THE STATE LAND ACQUISITION ACT, 1990 (1934 A.D.)

[illegible] [illegible]

[illegible] His Highness the Maharaja Bahadur vide Prime

Whereas it is expedient to amend the law for [illegible] 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; It is hereby enacted as follows:—

PART I
PRELIMINARY

1. Short title, extent and commencement

This Act may be called the State Land Acquisition Act No. X of 1990.

(2) It extends to the whole of the territories comprising the Jammu and Kashmir State.

(3) It shall come into force at once.

2. Validation of the former acquisitions of land

(1) The State Land Acquisition Regulation, 1903, is hereby repealed.

(2) But all proceedings commenced, officers appointed or authorised, agreements published and rules made under the said Regulation shall, as far as may be, be deemed to have been respectively com- [illegible] published and made under this Act.

(3) Any Act or document referring to the Regulation shall, as far as may be, be construed to refer to this Act, or to the corresponding portion thereof.

3. Definitions

In this Act, unless there is something repugnant in the subject or context,—

(a) the expression "land" includes benefits to arise out of land, and things attached to the earth or permanently fastened to any thing attached to the earth;

(b) the expression "person interested" 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;

(c) the expression "Court" means the principal Civil Court of original jurisdiction in a district unless the Government has appointed (as it is hereby empowered to do) a special Judicial Officer within any specified local limits to perform the functions of the Court under this Act;

[1][(d) the expression "Collector" means the Collector as defined in the Land Revenue Act, 1996];

(e) the expression "Revenue Minister" means the Revenue Minister of the Council of the Jammu and Kashmir State;

(f) the following persons shall be deemed to be "entitled to act" as and to the extent hereinafter provided (that is to say) the guardians of minors, or of lunatics or idiots, and trustees for other persons beneficially interested who are under disability, shall be deemed, respectively, the persons entitled to act to the same extent as the minors, lunatics or idiots themselves, if free from disability, could have acted:

Provided that—

1 Clause (d) substituted by Act III of 2005. (By Act X of 1996, original clause (d) was deleted and subsequent clauses (e), (f), and (h) were relettered as (d), (e), (f) and (g) respectively).

(i) no person shall be deemed "entitled to act" whose interest in the subject matter shall be shown to the satisfaction of Collector or Court to be adverse to the interest of the persons interested, for whom he would otherwise be entitled to act;

(ii) in every such case, the person interested may appear by a next friend, or, in default of the appearance by a next friend, the Collector or Court, as the case may be, shall appoint a guardian for the case to act on his behalf in the conduct thereof;

(iii) the provisions of the law in force in the State, for the time being, relating to Civil Procedure, shall so far as they apply are applicable, in the case of persons interested, appearing before a Collector or Court by a next friend or by a guardian, for the case in proceedings under this Act; and

(iv) no person "entitled to act" shall be competent to receive the compensation money payable to the person for whom he is entitled to act unless he would have been competent to alienate the land and receive and give a good discharge for the purchase money on, a voluntary sale;

[1][(g) the expression "Public Purpose" includes—

(i) the provision of village sites, or the extension planned development or improvement of existing village sites;

(ii) the provision of land for town or ruler planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of the Government;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purpose to the poor or landless or to persons residing in areas affected by natural calamities or to persons displaced or affected by reasons of the implementation of any scheme under-

1 Clause (g) substituted by Act XX of 1988, S. 2.

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taken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by any authority established by the Government for carrying out any such scheme or with the prior approval of Government, by a local authority or a society registered under the Societies Registration Act, Samvat 1998 or a Co-operative Societies, within the meaning of the Co-operative Societies Act, 1960;

(vii) the provision of land for any other scheme of development sponsored by the State or Central Government or with the prior approval of the Government, by a local authority:

Provided that the land shall not be allotted or leased out to a person other than permanent resident of the State for residential purposes;

(viii) the Provision of any premises or building for locating a public office:

Provided that the disposal of land by way of lease or otherwise shall be made by the authority in accordance with the provisions of the law governing alienation, lease, transfer, sale etc.;

(ix) the provision of land for any university or other educational institution established by the State Government;]

(h) the expression, "Company" means a Company registered under the [4][Companies Act, No. XI of 1977, and includes a registered society within the meaning of the Cooperative Societies Act, 1960 [2][;]

4 New Companies Act, 1956 (Central Act No. 1 of 1956).

[1][(i) the expression "local authority" includes a town planning authority (by whatever name called) set under any law for the time being in force;

(j) the expression "corporation owned or controlled by the State" means any body corporate established by or under any law for the time being in force in the State.

COMMENTS

Collector — Post of Revenue Officer designated as Collector in Jammu Development Authority — Not a post where Revenue Officer by virtue of his office entitled to exercise powers of Collector — No specific notification conferring powers of Collector under S. 6(4) on officer transferred to J.D.A. — Not entitled to issue notice under S. 4 (1) Land Acquisition Act. —*Kuldeep Singh v. State of J&K & Anr. 2004 (2) JKJ HC-117*

PART II
ACQUISITION

Preliminary Investigation

4. [2][Publication of preliminary notification and powers of officers thereupon

Whenever land in any locality is needed or is likely to be needed for any public purpose the Collector shall notify it—

(a) through a public notice to be affixed at convenient places in the said locality and shall also cause it to be known by beat of drum and through the local Panchayats and Patwaries; [3][omitted]

(b) in the Government Gazette [4][; and]

[4][(c) in two daily newspapers having largest circulation in the said locality of which at least one shall be in the regional language.]

