

**LLB.3rd Semester; SCHOOL OF LAW UNIVERSITY
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LOCAL LAWS-III

The State Land Acquisition Act, 1990

Taking of Possession [Sections 16-17a]

Section 16. *Power to take possession.*— When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

Section 17. *Special powers in case of urgency.*— In cases of urgency, whenever the Government so directs, the Collector, though no such award has been made, may, on the expiration of 15[fifteen days,] from the publication of the notice mentioned in section 9, sub-section (1), take possession of any land needed for public purposes. Such land shall

thereupon vest absolutely in the Government, free from all encumbrances:

Provided that, the Collector shall not take possession of any building or part of a building under this sub-section, without giving to the occupier thereof at least 48 hours' notice of his intention to do so, or such longer notice as may be reasonably sufficient, to enable such occupier to remove his movable property from such building without unnecessary inconvenience; and

Provided in every case under this section the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crop and trees (if any) on such land and for any other damage sustained by them caused by such dispossession and not excepted in section 24; and in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained :

Provided also that in the case of any land to which, in the opinion of the Government, the provisions of sub-section (1) are applicable, the Government may direct that the provisions of section 5-A shall not apply, and if it does so direct, a declaration may be made under section 6

in respect of the land at any time after the publication of the notification under section 4, sub-section (1).

Section 17-A: *Payment of compensation before acquisition proceedings are completed.*— Before taking possession of any land under section 17, the Collector shall, without prejudice to the provisions of the said section, —

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested and entitled thereto ;
and

(b) pay it to them unless prevented by some one or more of the contingencies mentioned in section 32 of the Act, and where the Collector is so prevented, the provisions of section 32 shall apply as they apply to the payment of compensation under that section.

Ghulam Mohi Ud Din Ahanger vs State of J&K & Others, (OWP no.152/2012 MP no.223/2012; Date of order: 20 .03.2018)

The Notification under Section 4 of the State Land Acquisition Act, was issued on 14.09.2004 and published in the dailies/newspapers as well as through Tehsildar, Srinagar, for calling the objections from the interested persons. The acquisition case was taken up by the High Level Committee (HLC) headed by the Divisional Commissioner, Kashmir, in which out of 18 number of structures notified, the owners of 14 number

of structures accepted the HLC decision and surrendered the possession to the indenting department. However, the owners of the four number of the structures did not surrender the possession to the indenting department. Given the objection of the owners and the decision of the HLC, the Collector, Circular Road Project, Srinagar proceeded to acquire the aforementioned structures and the land under the compulsory actions mode. The matter was taken up with the Financial Commissioner (Revenue) J&K, on 17.03.2008, for issuance of the notification/declaration under Section 6,7 and 17 of the Land Acquisition Act under Section 6, 7, & 17 of the Land Acquisition Act, was issued with a direction to finalise the case for taking over the possession of the land. This was followed by the Notice bearing endorsement no.DIPK-7074 dated 04.11.2008, issued by the respondent no.6, in terms of Section 9 & 9A of the Land Acquisition Act, intimating interested persons to attend the office of the respondent no.6 to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests.

The respondents have after 10.12.2010 demolished the structures of the petitioners on 15.01.2012, by use of force, when the courts were on vacation. No amount of the compensation has been fixed for the loss of the business and the loss of the residence, which are two essential

components for human survival - right to residence and right to business being fundamental rights.

The Collector insists that the impugned award has been passed by the competent authority with complete application of mind to the facts and circumstances of the case and also in accordance with the law and the rules governing the field. It is claimed that the petitioners are basically tenants and since there is no law as on date to rehabilitate such a person, only compensation has to be paid to the owner for the land and the structure with 15% Jabirana as per Land Acquisition, which has already been done in the present case. Since there is no scope left with the Collector, the claim of the petitioners does not merit any consideration and it is only the High Level Committee which is empowered to benefit any rehabilitation package, which has not been accepted by the landlord of the petitioners.

The honb'le court of J&K in this case directed, the respondents to submit the case of the petitioners to the High Level Committee, headed by the Divisional Commissioner, Kashmir, for fixation and payment of adequate compensation for the building structures and in terms of the package related to such structure in the form of providing residential plots for dislocated families. The respondents shall also pay

compensation in lieu of the shops acquired from the petitioners on the analogy of similarly situated shopkeepers.

