



Mahaweli Authority of Sri Lanka:
Applicable Laws



Law & Society Trust
Economic, Social & Cultural Rights Programme

**Authority of Sri Lanka:
Applicable Laws**



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Acts

Crown Lands Ordinance	No. 8 of 1947
Land Development Ordinance	No 19 of 1935
Mahaweli Authority of Sri Lanka Act	No 23 of 1979
State Lands Ordinance	No 8 of 1947
Land Acquisition Act	No 9 of 1950

1. Introduction

The Mahaweli Authority of Sri Lanka was created in 1979 under an Act of parliament to be in charge of all aspects of the Mahaweli Development Programme which was accelerated under the Ministry of Mahaweli Development established in 1978. The Mahaweli Development Programme began with the first major project in the Master Plan, in February 1970, i.e the Polgolla diversion. These developments programmes have resulted in irrigation of paddy lands, re-settlement of farmer families, setting up new towns, villages and hamlets, and providing vital facilities for the people in the Mahaweli areas, like education, healthcare and agriculture and farming assistance.

Land and administration of land has been at the heart of the Mahaweli Development Program. The Mahaweli Program spans 13 administrative districts and 14 irrigation systems. In the dry zone alone, the Mahaweli Master Plan has earmarked 365,000 hectares of land. The water resources of Mahaweli depend on six river basins and the major projects of Mahaweli include the Victoria dam, Rantambe, Polgolla, Randenigala, Kotmale, and Bowathenna. Mahaweli manages the irrigation of over 101,000 hectares of irrigable land in the dry zone.

The main objectives of the programme have been food production (through irrigation and agriculture and allied increase in employment opportunities), hydropower generation, providing land to the landless, and better flood control. The Programme was envisioned to be implemented over 35 years.

Administration of lands, including matters relating to forests, wild life, irrigation, agrarian services and agriculture, in areas that are demarcated under the Mahaweli Act is within the purview of the Mahaweli Authority.¹ Land related matters are handled by a special unit in the Development Services Division of the Mahaweli Authority.²

2. What areas can be demarcated under Mahaweli Act?

Any area which in the opinion of the Minister can be developed with the water resources of the Mahaweli Ganga or of any major river (section 3(1), Mahaweli Act)

¹ The World Bank, 'Strategic Cities Development Project (SCDP), Sri Lanka' (1993)
11<http://www.defence.lk/SCDP/ban/pdf/Social_Management_Framework/chapter_II.pdf>

² MASL, 'Annual Report'(2010) 49-53<http://www.parliament.lk/papers_presented/09112012/annual_report_mahaweli_authority_of_srilaanka_2010.pdf>

3. Who can demarcate such areas ?

The Minister (currently, the Minister of Mahaweli Development & Environment), with the approval of the President (section 3(1), Mahaweli Act)

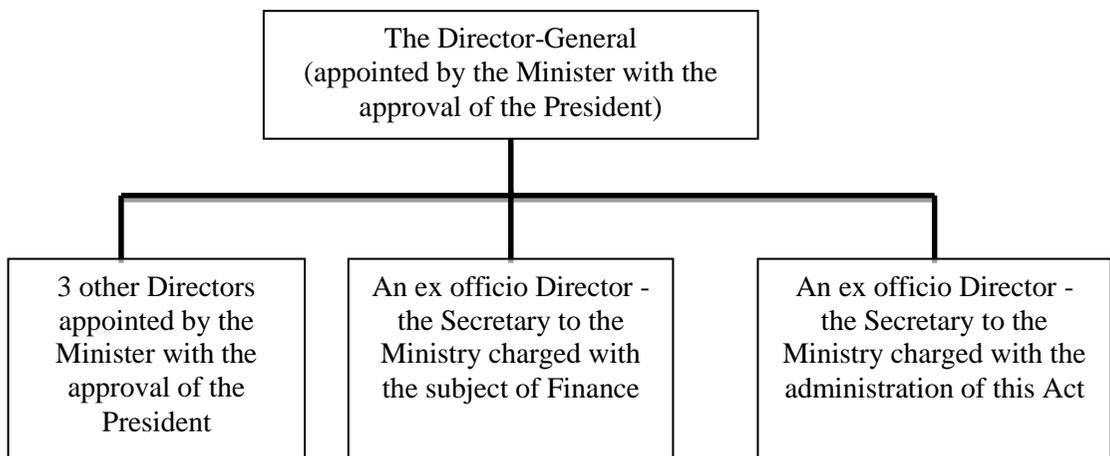
4. What is the procedure that the minister should follow to demarcate areas (Section 3 (1),(2))?

The Minister must declare, by Order published in Gazette, the areas which he decides should come under the authority of the Mahaweli Authority. For ease of reference hereinafter we will refer to such areas as ‘Mahaweli areas’. Every such Order must be submitted for Parliament’s approval ‘as soon as it is convenient.’ Where approval is not given by the Parliament, the Order will be deemed to be rescinded/no longer in effect from the date of such refusal. But this would not prejudice anything previously done under the order made by the Minister

5. What are the functions that the Mahaweli Authority can carry out even before the Parliamentary approval is extended?

- Maintaining any office or stores outside any Special Area.
- Executing outside any Special Area any such work as may be necessary for the discharge of its functions under this Act.

