

**LLB.3<sup>rd</sup> Semester; SCHOOL OF LAW UNIVERSITY  
OF KASHMIR**

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**LOCAL LAWS-III**

**The State Land Acquisition Act, 1990**

**Reference to Court and Procedure thereon**

**(Sections 18-20; 22-24)**

***Court:***

According to Section 3 (c) the expression “Court” means the principal Civil Court of original jurisdiction in a district unless the Government

has appointed (as it is hereby empowered to do) a special Judicial Officer within any specified local limits to perform the functions of the Court under this Act.

***Person Interested***

According to Section 3 (b) the expression “person interested” includes all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act; and a person shall be deemed to be interested in land if he is interested in an easement affecting the land.

***Section 18: Reference to Court:***

(1) Any person interested who has not accepted the award may, by written application to the Collector require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award, within six weeks from the date of the Collector's award ;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award, whichever period shall first expire.

***Section 19: Collector's statement to the Court:***

(1) In making the reference the Collector shall state for the information of the Court, in writing under his hand,—

(a) the situation and extent of the land with particulars of any trees, buildings or standing crops thereon ;

(b) the names of the persons whom he has reason to think interested in such land ;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17 or either of them and the amount of compensation awarded under section 11 ;

(cc) the amount paid or deposited under section 17-A of this Act ;

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined ;

(e) the name of persons out of those interested in such land who have accepted the award.

(2) To the said statement shall be attached a schedule, giving the particulars of the notices served upon, and of the statements in writing made, or delivered by the parties interested respectively.

***Section 20: Service of notice:***

The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons:—

(a) the applicant ;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded ; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

***Section 22: Proceedings to be in open Court:***

Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court within the State shall be entitled to appear, plead and act (as the case may be) in such proceeding.

***Section 23: Matters to be considered in determining compensation:***

(1) In determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration—

**First**, the market value of the land at the date of the publication of the declaration relating thereto under section 6 ;

**secondly**, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of the Collector's taking possession thereof ;

**thirdly**, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from his other land ;

**fourthly**, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property movable or immovable in any other manner, or his earnings ;

**fifthly**, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change ;  
and

**sixthly**, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration, under section 6, and the time of the Collector's taking possession of the land.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market value in consideration of the compulsory nature of the acquisition.

***Section 24: Matters to be neglected in determining compensation:***

But the Court shall not take into consideration—

first, the degree of urgency which has led to the acquisition ;

secondly, any disinclination of the person interested to part with the land acquired ;

thirdly, any damage sustained by him which if caused by a private person, would not render such person liable to a suit ;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put ;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired ;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

seventhly, any out-lay or improvements on, or disposal of the land acquired, commenced, made or effected, without the sanction of the Collector, after the date of the publication of the declaration under section 6;

eighthly, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy.

***State of J&K V. Masooda Maryam Fazili;(CIA No. 129 of 2003)***

In this case the notification under Section 4 of the State Land Acquisition Act, 1990 was issued on 13.08.1979. Declaration under Section 6 of the Act was made vide Revenue Department's on 17.04.1980. Notification under Section 9 and 9-A of the Act was issued on 26.04.1980. Award was made by the Collector Land Acquisition, Assistant Commissioner (Revenue), Anantnag on 15.05.1982 Compensation was awarded at the rate of Rs. 5,000.per kanal besides 15% solatium (Jabrana). Respondent received the compensation under

protest. On respondent's application alleging that the compensation awarded was nominal, the Collector made reference under section 18 of the Act to the court of learned District Judge, Anantnag.

It was contended by the appellant-State that the learned District Judge did not take into consideration the evidence produced by the appellant/Collector, which clearly indicated that the compensation had been awarded by the Collector after taking into consideration all the relevant factors including the site, value and potential of the land and some transactions effected by various persons in the vicinity. It was contended that learned District Judge ignored the contention of the appellant that area in which the respondent's land was situate was falling within the zone where no construction was permissible because of blanket ban imposed by the Government so price of the petitioner's land falling in that area was not comparable to the instances on which reliance was placed by the respondent.

Appellant-State raised objection before the learned District Judge to the maintainability of the reference contending that the application for reference having not been made within six months from the date of award, the reference was time barred.

Court observed that determination of compensation to be awarded to interested person(s) is governed by sections 23 and 24 of the Act. The court primarily has to determine the market value of the acquired land

on the date of publication of the declaration under Section 6 of the Act. After determining the market value, court must have regard to the other factors enumerated in section 23, which will have positive effect on the amount of compensation to be awarded. Section 24 enumerates the factors, which, however, are to be ignored and will not weigh in favour of the interested persons.