1 Clauses (i) and (j) added ibid.
2 Sub-section 4 (1) substituted by Act XXXIV of 1953.
3 The word "and" omitted by Act XX of 1955, S. 3.
4 The full stop at the end of clause (b) substituted by semi-colon and the words "and" inserted

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(2) [1][After the Collector has notified any land in the manner prescribed in clause (a) of sub-section (1) as being needed or likely to be needed for a public purpose] it shall be lawful for any officer, either generally or specially authorised by the Government in this behalf, and for his servants and workmen,—

to enter upon and survey and take levels of any land in such locality;

to dig or bore into the sub-soil;

to do all other acts necessary to ascertain whether the land is adopted for such purpose;

to set out the boundaries of the land proposed to be taken and the intended line of the work (if any) proposed to be made thereon;

to make such levels, boundaries and line by placing marks and cutting trenches; and

where otherwise the survey cannot be completed, and the levels taken and the boundaries and lines marked, to cut down and clear away any part of any standing crop, fence or jungle:

Provided that, no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (unless with the consent of the occupier thereof) without previously giving such occupier at least [2][ten days] notice in writing of his intention to do so.

COMMENTS

Notice to interested persons — Interested parties mean persons entitled to receive compensation on basis of existing rights in land to be acquired — Names of petitioners not entered in revenue record as owners of land, Collector not bound to issue notices to legal representatives of deceased owners who were not shown as interested persons in Revenue record. JT 2003 (3) SCC 566, Rel. *Ghulam Rasool Bhat v. State of J&K & Ors. 2004 (1) JKJ HC-416*

Petitioner called in Question the fresh acquisition proceedings in respect of land measuring 1 Kanal, 4 Marlas be ongling to him, comprised under Khasra No. 1494 situated at Pulwama Town, for construction of Bank Building. This Land was earlier acquired for the construction of Bus Stand in 1982-84 alongwith other land comprised under other Khasra Nos. for public purposes under proper notification. The petitioner claims to have objected the acquisitions on the plea that the purpose indicated is not a public purpose and he intends to utilize the land for personal use — Construction of Bank building in a Bus Stand is part of the public purpose for which the land was initially acquired. There doesn't seem to be any deviation much less material deviation for the public purpose. *Mst. Hafiza Begum & Ors. v. State of J&K & Ors. 2003 (3) JKJ HC-1*

1 Substituted ibid for "Thereupon".
2 Substituted by Act XXXIV of 1950 for "fortnight".

5. Payment for damage

The officer so authorised shall at the time of such entry pay or tender payment for all necessary damage to be done as aforesaid, and, in case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the Provincial Revenue authority within thirty days of its being pronounced, whereupon the decision of that officer shall be final.

5-A. Hearing of objections

(1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose [1][x x x] may within [2][fifteen days] [3][after such land is notified in the manner prescribed in clause (a) of sub-section (1) of section 4 as being needed or likely to be needed for a public purpose,] object to the acquisition of the land or of any land in the locality, a object to the acquisition as the case may be.

(2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard either in Person [4][or by pleader or by a person authorised by him] and shall, after hearing all such objections and after making such further inquiry, if any, as he thinks necessary, 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 on the objections shall be final.

1 Words "or for a company omitted" by Act XXVII of 1962.
2 Substituted by Act XXXIV of 1960.
3 Substituted ibid for "after the issue of the notification".
4 Substituted by Act XX of 1988. S. 4.

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(3) For the purpose of this section, a person shall be deemed to be interested in land who would be entitled to claim an interest in compensation if the land were acquired under this Act.

DECLARATION OF INTENDED ACQUISITION

6. Declaration that land is required for public purpose

(1) 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:

[1][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.]

(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.

7. After declaration Collector to take order for acquisition

Whenever any land shall have been so declared to be needed for a public purpose, [2][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.

8. Land to be marked out, measured and Planned

The Collector shall thereupon cause the land (unless, it has been already marked out under section 4) to be marked out. He shall also

1. Substituted for both the provisos by Act XXVII of 1962

cause it to be measured and (if no plan has been made thereof) a plan to be made of the same.

9. Notice to Persons Interested

(1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that the claims to compensation from all interests in such land may be made to him.

(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent, before the Collector at a time and place therein mentioned (such time not being earlier than [1][fifteen days] after the date of publication of notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections (if any) to the measurements made under section 8. The Collector may in any case, require such statements to be made in writing and signed by the party or his agent.

(3) The Collector shall also serve notice to the same effect 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.

(4) In case any person so interested resides elsewhere, and has no such agent, the notice shall be sent to him by post in a letter addressed to him at his last known residence, address or place of business and registered in accordance with the Postal Rules in force for the time being in that behalf.

