



Acquiring Land under the Land Acquisition Act

A Hand Book



Law & Society Trust
Economic, Social & Cultural Rights Programme

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Statutes

Land Acquisition Act No 9 of 1950

LAA

1. What is the objective of LAA?

- The objective of the LAA is to lay down the procedures and manner (make provision) in which private land and servitudes {A servitude is a registered right that a person has over the immovable property (eg. Land) of another person. Eg. The right of way to travel over a section of the other's (owners) property to reach your own property } can be taken over (acquisition) by the State (Government) for public purposes, and to provide for all matters that are connected with such acquisition;
- The state must follow the procedure laid down in the LAA when acquiring (taking ownership) private land;

2. What is the procedure that the authorities should follow in deciding which land to acquire?

Preliminary investigation¹(must be performed by the authority that is going to use the acquired land, before sending the application requesting the acquisition of specified land to the Secretary of the Ministry of Land and Land Development)

A comparative inquiry into all the land in the area has to be carried out before deciding which lands should be acquired. The following factors need to be taken into account in arriving at this decision of acquisition,

- i) The suggested land must be suitable for the purpose of acquisition. Eg: where land is acquired for village expansion, availability of water for that land, soil, location, ease of access through roads, slope and availability of health facilities in its vicinity should be assessed.
- ii) Lands with high economic productivity must not be acquired, unless there are no other lands available for the purpose. Acquisition of lands of high agricultural potential, which are subject to government aid must not be acquired.
- iii) Priority should be given to the lands of the owners who volunteer their land for acquisition.
- iv) Land should not be acquired where it causes grave hardship to the owners, unless there are no other suitable alternatives.
- v) Where the acquisition of land with a building renders the owner homeless, acquisition of such land must be the last resort. In the event that the acquisition takes place, regardless of this factor (that is the taking of the land would render owner homeless), alternative accommodation must be provided via the National Housing Authority or through other means. Also, a reasonable period (sufficient time) should be given to the owners to vacate their homes.

¹ Manual for State Land (1985), Orders under LAA, No 248.

- vi) It is not desirable to acquire three, four blocks of land from the same person.
- vii) Suggestions for acquisition must be consistent with the Development and other projects of the area. Further, the suggestion must be consistent as much as possible with the other institutions of the area.
- viii) Where acquisition involves land containing an economic crop, the permission must be taken from the Ministry in charge of cultivation of that crop.
- ix) Acquisition of the sole land owned by a person should be avoided as much as possible.

Additional factors to be considered where acquisition is for village expansion,

- i) Number of landless persons in the area and the requests for land.
- ii) Does the area have state land and land vested in (belonging to) the Land Reform Commission, which can be utilized for this purpose?
- iii) The minimum amount of land that can be acquired for this purpose is 10 acres. Suggestions as to acquisition in these circumstances must be preceded by a comprehensive inquiry as to the chosen area, way of distribution and social and economic facilities.
- iv) Are there prior lands acquired for village expansion that are not distributed yet? Are there lands acquired for village expansion which have been utilized for other purposes?

NOTICE OF ACQUISITION

You have a right to receive notice of acquisition of your land;

Section 2 notice: must contain the 'public purpose for which the land is being acquired';

Section 4 notice: must contain the 'public purpose for which the land is being acquired'; and the procedure for objecting;

Section 5 notice: must state that the land is being acquired for a public purpose;

The notice(s) must be displayed in a conspicuous place on your land, or must be handed over to you or an occupant of the land;

Gazette notifications must be published in all three languages;

PUBLIC PURPOSE

What is NOT a public purpose:-

- *“an undisclosed purpose”
(Exceptions allowed for reasons of national security and the like)*
- *“private purpose or no purpose at all”*
- *“personal benefit or private revenge”*
- *A hidden collateral (an additional or secondary) purpose inconsistent with the stated purpose*
- *Purpose that confers a direct benefit on an individual or small number of individuals*
- *Purpose that is ‘marginal, indirect or tenuous (doubtful)’*
- *Potential and nonexistent future public purpose*
- *Fancied public purpose.*
- *A purpose that will become a reality only in the distant future.*

What is a public purpose?

Purpose which promotes common good, ‘general interest of the community’

‘public utility and benefit of the community as a whole’

A benefit of a ‘sufficiently direct nature’ to the local community affected

Public purpose should be definite, real and present

3. What are the steps/procedures the state is required to follow in the event your land has been earmarked for acquisition?

