



The Markets and Fairs Act, 1862

Act 4 of 1862

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THE MARKETS AND FAIRS ACT, 1862.

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BOMBAY ACT No. IV OF 1862.¹

[THE MARKETS AND FAIRS ACT, 1862.]†

[24th April 1862]

Repealed in part, by Act 12 of 1873.

Repealed in part, by Act 12 of 1876.

Repealed in part and amended by Bom. 3 of 1886.

Adapted and modified by the Adaptation of Indian Laws Order in Council.

Amended by Bom. 17 of 1945.*

Adapted and modified by the Adaptation of Laws Order, 1950.

Amended by Bom. 21 of 1954.

Amended by Bom. 6 of 1956.

Adapted and modified by the Bombay Adaptation of Laws (State and Concurrent Subjects) Order, 1956.

Amended by Bom. 84 of 1958.

An Act for regulating the establishment ²[and the closure] of markets and fairs.

WHEREAS the establishment of new markets or fairs in the neighbourhood of ^{Preamble.} places where markets or fairs have been previously established leads to disputes between the owners of the lands on which such new and previously established markets or fairs are held, and such disputes not unfrequently occasion breaches of peace and serious inconvenience to the frequenters of ³[such markets or fairs ;

AND WHEREAS it is expedient to provide also for the closure of existing markets or fairs in the interests of the general public ;] It is enacted as follows :—

1. * * * * * No person shall establish a new market or fair without permission, ^{No new market or fair to be established without permission.} in writing, from the Magistrate of the district.

If any person shall attempt to establish a new market or fair without such license ^{Penalty for attempt to establish without license.} he shall, on conviction by ⁵[a Magistrate of the first class], be subject to a fine not exceeding two hundred rupees, or, in default of payment, to simple imprisonment for any period not exceeding two ⁶*months.

2. When any person desires to establish a new market or fair, he shall make ^{Person desiring to establish to apply to Magistrate.} application, in writing, to the Magistrate of the district.

¹ No Statement of Objects and Reasons was published. For the Bill, as introduced, see *Bombay Government Gazette*, 1862, Supplement, p. 49; for Report of the Select Committee, see *ibid.*, p. 77, and for Proceedings in Council, see *ibid.*, pp. 49, 76 and 95.

The short title was given by the Bombay Short Titles Act, 1921 (Bom. 2 of 1921).

² These words were inserted by Bom. 84 of 1958, s. 3.

³ These words were substituted for the words "such markets or fairs", *ibid.*, s. 4.

⁴ The words "After the passing of this Act" were repealed by the Repealing Act, 1873 (12 of 1873).

⁵ These words were substituted for the words "the Magistrate" by the Bombay General Clauses Act, 1886 (Bom. 3 of 1886), Schedule B. This Schedule is printed as an Appendix to the Bombay General Clauses Act, 1904 (Bom. 1 of 1904).

⁶ The word "calendar" was repealed by the Bombay General Clauses Act, 1886 (Bom. 3 of 1886). †This Act was extended to and shall be in force in that part of the State of Bombay to which immediately before the commencement of Bom. 84 of 1958 it did not extend, but excluding Greater Bombay (vide Bom. 84 of 1958, s. 2.).

*This Act has been re-enacted and the amendments made by section 9 and Schedule E of the said Act have been continued in force by Bom. 52 of 1947, s. 2.

Contents of application.

The application shall specify—
 the name of the place at which it is proposed to establish such new market or fair ;
 the days on which it is to be held ;
 the name of the place where the nearest existing market or fair is held ; and
 the days on which it is held ;
 the distance, in English miles, between the two places ; and
 the reasons of the applicant for desiring to establish a new market or fair.

Procedure on application.

3. [On receipt of the application the Magistrate, subject to the provisions of this section and of section 5A, may] issue a proclamation stating the desire of the applicant to establish a market or fair at the place named by him and the days on which it is proposed to be held and calling upon any person who may have any objection to the establishment of the market or fair to state his objection, in writing, within six weeks from the date of the proclamation.

