

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

The State Land Acquisition Act,1990

Declaration of intended acquisition [Sections 6-10]

The basic aim and objective of the Act is to lay down the procedure , provisions of law 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.

Section 6:

Section 6 of the State Land Acquisition Act,1990, deals with “*Declaration that land is required for public purpose*” —

Subsection(1) of section 6 lays down that:

When the Government is satisfied after considering the report, if any, made under section 5-A, sub-section (2), that any particular land is needed for public purpose, a declaration shall be made to that effect under the signature of the Revenue Minister or of some officer duly authorised in this behalf :

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid wholly or partly out of the public revenues or some fund controlled or managed by a local authority.

Section 6(2):*The declaration shall be published in official Gazette, and shall state the district or other territorial division in which the land is situate, the purpose for which it is needed, its approximate areas and where a plan shall have been made of the land, the place where such plan may be inspected.*

(3) The said declaration shall be conclusive evidence that land is needed for a public purpose, and after making such declaration the Government may acquire the land in manner hereinafter appearing.

Section 7: After declaration Collector to take order for acquisition.—*Whenever any land shall have been so declared to be needed for a public purpose, the Revenue Minister or some officer duly authorised by the*

Government in this Behalf shall direct the Collector to take order for the acquisition of the land.

The law concerning the acquisition of the land in the State of J&K contained in the State Land Acquisition Regulation, 1903, was repealed by the State Land Acquisition Act No.X of 1990. The Act called as "The State Land Acquisition Act, 1990 (1934 A.D.)" was sanctioned by His Highness the Maharaja Bahadur vide Prime Minister's endorsement no.G.B.387, dated 29th January, 1934 and published in the Government Gazette dated 28th Baisakh, 1991. The Act extends to the whole of the territories of the J&K State. Section 3(a) of the Act envisages that the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth. The "person interested", as Subsection (b) of Section 3 of the Act says, 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.

When it appears to the Government that a particular piece of land in any locality is required or likely to be required for any public purpose, a notification to the said effect is to be issued under Section 4 of the Act. The Collector, as envisaged under Section 4 of the Act, is required to

notify through a public notice to be affixed at the convenient places in the locality, where the land is needed or is likely to be needed for any public purpose and shall cause it to be known by beat of the drum and through the local Panchayats and Patwaries. The Collector is also required to notify the same in the Government Gazette. The Collector is under bounden duty to notify the intention as to need of the land in the two daily newspapers having the largest circulation in the said locality of which, at least, one shall be in the regional language. If any person, interested in any land, notified under Section 4(1) of the Act, objects the acquisition of the land, he may object it in writing to the Collector within fifteen days after issuance of the notification. The Collector is to afford an opportunity of being heard to the objector in person or his pleader or a person authorised by him. The Collector, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, shall submit the case for the decision of the Government together with the record of the proceedings held by him and a report containing his recommendations on the objections. The decision of the Government, as envisioned in subsection (2) of Section 5-A of the Act, shall be final.

When the Government is satisfied after considering the report, if any, made under subsection (2) of Section 5-A of the Act, that any particular land is needed for the public purpose, a declaration, as envisaged by Section 6 of the Act, shall be made to that effect under the signature of

the Revenue Minister or of some officer duly authorised in this behalf. However, no such declaration shall be made unless the compensation to be awarded for such property is to be paid wholly or partly out of the public revenues or some fund controlled or managed by a local authority. The declaration, as stipulated by subsection (2) of Section 6 of the Act, is to be published in the official Gazette, and shall indicate the District or other territorial division in which the land is situated, the purpose for which it is needed, its approximate areas and where a plan shall have been made of the land, the place where such plan may be inspected. Whenever any land shall have been so declared to be needed for a public purpose, the Revenue Minister or some officer duly authorised by the Government in this behalf, in terms of Section 7 of the Act, shall direct the Collector to take order for the acquisition of the land. The public notice, under subsection (1) of Section 9 of the Act, shall be caused to be given by the Collector at the convenient places on or near the land to be taken, informing that the Government intends to take the possession of the land and that the claims to compensation from all the interested persons in such land, be made to him. Such notice shall enumerate particulars of the land so needed and the persons interested in the land shall require to appear in person or by agent before the Collector at a time and place mentioned in the notice and such time should not be earlier than fifteen days after publication of the notice. The persons, to appear before the Collector, have to state the nature of their respective interests in the land and the amount