[2][9-A. The Collector shall also cause a notice to be served on the Head of the Department for which land is to be acquired or his nominee requiring him to appear before him on the date fixed under section 9

1. Substituted by Act XXXIV of 1960 for 30 days

for the appearance of the interested persons and to state his objections, if any, to the measurement made and to the amount of the tentative compensation that may be assessed.]

10. Power to require and enforce the making of statements as to names and interests

(1) The Collector may also require any such person to make or deliver to him, at a time and place mentioned (such time not being earlier than thirty days after the date of the requisition) a statement containing, so far as may be practicable, the name of every other person possessing any interest in the land or any part thereof as co-proprietor, sub-proprietor, mortgagee, tenant or otherwise, and of the nature of such interest and of the rents and profits (if any) received or receivable on account thereof for 3 years next preceding the date of the statement.

(2) Every person required to make or deliver a statement under this section or section 9 shall he deemed to be legally bound to do so within the meaning of sections 172 to 177 of Ranbir Penal Code.

ENQUIRY INTO MEASUREMENTS, VALUE AND CLAIMS AND AWARD BY THE COLLECTOR

[1][**11. Enquiry and award by the Collector**

(1) On the day so fixed or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objections (if any) which—

(a) any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land at the date of the publication of the notification under sub-section (1) of section 4 and into the respective interest the persons claiming the compensation;

(b) the Head of the Department or his nominee has, stated pursuant to a notice given under section 9-A; and shall

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tentatively assess the compensation which in his opinion should be allowed for the land.

(2) Where the amount of compensation tentatively assessed under sub-section (1) exceeds [1][the amount specified by the Government by notification] the Collector shall refer the record of the case along with the statement of the tentative assessment of compensation for approval of the Revenue Minister or an officer specially empowered by him in this behalf.

(3) In a case referred by the Collector under sub-section (2) the Revenue Minister or an Officer empowered by him in this behalf shall, after considering the report of the Collector and after making such further enquiry as may be necessary, determine the proper value of the property to be acquired and communicate it to the Collector and the value so determined shall form the basis of compensation to be allowed for the land.

(4) The Collector shall thereupon make an award under his hand of—

(i) the true area of the land;

(ii) the compensation payable for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him.

(5) An award made in contravention of the directions of the Revenue Minister or an officer specially empowered by him in this behalf with respect to the value of the land shall be void.]

[2][(6) Notwithstanding anything contained in the aforesaid sub-sections, if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the Government

he may, without making further enquiry, make an award according to the terms of such agreement:

Provided that no agreement shall be valid if it violates provisions of any law for the time being in force.

(7) The determination of compensation for any land under sub-section (6) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(8) Notwithstanding anything contained in the Registration Act, 1977 no agreement made under sub-section (6) shall be liable to registration under that Act.]

[1][11-A. Correction of clerical or arithmetical errors etc

(1) The Collector may, at any time but not later than six months from the date of award, or where he has been required under section 18 to make a reference to the court, before making of such reference, by order correct with the previous approval of the Divisional Commissioner any clerical or arithmetical mistakes in the award or errors arising therein either on his own motion or on the application of any person interested or a local authority:

Provided that no correction which is likely to affect prejudicially any person shall be made unless such person has been given a reasonable opportunity of making a representation in the matter.

(2) The Collector shall give immediate notice of any correction made in the award to all the persons interested.

(3) Where any excess amount is proved to have been paid to any person as a result of the correction made under sub-section (1), the excess amount so paid shall be liable to be refused and in the case any default or refusal to pay, the same may be recovered as an arrear of land revenue.]

COMMENTS

Correction of errors in award regarding quantum of land before disbursement of compensation — Collector competent to make reference to Divisional Commissioner for correction of rectification — Writ against — Dismissed in limine. *Haji Gull Mohd. Kuchai v. State and Ors. 2003 (3) JKJ HC-615*

12. Award of Collector when to be final

(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and the value of the land, and the apportionment of the compensation among the persons interested.

(2) The Collector shall give immediate notice of his award to such of the persons interested, as are not present personally or by their representatives when the award is made.

13. Adjournment of enquiry

The Collector may, for any cause, he thinks fit, from time to time, adjourn the enquiry to a day to be fixed by him.

14. Power to summon and enforce attendance of witnesses and production of documents

For the purpose of enquiries under this Act, the Collector shall have power to summon and enforce the attendance of witnesses including the parties interested or any of them, and to compel the production of documents by the same means, and (so far as may be) in the same manner, as is provided in the case of a Civil Court, under the law in force in the State, for the time being, relating to the procedure in civil actions.

15. Matters to be considered and neglected

In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 23 and 24.

Taking possession

16. Power to take possession

When the Collector has made an award under section 11, he may take possession of the land, which shall thereupon vest absolutely in the Government free from all encumbrances.

