

# THE BUILDING CONSTRUCTION ACT, 1952

(EAST BENGAL ACT NO. II OF 1953) 21st March, 1953

Amended version as of 2006

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An Act to provide for the prevention of haphazard construction of buildings and excavation of tanks which are likely to interfere with the planning of certain areas in Bangladesh.

WHEREAS it is expedient to provide for the prevention of haphazard construction of buildings and excavation of tanks and cutting of hills which are likely to interfere with the planning of certain areas in Bangladesh;

It is hereby enacted as follows: -

### **1. Short title, extent and commencement**

- (1) This Act may be called the Building Construction Act, 1952.
- (2) It extends to the whole of Bangladesh.
- (3) It shall come into force, -
  - (a) in the areas to which notification No. 2306 L.S.-G., dated the 26th July, 1951, relates, on and from the date on which the East Bengal Building Construction Ordinance, 1951, as enacted and continued in operation by the East Bengal Expiring Laws Act, 1951, ceases to operate; and
  - (b) in other areas, on and from such dates as the Government may, by notification in the official Gazette, direct.
- (4) The Government may, by notification in the official Gazette, withdraw the operation of this Act from any area.

### **2. Definitions**

In this Act, unless there is anything repugnant in the subject or context, -

- (a) "Authorized Officer" means an officer appointed by the Government, by notification in the official Gazette, to exercise in any area the functions of an Authorized Officer under this Act;
- (b) "building" includes a house, out-house, hut, wall and any other structure whether of masonry, bricks, corrugated iron sheets, metal, tiles, wood, bamboos, mud, leaves, grass, thatch or any other material whatsoever;
- (c) "Committee" means Building Construction Committee constituted for any area in the prescribed manner;
- (cc) "hill" includes hillocks;
- (ccc) "master plan" means the master plan prepared and approved under any law for the time being in force for the utilization of any land anywhere in Bangladesh;
- (d)
  - (i) "owner" in relation to a building or tank means the person at whose expenses such a building or tank is constructed or excavated or who has the right to transfer the same, and includes his heirs, assigns and legal representatives;
  - (ii) "owner" in relation to a hill means a person who possesses the hill and has the right to transfer the same, and includes his heirs, assigns and legal representatives;
- (e) "prescribed" means prescribed by rules made under this Act;
- (f) "tank" includes ditch, drain, well and channel; and
- (g) "temporary building" means such building which is declared by the Authorized Officer to be of a temporary nature.

### **3. Restriction on construction of building and excavation of tank**

- (1) Notwithstanding anything contained in any other law for the time being in force, or in any agreement, no person shall, without the previous sanction of an Authorized Officer, construct or re-construct or make addition or alternation to any building, or excavate or re-excavate any tank within the area to which this Act applies; and such sanction shall be subject to such terms and conditions as the Authorized Officer may think fit to impose:  
Provided that such sanction shall remain valid for three years from the date of sanction and on the expiry of the period, the application shall have to apply and obtain a fresh sanction.
- (1a) Notwithstanding anything contained in sub-section (1), all sanctions obtained during the 12 months immediately preceding the 30th September, 1958, shall be deemed to have expired and no such construction or excavation shall be made without obtaining fresh sanction.  
Explanation: For the purpose of obtaining fresh sanction under sub-section (1) or sub-section (1a), no fresh sanction shall have to be obtained for the construction of buildings where the construction has been made up to 4 feet above plinth level.
- (2) The Government may, by notification in the official Gazette, direct that the power of an Authorized Officer under sub-section (1) shall be exercised by a Committee in such area as may be specified in the notification.
- (3) When a notification under sub-section (2) has been issued, the Authorized Officer shall not exercise the power conferred on him by sub-section (1) in the area to which the said notification relates.
- (4) The provisions of sub-section (1) shall not apply to normal repairs to existing building.

### **3A. Restriction on improper use of lands and buildings**

- (1) No owner or occupier of a building shall, without obtaining previous permission from the Authorized Officer or the Committee, as the case may be, use the building for the purpose other than that mentioned in the sanction.
- (2) When the Authorized Officer is satisfied that the existing use of any land or building does not conform the scheme of land utilization indicated in the Master Plan, the Authorized Officer may, by an order in writing, direct the owner, occupier or the person in charge of the land or building to discontinue such use and, in the case of a building also to remove or dismantle such building:  
Provided, however, that the owner, occupier or the person in charge of the land or building shall be given six months' time before effect is given to the order of discontinuance of such use and twelve months' time before effect is given to the order of removal or dismantlement of the building:

Provided further that no existing or further use of any land or building for combined residential and commercial purpose shall be discontinued or prohibited unless, in any particular case, such use militates against the dominant character of the scheme of land utilization as indicated in the Master Plan and constitutes a nuisance generally to the zone and particularly to the neighbourhood in which the land or building is situated.

