

Digha Acquired Land Settlement Act, 2010

BIHAR

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Act 14 of 2010

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Digha Acquired Land Settlement Act, 2010 Bihar Act 14 of 2010 Published in Bihar Gazette (Extraordinary) No. 291, dated 26 April, 2010. Preamble. - Whereas, an area of 1024.52 acres of land was acquired by the Government of Bihar at Digha within Patna Municipal Corporation for Bihar State Housing Board, a statutory body, with an object that the Board shall develop and provide urban housing facilities to the citizens, Whereas, the acquisition proceeding was challenged by some of the erstwhile land owners and ultimately the matter went up to the Supreme Court of India, wherein, the acquisition proceeding was upheld, Whereas, acquisition was completed and the award was pronounced, Whereas, to meet the cost of acquisition and development the Board obtained interest bearing loan from the Government/Financial Institutions on certain terms and conditions, Whereas, the Board has deposited a sum of Rs. 17.42 crores with the Collector, Patna towards the acquisition cost, Whereas, during the process of acquisition and even after the acquisition various erstwhile land owners unlawfully delivered possession of the portions of the acquired land to various co-operative societies/individuals, either through deed of transfer registered in Metropolitan Cities or through any other written instrument notwithstanding, that such land holders had no title in the land transferred, Whereas, with the lapse of time approximately 600 and odd acres out of the said acquired land has been unlawfully occupied to a major extent by members of such societies/individuals, who have constructed their houses and are living therein or have constructed commercial buildings for commercial use, Whereas about 400 and odd acres of the remaining acquired land is largely free from unauthorized construction, except for a few unauthorised constructions in smaller areas, Whereas, a Public Interest Litigation was filed in the Patna High Court in the year 1987 by a social organisation alleging inaction on the part of the State Government and its agencies in the execution of the proposed housing scheme over the acquired land, Whereas, the Patna High Court passed several orders from time to time with respect to the removal of the unauthorised occupations and allotment of the plots of land carved out from the acquired land to different categories of applicants as well as in regard to execution of the proposed housing scheme over the acquired land and accordingly under the said orders of the Patna High Court all possible steps were taken by the Board with the assistance of the State Government/District Administration for execution of the proposed housing scheme over the acquired land but the same proved to be futile mainly on account of the stiff resistance of the

unauthorised occupants in collusion with the erstwhile land owners, leading to serious law and order problems, Whereas, taking into account the said factual position the Patna High Court also observed that the State Government and the Board should endeavour to frame a scheme embracing within its interest of the unauthorised occupants and the applicants for allotment of plots of land under different categories, Whereas, the erstwhile land owners have represented and demanded additional amount in view of the low market value which prevailed on the date of notification under Section-4 of the Land Acquisition Act and rapid rise in the valuation of the acquired land thereafter, Whereas, it is considered expedient that the entire acquired area may be classified in two categories, one which is largely under unauthorised occupation and the other which is mostly free from unauthorised occupation encroachment with only a few construction in smaller areas, Whereas, with a view to solve the vexed problem it is considered imperative to make a law authorising the Board or any other special purpose vehicle for the settlement of land and taking over the possession of vacant areas, Be it enacted by the legislature of State of Bihar in sixty-one year of the Republic of India as follows:-Chapter-1 Preliminary

1. Short title, extent and Commencement.

(1) This Act may be called The Digha Acquired Land Settlement Act, 2010. (2) It shall come into force on such date as the Government may, by notification in the Official Gazette, appoint. (3) It shall extend to the whole of the 1024.52 acres of land acquired by the Government at Digha, Patna for the purpose of the Bihar State Housing Board.

2. Definitions.

- In this Act unless there is anything repugnant to the subject or context:- (a) "Acquired land" means the 1024.52 acres land acquired by the State of Bihar at Digha, Patna for the purposes of the Bihar State Housing Board. (b) "Allotee" means allottee as defined under the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983. (c) "Applicant" means those person/persons who have made application to the Board along with earnest money in the manner prescribed by it for allotment of plots of land/houses/flats in the acquired land at Digha. (d) "Authority" means the Authority constituted under Section-9 of this Act. (e) "Board" means Bihar State Housing Board constituted under the Bihar State Housing Board Act, 1982. (f) "Building" includes any structure or part of structure which is being used or is intended to be used for residential, commercial or any other purpose in the acquired land. (g) "Chairman" means the Chairman of the Board. (h) "Chairperson" means the Chairperson of the Authority. (i) "Compensation" means the amount paid/payable to the erstwhile land owners against the acquisition of their respective land under an Award made in accordance with the provisions made under the Land Acquisition Act. (j) "Erstwhile Landowner" includes such persons, whose land was acquired by the State of Bihar at Digha, Patna for the purposes of the Board. (k) "Ex-Gratia Amount" means the amount determined by the Board and approved by the Government to be payable to the erstwhile land owners or their transferees either through registered sale deed or through any other written instrument against their respective land acquired for the Board in addition to the compensation already paid/ payable to them in terms of the provisions made under the Land Acquisition Act. (l) "Managing Director" means the Managing Director of the Board. (m) "Government" means the

