

GOVERNMENT OF GOA

LAW COMMISSION

Amendment of Land Acquisition Act 1894 to enable the Collectors to award compensation at market rates and other benefits according to Rehabilitation and Resettlement Policy of the Government.

Report No. 14

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LAW COMMISSION, GOA

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Amendment of Land Acquisition Act 1894 to enable the Collectors to award compensation at market rates and other benefits according to Rehabilitation and Resettlement Policy of the Government.

Forwarded to the Chief Minister, Government of Goa by Shri Ramakant D. Khalap, Chairman, Law Commission, Goa on the 6th day of May 2011.

The 2nd Law Commission constituted by Government of Goa for a period of one year (Order No. 9/5/2008-LA/100 dated 20th January 2009) and further extended for two years w.e.f. 06/04/2010 (Order No. 22/1/2010-LD(Estt.)/LC/530 dated 05/04/2010).

The Law Commission consists of the Chairman, and the two Members.

Chairman

Shri Ramakant D. Khalap

Members

Shri Cleofato Coutinho

Shri Mario Pinto Almeida

The Law Commission is located at B S/1, 3rd Floor, Paraiso de Goa, Porvorim-Goa.

Secretarial Support

1. Shri Manohar Shetye, O.S.D. to Chairman/ Acting Secretary

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Any enquiry relating to this Report should be addressed to the O.S.D. to Chairman/ Acting Secretary and sent either by post to the Law Commission, B S/1, 3rd Floor, Paraiso de Goa, Porvorim-Goa or email to chairman-glc.goa@nic.in or rdkhalap@rediffmail.com

Report

India is galloping towards a new horizon of wealth and prosperity. It is looking forward to a day when it will emerge as the Super Power. Its growth engines are showing admirable outputs. Per capita incomes are booming. Socio economic indicators of health, wealth and infrastructure are constantly on the rise. Population no doubt is growing but so too is the middle income section of the population. Infant mortality rates have come down drastically. Average life span has increased to almost 70 years. Sparkling new Airports, Metros, highways and Urban Conglomerates now define the life style at least of the urban Indians. Fashion and design now dictate food habits, clothing, housing, education and everything else. Two wheelers, cars, television sets, refrigerators, washing machines and white goods of every kind are now available off the shelf. In short, India is on the threshold of the elite club of developed Countries.

All this development is for a price. It has taken a toll of the rural landscape. Pristine agricultural land is being invaded to satiate the appetite for change and development. The farmer is being uprooted to provide the infrastructure needed for growth.

The common method of taking over land for public purposes is the age old Land Acquisition Act enacted way back in the year 1894. The methodology is simple. The process is set rolling by declaring government's intention to acquire land for a public purpose through a notification under section 4 of the Land Acquisition Act 1894. The land in question is surveyed, mapped and measured. Compensation to be paid to the land holders is determined by the Collectors on the basis of local enquiry. Price of similarly situated lands in the vicinity on the date of the first notification declaring government's intention to acquire the land is taken into consideration. Objections to acquisition are brushed aside under a spacious plea that public purpose overrides all other concerns. Claims for higher compensation as well as disputes regarding apportionment of the compensation awarded are referred to the District Courts for decision under section 18 of the Land Acquisition Act. Simple it may sound. But the entire methodology adopted by the bureaucracy is time consuming, apathetic and harsh upon the landholder. Land acquisition is in fact land confiscation for the crime of holding rights in the land fancied by the authorities as most suitable for the so called "public purpose". Years pass between the date of first notification and date of actual disbursement of compensation. Quite often the land holder loses both his shelter and means of livelihood. Compensation awarded is so abysmally poor that it defies even the definition of the word compensation. The scale of injustice meted out to landholders in the name of public purpose defies all logic. No wonder that at times the pent up anger of the land losers manifests

in violent agitations as witnessed in recent years in places like Singur and Nandigram in West Bengal, Noida in Uttar Pradesh and Gurgaon in Haryana.

It is therefore time to take a hard and close look at the process of statutory land acquisition and ensure adequate and efficacious compensation to the land holders whose land is acquired and guaranteeing simultaneously alternate shelter and means of livelihood in appropriate cases. Ms Sonia Gandhi, Chairperson of UPA in one of her recent reactions to agitations by farmers has set out a road map for land acquisition. She said, “.... If farmers are of necessity deprived of their land based livelihood, they must be provided with adequate compensation and alternate occupation.” This principle must also be extended to non farmers who lose their shelter or livelihood or both. The logic is simple. The land holders in the neighborhood of projects set up on acquired land end up benefiting from the project. The potential of their lands increases many fold and they reap dividends for all times to come while the land loser is left cursing his fate and of course the powers that be responsible for his loss. This unjust system must be done away with forthwith.

