

**LECTURE ON LAND ACQUISITION ACT AND COMPARATIVE STUDY OF
LAND ACQUISITION ACT 1894 AND LAND ACQUISITION,
REHABILITATION AND RESETTLEMENT ACT, 2013***

By

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In my endeavour to make young lawyers easily understand the concept of acquisition of land and the provisions of the Land Acquisition Act, I have prepared this write up by using simplest possible words.

Acquisition of land is of two kinds, acquisition of land by the Government for public purpose, and acquisition of land for companies. The public purpose is defined in Section 3(f) of the Land Acquisition Act 1894. It is an inclusive definition. 'Public Purpose', as mentioned in the Act, is not capable of a precise definition and has to be tested in the light of the purpose for which land is sought to be acquired. From time to time the apex Court and various High Courts have expanded the scope of public purpose.

Usual public purposes are laying of road, widening of existing road, construction of houses for weaker section of the public, irrigation projects, housing projects, construction of parks *etc.*, off late, various Governments started acquiring lands for development of townships, Information Technology parks, establishment of Universities/educational institutions, establishment of public offices *etc.* In the following acquisitions, it was held by the Supreme Court/High Courts that acquisition is for public purpose *viz.*,

- (a) construction of a sugar factory by a co-operative society with a view to encourage local cane-growers and to increase the production of sugar *etc.*, (*T. Subba Reddy v. State of Andhra Pradesh*, reported in AIR 1979 AP 127),
- (b) a housing scheme for a limited number of persons (*Ratilal Shankar Bhai v. State of Gujarat*, AIR 1970 SC 984),
- (c) acquisition to provide amenities and convenience to pilgrims (*Devastanam Aubaiah v. State of Andhra Pradesh*, AIR 1960 AP 231),
- (d) expansion of the school and its playground to meet growing educational need (*The Forane Church v. State of Kerala*, AIR 1972 Ker. 143),
- (e) public library (AIR 1953 All. 182),
- (f) maternity home and child welfare centre (AIR 1952 Cal 67),
- (g) development of a housing colony [*Jeeva Housing Board vs. KSK Kaul*, (2011) 1 SCC 714].

The concept of public purpose is not static. It changes with the requirements of the society from time to time and in accordance with the conditions of the country (AIR 1959 Pun 538).

In 'EMMAR Properties' case [*Sooraram Pratap Reddy vs. District Collector, Ranga Reddy District*, (2008) 9 SCC 552], establishment of integrated project for providing business-cum-leisure tourism infrastructure centre like villas, golf course, hotels and banquet halls was held to be for public purpose.

* Delivered on 10th October, 2013 in the meeting arranged in the premises of the High Court of Andhra Pradesh at Hyderabad.

There are two modes of acquisition, one is ordinary acquisition where possession of land can be taken only after an award is passed, and the second one is acquisition of land by invoking urgency clause where advance possession can be taken by giving notice of 15 days.

The process of land acquisition commences with the issuance of Section 4(1) notification. It is called preliminary notification. It is specified in Section 4(1) of the Land Acquisition Act as to whether it is an ordinary acquisition or acquisition invoking urgency clause. If it is ordinary acquisition then the land owner/interested person will be called upon to submit their objections by conducting an enquiry under Section 5-A of the Act. If the acquisition is under urgency clause then Section 5-A enquiry will be dispensed with.

There is no remedy available to the party except to approach the High Court under Article 226 of the Constitution of India if the interested party is aggrieved by the action of the State Government in depriving him from submitting objections under Section 5-A. Even in case of acquisition under urgency clause, there are several instances where the Supreme Court and the high Courts have interfered with the Section 4(1) notification to the extent of dispensing with Section 5-A enquiry. Depending upon the facts and circumstances of a case in certain acquisitions, the Courts had been consistent in holding the action of the respondent authorities in dispensing with Section 5-A enquiry as illegal, and directions are issued to the authorities to conduct Section 5-A enquiry.

In a case of establishment of Sewerage Treatment Plant invoking urgency clause, the High Court held that the proposed plant cannot be established in a matter of few days/months and it requires planning, designing and time for completing the project, and as such dispensing with Section 5-A enquiry is held to be unconstitutional.

In recent judgments of the supreme Court in *Radheysyam v. State of Uttar Pradesh*, (2011) 5 SCC 553, it was relating to acquisition of land for residential, commercial, industrial and institutional purposes, it was held that dispensing of 5-A enquiry, was illegal. During the 5-A objections, the objector/land-owner/party-interested has to be given an opportunity of hearing. The authority herein should apply its mind and render its decision as to whether it is dropping the acquisition proceedings or going ahead with the acquisition by rejecting the objections. Right to object and of being heard under Section 5-A enquiry is a substantive and valuable right available to the land-owner as held by catena of decisions of the supreme Court [*Anand Singh v. State of Uttar Pradesh*, (2010) 11 SCC 242].

