.

70. If the Chairman of a municipal board fails to make any payment as required by section 69 the Provincial Government may attach the municipal fund;

and thereupon the provisions of section 5 of the Local Authorities Loans Act, 1914, shall, with all necessary modifications be deemed to apply, and the Provincial Government may further require the municipal board to impose or increase the rate of the tax on the annual value of buildings or lands or both described in section 128 (1) (i) of the Municipalities Act, to such extent as may be necessary for the purpose of making such payment.

Payments under section 69 to be a charge on the property of the Trust.

71. All moneys paid by the Chairman of the municipal board under sub-section (1) of section 69 and not reimbursed by the Provincial Government under sub-section (2) of that section, and all moneys payable under sub-section (1) of section 69 and levied under section 70, shall constitute a charge upon the property of the Trust.

CHAPTER VIII

RULES

Power of Provincial Government to make rules.

72. (1) In addition to the power conferred by section 63, the Provincial Goverment may make rules consistent with this Act and applicable to all or any Trust—

(a) as to the authority on which money may be paid from the Trust funds,

(b) for prescribing the fees payable for a copy of, or extracts from, the municipal assessment list furnished to the Chairman under section 39,

(c) as to the conditions on which officers and servants of the Trust appointed to offices requiring professional skill may be appointed, suspended or dismissed,

(d) as to the intermediate office or offices (if any) through which correspondence between the Trust and the Provincial Government or officers of that Government shall pass,

(e) as to the accounts to be kept by the Trust, as to the manner in which such accounts shall be audited and published, and as to the powers of auditors in respect of disallowance and surcharge,

(f) as to the authority by whom, the conditions subject to which and the mode in which contracts may be entered into and executed on behalf of the Trust,

(g) as to the preparation of estimates of income and expenditure of the Trust and as to the authority by whom, and the conditions subject to which, such estimates may be sanctioned,

(h) as to the returns, statements and reports to be submitted by Trust,

(i) to prescribe and define the mutual relations to be observed between the Trust and other local authorities in any matter in which they are jointly interested,

(j) for regulating the grant of leave of absence, leave allowances and acting allowances to the officers and servants of the Trust and of the Tribunal,

(k) for establishing and maintaining a provident or annuity fund for compelling all or any of the officers in the service of the Trust or of the Tribunal (other than any servant of the Government in respect of whom a contribution is paid under section 93) to contribute to such fund at such rates and subject to such conditions as may be prescribed by such rules and for supplementing such contributions out of the funds of the Trust :

Provided that a Government servant employed as officer or servant of the Tribunal shall not be entitled to leave or leave allowances otherwise than as may be prescribed in any general or special orders of the Government,

(l) for determining conditions under which the officers and servants of the Trust or of the Tribunal or any of them, shall on retirement receive gratuities or compassionate allowances and the amount of such gratuities and compassionate allowances :

Provided that it shall be at the discretion of the Trust or of the Tribunal, as the case may be, to determine whether all such officers or servants or any, and, if so, which

of them, shall become entitled on retirement to any such gratuities or compassionate allowances as aforesaid,

(m) generally for the guidance of Trust and public officers in all matters connected with the carrying out of the provisions of *this Act*.

(2) The power of the Provincial Government to make rules under this section is subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Official Gazette.

Power of the Trust to make rules.

73 Every Trust may, from time to time with the previous sanction of the Provincial Government, make rules consistent with this Act and with any rules made under this Act by the Provincial Government—

(a) for fixing the amount of security to be furnished by any officer and servant of the Trust from whom it may be deemed expedient to require security,

(b) for associating members with the Trust under section 14,

(c) for appointing persons (other than Trustees and persons associated with the Trust under section 14) to be members of committes under section 15,

(d) for regulating the delegation of powers or duties of the Trust to committees or to the Chairman,

(e) for the guidance of persons employed by it under this Act,

(f) for prescribing the fees payable for copies of documents delivered under sub-section (3) of section 36 or under section 74,

(g) for the management, use, and regulation of dwellings constructed under any improvement scheme,

(h) generally for carrying out the purpose of this Act.

Printing and sale of copies of rules.

74. (1) The Chairman shall cause all rules made under section 72 or section 73 and for the time being in force to be printed and shall cause printed copies thereof to be delivered to any applicant on payment of such fee as may be prescribed.

(2) Notice of the fact of copies of rules being obtainable at the said price and of the place where and the person from whom the same are obtainable shall be given by the Chairman by advertisement in a local newspaper or newspapers (if any).

Power of Provincial Government to cancel rules made under section 73.

75. The Provincial Government may, after previous publication of its intention, rescind any rule made by the Trust which it has sanctioned, and thereupon the rule shall cease to have effect.

CHAPTER IX

PROCEDURE AND PENALTIES

Signature and service of notices or bills

Standing signature on notices or bills.

76. Every notice or bill which is required under this Act to bear the signature of the Chairman or of any other Trustee or of any officer or servant of the Trust shall be deemed to be properly signed if it bears a *facsimile* of the signature of the Chairman or of such other Trustee or of such officer or servant, as the case may be stamped thereupon.

Method of giving public notice.

77. Subject to the provisions of this Act, every public notice required under this Act, shall be deemed to have been given if it is pub-

lished in some local newspaper (if any) and posted upon a notice board to be exhibited for public information at the building in which the meetings of the Trust are ordinarily held.

Service of notice.

78. (1) Every notice other than a public notice, and every bill, issued under this Act, shall, unless it is under this Act otherwise expressly provided, be served or presented—

(a) by giving or tendering the notice or bill or sending it by post, to the person to whom it is addressed, or

(b) if such person is not found, then by leaving the notice or bill at his last known place of abode, if within municipal limits, or by giving or tendering it to some adult male member or servant of his family, or by causing it to be fixed on some conspicuous part of the building or land (if any) to which it relates.

(2) When a notice is required or permitted under this Act to be served upon an owner or occupier of a building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof, in cases not otherwise specially provided for in this Act, shall be effected either—

(a) by giving or tendering the notice, or sending it by post, to the owner or occupier, or if there be more owners or occupiers than one, to any one of them, or

(b) if no such owner or occupier is found, then by giving or tendering the notice to an adult male member or servant of his family, or by causing the notice to be fixed on some conspicuous part of the building or land to which the same relates.

(3) Whenever the person on whom a notice or bill is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall be deemed to be service upon the minor.

Disobedience to Act or to notice.

79. Where under this Act or a notice issued thereunder the public or any person is required to do or to refrain from doing anything, a person who fails to comply with such requisition shall, if such failure is not an offence punishable under any other section, be liable on conviction by a magistrate to a fine not exceeding five hundred rupees for every such failure and in the case of a continuing breach, to a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the breach.

Powers of Trust to execute works on failure to comply with notice.

80. If a notice has been given under this Act to a person requiring him to execute a work in respect of any property, moveable or immoveable, public or private, or to provide or do or refrain from doing anything within a time specified in the notice, and if such person fails to comply with such notice, then the Trust may cause such work to be executed or such thing to be provided or done, and may recover all expenses incurred by it on such account from the said person in the manner provided by Chapter VI of the Municipalities Act.

Liability of occupier to pay in default of owner.

81. (1) If the person to whom the notice mentioned in section 80 has been given is the owner of the property in respect of which it is given the Trust may (whether any action or other proceeding has been brought or taken against such owner or not) require the person (if any) who occupies such property or a part thereof under such owner, to pay to the Trust instead of to the owner the rent payable by him in respect of such property, as it falls due, up to the amount recoverable from the owner under section 80; and any such payment made by the occupier to the Trust shall, in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been made to the owner of the property.

(2) For the purpose of deciding whether action should be taken under sub-section (1), the Trust may require an occupier of property to furnish information as to the sum payable by him as rent on account of such property and as to the name and address of the person to whom it is payable; and if the occupier refuses to furnish such information he shall be liable for the whole of the expenses as if he were the owner.

(3) All money recoverable by the Trust under this section shall be recoverable in the manner provided by Chapter VI of the Municipalities Act

Right of occupier to execute works in default of owner.

82. Whenever default is made by the owner of a building or land in the execution of a work required under this Act to be executed by him, the occupier of such building or land may, with the approval of the Trust, cause such work to be executed, and the expense thereof shall, in the absence of any contract to the contrary, be paid to him by the owner, or the amount may be deducted out of the rent from time to time becoming due from him to such owner.

Procedure upon opposition to execution by occupier.

83. (1) If, after receiving information of the intention of the owner of any building or land to take any action in respect thereof in compliance with a notice issued under this Act, the occupier refuses to allow such owner to take such action, the owner may apply to a magistrate.

(2) The magistrate upon proof of such refusal may make an order in writing requiring the occupier to allow the owner to execute all such works, with respect to such building or land, as may be necessary for compliance with notice and may also, if he thinks fit, order the occupier to pay to the owner the costs relating to such application or order.

(3) If, after the expiration of eight days from the date of the magistrate's order, the occupier continues to refuse to allow the owner to execute such work, the occupier shall be liable, upon conviction, to a fine which may extend to twenty-five rupees for every day during which he has so continued to refuse.

(4) Every owner, during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such works.

Recovery of cost of work by the occupier.

84. When the occupier of a building or land has, in compliance with a notice issued under this Act, executed a work for which the owner of such building or land is responsible, either in pursuance of the contract of tenancy or by law, he shall, in the absence of any contract to the contrary, be entitled to recover from the owner by deduction from the rent payable by him or otherwise the reasonable cost of such work.

Recovery of expenses of removal by Trust.

85. The expenses incurred by the Trust in effecting any removal under section 265 of the Municipalities Act as applied by section 49 of this Act, or, in the event of a written notice under section 278 of that Act not being complied with, under section 80 of this Act, shall be recoverable by sale of the materials removed, and if the proceeds of such sale do not suffice, the balance shall be recoverable from the owner of the said materials in the manner provided by Chapter VI of the Municipalities Act.

Relief to agents and trustees.

86. (1) When a person, by reason of his receiving or being entitled to receive, the rent of immoveable property as trustee or agent of a person or society would, under this Act, be bound to discharge an obligation imposed by this Act on the owner of the property and for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, in this hands funds belonging to the owner sufficient for the purpose.

(2) When an agent or trustee has claimed and established his right to relief under this section, the Trust may give him notice to apply to the discharge of such obligation as aforesaid the first moneys which come to his hands on behalf, or for the use, of the owner, and should he fail to comply with such notice, he shall be deemed to be personally liable to discharge such obligation.

Application of chapter VI, Municipalities Act

87. Whenever in this Act or in any section of the Municipalities Act made applicable by section 49 of this Act, it is provided that any sum shall be recoverable in the manner provided by Chapter VI of the Municipalities Act, then in applying the provisions of that chapter all references to the board shall be construed as referring to the Trust and all references to the municipal office, a municipal officer or the municipal fund shall be construed as referring to the office of the Trust, to an officer of the Trust and the funds of the Trust, respectively.

Penalty for removing fences, etc., in street.

88. If any person, without lawful authority —

(a) removes any fence, or any timber used for propping or supporting any building, wall or other thing, or extinguishes any light set up at any place where the surface of street or other ground has been opened or broken up by the Trust for the purpose of carrying out any work, or

(b) infringes any order given, or removes any bar, chain or post fixed by the Trust for the purpose of closing any street to traffic,

he shall be punishable with fine which may extend to fifty rupees.

Power to prevent or demolish building in contravention of sections 30, 31 and, 32.

89. If any person without the permission of the Trust erects, re-erects, adds to or alters any building or wall so as to make the same project beyond the street alignment prescribed under section 30 or the street alignment or building line shown in any plan finally adopted by the Trust under section 31, or erects, re-erects, adds to or alters any building or wall in the area specified in sub-section (4) of section 32, the Chairman of the Trust may by a written notice —

(a) direct that the building, alteration or addition be stopped, and

(b) require such building, alteration or addition to be altered or demolished as he may deem necessary

Penalty for obstructing contractor or removing mark.

90. If any person—

(a) obstructs, or molests any person with whom the Trust 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 authorized 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.

Disposal of fines and damages.

Fines and damages to be paid to Trust.

91. Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

CHAPTER X

SUPPLEMENTAL PROVISIONS

Trustees, etc deemed public servants.

92. Every trustee, and every officer and servant of the Trust, and every member and officer and servant of the Tribunal, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Contribution towards leave allowances and pensions of Government servants

Contributions by Trust towards leave allowances and pensions of Government servants.

93. The Trust shall be liable to pay such contributions for the leave allowances and pension of the person in the service of the Crown employed as Chairman or as an officer or servant of the Trust, or as a member or officer or servant of the Tribunal, as may be required by the conditions of his service under the Crown to be paid by him or on his behalf.

Authority for prosecutions.

94 Unless otherwise expressly provided, no court shall take cognizance of any offence punishable under this Act, except on the complaint of, or upon information received from, the Trust or some person authorized by the Trust or by general or special orders in this behalf

Legal Proceedings

Powers of Chairman as to institution, etc of legal proceedings and obtaining legal advice.

95 The Chairman may, subject to the control of the Trust—

(a) institute, defend or withdraw from legal proceedings under this Act,

(b) compound any offence against this Act,

(c) admit, compromise or withdraw any claim made under this Act, and

(d) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the Trust to obtain, for any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Trust or any officer or servant of the Trust

Indemnity to Trust, etc.

96. No suit shall be maintainable against the Trust, or any trustee, or any officer or servant of the Trust, or any person acting under the direction of the Chairman of the Trust or of any officer or servant of the Trust in respect of anything lawfully and in good faith and with due care and attention done under this Act.

Notice of suit against Trust, etc.

97. (1) No suit shall be instituted against the Trust or any trustee, or any person associated with the Trust under section 14 or any member of a committee appointed under section 15, or any officer or servant of the Trust, or any person acting under the direction of the Trust or of the Chairman or of any officer or servant of the Trust, in respect of an act purporting to be done under this Act, until the expiration of two months next after notice in writing has been, in the case of a Trust, left at its office, and in any other case delivered to or left at the office or place of abode of the person to be sued, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and

place of abode of the intending plaintiff; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) If the Trust, or other person referred to in sub-section (1) shall, before the action is commenced, have tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of amount so tendred and shall also pay all costs incurred by the defendant after such tender.

(3) No action such as is described in sub-section (1) shall, unless it is an action for the recovery of immoveable property or for a declaration of title thereto, be commenced otherwise than within six months next after accrual of the cause of action.

(4) Provided that nothing in sub-section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the commencement of the suit or proceeding.

Evidence

Mode of proof of Trust records.

98. A copy of any receipt, application, plan, notice, order, entry in a register, or other document in the possession of the Trust shall, if duly certified by the legal keeper thereof or other person authorized by the Trust in this behalf, be received as *prima facie* evidence of the entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent as, the original entry or document would if produced, have been admissible to prove such matters.

Restriction on the summoning of Trust servants to produce documents.

99. No trustee or officer or servant of the Trust shall in any legal proceeding to which the Trust 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 a witness to prove the matters and transactions recorded therein, unless by order of the Court made for special cause.

Validation

Validation of acts and proceedings.

100. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—

(a) the existence of any vacancy in, or any defect in the constitution of, the Trust or any committee; or

(b) any person having ceased to be a trustee; or

(c) any trustee, or any person associated with the Trust under section 14 or any other member of a committee appointed under this Act having voted or taken any part in any proceeding in contravention of section 17; or

(d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or

(e) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Trust, the minutes of the proceedings of which have been duly signed as prescribed in clause (g) of sub-section (1) of section 13, shall be taken to have been duly convened and to be free from all defect and irregularity.

Compensation

General power of Trust to pay compensation.

101. In any case not otherwise expressly provided for in this Act, the Trust may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested under this Act in the Trust or the Chairman or any officer or servant of the Trust.

Compensation to be paid by offenders for damage caused by them.

102. (1) If, on account of any act or omission, any person has been convicted of an offence under this Act, and by reason of such act or omission damage has occurred to any property of the Trust, compensation shall be paid by the said person for the said damage, notwithstanding any punishment to which he may have been sentenced for the said offence.

(2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the magistrate before whom he was convicted of the said offence.

(3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said magistrate as if it were a fine inflicted by him on the person liable therefor.

Dissolution of Trust

Ultimate dissolution of Trust, and transfer of its assets and liabilities to the municipal board.

103. (1) When all schemes sanctioned under this Act have been executed, or have been so far executed as to render the continued existence of the Trust, in the opinion of the Provincial Government, unnecessary the Provincial Government may by notification declare that the Trust shall be dissolved from such date as may be specified in this behalf in such notification; and the Trust shall be deemed to be dissolved accordingly.

(2) From the said date—

(a) all properties, funds, and dues which are vested in or realizable by the Trust and the Chairman respectively, shall vest in and be realizable by the municipal board and the Chairman of the board respectively; and

(b) all liabilities which are enforceable against the Trust shall be enforceable only against the municipal board; and

(c) for the purpose of completing the execution of any scheme, sanctioned under this Act, which has not been fully executed by the Trust, and of realizing properties, funds, and dues referred to in clause (a), the functions of the Trust and the Chairman under this Act shall be discharged by the municipal board and the Chairman of the board respectively; and

(d) the municipal board shall keep separate accounts of all moneys respectively received and expended by it under this Act, until all loans raised hereunder have been repaid, and until all other liabilities referred to in clause (b) have been duly met.

THE SCHEDULE

(REFERRED TO IN SECTION 58)

Further modifications in the Land Acquisition Act, 1894 (hereinafter called "the said Act")

Amendment of section 3

1. After clause (*e*) of section 3 of the said Act the following shall be deemed to be inserted, namely,—

"(*ee*) the expression 'local authority' includes a Trust constituted under the United Provinces Town Improvement Act, 1919."

Notification under section 4 and declaration under section 6 to be replaced by notifications under sections 36 and 42 of this Act

2. (1) The first publication of a notice of an improvement scheme under section 36 of this Act shall be substituted for and have the same effect as publication, in the official Gazette and in the locality, of a notification under sub-section (1) of section 4 of the said Act, except where a declaration under section 4 or section 6 of the said Act has previously been made and is still in force.

(2) Subject to the provisions of sections 10 and 11 of this schedule the issue of a notice under sub-section (4) of section 29 in the case of land acquired under that sub-section, and in any other case the publication of a notification under section 42 shall be substituted for and have the same effect as a declaration by the Provincial Government under section 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force.

Amendment of section 11

3. The full stop at the end of section 11 of the said Act shall be deemed to be changed to a semicolon, and the following shall be deemed to be added, namely,—

"and

"(iv) the costs which, in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen *per centum mentioned in sub-section (2) of* section 23, as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

"The Collector may disallow, wholly or in part, costs incurred by any person if he considers that the claim made by such person for compensation was extravagant."

Amendment of section 15.

4. In section 15 of the said Act, for the word and figures "and 24" the figures, word, and letters "24 and 24A," preceded by a comma, shall be deemed to be substituted.

Amendment of section 17.

5. (1) In sub-section (3) of section 17 of the said Act after the figures, "24" the words, figures, and letter "or section 24A" shall be deemed to be inserted.

(2) To the said section 17 the following shall be deemed to be added, namely,—

"(4) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by the district magistrate or a magistrate of the first class to be unhealthy.

"(5) Before granting any such certificate, the magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

"(6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land compensation shall be paid to such person for such dispossession."

6. After section 14 of the said Act the following shall be deemed to be inserted, namely,—

Transfer of land to Trust.

"17A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over

charge of the land to the Trust; and the land shall thereupon vest in the Trust, subject to the liability of the Trust to pay all further costs which may be incurred on account of its acquisition.

Amendment of section 18.

7. The full stop at the end of sub-section (1) of section 18 of the said Act shall be deemed to be changed to a comma, and the words "or the amount of the costs allowed" shall be deemed to be added.

Amendment of section 19.

8. After the words "amount of compensation" in clause (c) of section 19 of the said Act, the words "and of costs (if any)," shall be deemed to be inserted.

Amendment of section 20.

9. After the words "amount of the compensation," in clause (a) of section 20 of the said Act the words "or costs" shall be deemed to be inserted.

Amendment of section 23.

10. (1) In clause *first* and clause *sixthly* of sub-section (1) of section 23 of Act, for the words "publication of the declaration relating thereto under section 6" and the words "publication of the declaration under section 6" shall be deemed to be substituted,—

(*a*) if the land is being acquired under sub-section (3) of section 7 of this Act, the words "issue of the notice under sub-section (1) of section 29 of the United Provinces Town Improvement Act, 1919," and,

(*b*) in any other case, the words "first publication of the notification under section 36 of the United Provinces Town Improvement Act, 1919."

(2) The full stop at the end of sub-section (2) of section 23 of the said Act shall be deemed to be changed to a colon, and the following proviso shall be deemed to be added:

"Provided that this sub-section shall not apply to any land acquired under the United Provinces Town Improvement Act, 1919, except—

(*a*) land acquired under sub-section (4) of section 29 of that Act, and

(*b*) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto, and,

(*c*) gardens not let to tenants but used by the owners as a place of resort."

(3) At the end of section 23 of the said Act, the following shall be deemed to be added, namely,—

"(3) For the purposes of clause *first* of sub-section (1) of this section—

(*a*) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause;

(*b*) if it be shown that before such date the owner of the land has in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him;

(*c*) if any person, without the permission of the Trust required by clause (*b*) of sub-section (1) of section 29 or by sub-section (3) of section 30 or by sub-section (4) of section 32 of the United Provinces Town Improvement Act, 1919, has erected, re-erected or added to or altered any building or wall so as to make the same project beyond the street alignment prescribed under section 29 or the street alignment or building line shown in any plan finally adopted by the Trust under section 30, or within the area specified in sub-section (4) of section 32, as the case may be, then any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded;

(*d*) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid date, such increase shall be disregarded unless it be provided that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act;

(*e*) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if put to ordinary uses; and

(*f*) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market-value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding;

(*g*) when the owner of the land or building has after the passing of the United Provinces Town Improvement Act, 1919 and within two years preceding the date with reference to which the market value is to be determined, made a return under section 158 of the United Provinces Municipalities Act 1916 of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct and the market value may be determined on the basis of such rent:

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value is to be determined the Court may take into consideration any increase in the letting value of the land due to such addition or improvement.

Amendment of section 24.

11. For clause *seventhly* of section 24 of the said Act, the following shall be deemed to be substituted, namely,—

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvement were necessary for the maintenance of any building in a proper state of repair."

New section 24A.

12. After section 24 of the said Act the following shall be deemed to be inserted, namely,—

Further provision for determining compensation.

"**24A.** In determining the amount of compensation to be awarded for any land acquired for the Trust under this Act, the Tribunal shall also have regard to the following provisions, namely,—

(1) when any interest in any land acquired under this Act has been acquired after the date with reference to which the market value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land;

(2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair as the case may be, minus the estimated cost of putting it into such condition or state;

(3) if, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the

amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building."

Amendment of section 31.

13. (1) After the words "the compensation" in sub-section (1) of section 31 of the said Act, and after the words "the amount of the compensation" in sub-section (2) of that section the words "and costs (if any)" shall be deemed to be inserted.

(2) After the words "any compensation" in the concluding proviso to sub-section (2) of section 31 of the said Act the words "or costs" shall be deemed to be inserted.

New section 48A.

14. After section 48 the following shall be deemed to be inserted, namely.—

Compensation to be awarded when land not acquired within two years.

"48A. (1) If within a period of two years from the date of the publication of the declaration under section 6 in respect of any land the Collector has not made an award under section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

Amendment of section 49.

15. After sub-section (1) of section 49 of the said Act, the following shall be deemed to be inserted, namely.—

"(1a) For the purposes of sub-section (1), land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

APPENDIX C.

THE PUNJAB TOWN IMPROVEMENT ACT, 1922.
PUNJAB ACT, IV OF 1922.

Received the assent of His Excellency the Governor of the Punjab on the 26th September, 1922, and that of His Excellency the Governor General on the 29th October, 1922, and was first published in the Punjab Government Gazette of the 17th November, 1922.

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THE PUNJAB TOWN IMPROVEMENT ACT, 1922.

PUNJAB ACT IV OF 1922

An Act for the Improvement of Certain Areas.

Preamble

Whereas it is expedient to make provision for the improvement and expansion of towns in the Punjab, and whereas the previous sanction of the Governor-General under section 80-A (3) of the Government of India Act has been obtained, it is hereby enacted as follow :—

CHAPTER I.

PRELIMINARY.

Title, extent and commencement.

1. (1) This Act may be called the Punjab Town Improvement Act, 1922.

(2) It extends to the whole of the Punjab.

(3) This section and section 66 shall come into force at once. The Provincial Government may by notification propose to apply the rest of the Act to the whole or any part of any municipality, and to any locality adjacent thereto, on such date as may be specified in such notification, and the Act

(3) The Trust, may, at any time, dissolve, or, subject to the provisions of sub-section (1), alter the constitution of, any such committee.

(4) Every such committee shall conform to any instructions from time to time given to it by the Trust.

(5) All proceedings of any such committee shall be subject to confirmation by the Trust.

(6) Any person associated with the Trust under section 13 or appointed a member of a committee of the Trust under clause (iii) of sub-section (1) shall be entitled to receive such remuneration either by way of monthly salary or by way of fees or partly in one of these ways and partly in the other as the Provincial Government may prescribe

Meetings of committees.

15. (1) Committees appointed under section 14 may meet and adjourn as they think proper, but the Chairman of the Trust may, whenever he deems fit, call a special meeting of any such committee, and shall do so upon the written request of not less than two members thereof.

(2) The Chairman may attend any meeting of a committee appointed under section 14 whether he is a member of such committee or not, and shall preside at every such meeting at which he is present, if he be absent any Trustee present and being a member of such committee as may be chosen by the meeting shall preside: provided that in this case if only one Trustee is present, he shall preside.

(3) All questions which come before any meeting of such committee shall be decided by a majority of the votes of the members present, the person presiding in case of any equality of votes having a second or casting vote

(4) No business shall be transacted at any meeting of such committee when less than two members or when the committee consists of more than eight members when less than one-fourth of such members are present

Trustees and associated members of Trust or committee not to take part in proceedings in which they are personally interested

16. (1) A Trustee who—

(i) has directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as is described in the proviso to section 10, in respect of any matter, or

(ii) has acted professionally, in relation to any matter, only on behalf of any person having therein any such share or interest as aforesaid,

shall not vote or take any other part in any proceedings of the Trust or any committee appointed under this Act relating to such matter

(2) If any Trustee, or any person associated with the Trust under section 13 or any other member of a committee appointed under this Act has directly or indirectly any beneficial interest in any land situated in an area comprised in any improvement scheme framed under this Act, or in any area in which it is proposed to acquire land for any of the purposes of this Act,—

(i) he shall, before taking part in any proceedings at a meeting of the Trust or any committee appointed under this Act relating to such area, inform the person presiding at the meeting of the nature of such interest;

(ii) he shall not vote at any meeting of the Trust or any such committee upon any resolution or question relating to such land, and

(iii) he shall not take other part in any proceeding at a meeting of the Trust or any such committee relating to such area if the person presiding at the meeting considers it inexpedient that he should do so.

Power of Trust to fix number and salaries of permanent

17. Subject to such rules as the Provincial Government may make under clause (iii) of section 73 the Trust may from time to time employ such servants as it may deem necessary and proper to assist in carrying out the purposes of this Act, and may assign to such servants such pay as it may deem fit

servants and appointment of temporary servants in cases of emergency.

18. Subject to the provisions of section 17 and to any rules for the time being in force, the power of appointing, promoting and granting leave to officers and servants of the Trust, and reducing, suspending, or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, shall be vested— Power of appointment, etc.

(i) in the case of officers and servants whose maximum monthly salary does not exceed one hundred rupees—in the Chairman, and

(ii) in other cases—in the Trust;

Provided that any officer or servant, in receipt of a minimum monthly salary exceeding fifty rupees who is reduced, suspended or dismissed by the Chairman may appeal to the Trust, whose decision shall be final.

19. The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the Trust; and, subject to the foregoing sections, shall dispose of all questions relating to the service of the said officers and servants and their pay, privileges and allowances. Control by Chairman

20. (1) The Chairman may, by general or special order in writing, delegate to any officer of the Trust any of the Chairman's powers, duties or functions under this Act or any rule made thereunder except those conferred or imposed upon or vested in him by sections 12, 15, 21, 46 and 96, respectively. Delegation of cetain of Chairman's functions.

(2) The exercise of discharge by any officer of any powers, duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman, or the Trust.

SUPPLY OF INFORMATION TO GOVERNMENT.

21. (1) The Chairman shall forward to the Provincial Government a copy of the minutes of the proceedings of each meeting of the Trust, within ten days from the date on which the minutes of the proceedings of such meeting were signed as prescribed in clause (c) of sub-section (1) of section 12. Supply of information and documents to the Govt.

(2) If the Provincial Government so directs, in any case, the Chairman shall forward to it a copy of all papers which were laid before the Trust for consideration at any meeting.

(3) The Provincial Government may require the Chairman to furnish it with—

(i) any return, statement, estimate, statistics or other information regarding any matter under the control of the Trust, or

(ii) a report on any such matter, or

(iii) a copy of any document in the charge of the Chairman.

The Chairman shall comply with every such requisition without unreasonable delay.

CHAPTER IV.

SCHEMES UNDER THE ACT.

22. (1) Whenever it appears to the Trust that— Matters to be provided for by General Improvement Scheme or Rebuilding Scheme.

(a) any buildings which are used or are intended or likely to be used as dwelling places within its local area are unfit for human habitation, or

(b) danger is caused or likely to be caused to the health of the inhabitants of such local area or part thereof by reason of—

(i) the congested condition of streets or buildings or groups of buildings in such local area or part, or

(ii) the want of light, air, ventilation or proper conveniences in such local area, or part, or

(iii) any other sanitary defects in such local area, or part,

the Trust may pass a resolution to the effect that such local area or part is in an insanitary locality and that "a General Improvement Scheme" ought to be framed in respect of such locality, and may then proceed to frame such a scheme.

(2) Whenever the Trust declares any local area or part thereof to be an insanitary locality within the meaning of this section, and is of opinion that having regard to the comparative value of the buildings in such local area or part and the sites on which they are erected it it undesirable to frame a General Improvement Scheme and the most satisfactory method of dealing with the local area or any part thereof is "a Rebuilding Scheme," it may proceed to frame such a scheme, which may provide for the reservation of streets and the enlargement of existing streets; the relaying out of the sites of the local area or part thereof under the streets so reserved or enlarged; the demolition of existing buildings and their appurtenances upon such sites; and the erection of buildings in accordance with the scheme.

Street Schemes and Defered street Schemes.

23. (1) Whenever it appears to the Trust that for the purpose of—

(i) providing building sites, or

(ii) remedying defective ventilation, or

(iii) creating new or improving existing means of communication and facilites for traffic, or

(iv) affording better facilities for conservancy

within its local area or part thereof it is expedient to lay out new streets, thoroughfares and open spaces, or alter existing streets, the Trust may pass a resolution to that effect, and shall then proceed to frame "a Street Scheme" which shall prescribe improved alignment for streets, thoroughfares and open spaces for such local area or part as the Trust may deem fit.

(2) Whenever it appears to such Trust that for any of the purposes mentioned in sub-section (1) within its local area or part thereof it is expedient to provide for the ultimate widening of any existing street by altering the existing alignments to improved alignments to be prescribed by the Trust but that it is not expedient immediately to acquire all or any of the properties lying within the proposed improved alignments the Trust if satisfied of the sufficiency of its resources, may pass a resolution to that effect, and forthwith proceed to frame a "Deferred Street Scheme" prescribing an alignment on each side of such street.

Development and Expansion Schemes.

24. (1) The Trust may, for the purpose of development of any locality within the municipal limits contained in its local area, prepare "a Development Scheme," and

(2) such Trust may, if it is of opinion that it is expedient and for the public advantage to promote and control the development of and to provide for the expansion of a municipality in any locality adjacent thereto, within the local area of such Trust prepare "an Expansion Scheme."

(3) A "Development Scheme" or "an Expansion Scheme" may provide for the lay-out of the locality to be developed, the purposes for which particular portions of such locality are to be utilised, the prescribed street alignment and the building line on each side of the street proposed in such locality, the drainage of insanitary localities and such other details as may appear desirable

Housing Accommodation Schemes.

25. If the Trust is of opinion that it is expedient and for the public advantage to providing housing accommodation for any class of the inhabitants within its local area such Trust may frame "a Housing Accommodation Scheme" for the purpose aforesaid.

Provided that if the Provincial Government are satisfied that within the Trust area it is necessary to provide house accommodation for industrial labour, the Provincial Government may by order require the Trust to frame a scheme under this section and to do all things necessary under the Act for executing the scheme so made; and if the Trust fail within such time as may be prescribed to frame a scheme to the satisfaction of the Provincial Government and to execute it, the Provincial Government may either by order require the Municipal Committee to frame and execute a scheme, or themselves frame a scheme and take such steps as are necessary to execute it. All expenses incurred by the Provincial Government or by the Municipal Committee in the exercise of the powers conferred upon them by this section, shall, in the first instance, be paid out of provincial revenues, but the amount so spent shall be recoverable from the Trustee as if it were a "debt due to the Provincial Government," and the Provincial Government may attach the rents and other income of the Trust. The provisions of section 72 shall also apply to all moneys so paid.

26. Whenever the Trust deems it necessary that accommodation should be provided for persons who are displaced by the execution of any scheme under this Act, or are likely to be displaced by the execution of any scheme, which it is intended to submit to the Provincial Government for sanction under this Act it may frame "a Re-housing Scheme" for the construction, maintenance, and management of such and so many dwellings and shops as ought, in the opinion of the Trust, to be provided for such persons.

27. Any resident house-owner who is likely to be displaced by the execution of any scheme under this Act, may apply to the Trust to be re-housed, and no such scheme shall be put into execution until a Re-housing Scheme as provided for in section 26 for the re-housing of such resident house-owners as may apply under this section has been completed

Explanation.—The demolition of a portion of a dwelling house which renders the remaining portion uninhabitable shall be deemed to be displacement of the person or persons residing in the said dwelling house.

Combination of schemes & matters which may be provided for in Schemes.

28. (1) A scheme under this Act may combine one or more types of scheme or any special features thereof.

(2) A scheme under this Act may provide for all or any of the following matters:—

(i) The acquisition under the Land Acquisition Act, 1894, as modified by this Act, or the abandonment of such acquisition under sections 56 and 57 of this Act, of any land or any interest in land necessary for or effected by the execution of the scheme or adjoining any street, thoroughfare or open space to be improved or formed under the scheme.

(ii) The acquisition by purchase, lease, exchange or otherwise of such land or interest in land.

(iii) The retention, letting on hire, lease, sale, exchange or disposal otherwise of any land vested in or acquired by the Trust.

(iv) The demolition of buildings or portions of buildings that are unfit for the purpose for which they are intended and that obstruct light or air or project beyond the building line.

(v) The relaying out of any land comprised in the scheme and the redistribution of sites belonging to owners of property comprised in the scheme.

(vi) The laying out and alteration of streets.

(vii) The provision of open spaces in the interests of the residents of any locality comprised in the scheme or any adjoining locality and the enlargement for alteration of existing open spaces.

"The words "debt due to the Provincial Government," were substituted for "debt due to Government," by the Government of India (Adaptation of Indian Laws) Order, 1937.

(viii) The raising, lowering or reclamation of any land vested in or to be acquired by the Trust for the purposes of the scheme, and the reclamation or reservation of land for the production of fruit, vegetables, fuel, fodder and the like for the residents of the local area.

(ix) The drainage, water supply and lighting of streets altered or constructed.

(x) The provision of a system of drains and sewers for the improvement of ill-drained and insanitary localities.

(xi) The doing of all acts intended to promote the health of residents of the area comprised in the scheme, including the conservation and preservation from injury or pollution of rivers and other sources and means of water supply.

(xii) The demolition of existing buildings and the erection and re-erection of buildings by the Trust or by the owners or by the Trust in default of the owners.

(xiii) The advance to the owners of land comprised within the scheme upon such terms and conditions as to interest and sinking fund and otherwise as may be prescribed under the scheme of the whole or part of the capital requisite for the erection of buildings in accordance with the scheme.

(xiv) The provision of facilities for communication.

(xv) All other matters which the Provincial Government may deem necessary to promote the general efficiency of a scheme or to improve the locality comprised in such scheme.

Efect of prescribing a street alignment on powers of Municipl Committee.

29. Notwithstanding anything contained in the Municipal Act, whenever any street alignment has been prescribed by the Trust in any scheme under this Act with the sanction of the Provincial Government, the Municipal Committee shall not have power to prescribe a regular line for the street within the limits of the scheme, and any such line previously prescribed by the Committee within such limits shall cease to be the regular line or line of frontage of the street.

Powers of Trust to set back or forward buildings adjacent to the street alignment.

30. (1) Should any building or part of a building project beyond the regular line of a street, either existing or determined on for the future, or beyond the front of the building on either side thereof, the Trust may, whenever such building or part has been either entirely or in greater part taken down, or burnt down or has fallen down, by written notice, require such building or part when being re-built to be set back to or towards the said regular line or the front of the adjacent buildings; and the portion of the land added to the street by such setting back or removal shall become part of the street and shall vest in the Trust.

(2) The Trust may on such terms as it may deem fit require or allow any building to be set forward for the improvement of the line of the street.

(3) When any building is set back or forward in pursuance of a requisition made under the preceding clause the Trust shall forthwith make full compensation to the owner of the building for any damage or loss that he may sustain.

(4) If the additional land, which will be included in the premises of any person required or allowed to set forward a building, or part thereof, belongs to the Trust, the requisition or permission of the Trust to set forward the building shall be sufficient conveyance to the said owner of the said land and the terms and conditions of the conveyance shall be set forth in the said requisition or permission.

Prohibition of building beyond a street alignment.

31. (1) In the locality comprised in a scheme under this Act no person shall, except with the written permission of the Trust, erect, re-erect add to or alter any building so as to make the same project beyond a street alignment or building line duly prescribed by the Trust.

(3) In the locality comprised in a Development Scheme or an expansion Scheme, if any person desires to erect, re-erect, add to or alter any building on his land so as to make the same project beyond a street alignment or a building line duly prescribed by the Trust, he shall apply to the Trust for permission to do so, and if the Trust refuses to grant permission to such person according to his application, and does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage or loss sustained by him in consequence of such refusal.

Acquisition of property effected by Deferred Street Scheme.

32. (1) In the locality comprised in a Deferred Street Scheme the owner of any property affected by a street alignment duly prescribed by the Trust may, at any time after the scheme has been sanctioned by the Provincial Government, give the Trust notice requiring it to acquire such property before the expiration of six months from the date of such notice, and the Trust shall acquire such property accordingly.

(2) In the locality comprised in a Deferred Street Scheme, before proceeding to acquire any property affected by a street alignment duly prescribed by the Trust other than property regarding which it has received a notice under the preceding clause, the Trust shall give six months' notice to the owner of its intention to acquire the property.

Official representation.

33. (1) A scheme under this Act may be framed upon an official representation by the Municipal Committee or otherwise.

(2) An official representation referred to in sub-section (1) may be made by the Municipal Committee—

(a) on its own motion, or

(b) on a written complaint by the Medical Officer of Health, or

(c) in respect of any area comprised in a Municipal Ward, on written complaint signed by twenty-five or more inhabitants of such ward.

(3) If the Municipal Committee decides not to make an official representation on any complaint made to it under clause (c) of sub-section (2), it shall cause a copy of such complaint to be sent to the Trust, with a statement of the reasons for its decision.

Consideration of official representation.

34. (1) The Trust shall consider every official representation made under section 33, and if satisfied as to the truth thereof and as to the sufficiency of its own resources, shall decide whether a scheme under this Act to carry such representation into effect should be framed forthwith or not, and shall forthwith intimate its decision to the Municipal Committee.

(2) If the trust decides that it is not necessary or expedient to frame a scheme under this Act forthwith, it shall inform the Municipal Committee of the reasons for its decision.

(3) If the Trust fails, for a period of twelve months after the receipt of any official representation made under section 33, to intimate its decision thereon to the Municipal Committee, or if the Trust intimates to the Municipal Committee its decision that it is not necessary or expedient to frame a scheme of a type other than that recommended by the Municipal Committee, the Municipal Committee may, if it deems fit, refer the matter to the Provincial Government.

(4) The Provincial Government shall consider every reference made to it under sub-section (3) and

(a) if it deems that the Trust ought to have passed a decision within the period mentioned in sub-section (3) shall direct the Trust to pass a decision within such further period as the Provincial Government may deem reasonable, or

(b) if it deems that it is expedient that a scheme should forthwith be framed, shall direct the Trust to proceed forthwith to frame a scheme. Such a direction may prescribe the type of scheme to be framed.

(5) The Trust shall comply with every direction given by the Provincial Government under sub-section (4).

Matters to be considered when framing improvement schemes.

35. When framing a scheme under this Act in respect of any locality regard shall be had to—

(a) the nature and the condition of adjoining localities and the town as a whole;

(b) the directions in which the town appears likely to expand; and

(c) the claims of any other part of the local area likely to require a scheme under this Act.

Preparation, publication and transmission of notice as to improvement schemes and supply of documents to to applicants.

36. (1) When a scheme under this Act has been framed, the Trust shall prepare a notice stating—

(i) the fact that the scheme has been framed,

(ii) the boundaries of the locality comprised in the scheme, and

(iii) the place at which details of the scheme including a statement of the land proposed to be acquired and a general map of the locality comprised in the scheme may be inspected at reasonable hours.