Fortunately, free consultancy in this regard is available. Government of Haryana is now the Role Model for the entire Nation. They have unveiled a fair, just and equitable land acquisition policy. They have hiked the compensation payable to the farmer and laced it with inflation linked royalty payable for 33 years at the rate of Rs.21000/- to Rs.42000/- per acre per year which is linked to inflation and is increased every year by Rs.750/- to Rs.1500/- depending upon the locality of the land acquired. They have fixed floor rate of land at prices ranging between Rs.12 Lakhs to Rs.42 Lakhs per acre depending again on location of land and its potential for development. In addition, a no litigation incentive at the rate of 20% of the compensation in addition to interest and solatium is offered to the land holders if they agree not to take the matter to the courts. If the land is acquired for a private developer, floor rates and annuity rates are still higher. Residential plots, business premises and a job per family are additional aspects of the Rehabilitation and Resettlement policy (R & R Policy) of the State of Haryana. It is a comprehensive policy under which the land oustees are entitled to free technical education, skill up gradation, exemption from stamp duty and registration fee, alternate tube well and other irrigation facilities, a special fund for community development, exemption from Capital Gains Tax, preference in allotment of residential, commercial and industrial plots etc are available. It also provides for Dispute Resolution Mechanism.

Scenario in Goa is far from satisfactory. Large tracks of land are being

acquired for Mopa Airport and Sports City in Pedne. Existing Industrial Estates are being extended; new estates are being set up in different parts of Goa. SEZs were permitted in large tracks of land. Rajiv Gandhi IT habitat occupies prime land where the land prices are upwards of Rs.50000/- per Sq. mt. NH4 A and NH17 are being widened. Railways, ports and Defense authorities also want land. Demand for land is ever increasing.

Farmers affected by land acquisition for the Mopa Airport and Sports City are up in arms. Those likely to be affected by the new alignments of NH4A and NH17 have flexed their muscles. They and their sympathizers have held a massive rally in Panaji and Porvorim and blocked all roads for almost half the day. Comunidade of Verna have registered their opposition to additional land acquisition by the Industrial Development Corporation for extension of Verna Industrial estate. Farmers from Mapusa have started mobilizing against the new Outline development Plan of the Mapusa town which earmarks large tracks of private land for projects like bus and taxi stands, parking lots, gardens, government and municipal buildings, schools and colleges, playgrounds and joggers parks as well as commercial complexes like markets, offices, malls and multiplexes. Land holders from and around other towns like Margao, Ponda, Vasco, etc are likely to rise in revolt sooner than later.

We think the Goa Government must act at the earliest if it wants to offset the likely backlash.

The Government of Goa must adopt its own R and R (Rehabilitation and Resettlement) Policy which should earmark among others such minimum price per acre/per sq. mt. and such rates of annuities as may be commensurate to the market conditions prevailing in Goa.

The section 11 of the Land Acquisition Act 1894 relates to inquiry and award by the Collector for the land to be acquired. The award to be prepared under this section provides for:

1. The true area of the land
2. The compensation which in the opinion of the Collector should be allowed for the land.
3. Apportionment of compensation among all persons having interest in such lands.

We are of the opinion that section 11 of Land Acquisition Act needs to be amended appropriately to empower the Collector to provide fair compensation as per prevailing market rates and such other facilities/amenities including annuity, house site, commercial space,

industrial plots, etc. as may be provided by the Government through its R and R Policy notified from time to time.

The Law Commission therefore, proposes that section 11 of the Land Acquisition Act 1894 be amended in the manner set out in annexed Draft Amendment Bill (Annexure A).

The Law Commission encloses herewith salient features (R and R Policy of Haryana (Annexure B) for the guidance of the Government of Goa.

The Law Commission also encloses herewith comprehensive R and R Policy of Government of Haryana which can be used as by the State Government as a guide for framing its own policy (Annexure C).

The Government of Goa had constituted a Committee comprising of the following Officers to discuss the Land Acquisition Policy for the State of Goa:

1. Chief Secretary
2. Finance Secretary
3. Law Secretary
4. Secretary (Revenue)
5. Collector (North)
6. Collector (South)

The Hon'ble Revenue Minister and the Hon'ble Chairman Law Commission were invited to attend this meeting.

