

ADMINISTRATIVE PROCEDURE UNDER THE LAND ACQUISITION ACT

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Urbanization and industrialisation imply a drastic change in the land use patterns. Besides, land provides an important point of control to the planner in implementing various projects. For urban planning in India, if not also for national planning, large-scale acquisition of land is inevitable. It is essential, therefore, that the administrative procedure laid down for acquisition of land does obstruct a speedy implementation of the development programmes. At the same time natural justice requires that the individual being deprived of his land be given a reasonable opportunity of being heard. The procedure provided under the Land Acquisition Act, 1894, which is the principal statute relating to land acquisition in India has been described as "lengthy and time consuming,"¹ and has often held up the implementation of important schemes of slum clearance, housing, town-planning, etc. A law enacted in the nineteenth century could not have taken into account the needs of planned development. The tenth report of the Law Commission² convincingly brought out the need for improvements in the present law. The Commission also prepared a draft bill, but nothing substantial seems to have been done in this behalf except the appointment of another committee in August 1967 under the Chairmanship of Mr. A.N. Mulla, M.P., a former Judge of the Allahabad High Court, to suggest amendments in the land acquisition law.

The acquisition of land under the Land Acquisition Act is either for a public purpose or for a company. The starting point of acquisition proceedings is the issue of a preliminary notification by the appropriate government under Section 4 (1) of the Act which lays down that "land in any locality is needed or is likely to be needed for any public purpose." Under Section 5-A (1) of the Act any person interested in any land, which has been notified under Section 4 (1) as being needed or likely to be needed for a public purpose or for a company, may within thirty days of the issue of the notification, object to the acquisition of the land or any land in the locality as the case may be. The Collector after giving the objector an opportunity of being heard either in person or by pleader, and making such further inquiry as he thinks necessary, has to submit the case to the government together with the record of the proceedings held

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1. Third Five-Year Plan, p. 687.
2. See, Tenth Report of the Law Commission of India (1958).

by him. A report containing his recommendations on the objection is also submitted. The decision of the government, on the objections is final. This follows a declaration by the government, under Section 6 of the Act as to whether any particular land is needed for a public purpose or for a company : If the acquisition is for a company, compensation is to be paid by the company and if it is for a public purpose, compensation wholly or partly must be paid out of public revenue or some fund controlled or managed by local authority. The declaration that the land is needed either for a company or a public purpose is published in the Official Gazette and it is final and conclusive.

After the declaration under Section 6 of the Act is made, the Collector under Section 7 of the Act is directed to take order for the acquisition of the land. The Collector under Section 8 of the Act causes public notice to be given stating that Government intends to take possession of the land, and that claims to compensation for all interests in such land may be made to him. The Collector under Section 11 of the Act holds an enquiry and has to give his award after giving an opportunity to the persons interested. The Collector, in determining the compensation as laid down in Section 15 of the Act, is to be guided by the principles embodied in Sections 23 and 24 of the Act. The award of the Collector under Section 12 of the Act is final, except in cases where a reference is made under Section 18 of the Act to the Court, within six weeks from the date of the Collector's award, in a case where the person making the reference is present or represented at the time the award is given. In other cases reference is made within six months of the receipt of the notice from the Collector of the making of the award.

After the award has been made the Collector, under Section 16 of the Act takes possession of the land which thereupon vests absolutely in the Government, free from all encumbrances. In cases of urgency, however, the appropriate Government may direct the Collector under Section 17 (1) and (2) of the Act to take possession of any waste or arable land even though he has not made his award. The Government under Section 17 (4) of the Act in a case to which sub-sections (1) and (2) of Section 17 of the Act apply, may also direct that the provisions of Section 5-A of the Act shall not apply, and a declaration under Section 6 may be made at any time after the publication of the notification under Section 4 (1).

Part VII of the Act deals with the acquisition of land for a company. Section 40 of the Act provides that the Government shall give consent for the acquisition of land for a company only when it is satisfied on the report of the Collector under Section 5-A (2) on the report of the Officer under Section 40 itself to the effect that the acquisition is (a) for the purpose of obtaining land for erection of dwelling houses for workmen of the company or for the provision of amenities directly connected with it; (b) for the construction of some building or work for a company which

is engaged or is taking steps for engaging, itself in any industry or work which is for a public purpose, (c) for the construction of some work, which is likely to prove useful to the public.

