

CHAPTER 5

TERRITORIAL TRANSFERS

Replaces Standing Order No. 25, original issue, dated 7th June, 1929 and reprint, dated 30th May, 1912,. In connection with this Chapter paragraphs 409-427 and 824 of the Land Administration Manual should be consulted.

5.1. All cases of transfer of territory from one district to another, are to be submitted to Government through the Board of Revenue for the sanction of the Government and for the publication of the revised limits of the district under ¹[section 5 of the Land Revenue Act (Act XVII of 1887)].

5.2. Treatment of lands transferred by alluvion from Pakistan to States territory : The order of the Government of United India, issued in 1860, are applicable to all cases regarding the jurisdiction and dominion of lands transferred by avulsion from one bank of river to the other which ordinarily forms the boundary between Pakistan and States. In those orders it was declared that “it is not correct to assume that as between sovereigns the only safe rule of practice is that the main river should be the boundary, irrespective of all other considerations. The rule is such only in cases of alluvion, and not in those of avulsion. When a boundary river suddenly quits its bed and cuts for itself a new channel, it ceases to be the boundary, and the Government which ruled the territory cut off by the change in the river continues to rule it”.

The question of proprietary right in the land is a totally different one from that of territorial jurisdiction, and remains unaffected by the decision on the latter question (paragraph 12 of Foreign Department No. 3631, dated 24th August 1860.)

It has been ruled by the Punjab Government that the rule affirmed by the Government of Pakistan is to be regarded as having been in operation from the date of issue of the orders above appended, and for no interior period. In deciding boundary disputes to which the rule is applicable reference must accordingly be made to the status of August, 1860, as the basis of decision, subject to such modification as, under the operation of the rule is regarding gradual accretion or erosion, will have to be made; but no transfer, by avulsion of land capable of identification, which has taken place subsequent to the orders of 1860, will be held to have affected the boundary.

As long ago as 1887, it was proposed to adopt fixed boundaries everywhere but the proposal was regarded as impracticable because of the lack of skill in survey work among the subordinate revenue staff. This objection has been overcome by the utilization of the services of the Survey of Pakistan and the first Act passed by the Punjab Legislative Council was one (Punjab Act 1 of 1899) enabling Government to order the substitution of fixed for varying boundaries in estates subject to river action. It added ²[Six sections, 101-A to 101-F to the Punjab Land Revenue Act, XVII of 1887], and made additions to ³[section 158] of the same Act, and to the second and third section of Regulation XI of 1825. The Board of Revenue’s instructions relating to the sections of the Land Revenue Act, referred to above, will be found in the appendix to this Chapter.

¹ . Now “section 6 of the West Pakistan Land Revenue Act, 1967”.

² . now “sections 123 to 128 of the West Pakistan Land Revenue Act, 1967”.

³ . Now “clause (XX) of section 172 (2) of the West Pakistan Land Revenue Act, 1967”.

As a result of this enactment between the year 1903 and 1929 fixed boundaries have been laid by the Survey Department in over 1871 linear miles of river in the five rivers of the Punjab and the Indus, Jumna and Chakki. The sole remnants of the deep stream rule survive in the Jumna in Karnal, Rohtak and Gurgaon now forming part of Punjab (India) and the Indus river in part of the Attock district.

5.3. Changes of territorial jurisdiction to be reported : Whenever any alterations in the boundaries of the Province, Pakistan States, districts or Tehsils takes place, whether as the result of river action or for administrative convenience, the fact should be reported by Collectors through Commissioners to the board of Revenue with full details, the report being accompanied by a map of the area transferred.

5.4. Contents of report and map : The report should state the reasons for the change and the approximate area in acres transferred and the number of occupied houses and the population, male and female, contained at the time of the last preceding decennial census, in case village comprised in it; and the prescribed map should be drawn on tracing paper on a scale (ordinarily) of 2 miles to an inch, unless for special reasons a larger scale should be necessary. The names should be entered on the map in English, and a table of references should in all cases be added sufficient to render the map intelligible in itself.