(2) The Trust shall—

(a) notwithstanding anything contained in section 78 cause the said notice to be published weekly for three consecutive weeks in the official Gazette and in a newspaper or newspapers with a statement of the period within which objections will be received, and

(b) send a copy of the notice to the President of the Municipal Committee, and to the Medical Officer of Health.

(3) The Chairman shall cause copies of all documents referred to in clause (iii) of sub-section (1) to be delivered to any applicant on payment of such fees as may be prescribed by rule under section 74.

Transmission to Trust of representation by Committee as to improvement scheme.

37. The President of any Municipal Committee and the Medical Officer of Health to whom a copy of a notice has been sent under clause (b) of sub-section (2) of section 36 shall, within a period of sixty days from the receipt of the said copy, forward to the Trust any representation which the Municipal Committee or the said Medical Officer of Health may deem fit to make with regard to the scheme.

Notice of proposed acquisition of land.

38. (1) During the thirty days next following the first day on which any notice is published under section 36 in respect of any scheme under this Act the Trust shall serve a notice on—

(i) every person whom the Trust has reason to believe after due enquiry to be the owner of any immovable property which it is proposed to acquire in executing the scheme,

(ii) the occupier (who need not be named) of such premises as the Trust proposes to acquire in executing the scheme.

(2) Such notice shall—

(a) state that the Trust proposes to acquire such property for the purposes of carrying out a scheme under this Act, and

(b) require such person, if he objects to such acquisition, to state his reasons in writing within a period of sixty days from the service of the notice.

(3) Every such notice shall be signed by or by the order of, the Chairman.

Furnishing of information available in Municipal records.

39. The President of the Municipal Committee shall furnish the Chairman at his request and on payment of such fees as may be prescribed by rule made under section 73 with a copy of such information relating to a locality regarding which a notice has been published under section 36 as is available in the Municipal records.

Abandonment of scheme, or application to Provincial Government to sanction it.

40. (1) After the expiry of the periods respectively prescribed under clause (a) of sub-section (2) of section 36, by section 37 and by clause (b) of sub-section (2) of section 38, in respect of any scheme under this Act, the Trust shall consider any objection, or representation received thereunder, and after hearing all persons or their representatives making any such objection, or representation, who may desire to be heard, the Trust may either abandon the scheme or apply to the Provincial Government for sanction to the scheme with such modifications (if any) as the Trust may deem necessary.

(2) Every application submitted under sub-section (1) shall be accompanied by—

(i) complete plans and details of the scheme and an estimate of the cost of executing it;

(ii) a statemet of the reasons for modifications (if any) made in the scheme as originally framed;

(iii) a statement of objections (if any) received under section 36;

(iv) the representation (if any) received under section 37;

(v) a list of the names of all persons (if any) who have objected under clause (b) of sub-section (2) of section 38, to the proposed acquisition of their property and a statement of the reasons given for such objection; and

(vi) a statement of the arrangements made or proposed by the Trust for the re-housing of persons who are likely to be displaced by the execution of the scheme and for whose re-housing provision is required.

3. When any application has been submitted to the Provincial Government under sub-section (1), the Trust shall cause notice of the fact to be published for two consecutive weeks in the official Gazette and in a newspaper or newspapers.

Power to sanction, reject or return scheme.

41. (1) The Provincial Government may sanction either with or without modification, or may refuse to sanction, or may return for consideration, any scheme submitted to it under section 40.

(2) If a scheme returned for reconsideration under sub-section (1) is modified by the Trust, it shall be republished in accordance with section 36—

(a) in every case in which the modification affects the boundaries of the locality comprised in the scheme, or involves the acquisition of any land not previously proposed to be acquired; and

(b) in every other case, unless the modification is, in the opinion of the Provincial Government not of sufficient importance to require republication.

Notification of sanction of of scheme.

42. (1) The Provincial Government shall notify the sanction of every scheme under this Act, and the Trust shall forthwith proceed to execute such scheme, provided that it is not a Deferred Street Scheme, Development Scheme, or Expansion Scheme and provided further that the requirements of section 27 have been fulfilled.

(2) A notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

Alteration of scheme after sanction.

43. A scheme under this Act may be altered by the Trust at any time between its sanction by the Provincial Government and its execution

Provided as follows:—

(a) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than Rs. 50,000 or twenty per cent of such cost, such alteration shall not be made without the previous sanction of the Provincial Government;

(b) if any alteration involves the acquisition, otherwise than by agreement of any land the acquisition of which has not been sanctioned by the Provincial Government, the procedure prescribed in the

foregoing sections of this chapter shall, so far as applicable, be followed as if the alteration were a separate scheme.

Inclusion of different localities in combined scheme.

44. Any number of localities in respect of which the Trust has framed or has proposed to frame schemes under this Act may, at any time, be included in one combined scheme.

CHAPTER V.

POWERS AND DUTIES OF THE TRUST WHERE A SCHEME HAS BEEN SANCTIONED.

Transfer to Trust of building or land vested in Municipal Committee for purposes of scheme

45. (1) Whenever any building, or any street or other land, or any part thereof which is vested in the Municipal Committee is required for executing any scheme under this Act the Trust shall give notice accordingly to the President of the Municipal Committee, and such building, street, land or part shall thereupon vest in the Trust, subject to the payment to the Municipal Committee of such sum as may be required to compensate it for actual loss resulting from the transfer of any building to the Trust

(2) If any question or dispute arises as to the sufficiency of the compensation paid or proposed to be paid under sub-section (1), the matter shall be referred to the Provincial Government whose decision shall be final

Transfer of private street to Trust for purposes of scheme.

46. (1) Whenever any street or part thereof, which is not vested in the Municipal Committee is required for executing any scheme under this Act the Trust shall cause to be affixed in a conspicuous place in or near such street or part, a notice signed by the Chairman

(a) stating the purpose for which the street or part, is required, and

(b) declaring that the Trust will, on or after a date to be specified in the notice, such date being not less than thirty days after the date of the notice take over charge of such street, or part, from the owner or owners thereof:

and shall simultaneously send a copy of such notice to the owner or owners of such street, or part, or to the duly accredited agent of such owner or owners

(2) After considering and deciding all objections (if any) received in writing before the date so specified the Trust may take over charge of such street or part from the owner or owners thereof and the same shall thereupon vest in the Trust

(3) When the Trust alters or closes any street or part thereof which has vested in it under sub-section (2) it shall pay such sum as may be required to compensate the previous owner or owners for actual loss resulting to him from such alteration or closure

(4) If the alteration or closing of any such street, or part, causes special damage or substantial inconvenience to owners of property adjacent thereto, or to residents in the neighbourhood the Trust—

(i) shall forthwith provide some other reasonable means of access for the use of persons who were entitled as of right to use such street, or part, as a means of access to any property or place; and

(ii) if the provision of such means of access does not sufficiently compensate any such owner or resident for such damage or inconvenience, shall also pay him reasonable compensation in money.

Provision of drain or water work to replace another situated on land vested in the Trust under section 45 or section 46.

47. (1) When any building or any street or other land, or any part thereof, has vested in the Trust under section 45 or section 46, no municipal drain or water-work therein shall vest in the trust until another drain or water-work (as the case may be), if required, has been provided by the Trust to the satisfaction of the Municipal Committee, in place of the former drain or work.

(2) If any question or dispute arises as to whether another drain or water-work is required, or as to the sufficiency of any drain or water-work provided by the Trust under sub-section (1) the matter shall be referred to the Provincial Government, whose decision shall be final

48. (1) **The Trust may—**

Power of Trust to make and deal with public street.

(a) **lay out and make a new public street** and construct tunnels and **other work subsidiary to the same, and**

(b) **widen, lengthen, extend, enlarge, raise the level of or otherwise improve any existing public street if vested in the Trust, and**

(c) **turn, divert, discontinue or close any public street so vested, and**

(d) **provide within its discretion building sites of such dimensions as it deems fit, to abut on or adjoin any public street made, widened, extended, enlarged, improved, or the level of which has been raised by the Trust under clauses (a), (b) and (c) or by the Provincial Government, and**

(e) **subject to the provisions of any rule prescribing the conditions on which property vested in the Trust may be transferred, lease, sell or otherwise dispose of any land used by the Trust for a public street and no longer required thereof, and in doing so impose any condition as to the removal of any building existing thereon, as to the description of any new building to be erected thereon, or to the period within which such new building shall be completed, and as to any other matter that it deems fit.**

(2) Whenever the Trust discontinues the public use of, or permanently closes, any street vested in it, or any part thereof, it shall pay reasonable compensation to every person who had an easement or right of way or light and air over, upon or from such street or part, and who by such discontinuance or closure has suffered special damage.

(3) In determining the compensation payable to any person under sub-section (2), the Trust shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other street at or about the same time that the public street or part thereof, on account of which the compensation is paid, is discontinued or closed.

Powers under the Municipal Act vested in the Trust.

49. (1) The provisions of sections 96, 97, 98, 99, 100, 101, 102, 103, 104, 113 114, 114-A, 115, 116, 117, 118, 119, 120, 125, 126, 127, 128, 129, 130, 131, 132, 133, 134, 135, 136, 137, 138, 139, 140, 155, 156, 157, 158, 159, 160, 161, 162, 163, 164, 165, 166, 170, 170-A, 170-B, 170-C, 170-D, 170-E, 170-F, 170-G, 171 (1), (2) and (3), 172, 173, 175, 176, 177, 178, 179, 180, 181, 182, 189, (1) and (2), 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 209, 210, 212, 213, 214, 221, 224, 225, 226, 227 and 230 of the Municipal Act, shall, so far as may be consistent with the tenor of the Act, apply to all localities in respect of which a scheme under this Act is in force, and for the period during which such scheme remains in force; and all reference in the said sections to the Municipal Committee or to the President, or to any officer of the Municipal Committee, shall be construed as referring to the Trust which, in respect of any such localities, may alone exercise and perform all or any of the said powers and functions which under any of the chapters and sections might have been exercised and performed by the Municipal Committee or by the President or by any officer of the Municipal Committee:

Provided that the Trust may delegate to the Chairman, or to any officer of the Trust all or any of the powers conferred by this section.

(2) The Trust may make by-laws for any locality outside the limits of the Municipality comprised in a scheme under this Act—

(a) generally for carrying out the purposes of this Act, and

(b) in particular and without prejudice to the generality of the aforesaid powers, regarding any of the matters referred to in sections 188, 189, and 190 of the Municipal Act.

Limitation of powers of Trust under section 49.

50. (1) **The Trust shall not take any action under sections 96, 97, 98, 99, 100, 101, 102, 132, 133, 134, 135, 136, 137, 138 or 139 of the Municipal Act without having previously consulted the Municipal Committee and obtained its consent, provided that if said committee does not give its consent, the matter in dispute shall forthwith be referred to the Provincial Government, whose decision shall be final.**

(2) If the Municipal Committee deems it necessary that action should be taken within the trust area under sections 96, 97, 98, 99, 100, 101, 102, 132, 133, 134, 135, 136, 137, 138 or 139 of the Municipal Act, it shall make an application to the Trust requiring that such action be taken, and the Trust shall thereupon comply with the application or give its reasons in writing for rejecting it, provided that if the application be rejected, the matter shall forthwith be referred to the Provincial Government whose decision shall be final.

Power of the Trust to facilitate movement of population.

51. In order to facilitate the movement of the population in and around any local area to which this Act is applied, the Trust may from time to time—

(a) subject to any conditions it may deem fit to impose—

(i) guarantee the payment, from the funds at its disposal, of such sums as it may deem fit, by way of interest on capital expended on the construction, maintenance or working of locomotion, or

(ii) make such payments as it may deem fit from the said funds by way of subsidy to persons undertaking to provide, maintain and work any means of locomotion, or

(b) either singly or in combination with any other persons construct maintain and work any means of locomotion, under the provisions of any law applicable thereto, or

(c) construct or widen, strengthen or otherwise improve, bridges :

Provided that no guarantee or subsidy shall be made under clause (a) and no means of locomotion shall be constructed, maintained or worked under clause (b), without the previous sanction of the Provincial Government.

Power to make surveys or contribute towards their cost.

52. The Trust may—

(a) cause a survey of any land to be made whenever it considers that a survey is necessary or expedient for carrying out any of the purposes of this Act, or

(b) contribute towards the cost of any such survey made by any other local authority.

Power of entry.

53. (1) The Chairman or any person authorized by him or by the Trust in writing may, with or without assistants or workmen, enter into or upon any land in order—

(i) to make any inspection, survey, measurement, valuation or inquiry

(ii) to take levels,

(iii) to dig or bore into sub-soil,

(iv) to set out boundaries and intended lines of work,

(v) to mark such levels, boundaries and lines by marks and cutting trenches, or

(vi) to do any other things,

whenever it is necessary to do so for any of the purposes of this Act or any rule made or scheme sanctioned hereunder or any scheme which the Trust intends to frame hereunder :

Provided as follows :

(a) Except when it is otherwise specially provided by a rule no such entry shall be made between sunset and sunrise.

(b) Except when it is otherwise specially provided by a rule no building which is used as a human dwelling shall be so entered unless with the consent of the occupier or if there be no occupier the own thereof, without giving the said occupier or owner as the case may be, at least twenty-four hours' previous notice in writing of the intention to make such entry.

(c) Even when any premises may otherwise be entered without notice, reasonable warning and facility to withdraw shall be given to any female not appearing in public according to the customs of the country.

(d) Due regard shall always be paid so far as the exigencies of the occasion permit to the social and religious usage of the occupants of the premises entered.

(2) Whenever any person enters into or upon any land in pursuance of sub-section (1), he shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid; and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Trust, whose decision shall be final.

(3) It shall be lawful for any person authorised under sub-section (1) to make an entry for the purpose of inspection or search to open or cause to be opened a door, gate or other barrier—

(a) if he consider the opening thereof necessary for the purpose of such entry, inspection or search, and

(b) if the occupier or owner as the case may be is absent, or being present refuses to open such door, gate or barrier.

Reference of disputes to *Tribunal*.

54. (1) If any question or dispute arises—

(a) between the Trust and the previous owner of any street or part thereof which has vested in the Trust under section 46 and has been altered or closed by it, as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of that section, or

(b) between the trust and any person who was entitled as of right to use as a means of access any street or part thereof, which has vested in the Trust under the said section—

(i) as to whether the alteration or closing of such street or part causes special damage or substantial inconvenience to owners of property adjacent thereto or to residents in the neighbourhood, or

(ii) as to whether the other means of access provided or proposed to be provided under sub-section (4) of the said section are reasonably sufficient, or

(iii) as to the sufficiency of any compensation paid or proposed to be paid under the said sub-section (4), or

(c) between the Trust and any person as to the sufficiency of any compensation paid or proposed to be paid to him under section 30, 31 or 102

the matter shall be determined by the Tribunal hereinafter defined, if referred to it either by the Trust or by the claimant within a period of three months from the date on which the said person was informed of the decision of the Trust fixing the amount of compensation to be paid to him or of the rejection of his claim to compensation by the Trust and the determination of the Tribunal shall be final:

Provided that the Tribunal shall not entertain the application of any claimant who has not applied to the Trust for compensation within three months of the date on which his claim to compensation accrued.

(2) The provisions of sections 5, 6 and 12 of the Limitation Act shall be applicable in determining whether any claim shall be entertained.

(3) If a reference to the Tribunal be not made within the period prescribed by sub-section (1), the decision of the Trust shall be final.

(4) For the purpose of determining any matter referred to it under sub-section (1), the Tribunal shall have all the powers with regard to witnesses, documents and costs which it would have if the Land Acquisition Act, 1894, as modified by section 59 of this Act were applicable to the case.

Vesting in Committee of streets laid out or altered, and open spaces provided by the Trust under a scheme.

55. (1) Whenever the Municipal Committee is satisfied—

(a) that any street laid out or altered by the Trust has been duly levelled, paved, metalled, flagged, channelled, sewered and drained in the manner provided in the plans sanctioned by the Provincial Government under this Act, and

(b) that such lamp-posts, and other apparatus as the Municipal Committee deem necessary for the lighting of such street and as ought to be provided by the Trust have been so provided, and

(c) that water and other sanitary conveniences ordinarily provided in a municipality have been duly provided in such streets,

the Municipal Committee after obtaining the assent of the Trust, or failing such assent of the Provincial Government under sub-section (3), shall by notice affixed in some conspicuous position in such street declare it to be a public street; and the street shall thereupon vest in and shall thenceforth be maintained, kept in repair, lighted, and cleansed by the Municipal Committee.

(2) When any open space for purposes of ventilation or recreation has been provided by the Trust in executing any scheme under this Act, it shall, on completion, be transferred to the Municipal Committee by resolution of the Trust and shall thereupon vest in and shall thenceforth be maintained, kept in repair, lighted and cleansed by the Municipal Committee:

Provided that the Municipal Committee may require the Trust before any such open space is so transferred, to enclose, level, turf, drain and lay out such space and provide footpaths therein and, if necessary, to provide lamps and other apparatus for lighting it.

(3) If any difference of opinion arises between the Trust and the Municipal Committee in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the Provincial Government, whose decision shall be final.

CHAPTER VI.

ACQUISITION, TRIBUNALS, AND APPLICATION OF ACT TO OTHER AUTHORITIES.

Abandonment of acquisition in consideration of special payment.

56. (1) Wherever in any locality comprised in any scheme under this Act the Provincial Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme the owner of such land, or any person having an interest therein, may make an application to the Trust requesting that the acquisition of such land be abandoned in consideration of the payment by him of a sum to be fixed by the Trust in that behalf.

(2) The Trust shall admit every such application if it—

(a) reaches it before the time fixed by the Collector, under section 9, of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by any person who either owns the lands, is mortgagee thereof, or holds a lease thereof, with an unexpired period of seven years.

(3) The Trust may admit any such application presented by any other person having an interest in the land.

(4) On the admission by the Trust of any such application, it shall forthwith inform the Collector, and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land and the Trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(5) Within the said period of three months, or with the permission of the Trust, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, the person from whom the Trust has agreed to accept the sum so fixed may if the Trust is

satisfied that the security offered by him is sufficient, execute an agreement with the Trust, either—

(i) to pay the said sum three years after the date of the agreement, or

(ii) to leave the said sum outstanding as a charge on his interest in the land subject to the payment of interest at a rate to be agreed upon by such person and the Trust until the said sum has been paid in full and to make the first annual payment of such interest four years after the date of the agreement :

Provided that the trust may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(6) When any agreement has been executed in pursuance of sub-section (5) or when any payment has been accepted in pursuance of the proviso to that sub-section in respect of any land, proceedings for the acquisition of the land shall be deemed to be abandoned.

(7) Every payment due from any person under any agreement executed under sub-section (5) shall be a charge on the interest of that person.

(8) If any instalment of interest payable under an agreement executed in pursuance of clause (ii) of sub-section (5) be not paid on the due date, the sum fixed by the Trust under sub-section (4) shall be payable on that date, in addition to the said instalment.

(9) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (5), any person may pay in full the charge created thereby, with interest, at the agreed rate, up to the date of such payment.

(10) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (5), no suit with respect to such agreement shall be brought against the Trust by any other person (except an heir, executor, or administrator of the person first aforesaid) claiming to have an interest in the land.

(11) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (5) and any sum payable in pursuance of that sub-section is not duly paid, the same shall be recoverable by the Trust (together with interest, up to the date of realization, at the agreed rate), from the said person or his successor-in-interest in such land in the manner provided by section 222 of the Municipal Act and, if not so recovered the Chairman may, after giving public notice of his intention to do so, and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance (if any) to the defaulter.

Agreement or payment under section 56 not bar to acquisition under a fresh declaration.

57. If any land in respect of which an agreement has been executed, or a payment has been accepted, in pursuance of sub-section (5) of section 56, be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894.

Tribunal to be constituted.

58. A tribunal shall be constituted as provided in section 60, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Trust, under the land Acquisition Act, 1894.

Modification of the Land Acquisition Act, 1894.

59. For the purposes of acquiring land under the Land Acquisition Act, 1894, for the Trust—

(a) the Tribunal shall (except for the purposes of section 54 of the said Act) be deemed to be the Court and the President of the Tribunal shall be deemed to be the Judge, under the said Act ;

(b) the said Act shall be subject to the further modifications indicated in the Schedule to this Act ;

(c) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means and (so far as may be) in the same manner as is provided in the case of a Civil Court under the Code of Civil Procedure, 1908 ; and

(d) the award of a Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894, and shall be final.

Constitution of Tribunal.

60. (1) The Tribunal shall consist of a president and two assessors.

(2) The President of the Tribunal shall be either—

(a) a member of the Judicial Branch of the Indian or Punjab Civil Service of not less than ten years' standing in such service who has for at least three years served as District Judge or for at least five years held judicial office not inferior to that of a Senior Subordinate Judge , or

(b) a barrister, advocate or pleader of not less than ten years' standing who has practised as an advocate or pleader in the High Court of Judicature at Lahore.

(3) The President of the Tribunal and one of the assessors shall be appointed by the Provincial Government and the other assessor shall be appointed by the Municipal Committee or, in default of appointment by the Municipal committee within two months of their being required by the Provincial Government to make such appointment by the Provincial Government :

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or would, if he were a Trustee, be liable to removal by the Provincial Government under section 10.

(4) The term of office of each member of the Tribunal shall be two years, but any member shall, subject to the proviso to sub-section (3), be eligible for re-appointment at the end of that term.

(5) The Provincial Government may remove any member of the Tribunal who would if he were a Trustee be liable to removal by the Provincial Government under section 10.

(6) When any person ceases for any reason to be a member of the Tribunal or when any member is temporarily absent in consequence of illness or any unavoidable cause, the authority which appointed him shall forthwith appoint a fit person to be a member in his place. Where the authority so appointing was the Municipal Committee and the Municipal Committee fails to make a fresh appointment within two months of being required to do so by the Provincial Government, the appointment may be made by the Provincial Government.

Remuneration of members of Tribunal.

61. Each member of the Tribunal shall receive such remuneration either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the Provincial Government may prescribe.

Officers and servants of Tribunals.

62. (1) The President of the Tribunal shall from time to time, prepare a statement showing

(a) the number and grades of the clerks and other officers and servants who in his opinion should be maintained for carrying on the business of the Tribunal.

(b) the amount of the salary to be paid to each such clerk, officer and servant.

(2) All statements prepared under sub-section (1) shall be subject to the previous sanction of the Provincial Government.

(3) Subject to any directions contained in any statement prepared under sub-section (1), and to rules made under section 78, the power of appointing, promoting and granting leave to clerks, officers and servants of

the Tribunal, and the power of reducing, or dismissing them, shall rest in the President of the Tribunal.

Mode of payment.

63. The remuneration prescribed under section 61 for members of the Tribunal and the salaries, leave allowances and acting allowances prescribed under this Act for clerks, officers and servants of the Tribunal shall be paid by the Trust to the President of the Tribunal for distribution.

Powers to make rules for Tribunal

64. (1) The Provincial Government may from time to time make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by Tribunals established under this Act.

(2) All such rules shall be published by notification.

Award of Tribunal, how to be determined.

65. (1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894—

(a) if there is any disagreement as to the measurement of land, or to the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail;

(b) notwithstanding anything contained in the foregoing clause, the decision on all questions of law and title and procedure shall rest solely with the President of the Tribunal, and such questions may be tried and decided by the President in the absence of assessors unless the President considers their presence necessary.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by a Court of Small Causes, or if there be no such Court, by the Senior Sub-Judge within the local limits of whose jurisdiction it was made as if it were a decree of that Court.

Application of Act to acquisition by other local authorities.

66. (1) Whenever a Municipal Committee or other local authority acquires land for the purposes of—

(i) laying out new public streets in any locality whether previously built upon or not; or

(ii) constructing new buildings and laying out of compounds attached thereto, abutting on such new public streets in any locality, whether previously built upon or not; or

(iii) reclaiming unhealthy or insanitary localities—

(a) the modifications of the Land Acquisition Act contained in the Schedule of this Act, shall, so far as they are applicable, apply to every such acquisition;

(b) the Provincial Government may constitute a Tribunal in accordance with section 60 and the provisions of sections 57 to 66 and of section 73 so far as they relate to the Tribunal, shall thereupon apply to such acquisition.

(2) If the Provincial Government does not constitute a Tribunal in accordance with clause (b) of sub-section (1), all references to the Tribunal in the Schedule shall be construed as referring to the Court.

CHAPTER VII.

FINANCE.

Power of Trust to borrow money.

67. A Trust under this Act shall be deemed to be a local authority under the Local Authorities Loans Act, 1914, for the purpose of borrowing money under that Act, and the making and execution of any scheme under this Act shall be deemed to be a work which such local authority is legally authorized to carry out.

Contribution by Municipal Committee.

68. (1) The Municipal Committee shall pay to the Trust so long as the Trust is concerned with the improvement of the locality within the limits of the Municipality an amount per annum equal to two per cent. of the gross annual income of such Committee.

(2) In case of dispute as to what is the gross annual income of a Committee, the matter shall be referred to the Provincial Government, whose decision shall be final.

Custody and investment of Trust funds.

69. (1) In places where there is a Government treasury or sub-treasury, or a bank to which the Government treasury business has been made over, all moneys at the credit of the Trust shall be kept in such treasury, sub-treasury or bank.

(2) In places where there is no such treasury or sub-treasury or bank such moneys may be kept with a banker or person acting as a banker, who has given such security for the safe custody and repayment on demand of the sum so kept as the Provincial Government may in each case deem sufficient.

(3) Provided that nothing in the foregoing provisions of this section shall be deemed to preclude a Trust from, with the previous sanction of the Provincial Government, investing any such moneys which are not required for immediate expenditure in any of the securities described in section 20 of the Indian Trust Act, 1882, or placing them in fixed deposit with a bank approved by the Provincial Government.

Procedure if the Trust fails to make any payment in respect of loans of the Trust.

70. If any money borrowed under section 67 or any interest or cost due in respect thereof is or are not repaid according to the conditions of the loan, the Provincial Government shall itself make such payment and may attach the rents and other income of the Trust; and thereupon the provisions *of section 5 of the local Authorities Loans Act, 1914, shall, will all necessary* modifications be deemed to apply.

Procedure if Chairman of Board fails to make any payment due to Accountant General.

71. The Provincial Government may further impose or increase a tax on the annual value of buildings or lands or of both described in section 61 (B) (a) of the Municipal Act, to such extent as may be necessary for the purpose of recovering a payment made under section 70.

Payment by Provincial Government to be a charge on the property of the Trust

72. All moneys paid by the Provincial Government shall constitute a charge upon the property of the Trust.

CHAPTER VIII.

RULES.

Power of Provincial Government to make rules.

73. (1) In addition to the power conferred by section 64, the Provincial Government may make rules consistent with this Act and applicable to all Trusts or any Trust—

(i) as to the authority on which money may be paid from the Trust Funds;

(ii) for fixing the fees payable for copies of or extracts from the municipal records furnished to the Chairman under section 39;

(iii) as to the employment, payment, suspension and removal of officers and servants of the Trust, and the conduct of such officers and servants;

(iv) as to the intermediate office or offices (if any) through which correspondence between the Trust and the Provincial Government or "servants of the Crown"* shall pass;

(v) as to the accounts to be kept by the Trust, as to the manner in which such accounts shall be audited and published, and as to the powers of auditors in respect of disallowance and surcharge;

*The words "servants of the Crown" were substituted for "officers of the Govt.," by the Government of India (Adaptation of Indian Laws) Order, 1937.

(vi) as to the authority by whom, the conditions subject to which and the mode in which contracts may be entered into and executed on behalf of the Trust ;

(vii) as to the preparation of estimates of income and expenditure of the Trust and as to the authority by whom and the conditions subject to which such estimates may be sanctioned ;

(viii) as to the returns, statements, and reports to be submitted by Trusts ;

(ix) to prescribe and define the mutual relations, to be observed between the Trust and other local authorities in any matter in which they are jointly interested ;

(x) for regulating the grant of leave of absence, leave allowances and acting allowances to the officers and servants of the Trust and of the Tribunal ;

(xi) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers in the service of the Trust or of the Tribunal (other than any "servant of the Crown"* in respect of whom a contribution is paid under section 94) to contribute to such fund at such rates and subject to such conditions as may be prescribed by such rules and for supplementing such contributions out of the funds of the Trust :

Provided that a "servant of the Crown"* employed as officer or servant of the Tribunal shall not be entitled to leave or leave allowances otherwise than as may be prescribed †["by the conditions of his service under the Crown] ;

(xii) for determining conditions under which the officers and servants of the Trust or of the Tribunal, or any of them, shall on retirement receive gratuities or compassionate allowances ; and the amount of such gratuities and compassionate allowances :

Provided that it shall be at the discretion of the Trust or of the Tribunal, as the case may be, to determine, whether all such officers and servants or any, and if so which of them, shall become entitled on retirement to any such gratuities or compassionate allowance as a foresaid ;

(xiii) generally for the guidance of Trust and public officers in all matters connected with the carrying out of the provisions of this Act ;

(xiv) for regulating the grant of subsidies to Trusts by the Provincial Government, the conditions under which they may be earned or forfeited and the arrangements for their repayment.

(2) All acts authorized or enjoined under this Act shall be held to be authorized or enjoined subject to such rules.

Power of the Trust to make rules.

74. Every Trust may from time to time with the previous sanction of the Provincial Government make rules consistent with this Act and with any rules made under this Act by the Provincial Government

(i) for fixing the amount of security to be furnished by any officer and servant of the Trust from whom it may be deemed expedient to require security :

(ii) for associating members with the Trust under section 13 ;

(iii) for appointing persons (other than Trustees and persons associated with the Trust under section 13) to be members of committee under section 14 ;

*The words "servants of the Crown" were substituted for "officers of the Government." by the Govt. of India (Adaptation of Indian Laws) Order 1937.

†The words within brackets were substituted for "in any general or special orders of the Government." *ibid.*

(iv) for regulating the delegation of powers or duties of the Trust to Committees or to the Chairman ;

(v) for the guidance of persons employed by it under this Act ;

(vi) for fixing the fees payable for copies of documents delivered under sub-section (3) of section 36 or under section 75 ;

(vii) for the management, use and regulation of dwellings constructed under any scheme under this Act ;

(viii) generally for carrying out the purposes of this Act.

Printing and sales of copies of Rules.

75. (1) The Chairman shall cause all rules made under section 73 or section 74 and for the time being in force to be printed and copies thereof to be delivered to any applicant on payment of such fees as may be fixed.

(2) Notice of the fact of copies of rules being obtainable at the said price and of the place where and the person from whom the same are obtainable shall be given by the Chairman by advertisement in a newspaper or newspapers.

Power of Provincial Govt. to cancel rules made under section 74.

76. The Provincial Government may, after previous publication of its intention, cancel any rule made by the Trust which it has sanctioned, and thereupon the rule shall cease to have effect.

CHAPTER IX.

PROCEDURE AND PENALTIES.

Stamping signature on notices or bills.

77. (1) Every notice or bill issued under this Act shall be signed by the Chairman, or by any other Trustee or any officer or servant of the Trust specially authorized by the Trust, or so authorized by the Chairman under sub-section (1) of section 20, and every notice or bill shall be deemed to be properly signed if it bears the facsimile of the signature of the Chairman or such Trustee, officer or servant stamped or printed thereon.

(2) No notice issued by the Trust under this Act or any rule or by-law made thereunder shall be invalid for defect of form.

Method of giving public notice.

78. Subject to the provisions of this Act, every public notice required under this Act shall be deemed to have been duly given if it is published in some local newspaper (if any) and posted upon a notice board to be exhibited for public information at the building in which the meetings of the Trust are ordinarily held.

Service of notice.

79. (1) Every notice other than a public notice, and every bill, issued under this Act shall, unless it is under this Act otherwise expressly provided, be served or presented—

(a) by giving or tendering the registered notice or bill, or sending it by registered post, to the person to whom it is addressed, or

(b) if such person cannot be found, then by leaving the notice or bill at his last known place of abode, if within municipal limits, or by giving or tendering it to some adult male member or servant of his family, ordinarily residing with him, or by causing it to be affixed on some conspicuous part of the buildings or land (if any) to which it relates.

(2) When a notice is required or permitted under this Act to be served upon an owner or occupier as the case may be of a building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof, in cases not otherwise specially provided for in this Act shall be effected either—

(a) by giving or tendering the notice, or sending it by post, to the owner or occupier, or if there be more owners or occupiers than one to any one of them, or

(b) if such owner or occupier cannot be found, then by giving or tendering the notice to an adult male member or servant of his

family ordinarily residing with him or by causing the notice to be affixed on some conspicuous part of the building or land to which it relates.

(3) Whenever the person on whom a notice or bill is to be served is a minor, service upon his guardian or upon an adult male member of his family ordinarily residing with him shall be deemed to be service upon the minor.

Disobedience to Act or to notice.

80. Where under this Act or a notice issued thereunder the public or a person is required to do or to refrain from doing any thing, a person who fails to comply with such requisition shall, if such failure is not an offence punishable under any other section be liable on conviction by a Magistrate to a fine not exceeding five hundred rupees for every such failure and, in the case of a continuing breach, to a further fine which may extend to five rupees for every day after the date of the last conviction during which the offender is proved to have persisted in the breach

Provided that when the notice fixes a time within which a certain act is to be done, and no time is specified in this Act, it shall rest with the Magistrate to determine whether the time so fixed was a reasonable time within the meaning of this Act.

Power of Trust to execute works on failure to comply with notice

81. If a notice has been given under this Act to a person requiring him to execute a work in respect of any property movable or immovable public or private, or to provide or do or refrain from doing anything within a time specified in the notice, and if such person fails to comply with such notice, then the Trust may after giving six hours' notice cause such work to be executed or such thing to be provided or done and may recover all expenses incurred by it on such account from the said person in the manner provided by section 222 of the Municipal Act

Liability of occupier to pay in default of owner

82. (1) If the person to whom the notice mentioned in section 81 has been given is not the owner of the property in respect of which it is given the Trust may (whether any action or other proceeding has been brought or taken against such owner or not) require the person (if any) who occupies such property or a part thereof under such owner to pay to the Trust instead of to the owner the rent payable by him in respect of such property as it falls due up to the amount recoverable from the owner under section 81, and any such payment made by the occupier to the Trust shall, in the absence of any contract between the owner and the occupier to the contrary be deemed to have been made to the owner of the property

(2) For the purpose of deciding whether action should be taken under sub-section (1) the Trust may require an occupier of property to furnish information as to the sum payable by him as rent on account of such property and as to the name and address of the person to whom it is payable; and if the occupier refuses to furnish such information he shall be liable for the whole of the expenses as if he were the owner

(3) All money recoverable by the Trust under this section shall be recoverable in the manner provided by section 222 of the Municipal Act

Right of occupier to execute works in default of owners.

83. Whenever default is made by the owner of a building or land in the execution of a work required under this Act to be executed by him the occupier of such building or land may with the approval of the Trust cause such work to be executed and the expense thereof shall in the absence of any contract to the contrary, be paid to him by the owner or the amount may be deducted out of the rent from time to time becoming due from him to such owner

Procedure upon opposition to execution by occupier.

84. (1) If after receiving information of the intention of the owner of any building or land to take any action in respect thereof in compliance with a notice issued under this Act, the occupier refuses to allow such owner to take such action, the owner may apply to a Magistrate

(2) The Magistrate upon proof of such refusal may by order in writing require the occupier to give the owner reasonable facility for executing such works, with respect to such building or land, as may be necessary for com-

pliance with the notice, and may also, if he deems fit order the occupier to pay to the owner the costs relating to such application or order.

(3) If, after the expiration of eight days from the date of the Magistrate's order, the occupier continues to refuse to allow the owner to execute such work, the occupier shall be liable upon conviction, to a fine which may extend to twenty-five rupees for every day during which he has so continued to refuse.

(4) Every owner, during the continuance of such refusal shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in the execution of such works.

Recovery by cost of work by the occupier.

85. When the occupier of a building or land has, in compliance with a notice issued under this Act, executed a work for which the owner of such building or land is responsible either in pursuance of the contract of tenancy or by law, he shall, in the absence of any contract to the contrary, be entitled to recover from the owner by deduction from the rent payable by him or otherwise the reasonable cost of such work.

Recovery of expenses of removal by Trust.

86. The expenses incurred by the Trust in effecting any removal under section 173 of the Municipal Act as applied by section 49 of this Act, or in the event of a written notice under section 116 of that Act not being complied with, under section 81 of this Act, shall be recoverable by sale of the materials removed, and if the proceeds of such sale do not suffice, the balance shall be recoverable from the owner of the said materials in the manner provided by section 222 of the Municipal Act.

Relief to agents and Trustees.

87. (1) When a person, by reason of his receiving, or being entitled to receive, the rent of immovable property as trustee or agent of a person or society would, under this Act, be bound to discharge an obligation imposed by this Act on the owner of the property for the discharge of which money is required he shall not be bound to discharge the obligations unless he has, or but for his own improper act or default might have had, in his hands funds belonging to the owner sufficient for the purpose.

(2) When an agent or Trustee has claimed and established his right to relief under this section, the Trust may give him notice to apply to the discharge or such obligation as aforesaid the first moneys which come to his hands on behalf or for the use of the owner, and should he fail to comply with such notice, he shall be deemed to be personally liable to discharge such obligation.

Application of section 222 Municipal Act.

88. Whenever in this Act or in any section of the Municipal Act made applicable by section 49 of this Act, it is provided that any sum shall be recoverable in the manner provided by section 222 of the Municipal Act then in applying the provisions of that section all references to the Municipal Committee shall be construed as referring to the Trust.

Penalty for removing fence, etc. in street.

89. If any person, without lawful authority—

(a) removes any fence, or any timber used for propping or supporting any building, wall or other thing, or extinguishes any light set up at any place where the surface of a street or other ground has been opened or broken up by the Trust for the purpose of carrying out any work, or

(b) infringes any order given, or removes any bar, chain, or post fixed by the Trust for the purpose of closing any street to traffic,

he shall be punishable with fine which may extend to fifty rupees.

Power to prevent or demolish building in contravention of sections 30 & 31.

90. If any person without the permission of the Trust erects, re-erects, adds to or alters any building so as to make the same project beyond a street alignment or building line by the Trust or erects, re-erects, adds to or alters any building in contravention of sections 30 or 31 the Chairman of the Trust may, by a written notice,—

(a) direct that the building, alteration or addition be stopped and

(b) require such building, alteration or addition to be altered or demolished as he may deem necessary.

Penalty for obstructing contractor or removing mark.

91. If any person—

(a) obstructs, or molests any person with whom the Trust has entered into a contract in the performance of 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 authorized 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.

DISPOSAL OF FINES AND DAMAGES.

Fines and damages to be paid to Trust.

92. Omitted by the Government of India (Adaptation of Indian Laws) Order, 1937.

CHAPTER X.

SUPPLEMENTAL PROVISIONS.

Trustees etc., deemed public servants.

93. Every trustee, and every officer and servant of the Trust, and every member and officer and servant of the Tribunal, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Contribution by Trust to leave allowances and pension of Govt. servants.

94. The Trust shall be liable to pay such contributions for the leave allowances and pension of any servant of the Crown employed as Chairman or as officer or servant of the Trust, or as a member or officer or servant of the Tribunal, as may be *[required by the conditions of his service under the Crown to be paid by him or on his behalf.]

LEGAL PROCEEDINGS.

Authority for prosecution.

95. Unless otherwise expressly provided, no court shall take cognizance of any offence punishable under this Act, except on the complaint of or upon information received from the Trust or some person authorized by the Trust by general or special order in this behalf.

Powers of Chairman as to institution, etc., of legal proceeding and obtaining legal advice.

96. The Chairman may, subject to the control of the Trust

(i) institute, defend or withdraw from legal proceedings under this Act,

(ii) compound any offence against this Act,

(iii) admit, compromise or withdraw any claim made under this Act, and

(iv) obtain such legal advice and assistance as he may from time to time deem it necessary or expedient to obtain, or as he may be desired by the Trust to obtain, for any of the purposes referred to in the foregoing clause of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Trust or any officer or servant of the Trust.

Indemnity to Trust, etc.

97. No suit shall be maintainable against the Trust, or any Trustee, or any officer or servant of the Trust, or any person acting under the direction of the Trust or of the Chairman or of any officer or servant of the Trust in respect of anything lawfully and in good faith and with due care and attention done under this Act.

Notice of suit against Trust, etc.

99. (1) No suit shall be instituted against the Trust or any Trustee, or any person associated with the Trust under section 13 or any member of a Committee appointed under section 14 or any officer or servant of the Trust, or any person acting under the direction of the Trust or of the Chairman or of any officer or servant of the Trust, in respect of an act purporting to be done under this Act, until the expiration of two months next after notice in writing has been, in the case of a Trust, left at its office, and in any

*The words within brackets were substituted for "prescribed in any general or special orders of the Government" *ibid.*

other case delivered to or left at the office or place of abode of the person to be sued, explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the intending plaintiff; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) If the Trust or other person referred to in sub-section (1) shall before the action is commenced have tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered and shall also pay all costs incurred by the defendant after such tender.

(3) No action such as is described in sub-section (1) shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be commenced otherwise than six months next after the accrual of action:

(4) Provided that nothing in sub-section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the commencement of the suit or proceedings.

EVIDENCE.

Mode of proof of Trust record

99. A copy of any receipt, application, plan, notice, order, entry in a register, or other document in the possession of the Trust shall if duly certified by the legal keeper thereof, or other person authorized by the Trust in this behalf be received as "prima facie" evidence of the existence of the entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent as the original or document would, if produced, have been admissible to prove such matters.

Restriction on the summoning of Trust servants to produce documents

100. No Trustee or officer or servant of the Trust shall in any legal proceedings to which the Trust 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 a witness to prove the matters and transactions recorded therein unless by order of the Court made for special cause.

