

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

The State Land Acquisition Act,1990

1. Intoduction

2. Section 4

Introduction

When the land is required for the construction of roads, railways, canals or other public infrastructure, urban housing or any other public purpose, land is acquired compulsorily by the government on payment of compensation in accordance with land acquisition laws. There are also provisions in these laws for acquisition of land for the establishment of industries owned by the private sector as well. While changes in land use take place gradually and incrementally over time through decisions by land-owners, big changes require decisions by

the governments and compulsory land acquisition is the main vehicle for bringing changes on a large scale.

Since the State Land Acquisition, Act, 1990 has been repealed by the Jammu and Kashmir Reorganisation Act, 2019, now the Central legislation (Land Acquisition, Rehabilitation and Resettlement Act, 2013 ;also known as The Land Acquisition Act, 2013) is applicable in the UT of J&K. Before discussing the provisions of State Act, it is important to highlight the main features of Central legislation.

Basic Features of Land Acquisition, Rehabilitation and Resettlement Act, 2013:

Land acquisition act 2013 and was brought to replace Land Acquisition Act of 1894, enacted during British era. However the act was mired into controversies mainly because of lack of specific definition of public purpose, thereby, extending even it to the extent of establishment of business-cum-leisure tourism infrastructure center like villas, golf course, hotels and banquet halls.

The new act seeks to establish a cohesive national law that dealt with the compensation, rehabilitation and resettlement issues arising out of process of land acquisition. The *aims and objectives* of the act are:

- The acquisition process is carried out in consultation with local self government and gram sabhas, thereby, ensuring least disturbance is caused to the owners of the land and other affected families.
- To ensure that fair compensation is provided to the affected families.

- Make adequate provisions for the rehabilitation and resettlement.
- In case of compulsory acquisition, endeavor should be made that the affected persons are made partners in development so as to ensure a smooth rehabilitation process for them after acquisition.

The provisions of the **Act does not apply** to acquisitions under 13 existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc.

The *Act is applicable when*:

- Government acquires land for its own use, hold and control, including land for Public sector undertakings.
- Government acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose.
- Government acquires land for immediate and declared use by private companies for public purpose.

Salient Provisions of the 2013 Act

Definition of ‘Public Purpose’

Section 2(1) of the act defines ‘public purpose’ as the project which involves land acquisition for strategic purposes or national security and defence of the country. For example-naval, military, air force, and armed forces of the Union, including central paramilitary forces etc. Other domain which falls under public purpose are-elaborate mention

of infrastructure projects, projects for housing for lower income groups or landless or to persons residing in areas affected by natural calamities or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government.

Consent clause

When government acquires the land directly for ‘public purpose’ consent of the land owner is not required. However, when the government acquires the land for private companies, the consent of at least 80% of the project affected families shall be obtained through a prior informed process. In case of acquisition of land for public-private project then the consent of at least 70% of the affected families should be taken.

Emergency acquisition

Under this the land acquisition can be expedited if it relates to national defense, security and rehabilitation of affected people from natural disasters or emergencies.

Limits on acquisition

The act does not allow acquisition of land under multi cropped area [area where two or more than two crops are grown in the same piece of land during one growing season instead of just one crop]. The act also mandates that in case of acquisition of multi cropped area under exceptional circumstances, an equivalent area of cultivable wasteland shall be developed by the state for agricultural purposes. In case of acquisition of other agricultural land, total acquisition should not

exceed the limit as specified by an appropriate authority. These limits shall not apply to linear [progressing from one stage to another in a single series of steps] projects which include projects for railways, highways, major district roads, power lines, and irrigation canals.

Compensation

It will be four times the market value of land in rural areas and twice in urban areas. The market value of the land will be set as higher of: minimum land value, if any, specified in the Indian Stamp Act, 1899 or; average of the sale price for similar type of land being acquired, ascertained from the highest fifty per cent of the sale deeds registered during the preceding three years in the nearest vicinity of the land being acquired.

Land Acquisition, Rehabilitation and Resettlement Authority

It is established to adjudicate matters arising out of the implementation of this law. It will be established by the state government as a “One Person” Land Acquisition, Rehabilitation and Resettlement Authority with powers of civil court. He must be either qualified to be a District Judge or must have seven years law practice experience.