5.5. Report to the Surveyor-General : The Board or Revenue will report to the Surveyor-General of Pakistan, Karachi, to enable him to arrange for the correction of the Survey Maps. Changes in the boundaries of territorial units of less importance than those noted above, such as thanas, ⁴[zails] or villages need not be reported and in all cases a copy of the map and report should be furnished to the Director of Land Records to enable him to correct the skeleton maps and village lists. The Director will keep the reports in a file arranged by districts so that the statistics of houses and population transferred may be readily available at the time of the next decennial census.

5.6. The rule of the determination of boundary disputes in which Pakistan States are concerned are given in Punjab Government Consolidated Circular No. 25.

5.7. Surveyed or demarcated boundary lines between Pakistan and Pakistan States territory to be inspected annually by Magistrates : Attention is drawn to the following extract from Resolution No. 1758 of 21st August, 1871 of the Government of United India in the Foreign Department, regarding the annual inspection by Magistrates of surveyed or demarcated boundary lines between Pakistan and Pakistan States territory. The Government of the State should be informed when the District Officer makes his inspection, in order that a representative from that State may be sent at the same time.

The subject must be specially noted in the Revenue Administration Report under heading "Surveys and Boundary Demarcation" in all districts where the boundary of a Pakistani State marches with that of the district.

Extract from Resolution No. 1758, dated 21st August, 1871, of the Government of United India the Foreign Department.

Paragraph 4 : His Excellency in Council considers that it should be made part of the duty of every Magistrate, between whose district and Pakistan State territory there is a surveyed or demarcated boundary line, to inspect it, or cause it to be inspected, once a

⁴ . All zails have since been dissolved 1967".

year, in his Annual Administration Report to specially notice the state of the boundary pillars. The necessary communication will be made to the several Government and Administrations in view of this procedure being adopted in future.

APPENDIX

INSTRUCTIONS REGARDING THE OPERATION OF THE ⁵[PUNJAB RIVERAIN BOUNDARIES ACT]

I. Instructions regarding the carrying out of the provisions of the ⁶[Punjab Riverain Boundaries Act]: The provisions of the Act may be set in motion in two ways : either the Deputy commissioners of any two districts may, as for an order to be passed under ⁷[section 101-A (1)] with regard to any particular estates within their districts, and the Commissioner or Commissioners concerned will forward the application to the Board of Revenue with a recommendation as to who should be the Collector for the purposes of the Act; or Government may depute a special officer as Collector to carry out the demarcation of all village riverain boundaries along a particular stretch of river, with discretion in special cases to leave the boundaries of any particular villages undetermined.

II. In considering where the fixed boundary should be laid under ⁸[section 101-A], the Collector should, in the first place, try to get the villages concerned to come to an amicable agreement as to the position of the boundary line.

If a boundary line cannot be fixed by agreement, that line should be declared by the Collector to be the line fixed under ⁹[section 101-A].

III. It should be remembered that a village may often agree to a boundary which is not as favourable as might reasonably be expected, on the condition that all rights in the lesser area transferred to it are transferred at once and not reserved under ¹⁰[the first proviso of section 101-B(1)]. Such a compromise should always be attempted as it promises finality. To help the villagers to come to a decision, the Collector might lay down two boundary lines, one the line which he would fix under the Act, and the other as a basis for a compromise on the condition of immediate transfer of rights, and let the people choose. Care must, of course, be taken that the rights of individuals do not suffer. The Collector might, where necessary, arrange for the payment of compensation by consent by one party to the other.

IV. If a line cannot be fixed by agreement, The Collector must himself fix a line under ¹¹[section 101-A(3)], and in doing so should aim at putting each party in as good a position on the whole as he would have been, taking a long series of years together, if matters had been allowed to continue under the existing law or custom. Among other things he would have to bear in mind that a bird in the hand is worth two in

⁵ . Now "Chapter X of the West Pakistan Land Revenue Act, 1967".

⁶ . Now "Chapter X of the West Pakistan Land Revenue Act, 1967".

⁷ . Now "Section 123 (1) of the West Pakistan Land Revenue Act, 1967".

⁸ . Now "Section 123 of the West Pakistan Land Revenue Act, 1967".

⁹ . Now "Section 123 of the West Pakistan Land Revenue Act, 1967".

¹⁰ . Now "Section 124 (2) of the West Pakistan Land Revenue Act, 1967".

