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THE OBSTRUCTIONS IN FAIRWAYS ACT, 1881

ACT NO. XVI OF 1881

[15th March, 1881]

***An Act to empower the Government to remove or destroy obstructions in fairways, and to prevent the creation of such obstructions.**

Preamble

WHEREAS it is expedient to empower the Government to remove or destroy obstructions to navigation in fairways leading to ports in Bangladesh and to prevent the creation of such obstructions; It is hereby enacted as follows:—

Short title

1. This Act may be called the Obstructions in Fairways Act, 1881;

But nothing herein contained shall apply to vessels belonging to, or hired by a contract made on behalf of, the Government.

Government empowered to remove or destroy obstruction in fairway

2. Whenever, in any fairway leading to any port in Bangladesh, any vessel is sunk, stranded or abandoned, or any fishing-stake, timber or other thing is placed or left, the Government may, if in its opinion such thing is, or is likely to become, an obstruction or danger to navigation,—

(a) cause such thing or any part thereof to be removed; or

(b) if such thing is of such a description or so situate that, in the opinion of the Government, it is not worth removing, cause the same or any part thereof to be destroyed.

Government entitled to expenses incurred in removing obstruction

3. Whenever anything is removed under section 2, the Government shall be entitled to receive a reasonable sum, having regard to all the circumstances of the case, for the expenses incurred in respect of such removal.

* Throughout this Act, except otherwise provided, the words “Bangladesh” and “Government” were substituted, for the words “Pakistan” and “Central Government” respectively by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).

Any dispute arising concerning the amount due under this section, in respect of anything so removed, shall be decided by the District Magistrate having jurisdiction at the place where such thing is, upon application to him for that purpose by either of the disputing parties; and such decision shall be final.

Dispute concerning such expenses

4. The Government shall, whenever anything is removed under section 2, publish in the official Gazette a notification containing a description of such thing, and the time at which and the place from which the same was so removed.

Notice of removal to be given by Government

5. If, after publishing such notification, such thing is unclaimed, or if the person claiming the same fails to pay the amount due for the said expenses and any customs-duties or other charges properly incurred by the Government in respect thereof,

Things removed may, in certain cases, be sold

the Government may sell such thing by public auction, if it is of a perishable nature, forthwith, and, if it is not of a perishable nature, at any time not less than six months after publishing such notification as aforesaid.

6. On realizing the proceeds of such sale, the amount due for expenses and charges as aforesaid, together with the expenses of the sale, shall be deducted therefrom, and the surplus (if any) shall be paid to the owner of the thing sold, or, if no such person appear and claim such surplus, shall be held in deposit for payment, without interest, to any person thereafter establishing his right to the same:

Proceeds how applied

Provided that he makes the claim within one year from the date of the sale.

7. For the purposes of this Act, the term "vessel" shall be deemed to include also every article or thing or collection of things being or forming part of the tackle, equipment, cargo, stores or ballast of a vessel; and any proceeds arising from the sale of a vessel, and of the cargo thereof, or of any other property recovered therefrom, shall be regarded as a common fund.

"Vessel" to include tackle, cargo, etc.

Power to make rules to regulate and prohibit the placing of obstructions in fairways

8. The Government may, from time to time, by notification in the official Gazette, make rules to regulate or prohibit, in any fairway leading to a port in Bangladesh, the placing of fishing-stakes, the casting or throwing of ballast, rubbish or any other thing likely to give rise to a bank or shoal, or the doing of any other act which will in its opinion, cause, or be likely to cause, obstruction or danger to navigation.

Penalty for breach of such rules

9. Whoever is guilty of any act or omission in contravention of the rules made under section 8 may be tried for such offence in any district in which he is found, and shall be punished with imprisonment for a term which may extend to six months, or with fine which may extend to five hundred taka, or with both.

Compensation payable in certain cases for damage caused under this Act

10. Whenever the maintenance or creation of an obstruction in any fairway has become lawful by long usage or otherwise, and such obstruction is removed or destroyed under section 2, or its creation is regulated or prohibited under section 8, any person having a right to maintain or create such obstruction shall be entitled to receive from the Government reasonable compensation for any damage caused to him by such removal, destruction, regulation or prohibition.

Every dispute arising concerning the right to such compensation, or the amount thereof, shall be determined according to the law for the time being in force relating to like disputes in the case of land needed for public purposes and not otherwise; and for the purposes of such law the fairway from or in which such obstruction was removed or destroyed, or in which its creation was regulated or prohibited, shall be deemed to be a part of the district in which the port to which such fairway leads is situate.

11. [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).]

Saving of other powers possessed by Government

12. Nothing herein contained shall be deemed to prevent the exercise by the Government of any other powers possessed by it in this behalf.

13. [Omitted by section 3 and 2nd Schedule of the Bangladesh Laws (Revision and Declaration) Act, 1973 (Act No. VIII of 1973).]

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