VALIDATION

Validation of acts and proceedings.

101. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of —

(a) the existence of any vacancy in, or any defect in the constitution of, the Trust or any committee, or

(b) any person having ceased to be a Trustee, or

(c) any Trustee or any person associated with the Trust under section 18 or any other member of a committee appointed under this Act having voted or taken any part in any proceeding in contravention of section 16, or

(d) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure, or

(e) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Trust, the minutes of the proceedings of which have been duly signed as prescribed in clause (e), sub-section (1) of section 12, shall be taken to have been duly convened and to be free from all defects and irregularities.

COMPENSATION.

General power of Trust to pay compensation.

102. In any case not otherwise expressly provided for in this Act, the Trust may pay reasonable compensation to any person who sustains damage by reason of the powers vested under this Act in the Trust or the Chairman or any officer or servant of the Trust.

DISSOLUTION OF TRUST.

Ultimate dissolution of Trust, and transfer of its assets and liabilities to the committee

103. (1) When all schemes sanctioned under this Act have been executed or have been so far executed as to render the continued existence of the Trust, in the opinion of the Provincial Government, unnecessary, or when in the opinion of the Provincial Government it is expedient that the Trust shall cease to exist, the Provincial Government may by notification declare that the Trust shall be dissolved from such date as may be specified in this behalf in such notification; and the Trust shall be deemed to be dissolved accordingly.

(2) From the said date—

(a) all properties, funds and dues which are vested in or realizable by the Trust and the Chairman respectively shall vest in and be realizable by the Municipal Committee, and

(b) all liabilities which are enforceable against the Trust shall be enforceable only against the Municipal Committee, and

(c) for the purpose of completing the execution of any scheme, sanctioned under this Act which has not been fully executed by the Trust, and of realizing properties, funds and dues referred to in clause (a) the functions of the Trust and the Chairman under this Act shall be discharged by the Municipal Committee and the President of the Municipal Committee respectively, and

(d) the Municipal Committee shall keep seperate accounts of all moneys respectively received and expended by it under this Act until all loans raised hereunder have been repaid and until all other liabilities referred to in clause (b) have been duly met

THE SCHEDULE.

(REFERRED TO IN SECTION 59)

Further modifications in the Land Acquisition Act, 1894, hereinafter called "the said Act."

Amendment of section 3.

1. After clause (e) of section 3 of the said Act the following shall be deemed to be inserted, namely:—

"(ee) the expression 'local authority' includes a Trust constituted under the Punjab Town Improvement Act, 1922"

Notification under section 4 and declaration under section 6 to be replaced by notification under sections 36 and 42 of this Act.

2. (1) The first publication of a notice of any improvement scheme under section 36 of this Act shall be substituted for and have the same effect as publication in the Gazette and in the locality of a notification under sub-section (1) of section 4 of the said Act except where a declaration under section 4 or section 6 of the Act has previously been made and is still in force.

(2) Subject to the provisions of clauses 10 and 11 of this Schedule the issue of a notice under sub-section (1) of section 32 in the case of land acquired under that sub-section and in any other case the publication of a notification under section 42 shall be substituted for and have the same effect as a declaration by the Provincial Government under section 6 of the said Act, unless a declaration under the last mentioned section has previously been made and is still in force.

Amendment of section 11

3. The fullstop at the end of clause 11 of the said Act shall be deemed to be changed to a semi-colon, and the following shall be deemed to be added, namely—

"and

"(iv) the costs which, in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen per centum mentioned in sub-section (2) of section 23, as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

"The Collector may disallow, wholly or in part costs incurred by any person if he considers that the claim made by such person for compensation is extravagant."

Amendment of section 15.

4. In section 15 of the said Act, for the word and figures "and 24" the figures, word and letter "24 and 24-A" preceded by a comma, shall be deemed to be substituted.

Amendment of section 17.

5. (1) In sub-section (3) of section 17 of the said Act, after the figure "24" the words, figures and letter "or section 24-A" shall be deemed to be inserted.

(2) To the said section 17 the following shall be deemed to be added, namely:—

"(4) Sub-sections (1) and (5) shall apply also to any area certified to be unhealthy by any Magistrate of the first class.

(5) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay any objections which may be urged by them.

(6) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession".

Transfer of land Trust.

6. After section 17 of the said Act the following shall be deemed to be inserted, namely:—

"17-A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Trust; and the land shall thereupon vest in the Trust subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition."

Amendment of section 18.

7. The fullstop at the end of sub-section (1) of section 18 of the said Act shall be deemed to be changed to a comma, and the words "or the amount of the costs allowed" shall be deemed to be added.

Amendment of section 20.

8. After the words "amount of compensation", in clause (c) of section 19 of the said Act, the words "and of costs (if any)" shall be deemed to be inserted.

Amendment of section 20.

9. *After the words "amount of the compensation," in clause (c) of* section 20 of the said Act, the words "or costs" shall be deemed to be inserted.

10. (1) In clause first and clause sixthly of sub-section (1) of section 23 of the said Act, for the words "publication of the declaration relating thereto under section 6" and the words "publication of the declaration under section 6" shall be deemed to be substituted —

Amendment of section 23.

(a) if the land is being acquired under sub-section (3) of section 32 of this Act the words "issue of the notice under sub-section (3) of section 32 of the Punjab Town Improvement Act, 1922," and

(b) in any other case, the words "first publication of the notification under section 36 of the Punjab Town Improvement Act, 1922."

(2) The fullstop at the end of sub-section (2) of section 23 of the said Act shall be deemed to be changed to a colon and the following proviso shall be deemed to be added:—

"Provided that this sub-section shall not apply to any land acquired under the Punjab Town Improvement Act, 1922."

(3) At the end of section 23 of the said Act, the following shall be deemed to be added namely:—

"(3) For the purposes of clause first of sub-section (1) of this section—

(a) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause;

(b) if it be shown that before such date, the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him;

(c) if any person without the permission of the Trust required by sub-section (1) of section 31 of the Punjab Town Improvement Act, 1922, has erected, re-erected, added to or altered any building or wall so as to make the same project beyond a street alignment or building line duly prescribed by the Trust then any increase in the market-value resulting from such erection, re-erection addition or alteration shall be disregarded;

(d) if the market-value has been increased by means of any improvement made by the owner or his predecessor-in-interest within two years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under the Punjab Town Improvement Act, 1922;

(e) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded, and the market-value shall be deemed to be the market-value of the land if put to ordinary use; and

(f) when the owner of the land or building has after the passing of the Punjab Town Improvement Act, 1922, within two years preceding the date with reference to which the market-value is to be determined, made a return under any enactment in force of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct, and the market-value may be determined on the basis of such rent:

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value is to be determined the Court may take into consideration any increase in the letting-value of the land due to such addition or improvement."

Amendment of section 24.

11. For clause seventhly of section 24 of the said Act, the following shall be deemed to be substituted, namely:—

Seventhly, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

Further provision for determining compensation.

12. After section 24 of the said Act the following shall be deemed to be inserted, namely:—

"24-A. In determining the amount of compensation to be awarded for any land acquired for the Trust under this Act, the Tribunal shall also have regard to the following provisions, namely:

(a) When any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land.

(b) If, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonable good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair as the case may be, minus the estimated cost of putting it into such condition or state.

(c) If, in the opinion of the Tribunal any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building."

Amendment of section 31.

13. (1) After the words "The compensation" in sub-section (1) of section 31 of the said Act, and after the words "the amount of compensation" in sub-section (2) of section 31 of the said Act, the words "and cost (if any)" shall be deemed to be inserted.

(2) After the words "any compensation" in the concluding proviso to sub-section (2) of section 31 of the said Act, the words "or cost" shall be deemed to be inserted.

Compensation to be awarded when land not required within one year.

14. After section 48 of the said Act, the following shall be deemed to be inserted, namely :—

"48-A. (1) If within a period of one year, from the date of the publication of the declaration under section 6 in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay."

"(2) The Provisions of part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section".

15. After sub-section (1) of section 49 of the said Act, the following shall be deemed to be inserted, namely :—

"**Explanation.**—For the purposes of this sub-section land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

THE PUNJAB TOWN IMPROVEMENT (AMENDMENT) Act, 1936.

Received the assent of the Governor on the 19th November 1936 and of the Governor-General on the 24th December 1936.

(Punjab Act No. VIII of 1936).

An Act to amend the Punjab Town Improvement Act, 1922.

Preamble.—Whereas it is expedient to amend the Punjab Town Improvement Act, 1922, for the purpose and in the manner hereinafter appearing, it is hereby enacted as follows :-

Short title and commencement.

1. (1) This Act may be called the Punjab Town Improvement (Amendment) Act, 1936.

(2) It shall come into force at once.

Insertion of new section 4-A in Punjab Act, IV of 1922.

2. After section 4 of the Punjab Town Improvement Act, 1922, the following new section shall be inserted, namely :—

Appointment of trustees during supersession of Municipal

"4-A. During the period of supersession of a Municipal Committee under section 238 of the Punjab Municipal Act, 1911, the three seats allotted to the Municipal Committee on the Trust under clause (b) of sub-section (1) of section 4 shall be filled by the Provincial Government by appointing any three persons by notification in the gazette. The term of office of every trustee

so appointed shall be three years or until the Trust is dissolved, whichever period is less, provided that if the Municipal Committee is reconstituted three members of the Municipal Committee shall be elected or appointed in accordance with the provisions of section 4, and on their election or appointment the three trustees appointed by the Provincial Government under this section shall cease to be members of the Trust". Committee.

APPENDIX D.

CENTRAL PROVINCES ACT No. XXXVI OF 1936.

THE NAGPUR IMPROVEMENT TRUST ACT, 1936

[Published in the *Central Provinces Gazette*, dated the 25th December, 1936]

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THE SCHEDULE

CENTRAL PROVINCES ACT No. XXXVI OF 1936

THE NAGPUR IMPROVEMENT TRUST ACT, 1936

[Published in the *Central Provinces Gazette*, dated the 25th December 1936.]

An Act to provide for the improvement and expansion of the Town of Nagpur

Preamble.

WHEREAS it is expedient to make provision for the improvement and expansion of the Town of Nagpur in the manner hereinafter provided;

AND WHEREAS the previous sanction of the Governor General, required by sub-section (3) of section 80-A of the Government of Indian Act, and the previous sanction of the Governor, required by section 80-C of the said Act, have been obtained for the passing of this Act;

It is hereby enacted as follows:—

CHAPTER I

Preliminary

Short title, extent and commencement.

1. (1) This Act may be called the Nagpur Improvement Trust Act, 1936.

(2) It extends to the area comprised within the limits of the Nagpur Municipality and to such other area outside those limits as the Provincial Government may, from time to time by notification declare.

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

Definitions.

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

(a) "betterment contribution" means the contribution prescribed by section 69;

(b) "building line" means a line, in rear of the street alignment, up to which the main wall of a building abutting on a projected public street may lawfully extend;

(c) "Chairman" means the Chairman of the Trust;

(d) "Civil Station Sub-Committee" means the sub-committee appointed by the municipal committee for the administration of the area known as civil station;

(e) "committee" means a committee constituted under sub-section (1) of section 18;

(f) "land" has the meaning assigned to it in clause (a) of section 3 of the Land Acquisition Act, 1894;

(g) "municipal committee" means the committee established for the Nagpur Municipality;

(h) "regulation" means a regulation made under section 90;

(i) "rule" means a rule made under this Act;

(j) "street alignment" means a line dividing the land comprised in, and forming part of, a street from the adjoining land;

(k) "Tribunal" means a tribunal constituted under section 62;

(l) the words and expressions not defined in this Act have the meanings assigned to them in the Central Provinces Municipalities Act, 1922 (hereinafter referred to as the Municipalities Act);

(m) all references to anything done, required, authorized, permitted, forbidden or punishable, or to any power vested, under this Act; shall include anything done, required, authorized, permitted, forbidden, or punishable, or any power vested—

(i) by any provision of this Act; or

(ii) by any rule or scheme made under the provisions of this Act; or

(iii) under any provision of the Municipalities Act which the Trust has by virtue of this Act power to enforce.

CHAPTER II

Constitution of the Trust

Creation and incorporation of Trust.

3. The duty of carrying out the provisions of this Act shall, subject to the conditions and limitations hereinafter contained, be vested in a board to be called "The Nagpur Improvement Trust" hereinafter called "the Trust." Such board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue or be sued.

Constitution of Trust.

4. (1) The Trust shall consist of seven Trustees, namely.—

(a) a Chairman,

(b) the President of the municipal committee,

(c) the President of the Civil Station Sub-Committee,

(d) one member of the municipal committee, and

(e) three other persons appointed under sub-section (2).

(2) The Chairman and the three persons referred to in clause (e) of sub-section (1) shall be appointed by the Provincial Government by notification.

(3) The President of the municipal committee and the President of the Civil Station Sub-Committee shall be Trustees *ex officio*.

(4) The member of the municipal committee referred to in clause (d) of sub-section (1) shall be elected by the municipal committee.

(5) If the municipal committee does not, within two months of the expiry of the term of a member elected under sub-section (4) elect a member to be a Trustee, the Provincial Government may by notification appoint a member of the municipal committee to be a Trustee and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by the municipal committee.

(6) Of the three persons referred to in clause (e) of sub-section (1) not more than one shall be a Government servant.

Explanation.—For the purposes of this section the term "Government servant", means a whole time salaried servant of Government.

Resignation of Trustee other than *ex-officio* Trustee.

5. Any Trustee, other than an *ex officio* Trustee, may at any time resign his office, provided that his resignation shall not take effect until accepted by the Trust.

Term of office of Chairman or *ex-officio* Trustee.

6. The term of office of the Chairman or of any trustee appointed under section 4 to be an *ex officio* Trustee shall be five years, provided that he may be removed from his office by the Provincial Government at the time.

Term of office of other Trustees.

7. Subject to the provisions of sections 5 and 6, the term of office of every Trustee elected under clause (d) of sub-section (1) of section 4 or appointed under sub-section (5) of that section shall be five years or until he ceases to be a member of the municipal committee, whichever period is less, and the term of office of every Trustee appointed under clause (e) of sub-section (1) of section 4 shall be five years.

Commencement of term of office of first Trustees.

8. (1) The term of office of the first appointed and elected Trustees shall commence on such date as shall be notified in this behalf by the Provincial Government.

(2) A person ceasing to be a Trustee by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for re-election or re-appointment.

Remuneration of Chairman.

9. No Trustee, other than the Chairman, shall receive any salary or other remuneration from the funds of the Trust. The Chairman shall receive such salary or remuneration, if any, as may be sanctioned by the Provincial Government.

Removal of Trustees.

10. (1) The Provincial Government may remove from the Trust any Trustee, other than an *ex officio* Trustee, who—

(a) refuses to act, or becomes incapable of acting as a Trustee, or absents himself without the permission of the Trust for more than three consecutive months from the meetings of the Trust or of any committee of which he is a member and is unable to explain such absence to the satisfaction of the Trust, or

(b) is an undischarged insolvent or has compounded with his creditors, or

(c) has been sentenced by a Criminal Court to imprisonment for a term exceeding six months or transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted or the offender pardoned, or

(d) has acquired or continued to hold without the permission in writing of the Provincial Government, directly or indirectly or by a partner, any share or interest in any contract or employment with, by, or on behalf of the Trust or the municipal committee, or

(e) has acted as a Trustee in a matter other than a matter referred to in clause (iv) or clause (v) of the proviso to this sub-section in which he had either directly or indirectly, a personal interest, as a partner, employer, agent or counsel, or

(f) has acted in contravention of section 20, or

(g) being a legal practitioner, in any suit or other proceeding, acts or appears on behalf of any other person against the Trust, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Trust:

Provided that a person shall not be deemed for the purpose of this sub-section to acquire, or continue to have, any share or interest in a contract or employment by reason only of his—

(i) having a share or interest in any lease, sale or purchase of land or buildings, or in any agreement for the same provided that such share or interest was acquired before he became a Trustee, or

(ii) having a share in a joint stock company which shall contract with, or be employed by or on behalf of the Trust, or

(iii) having a share or interest in newspaper in which an advertisement relating to the affairs of the Trust is inserted, or

(iv) holding a debenture or otherwise being interested in a loan raised by or on behalf of the Trust, or

(v) having a share or interst in the occasional sale of an article in which he regularly trades to the Trust to a value not exceeding in any one year, such amount as the Trust, with the sanction of Provincial Government, may fix in this behalf.

(2) The Provincial Government may remove from the Trust a Trustee who in its opinion has so flagrantly abused in any manner his position as a Trustee as to render his continuance as a Trustee detrimental to the public interest.

(3) Whenever the Provincial Government proposes to take action under the foregoing provisions of this section, an opportunity of explanation shall be given to the Trustee concerned, and, when such action is taken the reasons therefor shall be placed on record.

(4) A Trustee, who remains absent without the permission of the Trust for more than three consecutive months from the area to which this Act extends, shall be deemed to have resigned his office.

Disabilities of Trustees, removed under section 10.

11. A Trustee removed under clause (*a*) or clause (*c*) of sub-section (1) of section 10, or under sub-section (2) of that section, shall not be eligible for further election or appointment for a period of three years from the date of his removal.

(2) A Trustee removed under clause (*b*) of sub-section (1) of section 10 shall not be so eligible until he has obtained his discharge or has paid his creditors in full, as the case may be.

(3) A Trustee removed under any other provision of section 10 or deemed to have resigned under sub-section (4) of that section shall not be so eligible until he is declared to be no longer ineligible by an order of the Provincial Government.

Filling of casual vacancies.

12. (1) When the place of a Trustee appointed by the Provincial Government becomes vacant by his resignation, removal or death, the Provincial Government shall appoint a person to fill the vacancy.

(2) When the place of a Trustee elected under clause (d) of sub-section (1) of section 4 becomes vacant by his resignation, removal or death, the vacancy shall be filled, within two months of the existence of such vacancy being notified to the municipal committee by the Trust, in the manner provided by sub-section (4) of the same section, provided that if the municipal committee fails to elect a qualified person to fill the vacancy within the said period, the provisions of sub-section (5) of section 4 shall apply.

(3) The term of office of a Trustee appointed or elected under this section shall be the remainder of the term of office of the Trustee in whose place he has been elected or appointed :

Provided that no person elected or appointed under sub-section (2) shall continue to be a Trustee after he has ceased to be a member of the municipal committee, but he may so continue notwithstanding that the Trustee in whose place he was elected or appointed has ceased to be a member of the said committee.

Leave of absence or deputation of the Chairman.

13. (1) The Provincial Government may, after consultation with the Trust, grant leave of absence to the Chairman, or depute him to other duties for such period as it may think fit.

(2) The allowance, if any, to be paid to the Chairman during his absence on leave or deputation shall be such amount, not exceeding his salary, as may be fixed by the Provincial Government :

Provided that, if the Chairman is a Government servant, the amount of such allowance shall be such as he may be entitled to under any general or special orders of the Government for regulating the transfer of Government servants to foreign service.

Appointment, etc., of acting Chairman.

14. (1) Whenever the Chairman is granted leave of absence or deputed to other duties, the Provincial Government may appoint a person to act as Chairman in his place.

(2) The salary, house rent and conveyance allowance, if any, of any person appointed to act as Chairman shall be fixed by the Provincial Government, *subject to the provisions of section 9*.

(3) Any person appointed to act as Chairman shall exercise the powers and perform the duties conferred and imposed by or under this Act on the Chairman, and shall be subject to the same liabilities, restrictions and conditions as the Chairman.

Leave of absence of Trustees other than *ex officio* Trustee.

15. The Trust may permit any Trustee, other than the Chairman or the *ex-officio* Trustees, to absent himself from meetings of the Trust for any period not exceeding six months.

CHAPTER III

Proceedings of the Trust and Committees

Meetings of Trust.

16. (1) The Trust shall meet together and shall from time to time make such arrangements, not inconsistent with this Act, with respect to the place, day, hour, notice, management and adjournment of such meetings, and generally with respect to the transaction of business, as it may think fit subject to the following provisions, namely,—

(*a*) an ordinary meeting shall be held once at least in every month;

(*b*) the Chairman may, whenever he thinks fit, and shall, upon the written request of not less than two Trustees, call a special meeting;

(*c*) no business shall be transacted at any meeting unless at least three Trustees are present ;

(*d*) every meeting shall, if the Chairman be present, be presided over by him ; if he is absent, by such one of the Trustees present as may be chosen by the meeting ;

(*e*) all questions shall be decided by a majority of votes of the Trustees present and voting, the person presiding having a second or casting vote in all cases of equality of votes;

(*f*) if a poll be demanded, the names of the Trustees voting and the nature of their votes shall be recorded by the person presiding;

(*g*) minutes shall be kept of the names of the Trustees present and of the proceedings at each meeting in a book to be provided for this purpose, which shall be signed at the next meeting by the person presiding over that meeting, and shall be open to inspection by any Trustee during office hours.

(2) No person shall be entitled to object to the minutes of any meeting unless he was present at the meeting to which they relate.

Temporary association of members with Trust for particular purposes.

17. (1) The Trust may associate with, in such manner and for such period as may be prescribed by regulations, any persons whose assistance or advice it may desire in carrying out any of the provisions of this Act.

(2) A person associated with the Trust under sub-section (1) for any purpose shall have a right to take part in the discussions of the Trust relative to that purpose, but shall not have a right to vote at a meeting of the Trust and shall not be a member of the Trust for any other purpose.

Constitution and functions of committees.

18. (1) The Trust may from time to time appoint committees, consisting of such persons of any of the following classes as it may think fit, namely:—

(i) Trustees;

(ii) persons associated with the Trust under section 17;

(iii) other persons whose assistance or advice the Trust may desire as members of committees:

Provided that no committee shall consist of less than three persons, of whom at least one shall be a Trustee.

(2) The Trust may—

(*a*) refer to such committees, for inquiry and report, any matter relating to any of the purposes of this Act, and

(*b*) delegate to such committees by specific resolution, and subject to any regulations, any of the powers or duties of the Trust.

(3) The Trust may at any time dissolve, or, subject to the provisions of sub-section (1), alter the constitution of, any such committee.

(4) Every such committee shall conform to any instructions from time to time given to it by the Trust.

(5) All proceedings of any such committee shall be subject to confirmation by the Trust.

Meetings of committees.

19. (1) A committee appointed under section 18 may meet and adjourn as it thinks proper; but the Chairman may, whenever he thinks fit, call a special meeting of such committee, upon the written request of not less than two members thereof.

(2) The Chairman may attend any meeting of a committee whether he is a member of such committee or not, and shall preside at every such meeting at which he is present; if he is absent, such one of the Trustees present as may be chosen by the meeting shall preside.

(3) All questions at any meeting of a committee shall be decided by a majority of votes of the members present and voting, the person presiding having a second or casting vote in all cases of equality of votes.

(4) No business shall be transacted at any meeting of a committee when either less than two members of, or less than one-fourth of the members constituting, the committee whichever is greater are present.

Trustees and

20. (1) A Trustee who—

associated members of Trust or committee not to take part in proceedings in which they are personally interested.

(a) has, directly by himself or indirectly as partner, agent, employer or counsel, any such share or interest as is described in sub-section (1) of section 10, in respect of any matter, or

(b) has acted professionally, in relation to any matter, on behalf of any person having therein any such share or interest as aforesaid,

shall not vote or take any other part in any proceedings of the Trust or any committee relating to such matter.

(2) If any Trustee, or any person associated with the Trust under section 17, or any other member of a committee appointed under this Act, has, directly or indirectly, as partner, agent, employer or counsel any beneficial interest in any land situated in an area comprised in any improvement scheme framed under this Act, or in any area in which it is proposed to acquire land for any of the purposes of this Act,—

(i) he shall, before taking part in any proceeding at a meeting of the Trust or any committee relating to such area, inform the person presiding at the meeting of the nature of such interest;

(ii) he shall not vote at any meeting of the Trust or any committee upon any resolution or question relating to such land, and

(iii) he shall not take any other part in any proceeding at a meeting of the Trust or any committee relating to such area if the person presiding at the meeting considers it inexpedient that he should do so.

Officers and Servants

Power of Trust to fix number and salaries of its servants.

21. (1) Subject to such rules as the Provincial Government may make prescribing the conditions under which members of the staff appointed by the Trust to offices requiring professional skill may be appointed, suspended or dismissed, the Trust may from time to time fix the number and salaries of such permanent servants as it may think necessary and proper to assist in carrying out the purposes of this Act:

Provided that the Trust may with the previous sanction of the Provincial Government appoint a person possessing professional skill on a short term contract for a period not exceeding five years.

Appointment of temporary servants in cases of emergency.

(2) The Chairman may in cases of emergency appoint such temporary servants as may in his opinion be required for the purposes of this Act and may direct that the salaries of such temporary servants fixed as the emergency may require shall be paid from the Trust fund.

Provided that

(i) he shall not act under this sub-section in contravention of any order of the Trust prohibiting the employment of temporary servants for any particular work, and

(ii) every appointment made under this sub-section shall be reported at the next following meeting of the Trust.

Power of appointment etc.

22. Subject to the provisions of section 21 and to any rules for the time being in force the power of appointing promoting and granting leave to officers and servants of the Trust, and reducing suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct shall be vested—

(a) in the case of officers and servants whose monthly salary does not exceed one hundred and fifty rupees in the Chairman, and

(b) in other cases in the Trust:

Provided that any officer or servant in receipt of a monthly salary exceeding fifty rupees who is reduced suspended or dismissed by the Chairman may appeal to the Trust, whose decision shall be final.

Control by Chairman.

23. The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the Trust; and, subject to the provisions of sections 21 and 22, shall dispose of all questions relating to

the service of the said officers and servants and their pay, privileges or allowances.

Delegation of certain of Chairman's functions

24. (1) The Chairman may, by general or special order in writing, delegate to any Trustee or officer of the Trust any of the Chairman's powers, duties or functions under this Act or any rule made thereunder except those conferred or imposed upon or vested in him by sections 16 19 25 and 49

(2) The exercise or discharge by any such officer of any powers, duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations, if any, as may be prescribed in the said order and also to control and revision by the Chairman

Supply of information to Government.

Supply of information and documents to Government

25. (1) The Chairman shall forward to the Provincial Government and also to the Commissioner, Nagpur Division, a copy of the minutes of the proceedings of each meeting of the Trust within ten days from the date on which the minutes of the proceedings of such meeting were signed as prescribed in clause (g) of sub-section (1) of section 16

(2) If the Provincial Government so directs in any case the Chairman shall forward to it a copy of all papers which were laid before the Trust for consideration at any meeting

(3) The Provincial Government may require the Chairman to furnish with—

(*a*) any return, statement, estimate, statistics or other information regarding any matter under the control of the Trust, or

(*b*) a report on any such matter or

(*c*) a copy of any document in the charge of the Chairman

The Chairman shall comply with every such requisition without unreasonable delay.

CHAPTER IV

Improvement Schemes

Matters to be provided for by improvement schemes

26. An improvement scheme may provide for all or any of the following matters namely :—

(*a*) the acquisition by purchase exchange or otherwise of any property necessary for or affected by the execution of the scheme ;

(*b*) the recovery of betterment contributions from owners of property improved by a trust scheme ;

(*c*) the re-laying out of any land comprised in the scheme ;

(*d*) the re-distribution of sites belonging to owners of property comprised in the scheme ;

(*e*) the closure or demolition of dwellings or portions of dwellings unfit for human habitation

(*f*) the demolition of obstructive buildings or portions of buildings ;

(*g*) the construction and re-construction of buildings ;

(*h*) the sale, letting, or exchange of any property comprised in the scheme ;

(*i*) the construction and alteration of streets and back lanes ;

(*j*) the draining, water-supply, and lighting of streets so constructed or altered ;

(*k*) the provision of parks, playing-fields and open spaces for the benefit of any area comprised in the scheme or any adjoining area, and the enlargement of existing parks, playing-fields, open spaces and approaches ;

(*l*) the sanitary arrangements required for the area comprised in the scheme, including the conservation and prevention and injury or

contamination to rivers or other sources and means of water-supply ;

(*m*) the provision of accommodation for any class of the inhabitants ;

(*n*) the advance of money for the purposes of the scheme ;

(*o*) the provision of facilities for communication ;

(*p*) the reclamation or reservation of land for market gardens, afforestation, the provision of fuel and grass-supply, and other needs of the population ; and

(*q*) any other matter for which, in the opinion of the Provincial Government, it is expedient to make provision with a view to the improvement of any area in question or the general efficiency of the scheme.

Types of improvement schemes.

27. An improvement scheme shall be of one of the following types or may combine any two or more of such types, or of any special features thereof, that is to say,

(*a*) a general improvement scheme ;

(*b*) a re-building scheme ;

(*c*) a re-housing scheme ;

(*d*) a street scheme ;

(*e*) a deferred street scheme ;

(*f*) a development scheme ;

(*g*) a housing accommodation scheme; and

(*h*) a town expansion scheme.

General improvement scheme.

28. Whenever it appears to the Trust —

(*a*) that any buildings in any area which are used or are intended or likely to be used as dwelling places are unfit for human habitation, or

(*b*) that danger to the health of the inhabitants of buildings in any area, or in any neighbouring buildings is caused by—

(*i*) the narrowness, closeness, or bad arrangement and condition of streets or buildings or groups of buildings in such area, or

(*ii*) the want of light, air, ventilation or proper conveniences in such area, or

(*iii*) any other sanitary defects in such area,

the Trust may pass a resolution to the effect that such an area is an insanitary area, and that a general improvement scheme ought to be framed in respect of such area, and may then proceed to frame such a scheme.

Re-building scheme

29. (1) Whenever it appears to the Trust that any area is an insanitary area within the meaning of section 28 and that, regard being had to the comparative value of the buildings in such area and of the sites on which they are erected, the most satisfactory method of dealing with the area or any part thereof is a re-building scheme, it shall frame a scheme in accordance with the provisions of this section.

(2) A re-building scheme may provide for—

(*a*) the reservation of streets, back lanes, and open spaces and the enlargement of existing streets, back lanes, and open spaces to such an extent as may be necessary for the purposes of the scheme ;

(*b*) the re-laying out of the sites of the area upon such streets, back lanes, or open spaces so reserved or enlargrd ;

(*c*) the payment of compensation in respect of any such reservation or enlargement, and the construction of the streets, back lanes and open spaces so reserved or enlarged ;

(*d*) the demolition of the existing buildings and their appurtenances by the owners, or by the Trust in default of the owners, and the erection of buildings in accordance with the scheme by the said owners or by the Trust in default of the owners upon the sites as defined under the scheme ;

(*e*) the advance to the owners, upon such terms and conditions as to interest and sinking fund and otherwise as may be prescribed under the scheme, of such sums as may be necessary to assist them to erect new buildings in accordance with the scheme ;

(*f*) the acquisition by the Trust of any site or building comprised in the area included in the scheme.

Re-housing scheme.

30. The Trust may frame schemes (herein called re-housing schemes) for the construction, maintenance and management of such and so many dwellings and shops as it may consider ought to provided for persons who –

(*a*) are displaced by the execution of any improvement scheme sanctioned under this Act, or

(*b*) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the Provincial Government for sanction under this Act.

Street scheme.

31. (1) Whenever the Trust is of opinion that, for the purpose of

(*a*) providing building sites, or

(*b*) remedying defective ventilation, or

(*c*) creating new or improving existing means of communication and facilities for traffic, or

(*d*) affording better facilities for conservancy,

it is expedient to lay out new streets or alter existing streets (including bridges, causeways and culverts), the Trust may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as it may think fit.

(2) A street scheme may, within the limits of the area comprised in the scheme, provide for –

(*a*) the acquisition of any kind which will, in the opinion of the Trust, be necessary for its execution ;

(*b*) the re-laying out of all or any of the lands so acquired, including the construction and reconstruction of buildings by the Trust or by any other person and the laying-out, construction and alteration of streets and thoroughfares ;

(*c*) the draining, water-supply, and lighting of streets and thoroughfares so laid-out, constructed or altered ;

(*d*) the raising, lowering, or reclamation of any land vested in, or to be acquired by, the Trust for the purposes of the scheme ;

(*e*) the formation of open spaces for the better ventilation of the area comprised in the scheme ;

(*f*) the acquisition of any land adjoining any street, thoroughfare, or open space to be formed under the scheme.

Deferred street scheme.

32. (1) Whenever the Trust is of opinion that it is expedient for any of the purposes mentioned in section 31 to provide for the ultimate widening of any street by altering the existing alignments of such street to improved alignments to be prescribed by the Trust, but that it is not expedient immediately to acquire all or any of the properties lying within the proposed improved alignments, the Trust, if satisfied of the sufficiency of its resources, may pass a resolution to that effect, and shall forthwith proceed to make a scheme to be called a "*deferred street scheme*" prescribing an alignment on each side of such street.

(2) No person shall erect, add to or alter any building or wall so as to make the same project beyond the prescribed alignment of the street except with the written permission of the Trust.

(3) The deferred street scheme shall provide for—

(a) the acquisition of the whole or any part of any property lying within the prescribed street alignment;

(b) the re-laying out of all or any such property including the construction and re-construction of buildings by the Trust or by any other person and the formation and alteration of the street;

(c) the draining and lighting of the street so formed and altered.

(4) The owner of any property included in a deferred street scheme may, at any time after the scheme has been sanctioned by the Provincial Government, give the Trust notice requiring it to institute proceedings for the acquisition of such property before the expiration of six months from the date of such notice and the Trust shall acquire such property accordingly.

(5) Before proceeding to acquire any property within the limits of the scheme other than property regarding which it has received a notice under sub-section (4), the Trust shall give six months' notice to the owner of its intention to acquire the property.

(6) Upon the scheme being sanctioned by the Provincial Government and notwithstanding anything contained in the Municipalities Act, the municipal committee shall not prescribe a regular line of the street within the limits of the scheme and any such regular line previously prescribed within such limits shall cease to be the regular line of the street.

Development scheme.

33. (1) In regard to any area to which this Act is extended the Trust may, from time to time, prepare a scheme of proposed public streets with plans showing the direction of such streets, the street alignment and building line on each side of them, their intended width and such other details as may appear desirable.

(2) When any such scheme has been notified under section 45 the street to which it refers shall be deemed to be a projected public street.

(3) If any person desires to erect, re-erect, add to or alter any building or wall so as to make the same project beyond the street alignment or building line shown in any plan so adopted, he shall apply to the Trust for permission to do so.

(4) If the Trust refuses to grant permission to any person to effect on his land any building or wall to project as aforesaid, and if it does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal.

(5) When any building, wall or part thereof projecting beyond or adjacent to the street alignment or building line shown in any plan adopted as aforesaid has fallen down, or been burnt down or taken down the Chairman may, by written notice, require or permit the same to be set back or forward, as the case may be, from or towards such street alignment or building line.

(6) When any building or wall is set back or forward in pursuance of a requisition made by under sub-section (5), the Trust shall forthwith make full compensation to the owner of the building or wall for any damage that he may sustain thereby.

(7) If the additional land which will be included in the premises of any person required or permitted under sub-section (5) to set forward a building, wall or part thereof belongs to the Trust the requisition or permission of the Chairman to set forward the building shall be a sufficient conveyance to said owner of the said land; and the terms and conditions of the conveyance shall be set forth in the said requisition or permission.

(8) If, when the Chairman requires a building, wall or part thereof to be set forward, the owner thereof is dissatisfied with any of the terms or conditions of the conveyance, the Chairman shall, upon the application of the said owner at any time within fifteen days after the said terms and conditions are communicated to him, refer the case for the determination of the Tribunal, whose decision shall be final.

(9) Upon any scheme under this section being sanctioned by the Provincial Government and notwithstanding anything contained in the Municipalities Act, the municipal committee shall not prescribe a regular line of the street within the limits of the scheme, and any such regular line previously prescribed within such limits shall cease to be the regular line of the street.

Housing accommodation scheme

34. Whenever the Trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants of any area to which this Act is extended, it may frame a scheme (to be called a "housing accommodation scheme") for such purpose.

Town expansion scheme.

35. (1) Whenever the Trust is of opinion that it is expedient and for public advantage to control and provide for the future expansion of the Nagpur municipality, the Trust may frame a scheme therefor (to be called a "*town expansion scheme*").

(2) Such scheme shall show the method in which it is proposed to lay out the area to be developed and the purposes for which particular areas are to be utilised.

(3) For the purpose of a town expansion scheme the provisions of clause (*a*) of sub-section (2) of section 43 shall not be applicable, but the Trust shall furnish such details as the Provincial Government may consider necessary.

(4) After any such scheme has been notified under section 45, if any person desires to erect, re-erect, add to or alter any building or wall within the area comprised in the said scheme, he shall apply to the Trust for permission to do so.

(5) If the Trust refuses to grant permission to any person to erect, re-erect, add to or alter any building or wall on his land in the area aforesaid and if it does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal.

Procedure to be followed in framing an improvement scheme.

Official representation.

36. (1) An improvement scheme may be framed upon an official representation by the municipal committee or otherwise.

(2) An official representation referred to in sub-section (1) may be made by the municipal committee—

(a) on its own motion, or

(b) on a written complaint by the Chief Executive Officer or the health officer, or

(c) in respect of any area comprised in a municipal ward, on a written complaint signed by twenty-five or more residents of such ward who are liable to pay any tax assessed upon the annual value of buildings or lands leviable under the Municipalities Act.

(3) If the municipal committee decides not to make an official representation on any complaint made to it under clause (b) or clause (c) of sub-section (1), it shall cause a copy of such complaint to be sent to the Trust, with a statement of the reasons for its decision.

Consideration of official representation.

37. (1) The Trust shall consider every official representation made under section 36 and, if satisfied as to the truth thereof and as to the sufficiency of its resources, shall decide whether an improvement scheme to carry such

representation into effect should be framed forthwith or not, and shall forthwith intimate its decision to the municipal committee.

(2) If the Trust decides that it is not necessary or expedient to frame such an improvement scheme forthwith, it shall inform the municipal committee of the reasons for its decision.

(3) If the Trust fails, for a period of twelve months after the receipt of any official representation made under section 39, to intimate its decision thereon to the municipal committee, or if the Trust intimates to the municipal committee its decision that it is not necessary or expedient to frame an improvement scheme forthwith or decides to frame a scheme of a type other than that recommended by the municipal committee, the municipal committee may, if it thinks fit, refer the matter to the Provincial Government.

(4) The Provincial Government shall consider every reference made to it under sub-section (3), and

(a) if it considers that the Trust ought, in all the circumstances, to have passed a decision within the period mentioned in sub-section (3), shall direct the Trust to pass a decision within such further period as the Provincial Government may think reasonable, or

(b) if it considers that it is, in all the circumstances expedient that a scheme should forthwith be framed, shall direct the Trust to proceed forthwith to frame a scheme. Such direction may prescribe the type of scheme to be framed.

(5) The Trust shall comply with every direction given by the Provincial Government under sub-section (4).

Matters to be considered when framing improvement schemes.

38. When framing an improvement scheme in respect of any area regard shall be had to—

(a) the nature and the conditions of neighbouring areas and of the town as a whole;

(b) the several directions in which the expansion of the town appears likely to take place; and

(c) the likelihood of improvement schemes being required for other parts of the town.

Preparation, publication and transmission of notice as to improvement schemes, and supply of documents to applicants.

39. (1) When any improvement scheme has been framed, the Trust shall prepare a notice, stating—

(a) the fact that the scheme has been framed,

(b) the boundaries of the area comprised in the scheme, and

(c) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire and the land in regard to which it is proposed to recover a betterment contribution, may be seen at reasonable hours.

(2) The Trust shall—

(a) cause the said notice to be published weekly for three consecutive weeks in the Gazette and in a local newspaper or newspapers, if any, with a statement of the period within which objections will be received, and

(b) send a copy of the notice to the President of the municipal committee.

(3) The Chairman shall cause copies or extracts of all documents referred to in clause (c) of sub-section (1) to be delivered to any applicant on payment of such fees as may be prescribed by regulation.

Transmission to Trust of representation by municipal

40. The President of the municipal committee on receiving a copy of a notice sent to him under clause (b) of sub-section (2) of section 39 shall, within a period of sixty days from the receipt of the said copy, forward to the Trust any representation which the municipal committee may think fit to make with regard to the scheme.

committee as to improvement scheme.

41. (1) During the thirty days next following the first day on which notice is published under section 39 in respect of any improvement scheme, the Trust shall serve a notice on—

Notice of proposed acquisition of land

(a) every person whose name appears in the municipal assessment list as being primarily liable to any tax assessed upon the annual value of any building or land which it is proposed to acquire in executing the scheme in regard to which it proposes to recover a betterment contribution, and

(b) the occupier (who need not be named) of each premises entered in the municipal assessment list which the Trust proposes to acquire in executing the scheme.

(2) Such notice shall—

(a) state that the Trust proposes to acquire such land or to recover such betterment contribution for the purposes of carrying out an improvement scheme, and

(b) require such person, if he dissents from such acquisition or from the recovery of such betterment contribution, to state his reasons in writing within a period of sixty days from service of the notice.

(3) Every such notice shall be signed by, or by the order of, the Chairman.

Furnishing of copies or extracts from the municipal assessment book

42. The President of the municipal committee shall furnish the Chairman, at his request, with a copy of, or extracts from the municipal assessment list on payment of such fees as may be prescribed by rule made under section 89.

Abandonment of improvement scheme, or application to Provincial Government to sanction it

43. (1) After the expiration of the periods respectively prescribed under clause (a) of sub-section (2) of section 39, by section 40, and by clause (b) of sub-section (2) of section 41, in respect of any improvement scheme, the Trust shall consider any objection, representation or statement of dissent received thereunder, and after hearing all persons making any such objection, representation or dissent, who may desire to be heard, the Trust may either abandon the scheme or apply to the Provincial Government for sanction to the scheme with such modification, if any, as the Trust may consider necessary.