**3B. Direction for removal of construction, etc.**

- (1) Where it appears to the Authorized Officer or the Committee, as the case may be, that-
  - (a) any building has been constructed or re-constructed, or any addition or alteration to any building has been made, or any tank has been excavated or re-excavated, before or after the commencement of the Building Construction (Amendment) Ordinance, 1986 (Ordinance No. LXXII of 1986);
  - (b) any building is being constructed, or re-constructed, or any addition or alteration to any building is being made or any tank is being excavated or re-excavated, without obtaining the sanction under section 3, or in breach of any of the terms or conditions subject to which sanction was granted under that section, he or it may, by a notice, direct the owner, the occupier and the person in-charge of the building or the tank to show cause, within such period, not being less than seven days, as may be mentioned in the notice, why-
    - (i) the building or any portion thereof, whether constructed or under construction, as may be specified in the notice, should not be removed or dismantled; or
    - (ii) the tank or any portion thereof, whether excavated or under excavation, specified in the notice, should not be filled up; or
    - (iii) further construction or re-construction of, or addition or alteration to, the building, or excavation or re-excavation of the tank, should not be stopped.
- (2) Where a person is asked by a notice under sub-section (1) to show cause why further construction or re-construction of, or addition or alteration to, any building, or excavation or re-excavation of any tank, should not be stopped, he shall stop such further construction or re-construction or addition or alteration or excavation or re-excavation, as the case may be, from the date the notice is served on him till an order is made under sub-section (3).
- (3) Where, after considering the cause shown, if any, within the time mentioned in the notice and giving the person showing the cause a reasonable opportunity of being heard, or where no cause is shown within such time, the Authorized Officer or the Committee, as the case may be, after such enquiry as he or it deems fit, is satisfied that the building has been, or is being, constructed or re-constructed, or addition or alteration to the building has been, or is being, made, or the tank has been, or is being, excavated or re-excavated without obtaining the sanction under section 3, or in breach of any of the terms and conditions subject to which sanction was granted under that section, he or it may, by an order in writing stating reasons therefore, direct the owner, the occupier and the person in-charge of the building or the tank to remove or dismantle the building or any portion thereof or to fill up the tank or any portion thereof as specified in the order within such time as may be fixed by him or to stop further construction or re-construction, addition or alteration or excavation or re-excavation, as the case may be; and otherwise shall make an order vacating the notice.
- (4) Where further construction or re-construction of, or addition or alteration to, any building, or excavation or re-excavation of any tank has been stopped under sub-section (2) and cause is shown within the time mentioned in the notice against the stoppage of such further construction or re-construction, addition or alteration, excavation or re-excavation, as the case may be, the Authorized Officer or the Committee, as the case may be, shall make his or its order under sub-section (3) within fifteen days from the date the cause is shown.
- (5) No order under this section shall be made directing any person to remove or dismantle any building or part thereof or to fill up any tank or part thereof unless it is found that-
  - (a) such a building or part thereof has been constructed, or re-constructed, or such tank or part thereof has been excavated or re-excavated at a place or in a manner which is contrary to the master plan or development plan, if any, of the area in which the building or the tank is situated, or
  - (b) such building or part thereof cannot be re-constructed, or altered or such tank, or part thereof cannot be re-excavated, in accordance with the terms and conditions of the sanction alleged to have been breached, or

- (c) such building or part thereof or such tank or part thereof causes any undue inconvenience in respect of use or occupation of any land or building or road or passage in the area adjacent to it, or
- (d) sanction, if prayed for, could not be granted for the construction or re-construction of, or addition or alteration to, the building or excavation or re-excavation of the tank:

Provided such person-

- (i) pays, within the time specified by the Authorized Officer or the Committee, as the case may be, a fine of an amount, which shall not be less than TK. 5,000 and more than TK. 50,000 to be determined by that Officer or the Committee,
  - (ii) makes necessary addition or alteration to the building, or makes the excavation or the filling up of the tank as may be directed by the Authorized Officer or the Committee within the time specified by that Officer or the Committee, and
  - (iii) obtains the necessary sanction on payment of a fee which shall be ten times the amount of the fee prescribed.
- (6) If a person fails to pay the fine or make the addition or alteration or excavation or filling or obtain the sanction as mentioned in sub-section (5) within the time specified by the Authorized Officer or the Committee, as the case may be, under that sub-section, the said officer or the Committee may, by an order in writing, direct the owner, the occupier and the person in-charge of the building or the tank to remove or dismantle the building or any portion thereof or to fill up the tank or any portion thereof as specified in the order within such time as may be fixed by him or it.
- (7) A notice or an order under this section shall be served in the prescribed manner.

