

AUTHORITATIVE ENGLISH TEXT

Act No.20 of 2003

THE HIMACHAL PRADESH ROAD INFRASTRUCTURE PROTECTION ACT 2002

(AS ASSENTED TO BY THE PRESIDENT ON 17.09.2003)

AN

ACT

to provide for prevention of misuse, damage, unauthorized use and encroachment of the road infrastructure.

Be it enacted by the Legislative Assembly of Himachal Pradesh in the Fifty-third Year of the Republic of India, as follows:

1. (1) This Act may be called the Himachal Pradesh Road Infrastructure Protection Act, 2002.

(2) It shall extend to the whole of Himachal Pradesh.

2. In this Act, unless the context otherwise requires,

(a) “agriculture” includes horticulture, dairy farming, poultry farming and the planting and upkeep of an orchard;

(b) “appellate authority” means the Chief Engineer in-charge of the zone of Himachal Pradesh Public Works Department, appointed by the Government, by notification, in the Official Gazette, to perform any or all of the functions as conferred upon him under this Act and the rules made thereunder;

(c) “building” means a house, hut, shed, or other roofed structure, for whatever purpose or of whatsoever material constructed and every part thereof, and includes a wall or masonry platform or masonry ditch or drain but does not include a tent or a fence for agricultural purposes;

(d) “building line” means a line on either side of any road or part of a road, fixed in the manner prescribed, in respect of such road or part, by the Government, by notification in the Official Gazette;

(e) “confirmatory authority” means any authority not below the rank of Executive Engineer of Himachal Pradesh Public Works Department appointed by the

Government, by notification, in the Official Gazette, to perform any or all of the functions as conferred upon him under this Act and the rules made thereunder:

(f) “controlled area” for the purpose of this Act shall mean an area declared as such under section 3 of the Himachal Pradesh Roadside Land Control Act, 1968;

(g) “controlled line” means a line on either side of any road or part of a road beyond the building line fixed in the manner prescribed, in respect of such road or part, by the Government, by notification in the Official Gazette;

(h) “department” means the department of the Government of Himachal Pradesh to whom the work relating to road infrastructure has been entrusted;

(i) “Government” means the Government of Himachal Pradesh;

(j) “map” means the road infrastructure map of a division, notified by the State Government under section 4 of this Act;

(k) “Official Gazette” means the Rajpatra, Himachal Pradesh;

(l) “place of worship” includes a temple, church, mosque, imambara, tanquia, idgah, smadhi, math, sati;

(m) “prescribed” means prescribed by rules made under this Act;

(n) “prescribed authority” means any authority not below the rank of Junior Engineer of Himachal Pradesh Public Works Department, appointed by the Government by notification, in the Official Gazette, to perform any or all of the functions as conferred upon him under this Act and the rules made thereunder;

(o) “revisional authority” means Secretary (Public Works Department) to the Government of Himachal Pradesh, appointed by the Government, by notification, in the Official Gazette to perform any or all of the functions as conferred upon him under this Act and the rules made thereunder:

(p) “road” means a road maintained by the Government of Himachal Pradesh or any local authority and shall include National Highways declared under the National Highway Act, 1956;

(q) “road infrastructure” means the roads, paths and streets for transport or communication and shall include : -

(i) acquired road land width;

(ii) all types of road and their structure, such as road pavements, shoulders, retaining walls, breasts walls, toe walls, cross-drainage, kerb, road side drains,

road junctions, medians, speed breakers, i.e. rumble strips street lighting, traffic lights etc;

- (iii) any structure ancillary to road transport and communication system;
- (iv) bridges including approaches, return walls, wing walls, protection works and allied structures;
- (v) expressways including interchanges, grade separators, dividers and other ancillary structures;
- (vi) road furniture, such as parapets, railings, kerb stones, kilometer stones, benches, cat eyes, reflector pedestals and signboards, barricades and crash barriers;
- (vii) road over bridges, flyovers and under passes and their allied structures;
- (viii) roadside parking area;
- (ix) roadside plantation, nurseries, hedges and other landscape items;
- (x) toll booths/ plaza;
- (xi) tunnels and ancillary structures;

(xii) wayside amenities/structure, such as rain shelters, lay byes bus lanes, public conveniences, parks and open spaces located on Government land along the road;

(r) "Secretary" means Secretary (Public Works Department) to the Government of Himachal Pradesh and includes any person for the time being appointed by the Government, by notification, to exercise and perform all or any of the powers and functions of the Secretary under this Act and the rules made thereunder; and

(s) "Work Inspector" means any employee of the Himachal Pradesh Public Works Department, appointed by the State Government by notification, as such, and includes Road Inspector and Work Supervisor of the department.

