

## Land Acquisition Act, 1894

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### The law now in force:

#### **The Land Acquisition Act 1 of 1984:**

The effect of amendment of the Central Act (1984 Act) is the repeal of the Kerala Land Acquisition Act (AIR 1990 SC 761 & AIR 1992 SC 488).

### Relevant Statutes etc.

- 1) The Land Acquisition Act 1 of 1984
- 2) The Land Acquisition (Kerala) Rules 1990.
- 3) Transfer of Property Act Sec.73(2)
- 4) Civil Rules of Practice (Rules 239 & 377 to 379).  
(Rules were framed when Kerala Act was in force).
- 5) Advocates Fees Rules (Rule 14[5]).
- 6) Notification issued by Government (S.R.O. 1267/89 Dated 18-7-1989).
- 7) Circulars issued by the High Court (No.34/70, 5/71, 30/71 and 4/80 & 1/89)
- 8) Official Memorandum issued by the High Court
  - (1) No.D1 - 12316/94 Dt. 12-2-1996
  - (2) No.D1 – 60482/96 Dt. 14-1-1997
- 9) Judgments of the Supreme Court and High Courts.

### Court having jurisdiction

In Kerala, it is the Sub Court which has got jurisdiction under the L.A.Act.(vide S.R.O.1267/89 dtd.18.7.1989).

### Ouster of jurisdiction of civil courts

By necessary implication the jurisdiction of civil courts in dealing with matters under the L.A.Act is ousted.(AIR 1996 SC 523).

### Acquisition of Government land/interest

Government land cannot be acquired; nor its interest.(AIR 2004 SC 3491).

### Land Acquisition Officer

The officer empowered by the Act to acquire land is Collector. But any officer may be appointed by Government to perform the functions of the Collector. He is called Land Acquisition Officer. The words Collector and Land Acquisition Officer are used interchangeably.

### Preliminary notification under Section 4(1)

Section 4(1) notification shall be published :

- 1) in the office gazette
- 2) in two daily newspapers circulating into the locality, one of them shall be in the regional language

- 3) Public notice of the substance of the notification shall be given at convenient places in the locality. This is mandatory. (AIR 1973 SC 552; AIR 2002 SC 3309).

### Importance of Section 4(1) notification

- 1) The market value of the property is determined as on the date of Section 4(1) notification.
- 2) It is from the date of this notification the amount payable under Section 23(1)A is calculated.
- 3) Section 6 declaration shall be made within one year from Section 4(1) notification.

### Date of Section 4(1) notification

For all purposes the date of publication of Section 4(1) notification is the last of the dates of the two publications (i.e, notifications in the gazette and newspapers) and the giving of the public notice in the locality. See 1991 (2)KLT 636; 1995(2) KLT 857; 1995(4) SCC 501; 2003(1) KLT 494 is per incuriam.

### Erratum notification

It is not a fresh notification. It relates back to the date of the original notification.(AIR 1996 SC 866).

### Alienation made after Section 4(1) notification

The title to the land vests in the Government only when possession is taken by it; till then the original owner is free to deal with the land as he likes. (AIR 1987 SC 2421; 1996 (11) SCC 229 & AIR 1995 SC 812). There are certain local laws which prohibit alienation after Section 4(1) notification. Section 24 of the L.A.Act(7<sup>thly</sup>) only directs that for determining the amount of compensation alienation, improvements etc. made after Section 4(1) notification shall not be taken into consideration.

### Emergent situation

The interested party may object to the acquisition after the issuance of Section 4(1) notification (vide section 5A). But this may be dispensed with in an emergent situation (vide Section17).

### Declaration and notification under section 6

Subsequent to section 4(1) notification and enquiry under Section 5A (if not dispensed with) the Government has to make a declaration and publish a notification stating that the property is required for a public purpose.

### Award enquiry (Sec.9)

The Collector gives a public notice so that interested persons may take part in the enquiry for passing an award. This notice is mandatory. All interested parties including the owners etc. of the land and the beneficiary of the acquisition (local authority, company etc.) should be given notice. (AIR 1995 SC 724 ; AIR 2002 SC 817)

### Award by Collector

After the enquiry, the court shall pass award under Section 11. The following particulars shall be included in it. The true area of the land, compensation and apportionment of compensation.

### Nil Award

A nil award is also an award. (2005(4) KLT S.N.54).

### Award on agreement

An award may be passed on the basis of an agreement between all the interested persons and the Collector.

### The nature of the Collector's award.

The award is in the nature of an offer to the claimants and it becomes binding on them only when it is accepted by them. (AIR 1961 SC 1500; AIR 2003 SC 942)

### Taking possession

Normally possession is taken by the Government after the passing of the award (Section 16).