The provisions relating to the acquisition for a public purpose apply to the acquisition for a company, but these provisions in relation to the company as laid down in section 39 of the Act cannot be enforced unless the company has executed an agreement, as laid down in Section 41, with the Government with regard to the payment to the Government of the cost of acquisition and the terms, manner, conditions, etc., for the use of the land.

The experience of the working of the Act has not been too happy. Any number of instances can be cited in which the proceedings of acquisition were started say thirty years back but they are not yet complete.³ There is no provision in the Land Acquisition Act under which delay could be prevented and acquisition speeded up. Apart from the fact that the Act does not put any time limit for the completion of various steps that ultimately resulted in acquisition, the Government itself for reasons, political or otherwise does not complete the proceedings for acquisition within a reasonable time. To prevent this it is necessary that provision should be made in the law dealing with acquisition of property, that in case acquisition proceedings are not completed within a specified time, notification regarding acquisition shall be deemed to be cancelled. Section 18 (1) of the Bill suggested by the Law Commission provided that acquisition proceedings are to be completed within eight months from the date of the issue of a notification under Section 4 (1) or a further period of 4 months which the government for reasons to be recorded might extend. Section 18 (2) of the Commission's Bill provides that the Collector will within a period of four months complete the proceedings for payment of compensation whether an agreement about it is arrived at or the matter is referred to the court for determination. If this time limit is not adhered to the person whose land is acquired is entitled under Section 19 (a) (3) of the proposed Bill to the restoration of possession, and payment of such compensation as the court may determine. The absence of provisions setting a time limit for acquisition in the Land Acquisition Act, 1894 have

3. For example, land was intended to be acquired under the U.P. Town Improvement Act for providing additional accommodation in the Trans-Gomti North Chandganj Scheme, Lucknow. The first notification under Section 36 of the U.P. Town Improvement Act was issued on 26.10.1942 about the preparation of the improvement scheme. On 11.9.48 notification under Section 40 (3) was published in the U.P. Gazette that the scheme has been submitted to the Govt. for sanction. On 3.9.58 the Govt.'s approval for the scheme was accorded. Possession of the land was taken on 29.8.1959, while the award under Land Acquisition Act was made on 11.10.61. Reference for higher compensation was made on 18.7.62 and is still pending. Several other schemes including Road Widening Schemes are still pending for about 40 years or more.

been responsible to a great extent for the delay in acquisition proceedings. This is particularly harmful and may adversely affect agricultural production where large areas of agricultural land are put under an acquisition scheme. It would be in the fitness of things if the owner of an arable land is allowed to continue his cultivation till such time as the land is put to the use for which it is acquired, on such terms and conditions as the government might determine. A provision in this behalf in the Land Acquisition Act, 1894 should be made so that food production does not suffer. In some of the states say, Uttar Pradesh, an elaborate time table is laid down in administrative regulations for quick acquisition, but this has proved to be far from satisfactory.

The Land Acquisition (Amendment and Validation) Act 13 of 1967 is to some extent expected to accelerate acquisition proceedings, for S. 6 of the principal Act shall be made in respect of any land, which has been notified before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, under Section 4 (1) of the principal Act after the expiry of two years from the commencement of the Ordinance. Under Section 4 (3) of the Amending Act it is laid down that if a declaration under Section 6 of the principal Act is made either before or after the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967 in respect of a land notified under Section 4 (1) of the principal Act, before the commencement of the Land Acquisition (Amendment and Validation) Ordinance, 1967, and such declaration is made after the expiry of three years from the date of publication of such notification, simple interest at the rate of 6% per annum shall be paid on the expiry of the said period of three years on the compensation as determined under Section 23 of the principal Act till the date of tender of compensation by the Collector. The payment of interest is not expected to result in the acquisition proceedings ending quickly, if the Government is not interested in acquiring a land soon, it would not for fear of paying interests conclude the proceedings for acquisition expeditiously. By means of Section 3 of the Act of 1967, Section 6 of the principal Act has been amended and it now permits different declarations from time to time in respect of different parcels of any land covered by the same notification under Section 4 (1) of the principal Act. This could not be done, as held by the Supreme Court,⁴ under the Principal Act. Consistent with the amendment made in the principal Act permitting different declarations under Section 6 of the Act 1 of 1894, a definite time table by suitably amending the principal Act should have been laid down for the completion of different stages of acquisition proceedings.