¹¹ . Now "Section 123 (3) of the West Pakistan Land Revenue Act, 1967".

the bush. If, for example, the river were making a dead set upon its right bank, which in a high degree likely would continue for some year, some allowance would have to be made for the fact that the riparian owners on the left bank would by our taking action under the Act, be deprived of land which would be pretty certain to have accrued to them for some years if we had left matters alone. On the other hand, it should be borne in mind that in all probability after some years, the river would begin to work back again, and whatever was reasonable should be allowed per contra on this account in fixing the line. The object should be to draw the line, as far as possible, so that neither party should feel that the other had obtained a very clear advantage by our intervention under the Act.

V. Cases of estates now entirely in the bed of the river will occasionally come before the Collector. In each case it will have to be decided according to the custom of the locality-whether such estates should be included in adjacent estates or maintained as separate estates.

VI. The Collector should in all cases records his reasons for adopting the boundary line fixed by him, and should file copies of the old settlement maps with the proceedings. The statements of the headmen should always be recorded. Where possible the boundary line should be marked on the ground with pillars.

VII. When the villagers do not agree that valuable land should be transferred at once, the Collector must determine what land “is under cultivation, of reasonably fit for cultivation, or yields any produce of substantial value. “Generally all land which has ever been cultivated or ploughed, and has not since been materially altered by river action and all land which yields grass for grazing or thatching purposes, should be regarded as coming within ¹²[the first proviso of section 101-B(1). In cases of doubt the land should be held to come within the terms of ¹³[the proviso].

VIII. Where the land on both sides of the river bed has not been already mapped on a common system of squares, the Collector must survey and map the whole of the land ordinarily liable to diluvion. Where separate diluvial Chaks have not been marked out a settlement, the Collector will determine how much land it is necessary to map. If the length of the sides of the squares used on either side of the river is the same, the boundary map should be prepared on the same scale. If the scale differs on the two sides of the river, the Collector may adopt whichever scale he chooses. In either case he should take as his base line the sides of existing squares on one side of the river or the other. So long as the river has the same district or the same two districts on either side of it, the same scale should be maintained, and the Collector should have his base on the same side of the river but the same system of squares should not be continued from village to village, unless the settlement maps are also continuous.. When the river passes out of one district into another the Collector may, if he thinks fit, start from a base on the other side of the river.

IX. The map will show the natural features of the river bed, etc., the new boundary line and so many of the khasra numbers entered in the settlement or subsequently amended maps of the villages on either side of the line as will be affected by the action taken under the Act, or are necessary for easy identification. Numbers should be given to blocks of land which for any reason (e.g., because they have always

¹² . Now “sub-section (2)” of section 124 of the West Pakistan Land Revenue Act, 1967”.

¹³ . “Now Sub-section (2)”

been under water) have not got khasra numbers already. The new numbers should be in continuation of the numbers in the estate to which the land will in future belong.

The lands coming under 1 [the first proviso to section 101-B(1)] must be colour-washed, so as to distinguish them from the lands the rights in which vest at once in the land-owners of the estate within which they are included.

X. The Collector shall also, where necessary, determine and delineate on the map the boundaries of estates on the same side of the river inter se. The ordinary rule is mahaza muqabala. i.e., the boundary line between the villages will be observed unless there is strong proof of established custom to the contrary, or unless the parties concerned agree in some other boundary.

XI. The Collector will then draw up a khasra for each estate for all lands included in the estate and not already shown in the records as belonging to the estate. Lands coming within ¹⁴ [the proviso of section 101-B(1)] will be shown separately. All lands, the rights in which are transferred at once, should be entered against the names of the persons who are entitled to them by custom: all lands coming within 1 {the proviso of section 10 B(1)} should be shown against the names of the persons in whose favour the rights in the land are reserved.

¹⁴ . now “sub-section (2) of section 124 of the West Pakistan Land Revenue Act, 1967.”

FORMS OF KHASRA

A.---Khasra for the village from which land has been transferred immediately.

Serial No.	Filed No.	Khewat or Khatauni No.	Owner	Tenant, if any, with description	Area with class of land	Date of transfer and name of village to which transferred
1	2	3	4	5	6	7

B.---Khasra for the village from which land has been transferred immediately.

