

Jammu and Kashmir Underground Public Utilities (Acquisition of Rights of User in Land) Rules, 2015

JAMMU & KASHMIR

India

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Rule

JAMMU-AND-KASHMIR-UNDERGROUND-PUBLIC-UTILITIES-ACQUISITION OF RIGHTS OF USER IN LAND) RULES, 2015

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Jammu and Kashmir Underground Public Utilities (Acquisition of Rights of User in Land) Rules, 2015 Published vide Notification No. SRO-249, dated 3.8.2015 SRO-249. - In exercise of the powers conferred by section 30 of the Jammu and Kashmir Underground Public Utilities (Acquisition of Rights of User in Land) Act, 2014, the Government hereby makes the following rules, namely : -

1. Short title and commencement.

(1) These rules may be called the Jammu and Kashmir Underground Public Utilities (Acquisition of Rights of User in Land) Rules, 2015. (2) They shall come into force on their publication in the Government Gazette.

2. Definitions.

- In these rules, unless the context otherwise requires, - (a) "Act" means the Jammu and Kashmir Underground Public Utilities (Acquisition of Rights of User in Land) Act, 2014 ; (b) "Form" means the form appended to these rules ; (c) "Section" means a section of the Act ; (d) "Tehsildar" means Tehsildar Territorial or any other officer authorized by the Government to discharge the duties and functions assigned to the Tehsildar Territorial ; and (e) Words and expressions used in these rules but not defined shall have the same meaning as assigned to them in the Act.

3. The place and manner of publication of notification under sub-section (1) of section 3.

(1)The competent authority shall publish the substance of the notification issued under section 3,-(a)by beat of drum in the neighborhood of the land, the right of user in land which is to be acquired ; and(b)by affixing a copy of substance of the notification at a conspicuous place in the locality in which such land is situated ; and(c)by publishing the substance of the notification in two daily newspapers having largest circulation in the locality in which the land is situated, atleast one of which shall be published in local language.(2)The competent authority shall send, in the same manner in which a notice is to be served under rule 8, a copy of the notification issued under sub-section (1) of section 3, to every person whose name exists, on the date of the notification, in the relevant revenue records indicating his/her having interest in land, the right of user in which is to be acquired.

4. Initial proceedings, preparation of plans.

(1)When it is necessary to acquire land for a public utility, the acquiring departmental officers entrusted with the execution or supervision of the work shall prepare information as to the situation and general character of the land required. The scale of the map shall ordinarily be one inch to the mile, and it shall show-(a)village boundaries, where they have been surveyed ;(b)the distances traversed by the work ; and(c)the average width of the strip to be acquired. For land near towns, or which for other reasons is likely to have a specially high value, a map to a sufficiently large scale shall be prepared showing the approximate boundaries of the land likely to be required with a note of any valuable trees, buildings, or other property for which compensation will have to be paid in addition to the price of the land itself.(2)In the case of not traversing considerable distances, such information and such maps or plans shall be prepared by the departmental officers as will suffice and enable the competent authority to furnish his opinion.

5. Indent to whom made.

- The indent shall be placed with the respective District Collector for acquisition of right of user in land. On receipt of an indent, the District Collector shall give necessary instructions to the competent authority concerned for further proceedings under the Act and the rules made thereunder.

6. Preparation of estimates and issuance of notification by competent authority.

(1)On receipt of the indent for the notification of the land likely to be required for rights of user under the Act, the competent authority shall take necessary measures which may be taken for issuance and publication of the notification as prescribed under section 3 of the Act.(2)The officers concerned shall be responsible for conducting of surveys, and the preparation of maps and plans and for preparation of the data upon which the acquisition of right of user in land or award can be

made.