17. Special powers in case of urgency

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tion of [1][fifteen days,] from the publication of the notice mentioned in section 9, sub-section (1), take possession of any [2][xx] land needed for public purposes. Such land shall thereupon vest absolutely in the Government, free from all encumbrances:

Provided that, the Collector shall not take possession of any building or part of a building under this sub-section, without giving to the occupier thereof at least 48 hours notice of his intention to do so, or such longer notice as may be reasonably sufficient, to enable such occupier to remove his movable property from such building without unnecessary inconvenience: and

Provided in every case under this section the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crop and trees (if any) on such land and for any other damage sustained by them caused by such dispossession and not accepted in section 24; and in case such offer is not accepted, the value of such crops and trees and the amount of such other damage shall be allowed for in awarding compensation for the land under the provisions herein contained:

Provided also that in the case of any land to which, in the opinion of the Government, the provisions of sub-section (1) are applicable, the Government may direct that the provisions of section 5-A shall not apply, and if it direct, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under section 4, sub-section (1).

[3][17-A. Payment of compensation before acquisition proceedings are completed

Before taking possession of any land under section 17, the Collector shall without prejudice to the provisions of the said section,—

(a) tender payment of eighty per centum of the compensation for such land as estimated by him to the persons interested and entitled thereto; and

1 Substituted by Act XXXIV of 1960 for "30days".

(b) pay it to them unless prevented by some one or more of the contingencies mentioned in section 32 of the Act,

and where the Collector is so prevented, the provisions of section 32 shall apply as they apply to the payment of compensation under that section.

17-B. Determination of compensation and recovery of excess amount

The amount paid or deposited under section 17-A, shall be taken into account for determining the amount of compensation required to be tendered under section 32 and where the amount so paid or deposited exceeds the compensation awarded by the Collector under section 11 the excess amount may unless refunded within three months from the date of the Collector's award be recovered as an arrear of land revenue.]

PART III

REFERENCE TO COURT AND PROCEDURE THEREON

18. Reference to Court

(1) Any person interested who has not accepted the award may, by written application to the Collector require that the matter be referred by the Collector for the determination of the Court, whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable or the apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken:

Provided that every such application shall be made,—

(a) if the person making it was present or represented before the Collector at the time when he made his award within six weeks from the date of the Collector's award;

(b) in other cases, within six weeks of the receipt of the notice from the Collector under section 12, sub-section (2), or within six months from the date of the Collector's award,

COMMENTS

Reference — What could be the date of award for the purpose of reference under Section 18 of the Land Acquisition Act when the same has been passed in the absence of landowners? Date of award of the Collectorwould be the date when notice of the same is served on the land owners as required under Section 12(2) of the Act and in case no notice of award is served then the period of limitation of six months for making application for reference would commence from the actual or constructive knowledge of making of the award. *State through Collector Land Acquisition, Rajouri v. Probodh Chander 2003 (2) JKJ 554 (HC/J&K)*

Death of person at whose instance reference made — Non-substitution of legal representatives — Provisions under O. 1, R. 10, O. 22, R. 4 and O. 9 CPC do not apply since inconsistent with nature and scope of proceedings under Section 18. *Collector Land Acquisition & Anr. v. Dhani Ram & Ors. 2004 (3) JKJ HC-562*

Market value — Proof of — Market value would mean the value which a willing purchaser is ready to pay for the land in the normal conditions. In the proceedings under Section 18 before the District Judge claimants are required to prove the fact of such market value like any other fact is proved in a suit. What was the market value of the land acquired on the date of issuance of notification under Section 6 can be proved by instances of sale of similar kind of land in the vicinity and proximate in time with the relevant date. *Collector, Land Acquisition, Baramulla & Anr. v. Jugmohan Sing & Anr. 2003 (3) JKJ HC-206*

Circular No. REV(LV) 10/80, dated 23.2.1980 — Award under Land Acquisition Act — Compensation for the acquired land — Who is entitled — Whether original owner or tiller/prospective owner — It is only the original owner who shall be considered to be the interested person and entitled to compensation for the acquired land — It is accordingly directed that petitioners being the original owners alone shall have the right to receive compensation for the land acquired. *Nissar Hussain and Ors. v. State of J&K and Ors. 2003 (3) JKJ HC-228*

Whether a decree sheet was to be prepared after the award u/s 18 or 30 is made by the reference Court? Held, No. The award itself has been treated as decree u/s 26. *Executive Engineer v. Tarseem Lal 2003 (3) JKJ HC-40*

19. Collector's statement to the Court

(1) In making the reference the Collector shall state for the information of the Court, in writing under his hand,—

(a) the situation and extent of the land with particulars of any trees, buildings or standing crops hereon;

(b) the names of the persons whom he has reason to think interested in such land;

(c) the amount awarded for damages and paid or tendered under sections 5 and 17 or either of them and the amount of compensation awarded under section 11;

[1][(cc) the amount paid or deposited under section 17-A of this Act;]

(d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined;

(e) the name of persons out of those interested in such land who have accepted the award.

(2) To the said statement shall be attached a schedule, giving the particulars of the notices served upon, and of the statements in writing made, or delivered by the parties interested respectively.

20. Service of notice

The Court shall thereupon cause a notice, specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on that day, to be served on the following persons:—

(a) the applicant;

(b) all persons interested in the objection, except such (if any) of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

21. Restriction on scope of proceedings

The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

22. Proceedings to be in open Court

Every such proceeding shall take place in open Court, and all persons entitled to practise in any Civil Court within the State shall be entitled to appear, plead and act (as the case may be) in such proceeding.

