

ACT 21 OF 1962

THE KERALA LAND ACQUISITION ACT, 1961

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ACT 21 OF 1962 *

THE KERALA LAND ACQUISITION ACT, 1961

An Act to unify and amend the law for acquisition of land for public purposes in the State of Kerala

Preamble.—WHEREAS it is expedient to unify and amend the law for the acquisition of land needed for public purposes and for determining the amount of compensation to be given on account of such acquisition in the State of Kerala,

BE it enacted in the Twelfth Year of the Republic of India as follows :—

Part I

PRELIMINARY

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Land Acquisition Act, 1961.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

2. *Definitions.*—In this Act, unless the context otherwise requires,—

(1) 'land' includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth ;

(2) 'person interested' includes all persons claiming or entitled to claim an interest in compensation payable 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 ;

(3) 'Collector' means the Collector of the district and includes any officer appointed by the Government to perform the functions of a Collector under this Act ;

(4) 'company' means a company as defined in section 3 of the Companies Act, 1956 (Central Act 1 of 1956) and includes a foreign company within the meaning of section 591 of that Act, a society registered under the Societies Registration Act, 1860 (Central Act 21 of 1860) as in force in the Malabar district referred to in sub-section (2) of section 5 of the States Reorganisation Act, 1956 or under the Travancore-Cochin Literary, Scientific and Charitable Societies Registration Act, 1955 (Act XII of 1955) and a registered society within the meaning of the Co-operative Societies Act for the time being in force ;

* Received the assent of the President on the 31st day of August 1962 and published in the Gazette Extraordinary, dated the 6th September 1962.

(5) 'Court' means a Land Acquisition Court established, or any civil court invested with the jurisdiction of a Land Acquisition Court, under section 58;

(6) 'Government' means, in relation to the acquisition of land for the purposes of the Union, the Central Government, and, in relation to the acquisition of land for any other purposes, the State Government,

(7) the following persons shall be deemed 'persons entitled to act' as and to the extent hereinafter provided, that is to say—

(a) trustees for other persons beneficially interested shall be deemed to be the persons entitled to act with reference to any such case, and that to the same extent as the persons beneficially interested could have acted, if free from disability; and

(b) the guardians of minors and the 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 Order XXXII of the First Schedule to the Code of Civil Procedure, 1908, 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 this Act; and

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

Part II

ACQUISITION

PRELIMINARY INVESTIGATION

3. *Publication of preliminary notification and powers of officers thereupon.*—(1) Whenever it appears to the Government or to the Collector that land in any locality within the State of Kerala or within the jurisdiction of the Collector, as the case may be, is needed or is likely to be needed for any public purpose, a notification to that effect shall be published in the Gazette, and the Collector shall cause public notice of the substance of such notification to be given at convenient places in the said locality.

(2) Thereupon, it shall be lawful for any officer either generally or specially authorised by the Government or the Collector and for his servants and workmen,—

(a) to enter upon and survey and take levels of any land in such locality,

(b) to dig or bore into the sub-soil,

(c) 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,

(d) to mark such levels, boundaries and line by placing marks and cutting trenches;

(e) 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; and

(f) to do all other acts necessary to ascertain whether the land is adapted for such purpose:

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.

4. *Payment for damages.*—The officer so authorised shall, at the time of such entry, pay or tender payment for any damage which may be done by the acts 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, and such decision shall be final.

5. *Hearing of objections.*—(1) Any person interested in any land which has been notified under sub-section (1) of section 3 as being needed or likely to be needed for a public purpose 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 counsel and shall, after hearing all such objections and after making such further enquiry, if any, as he thinks necessary, submit the case,—

(i) where the preliminary notification under sub-section (1) of section 3 was published by the Government, to the Government,

(ii) where the preliminary notification under sub-section (1) of section 3 was published by himself, to the Board of Revenue

for the decision of the Government or the Board of Revenue, as the case may be, together with the record of the proceedings held by him and a report containing his recommendations on the objections.

The decision of the Government or the Board of Revenue, as the case may be, shall be final.

DECLARATION OF INTENDED ACQUISITION

6. *Declaration that land is required for public purpose.*—(1) Subject to the provisions of Part VII of this Act, when the Government or the Board of Revenue are or is satisfied after considering the report made by the Collector under sub-section (2) of section 5 that any particular land is needed for a public purpose, a declaration shall be made to that effect under the signature of an officer competent to authenticate the orders of the Government or the Board of Revenue, as the case may be.