6. Composition of the Mahaweli Authority (section 4, 5)



7. Who are the persons disqualified from being appointed or from continuing as a Director? (Section 7)

- A Member of Parliament or a member of a local authority.
- A person found or declared to be of unsound mind under the Sri Lankan law or the law of any other country.
- A person who, having been declared an insolvent or a bankrupt under any law in Sri Lanka or in any other country, is an undischarged insolvent or bankrupt.
- A person who is serving or has served a sentence of imprisonment imposed by any court in Sri Lanka or in any other country.

8. What are the functions of the Mahaweli Authority relating to land in the Special Areas (Mahaweli area) demarcated by the Minister? (Section 12)

- Planning and implementing the Mahaweli Ganga Development Scheme, including the construction and operation of reservoirs, irrigation distribution system and installations for the generation and supply of electrical energy (in collaboration with the authority which is competent according to the law).
- Fostering and securing the full and integrated development of any Special Area.
- Optimizing agricultural productivity and employment potential and generating and securing economic and agricultural development within any Special Area.
- Conserving and maintaining the physical environment within any Special Area.
- Promoting and securing the participation of private capital, both internal and external, in the economic and agricultural development of any Special Area.

9. What are the powers of the Mahaweli Authority relating to land in the Special Areas demarcated by the Minister? (Section 13)

- Promote, assist in, and secure the settlement of persons on lands, farms and properties in any special area.
- Make, advance to and pay for or contribute to the expenses of, and otherwise assist persons settling, farming or otherwise developing any such lands, farms and properties or are desirous of so doing.
- Take all such steps as are necessary or are connected there with.

10. What is the procedure for acquisition of land required for the purposes of the Mahaweli Authority?

The government can acquire the land/interest for the Authority, according to the procedure set out in the LAA (section 21(1)).

11. What are the provisions that apply especially to acquisitions done on behalf of the Mahaweli Authority, notwithstanding anything to the contrary stated in the Land Acquisitions Act?

When there is a requirement to acquire land in a Mahaweli Area ('Special area'), such a land can be acquired under the Land Acquisition Act. The process under the Land Acquisition Act must be followed, and all the notices, must contain the public purpose for which the land is being acquired. When land is being acquired in that way, under the Land acquisitions Act, and public notice of the intention to acquire that land is published (as required by the LAA) within 3 years from date of declaration of a Mahaweli area (i.e. Declared a 'Special Area', by an Order published in the Gazette under section 23(2)), there are certain procedures that must be followed by the Mahaweli Authority.

- **Compensation for the land:** When land is acquired compensation has to be paid. Compensation must be equal to the market value of the land.
- **Determining the market value of the land:** The market-value of the land is the market value the land would have had on the date of the Order (provided the land then was in the same condition as

Compulsory acquisition of land in any Special Area for the Authority.

"23 (1) Where any land (or any interest in any land) in any Special Area is required by the Authority for any of its purposes, that land (or interest) may be acquired under the Land Acquisition Act by the Government for the Authority, and the provisions of that Act shall, (save as otherwise provided in subsection (2),) apply for the purposes of the acquisition of that land or interest.

(2) In any case where any land or any interest in any land in any Special Area is to be acquired under the Land Acquisition Act for any purpose of the Authority and public notice of the intention to acquire that land or interest is published as required by that Act at any time within the period of three years commencing on the date of the publication in the Gazette under section 4 (1) of the Order declaring such Special Area, the following provisions shall apply for the purpose of determining the amount of compensation to be paid in respect of that land or interest, notwithstanding anything to the contrary in that Act:

(a) the market value of the land shall be deemed to be the market value the land would have had on the date of such Order if it then was in the same condition as it is at the time of acquisition, increased by a reasonable amount on account of bona fide improvements, if any, effected to such land after such date ;

(b) in ascertaining the market value of the land at the date of such Order no account shall be taken of any benefit or increase in value which may have accrued, or any expectation of benefit or increase in value likely to accrue, directly or indirectly, from any work of development or other operation of the Authority in pursuance of this Act".

it is at the time of acquisition) increased by a reasonable amount on account of improvements done in good faith, effected to such land after the date of the order. So if you have constructed or improved the land, after the date of the order, **in good faith**, then you have a right to an additional amount of compensation, for that particular improvement.

- Any improvement or development that has been done by the Mahaweli Authority will not be taken into account when the market value of the land is being assessed. Even an expectation of benefit, or a likely increase in value, that is directly or indirectly linked to the work or operations of the Mahaweli Authority, will not be considered when the market value of the land is being assessed.

12. Mahaweli Authority can possess the lands in Mahaweli Areas

The Mahaweli Authority can, for its purposes, possess the lands in the Special Areas without following the procedure delineated in the Land Acquisitions Act.

12.1 What is the procedure that they should follow to so possess the lands?

1st step - As per section 24(1), the Mahaweli Authority must publish a notice, stating,

- The description of the relevant land and the part in which it is situated in the Special Area.
- That every person who claims any right, title or interest to such land should prefer (submit) his claim in writing to the Mahaweli Authority.
- The time period within which the claims must be made.