7. Issuance of declaration under section 5 of the Act.

(1)A declaration under section 5 of the Act shall be issued in all cases in which it is intended to put the Act in force. The declaration shall be in the following form : -Declaration by Government in the Gazette under section 5. Whereas land is required by Government for a public purpose, namely for.....It is hereby declared that the under mentioned land is so required. This declaration is made under the provisions of section - the said Act. The competent authority is hereby directed to take order for the acquisition of right of user in land of the said land. Dated.....Secretary to the Government. Specification of Land

District Tehsil Mauza Area/Number Khasra in Kanals/ Marlas/Sarsais Boundaries

(2)The competent authority should also prepare and submit confidentially to Government through his official superior, note dealing with the nature of, and weight to be attached to, objections which have already been raised or are likely to be raised by persons directly or indirectly interested or by any section or the public. If no objections have been raised or are anticipated, the fact should be stated, and it should at the same time be explained whether in the event of acquisition of rights of user, the demolition of the buildings or obliteration of the tombs will be necessary.

8. Explanation to accompany the file for issuance of declaration.

- The file for issuance of declaration when forwarded to the Government shall be accompanied by a statement or explanation showing, -(i)that the cost of the land has been provided by the indenting department ;(ii)that no Kahcharai or Forest land is involved ; and(iii)endeavor has been made to spare the agricultural land.

9. Procedure after issuance of declaration under section 5.

- When the declaration under section 5 has been published in the Government Gazette, all further proceedings shall rest with the competent authority.

10. Land to be marked out and treatment of discrepancies in measurement.

- Proceedings should not ordinarily be delayed merely because it is found that there is a discrepancy between the land to be acquired for rights of user and the description or measurements of the land given in the declaration. If the declaration, describes the land with approximate correctness and the owners in this and other ways have had due notice of Government's intention to acquire the right of user in land, the acquisition should be completed, and no revised notification need to be issued.

11. Statement of value and owners.

- (1) In order to facilitate the inquiry into the value of the land and into the claims of persons interested, the acquiring officer will cause two statements, in the forms given below, to be prepared by the Tehsildar or other competent revenue officer : -Form I

S. No.	Kharsa No.	Khatauni No.	Total areas filed (in Kanals and Madras)	Owners, mortgagee, occupancy tenant, or other person interested	Area taken up (in Kanals and Maralas)	Class of land	Crops, tree, wells, or houses on land taken up	Value of such crops, trees, wells or houses	Remarks
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Form II

S. No.	Jamabandi No.	Name of owner	Name of occupancy tenants	Kharsa No. whole or part	Total Area of land in holding taken up (in Kanals and Marlas)	Class of land taken	Crops, tree, wells, or houses on land taken up	Value of Crops etc. shown in column 8	Remarks
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(2) Report giving data for estimate of market value. - The statements as mentioned in rule 12 (i) will give in a tabular form most of the information necessary to enable the acquiring officer to come to a decision as to the compensation to be awarded. Statement No. 1 will give details for each Khasra Number, whilst Statement No. 2 will merely give the totals for each holding. In addition to these statements the Tehsildar or other Revenue Officer will submit a report, in which he will give in detail all the data from which the market value of the land can be estimated viz. : -(a) the prices paid for land recently acquired in that or neighboring villages ;(b) the prices paid in private transactions as discoverable from the register of mutations etc. ;(c) all other information available, especially with regard to the points referred to in sections 23 and 24 of the Land Acquisition Act, Samvat 1990.(3) Proper care should be taken that a copy of the settlement field map, in which the land taken up is situated with the boundaries of the land marked on it, is filed with the Patwari's papers and with the proceedings of the case.

12. Notice to indenting department.

- The competent authority must give atleast 15 days prior notice of the date fixed to the officer acting on behalf of the indenting department for the acquisition of rights of user in the land in order that he may have an opportunity of making in person, by agent or by letter, any representation regarding its value which he may think necessary. The notice shall be accompanied by a copy of the statements and a report prepared under foregoing paragraphs, or in cases in which the file is too bulky for copies to be conveniently prepared, the notice shall inform the departmental officer that the file is

open to inspection by himself or by any other officer named by him, on a day later than 2 days before the date fixed in the notice issued. In the later case, however, a note of the value of the land, house etc., arrived at in the report shall invariably be forwarded along with the notice.