Social Impact Assessment

Before the acquisition process starts the government has to carry out a social impact study along with consultation involving local authorities viz. Gram Sabha, Municipality. The purpose of the study is to make public [inform public] the intended ‘public purpose’, the people

affected, extent of acquisition etc. The report is submitted to an expert committee who can after due consideration can also disapprove the project. But the government can override the disapproval of the committee.

Provision for SC/STs

Their land will be acquired only under exceptional circumstances and that too with the prior consent of Gram Sabha or Autonomous District Councils in fifth schedule. Moreover, development plan have to be launched within 5 years to ensure their livelihood is not affected. Also, one-third compensation will be provided before acquisition and rest after the process is completed.

Land left unused after acquisition

Land acquired for one purpose cannot be used for another purpose under section 99. However if the land is rendered useless for the originally notified purpose, the appropriate government may use it for another purpose. If the land acquired is not utilized within a period of five years from the date of taking possession, it shall be redelivered to the original owner.

The key **criticism of the** above **law** is as follows:

Complex procedure for acquisition

Social impact assessment study along with approval from the expert committee etc is a long and infeasible process, according to many business leaders. Also improper land records in India compounds the problem. Therefore by the time all the clearances are actually obtained, the project may lose its relevance or the project cost may significantly rise, so many businesses may simply decide to give it up.

High cost of acquisition

The law has made the compensation too high, thus, stifling investment sentiment in the country. Consequently various infrastructure projects failed to take off.

Consent of affected families

Act stipulates to take the consent of affected families also for land acquisition. The term 'affected families' has been defined very capaciously, so it would be a challenging task to find all affected families and to obtain their consent for acquiring land.

Exemption to 13 acts

The government gave exemption to 13 acts only for a year i.e. upto 1st January 2015. After one year the government has to bring amendments to withdraw this exemption but the government was not able to do so. Thus, unless it is done the legislation cannot be implemented effectively.

THE STATE LAND ACQUISITION ACT, 1990

The basic aim of this Act , is to expedite the process for the acquisition of land, needed for public purposes, within the territories comprising the Jammu and Kashmir State, and for determining the amount of compensation to be made on account of such acquisition. State land Acquisition Act, of 1990 repealed ‘The State Land Acquisition Regulation, 1903’.

DECLARATION [Sections: 4; 6-10]

Publication of Preliminary Notification and Powers of Officers thereupon: Section 4

Section 4(1):Whenever land in any locality is needed or is likely to be needed for any public purpose the Collector shall notify it—

- (a) through a public notice to be affixed at convenient places in the said locality and shall also cause it to be known by beat of drum and through the local Panchayats and Patwaries ;
- (b) in the Government Gazette
- (c) in two daily newspapers having largest circulation in the said locality of which at least one shall be in the regional language.

Section 4(2): After the Collector has notified any land in the manner prescribed in clause (a) of sub-section (1) as being needed or likely to

be needed for a public purpose, it shall be lawful for any officer, either generally or specially authorised by the Government in this behalf, and for his servants and workmen,—

- to enter upon and survey and take levels of any land in such locality ;
- to dig or bore into the sub-soil ;
- to do all other acts necessary to ascertain whether the land is adopted for such purpose ;
- to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon ;
- to make such levels, boundaries and line by placing marks and cutting trenches ; and where otherwise the survey cannot be completed, and the levels taken and the boundaries and lines marked, to cut down and clear away any part of any standing crop, fence or jungle .

Provided that, no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house unless with the consent of the occupier thereof without previously giving such occupier at least [ten days] notice in writing of his intention to do so.”

The first step here, is the issuance of a preliminary notification in the Official Gazette informing the public of the proposal to acquire the

land. Such notification is intended to alert the public of the government's intention for acquisition.

Any person interested in the land notified for acquisition could file an objection and every such person had to be given a hearing by the Collector.

After hearing the objections and making further inquiry where necessary, the collector is required to make a report with his recommendations on the objections, for a decision by the government. After consideration of the report, if the government is satisfied that any particular land was needed for a public purpose, it would issue a declaration to that effect.