and the particulars of their claim to compensation for such interests and their objections, if any, to the measurement. Such statements should be made in writing and signed by the party or his agent. A notice shall also be served by the Collector on the occupier, if any, of such land and on all such persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside, or have agents authorised to receive service on their behalf, within the revenue district in which the land is situate.

To explain further for better understanding of the implementation of the provisions of Land Acquisition Act, I would like to mention the case law decided by Honble Allahabad High Court, in the case of *Ram Nivas vs State Of U.P* [WRIT - C No. - 68915 of 2014] [judgement date:7 September, 2019].

The petitioner has invoked the writ jurisdiction of this Court under Article 226 of the Constitution of India questioning the validity of the declaration dated 11.5.2012 issued under Section 6 of the Land Acquisition Act, 1894 in respect of the land of various villages in district Agra notified for acquisition under Section 4 of the Act on 3.10.2005 lastly published on 28.11.2005 for the benefit of the Agra Development Authority.

The petitioner apart from seeking quashing of the aforesaid declaration has also made a prayer for the quashing of the entire acquisition

proceedings pursuant to the notifications dated 3.10.2005 and 11.05.2012 issued under Sections 4 and 6 of the Act respectively.

The primary ground for attacking the declaration made under Section 6 of the Act[1894] is that it is beyond time of one year from the date of publication of the notification under Section 4 of the Act as provided under proviso (ii) to Section 6(1) of the Act; and that the objections filed by the petitioner under Section 5-A of the Act were not decided by the Collector who is the competent authority but by the Special Land Acquisition Officer who was not notified for the purposes of dealing with the said objections and that no personal hearing was given to the petitioner while dealing with the said objections and thereafter making recommendation to the State Government.

The Court observed that the declaration made under Section 6 of the Act is on the face of it beyond one year and is barred by statutory limitation. Legal maxim---*Expressio unius est exclusio alterius*- means that if a statute provides for a thing to be done in a particular manner, then it has to be done in that manner alone and that no other manner is open and permissible in law. an Assistant Collector of the First Class is not entitled to function as Collector unless he is so notified by the Collector. Secondly, even if he is so notified he can only discharge functions of the Collector

under the Code and not those that are conferred upon the Collector under the other Acts.

Further it was held that, the Special Land Acquisition Officer who dealt with the objections of the petitioner/tenure holders and rejected the same is not the Collector or the person in-charge of the Revenue-administration. He is not even an Additional Collector. He is simply an Assistant Collector of the First Class but he cannot discharge the functions of the Collector either under the Code or under any other Act as there is nothing on record to establish that he has been so empowered by the State Government by means of a notification. Even if there is a notification of the State Government empowering the Assistant Collector First Class, he would be entitle only to carry out only those functions of the Collector which are given under the Code. It means the SLAO has no authority or jurisdiction to discharge the functions of the Collector as envisaged under Section 5A of the Act as he is not the Collector or officer-in-charge of the revenue administration of the district or the Additional Collector.

The Honble Court concluded that the declaration dated 11.05.2012 made under Section 6 of the Act is beyond time as prescribed by proviso (ii) to Section 6(1) of the Act and is a nullity and as the objections filed by the tenure holders under Section 5A of the Act were not dealt with by the Competent Authority their rejection is without jurisdiction and on that

basis no report or recommendation could have been made for issuing the declaration under Section 6 of the Act.