(2) Every application submitted under sub-section (1) shall be accompanied by—

(a) a description of, and full particulars relating to, the scheme, and complete plans and estimates of the cost of executing the scheme;

(b) a description of the street, square, park, open space or other land, or any part thereof, which is the property of, and managed by, Government, required for the scheme;

(c) a statement of the reasons for any modifications made in the scheme as originally framed;

(d) a statement of objections, if any, received under section 39;

(e) any representation received under section 40;

(f) a list of the names of all persons, if any, who have dissented, under clause (b) of sub-section (2) of section 41 from the proposed acquisition of their land or from the proposed recovery of a betterment contribution, and a statement of the reasons given for such dissent; and

(g) a statement of the arrangements made or proposed by the Trust for the re-housing of persons likely to be displaced by the execution of the scheme, for whose re-housing provision is required.

(3) A copy of the application, together with copies of all the documents and statements enumerated in sub-section (2) shall be forwarded to the Commissioner, Nagpur Division.

(4) When any application has been submitted to the Provincial Government under sub-section (1), the Trust shall cause notice of the fact to be published for two consecutive weeks in the Gazette and in a local newspaper or newspapers, if any;

Provided that the provisions of sub-section (2) of section 44 regarding republication under section 38 shall apply to modifications made by the Trust under sub-section (1).

Power to sanction, reject or return improvement scheme.

44. (1) The Provincial Government may sanction, either with or without modification, or may refuse to sanction, or may return for reconsideration, any improvement scheme submitted to it under section 43.

(2) If a scheme returned for reconsideration under sub-section (1) is modified by the Trust, it shall be republished in accordance with section 38—

(*a*) in every case in which the notification affects the boundaries of the area comprised in the scheme, or involves the acquisition of any land not previously proposed to be acquired; and

(*b*) in every other case, unless the modification is, in the opinion of the Provincial Government, not of sufficient importance to require republication.

Notification of sanction of improvement scheme and order regarding vesting of property in Trust.

45. (1) Whenever the Provincial Government sanctions an improvement scheme, it—

(*a*) shall announce the fact by notification and, except in the case of a deferred street scheme, development scheme, or town expansion scheme, the Trust shall forthwith proceed to execute the same; and

(*b*) may order that any street, square, park, open space or other land or any part thereof, which is the property of, and managed by Government, shall, subject to such conditions as it may impose, vest in the Trust for the purpose of the scheme.

(2) The publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

Alteration of improvement scheme after sanction

46. At any time after an improvement scheme has been sanctioned by the Provincial Government and before it has been carried into execution the Trust may alter it:

Provided as follows:—

(*a*) if any alteration is likely to increase the estimated net cost of executing a scheme by more than Rs. 50,000 or 5 per cent of such cost, such alteration shall not be made without the previous sanction of the Provincial Government;

(*b*) if any alteration involves the acquisition, otherwise than by agreement, of any land the acquisition of which has not been sanctioned by the Provincial Government the procedure prescribed in the foregoing sections of this Chapter shall, so far as applicable, be followed as if the alteration were a separate scheme;

(*c*) if owing to changes made in the course of a scheme, any land not previously liable under the scheme to the payment of a betterment contribution, subsequently becomes liable to such payment the provisions of sections 39, 41 and 43 shall, as far as they are applicable, be followed in any such case.

Combination of improvement schemes.

47. Any number of areas in respect of which improvement schemes have been, or are proposed to be framed, may at any time be included in one combined scheme.

CHAPTER V

Powers and duties of the Trust where a scheme has been sanctioned

Transfer to Trust, for purposes of improvement scheme, of building or land belonging to municipal committee.

48. (1) Whenever any building, street, square or other land, or any part thereof, which is vested in the municipal committee, is required for executing any improvement scheme, the Trust shall give notice accordingly to the President of the municipal committee, and such building, street, square, land or part shall thereupon vest in the Trust, subject in the case of any permanent roofed building to the payment to the municipal committee of such sum as may be required to compensate it for actual loss resulting from the transfer thereof to the Trust.

(2) If any question or dispute arises as to the sufficiency of the compensation paid or proposed to be paid under sub-section (1) the matter shall be referred to the Provincial Government whose decision shall be final.

Transfer of private street or square to Trust for purposes of improvement scheme.

49. (1) Whenever any street, or square or a part thereof which is not vested in the municipal committee is required for executing any improvement scheme, the Trust shall cause to be affixed, in a conspicuous place in or near such street, square or part, a notice signed by the Chairman—

(*a*) stating the purpose for which the street, or square or a part thereof is required, and

(*b*) declaring that the Trust will, on or after a date to be specified in the notice, such date being not less than thirty days after the date of the notice, take over charge of such street, square or part from the owner thereof;

and shall simultaneously send a copy of such notice to the owner of such street, square or part.

(2) After considering and deciding all objections, if any, received in writing before the date so specified, the Trust may take over charge of such street, square or part from the owner thereof; and the same shall thereupon vest in the Trust.

(3) When the Trust alters or closes any street or square or part thereof which has vested in it under sub-section (2), it shall pay reasonable compensation to the previous owner for the loss of his rights therein.

Provision of drain or water-work to replace another situated on land vested in Trust under section 45 or section 48 or section 49.

50. (1) When any building, or any street, square or other land, or any part thereof, has vested in the Trust under section 45 or section 48 or section 49, no municipal drain or water-work therein shall vest in the Trust until another drain or waterwork, as the case may be, if required has been provided by the Trust, to the satisfaction of the municipal committee, in place of the former drain or work.

(2) If any question or dispute arises as to whether another drain or water-work is required or as to the sufficiency of any drain or water-work provided by the Trust under sub-section (1), the matter shall be referred to the Provincial Government, whose decision shall be final.

Power of Trust to turn or close public street or square vested in it.

51. (1) The Trust may—

(*a*) turn, divert, discontinue the public use of, or permanently close, any public street vested in it, or any part thereof, or

(*b*) discontinue the public use of, or permanently close any public square vested in it, or any part thereof.

(2) Whenever the Trust discontinues the public use of, or permanently closes, any public street vested in it, or any part thereof, it shall pay reasonable compensation to every person who was entitled, otherwise than as a mere licensee, to use such street or part as means of access and has suffered damage from such discontinuance or closing.

(3) Whenever the Trust discontinues the public use of, or permanently closes, any public square vested in it, or any part thereof, it shall pay reasonable compensation to every person—

(*a*) who was entitled otherwise than as a mere licensee, to use such square or part as a means of access, or

(*b*) whose immoveable property was ventilated by such square or part,

and who has suffered damage—

(*i*) in case (*a*) from such discontinuance or closing, or

(*ii*) in case (*b*) from the use to which the Trust has put such square or part.

(4) In determining the compensation payable to any person under sub-section (2) or sub-section (3), the Trust shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other public street or square at or about the same time that the public street or square or part thereof, on account of which the compensation is paid, is discontinued or closed.

(5) When any public street or square vested in the Trust, or any part thereof, is permanently closed under sub-section (1), the Trust may sell or lease so much of the same as is no longer required.

Power under the Municipalities Act vested in the Trust.

52. (1) The provisions of sections 90 to 94, 96 to 99, 102 to 104, 105 to 130 and 147 to 149 of the Municipalities Act shall, so far as may be consistent with the tenor of this Act, apply to all areas in respect of which an improvement scheme is in force ; and for the period during which such scheme remains in force all references in the said sections to the committee or to the President, or to any officer of the committee shall be construed as referring to the Trust, which, in respect of any such areas, may alone exercise and perform all or any of the powers and functions which under any of the said sections might have been exercised and performed by the municipal committee, or by the President, or by any officer of the committee :

Provided that the Trust may delegate to the Chairman or to any officer of the Trust all or any of the powers conferred by this section.

(2) The Trust may make byelaws for any area comprised in an improvement scheme which is outside the limits of the Nagpur municipality—

(*a*) generally for carrying out the purpose of this Act, and

(*b*) in particular and without prejudice to the generality of the aforesaid powers, regarding any of the matters referred to in sections 179 and 180 of the Municipalities Act.

The provisions of sections 178 and 179 of the Municipalities Act shall, so far as may be consistent with the tenor of this Act, be applicable to all byelaws made by the Trust under this sub-section, and all references in the said sections to the committee shall be construed as referring to the Trust.

Facilities for movement of the population

Power of Trust for facilitating movement of population.

53. With a view to facilitating the movement of the population in and around any area to which this Act is applied, the Trust may from time to time,—

(*a*) subject to any conditions it may think fit to impose,—

(i) guarantee the payment, from the funds at its disposal, of such sums as it may think fit, by way of interest on capital expended on the construction, maintenance or working of means of locomotion, or

(ii) make such payments as it may think fit from the said funds, by way of subsidy to persons undertaking to provide, maintain, and work any means of locomotion, or

(*b*) either singly or in combination with any other persons construct, maintain, and work any means of locomotion, under the provisions of any law applicable thereto, or

(*c*) construct, or widen, strengthen or otherwise improve, bridges

Provided that no guarantee or subsidy shall be made under clause (*a*), and no means of locomotion shall be constructed, maintained, or worked under clause (*b*), without the sanction of the Provincial Government.

Surveys

Power to make surveys or contribute towards their cost.

54. The Trust may—

(*a*) cause a survey of any land to be made, whenever it considers that a survey is necessary or expedient for carrying out any of the purposes of this Act, or

(*b*) contribute towards the cost of any such survey made by any other local authority.

Power of entry

Power of entry

55. (1) The Chairman may, with or without assistants or workmen, enter into or upon any land, in order—

(*a*) to make any inspection, survey, measurement, valuation, or enquiry,

(*b*) to take levels,

(*c*) to dig or bore into the sub-soil,

(*d*) to set out boundaries and intended lines of work,

(*e*) to mark such levels, boundaries, and lines by marks and cutting trenches, or

(*f*) to do any other thing,

whenever it is necessary to do so for any of the purposes of this Act or any rule made or scheme sanctioned hereunder or any scheme which the Trust intends to frame hereunder :

Provided as follows :—

(i) except when it is otherwise specially provided by a rule, no such entry shall be made between sunset and sunrise ;

(ii) except when it is otherwise specially provided by a rule, no building which is used as a human dwelling shall be so entered unless with the consent of the occupier thereof without giving the said occupier at least twenty-four hours previous written notice of the intention to make such entry ;

(iii) sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice, to enable the inmates of any apartment appropriated to females to remove to some part of the premises where their privacy need not be disturbed ;

(iv) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made, to the social and religious usages of the occupants of the premises entered.

(2) Whenever the Chairman enters into or upon any land in pursuance of sub-section (1), he shall pay or tender payment for all necessary damage to be done ; and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Trust, whose decision shall be final.

(3) It shall be lawful for any person authorized under sub-section (1) to enter into or upon any land for the purpose of inspection or search to open or cause to be opened a door, gate or other barrier—

(*a*) if he considers the opening thereof necessary for the purpose of such entry, inspection or search, and

(*b*) if the owner or occupier is absent, or being present refuses to open such door, gate or barrier.

Settlement of disputes by Tribunal.

56. (1) If any question or dispute arises—

(*a*) between the Trust and the previous owner of any street or square or part thereof which has vested in the Trust under section 49 and has been altered or closed by it, as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of the section, or

(*b*) between the Trust and any person who was entitled otherwise than as a mere licensee, to use as a means of access any street or part thereof which has vested in the Trust under section 49 as to whether the alteration or closing of such street, square or substantial inconvenience to owners of property adjacent thereto or to residents in the neighbourhood, or

(*c*) between the Trust and any person as to the sufficiency of any compensation paid or proposed to be paid to him under section 29, 33, 35, 51 or 119,

the matter shall be determined by the Tribunal, if referred to it either by the Trust or by the claimant, within a period of three months from the date on which the said person was informed of the decision of the trust fixing the amount of compensation to be paid to him or of the rejection of his claim to compensation by the Trust, and the determination of the Tribunal shall be final :

Provided that the Tribunal shall not entertain the application of any claimant who has not applied to the Trust for compensation within three months of the date on which his claim to compensation accrued.

(2) If a reference to the Tribunal be not made within the period prescribed by sub-section (1), the decision of the Trust shall be final.

(3) For the purpose of determining any matter referred to it under sub-section (1), the Tribunal shall have all the powers with regard to witnesses, documents, and costs which it would have if the Land Acquisition Act, 1894, as modified by section 61 of this Act, were applicable to the case.

Vesting in municipal committee of streets laid out or altered, and open spaces provided by Trust under an improvement scheme.

57. (1) Whenever the Trust is satisfied—

(*a*) that any street laid out or altered by the Trust has been duly levelled, paved, metalled, flagged, channelled, sewered and drained in the manner provided in the plans sanctioned by the Provincial Government under this Act, and

(*b*) that such lamps, lamp-posts, and other apparatus as the Trust may consider necessary for the lighting of such street have been so provided, and

(*c*) that water and other sanitary conveniences ordinarily provided in the municipality have been duly provided in such street,

the Trust may call upon the municipal committee, by a notice in writing, to take over the management of such street within a period specified in the notice, which shall not be less than one month and, on receiving such a notice, the municipal committee shall, subject to the provisions of sub-section (3), by a written notice affixed in some conspicuous place in such street, declare the street to be a public street ; and the street shall thereupon vest in the municipal committee and shall thenceforth be maintained, kept in repair, lighted, and cleansed by the municipal committee.

(2) When any open space for purposes of ventilation or recreation has been provided by the Trust in executing any improvement scheme, it shall, on completion, be transferred to the municipal committee by resolution of the Trust and shall thereupon vest in, and be maintained at the expense of, the municipal committee :

Provided that the municipal committee may require the Trust, before any such open space is so transferred, to enclose, level, drain, and lay out such space and provide footpaths therein.

(3) If any difference of opinion arises between the Trust and the

municipal committee in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the Provincial Government, whose decision shall be final.

(4) The Provincial Government may resume the management of any street or open space which was, at the commencement of this Act, the property of Government or has since been acquired by Government and was vested in the Trust under clause (*b*) of sub-section (1) of section 45.

CHAPTER VI

Acquisition and disposal of land

Acquisition by agreement

Power to purchase or lease land by agreement.

58. The Trust may enter into an agreement with any person for the acquisition, by purchase, lease or exchange by the Trust from such person, of any land which the Trust is authorized to acquire, or any interest in such land.

Compulsory acquisition

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

59. The Trust may, with the previous sanction of the Provincial Government, acquire land under the provisions of the Land Acquisition Act, 1894, as modified by the provisions of this Act, for carrying out any of the purposes of this Act.

Tribunal to be constituted.

60. A Tribunal shall be constituted, as provided in section 62, for the purpose of performing the functions of the Court in reference to the acquisition of land for the Trust, under the Land Acquisition Act, 1894.

Modification of the Land Acquisition Act, 1894.

61. For the purpose of acquiring land under the Land Acquisition Act, 1894, for the Trust—

(*a*) the Tribunal shall except for the purposes of section 57 of that Act, be deemed to be the court, and the President of the Tribunal shall be deemed to be the Judge thereunder;

(*b*) the Act shall be subject to the further modifications as indicated in the Schedule;

(*c*) the President of the Tribunal may summon witnesses and enforce their attendance and may compel the production of documents, by the same means, and so far as may be, in the same manner, as is provided in case of a Civil Court under the Code of Civil Procedure, 1908, and

(*d*) the award of the Tribunal shall be deemed to be the award of the Court under the Land Acquisition Act, 1894, and shall be final.

Constitution of Tribunal

62. (1) The Tribunal shall consist of a President and two assessors.

(2) The President of the Tribunal shall be either

(*a*) a member of the Imperial or Provincial Civil Service, Judicial branch, of not less than ten years' standing in such service, who has for at least three years served as District Judge or held judicial office not inferior to that of a Subordinate Judge of the first class; or

(*b*) a barrister, advocate or pleader of not less than ten years' standing who has practised as an advocate or pleader in the High Court of Judicature at Nagpur.

(3) The President of the Tribunal and one of the assessors shall be appointed by the Provincial Government, and the other assessor shall be appointed by the municipal committee, or in default of appointment by the municipal committee within two months of its being asked by the Provincial Government to make such appointment, by the Provincial Government:

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or would, if he were a Trustee, be liable to removal by the Provincial Government under section 10;

(4) The term of office of a member of the Tribunal shall be two years but any member shall, subject to the proviso to sub-section (3), be eligible for re-appointment on the expiration of that term.

(5) The Provincial Government may, on the ground of incapacity, misbehaviour, or for any other good and sufficient reason, cancel the appointment of any person as member of the Tribunal.

(6) When any person ceases to be a member of the Tribunal, or when any member is temporarily absent owing to illness or any unavoidable cause the authority which appointed him shall forthwith appoint a fit person to be a member in his place. Where the authority so appointing was the municipal committee and the municipal committee fails to make a fresh appointment within two months of being asked to do so by the Provincial Government, the appointment may be made by the Provincial Government.

Remuneration of members of Tribunal.

63. The Provincial Government may prescribe by rules such remuneration, if any, as it may think fit, either by way of monthly salary or by way of fees, or partly in one of these ways and partly in the other, for the President and each member of the Tribunal.

Officers and servants of Tribunal.

64. (1) The President of the Tribunal shall, from time to time, prepare a statement showing—

(*a*) the number and grades of the clerks and other officers and servants who he considers should be maintained for carrying on the business of the Tribunal,

(*b*) the amount of the salary to be paid to each such officer and servant.

(2) All statements prepared under sub-section (1) shall be subject to the previous sanction of the Provincial Government.

(3) Subject to any directions contained in any statement prepared under sub-section (1), and to rules made under section 89, the power of appointing, promoting, and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

Mode of payment

65. The remuneration, if any, prescribed under section 63 for members of the Tribunal, and the salaries, leave allowances and acting allowances prescribed under this Act for officers and servants of the Tribunal shall be paid by the Trust to the President of the Tribunal for distribution.

Power to make rules for Tribunal

66. (1) The Provincial Government may make rules not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by Tribunals established under this Act.

(2) All such rules shall be subject to the condition of previous publication.

Award of Tribunal how to be determined.

67. (1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894—

(*a*) if there is any disagreement as to the measurement of land or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail;

(*b*) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary, and, when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal; and

(*c*) notwithstanding anything contained in clauses (a) and (b) the decision of the President of the Tribunal on all questions of law and procedure shall be final.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by a competent Civil Court within the local limits of whose jurisdiction it was made as if it were a decree of that Court.

Abandonment of acquisition in consideration of special payment.

68. (1) Wherever in any area comprised in any improvement scheme under this Act the Provincial Government has sanctioned the acquisition of land which is subsequently discovered to be unnecessary for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Trust, requesting that the acquisition of the land should be abandoned in consideration of the payment by *him* of a sum to be fixed by the Trust in that behalf.

(2) The Trust shall admit every such application if it—

(*a*) reaches it before the time fixed by the Deputy Commissioner under section 9 of the Land Acquisition Act, 1894 for making claims in reference to the land, and

(*b*) is made by any person who has an interest in the land or holds a lease thereof, with an unexpired period of seven years.

(3) On the admission by the Trust of any such application, it shall forthwith inform the Deputy Commissioner; and the Deputy Commissioner shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the Trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(4) Within the said period of three months, or, with the permission of the Trust, at any time before the Deputy Commissioner has taken possession of the land under section 16 of the Land Acquisition Act, 1894, the person from whom the Trust has agreed to accept the sum so fixed may if the Trust is satisfied that the security offered by him is sufficient, execute an agreement with the Trust, either—

(i) to pay the said sum three years after the date of the agreement, or

(ii) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment of interest at the rate to be agreed upon by such person to the Trust until the said sum has been paid in full, and to make the first annual payment of such interest four years after the date of the agreement,

Provided that the Trust may at any time before the Deputy Commissioner has taken possession of the land under section 16 of the Land Acquisition Act, 1894 accept immediate payment of the said sum instead of an agreement as aforesaid.

(5) When any agreement has been executed in pursuance of sub-section (4), or when any payment has been accepted in pursuance of the proviso to that sub-section in respect of any land the proceedings for the acquisition of the land shall be deemed to be abandoned.

(6) Every payment due from any person under any agreement executed under sub-section (4) shall be a charge on the interest of that person.

(7) If any instalment of interest payable under an agreement executed in pursuance of clause (i) of sub-section (4) be not paid on the date on which it is due the sum fixed by the Trust under sub-section (3) shall be payable on that date, in addition to the said instalment.

(8) At any time after an agreement has been executed in pursuance of clause (ii) of sub-section (4), any person may pay in full the charge created thereby with interest, at the agreed rate up to the date of such payment.

(9) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (4), no suit with respect to such agreement shall be brought against the Trust by any other person (except an

heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land.

Betterment Contribution.

Payment of betterment contribution.

69. (1) When by the making of any improvement scheme, any land in the area comprised in the scheme which is not required for the execution thereof will, in the opinion of the Trust, be increased in value, the Trust, in framing the scheme, may in lieu of providing for the acquisition of such land, declare that a betterment contribution shall be payable by the owner of the land or any person having an interest therein in respect of the increase in value of the land resulting from the execution of the scheme.

(2) Such betterment contribution shall be an amount equal to one-half of the increase in value of the land resulting from the execution of the scheme, and shall be calculated upon the amount by which the value of the land on the completion of the execution of the scheme estimated as if the land were clear of buildings exceeds the value of the land prior to the execution of the scheme estimated in like manner.

(3) No betterment contribution shall be payable by Government in respect of any land which is the property of, or managed by, Government or by a local authority or any public institution in respect of any land belonging to such authority or institution if, and so long as such land is used for a public, charitable or religious purpose.

Assessment of betterment contribution by Trust.

70. (1) When it appears to the Trust that an improvement scheme is sufficiently advanced to enable the amount of the betterment contribution to be determined, the Trust shall, by a resolution passed in this behalf, declare that for the purpose of determining such contribution the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to every person on whom a notice in respect of the land to be assessed has been served under clause (*a*) of sub-section (1) of section 41 that the Trust proposes to assess the amount of the betterment contribution payable in respect of such land under section 69.

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

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

(4) If the person concerned dissents from the assessment made by the Trust or fails to give the Trust the information required by sub-section (2) within the period specified therein, the matter shall be determined by the Tribunal appointed under section 69 in such manner as it thinks fit.

Trust to give notice to persons liable to payment of betterment contribution.

71. When the amount of all betterment contribution payable in respect of land in the area comprised in the scheme has been determined under section 70, the Trust shall, by a notice in writing to be served on all persons liable to such payment, fix a date by which such payment shall be made, and interest at the rate to be agreed upon by such persons upon any amount outstanding shall be payable from that date.

Agreement to make payment of betterment contribution a charge on land.

72. (1) Any person liable to the payment of a betterment contribution may, at his option, instead of making a payment thereof to the Trust execute an agreement with the Trust to leave the said payment outstanding as a charge on his interest in the land, subject to the payment of interest at the rate to be agreed upon by such person until the said sum has been paid in full, the first annual payment of such interest to be made one year from the date referred to in section 71.

(2) Every payment due from any person in respect of a betterment contribution and every charge referred to in sub-section (1) shall, notwith-

...anding anything contained in any other enactment and notwithstanding the ...istence of any mortgage or other charge whether legal or equitable created ...ther before or after the commencement of this Act, be the first charge upon ...he interest of such person in such land.

(3) The provisions of sub-sections (7), (8) and (9) of section 68 ...elating, in the case of the payments mentioned in that section, to the non-...yment of instalments of interest, the paying in full of the charge with interest ...nd the restrictions in respect of suits against the Trust shall apply, *mutatis mutandis*, to the payment of the money payment under an agreement made in ...ursuance of sub-section (1) and of the interest payable in respect thereof.

Recovery of special payments and betterment contributions

73. All money payable in respect of any land by any person under an agreement executed in pursuance of sub-section (4) of section 68, or by any person in respect of a betterment contribution under section 70, or by any person under an agreement executed in pursuance of sub-section (1) of section 72 shall be recoverable by the Trust together with interest, upto the *date of realization, at the agreed rate) from the said* person or his successor in interest in such land, in the manner provided by Chapter XIX of the Municipalities Act, and, if not so recovered, the Chairman may, after giving public notice of his intention to do so and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale, and shall pay the balance, if any, to the defaulter. Recovery of money payable in pursuance of section 68 70 or 72

74. The Trust may direct by what authority any power or duty under the Municipalities Act, for the enforcement of any process for the recovery of taxes shall be exercised and performed when that process is employed under section 73. Trust to appoint persons for enforcement of processes for recovery of dues

Acquisition on fresh declaration

75. If any land, in respect of which an agreement has been executed or a payment has been accepted in pursuance of sub-section (4) of section 68, or in respect of which the payment of a betterment contribution has been accepted in pursuance of sub-section (3) of section 70, or in respect of which an agreement for such payment has been executed under section 72 be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894. Agreement or payment not to bar acquisition under a fresh declaration

Disposal of land

76. Subject to any rules made by the Provincial Government under this Act, the Trust may retain or may let on hire, lease, sell, exchange or otherwise dispose of, any land vested in or acquired by it under this Act Power to dispose of land

CHAPTER VII

Taxation

Duty on Transfers of Property

77. (1) The duty imposed by the Indian Stamp Act, 1899, on instruments of sale, gift and *usufructuary mortgage, respectively* of immovable property shall, in the case of instruments affecting immovable property situated within the limits of the Nagpur Municipality and executed on or after the commencement of Act, be increased by one-half *per centum* on the value of the property so situated, or in the case of an usufructuary mortgage on the amount secured by the instrument, as set forth in the instrument. Duty on certain transfers of immovable property.

(2) For the purpose of this section, section 27 of the Indian Stamp Act, 1899, shall be read as if it specifically required the particulars referred to therein to be set forth separately in respect of—

(*a*) property situated in the Nagpur Municipality, and

(*b*) property situated outside the Nagpur Municipality, respectively.

(3) For the purposes of this section, section 64 of the Indian Stamp Act, 1899, shall be read as if it referred to the Trust as well as to the Government.

(4) All collections resulting from the said increase shall, after deducting incidental expenses, if any, be paid to the Trust at such time as may be prescribed by rule made under section 80.

Taxes which may be imposed.

78. With the previous sanction of the Provincial Government, the Trust may, by resolution of a meeting specially convened for the purpose impose any of the following taxes, for the purposes of this Act, namely :-

(*a*) a tax on manufactured goods exported from any place within the Nagpur municipality by road ;

(*b*) a tax on cotton or cotton seed exported from any place within the Nagpur Municipality by road.

Procedure in imposing taxes.

79. (1) The Trust may at a special meeting pass a resolution and propose the imposition of any tax under section 78.

(2) When such a resolution has been passed the Trust shall publish, in accordance with the regulations made under this Act, a notice defining the class of persons or description of property proposed to be taxed, the amount or rate of tax to be imposed and the system or assessment to be adopted.

(3) Any inhabitant of the Nagpur Municipality objecting to the proposed tax may, within thirty days from the publication of the notice submit his objection in writing to the Trust.

(4) The Trust shall take the proposals and all objections received thereto into consideration at a special meeting and may modify the proposals so as not to affect their substance, and may then forward them to the Provincial Government along with all objections received, for its decisions therefor. If the Trust decides to modify the proposals so as to affect their substance, it shall publish them again in the manner prescribed in sub-section (2).

(5) The Provincial Government, on receiving such proposals, may sanction or refuse to sanction the same, or sanction them subject to such modifications as it may think fit, or return them to the Trust for further consideration.

(6) No modification affecting the substance shall be made under sub-section (5), unless and until the modification has been accepted by the Trust.

(7) If any proposals for taxation have been sanctioned under sub-section (5), the Provincial Government, may by notification direct the imposition of the tax as sanctioned from such date as may be specified in such notification, and thereupon the tax shall come into effect as from the date so specified.

(8) A notification of the imposition of a tax under this section shall be conclusive evidence that the tax has been imposed in accordance with the provisions of this Act.

Supplemental Provisions

80. (1) The Provincial Government may make rules for carrying out the purposes of this Chapter.

(2) In particular, and without prejudice to the generality of the foregoing power, the Provincial Government may make rules for regulating the collection of taxes imposed by this Chapter, and the payment thereof to the Trust.

(3) In making any rule the Provincial Government may direct that a breach thereof shall be punishable with fine which may extend to five hundred rupees.

CHAPTER VIII

Finance

81. A Trust Fund shall be formed for the Trust and there shall be placed to the credit thereof all sums received by or on behalf of the Trust under this Act or otherwise.

82. Subject to the provisions of this Act, the Trust Fund shall be applicable only to the payment of the charges and expenses incidental to the several matters specified in this Act, and to any other purpose for which by or under this Act powers are conferred or duties imposed upon the Trust.

83. (1) The municipal committee shall pay from the municipal fund to the Trust on the first day of each quarter, so long as the Trust continues to exist, a sum equivalent to half per cent per quarter on the annual ratable valuation of houses within the Nagpur municipality as it stood on the first day of the last preceding quarter.

(2) If in any financial year the sums due to the Trust under this section aggregate less than one lakh of rupees, the municipal committee shall pay to the Trust from the municipal fund such further sum as may be required to make up the said sum of one lakh of rupees.

(3) The payments prescribed by sub-sections (1) and (2) shall be made in priority to all other payments due from the municipal committee, except sums under clause (*a*) of sub-section (1) of section 93 of the Municipalities Act.

(4) If the municipal committee makes default in the payment of any sum under this section, the Provincial Government may make an order directing the person having the custody of the balance of the municipal fund to make such payment either in whole or in such part as is possible from such balance :

Provided that no order shall be made by the Provincial Government directing payment of any sum until an opportunity has been given to the municipal committee to show cause why such order should not be made unless the Provincial Government considers that the municipal committee has already stated, or had already ample opportunity of stating, its case.

Power of Trust to borrow money.

84. The Trust shall be deemed to be a local authority, as defined in the Local Authorities Loans Act, 1914, for the purpose of borrowing money under that Act, and the making and execution of any improvement scheme mentioned in this Act shall be deemed to be a work which such local authority is legally authorized to carry out.

Custody and investment of Trust Fund.

85. All moneys at the credit of the Trust Fund shall be kept in the Government treasury :

Provided that nothing in this section shall be deemed to preclude the Trust from investing, with the previous sanction of the Provincial Government, any such moneys as are not required for immediate expenditure in any of the securities described in section 20 of the Indian Trusts Act, 1882, or placing them in fixed deposit with a Bank approved by Government.

Procedure if Trust fails to make any payment in respect of loans of Trust.

86. (1) If the Trust fails to repay a loan taken in pursuance of section 84 from a lender other than the Provincial Government, or any interest or costs due in respect of such loan, according to the conditions of the loan, the Accountant General of the Central Provinces, if required by the Provincial Government, shall make such payment ; and the municipal committee shall forthwith pay from the municipal fund to the said Accountant General a sum equivalent to the sum so paid by him.

(2) If the Trust fails to repay a loan taken from the Provincial Government in pursuance of section 84, or any interest or costs due in respect of such loan, according to the conditions of the loan, the municipal committee shall forthwith pay from the municipal fund to the Provincial Government a sum equivalent to the sum due from the Trust.

(3) If the Trust fails to repay any loan, the Provincial Government may attach the rents and other income of the Trust; and thereupon the provisions of section 5 of the Local Authorities Loans Act, 1914, shall, with all necessary modifications, be deemed to apply.

(4) If the municipal committee makes default in the payment of a sum required to be paid by it under sub-section (1) or sub-section (2), the Provincial Government may make an order directing the person having custody of the balance of the municipal fund to make such payment either in whole or in such part as is possible from such balance:

Provided that no order shall be made by the Provincial Government directing payment of any sum until an opportunity has been given to the municipal committee to show cause why such order should not be made, unless the Provincial Government considers that the municipal committee has already stated, or had already ample opportunity of stating, its case.

(5) Whenever any amount paid by the Accountant General under sub-section (1) is not repaid to him by the municipal committee under the said sub-section or by the person having the custody of the balance of municipal fund under sub-section (4) or whenever the municipal committee has made any payment to the Accountant General under sub-section (1) or to the Provincial Government under sub-section (2) or whenever the person having the custody of the municipal fund has made any payment to the Accountant General or to the Provincial Government under sub-section (4), the Provincial Government shall, so far as possible, reimburse the Accountant General or the municipal committee or such person, as the case may be, out of the rents and income attached under sub-section (3).

87. If the municipal committee fails to make any payment as required by section 86, the Provincial Government may attach the municipal fund, and thereupon the provisions of section 5 of the Local Authorities Loans Act, 1914, shall, with all necessary modifications, be deemed to apply and the Provincial Government may further require the municipal committee to impose, or increase the rate of the tax under clause (*a*) of sub-section (1) of section 66 of the Municipalities Act on the annual value of buildings or lands or of both, to such extent as may be necessary for the purpose of making such payment.

88. All moneys paid by the municipal committee under sub-section (1) of sub-section (2) of section 86 and not reimbursed by the Provincial Government under sub-section (5) of that section and all moneys payable under sub-section (1) of sub-section (2) of section 86 and levied under section 87 shall constitute a charge upon the property of the Trust.

CHAPTER IX

Rules and regulations

89. (1) In addition to the power conferred by section 63, 66 and 80, the Provincial Government may make rules consistent with this Act and applicable to the Trust

(*a*) as to the person on whose authority money may be paid from the Trust fund;

(*b*) for prescribing the fees payable for a copy of, or extracts from, the municipal assessment list furnished to the Chairman under section 42;

(*c*) as to the conditions on which officers and servants of the Trust appointed to offices requiring professional skill may be appointed, suspended or dismissed;

(*d*) as to the intermediate office or offices, if any, through which correspondence between the Trust and the Provincial Government or officers of that Government shall pass.

(*e*) as to the accounts to be kept by the Trust, as to the manner in which such accounts shall be audited and published, and as to the powers of auditors in respect of disallowance and surcharge.

(*f*) as to the person by whom, the conditions subject to which and the mode in which contracts may be entered into and executed on behalf of the Trust,

(*g*) as to the preparation of estimates of income and expenditure of the Trust and as to the person by whom, and the conditions subject to which such estimates may be sanctioned,

(*h*) as to the returns, statements and reports to be submitted by the Trust,

(*i*) to prescribe and define the mutual relations to be observed between the Trust and any other local authorities in any matter in which they are both interested or concerned,

(*j*) for regulating the grant of leave of absence, leave allowance and acting allowances to the officers and servants of the Trust and of the Tribunal,

(*k*) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers in the service of the Trust or of the Tribunal, other than any servant of the Government in respect of whom contribution is paid under section 130 to contribute to such fund at such rates and subject to such conditions as may be prescribed by such rules and for supplementing such contributions out of the funds of the Trust

Provided that a Government servant employed as officer or servant of the Trust or the Tribunal shall be entitled to leave or leave allowances under the rules or orders made by the Provincial Government in this behalf,

(*l*) for determining the conditions under which the officers and servants of the Trust or of the Tribunal shall, on retirement receive gratuities or compassionate allowances and the amount of such gratuities and compassionate allowances :

Provided that the Trust or Tribunal, as the case may be, may determine the officers or servants who shall be entitled, on retirement to such gratuities or compassionate allowances ,

(*m*) generally for the guidance of the Trust and of public officers in all matters connected with the carrying out of the provisions of this Act.

(2) All rules made under this section shall be subject to the condition of previous publication

Power to make regulations

90. The Trust may from time to time with the previous sanction of the Provincial Government, make regulations consistent with this Act and with any rules made under this Act—

(*a*) for fixing the amount of security to be furnished by any officer or servant of the Trust from whom it may be deemed expedient to require security ;

(*b*) for associating members with the Trust under section 17

(*c*) for appointing persons other than Trustees and persons associated with the Trust under section 17 to be members of committees

(*d*) for regulating the delegation of the powers or duties of the Trust to committees or to the chairman ,

(*e*) for the guidance of persons employed by it under this Act

(*f*) for prescribing the fees payable for copies or extracts of documents delivered under sub-section (3) of section 39 or for copies of rules and regulations printed under section 91 ,

(*g*) for the management, use, and regulation of dwellings constructed under any improvement scheme ,

(*h*) for regulating the erection, re-erection and alteration of buildings in any area covered by any improvement scheme under this Act, and in particular without prejudice to the generality of the foregoing power—

(i) for the materials and methods of construction to be used for external and partition walls, roofs, floors, fireplaces, chimneys, drains, latrines, privies, urinals and cess-pools,

(ii) the position of fireplaces, chimneys, drains, latrines, privies, urinals and cess-pools,

(iii) the free passage or way front of the building,

(iv) the level and width of foundation, the level of the lowest floor and the stability of the structure,

(v) the height and slope of the roof above the uppermost floor upon which human beings are to live or cooking operations are to be carried on,

(vi) the ventilation and the space to be left about the building to secure the free circulation of air and for the prevention of fire,

(vii) the line of frontage where the building abuts on street,

(viii) the number and height of the storeys of which the building may consist, and

(ix) the means to be provided for egress from the building in case of fire ;

(*i*) generally for carrying out the purposes of this Act.

Printing and sale of copies of rules and regulations.

91. The Chairman shall cause all rules and regulations for the time being in force to be printed and shall cause printed copies thereof to be delivered to any applicant on payment of such fee as may be prescribed by regulation made under clause (*f*) of section 10.

Power to cancel regulations.

92. The Provincial Government may, after previous publication of its intention, rescind any regulation made by the Trust which it has sanctioned and thereupon the regulation shall cease to have effect.

CHAPTER X

Procedure and penalties

Signature and service of notice or bills

Stamping signature on notices or bills.

93. Every notice or bill which is required under this Act, to bear the signature of the Chairman or of any other Trustee or of any officer or servant of the Trust shall be deemed to be properly signed if it bears a *fac-simile* of the signature of the Chairman or of such other Trustee, or of such officer or servant, as the case may be, stamped thereupon.

Method of giving public notice.

94. Subject to the provisions of this Act, every public notice required under this Act shall be deemed to have been given if it is published in some local newspaper, if any, and posted upon a notice board to be exhibited for public information at the building in which the meetings of the Trust are ordinarily held.

Service of notice.

95. (1) Every notice, other than a public notice, and every bill, issued under this Act, shall, unless it is under this Act otherwise expressly provided, be served or presented—

(*a*) by giving or tendering the notice or bill or sending it by post to the person to whom it is addressed, or

(*b*) if such person is not found, then by leaving the notice or bill at his last known place of abode, if within municipal limits, or by giving or tendering it to some adult male member or servant of his family, or by causing it to be fixed on some conspicuous part of the building

(2) When a notice is required or permitted under this Act, to be served upon an owner or occupier of a building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof, in cases not otherwise specially provided for in this Act, shall be effected either—

(a) by giving or tendering the notice, or sending it by post, to the owner or occupier, or if there be more owners or occupiers than one, to any one of them, or

(b) if no such owner or occupier is found, then by giving or tendering the notice to an adult male member or servant of his family, or by causing the notice to be fixed on some conspicuous part of the building or land to which the same relates.

(2) Whenever the person on whom a notice or bill is to be served is a minor, service upon his guardian or upon an adult male member or servant of his family shall by deemed to be service upon the minor.

Penalty for disobedience of Act or notice.

96. Where under this Act, or a notice issued thereunder the public or any person is required to do or to refrain from doing anything, a person who fails to comply with such requisition shall be liable on conviction by a Magistrate to a fine not exceeding five hundred rupees for every such failure and, in the case of a continuing breach, to a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the breach.

Powers of Trust to execute work on failure to comply with notice.

97. (1) If a notice has been given under this Act to a person requiring him to execute a work in respect of any property, movable or immovable, public or private, or to provide or do or refrain from doing anything within a time specified in the notice, and if such person fails to comply with such notice, then the Trust may cause such work to be executed or such thing to be provided or done and may recover all expenses incurred by it on such account from the said person in the manner provided by Chapter XIX of the Municipalities Act.

Liability of occupier to pay in default of owner.

98. If the person to whom a notice has been served under section 97 is the owner of the property in respect of which it is served, the Trust may, whether any action or other proceeding has been brought or taken against such owner or not, require the person, if any, who occupies such property or a part thereof under such owner, to pay to the Trust instead of to the owner the rent payable by him in respect of such property as it falls due up to the amount recoverable from the owner under section 97; and any such payment made by the occupier to the Trust shall, in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been made to the owner of the property.

(2) For the purpose of deciding whether action should be taken under sub-section (1), the Trust may require an occupier of property to furnish information as to the sum payable by him as rent on account of such property and as to the name and address of the person to whom it is payable; and if the occupier refuses to furnish such information he shall be liable for the whole of the expenses as if he were the owner.

(3) All money recoverable by the Trust under this section shall be recoverable in the manner provided by Chapter XIX of the Municipalities Act.

Right of occupier to execute works in default of owner.

99. Whenever a default is made by the owner of a building or land in the execution of a work required to be executed by him under this Act the occupier of such building or land may, with the approval of the Trust, cause such work to be executed, and the expense thereof shall, in the absence of any contract to the contrary, be paid to him by the owner, or the amount may be deducted out of the rent from time to time becoming due from him to such owner.

Procedure upon opposition to execution by occupier.

100. (1) If, after receiving information of the intention of the owner of any building or land to take any action in respect thereof in compliance with a notice issued under this Act, the occupier refuses to allow such owner to take such action, the owner may apply to a Magistrate.

(2) The Magistrate upon proof of such refusal may make an order in writing requiring the occupier to allow the owner to execute all such works with respect to such building or land, as may be necessary for compliance with the notice, and may also, if he thinks fit, order the occupier to pay to the owner the costs relating to such application or order.