State Government.(n)"Prescribed" means prescribed by Rules or order or notification made under this Act.(o)"Rules" means the Rules framed under this Act.(p)"Scheme" means any scheme framed under this Act.(q)"Secretary" means the Secretary to the Board.(r)"Settlee" means such unauthorised occupant, who is in unauthorised occupation of the acquired land with construction of dwelling house commercial building and to whom the portion of the acquired land, found to be under his unauthorised occupation with construction of dwelling house or commercial building is settled by the Board under the scheme framed by it in exercise of the powers under Section 3 of this Act.(s)"Settlement" means settlement of Digha land of the Board with the settlees who are neither applicant nor allottee of the Board but have unlawfully constructed dwelling house/any other residential/commercial construction, which may be settled under the scheme framed.(t)"Settlement Charge" means the amount determined by the Board and approved by the State Government while framing the scheme under Section 3 of the Act for settlement of the portions of the acquired land under unauthorised occupation and to be charged by the Board from the concerned unauthorised occupant.(u)"State" mean the State of Bihar.(v)"Transferee" means those person/persons to whom plot/plots of land forming part of the acquired land has/have been transferred by the concerned erstwhile land owner/owners by written instrument/instruments after the acquisition of the acquired land.(w)"Unauthorised Occupants" includes those persons, who have settled over the acquired land by making illegal purchases of plots of land either through registered sale deed or through any other written instrument after acquisition of the acquired land and by raising construction of dwelling houses/commercial buildings there upon without there being any valid title and legal authority over the land.(x)"Sector" means the twelve neighbourhood sectors carved out of the acquired land by the Board by preparing the lay out plan thereof under the Bihar State Housing Board Act, 1982 indicating the same therein.

3. Powers of the Board to frame and implement the Scheme.

- Subject to the provision of this Act and subject to the approval of the State Government, notwithstanding the provisions made under Chapter-IX of the Bihar State Housing Board Act, 1982 or any other law to the contrary to the provisions of this Act, the Board shall frame schemes for settlement of acquired land in favour of unauthorised occupants by making formal allotment of the area under the unauthorised occupation to the respective occupant on such terms and conditions which the Board may consider proper and just to enforce and implement the same: Provided that the Board shall also determine the settlement charges and ex-gratia amount with the prior approval of the Government: Provided further that while framing any scheme the Board shall, without prejudice to its right to recover cost of acquisition of land including payment of interest and development charges, also consider the following criteria: (a) The Board in the interest of revenue and in the interest of unauthorised occupants may settle the land to those person/ persons who are in possession, by making construction of dwelling houses or commercial buildings. (b) The Board may also consider interest of erstwhile land owners or their transferees who have remained deprived of the compensation amount by not receiving the same under protest and the low market value of the acquired land which prevailed on the date of notification under Section 4 of the Land Acquisition Act for payment of ex-gratia amount. (c) The Board shall be entitled to determine settlement charge in favour of unauthorised occupants and take into consideration factors such as cost of acquisition, interest on loan, development charges, ex-gratia amount likely to be paid to the erstwhile

landowners or their transferees and refund of deposits with interest made by allottees/applicants etc.: Provided that the Board shall also consider equity and human aspect of such unauthorised occupants who have constructed their houses and are in uninterrupted occupation for many years: Provided further that the Board may realise settlement charges in one lump sum or in a few installments. (d) The Board shall for such settlement realise settlement charge from the person/persons who are in such possession and desire for settlement by submitting the duly filled form as approved by the Board in the said regard. (e) The Board while determining ex-gratia amount to erstwhile landowners or transferees may take into consideration the money which is likely to be realised on settlement of land in favour of unauthorised occupants. (f) The Board shall have the right to reject unauthorised occupants who do not turn up in response to the notice made in two local newspapers published from Patna within sixty days of such notice to accept the scheme and pay settlement charges as determined by the Board and in the eventuality of ejection, the land together with all structures shall vest in the Board absolutely free from any encumbrance and the Board may settle the same to any other for housing or any other public purpose in the manner as it may deem fit and proper. (g) In case of failure of the unauthorised occupant or the erstwhile land owner/transferees from the erstwhile land owners to respond to the notice made by the Board, for whatsoever reason, within 60 (sixty) days there from, they shall cease to have any claim over settlement/ex-gratia amount.

4. Cancellation of allotments and refund of the deposits made by allottees/applicants, with the Board along with interest.