Serial No.	Fielded No.as in former village	Area as in former village	New No.	Area	Owner	Tenant, if any, with description	Date of transfer and name of village from which transferred
1	2	3	4	5	6	7	8

C.---Khasra of land coming under the ¹[proviso of section 101-B (1)]

Serial No.	Filed No.as in former village	Area as in former village	New No.	Area	Owner	Tenant, if any, with description	Date of transfer and name of village from which transferred
1	2	3	4	5	6	7	8

¹ . Now “sub-section (2) of section 124 of the West Pakistan Land Revenue Act, 1967.”

XII. Files will be prepared by villages and should resemble the ordinary diluvial files. They will contain the following documents:-

- (a) Number and the date of ¹⁵[Government order under section 101-A(1)].
- (b) List of villages coterminous with the village for which the file is prepared.
- (c) Description of custom hitherto prevailing as to river boundary.
- (d) Tracings of the map prepared under instruction VIII and IX.
- (e) Record of oral and written evidence.
- (f) Order of the Collector under instruction VI.
- (g) The khasra prescribed in instruction XI.

XIII. The Patwaris of the riverain estates will be given copies of the khasra, and will show the fixed boundary line in their maps. The field Kanungo must certify on the maps that he has personally supervised the plotting in of the new line. In the next annual papers the land included in an estate under ¹⁶[section 101-B(1)] not coming within ¹⁷[the proviso], will be shown as it would have been shown if it had been transferred to the estate by the custom hitherto prevalent in the estate, and land excluded under that section will be excluded from the record.

XIV. Land coming within ¹⁸[the first proviso to section 101-B(1)] will be shown in the revenue papers of the estate to which the land is transferred against the names of the persons in whose favour the rights have been reserved, and the words, malik kabza zer, 2[Act I, 1899,] shall be entered in the column of remarks. In the records of the village from which the land has been transferred, the land will be shown in appendices under the same khataunior khasra numbers as it would have come had it been shown in the body of the ¹⁹[jamabandi] or ²⁰[khasra girdawari]. In the ²¹[jamabandi] a note should be entered against the main khatauni number, referring to the entry in the appendix. Such land should be excluded from all totals of area, revenue, etc., relating to the village from which it has been transferred.

XV. Person having rights in land under ²²[the proviso] will pay their revfenue to the Lambardar of the taraf, patti, or village within which the land has permanently been included.

XVI. Limited owners under ²³[the proviso] will retain all rights already accruing to them in their own villages from the possession of such lands. For examples, the tact of a man's land having been transferred under the Act to another village will deprive him of any share in the common land to which he was entitled before the boundary was laid down by reason of his ownership if the transferred land. If the rights in

¹⁵ . Now "Board of Revenue's order under section 123 (1) of the West Pakistan Land Revenue Act, 1967."

¹⁶ . Now "sub-section (1) of section 124 of the West Pakistan Land Revenue Act, 1967."

¹⁷ . Now "sub-section (2)".

¹⁸ . Now "sub-section (2) of section 124 of West Pakistan Land Revenue Act, 1967."

¹⁹ . Now called "Register Haqdarar Zamin".

²⁰ . Now called "Register Gardawaro."

²¹ . Now called "Register Haqdarar Zamin".

²² . Now' section 124(2) of the West Pakistan Land Revenue Act, 1967.

²³ . Now' section 124(2) of the West Pakistan Land Revenue Act, 1967.

the common land are governed by the rule hasb rasad khewat, the revenue of the transferred lands will be taken into account in any partition of common land so long as the order under 1 [the proviso to section 101-B(1)] is maintained.

XVII. An application under ²⁴[section 101-C] may be made either when the boundary line is first laid down or at any subsequent time. The notice under ²⁵[section 101-C(2)(b)] should be issued to all owners of the village within which the land is included. The compensation to be awarded will be calculated as if the limited owner were a full proprietor.

XVIII. In deciding whether to entertain or reject the application the Collector will consider whether it is to the interest of both villages that the limited owners should be brought out. The chief consideration will be how best to avoid future litigation in the Civil Courts. It must be remembered that a person acquiring land by payment of compensation under ²⁶[section 101-C] does not thereby acquire an indisputable title. His title is liable to be called in question in the Civil Courts under ²⁷[section 101-E] by persons who claim a prior right of pre-emption. When, then more than one person claims to purchase under 2 [section 101-C] the Collector should so far as he can, select the appointment who seems best entitled to the land, and who is least likely to be subsequently sued in the Civil Court.