The first meeting of this Committee was held on 1st December 2010 at 10.30 a.m in the Conference room at the Secretariat. It was presided over by the Hon'ble Chief Minister of Goa. It constituted a sub committee comprising of the following Members:

1. Chairman of Law CommissionChairman
2. The Law SecretaryMember
3. The Collector (North).....Member
4. The Collector (South).....Member
5. The Joint Secretary (Finance).....Member
6. The State Registrar-cum-Head
of Notary Services.....Member

This sub Committee was directed to suggest minimum floor rates for different types of lands in the towns and villages of Goa. This Committee met on 10/12/2010 and directed the Collectors to compile the data regarding market price of different types of land of different towns and

villages of Goa. This was a strenuous job which has been satisfactorily completed by Collectors of North and South of Goa. They submitted their Report on 28/04/2011. The Law Commission appreciates the work of Collectors and their subordinates. The statistical data is also annexed to this Report (Annexure D).

Recommendation :

Considering the above, the Law Commission is pleased to recommend as follows:

- 1. The Government of Goa may expeditiously frame its own R and R Policy preferably on the lines of R and R Policy of State of Haryana.**
- 2. The State of Goa may expeditiously adopt the minimum floor rates for different types of land in different parts of Goa. In fact, village wise rates be notified every year which can also be used for the purpose of Stamp Duty.**
- 3. To enable the Collectors to award compensation as per the R and R Policy of Goa Government.**
- 4. The Land Acquisition Act may be amended as per the Draft Amendment Bill annexed hereto.**

We recommend accordingly.

**(Ramakant D. Khalap)
Chairman**

**(Cleofato Coutinho)
Member**

**(Mario Pinto Almeida)
Member**

Annexure A

Land Acquisition (Amendment) Act 2011

Bill No. _____ of 2011

An Act to amend the law for determination of fair compensation and for grant of allied benefits to persons affected by the Land Acquisition.

Whereas, it is expedient to amend the law for acquisition of land needed for public purpose and for determination of amount of compensation as per prevailing market price and for providing such other benefits to the affected persons as per Governments policy of Land Acquisition, Rehabilitation and Resettlement of affected persons.

Be it enacted by the Legislative Assembly of the State of Goa in the ____year of the Republic as under-

1. Short title, extent and commencement:

- (1) This Act may be called as Land Acquisition (Amendment) Act 2011.
- (2) It extends to the whole of Goa.
- (3) It shall come into force with effect from such date as may be notified.

2. In section 11 of the Land Acquisition Act, sub section (1) sub clause (ii) be substituted by the following:

“(ii) The compensation which in his opinion should be allowed for the land and which shall not be less than the compensation determined in terms of notification issued by the Government fixing the minimum market value of similar lands and such other benefits as may be permissible under any Land Acquisition, Rehabilitation and Resettlement Policy notified by the Government from time to time.”

Statement of Objects and Reasons

Amount of compensation paid by the Government for land acquired for public purposes is usually much below the market price. Usually land acquired is under specific land use but is put to better use on acquisition. For example, land under agriculture is acquired and put to use for settlement or commercial or industrial purpose. The acquiring departments/companies earn much more money in the process. Besides, the landholder loses valuable source of income. This leads to objections to land acquisition,

litigations as well as morchas, hartals and other types of agitations. Government of Haryana, Uttar Pradesh and some other States have formed Rehabilitation and Resettlement Policies for the benefit of land oustees which provide for a fair market price, annuities for farmers for sufficiently long periods, allotment of house sites, commercial spaces and industrial plots, etc to the affected persons. Government of Goa desires to offer similar benefits to land oustees. Hence, this enabling amendment.

Annexure B

Rehabilitation and Resettlement Policy of Haryana – Salient Features

1. Market Value as compensation for land acquired. Minimum floor rates prescribed. Land Price fixed between 12 Lakhs to 42 Lakhs and more per acre.
2. Annuity for 33 years at Rs.21000/- to Rs.42000/- per year with annual increment of Rs.750/- to Rs.1500/-.
3. No litigation incentive equal to 20% of the basic rate of land plus solatium and interest payable under law.
4. Residential plots where self occupied house is acquired for unavoidable reasons.
5. Commercial sites/industrial plots where 75% and more revenue estate is acquired.
6. One job per affected family in group C and D categories and preference in jobs to the dependents.
7. Alternate Electricity connection
8. Alternate irrigation facility including tub wells
9. Exemption from Stamp duty and registration Charges if the oustee invests his compensation in agricultural land within 2 years.
10. Special scheme even to agricultural labourers and artisans dependent upon land acquired for their livelihood.
11. Free technical education and up gradation of skills of dependents of oustees.
12. Creation of Social and Community infrastructure facilities for the benefit of oustees.
13. Exemption from Capital Gains tax on compensation.
14. Investment Advisory services to oustees to help them invest compensation profitably.
15. Grievance/dispute resolution Mechanism

Annexure C

**Land Acquisition Policy –Haryana Government
is annexed as separate file.**

Annexure D-details with the North Collector, Panaji.