- The Board may cancel the allotment/allotments made over the acquired land under the Bihar State Housing Board (Management and Disposal of Housing Estates) Regulation, 1983 framed under the Bihar State Housing Board Act, 1982 and make refund of the deposits made by such allottees/applicants along with compound interest @ 8% per annum from the date of its deposit till the date of refund: Provided that any allottee of the plot of land forming part of acquired land, who have accepted refund from the Board prior to enforcement of this Act shall have no claim for any additional amount

5. Previous allotment deemed to be annulled.

- Notwithstanding, anything contained in this Act or in any other Act or rule or order any allotment made by the Board prior to enforcement of this Act on any portion of acquired land shall deemed to be annulled, Provided that such allottees of the land by the Board who are in actual physical possession of the land and have constructed residential or commercial buildings shall not be subjected to annulment.

6. Settlement of land limited to certain area.

- Settlement in accordance with provisions of this Act, rules or orders issued hereunder shall remain confined to an area of about 600 acres of land comprised in sector 3, 4, 5, 6, 7, 9, 11 and 12 wherein the unlawfully constructed area for residential or commercial purposes are spread over the

maximum area of the Sector: Provided that the vacant land in said sectors shall remain with Board and the land owners/transferees shall be entitled for ex-gratia payment of the land.

7. Board to take possession of vacant land.

- The Board shall be entitled to take possession of vacant land comprised in an area of about 400 acres of land situated in Sectors 1, 2, 5, 8 and 10 : Provided that the constructed portion in the form of dwelling houses or commercial buildings shall be entitled for ex-gratia payment as well as an additional amount for the constructed areas to be determined by the Board and approved by the Government: Provided further that while framing and implementing the scheme under Section 3, the Board may earmark a compact area for settlement in favour of only those unauthorised occupants who have constructed only their residential houses: Provided further that unauthorised occupants shall not be entitled to settlement in the area described in Section 7, except the area which has been earmarked by the Board in the scheme for the said purpose.

8. State Government to provide Fund.

- The State Government may provide sufficient Fund to the Board for carrying out purposes of this Act and schemes framed thereunder. Chapter-III

9. Constitution of an Authority.

(1) The Government shall constitute an Executing Authority, initially for a period of one year, consisting of three members, including the Chairperson, for the purposes of deciding the claims of ex-gratia amount as well as the settlement charge. (2) The chairperson shall be a serving or a retired senior Government servant, having knowledge of matters related to revenue administration. (3) The Chairperson and the members of the Authority shall hold office till the pleasure of the Government. (4) The Authority for the purpose of this Act shall have the same powers as are vested in a Civil Court under the Code of Civil Procedure, 1908 (Act 5 of 1908) to issue commission, to hold local inspection, to summon and enforce attendance of witnesses and to compel production of documents. (5) The proceedings before the Authority shall be deemed to be judicial proceedings, within the meaning of Section-193 and 228 of the Civil Procedure Code.

10. Officers and Servants of the Authority.

- The Board may, with the previous sanction of the State Government, appoint, such officers and servants to assist the Authority as it considers necessary for carrying on its business. The remuneration and other conditions of service of such officers and servants shall be such as may be prescribed by the Board and approved by the Government.

11. Payment by the Board on account of Authority.

- The amount necessary for the payment of remuneration, salaries, allowances and other contributions payable to the Chairperson and other members of the Authority and of the officers and servants of the Authority, shall be paid by the Board which shall create a corpus by depositing 1% of the settlement charge/ex-gratia amount for meeting the cost to be incurred in the said regard in a separate account.

12. Powers to make Rules for the Authority.

(1)The Board may, from time to time, with the previous sanction of the State Government, make Rules for carrying out purposes of this Act.(2)All such Rules shall be published in the Official Gazette.

13. Bar on Jurisdiction of Courts.

- Any decision/order made by the Authority in exercise of the powers conferred by or under this Act shall not be challenged in any Court.Chapter -IV Miscellaneous

14. Powers of Government to give directions to the Board and the Authority.

- The Government may give the Board and the Authority such directions as in its opinion are necessary or expedient for carrying out the objects/ purposes of this Act and the Board and the Authority shall be bound to comply with such directions.

15. Powers to remove difficulties.

- The State Government, in case of any dispute, difficulty/impediment in giving effect to the provisions of this Act, may give orders notwithstanding the provisions of this Act, which it may deem necessary for the purposes of removing the dispute, difficulty/impediment.

16. Protection of action taken in good faith.

- No suit, prosecution or other legal proceedings shall be initiated against the officials of State Government of the Board or its officials or the Authority or its officials who in good faith have done or intend to do any thing under this Act or under any Rule or Order made thereunder.

17. Overriding effects and Savings.

(1)The provisions made under this Act, in case of any conflict/contradiction with the provisions made under the Land Acquisition Act, 1894, Transfer of Property Act, 1882, Bihar State Housing Board Act, 1982 and/or any other laws/rules/regulations for the time being in force, shall have the overriding effect:(2)Provided that in any other law/rule for the time being in force, any order,

notification circular, schemes, resolution made/issued in regard to the acquired land prior to enforcement of this Act, so far as it is not inconsistent with this Act, shall continue to be in force and shall be deemed to have been made/issued or passed under the provisions of this Act.