The State Land Acquisition Act, Samvat, 1990, was amended by virtue of the State Land Acquisition (Amendment) Act, 1997, which received the assent of the Governor on 9th April 1997, and published in the Government Gazette on 10th April 1997. In terms of the said amendment, clause (b) of subsection (1) of Section 4 of the Act has been omitted from the Statute and Section 11-B has been inserted in the Principal Act. Section 11-B envisions that the Collector shall make an award under section 11 of the Act within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

The Land Acquisition Act prior to omission of clause (b) from section 4(1) of the Act had visualised three different modes of the publication

of the notification under Section 4 of the Act including its publication in Government Gazette. As a consequence of the deletion of clause (b) of section 4(1), the publication of the notification can be done through

(a) a public notice to be fixed at the convenient place in the said locality or to be caused it to known by beat of drum and through the local panahcyats and patwaris; and

(b) the publication in the two daily newspapers having largest circulation in the regional language.

The deletion of clause (b) requiring the publication in Government Gazette aims at streamlining the procedure and to ensure the expeditious disposal of the cases at initial stage. The Act, given the amendment and insertion of Section 11-B, visualises issuance of the award within a period of two years in contradistinction to the earlier procedure where no specified time limit was indicated. The amendment, therefore, has introduced greater regularity and time specificity within which the award has to be finalised.

The implication of this amendment is that where the land acquisition proceedings cannot be completed within the stipulated time frame of two years, it would entail de novo (afresh /new trial) proceedings thereby implying fresh determination and assessment of the amount of the compensation with reference to the parameters as indicated in Section 23 of the Act. Thus, the amendment in the Land Acquisition Act not only has indicated the timeframe but it has also made it

incumbent on the Collectors to ensure strict adherence to the timeframe, failing which it would induce serious financial implications by way of revision of award with reference to the market prices prevalent at the date of the publication of the declaration.

In case of urgency, the Collector under Section 17 of the Act, may, on the expiration of fifteen days, from the publication of the notice mentioned in Section 9 subsection (1) of the Act, take the possession of any land needed for the public purposes. Such land will thereupon vest absolutely in the Government. The Collector, however, has been enjoined upon under Section 17-A of the Act, to tender payment of eighty per centum of the compensation, prior to taking the possession of the land under Section 17 of the Act, to the persons interested and entitled thereto.

Public purpose

According to Section 3(g) the expression “Public Purpose” includes—

- (i) the provision of village sites, or the extension planned development or improvement of existing village sites ;
- (ii) the provision of land for town or rural planning ;
- (iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of the Government ;
- (iv) the provision of land for a corporation owned or controlled by the State ;

(v) the provision of land for residential purpose to the poor or landless or to persons residing in areas affected by natural calamities or to persons displaced or affected by reasons of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State ;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by the Government for carrying out any such scheme or with the prior approval of Government by a local authority or a society registered under the Societies Registration Act, Samvat 1998 or a Co-operative Society, within the meaning of the Co-operative Societies Act. 1960 ;

(vii) the provision of land for any other scheme of development sponsored by the State or Central Government or with the prior approval of the Government, by a local authority :

Provided that the land shall not be allotted or leased out to a person other than permanent resident of the State for residential purposes ;

(viii) the Provision of any premises or building for locating a public office : Provided that the disposal of land by way of lease or otherwise shall be made by the authority in accordance with the provisions of the law governing alienation, lease, transfer, sale etc;

(ix) the provision of land for any university or other educational institution established by the State Government.

Delhi High Court in the case of *Adil Singh vs Uoi & Ors* [decided on 9 August, 2010; WP(C) 2948/2007] held that where land is acquired for one public purpose and part of it is left unused, the same can be used for another public purpose. In case this is done, merely because the unused land is used for another public purpose would not be a ground for challenging the original acquisition itself. It is further clear that once the land has vested in the State either by virtue of Section 16 [taking possession] of the said Act or by virtue of Section 17(1) [special powers in case of urgency], in urgent cases, there is no question of the land being re-vested in the erstwhile owners. The Government can withdraw from the acquisition only upto the point it does not take possession of the land sought to be acquired. Once possession has been taken, the acquisition cannot be given up. It is also clear that though part of the land acquired for one public purpose could be used for another public purpose, without invalidating the acquisition itself, **land acquired for a public purpose cannot be used for a private objective**. But, even if part of the land is sought to be used for a commercial purpose, the same would not revert to the original owner though the appropriate Government would be subject to an action in case the allotment for commercial use is arbitrary or unreasonable. Where a portion of the land acquired for a public purpose is left unused, it would be open to the State Government to utilize the same for a commercial purpose provided it is done in a

transparent manner either through an open tender or through an auction.