

HAND BOOK
OF THE
LAW OF LAND ACQUISITION

(An Analysis of the Law and Procedure)

FOURTH REVISED EDITION

Specially prepared for
LOCAL BODIES, 'L. S. G. D.' AND
TOWN PLANNING STUDENTS

by

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and

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The Local Self-Government Institute,
11, Horniman Circle, Fort,
Bombay.

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FOURTH EDITION

In this edition, amendments to the Act have been incorporated, the case law has been brought up-to-date and the principles laid down in some leading cases have been fully explained.

I should like to acknowledge the assistance rendered to me by Shri E. P. Bhamgara and Shri K. D. Nayar in bringing out this Edition.

It is hoped that this revised manual will be found useful not only to the Students of the Local Self-Government Diploma Classes for whom it is specially prepared but also to the Students of the Preliminary Certificate Examination of the Town and Country Planning Association.

1st June, 1957.

Chunilal D. Barfivala.

FIRST EDITION

This Handbook—

This hand-book has been prepared to meet the requirements mainly of two classes of readers, first the students of the L. S. G. D. Training Classes for officers of Local Self-Government service conducted under the joint-auspices of the Government of Bombay and the Local Self-Government Institute, who have to study the subject for their examination, and secondly the officers of local bodies, particularly in the mofussil, who are often called upon to deal with cases of compulsory land acquisition. What these two classes require is an elementary exposition of the law and practice of compulsory land acquisition, broad statements of the law on the subject in a small compass and a skeleton of the proceedings under the Land Acquisition Act and the Municipal Acts of the Province. They are neither expected to be acute lawyers nor expert valuers. They need neither learned discussions on the subtleties of the law nor technical dissertations on the valuation of property. There are standard law-books and valuation treatises for those who need them. In the preparation of this hand-book many of them have been consulted. Anderson's Manual of Land Acquisition, Mr. Mirams' Valuation of Property, and Commentaries on Land Acquisition Act by Ghosh, Nanniah, Velinkar and others have been drawn upon. To all these esteemed authors I acknowledge my obligations.

My justification for writing this booklet is that to the L. S. G. D. students and mofussil municipal officers who have no previous grounding in the subject formidable standard works of these authorities are neither available nor very helpful except for reference purposes. This hand-book presents to them an analytical study of the statutory and the case law on the subject of compulsory land acquisition which is daily growing in importance. It is meant to be a handy guide for them.

I have received considerable assistance in the preparation of this hand-book, from three gentlemen who are Honorary Lecturers to the training classes of the Local Self-Government Institute and who have considerable experience of land acquisition. To Mr. G. B. Soparkar, B.A., L.C.E., F.S.L.I., A.M.T.P.I., (Lond.), Consulting Surveyor to the Government of Bombay, I am greatly indebted for going over some of the proofs and making very weighty suggestions. Mr. G. S. Gupte, B.A., L.C.E., Superintendent, City Survey and Land Records, Bombay, and Mr. Girishchandra S. Desai, B.E., Special Relief Road Officer and Mill Valuation Officer, Ahmedabad Municipality, went over my manuscripts and gave me the benefit of their valuable advice. Some of the merits of this hand-book should, therefore, be ascribed to these experienced administrators. I, however, remain personally responsible for some of the categorical statements of law or procedure which may require modifications on expert scrutiny. To a certain extent, the method of treatment adopted here has compelled me to eschew all niceties and controversies. I hope this, however, has not taken away much from the merits of the Book.

1st March, 1939.
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Chunilal D. Borfivala.

INTRODUCTORY

GOVERNMENT of every country is based on the implied assent of every member thereof that his own individual interest shall be subordinated to the common welfare of the community as a whole. In consideration of the benefits derived from ordered government, every person must be prepared to sacrifice his private interests. The governing maximum is '*Salus populi est suprema lex*' that regard for the public welfare is the highest law.

The sovereign power in every State so frames its laws as to make the interests of private persons subservient to those of the public and to take care that where they are in conflict, the latter should prevail.

The State is supposed to have a reserved right or a "super-estate or interest in all property" and every owner of property is holding it subject to this paramount right of the State.

Every State therefore arrogates to itself the right to take private property for public purpose.

A State which respects the right of private property, however, does not confiscate such private property even for a public purpose. Such confiscation would mean that the burden of contributing to public good is made to fall exclusively on an individual instead of being distributed equitably on all the members of the community. The policy of out and out confiscation, which as Mr. Laski points out, may be possible in the revolutionary Russia, has not so far been adopted elsewhere in the modern States.

In order, therefore, to reconcile the conflicting claims of private property and the public good—the State compensates such person for the loss of his private property.

This right of the State appropriating private property for public purpose is known in America as "**Eminent Domain.**"¹

"Nor shall private property be taken for public use, without just compensation" says the Federal Constitution of the U.S. A. In a recent work, an eminent American authority explains the economic function of this power of Compulsory Acquisition or Eminent Domain thus:—

"The principles by which property is valued under the law of 'Eminent Domain' can be understood only in the light of the purpose that this extraordinary power is assumed to serve. Under any legal-economic system

1 Cf. also Articles 31 and 298 of the Constitution of India.

known as one of 'private property' or 'capitalism,' the ordinary mode of acquisition of property rights is through what is called a 'voluntary' purchase, in which the buyer and seller agree upon a transfer at a given price. This price is arrived at by the procedure of bargaining and is determined by the familiar forces of competition. Even the sovereign governments, or the public-utility companies that are treated in some respect as agents of the governments, acquire by far the major part of their property rights in this way.

"But it has long been recognized that certain types of property essential to the needs of government or of a public utility cannot always be acquired at a fair price except by expropriation rather than by a voluntary transaction. Real estate, particularly though not exclusively, belongs to this category. What a State or city needs when it constructs a public road, and what a railway needs when it lays a track, is a group or line of particular tracts of land, not merely any land of a given quality. Unarmed with the power of Eminent Domain, efforts to secure these tracts at a reasonable price would almost certainly be frustrated by owners who would wilfully refuse to sell at any price, or who would demand a 'hold-up price.'

"Accordingly, political tradition and constitutional law sanction the expropriation of private property for public purposes on payment by the taker of 'just compensation.'"¹ & 2.

Applying these principles to the Land Acquisition Act,³ we find that immovable property (lands) of every person may be compulsorily acquired for a public purpose. The unwillingness of the person to part with his lands for his private needs cannot weigh with the authorities. "Public welfare is of greater importance than private necessity." "*Necessitas publica major est quam privata.*" Public purpose for which lands can be compulsorily acquired has been described in an important decision of the Bombay High Court as "an object or aim in which the general interest of the community as opposed to the particular interest of individuals is directly and vitally concerned."⁴ The Land Acquisition Act has constituted 'Local Government' as the final judge of what a public purpose is. Decisions of the Local Government on the subject are final. Courts have no appellate powers in the matter.

As regards the compensation to the person whose lands are compulsorily acquired, the Act lays down specific Rules as to what matters shall and what matters shall not be taken into consideration when awarding compensation. The principle underlying these Rules is not that the man dis-

1 J. C. Bonbright: "The Valuation of Property," p. 408.

2 "After all the Government have very wide powers under the Land Acquisition Act to deprive a man of his property, and it is only fair that he should be recouped on a liberal scale; any endeavours to unduly depreciate the value of properties that have to be acquired in order that Government may acquire as cheaply as possible, should be condemned equally with the exaggerated valuations put forward by claimants." *Government of Bombay vs. The Century Spinning and Manufacturing Co. Ltd.*, 44 Bom. L. R. 57.

3 The Text of the Act is printed in Appendix No. IV.

4 13 Bom. L. R., p. 1097 at p. 1119.

possessed of his land, shall be reinstated in the same favourable position as he occupied before, but that he must receive market value of his lands *plus* all damages incidental to such acquisition, such as damage caused to his other lands, expense of removal to new premises, etc. The Act goes further and allows him a special *solatium* of 15% over the market value. These important **Canons of Compensation** are given in Sections 23 and 24 of the Act.

The basis of compensation in England and India differ. The English Law lays stress on private property and carries its sympathy with the owner of acquired property by attempting to reinstate him in his original position. The Indian Law lays emphasis on public purpose and compulsory acquisition and bases its theory of compensation not on the principle of reinstatement but on that of the market value.

The comparison is well brought out by Mr. Anderson in the following words:—

“Though it would not be correct to describe the Act as confiscatory still it undoubtedly causes hardship to individuals because it restricts them, to the market value of what is taken from them. Although all actual pecuniary losses, even the cost of moving and the loss on earnings resulting from interference with the goodwill of business and the like, are taken into account and paid for, there are many sentimental losses which cannot be paid for because they have no market value. The Act does not commend what is known as reinstatement under which a man losing a property artistically improved at great expense and enjoying advantages of scenery, etc., might claim to be reinstated in another property, at however great a cost, possessing the same amenities. This is not what the Act offers but only the current prosaic market value. The owner whose land is notified is in the same position as if he were compelled to sell by some sudden reverse of fortune. He cannot stand out for a reinstatement value, but only for what a fair-minded purchaser will offer him in the existing state of the market. It is the legitimate aim of all officers administering the Act to secure for the public all land required for the use of the State at the least burden to the tax-paying public; on the other hand, no one should be deprived of his property even on the ground of State necessity without giving him at least as much as prudent private purchaser would pay. Since the Act imposes a burden on those whose land is taken, it must be interpreted like penal statutes strictly in favour of the private party and every irregularity prejudicing him is fatal to proceedings thereunder.¹

Mr. Mirams² has drawn attention to the following general principles deducible from the provisions of the Land Acquisition Act:—

(1) Sale by the owner is compulsory. There is no option.

¹ For further remarks See Chapter VI.

² Mr. Mirams has been quoted in this book from his valuable work: “Valuation of Property.”

- (2) The compensation is not necessarily the value of the property to the owner himself but is the market value of the property dealt with in theory, in the most lucrative manner.
- (3) Compensation is intended to cover all the loss suffered by the owner, apart from the value of the property taken, *e.g.*, 'injurious affection' or 'severance.'
- (4) A part only of a house or building without the consent of the owner is not allowed to be acquired.
- (5) No credit is allowed for any betterment which may result from the carrying out of the works contemplated.
- (6) The value of the property is to be calculated at the date of the notification under Section 4.

Lands can be purchased by local bodies by private negotiations, without having recourse to the Land Acquisition Act. There are, however, special advantages for proceeding under this Act. We enumerate these advantages hereunder.

The following advantages may be claimed for proceedings under the Land Acquisition Act:—

I. The Land Acquisition Act secures an **indefeasible title** to the land; when possession of the land is taken by the Collector under the Act it vests absolutely in Government free from all encumbrances.¹

In ordinary transfers of property, the transferor transfers to the transferee all the interests which he is capable of transferring. He cannot transfer a title greater than his own.

In the case of the Land Acquisition Act all the rights of every person in the land are extinguished. All rights before existing, *e.g.*, right of way over the acquired land, absolutely cease. No right of way can survive even though the adjoining owner has no access left to his property.

Even the mortgage lien of the mortgagee does not follow with the lands acquired under the Act. The lien is transferred to the compensation money into which the property is converted, property itself being freed from all encumbrances.

II. All further disputes about the measurement, etc., of the land will be put a stop to. There will be a **guaranteed certainty** about its identity.

III. This procedure **shortens correspondence and negotiations.**

IV. Transactions will be **overboard** and **no private influences** regarding prices, etc., will play in the matter either with the executive or with the members of a local body.

¹ Section 16

V. For large schemes and plots, this is the only suitable method though for small insignificant places, where question of title is not involved, private negotiation may be a speedier and a better remedy.

VI. Land taken in virtue of the Land Acquisition Act does not require any Deed of Transfer or registration or other document. In case of ordinary transfers of property no valid title would pass to a local body if sale-deeds are not properly executed.

VII. "When a price can be agreed upon in easy preliminary negotiations and there is no dispute or objection still formal proceedings under the Act will give very little real trouble. Complications may easily arise through private acquisitions. The following are known to have occurred:—

- (1) Sons have repudiated alienations by their father on the ground that they were a joint family and the father individually had no power of alienation.
- (2) The person who accepts the price has been found not to be the real owner.
- (3) Suits have been brought to set aside the sale on the ground that undue official pressure was applied to the parties.
- (4) Minors are not bound or estopped by all acts of their guardians (*J. L. R. 17 Bom. 199*). No waiver of right is possible where the party is a minor, a limited owner, (e.g., a Hindu widow), receiver, trustee, executor, etc."¹

"It will, therefore, always be wiser" says Mr. Anderson "even in the simplest case, to make the acquisition through the simple formalities of the Act."

It should, however, be borne in mind by the local bodies that there are certain disadvantages in proceeding under the Land Acquisition Act.

Disadvantages:—

(1) In consideration of the compulsory nature of the acquisition, the Court has to award under Section 23(3) of the Act, in addition to the market value of the land a sum of 15% on such market value. This *solatium* acts as an additional burden on the resources of local bodies where large schemes are undertaken.

(2) If the acquisition increases the value of the other land of the owner which is not acquired, this increase in the value cannot (under Section 24, *sixthly*) be deducted from or set off against the compensation which the owner obtains for his acquired land. Technically this increase is known as "betterment." The Land Acquisition Act does not recognise this modern doctrine of 'betterment.' It permits the owner to enjoy this unearned increment. Under the Bombay Town Planning Act, 1955, the local authority is entitled to recover from the owner a portion of this increased value.

¹ Mr. Anderson is quoted from his "Manual of Land Acquisition." (Para. 18, p. 38).

(3) "The whole tenor of the Land Acquisition Act presupposes that the land in excess of the actual necessity will not be proposed for acquisition."¹ The Municipal Acts (e.g., the District Municipal Act, Section 90(2) and the Bombay Municipal Boroughs Act, 1925, Section 114(2),) expressly provide that lands in excess of requirements may be subsequently sold away. Under these provisions Municipalities are entitled to acquire all the lands which in their opinion are likely to increase in value on account of improvements carried out by acquisition and sell the excess at enhanced prices. The Municipalities are thus enabled to recoup their expenses of improving the area (c.f. 23 Bom. L. R. p. 35). This salutary principle of recoupment is not recognised by the Land Acquisition Act.

This policy of allowing Local Bodies to acquire more land than necessary and to sell away the excess is known in America as "Excess Condemnation."

CHAPTER I

WHAT ARE THE OBJECTS OF THE ACT?

The Act lays down² the law—

- (i) for the acquisition³ of land needed—
 - (a) for public purposes and
 - (b) for companies, provided that the purposes of the acquisition is
 - (i) to erect dwelling houses for workmen employed by the Company or (ii) for construction of such work as is likely to prove useful to the public

and
- (ii) for determining the amount of compensation on account of such acquisition to be paid to persons interested:—
 - (a) out of (wholly or partly)—
 - (i) public revenues, or
 - (ii) some fund controlled or managed by a local authority

or
 - (b) by a company.

In the above narration of the objects, the following words and expressions require to be clearly understood:—

1 Anderson: para 31, p. 58 and The Bombay Municipal Boroughs Act, 1925, Section 114 (2).

2 Preamble and Sections 6 and 40.

3 The word 'acquisition' has quite a wide concept, meaning the procuring of property or the taking of it permanently or temporarily (Dinshaw Italia V. State of Hyderabad, A.L.R. (1955) Hyderabad 203.)

I. Land—

Section 3 (a) without giving an exhaustive definition of 'Land' explains that over and above what is ordinarily understood by the term, 'Land' includes:-

- (a) benefits to arise out of land, e.g., mines, minerals, etc.
and
- (b) things attached to the earth, i.e.,
 - (i) rooted in the earth as trees;
 - (ii) embedded in the earth as walls or buildings;
- (c) things permanently (not temporarily) fastened to anything attached to the earth, e.g., machinery affixed to the foundations by means of bolts and nuts, meant not be removed but embedded for the permanent beneficial enjoyment (not necessarily irremovable) except perhaps, for repairs or inspection.

The use of the word "includes" in the definition of "land" in Section 3 (a) shows that the legislature intended to lump together in one single expression "land" several things or particulars. The use of the word "includes" shows that it is not intended to be exhaustive. When in an interpretation clause, it is stated that a certain term sought to be defined includes so and so, the meaning is that the term retains the ordinary meaning and that clause enlarge the meaning of the term and makes it include matters which the ordinary meaning will not include (*Official Assignee, Bombay vs. Firm of Chumilal Chimanlal*, 76 I. C. 657).

The 'Land' is thus equivalent to what is defined as "an immovable property" in Section 3 (25) of the General Clauses Act, 1897.

NOTE:—(1) The expression "benefits to arise out of land" would seem to cover the rights commonly known as "easements." But it may be observed that the Act does not authorise the acquisition of an "easement" *per se*, i.e., apart from the land, nor can an owner be compelled to grant one over his land although such easement might be sufficient for carrying out the purposes.

The expression "benefits to arise out of land" thus includes all subordinate tenancies or leases, rents and profits, easements (as of way, light, air or water) over the land, fishery, etc., and also mortgages or other charges or liens attached thereto. The definition thus includes all incorporeal rights on the land as well. Consequently what has to be acquired in every case under the Land Acquisition Act is the aggregate of rights in the land and not merely some subsidiary right (c.f. 10 *Bom. L. R.* 657 and *I. L. R.* 33 *Bom.* 483).

(2) Where the Government owns and is in undisputed possession of the entire interest in the land, in other words, is the full owner

and no other person has any kind of interest in it, the question of acquisition will not arise; for, there is nothing to be acquired and hence there would be no occasion for proceeding under this Act when the land is required for the purpose of a Government Department. Even if land is needed for a local authority or Company, necessary arrangement can be made either under the Government Grants Act, 1895, or otherwise. Thus there can be no such thing as the compulsory acquisition of land owned by and in the occupation and control of Government. The Act cannot apply to such lands because all Government lands being vested in Government, they are competent and free to devote any of the lands for a public purpose. It is a contradiction in terms to say that Government are compulsorily acquiring that which they have acquired otherwise, both as to title and possession (*Government of Bombay vs. Eusuf Ali*, I.L.R. 34 Bom. p. 618 and *Collector of Bombay vs. Nusserwanji*, A.I.R. (1955) S. C. p. 298). The question of acquisition would however arise only when Government owns not all the interests in the land but only a partial interest. Thus where Government is the owner of the site, a notification for acquisition of only the building on the land is not invalid (See 42 Bom. L. R. p. 138).

II. Public Purpose—

What is the meaning of "Public Purpose" for which land can be acquired?

This phrase has been left undefined in the Act. Section 3(f) gives partially inclusive and not an exhaustive definition by explaining that over and above the ordinary meaning of 'Public Purpose' the expression shall include acquisition of "Village Sites."

There is no definition of a "public purpose" in the Act, nor any limitation regarding what is likely to prove useful to the public. For obvious reasons both the matters are left to the absolute discretion of the Government (*Ezra v. S. of S.*, I.L.R. 30 Cal. p. 36). "Public purpose" is incapable of accurate definition. However, the test laid down by *Batchelor, J.* in the case of *Hamabai Petit v. S. of S.* (13 Bom. L.R. p. 1097 at p. 1119) is stated thus:—

"General definitions are rather to be avoided when avoidance is possible; and I make no attempt to define precisely the extent of the phrase 'Public purpose' in this case. It is enough to say that, in my opinion, the phrase, whatever else it may mean, must include a purpose, that is an object or aim, in which the general interest of the community, as opposed to the particular interest of individuals, is directly and vitally concerned."

The view thus expressed by *Batchelor, J.* was also endorsed by the Privy Council, and Lord Dunedin who delivered the judgment observed that the

true view is well expressed by *Batchelor, J.* (c.f. *I.L.R.* 39 *Bom.* p. 279 at p. 295).

The following decided cases are illustrative of the categories of purposes for which acquisition of land can be made on the ground that they fall within the scope of the expression "public purpose":—

- (1) Acquisition of land by the Municipality for widening a street, the reclamation of unhealthy localities and any other measure likely to promote the public safety, health, convenience and education (*Shastri Ram Chandra v. Ahmedabad Municipality, I.L.R., 24 Bom.* p. 600);
- (2) Provision for suitable accommodation of pilgrims crowding about a temple (*Amulya Chandra Banerji v. Corporation of Calcutta, 49 Cal.* p. 838);
- (3) Construction of road and provision for house-sites for poor people (*Ponnia v. S. of S., A.I.R.* 1926, *Mad.* 1099; *S. of S. v. Gopala Iyer, 59 M.L.* p. 274).
- (4) Acquisition of land for carrying out any part of an irrigation scheme is acquisition for a public purpose (*A.I.R.* (40), 1953, *Madras* 540).
- (5) Acquisition of land by the State for the extension of a Maternity Home and Child Welfare Centre is held to be acquisition for a public purpose. (*Nader Chand Mallik v. State of West Bengal and others, A.I.R.* (39), 1952 *Calcutta* 67).
- (6) The requisitioning of land for military purposes is a "public purpose." (*A.I.R.* (41), 1954, *Assam* 195).
- (7) Acquisition of land for the purpose of building a public library is acquisition for a "public purpose." (*A.I.R.* (40), 1953, *Allahabad* 812).
- (8) Acquisition of land to provide facilities for transport or communication to the general public is acquisition for a public purpose. (*A.I.R.* (1955), *N.U.C. Assam* 3311).
- (9) Acquisition of land for rehabilitation of thousands of persons whose lands were acquired for public purpose is acquisition for a public purpose. (*A.I.R.* (1955) *Punjab* 83).

It is pointed out that under the Land Acquisition Act, as amended by the State of Bombay, the scope of "public purpose" has been widened so as to cover acquisition of lands for (1) the purpose of "housing schemes."¹ and

1. See Bombay Amendment Act IV of 1948 (App. V Item No. 3).

(2) for the purpose of development of areas from public revenues or fund controlled or managed by a local authority.¹

NOTE (a) :—The public utility must be such that Government can prescribe the terms on which the public may use it.

NOTE (b):—

- (1) Land acquired for one public-purpose may be used for another public purpose, provided the second purpose is such as does not infringe the rights of others and is not inconsistent with the purpose sanctioned in the notification or outside the statutory authority of the local body.
- (2) "Public Purpose" must be immediate, *bona fide* and not illusory or merely ostensible. Supposing that in future a certain plot may be required for a public purpose (say, a hospital) but if we waited long, prices might go up, therefore it would not be proper to acquire under the pretext that it is to-day required as "an open space."
- (3) It seems that it would not be permissible under the Act to acquire more land than is absolutely required (say, for road purposes) with a view to profitable disposal of the surplus to reimburse the expenses, (*i.e.*, for recoupment purposes).²

Such recoupment is possible as 'betterment' under the Bombay Town Planning Act, also under the Bombay Municipal Boroughs Act, the Bombay District Municipal Act and the City of Bombay Municipal Act.

III. Village Sites—

'Public Purpose' is defined to include provision for 'village sites' in districts, where Government have declared that such provision is customary.³

'Village site' is not land reserved in a village for communal purpose but land which is reserved for being parcelled out as house sites and also all lands on which houses have been built.⁴

When, for example, it is found desirable to relieve overcrowding in villages and for preserving sanitation in villages, large areas, taking into account present as well as future requirements, may be acquired under this Act.

"Formerly District Local Boards could acquire lands to relieve overcrowding. But now as a general rule such acquisitions by Local Boards is not permitted."⁵

1 See Bombay Amendment Act XXXV of 1953 (App. V Item No. 6).

2 Anderson, para. 32, p. 59.

3 Section 3 (f).

4 *Veeraraghavachariar vs. S. of S.*, I.L.R. 49 Mad. p. 237.

5 Anderson, para. 34 (6), p. 63.

IV. Persons Interested—

Who are the 'persons interested' in the compensation?

The expression 'person interested' is left undefined. It depends, in fact, on the nature of ownership which a person has in property. It may be¹

- (1) Absolute, as in the case of free-hold;
- (2) Limited, as in the case of leasehold;
- (3) In possession;
- (4) In expectancy as reversion after expiry of time or dependent upon a contingency;
- (5) In severalty as in the case of a person at one time; and
- (6) In community as vested in two or more persons as joint-tenants with the right of survivorship or as tenants-in-common.

It is, however, stated to include—

- (1) persons claiming an 'interest' in the land; and
- (2) persons interested in the easement affecting the land.

We have noted above that the word 'Land' is used in a very wide sense, including several particulars as soil, buildings thereon, any charges on it, etc. So also the 'person interested' means either the person in whom is vested the lump of several things or particulars as the soil, etc., and other interests which constitute the word 'land' or the person in whom is vested each of the several things or particulars which has a separate existence and is capable of being dealt with separately.

- NOTE:—(1) It is possible that a person may be interested in the compensation without having interest in the land strictly legally, *e.g.*, Hindu females have various rights in a joint family. Therefore, they may have interest in the compensation though not in the land.
- (2) Quarrymen, ploughmen, workmen, etc., are not persons interested though they may suffer damage on account of the land being acquired from the owners.
- (3) A tenant with a term of years, also a lessee holding over, (not a tenant-at-will),
 A mortgagee,²
 Owner of a dominant easement,
 A purchaser at a revenue sale,
 An attaching creditor,
 (but not a mere holder of a money decree against the owner)
- } are 'persons interested.'

¹ Mirams.