Generally the Proprietors with the strongest claim to pre-emption are, (a) those to whom according to custom or law the land would have fallen had it been transferred by river action; then (b) the joint proprietary of the patti or taraf, to which these special proprietors (if any) belong; then (c) any proprietor of that patti or taraf; then (d) the joint proprietary of the estate and, lastly, (e) any proprietor of the estate.

In rare cases it may be best to refuse to proceed with the application until the disputes between the different applicants have been settled amicably or by a decree in a Civil Court.

XIX. Subject to what is said in the last paragraph, a person acquiring land under ²⁸[section 101-C] acquires rights of all ownership, together with all the contingent rights which belong to owners in the estate in which the land is situated.

XX. When any land is acquired under ²⁹[section 101-C], the Patwaris, both of the estate to which the land belongs and of the estate or estates to which the land belongs and of the estate or estates to which the limited owners belong, shall enter the acquisition in their mutation registers, and the land will thenceforward be excluded from the records of the latter estates. No fee should be charged on the entry in the register of the village to which the limited owners under ³⁰[the proviso to section 101-B(1)] belong.

XXI. A transfer under ³¹[section 101-D] takes precedence of an application under ³²[section 101-C], that is to say, if an application under ³³[section 101-C] is

²⁴ . Now' section 125 of the West Pakistan Land Revenue, Act, 1967.

²⁵ . Now, section 126(1)(b) of the West Pakistan Land Revenue Act, 1967.

²⁶ . Now' section 126 of the West Pakistan Land Revenue Act, 1967.

²⁷ . Now' section 127 of the West Pakistan Land Revenue Act, 1967.

²⁸ . Now' section 126 of the West Pakistan Land Revenue Act, 1967.

²⁹ . Now' section 126 of the West Pakistan Land Revenue Act, 1967.

³⁰ . Now' section 124 (2) of the West Pakistan Land Revenue Act, 1967.

³¹ . Now' section 127 of the West Pakistan Land Revenue Act, 1967.

³² . Now' section 126 of the West Pakistan Land Revenue Act, 1967.

³³ . Now' section 126 of the West Pakistan Land Revenue Act, 1967.

pending, and in the meantime the limited owner voluntarily transfers his rights to a landowner of the estate in which the land is included, the voluntary transfer takes effect, and the proceedings under ³⁴[section 101-C] should be stopped, so far as they apply to the land transferred.

The title of the transferee is, of course, liable subsequently to be called in question in a Civil Court under ³⁵[section 101-E], but, until upset, carries with it the rights of full ownership.

XXII. A transfer under ³⁶[section 101-D] should be shown in the mutation registers as directed in paragraph XX.

XXIII. At the annual di-alluvion inspections the Collector shall inspect all plots of land in which rights have been reserved under ³⁷[proviso 1 to section 101-B], and, if in his opinion any plot has ceased to be reasonably fit for cultivation or to yield any produce of substantial value, he shall, after considering what the limited owners have to say, pass an order extinguishing the rights of the limited owners and transferring the lands to the persons entitled to them under ³⁸[section 101-B(1)]. His order shall be communicated to the Collector of the district to which the limited owners belong, in order that they may be informed and the necessary amendments made in the records.

XXIV. The Board of Revenue will determine under ³⁹[section 12 of the Land Revenue Act] which Commissioner will hear appeals from the order of the Collector when the order affects villages situated in two revenue divisions.

XXV. The record of the proceedings under ⁴⁰[section 101-A] will, in each case, be submitted to the Board of Revenue through the Commissioner in original.

³⁴ . Now' section 126 of the West Pakistan Land Revenue Act, 1967.

³⁵ . Now' section 128 of the West Pakistan Land Revenue Act, 1967.

³⁶ . Now' section 127 of the West Pakistan Land Revenue Act, 1967.

³⁷ . Now' section 124(2) of the West Pakistan Land Revenue Act, 1967.

³⁸ . Now' section 124 (1) of the West Pakistan Land Revenue Act, 1967.

³⁹ . Now' section 14 of the West Pakistan Land Revenue Act, 1967.

⁴⁰ . Now' section 123 of the West Pakistan Land Revenue Act, 1967.