1 Inserted by Act XX of 1988, S. 9.

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23. Matters to be considered in determining compensation

(1) In determining the amount of compensation to be awarded for land acquired under the Act, the Court shall take into consideration—

first, the market value of the land at the date of the publication of the declaration relating thereto under section 6;

secondly, the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of he Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested at the time of the Collector's taking possession of the land by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land by reason of the acquisition injuriously affecting his other property movable or immovable in any other manner, or his earnings;

fifthly, if, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change; and

Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 6, and the time of the Collector's taking possession of the land.

(2) In addition to the market value of the land as above provided, the Court shall in every case award a sum of fifteen per centum on such market value in consideration of the compulsory nature of the acquisition.

COMMENTS

Comparable sales instances of the land of neighbourhood, the location of land and commercial value of the land acquired. *State through Collector Land Acquisition, Rajouri v. Probodh Chander 2003 (2) JKJ 554 (HC/J&K)*

24. Matters to be neglected in determining compensation

But the Court shall not take into consideration—

secondly, any disinclination of the person interested to part with the land acquired;

thirdly, any damage sustained by him which if caused by a private person, would not render such person liable to a suit;

fourthly, any damage which is likely to be caused to the land acquired, after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

sixthly, any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; [1][out-let].

seventhly, any out-let or improvements on, or disposal of the land acquired, commenced, made or effected, without the sanction of the Collector, after the date of the publication of the declaration under section 6 [2][; or]

[2][*eighthly*, any increase to the value of the land on account on its being put to any use which is forbidden by law or opposed to public policy.

25. Rules as to amount of compensation

(1) When the applicant has made a claim to compensation, pursuant to any notice given under section 9, the amount awarded to him by the Court, shall not exceed the amount so claimed or be less than the amount awarded by the Collector under section 11.

(2) When the applicant has refused to make such claim or has omitted without sufficient reason (to be allowed by the Judge) to make such claim the amount awarded by the Court shall in no case exceed the amount awarded by the Collector.

(3) When the applicant has omitted for sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not he less than, and may exceed, the amount awarded by the Collector.

1 The word "or" omitted by Act XX of 1988 S. 10.
2 Substituted by Act XX of 1988 S. 10.

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COMMENTS

Whether compensation amount awarded u/s 18 can exceed the amount claimed pursuant to notice u/s 9? Held, No. *Executive Engineer v. Tarseem Lal 2003 (3) JKJ HC-40*

26. (1) Every award under this part shall be in writing signed by the Judge, and shall specify the amount awarded under clause first of sub-section (1) of section 23, and also the amounts (if any) respectively awarded under each of the other clauses of the same sub-section together with the grounds of awarding each of the said amounts.

(2) Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2 clause (2) and section 2, clause (9) respectively of the Code of Civil Procedure.

COMMENTS

Whether a decree sheet was to be prepared after the award u/s 18 or 30 is made by the reference Court? Held, No. The award itself has been treated as decree u/s 26. *Executive Engineer v. Tarseem Lal 2003 (3) JKJ HC-40*

27. (1) Every such award shall also state the amount of costs incurred in the proceedings under this part, and by what persons and in what proportions they are to be paid.

(2) When the award of the Collector is not upheld, the costs shall ordinarily be paid by the Collector unless the Court shall be of opinion that the claim of the applicant was so extravagant or that he was so negligent in putting his case before the Collector, that some deduction from his costs should be made or that he should pay a part of the Collector's costs.

28. If the sum which, in the opinion of the Court, the Collector ought to have awarded as compensation is in excess of the sum which the Collector did award as compensation, the award of the Court may direct that the Collector shall pay interest on such excess at the rate of [1][six per centum] per annum from the date on which he took possession of the land to the date of payment of such excess into Court.

1 Substituted by Act XX of 1988 for "four per centum" S.11.

29. Notwithstanding anything herein above contained, the market value of the land to be acquired shall not form part of the amount of compensation to be awarded under this Act except to the extent of 1/3rd share thereof or enter into consideration except to that extent in assessing such compensation, where the land to be acquired is situate in a place in which the land is owned directly by the Government as proprietor.

PART IV
APPORTIONMENT OF COMPENSATION

30. Particulars of apportionment to be specified

Where there are several persons interested, if such persons agree to the apportionment of the compensation, the particulars of such apportionment shall be specified in the award and as between such persons the award shall be conclusive evidence of the correctness of the apportionment.

COMMENTS

Scope of reference — Jurisdiction of reference confined to dispute as to apportionment or any part thereof or as to persons to whom same or any part is payable — Dispute regarding adequacy of amount awarded is beyond the reference to be determined under Section 31. *Collector, Land Acquisition v. 3rd Additional District Judge Srinagar and Others 2004 (3) JKJ HC-556*

Whether a decree sheet was to be prepared after the award u/s 18 or 30 is made by the reference Court? Held, No. The award itself has been treated as decree u/s 26. *Executive Engineer v. Tarseem Lal 2003 (3) JKJ HC-40*

31. Dispute as to apportionment

When the amount of compensation has been settled under section 11, if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable the Collector may refer such dispute to the decision of the Court.