² *Smt. Raj Lakshmi Dasi vs. Bunmah Sen* (A.I.R. (1953) S.C., p. 33).

- (4) Government is not a 'person interested' in the land even where Government may have land revenue to recover.¹

A company at whose instance acquisition proceedings are initiated is not a "person interested."²

- (5) The term 'interested' is wide enough to include both, the persons interested in supporting or opposing the applicant, *i.e.*, parties having conflicting claims to the compensation either whole or part as against the applicant or otherwise. *Nagendra Nath v. Bhagwati Prasad*, A.I.R. (33), 1946, Patna 447.

Note.—The Government is not a "person interested" within the definition in Section 3(b), and the Act does not contemplate its interest being valued or compensation being awarded therefor. *Collector of Bombay v. Nusserwanji R. Mistri*, A.I.R. Sup. Court (1955) 298.

V. "Which are the persons entitled to act"? When persons interested are under disability such as minority, lunacy, etc.³

- (1) Trustees are entitled to act for persons beneficially interested.
- (2) A married woman to which the English Law applies—whether of full age or not—is entitled to act as if unmarried and of full age.
- (3) Guardians of minors, } are entitled, respectively to
Committees or Managers of } act for minors, lunatics or
lunatics or idiots } idiots.

Provided:

- (1) the interest of such persons is not shown to the satisfaction of Collector or Court to be adverse to the person interested;
- (2) person interested may appear by 'next friend,' failing that, Collector or Court may appoint a guardian for the case to act;
- (3) provisions of Civil Procedure Code apply in such cases of appearance by 'next friend' or guardian;
- (4) person entitled to act shall not be competent to receive compensation money unless he is competent to alienate the land and receive and give a good discharge for the purchase money in a voluntary sale.

VI. Company means a Company—⁴

(i) registered under

- the (1) Indian Companies Act;
(2) English Companies Act;

or

(ii) incorporated by

1 *Collector of Bombay vs. Nusserwanji* (A.I.R. (1955) Supreme Court, p. 298).

2 *Government of Pepsu vs. Pratap Singh*, (A.I.R. (1952), Pepsu 119).

3 Section 3(g).

4 Section 3(e).

- (c) (1) An Act of Parliament of the United Kingdom
or
- (2) an Indian Law;
- (b) Royal Charter; or
- (c) Letters Patent

and includes—

- (iii) a society registered under the Societies Registration Act, 1860 and
- (iv) a registered society within the meaning of the Co-operative Societies Act, 1912,

and also includes

- (v) an industrial concern (not being a company) ordinarily employing not less than 100 workmen, desiring to acquire land for:—
 - (a) the erection of dwelling-houses for workmen employed therein
or
 - (b) providing amenities directly connected therewith.¹

1. Section 38A.

CHAPTER II

ACQUISITION PROCEDURE

Stages:—*The following are the important stages in the acquisition proceedings:—*

(1) Application:

(a) In the first place there must be an applicant from

- | | |
|---|---|
| (i) a department of Government, | } moving for
acquisition of
the land. |
| (ii) a local body (supported by proper resolution) or | |
| (iii) a company, etc. | |

(b) The application should contain—

- (i) the purpose for which acquisition is required,
- (ii) plan of the land,
- (iii) schedule with particulars of areas,
- (iv) cost estimate of acquisition,
- (v) statement that provision has been made for payment of award and costs.

NOTE:—Provision must also be made for payment of costs of measurement and correction of land records, etc.

(2) Duty of the Collector:

(a) Collector's reference to Acquisition Officer

If a separate acquisition officer is appointed, the Collector refers the application to him for inquiry and report whether everything is in order, *i.e.*, plans, area, estimates and whether he has any objections to suggest against such acquisition.

(b) Land Acquisition Officer's Report

The special Land Acquisition Officer institutes inquiries, makes necessary inspection, collects required data, prepares rough estimates, and submits his report to the Collector.

NOTE:—If no separate Acquisition Officer is appointed, the Collector himself conducts all these inquiries.

(c) Draft Notification

The Collector, on being satisfied that Acquisition should proceed, submits draft notification¹ to Government.

¹ Section 4.

(3) Preliminary Notification:

The State Government on being satisfied that land in any locality is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the *Official Gazette*.

NOTE:—(1) Such notification is obligatory in all cases—even in case of urgency.

(2) In the schedule to the notification, the land may be described as 'approximately'—Ordinarily a little larger area may be included—rather than too small.

(3) Before issuing notification, Local Body may be asked by Government to enter into an agreement to pay all the cost of acquisition, etc., to Government.

(4) Public Notice of the Notification:

(1) Immediately after the publication of the notification (though no time is prescribed) public notice of the substance of notification should be given at convenient places in the locality.

Note.—Section 4 does not require, either expressly or impliedly, that the notice must in all cases be served on the land itself. (*A.I.R.* (1955) *N.U.C., Cal.* 1803).

(2) Such notice shall be addressed to the persons interested either by names or generally.

NOTE:—"Person interested" means person entitled to claim an interest in the compensation.

(3) **Contents of the Notice**—It shall contain—

(a) the substance of the notification (Sec. 4) with schedule of the property;

(b) appointment of date before which objections should be raised;

(c) intimating that opportunity will be given to hear a party or his pleader.

(5) Legal Consequences of issuing such notice.¹

It facilitates preliminary investigations because on the issue of such notice—

It becomes lawful for—

(i) any officer authorised by Government, and

(ii) his servants or workmen

to do the following acts, viz:—

1. Section 4(1).

- (i) to enter upon, survey¹ and take levels of any land in the locality,
- (ii) to dig or bore into sub-soil,
- (iii) to do all other acts to ascertain the adaptability of the land for the purpose,
- (iv) to set out boundaries and intended line of work,
- (v) to mark such levels, boundaries and lines by placing marks and cutting trenches,
- (vi) to cut down and clear away part of standing crop, fence or jungle, provided that—

- (1)² At least seven days' notice in writing shall be given before entering into any (a) building or (b) enclosed court or garden attached to a dwelling-house—unless the occupier waives notice and gives his consent.
- (2) Such officer at the time of such entry pays or orders payment of damages to be done on account of such cutting down of crops, etc.

NOTE³:—(1) if sufficiency of amount tendered is disputed, the officer shall refer the matter to the Collector or Chief Revenue Officer of the District—whose decision shall be final. No reference can be made to the Court in such a case.

(2)⁴ Willful obstruction, or filling up, destroying, damaging or displacing any trench or mark will render the offender on conviction before a Magistrate upto imprisonment upto one month or fine upto Rs. 50 or to both.

(6) Objections to Acquisitions:

(A) Raising of objections:

Any person interested

- (a) may make objections in writing
- (b) to the Collector
- (c) within 30 days of the Notification (not Notice) under Section 4 or such further time as the Collector may allow.

1. It will be clear that a Survey of lands can only be undertaken after the publication of a notification under Section 4. Government of Bombay, however, found that in many cases the lands as originally notified were, after the Survey authorised under Section 4(2) found to be unsuitable for the purpose, with the result that there was delay in land acquisition proceedings as some other lands had to be acquired in such eventuality. With a view to secure the lands as expeditiously as possible, the Land Acquisition Act, 1894, in its application to the State of Bombay, was amended by Bom. Act XX of 1945, authorising the *preliminary Survey* of the lands likely to be needed for any public purpose and to empower officers to carry out such Survey (See App. V, Item 2).

2. Section 4(2).

3. Section 5.

4. Section 46.

(B) Nature of admissible Objections¹ :

The following objections are considered admissible, under the Rules framed by the Government of Bombay—

They must be specifically stated:—

- (1) The notified purpose is not properly or genuinely a 'public purpose';
- (2) The land notified is not suitable for the notified purpose;
- (3) The land is not as suitable as other land;
- (4) The area proposed is excessive;
- (5) The objector's land has been selected maliciously or vexatiously;
- (6) The Acquisition (1) will destroy or impair the amenity of historical or artistic monuments and places of public resort, (2) will take away important public rights of way or other conveniences or (3) will desecrate religious buildings, grave-yards and the like.

(C) Collector's (or Land Acquisition Officer's) Duties²

He shall—

- (1) give opportunity to the objector of being heard either in person or by pleader;
- (2) record the objections in his proceedings;
- (3) consider whether the objections are admissible according to Rules;
- (4) decide whether it is desirable to hear oral or documentary evidence which he has a right to call;³
- (5) if he admits evidence, he shall afford the other party an opportunity of cross-examining it or rebutting it by other evidence;
- (6)⁴ After completing the record of evidence, the Collector shall submit his report and recommendations as to each objection, whether admissible or inadmissible, for the orders of Government.

The requirements of Section 5A are mandatory that the objector must be given an opportunity of being heard, and failure to comply renders a decision under Section 6(1) to acquire the land invalid and *ultra vires*. The powers to be exercised under Section 5A and 6(1) are quasi-judicial powers, though the whole proceeding of acquisition is administrative. If the authorities have not applied their minds in the manner required by Section 5A, a writ of certiorari will issue to correct the error or illegality. (*Rama Govind Singh v. Chief Commissioner, Vindhya Pradesh, A.I.R. 1951 V.P. p. 3*). Where the provisions of Section 5A are not complied with the declaration made under Section 6 is without jurisdiction and the conclusiveness provided for in Section 6 (3)

1. Rules of the Government of Bombay under Section 5A, Appendix No. III.
 2. Anderson, para. 30B, p. 57.
 3. Section 14 and Section 40.
 4. Section 5A (2).

would not attach to it (*Ram Chavan Lal v. The State of Uttar Pradesh, A.I.R. 1952 All. 752*).

Decision of Government.¹

The decision of the State Government on the objections shall be final.

(7) Final Declaration:²

When the State Government is satisfied—

- (1) that the particular land is required for a "public purpose" or a company; and
- (2) that the compensation is to be paid
 - (i) by a company (an agreement to be made with the company under Section 40), or
 - (ii) wholly or partly out of public revenues, or
 - (iii) from some fund controlled or managed by a Local Authority,

Government shall make a final declaration that such land is so needed.

NOTES:—(a) Such declaration shall be published in the *Official Gazette* stating—

- (i) the district or other territorial division in which land is situated,
 - (ii) purpose of acquisition,
 - (iii) approximate area,
 - (iv) the place where plan, if any, may be inspected.
- (b) Such declaration is conclusive evidence that land is needed for a public purpose or a company.
Where Government had granted land to any party on the condition that Government would be entitled to acquire land without payment of Compensation if the land was required for public purpose, the grantee of such land would be entitled to show that the land was not required for a public purpose when Government published Notification under Section 6 that the said land is required for a public purpose. *Ruttonji Wadia v. Assistant Development Officer, Bandra,* *A.I.R. 1940, Bombay 260;*³
- (c) Government can acquire the land only after such declaration is made.
 - (d) Land actually acquired should not differ from that described in the declaration, otherwise proceeding will be void.

1. Section 5A (2).

2. Section 6.

3. Except in the rare cases when the State Government is charged with acting in fraud of its powers, that a suit would lie. *A. I.R. (32) 1945, Madras 394.* A writ of certiorari to quash the notification under Section 6 cannot be issued: Suit will be the proper remedy (see *A.I.R. 1954, Mad. 362*).

- (e) In a recent case, viz., *The Province of Bengal v. Maulvi Mohamed Usuf*, A.I.R. (30), 1943, Cal. 122 it was held —
- (1) Land not covered by the declaration cannot be acquired;
 - (2) If there is an adequate and sufficient definition with convenient certainty of what is intended to be acquired any erroneous addition, e.g., a plan, will not vitiate it; in these circumstances, the plan can be referred to for elucidation where it is necessary, but cannot subordinate the text of the the proclamation. (*Province of Bengal v. Muhammad Usuf* 1943, Cal. 122).
 - (3) If declaration is ambiguous, contemporaneous evidence and evidence of conduct would be admissible to determine the intention as to the extent of acquisition. In a case where identity of the land cannot be ascertained and there is an ambiguity as to the area of the land acquired, the ambiguity may be resolved by election of one of the parties. Evidence is admissible to show that uncertainty of the description of the land, has been solved by one of the parties exercising the election. (*Wali Mohammad vs. Gyan Prakash Naga Babaji*, A. I. R. 1954, Patna 399).
- (f) The whole of Compensation need not be paid out of public or local funds. Even the contribution of one anna by the Government towards the Compensation is sufficient compliance with the provisions of Section 6. *Vedlapatla vs. Province of Madras*, A.I.R. (32) 1915, Mad. 394; *Vedlaptala Suryandrayan vs. Province of Madras*, I.L.R. 1946, Mad. 153.
- (g) The declaration of the Government under Section 6(1) is expressly made conclusive and therefore not open to objection and cannot be questioned in a Court of Law. (*Maheswar Baharali v. The State of Assam and another*, A.I.R. (1955) Assam 190).
- (h) In order to entitle Government to make a declaration under Section 6 (1) there must be some unmistakable manifestation of the intention of the Government to pay at least a part of the compensation from out of the public revenues, and that manifestation must be antecedent to the publication of the declaration under Section 6 (1) of the Act. The statutory requirements would not be satisfied if the Government eventually pays the contribution. (*Syeld Dilawar Hussain v. Collector of Madras (Land Acquisition Office Madras)*, A.I.R. (1955) Mad. 610).

- (i) The simultaneous publication of the preliminary notice under Section 4(1) and the declaration under Section 6 does not render the entire proceedings illegal or void. At the most, it is an irregularity not affecting the merits of the acquisition. (*B K. Abdul Azeez v. The State of Mysore and another*, [A.I.R. (1957),

Mysore 12).

(8) Acquisition Order:¹

After declaration under section 6, Government directs the Collector to take order for acquisition and on receipt of such order the Collector proceeds to take action.

NOTE:—Sections 6 and 7 of the Act prescribe the conditions precedent to the exercise of jurisdiction and if their provisions are not complied with, the acquisition would not be under the Act and Government, if they take possession, will be liable to be sued for trespass. *Harish Chandra vs. S of S. 11 C.W.N. 875; Ma Gyi vs. S of S. 3 L.B.R., p. 117.*

**(9) Collector thereupon:
causes the Land to be**

- (1) marked out,²
- (2) measured, and
- (3) planned.

NOTE:—Wilful obstruction will render a person on conviction, liable to imprisonment upto 1 month or fine upto Rs. 50/- or to both.³

(10) The Collector thereafter causes general and special notices to be given as under⁴ :—

The Collector shall cause—

(A) General public notice to be given

- (1) at convenient places on or near the land
- (2) stating that—
 - (a) Government intends to take possession of the land,
 - (b) claims for compensation may be made to the Collector and shall further state

(1) particulars of the land

- (2) time and place (not earlier than 15 days) where persons interested or their agents may appear and state in writing duly signed;—
 - (a) nature of their respective interests

1. Section 7.
2. Section 8.
3. Section 46.
4. Section 9.

- (b) amounts and particulars of their claim
- (c) objections to measurements.

(B) Special Notice:

The Collector shall also serve similar notice to

- (1) occupier (if any)
 - (2) all such persons
 - (i) known
 - (ii) believed
- } to be interested;
- (iii) entitled to act for persons (1) and (2),

as reside or have agents authorised to receive service—within the district. If not so residing or having agent—to the last place of residence or business by post in a letter registered under the Post Office Act.

If parties have knowledge of compulsory Acquisition absence of Special Notice is immaterial. 1939 *All.* 130.¹

NOTE:—(i) Non-service of notice is not by itself fatal if the claimant had otherwise notice of the proceedings.² Otherwise notice is imperative.

- (ii) Proceedings are not vitiated, if a mistake, which is not wilful or perverse, is made in serving notice on the real owner.

Jagannath Prasad Shah vs. Municipal Board, Benares, A.I.R. 1948, 446; *I.L.R.* (1948) *All.* 529.

- (iii) Under Section 9 (3) of the Land Acquisition Act, 1894, it is only in the case of an occupier that the failure to serve a notice by itself may furnish him with a cause of action by which he could challenge the award. In the case of persons other than the occupier who are interested in the land, the mere omission or failure to serve a notice is not sufficient in itself to entitle them to challenge the award but they must establish that the failure to give them such notice was a wilful or perverse or fraudulent failure on the part of the Collector.

In a proper case the Collector might be fixed with constructive notice of the existence of a person who is interested in the land, and if the Collector fails to make proper enquiries with regard to the existence of such a person, the Court may come to the conclusion that the omission to serve notice was wilful. It is the duty of Government officers to take proper care that inquiries are made to find out all the persons who are interested

1. Also see *Secretary of State vs. Karim Bux*, A.I.R. 1939, All. 130.

2. I. L. R. 43 Mad. 280; See also 1932 Pat. 134.

in the land which is sought to be acquired, and in a proper case the mere fact that the name of a person interested did not appear in the Record of Rights may not be sufficient to entitle him to make no other inquiry and to proceed with the acquisition without serving any notice under Section 9(3) of the Land Acquisition Act, 1894. *Laxmanrao Kristarao Jahagirdar vs. The Provincial Govt. of Bombay*, 52 Bom. L.R., 316.

- (iv) There is a marked distinction between the irregularity in the service of notice and a non-compliance with the terms of the enactment in regard to the duration of the notice. Where the minimum duration of notice fixed by the statute is not complied with, it would be for the Government to prove that notwithstanding the non-compliance with the statute the claimant is not prejudiced. Unless therefore they are able to establish that the claimant was informed of the steps he has to take and the statements he has to file to assert his rights, the infirmity arising out of the defect continues to afford protection to the claimant. (*A. P. S. Karuppaiah Nadar v. Special Dy. Collector for Land Acquisition, Virudhunagar and another*, A.I.R. (1955) Mad. 406).
- (v) An award passed under Section 11 in pursuance of an invalid notice, in which the period fixed is less than fifteen days, is void and illegal. (*Prasanna Kumar Das and others v. State of Orissa*, A.I.R. (1956) Orissa 114)

(11) Requisition to make Statement:¹

The Collector may require any person interested to make a statement (not earlier than 15 days after requisition) containing

- (1) name of any other person having interest in the land or part thereof as:—
- (1) Co-proprietor,
 - (2) Sub-proprietor,
 - (3) Mortgagee,
 - (4) Tenant, or
 - (5) Otherwise;
- (2) nature of such interest; and
- (3) rents and profits received or receivable within last 3 years.

NOTE:—Under the Indian Penal Code, a person is bound to supply this information (Secs. 175 and 176 of the I. P. C.)

While acting under the land acquisition proceedings the Collector is in no sense of the term a judicial officer nor is the proceeding before him a judicial

1. Section 10.

proceeding. His role is that of an agent of the Government for purposes of acquisition, (*Ezra vs. S. of S.*, 30 Cal. 36.) He is not entitled to administer oath or require the verification of a petition. So any exaggeration or over-estimation of the value of land by a party will not constitute a false statement or amount to giving false information so as to attract the application of section 177 I. P. C. (*Durga Das vs. Queen Empress*, 27 Cal. 820).

(12) Inquiry by Collector and Award:¹

The Collector shall, on the date appointed in the notice under Section 9 or on any other day to which the inquiry has been adjourned, inquire into objections regarding

- (1) measurement made,
- (2) value of the land,
- (3) respective interests of the persons claiming compensation, and make an award under his hand of—
 - (1) the true area of the land,
 - (2) compensation which should, in his opinion, be awarded,
 - (3) apportionment of the compensation among persons interested or believed to be so, of whose claim he has information (whether they have appeared before him or not).

NOTE:—Whether while awarding compensation right of Government to levy assessment can be construed as “interest” in the land:—

If the Government has itself an “interest” in the land, it has only to acquire other interests outstanding therein, so that it might be in a position to pass it on absolutely for public use. When Government possesses an “interest” in land which is the subject of acquisition, that interest is itself outside such acquisition, because there can be no question of Government acquiring what is its own.

The right of Government to levy assessment is an “interest” in land within the meaning of Section 8 of Bombay City Land Revenue Act, 1876. In its normal acceptation, “interest” means one or more of those rights which go to make up “ownership.” The word “interest” in the Section must, in the context, be construed *ejusdem generis* with “estates,” etc., as meaning right over lands, in the character of, but not amounting to an estate, and cannot include the prerogative right to assess the lands. It must, therefore, be held that the effect of the land acquisition proceedings is only to extinguish the right of the occupants in the lands and to vest them absolutely in the Government. The right of the latter to levy assessment is not the subject matter of those proceedings, and if after the award the

1. Sections 11 and 12.

lands were not assessed to revenue, it was because there could be no question of Government levying assessment on its own lands.

The word "encumbrance" in Section 16 can only mean interests in respect of which compensation was made under Section 11 or could have been claimed. It cannot include the right of Government to levy assessment on the lands. *Collector of Bombay v. Nusserwanji R. Mistri, A.I.R. Sup. Court (1955) 298.*

- NOTE:—(A) (1) Award is then filed in the Collector's office.
 (2) Award is final regarding the above 3 points.
 (3) The Collector shall give notice of the award to persons who were not present either in person or by their representatives. (Section 13).
 (B) The Collector may adjourn the inquiry from day to day;¹
 (C) The Collector can enforce attendance and compel production of documents for this inquiry under the Civil Procedure Code.²
 (D) The Collector is guided by Section 23 and Section 24 in awarding the amount of compensation.³

The term "award" is not defined in the Act. The "award" is not a judicial proceeding, but merely an executive act or authoritative offer to pay a certain sum by Government, (*Chunilal Chatterjee vs. Province of Bengal (1950) 2 D. R. 51; Jehangir vs. Gaikwad, A. I. R. 1954 Bom. p. 419*). There can, however, be no doubt that a mere preliminary decision which decrees no compensation cannot be regarded as an "award" (*Mul Raj Khatau vs. The Collector of Poona, 15 Bombay L. R. 802*). As constituted by the Statute, it is nothing but an award which states the area of the land, the compensation to be allowed and the apportionment among the persons interested in the land of whose claims the Collector has information, (*Prag Narain vs. Collector of Agra, 54 All. 286; 34 Bom. L.R. 885*). A decision or determination which does not decide in one form or another the question of compensation is not an award, (*Sarat Chandra vs. S. of S. 46 Cal. 861*). After making the award, the Collector must file it in his office, that is to say, it is to be made a part of his record open to inspection by person interested. Mere signing of a document in the nature of an award does not make it conclusive; it is only when the award is filed that it becomes final and conclusive, (*Padamji Narayan vs. Collector of Thana, I.L.R., 46 Bom. 366*). So long as it is not filed, it can be modified and is not binding on Government, and till then it is open to the Collector to destroy an award even though signed and substitute another in its place (*Kooverbai vs. Assistant Collector, Surat 22 Bom. L. R. 1136*). The award must be made in the presence of the parties or be communicated to them (*Macdonald vs. S of S. 19 P.L.R. 1909; See also 34 Bom. 486*).

1. Section 13.
 2. Section 14.
 3. Section 15.

Failure to make an award—remedy—

Where the declaration under Section 6 was made, notices under Section 9 were issued and possession was taken under Section 17, but no award was made under section 11, it was held that the Land Acquisition Officer had failed in the performance of the duties cast by sections 11 and 12 and consequently a writ in the nature of mandamus could be issued under Article 226 of the Constitution, commanding him to perform the statutory duty imposed upon him. (*Pannalal Maheshwari vs. State of Bihar, A.I.R. 1955, Patna, p. 63*).

(13) Taking Possession:**Collector may take possession—**

(1) **After award**—at any time, possession may be taken after 15 days of notice to take possession given under Section 9.

(2) **Before award**—

(1) in case of urgency wherever the State Government so direct, only of waste or arable land. Whether an urgency exists or not is a matter solely for the determination of Government and it is not a matter for judicial review. (*A.I.R. 1954 Mad., p. 481*);

(2) in case of sudden change of navigable river or other unforeseen emergency—if required for the Railway Administration for maintaining traffic or making river side or ghat station or for providing convenient connection with or access to such station.

NOTE:—(1) In case of building, notice of 48 hours or longer, if necessary should be given to owners to remove movables.

(2) Whenever possession is taken before award, the Collector should give compensation for (1) standing crops and trees, (2) damages caused by sudden dispossession not excepted in Section 24.

(3) Wherever the State Government so desire, provisions regarding hearing of objections under Section 5A shall not apply to cases of emergency under Section 17 so that final declaration under Section 6 may be made immediately after preliminary notification under Section 4(1).¹

(4)² If the Collector is opposed or impeded in taking possession, he can enforce surrender if he is himself a Magistrate, otherwise he can apply to the Magistrate or Commissioner of Police to enforce surrender to him.³

1. Section 17(4).

2. Sections 183 and 186 of the I. P. C.

3. Section 47.

(14) Legal Effect of Collector's taking possession:

The legal effect of Collector's taking possession, either after the award or in case of urgency before the award, is that the Land vests absolutely in the Government free from all encumbrances.¹

NOTE:—(1) If, however, the provisions are not strictly complied with but are made a cloak for attempting to obtain an indefeasible title under the guise of a public purpose, the proceedings do not operate to create a valid title in Government; *Luckmeswar Singh vs. Chairman, Darbhanga Municipality*, 18 Cal., p. 99.

