

Section. (1)	Executive Order. (2)	Appellate Authority. (3)	Time allowed for appeal. (4)
238	Magistrate's notice directing disorderly person to remove from cantonment and prohibiting him from re-entering it without permission.	District Magistrate ...	Thirty days from service of notice.

THE CANTONMENTS (HOUSE ACCOMMODATION) ACT.

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THE CANTONMENTS (HOUSE ACCOMMODATION) ACT.

[INDIA ACT VI, 1923.] (1st April, 1923.)

CHAPTER I.**PRELIMINARY.**

1. (1)-(2) * * * *

Operation
of Act

(3) This Act shall not become operative in any cantonment or part of a cantonment otherwise than in pursuance of a notification under section 3 :

Provided that any notification made under section 3 of the Cantonments (House Accommodation) Act, 1922,¹ in force on the 1st April, 1923,² shall be deemed to be a notification made under section 3 of this Act. India II, 1902.

2. (1) In this Act, unless there is anything repugnant in the subject or context,— Definitions.

³(a) * * * *

(b) "Cantonment Board" means a Cantonment Board constituted under the Cantonments Act ;

(c) * * * *

(d) "Officer Commanding the station" means the officer for the time being in command of the forces in a cantonment or, if that officer is the General Officer Commanding the Forces in the Union of Burma, the military officer who would be in command of those forces in the absence of the General Officer Commanding the Forces in the Union of Burma ;

(e) * * * *

(f) "house" means a house suitable for occupation by a military officer or a military mess, and includes the land and buildings appurtenant to a house ;

(g) "military officer" means a commissioned or warrant officer of [the Burma]⁴ military or air forces on military or air-force duty in a cantonment, and includes * * * *⁵ an officer of the Cantonments Department and any person in Army departmental employment whom the General Officer Commanding the Forces in the Union of Burma may at any time, by an order in writing, place on the same footing as a military officer for the purposes of this Act ;

(h) "owner" includes the person who is receiving, or is entitled to receive, the rent of a house, whether on his own account or on behalf of himself and others or as an agent or trustee, or who would so receive the rent, or be entitled to receive it, if the house were let to a tenant ; and

(i) a house is said to be in a state of reasonable repair when—

(i) all floors, walls, pillars and arches are sound and all roofs sound and watertight,

(ii) all doors and windows are intact, properly painted or oiled, and provided with proper locks or bolts or other secure fastenings, and

(iii) all rooms, out-houses and other appurtenant buildings are properly colour-washed or white-washed.

¹ Repealed by the Cantonments (House Accommodation) Act, 1923 (India Act VI, 1923).

² Date of commencement of this Act.

³ Clause (a) was omitted by Act II, 1945.

⁴ Substituted by the Union of Burma (Adaptation of Laws) Order, 1948.

⁵ Omitted *ibid.*

(2) If any question arises whether any land or building is appurtenant to a house, it shall be decided by the Officer Commanding the station whose decision thereon shall, subject to revision by the Collector, be final.

CHAPTER II.

APPLICATION OF ACT.

Cantonments or parts of cantonments in which Act to be operative.

3. (1) The President of the Union may, by notification in the Gazette, declare this Act to be operative¹ in any cantonment or part of a cantonment situate in the Union of Burma.

(2) Before issuing a notification under sub-section (1) in respect of any cantonment or part of a cantonment, the President of the Union shall cause local inquiry to be made with a view to determining whether it is expedient to issue such notification, and what portion (if any) of the area proposed to be included therein should be excluded therefrom.

Saving of written instruments.

4. Nothing in this Act shall affect the provisions of any written instrument executed by or on behalf of the East India Company or the Government, unless the other party entitled and the Government consent in writing to be bound by the terms of this Act.

CHAPTER III.

APPROPRIATION OF HOUSES.

Liability of houses to appropriation.

5. Every house situate in a cantonment or part of a cantonment in respect of which a notification under sub-section (1) of section 3 is for the time being in force shall be liable to appropriation by the Government on a lease in the manner and subject to the conditions hereinafter provided.

Conditions on which houses may be appropriated.

6. (1) Where—

(a) a military officer who is stationed in or has been posted to the cantonment, or a [Chairman]² of a military mess in the cantonment, applies in writing to the Officer Commanding the station stating that he is unable to secure suitable accommodation in the cantonment for himself or the mess on reasonable terms by private agreement, and that no suitable house or quarter belonging to Government is available for his occupation or for the occupation of the mess, and the Officer Commanding the station is satisfied on inquiry of the truth of the facts so stated, or

(b) the Officer Commanding the station is satisfied on inquiry that there is not in the cantonment a sufficient and assured supply of houses available at reasonable rates of rent by private agreement to meet the requirements of the military officers and military messes whose accommodation in the cantonment is in his opinion necessary or expedient,

the Officer Commanding the station may, with a view to enforcing the liability under section 5, serve a notice on the owner of any house which appears to

¹ This Act has been declared to be in operation in all cantonments in Burma, *vide*, Notification No. 87, dated 26th May 1931, *Burma Gazette*, 1931, Part I, page 431.