This notice must be,

- Published in the Gazette.
- Published in at least one newspaper in the Sinhala language and one newspaper in the Tamil language.
- Displayed, in accordance with directions of the Authority, at conspicuous places in such part of a Special Area as is described in the notice.

2nd step - A due investigation must be carried out by the Mahaweli Authority into all the claims made in respect of the land to decide their validity or invalidity.

3rd step - Where the Mahaweli Authority concludes that all the claims are invalid, after the due investigation, they can, with the approval of the Minister, take possession of such land and cause any work to be done in it.

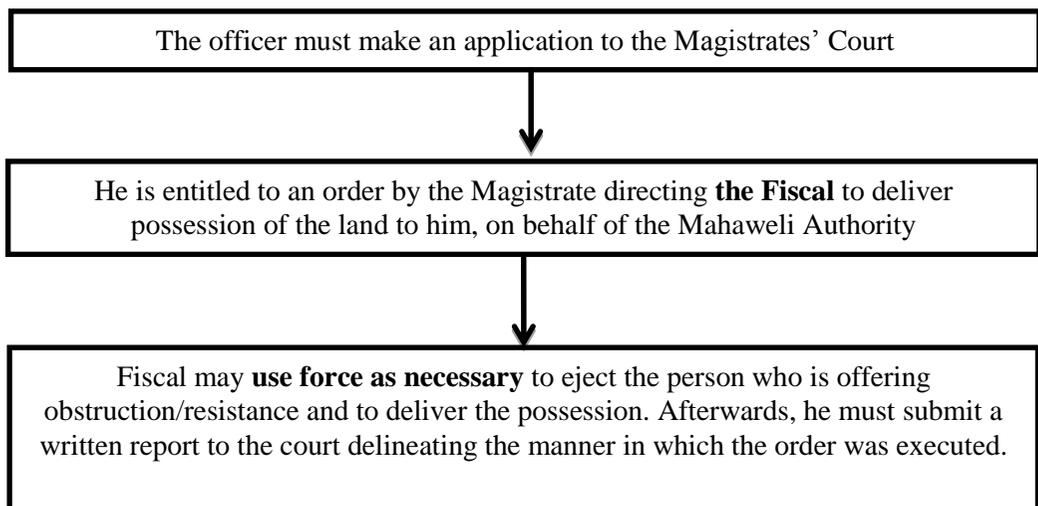
☆ *The effect such possession is similar to acquisition of lands because the land so possessed vests absolutely in the Mahaweli Authority free from any encumbrances (section 25(1)).*

However, there are procedural differences in that there is no need to disclose the public purpose in the case of taking possession. Authority is also under no duty to compensate the parties with claims.

12.2 Who can take possession of such land?

Only a person who has authorization given in writing to take possession for or on behalf of the MASL can take possession of the land.

12.3 What is the procedure the person acting on behalf of the Mahaweli Authority should follow where there is obstruction or resistance to him taking possession?



12.4 What remedies are available to a person whose right, title or interest in land has been acquired by the Mahaweli Authority

He can file action in a court of competent jurisdiction i.e. the District Court against the Authority for a declaration of such right, title or interest and for obtaining compensation from the Authority in respect of that land (section 25(3)).

Compensation will be assessed in these circumstances according to the Land Acquisition Act. However, where the Mahaweli Authority has taken possession of the land within 3 years from the date of declaring the areas a Mahaweli Area (i.e the Order under section 3(1)), the exceptions mentioned above under the process of acquisition in section 23(2) shall apply (section 25(5)).

*The Mahaweli
Authority holds
property in trust
for the people*

-The Supreme Court of Sri

*Lanka in Environmental
Foundation Ltd. vs.*

Mahaweli Authority of Sri

Lanka, SC (FR) No.

459/08 (17-06-2010)

13. What powers does the Mahaweli Authority have to alienate land in the ‘Special Areas’?

The Mahaweli Authority has the power to alienate land under the Land Development Ordinance and the State Land Ordinance/Crown Lands Ordinance in the ‘Special Areas.’ This is because section 22 of the Mahaweli Authority Act provides that the Mahaweli Authority shall exercise powers of the laws mentioned under the Schedule B of the Act and the Land Development Ordinance and the State Land Ordinance are mentioned therein (This argument was made Justice PA Ratnayake in pgs 7-9 of *Environmental Foundation Ltd v MASL*³).

Under section 22A, the Minister who administers the Mahaweli Act also has special powers in relation to the ‘Special Areas’ in relation to the functions stated in the Land Development Ordinance and the Crown Lands Ordinance.

However, the Supreme Court has held that **public trust doctrine** applies to the actions of the Mahaweli Authority and that they can ‘exercise their powers only in furtherance of the functions of the Mahaweli Authority.’⁴ For instance, they cannot alienate the ‘reserved lands of the reservoir’ and grant ‘permission for constructions’ without providing ‘a rational or justifiable basis.’⁵

³ SC (FR) No. 459/08 (17-06-2010)

⁴ *Ibid* 17.

⁵ *Ibid* 18.

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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