(2) Disposal of the Land after acquisition:

“Under Section 16 acquired land vests absolutely in Government free from all encumbrances. Obviously, therefore, Government can do what they please with it. It would be inadvisable to acquire land ostensibly for one purpose and use it for another purpose, more particularly if the second purpose were one for which it could not be compulsorily acquired under the statute, but it does not appear that the former owner would have any remedy. Speaking generally and assuming that the change of purpose was a *bona fide* error and not due to a desire to avoid law, land which has been acquired for a specified purpose may be used for any other purpose.”²

(3) Transfer of Clear Possession and Correction of Land Records:

- (i) The Acquiring Officer must take possession and see that the possession is clear and good, *i.e.*, tenants are evicted and occupied structures or standing crops, etc., are removed. When Acquiring Officer has obtained perfectly clear possession, he can then duly pass it on to the applicant.
- (ii) Acquiring Officer must also take steps to get the Land Records, namely—(1) the Record of Rights; (2) The Village or City Survey Map; (3) the Land Register—, corrected. When land is acquired for a local body, land assessment is generally remitted.
- (iii) Sixty years' adverse possession would defeat Government title to land if possession is not taken when it should have been taken.

1. Section 16.

2. Anderson, para. 325, p. 2591

CHAPTER III

JURISDICTION OF CIVIL COURT

The Land Acquisition Act creates a special jurisdiction and provides special remedies. Such jurisdiction is exclusive and the ordinary jurisdiction of the Civil Court is ousted. 'Consequently, the claimant dissatisfied with an award made by the Collector has no other remedy available to him except to demand a Reference under Section 18, and unless he makes an application within the prescribed time to the Collector demanding a Reference, he will be without any legal remedy.'

The Act provides for references to the Court¹ under five Sections, viz., Sections 18, 30, 35, 37 and 49. They are dealt with in the following order:—

I. On what points can references be made under the Land Acquisition Act?

References can be made as regards—

- (1) the amount of compensation for standing crops and trees and damages, etc., in cases of emergency under Section 17;²
- (2) as to the true area taken;³
- (3) as to the apportionment of the sum awarded;⁴
- (4) as to the investment of money deposited in respect of lands of persons incompetent to alienate;⁵
- (5) regarding disputes as to the estimate of damage during temporary occupation;⁶
- (6) regarding disputes as to the condition of the land on the expiry of temporary occupation or any matter connected with the agreement regarding damages during temporary occupation;⁷
- (7) for settlement of the question as to whether any land is part of a house, factory, etc.⁸

1. In the State of Bombay 'Court' includes the Court of Civil Judge (Senior Division) to which the principal Civil Court may transfer such proceedings. (See Section 2 of Bom. Act XXV of 1953).

2. Section 18.

3. Section 18.

4. Section 18 or Section 30.

5. Section 32.

6. Section 35(3)

7. Section 37.

8. Section 49.

NOTE—

- (1) Provisions regarding references to Court are unilateral in so far as Government (or the applicant who applies for acquisition through Government, e.g., Local Body or Chief Officer) cannot invoke Court if dissatisfied with the award.¹
- (2) No reference lies against award of compensation for damages by Collector or Acquisition Officer in respect of preliminary entry under Section 5.
- (3) No reference lies against the decision of State Government under Section 5A that a particular piece of land is required for a public purpose.

NOTE:—When a Collector refuses to entertain a claim under L. A. Act, a claim may be made in Civil Court. *A.I.R.* 1939, *All.* 130.

II Appeals (Section 54).

When the District Judge's award exceeds that of the Acquisition Officer, the Collector has to see the advisability of preferring the appeal and if he decides that an appeal should be made he has to apply to Government for sanction. An appeal, if Government sanction, will then be to the High Court, and, if necessary, a second appeal will be to the Supreme Court from the decree of the High Court (Sec. 54). These appeals are subject to the provisions of the Civil Procedure Code. Thus an Appellate Court has inherent power to consolidate appeals under Section 51 of the Code (45 *I.C.* 468). Thus from a decree of the District Court there is an appeal to the High Court and from a decree of the High Court to the Supreme Court. From a single High Court judge hearing a reference there is an appeal to the High Court consisting of a Bench of two Judges and from their decree to the Supreme Court.

III Civil Procedure Code, 1908—Applicability of provisions of—Section 53.

The claimant before the Land Acquisition Court is in the position of the plaintiff. Proceedings in Court on a reference are in the nature of suits. (See *I.L.R.* 30 *Bom.*, p. 341).

Section 53 of the Land Acquisition Act lays down that the provisions of the Civil Procedure Code will apply to all proceedings under the Act except where any provisions of the Code will be inconsistent with the provisions of the Act, for example, the following provisions of the Civil Procedure Code will apply:—

- (1) Power to add new parties.²
- (2) „ „ restore to file a case dismissed for default.³

1. Section 50, proviso.

2. O 1, r 10 (2).

3. O 1, r 4.

- (3) „ „ order for discovery.¹
- (4) „ „ call for records.²
- (5) „ „ consolidate proceedings.³
- (6) „ „ review.⁴
- (7) „ „ appeals,⁵ etc.

IV. Costs:

Section 27 of the Land Acquisition Act deals with costs. Every award must state costs incurred in the proceedings and by what persons and in what proportions they are to be paid. Costs are ordinarily payable by the Collector or when the Collector's award is not upheld unless the owner's claim was extravagant [Section 27(2)] or he was negligent in putting his case before the Collector.

Note—

(1) Costs referred to in Section 27 are (i) process fees, (ii) expenses incurred to summon witnesses, etc., and (iii) pleader's fees, (iv) court-fees on applications, and (v) costs of exhibits.

(2) Although costs are in the discretion of the Court, generally the successful party gets his costs on the principle that costs follow the events.

(3) The usual rule in the matter of costs is to direct the parties to receive and pay costs in proportion to their success or failure. (*A.I.R. (1955) N.U.C Tra. Co. 1666*).

V. Court-fees and Stamp Duty:

An award or an agreement made under the Act is not chargeable with stamp duty. Nor is fee required to be paid for a copy of the award or agreement by a person claiming under it.⁶

VI. Limitation:

The following periods are prescribed under the Act:—

1. For entry by an officer or his servant into a building or enclosed court or garden attached to a dwelling-house after publication of a notification under Section 4(1), unless the occupier consents, at least 7 days' notice in writing is necessary.⁷

2. A person interested who wants to object to the acquisition of land must apply in writing within 30 days of the notification under Section 4 of the Act.⁸

1. O XI, r 12.
 2. O XIII, r 10.
 3. O XLV, r 4.
 4. O XLVII, r 1.
 5. O XLV.
 6. Section 51.
 7. Section 4 (2), proviso.
 8. Section 5A.

3. A claimant will require a notice of not less than 15 days' time to appear and state the nature of his interest in the land.¹

4. Section 18 of the Act lays down the period of limitation within which an application for reference should be made:—

(1) For a party who has not accepted the award but who was present or represented at the time of the Collector's award.....
Six weeks from the date of award.

(2) For a party who has not accepted the award.....

(1) six weeks from the date of receipt of the Collector's notice under Section 12 (2), or

(2) six months from the date of the award,
whichever period shall first expire.

5. Under Section 35 temporary occupation of waste or arable land must not exceed three years from the commencement of the occupation.

6. For reference under Section 49—Any time before the award.

NOTE:—(a) When the last day of reference is a holiday an application may be made on the day on which the Court re-opens.

(b) No extension of time is allowable on the ground of minority. (25 I. C. 448).

(c) Time taken for obtaining copy of the award is not excluded from computing the period of limitation prescribed by Section 18.

(d) A suit by the real owner for the recovery of money paid by Government to another person in respect of land acquisition should be brought within 6 years from the date of the payment.

(e) A month's previous notice in writing of any intended suit or proceeding against any person for anything done under the Act. (Sec. 52). This does not apply to appeals. Section 52 refers to tortious act done under the Act.

(f) In computing the 15 day's notice prescribed in Section 9 (2) the day of service and the date fixed for hearing is to be excluded.

(g) In computing the period of limitation for application for reference under Section 18 (2) (b), the date on which the award is pronounced is to be excluded. (A.I.R. (1955) N.U.C. Andhra 6010).

1. Section 9 (2).

VII Res judicata:—If a person omits to press any part of his claim before the Land Acquisition Court, the matter will become *res judicata* and cannot be litigated afresh in a Civil Court. So also an adjudication as to the right of persons claiming compensation concludes the question between the parties and is *res judicata* in subsequent proceedings,¹ but it is not *res judicata* as regards other parts of claimants' property held under the same title.²

VIII Review:—The Collector cannot review an order awarding compensation passed by him as the Civil Procedure Code does not apply to proceedings before him. He is not a "Court."

There is nothing in the Land Acquisition Act which debars the Land Acquisition Court from reviewing its own order and hearing an application for review.³

As the Land Acquisition Officer holding an inquiry and making an award under Section 11 is also not "a Court" within the meaning of Section 115 of the Code, he is also not a Court subject to the appellate jurisdiction of the High Court within the meaning of Section 15 of the Charter Act. The High Court has therefore no power to review an award of the Collector in the exercise of its revisional jurisdiction or of the powers of superintendence vested in it under the Charter Act.⁴

IX Revision:—The fact that an appeal is allowed from an award of the Land Acquisition Court is conclusive of the fact that the Court is subordinate to the High Court. It follows that all the rules laid down in the Civil Procedure Code form its guidance. The exercise by the High Court of its revisional powers has never been questioned.⁵

When the District Judge declines to exercise jurisdiction being of opinion that he is precluded from hearing the case, the High Court interferes and there is no want of revisional jurisdiction in the High Court.⁶

1. I. L. R. 29 Mad. 173; I. L. R. 45 Mad. 320.

2. I. L. R. 20 Mad. 269.

3. 58 I. C. 510; I. L. R. 45 Mad. 320.

4. I. L. R. 38 Cal. 20.

5. I. L. R. 17 Mad. 371.

6. 1934 All. 260, (F. B.) 56 All. 656. See also *Secretary of State vs. Allahabad Bank Ltd.*, 1939 All. p. 34.

CHAPTER IV

REFERENCE TO COURT UNDER SECTION 18

Nature of Proceedings:—The Act contemplates that there should be a fresh inquiry by the Court. A reference to Court is not, therefore, in the nature of an appeal. The Court cannot go behind the reference as it has no appellate authority over the Collector.¹

Court:—means a principal Civil Court of Original Jurisdiction unless the State Government has appointed a judicial officer within the specified local limits for the purpose of the Act.

When the Collector makes an award under Section 11 of the Act about (1) the true area, (2) the compensation, and (3) apportionment—the remedy of the parties aggrieved is to apply to the Collector for reference to the Court for a judicial decision. The conditions for such application and the period of limitation within which the application should be made should be strictly observed.—If those provisions are not complied with, there cannot be any application at all and necessarily if such an application does not exist, a positive reference is incapable of existence. (*A.I.R. (1955) Mad. 23*).

1. Who can apply to the Collector for a reference?

- (1) any person interested,
 - (2) who has not accepted the award,
- may apply to the Collector to refer the matter to the Court.

2. On what objections a reference may be demanded?

Reference may be required by the applicant whether his objections be to—

- (1) the measurement of the land,
- (2) amount of compensation,
- (3) persons to whom compensation is payable, or
- (4) apportionment of the compensation.

3. What are the requisites of a valid application for reference?

- (1) Person interested who has not accepted the award should require the Collector to make a reference to the Court.

1. Section 50.

- (2) Application must be in writing.
- (3) The application must state the grounds on which the objections to the award is taken.

“The Act does not require particulars to be given—it requires only the ‘grounds’ of objection to be given and by grounds is meant only the four grounds mentioned in Section 18(1) mentioned above. No further particulars are required in order to comply with the terms of the Section. Per Lord Porter in *Bhagwati vs. Ram Murti*, A.J.R. 1939, P.C. 133. It is immaterial whether there is any substance in the claim made by the person applying under Section 18 or not. [A.I.R. (1956) Pun. 231.]

- (4) Application must be made within the period prescribed under the Land Acquisition Act, viz:—
- (i) Within 6 weeks of the date of the Collector’s award—if applicant was present or represented when the Collector made his award.
- (ii) (a) Within 6 months of the receipt of notice from the Collector under Section 12(2) of the award to persons not present or not represented;
- or
- (b) Within 6 months of the date of the Collector’s award (No question of notice of the award arises in such a case), whichever (a) or (b) shall first expire.

The expression “date of the award” which is not defined in the Act is ambiguous and has, therefore, led to divergence of views, and given rise to conflicting views by the different High Courts. After reviewing the various decisions, the Travancore-Cochin High Court concurred in the view of *Niamatullah, J.* in A.I.R. 1929 All. 769 and held that “the date of the award” under Section 18 cannot be taken to be the date on which the award is filed under Section 12(1) or the date on which notice of the award is served on the party under Section 12(2), but the date on which it is drawn up and signed by the Collector (c.f. *Ravunny Nair vs. State*, A.I.R. 1954 Travancore-Cochin, p. 444).

NOTE:—(1) As pointed out in Chapter II, the award made by the Collector under Section 11 regarding measurement of the land, amount of compensation and apportionment thereof, is the result of his inquiry and valuation which are administrative and not judicial in character. Award is not, therefore, a judicial decision. Strictly speaking, it is an ‘offer’ made by the agent of the Government. It, therefore, binds no one but (1) the Government who are estopped from contesting its agent’s offer and (2) the persons who accept the offer and convert into a contract.

- (2) No local authority on whose behalf land is being acquired shall be entitled to demand a reference under Section 18, though it may appear and adduce evidence for the purpose of determining the amount of compensation.¹
- (3) Those who have not accepted the award cannot file a suit against the Collector but can compel the Collector to refer the matter to the Court for a judicial decision by observing the procedure laid down in Section 18 mentioned above.
- (4) Collector's authority to make a reference is restricted by the statutory conditions prescribed in Section 18. He cannot make a reference on a time-barred application. Where he does make a reference on a time-barred application through inadvertence, his action will not bind the Government. In this connection the following words of *Beaumont, C. J.*, in the *Mahadeo Krishna Parkar vs. Mamlatdar of Alibag*, A.I.R. (31) 1944, Bombay 200, be noted:—

“The Collector has power to make a reference on certain specified conditions. The first condition is that there shall be a written application by a person interested who has not accepted the award, the second condition is as to the nature of the objections which may be taken, and the third condition is as to the time within which the application shall be made. It seems to me that the Court is bound to satisfy itself that the reference by the Collector complies with the specified conditions so as to give the Court jurisdiction to hear the reference. It is not a question of Court sitting in appeal or revision on the decision of the Collector. It is a question of Court satisfying itself that the reference made under the Act is one which it is required to hear. If the reference does not comply with the terms of the Act, then the Court cannot entertain.”²

The Act makes no provision in respect of cases wherein the Collector refuses to make a reference under Section 18(1) even though the application is made to him within limitation period prescribed under Section 18(2) (b). This question has been judicially determined, but there is divergence of views of different High Courts.

So far as the Presidency Towns are concerned, it has been held by the Madras and Bombay High Courts that where the Collector refuses to make a reference, an application for a writ

1. *Raja Bommadevara vs. Atmuri Subharadu*, 36 Mad. 395; *Secretary of State vs. Bhagwan Prasad*, 1929 All. 769.

2. This view was affirmed in the subsequent decision of the *H. C. (Desai vs. Abdul Mazid* A. I. R. 1951, Bom. p. 156.)

of mandamus requiring the Collector to refer the case to the Court is proper and effective remedy (*Besh & Co. vs. Dy. Collector of Madras*, 36 I.C. 621; *Provident Investment Co. vs. Land Acquisition Officer, Bombay*, 37 Bom. L.R. 465). Outside the Presidency Towns the position is anomalous. The only provision of law which could be considered in this connection is Section 115 of the Code of Civil Procedure, and there has been a serious conflict of authority as to the power of the High Court to interfere with the refusal by the Collector to make a reference. Some High Courts held that the High Court was competent to interfere in the exercise of its powers of revision, the reasons advanced being two-fold:—

- (i) that the functions of the Collector under Part II of the Act were of a different nature from those under Part III; and
- (ii) that while the Collector's functions under Part II were executive or administrative, those under Part III were judicial.

This view was, however, not accepted by the Allahabad, Bombay, Lahore, Madras, Rangoon and Calcutta High Courts. From the review of the authorities, the bulk of the authority is in support of the proposition that the Collector cannot be deemed to be "Court" subordinate to the High Court, and consequently, the order of the Collector refusing to make a reference cannot be revised by the High Court.

However, in a recent decision of the Orissa High Court, *Samanta Radha vs. Province of Orissa*, A.I.R., 1952 Orissa, p. 99, it is held that under Article 227 of the Constitution, the High Court has got the power of superintendence over all Courts and Tribunals within its jurisdiction, and the Collector, exercising his powers under the Land Acquisition Act, is such a Tribunal over whom the High Court has got the power of superintendence. The order of the Collector being manifestly opposed to law, it is incumbent upon the Court to rectify the mistake.

- (5) It is not obligatory on the Collector to give notice to interested persons whom he is not aware of. If he chooses to give a notice then the person will have to apply within 6 weeks. If he does not give a notice and the person interested was not present then the period of limitation will be six months *A. I. R. (30) 1943, Mad. 327.*

In June 1948, Government issued a notification under Section 4 in relation to certain land and notification under Section 6 was issued in June 1949. In

July 1949, notice to file the claim was given and pursuant to this notice, the claimants filed a claim in November 1949. The award was filed in the Collector's Office on 28-12-51. Though a notice was given by the Collector of the filing of the award, no notice was given to the petitioners. A copy of the notice was sent to the petitioners in April 1953. They then applied to the Collector for a reference under Section 18, but he declined to make a reference on the ground that the application was barred by limitation. Held that in proviso to Section 18, the Legislature provided for all cases of application being made to the Collector for a reference. Clause (a) deals with the case where the claimant was present or represented before the Collector and Cl. (b) is the residuary clause which deals *with all other Cases*. It cannot be contended that there is a case left out by the Legislature and that case is where a notice is not received within six months from the date of the Collector's award. No question with regard to the period fixed in the earlier part of clause (b) viz. within six weeks of the receipt of the notice from the Collector arises as what has got to be considered is which period expires first and where in a case six months from the date of the award expired first, the receipt of the notice by the petitioners subsequently is irrelevant.

The only right that a claimant has is to apply for a reference, and if that reference is barred, the failure to give immediate notice can hardly confer any right upon the claimant. The element of notice is not an essential ingredient as far as the second part of Cl (b) is concerned as the limitation runs from the date of the award, and the date of the award has nothing to do with the notice which the Collector has to give under Section 12(2) (*Jehangir Bomanji vs. Gaikwad, A.I.R. 1954, Bom. p. 419*). The Madras High Court, however, has taken a different view in a similar case where no notice of award was given, and the application for reference under Section 18 to the Revenue Divisional Officer was held as time barred. The Court, however, held that it would be in consonance with common sense and a reasonable construction to hold that the six months' period in such a case would start only when the claimant has notice that an award has been made. (*Lakshmana Rao vs. Rev. Divisional Officer, A.I.R. 1954, Mad. p. 942*).

4 Further Proceedings on a Reference under Section 18:

On a valid application for reference being made—

The Collector shall state the following particulars for information of the Court:—

(i) Collector's Statement to Court¹

- (1) Situation and extent of land with particulars of trees, buildings or standing crops thereon.
- (2) Names of persons believed to be interested.

1. Section 19.

- (3) Amount awarded for—
- (a) damage caused at the time of preliminary entry,¹
 - (b) damage caused in case of emergent entry under Section 17,
 - (c) amount of compensation.
- (4) If the amount of compensation is objected to, the grounds on which the amount of compensation was determined.
- (5) A schedule containing
- (1) particulars of notices of award served upon parties
and
 - (2) written statements made or delivered by interested parties.

(ii) Notice of Reference²

Court will issue notice—

- (1) specifying the date when it will determine objections, and
- (2) directing appearance of persons on whom it is served to the following persons:—
 - (1) the applicant,
 - (2) persons interested in the objection—except those who have consented to receiving payment of compensation awarded without protest,
 - (3) the Collector—if objection is regarding
 - (i) the area or
 - (ii) amount of compensation.³

(iii) Scope of Proceedings⁴

Inquiry in the Court shall be restricted to a consideration of the interests of the persons affected by the objections, *e.g.*

When the only objection taken was to the amount of compensation, the Court cannot consider an objection to measurement which is a distinct objection. When more than one reference has been made, all of which arise between the same parties, and which are in respect of the same subject matter, and which arise out of one and the same Land Acquisition case, they can all be heard together by the Court. (*Lila Mahton v. Sheo Govind Singh*, A.I.R. (1956) Patna 108). *Promotha Nath Mullick vs. Secretary of State*, 57 Cal. p. 1148.

Proceedings shall be in open Court⁵—where duly authorised, pleaders may represent parties.

1. Section 5.
2. Section 20.
3. Section 10.
4. Section 21.
5. Section 22.

CHAPTER V
COMPENSATION I

(Positively)

(Section 23)

The Act provides that private property may be acquired for public purpose provided such person is compensated for the loss of his property. It goes further and lays down specific rules for arriving at the correct amount of compensation payable. The Collector or the Land Acquisition Officer has to bear these rules in mind when he makes his award under Section 11. If the matter goes to Court, under Section 18 for example, the Court will be guided by these rules. These important **canons of compensation** are laid down in Sections 23 and 24 which should be committed to memory by every one who has to deal with acquisition matters.

These canons in the first place specify positively what matters shall be taken into consideration when awarding compensation and in the second place, negatively specify matters which should not be taken into consideration.¹

The first group is dealt with in Section 23 and the second in Section 24. Both together give a complete Code of Rules.

We enumerate in this Chapter, the *positive* Rules. Chapter VIII deals with *negative* Rules. See also Charts I and II, pp. 37 and 38 *post*.

A. In determining the amount of compensation to be awarded the Court shall take the following into consideration:—

- (1) **The market value of the Land** at the date of the publication of the preliminary notification under Section 4(1).
 - (a) **Market value** (See Chapter VI);
 - (b) of the **(Land)**=all the aggregate interests in the land,
 - (c) at the date of the preliminary notification under Section 4, *i.e.*, the date when it is notified that the land is likely or is needed for a public purpose or a company. This is in English Law called a **notice to treat**.

1. See Section 15.

- (2) The damage sustained by the person interested, by reason of the taking of any—

Standing crops or trees which may be on the land, when the Collector takes possession thereof.

NOTE:—These standing crops or trees are included in the definition of the 'land' because they are 'things attached to the earth.' Therefore, their value is to be included in the market value of the land.

- (3) Damage, (if any), sustained by the person interested when Collector takes possession, by reason of severing such land from his other land.

Severance—See Chapter VII.

- (4) Damage, (if any), sustained by the person interested when Collector takes possession by reason of the acquisition injuriously affecting

- (1) his other property, movable, or immovable, in any other manner
or
(2) his earnings.

Injurious affection—See Chapter VII.

- (5) If in consequence of acquisition, person interested is compelled to change his residence or place of business—reasonable expenses (if any) incidental to such change.
- (6) The damage, (if any), *bona fide* resulting from diminution of profit of the land between the time of the publication of the declaration under Section 6, and the Collector taking possession.
- B. In addition to market value of the land—the Court shall award a sum of 15% on such market value:—**

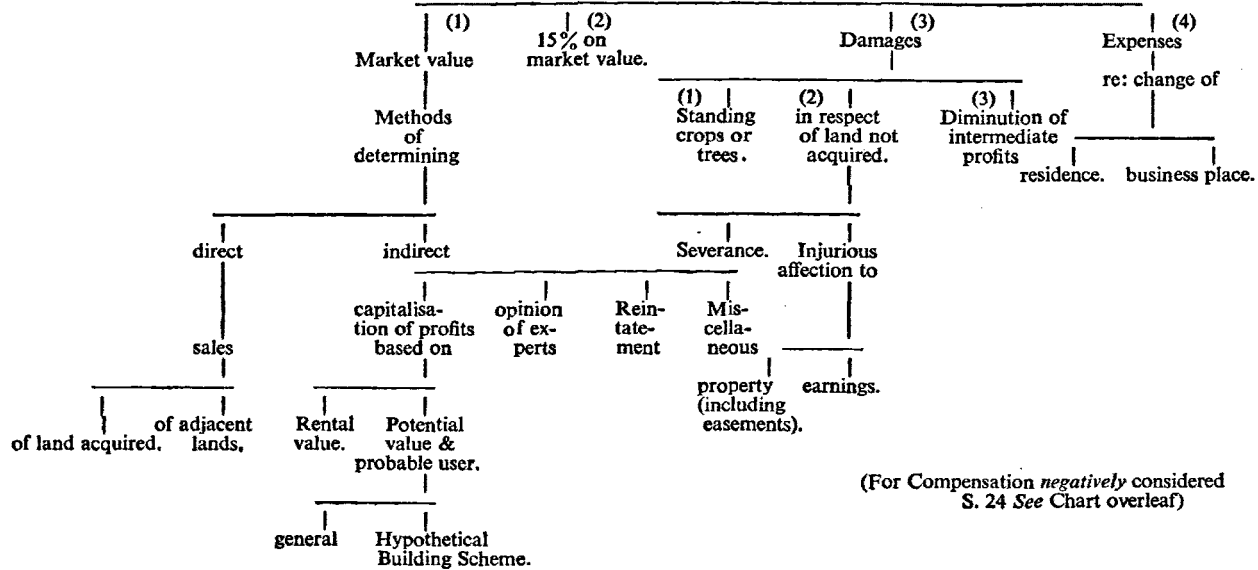
NOTE:—(1) This 15% shall be awarded also on the value of the standing trees or crops because they form part of the 'land.' But no addition is to be made to other damages and costs awarded under this Section 23.