² Substituted for the word "President" by the Union of Burma (Adaptation of Laws) Order, 1948.

him to be suitable for occupation by a military officer or a military mess, as the case may be, within the cantonment, or, if this Act is in force in part only of the cantonment, within that part, requiring the owner to permit the house to be inspected, measured and surveyed by such person and on such date, not being less than three clear days from the service of the notice, and at such time between sunrise and sunset, as may be specified in the notice.

(2) On the date and at the time so specified the owner shall be bound to afford all reasonable facilities to the person specified in the notice for the purpose of the inspection, measurement and survey of the house and, if he refuses or neglects to do so, such person may, subject to any rules made under this Act, enter on the premises and do all such things as may be reasonably necessary for the said purpose.

7. (1) If, on the report of such person as aforesaid, the Officer Commanding the station is satisfied that the house is suitable for occupation by a military officer or a military mess, he may, by notice—

Procedure for taking house on lease.

- (a) require the owner to execute a lease of the house to the Government for a specified period which shall not be less than five years ;
- (b) require the existing occupier, if any, to vacate the house ; and
- (c) require the owner to execute within such time as may be specified in the notice such repairs as may, in the opinion of the Officer Commanding the station, be necessary for the purpose of putting the house into a state of reasonable repair.

(2) Every notice issued under sub-section (1) shall state the amount of the annual rent proposed as reasonable for the house, calculated on the assumption that the owner will carry out the required repairs, if any. It shall also contain an estimate of the cost of such repairs.

(3) The following shall be deemed to be conditions of every lease executed under sub-section (1), namely :—

- (a) that the house shall, on the expiration of the lease, be re-delivered to the owner in a state of reasonable repair, and
- (b) that the grounds and the garden, if any, appertaining to the house shall be maintained in the condition in which they are at the time at which the lease is executed :

Provided that nothing in this sub-section shall be deemed to affect the right of the Government to avoid the lease in any such event as is specified in clause (e) of section 108 of the Transfer of Property Act.

8. * * * *

9. No house in any cantonment or part of a cantonment in which this Act is operative shall, unless it was so occupied at the date of the issue of the notification declaring this Act or the Cantonments (House-Accommodation) Act, 1902,¹ as the case may be, to be operative, be occupied for the purposes of a hospital, school, school hostel, bank, hotel, or shop, or by a railway

Sanction to be obtained before a house is occupied as a hospital, etc.

¹ Repealed by the Cantonments (House Accommodation) Act, 1923 (India Act VI, 1923).

administration, a company or firm engaged in trade or business or a club, without the previous sanction of the General Officer Commanding the Forces in the Union of Burma given with the concurrence of the Commissioner.

Houses not to be appropriated in certain cases.

10. No notice shall be issued under section 7 if the house—

- (a) was, at the date of the issue of the notification declaring this Act or the Cantonments (House-Accommodation) Act, 1902,¹ as the case may be, to be operative in the cantonment or part of the cantonment, or is, with such sanction as is required by section 9, occupied as a hospital, school, school hostel, bank, hotel or shop, and has been so occupied continuously during the three years immediately preceding the time when the occasion for issuing the notice arises, or
- (b) was, at the date of such a notification as is referred to in clause (a), or is, with such sanction as aforesaid, occupied by a railway administration or by a company or firm engaged in trade or business or by a club, or
- (c) is occupied by the owner, or
- (d) has been appropriated by the President of the Union for use as a public office or for any other purpose.

Time to be allowed for giving possession of house.

11. (1) If a house is unoccupied, a notice issued under section 7 may require the owner to give possession of the same to the Officer Commanding the station within twenty-one days from the service of the notice.

(2) If a house is occupied, a notice issued under section 7 shall not require its vacation in less than thirty days from the service of the notice.

(3) Where a notice has been issued under section 7 and the house has been vacated in pursuance thereof, the lease shall be deemed to have commenced on the date on which the house was so vacated.

Surrender of house when to be enforced.

12. If the owner fails to give possession of a house to the Officer Commanding the station in pursuance of a notice issued under section 7, or if the existing occupier fails to vacate a house in pursuance of such a notice, the District Magistrate, by himself or by another person generally or specially authorized by him in this behalf, shall enter on the premises and enforce the surrender of the house.