13. Opportunity to be given to the officer to make representation to acquiring officer.

- Due consideration shall be given by the competent authority to any representation the officer may make in reply to this notice whether made in person, by agent or written statement. It will rest with the department concerned to decide whether there is ground for making any such representation. The officer acquiring the land is only required to see that due opportunity for doing so is afforded and that the representation, if made, is duly considered before an award is made under the Act.

14. Disposal of objections raised on the score of interference with religious buildings or tombs.

- After the proceedings for acquisition of right of user in land have been initiated, the competent authority may himself dispose off any objections raised on the score of interference with religious buildings or tombs, if they can be settled amicably. If, however, these cannot be settled amicably or if for any reason the competent authority apprehends that the local settlement of such objections may not be accepted by the public, he should refer the matter to his superior officer who will, if necessary, submit it to the Revenue Minister for orders. This procedure should be observed with a special care when right of user in land is acquired for the removal of congested areas as in such cases the proceedings are more public than in ordinary cases.

15. Procedure of hearing claims for compensation.

- The award must in all cases be made by the competent authority himself and recorded with his own hand. On the date fixed in the notice issued he shall cause the persons who are interested in the land to be acquired for right of user to appear before him. He will then prepare two lists, the one showing the names of the persons present, the other the names of the absentees. The absentees shall be given, another chance of appearance. On the second hearing, if it appears to him that there is sufficient reason for adjourning proceedings to a later date, the case will be conducted ex parte so far as absentees are concerned.

16. Price how to be fixed.

(1)The competent authority shall pay special attention to the directions given in sections 23 and 24 of the Land Acquisition Act, Samvat 1990 and other relevant provisions of the said Act, for fixing the price for land or determining the amount of compensation. The competent authority may consider the prices paid for land, if any, recently acquired under the said Act in the same neighborhood, or prices paid in private transactions and recorded in registered deeds or judicial proceedings or the letting value of the land, and the stamp duty rates, if any.(2)In regard to structures including

houses, buildings etc. the concerned Superintending Engineer of the Public Works Department shall be consulted, for assessment of the value of such structure in terrains of the relevant rules governing the same.(3) Compensation for trees that are fruit or non-fruit bearing, should be assessed by the Horticulture or Forest Departments, as the case may be, according to the rules made in this behalf from time to time for the purpose. The competent authority shall refer the case to the respective Horticulture Developmental Officer or the Divisional Forest Officer for assessing the value of trees, who should not later than 15 days of receipt of requisition from the competent authority, provide assessment report back to the competent authority. In case of failure on part of the respective departments, the competent authority shall report to the concerned District Collector for initiating disciplinary action against the delinquent officer (s). For trees that are not fruit bearing the average local market value of timber or fuel will be allowed after deducting cutting and carriage charges. The owner may cut and remove those within a reasonable time in which case no price will be paid.

17. Proceedings under separate notification.

- Separate proceedings may be taken as to land acquired for rights of user under separate notifications and separate awards should be drawn up on account of each village in which right of user in land is acquired.

18. Reference under section 13 how made.

- When reference is made under section 13 of the Act, the competent authority should be guided by the following consideration in deciding whether to make a separate reference on account of each holding included in the award, as to which an application has been filed under section 13 or to make a single reference covering several holdings. In all cases there must be a separate reference on account of each village. If the persons interested in a number of holdings in the same village object to the award on the same grounds, one reference may be made as to all the holdings ; if, however, the person interested in any holding object to the award on grounds which apply only to that holding, then a separate reference just be made as to that holding. References to the Court should, of course, be made only in the case of persons interested who have objected to the award

19. Departmental officer to be informed.

- The competent authority should at once inform the indenting department concerned or any reference to the Court made under section 13, and should forward to him a copy of the grounds on which the objection to the award is taken.