- (2) The City of Bombay Improvement Trust Transfer Act, 1925, being repealed its provisions relating to improvement schemes have been incorporated in Chapter XII-A of the Bombay Municipal Corporation Act, 1888. Section 354S makes applicable some of the provisions of the Land Acquisition Act, 1894, with certain modifications to acquisition of land otherwise than by agreement.¹

1. Bombay Act No. XIII of 1933, Section 35.

COMPENSATION I.

(Section 23)
(Positively)



Section 23 is not in terms exhaustive. It only says that in determining the amount of compensation to be awarded or land acquired under the Act, the Court shall take certain matters into compensation; it does not direct that no other matter may be taken into account, and in special cases the Court may take other matters into consideration. *Government vs. The Century Spinning and Manufacturing Co. Ltd.*, 44 Bom. L. R. 57.

COMPENSATION II.

(Section 24)

(Negatively)

**NO COMPENSATION
TO BE PAID
FOR**

Urgency of
acquisition.

Disinclination
of Owner to
part with
his land.

Damages not
recognised as
injury accord-
ing to law.

Prospective
Decrease in
value of
acquired land.

Prospective
Increase in
value of
acquired land.

Prospective
Increase in
value of
remaining
land of the
Owner, *i.e.*
other than
acquired.

Improvements
subsequent to
notification.

CHAPTER VI

MARKET VALUE

I. Preliminary Remarks:

(1) The nature of compensation paid under the English and Indian Laws. (See introductory remarks).

“Under the English Acts, the compensation is based on the loss suffered by the seller. Under the Indian Law, the market value of the whole of the property is ascertained independent of ownership or user and the total market value is apportioned between the several interests. The financial results are quite different for the sum of the values of the individual interests may be different from the value of the whole as a complete entity.¹ Compensation is to the extent of the owner’s loss. Compensation is not to be taken as the value to the owner and is to cover all loss to the owner apart from the question of the value of his property taken. Although reinstatement is not recognised under the Indian Act as is done in the English Acts, in order that the owner should not suffer any financial loss, he is paid 15% *solatium*.”

Principles underlying the Acquisition of Land (Assessment of Compensation) Act of 1919 (England) are as under:—²

- (1) No allowance shall be made on account of the acquisition being compulsory, *i.e.*, no extra *solatium* is allowed.
- (2) The value of land shall be taken to be the amount which the land if sold in the open market by a willing seller might be expected to realise: provided always that the Arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimant.
- (3) The special suitability of the land for any purpose shall not be taken into account if that purpose is a purpose to which it could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government Department or any local or public authority.
- (4) Where the value of land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained

1. Mirams.

2. From a letter to the author from Mr. G. B. Soparkar, B.A., L.C.E., F.S.I., A.M.P.T. Inst. (London), Consulting Surveyor to the Government of Bombay.

by any Court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account.

- (5) Where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that purpose, the compensation may, if the official arbitrator is satisfied that reinstatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement.
- (6) The provisions of Rule (2) shall not affect the assessment of compensation for disturbance or any other matter not directly based on the value of the land.

It would be seen from the above that the provisions of compensation as obtaining in the English Law at present are far more severe to the private individual than in the Indian Act. But this is not all. There are some special provisions of acquisition under the Housing Acts which are still stricter and when the house to be acquired, for instance, is for slum clearance or when it is an obstructive building, the compensation awarded is far lower than that awarded under the Indian Act and in addition the amount of compensation is recovered from the surrounding properties, which are bettered by such acquisition.

Distinction between "Value to the Owner" and "Market Value."

The 'Value to the Owner' forms the basis of Compensation under the English Law (Land Clauses Act).

The 'Market Value' forms the basis of Compensation under the Indian Law (Section 23).

The measure of Compensation under the English Law is not what the person who takes the land will **gain** by taking it but what the person from whom he is taking will **lose** by having it taken from him, *i.e.*, in other words, the market value is estimated not on the value to the Purchaser but on the value to the Owner. In short, English Courts look backwards to the late owner's loss, while the Indian Law looks forward to the purchaser's gain.

The term "Market Value" is the converse of what the Law in England contemplates but it has been interpreted according to principles similar to those laid down in English Law. According to the Indian Statute, the Value to the Owner is what he can realise from a Purchaser, while the 'Market Value' is what a Purchaser will give the Owner so that there is no substantial difference between the two terms.¹

II. Market Value must be distinguished from monopoly prices, *e.g.*

- (a) where the vendor possesses a unique property, *e.g.*, a corner plot of land with frontage on two or more important streets;

1. Bombay Government Resolution No. 6188 of 25-7-34.

- (b) where the need of the purchaser is unique, e.g., where he gets no access to a street unless he buys the other plot.

Monopoly price may be market value in certain cases, e.g.,

- (a) where the owner possesses unique property, i.e., where the owner possesses a natural or universal monopoly as against all other vendors. Whether he sells the property privately or at public auction, he is sure to get a unique price (which is not necessarily a monopoly price) but still it will be price obtainable in the market for the particular plot of land with its peculiar advantages. This may be then commercial value or market value;
- (b) where the need of the purchaser is unique, e.g., where he gets no access to a street unless he buys the other plot.

II. "Market Value" is not defined in the Land Acquisition Act.

It may, however, be roughly described as under—

It is the price which:—

- (a) a prudent and willing owner (who is not obliged to sell)
- (b) might reasonably expect to obtain from
- (c) a prudent and willing purchaser (who is under no necessity of having it)
- (d) in the open market (free bargain at arm's length).

NOTE:—(1) Market Value may be taken to mean the price which the owner might be expected to obtain for his property with full opportunities of time and occasion such as might be held reasonable under all the circumstances of the case.¹

(2) Market Value is not the same thing as cost price. The one may be more or less than the other.

(3) Market Value is not the same thing as Reinstatement Value (see further).

(4) Anything which produces no income, profit or advantage capable of expression in terms of money can have no market value.

(5) The term "Compensation" is wider than 'Market Value' of the land payable and includes damages, expenses, etc., payable to the owner.

But the view taken by the Indian Courts is not in conformity with the Indian Law on the subject. The Indian Courts have followed the decision enunciated by the Privy Council in *Narsingh Das vs. The S. of S. for I. in C.* (P. C. Appeal No. 40 of 1924). The decision was based on the dictum of an English Court (*Fraser vs. City of Fraserville*, (1917) A. C. 194) in respect of property not subject to the Indian Land Acquisition Act, 1894, Section 23,

1. 10 Bom. L. R. 907; also I. L. R. 55 Cal. 994.

which lays down that the Market Value of the land at the date of the publication of the notification under Section 4(1) should be taken into consideration by the Court.¹

IV. Recognised Methods of Determining Market Value²

The methods of the valuation may be classified under the following heads:—

(I) Sales:

(A) Comparison with sales of particular land acquired or part thereof.

- (i) Sales must be recent.
- (ii) Sales must be bona fide.
- (iii) Evidence of (offers) for purchase must not be given much importance, although evidence of such offers is admissible. Bonafide offers only should be considered.

NOTE:—Evidence of offer—given by the offerer himself—may be relevant but it gives only an index of the opinion of such offerer. Oral offers unsupported by documentary evidence do not carry any weight or afford any assistance.

(B) Comparison with Sales of adjacent land.³

- (i) Sales must be recent.
- (ii) Adjacent land must be similarly situated with similar advantages.
- (iii) Average prices of similar land-sales should be struck after eliminating abnormally high or low prices.
- (iv) Quantity as well as quality of land sold should be taken into consideration.

NOTE:—(1) (A) & (B) are direct basis of valuation.

- (2) In both the cases prices recorded should not be accepted unreservedly unless the relation of parties and antecedent facts are known, e.g., (1) Sale by a Hindu widow—implying possible future litigation will hardly command a fair price; (2) Sale to a creditor by a debtor may not be at correct market price.

(II) Capitalisation of profits:

- (A) On Rental Basis—i.e., present rental (or net annual income) may be capitalised at so many Years' Purchase. The number of years' purchase can be fixed by ascertaining the rate of return which the investors expect from the particular class of property.

1. Mirams.

2. Nanniah's "Law of Acquisition."

3. See A. I. R. 1953, Travancore-Cochin, p. 177.

NOTE:—For a full explanation of 'Years' Purchase' see Appendix No. 1.

- (1) Rent recoverable should be normal, *i. e.*, near the average of rent in the neighbourhood.
- (2) A fair allowance should be made for prospective rise in the rental.
- (3) The number of year's purchase that applies to one case may not apply to another. Each case depends on its merits.
- (4) Compensation is allowed on the basis of 20 years' purchase because the assumption is that a person who is given a sum of money in lieu of landed property may generally expect to invest that money in some other undertaking and obtain interest at 5 per cent. Hence a person who holds a lease should not get compensation on the basis of 20 years' purchase. *Radha Charan vs. Secretary of State, A.I.R. (30) 1943, All. 238.*

(B) Potential Value and probable user.

(1) General.

Potential Value—

- (a) Takes account of the beneficial purpose for which in the course of events within a reasonable period the land may be utilised (probable future user), *e.g.*, adaptability of agricultural land for building purposes.
- (b) Future utility must be estimated by prudent business calculation and not by mere speculation or impracticable imagination.
- (c) Price should be determined not according to present disposition but laid out in the most lucrative and advantageous way in which it could be disposed of. The case of *Collector of Poona vs. Kashinath Khasgiwalla (10 Bom. 989)* may be cited as an instance of "Potential Value." It was held in that case that where the land acquired was originally devoted to agricultural purposes, compensation was awarded on the footing of the most lucrative use of the land and it was not disputed that the most advantageous way was to use it for building purposes. The same principle was applied in another case, *in the matter of the Land Acquisition Act, Munji Khetsey (15 Bom. 279)* where the land acquired lay in the vicinity of a town where building was going on and there was a fair probability of the owner being able owing to its situation to sell or lease his lands for building purposes. In respect of land having a potentiality of being used as salt works, the owner is entitled to the market value of that potentiality (*A.I.R. 1929, P.C. 112*). The possibilities of the land as distinguished from its realised possibilities must be taken into consideration (*A.I.R. 1954 Andhra, p. 12; A. I. R. 1955, Mad. p. 943*).

- (d) Purpose for which the land is acquired should not be taken into account.
- (e) "Special adaptability of the land for the purpose for which it is acquired may be taken in consideration (Doctrine of special adaptability) if the special adaptability can have special value for other possible purchasers besides the acquiring authorities.
- (2) **Hypothetical Building Scheme:**
- (a) The scheme consists in an attempt to value a parcel of land by means of figures based upon the calculated financial results of an hypothetical erection of buildings on the land and its hypothetical development in the most profitable manner.

PROCESS:—

- (1) Land to be acquired is imagined to be covered with structures.
 - (2) Structures to be of as profitable a character as can be reconciled with existing and future circumstances of the demand.
 - (3) Net annual returns of such structures to be estimated.
 - (4) Capitalised value on the basis of these returns to be found.
 - (5) From the capitalised value should be deducted the calculated cost of construction—This gives the prospective value.
 - (6) From the prospective value—present value of the plot can be inferred by making various deductions on account of loss of interest on capital and advantage to the owner of getting cash payment and so being saved the trouble and risk of development.
- (b) **Difference between Ordinary Method and Hypothetical Method.**
- (1) The former ascertains the demand direct from the market. The latter pushes the inquiry further back into the causes which create a demand in a reasonable market.
 - (2) The Hypothetical method does not supersede the Direct method if proofs of sales, etc., are available.
 - (3) If calculations based on both methods approach figures very nearly the same, the result is entitled to great weight.

Miscellaneous:

- (a) **Reinstatement:** According to this principle the owner cannot be placed in as favourable a position as he was in, before the exercise of compulsory powers, unless such a sum is assessed as will enable him to replace the premises which could be of the same value. For example, when the land, (e.g., a church) proposed to be acquired is of such a nature that it is very difficult

to assess the loss, the method of reinstatement is applied and the amount of compensation is to be calculated according to the cost of acquiring an equally convenient site and erecting equally convenient premises. This method is taken into consideration of churches, schools, houses of exceptional character and business premises in which business can only be carried on under special conditions or by means of special licences. But the principle is not recognised in the Land Acquisition Act.¹

(b) **Frontage and Back Site—Valuation by Belts:**

- (1) Price of frontage land is no guide to price of rear land.
- (2) Valuation of frontage land bears proportion to its depth. What is suitable depth depends upon the character of buildings in the locality.
- (3) No hard and fast rule can be laid down as to the proportion between the value of the front land and the back land. Usually back land is supposed to be worth half the frontage land but this is not necessarily so.
- (4) The depth of frontage is a matter of importance. What is suitable depth must depend on the character of the buildings in the locality.
- (5) The value of a building frontage depends on the higher rents that can be obtained for shops or rooms facing the street and as the proportion of the rents to the lowest rents of the back rooms decreases so the value of the whole frontage land decreases.

N.B.—Front land prices do not affect the value of inferior back land.

- (6) It can best be settled by assuming that the owner of the property will make the best possible use of it and that the actual 'lay-out' of the property at the time of acquisition was in all circumstances of the case the most advantageous and lucrative, it being open to the owner to show that owing to special circumstances such as minority, litigation, poverty or unbusinesslike methods, full advantage had not been taken of the property.

NOTE:—The mode of valuation by division into belts is artificial. It does not give a reliable guide to estimate the market value inasmuch as it depends upon the depths of the belts assumed more or less artificially.

¹ L. Anderson, para. 157, p. 148.

(c) Valuation of Land with separate interests:

- (1) First ascertain the market value of the land on the footing that all separate interests combine to sell.
- (2) Apportion the sum among the various persons according to the value of their interests. (See *I.L.R. 33 Bom. p. 483*; and *44 Bom. L. R. p. 57*).

(d) A Yearly Tenant if required to give up possession before the expiry of the year is entitled to compensation:

(e) Market Value of Land covered by buildings:

Land and buildings when 'married' (technically so called) cannot be valued by taking separately the value of the land and the superstructure and taking the total as the value of the whole—because the market price is not the cost of the two. The rent of the land and the building cannot normally be separated. The proper method of valuation is by capitalising the net annual rent for the probable life of the building and then adding the present value of the land which will be available when the building dies.¹

The method involves—

- (1) Ascertainment of net rent.
- (2) Capitalisation of the net rent—depending upon—
 - (a) life of the structure, and
 - (b) rate of interest expected.
- (3) Present value of land which will fall vacant when building dies.

We consider these steps hereinbelow:—

(1) How the rent is to be ascertained:—

- (1) From evidence of previous renting of the premises.
- (2) Rental in the neighbourhood of similar property—by reducing each building into common denominator of say 100 sq. ft. dimension of habitable area or of so many *khans*, etc., making due allowance for different types of buildings.
- (3) After coming to gross rent, following deductions should be made:—
 - (i) Taxes which the owner pays (taxes paid by tenants to be omitted).
 - (ii) Annual cost of ordinary repairs (provided tenant is not liable to make such repairs); this is generally taken at 10% of the annual rent.

1. Anderson, para. 206, p. 179.

- (iii) Insurance premium; the rate of the premium varies with the different classes of risks of buildings.
 - (iv) Deductions for (a) vacancies, (b) bad debts, and (c) cost of collection (*e. g.*, low-class chawls and respectable tenancies). This is normally taken at 5% of the annual rent.)
 - (v) Sometimes deductions may have to be made by remodelling premises which are so insanitary that municipal requirements may have to be met (for buildings marked U.H.H. only breaking up value can be allowed).
- (2) After net rent is ascertained—we have to capitalise the same. This will depend on (a) the probable life of the structure and (b) expectation of rate of interest.

Future Life. A properly constructed building annually repaired with due care ought to last long enough for the net annual rent to be capitalised in perpetuity. Engineers in their valuation usually state the probable future life of a building. If this estimate is 50 years or more, the future life is estimated as if it were in perpetuity.

The life of a building is, therefore, the period during which it may be safely said that an economic return in excess of that sum which would be recoverable as ground rent from the bare site would be receivable from the combined entity of land and building.

The expectation of a future life is done only through experience. Points to be noted:—

- (i) Major defects, *e. g.*, settlements, cracks, floors, beams, repairs;
- (ii) Information as to age;
- (iii) Brief history of structural life;
- (iv) Capital repairs made.

There is no rule regarding rate of interest. Generally minimum rate for the best building is calculated at about 5%; for low-class chawls, etc., it may be 7% or even more.

- (3) Having ascertained net rent and number of years of its life apply the Tables for Selected rate per cent and ascertain the present value of that income; to which add the present value of the land which will become vacant when the building dies. This is technically termed the annuity basis of valuation.

(For examples of valuation see Appendix No. II.)

CHAPTER VII

COMPENSATION PAYABLE IN RESPECT OF LAND NOT ACQUIRED

Besides the market value and other items of compensation payable in respect of land acquired, there yet remains payment to be made in respect of lands not acquired but left in possession of its owner.

Such payments are to be made whenever there is damage caused to the land not acquired, in other words, for injurious affection to it. The subject is considered under the following three heads:—

- (1) Severance,
- (2) Injurious affection technically so called, and
- (3) Loss of easements dominant over the acquired property.

(1) Severance

[According to Section 23(1) (iii)]

Damages, (if any), caused by severance of the acquired land from the owner's other land—should be taken into consideration in awarding compensation.

- (a) **Meaning of "Severance."** When by reason of the acquisition of a portion of a plot, the portion acquired is severed from the other land of the person interested and his remaining land suffers damage in consequence of the severance, the damage is said to result from severance and the owner is entitled to damage under Section 23(1) (iii).

(1) It is not necessary that two pieces be in actual contiguity. They must be so near one another or so situated that the possession and control of each gives an enhanced value to all.

(2) There may be lateral severance as well as vertical severance, *e.g.*, when subsoil is taken for a tunnel.

- (b) **Some forms of 'Severance':**

(1) Where the remaining land of the owner consists of two or more pieces, *e.g.*, where a railway line passes over the acquired portion severing owner's lands on either side, the damage caused

for the loss or inconvenience due to want of passage from one to another is payable. It may be mitigated by providing a bridge or a level-crossing.

(2) Where the remaining land is reduced in value or rendered valueless, *e.g.*, where out of one acre 39 gunthas are acquired and only when one guntha is left which is neither useful for cultivation or building.

If portion left is quite useless—full value can be claimed.

(3) Where acquisition cuts off water from the lands not acquired rendering agriculture impossible—compensation is payable.

(4) Where the land affected by severance is stated to have been rendered valueless or nearly so—the whole may be taken over by Government.

(2) Injurious Affection

“Injuriously affected” means depreciated in market value. It is defined as a (physical) interference with some valuable right.

(1) Damages to the landed property:

e.g., loosening of foundations, obstructing light, drainage, access, road frontage, etc. These instances are akin to losses of easements.

NOTE:—The distinction between the injurious affection to lands of (1) persons whose lands are not acquired and of (2) persons whose lands are acquired. The latter alone is entitled to compensation under the Act. An owner or tenant can claim compensation under this head.

(2) Damage to the earnings:

e.g., where a dentist’s premises are acquired—he would take time to build up a similar practice at other premises—compensation for the risk to his business should be calculated.

Injury to goodwill should be compensated if goodwill is attached to the land and not solely to the personal reputation of the party. Retail trade involving neighbouring customer, difficulty of similar place being available are factors to be considered.

“Loss of Earnings” means loss of earnings from a business which at the time of the acquisition was a going concern—business which the person concerned is compelled to give up or carry it on elsewhere, which would give him less profit than what he was making at the former place. In that case he would be entitled to compensation on that account. *A.I.R.* (33) 1946, *Bom.* 142. Also 56 *Cal.* 819. But damage flowing from the stoppage of a business carried on unlawfully is not covered by the Section. 47 *Bom. L.R.*, p. 853.

(3) Damage due to loss of easements

If a piece of land (A) has a right of way over another piece (B) the former is said to be the dominant hereditament. If therefore ‘B’ is acquired, right of

'A' to pass over 'B' being extinguished, damage is payable to the owner of the dominant hereditament 'A' for this loss of easement.

It would appear that if the other land of the dominant owner is not acquired—he would come in as person 'interested' in the compensation money. If his or her other land is acquired, he would come in as a person injuriously affected under this Section 24(4).

Difference between Severance and Injurious Affection.

Really speaking both are injurious affections but in the case of severance the damage is directly due to cutting of the one portion from the other, e.g., where the portion left is too small for any use, whereas in injurious affection technically so called the damage is due to causes other than severance, e.g., by user of the acquired property in a manner which will diminish the value of the property unacquired as where Railways are constructed on acquired lands near the remaining property over which exists a cotton mill. The latter is exposed to risk involving higher insurance premium and loss in value of the premises.

In a recent leading case *Bishnu Prasad Chunder vs. Binoy Krishna Rahatgi*, A.I.R. (32) 1945, Calcutta 142, the following principles have been laid down in matter of the award of compensation when a servient tenement, which is subject of an easement right, is acquired:—

(1) The owner of the dominant tenement is entitled to be paid the value of his easement right because an easement being a benefit arising out of land is 'land' within Section 3 of the Act and the acquired premises would vest it the Government free from the easement of the owner of the dominant tenement.

(2) The owner of the acquired servient tenement would not be entitled to the full market value of his property as if there was no easement affecting it. The easement depreciates its value to him. He can only have the value of beneficial enjoyment thus restricted by the easement affecting it. A sum of money representing the depreciation of the value of the property by the existence of the easement thereon should therefore be deducted from its full market value and the balance only should be awarded to its owner.

(3) But the value of the easement right to the person entitled thereto is not necessarily the same as the amount by which the existence of that easement depreciates the value of the land subject thereto. 29 A.I.R. 1942 Bom. 105. (Approved.)

(4) Where the value of the easement is more than the sum deducted from the full market value of the servient tenement, which is acquired, in making payment to the owner thereof, the excess must be paid by the Government to the owner of the dominant tenement.

CHAPTER VIII
COMPENSATION (II)

(Negatively)

(Section 24)

What matters are *not* to be taken into consideration in estimating Compensation to be given?

(1) The degree of urgency which led to the acquisition.

Urgency of demand, though it plays a great part in purchases by private individuals in influencing prices, should not be taken into consideration when acquiring land for purposes under the Act.

(2) Any disinclination of the person interested to part with land acquired. Sentimental or personal objections cannot be considered.

(3) Any damage sustained by him which if caused by a private person would not render such (private) person liable to suit. (Damage without legal injury.)

There are many things which a man may do on his own land with impunity though they seriously affect the comfort, convenience and even pecuniary value which attach to the lands of his neighbour. In law these things are called '*damna absque injuria*' [damage without (legal) injury].

For doing these things, no action lies against the offender. If therefore such things are done on the lands acquired—no damage can be obtained by the owner who has retained a portion of his land. For example, an owner who receives a flow of water from adjoining lands, but who has not acquired any prescriptive right to receive such flow, cannot claim any damage if by acquisition such a flow is stopped because if a private party had stopped it he would not have been able to sue him for damages. In law it would not be an 'injury.'

(4) Any (prospective) *damage* (or depreciation) which is likely to be caused to the land acquired after the date of the declaration under Section 6 by or in consequence of the use to which the land acquired will be put to when acquired.

For example, if garden lands are acquired and are appropriated for a latrine, the owner will get compensation as for garden lands, without reference to the lower value they will consequently have.

(5) Any (prospective) *increase* to the value of the land acquired likely to accrue from the use to which it will be put to when acquired—should not be considered.

NOTE:—(1) The market value of the land in view of the use, which the land might, at the best, be ordinarily put to, at the time of the publication of the **declaration** should be taken into consideration. **But probable increase** in the value of the land **in future**, which might accrue from the use to which the land might be put **after its acquisition**, must **not be taken into consideration**.

(2) Although any enhancement of the value of the land due to the purpose for which it is acquired must be **disregarded**—**natural adaptability** of the land for a particular purpose—whether that be the purpose of acquisition or not—**should be taken into consideration**.

(3) Any damage which the owner sustains by severance or otherwise should not be set off against any benefits which he may get by the acquisition.

(4) It is a recognised principle to exclude from the assessment of compensation any enhancement or diminution in value consequent on the construction of works authorised by the special Act under which the assessment is made.

(6) Any increase to the value of the **other land of the person interested** (his remaining land) likely to accrue from the use to which the land acquired will be put. (See *Betterment* in Chapter XIX).

(7) 1. Any outlay or 2. Improvement or 3. Disposal of	}	on	}	the land acquired commenced, made, or affected
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without the consent of the Collector **after the date of the publication of the Notification** under Section 4(1).

A recent leading case, *Sub-Collector, Rajahmundry vs. Pillarisetti Parthasarathi Naidu and Another*, A.I.R. (29) 1942, Madras 739, on compensation, which laid down certain rules as regards land under peculiar circumstances:—

(1) Effect of Sale-Deed—

A sale-deed of neighbouring land more than six years prior to the date of notification under Section 4(1) cannot furnish proper basis for fixing the market value of the land sought to be acquired especially when the value of the sites in the locality has

increased by reason of the springing up of fresh amenities not in existence before.