In deciding to acquire a Land:

- The State must first decide that the land is needed for a public purpose (Section 2). The Minister decides this and informs the DS, who must put up a notice, in all three languages, in a conspicuous place. The notice must state the public purpose for which the land is acquired, and must state what action can be taken to investigate whether that land is suitable for the said purpose.
- State must investigate whether the land is suitable for the public purpose. Investigation can only take place after the notice under section 2(2) has been put up. State must pay compensation for any damage done to the land during investigation. Investigation is limited to the following:-
 - Survey the land and take levels
 - dig or bore into the subsoil
 - set out and mark boundaries
 - clear out any crop, jungle, fence which is in the way
 - do all other acts necessary to ascertain whether that land is suitable for the public purpose for which land in that area is required
- State must decide that the land is suitable for acquisition (section 4). There must be a decision by the Minister that the land is suitable for acquisition. He must direct the acquiring officer (usually the DS) accordingly. The Acquiring officer (the DS, land officer or Grama Niladhari) must then put up a notice to that effect in a conspicuous place. The notice must be in all three languages, and must contain the following:-

- A description of the land/servitude acquired
 - The public purpose for which the government acquires the land
 - Procedure for objections to acquisition – in writing to the Secretary to such Ministry as specified.
 - Period for objections, minimum being 14 days from giving notice.
- Minister must make a decision to acquire:-
 - This decision can be taken only after the time given for objections has expired;
 - This decision can only be taken after considering any objections that have been made;
 - If there are objections and the permanent secretary has made recommendations to the Minister, the Minister can decide to acquire only after considering those recommendations.
- Once the Minister decides to acquire the land, he must make a written declaration under section 5 of the Act, that the land is needed for a public purpose and will be acquired under the LAA.
 - The Minister must direct the Acquiring Officer (usually the DS) to publish the Minister's declaration in the Gazette;
 - The declaration must be in all three languages;
 - The declaration must also be exhibited in a conspicuous place on or near the land;
 - The notice is conclusive evidence (unquestionable & evidence that cannot be contradicted) that the land is needed for a public purpose;

COMPENSATION

Every land owner is entitled to compensation for land that is acquired by the State.

You can make a claim for compensation to the Divisional Secretary of your area.

The Divisional Secretary must notify you as to when and how you can make your claim for compensation.

You have to show the Divisional Secretary the nature of your interest over the land e.g:- Deed of ownership or lease agreement or mortgage.

You have a right to receive the market value of the land as compensation.

If your compensation is inadequate you have a right of appeal.

- It is only after the section 5 declaration that the Acquiring officer can survey the land and make a plan of it (if necessary)

4. What are the things that you should be vigilant of?

- The section 2 notice is not mandatory (compulsory). The acquisition process can begin directly with a notice of acquisition under section 4.
- The Notice (section 2 or section 4 notice)
 - must be on or near the land.
 - must be in all three languages
 - must be displayed in a conspicuous place
 - must set out a time limit to register objections to the acquisition
- Once a section 2 or 4 notice has been issued, you cannot act in a way that will depreciate the value of the land for 12 months thereafter.
- The Notice must expressly state the “public purpose” for which the land is being acquired. The Courts of Sri Lanka have defined a public purpose.
 - “Section 2 notice can be reviewed and declared to be a nullity (invalid) if it is found that the alleged purpose (though not stated in the notice) is found in the course of proceedings to be spurious (bogus) and a cloak of discrimination (Manel Fernando v Jayaratna [2000] 1 Sri LR 126)”
- The section 5 declaration by the Minister must be,
 - Published in the gazette in all three languages

- Must be exhibited in a conspicuous place on or near the land

5. Who can object and how can you object to the Acquisition?

Who can object:- Any person interested in the land

When can you object:- Within the time allowed to make such objections. This time must be mentioned in the notice.

Under section 4(4) of the Act, you can object to the acquisition. You can tender your objection to the relevant Secretary to the Ministry ('permanent secretary'). The Secretary must then consider the objections.

When considering the objections, the Secretary must give every person who objects, an opportunity to be heard. After considering the objections, the Secretary must make a recommendation to the Minister in charge of the Ministry specified in the notice, and the Minister must consider the Secretary's recommendation. After considering the recommendation, the Minister must ('shall'- that is he has no discretion regarding this.) make his own recommendations on the objections to the Minister in charge.