If land is urgently needed the Government may direct the Collector under Section 17 of the Act to take possession of any waste or arable land,

4. *State of Madhya Pradesh v. Vishnu Prasad Sharma*, A.I.R., 1966 S.C., 1593.

on the expiry of fifteen days from the publication of the notice under Section 9 (1) of the Act. In such an eventuality the Government directs under Section 17 (4) of the Act 1 of 1894 that the provisions of Section 5-A would not apply and declaration under Section 6 may be made at any time after the publication of the notification under Section 4 (1). Possession of only waste or arable land can be taken under Section 17 of the Act. This is an anomaly which prevents speedy acquisition and it should be removed. This was attempted in Uttar Pradesh by means of the Land Acquisition (U.P. Amendment) Act, 1954 which provides that the power to take possession under sub-section (1) of the Section 17 of the principal Act may also be exercised in the case of land other than waste or arable lands, where the land is acquired for, or in connection with sanitary improvement of any kind or planned development. The U.P. Amendment Act, 1954 failed to achieve its object and the Supreme Court⁵ held that as sub-section (4) of Section 17 was not amended the applicability of Section 5-A could not be dispensed with, except in case of waste arable lands. In a few other states also amendments were carried out in Section 17 of the principal Act. It is suggested that in the interest of planned development and for the sake of uniformity Section 17 be suitably amended by a Central legislation permitting the taking over of possession of land, other than waste or arable, and dispensing with proceedings under Section 5-A of the principal Act. In cases of urgency the scheme of the Act, as it stands at present, permits the decision as to the requirement of the land (waste or arable) for a public purpose, and the decision not to apply the provisions of Section 5-A being taken simultaneously.⁶ The authorities need not wait for bringing into operation the provisions of Section 17 (4) of the Act till after the issue of a preliminary notification. Section 4 of the Act should be so amended as to contain a provision for specifying a date, say two weeks for filing objections before the Collector to the acquisition of land. While this is being done, investigation as contemplated by Section 4 (2) of the Act should be completed. The Collector should of course conclude his enquiry within a period of three months and submit his report to the Government, which must within six weeks hereafter take a decision if the land is to be acquired. These changes have been incorporated by the Law Commission in its Draft Bill and should be accepted.

The question of the payment of compensation under Land Acquisition Act, 1894 may now be considered. Article 31 of the Constitution has been amended and additions have been made to it a number of times, since it came into force with effect from January 26, 1950. The view of the Supreme Court is that the word "compensation" means full value of the property, which may be acquired. Under the provisions of the

5. *Sarju Pd. Saha v. State of U.P.*, A.I.R. 1965 S.C. 1763.

6. *Somawanti v. State of Punjab*, A.I.R. 1963 S.C. 151.

Land Acquisition Act, 1894, compensation is required to be paid on the basis of "market value." The decision of the Supreme Court in the *I. C. Golaknath*⁷ case has, at any rate for the present, created obstacles in the way of amendment of the fundamental rights, otherwise in order to escape the liability of paying full value for the property, amendment of the Constitution would have been the most appropriate thing. Market value is determined with reference to the date of the notification under Section 4 (1). Taking advantage of the proposal to issue a notification under Section 4 (1) some persons might try to take undue advantage by boosting up the prices, by entering into factitious transactions. Such cases are likely to be very few, and the authorities determining compensation may also be able to get instances, which would throw light on the real state of affairs. If on account of development after acquisition, owners of adjoining areas get advantage by reason of the enhancement of the value of their property, it cannot be helped, except by way of having a betterment levy.