- (2) When property is removed half a mile from the site to be acquired:—

Where the property covered by sale-deed is situated more than half a mile from the site to be acquired, the sale deed cannot furnish a proper criterion of the value of the land to be acquired.

- (3) For purpose of capitalising the net annual value:—

For the purpose of capitalisation the net annual value and not the gross rental value of the property to be acquired should be taken into account.

- (4) What is net maximum Compensation?

It is wrong to say that twenty years' purchase is the maximum compensation payable under the Act. The number of years' purchase which should be adopted in a given case must vary with individual cases and will have to be decided upon the material placed before the Court.

In the absence of evidence on the point, twenty years' purchase which is the rule of ordinary practice should be adopted as the basis for fixing the market value of the land to be acquired: [(38) 25 *A.I.R.* 1938, *Mad.* 33 Expl. and Rel. on: (41) 28 *A.I.R.* 1941, *Mad.* 684. Not approved. (P. 740b).]

- (5) When the Court can capitalise net annual income at 20 years' purchase for Compensation:—

The function of the Court in awarding compensation is to ascertain the market value of the land at the date of the notification under Section 4(1) of the Act. Where definite material is not forthcoming either in the shape of sales of neighbouring land at or about the date of the notification or otherwise the Court would not be erring on the wrong side if it fixes the market value by capitalizing the net annual income at twenty years' purchase.

CHAPTER VIII A

A LEADING CASE ON SECTION 23 AND SECTION 24

In a recent leading case *Government of Bombay v. The Century Spinning and Manufacturing Co. Ltd.* (44 Bom. L. R. 57) the following rules have been laid down for determining market value and compensation:—

(1) Factors to be considered in determining market value:

In order to determine the “market value” various factors have to be taken into consideration, amongst others, the size and shape of the land, the locality and its situation, the tenure of the property, the user, its potential value, that is, its value for future purposes, and the rise or depression in the value of land in the locality and even in its near vicinity. The Court also considers the evidence of what are called ‘Instances,’ that is to say, evidence of the price at which lands in the locality or vicinity have been sold and purchased and let about the time of the notification after making all due allowances for situation, and deducting from such sales and leases the price which the land in question would probably fetch if offered to the public. (*Per Wadia, J.*)

(2) How land to be valued:

The land under acquisition should be valued as a whole. It should be valued by considering it with all its advantages and drawbacks from a commercial point of view: 2 Cal. 103 and 33 Bom. 483, Rel. on (*Per Wadia, J.*)

(3) Value of Potentialities to be considered:

The market value of land is not to be ascertained merely by reference to the use to which it is being put at the time at which it has to be determined, namely, the date of the notification, but also by reference to its potentialities, i.e., by reference to the uses to which it is reasonably capable of being put in the future. The owner of the land is entitled to have the value of such potentialities ascertained even when the only possible purchaser of the potentialities is the authority purchasing under powers enabling compulsory acquisition (39) 26 A.I.R. 1939 P. C. 98, Rel. on (*Per Wadia, J.*); See also A.I.R. 1954 Andhra, p. 12.

(4) Nature of Instances required in determining market value:

It is not always possible to obtain instances precisely parallel in all their circumstances to the particular land acquired. There would be differences—small or great, under varying conditions, and what precise allowance should be

made for such difference is again not a matter which could be reduced to any hard and fast rule. At the same time it is necessary that the instances produced must relate to lands which on the whole have nearly the same conditions or quality and situation as the land acquired. Generally speaking, sales and leases long after the date of the notification are to be discarded, if it is proved that the values have been affected one way or the other by circumstances which have arisen after that date. (*Per Wadia, J.*)

(5) Compensation to be awarded in respect of Land:

(i) Subject to restrictive covenants.

There is nothing in the Land Acquisition Act to suggest that any person interested is to be paid for anything except the interest which he possesses, and where the claimants only possess an interest in the land subject to restrictive covenants, they can only be paid compensation for such land. The restrictive covenants imposed upon a land must prejudicially affect the value of the land. Although they may be of no benefit to the holder, it cannot be said that their existence depreciates the land only by a nominal sum. (*Per Beaumont, C. J. & Sen, J.*)

(ii) Which is freehold and subject to lease of 999 years at a nominal rent.

The difference between a free-hold piece of land and a piece of land leased for 999 years at a nominal rent and with no restrictive covenants, would be purely sentimental. But where there are restrictive covenants, experience shows that as time passes, and lands change hands, it becomes difficult to enforce covenants between freeholders, whilst it is not difficult to enforce covenants against lessees. Covenants are more detrimental in case of leaseholds than in the case of freeholds. (*Per Beaumont, C. J. & Sen, J.*)

(iii) Subject to lease under which lessee is entitled to remove building.

It cannot be said that in every case in which the land acquired is subject to a lease for a short term, under which the lessee is entitled to remove his building, the market value of the land must be increased by the amount of expense to which the lessee would be put: ('39) 26 *A. I. R.* 1939 P. C. 98 Expl. (*Per Beaumont, C. J. & Sen, J.*)

(iv) Subject to easements.

Where Government is seeking to acquire land, which is subject to an easement, it has got to pay compensation to the land owner, that is the owner of the servient tenement, and it has also got to pay compensation to the owner of the easement; and the value of the easement bears no relation to the value of the servient tenement. If it happens that the easement is of no great value, then Government may acquire both the servient tenement and the easement at a price which is less than the market value of the land free from the easement. (*Per Beaumont, C. J. & Sen, J.*)

(6) Measure of compensation for injurious affection and severance:

As to whether compensation for injurious affection and severance can be claimed, the test is whether the remaining land after the severance is as valuable as it was before the severance. The true measure of compensation when part of an entire area is taken is the depreciation in value of the remaining area: (1889) 14 A. C. 153, Rel. on. (*Per Wadia, J.*)

(7) Compensation in respect of severance and reduction of frontage:

Compensation allowed on the basis that the land acquired has a certain frontage will not cover the whole of the damage occasioned to the remainder of the land by reduction of the frontage. When a large proportion of frontage is acquired and a relatively small amount of frontage is left with the owner of the remaining land, he is entitled to some compensation in respect of severance. (*Per Beaumont, C. J. & Sen, J.*)

(8) Onus of proof when compensation is inadequate:

The burden of proof is ordinarily on the claimant to show that the award is inadequate and should not be accepted. (*Per Wadia, J.*)¹

(9) Value of evidence of experts in determining the market value:

In considering the fair market value of the land under acquisition, the evidence of expert witnesses is generally of assistance to the Court, but it has also its limitations. Every expert witness has his own set of conjectures of more or less weight according to his experience and personal sagacity with the result that the enquiry abounds with uncertainty and gives more than ordinary room for guess work. Further, the expert witness sometimes begins with a predetermined conclusion, and tries to adjust his figures, his answers and his conjectures to that conclusion. (*Per Wadia, J.*)

(10) Procedure to value all interests where there are several interests and apportionment of compensation:

The market value of the land means the market value of the concrete piece of land to which the notification applies, and not separate interests in it. The normal method contemplated by the Act is to take the market value of the land, and then to apportion that amongst the different interests. The Act does not lay down any hard and fast rule, and in special cases it may be desirable to adopt a different method: (33) Bom. 483 and 10 Bom. L.R. 657 Rel. on (*Per Beaumont, C. J. & Sen, J.*)

1. See also A. I. R. 1954, Cal. 551.

CHAPTER IX

RULES REGARDING THE 'AMOUNT' OF COMPENSATION TO BE AWARDED BY COURT

(Section 25).

Scope of the Section: The Section is concerned with the maximum and minimum amounts which the Court may award in each of the four cases, viz., (1) when the applicant has made a claim before the Collector; (2) where without sufficient reason he has refused to make a claim; (3) where without sufficient reason, the applicant has omitted to make a claim; and (4) where with sufficient reason he has failed to make a claim.¹

- I. If the applicant in response to Collector's notice under Section 9 has made a claim:

The amount awarded by the Court shall be—

- (a) not more than the amount claimed;
- (b) not less than the amount awarded by the Collector.

NOTE—(a) It may be more than the amount claimed for a particular item but it should not exceed the total amount claimed.

- (b) It may be less than the amount offered by the Collector under a particular head—though it cannot be less than the total amount awarded.

NOTE:—This Rule does not apply in England—where a jury may award an amount higher than the claim.

- (c) The word 'applicant' is intended to describe the person who puts in a written application under Section 18. He must be a person interested and who has not accepted the award.
- (d) In response to notice under Section 9 owner of land claiming compensation is not precluded from praying for enhancement of award by Land Acquisition Officer. *A.I.R.* 1949 *Mad.* 171.

- II. If the applicant has refused to make a claim without sufficient cause:
The Court cannot allow more than the amount awarded by the Collector.

1. See Velinkar's "Law of Land Acquisition."

NOTE:—(1) Neither can the amount be less than the Collector's offer because the Collector's offer is binding on the Government.

(2) Refusal is equivalent to omission without reasonable ground.

III. Where the applicant has omitted without sufficient reason to make a claim:—

The amount awarded by the Court cannot exceed the Collector's offer.

NOTE:—(1) Nor can it be less than the Collector's offer.

(2) It is for Court to decide what is sufficient cause, e.g., omission to receive under Section 9 is a sufficient cause; condonation by the Collector of the claimant's failure to specify the amount of his claim in the belief that he was not required to do, is a sufficient reason.

IV. When the applicant has omitted for a sufficient reason to make a claim:—

The amount awarded by Court may be

- | | | |
|-------------------|---|--------------------------------------|
| (1) not less than | } | the amount offered by the Collector. |
| and | | |
| (2) may exceed | | |

NOTE:—(1) Statutory allowance of 15% over the market value specified in Section 23 is to be awarded whether claimed or not.

(2) A failure to specify the amount claimed in respect of any particular sub-head of Section 23 is no bar to the Court to review the award of the Acquisition Officer in respect of such sub-head.

‘Sufficient reason’—The judicial test laid down for holding what constitutes “sufficient reason” is that the applicant should have acted in good faith and without negligence (See *Ranchhodliji vs. Acquisition Officer, Ahmedabad*, 46 *Bom. L.R.* p. 696, (approved and followed in *Subramania Chettiar v. State of Madras*, *A.I.R.* 1953 *Mad.* p. 943)

CHAPTER X

COURT'S AWARD (Sections 26 to 28)

- (i) It shall be in Judge's hand-writing and signed by him.
- (ii) It shall specify—
- (1) the amount awarded for market value under Section 23;
 - (2) the amount (if any) awarded for damages, etc., under each head of Section 23;
 - (3) the grounds of awarding each of these amounts;
 - (4) the amount incurred for cost of Court Proceedings;
 - (5) by what persons
and
in what proportion
- } cost of proceedings are to be paid.
- NOTE:—Award is a decree;
Grounds of Award is a judgment;
- } Therefore awards are appealable as provided in Section 54.
- NOTE:—When Collector's award is not upheld—costs shall be paid by the Collector unless the Court is of opinion that
- (1) applicant's claim was so extravagant or
 - (2) applicant was so negligent in putting his case before the Collector
- } that some
(1) deduction shall be made from his costs or
(2) that he should pay part of Collector's costs.
- (iii) The award may direct—
in case Court's award is higher than the Collector's—
that interest at 6%¹ shall be paid to the applicant on the excess amount from the date the Collector took possession to the date of payment in Court.²
- (iv) The direction as to interest over the excess amount of compensation is discretionary with the Court. But unless there are special reasons to the contrary, interest ordinarily should be granted to the claimant, specially when there is a big difference between the award given by the Collector and the amount eventually determined by the Court. (*Collector of Darrang v. Phani Bhusan Bose, A.I.R. (1955) Assam 124*).
- (v) The Court may order the cost to be paid by any person whether party to proceedings or not, e.g., the Court will have jurisdiction to order a trustee of a religious institution which is a party to the proceedings before it to pay the costs personally or order that the same shall be paid by the religious institution. *Sevugun Chettiar v. Revenue Divisional Officer, Devakottai, A.I.R. 1941 Mad. 198*.

1. The rate of interest is now reduced to 4% by Bom. Act No. XVIII of 1938.

2. Sections 26-28.

CHAPTER XI

'APPORTIONMENT' OF COMPENSATION

(Section 29)

Reference to Court under Section 30

The Act provides for two classes of references to the Judge, one to ~~assess~~ compensation described as being an award and appealable under Section 54 and the other to apportion the compensation. It provides for two separate and distinct forms of procedure.

Where there are several persons interested in the compensation.

(1) If they agree in the apportionment of the compensation—

The Collector shall specify the particulars of such apportionment.

NOTE:—Such an agreement may be expressed or implied if the parties receive payment without protest. The Collector's award thus accepted is conclusively binding on the parties.

(2) If dispute arises as regards

(a) the apportionment of the compensation or part thereof or

(b) as to the person to whom the same or part thereof is payable

the Collector may refer the dispute to the decision of the Court.¹

NOTE:—Distinction between reference under Section 18 and Section 30.

(1) Under Section 18 reference is made by the Collector on the application of a person interested.

Under Section 30 the Collector refers to the Court *suo motu* on the question of title when there is a dispute.

(2) Under Section 18 the Collector can be requested to refer the matter to Court and it seems that if he does not so refer, Court can be moved in the matter if the application is not time-barred. Under Section 30 it is at the discretion of the Collector to refer to Court. If he simply determines the amount and does not apportion—parties can go to Court by a suit.

(3) Section 18 refers to apportionment as one of the several items on which reference can be made.

Section 30 refers only to apportionment.

(4) Under Section 18 the enquiry is restricted to the interests of the parties before Court.

1. Sections 29-30.

Under Section 30 Court may add parties for final adjudication of the rights of all persons interested.

- (5) If the Collector or Acquisition Officer refuses or omits to make a reference under Section 30, the party is not precluded from going to the Court directly.

If a party does not demand an apportionment—reference, he can still sue the recipient of the compensation within 6 years under Section 31 (2).

Here the jurisdiction is not exclusive as it is in respect of the amount to be awarded (Section 18).

- (6) When the Court considers 'total amount' of compensation, the Collector or Acquisition Officer are necessary parties. In apportionment proceedings, Government have no interest and usually the Collector or Acquisition Officer does not appear.

- (7) Under Section 18 there is a definite period of limitation for application for reference.

Under Section 30 there is no limitation. The Collector may make it at any time.

NOTE:—The Principle of apportionment of compensation is not the same as the principles adopted in assessing compensation. The market value of land acquired may be based upon hypothetical considerations. The question of apportionment, however, must be based on the accurate determination of the value of the claimant's respective interests in the land.

The three main points of distinction between Section 18 and Section 30 are that Section 30 leaves the Collector with a power of discretion in the matter, which he does not possess under Section 18, that the subject-matter of reference under Section 30 is limited to cases in which the Government is not directly interested and that Section 18 alone contains a definite provision of limitation. *Nanakchand v. Piran Ditta* (A. I. R. 1941 Lahore 208.)

NOTE:—Composite reference under Sections 18 and 30. When there is a composite reference under Sections 18 and 30 to the Civil Court for the adjudication of the adequacy of compensation and also for apportionment of the amount between different persons to whom it is due, and both these are disposed of by one order, the order is an award within the meaning of Section 54 and the forum of appeal against it will be the High Court irrespective of whether the appeal is directed against the order as to the amount of compensation only or against the order about persons to whom it is declared to be payable (*Brahmeswara Devaru and others v. Rudraiah and others*, A.I.R. (1956) Mysore 28).

CHAPTER XII
PAYMENT OF COMPENSATION
OR
DEPOSIT OF SAME IN COURT

(Sections 31—34)

On making the award the Collector shall tender the amount payable to the person entitled thereunder except under the following contingencies when he shall deposit the amount in Court—

- (1) If the person entitled refuses to receive it.
- (2) If there is no person competent to alienate the land, e.g. where such persons are lunatics, idiots or minors.¹
- (3) But the deposit of the amount is not a condition precedent to the entertainability of the reference.²

NOTE:—In such cases, Court shall order.—

- (a) investment in the purchase of other lands; or
- (b) if that cannot be done forthwith, investment in Government or other approved securities until—
 - (1) they are invested in purchase of other land
or
 - (2) they are paid to the persons becoming absolutely entitled to it, e.g., minor on attaining majority.³
- (4) If there is any dispute regarding—(1) title to receive it or
(2) apportionment of it.

NOTE:—In this case as in case No. (1) aforesaid, Court may order investment in Government or approved securities and direct accumulation of interest and payment according to individual rights.⁴

NOTE:—(1) A person who receives money without protest will be construed to have accepted the award and will not be entitled to claim reference to Court under Section 18.

1. Section 31 (1) and (2).
2. I. L. R. 42 Bom. 54.
3. Section 32 (1).
4. Section 32 (1) and Section 33.

- (2) If a person receives the amount to which someone else is entitled, he may be made to pay the amount to the latter (1) in a suit¹ by the latter or (2) by a reference by the Collector under Section 30.²
- (3) In case of persons with limited interest in land, the Collector may, instead of cash payment, make arrangements either—
- (i) by grant of other lands in exchange. (As there is no money award in this case there need not be 15% solatium or interest).
or
- (ii) by remission of land revenue on other lands of the person
or
- (iii) by other method that may be equitable.³
- (4) In case of deposits—cost of proceedings of investments, of payment of interest, etc., shall be paid by the Collector (except cost of litigation between adverse claimants.)⁴
- (5) In case deposit is not made by Collector—he shall pay interest at 6%⁵ from the date of taking possession until the amount is so paid or deposited.⁶
- (6) Interest payable under Section 34 is upon the Compensation, *i.e.*, upon the compensation that is ultimately found to be due for the land acquired. (*Travancore Cochin State v. Chacko S. Alexander and others*, A.I.R. (1956) *Travancore Cochin* 121).

1. The period of limitation for the institution of a suit is six years under Article 120 of the Limitation Act.

2. Section 31 (2), proviso Third.

3. Section 31 (3).

4. Section 32 (2).

5. The rate of interest is now reduced to 4% by Bom. Act No. XVIII of 1938.

6. Section 34.

CHAPTER XIII

TEMPORARY OCCUPATION OF LAND

(Sections 35—37)

Temporary—Not more than three years from the date of occupation.

PROCEDURE

- I. When it appears to the State Government that any waste or arable land
 - (2) is required for public purpose or company
 - (3) for such term not exceeding 3 years from date of occupation they may direct the Collector to procure the occupation (and ask for such term as it shall think fit).

- II. The Collector shall serve notice upon persons interested and pay them such compensation (1) for the occupation and use and (2) for the materials to be taken out therefrom as may be agreed to by them.

If there is no agreement reached either as regards compensation or apportionment thereof, the Collector shall refer the matter to the Court for decision.¹

- III. Possession Taken:

When the amount is paid or agreement entered into or matter referred to Court	}	the Collector may enter and take possession for the purpose mentioned in the notice. ²
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- IV. Restoration of Land:

On the expiry of the term, the Collector shall pay compensation for the damage, if any, done to the land, and not provided for in the agreement, and restore the land.³

- V. Land Rendered Unfit:

If by such temporary use, land is rendered permanently unfit for the purpose for which it was used previously, the State Government shall proceed to acquire it permanently, if persons interested so require.⁴

NOTE:—If the Collector and persons interested differ regarding the condition of the land or any matter connected with the agreement, the matter shall be referred by the Collector to the decision of the Court.⁵

1. Section 35.

2. Section 36 (1).

3. Section 36 (2).

4. Section 36 proviso.

5. Section 37.

CHAPTER XIV

ACQUISITION FOR COMPANIES

(Sections 38—42)

NOTE:—The word ‘companies’ also includes (1) Registered Societies (2) Co-operative Societies and (3) (for the erection of dwelling-houses for workmen and provision of amenities directly connected therewith the term includes)—**Industrial Concerns** employing not less than 100 workmen.¹

NOTE:—The provisions do not apply to Railway or other companies for which Government is under an agreement bound to provide land. (See definition page 12).²

When the provision of the Act can be applied for the benefit of the Companies.

(1) They cannot be applied

(a) unless with the previous consent of the appropriate Government

and

(b) unless the company have executed an agreement with the appropriate Government.³

(a) Conditions for obtaining the consent of the appropriate Government.

In order that such consent may be forthcoming, the appropriate Government must be satisfied either (a) on report from the Collector under Section 5 (A) or (b) by an inquiry held by any such officer (and at such time and place as it shall appoint) that the purpose of acquisition is—

(1) to erect dwelling-houses for workmen employed by the company or for providing amenities directly connected therewith, or

(2) for construction of some work likely to prove useful to public.⁴

1. Sections 3 and 38-A.

2. Sections 38, 43 and 44.

3. Section 39.

4. Section 40.

N.B.—Land may be acquired for a company in which the public have a **direct** interest. So also the works carried out by the Company must be directly useful to the public, *e.g.*, land cannot be acquired for a spinning and weaving company or an iron foundry for it is not possible to predicate of them the terms on which the public shall be entitled to use them.

(b) **Agreement with the Company—for what matters it shall provide?**

It shall provide for the following matters:—

- (1) **Payment to Government of Cost of Acquisition.**
- (2) **Transfer of land to Company on such payment.**
- (3) **Terms on which the land shall be held by the Company.**
- (4) (a) the time within
(b) the conditions on
(c) the manner in } which the
(a) dwelling-houses or
(b) amenities
shall be erected or provided.
- (5) (a) the time within
(b) the conditions on } which the work¹ shall be executed
and maintained; and
(c) the terms on which the public shall be entitled to use the work.²
- (6) **Every such Agreement shall be published in the *Official Gazette*.³**

1. The word "work" has a very wide meaning. It is used in two senses of bestowing labour and that upon which labour has been bestowed. See *Radha Raman vs. State of U. P.*, A. I. R. 1954 All. p. 700.

2. Section 41.

3. Section 42.

CHAPTER XV

HOW NOTICES UNDER THE LAND ACQUISITION ACT ARE TO BE SERVED

(1) They must be signed by—

(1) An officer authorised in cases of notice under Section 4 (regarding entry for preliminary survey).

(2) By the order of the

(a) Collector

or

(b) Judge

} in any other case.

(2) They must be served—

(i) on the person named therein whenever it may be practicable,

(ii) if (i) cannot be found—on any adult male member residing with him,

(iii) if (ii) cannot be found—

(A) by affixing a copy on the—

(1) outer-door of the house in which the person

(1) ordinarily dwells, or

(2) carries on business, or

(2) in some conspicuous place in the office of the

(1) officer named under Section 4, or

(2) the Collector or

(3) in the Court house, and

(B) also in some conspicuous part of the land to be acquired:

Provided that if the Collector or Judge so direct, a notice may be sent—

(1) by post,

(2) in a letter addressed to the person named therein,

(3) at his last known place of residence, or

(4) address or place of business, and

(5) registered under the Post Office Act.¹

NOTE:—Service in this case may be proved by production of addressee's receipt.

But a notice by registered letter refused by the addressee and returned as such by the Post Office is held to be sufficient service in the absence of a regular receipt by the addressee.²

1. Section 45.

2. 23 C. W. N. 319.

CHAPTER XVI

WITHDRAWAL FROM ACQUISITION (*Section 48*)

Scope of the Section:—The Section provides that the Government may withdraw from the acquisition at any time before taking possession, except in a case covered by Section 36 (temporary acquisition). It does not apply when once the land is vested in the Government under Section 16.

Government shall be at liberty to withdraw from the acquisition of any land—

- (1) of which possession has not been taken or the award has not been made,
- (2) except in the case of temporary acquisition under Section 36.

Provided that

When Government withdraws from any such acquisition, the Collector determines and pays the amount of compensation—

- (1) due for the damage suffered by the owner on account of such notice or proceedings thereunder;
- (2) with all costs reasonably incurred by the owner in the prosecution of the proceedings.

NOTE:—(1) Compensation shall be determined on the principles mentioned in Sections 23 and 24.

- (2) A local body has no power to withdraw.

If for any reason, the necessity for the acquisition should disappear after Notification, discretion of withdrawal is vested absolutely in Government. Government may not agree to drop the acquisition at the convenience of the local body at whose instance and cost the land is to be acquired. Though in ordinary cases Government would assent to withdrawal, where, for example, the cost is beyond the means of the applicant.¹

- (3) If there were a withdrawal after payment (but before taking possession), compensation money may be recovered back by suit, if not otherwise recovered.²
- (4) Withdrawal after notification under Section 4 but before notification under Section 6 has been held not to carry a title to damages under Section 48(2).³
- (5) The acquiring authority may acquire any portion of the land in respect of which notice under Section 9 of the Act has been issued withdrawing the acquisition as to the rest.

1. Anderson, para. 305, p. 252.

2. Anderson, para. 307, p. 252.

3. Anderson, para. 303A, p. 251.

CHAPTER XVII

ACQUISITION OF 'A' PART of

(1) a house, (2) a manufactory or (3) other buildings.

(Section 49).

Scope of the Section:—The Section consists of two propositions. The first provides that if the owner is willing that the whole of a house, manufactory or the building should be acquired, he shall not be compelled to part with a part only of it. The second provides that when a claim for damages on account of severance is unreasonable or excessive, the Government may direct the acquisition of the whole land.