20. Representation of Government in Court.

- The proceedings before the Court under the Act are of regular nature and the provisions of Civil Procedure Code and of the Evidence Act are applicable. The competent authority shall arrange for the defence of his award as if it were a suit against the Government and should be represented at the hearing before the judge by the Government Pleader. Facts must be proved in a legal manner, and

all evidence, whether oral or documentary on which the case is to be decided must be produced in Court. If the competent authority is not represented before the Court, the case will be decided ex parte.

21. Legal advice and interpretation.

- Cases which are referred to the Civil Court under section 13 of the Act need not, as a general rule, be reported to the Government, but the Revenue Department may be consulted in the usual manner on any point(s) that may arise in respect of such cases involving legal doubts or difficulties while putting the provisions of the Act or rules in force.

22. Liberal treatment in cases of sudden dispossession.

- Whenever the Collector deprives an owner suddenly of the land he should meet the reasonable expenses to which the owner may be put.

23. Competent authority alone to take possession.

- The competent authority alone is entitled to take possession of the land acquired for right of user of any public utility.

24. Payment of compensation when made.

- As soon as the award has been announced, the competent authority will proceed to pay the compensation awarded to those persons who are present and who accept the award. Sufficient notice should be given to enable all payees to assemble at the place where they will receive their dues, but no time should be wasted in useless endeavors to secure the attendance of absentees. A note shall be made of the names of those persons who refuse to accept the amount awarded or who accept it under protest.

25. Budgetary provisions to be made for acquisition of right of user in land by the indenting department.

- It shall be obligatory on part of the indenting department that in the matter of acquisition of right of user land, the heads of the various indenting departments at the commencement of every financial year the amount of budgetary provision is actually made in that year budget. Every year, clear intimation of the budgetary provisions made for the acquisition must, therefore, be furnished by each of the requisitioning departments in order that acquisition proceedings may be confined during the year approximately to the extent of the grant.

26. Deposit and payment of compensation and of damages under section 15.

(1) The State Government or, as the case may be, the Corporation, shall, within two months of the receipt of the intimation under sub-rule (3) of rule 4, deposit the compensation amount in such treasury and under such head of account, as may be specified therein, in that behalf. (2) As soon as the compensation is deposited with the competent authority by the Government or the Corporation as the case may be, the competent authority shall immediately pay the compensation to the persons entitled thereto with the period prescribed under sub-sections (3) and (4) of section 15 of the Act.

27. Notice to claimants and reference of dispute to the Court.

(1) Where several persons claim to be interested in the amount of compensation assessed under sub-section (1) and sub-section (4) of section 10, the competent authority shall specify the persons who in its opinion are entitled to receive the compensation and the amount payable to each of them, it shall send intimation thereof to all the persons who have preferred claims for compensation. (2) If any of the persons to whom intimation has been sent under sub-rule (1), does not accept the decision of the competent authority, he shall within a period of thirty days of the receipt of such intimation inform the competent authority in writing. (3) If on receipt of intimation under sub-rule (2) or otherwise, the competent authority is of the opinion that a dispute has arisen as to the apportionment of the compensation or any part thereof, or, as to the persons to whom the same or any part thereof is payable, then it shall refer the dispute to the Court within the limits of whose jurisdiction the land or any part thereof is situate.