### Taking advance possession

But in the case of urgency on the expiration of 15 days from the date of publication of Section 9 notification the Government may take possession (Se. 17). In such cases award will be passed later. Even on taking advance possession the property will vest in the Government. (AIR 2002 SC 2532).

### Locality to pay compensation arises when

The Government becomes liable to pay compensation when the possession is taken. (1989 (1) KLJ 107)

### Vesting free of encumbrance:

On taking possession, the property vests in the Government free of all encumbrances (2001 (8) SCC 143; AIR 2002 SC 2532). Easement is an encumbrance (See AIR 1955 SC 298; AIR 2001 SC 5431). But easement of necessity is not extinguished by acquisition (2005(2) SCC 164).

### Payment of amount awarded by Collector

The Collector shall pay compensation within one month from the date of the award (rule 14) or deposit it in court if the persons to whom compensation is tendered by the Collector do not consent, receive it or if there is no person competent to alienate the land or if there is dispute as to the apportionment of it, the Collector shall deposit the amount in court. (Section 31).

### Receiving under protest

A person who is aggrieved by the Award as to the extent of the property, apportionment, persons entitled to the amount or amount of compensation may receive the compensation under protest (Section 31(2) proviso). This protest is necessary for him to make an application under Section 18 proviso (2).

### Reference applications

Reference is made under Sections 18, 28A, 30 and 49(1)

### Application by Advocate

Advocate may file an application for reference (1998(2) KLT 881).

## Court Fees

No court fee is payable on reference applications (1996(1) SCC 289, 2005 (4) KLT 520).

## Reference application under Section 18

Who can file :

- 1) He must be an interested person.
- 2) He must not have accepted the award (i.e, he must have received payment under protest)
- 3) Objection should be as to the measurement of land, amount of compensation, persons to whom which is payable or the apportionment of compensation
- 4) A beneficiary or government cannot file application under Section 18.

## Protest

Protest may be registered in an application for payment of compensation. (1997 (1) KLT 768). The protest should precede receipt of compensation. It may be oral; it may be made in a reference application filed before receipt of the amount.

But if there was neither oral protest, nor protest in writing, the mere fact of filing of a reference application on the next day of receipt of compensation does not raise an inference that there was protest. (2001(1) KLT 958 FB.). If L.A.O. is not satisfied that there was protest he cannot be compelled to make a reference. (2004(3) KLT 348 overruling 2003(1) KLT 863). If a person who receives the amount under protest does not file a reference application no reference can be made. (1998 (2) KLT 898 and 2005 (1) KLT 583).

## FORM OF APPLICATION

A letter written by the party may be treated as an application (2005(1) KLT 583) no form has been prescribed the Act (See 2006 (3) KLT 186. R. 16 A of Kerala L.A. Rules is ultra vires).

For the effect of failure to receive compensation under protest (see -AIR 1992 SC 974).

## Contents of reference application

Reference may be sought for in respect of four matters only.

- a) Measurement of land
- b) Amount of compensation
- c) Person to whom compensation is payable
- d) Apportionment of compensation

## Application by post

Application may be sent by post. But it must reach the L.A.O. before the expiry of the period of limitation. 1989(2) KLT 828; 1982 KLT 466 is not good law.

## Application by co-owner

A co-owner may file an application on behalf of all the co-owners, in which case all the co-owners are entitled to enhancement (AIR 1991 SC 1966). But if it is not made on behalf of all the co-owners the co-owner who files an application alone will get the benefit ( AIR 1992 SC 974; AIR 1996 SC 1513 & AIR 2003 SC 620).

## Joint Application

Husband and wife filed joint application. This was held proper (1995(2) SCC 376).

### **Limitation for filing application (Section 18(2))**

If the person making the application was present or represented before the Collector at the time the award was made the reference application should be filed within six weeks from the date of the award (1995 (2) JT 572). This includes of person who shall be deemed to be present or represented (AIR 2003 SC 942). Thus, if the claimant is represented by a counsel that is sufficient (AIR 2003 Ker.263).

In other cases, the reference application should be filed within six weeks of the receipt of the notice from the Collector or within six months from the date of the Collector's award, whichever period shall first expire.

### **Date of award**

For the purpose of Section 18(2) proviso (b) the date of award is the date on which the award is communicated to the party or the party either actually or constructively knew about the contents of the award (AIR 1961 SC 1500, 2005(1) KLT 79, 2000 (2) KLT 777 & 2005(7) SCC 440).

### **When no communication is made**

If no notice is issued it is sufficient for a claimant to file an application within six months from the date of his knowledge of the contents of the award.