*[Provided that the Magistrate instead of issuing a proclamation may, for reasons to be recorded in writing, dismiss the application summarily.]

Publication of proclamation.

*[If a proclamation is issued, it shall be fixed] in a conspicuous place in the village or town in or near to which it is proposed that the new market or fair shall be held, and a copy of the same shall be affixed at the police station within the jurisdiction of which the village or town is situated, and in the Court of the Magistrate.

Notice to land-owners of neighbouring market.

If it shall appear that any existing market or fair is held within a distance of [six miles] from the place where it is proposed that the new market or fair shall be established, the Magistrate shall cause a notice, to the effect of the proclamation to be served upon the owner of the land where such existing market or fair is held.

The proclamation and notice (if any) shall be issued and served *[at the expense of Government].

Order permitting establishment.

4. If, within the time specified in the proclamation and notice (if any), no objection is preferred to the establishment of the proposed market or fair, the Magistrate of the district shall pass an order permitting it to be established.

Inquiry into objection.

If within the time specified any objection is preferred, the Magistrate of the district shall inquire into the objection, and pass such order as may appear proper under the circumstances of the case.

Alteration of days on which market to be held.

*[5. The Magistrate may, upon application or otherwise and after such enquiry (if any) as he thinks necessary, change or add to or reduce the days on which a market or fair is permitted under section 4 to be held.

Magistrate to consult Director of Agricultural Marketing and Rural Finance or authorised officer before passing orders.

5A. No order under section 3, 4, [5, 5C or 5D] shall be made by the Magistrate of the District except in consultation with the Director of Agricultural Marketing and Rural Finance * * * referred to in the Bombay Agricultural Produce Markets Act, 1939, or any officer authorised by the Director in this behalf [or in consultation with any other officer specified by the State Government].

Bom.
XXII
of
1939.

¹ These words, figure and letter were substituted for the words " On receipt of the application, the Magistrate shall " by Bom. 6 of 1956, s. 2 (1).

² This proviso was inserted *ibid.*, s. 2 (2).

³ These words were substituted for the words " The proclamation shall be fixed " *ibid.*, s. 2 (3).

⁴ These words were substituted for the words " four miles " *ibid.*, s. 2 (4).

⁵ These words were substituted for the words " at the expense of the applicant ", *ibid.*, s. 2 (5).

⁶ These sections were inserted, *ibid.*, s. 3.

⁷ These figures, letters and word were substituted for the word and figure " or 5 " by Bom. 84 of 1958, s. 5 (7).

⁸ The words " for the State of Bombay " were omitted by the Bombay Adaptation of Laws (State and Concurrent Subjects) Order, 1956.

⁹ These words were added by Bom. 84 of 1958, s. 5 (8).

5B. If there be a market or fair within a distance of five miles from the place where it is proposed that the new market or fair shall be established, the Magistrate shall refuse permission to establish such new market or fair.]

Refusal of permission if within 5 miles a market or fair is already established.

1[5C. The District Magistrate, on an application made to him under this Act for the closure of an existing market or fair, if he is satisfied that it is necessary so to do—

Power to close existing market or fair in public interest.

(a) for the prevention of breaches of the peace or serious inconvenience to the frequenters of such market or fair, or

(b) because of the vicinity of any place of public religious worship, educational institution, hostel, hospital, nursing home, or other public place to the market or fair and the consequent nuisance caused to such public place by the holding of the market or fair, or

(c) on grounds of public health, public convenience or safety, or the proper regulation of traffic,

may, by order in writing, direct that, from such date as is stated therein, either permanently or for a period specified in the order such market or fair shall be closed and shall not be held at such place:

Provided that no order shall be made by the Magistrate, unless he has followed the procedure set out in section 5D.