(a) **Instead of acquiring the whole, a part can be acquired under the Act, if—**

- (1) The 'Owner' has not expressed his desire that the whole should be acquired. If the Owner has expressed his desire that the whole should be acquired, the Collector must acquire or drop the whole. Desire of the Owner is, therefore, material.
- (2) The Owner who has expressed his desire that the whole should be acquired has subsequently withdrawn or modified his desire by notice in writing to the Collector before the latter has made his award.
- (3) The Court on a reference by the Collector decides that portion sought to be acquired is not 'a part' of the house, manufactory or other building, that is (1) he does not object to it or (2) waives his objections or (3) it is not really 'a part' of the whole.

(b) **What is 'a part'?**

If the portion sought to be acquired is "reasonably required for the full and unimpaired use of the house, manufactory or other building," it cannot be acquired separately against the wishes of the 'owner.' If the whole can be considered as 'one unit' fractions cannot be compulsorily severed. For example:—

Godowns necessary for residence of serjants are parts of the houses.

A well in a mill-compound supplying the engine with water by means of a pipe is a part of manufactory.

A garden let with the house is part of the house.

Whether or not the land is reasonably required is a question of fact depending upon the particular circumstances of each case. The burden of proving that the land is not a part rests on the acquiring body. If the burden is not discharged the objection of the owner will prevail and the whole will have to be considered as one unit and acquired.

If the Collector and the owner differ as to whether the land is a part, the Collector is bound to refer the matter to Court for decision—if he does not proceed to acquire the whole.

(c) Procedure:

(1) If the owner whose land is 'severed' makes unreasonable or excessive claim for damages under Section 23—State Government may order acquisition of the whole.

(2) In such case no fresh declaration or notices, etc., would be necessary but the Collector serves on the owner a copy of Government order and proceeds to make the award.

But where Government acquires a portion of a certain land and the owner desires that the whole of the land may be acquired under Section 49 (1), a fresh declaration of the whole land under Section 6 is necessary and non-compliance vitiates the whole proceedings and makes the Collector's award void and illegal.¹ In the absence of such an expression of desire on the part of the owner, the provisos to section 49(1) would not come into operation and the order of the Land Acquisition Officer refusing to refer the question to the Civil Court will be correct. (*A.I.R. (1955) Mad. 119*).

(3) If the claim of the owner that the 'land' forms part of the house or manufactory or building is rejected by the Court—he has still a right to claim damages under Section 23(1), (3) for severance.

(4) It is doubtful whether the order of the Court deciding whether the land is not a part is appealable or not. It was held in a number of cases that such an order was not a 'decree' and therefore not appealable.² A recent Madras case however seems to suggest that such an order is a decree and is appealable.³

(5) Where in a reference under this Section a Judge has acted beyond his jurisdiction, the High Court can set the matter right in revision under Section 115 of the Code of Civil Procedure.⁴

(6) There is nothing in the Scheme of section 49 which enables the statutory authority to dismiss an application either on the ground of delay

1. 17 Bom. L. R. 192.

2. 15 Bom. L. R. 802; 46 Cal. 861.

3. 55 Mad. 391.

4. 43 Cal. 665.

or on the ground of delay with laches on the part of the applicant. (*A.I.R.* 1956) *Mad.* 583.).

(d) Piecemeal acquisition:

Piecemeal acquisition, as such, is unwarranted by the Land Acquisition Act and *per se* illegal.

There is no room whatsoever in the scheme of the Act for the acquisition of an area of land covered by a declaration under section 6 in portions and by stages and by separate proceedings at successive points of time, still less any room for such acquisition of a single holding held in the same ownership.

More than one award has to be made only in the following two classes of cases:—

- (a) where the land in respect of which the declaration under section 6 has been made is under the ownership of different individuals, and
- (b) where the acquisition proceeding is held up by circumstances over which the acquiring authority has no control, *e.g.*, by an injunction or decision of a superior court and that injunction is subsequently dissolved or the decision overruled.

Subject to these two exceptions, the ordinary rule is that there can be no piecemeal acquisition in respect of land for which a declaration has been made under section 6 of the Act. (*Corporation of Calcutta vs. Omeda Khatun Bewa, A.I.R.* (1956) *Cal.* 122).

CHAPTER XVIII

RULES

(Section 55)

The appropriate Government has power to make rules for the guidance of officers in all matters connected with the enforcement of land acquisition. Rules may be amended from time to time after previous publication and have to be published in the *Official Gazette* and have then the force of law.¹

(For Rules framed by the Government of Bombay for the guidance of officers dealing with objections lodged under Section 5-A, see Appendix No. III.)

¹ Section 55.

CHAPTER XIX

ACQUISITION OF LANDS BY LOCAL BODIES IN THE STATE OF BOMBAY

1. Acquisition of Land under the Land Acquisition Act by Local Bodies. Skeleton Proceedings

1. (a) Officers or President or a Committee of Local Bodies consider that a particular piece of land is required for the purpose of the Act governing the Local Body.

NOTE:—A District Local Board cannot acquire land for the purpose of relieving overcrowding in villages.

- (b) They get prepared a plan of the land with a schedule of particulars regarding area, etc., and an estimate of the total cost of acquisition.

NOTE:—(1) In estimating the cost of compulsory acquisition they should include (1) the compensation on the basis of Sections 23 and 24 of the Act, (2) the cost of preparation of plans and preliminary inquiry by the Collector or Land Acquisition Officer. Government may engage a special staff, if necessary, and recover whole charge from Local Body or levy percentage charges, e.g., on the following scale:—

If compensation is under	Rs. 1000	5%	minimum	Rs. 10
Do.	do.	Rs. 5000	2%	„ „ 50
Do.	above	Rs. 5000	1%	„ „ 100

(Anderson, para 79, page 82).

NOTE:—(2) When sending application to Government for acquisition the local authorities should bear in mind the following points to which Mr. Mirams has drawn attention:—

- (a) Whether the property consists of land and buildings, or merely vacant land.
- (b) If land only, the land must be suitable for the purpose in view and in the public interest as inexpensive as possible.
- (c) In making the boundaries of the site no odd bits of lands should be left with the owner, which by themselves are of no use to him, in view of the smallness of the area left, or access to it being cut off.

- (d) Avoidance of temple, Masjid, Samadhi or any religious building or grave-yard, if possible.
- (e) When the proposal is to acquire a building, it should be borne in mind that a portion of the structure only cannot be acquired if the owner desires that whole of the property be taken. Whether any land proposed to be acquired, does, or does not form part of a building within the meaning of this Section, has to be decided by the District Court in the first instance, on an objection being raised by the owner.
- (f) If the proposal interferes with any public rights of way or water courses, etc., it is important to make requisite provision for meeting the case.
- (g) The suggestion with the above particulars is submitted to the General Board.

II. If the General Board approves the suggestion, it resolves that—

- (i) the particular land (identified by detailed particulars) is required for a particular public purpose for which it can incur expenditure under the Act;
- (ii) the acquisition proceedings should be undertaken under the Land acquisition Act;
- (iii) provision be made in the budget for the cost of acquisition from its funds.

III. The Local Body then submits an application to the Collector with a copy of its resolution and requests Government to acquire the land for the Local Body.

{For particulars required to be put in the application see Chapter II *ante*.}

IV. The Collector then sends copies to the Special Land Acquisition Officer for enquiry and report whether everything is in order, *i.e.*, plan, area, estimate and whether there is any objection to the acquisition. The Special Land Acquisition Officer enquires, inspects, collects data available, values roughly and reports. If the Collector is satisfied, he submits a draft notification to Government. If no Special Land Acquisition Officer is appointed, the Collector himself performs these functions.

V. If State Government is satisfied that Land is required for a public purpose and that proceedings should be taken—

Local Body may be asked to enter into an agreement with the appropriate Government for payment of cost of acquisition, etc., and also the value of the interest, if any, of Government in the said land.

(Such an agreement does not require stamp—See Section 51).

VI. The Local Body may be required to pay Government in advance the amount of estimated cost as a deposit on such date and in such instalments as Government may direct and further payments when deposits are exhausted.

If Government is satisfied that due provision has been made in budget, Government may not ask for advance but may require the Local Body to pay directly to the parties concerned the amount due under the award when it is made.

VII. Government then proceed to make a preliminary notification that the land is likely to be required for a public purpose and issue notices to the persons concerned (Section 4). After hearing their objections, Government (if they hold the objections invalid) issue final notification that the land is needed for a public purpose (Section 6) and ask the Collector to proceed with the acquisition.

VIII. The Collector or the Acquisition Officer proceeds to investigate claims. The Local Body is asked to send a lawyer or a departmental officer to represent the Local Body, who states the rate the Local Body is willing to pay and supports the same by evidence. The landlord names his figure and produces his evidence.

The Acquisition Officer weighs the evidence and makes his award of compensation, on the principles laid down in Sections 23 and 24. He embodies the award figures in an Award Statement which is sent to the President of the Local Body.

IX. If the award is not satisfactory to the Local Body it has no remedy because the award is binding on it.

If the award is unsatisfactory to any person interested in the compensation and he moves the Collector to refer the matter to the Court the Collector will give notice of such application and will ask the Local Body to assist him in defending the award under Section 50. He has to take all steps necessary to defend the award with the help of the Local Body. The Local Body may appear through an officer or pleader and adduce evidence for the purpose of determining the amount of compensation.

X. After the Collector's award (or after the Court's award, if there is a reference to Court) the Collector proceeds to take possession. But before possession is taken, the Local Body if it finds that the amount payable is prohibitive or beyond its means, it may move Government to withdraw from the acquisition. Government may agree to do so on the Local Body paying damage to parties suffering loss on account of such withdrawal.

NOTE:—Such withdrawal may be at any stage before possession is taken if Government sanction it. Government would sanction it only under exceptional circumstances.

- XI. If there is no withdrawal proceeding—the Collector takes possession of the same and hands over the same to the Local Body concerned. The Local Body, however, should take care that clear possession is given, *i.e.*—tenants, etc., are evicted. Such clear possession taken from the Collector vests the land in the body free from all encumbrances. The Local Body should also see that the Collector takes steps to get the transfer recorded in the books of the Sub-Registrar, in the Record of Rights, etc.
- II. Acquisition by Municipalities under the Bombay District Municipal Act, 1901, and the Bombay Municipal Boroughs Act, 1925.

Under the Municipal Acts, broadly speaking, there are three methods of acquiring land:—

- (1) By private negotiations resulting in an agreement with the vendor.
- (2) By appointment of Panchas or arbitrators to settle the amount of compensation payable.
- (3) By resorting to proceedings under the Land Acquisition Act.

Advantages of following the procedure under the Land Acquisition Act are sufficiently stated in the Introduction to this Handbook. One disadvantage or rather a drawback has been pointed out there, *viz.*, that the principle of recoupment, (*i.e.*, recovery of the cost of acquisition by acquiring land in excess of requirement and selling the excess at a profit) is not recognised by the Land Acquisition Act. This statement should be understood to mean that speaking strictly legally this Act, considered by itself without reference to other Acts, does not recognise the principle of recoupment. For practical purposes, however, the statement need not deter Local Bodies because the municipal Acts which permit recourse to the Land Acquisition Act do fully recognise this salutary principle of recoupment.

(1) Every Municipality may acquire and hold immovable property whether within or without the limits of the municipal district.¹

(2) When expenditure is proposed to be incurred for the acquisition of land beyond the limits of the municipality—say for building a reservoir for its water supply, sanction of Government or any officer duly authorised by it is necessary.²

(3) Such property shall be held and applied by them as trustees subject to the provisions and for the purposes of the Act.³

(4) Where there is any hindrance to the permanent or temporary acquisition of land or building required for the purposes of the Act—the Government

1. Section 50(1) of Bom. Dist. Mun. Act., 1901 and Section 63(1) Bom. Mun. Boroughs Act, 1925.

2. Section 52 of Bombay Act III of 1901 and Section 66 of Bombay Act XVIII of 1925.

3. Section 50(2) of Bombay Act III of 1901 and Section 63(2) of Bombay Act XVIII of 1925.

may after obtaining possession under the Land Acquisition Act or other existing law vest such land or building in the municipality on its—

- (a) paying the compensation awarded, and
- (b) repaying to Government costs incurred for acquisition.¹

NOTE:—Government may require the municipality to pay in advance estimated cost of compensation.

(5) In laying out, widening or otherwise improving a street, a municipality may acquire land in addition to that actually required for new carriage ways, footways and drains, for buildings forming the street and then lease or sell the surplus land to private persons.² This is called ['recoupment'] and is explained further.

(6) Special methods of acquiring land and of settling compensation have been provided in both the Acts for the following two cases:—

- (1) Setting back of buildings projecting beyond a regular line of a public street and paying compensation for the portion of the land so added to the street.
- (2) Acquisition of land which is within the regular line of a street and open or occupied only by platforms, verandahs, etc., and payment of compensation therefor.³

Method of awarding compensation in these cases has been provided.⁴

The amount of compensation is to be determined by a Panchayat of five persons, two to be appointed by the Municipality and two by the party to whom compensation is payable. Sar Panch shall be selected by the four-persons so appointed. If either party fails to appoint members or if the members fail to select a Sar Panch within one month from the receipt of written notice from the other, District Judge shall appoint them, if moved.⁵

If Panchayat fails to give decision within one month of the selection of the Sar Panch or of appointment of member by the District Court, the matter shall, on the application of either party, be determined by the District Court.⁶

1. Section 41 of Bombay Act III of 1901 and Section 52 of Bombay Act XVIII of 1925.

2. Section 90(2) of the Bombay District Municipal Act, 1901 and also Section 114 (2) of the Bombay Act XVIII of 1925. (Under the City of Bombay Municipal Act, 1888, recoupment is recognised in Section 296, where land is required for opening or widening a public street or for making a new public street. (*Khanderao Vithoba Kore vs. The Corporation of Bombay*, L. R. 51, I. A. 14).)

3. Section 92(1) and (2) of Bombay Act III of 1901 read with Section 160, and Section 119(1) and (2) of Bombay Act XVIII of 1915.

4. Sections 160 of Bombay Act III of 1901 and 198 of Bom. Act. XVIII of 1925.

5. Section 160(1) and (2) of Bom. Act III of 1901 and Section 198 of Bom. Act XVIII of 1925.

6. Section 160(3) of Bom. Act III of 1901 and Section 198 of Bom. Act XVIII of 1925.

The District Court shall, in cases of Compensation for land, follow the procedure provided by the Land Acquisition Act.

(1) It is not necessary that application should be made to the Collector.

(2) The Court will also have full powers to give and apportion cost of proceedings.¹

The following principles (in addition to those already mentioned before) govern Local Bodies when they acquire land for a public purpose, namely:—

Betterment:—It means an enhancement in the value of private property owing to an action or undertaking carried out by a public or statutory body. It is called “an unearned increment” as it does not include any improvement in the value of property from the personal action of the owner. Full betterment charges are levied from the owner either in lump or in instalments as a periodical tax.

The Land Acquisition Act entirely ignores ‘Betterment.’

Set off:—The amount of betterment accruing towards remaining property as a result of the undertaking or scheme is ‘set off’ against the amount of compensation payable to him for acquisition of his land.

Recoupment:—It gives the power to a municipal or other public body to take land beyond what is necessary for the actual execution of the work, so that some part at least of the improved value may be secured by the improving body to ease the burden of the tax-payers.²

This method pays more than the cost of acquisition and the cost of construction under the scheme.

III. Acquisition of Lands by Local Boards:

Every Local Board has power to hold and acquire property both movable and immovable, whether within or without its limits.³

When a Local Board requires any land for the purposes of the Bombay Local Boards Act, the Local Board has to move Government. The latter will then proceed to acquire it under the provisions of the Land Acquisition Act and on payment by the Local Board of the compensation awarded, the land shall vest in the Local Board.⁴

IV. Acquisition of Lands by Village Panchayats:

A Village Panchayat is competent to acquire and hold both movable and immovable property within or without its limits.⁵

1. Section 160(3) provisos (a) and (b) of Bom. Act III of 1901 and Section 198 of Bom. Act XVIII of 1925.

2. *Manilal Singh vs. The Cal. Imp. Trust*, I.L.R. 45 Cal. 343.

3. Section 47 of Bom. Local Boards Act, 1923.

4. Section 137 of the Bom. Local Boards Act, 1923.

5. Section 29 of the Bom. Village Panchayats Act, 1933.

As the Panchayats are under the authority of the Local Boards, acquisition of land, if any, is made by the Local Board in the manner described in its own case above.

V. Acquisition of Property in Greater Bombay:

*(The Bombay Municipal Corporation Act, 1888,
Sections 87, 90, 91, 296, 354-S and 354 T).*

Under Section 87, the Municipal Corporation has power to acquire and hold movable and immovable property whether within or without the limits of the City.

The Commissioner can acquire on behalf of the Corporation any immovable property for any purpose under the Act by agreement on such terms and at such rates not exceeding the maxima as shall be approved by the Improvements Committee. But in case the price to be paid for such property exceeds five thousand rupees, the agreement must be approved by the Improvements Committee, and if it exceeds ten thousand rupees, the agreement must be approved by the Corporation.¹

Where the Commissioner is unable to acquire any immovable property as laid down in the above section, the Commissioner may with the approval of the Improvements Committee apply to the Government who in their discretion order proceedings to be taken under the Land Acquisition Act.²

Subject to the provisions of Sections 90, 91 and 92 the Commissioner may—

- (a) acquire land for the purpose of opening, widening, extending or improving any public street and also buildings if standing on such land,
- (b) acquire if necessary in addition to the land and building, any land with buildings thereon outside the regular line or of the intended regular line, of any street, and may lease, sell or otherwise dispose of any such land or buildings on such conditions as he thinks fit as to their removal or creation of new buildings and the period within which the new buildings are to be completed and other such matters.³ In *Khanderao Vithoba vs. The Municipal Corporation of Bombay*, it was held by the Privy Council that **Bombay Municipality has power, while acquiring lands for streets, to acquire contiguous extra land with a view to resell and recoup expenditure incurred.**⁴
- (c) In the case of land acquired otherwise than by agreement for the purposes mentioned in Section 90 and Chapter XII-A of the Act, the provisions of the Land Acquisition Act to the extent set forth

1. Section 90(3) of the Bom. Municipal Corporation Act.

2. Section 91.

3. Section 296.

4. I. L. R. 48, Bom. 185.

in Schedule CC to the Bombay Municipal Corporation Act will apply.¹

Section 354-T of the Act provides that in determining the amount of compensation to be awarded for any land or building acquired under this Act, the following further provisions, besides those under the Land Acquisition Act, shall apply:—

- (1) The Court shall take into consideration any increase to the value of any other land or building belonging to the person interested likely to accrue from the acquisition of the land or from the acquisition, alteration or demolition of the building.

Note that Section 24 (*sixthly*) does not allow this and that it reduces the amount of compensation in case of frontage lands for road widening schemes as illustrated further by an example.

- (2) when any addition to, or improvement of, the land or building has been made after the date of the publication under sub-Section (1) of Section 345-G or Section 354-P of a notification relating to the land or building, such addition or improvement shall not (unless it was necessary for the maintenance of the building in a proper state of repair) be included, nor in the case of any interest acquired after the said date shall any separate estimate of the value thereof be made, so as to increase the amount of compensation to be paid for the land or building.

This is similar to Section 24 (*Seventhly*).

- (3) in estimating the market value of the land or building at the date of the publication of a notification relating thereto under Sub-Section (1) of Section 354-G or Section 354-P, the Court shall have due regard to the nature and the condition of the property and the probable duration of the building, if any, in its existing state and to the state of repair thereof and to the provisions of clauses (4), (5) and (6) of Section 354-T.

This is equitable and is recognised by the Land Acquisition Act.

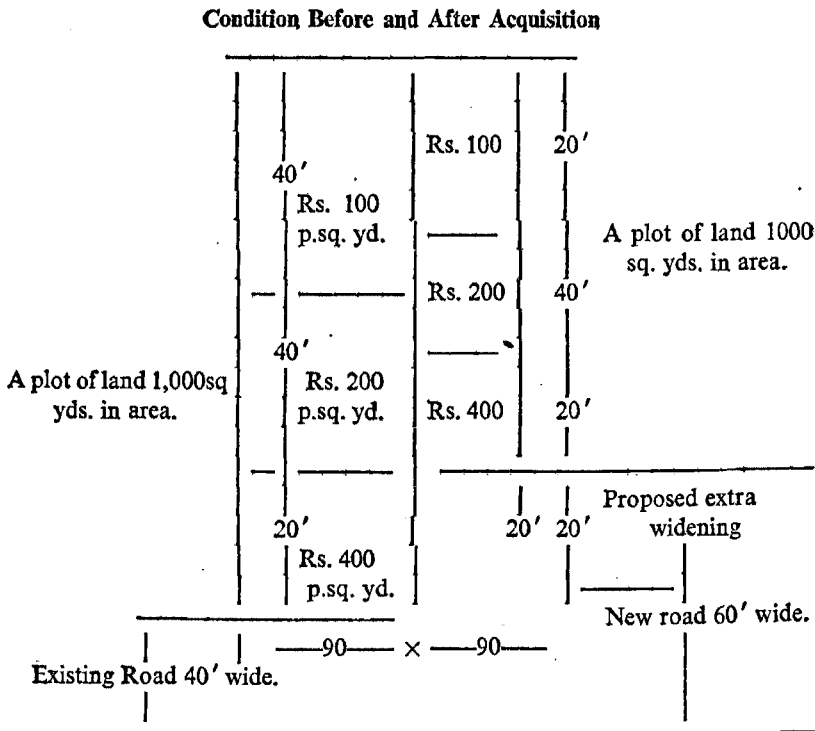
- (4) if in the opinion of the Court the rental of the land or building has been enhanced by reason of its being used for an illegal purpose, or being so over-crowded as to be dangerous or injurious to the health of the inmates, the rental shall not be deemed to be greater than the rental which would be obtainable if the land or building were used for legal purposes only, or were occupied by such a number of persons only as it was suitable to accommodate without risk of such overcrowding.

Explanation.—For the purposes of this Sub-section, overcrowding shall be interpreted as in Sub-section (4) and (5) of Section 379-A.

1. Section 354-S.

- (5) if in the opinion of the Court the building is in a state of defective sanitation, or is not in reasonably good repair the amount of compensation shall not exceed the estimated value of the property after the building has been put into a sanitary condition, or into reasonably good repair, less the estimated expense of putting it into such condition, or repair;
- (6) if in the opinion of the Court the building being used or intended or likely to be used for human habitation, the amount is not reasonably capable of being made fit for human habitation, the amount of compensation for the building shall not exceed the value of the materials, less the cost of demolition.

Example of Acquisition of Land for Road Widening under Land Acquisition Act.¹



Assume a hypothetical plot of land 100' in depth and 90' wide situated on a 40' main road which it is proposed to be widened to 60' the existing road is flanked on either sides with shops on an average 20' in depth from road frontage. Behind the shops are residences of the shop-keepers and behind the residences, open court-yards used for stocking packing cases, etc.

Calculating on the basis of rental value, the land value for the front 20' strip used for shopping purposes works out to pay Rs.400 per sq. yd. The rear residential area 40' deep is worth Rs. 200 per sq. yd. and the court-yard in the rear Rs. 100 per sq. yd.

Now according to the provisions of the Land Acquisition Act, the owner would claim for the loss of his front 200 sq. yds. at the rate of Rs. 400 per sq. yd., *i.e.*, Rs. 80,000. However, the right hand side plot shows the position of the plot after the acquisition. Inasmuch as the acquisition is for road widening purposes the front land useful for shopping is only moved back by 20' making a consequential movement of the residential area and reducing the court-yard by 20'. Thus, what the owner actually loses is 20' depth of rear Court-yard at Rs. 100 per sq. yard and not front land. This is worth only Rs. 20,000 and it is this correct compensations which is payable under Section 49 of the Bombay Improvement Act¹ as the advantage accruing to the remaining land is to be considered. This is also the amount of compensation payable under English Acts as calculated by what is called "Before and After" method of Valuation. But this is forbidden under the Land Acquisition Act. It will thus be clear that it is inequitable to pay Rs. 80,000 under the Land Acquisition Act for road widening acquisition though it may be strictly legal. It is necessary, therefore, to find out a *via media* and the best method is to compensate the owner according to the average all over value of his whole plot, *i.e.*, at an average rate of Rs. 200 per sq. yd. *i.e.*, at Rs. 40,000.

1. Now repealed and embodied in Section 354-T of the Bombay Municipal Corporation Act.

APPENDIX NO. I.

A NOTE ON YEARS' PURCHASE

(a) Year's Purchase:¹

(i) PERMANENT FIXED INCOME.

Suppose your investment of Rs. 100 in a particular security brings you Rs. 4 per annum and you expect that income permanently you can describe your investment as worth twenty-five times your annual income of Rs. 4:— $4 \times 25 = 100$. In other words, the price of your investment is **25 Years' Purchase**.

This means mathematically—

Interest	Year's Purchase	Sum invested
<i>i.e.</i> —————	—	= —————
4	25	100
	sum invested	
So year's purchase = —————		
	sum of interest	

i.e. Years' Purchase can be defined as the figure arrived at by dividing the sum invested by the rate of interest or net annual income.