### **No notice is necessary**

If the claimant is present when the award is passed, it is not necessary to issue notice. (1997 JT 123).

#### **Reference application for re-determination of compensation** (Section 28A)

This provision enables a person to file an application for reference if he did not file an application under Section 18.

The following conditions are to be satisfied:

- a). An award has been passed by the court
- b) By that award the court has enhanced the compensation awarded by the Collector.
- c) The applicant is interested in another land covered by the same notification
- d) The applicant did not make an application under Section 18
- e) The applicant is aggrieved by the award of the Collector.
- f) Application under Section 28A is filed within three months from the date of the award of the court on the basis of which re-determination is sought.

The above conditions may be analysed in detail.

### **Condition No. (a)**

An award has been passed by the court:

Only on the basis of a reference court award- and not an appellate award - an application under Section 28A is maintainable (AIR 1997 SC 1915)

Anyone of successive awards may be the basis for an application under Section 28A. It need not be the first award (AIR 1995 SC 2259).

### **Condition No.(b)**

The court has enhanced the compensation:

Only if the court has enhanced the compensation awarded in the judgment relied on, an application under Section 28A will lie. If in the appeal against that award the appellate court reduces the compensation the claimant under Section 28A will get only the reduced amount (2006(2) KLT 992)

#### **Condition No.(c)**

Both properties should be covered by the same notification:

The property covered by the award relied on by the claimant and the property of the claimant should be covered by the same notification. It is not sufficient that they are covered by the notifications of the same date (1994 Maharashtra LJ 1414; AIR 2003 Ker. 263).

Properties should be similar

In the case coming under Section 28A also the properties of the claimant and the property covered by the award relied on by him should be similar and similarly situated.(2002 (2) KLT 569).

#### **Condition No.(d)**

The applicant did not make an application:

To make an application means to make an effective application. A person whose application under Section 18 has been dismissed or rejected on the ground of delay or other technical grounds is entitled to file an application under Section 28A ( AIR 2002 SC 3240, 2003 (3) KLT 705, 2004(7)SCC 753).

#### **Condition No.(e)**

The applicant is aggrieved by the award of the Collector:

A person who had not filed an application under Section 18 is entitled to file an application under Section 28A (AIR 2002 SC 3240, AIR 2004 Ker.1).

#### **Condition No.(f)**

Application should be filed within three months:

The limitation starts from the date of the award relied on and not from the date of knowledge of that award (1997 (2) KLT 24 SC, AIR 2003 SC 2949, 2003(3)KLT S.N.182). But the time requisite for obtaining a copy of the award relied on may be excluded.

#### **Only land value can be re-determined**

In an application under Section 28A only value of the land can be re-determined and not of the improvements (2004(2) KLT 716). Market value as on Section 4(1) notification should be determined (2005(1) KLT 687).

#### **Award on agreement**

In the case of an award passed by the Collector on agreement, Section 28A cannot be invoked (2005(2) KLT 39).

#### **When appellate court reduces the amount**

If in an appeal against the award relied on by the claimant under Section 28A the compensation is reduced by the appellate court the claimant under Section 28A will get only the reduced amount (2006(2) KLT 992 SC).

### Payment of interest

The compensation awarded under Section 28A also will carry interest provided in Section 34 of the Act (AIR 1995 SC 2259). Rule 12 (a)(vi) of the Kerala Rules was struck down in 2000(1) KLT 26.

### Parties entitled to notice

All the interested parties including the beneficiary are entitled to notice in the proceedings under Section 28A.

### Only one application can be filed

Only one application can be filed under Section 28A by a person. (AIR 1995 SC 2259, 2000(1)KLT 338). But if an application under Section 28A is dismissed as time barred there is no bar in filing another application on the basis of another award as the first one was not an effective one. (2003(1) KLT 813).

### REFERENCE OF DISPUTE AS TO APPORTIONMENT(Sec. 30)

When there is a dispute as to the apportionment of the compensation or as to the persons entitled to it, the Collector may refer the dispute to the court, when the Collector is not bound to refer the dispute to the court. It is discretionary. The reference may be made either on the application of the person or by the Collector suo motu. There is no period of limitation for filing an application under Section 30.