5D. (1) An application for the closure of an existing market or fair under the last preceding section shall specify—

Procedure for closure of existing market or fair.

the name of the place at which the existing market or fair is held ;

the days on which it is held ;

the name of the place in the vicinity where any other market or fair is held or proposed to be held ;

the days on which that market or fair is held or is proposed to be held ;

the distance in miles between the two places ; and

the reasons for the closure of the existing market or fair.

(2) On receipt of such application, the District Magistrate shall issue a proclamation, stating therein that an application has been made to him for the closure of an existing market or fair and the reasons urged therefor, and calling upon all persons who may be interested in the holding of the market or fair, or who may have any objection to such closure, to submit their objections in writing to the Magistrate, within six weeks from the date of the proclamation. The District Magistrate shall also cause a notice, setting out the matter contained in the proclamation, to be served upon the owner of the land upon which the market or fair to be closed is held, and also upon the owner of such market or fair, calling upon them to show cause, within six weeks from the date of the notice, why such market or fair should not be closed :

Provided that the District Magistrate, instead of issuing a proclamation and notice as aforesaid, may for reasons to be recorded in writing, dismiss the application summarily.

(3) If a proclamation is issued, it shall be fixed in a conspicuous place in the village or town in or near to which the market or fair to be closed is held, and a copy of the same shall be affixed at the police station within the jurisdiction of which the village or town is situated.

¹ Sections 5C and 5D were inserted by Bom. 94 of 1958, s. 6.

(4) The proclamation and notice (if any) shall be issued and served at the expense of Government.

(5) If, within the time specified in the proclamation and notice, no objection is preferred to the closure of the market or fair, the District Magistrate may forthwith, and if within such time any objection is preferred, the District Magistrate shall enquire into the objection, and, pass such order as may appear proper under the circumstances of the case.]

Appeal. 46. Every order passed by a District Magistrate under section 3, 4, 5, 5C or 5D shall, within six weeks, be open to appeal to such officer as the State Government may specify in this behalf (hereinafter in this section referred to as 'the appellate authority'). The order made by the District Magistrate, subject to an appeal to the appellate authority, and the decision of the appellate authority on appeal, shall be final.]

Penalty for contravening disobeying or opposing order. 7. Every person who shall contravene, disobey, or oppose any order duly made under this Act, shall be liable to a fine not exceeding two hundred rupees, or, in default of payment, to imprisonment * * * for any period not exceeding two * * * months.

Delegation. 7A. The District Magistrate may delegate his powers under this Act to any officer not below the rank of a Mahalkari in respect of the whole or any part of the area within the jurisdiction of such officer.]

Extent. 8. This Act shall extend to the whole of the State of Bombay, except Greater Bombay.]

Interpretation and saving. 9. [In this Act, unless the context otherwise requires,—
(1) "market" includes a bazaar, but does not include—
(a) a market belonging to, maintained, established or regulated by, a local authority under any law relating to local authorities and for the time being in force;
(b) an assemblage of people collected at, or concerned in, the inauguration of sacred edifices, or collected at or concerned in, any other religious festival or ceremonies not forming a part of a fair or market ;]
2[(2) "a District Magistrate" or "Magistrate of the District" includes any other Magistrate, whom the State Government may, in respect of any area, specify in this behalf.]

10. [Saving of general powers of State Government.] Repealed by Bom. XXI of 1954, First Schedule.

11. [Meaning of "Magistrate".] Repealed by Bom. III of 1886.

¹ This section was substituted for the original by Bom. 84 of 1958, s. 7.

² The words "of either kind" and the word "calendar" were repealed by the Bombay General Clauses Act, 1896 (Bom. 3 of 1896).

³ This section was inserted by Bom. 6 of 1956, s. 5.

⁴ This section was substituted for the original by Bom. 84 of 1958, s. 8.

⁵ This section was inserted by Bom. 6 of 1956, s. 6.

⁶ These words were substituted for the words "For the purposes of this Act, 'market'" by Bom. 84 of 1958, s. 9 (1).

⁷ This sub-section was added, *ibid.*, s. 9 (2).