Option in certain cases for owner on whom notice is issued under section 7 to call upon the Government to purchase.

13. (1) If a house, in respect of which a notice is issued under section 7, is shown to the satisfaction of the President of the Union, or is proved by a decree or order of a Court of competent jurisdiction, to have been erected under any conditions, rules, regulations or orders which were in force in Bengal prior to the eighth day of December, 1864, and conferred on the owner the option of offering the house for sale to the military officer applying for its appropriation for his occupation or to the East India Company or the Government, then the owner shall have the option of either complying with the notice or offering the house for sale to the Government.

¹ Repealed by the Cantonments (House Accommodation) Act, 1923 (India Act VI, 1923).

(2) If the owner elects to sell the house, and the Government is willing to purchase it, the question of the amount of the purchase-money to be paid shall, in the event of disagreement, be referred to a civil Court in accordance with the provisions of Chapter IV.

14. (1) If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease for any term exceeding one year, the Government shall, for the term of one year from the date on which the house is vacated in pursuance of the notice, or for the unexpired term of the lease, whichever is the shorter, be liable to the owner for the rent fixed by the registered lease instead of for the rent payable under this Act if the rent so fixed exceeds the rent so payable.

Provision where house is held on lease by a tenant.

(2) If a house, in respect of which a notice is issued under section 7, is occupied by a tenant holding in good faith and for valuable consideration under a registered lease from year to year, the Government shall be liable as aforesaid for the term of six months from the date on which the house is vacated in pursuance of the notice.

(3) Nothing in this section shall be deemed—

- (a) to render the Government so liable unless an application in writing in this behalf is made by the owner to the Officer Commanding the station within fifteen days from the service of the notice ; or
- (b) to limit or otherwise affect any agreement between the Secretary of State for India in Council or the Government and the owner.

15. (1) If the owner considers that the rent stated in a notice issued under section 7 is not reasonable, he may, within a period of thirty days from the service of such notice, refer the matter to a civil Court, in accordance with the provisions of Chapter IV :

Power for owner to require reference to Court on question of rent.

Provided that where an appeal has been made to the General Officer Commanding the Forces in the Union of Burma under section 30, the period of thirty days shall be reckoned from the date on which the owner received notice of the result of the appeal under sub-section (2) of section 32.

(2) If the owner does not make such reference within the said period, he shall be deemed to have accepted the rent so offered.

16. (1) If the owner fails to execute any repairs to a house as required by a notice issued to him under section 7, the Officer Commanding the station may by notice require the owner to execute the repairs within such period, not being less than thirty days, as may be specified in the notice :

Power for owner to require reference to Court on question of repairs.

Provided that where an appeal has been made to the General Officer Commanding the Forces in the Union of Burma under section 30, the period of thirty days shall be reckoned from the date on which the owner received notice of the appeal under sub-section (2) of section 32.

(2) If the owner objects to any requisition contained in a notice issued under sub-section (1), he may, within thirty days from the service of the notice, refer the matter to a civil Court, in accordance with the provisions of Chapter IV.

(3) Every reference under sub-section (2) shall be accompanied by an estimate of the repairs, if any, which the owner considers necessary in order to put the house into a state of reasonable repair.

Power to have repairs executed and recover cost.

17. If the owner fails to comply with a notice issued under sub-section (1) of section 16, the Military Engineer Services or the Public Works Department may, with the previous sanction of the Officer Commanding the station and notwithstanding any right of reference conferred by that section, cause the repairs specified in the notice to be executed at the expense of the Government, and the cost thereof, or, where a reference has been made, the amount finally determined by the civil Court, may be deducted from the rent payable to the owner.

Notice to be given of devolution of interest in house in cantonment.

18. Every person on whom devolves, by transfer, by succession or by operation of law, the interest of an owner in any house, or in any part of any house, situate in a cantonment or part of a cantonment in respect of which a notification under sub-section (1) of section 3 is for the time being in force, shall be bound to give notice of the fact to the Officer Commanding the station within one month from the date of such devolution, and if he, without reasonable cause, fails to do so, he shall be punishable with fine which may extend to fifty rupees.

CHAPTER IV.

PROCEDURE IN REFERENCES.

Jurisdiction in references.

19. All references under this Act shall be made by application to, and tried by, the Court of the District Judge.

Procedure and powers of the Court.

20. References under this Act shall be deemed to be proceedings within the meaning of section 141 of the Code of Civil Procedure and in the trial thereof the Court may exercise any of its powers under that Code.

Restriction of scope of inquiry.