After Section 5-A enquiry, next step is Section 6 declaration. Upon issuance of Section 6 declaration, it becomes conclusive that land is needed for public purpose or for a company. The Section 4(1) notification and Section 6 declaration have to be published in the official gazette and in two daily newspapers of which at least one should be in the regional language.

The difference between Section 4(1) notification and Section 6 declaration is as follows:

‘After issuance of 4(1) notification, the authorities are entitled to enter upon the land, survey the land and take such measures to ascertain whether the land is adapted for such intended public purpose, and also to set out boundaries of the land, level the land *etc.* it is not only an initial step to enable the authorities to find out the area of the land, nature of the land but also to see whether it is suitable for the intended public purpose.

After issuance of Section 6 declaration the authorities are entitled to go ahead with further acquisition proceedings.’

Then comes the stage of award enquiry. Under Section 9 of the Land Acquisition Act notices are issued to persons interested calling upon them to submit their claims for compensation. Under Section 11, award enquiry is conducted by the Land Acquisition Officer/Special Deputy Collector appointed for the purpose. Usual methods of fixation of land compensation are comparative sales method (sales statistics) and if sale instances are not available then capitalisation method is followed *i.e.*, value of agricultural produce less expenditure for growing them. If the award is not passed within a period of two years from the date of Section 6 declaration, the entire proceedings shall lapse under Section 11-A of the Act. The notice of award under Section 12(2) has to be issued to persons interested intimating them that compensation has been fixed, and parties will be asked to receive the compensation amount. If the party is aggrieved by the quantum of compensation, he can file a Protest Petition under Section 18 of the Act. On such protest petition the Land Acquisition Officer is bound to refer the matter to the civil Court under Section 18 of the Act. This is called Section 18 reference, and normally it will be registered as an Original Petition ("OP"), and the enquiry for fixation of compensation will be conducted like a civil suit.

In case of rival claims during the award enquiry reference will be made by the Land Acquisition Officer to the concerned civil Court under Sections 30 and 31 of the Act for apportionment of compensation or to determining the entitlement of compensation. Thus normally Section 18 reference is filed for deciding additional quantum of compensation, and Section 30 reference is made for deciding as to the entitlement and apportionment of compensation *i.e.*, incidentally title to the acquired land.

A person who is not a party to the award proceedings also has got a right to

file a petition under Section 18 of the Act, to seek reference as to the entitlement to claim the compensation. Likewise, person who may/may not be aggrieved by the quantum of compensation, also may seek reference to the civil Court for proper measurement of the land, under Section 18. However, such application has to be made within six weeks if the person making it was present during the award enquiry and in other cases two months from the date of service of notice of award under Section 12(2) of the Act. A person who does not avail Section 18 reference for enhancement of compensation by filing a Protest Petition, has got yet another remedy under Section 28-A of the Act wherein he can apply to the Land Acquisition Officer for re-determination of compensation on the basis of enhancement made to another similarly placed person under the same Section 4(1) notification, if such other person was given additional compensation under the Section 18 reference. However application under Section 28-A has to be filed within a period of three months from the date of award by the reference Court under Section 18.

After the award is passed under Section 11 of the Act, by giving 15 days prior notice the authorities can take possession of the land. In case of urgency clause, though the procedure regarding receipt of claim statement, award enquiry is one and the same, possession can be taken in advance by giving 15 days notice under Section 17(1) of the Act. The rights of the parties whose land is being acquired by invoking the urgency clause, are safeguarded under Section 17(3)(A) wherein the land-owner should be paid 80% of the compensation estimated by the authorities. Then usually after the award enquiry even a person whose land is acquired under urgency clause, can invoke Section 18 reference for additional compensation.

The Land Acquisition Officer is guided by Sections 23 and 24 of the Act for

determining the compensation, payment of interest, payment solatium *etc.*, on the compensation amount.

Company acquisition under Part-IV of the Act:

In case of company acquisition any company (requisitioning authority) for whose purpose the land is sought to be acquired has to bear the costs of acquisition. It should enter into a prior agreement with the appropriate Government for payment of compensation, transfer of land and other terms as may be necessary in connection with such acquisition. Such agreement between the appropriate Government and the company has to be published in the official gazette under Section 42 of the Act, which is obviously to ensure transparency in the matter.

In case the land-owner does not voluntarily deliver possession of the land, then power under Section 47 of the Act can be invoked by taking assistance of police to enforce surrender of land.