The relevant date for determining the market value is the date of notification under Section 4 (1). This position came about after the amendment of Section 4 (1) by the Land Acquisition (Amendment) Act, 1923. Prior to the Land Acquisition (Amendment) Act 1923 the date with reference to which market value was determined was the date of the declaration under Section 6 of the Act. The fixing of a date anterior to the date of the notification under Section 4 (1) of the Act for determining the market value would be hit by Art. 31 of the Constitution inasmuch as it would prevent the owner from claiming real market value of the land. The Supreme Court in the case of *State of Madras v. Namasivaya Mudaliar*⁸ held that provision of law to be invalid, in which April 28, 1947 was the date fixed with reference to which market value was to be determined.

The assessment of compensation by the Collector and the making of an award by him are wholly unsatisfactory. The Collector has not been able to inspire confidence and the lawyers have generally been treating proceedings before him as a farce. In accordance with the circulars of the Revenue Department compensation already determined in almost each and every case is the compensation awarded by the Collector. The Collector is not in a position to differ from the compensation calculated in accordance with the revenue circulars or instructions. As the award by the Collector offering compensation hardly satisfies the owners of property, a large number of references are made to the court. It has been seen as a matter of practice that compensation ultimately

7. *I. C. Golaknath & Others v. The State of Punjab*, A.I.R. 1967 S.C. 1643,

8, A.I.R. 1965 S.C. 190.

allowed by the Court is much higher than⁹ the one offered by the Collector. The proceeding before the Collector leading to the giving of an award by him can safely be said to be a sheer waste of time. For the fear of not getting the correct amount of compensation from the Collector, occasionally by resorting to one legal proceeding or the other, acquisition is delayed. Where the rates are high, the owner has to bear considerable expense in prosecuting the proceedings under Section 18 of the Act. The State in defending these proceedings has also to spend a good amount of money. If an independent body entrusted with the task of awarding compensation is created, owners of property in the hope of getting a fair deal would not resort to dilatory tactics. The delay, permits the owners to carry on their business or reside in the property sought to be acquired, and thereby they earn profit much more than they would earn out of the inadequate compensation offered to them by the Collector. Besides this, it would also leave some time with the otherwise too busy officials of the Collectorate and the Collector himself to be able to devote time to complete the earlier stages of acquisition proceedings quickly.

When large-scale acquisition of land is inevitable, we must have an efficient staff in sufficient number to cope with the work of acquisition, and carrying it out quickly. The absence of trained and qualified personnel delays proceedings of acquisition.

The acquisition of land for a company may be for the expansion of an existing industry or for the setting up of an altogether new industry by a company. If the company wants to set up a new industry, land should not be acquired for it. The Government ought to lay down its policy and a plan for industrialisation, and also predetermine the areas or zones where a particular industry would be allowed to come up. Having done this the Government should acquire land and then allot it by inviting offers to those companies or bodies which want to set up the kind of industry about which the Government has already taken a decision. This would prevent abuse of power and the giving of preference to one company over the other. So far as the acquisition of land for the expansion of an existing company is concerned, it should be resorted to in exceptional

9. In the case of *U.P. Govt. v. H. S. Gupta*, A.L.R. 1957 S.C. 202, the Collector awarded Rs. 2,88,000/- as compensation. The District Judge Lucknow increased it to Rs. 6,07,675/-. The High Court, however, reduced it by Rs. 53,366/-, but the Supreme Court restored it to the figure of the District Judge. In a case in Prapatgarh in U.P., the Collector awarded Rs. 3,865.99 N.P. as compensation. It was enhanced to Rs.22,734.89 N.P. the reference and the High Court in appeal affirmed the order passed in the reference. In another case relating to acquisition for Hydrel Colony Gonda, the Dy.Land Acquisition Officer awarded a sum of Rs. 4,454/- for 12 acres of land. It was affirmed in the reference by the District Judge, Gonda, and now a First Civil Appeal is pending in the High Court in which compensation claimed is Rs. 40,000/-.

circumstances, and in any case the Government should strictly enforce the provisions of Rule 5 of the Land Acquisition (Companies) Rules, 1963, regarding the resumption of land by the Government, where the company fails to utilise the land for the purpose for which it had requested the Government to acquire land for it.

The reference in the foregoing pages to the shortcomings of the present procedure for land acquisition highlights the need for a thorough revision of the present law. The requirements of planning make it imperative that a new law for land acquisition be enacted at the earliest.