21. The scope of the inquiry in a reference under this Act shall be restricted to a consideration of the matters referred to the Court in accordance with the provisions of this Act.

22—28. * * * *

CHAPTER V.

APPEALS.

Appeal to High Court.

29. (1) An appeal shall lie to the High Court against the decision of the Court of the District Judge upon a reference tried by it.

(2) No appeal under this section shall be admitted unless it is made within thirty days from the date of the decision against which it is preferred.

(3) An appeal preferred under this section shall be deemed to be an appeal from an order within the meaning of section 108 of the Code of Civil Procedure.

30. The owner or any tenant of a house in respect of which a notice has been issued under section 7 may, within a period of twenty-one days from the date of the service thereof, appeal to the General Officer Commanding the Forces in the Union of Burma against the decision of the Officer Commanding the station to appropriate the house.

Appeal to General Officer Commanding the Forces in the Union of Burma.

31. (1) Every petition of appeal under section 30 shall be in writing and accompanied by a copy of the notice appealed against.

Petition of appeal.

(2) Any such petition may be presented to the Officer Commanding the station and that officer shall be bound to forward it to the authority empowered by section 30 to hear the appeal, and may attach thereto any report which he may desire to make in explanation of the notice appealed against.

(3) If any such petition is presented direct to the General Officer Commanding the Forces in the Union of Burma and an immediate order on the petition is not necessary, the General Officer Commanding the Forces in the Union of Burma may refer the petition to the Officer Commanding the station for report,

32. (1) The decision on any such appeal of the General Officer Commanding the Forces in the Union of Burma shall be final, and shall not be questioned in any Court otherwise than on the ground that the house is situate in a cantonment, or part of a cantonment, in which this Act is not operative :

Order in appeal final.

Provided that no appeal shall be decided until the appellant has been heard or has had a reasonable opportunity of being heard in person or through a legal practitioner, and in giving a decision the General Officer Commanding the Forces in the Union of Burma shall record briefly the grounds therefor.

(2) Notice of the result of the appeal shall be given to the appellant as soon as may be, and, where the appellant is a tenant of the house, to the owner of the house also.

33. Where an appeal has been presented under section 30 within the period prescribed therein, all action on the notice shall, on the application of the appellant, be held in abeyance pending the decision of the appeal.

Suspension of action pending appeal.

CHAPTER VI.

SUPPLEMENTAL PROVISIONS.

34. Every notice or requisition prescribed by this Act shall be in writing, signed by the person by whom it is given or made or by his duly appointed agent, and may be served by post on the person to whom it is addressed, or,

Service of requisitions.

in the case of an owner who does not reside in or near the cantonment, on his agent appointed in accordance with a bye-law made under clause (29) of section 282 of the Cantonments Act.

Computation of periods of limitation,

34A. The period prescribed for making any reference or preferring any appeal under this Act shall be computed in accordance with the provisions of the Limitation Act.

Power for President to make rules.

35. (1) The President of the Union may make rules to carry out the purposes and objects of this Act.

(2) In particular, and without prejudice to the generality of the foregoing power, such rules may define the powers of entry, inspection, measurement or survey which may be exercised in carrying out the purposes and objects of this Act or of any rule made hereunder.

Further provisions respecting rules,

36. (1) The power to make rules under section 35 shall be 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 and in such other manner (if any) as the President of the Union may direct.

(2) Any rule under section 35 may be general for all cantonments or parts of cantonments in the Union of Burma in which this Act is for the time being operative, or may be special for any of such cantonments or parts as the President of the Union may direct.

(3) A copy of the rules under section 35 for the time being in force in a cantonment shall be kept open to inspection free of charge at all reasonable times in the office of the Cantonment Authority.

(4) In making any rule under sub-section (2) of section 35, the President of the Union may direct that whoever obstructs any person, not being a public servant within the meaning of section 21 of the Penal Code, in making any entry, inspection, measurement or survey, shall be punishable with fine which may extend to fifty rupees, and, in the case of a continuing offence, with fine which, in addition to such fine as aforesaid, may extend to five rupees for every day after the first during which such offence continues.

Inapplicability of section 556 of the Code of Criminal Procedure to trials of offences,

37. No Judge or Magistrate shall be deemed, within the meaning of section 556 of the Code of Criminal Procedure, to be a party to, or personally interested in, any prosecution for an offence constituted by or under this Act merely because he is a member of the Cantonment Board or has ordered or approved the prosecution.

Protection to persons acting under Act,

38. No suit or other legal proceeding shall lie against any person for anything in good faith done or intended to be done, under this Act or in pursuance of any lawful notice or order issued under this Act.