(2) The declaration shall be published in the Gazette and shall state the district, taluk and village 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.

7. *After declaration the Collector to take order for acquisition.*—Whenever any land shall have been so declared by the Government or the Board of Revenue to be needed for a public purpose, the Government or the Board of Revenue, as the case may be, shall direct the Collector to take order for the acquisition of the land.

8. *Lands to be marked out, measured and planned.*—The Collector shall thereupon cause the land (unless it has already been marked out under section 3) 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 intend 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 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 authorised to receive service on their behalf, within the revenue district in which the land is situate.

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

(5) The notice shall also be published in the Gazette and shall be deemed to be sufficient notice to all persons interested in the land as between the Government and such persons.

10. *Power to require and enforce the making of statements as to names and interests.*—(1) The Collector may 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.

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 at the date of the publication of the notification under sub-section (1) of section 3, and into the respective interest 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 shall 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.

12. *Award of Collector when to be final.*—(1) Such award shall be filed in the Collector's office and shall, except as hereinafter provided, be final and conclusive evidence, as between the Collector and the persons interested, whether they have respectively appeared before the Collector or not, of the true area and 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 Code of Civil Procedure, 1908.

15. *Matters to be considered and neglected.*—In determining the amount of compensation, the Collector shall be guided by the provisions contained in sections 25 and 26.

16. *Award in case of agreement as to the amount of compensation.*—(1) If the Collector and all the persons interested agree as to the amount of compensation to be allowed, the Collector shall make an award under his hand for the same.

(2) Such award shall be filed in the Collector's office and shall be conclusive evidence, as between the Government and all persons interested, of the value of the land and the amount of compensation allowed for the same.

17. *Valuation statement to be approved by superior authority.*—No award shall be made by the Collector under section 11 or section 16 unless the valuation statement prepared in such manner as may be prescribed by rules is approved,—

(i) where the Collector making the award is not the District Collector, by the District Collector; and

(ii) where the Collector making the award is the District Collector, by the Board of Revenue.

TAKING POSSESSION

18. *Power to take possession.*—When the Collector has made an award under section 11 or section 16, he may take possession of the land, which shall thereupon vest absolutely in the Government, free from all encumbrances.

19. *Special powers in cases where land is needed urgently.*—(1) In cases of urgency, whenever the Government or the District Collector, for reasons to be recorded in writing, so direct, or directs, the Collector may, on the expiration of fifteen days from the publication of the notice mentioned in sub-section (1) of section 9, take possession of any land needed for a public purpose though no award has been made. Such land shall thereupon vest absolutely in the Government, free from all encumbrances :

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least three days' 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.

(2) In every case under sub-section (1), 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 26, 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.

(3) In every case under sub-section (1), the Collector may, on a request in writing by all the parties interested and on furnishing sufficient security, after such summary enquiry as he may think fit to institute and after satisfying himself that the parties are lawfully entitled to receive the compensation, pay a sum not exceeding fifty per cent of the probable compensation that may be finally awarded in respect of such acquisition, provided that no payment shall be made where there is a dispute as regards the person entitled to the compensation. The advance compensation paid under this sub-section shall be adjusted towards the final compensation payable under the award.

(4) In the case of any land to which, in the opinion of the Government or the District Collector, the provisions of sub-section (1) are applicable, the Government or the District Collector, as the case may be, may direct that the provisions of section 5 shall not apply, and, if they or he so direct or directs, a declaration may be made under section 6 in respect of the land at any time after the publication of the notification under sub-section (1) of section 3.

Part III

REFERENCE TO COURT AND PROCEDURE THEREON

20. *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 person to whom it is payable, or the apportionment of the compensation among the persons interested.

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

Provided that every such application shall be made—

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

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

21. *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 4 and 19 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.

22. *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.

23. *Restriction on scope of proceedings*.—The scope of the enquiry in every such proceedings shall be restricted to a consideration of the interests of the persons affected by the objection.

24. *Proceedings to be in open court*.—Every such proceedings shall take place in open Court and all persons entitled to practise in any Civil Court in the State shall be entitled to appear, plead and act, as the case may be, in such proceedings.

25. *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 sub-section (1) of section 3,

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;

26. *Matters to be neglected in determining compensation.*—But the court shall not take into consideration—

first, 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 effected without the sanction of the Collector after the date of the publication of the notification under sub-section (1) of section 3.

27. *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.

28. *Form of awards.*—(1) Every award under this Part shall be in writing signed by the Judge, and shall specify the amount awarded