COMMENTS

Circular No. REV(LV) 10/80, dated 23.2.1980 — Award under Land Acquisition Act — Compensation for the acquired land — Who is entitled — Whether original owner or tiller/prospective owner — It is only the original owner who shall be considered to be the interested person and entitled to compensation for the acquired

shall have the right to receive compensation for the land acquired. *Nissar Hussain and Ors. v. State of J&K and Ors. 2003 (3) JKJ HC-228*

Scope of reference — Jurisdiction of reference confined to dispute as to apportionment of any part thereof or as to persons to whom same or any part is payable — Dispute regarding adequacy of amount awarded is beyond the reference to be determined under Section 31. *Collector, Land Acquisition v. 3rd Additional District Judge Srinagar and Others 2004 (3) JKJ HC-556*

Deposit of amount of compensation in court of reference — Liability of State to pay interest thereon ceases from date of deposit — Collector sending Refund Bill, a negotiable instrument, payable on demand, Collector stood absolved of his liability to pay compensation — Deposit valid under Section 32. *Collector Land Acquisition v. 3rd Additional District Judge Srinagar and Others 2004 (3) JKJ HC-556*

PART V

PAYMENT

32. Payment of compensation or deposit of same in Court

(1) On making an award under section 11, the Collector shall tender payment of the compensation awarded by him to the persons interested-entitled thereto, according to the award, and shall pay it to them unless prevented by someone or more of the contingencies mentioned in the next sub-section.

(2) If they shall not consent to receive it, or if there be no person competent to alienate the land, or if there be any dispute as to the title to receive the compensation or as to the apportionment of it, the Collector shall deposit the amount of the compensation in the Court, to which a reference under section 18 would be submitted:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 18:

Provided also that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.

compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land revenue on other lands held under the same title or in such other way as may be equitable having regard to the interest of the parties concerned.

(4) Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

33. Investment of money deposited In respect of lands belonging to persons incompetent to alienate

(1) If any money shall be deposited in Court under sub-section (2) of the last preceding section and it appears that the land in respect whereof the same was awarded belonged to any person who had no power to alienate the same, the Court shall—

(a) order the money to be invested in the purchase of other lands to be held under the like title and conditions of ownership as the land in respect of which such money shall have been deposited was held; or

(b) if such purchase cannot be effected forthwith, then in such securities as the Court shall think fit;

and shall direct the payment of the interest or other proceeds arising from such investment to the person or persons who would for the time being have been entitled to the possession of the said land and such moneys shall remain so deposited or invested, until the same be applied—

(i) in the purchase of such other lands as aforesaid; or

(ii) if such purchase cannot be effected forthwith then in such other securities as the Court shall think fit; or

(iii) in payment to any person or persons becoming absolutely entitled thereto.

(2) In all cases of moneys deposited to which this section applies the Court shall order the costs of the following matters, including therein all reasonable charges and expenses incident thereto, to be

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(b) the costs of the orders for the payment of the interest or other proceeds of the securities upon which such moneys are for the time being invested and for the payment out of Court of the principal of such moneys and of all proceedings relating thereto, except such as may be occasioned by litigation between adverse claimants.

34. Investment of money deposited in other cases

When any money shall have been deposited in Court under the Act for any cause other than that mentioned in the last preceding section, the Court may on the application of any party interested or claiming an interest in such money, order the same to be invested in such Government or other approved securities as it may think proper and may direct the interest or other proceeds of any such investment to be accumulated and paid in such manner as it may consider will give the parties interested therein the same benefit therefrom as they might have had from the land in respect whereof such money shall have been deposited or as near thereto as may be.

35. Payment of interest

When the amount of such compensation is not paid or deposited on or before taking possession of the land, the collector shall pay the amount awarded with interest thereon at the rate of [1][six per centum] per annum from the time of so taking possession until it shall have been so paid or deposited [2][:]

[3][Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of ten per centum shall be payable from the date of expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited at the date of such expiry.)

1 Substituted by Act XX of 1965 for "four per centum". S. 12.

PART VI

TEMPORARY OCCUPATION OF LAND

36. Temporary occupation of waste or arable land, Procedure when difference as to compensation exists

Whenever it appears to the Government that the temporary occupation and use of any waste or arable land are needed for any public purposes, the Government may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding 3 years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the person interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid and for the materials (if any) to be taken therefrom, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

37. Power to enter and take compensation on restoration

(1) On payment of such compensation or on executing such agreement or on making a reference under section 35, Collector may enter upon and take possession of the land and use or permit the use thereof in accordance with the term of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Government shall proceed under this Act, to acquire the land as if it was needed permanently for a public purpose.

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38. Difference as to condition of land

In case the Collector and persons interested differ as to the condition of the land at the expiration of them, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

PART VII
ACQUISITION OF LAND FOR COMPANIES

[1][39. The provisions of sections 4 to 35 (both inclusive) shall apply to the acquisition of land by Government for the purposes of transferring it on lease or otherwise to any company on such terms and conditions as the Government may determine after the said company has executed the agreement hereinafter mentioned.

Explanation. — Acquisition of land by the Government for a company under this part shall be deemed to be a public purpose as defined in this Act.]