### **3C. Restriction on cutting etc. of hills**

- (1) Notwithstanding anything contained in any other law for the time being in force, no person shall, without the previous sanction of an Authorized Officer, cut or raze any hill within the area to which this Act applies; and such sanction shall be subject to such terms and conditions as the Authorized Officer may think fit to impose:

Provided that no such sanction shall be granted without the previous approval of the Government or such other authority as the Government may, by notification in the official Gazette, specify in this behalf:

Provided further that no such sanction shall be granted unless the Authorized Officer and the Government or the authority specified in the notification mentioned in the first proviso is satisfied that-

- (a) the cutting or razing of the hill shall not cause any serious damage to any hill, building, structure or land adjacent to or in the vicinity of the hill, or
  - (b) the cutting or razing of the hill shall not cause any silting of or obstruction to any drain, stream or river, or
  - (c) the cutting or razing of the hill is necessary in order to prevent the loss of life or property, or
  - (d) the cutting of the hill is such as is normally necessary for construction of dwelling house without causing any major damage to the hill, or
  - (e) the cutting or razing of the hill is necessary in the public interest.
- (2) A sanction granted under sub-section (1) shall remain valid for a period of one year from the date of sanction.
- (3) Notwithstanding anything contained in any other law for the time being in force, all sanctions obtained for cutting or razing of the hills prior to the commencement of the Building Construction (Amendment) Ordinance, 1990 shall be deemed to have expired and no such cutting or razing shall be done without obtaining fresh sanction.
- (4) The Government may, by notification in the official Gazette, direct that the power of an Authorized Officer under sub-section (1) shall be exercised by a Committee in such area as may be specified in the notification.
- (5) When a notification under sub-section (4) has been issued, the Authorized Officer shall not exercise the power conferred on him by sub-section (1) in the area to which the said notification relates.

### **3D. Direction for stopping cutting or razing of hill**

- (1) Where it appears to the Authorized Officer or the Committee, as the case may be, that any hill is being cut or razed without obtaining the sanction under section 3C, or in breach of any of the terms or

conditions subject to which sanction was granted under that section, he or it may, by a notice, direct the owner or the occupier of the hill to show cause, within such period, not being less than three days, as may be mentioned in the notice, why the cutting or razing of the hill should not be stopped.

- (2) Where a person is asked by a notice under sub-section (1) to show cause why the cutting or razing of the hill should not be stopped, he shall stop such cutting or razing from the date the notice is served on him till an order is made under sub-section (3).
- (3) Where, after considering the cause shown, if any, within the time mentioned in the notice and giving the person showing the cause a reasonable opportunity of being heard, or where no cause is shown within such time, the Authorized Officer or the Committee, as the case may be, after such enquiry as he or it deems fit, is satisfied that the hill has been or is being cut or razed without obtaining the sanction under section 3C or in breach of any of the terms and conditions subject to which sanction was granted under that section, he or it may, by order in writing stating reasons therefore, direct the owner and the occupier of the hill to stop the cutting or razing of the hill; and otherwise shall make an order vacating the notice.
- (4) A notice or an order under the section shall be served in the prescribed manner.

#### **4. Power of removal of temporary building**

The Authorized Officer may, by a notice served in the prescribed manner, direct the owner of a temporary building, erected prior to the date of the coming into force of this Act, to remove the same within the period mentioned in the notice or within such further period as may be extended by the Authorized Officer; and the owner thereof shall, on payment to him of such compensation as the Authorized Officer thinks fair and reasonable, remove it within the period aforesaid.

#### **5. Power of removal of building under construction**

- (1) The Authorized Officer may, by a notice served in the prescribed manner, direct the owner of a building or tank or hill, the construction or excavation or cutting whereof is in progress on the date of the commencement of this Act, not to proceed with the work any more and to remove such building within the period mentioned in the notice or within such further period as may be extended by the Authorized Officer; and the owner thereof shall, on payment to him of such compensation, not exceeding the sum of two hundred and fifty rupees, as the Authorized Officer thinks fair and reasonable, remove the same within the period aforesaid.
- (2) The provision of sub-section (1) shall not apply to normal repairs to existing buildings.