6. What is the procedure for persons who are interested to raise their claims?

- Once the section 5 notice has been made, the Acquiring officer must publish a notice(section 7 notice) with the following information:-
 - A description of the land/servitude being acquired
 - Name of the DS to whom the claims for compensation should be directed to
 - Arrange for interested persons to appear before the DS in person or via an agent (duly authorized in writing)
- Interested persons include owners, co-owners (joint owners), mortgagees, lessees (person/s who holds a lease of a property) or otherwise, whether absolutely for himself or in trust for any other person or for any charitable, religious or other purpose, or a person having a servitude over the land. Interested person does not include a tenant on a monthly tenancy.
- They should appear before the DS at least 7 days before the date specified in the notice to notify in writing,
 1. The nature of his interest over land
 2. Claims for compensation and amounts
- An inquiry shall be held at the time and place provided in the section 7 notice, to decide,

- The market value of the land/servitude
 - Respective interests of the persons
 - Claims for compensation
 - Other relevant matters which need investigation
- Inquiry can be adjourned and held in different places on different dates, provided notice is given to claimants present-sec 9 (2)
 - Postponements should be notified to claimants via registered post so as to reach them 7 days before the fresh date of inquiry- sec 9 (2A)
 - The DS can make a decision after the inquiry or refer the matter to the DC.
 - A claimant/party to the dispute can also make an application to the DS for reference of claim/dispute to DC within 14 days of him receiving notice of the decision. DS must make reference following such application.

7. How do you protect your rights/interests if you have been away from your property during the acquisition procedure?

Upon failure to make claims on time,

- DS shall inquire into any claim made in writing any time before the conclusion of the inquiry.
- DS shall inquire into any claim made orally any time after the commencement and before the conclusion of the inquiry.
- Where claims are made orally, DS must record that claim.

Upon failure to appear on the time specified in the section 7 notice,

- Shall postpone the inquiry to a date after 14 days from the initial date of inquiry
- Exhibit or display notice of the postponed date in a conspicuous place 7 days prior to the date to which the inquiry has been postponed.

Section 15 notice in the event interested persons do not appear

- Date, time, place of the postponed inquiry
- Require interested persons, who had not yet responded, to notify in writing to the DS nature of their claims and amounts and particulars of compensation.
- Statement of compensation will be determined (decided) at the inquiry, regardless of attendance by interested persons.

8. If the state has not followed the legal procedure what reliefs can you seek and what are the institutions that you should approach?

The aggrieved or affected persons can demand relief from the Court of Appeal whenever the administrators fail to comply with the procedure stipulated in the LAA and Orders given under LAA, which is traced above. Where their fundamental rights (eg: right to equality) are affected, they can file a petition with the Supreme Court within one month of the violation to vindicate (prove and defend) their rights.

9. How is the compensation assessed?

- Land - based on the market value of the land
- Servitudes - based on the market value of servitude
(Proportionate to the person's interest in land)

9.1 Additional Compensation

Additional compensation is recoverable for,

- Damage or injury arising from severance (division) of the land acquired from his other lands
 - Provided that amount does not exceed 20 per centum of the market value of land.
- Loss of earnings carried out on that land
 - Provided that amount does not exceed 3 times the average annual net profits from the business, as shown by the books of accounts, for the 3 calendar years immediately preceding the date.
 - No compensation allowed if the business is the sale or disposal of the produce of the land to be acquired
- Reasonable expenses incurred in changing residence

9.2 Matters to be disregarded when assessing compensation

- Improvements made by the State
- Degree of urgency of acquisition

- Reluctance to part with land
 - Any damage to land caused by a private person
 - Damage likely to occur after the acquisition
 - Increase of market value because of acquisition
 - Improvement done to land after section 4 notices are put up
 - Special suitability and adaptability of land, which can only be used through statutory powers
 - Increases to market value of land effected (made) contrary to a court order, contrary to any law or in a manner that is detrimental (damaging) to the public health.
- ☆ Deductions to the computed amount of compensation are allowed, where market value for the remaining part of land increases by the reason of acquisition of the other part – sec 47
- ☆ However the amount of the deduction should not be more than 20 per centum of the market value of the land acquired.

10. How do you get to know the compensation is offered? What is the manner in which you would be notified of the compensation that is to be given?

Written notice should be given by the DS to persons entitled to compensation (after the alterations made by the board of review and CA in the event that appeals have been made).

11. How to get your compensation?

- You will receive compensation under the Land Acquisition Act, in cases where:
 - The total amount of compensation exceeds Rs. 25000.00
 - Land is not situated within the administrative area of any MC, UC or PS
 - The land does not have any building used for business or residential purpose on the date sec 7 notice is published in Gazette.