Section 48 of the Act deals with power of the Government to withdraw from the acquisition proceedings. The Government is entitled to withdraw from acquisition in respect of land of which possession is not taken. Therefore once possession is taken either in advance by invoking urgency clause-or-after award is passed in case of ordinary acquisition, withdrawal from acquisition cannot be done. A question may arise as to what would happen in case a land in respect of which an award is passed and possession is claimed to have been taken by the Government, and the party approaches the Government/Court for withdrawal of acquisition. Possession should be taken by the Government in accordance with law. It is not a statutorily recognised right of the land-owner, but also a constitutional right provided under Article 300-A of the Constitution of India. If possession is not taken in accordance with the Land Acquisition

Act *i.e.*, after passing award (ordinary acquisition/urgency acquisition) by giving 15 days prior notice, then the land-owner can always request the Government to release its land from acquisition under Section 48 of the Act.

For challenging the acquisition proceedings the parties are barred from approaching Civil Court, and the only remedy available is to approach the High Court under Article 226 of the Constitution of India.

There are certain grey areas in the Act. For the purpose of issuing Section 4(1) notification, the authorities normally see revenue records in case of agricultural land, and town/municipal records in case of urban properties. There is no mechanism under the Act to conduct preliminary enquiry as to the ownership of the land.

Supposing that the original owner is dead and his legal-heirs/transferees did not take proper care to get their names mutated in the revenue records, the notification will be issued in the name of the dead person or in some cases in the name of some person who has already alienated the land. During the award enquiry taking advantage of the name of owner shown in Section 4(1) notification and Section 6 declaration, the person whose name is thus shown or his legal heirs, tend to make speculative claims thereby depriving/delaying the actual and real owner of the property to claim compensation. Further, since the Land Acquisition Officer cannot decide the title of the properties, in normal course reference under Sections 30 and 31 will be made to a civil Court for a decision as to the entitlement/apportionment of compensation. There may be instances where a land may belong to joint family but only one member (normally eldest member of the family) is recorded as enjoyer/occupier. A greedy family-member whose only name is recorded may claim the entire compensation as sole

claimant without giving any information to the other family members. Though public notice generally is considered as a constructive notice to public in general and even if a person interested does not see or miss-out seeing the notice, it is deemed sufficient service of notice to public in general, and therefore authorities can go ahead with award enquiry on the basis of the claim submitted before it.

I personally opine that the authorities should make local enquiry about the present ownership of the land/property and then issue 4(1) notification by showing the name of the original owner/ present owner/ present enjoyer. Another grey area is the enquiry for determination of compensation. When there are sale transactions, the Land Acquisition Officer is bound to look into the sales statistics for three years prior to Section 4(1) notification to arrive at an average market value of the land. Recent decision of the Supreme Court held that highest sale price has to be taken into consideration to fix the market value.

There may be a case in a village where land is acquired does not have any sale transactions for the past three years. Such village may have the same advantages of being nearer to the National Highway/road, proximity with the railway stations/bus stand, and other facilities like hotels, schools as compared to the other vicinity villages. But the Land Acquisition Officer may ignore such sales by saying that other village where sales transactions have taken place is at a far off distance, and may opt for capitalisation

method. In case of capitalisation method normally compensation will be very less as compared to the comparable sales method. Even in cases where the Government develops layouts and sells the plots in auction, such auction price, as held by Courts, need not be a guiding factor for the Land Acquisition Officer for fixing the appropriate market value.

The usual ground for challenging the land acquisition proceedings are (a) vagueness/ defect in Section 4(1) notification *i.e.*, purpose of acquisition is not mentioned with clarity so as to enable the land-owner to know as to which land is being acquired and for what purpose it is acquired, and to further file objections to oppose such acquisition. [*Madhya Pradesh Housing Board v. Mohd. Shafi*, (1992) 2 SCC 168]. (b) *mala-fide* exercise of power, (c) colourable exercise of power, (d) non-application of mind. [*Hindusthan Petroleum Corporation Limited v. Darius Shapoor Chenai*, (2005) 7 SCC 627].

Experience has shown that agriculturists/ landless poor are unduly deprived on their valuable lands. Several people have been displaced from their villages, meager compensation is being paid, acquisition being made in colourable exercise of power, all these problems compounded have triggered our parliamentarians to come up with a new Land Acquisition Act which is titled as 'Land Acquisition, Rehabilitation and Settlement Act 2013'

Some of the provisions of this Act are *in pari materia* with the old Act 1894.

Section under the Land Acquisition Act
1894 including the Amendment Act of 1984

Section under the Land Acquisition,
Rehabilitation and Settlement Act 2013

4
5-A
6 and 7
11
11-A
48

11 and 12
15
19
23
25
93

The most notable changes in the 2013 Act are...