#### **6. Eviction of occupier**

- (1) The Authorized Officer or the Committee, as the case may be, shall, simultaneously with the issue of an order under section 3B or a notice under section 4 or sub-section (1) of section 5 on the owner, the occupier or the person in-charge of the building, as the case may be, issue a notice upon them to vacate the building within the period mentioned therein or within such further period as may be extended by the Authorized Officer or the Committee.
- (2) If the person upon whom a notice to vacate the building under sub-section (1) has been served does not, in pursuance of that notice, vacate the building within the period mentioned in the notice, he shall, notwithstanding anything contained in any other law for the time being in force, be liable to be summarily evicted therefrom by the Authorized Officer or the Committee, as the case may be, and the Authorized Officer or the Committee may, in effecting such eviction, use or cause to be used such force as may be deemed necessary.

#### **7. Removal of building, etc.**

- (1) If any person fails to comply with any direction for removal or dismantling of any building or any portion thereof or filling up any tank or any portion thereof, given to him under section 3B, within the period fixed therefore, the Authorized Officer or the Committee, as the case may be, may cause the building or portion thereof to be removed or the tank or portion to be filled up, as the case may be, by using or causing to be used such force as may be deemed necessary; and the cost thus incurred shall be realized from its owner in the manner laid down for recovery of fine under section 386 of the Code of Criminal Procedure, 1898 (Act V of 1898).

- (2) If any person fails to comply with any direction for removal of any building given to him under section 4 or sub-section (1) of section 5, within the period fixed therefore, the Authorized Officer may cause the temporary building or the building under construction, as the case may be, to be removed at his own expenses in which case such person shall not be any more entitled to any compensation.

#### **8. Application for sanction**

An application for sanction under section 3 or section 3C shall be made to the Authorized Officer or the Committee, as the case may be, in such manner and from and on payment of such fee as may be prescribed.

#### **9. Cancellation of sanction on breach of terms and conditions thereof**

The sanction granted under section 3 or section 3C shall be liable to cancellation by the Authorized Officer or the Committee, as the case may be, for breach of any of the terms or conditions or making statements not correct under which such sanction was granted.

#### **10. Entry into premises**

- (1) For carrying out the purposes of this Act, an Authorized Officer or the Committee or any person empowered by him or it in this behalf may, after giving reasonable notice to the occupier of any premises, enter upon such premises after sunrise and before sunset.
- (2) The owner of any building or tank or hill shall, on being required by an Authorized Officer or the Committee or any person empowered by him or it in this behalf, produce before him or it] the sanction obtained therefore under 20[ section 3 or section 3C.
- (3) The owner of any hill shall, on being required by an Authorized Officer or the Committee or any person empowered by him or it in this behalf, or any Police Officer not below the rank of Assistant Sub-Inspector, produce before him or it the sanction obtained for cutting or razing the hill under section 3C.
- (4) For carrying out the purposes of this Act, an Authorised Officer or the Committee or any person empowered by him or it in this behalf or any Police Officer not below the rank of Assistant Sub-Inspector may, after giving reasonable notice to the occupier of the hill, enter upon such hill at any time.

#### **10A. Power of seizure and arrest without warrant**

- (1) The Authorized Officer or any member of the Committee or any officer authorized by him or Committee or any Police Officer not below the rank of Assistant Sub- Inspector who has reason to believe, from personal knowledge or from information given by any person and taken down in writing, that any hill is being cut or razed without obtaining the sanction under section 3C or in breach of any of the terms and conditions subject to which sanction was granted under that section or in contravention of an order made under section 3D may at any time during the day or night-
- (a) enter into such hill;
- (b) seize any vehicle, instrument, material and animal used in the cutting or razing of the hill or loading or carrying the earth of such hill;
- (c) if he is a Police Officer, arrest any person who he has reason to believe to have committed an offence punishable under sub-section (1A) of section 12.
- (2) Whenever a Police Officer makes any arrest or any person makes any seizure under sub-section (1), he shall, within twenty-four hours after such arrest or seizure, make a full report of all the particulars of such arrest or seizure to his immediate superior.
- (3) Every person arrested and any vehicle, instrument, material or animal seized under this section shall be forwarded without delay to the Officer-in-Charge of the nearest police station, and the officer to whom such person or vehicle, instrument, material or animal is forwarded shall, with all convenient dispatch, take such measures as may be necessary for the disposal according to law of such person or, as the case may be, vehicle, instrument, material or animal.
- (4) The provisions of the Code of Criminal Procedure, 1898 (Act V of 1898) shall apply, in so far as they are not inconsistent with the provisions of this section, to all arrests and seizure made under this section.