(3) If, after the expiration of eight days from the date of the Magistrate's order, the occupier continues to refuse to allow the owner to execute such work, the occupier shall be liable, upon conviction, to a fine which may extend to twenty-five rupees for every day during which he has so continued to refuse.

(4) Every owner, during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such works.

101. When the occupier of a building or land has, in compliance with a notice issued under this Act, executed a work for which the owner of such building or land is responsible, either in pursuance of the contract of tenancy or by law, he shall, in the absence of any contract to the contrary, be entitled to recover from the owner, by deduction from the rent payable by him or otherwise, the reasonable cost of such work.

102. The expenses incurred by the Trust in effecting any removal under sections 93 and 94 of the Municipalities Act as applied by section 52 or, in the event of a written notice under section 122 of that Act not being complied with under section 97, shall be recoverable by sale of the materials removed, and if the proceeds of such sale do not suffice, the balance shall be recoverable from the owner of the said materials in the manner provided by Chapter XIX of the Municipalities Act.

Relief to agent and trustees

103. (1) When a person, by reason of his receiving, or being entitled to receive, the rent of immovable property as trustee or agent of a person or society, would, under this Act, be bound to discharge an obligation imposed by this Act on the owner of the property and for the discharge of which money is required, he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, in his hands funds belonging to the owner sufficient for the purpose.

(2) When an agent or trustee has claimed and established his right to relief under this section, the Trust may give him notice to apply to the discharge of such obligation as aforesaid the first moneys which come to his hands on behalf, or for the use, of the owner and should he fail to comply with such notice, he shall be deemed to be personally liable to discharge such obligation.

Application of Chapter XIX, Municipalities Act.

104. Whenever in this Act or in any section of the Municipalities Act made applicable by section 52 it is provided that any sum shall be recoverable in the manner provided by Chapter XIX of the Municipalities Act, then in applying the provisions of that chapter all references to the committee shall be construed as referring to the Trust and all references to the municipal office, a municipal officer or the municipal fund shall be construed as referring to the office of the Trust, to an officer of the Trust and the Trust Fund respectively.

Penalty for removing fence, etc., in street

105. If any person, without lawful authority,—

(*a*) removes any fence, or any timber used for propping or supporting any building, wall or other thing, or extinguishes any light set up at any place where the surface of a street or other ground has been opened or broken up by the Trust for the purpose of carrying out any work, or

(*b*) infringes any order given, or removes any bar, chain or post fixed by the Trust for the purpose of closing any street to traffic,

he shall be punishable with fine which may extend to fifty rupees.

Power to prevent or demolish building in contravention of sections 23, 33 and 35

106. (1) If any person without the permission of the Trust erects, re-erects, adds to or alters any building or wall so as to make the same project beyond the street alignment prescribed under section 32 or the street alignment or building line shown in any plan finally adopted by the Trust under section 33, or erects, re-erects, adds to or alters any building or wall in the area specified in sub-section (4) of section 35, the Chairman may, by a written notice,—

(a) direct that the building, alteration or addition be stopped, and

(b) require such building, alteration or addition to be altered or demolished as he may deem necessary.

(2) If any person on whom a notice under sub-section (1) has been served neglects or refuses to carry out the order or requisition in the manner and within the period specified in the notice, the Chairman may have such alteration or demolition carried out and may recover the cost incurred thereon from the owner or the person on whom the notice was served in the manner provided by Chapter XIX of the Municipalities Act.

Penalty for obstructing contractor or removing mark.

107. If any person—

(a) obstructs, or molests any person with whom the Trust 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 authorized under this Act,

he shall be punishable with imprisonment for a term which may extend to two months, or with fine which may extend to two hundred rupees.

Disposal of fines and damages

Fines and damages to be paid to Trust.

108. All fines and damages realized in connection with prosecutions under this Act shall be paid to the Trust.

CHAPTER XI

Supplemental provisions

Trustees, etc., deemed public servants.

109. Every Trustee, and every officer and servant of the Trust, and every member and officer and servant of the Tribunal, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

Contributions towards leave allowances, passages and pensions of Government servants.

Contributions by Trust towards leave allowances, passages and pensions of Government servants.

110. The Trust shall be liable to pay such contributions for the leave allowances, passage and pension of any Government servant employed as Chairman or as an officer or servant of the Trust, or as a member or officer or servant of the Tribunal, as may be prescribed in any general or special orders of the Provincial Government.

Legal proceedings

Authority for prosecutions.

111. Unless otherwise expressly provided, no Court shall take cognizance of any offence punishable under this Act, except on the complaint of, or upon information received from, the Trust or some person authorized by the Trust by general or special order in this behalf.

Magistrates empowered to try offences.

112. No court inferior to that of a Magistrate of the second class shall try any offence against this Act.

Powers of Chairman as to institution, etc., of legal proceedings and obtaining legal advice.

113. The Chairman may, subject to the control of the Trust,—

(*a*) institute, defend or withdraw from legal proceedings under this Act, or

(*b*) compound any offence against this Act :

Provided that no offence shall be compoundable which is constituted by failure to comply with a written notice issued by or on behalf of the Trust unless the notice has been complied with, in so far as compliance is possible, or

(c) admit, compromise or withdraw any claim made under this Act, and

(d) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the Trust to obtain, for any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Trust or any officer or servant of the Trust.

Bar of suit or other legal proceeding.

114. No suit or other legal proceeding shall lie against the Trust or any trustee, or any officer or servant of the Trust, or any person acting under the direction of the Trust or of the Chairman or any officer or servant of the Trust for anything in good faith done or intended to be done under this Act.

Notice of suit against Trust, etc.

115. (1) No suit shall be instituted against the Trust or any Trustee or any person associated with the Trust under section 17 or any member of a committee appointed under section 18, or any officer or servant of the Trust, or any person acting under the direction of the Trust or of the Chairman or of any officer or servant of the Trust, in respect of anything purporting to be done under this Act, until the expiration of two months next after notice in writing has been, in the case of the Trust, left at its office and in any other case delivered to or left at the office or place of abode of the person to be sued, stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the intending plaintiff ; and the plaint shall contain a statement that such notice has been so delivered or left.

(2) Every such suit shall be dismissed unless it is instituted within six months from the date of the alleged cause of action.

(3) If the Trust or other person referred to in sub-section (1) shall have tendered sufficient amends to the plaintiff before the institution of such suit, the plaintiff shall not recover any sum in excess of the amount so tendered and shall also pay all costs incurred by the defendant after such tender.

Evidence.

Mode of proof of Trust records.

116. A copy of any receipt, application, plan, notice, order, entry in a register or other document in the possession of the Trust shall, if duly certified by the legal keeper thereof or other person authorized by the Trust in this behalf, be received as *prima facie* evidence of the existence of the entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case where, and to the same extent as the original entry or document would, if produced, have been admissible to prove such matters.

Restriction on the summoning of Trust servants to produce documents.

117. No trustee or officer or servant of the Trust shall in any legal proceeding to which the Trust is not a party be required to produce any register or document the contents of which can be proved under section 116 by a certified copy, or to appear as a witness to prove the matters and transactions recorded therein, unless by order of the Court made for special cause.

Validation.

Validation of acts and proceedings.

118. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of—

(*a*) the existence of any vacancy in, or any defect in the constitution of, the Trust or any committee, or

(*b*) any person having ceased to be a Trustee; or

(*c*) any Trustee, or any person associated with the Trust under section 17 or any other member of a committee having voted or taken any proceeding in contravention of section 20, or

(*d*) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or

(*e*) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Trust, the minutes of the proceedings of which have been duly signed as prescribed in clause (*a*) of sub-section (1) of section 16 shall be taken to have been duly convened and to be free from all defects and irregularity.

Compensation.

General power of Trust to pay compensation

119. In any case not otherwise expressly provided for in this Act, the Trust may pay reasonable compensation to any person who sustains damage or loss by reason of the exercise of any of the powers vested under this Act in the Trust or the Chairman or any officer or any servant of the Trust.

Compensation to be paid by offenders for damage caused by them

120. (1) If, on account of any act or omission any person has been convicted of an offence under this Act, and by reason of such act or omission damage has been caused to any property of the Trust, compensation shall be paid by the said person for the said damage, notwithstanding any punishment to which he may have been sentenced for such offence.

(2) In the event of a dispute, the amount of compensation payable by a person under sub-section (1) shall be determined by the Magistrate before whom he was convicted of the said offence.

(3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said Magistrate, as if it were a fine inflicted by him on the person liable therefor.

Dissolution of Trust.

Ultimate dissolution of Trust, and transfer of its assets and liabilities to the municipal committee.

121. (1) When all schemes sanctioned under this Act have been executed, or have been so far executed as to render the continuance of the Trust, in the opinion of the Provincial Government, unnecessary, the Provincial Government may by notification declare that the Trust shall be dissolved from such date as may be specified in this behalf in such notification; and the Trust shall be deemed to be dissolved accordingly.

(2) From the said date—

(*a*) all properties, funds, and dues which are vested in or realizable by the Trust shall vest in and be realizable by the municipal committee:

Provided that the Provincial Government may resume the management of any street, square, park, open space or other land, which was at the commencement of this Act the property of Government or has since been acquired by Government, and was vested in the Trust under sub-section (1) of section 45; and

(*b*) all liabilities which are enforceable against the Trust shall be enforceable only against the municipal committee; and

(*c*) for the purpose of completing the execution of any scheme, sanctioned under this Act, which has not been fully executed by the Trust, and of realizing properties, funds, and dues

referred to in clause (*a*), the functions of the Trust under this Act shall be discharged by the municipal committee, respectively; and

(*d*) the municipal committee shall keep separate accounts of all moneys respectively received and expended by it under this Act, until all loans raised hereunder have been repaid, and until all other liabilities referred to in clause (*b*) have been duly met.

THE SCHEDULE

[Referred to in section 61]

Further modifications in the Land Acquisition Act, 1894.

Amendment of section 3

1 After clause (*e*) of section 3 the following clause shall be deemed to be inserted, namely:—

"(*ee*) the expression 'local authority' includes the Trust constituted under the Nagpur Improvement Trust Act, 1936."

Notification under section 4 and declaration under section 6 to be replaced by notifications under sections 39 and 45 of this Act

2. (1) The first publication of a notice of an improvement scheme under section 39 of the Nagpur Improvement Trust Act, 1936, shall be substituted for, and have the same effect as publication in the Gazette and in the locality of a notification under sub-section (1) of section 4, except where a declaration under section 4 or section 6 has previously been made and is still in force.

(1) Subject to the provisions of clauses 10 and 11 of this Schedule the issue of a notice under sub-section (4) of section 32 of the Nagpur Improvement Trust Act, 1936, in the case of land acquired under that sub-section, and in any other case the publication of a notification under section 45 of the Nagpur Improvement Trust Act, 1936, shall be substituted for and have the same effect as a declaration by the Provincial Government under section 6, unless a declaration under the last mentioned section has previously been made and is in force.

Amendment of section 11

3. The full stop at the end of section 11 shall be deemed to be changed to a semi-colon, and the following shall be deemed to be added, namely:—

"and

(*iv*) the costs which in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen *per centum* mentioned in sub-section (2) of section 23 as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant."

Amendment of section 15

4 In section 15 for the word and figures "and 24" the figure, word and letter "24 and 24-A", preceded by a comma, shall be deemed to be substituted.

Amendment of section 17

5. (1) In sub-section (3) of section 17 after the figures "24" the words, figures, and letter "or section 24-A" shall be deemed to be inserted.

(2) To section 17 the following shall be deemed to be added, namely—

"(5) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land compensation shall be paid to such person for such dispossession."

Transfer of land to Trust.

6. After section 17 the following section shall be deemed to be inserted, namely:—

"17-A. In every case referred to in section 16 or section 17, the Collector shall upon payment of the cost of acquisition, make over charge of the land to the Trust;

and the land shall thereupon vest in the Trust, subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition."

Amendment of section 18

7. The full stop at the end of sub-section (1) of section 18 shall be deemed to be changed to a comma, and the words "or the amount of the costs allowed" shall be deemed to be added.

Amendment of section 19

8. After the words "amount of compensation," in clause (c) of section 19, the words "and of costs (if any)" shall be deemed to be inserted.

Amendment of section 20

9. After the words "amount of the compensation" in clause (c) of section 20, the words "or costs" shall be deemed to be inserted.

Amendment of section 23

10. (1) In clause *first* and clause *sixthly* of sub-section (1) for the words and figures "publication of the notification under section 4, sub-section (1)" and "publication of the declaration under section 6" the following clauses shall be deemed to be respectively substituted,

(*a*) if the land is being acquired under sub-section (3) of section 32 of the Nagpur Improvement Trust Act, 1936, the words "issue of the notice under sub-section (3) of section 32 of the Nagpur Improvement Trust Act, 1936," and

(*b*) in any other case, the words "first publication of the notification under section 39 of the Nagpur Improvement Trust Act, 1936."

(2) The full stop at the end of sub-section (2) of section 23 shall be deemed to be changed to a colon, and the following proviso shall be deemed to be added :—

"Provided that this sub-section shall not apply to any land acquired under the Nagpur Improvement Trust Act, 1936, except

(*a*) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto and

(*b*) gardens not let to tenants but used by the owners as a place of resort."

(3) At the end of section 23, the following shall be added, namely

"(3) For purposes of clause *first* of sub-section (1) of this section

(*a*) the market-value of the land shall be the market value according to the use to which the land was put at the date with reference to which the market-value is to be determined under that clause,

(*b*) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual expenditure may be paid to him,

(*c*) if any person, without the permission of the Trust required by clause (*b*) of sub-section (1) of section 32 or by sub-section (3) of section 33 or by sub-section (4) of section 35 of the Nagpur Improvement Trust Act, 1936, has erected re-erected added to or altered any building or wall so as to make the same project beyond the street alignment prescribed under the said section 32 or the street alignment or building line shown in any plan finally adopted by the Trust under the said section 33, or within the area specified in sub-section (4) of the said section 35 as the case may be, then any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded,

(*d*) if the market-value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid date, such increase shall be disregarded, unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act,

(*e*) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market-value of the land if put to ordinary uses ;

(*f*) if the market-value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded and the market value shall be deemed to be the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding ; and

(*g*) when the owner of the land or building has after passing of the Nagpur Improvement Trust Act, 1936, and within two years preceding the date with reference to which the market-value is to be determined, made a return under section 72 of the Central Provinces Municipalities Act, 1922, of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, and the market-value shall be determined on the basis of such rent :

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement."

Amendment of section 24

11. For clause *seventhly* of section 24, the following clause shall be deemed to be substituted, namely :—

"*seventhly*, any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

New section 24-A.

12. After section 24, the following section shall be deemed to be inserted, namely :—

Further provision for determining compensation.

"24-A. In determining the amount of compensation to be awarded for any land acquired for the Trust under this Act, the Tribunal shall also have regard to the following provisions, namely :—

(1) when any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land ;

(2) if in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be minus the estimated cost of putting it into such condition of state ;

(3) if in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building."

13. (1) After the words "the compensation" in sub-section (1) of section 31; and after the words "the amount of the compensation" in sub-section (2) of that section the words "and costs, if any," shall be deemed to be inserted. Amendment of section 31

(2) After the words "any compensation" in the concluding proviso to sub-section (2) of section 31, the words "or cost" shall be deemed to be inserted.

14. After section 48, the following section shall be deemed to be inserted, namely:— New section 48-A Compensation to be awarded when land not acquired within two years.

"48-A. (1) If within a period of two years from the date of the publication of the declaration under section 6 in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall, unless he has been to a material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of Part III of this Act, shall apply so far as may be, to the determination of the compensation payable under this section."

APPENDIX E.

GOVERNMENT OF INDIA, DEPARTMENT OF EDUCATION, HEALTH & LANDS NOTIFICATIONS

No. F. 23 10/37-H, dated the 2nd March, 1937.—In exercise of the powers conferred by section 7 of the Delhi Laws Act, 1912 (XIII of 1912), the Governor General in Council is pleased to extend to that part of the Province of Delhi which is described in the Schedule the United Provinces Town Improvement Act, 1919 (United Provinces Act VIII of 1919), with the following modifications, namely:—

In the said Act, as so extended,—

1. (*i*) For the words "Local Government" wherever they occur, the words "Chief Commissioner" shall be substituted.

(*ii*) For the words "the municipal board"—

(*a*) wherever they occur in sections 29, 30, 33, 39 and 46 in sub-section (3) of section 54, and

(*b*) where they occur for the first time in sub-section (1) of section 45 and sub-section (1) of section 54,

the words "a Municipal Committee or Notified Area Committee" shall be substituted.

(*iii*) For the words "the municipal board"

(*a*) wherever they occur in sections 34, 36, 37 and 47, in sub-section (2) of section 54 and in clause (d) of sub-section (2) of section 103, and

(*b*) wherever they occur, otherwise than for the first time, in sub-section (1) of section 45 and sub-section (1) of section 54,

the words "the Municipal Committee or Notified Area Committee" shall be substituted.

(*iv*) For the words "any municipal board" in section 37 the words "a Municipal Committee or Notified Area Committee" shall be substituted.

2. In section 1 —

(*i*) sub-section (2) shall be omitted, and

(*ii*) for sub-section (3) the following sub-section shall be substituted, namely:—

"(2) It shall come into force at once."

3. In clause (1) of section 2, for the words and figures "United Provinces Municipalities Act, 1916, as from time to time amended" the words and figures "Punjab Municipal Act, 1911, as extended to the Province of Delhi" shall be substituted.

4. For section 3 the following section shall be substituted, namely:-

"3. *Creation and incorporation of Trust.*—The duty of carrying out the provisions of this Act in the local area to which this Act has been extended shall, subject to the conditions and limitations hereinafter contained, be vested in a Board to be called "The Delhi Improvement Trust" (hereinafter called the Trust) and such Board shall be a body corporate and have *perpetual succession* and a common seal, and shall by the said name sue or be sued."

5. For section 4 the following section shall be substituted, namely:-

"4. *Constitution of Trust.* — (1) The Trust shall consist of seven Trustees, namely:—

(*a*) a Chairman,

(*b*) an officer of the Central Public Works Department,

(*c*) the Assistant Director of public Health, Delhi;

(*d*) a Financial Adviser;

(*e*) two members of the Municipal Committee of Delhi;

(*f*) one other person.

(2) The Chairman and the persons referred to in clauses (*a*), (*d*) and (*f*) of sub-section (1) shall be appointed by the Chief Commissioner by notification

(3) The Assistant Director of public Health, Delhi, shall be an *ex officio* member of the Trust.

(4) The two members of the Municipal Committee referred to in clause (*e*) of sub-section (1) shall be elected by the Municipal Committee.

(5) If the municipal committee does not, by such date as may be fixed by the Chief Commissioner, elect a person to be a Trustee, the Chief Commissioner shall, by notification, appoint a member of the Municipal Committee to be a Trustee and any person so appointed be deemed to be a Trustee as if he had been duly elected by the Municipal Committee."

6. In section 7—

(*i*) for the brackets and letter (*c*) the brackets and letters (*e*) shall be substituted;

(*ii*) for the brackets and letter (*d*) the following shall be substituted, namely:—

"(*b*), (*d*), or (*f*)" and

(*iii*) for the words "municipal board" the words "municipal Committee" shall be substituted.

7. For section 9 the follwing section shall be substituted, namely:—

"9. *Remuneration and fees of Chairman and Trustees*— (1) The Chairman shall receive from the funds of the Trust such salary and allowances as may be sanctioned by the Governor-General in Council.

(2) Every Trustee (other than the Chairman) and every person associated with the Trust under section 14 shall, if he is not a whole-time Government servant, be entitled to receive from the funds of the Trust fee of twenty rupees, and every member of a Committee appointed under section 15 shall, if he is not the Chairman or a whole-time Government servant, be entitled to receive from the funds of the Trust a fee of ten rupees for each meeting of the Trust or the Committee—

(*i*) at which a quorum is present and business is transacted; and

(*ii*) which he attends from the beginning to the end thereof, or for such period as the person presiding at the meeting may consider sufficient to justify the payment of the fee:

Provided that the aggregate amount of fees payable to any person in respect of meetings of any kind held during any month shall not exceed such sum as the Chief Commissioner may by order in writing prescribe."

8. In sub-section (3) of section 10, for the words "its opinion" the words "the opinion of the Chief Commissioner" shall be substituted.

9. In section 12—

(i) for the words "the board", and the words "the municipal board", wherever they occur, the words "the Municipal Committee" shall be substituted;

(ii) *in sub-section* (2), *for the brackets and letter*

"(*c*)" the brackets and letter "(*e*)" shall be substituted and

(*iii*) in sub-section (3), for the words "said board" the words "said Committee" shall be substituted.

10. In sub-section (1) of section 8, for the words "a Trust" the words "the Trust" shall be substituted.

11. In sub-sections (2) and (3) of section 22, for the word "it" the word "him" shall be substituted.

12. In sub-section (1) of section 32, after the word "*municipality*" the words "or Notified Area" shall be inserted.

13. In clause (*c*) of sub-section (2) of section 33, after the word "ward", wherever it occurs, the word "or Notified Area" shall be inserted.

14. In section 34—

(*i*) in sub-section (3), for the words "the board" the words "the Municipal Committee or Notified Area Committee" shall be substituted; and

(*ii*) in sub-section (4), for the word "it"

(*a*) where it occurs for the first time, the word "him"; and

(*b*) where it occurs for the second and third time the word "he".

shall be substituted.

15. In clauses (*a*) and (*b*) of sub-section (1) of section 38, for the words "municipal assessment list" the words "assessment list of the municipality or Notified Area" shall be substituted.

16. In section 39, for the words "municipal assessment list" the words "assessment list of the municipality or Notified Area" shall be substituted.

17. In sub-section (1) of section 41, for the word "it" the word "him" shall be substituted.

18. In sub-section (1) of section 42, for the word "it" the word "he" shall be substituted.

19. In sub-section (1) of section 47, for the words "municipal drain or water-work" the words "drain or water-work of the Municipal Committee or Notified Area Committee" shall be substituted.

20. In section 49—

(i) in sub-section (1)—

(*a*) for the words, figures and brackets "The provision of sections 178 to 186, 189, to 199, 203 to 216, 218 to 224, 336, 257, 261, 265, 266, 267, (except in respect of cleansing and *disinfecting*), 268 *to* 270 and 278 of" the following shall be substituted, namely:—

"*The provisions of sections* 102, 112, 116, 118, 130, to 136, 140, 169, 170A to 172, 176 and 182, sub-sections (1) and (2) of section 189, sections 191 to 196 and Chapter XI of and of any bye-laws made by the municipal committee or notified area committee under,";

(*c*) for the words "said sections" wherever they occur, the words "said provisions" shall be substituted;

(*d*) for the words "board or to the Chairman, or to any officer of the board, shall be construed as referring' the words "Local Government or to the committee shall be construed, respectively, as referring to the Chief Commissioner or" shall be substituted and

(*e*) for the words "board or by the Chairman or by any officer of the board" the word "committee" shall be substituted, and

(*ii*) in sub-section (2)

(*a*) for the words the "municipality" the words "a municipality or Notified Area" shall be substituted ;

(*b*) for the word and figures "section 298" the word and figure "Chapter X" shall be substituted ;

(*c*) for the words and figures "sections 299 and 301" the words and figures "sections 199 to 202" shall be substituted ;

(*d*) for the words "a Trust" the words "the Trust" shall be substituted ; and

(*e*) for the words "the board shall be construed as referring" the words "the Local Government or to the committee shall be construed, respectively, as referring to the Chief Commissioner or" shall be substituted.

21. In section 50, for the words "this Act is applied" the words "this Act has been extended" shall be substituted.

22. In clause (*c*) of sub-section (1) of section 54, after the word "municipality" the words "or Notified Area" shall be inserted.

23. In section 56, the words "as modified by the provisions of this Act," shall be omitted.

24. In clause (*b*) of section 58, after the words "the said Act shall" the words "in respect of any improvement scheme mentioned in this Act," shall be inserted.

25. In section 59—

(*i*) in sub-section (2)—

(*a*) in clause (*a*), for the words "or Provincial Civil Service", and for the words "Civil Judge of the first grade," the words "or of a Provincial Civil Service", and the words "Subordinate Judge of the first class," shall, respectively, be substituted ; and

(*b*) in clause (*b*), for the words "in the High Court of Judicature at Allahabad or the Court of the Judicial Commissioner of Oudh" the following shall be substituted, namely :—

"in the High Court of Judicature at Lahore or in the Court of the District Judge at Delhi"; and

(*ii*) in sub-sections (3) and (6), for the words "municipal board", wherever they occur, the words "Municipal Committee of Delhi" shall be substituted.

26. In sub-section (1) of section 63, for the word "Tribunals" the words a Tribunal" shall be substituted.

27. Section 66 shall be omitted.

28. In section 67—

(*i*) for the words "A Trust as defined in this Act" the words "The Trust" shall be substituted ; and

(*ii*) after the words "under that Act" the words "and the undertaking of any work under section 22A of this Act" shall be inserted.

29. For section 68 the following section shall be substituted, namely :—

"68. *Custody and investment of Trust funds.*—All moneys at the credit of the Trust shall be kept in the Government Treasury :—

Provided that the Trust may, with the previous sanction of the Chief Commissioner, invest any such moneys as are not required for immediate expenditure in any of the securities prescribed in section 20 of the Indian Trusts Act, 1882."

30. Sections 69, 70 and 71 shall be omitted.

31. In sub-section (1) of section 72—

(*i*) the words "and applicable to all or any Trust" shall be omitted ;

(*ii*) in clause (*b*), for the words "municipal assessment list" the words "assessment list of the municipality or Notified Area" shall be substituted ;

(*iii*) in clause (*d*), for the words "officers of that Government" the words "his officers" shall be substituted ;

(*iv*) in clause (*h*), for the word "Trusts" the words "the Trust" shall be substituted ;

(*v*) in clause (*j*), after the words "to the" the words "Chairman and" shall be inserted ; and

(*vi*) in clause (*m*), for the word "Trusts" the words "the Trust" shall be substituted.

32. In section 73, for the words "Every Trust" the words "The Trust" shall be substituted.

33. In section 75, for the word "its", and for the word "it", the word "his", and the word "he", shall, respectively, be substituted.

34. In clause (*b*) of sub-section (1) of section 78, for the words "municipal limits" the words "the limits of a municipality or Notified Area" shall be substituted.

35. In sections 80 and 81, for the word and figures "Chapter VI" the words, brackets and figures "sub-section (4) of section 222" shall be substituted.

36. In section 85—

(*i*) the words and figures "in effecting any removal under section 265 of the Municipalities Act as applied by section 49 of this Act, or" shall be omitted ;

(*ii*) for the words "under section 278 of that Act" the following shall be substituted, namely :—
"under section 114 or 171 of the Municipalities Act as applied by section 49 of this Act" ; and

(*iii*) for the word and figures "Chapter VI" the words and figures "sub-section (4) of section 222" shall be substituted.

37. For section 87 the following section shall be substituted, namely :—

"87. *Application of section 222, Municipalities Act.*—Wherever in this Act or in any section of the Municipalities Act it is provided that any sum may be recovered under sub-section (4) of section 222 of the Municipalities Act, then in applying the provisions of that sub-section the Trust shall be deemed to be the committee."

38. In sub-section (1) of section 97, for the words "a Trust" the words "the Trust" shall be substituted.

39. In sub-section (2) of section 103—

(*i*) for clause (*a*) the following clauses shall be substituted namely:—

"(*a*) (*i*) all properties, funds and dues placed at the disposal of the Trust under sub-section (1) of section 54-A, and

(*ii*) all properties, funds and dues exchanged for, derived from, or otherwise attributable to, the properties, funds and dues referred to in sub-clause (*i*),

which, on the said date, are held by or realizable by the Trust, shall vest in, and, be realizable by, the Chief Commissioner; and

(*aa*) all properties, funds and dues, other than those referred to in clause (*a*), which, on the said date, are vested in or realizable by the Trust and the Chairman respectively shall vest in and be realizable by the Municipal Committee or Notified Area Committee and the Chairman of such Committee respectively; and";

(*ii*) in clause (*a*), for the words "only against the municipal board" the following shall be substituted namely:—

"only against the Chief Commissioner or the Municipal Committee or Notified Area Committee, as the case may be"; and

(*iii*) in clause (*c*)—

(*a*) for the word, brackets and letter "clause (*a*)" the words, brackets and letters" clauses (*a*) and (*aa*)" shall be substituted; and

(*a*) for the words "by the municipal board and the Chairman of the board respectively" the following shall be substituted, namely:—

"by the Chief Commissioner or the Municipal Committee or Notified Area Committee and the Chairman of such Committee, as the case may be".

40. In the Schedule:—

(*i*) after the words and figures "United Provinces Town Improvement Act, 1919," wherever they occure, the words "as extended to the Province of Delhi," shall be inserted;

(*ii*) in section 1, for the words "a Trust" the words "the Delhi Improvement Trust" shall be substituted;

(*iii*) in section 2, sub-section (2) shall be renumbered as sub-section (3) and after sub-section (1) the following sub-section shall be inserted, namely:—

"(2) Proceedings under section 38 and sub-section (1) of section 40 of the United Provinces Town Improvement Act, 1919, as extended to the Province of Delhi, shall be substituted for and have the same effect as proceedings under section 5A of the said Act"; and

(*iv*) in sub-section (3) of section 10, the following shall be omitted, namely:—

"(g) when the owner of the land or building has after passing of the United Provinces Town Improvement Act, 1919, and within two years preceding the date with reference to which the market-value is to be determined, made a return under section 158 of

the United Provinces Municipalities Act, 1916, of the rent of the land or building, the rent of the land or building shall not in any case be deemed to be greater than the rent shown in the latest return so made, save as the Court may otherwise direct, and the market-value may be determined on the basis of such rent:

Provided that where any addition to, or improvement of, the land or building has been made after the date of such latest return and previous to the date with reference to which the market-value is to be determined, the Court may take into consideration any increase in the letting value of the land due to such addition or improvement."

Schedule.

I. (1) The Municipality of Delhi. (2) The Municipality of New Delhi.

(3) The Civil Lines Notified Area. (4) The Fort Notified Area.

II. The following Revenue Estates or Mahals or such portions of them as are not included in the Municipalities and Notified Areas hereinbefore mentioned:

	Hadbast No.		*Hadbast No.*
1. Delhi (Patti Jehan Numa)	252	20. Dhaka. ...	18
2. Sadhaura Kalan. ...	247	21. Serai Kale Khan.	9
3. Sadhaura Khurd. ...	243	22. Behlolpur Khadar.	275
4. Khanpur Raya. ...	242	23. Nangli Razapur. ...	267
5. Shadipur.	241	24. Chak Chilla	273
6. Naraina. ...	239	25. Kilokri.	274
7. Basaidarapur ...	79	26. Garhi Jharia Maria	11
8. Chaukri Mubarakabad ...	244	27. Khizrabad.	272
9. Nimri. ...	245	28. Joga Bai.	271
10. Wazirpur ...	246	29. Okhla.	270
11. Malakpur Chaom. ...	248	30. Jasaula. ...	269
12. Azadpur. ...	49	31. Bahapur .	44
13. Bharaula. .	50	32. Charagah Shumali ...	56
14. Bhalswa Jehangirpur .	48	33. Charagah Janubi	57
15. Shanjarpur. .	20	34. Jhilmila Taharpur	8
16. Mukandpur. ...	21	35. Tehar. ...	194
17. Dahirpur. ...	19	36. Tatarpur. .	193
18. Jharauda Mazra Burari	22	37. Madipur.	80
19. Wazirabad. ...	251	38. Shakurpur.	78

No. F. 23-10/37 H, dated the 2nd March, 1937 In exercise of the powers conferred by section 7 of the Delhi Laws Act, 1912 (XIII of 1912) the Governor General in Council is pleased to extend to that part of the Province of Delhi which is described in the Schedule sections 32, 59 and 86 of the Rangoon Development Trust Act, 1920 (Burma Act V of 1920), with the following modifications, namely:—

1. In the said sections, as so extended, for the words "Local Government", and for the words "the Board", wherever they occur, the words "Chief Commissioner", and the words "the Trust", shall, respectively, be substituted

2. In section 32, as so extended—

(*i*) the words "and the provisions of this Act" shall be omitted; and

(*ii*) for the words "expansion or development of the city or of any area in the vicinity thereof to which the Local Government may, by notification, declare this Act to apply", the words "or development of the area to which this Act has been extended" shall be substituted.

3. Section 32, as so modified and so extended, shall be read together with, and as Chapter IIIA, entitled "GENERAL POWERS OF TRUST", and as section 22A, of, the United Provinces Town Improvement Act, 1919, as extended to the Province of Delhi.

4. In section 59 as so extended—

(*i*) for sub-section (1) the following sub-section shall be substituted, namely :—

"*Power of Trust to hold Government property.*"

(1) The Government may, upon such terms as may be agreed upon between the Government and the Trust, place at the disposal of the Trust any properties, or any funds or dues, of the Government and thereupon the Trust shall hold or realise such properties, funds and dues in accordance with such terms"; and

(*ii*) in sub-section (2)—

(*a*) for the words "vested in the Board is required by the Imperial or Local" the words "held by the Trust under sub-section (1) is required by the" shall be substituted; and

(*b*) for the words "the rate of six per cent. per annum" the words "such rate as may be fixed by the Chief Commissioner" shall be substituted.

5. In section 87, as so extended—

(*i*) in sub-section (1)—

(*a*) the words "or any tax or fee" shall be omitted; and

(*b*) before the words "may be recovered", the words "in respect of any properties, funds or dues placed at the disposal of the Trust under sub-section (1) of section 54A" shall be inserted; and

(*ii*) in sub-section (2) the words "tax or fee" shall be omitted.

6. Sections 59 and 86, as so modified, and so extended, shall be read together with, and as Chapter VA, entitled "GOVERNMENT PROPERTY HELD BY TRUST", and as sections 54A and 54B, of the United Provinces Town Improvement Act, 1919, as extended to the Province of Delhi.

Schedule

Same as on page 605

No. F. 23-(10) 37-H. dated the 2nd March, 1937. In exercise of the powers conferred by section 7 of the Delhi Laws Act, 1912 (VIII of 1912), the Governor General in Council is pleased to extend to that part of the Province of Delhi which is described in the Schedule section 78 of the Calcutta Improvement Act, (1911) Bengal Act V of 1911, with the following modifications, namely:—

1. In the said section, as so extended,—

(*i*) for the words "Local Government," and for the words "the Board," wherever they occur, the words "Chief Commissioner," and the words, "the Trust," shall, respectively, be substituted;

(*ii*) in sub-section (2), for the word "them" the words "the Trust" shall be substituted;

(*iii*) in sub-section (3), for the words "decide" and "they" the words "decides" and "it" shall, respectively, be substituted;

(*iv*) in sub-section (4), for the words "have arranged," and for the words "are satisfied," the words "has arranged" and the words "is satisfied," shall, respectively, be substituted; and

(*v*) sub-sections (10) and (11) shall be omitted.

2. The said section, as so modified, and so extended, shall be read together with, and as section 64-A with the heading "*Abandonment of Acquisition*," of, the United Provinces Town Improvement Act, 1919, as extended to the Province of Delhi.

Schedule.

Same as on page 605

No. F. 23-28/37-H dated the 30th September, 1937. In exercise of the powers conferred by section 7 of the Delhi Laws Act, 1912 (XIII of 1912), the Central Government is pleased to direct that the following amendment shall be made in the notifications of the Government of India in the Department of Education, Health and Lands, Nos F. 23-10/37-H., dated the 2nd March 1937, namely:

To the entries in item II of Schedules to the said notifications, the following entries shall be added, namely:

"(35) Tehar	194	(36) Tatarpur	193
(37) Madipur	10	(38) Shakurpur	78"

No. F. 29-55 (4)/39-F. & L. dated the 22nd February, 1940. In exercise of the powers conferred by section 7 of the Delhi Laws Act, 1912 (XIII of 1912), the Central Government is pleased to extend to that part of the Province of Delhi, which is described in the Schedule hereto annexed, sections 24, 78A, 78B, 78C, 78D, 78E, 78F, 78G, 79, and 80 of the Calcutta Improvement Act, 1911 (Bengal Act V of 1911), *with the following modifications*, namely:

I. In the said sections

(*a*) for the word "Board" wherever it occurs the word "Trust" shall be substituted, and for the words Provincial Government' wherever they occur, the words "Chief Commissioner" shall be substituted; and

(*b*) references to sections 78, 78A, 78B, 78C, 78F and 78G shall be read as referring to sections 64A, 64B, 64C, 64D, 64G and 64 H respectively.

2. In section 78B, for the words letter, brackets and figures 'clause (*a*) of sub-section (1) of section 45," the words, letter brackets and figures "clause (*a*) of sub-section (1) of section 38" shall be substituted

3. In section 78E for the figures "37," the figures "72" shall be substituted.

4. In sub-section (2) of section 78G for the words, brackets and figures, "the commencement of the Calcutta Improvement (Amendment) Act 1931," the following shall be substituted, namely:-

"the extension of this section to the Province of Delhi"

5. In section 79, for the words and figures "in the manner provided by the Calcutta Municipal Act 1923 for the recovery of the consolidated rate the following shall be substituted, namely –

"in the manner provided by the Punjab Municipal Act, 1911 as extended to the Province of Delhi, for the recovery of taxes, and for the purposes of such recovery the Trust shall be deemed to be the Committee."

6. The said sections as so modified and so extended shall be read together with and as part of, the United Provinces Town Improvement Act 1919, as extended to the Province of Delhi, in the following manner, namely:-

(1) Section 24 shall be numbered section 22B and shall be read together with its side-heading in Chapter IIIA of the United Provinces Town Improvement Act 1919 as so extended.

(2) Sections 78A, 78B, 78C, 78D, 78E, 78F, and 78G shall be numbered sections 64B, 64C, 64D, 64E, 64G and 64H respectively and shall

be read together with their side-headings and under a new cross-heading "Betterment Fee" in Chapter VI of the said Act as so extended immediately after section 64A.

(3) Sections 79 and 80 shall be numbered sections 64-I and 64J respectively and shall be read together with their side-headings in Chapter VI of the said Act as so extended immediately after the new section 64H, and under the new cross headings "Recovery of special payments and betterment fees" and "Acquisition on free declaration" respectively.

Schedule.

Same as on page 605.

No. F. 29-55 (5)/39 F. & L., dated, the 22nd February 1940. In exercise of the powers conferred by section 7 of the Delhi Laws Act 1912 (XIII of 1912), the Central Government is pleased to direct that the following further amendments shall be made in the notification of the Government of India in the Department of Education, Health and Lands No F.-23-10/H dated the 2nd March 1937, extending the United Provinces Town Improvement Act, 1919 (United Provinces Act VIII of 1919) to the Province of Delhi, namely:

Amendments.

I. The said notification shall be re-numbered F-23-10/37-H (1).

II. In the said notification as so re-numbered—

1. Paragraph 3 shall be numbered sub-paragraph (1) of that paragraph and after sub-paragraph (1) as so numbered, the following sub-paragraph shall be added, namely:—

"(2) after clause (1) of section 2 the following clause shall be inserted, namely:

"(*a*) 'betterment fee' means the fee prescribed by section 64B in respect of an increase in value of land resulting from the execution of an improvement scheme.

2. After paragraph 14 the following paragraph shall be inserted namely:-

"14A. In section 36, for clause (*c*) of sub-section (1) the following clause shall be substituted, namely:—

"(*c*) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire, and of the land in regard to which it is proposed to recover a batterment fee, may be seen at reasonable hours."

3. For paragraph 15, the following paragraph shall be substituted, namely:-

"15 In section 38

(*a*) in sub-section (1)

(1) in clauses (*a*) and (*b*), for the words "municipal assessment list", the words "assessment list of the municipality or Notified area shall be substituted; and

(2) in clause (*a*), after the words "which it is proposed to acquire in executing the scheme", the following be inserted namely:

"or in regard to which the Trust proposes to recover a betterment fee."

(*b*) in sub-section (2)-

(1) in clause (*a*), after the words "proposes to acquire such land", the following shall be inserted, namely.

"or to recover such betterment fee"

(2) in clause (*b*), after the words "if he dissents from such acquisition", the following shall be inserted, namely :—

"or from the recovery of such betterment fee".

4. After paragraph 16 the following paragraph shall be inserted, namely :—

"16A. In clause (*c*) of sub-section (2) of section 40, after the words "from the proposed acquisition of their land, the following shall be inserted, namely :—

"or from the proposed recovery of betterment fee".

5. After paragraph 18, the following paragraph shall be inserted, namely :—

"18A. In section 43, after clause (*b*) of the proviso, the following clause shall be inserted, namely :

"(*c*) if, owing to changes made in the course of a scheme any land not previously liable under the scheme to the payment of a betterment fee becomes liable to such payment, the provisions of sections 36, 38 and 40 shall, so far as they are applicable, be followed in any such case.