40. [2][(1)] The Government shall not acquire land for a company under this part unless they are satisfied either on the report of the Collector under section 5-A sub-section (2) or by an enquiry held as hereinafter provided—

(a) that such acquisition is needed for the construction of some work, and that such work or its product is likely to prove useful to the public; or

(b) that the purpose of the acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for the provision of amenities directly connected therewith.]

(2) Such enquiry shall be held by such officer and at such time and place as the Revenue Minister shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means

1 Section 39 substituted by Act XXVII of 1962.

and, as far as possible, in the same manner as is provided by the Code of Civil Procedure, in the case of a Civil Court.

[1][41. **Agreement with the Government**

If the Government are satisfied after considering the report, if any, of the Collector under section 5-A, sub-section (2) or on the report of the officer making an inquiry under section 40 that the proposed acquisition is needed for the construction of a work and that such work or its product is likely to prove useful to the public or that the purpose of the proposed acquisition is to obtain land for the erection of dwelling houses for workmen employed by the company or for provision of amenities directly connected therewith, the Government shall require the company to enter into an agreement with them, providing to the satisfaction of the Government for the following matters, namely:-

(i) the payment to the Government in the case of lease of such premium and rent as the Government may determine with due regard to the cost of acquisition and in the case of transfer other than lease the cost of acquisition;

(ii) the transfer by lease or otherwise on such payment of the land to the company;

(iii) the terms on which the land shall be held by the company;

(iv) where the acquisition is for the construction of any work, the time within which and the conditions on which the work shall be executed and maintained, and the terms on which the public shall be entitled to use such work or its product; and

(v) where the acquisition is for the purpose of erecting dwelling houses or the provision of amenities connected therewith, the time within which the conditions on which and the manner in which the dwelling houses or amenities shall be erected or provided.]

1 Section 41 substituted by Act XXVII of 1962.

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42. Every such agreement shall, as soon as may be after its execution, be published in the Government Gazette and shall be thereupon (so far as regards the terms on which the public shall be entitled to use the work) [1][or its products] have the same effect as if it had formed part of this Act.

[2][42.A. Acquisition of land for a corporation or a local authority etc

The provisions of section 39 to 42 (both inclusive) shall apply to the acquisition of land by Government for the purposes of transferring it on lease to any corporation or local authority.]

PART VIII
MISCELLANEOUS

43. Service of notice

(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed, in the case of a notice under section 4, by the officer therein mentioned, and in the case of any other notice, by or by order of the Collector or the Judge.

(2) Whenever it may be practicable, the service of the notice shall be made on the person therein named.

(3) When such person cannot be found, the service may be made on any adult male member of his family residing with him; and if no such adult male member can be found, the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the office of the officer aforesaid or of the Collector or in the Court-house and also in some conspicuous part of the land to be acquired:

Provided that, if the Collector or Judge shall so direct a notice may be sent by post, in a letter addressed to the person named therein at his last known residence, address or place of business and registered in accordance with the rules in force for the time being in that

1 Words "or its products" inserted by Act XXVII of 1962.

behalf, and service of it may be proved by production of the addressee's receipt.

44. Penalty for obstructing acquisition of land

Whoever wilfully obstructs any person in doing any of the acts authorised by section 4 or section 8, or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4, shall on conviction before a [1][Judicial Magistrate] be liable to imprisonment for any term not exceeding one month, or to fine not exceeding [2][five hundred] rupees or to be both.

45. Magistrate to enforce Surrender

If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if [1][an Executive Magistrate,] enforce the surrender of the land to himself, and, if not [1][an Executive Magistrate,] he shall apply to [1][an Executive Magistrate] and such Magistrate shall enforce the surrender of the land to the Collector.

46. Completion of acquisition not compulsory but compensation to be awarded when not completed

(1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of 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 this Act relating to the said land.

(3) The provisions of may be, to the determination of the compensation payable under this section.

COMMENTS

Promissory Estoppel — Withdrawal from acquisition — Section 46 does not limit power of State Government to withdraw from acquisition of land except that

1 Substituted by Act XL of 1966.

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possession of land notified should not have been taken by Government — No necessity of hearing owner of land or any other person interested before taking decision to withdraw from acquisition — Power of Government cannot be curtailed by invoking doctrine of promissory estoppel. AIR 1987 SC 2421, Rel. *Rajiv Ruia & Anr. v. Naranian Mohalla Welfare Ass. & Ors. 2004 (2) JKJ HC:1*

47. Acquisition of part of houses or building

(1) The provisions of this 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 desire that the whole of such house, manufactory or building shall be so acquired:

Provided that the owner may at any time before the Collector has made his award under section 11, by notice in writing, withdraw or modify his expressed desire that the whole of such house, manufactory or building shall be so acquired:

Provided also that, if any question shall arise as to whether any land proposed to be taken under this Act does or does not form part of a house, manufactory or building within the meaning of this section, the Collector shall refer the determination of such question to the Court and shall not take possession of such land until after the question has been determined. In deciding on such a reference, the Court shall have regard to the question whether the land proposed to be taken is reasonably required for the full and unimpaired use of the house, manufactory or building.