#### **11. [Omitted]**

## **12. Penalty**

(1) Whoever commits an offence by-

- (a) Contravening the provision of section 3; or
- (b) failing to comply with any direction given to him by an Authorized Officer or a Committee under section 3B or by an Authorized Officer under section 4 or sub-section (1) of section 5; or
- (c) designing or approving or implementing a building construction plan in contravention to any provision of the Bangladesh Building Code made under section 18A and the rules made under section 18; or
- (d) constructing a building in contravention to any provision of the Bangladesh Building Code made under section 18A-

shall, on conviction before a Court of competent jurisdiction, be punishable with imprisonment for a term which may extend to seven years, or with fine not less than taka fifty thousand, or with both; and the Court convicting the accused shall, if an application in writing is made by the prosecution in this behalf, fix a date within which the building or tank or portion thereof, in respect of which the offence has been committed shall be removed or dismantled or filled up, as the case may be by the person convicted and may, for sufficient reason, extend such date.

(1A) Whoever commits an offence by-

- (a) contravening the provision of section 3C, or
- (b) failing to comply with any direction given to him by an Authorized Officer or Committee or Police Officer under section 3D,

shall, on conviction before a Court of competent jurisdiction, be punishable with imprisonment for a term which may extend to seven years, or with fine, or with both; and the Court convicting the accused shall, if an application in writing is made by the prosecution in this behalf, forfeit any vehicle, instrument, material or animal used for the purpose of or in connection with the commission of the offence or for carrying the earth.

(2) If the person convicted under sub-section (1) fails to comply with the direction of the Court under that sub-section within the date fixed or within the date as so extended, the Court may causes the 25[ building or portion thereof or the tank or portion thereof] filled up, and the cost thus incurred may be realized from the convicted person in the manner laid down for recovery of fine under section 386 of the Code of Criminal Procedure, 1898.

(3) The provision of this section shall be in addition to, and not in derogation of, any other provision of this Act.

**12A.** [Omitted]

## **13. Cognizance of Offence**

(1) An offence punishable under sub-section (1A) of section 12 shall be cognizable and non-bailable.

(2) Subject to sub-section (1), no Court shall take cognizance of any offence punishable under this Act except upon a complaint by the Authorized Officer or the Committee or by a person authorized by the Authorized Officer or the Committee, as the case may be.

## **14. Bar to jurisdiction of Civil Court**

Every order under section 3 or section 3A or section 3B or section 3C or section 3D or section 4 or section 5 or section 6 or section 9 shall, subject to the provision of section 15, be final and shall not be called in question in any Civil Court.

## **15. Appeal**

An appeal, if presented within thirty days from the date of the order appealed against, shall lie to such officer or authority as may be prescribed against every order under section 3 or section 3A or section 3B or section 3C or section 3D or section 4 or section 5 or section 6 or section 9, and the decision of such officer or authority on such appeal shall be final and shall not be called in question in any Civil Court.

## **16. Public servant**

An Authorized Officer or any person empowered to perform any function under this Act, shall be deemed to be a public servant within the meaning of section 21 of the Penal Code.

#### **17. Indemnity**

- (1) No suit or legal proceeding shall lie against the Government in respect of anything which is, in good faith, done or intended to be done, under this Act.
- (2) No suit, prosecution or legal proceeding shall lie against any person in respect of anything which is in good faith, done or intended to be done, under this Act.

#### **18. Power to make rules**

- (1) The Government may 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: -
  - (a) the constitution of a Building Construction Committee;
  - (b) the tenure of office of members of the Committee;
  - (c) the resignation and removal of members of the Committee;
  - (d) the filling of casual vacancy and the tenure of office of the person filling such vacancy;
  - (e) the regulation of functions of the Committee including the procedure and conduct of business at its meetings;
  - (f) the manner of service of notice under sections 32[ 3B, 3D, 4] and 5; (g) the form of application for sanction under 33[ section 3 and 3C]; and
  - (h) the amount of fee payable under section 8.

#### **18A. Power to make Bangladesh National Building Code** (inserted in 2006)

- (1) The Government may, by notification in the official Gazette, make provision to carry out the purposes of this Act and the provisions made under this section may collectively be called the Bangladesh National Building Code.
- (2) Without Prejudice to the generality of the foregoing power, the Bangladesh National Building Code may provide for all or any of the following matters, namely: -
  - (a) general building requirements, control and regulation; (b) fire protection;
  - (c) building materials;
  - (d) structural design;
  - (e) construction practices and safety;
  - (f) building services;
  - (g) alteration, addition to and change of use of existing building;
  - (h) sign and outdoor display;
  - (i) matters relating to administration and enforcement of the above matters.

#### **19. Compensation when not payable**

No owner of any building shall be entitled to any compensation under this Act, if he had contravened any provision of the East Bengal Building Construction Ordinance, 1951.

#### **20. [Omitted]**