3. No person shall –

- (i) encroach upon the Government land under road infrastructure;
- (ii) raise any permanent, temporary or movable structure on or from road infrastructure;

- (iii) misuse a road by erecting workshop and carrying out commercial activity including tethering of livestock on road infrastructure;
- (iv) block/damage roadside damage and cross drainage system;
- (v) divert sullage/muck from private properties to the road;
- (vi) stack/throw excavated earth/debris on roads and unauthorisedly stack material on roads;
- (vii) dig/damage road infrastructure without permission from competent authority;
- (viii) un-authorisedly install hand pumps and petrol pumps;
- (ix) damage/deface bridges, road over bridges, flyovers and under-passes including approaches, return walls and wing wall, parapets, railing and lighting system, protection works, tunnels and their ancillary structures and other structures such as road pavement, shoulders, retaining walls, breast walls toe walls, cross-drainage and roadside drains, road junctions, medians, speed-breakers, i/c rumble strips, street lighting, traffic lights, barricades, crash barriers, sign board, kilometer stone, reference pillar, boundary pillar, road identification marked infrastructure, pedestals benches, toll booths/plaza, way side amenities such as rain shelters, lay byes, bus lanes public conveniences parks and open spaces along the road and building any other structure meant for facilitating road transportation and maintenance of roads;
- (x) park accidented or condemned or serviceable or unserviceable vehicles or goods/machinery on the road;
- (xi) damage/uproot roadside plantation, nurseries, hedges and other landscape items;
- (xii) un-authorisedly display of hoardings;
- (xiii) commit an act prohibited under the Himachal Pradesh Open Places (Prevention of Disfigurement) Act, 1985;
- (xiv) un-authorisedly erect welcome gates arches etc;
- (xv) commit any act of omission or commission that may be notified by the Government under this section as injurious to the road infrastructures;
- (xvi) damage road infrastructure due to mining in the area; and
- (xvii) erect or construct any structure in the controlled area.

4. (1) Executive Engineer in-charge of the road infrastructure shall prepare on a scale of 1:500 a map of the road infrastructure within his jurisdiction showing therein the length and width of the road.

(2) The map shall also show important landmarks including building and control lines and landmarks fixed by the Revenue Department along the road infrastructure as reference points for identification and demarcation of the road infrastructure and the map shall be approved by the Chief Engineer in-charge of the Zone concerned.

(3) The Government shall, through publication in newspapers, inform the public regarding the existence of maps of the roads showing their boundaries and other important landmarks and the availability of such maps of public inspection in office of the Executive Engineer-in-charge of the road infrastructure and the Government shall also invite public objections within sixty days of first publication of the notice in newspapers and similarly for every addition or change made therein subsequently.

(4) After adjudicating upon the objections raised, the Government shall finalise such maps and inform the public regarding their existence and availability in the Executive Engineer's office for reference and use.

(5) After action under sub-section (3) has been taken, the map shall become the reference record of road infrastructure in the division of the Himachal Pradesh Public Works Department and shall be known as 'road infrastructure map' of a division.

(6) The occurrence of all prohibited activities within the jurisdiction of the prescribed/confirmatory authority may be determined with reference to this road infrastructure map of the concerned division of Himachal Pradesh Public Works Department.

(7) It shall be open to public to inspect the road infrastructure map of a division and obtain certified copies from the Executive Engineer concerned of the area on payment of prescribed fee.

(8) For control of land along highways and for removal of encroachments, the Government shall demarcate and enforce building lines and control lines on the private lands beyond the right way of National Highways.

5. It shall be the duty of the prescribed authority or Work Inspector, as the case may be to ensure that no activity prohibited under section 3 of the Act occurs within his jurisdiction.

