

**LLB.3rd Semester; SCHOOL OF LAW UNIVERSITY
OF KASHMIR**

Email:arfatshab9@gmail.com

LOCAL LAWS-III

Unit-I

The State Land Acquisition Act,1990

Apportionment of Compensation and Payment

[Sections 31-33; 45,47,49]

31. Dispute as to apportionment —

When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is

payable the Collector may refer such dispute to the decision of the Court.

Section 32. Payment of compensation or deposit of same in Court. —

(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested/entitled thereto, according to the award, and shall pay it to them unless prevented by some one or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court, to which a reference under section 18 would be submitted :

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount :

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18 :

Provided also that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Collector may, with the sanction of the Government, instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title or in such other way as may be equitable having regard to the interest of the parties concerned.

(4) Nothing in the last foregoing sub section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

33. Investment of money deposited in respect of lands belonging to incompetent to alienate persons —

(1) If any money shall be deposited in Court under sub section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held ; or

(b) if such purchase cannot be effected forthwith, then in such securities as the Court shall think fit; and shall direct the payment of the interest

or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land and such moneys shall remain so deposited or invested until the same be applied —

(i) in the purchase of such other lands as aforesaid ; or

(ii) if such purchase cannot be effected forthwith then in such other securities as the Court shall think fit ; or

(iii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be paid by the Collector, namely:—

(a) the costs of such investments as aforesaid ;

(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested and for the payment out of Court of the principal of such moneys and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

Part IV & V of the Act which contains sections 31 to 34 deals with apportionment & payment of compensation. Under s. 32 the Collector has to tender payment of the compensation awarded by him to the persons interested/entitled. Section 33 deal with investment of money deposited in respect of land belonging to persons incompetent to alienate the land and in other cases.

There are two provisions ss. 18(1) and 30 which invest the Collector with power to refer to the Court a dispute as to apportionment of compensation or as to the persons to whom it is payable. By sub-s. (1) of s. 18 the Collector is enjoined to refer a dispute as to apportionment, or as to title to receive compensation, on the application within the time prescribed by sub-s. (2) of that section of a person interested who has not accepted the award. Section 32 authorises the Collector to refer to the Court after compensation is settled under s. 11, any dispute arising as to apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable. A person shown in that part of the award which relates to apportionment of compensation, who is present either personally or through a representative, must, if he does not accept the award, apply to the Collector within the time prescribed under s. 18(2) to refer the matter to the Court. But a person who has not appeared in the acquisition proceeding before the Collector may, if he is not served with notice of the filing, raise a dispute as to apportionment

or as to the persons to whom it is payable, and apply to the Court for a reference under s. 31, for determination of his right to compensation which may have existed before the award, or which may have developed upon him since the award. Whereas under s. 18 an application made to the Collector must be made within the period prescribed by sub-s.(2) cl. (b), there is no such period prescribed under s. 31. Again under s. 18 the Collector is bound to make a reference on a petition filed by a person interested. The Collector is under s. 31 not enjoined to make a reference: he may refer the person raising a dispute as to apportionment, or as to the person to whom compensation is payable, to agitate the dispute in a suit and pay the compensation in the manner declared by his award.

Payment of compensation therefore under s. 32 to the person declared by the award to be entitled thereto discharges the State of its liability to pay compensation (subject to any modification by the Court), leaving it open to the claimant to agitate his right in a reference under s. 31 or by a separate suit.

When the Collector decides to refer the dispute to a Court under Section 32 of the Act and passes a joint award in favour of all the persons interested in the land regarding the compensation amount and deposits the compensation money in Court under Section 32(2) of the Act, then, it is a valid award under Section 11 of the Act and the award is complete. The Collector also becomes functus officio with the deposit of the compensation money in Court under Section 32(2) of the Act and it

is no longer open to him to modify the award on the basis of the decision of the Court or complete the award if it is considered incomplete.

The statute, gives the Collector the option either to proceed to determine the persons entitled and to apportion the amount himself, and to make an award of such apportionment, or, to refer the dispute to the court. If the Collector does not apportion the compensation amount himself, he must under Section 32 refer to the Court the dispute as to the apportionment of the same or any part thereof and the question as to whom the same or any part thereof is payable, depositing the compensation amount or part thereof as the case may be under Section 33(2) of the Act. However, the Collector is not bound to make such a reference.