Court held that enhanced compensation paid to one aggrieved person can well be made the basis for granting similar compensation to another similarly situated aggrieved person. Learned District Judge, therefore, cannot be said to have committed any error by relying upon the assessment of market value made by Additional District Judge, Srinagar in Mohd. Yaqoob's case [similarly situated person] and fixing the market value of respondent's acquired land as 2.40 lac rupees per kanal. Therefore the appeal was dismissed.

The Supreme Court in, *Haresh Chandra Raj Singh v. Land Acquisition Officer*, AIR 1961 SC 1500. Their Lordships have observed:

“In dealing with this question it is relevant to bear in mind the legal character of the award made by the Collector under S. 12 (award of the collector when to be final). In a sense it is decision of the Collector reached by him after holding and enquiry as prescribed by the Act. It is a decision, inter alia, in respect of the amount of compensation which should be paid to the person interested in the property acquired; but

legally the award cannot be treated as a decision; it is in law an offer or tender of the compensation determined by the Collector to the owner of the property under acquisition. If the owner accepts the offer no further proceedings is required to be taken; the amount is paid and compensation proceedings are concluded. If, however, the owner does not accept the offer, S. 18 gives the statutory right of having the question determined by Court and it is the amount of compensation which the Court may determine that would bind both the owner and the Collector. In that case it is on the amount thus determined judicially that the acquisition proceedings would be concluded. It is because of this nature of the award that the award can be appropriately described as a tender or offer made by the Collector on behalf of the Government to the owner of the property for his acceptance.”

Section 18 of the Act came up for interpretation before the Supreme Court in *Bhagwan Dass v. State of Uttar Pradesh*; (2010) 3 SCC 545. In this case Their Lordships have held:

“(i) If the award is made in the presence of the person interested (or his authorized representative), he has to make the application within six weeks from the date of the Collector's award itself.

(ii) If the award is not made in the presence of the person interested (or his authorized representative), he has to make the application seeking

reference within six weeks of the receipt of the notice from the Collector under Section 12(2).

(iii) If the person interested (or his representative) was not present when the award is made, and if he does not receive the notice under Section 12(2) from the Collector, he has to make the application within six months of the date on which he actually or constructively came to know about the contents of the award.

(iv) If a person interested receives a notice under Section 12(2) of the Act, after the expiry of six weeks from the date of receipt of such notice, he cannot claim the benefit of the provision for six months for making the application on the ground that the date of receipt of notice under Section 12(2) of the Act was the date of knowledge of the contents of the award.”

Legal position in context of Proviso (b) of section 18 of the Act, therefore, is clear too and should no more be taken as *res integra* [those points of law which have not been decided; which are untouched by dictum or decision]. In a case where an interested person (or his authorized representative) was not present at the time of making/announcement of the award by the Collector and notice of the award was not issued to him, the date of award shall be taken as the date on which he/she gets knowledge of award and six months duration for

making application for reference to the court under section 18 of the Act shall commence from the date of his/her knowledge.

Judicially recognized and preferred method for determination of the market value,. This method involves taking into consideration the sale transactions having taken place in the close vicinity or the adjoining areas of the acquired land at the relevant time. Such transactions can be proved by producing the sale deeds of comparable sales of land in the close vicinity or the adjoining areas and leading evidence about similarity between the acquired land and land covered by those comparable sale deeds. Another method recognized by the Courts, which can be resorted to, if evidence of comparable sale is not available, is the judgments and awards in respect of acquisition of land made in close vicinity of acquired land in the same village or in neighbouring villages.

Supreme Court in *Shaji Kuriakose v. Indian Oil Corporation Ltd.*, 2001 AIR SCW 3186, has observed as under:

“It is no doubt true that courts adopt comparable sales method of valuation of land while fixing the market value of the acquired land. While fixing the market value of the acquired land, comparable sales method of valuation is preferred than other methods of valuation of land such as capitalization of net income method or expert opinion method. Comparable sales method of valuation is preferred because it furnishes the evidence for determination of the market value of the acquired land

at which a willing purchaser would pay for the acquired land if it had been sold in the open market at the time of issue of notification under Section 4 of the Act. However, comparable sales method of valuation of land for fixing the market value of the acquired land is not always conclusive. There are certain factors which are required to be fulfilled and on fulfillment of those factors the compensation can be awarded, according to the value of the land reflected in the sales. The factors laid down inter alia are: (1) the sale must be a genuine transaction, (2) that the sale deed must have been executed at the time proximate to the date of issue of notification under Section 4 of the Act, (3) that the land covered by the sale must be in the vicinity of the acquired land, (4) that the land covered by the sales must be similar to the acquired land and (5) that the size of plot of the land covered by the sales be comparable to the land acquired. If all these factors are satisfied, then there is no reason why the sale value of the land covered by the sales be not given for the acquired land. However, if there is dissimilarity in regard to locality, shape, site or nature of land between land covered by sales and land acquired, it is open to the court to proportionately reduce the compensation for acquired land than what is reflected in the sales depending upon the disadvantages attached with the acquired land.”