(2) If, in the case of any claim under section 23, sub-section (1) thirdly, by a person interested on account of the severing of the land to be acquired from his other land, the Government is of opinion that the claim is unreasonable or excessive, it may, at any time before the Collector has made his award, order the acquisition of the whole of the land of which the land first sought to be acquired forms a part.

(3) In the case last hereinbefore provided for, no fresh declaration or other proceedings under sections 6 to 10, both inclusive, shall be necessary; but the Collector shall without delay furnish a copy of the order of the Government to the person interested and shall thereafter proceed to make his award under section 11.

48. Acquisition of land at cost of a local body, person or body of persons

(1) When the provisions of this Act are put in force for the purpose of acquiring land and at the cost of any fund controlled or managed by a local body or of any person or body of persons, whether corporate or not, the charges of and incidental to, such acquisition shall be defrayed from or by such fund or such person or body of persons.

(2) In any proceedings held before a Collector or Court in such cases the local authority or the person or the body of persons concerned may appear and adduce evidence for the purpose of determining the amount of compensation:

Provided that, no such person or a body of persons shall be entitled to demand a reference under section 18.

49. Exemption from stamp duty and fees

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

[1][49-A. Acceptance of certified copy as evidence

In any proceeding under this Act, a certified copy of a document registered under Registration Act, Samvat 1977, including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document].

50. Notice in case of suits for anything done in pursuance of this Act

No suit or other proceeding shall be commenced or prosecuted against any person for anything done in pursuance of this Act without giving to such person two months previous notice in writing of the intended proceeding and of the cause thereof, nor after tender of sufficient amends.

51. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the law in force in Jammu and

1 Section 49-A inserted by Act XX of 1988 S. 15.

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Kashmir State for the time being relating to the procedure in civil actions shall apply to all proceedings before the Court under this Act.

52. Subject to the provisions of law in force for the time being in the State relating to the procedure in civil section applicable to appeals from original decrees, an appeal shall lie to the State High Court from any part of the award of the Court in any proceedings under this Act.

COMMENTS

Appeal — Whether State can maintain an appeal against a judgment and passed upon a reference u/sec. 18 of Land Acquisition Act in which it was not a party ? — It is the State who ultimately has to pay the enhanced amount of compensation and therefore can maintain appeal with the leave of the Court. Especially so because State after all is the principal and Chief Engineer applicant No. 2 its functionary is its agent and what an agent can legally, do can also be done by the principal under the doctrine of agency. *State and Anr. v. Amjad Hussain and Anr. 2003 (3) JKJ HC-132*

[1][52-A. Delegation

The Government may by order direct that all or any of the powers and duties conferred or imposed on the Government be exercised or performed by the Revenue Minister].

53. (1) Government shall have power to make rules consistent with this Act for the guidance of officers in all matters connected with its enforcement, and may from time to time alter and add to the rules so made.

(2) The power to make, alter and add to rules under sub-section (1) shall be subject to the condition of the rules being made, altered or added to after previous publication.

(3) All such rules, alterations and additions shall be published in the Government Gazette and shall thereupon have the force of law.

LAND ACQUISITION RULES FOR PUBLIC PURPOSES

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EXTRAORDINARY REGD. NO. JK-33

THE

JAMMU & KASHMIR GOVERNMENT GAZETTE

V 1091 Jammu, Thu., the 10th April. 97/20 Chai., 1919. (No. 2-3)

Seperate paging is given to this part in order that it may be filed as a seperate compilation.

PART III

Laws, Regulations and Rules passed thereunder.

GOVERNMENT OF JAMMU AND KASHMIR,
CIVIL SECRETARIAT- LAW DEPARTMENT ,

Jammu, the 10th April, 1997.

The following Act as passed by the Jammu and Kashmir State Legislature received the assent of the Governor on 9th April, 1997 and is hereby published for general information :-

THE STATE LAND ACQUISITION (AMENDMENT) ACT, 1997.

(SVT No. XV OF 1997)

(09th April,1997)

An Act to amend the State Land Acquisition Act,Samvat 1990.

It is enacted by the Jamma and Kashmir State Legislature in the Forty-eighth Year of the Republic of India as follows:

1. Short title:- This Act may be called the State Land Acquisition (Amendment) Act, 1997.

17 JUL 1998

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.....2/-

2. Amendment of section 4, Act X of Samvat 1990.—Clause (c) of sub-section (1) of section 4 of the State Land Acquisition Act, Samvat 1990 (hereinafter referred to as 'the principal Act'), shall be renumbered as clause (b) and the existing clause (b) shall be omitted.

3. Insertion of section 11-B in Act X of Samvat 1990.—after section 11-A of the principal Act, the following section shall be inserted, namely :-

" 11-B Period within which an award shall be made.— The Collector shall make an award under section 11 within a period of two years from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of land shall lapse.

Provided that in cases where the said declaration has been published before the commencement of the State Land Acquisition (Amendment) Act, 1997 the award shall be made within a period of two years from such commencement.

Explanation.— In computing the period of two years referred to in this section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a court, shall be excluded."

(Sd.).....

Deputy Legal Remembrancer,
Law Department.