

EXTRAORDINARY

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G A Z E T T E



KHYBER PAKHTUNKHWA

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PESHAWAR WEDNESDAY, 20TH OCTOBER, 2010.

**PROVINCIAL ASSEMBLY SECRETARIAT
KHYBER PAKHTUNKHWA**

NOTIFICATION

Dated Peshawar, the 20th October, 2010.

No.PA/KP/Bills/2010/39016.—The Khyber Pakhtunkhwa Chashma Right Bank Canal (Lift-Cum-Gravity) Project (Control and Prevention of Speculation in Land) Bill, 2010 having been passed by the Provincial Assembly of Khyber Pakhtunkhwa on 15th October, 2010 and assented to by the Governor of the Khyber Pakhtunkhwa on 15th October, 2010 is hereby published as an Act of the Provincial Legislature of the Khyber Pakhtunkhwa.

**THE KHYBER PAKHTUNKHWA CHASHMA RIGHT BANK CANAL
(LIFT-CUM-GRAVITY) PROJECT (CONTROL AND PREVENTION OF
SPECULATION IN LAND) ACT, 2010.**

(KHYBER PAKHTUNKHWA ACT NO. XVIII OF 2010)

(first published after having received the assent of the Governor of
the Khyber Pakhtunkhwa in the Gazette of the Khyber Pakhtunkhwa
(Extraordinary), dated the 20th October, 2010).

**AN
ACT**

*to control the lands and their alienation in the Chashma Right Bank Canal
(Lift-cum-Gravity) Project Area.*

WHEREAS Government of the Khyber Pakhtunkhwa contemplates to commence the execution of the Chashma Right Bank Canal (Lift-cum-Gravity) Project in order to conserve and utilize to the best advantage of the waters of the Indus River;

AND WHEREAS considerable purchase of land which are of speculative character have been made or are likely to be made in the area which is to be irrigated when the project is complete;

AND WHEREAS it is necessary that Government of the Khyber Pakhtunkhwa should control the areas as well as the alienations;

It is hereby enacted as follows:-

1. **Short title, extent and commencement.**---(1) This Act may be called the Khyber Pakhtunkhwa Chashma Right Bank Canal (Lift-cum-Gravity) Project (Control and Prevention of Speculation in Land) Act, 2010.

(2) It shall extend to such areas and villages in Dera Ismail Khan District as Government may, from time to time, by notification in the official Gazette, specify.

(3) It shall come into force at once.

2. **Definitions.**— In this Act, unless the context otherwise requires, the following expressions shall have the meanings hereby respectively assigned to them, that is to say-

- (a) "alienation" includes sale, mortgage, lease, exchange, gift but shall not include alienation of land in lieu of dower or gift to legal heirs;
- (b) "Collector" means a Collector appointed under sub-section (1) of section 3 of this Act;
- (c) "Government" means Government of the Khyber Pakhtunkhwa;
- (d) "project area" or "area" means the area consisting of the villages or portion of villages or areas notified by Government under sub-section (2) of section 1 of this Act;
- (e) "project land" or "land" means land in such area; and
- (f) "prescribed" means prescribed by rules made under this Act.

3. **Appointment of Collector, his status and duties.**—(1) Government may, by notification in the official Gazette, appoint, either by name or by designation, a Collector for the project area.

(2) The Collector so appointed shall perform such duties and exercise such powers as may be prescribed.

(3) Every such Collector and every member of his staff appointed to assist him shall be deemed to be a 'public servant' within the meaning of section 21 of the Pakistan Penal Code, 1860 (Act XLV of 1860).

4. **Bar on alienation of prior land.**—No person shall alienate the project land from the commencement of this Act and until the date on which water from the Chashma Right Bank Canal (Lift-Cum-Gravity) Project is made available for irrigation of the land, except to mortgage their land in favour of Banks/ Financial Institutions for obtaining loans:

Provided that the District Officer (Revenue and Estate)/ Collector may on application, if satisfied that there are sufficient grounds for doing so, permit the land to be alienated before the expiry of the above said period on such payment to Government and subject to such conditions as it may deem fit to impose.

5. **Annulment of certain alienations.**— (1) No alienation of any land in the project area made by any owner, his agent, assignee or attorney on or after the 1st day of January, 2005 and until the commencement of this Act, shall be effective so as to confer any right or remedies on the party to such transfer or any person claiming under him, unless such transfer is proved to the satisfaction of the Collector to be bona fide, for a reasonable price and not speculative in character.

(2) Every such alienation shall be speculative in character-

(a) if made in favour of non-resident of the District concerned, irrespective of the area of the land involved; or

(b) if made in favour of a resident of the revenue estate concerned, when the total area involved is more than one hundred (100) Kanals of irrigated land or more than two hundred (200) Kanals of unirrigated land.

(3) Upon the commencement of this Act or upon the determination of issue under sub-section (1), as the case may be, the alienated land shall immediately vest in Government.

(4) Government shall pay such consideration to the alienee as may be determined by the Collector.

(5) The Collector shall, after hearing the alienor and the alienee and after making such enquiry, as he may deem fit, determine the consideration and while doing so shall also be guided by the principles laid down in sub-section (2) of section 6.

(6) Upon an application made to the Collector and upon deposit of such consideration in favour of Government or in favour of the alienee, as the case may be, within a period of one year from the date of the order under sub-section (5), the Collector shall order and Government shall transfer the alienated land to the alienor.

Explanation-I.— The expression "consideration" used in this section means-

- (i) in case of sale, sale price;
- (ii) in case of lease or mortgage, the lease or mortgage money; and
- (iii) in case of exchange, the price of such land.