28. Exemption from stamp duty and fee.

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

29. Mode of service of notice, etc.

(1) Any notice or letter issued or any order passed under the Act or the rules made thereunder, may be served by delivering or tendering a copy of such notice, letter or as the case may be, order, to the person for whom it is intended or to any adult member of his family or by sending it by registered post with acknowledgement due, addressed to that person at his usual or last known place of residence or business. (2) Where the serving officer delivers or tenders the copy of the notice, letter or order under sub-rule (1), he shall require the person to whom the copy is so delivered or tendered to sign an acknowledgement of service endorsed on the original. (3) Where the person or the adult member of the family of such person refuses to sign the acknowledgement or where the serving officer, after using all due and reasonable diligence, cannot find such person and there is no adult member of the family of such person, the serving officer shall affix a copy of the notice, letter or order on the outer door or some other conspicuous part of the ordinary residence or usual place of business of such person and then shall return the original to the authority or officer who issued the

notice, letter or as the case may be, order, with a report endorsed thereon or annexed thereto stating that he has so affixed a copy, the circumstances under which he did, so and the name and address of the person, if any, by whom the usual or last known place of residence or, as the case may be, business, was identified and in whose presence the copy was affixed.(4)Where the person to be served with the notice, letter or order is a minor or a person of unsound mind the notice, letter or order shall be served in the aforesaid manner, on the guardian of such minor or, as the case may be person of unsound mind.

30. Acquisition of' right of user in land at the cost of Government or Corporation or body of persons.

(1)When provision of the Act are put in force for the purpose of acquiring the right of user in land at the cost of any fund controlled or managed by the Government, or Corporation or body of person, whether corporate or not, the charges of and incidental to such acquisition, shall be defrayed from or by such fund.(2)In any proceedings held before the competent authority or Court in such cases the acquiring authority or corporation or body of persons concerned may appear and adduced evidence for the purpose of determining the amount of compensation or the damages under the Act :Provided that the Government or the Corporation or the body of persons on whose behalf the rights of user in land are being acquired shall not entitled to demand a reference under section 13.

31. Acceptance of certified copy as evidence.

- In any proceedings under the Act, a certified copy of document registered under the Registration Act, Samvat 1977 may be accepted as evidence of the transaction recorded in such document.

32. Acquisition of part of the house or building.

- The provision of the 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 or occupant or allottee desires that the whole of such house, manufactory or building shall so be acquired :Provided that if any question shall arise as to whether any land proposed to be taken under the Act does or does not form part of a house, manufactory or building within the meaning of this rule, the competent authority shall refer the matter to the Court and shall not take possession of such land until after the question has been determined.

33. Withdrawal from acquisition of right of user in land.

(1)The Government or the Corporation, as the case may be, shall be at liberty to withdraw from acquisition of rights of user of part of any land even after the award has been issued or possession taken.(2)When the Government or the Corporation, as the case may be, withdraws from any such acquisition under sub-rule (1), the competent authority shall determine the amount of compensation due for damages suffered by the interested person or persons in consequence of the notice or any proceedings thereunder, and shall pay such amount to the person interested together

with all costs reasonably incurred by him in the prosecution of the proceedings under the Act relating to said land.(3)The relevant provisions of the Act shall apply, so far as may be, to the determination of compensation payable under this rule.

34. Routine administrative expenses to be borne by the indenting department or corporation.

(1)For the purpose of acquiring rights of user in land for laying any gas pipeline or other public utility and the compensation to such property shall be paid out of the public revenues or at the cost of any fund controlled or managed by the Government or Corporation or of body of persons, whether corporate or not, all the charges as office expenses incurred by the competent authority, on and incidental to such acquisition, shall be defrayed by the competent authority from or by such fund or such body of the persons, at the rate of one per centum (1%) of the total cost of acquisition, awarded in each case, the provision with regard to which shall be kept by the corporation of the indenting department while preparing the estimates. Such amount for purposes of defraying administrative expenses shall, however, not form part of the award made by the competent authority.(2)The amount of one per centum shall be over and above the actual cost of acquisition awarded by the competent authority in each case, which shall be provided by the indenting department pledged to the competent authority concerned, who shall maintain proper account of the said amount and defray the routine office expenses on and incidental to such acquisition including purchase of stationary items, POL, hiring of vehicle for office conveyance, payment of routine wages to the persons temporarily engaged for assisting the competent authority in preparing revenue and allied papers etc.