

REAL ESTATE BULLETIN

COMPULSORY ACQUISITION: GOVERNMENT'S HELPING HAND



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INTRODUCTION

Real-estate sector which was opened for foreign direct investment in 2005¹ has witnessed a spurt in investments. This spurt has been augmented by investment in sectors like information technology, retail² and other sectors as their burgeoning demand for office and commercial space needs to be satisfied by the real estate sector. The availability of usable land is the most critical for any investment. A foreign investor investing in real estate does not have the knowledge and resources to acquire land for projects on a large scale. In this scenario the government acts as a facilitator by invoking its powers under the principle of eminent domain³ and makes compulsory acquisition of land for a company. Land can be acquired by the government under Land Acquisition Act, 1894 (“the Act”) and specific legislations like Electricity Act, 2003.

The subject matter of this bulletin is compulsory acquisition of land by the government. It describes the procedure pertaining to compulsory acquisition with emphasis on issues of compensation, public purpose, consent by the government and agreement between the government and a company.

1. An overview

Part VII of the Act governs acquisition of land for a company. The Act limits the type of company for which the acquisition can be made.⁴ Only government companies and public limited companies qualify for compulsory acquisition. It is essential that the acquisition should be for the general benefit of the society rather than enrichment of few individuals. Moreover, the Act includes societies and co-operative societies within the meaning of a company.⁵ Acting as a facilitator, the government can acquire land for a company only when the cost of the acquisition is borne out of the funds of the company.⁶

Compulsory acquisition commences with publication of acquisition notification by the collector⁷ followed by the collector’s report⁸ or enquiry by the state government, ascertaining the purpose of acquisition.⁹ Government gives its consent on the findings of the collector or result of the enquiry, as the case may be. A declaration is published in the official gazette pursuant to the government’s consent which is conclusive evidence that the land acquired by the government for the company is for public purpose.¹⁰

¹ Press Note 2 of 2005, issued by the Department of Industrial Policy and Promotion on March 3, 2005.

² Single brand retailing only.

³ Black’s Law dictionary defines principle of eminent domain as the inherent power of the governmental entity to take privately owned property and convert it to public use subject to reasonable compensation.

⁴ R.L Arora v. State of U.P AIR 1964 SC 1230.

⁵ Section 3(e) defines company as (i) a company as defined in section 3 of the Companies Act, 1956 (1 of 1956), other than a government company referred to in clause (cc); (ii) a society registered under the Societies Registration Act, 1860 (21 of 1860), or under any corresponding law for the time being in force in a State, other than a society referred to in clause (cc); (iii) a co-operative society within the meaning of any law relating to co-operative societies for the time being in force in any State, other than a co-operative society referred to in clause (cc).

⁶ Abdul Sattar v. State of UP, AIR 1994 All 77

⁷ Section 4 of the Act.

⁸ Section 5A of the Act.

⁹ Section 40 of the Act.

¹⁰ Section 6(3) of the Act.

Declaration does not grant any authority to the collector to proceed with the acquisition. Therefore, the Act provides that the collector takes orders from the government for subsequent steps of the acquisition.¹¹ After demarcation of the land, the collector serves a notice to the interested persons¹² announcing the government's intent to acquire their land and invites objections, if any, which are dealt in the enquiry. Upon settlement, the collector gives his award on the objections/claims¹³ followed by the grant of compensation to the interested parties.¹⁴ Land can then be acquired by the collector, which then vests in the government free of all encumbrances.¹⁵

1.1 Public Purpose

Compulsory acquisition can be made only if it is for public purpose¹⁶. Public purpose is ascertained either through collector's report or enquiry conducted by the government.¹⁷ According to Indian jurisprudence, public purpose is used in a generic sense and includes any purpose in which even a fraction of the community may benefit. Moreover, the meaning of public purpose cannot be static and it has to take different connotations at different points of time.

Public purpose does not mean that company should acquire land for charitable purposes. Acquisition of land for housing project,¹⁸ expansion of a company engaged in the supply of electricity¹⁹ or construction of industrial establishments have been held to be within the meaning of public purpose. Therefore, acquisition for public purpose gives due importance to commercial aspects.

1.2 Terms of agreement

If the government is satisfied with the purpose for which land is to be acquired, then an agreement must be executed between the company and the government which must mandatorily address cost of acquisition, transfer of payment, terms on which the land could be held by the company, time during which construction would be completed and terms of such construction.

Upon execution, the agreement must be published in the Gazette of India as well as local official gazette in order to apprise the public. Gazette is a government publication documenting important notifications, guidelines, and steps taken by the government in its day to day activities. Gazette of India publishes notifications of the central government and the local gazette publishes government notifications, in the state where compulsory acquisition is to take place. Publication of agreement is not a formality and

¹¹ Section 14 of the Act.

¹² Section 3(b) of the Act gives inclusive definition of interested persons and within its meaning it 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.

¹³ Section 11 of the Act.

¹⁴ Section 15 of the Act.

¹⁵ Section 16 of the Act.

¹⁶ Section 3(f) of the Act includes within the meaning of public purpose provision of land for various purposes like village sites, town and rural planning, for a corporation owned by the state, slum clearance, housing and educational programme sponsored by the government.

¹⁷ Section 40(1) of the Act.

¹⁸ Radha Raman V. State of U.P AIR 1954 All 700.

¹⁹ N.Ronithi V. District Collector AIR 1989 Ker 233.

omission to publish strikes at the root of the process of acquisition.²⁰ The terms of agreement are binding on the company and public.

2. Compensation

Compensation is a delicate issue as it should be seen that the company is not robbed of its money while acquiring the land. Further, the owner needs to be compensated for his property. The Act specifies factors which must be considered while awarding compensation, which are as follows:²¹

- market value of the land on the date of notification.
- damage or destruction caused to standing crops or trees on land when collector takes possession.
- damage sustained by the interested person if land gets severed from any other land he owns.
- if the acquisition leads to destruction or damage to the immovable or movable property of an interested person.
- if the acquisition compels an interested person to change his residence or place of business, reasonable expenses incidental to such change must be provided. The amount paid comprises of reasonable transit expenses or trade loss. This compensation is payable to the occupier of premises and, therefore, includes tenants.
- diminution of profits of the land between the period of publication of declaration²² and collector's taking possession of the land and additionally, the court can grant a sum of 30% on market value.

CONCLUSION

Land being the primary input for real estate development requires support from state. Compulsory acquisition makes the task of the foreign investor simple as he is saved from the burden of acquisition. Land is acquired by the government and handed over to the company. Furthermore, acquisition of large tracts of land is in itself a herculean task which necessarily requires support.

The definition of "public purpose" gives due importance to commercial aspects as is evident from the purposes for which acquisitions have been made which vary from housing projects to industrial establishments. Furthermore, collector has discretionary power to decide market value of land which can be abused and instead, the Act should specify a formula for determining the value.

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²⁰ P.Iyar Nadar v. State of Madras AIR 1965 Mad 50.

²¹ Section 23 of the Act.

²² Section 6 of the Act.