Himachal Pradesh High Court in the case of ***Narotam Ram And Etc. vs Land Acquisition Collector*** [decided on 25 September, 2002; Equivalent citations: AIR 2003 HP 55]; The following points are referred to this larger Bench of three Judges :--

(i) If in a given case the actual possession of the acquired land is taken before the date of Notification under Section 4 of the Act or from the date of taking possession under Section 16 or 17 of the Act, whether the claimant is entitled to additional compensation under Section 23 (1 -A) of the Act from the date of taking actual possession or from the date of notification under Section 4 of the Act?

(ii) Whether the interest under Section 28 of the Act is to be paid from the date the possession is taken under Section 16 or 17 of the Act?

It was observed that "The Land Acquisition Act,1894 does not anywhere say that possession should be taken only after a particular date contemplated by the Act. The Act itself contemplates taking of possession even before the Award is passed and even on a prior date before a declaration is made under Section 6. Section 17 provides an

instance where possession could be taken immediately after Section 4 notification is made. Section 23(1-A) talks of possession having been taken before the passing of the award. Under Section 23(1-A) interest is payable on the market value of the land for the period commencing on and from the date of publication of notification under Section 4(1) of the Act in respect of such land till the date of the Award by the Collector or by the date of taking possession of the land whichever is earlier. If possession had been taken prior to the issue of notification under Section 4(1) with a view to acquire the land it could be regularized by a notification under Section 4(1) of the Act.

Though under Section 16 the Collector may take over possession of the acquired land after making the award and under Section 17(4) of the Act. If the possession is taken over before making the award in exercise of the urgency powers, yet taking over the possession of the acquired land even before the award would definitely be after the issuance of notification under Section 4 of the Act and in that eventuality the interest is payable from the date of taking over physical or actual possession under the Act.

The application of the provisions of Land Acquisition for taking possession, can be explained with the help of case law decided by

Allahabad High Court. In the case of, *Satish Chandra Gupta vs State Of U.P. & Others* on 7 January, 2016, [WRIT - C No. - 66353 of 2015]. The petitioner pleaded before Court for quashing the award dated 22.9.1986 passed by Special Land Acquisition Officer. He has further prayed for direction commanding the respondents to release the land in dispute and not to interfere in his peaceful possession and occupation over the land in dispute.

The Allahabad Development Authority had sent a detailed proposal to the State Government that the land in dispute was urgently required for planned development of Allahabad. Consequently, a notification under Section 4 (1) of Land Acquisition Act, 1894 alongwith Section 17 (1) of the 1894 Act was issued on 28.4.1979. The same was published in official Gazette on 9.6.1979. The petitioners father died on 28.12.1980. Subsequently the State Government issued notification under Section 6 (1) of the 1894 Act on 26.5.1981, which was published in the official Gazette on 27.5.1981. Finally the award in question was also made on 22.9.1986. As per the award it is reflected that the possession of the land in question had been taken by the Competent Authority way back on 01.9.1981/2.1.1984. It is claimed that upon the death of father of the petitioner, the name of the petitioner was recorded in the revenue record on 2.7.1994.

The petitioner submitted that the 1894 Act was repealed and under the Act No.30 of 2013 i.e. the Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013(in short, 2013 Act), now it covers the field of land acquisition, which also provides the methods and methodology to be followed in respect of acquisition under the Act of 1894. He has placed reliance upon Section 24 of the 2013 Act and submits that in view of Section 24 (2) of the 2013 Act the entire acquisition initiated by the ADA has lapsed and further alternatively prayed that the respondents are obliged to determine the compensation to be fixed as per provisions of the 2013 Act.

It was submitted by the landowners that by virtue of Section 24 (2) of the 2013 Act, the subject acquisition shall be deemed to have been lapsed because the award under Section 11 of the 1894 Act is made more than five years prior to the commencement of 2013 Act and no compensation has been paid to the owners nor the amount of compensation has been deposited in the court by the Special Land Acquisition Officer.

It was held that though the award has been passed by the Land Acquisition Collector, they have not taken the physical possession of the land and have not paid the compensation to the appellant or had deposited the said compensation before an appropriate forum. Sub-

section (2) of Section 24 of the 2013 Act squarely applies to the appellant's case and the appellant is entitled to relief sought for in their petition. The acquisition proceedings insofar as the appellant is concerned are deemed to have lapsed. Further in this case, the respondents were permitted to initiate appropriate proceedings for acquisition of the land in question afresh in accordance with the provisions of the 2013 Act.