If we know the annual income only and we wish to find the capital value we must multiply the figure of "Years' Purchase."

What figure shall we adopt in each case as the "Years' Purchase"?

Suppose in the money market people find it safest to invest 100 rupees in a particular security which produces 4 rupees per annum only we can say, as calculated above, that the "Years' Purchase" of the particular security is

$$\frac{100}{4} = 25.$$

If there is another security which is not considered so very safe but it produces Rs. 10 per year on every 100 Rupees invested, the Years' Purchase would be

$$\frac{100}{10} = 10.$$

We know that more secure you wish to keep your capital and annual income, you get less interest, *e.g.*, 4% mentioned above—but there is **higher years' purchase** in such cases. Conversely (*e.g.*, 10% abovementioned) the higher the rate of interest, the lower the years' purchase.

1. This note is taken from the 'Valuation of Real Property's, a paper read by Mr. G.S. Gupte, *†A., *C.E.*, at the Engineers' Club, Poona, on 7th July 1917.

(ii) TERMINABLE INCOME.

In the above cases, we have based the figure of "Years' Purchase" on the understanding that the yearly income, say 4%, is to accrue for ever.

But if this income is to last only for a limited number of years, plainly its value is less and, therefore, the "Years' Purchase" would be lower.

In valuing a temporary income, the number of years of purchase has to be obtained from valuation tables, otherwise a laborious calculation involving the use of the rules of compound interest has to be made. The difference between a permanent and a terminable income is the amount of the allowance which must be made in the case of a terminable income to provide for the reinstatement of the capital at the termination of the income. In such a case the annual income does not wholly represent the interest on capital invested. Part of it goes as Sinking Fund necessary for redemption of capital and the remaining income shows the return on capital. A Sinking Fund is the annual sum which must be invested for redemption of capital, *i.e.*, a sum which, laid by every year, accumulates at compound interest at the termination of the income, to the capital value of the income. A Sinking Fund is usually invested at a lower rate of interest than that yielded by the main investment. This is, because of the following causes:—

- (1) The Sinking Fund is a small annual investment, and as such the rate of interest it fetches is low.
- (2) The Sinking Fund has to be invested in a very secure investment, to ensure the repayment of capital at the termination of the income. The rate per cent adopted till now for purposes of the Sinking Fund was $3\frac{1}{2}$ per cent that being the rate of interest paid by Government paper.

Coming to the years' purchase again, the years' purchase in the case of a terminable annuity is a figure which, if multiplied by the given income, will assign to it such a capital value that a buyer will find that the income he has purchased is sufficient to allow him the full interest which he expected on his capital during the whole term and also a surplus income which, if invested annually, will accumulate at compound interest to the amount of his original capital at the termination of the income.

The years' purchase for a definite period set out in the tables is usually calculated either from the table of Present Value of Re. 1 or from the table of "Annual Sinking Funds." When using the former tables, the necessary figure is obtained by summation of the values of one Rupee due after one year, two years, three years, and so on. Supposing we want to arrive at the value of an

annuity of one Rupee to continue for five years, the rate of interest being 6 per cent, then the present value of one Rupee due after—

1 year at 6 per cent is94,33,962
2 years at ,, ,,88,99,964
3 ,, ,, ,,83,96,193
4 ,, ,, ,,79,20,937
5 ,, ,, ,,74,72,582

Total 4,21,23,538

and years' purchase for 5 years at 6 per cent is 4,21,23,538, or this figure may be obtained by the latter method as below:—

$$\begin{aligned}
 \text{Y. P.} &= \frac{\text{Capital Value}}{\text{Interest} + \frac{\text{S.F.}}{1}} \\
 &= \frac{.06 + .177,396}{1} \\
 &= 4.212.
 \end{aligned}$$

.06 is the interest at 6 per cent of one Rupee for one year and .177,396 is the Sinking Fund for the accumulation of one Rupee in five years at 6 per cent. This method is much simpler to use provided a table of Sinking Funds is at hand.

In the above case both the Sinking Fund and the Capital are supposed to be invested at the same rate. But this is rarely the case. Assuming the Sinking Fund to be invested at 5 per cent, and the capital at 7 per cent, then the years' purchase for five years would be

$$\frac{1}{.07 + .1809748} = \frac{1}{.2509748} = 3.98.$$

Such a Years' purchase based on two rates of interest is called a Y. P. on the dual rate principle.

(b) Capitalization of the Net Annual Rent.

How made:—In calculating the market value of land by capitalising annual net profit, it depends on the circumstances of each case at what rate the property should be capitalised. The rate per cent depends upon various circumstances especially upon the market and security. The greater the security the smaller the rate of interest. The rate of interest is lower when the risk is infinitely smaller as in the case of G. P. Notes. The rate of interest is then the return that one expects from the class of one's property. We must first fix this return and then determine the years' purchase to be allowed as explained above. It is the quotient arrived at by dividing 100 by the figure of the return expected. If the property is to be valued in perpetuity, i.e., 50 or 60 years, multiply the figure representing net annual return by the figure representing the years' purchase.

Thus, if Rs. 1,000 represents the net annual return and 20 years' purchase is to be allowed, the capitalised value of the property is, $1,000 \times 20 = 20,000$.

In the case of a building having a future life of less than 50 years:

Determine the capital value of the net annual rent.

Suppose, the future life of the building to be 20 years

The net annual rent is Rs. 100.

What we have to do is to get the capital value of Rs. 100 for 20 years at a certain rate of interest. This latter will depend upon the rate prevailing in the market, *i.e.*, what sum of money invested at 5% would yield Rs. 100 per year for 20 years. This is determined by reference to valuation tables.

In short we have to see the present worth of 'x' rupees which a person would get after 20 years at the prevailing rate of interest. The present value is otherwise called the value of reversion.

How this is determined:—Subtract the present value of an annuity for a given number of years from the present value of a perpetuity and we get the present value of that perpetuity deferred for that given number of years. For example, the present value of a perpetuity of one Rupee at 4% per annum is Rs. 25. The present value of an annuity of Rupee One for 20 years at 4% is Rs. 13.5903. Deduct the latter amount from the former (Rs. 25—13.5903) we get Rs. 11.409.

This is the present value of the reversion after 20 years of a perpetuity of one Rupee.

APPENDIX NO. II.

**EXAMPLE OF VALUATION OF RENTAL BASIS IN
PERPETUITY.¹**

Land and Building:

Buildings	88000 C. Ft.	Rs.
Cost of construction at annas 8 per C. Ft. ..		44,000
Future life—40 years		
Annual rent— $270 \times 12 =$ Rs. 3,240		
<i>Less</i>		
Outgoings		Rs.
Rates at 13.52 p. c. ² on Rs. 3,240		438.04
Vacancies, bad debts at $7\frac{1}{2}\%$		243.00
Repairs at 1% on $\frac{9}{10}$ th of Rs. 44,000 or about 12.2% of the gross annual rent ..		396.00
Sinking Fund at $4\frac{1}{2}\%$ on Rs. 44,000 for future life of 40 years		409.20
Insurance at 14% on $\frac{9}{10}$ th of Rs. 44,000 ..		55.44
		1541.68
Net annual return (Rs. 3240-1541.68) ..		1698.32
Years' purchase $16\frac{2}{3}$ Capital Value Rs. $1698.32 \times 16\frac{2}{3}$ —		28,305
Add 15% for compulsory acquisition		4,245
		Rs. 35,550

-
1. Adapted from Velinkar's Law of Compulsory Land Acquisition and Compensation," page 126.
 2. According to the current municipal rates of 18.1N p.c. of the rateable value the current percentage rent would be 15.75 and not 13.52 p.c.

**Example of Valuation of Land and Building on
Terminable Annuity Basis¹**

Land with Building	6000 sq. yds.	Rs.
Estimated cost of construction on an area of 1000 sq. yds.		30,000
Normal rent p. m. —Rs. 200 ..		
Future life—40 years	Rs.	Rs.
(1) Gross Annual rent—Rs. 200 × 12		2400
Less outgoings ..		
(a) Municipal Taxes at 15% on Rs. 2400	360	
(b) Vacancies, collection charges, bad debts at 4% on Rs, 2400	96	
(c) Repairs at 8% on Rs. 2400	192	
(d) Insurance at 1/5th on 9/10th of the cost of construction, i.e., Rs. 30,000	54	
	702	
Net annual income (Rs. 2400—702)		1698
For 40 years purchase at 5½% allowing for redemption of capital at 5% years purchase 15.82	Rs. 1698 × 15.82	2686.32
<i>Deduct</i>		
Repairs necessary to maintain rent allowed, viz.		862
		2600.32
(2) Reversion to land value		
Area 5000 sq. yds. at Rs. 15 per sq. yard—5000 × 15—Rs. 75000		
Deferred for 40 years at 5%—		
Rs. 75000 × .14		10500
(3) Extra vacant land—1000 sq. yds, Value of the same at Rs. 15 per sq. yard ..		15000
(4) Well—Nil (as the value of the well is included in rent)		
(5) Value of trees		100
(6) Material of outhouses		500
		52100.32
Total value of land and building being the total items (1), (2), (3), (4), (5), (6)		

1. Adapted from Velinkar's "Law of Compulsory Land Acquisition and Compensation," pages 128-129.

Less

Capitalized value of Government assessment Rs. 10 per annum at

25 years' purchase or 4%— 10×25 250*Add*

21850.32

(a) 15% for compulsory acquisition

(3/20 \times 51850) 7777.5

(b) compensation for

(1) severance—Nil

(2) expenses of removal 500

Loss of rent or profit for

3 months = 200×3 600

Total .. 60727.5

APPENDIX NO. III.

**RULES FOR THE GUIDANCE OF OFFICERS IN DEALING WITH
OBJECTIONS LODGED UNDER SECTION 5-A.**

Notification No. 9173, R.D., 4th Oct. 1926, B. G., 1926, Pt. 1, p. 2249.

In exercise of the powers conferred by section 55 of the Land Acquisition Act, 1894 (1 of 1894), hereinafter referred to as the Act, the Governor-in-Council is pleased to make the following rules for the guidance of officers in dealing with objections lodged under Section 5-A of the Act:—

1. Whenever any notification under section 4 of the Act has been published but the provisions of Section 17 have not been applied, and the Collector has under the provisions of Section 4 (1) issued notices to the parties interested, and on or before the last day fixed by the Collector in those notices in this behalf any objection is lodged under Section 5-A (2) : *firstly*, the Collector shall record the objection in his proceedings; *secondly*, the Collector shall consider whether the objection is admissible according to these rules.

2. To be admissible (a) an objection must be presented in writing by a party interested in the notified land and must be presented within thirty days after the date of publication of the notification under section 4 or within such further period as may be fixed by the Collector, (b) it must allege some specific objection, such as these:—

- (i) the notified purpose is not genuinely or properly a public purpose;
- (ii) the land notified is not suitable for the purpose for which it is notified;
- (iii) the land is not so well suited as other land;
- (iv) the area proposed is excessive;
- (v) the objector's land has been selected maliciously or vexatiously;
- (vi) the acquisition will destroy or impair the amenity of historical or artistic monuments and places of public resort; will take away important public rights of way or other conveniences, or will desecrate religious buildings, grave-yards and the like.

3. After admitting an objection and after having given the objector an opportunity of being heard either in person or by pleader, the Collector shall decide whether it is desirable to hear oral or documentary evidence, which under Section 14 or Section 40 of the Act he has power to call for. If evidence

tendered by the objector is admitted, the Collector shall also afford the other party an opportunity of rebutting it by other evidence or of cross-examining the witnesses.

If he admits evidence, he will fix a time and place for hearing it; and will hear and record it in his proceedings.

4. Agents, other than pleaders will not be allowed to appear on behalf of persons interested in an enquiry under Section 5-A of the Act.

5. After completing the record of evidence, the Collector shall submit his report and recommendation as to each objection, whether inadmissible or admissible, for the orders of the Government under section 5-A (2) of the Act.

APPENDIX NO. IV

ACT No. I OF 1894.¹

(2nd February, 1894).

An Act to amend the law for the acquisition of land for public purposes
and for Companies.

(As modified upto the 1st April, 1952).

WHEREAS it is expedient to amend the law for the acquisition of land needed for public purposes and for Companies 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.—(1) This Act may be called the Land Acquisition Act, 1894;

(2) It extends to² the whole of India (except Part B States); and

(3) It shall come into force on the first day of March, 1894;

2. (Saving).—*Repealed partly by the Repealing and Amending Act 1914 (X of 1914), s. 3 and Sch. II, and partly by the Repealing Act, 1938 (I of 1938), s. 2 and Sch.*

1. For Statement of Objects and Reasons, see Gazette of India, 1892, Pt. V., p. 32; for Report of the Select Committee, see *ibid*, 1894, Pt. V. p. 23; and for Proceedings in Council see *ibid*, 1892, Pt. VI, p. 25, and *ibid* 1894, pp. 19, 24 to 42.

This Act has been declared to be in force in—

(1) Sonthal Parganas by the Sonthal Parganas Settlement Regulation, 1872 (3) of 1872), s. 3;

(2) Khondmals District by the Khondmals Laws Regulation, 1936 (4 of 1936), s. 3 and Sch.; and,

(3) Angul District by the Angul Laws Regulation, 1936 (5 of 1936), s. 3 and Sch.

The Act has also been declared by notification under the Scheduled Districts Act, 1874 (14 of 1874), to be in force in (1) the Districts of Hazaribagh, Lohardaga (now called the Ranchi District see Calcutta Gazette, 1899, Pt. I, p. 44) and Manbhum, and in Pargana Dhalbhum and the Kolhan in the District of Singhbhum—see Gazette of India, 1894, Pt. I, p. 400; and (2) the District of Palamau, see Gazette of India, 1894, Pt. I, p. 639.

This Act has been amended in its application to—

(1) Bombay by Bombay Act 18 of 1938.

(2) Bengal by Bengal Act 2 of 1934.

(3) Madhya Pradesh by Madhya Pradesh Acts of 27 of 1939, 7 of 1949, 28 of 1949, 3 of 1950.

(4) Madras City (locally) and its neighbourhood by Madras Act 16 of 1945, s. 73, and 37 of 1950.

(5) Cawnpore Area (locally) by U. P. Act 6 of 1945, s. 114 and Sch.

(6) Uttar Pradesh by U. P. Act 10 of 1945,

(7) Bihar by Bihar Acts 8 of 1946, 23 of 1948, 17 of 1951, and

(8) Punjab by East Punjab Act 15 of 1948.

2. Subs. by the A. O. 1950 for "all the Provinces of India."

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 anything 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 “Collector” means the Collector of a district, and includes a Deputy Commissioner and any officer especially appointed by the ¹(appropriate Government) to perform the functions of a Collector under this Act:
- (d) the expression “Court” means a principal Civil Court of original jurisdiction, unless the ¹(appropriate 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:
- (e) the expression “Company” means a Company registered under the ²Indian Companies Act, 1882 (VI of 1882) or under the (English) Companies Acts, 1862 to 1890, or incorporated by an Act of Parliament ³(of the United Kingdom) or ⁴(by an Indian Law), or by Royal Charter or Letters Patent ⁵(and includes a society registered under the Societies Registration Act, 1860 (XXI of 1860), and a registered society within the meaning of the Co-operative Societies Act, 1912 (II of 1912):
- 3((e) the expression “appropriate Government” means, in relation to acquisition of land for the purposes of the Union, the Central Government, and, in relation to acquisition of land for any other purposes, the State Government):
- (f) the expression “public purpose” includes the provision of village-sites in districts in which the ¹(appropriate Government) shall have declared by notification in the Official Gazette that it is customary for the Government to make such provision; and
- (g) the following persons shall be deemed persons “entitled to act” as and to the extent hereinafter provided (that is to say)—
trustees for other persons beneficially interested shall be deemed the persons entitled to act with reference to any such case, and

1. Subs. by the A. O. 1950 for “Provincial Government.”

2. See now Act VII of 1913.

3. Ins. by the A. O. 1950.

4. Subs. by the A. O. 1937 for “of the G. G. in C.”

5. Added by Act 17 of 1919, s. 2.

that to the same extent as the persons beneficially interested could have acted if free from disability;

a married woman, in case to which the English Law is applicable, shall be deemed the person so entitled to act, and whether of full age or not, to the same extent as if she were unmarried and of full age; and

the guardians of minors and the committees or managers of lunatics or idiots shall be deemed respectively the persons so entitled to act, to the same extent as the minors, lunatics, or idiots themselves, if free from disability, could have acted:

Provided that—

- (i) no person shall be deemed "entitled to act" whose interest in the subject-matter shall be shown to the satisfaction of the Collector or Court to be adverse to the interest of the person 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 his 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 Chapter XXXI of the ¹Code of Civil Procedure (XIV of 1882) shall, *mutatis mutandis*, apply 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 his 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.

PART II

ACQUISITION

Preliminary Investigation

4. Publication of preliminary notification, and powers of officers thereupon.-

(1) Whenever it appears to the ²(appropriate Government) that land in any locality ³(is needed or) is likely to be needed for any public purpose, a notification to that effect shall be published in the Official Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

1. See now the Code of Civil Procedure, 1908 (Act 5 of 1908), Sch. I, Order XXXII.

2. Subs. by the A. O. 1950 for "Provincial Government."

3. Ins. by Act 38 of 1923, s. 2.

(2) Thereupon it shall be lawful for any officer, either generally or specially authorized by such 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 adapted 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 mark 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 line 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 seven days' notice in writing of his intention to do so.

5. **Payment for damage.**—The officers so authorized 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 decision of the Collector or other chief revenue officer of the district, and such decision shall be final.

¹(Objections)

¹5A. 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 or for a Company may, within thirty days after the issue of the notification, object to the acquisition of the land or of any land in the locality, 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 or by pleader 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 ²(appropriate Government) together with the record of the proceedings, held by him and a report containing his recommendations on the objections. The decision of the ²(appropriate Government) on the objections shall be final.

(3) For the purposes 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.)

1. This Section with its heading was inserted by Act 38 of 1923, s. 3.

2. Subs. by the A. O. 1950 for "Provincial Government".

Declaration of intended Acquisition

6. Declaration that land is required for a public purpose.—(1) Subject to the provisions of Part VII of this Act, ¹(when the ²(appropriate Government) is satisfied, after considering the report, if any, made under section 5A, subsection (2),) that any particular land is needed for a public purpose, or for a Company, a declaration shall be made to that effect under the signature of a Secretary to such Government or of some officer duly authorized to certify its orders:

Provided that no such declaration shall be made unless the compensation to be awarded for such property is to be paid by a Company, or wholly or partly out of public revenues, or some fund controlled or managed by a local authority.

(2) The declaration shall be published in the 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 area, 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 the land is needed for a public purpose or for a Company, as the case may be; and, after making such declaration, the ²(appropriate 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 or for a Company, the ²(appropriate Government) or some officer authorized by the ²(appropriate 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 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 claims to compensation for 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 fifteen days after the date of publication of the 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

1. Subs. by Act. 38 of 1923, s. 4 for "whenever it appears to the Local Government."

2. Subs. by the A. O. 1950 for 'Provincial Government'.

objections (if any) to the measurements made under Section 8. The Collector may in any case require such statement 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 authorized 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 under Part III of the ¹Indian Post Office Act, 1866 (XIV of 1886).

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 fifteen 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 three 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 be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Indian Penal Code (XLV of 1860).

Enquiry into Measurements, Value and Claims, and Award by the Collector.

11. Enquiry and award by Collector.—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 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 ²(at the date of the publication of the notification under section 4, sub-section (1), and into the respective interests of the persons claiming the compensation and shall make an award under his hand of—

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed 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.

1. See now the Indian Post Office, Act, 1898 (6 of 1898).

2. Ins. by Act 38 of 1923, s. 5.

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, where they have respectively appeared before the Collector or not, of the true area and 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 ¹Code of Civil Procedure (XIV of 1882.)

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 ²[vest absolutely in the ³(Government)], free from all encumbrances.

17. Special powers in cases of urgency.—(1) In cases of urgency, whenever the ⁴(appropriate Government) so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), take possession of any waste or arable land needed for public purposes or for a Company. Such land shall thereupon ²(vest absolutely in the ³Government), free from all encumbrances.

(2) Whenever, owing to any sudden change in the channel of any navigable river or other unforeseen emergency, it becomes necessary for any Railway Administration to acquire the immediate possession of any land for the maintenance of their traffic or for the purpose of making thereon a river-side or ghat station, or of providing convenient connection with or access to any such station, the Collector may, immediately after the publication of the notice

1. See now Act 5 of 1908.

2. Subs. by the A. O. 1937 for "vest absolutely in the Government."

3. Subs. by the A. O. 1950 for "Crown."

4. Subs. *ibid* for "Provincial Government."

mentioned in sub-section (1) and with the previous sanction of the ¹(appropriate Government), enter upon and take possession of such land, which shall thereupon ²(vest absolutely in the ³Government) 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 forty-eight hours' notice of his intention so to do, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

(3) In every case under either of the preceding sub-sections the Collector shall at the time of taking possession offer to the persons interested compensation for the standing crops and trees (if any) on such land and for any other damage sustained by them caused by such sudden dispossession and not excepted 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.

2((4) In the case of any land to which, in the opinion of the ²(appropriate Government), the provisions of sub-section (1) or sub-section (2) are applicable the ³(appropriate Government) may direct that the provisions of section 5A shall not apply, and, if it does so 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)).

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;

1. Subs., *ibid*, for "Provincial Government."

2. Added by Act 38 of 1923, s. 6.

3. Subs. by the A. O. 1950 for "Provincial Government."

- (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, whichever period shall first expire.

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

(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, namely:—

- (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 in the province shall be entitled to appear, plead and act (as the case may be) in such proceeding.

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

first, the market-value of the land at the date of the publication of the [notification under section 4, sub-section (1)];

1. Subs., by Act 38 of 1923, s. 7 for "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 the 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.

24. Matters to be neglected in determining compensation.—But the Court shall not take into consideration—

- firstly*, the degree of urgency which has led to the acquisition;
 - 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;
- or
- seventhly*, any outlay or improvements on, or disposal of, the land acquired, commenced, made or affected without the sanction of the Collector after the date of the publication of the ¹(notification under section 4, sub-section (1)).

1. Subs. by Act 38 of 1923, s. 8 for "declaration under Section 6."

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 a sufficient reason (to be allowed by the Judge) to make such claim, the amount awarded to him by the Court shall not be less than, and may exceed, the amount awarded by the Collector.

26. Form of awards.—¹(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, 1908 (V of 1908).

27. Costs.—(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. Collector may be directed to pay interest on excess compensation.— 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 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. Section 26 was renumbered s. 26 (1), and sub-section (2) was added by the Act 19 of 1921, s. 2.

PART IV

APPORTIONMENT OF COMPENSATION

29. Particulars of apportionment to be specified.—Where there are several persons interested, if such persons agree in 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.

30. 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.

PART V

PAYMENT

31. 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 some one 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.

(3) Notwithstanding anything in this section the Collector may, with the sanction of the ¹(appropriate Government), instead of awarding a money 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 hands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

¹ Suba. by the A. O. 1950 for "Provincial Government."

(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 hereof.

32. 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 Government or other approved 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 and invested until the same be applied—

- (i) in the purchase of such other lands as aforesaid; or
- (ii) 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 paid by the Collector, namely:—

- (a) the costs of such investments as aforesaid:
- (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.

33. Investment of money deposited in other cases.—When any money shall have been deposited in Court under this 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.

34. **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 six per centum per annum from the time of so taking possession until it shall have been so paid or deposited.

PART VI

TEMPORARY OCCUPATION OF LAND

35. **Temporary occupation of waste or arable land. Procedure when difference as to compensation exists.**—(1) Subject to the provisions of Part VII of this Act, whenever it appears to the ¹(appropriate Government) that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the ¹(appropriate Government) may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the persons 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.

36. **Power to enter and take possession, and compensation on restoration.**—

(1) On payment of such compensation, or on executing such agreement or on making a reference under section 35, the Collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms 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 ¹(appropriate Government) shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

1. Subs. by the A. O. 1950 for "Provincial Government."

37. 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 the term, 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

38. Company may be authorised to enter and survey.—(1)¹ * * * The²(appropriate Government) may authorise any officer of any Company desiring to acquire land for its purposes to exercise the powers conferred by section 4.

(2) In every such case section 4 shall be construed as if for the words “for such purpose” the words “for the purposes of the Company” were substituted; and section 5 shall be construed as if after the words “the officer” the words “of the Company” were inserted.

3(38A. Industrial concern to be deemed Company for certain purposes.—An industrial concern, ordinarily employing not less than one hundred workmen owned by an individual or by an association of individuals and not being a Company, desiring to acquire land for the erection of dwelling houses for workmen employed by the concern or for the provision of amenities directly connected therewith shall, so far as concerns the acquisition of such land, be deemed to be a Company for the purposes of this Part, and the references to Company in sections 5A, 6, 7, 17 and 50 shall be interpreted as references also to such concern.)

39. Previous consent of appropriate Government and execution of agreement necessary.—The provisions of sections 6 to 37 (both inclusive) shall not be put in force in order to acquire land for any Company, unless with the previous consent of the¹(appropriate Government), nor unless the Company shall have executed the agreement hereinafter mentioned.