No. F.-29-55 (6) 39-F. & L., dated, the 7th March 1940. In exercise of the powers conferred by section 7 of the Delhi Laws Act, 1912 (XIII of 1912), the Central Government is pleased to direct that the following further amendment shall be made in the notification of the Government of India in the Department of Education, Health and Lands, No. F.-23-10/37-H. (1), dated the 2nd March 1937 extending the *United Provinces Town Improvement Act, 1919 (United Provinces Act VIII of 1919)* to the Province of Delhi, namely:

In the said notification, for paragraph 20 the following paragraph shall be substituted, namely:—

"20. For section 49, the following section shall be substituted, namely:—

"49. (1) The provisions of the undermentioned sections of the Municipalities Act, and of any bye-laws made by the Municipal Committee or Notified Area Committee under clause (1) of section 188, sub-section (3) of section 189, and section 190 of the Municipalities Act shall, so far as may be consistent with the tenor of this Act, apply to all areas in respect of which an improvement scheme is in force, and for the period during which such scheme remains in force all references in the said provisions to the Provincial Government or to the Committee shall be construed respectively as referring to the Chief Commissioner or to the Trust which, in respect of any such increase, may alone exercise and perform all or any of the powers and functions which under any of the said provisions might have been exercised or performed by the Committee :

Provided that the Trust may delegate to the Chairman or to any officer of the Trust all or any of the powers conferred by these sections.

Sections

96, sub-sections (1) and (2), 102 [for the purpose of providing and maintaining the water supply only], 114, 116, 118, 125, 126, 127, 130, 131, 132, and 133 (only in respect of lighting, drainage and sewerage), 134, 135 and 136 (only in respect of drainage and sewerage connections) 140, 169, 170, 170A, 170B, 170C, 170D, 170E, 171, 172, 173, 174, 176, 177, 181, 182, 189 [sub-sections (1), (2) and (4)] 190 sub-section (2), 191, 192, 192A, 193, 193A, 194, 195, 195A, 196, 203 to 205, 209, 212 to 219, 219A, 220 to 226, 228 to 230.

(2) The Trust may make bye-laws for any area comprised in an improvement scheme which is outside the limits of a Municipality or Notified Area:—

(*a*) generally for carrying out the purpose of this Act, and

(*b*) in particular and without prejudice to the generality of the aforesaid powers the Trust may make by-laws regarding any of the matters referred to in Chapter X of the Municipalities Act.

The provisions of sections 199 to 202 of the Municipalities Act shall, so far as may be consistent with the tenor of this Act, be applicable to all bye-laws made by the Trust under this sub-section and all references in the said sections to the Provincial Government or to the Committee shall be construed, respectively, as referring to the Chief Commissioner or to the Trust."

No. F. 29-17/39-F. & L. dated the 2nd April, 1940. In exercise of the powers conferred by section 7 of the Delhi Laws Act, 1912 (XIII of 1912), the Central Government is pleased to direct that the following further amendment shall be made in the notification of the Government of India in the Department of Education, Health and Lands, No. F. 23-10/3-H (I), dated the 2nd March, 1937, extending the United Provinces Town Improvement Act, 1919, (United Provinces Act VIII of 1919) to the Province of Delhi, namely:—

In the said notification, for paragraph 12, the following paragraph shall be substituted, namely:—

"12. In section 3—

(1) in sub-section (1) after the words "future expansion" the words "or development" shall be inserted, and after the word 'municipality' the words 'or Notified Area' shall be inserted; and

(2) after sub-section (1) the following sub-section shall be inserted, namely:—

(1A) Such scheme shall ordinarily be framed in respect of an area wholly without the limits of the Municipality or Notified Area, but may, in special circumstances and with the previous sanction of the Chief Commissioner, be framed in respect of an area which lies wholly within, or partly within and partly without, the said limits:—

Provided that the Chief Commissioner shall, before giving his sanction to any such scheme, satisfy himself that a development scheme under section 30 in respect of the area would not be suitable."

No. F. 29-19 (2)/40-F. & L., dated the 16th July 1940.

(Corrigendum).

In the notification of the Government of India in the Department of Education, Health and Lands, No. F. 29-55 (6)/39-F. & L., dated the 7th March, 1940, appearing in the Gazette of India dated the 9th March 1940, for the words and figures "clause (1) of section 188" read "clause (*l*) of section 188."

UNITED PROVINCES ACT VIII OF 1919.

(As applied to the Province of Delhi).

An Act for the improvement of certain areas.

CHAPTER I.

PRELIMINARY.

Title and commencement

1. (1) This Act may be called the United Provinces Town Improvement Act, 1919.

(2) It shall come into force at once.

Definitions.

2. In this Act, unless there is something repugnant in the subject or context,-

(1) words and expressions not defined in this Act have the same meaning as in the Punjab Municipal Act, 1911, as extended to the Province of Delhi (hereinafter called the Municipal Act);

(1a) "Betterment fee" means the fee prescribed by section 64-B in respect of an increase in value of land resulting from the execution of an improvement scheme.

(2) "building line", means a line (in rear of the street alignment) up to which the main wall of a building abutting on a projected public street may lawfully extend;

(3) "land" has the same meaning as in clause (*a*) of section 3 of the Land Acquisition Act, 1894;

(4) "rule" means a rule made under section 72 or section 73;

(5) "street alignment" means a line dividing the land comprised in and forming part of a street from the adjoining land;

(6) "tribunal" means a tribunal constituted under section 59;

(7) all references to anything done, required, authorized, permitted, forbidden, or punishable, or to any power vested, under this Act, shall include anything done, required, authorised, permitted, forbidden, or punishable, or any power vested

(*a*) by any provision of this Act; or

(*b*) by any rule or scheme made under the provisions of this Act, or

(*c*) under any provision of the Municipalities Act which the Trust has by virtue of this Act power to enforce.

CHAPTER II

CONSTITUTION OF TRUST

Creation and incorporation of Trust.

3. The duty of carrying out the provisions of this Act in the local area to which the Act has been extended shall, subject to the conditions and limitations hereinafter contained, be vested in a Board to be called "The Delhi Improvement Trust" (hereinafter called the Trust), and such Board shall be a body corporate and have perpetual succession and a common seal, and shall by the said name sue or be sued.

Constitution of Trust.

4. (1) The Trust shall consist of seven Trustees, namely :

(*a*) a Chairman ;

(*b*) an officer of the Central Public Works Department;

(*c*) the Assistant Director of Public Health, Delhi;

(*d*) a Financial Adviser ;

(*e*) two members of the Municipal Committee of Delhi ;

(*f*) one other person.

(2) The Chairman and the persons referred to in clauses (*b*), (*d*) and (*f*) of sub-section (1) shall be appointed by the Chief Commissioner by notification.

(3) The Assistant Director of Public Health, Delhi, shall be an *ex-officio* member of the Trust

(4) The two members of the Municipal Committee referred to in clause (*c*) of sub-section (1) shall be elected by the Municipal Committee.

(5) If the Municipal Committee does not by such date as may be fixed by the Chief Commissioner elect a person to be a Trustee, the Chief Commissioner, shall, by notification, appoint a member of the Municipal Committee to be a Trustee, and any person so appointed shall be deemed to be a Trustee as if he had been duly elected by the Municipal Committee.

Resignation of Trustee.

5. Any Trustee, other than an *ex-officio* Trustee, may at any time resign his office, provided that his resignation shall not take effect until accepted by the Trust.

Term of office of Chairman.

6. The term of office of the Chairman shall ordinarily be three years, provided that he may be removed from office by the Chief Commissioner at any time.

Term of office of other

7. Subject to the foregoing provisions the term of office of every Trustee elected under clause (*e*) of sub-section (1) of section 4 shall be

Trustees.

three years or until he ceases to be a member of the Municipal Committee whichever period is less, and every Trustee appointed under clause (*b*), (*d*) or (*f*) of the said sub-section shall be three years.

Commencement of term of office of first Trustees.

8. (1) The term of office of the first nominated and elected Trustees shall commence on such date as shall be notified in this behalf by the Chief Commissioner.

(2) A person ceasing to be a member by reason of the expiry of his term of office shall, if otherwise qualified, be eligible for re-election or re-nomination.

Remuneration and fees of Chairman and Trustees

9. (1) The Chairman shall receive from the funds of the Trust such salary and allowances as may be sanctioned by the Governor General in Council.

(2) Every Trustee (other than the Chairman) and every person associated with the Trust under section 14 shall, if he is not a whole-time Government servant, be entitled to receive from the funds of the Trust a fee of twenty rupees, and every member of a Committee appointed under section 15 shall, if he is not the Chairman or a whole-time Government servant, be entitled to receive from the funds of the Trust a fee of ten rupees for each meeting of the Trust or the Committee:—

(*i*) at which a quorum is present and business is transacted; and

(*ii*) which he attends from the beginning to the end thereof, or for such period as the person presiding at the meeting may consider sufficient to justify the payment of the fee;

Provided that the aggregate amount of fees payable to any person in respect of meetings of any kind held during any month shall not exceed such sum as the Chief Commissioner may by order in writing prescribe.

Removal of Trustees.

10. (1) The Chief Commissioner may remove from the Trust any Trustee other than an *ex-officio* Trustee, who—

(*a*) refuses to act, or becomes incapable of acting, or absents himself for more than three consecutive months from the meetings of the Trust or of any committee of which he is a member and is unable to explain such absence to the satisfaction of the Trust, or

(*b*) is an undischarged insolvent or has compounded with his creditors, or

(*c*) has been sentenced by a criminal court to imprisonment for a term exceeding six months or to transportation, or has been ordered to find security for good behaviour under the Code of Criminal Procedure, such sentence or order not having subsequently been reversed or remitted or the offender pardoned, or

(*d*) has knowingly acquired or continued to hold without the permission in writing of the Chief Commissioner, directly or indirectly or by a partner, any share or interest in any contract or employment with, by, or on behalf of the Trust, or

(*e*) has knowingly acted as a Trustee in a matter other than a matter referred to in clause (*d*) or (*e*) of sub-section (2) in which he or a partner had, directly or indirectly, a personal interest, or in which he was professionally interested on behalf of a client, principal or other person, or

(*f*) has acted in contravention of section 17, or

(*g*) being a legal practitioner, in any suit or other proceeding, acts or appears on behalf of any other person against the Trust, or acts or appears on behalf of any other person in any criminal proceeding instituted by or on behalf of the Trust.

(2) Provided that a person shall not be deemed for the purpose of sub-section (1) to acquire, or continue to have, any share or interest in a contract or employment by reason only of his:—

(a) having a share or interest in any lease, sale or purchase of land or buildings, or in any agreement for the same, provided that such share or interest was acquired before he became a Trustee, or

(b) having a share in a joint stock company which shall contract with, or be employed by or on behalf of the Trust, or

(c) having a share or interest in a newspaper in which an advertisement relating to the affairs of the Trust is inserted, or

(d) holding a debenture or otherwise being interested in a loan raised by or on behalf of the Trust, or

(e) being retained by the Trust as a legal practitioner, or

(f) having a share or interest in the occasional sale of an article in which he regularly trades to the Trust to a value not exceeding in any one year, such amount as the Trust, with the sanction of the Chief Commissioner, may fix in this behalf.

(3) The Chief Commissioner may remove from the Trust a Trustee who in the opinion of the Chief Commissioner has so flagrantly abused in any manner his position as a Trustee as to render his continuance as a Trustee detrimental to the public interest.

(4) Provided that when the Chief Commissioner proposes to take action under the foregoing provisions of this section an opportunity of explanation shall be given to the Trustee concerned, and, when such action is taken, the reasons therefor shall be placed on record.

Disabilities of Trustees removed under section 10

11. (1) A Trustee removed under clause (*a*) or clause (*c*) of sub-section (1) of section 10, or under sub-section (3) of that section shall not be eligible for election or nomination for a period of three years from the date of his removal.

(2) A Trustee removed under clause (*b*) of sub-section (1) of section 10 shall not be so eligible until he has obtained his discharge or has paid his creditors in full, as the case may be.

(3) A Trustee removed under any other provision of section 10 shall not be so eligible until he is declared to be no longer ineligible, and he may be so declared by an order of the Chief Commissioner.

Filling of casual vacancies

12. (1) When the place of a Trustee appointed by the Chief Commissioner becomes vacant by his resignation, removal or death, the Chief Commissioner shall appoint a person to fill the vacancy.

(2) When the place of a Trustee elected under clause (*e*) of sub-section (1) of section 4 becomes vacant by his resignation, removal or death, the vacancy shall be filled, within two months of the existence of such vacancy being notified to the Municipal Committee by the Trust, in the manner provided by sub-section (4) of the same section, provided that if the Municipal Committee fails to elect a qualified person to fill the vacancy within the preiod prescribed above, the provisions of sub-section (5) of section 4 shall apply.

(3) The term of office of a Trustee appointed or elected under this section shall be the remainder of the term of office of the Trustee in whose place he has been elected or appointed:—

Provided that no person elected or appointed under sub-section (2) shall continue to be a Trustee after he has ceased to be a member of the Municipal Committee, but he may so continue notwithstanding that the Trustee in whose place he was elected or appointed has ceased to be a member of the said Committee.

CHAPTER III.

PROCEEDINGS OF THE TRUST AND COMMITTEES.

Meetings of Trust.

13. (1) The Trust shall meet together and shall from time to time make such arrangements not inconsistent with this Act with respect to the place, day, hour, notice, management, and adjournment of such meetings, and generally with respect to the transaction of business as it may think fit, subject to the following provisions, namely :—

(*a*) an ordinary meeting shall be held once at least in every month ;

(*b*) the Chairman may, whenever he thinks fit, and shall, upon the the written request of not less than two Trustees, call an extra meeting ;

(*c*) no business shall be transacted at any meeting unless at least three Trustees are present ;

(*d*) every meeting shall, if the Chairman be present be presided over by him ; if he is absent, by such one of the Trustees present as may be chosen by the meeting;

(*e*) all questions shall be decided by a majority of votes of the Trustees present and voting, the person presiding having a second or casting vote in all cases of equality of votes ;

(*f*) If a poll be demanded, the names of the Trustees voting and the nature of their votes shall be recorded by the person presiding ;

(g) minutes shall be kept of the names of the Trustees present and of the proceedings at each meeting in a book to be provided for this purpose, which shall be signed at the next ensuing meeting by the person presiding at such meeting, and shall be open to inspection by any Trustee during office hours.

(2) No person shall be entitled to object to the minutes of any meeting unless he was present at the meeting to which they relate.

Temporary association of members with the Trust for particular purposes.

14. (1) The Trust may associate with itself, in such manner and for such period as may be prescribed by rules made under section 78, any person whose assistance or advice it may desire in carrying out any of the provisions of the Act.

(2) A person associated with itself by the Trust under sub-section (1) for any purpose shall have a right to take part in the discussions of the Trust relative to that purpose, but shall not have a right to vote at a meeting of the Trust, and shall not be a member of the Trust for any other purpose.

Constitution and functions of committees

15. (1) The Trust may from time to time appoint committees, consisting of such persons of any of the following classes as it may think fit, namely :

(*i*) Trustees;

(*ii*) persons associated with the Trust under section 14;

(*iii*) other persons whose assistance or advice the Trust may desire as members of committees;

provided that no committee shall consist of less than three persons.

(2) The Trust may—

(*a*) refer to such committees, for enquiry and report, any matter relating to any of the purposes of this Act, and

(*b*) delegate to such committees by specific resolution and subject to any rules made under section 78, any of the powers or duties of the Trust.

(3) The Trust may at any time dissolve, or, subject to the provisions of sub-section (1), alter the constitution of, any such committee.

(4) Every such committee shall conform to any instructions from time to time given to it by the Trust.

(5) All proceedings of any such committee shall be subject to confirmation by the Trust.

Meetings of committees

16. (1) Committees appointed under section 15 may meet and adjourn as they think proper; but the Chairman may whenever he thinks fit, call an extra meeting of any committee, and shall call an extra meeting of any committee upon the written request of not less than two members thereof.

(2) The Chairman may attend any meeting of a committee whether he is a member of such committee or not, and shall preside at every such meeting at which he is present: if he is absent, such one of the Trustees present as may be chosen by the meeting shall preside.

(3) All questions at any meeting of a committee shall be decided by a majority of votes of the members present and voting, the person presiding having a second or casting vote in all cases of equality of votes.

(4) No business shall be transacted at any meeting of a committee when either less than two members or less than one-fourth of the members constituting the committee are present.

Trustees and associated members of Trust or committee not to take part in proceedings in which they are personally interested

17. (1) A Trustee who -

(*a*) has, directly or indirectly, by himself or by any partner, employer or employee, any such share or interest as is described in sub-section (2) of section 20, in respect of any matter, or

(*b*) has acted professionally, in relation to any matter, on behalf of any person having therein any such share or interest as aforesaid,

shall not vote or take any other part in any proceedings of the Trust or any committee relating to such matter.

(2) If any Trustee, or any person associated with the Trust under section 14, or any other member of a committee appointed under this Act, has directly or indirectly, any beneficial interest in any land situated in an area comprised in any improvement scheme framed under this Act, or in any area in which it is proposed to acquire land for any of the purposes of this Act,

(*i*) he shall, before taking part in any proceeding at a meeting of the Trust or any committee relating to such area, inform the person presiding at the meeting of the nature of such interest,

(*ii*) he shall not vote at any meeting of the Trust or any committee upon any resolution or question relating to such land, and

(*iii*) he shall not take any other part in any proceeding at a meeting of the Trust or any committee relating to such area if the person presiding at the meeting considers it inexpedient that he should do so.

Officers and Servants.

Power of Trust to fix number and salaries of its servants.

18. (1) Subject to such rules as the Chief Commissioner may make prescribing the conditions under which members of the staff appointed by the Trust to offices requiring professional skill may be appointed, suspended or dismissed, the Trust may, from time to time fix the number and salaries of such permanent servants as it may think necessary and proper to assist in carrying out the purposes of this Act.

Appointment of temporary servants in cases of emergency.

(2) The Chairman in cases of emergency may appoint such temporary servants as in his opinion may be required for the purposes of this Act, and may direct that the salaries of such temporary servants fixed as the emergency may require shall be paid from the Trust fund:

Provided that—

(*i*) he shall not act under this sub-section in contravention of any order of the Trust prohibiting the employment of temporary servants for any particular work; and

(*ii*) every appointment made under this sub-section shall be reported at the next following meeting of the Trust.

Power of appointment, etc.

19. Subject to the provisions of section 18 and to any rules for the time being in force the power of appointing, promoting, and granting leave to officers and servants of the Trust, and reducing, suspending or dismissing them for misconduct, and dispensing with their services for any reason other than misconduct, shall be vested—

(*a*) in the case of officers and servants whose monthly salary does not exceed three hundred rupees in the Chairman, and

(*b*) in other cases in the Trust:

Provided that any officer or servant in receipt of a monthly salary exceeding one hundred rupees who is reduced, suspended, or dismissed by the Chairman may appeal to the Trust, whose decision shall be final.

Control by Chairman.

20. The Chairman shall exercise supervision and control over the acts and proceedings of all officers and servants of the Trust; and, subject to the foregoing section, shall dispose of all questions relating to the service of the said officers and servants and their pay, privileges, and allowances.

Delegation of certain of Chairman's functions.

21. (1) The Chairman may, by general or special order in writing, delegate to any officer of the Trust any of the Chairman's powers, duties or functions under this Act or any rule made thereunder, except those conferred or imposed upon or vested in him by sections 13, 16, 22, 46 and 95.

(2) The exercise or discharge by any officer of any powers, duties or functions delegated to him under sub-section (1) shall be subject to such conditions and limitations (if any) as may be prescribed in the said order, and also to control and revision by the Chairman.

Supply of information to Chief Commissioner.

Supply of information and documents to Chief Commissioner.

21. (1) The Chairman shall forward to the Chief Commissioner a copy of the minutes of the proceedings of each meeting of the Trust, within ten days from the date on which minutes of the proceedings of such meeting were signed as prescribed in clause (*g*) of sub-section (1) of section 13.

(2) If the Chief Commissioner so directs in any case, the Chairman shall forward to him a copy of all papers which were laid before the Trust for consideration at any meeting.

(3) The Chief Commissioner may require the Chairman to furnish him with—

(*a*) any return, statement, estimate, statistics or other information regarding any matter under the control of the Trust, or

(*b*) a report on any such matter, or

(*c*) a copy of any document in the charge of the Chairman.

The Chairman shall comply with every such requisition without unreasonable delay

CHAPTER IIIA

GENERAL POWER OF TRUST

Power of the Trust to undertake works and incur expenditure for the improvement, etc., of area to which Act has been extended.

22-A. The Trust may, subject to the control of the Chief Commissioner, undertake any works and incur any expenditure for the improvement, or development of the area to which this Act has been extended, and for the purpose of framing and executing such town-planning schemes as may be necessary from time to time.

Power to make and perform contracts.

22-B. The Trust may enter into and perform all such contracts as it may consider necessary or expedient for carrying out any of the purposes of this Act.

CHAPTER IV

IMPROVEMENT SCHEMES.

Matters to be provided for by improvement scheme.

13. An improvement scheme may provide for all or any of the following matters :—

(*a*) The acquisition by purchase, exchange or otherwise of any property necessary for or affected by the execution of the scheme.

(*b*) The re-laying out of any land comprised in the scheme

(*c*) The redistribution of sites belonging to owners of property comprised in the scheme

(*d*) The closure or demolition of dwellings or portions of dwellings unfit for human habitation

(*e*) The demolition of obstructive buildings or portions of buildings

(*f*) The construction and re-construction of buildings

(*g*) The sale, letting or exchange of any property comprised in the scheme

(*h*) The construction and alteration of streets and back lanes

(*i*) The draining, water-supply and lighting of streets so constructed or altered

(*j*) The provision of open spaces for the benefit of any area comprised in the scheme or any adjoining area and for the enlargement of existing open spaces and approaches

(*k*) The sanitary arrangements required for the area comprised in the scheme, including the conservation and prevention of injury or contamination to rivers or other sources and means of water-supply.

(*l*) The provision of accommodation for any class of the inhabitants.

(*m*) The advance of money for the purposes of the scheme

(*n*) The provision of facilities for communication

(*o*) The reclamation or reservation of land for market gardens afforestation the provision of fuel and grass supply and other needs of the population

(*p*) Any other matter for which in the opinion of the Chief Commissioner it is expedient to make provision with a view to the improvement of any area in question or the general efficiency of the scheme

Types of improvement Schemes

14. An improvement scheme shall be of one of the following types or may combine any two or more of such types or of any special features thereof, that is to say,

(*a*) a general improvement scheme,
(*b*) a re-building scheme,
(*c*) a re-housing scheme,
(*d*) a street scheme,
(*e*) a deferred street scheme,
(*f*) a development scheme,
(*g*) a housing accommodation scheme, and
(*h*) a town-expansion scheme

General improvement Scheme

15. Whenever it appears to the Trust

(*a*) that any buildings in any area which are used or are intended or likely to be used as dwelling-places are unfit for human habitation, or

(*b*) that danger to the health of the inhabitants of buildings in any area, or in any neighbouring buildings is caused by—

(*i*) the narrowness, closeness, or bad arrangement and condition of streets or buildings or groups of buildings in such area, or

(*ii*) the want of light, air, ventilation or proper conveniences in such area, or

(*iii*) any other sanitary defects in such area,

the Trust may pass a resolution to the effect that such an area is an insanitary area, and that a general improvement scheme ought to be framed in respect of such area, and may then proceed to frame such a scheme.

Re-building scheme

26. (1) When it appears to the Trust that any area is an insanitary area within the meaning of the preceding section and that, regard being had to the comparative value of the buildings in such area and of the sites on which they are erected, the most satisfactory method of dealing with the area or any part thereof is a re-building scheme, it shall frame a scheme in accordance with the provisions of this section.

(2) A re-bnilding scheme may provide for—

(*a*) the reservation of streets back lanes, and open spaces and the enlargement of existing streets, back lanes, and open spaces to such an extent as may be necessary for the purposes of the scheme,

(*b*) the re-laying out of the sites of the area upon such streets, back lanes or open spaces so reserved or enlarged,

(*c*) the payment of compensation in respect of any such reservation or enlargement, and the construction of the streets, back lanes, and open spaces so reserved or enlarged;

(*d*) the demolition of the existing buildings and their appurtenances by the owners, or by the Trust in default of the owners and the erection of buildings in accordance with the scheme by the said owners or by the Trust in default of the owners upon the sites as defined under the scheme;

(*e*) the advance to the owners, upon such terms and conditions as to interest and sinking fund and otherwise as may be prescribed under the scheme of such sums as may be necessary to assist them to erect new buildings in accordance with the scheme;

(*f*) the acquisition by the Trust of any site or building comprised in the area included in the scheme

Re-housing scheme

27. The Trust may frame schemes (herein called rehousing schemes) for the construction, maintenance and management of such and so many dwellings and shops as it may consider ought to be provided for persons who—

(*a*) are displaced by the execution of any improvement scheme sanctioned under this Act, or

(*b*) are likely to be displaced by the execution of any improvement scheme which it is intended to frame, or to submit to the Chief Commissioner for sanction under this Act

Street scheme

28. (1) Whenever the Trust is of opinion that, for the purpose of—

(*a*) providing building sites, or

(*b*) remedying defective ventilation, or

(*c*) creating new or improving existing means of communication and facilities for traffic, or

(*d*) affording better facilities for conservancy,

it is expedient to lay out new streets or alter existing streets (including bridges, causeways, and culverts), the Trust may pass a resolution to that effect, and shall then proceed to frame a street scheme for such area as it may think fit.

(2) A street scheme may within the limits of the area comprised in the scheme provide for—

(a) the acquisition of any land which will, in the opinion of the Trust, be necessary for its execution;

(b) the re-laying out of all or any of the lands so acquired, including the construction and re-construction of buildings by the Trust or by any other person and the laying-out, construction, and alteration of streets and thoroughfares,

(c) the draining, water-supply, and lighting of streets and thoroughfares so formed or altered;

(d) the raising, lowering, or reclamation of any land vested in, or to be acquired by, the Trust for the purposes of the scheme;

(e) the formation of open spaces for the better ventilation of the area comprised in the scheme;

(f) the acquisition of any land adjoining any street, thoroughfare, or open space to be formed under the scheme.

Deferred street scheme.

29. (1) (a) Whenever the Trust is of opinion that it is expedient for any purpose mentioned in section 28 to provide for the ultimate widening of any street by altering the existing alignments of such street to improved alignments to be prescribed by the Trust, but that it is not immediately to acquire all or any of the properties lying within the proposed improved alignments, the Trust, if satisfied of the sufficiency of its resources, may pass a resolution to that effect, and shall forthwith proceed to make a scheme to be called a "deferred street scheme" prescribing an alignment on each side of such street.

(b) No person shall erect, re-erect, add to or alter any building or wall so as to make the same project beyond the prescribed alignment of the street except with the written permission of the Trust.

Particulars to be provided for in a deferred street scheme.

(2) The deferred street scheme shall provide for—

(a) the acquistion of the whole or any part of any property lying within the prescribed street alignments;

(b) the re-laying-out of all or any such property including the construction and reconstruction of buildings by the Trust or by any other person and the formation and alteration of the street.

(c) the draining and lighting of the street so formed and altered.

(3) The owner of any property included in a deferred street scheme may, at any time after the scheme has been sanctioned by the Chief Commissioner, give the Trust notice requiring it to acquire such property before the expiration of six months from the date of such notice and the Trust shall acquire such property accordingly.

(4) Before proceeding to acquire any property within the limits of the scheme other than property regarding which it has received a notice under sub-section (3), the Trust shall give six months' notice to the owner of its intention to acquire the property.

(5) Upon the scheme being sanctioned by the Chief Commissioner and notwithstanding anything contained in the Municipalities Act, a municipal Committee or Notified Area Committee shall not have power to prescribe a regular line of the street within the limits of the scheme and any such regular line previously prescribed within such limits shall cease to be the regular line of the street.

Development scheme.

30. (1) In regard to any area to which this Act is extended, the Trust may, from time to time, prepare a scheme of proposed public streets with plans showing the direction of such streets, the street alignment and building line on each side of them, their intended width and such other details as may appear desirable.

(2) When any such scheme has been notified undersection 42 the street to which it refers shall be deemed to be a projected public street.

(3) If any person desires to erect, re-erect, add to or alter any building or wall so as to make the same project beyond the street alignment or building line shown in any plan so adopted, he shall apply to the Trust for permission to do so.

(4) If the Trust refuses to grant permission to any person to erect on his land any building or wall to project as aforesaid; and if it does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal.

(5) When any building, wall or part thereof projecting beyond or adjacent to the street alignment or building line shown in any plan adopted as aforesaid has fallen down, or been burnt down or taken down, the Chairman, may, by written notice require or permit the same to be set back or forward, as the case may be, to or towards such street alignment or building line.

(6) When any building or wall is set back or forward in pursuance of a requisition made under sub-section (5), the Trust shall forthwith make full compensation to the owner of the building or wall for any damage that he may sustain thereby

(7) If the additional land which will be included in the premises of any person required or permitted under sub-section (5) to set forward a building, wall or part thereof belongs to the Trust, the requisition or permission of the Chairman to set forward the building shall be a sufficient conveyance to the said owner of the said land, and the terms and conditions of the conveyance shall be set forth in the said requisition or permission.

(8) If, when the Chairman requires a building, wall or part thereof to be set forward, the owner thereof is dissatisfied with any of the terms or conditions of the conveyance, the Chairman shall, upon the application of the said owner at any time within fifteen days after the said terms and conditions are communicated to him, refer the case for the determination of the Tribunal, whose decision shall be final.

(9) Upon any scheme under this section being sanctioned by the Chief Commissioner and notwithstanding anything contained in the Municipalities Act, a Municipal Committee or Notified Area Committee shall not have power to prescribe a regular line of the street within the limits of the scheme, and any such regular line previously prescribed within such limits shall cease to be the regular line of the street.

Housing accommodation scheme.

31. Whenever the Trust is of opinion that it is expedient and for the public advantage to provide housing accommodation for any class of the inhabitants of any area to which this Act is extended, the Trust may frame a scheme (to be called a "housing accommodation scheme") for the purpose aforesaid.

Town expansion scheme.

32. (1) Whenever the Trust is of opinion that it is expedient and for the public advantage to control and provide for the future expansion [or development] of a municipality or Notified Area in any area to which this Act is extended, the Trust may frame a scheme to be called a ("town-expension scheme.")

"(A) Such scheme shall ordinarily be framed in respect of an area wholly without the limits of the municipality or Notified Area, but may, in special circumstances and with the previous sanction of the Chief Commissioner, be framed in respect of an area which lies wholly within, or partly within and partly without, the said limits;

Provided that the Chief Commissioner shall, before giving his sanction to any such scheme, satisfy himself that a development scheme under section 30 in respect of the area would not be suitable."

(2) Such scheme shall show the method in which it is proposed to lay out the area to be developed and the purposes for which particular areas are to be utilised.

(3) For the purposes of a town-expansion scheme the provisions of clause (*a*) of sub-section (2) of section 40 shall not be applicable, but the Trust shall be required to supply such details as the Chief Commissioner may consider necessary.

(4) When any such scheme has been notified under section 42, if any person desires to erect, re-erect, add to or alter any building or wall within the area comprised in the said scheme, he shall apply to the Trust for permission to do so.

(5) If the Trust refuses to grant permission to any person to erect, add to or alter any building or wall on his land in the area aforesaid, and if it does not proceed to acquire such land within one year from the date of such refusal, it shall pay reasonable compensation to such person for any damage sustained by him in consequence of such refusal.

Procedure to be followed in framing improvement scheme

Official representation.

33. (1) An *improvement scheme may* be framed upon an official representation by a Municipal Committee or Notified Area Committee or otherwise.

(2) An official representation referred to in sub-section (1) may be made by a Municipal Committee or Notified Area Committee

(*a*) on its own motion, or

(*b*) on a written complaint by the health officer, or

(*c*) in respect of any area comprised in a municipal ward or Notified Area on a written complaint signed by twenty-five or more residents of such ward or Notified Area who are liable to pay any tax assessed upon the annual value of buildings or lands leviable under the Municipalities Act.

(3) If a Municipal Committee or Notified Area Committee decides not to make an official representation on any complaint made to it under clause (*b*) or clause (*c*) of sub-section (2), it shall cause a copy of such complaint to be sent to the Trust, with a statement of the reason for its decision.

Consideration of official representation.

34. (1) The Trust shall consider every official representation made under section 33 and if satisfied as to the truth thereof and as to the sufficiency of its resources, shall decide whether an improvement scheme to carry such representation into effect should be framed forthwith or not and shall forthwith intimate its decision to the Municipal Committee or Notified Area Committee.

(2) If the Trust decides that it is not necessary or expedient to frame an improvement scheme forthwith, it shall inform the Municipal Committee or Notified Area Committee of the reasons for its decision.

(3) If the Trust fails, *for a period of twelve months after the receipt* of any official representation made under section 33, to intimate its decision thereon to the Municipal Committee or Notified Area Committee, or if the Trust intimates to the Municipal Committee or Notified Area Committee, its decision that it is not necessary or expedient to frame an improvement scheme forthwith or decides to frame a scheme of a type other than that recommended by the Municipal Committee or Notified Area Committee, the Municipal Committee or Notified Area Committee may, if it thinks fit, refer the matter to the Chief Commissioner.

(4) The Chief Commissioner shall consider every reference made to him under sub-section (3), and

(*a*) if he considers that the Trust ought, in all the circumstances, to have passed a decision within the period mentioned in sub-section (3), shall direct the Trust to pass a decision within such

further period as the Chief Commissioner may think reasonable, or

(b) if he considers that it is, in all the circumstances, expedient that a scheme should forthwith be framed, shall direct the Trust to proceed forthwith to frame a scheme. Such a direction may prescribe the type of scheme to be framed.

(5) The Trust shall comply with every direction given by the Chief Commissioner under sub-section (4)

Matters to be considered when framing improvement Scheme.

35. When framing an improvement scheme in respect of any area regard shall be had to—

(a) the nature and the conditions of neighbouring areas and of the town as a whole;

(b) the several directions in which the expansion of the town appears likely to take place; and

(c) the likelihood of improvement schemes being required for other parts of the town.

Preparation, publication and transmission of notice as to improvement schemes, and supply of documents to applicants.

36. (1) When any improvement scheme has been framed, the Trust shall prepare a notice, stating—

(a) the fact that the scheme has been framed,

(b) the boundaries of the area comprised in the scheme, and

(c) the place at which particulars of the scheme, a map of the area comprised in the scheme, and a statement of the land which it is proposed to acquire (and of the land in regard to which it is proposed to recover a betterment fee,) may be seen at reasonable hours.

(2) The Trust shall—

(a) cause the said notice to be published weekly for three consecutive weeks in the Gazette and in a local newspaper (if any, with a statement of the period within which objection will be received, and

(b) send a copy of the notice to the Chairman of the Municipal Committee or Notified Area Committee.

(3) The Chairman shall cause copies of all documents referred to in clause (c) of sub-section (1) to be delivered to any applicant on payment of such fees as may be prescribed by rule under section 73.

Transmission to Trust of representation by Municipal or Notified Area Committee as to improvement scheme.

37. The Chairman of a Municipal Committee or Notified Area Committee to whom a copy of a notice has been sent under clause (b) of sub-section (2) of section 36 shall, within a period of sixty days from the receipt of the said copy, forward to the Trust any representation which the Municipal Committee or Notified Area Committee may think fit to make with regard to the scheme.

Notice of proposed acquisition of land.

38. (1) During the thirty days next following the first day on which any notice is published under section 36 in respect of any improvement scheme, the Trust shall serve a notice on—

(a) every person whose name appears in the assessment list of the municipality or Notified Area as being primarily liable to pay any tax assessed upon the annual value of any building or land which it is proposed to acquire in executing the scheme, [or in regard to which the Trust proposes to recover a betterment fee] and

(b) the occupier (who need not be named) of each premises entered in the assessment list of the municipality or Notified

Area which the Trust proposes to acquire in executing the scheme.

(2) Such notice shall—

(a) state that the Trust proposes to acquire such land [or to recover such betterment fee] for the purposes of carrying out an improvement scheme, and

(b) require such person, if he dissents from such acquisition, [or to recover such betterment fee] for the purposes of carrying out an improvement scheme, and

(b) require such person, if he dissents from such acquisition, [or from the recovery of such betterment fee,] to state his reasons in writing within a period of sixty days from service of the notice.

(3) Every such notice shall be signed by, or by the order of, the Chairman.

Furnishing of copies or extracts from the municipal or Notified Area assessment book.

39. The Chairman of a Municipal Committee or Notified Area Committee shall furnish the Chairman of the Trust, at his request, with a copy of, or extracts from, the assessment list of the municipality or Notified Area on payment of such fees as may be prescribed by rule made under section 72.

Abandonment of improvement scheme, or application to Chief-Commissioner to sanction it.

40. (1) After the expiry of the periods respectively prescribed under clause (*a*) of sub-section (2) of section 36, by section 37, and by clause (*b*) of sub-section (2) of section 38, in respect of any improvement scheme the Trust shall consider any objection, representation and statement of dissent received thereunder, and after hearing all persons making any such objection, representation or dissent, who may desire to be heard, the Trust may either abandon the scheme or apply to the Chief Commissioner for sanction to the scheme with such modifications (if any) as the Trust may consider necessary.

(2) Every application submitted under sub-section (1) shall be accompanied by—

(*a*) a description of and full particulars relating to, the scheme, and complete plans and estimates of the cost of executing the scheme;

(*b*) a statement of the reasons for any modifications made in the scheme as originally framed;

(*c*) a statement of objections (if any) received under section 36;

(*d*) any representation received under section 37;

(*e*) a list of the names of all persons (if any) who have dissented, under clause (*b*) of sub-section (2) of section 38, from the proposed acquisition of their land [or from the proposed recovery of a betterment fee] and a statement of the reasons given for such dissent; and

(*f*) a statement of the arrangements made or proposed by the Trust for the re-housing of persons likely to be displaced by the execution of the scheme for whose re-housing provision is required.

(3) When any application has been submitted to the Chief Commissioner under sub-section (1), the Trust shall cause notice of the fact to be published for two consecutive weeks in the Gazette and in a local newspaper or newspapers (if any).

Power to sanction, reject or return improvement scheme.

41. (1) The Chief Commissioner may sanction either with or without modification, or may refuse to sanction, or may return for reconsideration, any improvement scheme submitted to him under section 40.

(2) If a scheme returned for reconsideration under sub-section (1) is modified by the Trust, it shall be republished in accordance with section 36—

(a) in every case in which the modification affects the boundaries of the area comprised in the scheme, or involves the acquisition of any land not previously proposed to be acquired, and

(b) in every other case, unless the modification is, in the opinion of the Chief Commissioner, not of sufficient importance to require republication.

Notification of sanction of improvement scheme

42. (1) Whenever the Chief Commissioner sanctions an improvement scheme he shall announce the fact by notification, and, except in the case of a deferred street scheme, development scheme, or town expansion scheme, the Trust shall forthwith proceed to execute the same.

(2) The publication of a notification under sub-section (1) in respect of any scheme shall be conclusive evidence that the scheme has been duly framed and sanctioned.

Alteration of improvement scheme after sanction.

43. At any time after an improvement scheme has been sanctioned by the Chief Commissioner and before it has been carried into execution, the Trust may alter it.

Provided as follows:—

(a) if any alteration is estimated to increase the estimated net cost of executing a scheme by more than Rs. 50,000 or 5 per cent. of such cost, such alteration shall not be made without the previous sanction of the Chief Commissioner;

(b) if any alteration involves the acquisition, otherwise than by agreement, of any land the acquisition of which has not been sanctioned by the Chief Commissioner, the procedure prescribed in the foregoing section of this Chapter shall, so far as applicable, be followed as if the alteration were a separate scheme.

(c) if, owing to changes made in the course of a scheme any land not previously liable under the scheme to the payment of a betterment fee becomes liable to such payment, the provisions of sections 36, 38 and 40 shall, so far as they are applicable, be followed in any such case.

Combination of improvement schemes

44. Any number of areas in respect of which improvement schemes have been or are proposed to be framed, may at any time be included in one combined scheme.

CHAPTER V

POWERS AND DUTIES OF THE TRUST WHERE A SCHEME HAS BEEN SANCTIONED.

Transfer to Trust for purposes of improvement scheme, of building or land vested in Municipal or Notified Area Committee.

45. (1) Whenever any building, or any street, square or other land, or any part thereof which is vested in a Municipal Committee or Notified Area Committee, is required for executing any improvement scheme, the Trust shall give notice accordingly to the Chairman of the Municipal Committee or Notified Area Committee and such building, street, square, land or part shall thereupon vest in the Trust, subject in the case of any building to the payment to the Municipal Committee or Notified Area Committee of such sum as may be required to compensate it for actual loss resulting from the transfer thereof to the Trust.

(2) If any question or dispute arises as to the sufficiency of the compensation paid or proposed to be paid under sub-section (1), the matter shall be referred to the Chief Commissioner, whose decision shall be final.

Transfer of private street or square to Trust for purposes of improvement scheme.

46. (1) Whenever any street, or square or part thereof which is not vested in a Municipal Committee or Notified Area Committee is required for executing any improvement scheme, the Trust shall cause to be affixed, in a conspicuous place in or near such street, square or part, a notice signed by the Chairman—

(a) stating the purpose for which the street, square or part is required, and

(b) declaring that the Trust will, on or after a date to be specified in the notice, such date being not less than thirty days after the date of the notice, take over charge of such street, square or part from the owner thereof,

and shall simultaneously send a copy of such notice to the owner of such street, square or part.

(2) After considering and deciding all objections (if any) received in writing before the date so specified, the Trust may take over charge of such street, square or part from the owner thereof; and the same shall thereupon vest in the Trust.

(3) When the Trust alters or closes any street or square or part thereof which has vested in it under sub-section (2), it shall pay reasonable compensation to the previous owner for the loss of his rights therein.

(4) If the alteration or closing of any such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto, or to residents in the neighbourhood, the Trust—

(*i*) shall forthwith provide some other reasonable means of access for the use of persons who were entitled to use such street, square or part as a means of access to any property or place, and

(*ii*) if the provision of such means of access does not sufficiently compensate any such owner or resident for such damage or inconvenience, shall also pay him reasonable compensation in money.