6. (1) On noting the occurrence of any activity prohibited under section 3, the prescribed authority shall issue an order directing the defaulter to stop forthwith the prohibited activity and where necessary, order the restoration of status quo of the road infrastructure.

(2) An order of the prescribed authority under sub-section (1) shall clearly describe in writing the prohibited activity and also indicate by way of sketch, the location of the occurrence of prohibited activity on a relevant portion of the map and the extent of such activity and the damage already caused or being caused.

(3) The prescribed authority shall also direct the defaulter to restore the status of the road infrastructure to its original position within a specified period of time by starting the process of restoration within 3 days from the issue of notice and complete the same within the allowed time.

(4) The prescribed authority shall indicate specifically that in the event of failure to comply with any direction or order passed under this section, steps shall be taken to restore the status quo at the risk and cost of the defaulter, in addition to the restoration cost to be imposed. The expenditure so incurred shall liable to be recovered as arrears of land revenue and the prescribed authority shall confiscate to the Government and sell the dismantled property used in the commission of a prohibited activity in the prescribed manner.

(5) The service of notice shall be effected in the manner as provided in Code of Civil Procedure, 1908.

(6) Any order passed under this section shall not be liable to be challenged in any civil court on any ground whatsoever.

7. Save as provided in section 11 of this Act, the prescribed authority shall impound vehicles/machinery/goods abandoned on road infrastructure and in addition to the cost of removal, impose a penalty @ Rs. 1000/- per day for the period during which the vehicles / machinery / goods remain in the custody of the prescribed authority:

Provided that if an impounded vehicle / machinery / goods remain in the custody of the prescribed authority for a period more than 10 days, the confirmatory authority shall take action under sections 25, 26 and 27 of the Indian Police Act, 1861 for disposal of abandoned property.

8. The aggrieved party may file objections, against the order issued by the prescribed authority, to the confirmatory authority within a period of 3 days from the service of said order and confirmatory authority shall thereafter shall afford an opportunity to the aggrieved party to be heard in person and thereafter shall pass an order within a period of 5 days confirming or setting a side the order passed by the prescribed authority through a self speaking and reasoned order.

9 (1) No appeal shall be entertained against any order passed by the confirmatory authority, unless, the appeal is filed within 15 days from the passing of order by the confirmatory authority;

Provided that an appeal may be admitted after the expiry of the period specified under this section, if the appellant satisfies the appellate authority that he has sufficient cause for not preferring appeal within that period:

Provided further that the appellant while filing the appeal against such order, shall deposit 50% of the anticipated restoration cost as assessed by the department.

(2) The appellate authority shall, within 15 days of the filing of the appeal, pass an order confirming or setting aside the order passed by the confirmatory authority.

10. (1) Any person aggrieved by an order passed in appeal by the appellate authority under section 9 may, within 15 days of communication of such order, make an application to the Government seeking revision.

(2) The revisional authority shall within 15 days of the filing of revision application against the order of the appellate authority pass an order confirming or setting aside the order of the appellate authority. The Government shall not pass an order under this section prejudiced to any person without giving such person a reasonable opportunity of being heard.

11. (1) The prescribed authority may order any person, who has indulged in a prohibited activity as referred to in clauses (i), (iii) and (viii) of section 3 to restore road infrastructure to its original state and if such person fails to start the restoration work within a period of 3 days from the date of passing of such order and completing it within the time allowed, the prescribed authority shall take such measures as may appear to him to be necessary, to give effect to the orders at the cost of the defaulter.

(2) If a person contravenes or fail to comply with, any provisions of this Act or any order made under sub-section (1), the prescribed authority may, after giving a reasonable opportunity of being heard, direct such person to pay, by way of restoration fee, in addition to the cost of restoration of road infrastructure –

- (i) for contravention of any prohibited activities as referred to in clauses (ii), (iv), (v), (vii), (ix), (xi), (xvi) and (xvii) of section 3, an amount which shall be five times of the restoration cost;
- (ii) for contravention of prohibited activities as referred to in clause (vi) of section 3, an amount @ five hundred rupees per cubic meter or part thereof per day in respect of excavated earth/deveris and @ one thousand rupees per truck load or part thereof per day in respect to stacked material;
- (iii) for contravention of prohibited activities as referred to in clause (xii) of section 3, a amount @ five hundred rupees per square metre per week till the time such act continues;

- (iv) for contravention of the prohibited activities as referred to in clause (xiv) of section 3, an amount @ one hundred rupees per running metre of the erection per day till the time the act continues; and
- (v) for contravention of the prohibited activities as referred to in clause (xiii) or (xv) of section 3, an amount @ six times the cost of removal.