40. Previous enquiry.—(1) Such consent shall not be given unless the¹(appropriate Government) be satisfied, ³(either on the report of the Collector under section 5A, sub-section (2), or) by an enquiry held as hereinafter provided:—

5(a) 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 or

1. The words “Subject to such rules as the Governor-General of India in Council may from time to time prescribe in this behalf” were rep. by Act 38 of 1920, s. 2 and Sch. I.

2. Subs. by the A. O. 1950 for “Provincial Government.”

3. Ins. by Act 16 of 1923, s. 2.

4. Ins. by Act 38 of 1923, s. 9.

5. Subs. by Act 16 of 1933, s. 3 for the original clauses.

(b) that such acquisition is needed for the construction of some work, and that such work is likely to prove useful to the public.

(2) Such enquiry shall be held by such officer and at such time and place as the ¹(appropriate Government) shall appoint.

(3) Such officer may summon and enforce the attendance of witnesses and compel the production of documents by the same means and, as far as possible, in the same manner as is provided by the ²Code of Civil Procedure (XIV of 1882) in the case of a Civil Court.

41. Agreement with appropriate Government.—³*** If the ¹(appropriate Government) is satisfied ⁴(after consideration the report, if any, of the Collector under section 5A, sub-section (2), or on the report of the officer making an inquiry under section 40) that ⁵(the purpose of the proposed 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, or that) the proposed acquisition is needed for the construction of a work, and that such work is likely to prove useful to the public, it shall ⁶*** require the Company to enter into an agreement ⁷with the ¹(appropriate Government) providing to the satisfaction of the ¹(appropriate Government) for the following matters, namely:—

(1) the ⁸payment to the ¹(appropriate Government) of the cost of the acquisition;

(2) the transfer, on such payment, of the land to the Company;

(3) the terms on which the land shall be held by the Company;

⁹((4) 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; and

(5) where the acquisition is for the construction of any other 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 the work.)

42. Publication of agreement.—Every such agreement shall, as soon as may be after its execution, be published¹⁰ *** in the ¹¹(Official Gazette) and shall thereupon (so far as regards the terms on which the public shall be entitled to use the work) have the same effect as if it had formed part of this Act.

1. Subs. by the A. O. 1950 for "Provincial Government."

2. See now Act 5 of 1908.

3. Certain words were omitted by Act 38 of 1923, s. 10.

4. Ins. by Act 38 of 1923, s. 10.

5. Ins. by Act 16 of 1922, s. 4.

6. Certain words were rep. by Act 38 of 1920, s. 2 and Sch. I.

7. Subs. by the A. O. 1937 for "with the Secretary of State for India in Council."

8. Subs., *ibid.*, for "payment to Government."

9. Subs. by Act 16 of 1933, s. 4 for the original clauses.

10. The words "in the Gazette of India and also" were rep. by the A. O. 1937.

11. Subs., *ibid.*, for "local official Gazette."

43. Sections 39 to 42 not to apply where Government bound by agreement to provide land for Companies.—The provisions of sections 39 to 42, both inclusive, shall not apply and the corresponding sections of the ¹Land Acquisition Act, 1870 (X of 1870) shall be deemed never to have applied, to the acquisition of land for any Railway or other Company, for the purposes of which, ²(under any agreement with such Company, the Secretary of State for India in Council, the Secretary of State ³(the Central Government or and ⁴(State) Government is or was bound to provide land).

44. How agreement with Railway Company may be proved.—In the case of the acquisition of land for the purposes of a Railway Company, the existence of such an agreement as is mentioned in section 43 may be proved by the production of a printed copy thereof purporting to be printed by order of Government.

PART VIII

MISCELLANEOUS

45. Service of notices.—(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 under Part III of the⁵ Indian Post Office Act, 1866 (XIV of 1866) and service of it may be proved by the production of the addressee's receipt.

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1. Repealed by this Act.
 2. Subs. by the A. O. 1937 for "under any agreement between such company and the Secretary of State for India in Council, the Government is, or was, bound to provide land."
 3. Subs. by the A. O. 1948 for "or any Government in British India."
 4. Subs. by the A. O. 1950 for "Provincial."
 5. See now the Indian Post Office Act, 1898 (6 of 1898).

46. 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 Magistrate, be liable to imprisonment for any term not exceeding one month, or to fine not exceeding fifty rupees, or to both.

47. Magistrate to enforce surrender.—If the Collector is opposed or impeded in taking possession under this Act of any land, he shall, if a Magistrate, enforce the surrender of the land to himself, and, if not a Magistrate, he shall apply to a Magistrate or (within the towns of Calcutta, Madras and Bombay) to the Commissioner of Police, and such Magistrate or Commissioner (as the case may be) shall enforce the surrender of the land to the Collector.

48. 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 Part III of this Act shall apply, so far as may be, to the determination of the compensation payable under this section.

49. Acquisition of part of house 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 desires 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 ¹(appropriate 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 herebefore 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 ¹(appropriate Government) to the person interested, and shall thereafter proceed to make his award under section 11.

50. Acquisition of land at cost of a local authority or Company.—(1) Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any fund controlled or managed by a local authority or of any Company the charges of and incidental to such acquisition shall be defrayed from or by such fund or Company.

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

Provided that no such local authority or Company shall be entitled to demand a reference under section 18.

51. 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.

52. Notice in case of suits for anything done in pursuance of 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 a month's previous notice in writing of the intended proceeding, and of the cause thereof, nor after tender or sufficient amends.

53. Code of Civil Procedure to apply to proceedings before Court.—Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the² Code of Civil Procedure (XIV of 1882) shall apply to all proceedings before the Court under this Act.

³**(54. Appeals in proceedings before Court.—**Subject to the provisions of the Code of Civil Procedure, 1908 (V of 1908), applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such

1. Subs. by the A. O. 1950 for "Provincial Government."

2. See now Act 5 of 1908.

3. Subs. by Act 19 of 1921, s. 3 for the original section.

appeal as aforesaid an appeal shall lie to ¹(the Supreme Court) subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908 (V of 1908, and in Order XLV thereof.)

55. Power to make rules.—(1) The ²(appropriate Government) shall ³*** 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:

4* * * *

(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 additional shall⁵ *** be published in the Official Gazette, and shall thereupon have the force of law.

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1. Subs. by the A. O. 1950 for "His Majesty in Council."
 2. Subs., *ibid.*, for "Provincial Government."
 3. Certain words were rep. by Act 38 of 1920, s. 2 and Sch. I.
 4. The proviso rep. by the A. O. 1937.
 5. Certain words were rep. by Act 4 of 1914, s. 2 and Sch. Pt. I.

APPENDIX V (Item 1)

BOMBAY ACT NO. XVIII OF 1938.¹

The Land Acquisition (Bombay Amendment) Act, 1938.
(27th October, 1938).

An Act to amend the Land Acquisition Act, 1894² in its application to the State³ of Bombay

ACT I of 1894

Whereas it is expedient to amend the Land Acquisition Act, 1894, in its application to the (State)³ of Bombay for the purpose hereinafter appearing; It is enacted as follows:—

1. Short title and extent.—(1) This Act may be called the Land Acquisition (Bombay Amendment) Act, 1938.

(2) It shall come into force on such date as the (State)³ Government may by notification in the Official Gazette appoint.

2. Amendment of Sections 28 and 34 of Act I of 1894.—In sections 28 and 34 of the Land Acquisition Act, 1894, for the word "six" the words "four" shall be substituted.

(APPENDIX V (Item No. 2)

BOMBAY ACT NO. XX of 1945

The Land Acquisition (Bombay Amendment) Act, 1945.
3rd November, 1945.

An Act to amend the Land Acquisition Act, 1894, in its application to the State⁴ of Bombay.

Whereas it is necessary to amend the Land Acquisition Act, 1894, in its application to the (State) of Bombay for the purpose hereinafter appearing;

And whereas the Governor of Bombay has assumed to himself under the proclamation, dated the 4th November, 1939, issued by him under Section 93 of the Government of India Act, 1935, all powers, vested by or under the said Act in the (State)¹ Legislature;

1. For Statement of Objects and Reasons, see Bombay Government Gazette, 1938, Pt. V. p. 493; for Proceedings in Assembly, see Bombay Legislative Assembly Debates, 1938, Vol. 4 p. 370; and for Proceedings in Council, see Bombay Legislative Council Debates, 1938, Vol. 4, pp. 120 and 121.

2. See Unrepealed Central Acts, Vol. III, p. 481.

3. Subs. by the A. O. 1950.

4. Subs. by the A. O. 1950 for "Province."

Now, therefore, in exercise of the said powers, the Government of Bombay is pleased to make the following Act:—

1. Short title.—This may be called the Land Acquisition (Bombay Amendment) Act, 1945.

2. Insertion of new Part I-A in Act I of 1894.—After Part I of the Land Acquisition Act, 1894, hereinafter called “the said Act,” the following Part shall be inserted namely:—

“PART I-A

PRELIMINARY SURVEY

3A. Preliminary survey of lands and powers of officers to carry out survey.—

For the purpose of enabling the (State)¹ Government to determine whether land in any locality is needed or is likely to be needed for any public purpose, it shall be lawful for any officer of the (State)¹ Government in the Public Works Department, or any officer either generally or specially authorised by the (State)¹ Government in this behalf, and for his servants and workmen:—

- (i) to enter upon and survey and take levels of any land in such locality,
- (ii) to mark such levels,
- (iii) to do all other acts necessary to ascertain whether the land is adapted for such purpose, and
- (iv) where otherwise the survey cannot be completed and levels taken to cut down and clean 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 seven days’ notice in writing of his intention to do so.

3B. Payment of damages.—The officer of the (State)¹ Government in the Public Works Department and any other 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 paid or tendered, shall at once refer the dispute to the decision of the Collector or other chief revenue officer of the district, and such decision shall be final.”

3. Amendment of Section 45 of Act I of 1894.—In section 45 of the said Act, for the word and figure “section 4” the words, figures “section 3A or 4,” shall be substituted.

4. Amendment of Sections 46 of Act I of 1894.—In section 46 of the said Act:

- (a) after the word “by” the word, figure and letter “section 3A” shall be inserted; and
- (b) after the words “under section” the figure, letter and words “3A or section” shall be inserted.

1. This word was substituted for the word “Province” by the Adaptation of Laws Order, 1950.

APPENDIX V (Item No. 3)

BOMBAY ACT No. IV of 1948¹

The Land Acquisition (Bombay Amendment) Act, 1948. (18th March, 1948)

(Amended by Bombay 2 of 1953)

An Act to amend the Land Acquisition Act, 1894, in its application to the (State)² of Bombay

Whereas it is expedient to amend the Land Acquisition Act, 1894, in its application to the (State)² of Bombay, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. Short title, extent and commencement.—(1) This Act may be called the Land Acquisition (Bombay Amendment) Act, 1948.

(2) It extends to the whole of the (State)² of Bombay.

(3) It shall come into force at once.

(4) It shall remain in force for a period of (ten years)³ only.

2. Definitions.—In this Act unless there is anything repugnant in the subject or context—

(i) “housing scheme” means any housing scheme which the Government may from time to time undertake for the purpose of increasing accommodation for housing persons and shall include any such scheme undertaken from time to time with the previous sanction of the (State)⁴ Government by a local authority or company,

(ii) “relevant date” means the first day of January, 1948.

3. Amendment of sections 11 and 23 of Act I of 1894.—(1) Where during the continuance of this Act any land is required under the Land Acquisition Act, 1894 (hereinafter called “the said Act”), for the purpose of a housing scheme the said Act shall have effect in relation to such acquisition as if—

(a) in clause (f) of Section 3 after the words “such provision” the words and brackets “and a housing scheme as defined in the Land Acquisition (Bombay Amendment) Act, 1948” had been inserted;

(b) in Section 11 after the words, figures and brackets “section 4, sub-section (i)” the words “and at the relevant date” had been inserted; and

1. For Statement of Objects and Reasons, see Bom. Govt. Gazette, 1948, Pt. V., p. 2.

2. This word was substituted for the word “Province” by the Adaptation of Laws Order, 1950.

3. These words were substituted for the words “five years” by Bom. 2 of 1953, s. 2.

4. This word was substituted for the word “Provincial” by the Adaptation of Laws Order, 1950.

- (c) in section 23—
- (i) in the first clause of sub-section (i), after the words, brackets, and figures “section 4, sub-section (i)” the words “or the relevant date, whichever is less” had been inserted; and
 - (ii) sub-section (2) had been omitted.
- (2) Nothing in this section shall apply to any building.

APPENDIX V (Item No. 4)

BOMBAY ACT No. XXXV of 1949.¹

(The Bombay Land Acquisition Officers Proceedings Validation Act, 1949)
14th October, 1949.

An Act to remove certain doubts and to establish the validity of certain proceedings taken for acquisition of lands in the (State)² of Bombay

Whereas the (State)³ Government had declared certain lands in the (State)² of Bombay to be needed for public purposes and for the purposes of certain companies under the provisions of the Land Acquisition Act, 1894;

And whereas the (State)³ Government had appointed certain officers under clause (c) of section 3 of the said Act to perform the functions of the Collector and had directed certain officers under section 7 of the said Act to take over for the acquisition of the said lands under the said Act;

And whereas certain officers other than those who were so appointed or directed took proceedings under the said Act in respect of the acquisition of some of the said lands, instead of the officers appointed or directed;

And whereas doubts have been raised as to the validity of the proceedings taken by the officers who were not duly appointed or directed;

And whereas it is expedient to remove the said doubts and to validate the proceedings taken and acts done by the said officers;

And whereas it is also expedient to provide that any proceedings which may hereafter be taken for the acquisition of lands under the said Act shall not be invalid only on the ground that the proceedings are taken by officers other than those who were appointed or directed to take the said proceedings; It is hereby enacted as follows:—

1. Short title and extent.—(1) This Act may be called the Bombay Land Acquisition Officers Proceedings Validation Act, 1949.

(2) It extends to the whole of the (State)² of Bombay.

1. For Statement of Objects and Reasons, see Bombay Govt. Gazette, 1949, Pt.V., p. 258.

2. By Adaptation of Laws Order, 1950.

3. Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950.

2. Definition.—In this Act, unless there is anything repugnant in the subject or context—

- (a) “said Act” means the Land Acquisition Act, 1894;
- (b) “said date” means the date on which this ACT comes into force;
- (c) “said lands” means the lands which before the said date were declared by the (State)¹ Government under Section 6 of the said Act as being needed for a public purpose or for the purposes of a company and any proceedings for the acquisition of which were taken by officers who were not duly appointed or directed to take such proceedings;
- (d) “Special officers” means officers who took proceedings for the acquisition of the said lands but who were not duly appointed as the Collectors under clause (c) of section 3 or were not directed to take order for their acquisition under section 7 of the said Act.

3. Validation of notices, awards, proceedings, etc., under the Land Acquisition Act, 1894.—(1) Notwithstanding anything contained in the said Act:—

- (a) all notices given, inquiries held, disputes decided, orders taken or made, awards made and all acts done before the said date by the Special Officers purporting to act as the Collectors under the said Act, in respect of the said lands;
- (b) all declarations made by the (State)¹ Government under section 6 of the said Act in respect of the acquisition of the said lands as being needed for a public purpose or for the purposes of a company before the said date;
- (c) all agreements executed before the said date by companies in respect of any of the said lands, declared to be needed for their purposes; and
- (d) all other proceedings taken by the Special Officers for the acquisition of the said lands before the said date, including the proceedings for taking the possession of any of the said lands in pursuance of the provisions of the said Act,
shall be deemed to be and always to have been validly given, held, decided, taken, made, done or executed, as the case may be, and any of the said lands, the possession of which has been so taken, shall be and always to have been vested in the (Government)² under the said Act; and

(2) it shall be lawful for the Special Officers, or any other officers who may be duly appointed or directed by the (State)¹ Government and under the said Act, to take such proceedings to take or make such orders, to make such awards or to do such other acts as may be necessary for the completion of the acquisition of the said lands under the said Act or any other law for the time being in force.

1. Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950.

2. Substituted for the word “Crown” by the Adaptation of Laws Order, 1950.

4. Validity of notices, awards, proceedings, etc., relating to acquisition not to be questioned and bar of suits and proceedings.—(1) The validity of any notice, inquiry, dispute, order, award or declaration and any proceeding including the proceeding for taking possession of the said lands given, held, decided, taken or made, or purporting to have been given, held, decided, taken or made, as the case may be, in connection with the acquisition of the said lands under the said Act shall not be called in question; and

(2) No Court shall have jurisdiction to entertain or try any suit or legal proceeding against the (State)¹ Government or against any of the Special Officers or any other officers of the (State)³ Government, acting or purporting to act under the said Act in connection with the acquisition of the said lands only on the ground that the proceedings for such acquisition were illegal or irregular by reason of the fact that any of the Special Officers was not duly appointed to perform the functions of a Collector under clause (c) of section 3, or was not duly directed to take order for the acquisition under section 7, of the said Act.

5. Application of Sections 2 to 4 to pending suits and proceedings.—The provisions of sections 2 to 4 (both inclusive) shall apply, notwithstanding the pendency of any suit or other proceeding in any Court, either in a Court of first instance or in a Court of appeal, on the said date.

6. Insertion of new Section 52A in Act I of 1894.—After Section 52 of the Land Acquisition Act, 1894, in its application to the (State)² of Bombay, the following Section shall be inserted, namely:—

“52-A. Delegation. Notwithstanding anything contained in the foregoing provisions, a Collector may, subject to the general or special orders of the (State)³ Government, delegate any of his powers or functions under this Act to any officer not below the rank of a Mamlatdar or to a Land Acquisition Officer specially appointed by the (State)¹ Government in this behalf.”

APPENDIX V (Item 5)

BOMBAY ACT NO. XXVII of 1950²

(The Land Acquisition (Bombay Amendment) Act, 1950).

(21st June, 1950)

An Act to amend the Land Acquisition Act, 1894 in its application to the State of Bombay.

Whereas it is expedient to amend the Land Acquisition Act, 1894, in its application to the State of Bombay for the purpose hereinafter appearing; It is hereby enacted as follows:—

1. Short title.—This Act may be called the Land Acquisition (Bombay Amendment) Act, 1950.

1. Substituted for the word “Provincial” by the Adaptation of Laws Order, 1950.

2. For Statement of Objects and Reasons, see Bom. Govt. Gazette, 1950, Pt. V., p. 97.

2. Amendment of Section 3 of Act I of 1894.—In section 3 of the Land Acquisition Act, 1894, after clause (a) the following new clause shall be inserted namely:—

(aa) the expression “arable land” includes “garden land.”

APPENDIX V (Item No. 6)

BOMBAY ACT No. XXXV of 1953¹

(The Land Acquisition (Bombay Amendment) Act, 1953)

(6th June, 1953)

An Act to amend the Land Acquisition Act, 1894, in its application to the State of Bombay

Whereas it is expedient to amend the Land Acquisition Act, 1894, in its application to the State of Bombay, for the purposes hereinafter appearing; It is hereby enacted as follows:—

1. Short title.—This Act may be called the Land Acquisition (Bombay Amendment) Act, 1953.

2. Amendment of Section 3 of Act I of 1894.—In section 3 of the Land Acquisition Act, 1894 (hereinafter referred to as the said Act),—

(1) in clause (d), the following shall be added at the end, namely:—
“and shall in relation to any proceedings under this Act, include the Court of a Civil Judge (Senior Division) to which the principal Civil Court may transfer any such proceedings.”

(2) in clause (f),—

(1) after the word “includes” the brackets and figure “(1)” shall be inserted;

(2) after the words “such provision” the following shall be inserted namely:— “and”

(2) the acquisition of land for purposes of the development of areas from public revenues or some fund controlled or managed by a local authority and subsequent disposal thereof in whole or in part by lease, assignment or sale, with the object of securing further development;”

3. To section 11 of the said Act, the following proviso shall be added, namely:—

“Provided that no such award shall be made by the Collector without the previous approval of the State Government or such officer as the State Government may appoint in this behalf.”

1. For Statement of Objects and Reasons, see Bom. Govt. Gazette, 1953, Pt. V., p. 9.

4. In section 12 of the said Act,

- (1) In sub-section (1), after the words "and shall," the words, figures and letter "subject to the provisions of section 15A and" shall be inserted;
- (2) In sub-section (2), after the word "award," where it occurs for the first time, the words, figures and letter "or the amendment thereof made under section 12A" shall be inserted; and after the word "award," where it occurs for the second time, the words "or amendment" shall be inserted.

5. **Insertion of new Section 12A in Act I of 1894.**—After section 12 of the said Act, the following section shall be inserted namely:—

"12A. Amendment of award.—(1) Any clerical or arithmetical mistake in an award or errors arising therein from accidental slips or omission may, at any time not later than six months from the date of the award, be corrected by the Collector either on his own motion or on the application of a person interested and the award so corrected shall be deemed to have been amended accordingly.

(2) If the award so amended discloses any overpayment, the Collector shall, either immediately after the amendment of the award or after the expiry of the time allowed to make a reference to the Court from the amendment of the award issue a notice to a person to whom overpayment was made that if the amount overpaid is not paid back to the State Government within one month after receipt of the notice, the amount overpaid shall be recovered as an arrear of land revenue and after the expiry of the time stated in the notice the amount shall be so recoverable."

6. **Insertion of new Section 15A in Act I of 1894.**—After section 15 of the said Act, the following section shall be inserted, namely:—

"15A. Power of State Government to call for proceedings and pass orders thereon.—The State Government may, at any time before an award is made by the Collector under section 11, call for and examine the record of any order passed by the Collector or of any inquiry or proceedings of the Collector, for the purpose of satisfying itself as to the legality or propriety of any order passed and as to the regularity of such proceedings. If, in any case, it shall appear to the State Government that any order or proceedings so called for should be modified, annulled or reversed, it may pass such order thereon as it deems fit."

7. **Amendment of Section 17 of Act I of 1894.**— In section 17 of the said Act, in sub-section (2), after the words "access to any such station," the following words shall be inserted, namely:—

"or whenever owing to a like emergency or owing to breaches or other unforeseen events causing damage to roads, rivers, channels or tanks, it becomes necessary for the State Government to acquire the

immediate possession of any land for the purpose of maintaining road communication or irrigation or water supply service, as the case may be."

8. Amendment of Section 18 of Act I of 1894.—In section 18 of the said Act, after the word "award," where it occurs for the first time, the words "or the amendment thereof" shall be inserted; and after the said word, wherever it occurs thereafter, the words "or the amendment" shall be inserted.

9. Amendment of Section 27 of Act I of 1894.—In section 27 of the said Act, in sub-section (2), after the words "award of the Collector," the words "or the amendment thereof" shall be inserted.

10. Amendment of Section 35 of Act I of 1894.— In section 35 of the said Act,—

(1) After sub-section (1), the following sub-section shall be inserted, namely:—

"(1A) Before issuing a direction under sub-section (1) the State Government may require the Collector to submit—

- (a) a plan of the land which is needed for occupation and use; and
- (b) an estimate of the compensation that would be payable under sub-section (2);

and upon the issue of such a requisition the Collector shall cause public notice of the substance of the requisition to be given at convenient places in the locality in which the land is situated.

(1B) After the issue of such notice, it shall be lawful for any officer either generally or specially authorised by the Collector in this behalf, and for his servants and workmen to exercise the powers conferred by sub-section (2) of section 4.

(1C) The officer authorised under sub-section (1B) shall at the time of his entry pay or tender payment for all necessary damage to be done as aforesaid, and, in the case of dispute as to the sufficiency of the amount so paid or tendered, he shall at once refer the dispute to the decision of the Collector and such decision shall be final."

(2) in sub-section (2), for the words "The Collector shall thereupon" the words "Upon the issue of a direction under sub-section (1) the Collector shall" shall be substituted.

11. Amendment of Section 46 of Act I of 1894.—In section 46 of the said Act, for the words and figure "or section 8" the words and figures, "section 8 or section 35" and for the words, figures and letter "section 3A or section 4" the words, figures and letter "section 3A, section 4 or section 35" shall be substituted.

APPENDIX V (Item No. 7)**ACT No XXIII of 1954**

*(The State Acquisition of Lands for Union Purposes (Validation) Act, 1954
(30th April, 1954)*

An Act to validate the acquisition under the Land Acquisition Act, 1894, of lands by certain State Governments for the purposes of the Union, and orders passed and proceedings held in connection therewith.

Be it enacted by Parliament as follows:—

1. Short title.—This Act may be called the State Acquisition of Lands for Union Purposes (Validation) Act, 1954.

2. Validation of certain acquisition of land and proceedings and orders connected therewith.—Every acquisition of land for the purposes of the Union made by any State Government acting or purporting to act under the Land Acquisition Act, 1894 (I of 1894), at any time during the period beginning with the commencement of the Constitution and ending with the functions of the Central Government in relation to the acquisition of land for the purposes of the Union in pursuance of clause (1) of article 258 of the Constitution, and every proceeding held and order made during the said period in connection with the acquisition of land for any such purposes, shall be deemed to be, and always to have been as valid as if the State Government had been duly entrusted with the said functions of the Central Government during the said period, and accordingly no acquisition so made, and no proceeding held and no order passed by any authority under the said Act in connection with any acquisition of land during the said period, shall be called in question merely on the ground that the State Government was not duly entrusted with the functions of the Central Government at the time the acquisition was made or the proceeding was held or the order was made.

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