Provision of drain or water-work to replace another situated on land vested in the Trust under section 45 or section 46.

47. (1) When any building, or any street, square or other land or any part thereof, has vested in the Trust under section 45 or section 46, no drain or water-work of the Municipal Committee or Notified Area Committee therein shall vest in the Trust until another drain or water-work (as the case may be), if required, has been provided by the Trust, to the satisfaction of the Municipal Committee or Notified Area Committee in place of the former drain or work.

(2) If any question or dispute arises as to whether another drain or water-work is required or as to the sufficiency of any drain or water-work provided by the Trust under sub-section (1), the matter shall be referred to the Chief Commissioner, whose decision shall be final.

Power of Trust to turn or close public street or square vested in it.

48. (1) The Trust may—

(*a*) turn, divert, discontinue the public use of, or permanently close any public streets vested in it, or any part thereof, or

(*b*) discontinue the public use of, or permanently close any public square vested in it, or any part thereof.

(2) Whenever the Trust discontinues the public use of, or permanently closes, any public street vested in it, or any part thereof, it shall pay reasonable compensation to every person who was entitled, otherwise than as a mere licensee, to use such street or part as a means of access and has suffered damage from such discontinuance or closing.

(3) Whenever the Trust discontinues the public use of, or permanently closes, any public square vested in it, or any part thereof, it shall pay reasonable compensation to every person—

(*a*) who was entitled, otherwise than as a mere licensee, to use such square or part as a means of access, or

(*b*) whose immovable property was ventilated by such square or part,

and who has suffered damage—

(*i*) in case (*a*) from such discontinuance or closing, or

(*ii*) in case (*b*) from the use to which the Trust has put such square or part.

(4) In determining the compensation payable to any person under sub-section (2) or sub-section (3), the Trust shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other public street or square at or about the same time that the public street or square or part thereof on account of which the compensation is paid, is discontinued or closed.

(5) When any public street or square vested in the Trust, or any part thereof, is permanently closed under sub-section (1), the Trust may sell or lease so much of the same as is no longer required.

Powers under the Municipalities Act ed in the t.

49. (1) The provisions of the undermentioned sections of the Municipalities Act, and of any byelaws made by the Municipal Committee or Notified Area Committee under clause (*b*) of section 188, sub-section (3) of section 189, and section 190 of the Municipalities Act, shall, so far as may be consistent with the tenor of this Act, apply to all areas in respect of which an improvement scheme is in force, and for the period during which such scheme remains in force all references in the said provisions to the Provincial Government or to the Committee shall be construed respectively as referring to the Chief Commissioner or to the Trust which in respect of any such areas may alone exercise and perform all or any of the powers and functions which under any of the said provisions might have been exercised or performed by the Committee.

Provided that the Trust may delegate to the Chairman or to any officer of the Trust all or any of the powers conferred by these sections.

Sections.

96, [sub-sections (1) and (2)], 102 [for the purpose of providing and maintaining the water supply only], 114, 116, 118, 125, 126, 127, 130, 131, 132 and 133, [only in respect of lighting, drainage and sewerage], 134, 135 and 136 [only in respect of drainage and sewerage connections], 140, 169, 170, 170A, 170B, 170C, 170D, 170E, 171, 172, 173, 174, 176, 177, 181, 182, 189 [sub-sections (1), (2), and (4), 190 [sub-section (2)], 191, 192, 192A, 193, 193A, 194, 195, 195A, 196, 203, 204, 205, 209, 212, 213, 214, 215, 216, 217, 218, 219, 219A, 220, 221, 222, 223, 224, 225, 226, 228, 229, 230.

(2) The Trust may make byelaws for any area comprised in an improvement scheme which is outside the limits of a Municipality or Notified Area :—

(*a*) generally for carrying out the purpose of this Act, and

(*b*) in particular and without prejudice to the generality of the aforesaid powers the Trust may make byelaws regarding any of the matters referred to in Chapter X of the Municipalities Act.

The provisions of sections 199 to 202 of the Municipalities Act shall, so far as may be consistent with the tenor of this Act, be applicable to all byelaws made by the Trust under this sub-section and all references in the said section to the Provincial Government or to the Committee shall be construed, respectively, as referring to the Chief Commissioner or to the Trust.

Facilities for movement of the population.

Power of the Trust for facilitating movement of the population.

50. With a view to facilitating the movement of the population in and around area to which Act has been extended, the Trust may from time to time,—

(1) subject to any conditions it may think fit to impose,—

(*a*) guarantee the payment, from the funds at its disposal, of such sums as it may think fit, by way of interest on capital expended on the construction, maintenance or working of means of locomotion, or

(*b*) make such payments as it may think fit from the said funds, by way of subsidy to persons undertaking to provide, maintain, and work any means of locomotion, or

(2) either singly or in combination with any other persons construct, maintain, and work any means of locomotion under the provisions of any law applicable thereto, or

(3) construct, or widen, strengthen or otherwise improve, bridges.

Provided that no guarantee or subsidy shall be made under sub-section (1), and no means of locomotion shall be constructed, maintained, or worked under sub-section (2), without the sanction of the Chief Commissioner.

Surveys.

51. The Trust may—

Power to make surveys or contribute towards their cost.

(a) cause a survey of any land to be made, whenever it considers that a survey is necessary or expedient for carrying out any of the purposes of this Act, or

(b) contribute towards the cost of any such survey made by any other local authority.

Power of entry

52. (1) The Chairman may, with or without assistants or workmen, enter into or upon any land, in order— Power of entry.

(a) to make any inspection, survey, measurement, valuation or enquiry,

(b) to take levels,

(c) to dig or bore into the sub-soil,

(d) to set out boundaries and intended lines of work,

(e) to mark such levels, boundaries, and lines by marks and cutting trenches, or

(f) to do any other thing,

whenever it is necessary to do so for any of the purposes of this Act or any rule made or scheme sanctioned hereunder or any scheme which the Trust intended to frame hereunder:

Provided as follows:—

(a) except when it is otherwise specially provided by a rule no such entry shall be made between sunset and sunrise,

(b) except when it is otherwise specially provided by a rule no building which is used as a human dwelling shall be so entered, unless with the consent of the occupier thereof without giving the said occupier at least twenty-four hours previous written notice of the intention to make such entry;

(c) sufficient notice shall in every instance be given, even when any premises may otherwise be entered without notice to enable the inmates of any apartment appropriated to females to remove to some part of the premises where their privacy need not be disturbed,

(d) due regard shall always be had, so far as may be compatible with the exigencies of the purpose for which the entry is made to the social and religious usages of the occupants of the premises entered.

(2) Whenever the Chairman enters into or upon any land in pursuance of sub-section (1), he shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid; and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Trust, whose decision shall be final

(3) It shall be lawful for any person authorized under sub-section (1) to make an entry for the purpose of inspection or search to open or cause to be opened a door, gate or other barrier—

(a) if he considers the opening thereof necessary for the purpose of such entry, inspection or search, and

(*b*) if the owner or occupier is absent, or being present refuse to open such door, gate or barrier,

Reference of disputes to Tribunal.

53. (1) If any question or dispute arises—

(*a*) between the Trust and the previous owner of any street or square or part thereof which has vested in the Trust under section 46 and has been altered, or closed by it, as to the sufficiency of the compensation paid or proposed to be paid under sub-section (3) of that section, or

(*b*) between the Trust and person who was entitled otherwise than as a mere licensee, to use as a means of access any street or part thereof which has vested in the Trust under section 46—

(*i*) as to whether alteration or closing of such street, square or part causes damage or substantial inconvenience to owners of property adjacent thereto or to residents in the neighbourhood, or

(*ii*) as to whether the other means of access provided or proposed to be provided under sub-section (4) of the said section 46 are reasonably sufficient, or

(*iii*) as to the sufficiency of any compensation paid or proposed to be paid under the said sub-section (4), or

(*c*) between the Trust and any person as to the sufficiency of any compensation paid or proposed to be paid to him under section 26, 30, 32, 48, or 101, the matter shall be determined by the Tribunal, if referred to it either by the Trust or by the claimant within a period of three months from the date on which the said person was informed of the decision of the Trust fixing the amount of compensation to be paid to him or of the rejection of his claim to compensation by the Trust, and the determination of the Tribunal shall be final:

Provided that the Tribunal shall not entertain the application of any claimant who has not applied to the Trust for compensation within three months of the date on which his claim to compensation accrued.

(2) If a reference to the Tribunal be not made within the period prescribed by sub-section (1) the decision of the Trust shall be final.

(3) For the purpose of determining any matter referred to it under sub-section (1), the Tribunal shall have all the powers with regard to witnesses, documents, and costs which it would have if the Land Acquisition Act, 1894, as modified by section 58 of this Act, were applicable to the case.

Vesting in Municipal or Notified Area Committee of streets laid out or altered, and open spaces provided by the Trust under an improvement scheme.

54. (1) Whenever a Municipal Committee or Notified Area Committee is satisfied—

(*a*) that any street laid out or altered by the Trust, has been duly levelled, paved, metalled flagged, channelled, sewered, and drained in the manner provided in the plans sanctioned by the Chief Commissioner under this Act, and

(*b*) that such lamps, lamp-posts, and other apparatus as the Municipal Committee or Notified Area Committee may consider necessary for lighting of such street and as ought to be provided by the Trust have been so provided, and

(*c*) that water and other sanitary conveniences ordinarily provided in a municipality or Notified Area have been duly provided in such street,

the Municipal Committee or Notified Area Committee after obtaining the assent of the Trust, or failing such assent, the assent of the Chief Commissioner under sub-section (3), shall by a written notice affixed in some conspicuous position in such street, declare the street to be a public street; and the street shall thereupon vest in the Municipal Committee or Notified Area Committee, and shall thenceforth be maintained, kept in repair, lighted, and cleansed by Municipal Committee or Notified Area Committee.

(2) When any open space for purposes of ventilation or recreation has been provided by the Trust in executing any improvement scheme, it shall, on completion, be transferred to the Municipal Committee by resolution of the Trust and shall thereupon vest in and be maintained at the expense of, the Municipal Committee or Notified Area Committee.

Provided that the Municipal Committee or Notified Area Committee may require the Trust, before any such open space is so transferred, to enclose, level, turf, drain, and lay out such space and provide footpaths therein, and, if necessary, to provide lamps and other apparatus for lighting it.

(3) If any difference of opinion arises between the Trust and a Municipal Committee or Notified Area Committee in respect of any matter referred to in the foregoing provisions of this section, the matter shall be referred to the Chief Commissioner, whose decision shall be final.

CHAPTER VA.

GOVERNMENT PROPERTY HELD BY TRUST

Power of Trust to hold Government property.

54-A. (1) The Government may, upon such terms as may be agreed upon between the Government and the Trust, place at the disposal of the Trust any properties, or any funds or dues, of the Government and thereupon the Trust shall hold or realise such properties, funds and dues in accordance with such terms.

(2) If any immovable property, held by the Trust under sub-section (1) is required by the Government for administrative purposes, the Trust shall transfer the same to the Chief Commissioner upon payment of all costs incurred by the Trust in acquiring, reclaiming or developing the same together with interest thereon at such rate as may be fixed by the Chief Commissioner calculated from the day on which this Act comes into force or from the date on which such costs were incurred, whichever is the later.

The transfer of any such immovable property, shall be notified in the gazette and such property shall thereupon vest in the Chief Commissioner from the date of the notification.

Recovery of dues.

54-B. (1) Any sum of money due to or claimed by the Trust in respect of any properties, funds, or dues placed at the disposal of the Trust under sub-section (1) of section 54-A may be recovered by the Trust as if it was an arrear of land revenue.

(2) The Chief Commissioner may by notification prescribe by whose orders and on whose application such money may be recovered.

CHAPTER VI

ACQUISITION AND DISPOSAL OF LAND

Acquisition by agreement

Power to purchase or lease by agreement.

55. The Trust may enter into an agreement with any person for the purchase, leasing or exchange by the Trust from such person of any land which the Trust is authorized to acquire, or any interest in such land.

Compulsory acquisition

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

56. The Trust may, with the previous sanction of the Chief Commissioner, acquire land under the provisions of the Land Acquisition Act 1894, for carrying out any of the purposes of this Act.

Tribunal to be constituted.

57. A Tribunal shall be constituted, as provided in section 59 for the purpose of performing the functions of the Court in reference to the acquisition of land for the Trust, under the Land Acquisition Act, 1894.

Modifications of the Land Acquisition Act, 1894.

58. For the purpose of acquiring land under the said Act for the Trust—

(a) the Tribunal shall (except for the purposes of section 54 of that Act be deemed to be the court, and the President of the Tribunal shall be deemed to be the Judge, under the said Act;

(*b*) the said Act shall, in respect of any improvement scheme mentioned in this Act, be subject to the further modifications indicated in the Schedule;

(*c*) the President of the Tribunal shall have power to summon and enforce the attendance of witnesses, and to compel the production of documents, by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court, under the Code of Civil Procedure, 1908; and

(*d*) the award of the Tribunal shall be deemed to be the award of the Court under the said Land Acquisition Act, 1894, and shall be final.

Constitution of Tribunal

59. (1) The Tribunal shall consist of a President and two assessors.

(2) The President of the Tribunal shall be either—

(*a*) a member of the judicial branch of the Imperial or of a Provincial Civil Service, of not less than ten years' standing in such service, who has for at least three years served as District Judge or held judicial office not inferior to that of a subordinate Judge of the first class, or

(*b*) a barrister, advocate or pleader of not less than ten years' standing who has practised as an advocate or pleader in the High Court of Judicature at Lahore or in the Court of the District Judge at Delhi.

(3) The President of the Tribunal and one of the assessors shall be appointed by the Chief Commissioner, and the other assessor shall be appointed by the Municipal Committee of Delhi, or in default of appointment by the Municipal Committee of Delhi within two months of their being asked by the Chief Commissioner to make such appointment, by the Chief Commissioner:

Provided that no person shall be eligible for appointment as a member of the Tribunal if he is a Trustee or would if he were a Trustee, be liable to removal by the Chief Commissioner under section 10.

(4) The term of office of each member of the Tribunal shall be two years, but any member shall, subject to the proviso to sub-section (3), be eligible for re-appointment at the end of that term

(5) The Chief Commissioner may, on the ground of incapacity or misbehaviour or for any other good and sufficient reason cancel the appointment of any person as member of the Tribunal

(6) When any person ceases for any reason to be a member of the Tribunal, or when any member is temporarily absent in consequence of illness or any unavoidable cause the authority which appointed him shall forthwith appoint a fit person to be a member in his place. Where the authority so appointing was the Municipal Committee of Delhi and the Municipal Committee of Delhi fails to make a fresh appointment within two months of being asked to do so by the Chief Commissioner, the appointment may be made by the Chief Commissioner

Remuneration of members of Tribunal

60 Each member of the Tribunal shall be entitled to receive such remuneration, either by way of monthly salary or by way of fees, or partly in one of those ways and partly in the other, as the Chief Commissioner may prescribe

Officers and servants of Tribunal.

61. (1) The President of the Tribunal shall, from time to time, prepare a statement showing

(*a*) the number and grades of the clerks and other officers and servants who he considers should be maintained for carrying on the business of the Tribunal;

(*b*) the amount of the salary to be paid to each such officer and servant

(2) All statements prepared under sub-section (1) shall be subject to the previous sanction of the Chief Commissioner.

(3) Subject to any directions contained in any statement prepared under sub-section (1), and to rules made under section 72, the power of appointing, promoting, and granting leave to officers and servants of the Tribunal, and the power of reducing, suspending or dismissing them, shall vest in the President of the Tribunal.

Mode of payment

62. The remuneration prescribed under section 60 for members of the Tribunal, and the salaries, leave allowances and acting allowances prescribed under this Act for officers and servants of the Tribunal, shall be paid by the Trust to the President of the Tribunal for distribution.

Power to make rules for Tribunal

63. (1) The Chief Commissioner may from time to time make rules, not repugnant to the Code of Civil Procedure, 1908, for the conduct of business by a Tribunal established under this Act.

(2) All such rules shall be published by notification.

Award of Tribunal how to be determined

63. (1) For the purpose of determining the award to be made by the Tribunal under the Land Acquisition Act, 1894,

(*a*) if there is any disagreement as to the measurement of land, or the amount of compensation or costs to be allowed, the opinion of the majority of the members of the Tribunal shall prevail,

(*b*) questions relating to the determination of the persons to whom compensation is payable, or the apportionment of compensation, may be tried and decided in the absence of the assessors if the President of the Tribunal considers their presence unnecessary, and, when so tried and decided, the decision of the President shall be deemed to be the decision of the Tribunal, and

(*c*) notwithstanding anything contained in the foregoing clauses the decision on all questions of law and procedure shall rest solely with the President of the Tribunal.

(2) Every award of the Tribunal, and every order made by the Tribunal for the payment of money, shall be enforced by a Court of Small Causes within the local limits of whose jurisdiction it was made as if it were a decree of that Court.

Abandonment of Acquisition

Abandonment of acquisition in consideration of special payment

64. A. (1) In any case in which the Chief Commissioner has sanctioned the acquisition of land, in any area comprised in an improvement scheme, which is not required for the execution of the scheme, the owner of the land, or any person having an interest therein, may make an application to the Trust, requesting that the acquisition of the land should be abandoned in consideration of the payment by him of a sum to be fixed by the Trust in that behalf.

(2) The Trust shall admit every such application if it

(a) reaches the Trust before the time fixed by the Collector under section 9 of the Land Acquisition Act, 1894, for making claims in reference to the land, and

(b) is made by all persons who have interests in the land greater than a lease for years having seven years to run.

(3) If the Trust decides to admit any such application, it shall forthwith inform the Collector, and the Collector shall thereupon stay for a period of three months all further proceedings for the acquisition of the land, and the Trust shall proceed to fix the sum in consideration of which the acquisition of the land may be abandoned.

(4) Within the said period of three months, or, with the permission of the Trust, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, the person from whom the Trust has arranged to accept the sum so fixed may, if the Trust is satisfied that the security offered by him is sufficient, execute an agreement with the Trust, either—

(*i*) to pay the said sum three years after the date of the agreement, or

(*iii*) to leave the said sum outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at such rate not exceeding six *per cent. per annum* as the Chief Commissioner may fix by notification and to make the first annual payment of such interest four years after the date of the agreement:

Provided that the Trust may, at any time before the Collector has taken possession of the land under section 16 of the Land Acquisition Act, 1894, accept immediate payment of the said sum instead of an agreement as aforesaid.

(5) When any agreement has been executed in pursuance of sub-section (4), or when any payment has been accepted in pursuance of the proviso to that sub-section, in respect of any land, the proceedings for the acquisition of the land shall be deemed to be abandoned.

(6) Every payment due from any person under any agreement executed under sub-section (4) shall be a charge on the interest of that person.

(7) If any instalment of interest payable under an agreement executed in pursuance of clause (*ii*) of sub-section (4) be not paid on the date on which it is due, the sum fixed by the Trust under sub-section (3) shall be payable on that date, in addition to the said instalment.

(8) At any time after an agreement has been executed in pursuance of clause (*ii*) of sub-section (4), any person may pay off the charge created thereby, with interest, at the rate fixed under the provisions of that clause, up to the date of such payment.

(9) When an agreement in respect of any land has been executed by any person in pursuance of sub-section (4) no suit with respect to such agreement shall be brought against the Trust by any other person (except an heir, executor or administrator of the person first aforesaid) claiming to have an interest in the land.

Betterment fee.

Payment of betterment fee.

64.-B. (1) When by the making of any improvement scheme, any land in the area comprised in the scheme which is not required for the execution thereof will, in the opinion of the Trust, be increased in value, the Trust, in framing the scheme, may in lieu of providing for the acquisition of such land, declare that a betterment fee shall be payable by the owner of the land or any person having an interest therein in respect of the increase in value of the land resulting from the execution of the scheme.

(2) Such betterment fee shall be an amount equal to one-half of the increase in value of the land resulting from the execution of the scheme, and shall be calculated upon the amount by which the value of the land on the completion of the execution of the scheme estimated as if the land were clear of buildings exceeds the value of the land prior to the execution of the scheme estimated in like manner.

Assessment of betterment fee by Trust.

64.-C. (1) When it appears to the Trust that an improvement scheme is sufficiently advanced to enable the amount of the betterment fee to be determined, the Trust shall by a resolution passed in this behalf declare that for the purpose of determining such fee the execution of the scheme shall be deemed to have been completed and shall thereupon give notice in writing to every person on whom a notice in respect of the land to be assessed has been served under clause (*a*) of sub-section (1) of section (38) that the Trust proposes to assess the amount of the betterment fee payable in respect of such land under section 64-B.

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

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

(4) If the person concerned dissents from the assessment made by the Trust or fails to give the Trust the information required by sub-section (2) within the period specified therein, the matter shall be determined by arbitrators in the manner provided by section 64-D

Settlement of betterment fee by arbitrators

64-D. (1) For the determination of the matter referred to in sub-section (4) of section 64-C, the Chief Commissioner shall constitute a panel of arbitrators consisting of two parts of which one part shall be composed of persons having special knowledge of the valuation of land and the second part of other suitable persons

(2) When the Trust have in accordance with the provisions of section 64-C, assessed the amount of betterment fee payable by all persons in respect of land in the area comprised in the scheme the Trust shall serve a notice on all those persons who have dissented from the assessment made by the Trust, requiring them to meet at such time and place as may be fixed by the Chairman for the purpose of electing an arbitrator

(3) For each scheme there shall be a body of two arbitrators one of whom shall be elected by vote by the persons present at the meeting referred to in sub-section (2) from one part of the panel and the other shall be appointed by the Chief Commissioner from the other part of the panel

Provided that for the purposes of a particular scheme the Chief Commissioner may prior to the election referred to in this sub-section if he thinks fit, modify either part of the panel

(4) In the event of a difference of opinion on any matter between the two arbitrators a third arbitrator shall be selected by lot from the first part of the panel and the matter shall be decided by the votes of the *majority of the three arbitrators*

(5) If an arbitrator dies resigns becomes disqualified is removed under-section (6), or refuses to perform or in the opinion of the Chief Commissioner neglects to perform or becomes incapable of performing his functions, the authority who elected or appointed him shall forthwith elect or appoint a fit person to take the place of such arbitrator

(6) If the Chief Commissioner is satisfied after such enquiry as he thinks fit that the arbitrator has misconducted himself he may remove him

(7) When the arbitrators have made their award under section 64 D they shall sign it and forward it to the Trust and such award shall subject to the provisions of sub section (8) be final and conclusive and binding on all persons

(8) If the Chief Commissioner is satisfied after such inquiry as he thinks fit that an award has been improperly procured or that an arbitrator has misconducted himself in connection with an award the Chief Commissioner may set aside the award

Fees for arbitrators

64-E. The Trust shall pay to each arbitrator a fee to be determined by the Chief Commissioner in respect of the whole of the scheme for which his services are utilized

Proceedings of arbitrators

64-F. Notwithstanding anything contained in any other enactment the proceedings of arbitrators under section 64 D shall be governed by rules to be made in this behalf under section 72

Provided that every party to such proceedings shall be entitled to appear before the arbitrators either in person or by his authorized agent

Trust to give notice to persons liable to payment of

64-G. When the amount of all betterment fees payable in respect of land in the area comprised in the scheme has been determined under section 64-C, or section 64-D, as the case may be the Trust shall, by a notice in writing to be served on all persons liable to such payment, fix a date by

betterment fee.

which such payment shall be made, and interest at the rate of six *per cent per annum* upon any amount outstanding shall be payable from that date.

Agreement to make payment of betterment fee a charge on land.

64-H. (1) Any person liable to the payment of a betterment fee may, at his option, instead of making a payment thereof to the Trust, execute an agreement with the Trust to leave the said payment outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at the rate of six *per cent per annum*, the first annual payment of such interest to be made one year from the date referred to in section 64-G.

(2) Every payment due from any person in respect of a betterment fee and every charge referred to in sub-section (1) shall, notwithstanding anything contained in any other enactment and notwithstanding the existence of any mortgage or other charge whether legal or equitable created either before or after the extension of this section to the Province of Delhi, be the first charge upon the interest of such person in such land.

(3) The provisions of sub-sections (7), (8), and (9) of section 64-A relating, in the case of the payments mentioned in that section, to the non-payment of instalments of interest, the paying off of the charge with interest and the restrictions in respect of suits against the Trust shall apply, *mutatis mutandis*, to the payment of the money payable under an agreement made in pursuance of sub-section (1) and of the interest payable in respect thereof.

Recovery of special payments and betterment fees

Recovery of money payable in pursuance of sections 64A, 64C, 64D or 64H

64-I. All money payable in respect of any land by any person under an agreement executed in pursuance of sub-section (4) of section 64-A, or by any person in respect of a betterment fee under section 64-C or section 64-D, or by any person under an agreement executed in pursuance of section 64-H sub-section (1), shall be recoverable by the Trust (together with interest, up to the date of realization at the rate of six *per cent per annum* from the said person or his successor in interest in such land, in the manner provided by the Punjab Municipal Act 1911, as extended to the Province of Delhi, for the recovery of taxes, and for the purposes of such recovery the Trust shall be deemed to be the Committee,

and, if not so recovered, the Chairman may, after giving public notice of his intention to do so and not less than one month after the publication of such notice, sell the interest of the said person or successor in such land by public auction, and may deduct the said money and the expenses of the sale from the proceeds of the sale and shall pay the balance (if any) to the defaulter.

Acquisition on fresh declaration

Agreement or payment not to bar acquisition under a fresh declaration.

64-J. If any land, in respect of which an agreement has been executed or a payment has been accepted in pursuance of sub-section (4) of section 64-A, or in respect of which the payment of a betterment fee has been accepted in pursuance of sub-section (3) of section 64-C or has been made after its determination under section 64-D or in respect of which an agreement for such payment has been executed under section 64-H, be subsequently required for any of the purposes of this Act, the agreement or payment shall not be deemed to prevent the acquisition of the land in pursuance of a fresh declaration published under section 6 of the Land Acquisition Act, 1894.

Disposal of land

Power to dispose of land

65. Subject to any rules made by the Chief Commissioner under section 72 of this Act, the Trust may retain or may let on hire lease, sell exchange or otherwise dispose of, any land vested in or acquired by it under this Act.

66. Omitted

CHAPTER VII

FINANCE.

67. The Trust shall be deemed to be a local authority, as defined in the Local Authorities Loans Act, 1914, for the purpose of borrowing money under that Act, and the undertaking of any work under section 22A of this

Act, and the making and execution of any improvement scheme mentioned in this Act, shall be deemed to be a work which such local authority is legally authorized to carry out.

Custody and investment of Trust funds.

68. All moneys at the credit of the Trust shall be kept in the Government Treasury:

Provided that the Trust may, with the previous sanction of the Chief Commissioner, invest any such moneys as are not required for immediate expenditure in any of the securities prescribed in section 20 of the Indian Trusts Act, 1882.

69—71. Omitted.

CHAPTER VIII.

RULES

Power of Chief Commissioner to make rules.

72. (1) In addition to the power conferred by section 63, the Chief Commissioner may make rules consistent with this Act—

(*a*) as to the authority on which money may be paid from the Trust funds,

(*b*) for prescribing the fees payable for a copy of, or extracts from, the assessment list of a municipality or Notified Area furnished to the Chairman under section 39,

(*c*) as to the conditions on which officers and servants of the Trust appointed to offices requiring professional skill may be appointed, suspended or dismissed,

(*d*) as to the intermediate office or offices (if any) through which correspondence between the Trust and the Chief Commissioner or his officers shall pass,

(*e*) as to the accounts to be kept by the Trust, as to the manner in which such accounts shall be audited and published, and as to the powers of auditors in respect of disallowance,

(*f*) as to the authority by whom, the conditions subject to which and the mode in which contracts may be entered into and executed on behalf of the Trust,

(*g*) as to the preparation of estimates of income and expenditure of the Trust and as to the authority by whom, and the conditions subject to which, such estimates may be sanctioned,

(*h*) as to the returns, statements and reports to be submitted by the Trust,

(*i*) to prescribe and define the mutual relations to be observed between the Trust and other local authorities in any matter in which they are jointly interested,

(*j*) for regulating the grant of leave of absence, leave allowances and acting allowances to the Chairman and officers and servants of the Trust and of the Tribunal,

(*k*) for establishing and maintaining a provident or annuity fund, for compelling all or any of the officers in the service of the Trust or of the Tribunal (other than any servant of the Government in respect of whom a contribution is paid under section (93) to contribute to such fund at such rates and subject to such conditions as may be prescribed by such rules and for supplementing such contributions out of the funds of the Trust:

Provided that a Government servant employed as officer or servant of the Tribunal shall not be entitled to leave or leave allowances otherwise than as may be prescribed in any general or special orders of the Government,

(l) for determining conditions under which the officers and servants of the Trust or of the Tribunal, or any of them, shall on retire-

ment receive gratuities or compassionate allowances and the amount of such gratuities and compassionate allowances:

Provided that it shall be at the discretion of the Trust or of the Tribunal, as the case may be, to determine whether all such officers and servants or any, and, if so, which of them, shall become entitled on retirement to any such gratuities or compassionate allowances as aforesaid,

(*m*) generally for the guidance of the Trust and public officers in all matters connected with the carrying out of the provisions of this Act.

(2) The power of the Chief Commissioner to make rules under this section is subject to the condition of the rules being made after previous publication and of their not taking effect until they have been published in the Gazette.

Power of the Trust to make rules.

73. The Trust may from time to time with the previous sanction of the Chief Commissioner make rules consistent with this Act and with any rules made under this Act by the Chief Commissioner,

(*a*) for fixing the amount of security to be furnished by any officer and servant of the Trust from whom it may be deemed expedient to require security,

(*b*) for associating members with the Trust under section 14,

(*c*) for appointing persons other than Trustees and persons associated with the Trust under section 14 to be members of committees under section 15,

(*d*) for regulating the delegation of powers or duties of the Trust to committees or to the chairman,

(*e*) for the guidance of persons employed by it under this Act,

(*f*) for prescribing the fees payable for copies of documents delivered under sub-section (4) of section 36 or under section 74,

(*g*) for the management, use, and regulation of dwellings constructed under any improvement scheme,

(*h*) generally for carrying out the purposes of this Act.

Printing and sale of copies of rules.

74. (1) The Chairman shall cause all rules made under section 72 or section 73 and for the time being in force to be printed and shall cause printed copies thereof to be delivered to any applicant on payment of such fee as may be prescribed.

(2) Notice of the fact of copies of rules being obtainable at the said price and of the place where and the person from whom the same are obtainable shall be given by the Chairman by advertisement in a local newspaper or newspapers (if any).

Power of Chief Commissioner to cancel rules made under section 73.

75. The Chief Commissioner may, after previous publication of his intention, rescind any rule made by the Trust which he has sanctioned, and thereupon the rule shall cease to have effect.

CHAPTER IX

PROCEDURE AND PENALTIES

Signature and service of notices or bills.

Stamping Signature on notices or bills.

76. Every notice or bill which is required under this Act to bear the signature of the Chairman or of any other Trustee or of any officer or servant of the Trust shall be deemed to be properly signed if it bears a *facsimile* of the signature of the Chairman or of such officer or servant, as the case may be, stamped thereupon.

Method of giving public notice.

77. Subject to the provisions of this Act, every public notice required under this Act shall be deemed to have been given if it is published in some local newspaper (if any) and posted upon a notice board to be exhibited for

public information at the building in which the meetings of the Trust are ordinarily held.

Service of notice.

78. (1) Every notice other than a public notice, and every bill, issued under this Act, shall, unless it is under this Act otherwise expressly provided, be served or presented—

(*a*) by giving or tendering the notice or bill or sending it by post, to the person to whom it is addressed, or

(*b*) if such person is not found, then by leaving the notice or bill at his last known place of abode, if within the limits of a municipality or Notified Area, or by giving or tendering it to some adult male member or servant of his family, or by causing it to be fixed on some conspicuous part of the building or land (if any) to which it relates.

(2) When a notice is required or permitted under this Act to be served upon an owner or occupier of a building or land, it shall not be necessary to name the owner or occupier therein, and the service thereof, in cases not otherwise specially provided for in this Act, shall be effected either—

(*a*) by giving or tendering the notice, or sending it by post to the owner, or occupier, or if there be more owners or occupiers than one, to any one of them, or

(*b*) if no such owner or occupier is found, then by giving or tendering the notice to an adult male member or servant of his family, or by causing the notice to be fixed on some conspicuous part of the building or land to which the same relates.

(3) Whenever the person on whom a notice or bill is to be served is a minor, service upon his guardian or upon an adult male member of servant of his family shall be deemed to be service upon the minor.

Disobedience to Act or to notice.

79. Where under this Act or a notice issued thereunder the public or any person is required to do or to refrain from doing anything, a person who fails to comply with such requisition shall, if such failure is not an offence punishable under any other section, be liable on conviction by a Magistrate to a fine not exceeding five hundred rupees for every such failure and in the case of a continuing breach, to a further fine which may extend to five rupees for every day after the date of the first conviction during which the offender is proved to have persisted in the breach.

Powers of Trust to execute works on failure to comply with notice.

80. If a notice has been given under this Act to a person requiring him to execute a work in respect of any property, movable or immovable public or private, or to provide or to do or refrain from doing anything within a time specified in the notice and if such person fails to comply with such notice, then the Trust may cause such work to be executed or such thing to be provided or done, and may recover all expenses incurred by it on such account from the said person in the manner provided by sub-section (4) of section 222 of the Municipalities Act.

Liability of occupier to pay in default of owner.

81. (1) If the person to whom the notice mentioned in section 80 has been given is the owner of the property in respect of which it is given, the Trust may (whether any action or other proceeding has been brought or taken against such owner or not) require the person (if any) who occupies such property or a part thereof under such owner, to pay to the Trust instead of to the owner the rent payable by him in respect of such property, as it falls due up to the amount recoverable from the owner under section 80, and any such payment made by the occupier to the Trust shall in the absence of any contract between the owner and the occupier to the contrary, be deemed to have been made to the owner of the property.

(2) For the purpose of deciding whether action should be taken under sub-section (1) the Trust may require an occupier of property to furnish information as to the sum payable by him as rent on account of such property and as to the name and address of the person to whom it is pay-

able; and if the occupier refuses to furnish such information he shall be liable for the whole of the expenses as if he were the owner.

(3) All money recoverable by the Trust under this section shall be recoverable in the manner provided by sub-section (4) of section 222 of the Municipalities Act.

Right of occupier to execute works in default of owner.

82. Whenever default is made by the owner of a building or land in the execution of a work required under this Act to be executed by him, the occupier of such building or land may, with the approval of the Trust cause such work to be executed and the expense thereof shall, in the absence of any contract to the contrary, be paid to him by the owner, or the amount may be deducted out of the rent from time to time becoming due from him to such owner

Procedure upon opposition to execution by occupier.

83. (1) If, after receiving information of the intention of the owner of any building or land to take any action in respect thereof in compliance with a notice issued under this Act, the occupier refuses to allow such owner to take such action, the owner may apply to a Magistrate

(2) The Magistrate upon proof of such refusal may make an order in writing requiring the occupier to allow the owner to execute all such works, with respect to such building or land, as may be necessary for compliance with the notice, and may also, if he thinks fit, order the occupier to pay to the owner the costs relating to such application or order.

(3) If, after the expiration of eight days from the date of the Magistrate's order, the occupier continues to refuse to allow the owner to execute such work the occupier shall be liable, upon conviction, to a fine which may extend to twentyfive rupees for every day during which he has so continued to refuse

(4) Every owner, during the continuance of such refusal, shall be discharged from any penalties to which he might otherwise have become liable by reason of his default in executing such works

Recovery of cost of work by the occupier.

84. When the occupier of a building or land has, in compliance with a notice issued under this Act, executed a work for which the owner of such building or land is responsible, either in pursuance of the contract of tenancy or by law, he shall, in the absence of any contract to the contrary, be entitled to recover from the owner by deduction from the rent payable by him or otherwise the reasonable cost of such work

Recovery of expenses of removal by Trust.

85. The expenses incurred by the Trust in the event of a written notice under section 114 or 171 of the Municipalities Act as applied by section 49 of this Act not being complied with, under section 80 of this Act shall be recoverable by sale of the materials removed, and if the proceeds of such sale do not suffice, the balance shall be recoverable from the owner of the said materials in the manner provided by sub-section (4) of section 222 of the Municipalities Act.

Relief to agents and trustees.

86. (1) When a person, by reason of his receiving, or being entitled to receive the rent of immovable property as trustee or agent of a person or society would, under this Act be bound to discharge an obligation imposed by this Act on the owner of the property and for the discharge of which money is required he shall not be bound to discharge the obligation unless he has, or but for his own improper act or default might have had, in his hands funds belonging to the owner sufficient for the purpose.

(2) When an agent or trustee has claimed and established his right to relief under this section, the Trust may give him notice to apply to the discharge of such obligation as aforesaid the first moneys which come to his hands on behalf, or for the use, of the owner, and should he fail to comply with such notice, he shall be deemed to be personally liable to discharge such obligation

Application of section 222, Municipalities Act.

87. Wherever, in this Act or in any section of the Municipalities Act it is provided that any sum may be recovered under sub-section (4) of section 222 of the Municipalities Act, then in applying the provisions of that sub-section the Trust shall be deemed to be the committee.

Penalty for removing

88. If any person, without lawful authority,—

(a) removes any fence, or any timber used for propping or support-

ing any building, wall or other thing, or extinguishes any light, set up at any place where the surface of a street or other ground has been opened or broken up by the Trust for the purpose of carrying out any work; or

(*b*) infringes any order given, or removes any bar, chain or post fixed by the Trust for the purpose of closing any street to traffic,

he shall be punishable with fine which may extend to fifty rupees.

Power to prevent or demolish building in contravention of sections 29, 30 & 32

89. If any person without the permission of the Trust erects re-erects, adds to or alters any building or wall so as to make the same project beyond the street alignment prescribed under section 29 or the street alignment or building line shown in any plan finally adopted by the Trust under section 30, or erects, adds to or alters any building or wall in the area specified in sub-section (4) of section 32 the Chairman of the Trust may, by a written notice,—

(*a*) direct that the building, alteration or addition be stopped, and

(*b*) require such building, alteration or addition, to be altered or demolished as he may deem necessary

Penalty for obstructing contractor or removing mark

90. If any person –

(*a*) obstructs, or molests any person with whom the Trust 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 authorized 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

Disposal of fines and damages

Fines and damages to be paid to Trust

91. All fines and damages realized in connection with prosecutions under this Act shall be paid to the Trust

CHAPTER X.

SUPPLEMENTAL PROVISIONS

Trustees etc., deemed public servants

92. Every trustee and every officer and servant of the Trust and every member and officer and servant of the Tribunal, shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code

Contributions towards leave allowances and pensions of Government servants

Contribution by Trust towards leave allowances and pensions of Government servants

93. The Trust shall be liable to pay such contributions for the leave allowances and pension of any Government servant employed as Chairman or as an officer or servant of the Trust or as a member or officer or servant of the Tribunal, as may be prescribed in any general or special orders of the Government

Legal Proceedings

Authority for prosecutions

94. Unless otherwise expressly provided no Court shall take cognizance of any offence punishable under this Act except on the complaint of or upon information received from the Trust or some person authorized by the Trust by general or special orders in this behalf

Powers of Chairman as to institution etc., of legal proceedings and obtaining legal advice.

95. The Chairman may, subject to the control of the Chief Commissioner—

(*a*) institute, defend or withdraw from legal proceedings under this Act,

(*b*) compound any offence against this Act,

(*c*) admit, compromise or withdraw any claim made under this Act, and

(*d*) obtain such legal advice and assistance as he may from time to time think it necessary or expedient to obtain, or as he may be desired by the Trust to obtain, for any of the purposes referred to in the foregoing clauses of this section, or for securing the lawful exercise or discharge of any power or duty vested in or imposed upon the Trust or any officer or servant of the Trust.

Indemnity to Trust

96. No suit shall be maintainable against the Trust, or any trustee, or any officer or servant of the Trust or any person acting under the direction of the Trust or of the Chairman or of any officer or servant of the Trust in respect of anything lawfully and in good faith and with due care and attention done under this Act

Notice of suit against Trust etc

97. (1) No suit shall be instituted against the Trust or any Trustee, or any person associated with the Trust under section 14 or any member of a committee appointed under section 15, or any officer or servant of the Trust, or any person acting under the direction of the Trust or the Chairman or of any officer or servant of the Trust in respect of an act purporting to be done under this Act until the expiration of two months next after notice in writing has been, in the case of the Trust left at its office, and in any other case delivered to or left at the office or place of abode of the person to be used explicitly stating the cause of action, the nature of the relief sought, the amount of compensation claimed and the name and place of abode of the intending plaintiff, and the plaint shall contain a statement that such notice has been so delivered or left

(2) If the Trust or other person referred to in sub-section (1) shall before the action is commenced have tendered sufficient amends to the plaintiff, the plaintiff shall not recover any sum in excess of the amount so tendered and shall also pay all costs incurred by the defendant after such tender

(3) No action such as is described in sub-section (1) shall, unless it is an action for the recovery of immovable property or for a declaration of title thereto, be commenced otherwise than within six months next after the accrual of the cause of action.

(4) Provided that nothing in sub-section (1) shall be construed to apply to a suit wherein the only relief claimed is an injunction of which the object would be defeated by the giving of the notice or the postponement of the commencement of the suit or proceeding.