Unless the Minister otherwise directs in the national interest, DS shall,

1. Divide Rs. 25000.00 among the persons entitled to compensation in the same manner the whole amount of compensation is divided among them
2. Divide the balance compensation in maximum 10 equal payments so that payment is complete within 10 years.

Where the courts/board of review orders the party to pay costs to the DS, this amount shall be deducted from the amount of compensation.

Compensation's for mortgagee's interest in land will be paid into the DS, unless otherwise agreed by the parties.

Interest payable, where compensation is not paid before the date on which an Order for taking possession of land is made by the minister.

Land can be given in lieu (place of) of monetary compensation, by a written agreement signed by the person and the DS and specifying the amount of compensation in lieu of which land is given.² This must be done with the prior sanction of the Land Commissioner, where suitable state lands are available for exchange and where it is deemed fair for such land to be given in exchange.³

12. If the compensation is not adequate, what redress or remedies do you have?

Where your claim is wholly or partially disallowed, an application can be made to the DS to refer the matter to the District Court. When such an application has been made it is mandatory for the DS to refer the matter to the court.

Where your claim is allowed, but the compensation is insufficient, you have a right of appeal to the board of review appointed by the president. This right is lost where you accept the amount of compensation tendered, before the appeal is made or while the decision of the board is pending.

Form of appeal

- Produced in writing, including,
 - name and address of the appellant
 - name the DS who made the award in question as respondent
 - plain and concise statement of the appellant's interest in the relevant land
 - amount of compensation claimed by the appellant
 - his reasons for considering the compensation given to him by such an award to be insufficient.
- Appellant should further provide,
 1. a list of the witnesses he intends to call at the hearing of such appeal –and-
 2. a list of the documents he intends to produce at that hearing in support of such appeal before 6 months from the date on which the appeal is preferred (submitted) to the board/where a date to hear the appeal is fixed within 6 months, before that date.

² LAA, section 36.

³ Manual for State Land (1985), Orders under LAA, No 261(6)

Where a party is dissatisfied with a decision of the board, appeal can be made to the CA on a question of law (legal issue) by way of a written petition.

13. What is the normal procedure for possession of land and the procedure followed in the event of urgency?

Normal procedure - Any time after the award of sec 17 the Minister can, by Order published in Gazette, direct the DS/officer authorized on behalf of the DS to take possession of the land.

In the case of an 'urgency'- Minister can order the taking of possession after notice is published under sec 2 or 4 for the first time.

However, the Minister can issue this order only after obtaining an assessment from the DS whether such an order would cause inconvenience to the occupants of such land and their dependents.⁴Taking of possession should be done in a way that does not cause grave hardship to the owners/occupiers.⁵Moreover, the occupants are entitled to 6 months notice to vacate the premises, after notice of such requirement is given through registered post.⁶

Urgency discussed in case law,

- Burden of proving the urgency is on the acquiring authority.⁷
- Reasons for urgency should be satisfactorily set out.⁸
- "Urgency is always relative; sometimes action may be required within hours; for an enormous project, such as this expressway, urgency may be a matter of months or years."⁹

14. How do you organize as a group to secure your rights under the LAA?

Where rights of a group of people are violated, they can defend their rights by filing a case as a group. Publicly concerned persons can also take actions on behalf of the aggrieved parties by going before the law.

⁴ Manual for State Land (1985), Orders under LAA, No 263.

⁵ Manual for State Land (1985), Orders under LAA, No 249.

⁶ Manual for State Land (1985), Orders under LAA, No 263.

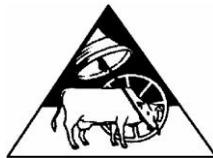
⁷ *Horana Plantations Ltd v Anura Kumara Dissanayake* SC Appeal No. 06/2009 (02.07.2012) 10.

⁸ *Ibid* 11.

⁹ *Amarasinghe v AG* [1993] 1 SriLR 376.

Notes

The Law & Society Trust (LST) is a not-for-profit organization established in 1982 in Colombo, Sri Lanka. It is engaged in human rights documentation research and advocacy across three programme areas: Civil and Political Rights; Economic, Social and Cultural Rights and Human Rights in Conflict. Its regular publications include 'LST Review' and 'Sri Lanka: State of the Human Rights' report. LST is a member of regional networks including the Asian for Human Rights and Development (FORUM-ASIA) and South Asians for Human Rights (SAHR).



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