Explanation-II.—For the purpose of this section "alienor" means the person who was owner of the alienated land before the 1st day of January, 2005.

6. Valuation of land in the project area.— (1) The Collector shall value all lands in the project area of the average price of such land prevailing during the preceding five years of acquisition.

(2) For purpose of determining the value, the Collector shall consider the following among other matters as evidence of such value:

- (i) the price or value actually received by the vendors from the vendees in the sale of project lands during the said five years;
- (ii) the estimated amount of the average annual net assessment of the land;
- (iii) the land revenue assessed upon the land; and
- (iv) the value of land as shown in mortgages during the said five years.

(3) Subject to the provisions of the succeeding sections, valuation fixed by the Collector shall be final and shall not be called in question in any civil, revenue or criminal Court.

7. Power of Government to revise valuation.— Government may revise the value of any land fixed by the Collector under section 6 and fix any other valuation of such land, as it deems fit, in which case the value fixed by Government shall be final and shall not be questioned in any civil, revenue or criminal Court.

8. Power of Government to re-valuate lands.— Government may, by notification in the official Gazette or the date on which water from the Chashma Right Bank Canal (Lift-cum-Gravity) Project is made available for the irrigation of the land, re-value the lands in the project area, which valuation shall not in any case be less than hundred (100) per cent above the valuation fixed under section 6 or section 7, as the case may be, and valuation so fixed shall be final and shall not be called in question in any civil, revenue or criminal Court.

9. Acquisition of land by Government.- (1) Any person owing any land in the project area shall, on demand made by the Government by notice in writing within fifteen years from the date on which water from the Chashma Right Bank Canal (Lift-Cum-Gravity) Project is made available for the irrigation of the land, be bound to sell the land or part of the land, as the case may be, in accordance with sub-section (2) of section 6.

(2) Government may dispose off any project land which it owns or which it acquires by purchase, in the prescribed manner.

10. Acquisition made in contravention of this Act be null and void.- Any alienation of project land made by a person against the provisions of this Act shall be null and void and shall not confer any right or remedies on the parties to such alienation or any person claiming under them.

11. Power of Government to call for and examine the records.- Government or the officer appointed by it in that behalf may, at any time, either *suo moto* or on application, call for and examine the records relating to any order passed or proceeding taken under this Act by any authority or officer, for the purpose of satisfying itself or himself as to the legality, regularity or propriety of such order or proceeding and may pass such order in regard thereto as it or he may think fit.

12. Finality of orders.- No order passed by Government or any authority or officer under this Act shall be called in question in any civil, revenue or criminal Court.

13. Bar of certain proceedings.- (1) No suit or other proceedings shall lie against Government for anything done or purported to be done under this Act or any rules made there under.

(2) No suit, prosecution or other proceeding shall lie against any officer or servant of Government for any act done or purported to be done by such officer or servant under this Act or any rules made hereunder, without the previous sanction of Government.

(3) No suit, prosecution or legal proceeding shall lie against any officer or servant of Government for anything which is in good faith done or purported to be done in pursuance of this Act or any rules made thereunder.

14. Power to make rules.- (1) Government may make rules to carry out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for-

(a) all matters expressly required or allowed by this Act to be prescribed;

- (b) the opening and maintenance of a common register for the project area, showing the ownership, and changes in the ownership of lands therein and any other particulars which may be deemed necessary;
- (c) the penalties which may be imposed for contravention of any of the provisions of this Act and the authority which may imposed such penalties; provided that the penalty shall not in any case exceed Rs. 10,000/-; and
- (d) generally regulating the procedure to be followed and the forms to be adopted in proceedings under this Act and fixing the time within which such proceedings shall be initiated.

(3) All rules made under this section shall be published in the official Gazette.

15. **Power to remove difficulties.**— If any difficulty arises in giving effect to the provisions of this Act, Government may, as occasion may require, by order, do anything which appears to it necessary for the purpose of removing the difficulty.

16. **Savings.**— Nothing in this Act shall apply to the acquisition of land-

- (a) at a sale held by any civil, revenue, or criminal Court in execution of a decree, or order; or
- (b) by Government or by an Agricultural Development Bank; or
- (c) at a sale conducted under any law for the time being in force for recovery of any revenue due to Government or of any sum recoverable as an arrear of land revenue; or
- (d) by exchange in accordance with any scheme made or approved by Government:

Provided that in cases falling under clause (c) and clause (d), the Court which, or the officer, who, ordered the land to be sold, may of its or his own motion or on the application of Government or any party to the proceedings, set aside the sale, if the Court or officer is satisfied that the sale was a collusive transaction or was made with a view to defeat or evade the provisions of this Act.

17. **Punishment for obstruction in the execution of the project.**— Any person who obstructs or abets obstruction to the execution of the project shall be liable to a term of imprisonment which may extend to one year or fine or both.

18. Effect on other enactments.—The provisions of this Act shall take effect notwithstanding anything contained to the contrary in any other enactment for the time being in force.

19. Repeal.—The Khyber Pakhtunkhwa Chashma Right Bank Canal (Lift-cum-Gravity) Project (Control and Prevention of Speculation in Land) Ordinance, 2010 (Khyber Pakhtunkhwa Ordinance No. IV of 2010) is hereby repealed.

BY ORDER OF MR. SPEAKER
PROVINCIAL ASSEMBLY OF KHYBER
PAKHTUNKHWA

(AMANULLAH)
Secretary
Provincial Assembly of Khyber Pakhtunkhwa