Evidence

Mode of proof of Trust records

98. A copy of any receipt application, notice, order, entry in register, or other document in the possession of the Trust shall if duly certified by the legal keeper thereof or other person authorized by the Trust in this behalf, be received as *prima facie* evidence of the existence of the entry or document and shall be admitted as evidence of the matters and transactions therein recorded in every case where and to the same extent as the original entry or document would, if produced, have been admissible to prove such matters

Restriction on the summoning of Trust-servants to produce documents

99. No trustee or officer or servant of the Trust shall in any legal proceeding to which the Trust 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 a witness to prove the matters and transactions recorded therein unless by order of the Court made for special cause

Validation

Validation of acts and proceedings.

100. (1) No act done or proceeding taken under this Act shall be questioned on the ground merely of-

(*a*) the existence of any vacancy in, or any defect in the constitution of, the Trust or any committee.

(*b*) any person having ceased to be a Trustee, or

(*c*) any Trustee, or any person associated with the Trust under section 14 or any other member of a committee appointed under this Act having voted or taken any proceeding in contravention of section 17; or

(*d*) the failure to serve a notice on any person, where no substantial injustice has resulted from such failure; or

(*e*) any omission, defect or irregularity not affecting the merits of the case.

(2) Every meeting of the Trust, the minutes of the proceedings of which have been duly signed as prescribed in clause (*g*) of sub-section (1) of section 18, shall be taken to have been duly convened and to be free from all defect and irregularity.

Compensation.

General powers of Trust to pay compensation.

101. In any case not otherwise expressly provided for in this Act the Trust may pay reasonable compensation to any person who sustains damage by reason of the exercise of any of the powers vested under this Act in the Trust or the Chairman or any officer or servant of the Trust.

Compensation to be paid by offenders for damage caused by them.

102. (1) If, on account of any act or omission, any person has been convicted of any offence under this Act, and by reason of such act or omission damage has occurred to any property of the Trust, compensation shall be paid by the said person for the said damage, notwithstanding any punishment to which he may have been sentenced for the said offence.

(2) In the event of dispute, the amount of compensation payable by the said person shall be determined by the Magistrate before whom he was convicted of the said offence.

(3) If the amount of any compensation due under this section be not paid, the same shall be recovered under a warrant from the said Magistrate, as if it were a fine inflicted by him on the person liable therefor.

Dissolution of Trust.

Ultimate dissolution of Trust and transfer of its assets and liabilities.

103. (1) When all schemes sanctioned under this Act have been executed, or have been so far executed as to render the continued existence of the Trust, in the opinion of the Chief Commissioner, unnecessary, the Chief Commissioner may by notification declare that the Trust shall be dissolved from such date as may be specified in this behalf in such notification; and the Trust shall be deemed to be dissolved accordingly.

(2) From the said date—

(*a*) (i) all properties, funds and dues placed at the disposal of the Trust under sub-section (1) of section 54-A, and

(*ii*) all properties, funds and dues exchanged for, derived from, or otherwise attributable to, the properties, funds and dues referred to in sub-clause (1),

which, on the said date, are held by or realizable by the Trust, shall vest in, and be realizable by, the Chief Commissioner; and

(*aa*) all properties, funds and dues, other than those referred to in clause (*a*), which, on the said date, are vested in or realizable by the Trust and the Chairman respectively shall vest in and be realizable by the Municipal Committee or Notified Area Committee and the Chairman of such Committee respectively, and

(*b*) all liabilities which are enforceable against the Trust shall be enforceable only against the Chief Commissioner or the Municipal Committee or Notified Area Committee, as the case may be; and

(*c*) for the purpose of completing the execution of any scheme, sanctioned under this Act, which has not been fully executed by the Trust, and of realizing properties, funds, and dues referred to in clauses (*a*) and (*aa*), the functions of the Trust and the Chairman under this Act shall be discharged by the Chief Commissioner or the Municipal Committee or Notified Area Committee and the Chairman of such Committee, as the case may be; and

(*d*) the Municipal Committee or Notified Area Committee shall keep separate accounts of all moneys respectively received and expended by it under this Act, until all loans raised hereunder have been repaid, and until all other liabilities referred to in clause (*b*) have been duly met.

THE SCHEDULE.

(*Referred to in section 58*).

FURTHER MODIFICATIONS IN THE LAND ACQUISITION ACT, 1894

(HEREINAFTER CALLED "THE SAID ACT")

Amendment of section 3

1. After clause (*e*) of section 3 of the said Act the following shall be deemed to be inserted, namely,—

"(*ee*) expression 'local authority' includes the Delhi Improvement Trust constituted under the United Provinces Town Improvement Act, 1919, as extended to the Province of Delhi."

Notification under section 4 and declaration under section 6 to be replaced by notifications under sections 36 and 42 of this Act.

2. (1) The first publication of a notice of an improvement scheme under section 36 of this Act shall be substituted for and have the same effect as publication, in the Gazette and in the locality, of a notification under sub-section (1) of section 4 of the said Act, except where a declaration under section 4 or section 6 of the said Act has previously been made and is still in force.

(2) Proceedings under section 38 and sub-section (1) of section 41 of the United Provinces Town Improvement Act, 1919, as extended to the Province of Delhi, shall be substituted for and have the same effect as proceedings under section 5A of the said Act.

(3) Subject to the provisions of sections 10 and 11 of this Schedule the issue of a notice under sub-section (4) of section 29 in the case of land acquired under that sub-section, and in any other case the publication of a notification under section 42 shall be substituted for and have the same effect as a declaration by the Chief Commissioner under section 6 of the said Act unless a declaration under the last-mentioned section has previously been made and is still in force.

Amendment of section 11.

3. The full stop at the end of section 11 of the said Act shall be deemed to be changed to a semicolon, and the following shall be deemed to be added, namely,—"and

(*iv*) the costs which, in his opinion, should be allowed to any person who is found to be entitled to compensation, and who is not entitled to receive the additional sum of fifteen per *centum* mentioned in sub-section (2) of section 23, as having been actually and reasonably incurred by such person in preparing his claim and putting his case before the Collector.

The Collector may disallow, wholly or in part, costs incurred by any person, if he considers that the claim made by such person for compensation is extravagant."

Amendment of section 15.

4. In section 15 of the said Act, for the word and figures "and 24" the figures, word, and letter "24 and 24A," proceeded by a comma, shall be deemed to be substituted.

Amendment of section 17.

5. (1) In sub-section (3) of section 17 of the said Act, after the figures "24" the words, figures, and letter "or section 24A" shall be deemed to be inserted,

(2) To the said section 17 the following shall be deemed to be added namely:—

(5) Sub-sections (1) and (3) shall apply also in the case of any area which is stated in a certificate granted by the District Magistrate or a Magistrate of the first class to be unhealthy

(6) Before granting any such certificate, the Magistrate shall cause notice to be served as promptly as may be on the persons referred to in sub-section (3) of section 9, and shall hear without any avoidable delay objections which may be urged by them

(7) When proceedings have been taken under this section for the acquisition of any land, and any person sustains damage in consequence of being suddenly dispossessed of such land, compensation shall be paid to such person for such dispossession."

6. After section 17 of the said Act the following shall be deemed to be inserted, namely.

"17A. In every case referred to in section 16 or section 17, the Collector shall, upon payment of the cost of acquisition, make over charge of the land to the Trust, subject to the liability of the Trust to pay any further costs which may be incurred on account of its acquisition."

Amendment of section 18.

7. The full stop at the end of sub-section (1) of section 18 of the said Act shall be deemed to be changed to a comma and the words "or the amount of the costs allowed" shall be deemed to be added

Amendment of section 19.

8. After the words "amount of compensation," in clause (c) of section 19 of the said Act, the words "and of costs (if any)" shall be deemed to be inserted.

Amendment of section 20.

9. After the words "amount of compensation," in clause (c) of section 20 of the said Act, the words "or costs" shall be deemed to be inserted.

Amendment of section 23.

10. (1) In clause *first* and clause *sixthly* of sub-section (1) of section 3 of the said Act, for the words "publication of the notification under section 4, sub-section (1)' and the words "publication of the declaration under section 6" shall be deemed to be substituted,

(*a*) if the land is being acquired under sub-section (3) of section 29 of this Act, the words "issue of the notice under sub-section (3) of section 29 of the United Provinces Town Improvement Act, 1919, as extended to the Province of Delhi," and

(*b*) in any, other case, the words "first publication of the notification under section 36 of the United Provinces Town Improvement Act, 1919 as extended to the Province of Delhi."

(2) The full stop at the end of sub-section (2) of section 23 of the said Act shall be deemed to be changed to a colon and the following proviso shall be deemed to be added:

"Provided that this sub-section shall not apply to any land acquired under the United Provinces Town Improvement Act, 1919, as extended to the Province of Delhi, except—

(*a*) land acquired under sub-section (4) of section 29 of that Act, and

(*b*) buildings in the actual occupation of the owner or occupied free of rent by a relative of the owner, and land appurtenant thereto, and

(*c*) gardens not let to tenants but used by the owners as a place of resort."

"(3) At the end of section 22 of the said Act, the following shall be deemed to be added, namely.

"(3) For the purpose of clause *first* of sub-section (1) of this section,—

(*a*) the market-value of the land shall be the market-value according to the use to which the land was put at the date with reference to which the market value is to be determined under that clause;

(*b*) if it be shown that before such date the owner of the land had in good faith taken active steps and incurred expenditure to secure a more profitable use of the same, further compensation based on his actual loss may be paid to him;

(*c*) if any person, without the permission of the Trust required by clause (*b*) of sub-section (1) of section 29 or by sub-section (3) of section 30 or by sub-section (4) of section 32 of the United Provinces Town Improvement Act, 1919, as extended to the Province of Delhi, has erected, re-erected, added to or altered any building or wall so as to make the same project beyond the street alignment prescribed under section 29 or the street alignment or building line shown in any plan finally adopted by the Trust under section 30, or within the area specified in sub-section (4) of section 32, as the case may be, then any increase in the market-value resulting from such erection, re-erection, addition or alteration shall be disregarded;

(*d*) if the market value has been increased by means of any improvement made by the owner or his predecessor in interest within two years before the aforesaid date, such increase shall be disregarded unless it be proved that the improvement so made was made in good faith and not in contemplation of proceedings for the acquisition of the land being taken under this Act,

(*e*) if the market-value is specially high in consequence of the land being put to a use which is unlawful or contrary to public policy, that use shall be disregarded and the market-value shall be deemed to be the market value of the land put to ordinary uses, and

(*f*) if the market value of any building is specially high in consequence of the building being so overcrowded as to be dangerous to the health of the inmates, such overcrowding shall be disregarded, and the market-value of the building if occupied by such number of persons only as could be accommodated in it without risk of danger from overcrowding."

Amendment of section 24.

11. For clause *seventhly* of section 24 of the said Act, the following shall be deemed to be substituted, namely :—

"*seventhly* any outlay on additions or improvements to land acquired, which was incurred after the date with reference to which the market-value is to be determined, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair."

New section 24A.

12. After section 24 of the said Act the following shall be deemed to be inserted, namely :—

Further provision for determining compensation.

"24A In determining the amount of compensation to be awarded for any land acquired for the Trust under this Act, the Tribunal shall also have regard to the following provisions, namely, :—

(1) when any interest in any land acquired under this Act has been acquired after the date with reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land;

(2) if, in the opinion of the Tribunal, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Tribunal considers

the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be, minus the estimated cost of putting it into such condition or state;

(3) if, in the opinion of the Tribunal, any building which is used or is intended or is likely to be used for human habitation, is not reasonably capable of being made fit for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building."

Amendment of section 31.

13. (1) After the words "the compensation" in sub-section (1) of section 31 of the said Act, and after the words "the amount of the compensation" in sub-section (2) of that section the words "and costs (if any)" shall be deemed to be inserted.

(2) After the words "any compensation" in the concluding proviso to sub-section (2) of section 31 of the said Act the word "or cost" shall be deemed to be inserted.

New section 48A.

14. After section 48 the following shall be deemed to be inserted, namely,—

"48A. "if within a period of two years from the date of the publication of the declaration under section 6 in respect of any land, the Collector has not made an award under section 11 with respect to such land, the owner of the land shall, unless he has been to material extent responsible for the delay, be entitled to receive compensation for the damage suffered by him in consequence of the delay.

(2) The provisions of part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section."

Amendment of section 49.

15. After sub-section (1) of section 49 of the said Act, the following shall be deemed to be inserted, namely,

"(*1a*) For the purpose of sub-section (1), land which is held with and attached to a house and is reasonably required for the enjoyment and use of the house shall be deemed to be part of the house."

APPENDIX F.

THE CITY OF BOMBAY MUNICIPAL ACT, 1888.

CHAPTER XIIA.

City Improvement.

Transfer of rights etc., of the Board to the corporation.

354B. (1) From the date on which the City of Bombay Municipal (Amendment) Act, 1933, comes into operation, all the property, interests, rights and liabilities of the Board of Trustees for the Improvement of the City of Bombay constituted under the City of Bombay Improvement Trust Transfer Act, 1925, in respect of any improvement scheme, street scheme, deferred street scheme, poorer classes accommodation scheme, reclamation scheme, or police accommodation scheme, duly sanctioned or executed before the said date in accordance with the provisions of the City of Bombay Improvement Act, 1898, or the City of Bombay Improvement Trust Transfer Act, 1925, shall, save in so far as they are restricted or modified by the provisions of this chapter and of sections 91A, 91B and 91C, vest in the corporation.

(2) It shall be the duty of the corporation to execute, with due diligence, any improvement scheme, street scheme, deferred street scheme, poorer classes accommodation scheme, reclamation scheme, or police accommodation scheme, duly sanctioned in accordance with the provisions of the City of Bombay Improvement Act, 1898; or the City of Bombay Improvement Trust Transfer Act, 1925 before the date on which the City of Bombay Municipal (Amendment) Act, 1933, comes into operation, which remains unexecuted on that date, until the completion of the scheme.

Improvement Schemes.

Commissioner to make a draft improvement scheme.

354C. (1) If it shall appear to the Commissioner:—

(A) that within certain limits in any part of the city:

(*a*) any buildings used, or intended or likely to be used, for human habitation, or

(*b*) the narrowness, closeness and bad arrangement or the bad condition of the streets and buildings, or groups of buildings, within such limits, or the want of light, air ventilation or proper conveniences, or any sanitary defects, or one or more of such causes, are dangerous or injurious to the health of the inhabitants of either of the buildings within the area of such limits, or of the neighbouring buildings; and that the evils connected with such buildings and the sanitary defects in such area cannot be effectually remedied otherwise than by an improvement scheme for the rearrangement and reconstruction of the streets and buildings within such area or of such streets or buildings, or

(*c*) it is necessary to provide for the construction of buildings for the accommodation of the poorer and working classes, or

(B) that for the purpose of providing building sites for the expansion of the city, or of remedying the defective ventilation of any part of the city, or of creating new or increasing the existing means of communication and facilities for traffic between various parts of the city it is expedient to form new or to alter existing streets in any part of the city,

the Commissioner may

(*i*) with the previous approval of the corporation, which shall not be given unless the corporation are satisfied of the sufficiency of their resources draw up a notification stating that the Commissioner proposes to make an improvement scheme, the area to which the resolution relates and naming a place where a map of the area may be seem at all reasonable hours;

(*ii*) during three consecutive weeks publish simultaneously in the *Official Gazette* and in some one more English and in some two or more vernacular newspapers circulating within the city a copy of the said notification;

(*iii*) proceed to make a draft improvement scheme and admit the scheme to the Improvements Committee for approval.

(2) In making an improvement scheme more than one area may be included in one improvement scheme.

(3) With the previous approval of the corporation the Commissioner may, for the purpose of making an improvement scheme, cause surveys to be made in areas either inside or outside the limits of the area comprised in the scheme to be made.

Improvements Committee to consider and approve draft scheme submitted by Commissioner

354D. On the submission by the Commissioner of a draft improvement scheme the Improvements Committee shall take such scheme into their consideration and may approve the same with or without such alteration as it thinks fit.

Particulars to be provided for in an improvement scheme.

354E. (1) The improvement scheme, which may exclude any part of the area included in the notification referred to in section 354C, or include any neighbouring land, if the Commissioner is of opinion that such exclusion is expedient,—

(*i*) shall, within the limits of the area comprised in the scheme, provide for:—

(a) the acquisition of any land which will, in the opinion of the Commissioner, be necessary for or affected by the execution of the scheme;

(b) relaying out all or any land including the construction and reconstruction of buildings and the formation and alteration of streets;

(c) the laying of such storm-water drains and sewers as may be required for the efficient draining and sewering of streets so formed or altered;

(d) the lighting of streets so formed or altered;

(ii) may, within the limits of aforesaid, provide for:-

(a) raising any land which the Commissioner may deem expedient to raise for the better dramange of the locality;

(b) forming open spaces for the better ventilation of the area comprised in the scheme or any adjoining area;

(c) the whole or any part of the sanitary arrangements required; and

(iii) may, within and without the limits aforesaid, provide for the construction of buildings for the accommodation of the poorer and working classes including the whole or part of such classes to be displaced in the execution of the scheme. Such accommodation shall be deemed to include shops.

(2) The improvement scheme may exclude any part of the area included in the notification referred to in section 354C or include any neighbouring land, provided that the Commissioner is of opinion that such exclusion or inclusion is necessary for the proper carrying out of the scheme and provided further that previous notice of such inclusion shall have been given in the manner prescribed in section 354C (1) (ii).

Considerations which shall prevail in making the scheme.

354F. In making an improvement scheme for any area, regard shall be had to the conditions and nature of neighbouring parts of the city and of the city as a whole, and to the likelihood of improvement schemes being required for the neighbouring and other parts of the city.

Procedure on completion of the scheme.

354G. (1) Upon the approval of an improvement scheme by the Improvements Committee the Commissioner shall forthwith draw up a notification stating the fact of a scheme having been made, the limits of the area comprised therein, and naming a place where particulars of the scheme, a map of the same and a statement of the land proposed to be acquired, may be seen at all reasonable hours, and shall:—

(a) communicate a copy of such notification, particulars, map and statement to the corporation;

(b) publish the notification in the manner prescribed for the publication of a notification under section 354C.

(2) During the thirty days next following the first day on which such notification is published, the Commissioner shall serve a notice on every person whose name appears in the Commissioner's Assessment-book as primarily liable for the payment of the property taxes leviable under this Act on any land or building proposed to be acquired by the Commissioner in executing the scheme. The notice shall state that such land or building is proposed to be acquired by the Commissioner on behalf of the corporation for the purpose of an improvement scheme and shall require an answer stating whether the person so served dissents or not in respect of the acquisition of such land or building, and if the person dissents requiring the reasons of such dissent to be given, within thirty days from the date of service of the notice.

Right of owner to demand acquisition on an issue of notification when building operations are in progress.

354H. (1) If any land is included in any statement specifying the land proposed to be acquired made in accordance with any notification drawn up under section 354G, and if the owner of such land shall prove to the satisfaction of the Collector that at the date of the said notification building operations were in progress on such land or any part thereof and the buildings were structurally complete up to the first floor level, the Collector shall call upon the Commissioner to acquire such land.

(2) On receipt of such notice the Commissioner shall forthwith report the matter to the Improvements Committee and the said Committee shall then resolve whether in their opinion it is desirable to acquire the land set out in the notice or to withdraw from the proposal to acquire and shall communicate their resolution within two months to the corporation who shall within one month after receipt thereof communicate to the Commissioner the decision of the corporation in the matter, and thereupon the Commissioner shall forthwith in accordance with such decision either proceed to acquire such land or shall give written notice to the owner that the proposal to acquire has been withdrawn.

(3) If the corporation decide to acquire the land the Commissioner shall give notice of such decision to the Collector and to the owner, and the Collector shall proceed as if a declaration has been made in respect of the land in question under section 6 of the Land Acquisition Act, 1894.

(4) If the corporation withdraw from the proposal to acquire any land under sub-section (2) such land shall not be included in any statement of land proposed to be acquired, made in accordance with any notification drawn up under section 354G, untill the expiry of two years from the date of the issue of written notice of withdrawal to the owner.

Right of owner to demand acquisition or withdrawal by the corporation after the lapse of two years from the date of notification

354I. (1) The owner of any land included in any statement of the land proposed to be acquired made in accordance with any notification drawn up under section 354G may at any time before the publication of a declaration under section 354M and after the expiry of one year from the date of such notification by written notice to the Commissioner setting out the particulars of such land call upon the Commissioner to acquire such land on behalf of the corporation.

(2) On receipt of such notice the Commissioner shall forthwith report the matter to the Improvements Committee and the said Committee shall resolve whether in their opinion it is desirable to acquire the land set out in the notice and shall communicate their resolution within two months to the corporation which shall within two months after the receipt thereof communicate to the Committee and Commissioner the decision of the corporation in the matter and thereupon the Commissioner shall in accordance with such decision either decide to acquire such land or shall give notice to the owner that he has withdrawn the proposal to acquire.

(3) If the corporation decide to acquire the land they shall instruct the Commissioner to give notice of such decision to the Collector and to the owner, and the Collector shall proceed as if a declaration had been made in respect of the land in question under section 6 of the Land Acquisition Act, 1894.

(4) If the corporation withdraw from the proposal to acquire any land under sub-section (2) such land shall not be included in any statement of land proposed to be acquired made in accordance with any notification drawn up under section 354G until the expiry of two years from the date of the issue of written notice of withdrawal to the owner.

The Improvements Committee after publication and service of notices to forward the

354J. (1) Upon compliance with the foregoing provisions with respect to the publication of notices of the scheme the Commissioner shall submit to the Improvements Committee any representation or answer received under section 354G together with any suggestion he may wish to make in respect of the modification of the scheme.

(2) The Improvements Committee shall, after consideration of any such representation, answer or suggestion and after inserting in the scheme

such modifications as they think fit, submit the scheme together with any representation, answer or suggestion to the corporation for their approval.

scheme to the corporation for approval.

354K. The corporation shall on receipt of a scheme from the Improvements Committee proceed to take such scheme into consideration together with any representation, answer or suggestion received or made under section 354G or 354J and shall, after having approved the scheme with or without modification or declined to approve the scheme, pass a resolution to that effect.

Corporation to consider the improvement scheme and to approve or disapprove.

354L. (1) As soon as corporation have approved the scheme the Commissioner shall apply to the Provincial Government on behalf of the Corporation for sanction to the scheme.

Commissioner to apply to Provincial Government for sanction to the scheme.

(2) If the corporation do not approve the scheme they shall pass a resolution to that effect. The Commissioner shall thereupon forthwith draw up a notification stating the fact that the corporation have resolved not to proceed with the making of the said improvement scheme and shall publish the said notification in the manner prescribed in section 354C. Thereupon the notifications relating to the scheme published under sections 354C and 354G shall be deemed cancelled.

(3) The application to the Provincial Government for sanction under sub-section (1) shall be accompanied by:-

(a) a copy of the resolution passed by the Improvements Committee under section 354D;

(b) a copy of a resolution passed by the corporation under section 354C;

(c) a description with full particulars of the scheme including the reasons for any modifications inserted therein;

(d) complete plans and estimates of the cost of executing the scheme;

(e) a statement specifying the land proposed to be acquired,

(f) a list of the names of the persons, if any, who in answer to the notices mentioned in sub-section (3) of section 354G dissented, with the reasons (if any) stated by such persons for dissent, in respect of the acquisition of their land;

(g) a schedule showing the rateable value, as entered in the Commissioner's Assessment-book, at the date of the publication of a notification relating to the land under section 354G, of all land specified in the statement under clause (e) and of any other land wholly or partially situated within 90 feet from either side of any street to be formed or altered in executing the scheme.

354M. (1) (a) On receipt of the sanction of the Provincial Government, the Commissioner shall forward to the Provincial Government a declaration for notification under the signature of a Secretary to the Provincial Government stating the fact of such sanction and that the land proposed to be acquired by the corporation for the purposes of the scheme is required for a public purpose.

On receipt of sanction declaration to be published giving particulars of land to be acquired and on publication of such declaration the Commissioner to be authorized to execute the scheme.

(b) The declaration shall be published in the Official Gazette and shall state the limits within which the land proposed to be acquired is situate, the purpose for which it is needed, its approximate area, and the place where a plan of the land may be inspected.

(c) The said declaration shall be conclusive evidence that the land is needed for a public purpose, and the Commissioner shall, upon the publication of the said declaration, proceed to execute the scheme.

(2) (a) If at any time it appears to the Commissioner, the Improvements Committee or the corporation, as the case may be, that an improvement can be made in any part of the scheme, the corporation may alter the scheme for the purpose of making such improvement, and thereupon the Commissioner shall, subject to the provisions contained in the next two clauses of this sub-section, forthwith proceed to execute the scheme as altered.

(b) If the estimated net cost of executing the scheme as altered exceeds by ten per cent the estimated net cost of executing the scheme as sanctioned, the Commissioner shall not, without the previous sanction of the corporation and of the Provincial Government proceed to execute the scheme as altered.

(c) If the scheme as altered involves the acquisition, otherwise than by agreement, of any land other than that specified in the schedule accompanying the scheme under sub-section (3) of section 354L the provisions of sections 354G and 354L and of sub-section (1) shall apply to the part of the scheme so altered, in the same manner as if such altered part were the scheme.

If the corporation fail to acquire the land, owner may call upon committee to acquire it or to withdraw from the proposal.

354N. If, within three years from the declaration aforesaid, the corporation fail to acquire the land or any part of the land proposed to be acquired for the purposes of any scheme notified after the City of Bombay Municipal (Amendment) Act, 1933, comes into operation, the owner of any land included in the declaration may, by written notice setting out the particulars of such land, call upon the corporation to acquire such land or to withdraw from the proposal to acquire it. Thereafter the procedure prescribed in sub-sections (2) to (4) of section 354I shall be followed.

Police Accommodation Schemes

The corporation to have power to make a police accommodation scheme.

354O. (1) When a representation is made by the Provincial Government to the corporation that within any part of the city accommodation is required for housing any part of the Police of the city, the corporation shall take such representation into their consideration, and, if satisfied of the sufficiency of their resources and that it is otherwise expedient, shall pass a resolution to the effect that a scheme for providing such accommodation ought to be made; and shall direct the Commissioner to forthwith proceed to make a police accommodation scheme.

(2) The police accommodation scheme may provide for constructing dwellings, police stations and accessory buildings for any or classes of such Police, and for acquiring, raising and levelling any land required for the execution of the scheme.

Procedure on completion of a scheme.

354P. Upon completion of a police accommodation scheme, the provisions of sections 354G to 345M shall, with all necessary modifications, be applicable to the scheme in the same manner as if the scheme were an improvement scheme.

Vesting of land in corporation.

354Q. (1) When such scheme is sanctioned by the Provincial Government, in the case of land specified in Schedule W the Provincial Government shall resume the land, and the said land shall thereupon vest in the corporation.

(2) The Commissioner shall then proceed to execute the police accommodation scheme.

(3) Any building constructed under this section shall with the site be held by the Provincial Government for police purposes for a term of sixty years from the date of the completion of the building, and the Provincial Government shall, during the said period, pay yearly to the corporation by way of rent a sum equal to the total of:—

(a) the annual interest payable by the corporation on all moneys, which they have spent on the scheme, and

(b) sinking fund charges so calculated that at the end of the said period the aggregate in the sinking fund shall amount to the total sum spent on the scheme.

such total sum shall include:—

(i) All moneys spent on interest and sinking fund charges up to the date of commencement of the said period,

(ii) if and so far as the land included in the scheme if not part of the land specified in Schedule W the cost of such land,

(iii) preliminary expenses and an allowance for management and supervision up to the date of the commencement of the said period.

(4) The cost of such land for the purposes of this section shall be deemed to be:—

(a) if and so far as the land has been acquired for the scheme the actual cost of its acquisition, and

(b) in all other cases the market value of the land at the date of the declaration of the scheme

(5) The Provincial Government shall maintain the building held by them under sub-section (3) in a state of proper repairs

(6) On the expiration of the period of sixty years the building and the land forming the site thereof shall vest absolutely in His Majesty

(7) This section shall apply to all police accommodation schemes sanctioned heretofore by the Provincial Government in accordance with the provisions of the City of Bombay Improvement Act 1898 or the City of Bombay Improvement Trust Transfer Act, 1925 as if such scheme had been sanctioned under the provisions of this Act

Minimum width of streets.

344R. (1) No new public street made under any scheme executed in pursuance of the provisions of this chapter shall if made for carriage traffic, be less than 40 feet in width, nor if made for foot traffic only be less than 20 feet in width:

Provided that where in an improvement scheme or otherwise provision is made for a garden or open space on one or both sides of a public street throughout its length on such terms as to preclude such garden or space being built over, when the total width between the buildings on opposite sides of the street, including such garden or space, is not less than 40 feet the street between such buildings need not, if made for carriage traffic be more, and shall not be less, than 20 feet in width and if made for foot traffic only need not be more, and shall not be less, than 10 feet in width

(2) Service passages for sanitary purposes need not be more and usually shall not be less than 10 feet in width, and in the case of such passages, the Commissioner may enter into an agreement with any person as to the supervision, repair, lighting and general management thereof but such service passages shall not be considered to be streets for the purposes of this chapter

Extent to which Land Acquisition Act shall apply to acquisition of land otherwise than by agreement

345S. Notwithstanding anything contained in the Land Acquisition Act, 1894 (in this and the next succeeding sections referred to as "the Land Acquisition Act"), the Land Acquisition Act shall not except to the extent set forth in Schedule CC, apply to the acquisition of land under this chapter but the Land Acquisition Act shall, to the extent set forth in the said schedule, regulate and apply to the acquisition of land otherwise than by agreement, and shall for that purpose be deemed to form part of this chapter in the same manner as if enacted in the body hereof, subject to the provisions of this chapter and to the provisions following, namely —

(1) a reference to any section of the Land Acquisition Act shall be deemed to be a reference to such section, as modified by the provisions of this chapter, and the expression "land," as used in the Land Acquisition Act, shall be deemed to have the meaning assigned to it by clause (r) of section 3 of this Act, and clause (b) of section 3 of the Land Acquisition Act shall, for the purposes of this chapter, be read as if the words and parentheses "includes all persons," and the words "or if he is the owner of any right created by legislative enactment over any street forming part of the land" were added after the words "affecting the land";

(2) in the construction of sub-section (2) of section 4 of the Land Acquisition Act and the provisions of this chapter the provisions of the said sub-section shall, for the purposes of this Act, be applicable immediately upon the passing of a resolution under sub-section (1) of section 354C or 354O, as the case may be, and the expression "Provincial Government" shall be deemed to include the Commissioner, and the words "such locality" shall be deemed to mean the locality referred to in any such resolution;

(3) in the construction of the sections of the Land Acquisition Act deemed to form part of this chapter and of the provisions of this chapter, the publication of a notification under sub-section (1) of section 354G or 354P shall be deemed to be the publication of a notification under sub-section (1) of section 4 of the Land Acquisition Act and the date of publication of the declaration under section 354M or 354P shall be deemed to be the date of the publication of the declaration under section 6 of the Land Acquisition Act :

Provided that where land is acquired under section 354H or sub-section (3) of section 354I the date of the publication of the notification under sub-section (1) of section 354G shall be deemed to be the date of publication of a declaration under section 6 of the Land Acquisition Act.

Provided further that the provisions of sub-section (2) of section 23 of the Land Acquisition Act shall apply when land, other than land forming part of any sanctioned scheme prepared in accordance with the provisions of section 354D, is acquired specially under this Act for the purpose of a police accomodation scheme ; and that in all other cases in which the land is notified for acquisition after the date on which the City of Bombay Municipal (Amendment) Act, 1933, comes into operation additional compensation in consideration of the compulsory nature of the acquisition shall be awarded on the scale set out in Schedule DD.

(4) In the construction of sub-section (2) of section 50 of the Land Acquisition Act and the provisions of this Chapter the Commissioner shall be deemed to be the local authority or company concerned.

Special provisions as to compensation.

354T. In determining the amount of compensation to be awarded for any land or building acquired under this Act, the following further provisions shall apply :—

(1) The Court shall take into consideration any increase to the value of any other land or building belonging to the person interested likely to accrue from the acquisition of the land or from the acquisition, alteration or demolition of the building ;

(2) when any addition to, or improvement of, the land or building has been made after the date of the publication under sub-section (1) of section 354G or section 354P of a notification relating to the land or building, such addition or improvement shall not (unless it was necessary for the maintenance of the building in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made, so as to increase the amount of compensation to be paid for the land or building :

(3) in estimating the market value of the land or building at the date of the publication of a notification relating thereto under sub-section (1) of section 354G or section 354P the Court shall have due regard to the nature and the condition of the property and the probable duration of the building if any in its existing state and to the state of repair thereof and to the provisions of clauses (4), (5) and (6) of this section ;

(4) if in the opinion of the Court the rental of the land or building has been enhanced by reason of its being used for an illegal purpose, or being so overcrowded as to be dangerous or injurious to the health of the inmates, the rental shall not be deemed to be greater than the rental which would be obtainable if the land or building were used for legal purposes only, or were occupied by such a number of persons only as it was suitable to accommodate without risk of such overcrowding ;

Explanation.—For the purposes of this sub-section overcrowding shall be interpreted as in sub-sections (4) and (5) of section 379A;

(5) if in the opinion of the Court the building is in a state of defective sanitation, or is not in reasonably good repair the amount of compensation shall not exceed the estimated value of the property after the building has been put into a sanitary condition, or into reasonably good repair, less the estimated expense of putting it into such condition, or repair;

(6) if in the opinion of the Court the building being used or intended or likely to be used for human habitation is not reasonably capable of being made fit for human habitation, the amount of compensation for the building shall not exceed the value of the meterials, less the cost of demolition.

Collector to take possession after making an award and transfer land to corporation.

354U. When the Collector has made an award under section 11 of the Land Acquisition Act, as applied by this Act, he may take possession of the land which shall thereupon vest absolutely in His Majesty free from all encumbrances, and the Collector shall, upon payment of the cost of the acquisition, make over charge of the land to the Commissioner and the land shall thereupon vest in the corporttion subject to the liability of the Commissioner to pay on behalf of the corporation any further costs which may be incurred on account of the acquisition of the land.

Compensation to corporation on resumption of certain land.

354V. Whenever any land specified in Schedule is resumed by the Provincial Government, or any land specified in Schedule V and vested in the corporation is taken possession of by the Provincial Government under the provisions of this Act, the market value of the land as at the date of resumption as determined by the Collector, or in appeal by the High Court, shall be paid to the corporation by the Provincial Government.

Power to grant loans for building purposes.

354W. (1) Subject to the provisions of this Act and of the bye-laws made thereunder the Commissioner may, with the previous sanction of the Improvements Committee, advance loans to persons desiring to erect buildings on land vested in the corporation in consequence of the transfer to them of the property of the Board of Trustees for the Improvement of the City of Bombay constituted under the City of Bombay Improvement Trust Transfer Act, 1925.

(2) Any person desiring to erect a building on any such land may make an application to the Commissioner in the form prescribed by the byelaws for a loan to be advanced by way of a mortgage on the security of the building to be so erected; and the Commissioner may, after making such enquiry as he thinks necessary, and subject to the conditions mentioned in sub-sections (1) and (3) and the byelaws made under section 461, advance such loans.

(3) Every such loan shall be subject to the following among other conditions:—

(1) that the building in respect of which the loan is advanced shall be used wholly or mainly for residential purposes;

(2) that the aggregate amount of the loan shall not exceed twenty thousand rupees in any individual case;

(3) that the period within which the loan shall be repayable shall not exceed twenty years from the date of the first occupation of the building;

(4) that the amount of the loan shall not exceed 60 per cent. of the cost of the building (including outhouses and other works, if any connected therewith) irrespective of the period of repayment;

(5) that the person to whom the loan is advanced shall execute a mortgage of the building (including outhouses and other works, if any, connected therewith) together with the site on which they are erected in favour of the corporation containing such covenants and conditions as may be prescribed in the bye-laws.

Payment to be made by Provincial Government.

354X. The Provincial Government shall pay to the corporation, from the date on which the City of Bombay Municipal (Amendment) Act, 1938, comes into operation and until the ninth day of November 1997 all rents and profits derived by the Provincial Government from the lands specified or referred to in Schedule Z.

APPENDIX G.

THE CALCUTTA IMPROVEMENT (APPEALS) ACT, 1911, (ACT XVIII OF 1911).

An Act to modify certain provisions of the Calcutta Improvement Act, 1911

Whereas it is expedient to modify the provisions of the Calcutta Improvement Act, 1911, so as to provide in certain cases for an appeal to the High Court from the awards of the Tribunal constituted under that Act;

Short title.

1. This Act may be called the Calcutta Improvement (Appeals) Act, 1911.

Definitions.

2. In this Act:—

(1) "Court" means the High Court of Judicature at Fort William in Bengal; and

(2) "Tribunal" has the same meaning as in the Calcutta Improvement Act, 1911.

Appeal from awards of the Tribunal.

3. (1) Notwithstanding anything contained in the Calcutta Improvement Act, 1911, an appeal shall lie to the Court in any of the following cases, namely:—

(*a*) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (*b*) of section 77 of the said Act:—

(*b*) where the decision is that of the Tribunal, and

(*i*) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(*ii*) the Court grants special leave to appeal:

Provided that the Court shall not grant such special leave unless the President has refused to grant a certificate under sub-clause (*i*) and the amount in dispute is five thousand rupees or upwards.

(2) An appeal under clause (*b*) of sub-section (1) shall only lie on one or more of the following grounds, namely:—

(*i*) the decision being contrary to law or to some usage having the force of law;

(*ii*) the decision having failed to determine some material issue of law or usage having the force of law;

(*iii*) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

Proceedings of such appeals.

4. Subject to the provisions of section 3, the provisions of the Code of the Civil Procedure, 1908, with respect to appeals from original decrees shall so far as may be apply to appeals under this Act.

Execution of orders of Court.

5. The Chief Judge of the Court of Small Causes of Calcutta shall, on application, execute any order passed by the Court on appeal under this Act, as if it were a decree made by himself.

Period of limitation for such appeals.

6. An appeal under section 3 shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of No. 156 of the First Schedule to the Indian Limitation Act, 1908.

APPENDIX H.

THE UNITED PROVINCES TOWN IMPROVEMENT (APPEALS) ACT, 1920.

(ACT No. III OF 1920.)

(PASSED BY THE INDIAN LEGISLATIVE COUNCIL).

(Received the assent of the Governor-General on the 11th February, 1920).

An Act to modify certain provisions of the United Provinces Town Improvement Act, 1919.

Whereas it is expedient to modify the provisions of the United Provinces Town Improvement Act, 1919, so as to provide in certain cases for an appeal to the High Court from the awards of the Tribunal constituted under that Act ; it is hereby enacted as follows :—

Short title.

1. This Act may be called the United Provinces Town Improvement (Appeals) Act, 1920.

Definitions.

2. In this Act :—

(1) "High Court" means, in Agra, the High Court of Judicature at Allahabad and in Oudh the Court of the Judicial Commissioner of Oudh ; and

"Tribunal" has the same meaning as in the United Provinces Town Improvement Act, 1919.

Appeals from the awards of the Tribunal.

3. (1) Notwithstanding anything contained in the United Provinces Town Improvement Act, 1919, and subject to the provisions of sub-section (2), an appeal shall lie to the High Court in any of the following cases, namely :—

(*a*) where the decision is that of the President of the Tribunal sitting alone in pursuance of clause (*b*) of section 64 of the said Act ;

(*b*) Where the decision is that of the Tribunal, and

(*i*) the President of the Tribunal grants a certificate that the case is a fit one for appeal, or

(*ii*) the High Court grants special leave to appeal :

Provided that the High Court shall not grant any special leave unless the President has refused to grant a certificate under sub-clause (*i*) and the amount in dispute is not less than five thousand rupees.

(2) An appeal under clause (*b*) of sub-section (1) shall only lie on one or more of the following grounds, namely :—

(*i*) the decision being contrary to law or to some usage having the force of law ;

(*ii*) the decision havidg failed to determine some material issue of law or usage having the force of law ;

(*iii*) a substantial error or defect in the procedure provided by the said Act which may possibly have produced error or defect in the decision of the case upon the merits.

Procedure in such appeals.

4. Subject to the provisions of section 3, the provisions of the Code of Civil Procedure, 1908, with respect to appeals from original decrees shall, so far as may be, apply to appeals under this Act.

Execution of orders of High Court

5. Every order passed by the High Court on appeal under this Act shall be enforced by a Court of Small Causes within the local limits of whose jurisdiction the award or order appealed against was made, as if it were a decree of that Court.

Period of limitation for such appeals

6. An appeal under section 3 shall be deemed to be an appeal under the Code of Civil Procedure, 1908, within the meaning of Article 156 of the First Schedule to the Indian Limitation Act, 1908.

APPENDIX I.

THE UNITED PROVINCES TOWN IMPROVEMENT (APPEALS) ACT 1920 (XIII OF 1920)

As extended to the Province of Delhi.

No. F. 28-13 (5) / 41-F. & L. (C).

GOVERNMENT OF INDIA

DEPARTMENT OF EDUCATION, HEALTH AND LANDS.

SIMLA, THE 19TH MAY, 1941.

Notification.

(L.S.G.)

In exercise of the powers conferred by section 7 of the Delhi Laws Act, 1912 (XIII of 1912) the Central Government is pleased to extend to the Province of Delhi, the United Provinces Town Improvement (Appeals) Act, 1920 (III of 1920), with the following modifications, namely:—

In section 2 of the said Act, for clause (1) the followfng clause shall be substituted, namely :

"(1) 'High Court' means the High Court of Judicature at Lahore; and"

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