1. Social Impact Assessment Study to be done by the authorities before preliminary notification under Section 4 of the 2013 Act if the Government intends to acquire land for public purpose, which means the authorities have to conduct public hearing and give a report about the social impact by consulting with the panchayats/municipalities/municipal corporations (local authority) as the case may be prior to issuing preliminary notification under Section 11 for acquisition of land. During such Study the grass-root level authorities also have a say to give their opinion whether the proposed acquisition serves public purpose, number of family members likely to be affected in the acquisition, whether alienated land can be acquired, the extent of public land/house settlement likely to be affected in the acquisition, as to whether the extent of land proposed to be acquired is bare-minimum requirement for the project. Under the Social Impact Assessment Study ('SIAS') the authorities are bound to take into consideration the impact the project is likely to cause on various components such as livelihood of the affected families, properties, assets, sources of drinking water for humans, source of drinking water for cattle, community ponds, grazing lands *etc.* After such Study, a report is prepared and it should be made available in local language at panchayats/municipalities/municipal corporations as the case may be.
2. The SIAS will be done by group of persons comprising of two unofficial social scientists, representatives of the panchayat/grama sabha/municipality/municipal corporation, two experts on rehabilitation, technical experts *etc.* Then such report has to be forwarded to

the appropriate Government, and the appropriate Government after ensuring that the purpose of acquisition is bona-fide and recommend such area for acquisition which would ensure minimum displacement of people disturbance of infrastructure, ecology *etc.* However under Section 9 of the 2013 Act, the Government may exempt the undertaking of Social Impact Assessment Study if the acquisition is made under urgency clause, under Section 40 of the 2013 Act.

Most important and people-friendly features of the 2013 Act are,

1. *Section 10* : no irrigated multi crop land shall be acquired under the 2013 Act. If under exceptional circumstances such land is acquired, the Government should ensure that equivalent area of cultivable waste land shall be developed for agricultural purposes, or the amount equivalent to the value of the land acquired shall be deposited with the appropriate Government for investing in agricultural for enhancing food security. This provision is in consonance with the Food Security Act 2013. So in case of acquisition of multi-crop fertile lands, the object is to see that cultivable lands are not diminished, and thereby to ensure that there is no shortage of food production.
2. *Rehabilitation and Resettlement* : In case of land-owners/landless people whose lands are affected in acquisition, rehabilitation and resettlement scheme has to be prepared under Sections 16 and 17 of the 2013 Act. A special provision is made for the benefit of the people belonging to Scheduled Castes and Scheduled Tribes under Section 41, and their lands should not be acquired as far as possible, and in case of demonstrable last resort, their lands are acquired under a

special development plan for their rehabilitation and resettlement.

3. 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 utilised within a period of five years from the date of taking possession, it shall be redelivered to the original owner under Section 101 of the 2013-Act.

Section 24 protects certain category of persons whose lands have been notified acquired under the 1894-Act. The provisions of the 2013-Act will apply (a) where no award has been passed under Section 11 of the 1894-Act for payment of compensation, (b) where award has been passed under Section 11 of the 1894-Act five years or more prior to the commencement of the 2013-Act, but physical possession has not been taken or compensation has not been paid, then in the above two circumstances, the proceeds under the 1894-Act are deemed to have lapsed.

Further, where award is passed and compensation of majority land-holdings has not been deposited in the account of beneficiaries, then all the beneficiaries specified in the Section 4-notification under 1894-Act will be entitled to compensation under 2013-Act.

As evidenced from the contents of the 2013-Act, at various stages substantial safeguards have been provided to the land-owner so as to ensure that the authorities do not act arbitrarily and in a discriminative

manner to deprive the land-owner of his land. The parliamentarians were conscious of the fact that in case of several acquisitions there is colourable exercise of power and in many a case corporate entities in the guise of development of Information Technology parks, ports, tourism projects *etc.*, have been getting land acquired by paying meagre compensation to the land-owners. Compensation payable to the land-owners is provided in Schedule-I of the 2013-Act. The land-owner will get market value multiplied by one or two times (for urban and rural lands as the case may be), alongwith interest which includes 100% solatium. Similarly Schedule-II is also provided detailing out the manner in which the land-owners and landless poor will be rehabilitated and resettled. The 2013-Act will go a long way to protect the interests of farmers and land-owners who are solely depended on the lands. Majority of the Indian population is depended on lands. Most of them have agricultural lands. Some are depended on urban properties. In view of ever increasing demand and rising prices of land, a person/family affected in land acquisition will suffer heavily as it will be impossible for him/them to purchase similar extent of land lost in the acquisition. Therefore payment of compensation one or two times as per Schedule-I, and rehabilitation & resettlement as per Schedule-II protects and safeguards the interests of the land-owners, and further ensures that if acquisition of the property is sought to be done the authorities will be careful before going for such acquisition. This mechanism takes care of the longstanding grievances of the land-owners/displaced persons by ensuring the acquisition of property will be made only as a last resort and if the purpose is *bona fide* and genuine.