If a person has not appeared in the acquisition proceeding before the Collector may, if he is not served with notice of the filing (the award), raise a dispute as to apportionment or as to the persons to whom it is payable, and apply to the Court for a reference under Section 30, for determination of his right to compensation which may have existed before the award, or which may have devolved upon him since the award.

The person lawfully entitled to the whole or any part of the compensation, has also the right to institute a suit against the person who receives the whole or any part of the same for realisation of it. This is provided for by the third proviso to Section 33(2) of the Act.

Sec. 33, 3rd proviso has safeguarded the right of the real owner of the property to receive the compensation money when such a person has been directed to apply before the court in which a reference as to apportionment is pending. By the third proviso to sub-s. (2) of s.32, liability of any person, who may receive the whole or any part of the compensation awarded under the Act, to pay the same to the person lawfully entitled thereto.

In Grant's case [*Grant v. St. of Bihar*], (1965) 3 SCR 576 : (AIR 1966 SC 237) the Supreme Court said:

“The scheme of the Land Acquisition Act is that all disputes about the quantum of compensation must be decided by resort to the procedure prescribed by the Act; it is also intended that disputes about the rights of owners to compensation being ancillary to the principal dispute should be decided by the Court to which power is entrusted. Jurisdiction of the Court in this behalf is not restricted to cases of apportionment, but extends to adjudication of disputes as to the persons who are entitled to receive compensation..... The Collector has no power to finally adjudicate upon the title to compensation, that dispute has to be decided either in a reference under Section 18 or under Section 30 or in a separate suit.”

The statute has taken care to see that no person lawfully entitled to compensation is deprived of the same, and that he has a right to have his

claim decided by the court on a reference under Sec. 18 or Sec. 31 of the Act, or in a suit instituted by him in that behalf.

It is a basic principle of justice that if there are several persons interested in the same property and if they agree amongst themselves as to the manner of apportionment of the compensation, then the agreement shall be conclusive evidence of the correctness of the apportionment of award. But in the case of a dispute with respect to the apportionment of award, the Collector shall refer the matter to a Civil Court.

In *State of Madras v. Subramania Iyer*, AIR 1962 Mad. 313., Madras High Court observed that, “it is obvious that when the Government exercises its power of eminent domain and acquires property, public funds have to be utilized for the payment of compensation to the true owner, and not merely to any claimant who cares to appear on the scene”. The Collector can even make a reference without an application from the party. If a property has been jointly inherited by brothers and sisters, then brothers together had no right to sell the entire property.

It is the duty of the Collector to ensure the payment of the award in whose favour the award has been made. If the parties interested in acquisition of land do not consent to receive the amount or when there is a dispute as to the title or as to the apportionment of the compensation money or when the compensation money is payable to a person who is not competent to alienate the land, the Collector shall deposit the amount of compensation in the court to which a reference is made by him.

Section 33 gives power to the Court in respect to persons incompetent to alienate, on an application by a person interested or claiming an interest in such money, to pass an order to invest the amount so deposited in such government or other approved securities [who are in possession of land] and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider proper so that the parties interested therein may have the benefit therefrom.

For the purpose of this provision [section 33], 'incompetency to alienate' implies 'personal incapacity, such a lunacy, idiocy, and minority'. As to the question whether a party has the power to alienate the land, and consequently entitled to receive payment, the Collector is not competent to give a decision. In such cases where he has a bonafide doubt, it is his duty not to take upon himself the task of determining that question himself but to send the matter to the court that would have jurisdiction to hear the reference.

Miscellaneous (Part VIII) [Sections 45,47,49]

Section 45. Magistrate to enforce surrender.--

If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if 3[an Executive Magistrate,] enforce the surrender of the land to himself, and, if not 3[an Executive Magistrate] he shall apply to 3[an Executive Magistrate] and such Magistrate shall

enforce the surrender of the land to the Collector. [ex. Maj. Like divisional commissioner]

47. Acquisition of part of houses or building. —

(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any house, manufactory or other building, if the owner desire that the whole of such house, manufactory or building shall be so acquired :

Provided that the owner may at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired :

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined. In deciding on such a reference, the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub section (1) thirdly, by a person interested on account of the severing of the land to be

acquired from his other land, the Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the Government to the person interested and shall thereafter proceed to make his award under section 11.

49. Exemption from stamp duty and fees.—

No award or agreement made under this Act shall be chargeable with stamp duty and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.