Explanation : (1) All restoration costs and fees payable under the provisions of this section shall be deposited with the prescribed authority within seven days, failing which it shall be recovered as arrears of land revenue with interest commencing from the day following the last day allowed for deposit.

(2) Cost of removal/restoration shall be determined as per the current schedule of rates/principles of costing of the Himachal Pradesh Public Works Department duly indexed for inflation.

12. (1) Any person who commits any act prohibited under section 3 or fails to perform their duties assigned under section 5 of this Act shall be punished with imprisonment of either description for a term which may extend to two years or fine, or with both.

(2) No court shall take cognizance of an offence punishable under sub-section(1) against any person, unless a complaint in writing is made by public servant authorised by the Government, by notifications, in the Official Gazette .

13. Every person who intends to have the following facilities, namely:

- (i) an approach to private property from the road infrastructure;
- (ii) laying of service such as pipeline, sewerage line, electrical cables, telephone cables etc. either along or across the road or bridge;
- (iii) mining activities within 50 metres from either side of existing road or 500 metres upstream or downstream of a bridge;
- (iv) carrying out any private or commercial activity within the acquired and controlled area;
- (v) display of hoardings within the acquired and controlled area;
- (vi) installation of hand pumps within the acquired and controlled area;
- (vii) parking of accidented vehicles/machinery on the road upto 48 hours; and

(viii) temporary stacking of materials/goods on the road for a period not exceeding 48 hours, shall apply for permission in writing to the Executive Engineer-in-charge of the road infrastructure within his jurisdiction in respect of facility under clauses (i) to (vi) above and to the Junior Engineer-in-charge in respect of facility under clauses (vii) and (viii) of this section and every such application for permission shall be in the prescribed manner:

Provided that failure to comply with the requirements as contained under this section, shall be liable to pay cost/fee as per provision of section 11 of this Act:

Provided further that the facilities as contained in this section shall be provided by the department as a deposit work for the beneficiary.

14. The confirmatory authority/prescribed authority shall, for the purpose of performing any function under this Act, have the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 when trying a suit in respect of the following matters, namely: -

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents; and
- (c) any other matter which may be prescribed.

15. No suit or prosecution shall be entertained against the prescribed authority or any other officer of the department authorized under this act acting under the order or direction of superior authority of the department, for anything, which is done by him in good faith or intended to be done under this Act or any rule made thereunder.

16. No civil court shall have any jurisdiction to entertain or to decide any question relating to matter failing under this Act or the rules made thereunder.

17. All the road infrastructure shall be deemed to be in the custody of the department on behalf of Government, as soon as it comes into existence.

18. The Government may, by notification, in the Official Gazette, empower officer of Municipal Corporation, Municipalities, Nagar Panchayats and Development Authorities within the State of Himachal Pradesh to exercise such powers and perform such functions, as may be specified in the notification under this Act, in respect of road infrastructure within their jurisdiction.

19. (1) The State Government may, by notification, in the Official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for all or any of the following matters, namely: -

- (a) the form of any notice required or authorized to be given under this Act and the manner in which it may be served;
- (b) the conduct of proceedings under this Act;
- (c) the distribution and allocation of work to prescribed authority and transfer of any proceeding pending before a prescribed authority to another prescribed authority;
- (d) the manner in which the damage resulting from acts of prohibited activities may be assessed and the principles which may be taken into account in assessing such damages;
- (e) the manner of the laying out of means of access to road infrastructure ;
- (f) the manner in which permission under this Act, may be granted or refused and fees to be charged; and
- (g) any other matter, which may be prescribed.

(3) All rules made under this section shall be subject to the condition of previous publication.

(4) All rules made under this section shall be laid before the Legislative Assembly, as soon as they are framed.