1. Dr. G.H. Grant Vs. State of Bihar (AIR 1966 S.C. 237).
2. Inder Singh Vs. Ram Sarup (I.L.R. 1973 (2) Del. 78).
3. Sarjug Rai vs. Maheswari Devi (AIR 1975 Pat. 192).
4. Sharda Devi Vs. State of Bihar (AIR 2003 SC 942)
5. Meher Rusi Dalal Vs. Union of India (AIR 2004 SC.3491)

Sec.18(1)	Sec.30
1).Applicable to a party who had a right before Collector's Award and had notice u/s.12(2)	Applicable to a party who got right compensation after the Collector's award or party who had notice u/s.12(2) though he had right before Collector's award.
2).Application for reference necessary.	Application not necessary. L.A.O. may refer suo motu.
3).Period of time has been prescribed application	No period has been prescribed.
4).Civil Suit is barred	Civil Suit is not barred

### WHAT IS REASONABLE TIME

Though no period of limitation has been prescribed for an application U/s.30, it must be filed within a reasonable period. The reasonable time would be the time set out in Section 18(AIR 2004 SC 3491).

### ACQUISITION PENDING PARTITION SUIT

If a property is acquired during the pendency of a partition suit reference U/s.30 is unnecessary (AIR 2004 Pat.26).

### ACQUISITION OF A PART OF BUILDING

(Reference under Sec. 49 (1))

If only a part of a building etc. is to be acquired, Government shall acquire the whole of the building etc. if the owner so desires. A dispute may arise whether the acquired property is part of a building. Then the Collector shall refer the question to the court and shall not take possession until that question is decided. No application is necessary to invoke section 49(1) (1998 (1) KLT 511). Only the building can be acquired u/s.49(1) and not the land (1980 KLT 59).

### OBJECTION OF TENANTS

A tenant has no right to object to the exercise of the option by the owner u/s.49(1). (1993 (1) KLT 730; 2000 (3) KLT 16).

### DELAY CONDONATION BY COLLECTOR

Collector is not a court. He cannot condone the delay in filing the reference application (1996 (1) KLT S.N. 24; 1996 (2) KLT S.N.53; 2005(7) SCC 440).

### REFERENCE ON THE DECISION OF L.A.O. REGARDING LIMITATION

If a L.A.O. rejects the application for reference as time barred the claimant cannot get the question of limitation referred to the court (2000(3) KLT 71).

### APPLICATION BY A PERSON WHO EXECUTED AN AGREEMENT

(Sec. 11(2) Rule (4) (5))

If an award is passed on the basis of the agreement no reference can be made. An agreement takes away the jurisdiction of the court (AIR 1995 S.C. 225; AIR 1996 S.C. 133 & 2005(4) SCC 264).

### Deposit of amount and cessation of interest (Section 34)

When the Collector deposits the amount into the court the liability of the State to pay interest ceases (AIR 1996 SC 136; 1996(2) SCC 71).

### Forwarding the records to the court (S.19)

The Collector should send a statement to the court containing the following particulars.

1. Situation and extent of land with particulars of trees, buildings, standing crops.
2. Name of the persons interested in the land.
3. Compensation awarded and paid or tendered.
4. The amount paid or deposited.
5. The grounds on which the amount of compensation was determined.

The Collector shall attach a schedule giving particulars of notices served on the parties and the statements filed by them.

Rule 377 of C.R.P. makes it mandatory for the Collector to send the records which form the basis for reference. If the records are not sent up the Judge shall send for them before notice is issued.

In **State of Kerala Vs. Ramachandran Nair (1995 (1) KLT 658)** it is observed that sending a covering letter by the Collector is not sufficient. He should comply with Sec.19 failing which the court shall return the

reference as the reference is not in accordance with law. The same direction is given in the High Court Circular No.4/1980.

### **NUMBERING THE REFERENCE & PARTIES**

Rule 377 C.R.P

The reference shall be numbered as L.A.R. No...../..... It is the duty of the court to send notice to all the interested parties (vide Section 20). It is clear that the parties to the reference are arrayed by the court. So it should make sure that all the necessary parties are on the party array. The beneficiary entitled to appear and adduce evidence (u/s.50) also shall be made a party. The Collector shall not be made a party if the reference relates to apportionment alone. Parties to the reference other than the Collector, Company or local authority shall be shown as claimants A, B, C etc. The Collector, the company or local authority shall be shown as respondents A, B, C etc.

### **APPLICATION OF C.P.C.**

(Sec.53)

Provisions of CPC are applicable unless it is inconsistent with anything containing in the L.A.Act.

### **NOTICE**

(Sec.20)

All the interested parties, and the Collector in appropriate cases shall be issued notice (AIR 1986 S.C.1164; AIR 2002 S.C. 817). If the beneficiary is not heard the judgment is not binding on it (1990 (3) SCC. 617; 1995(2) KLT 683). The beneficiary may file an appeal or writ petition if it (the beneficiary) is not heard (AIR 1995 S.C. 724).

### **SERVICE OF NOTICE**

(S. 45 & High Court Circular No.30/71)

1. Notice shall be served by delivering or tendering a copy.
2. Service shall be made on the party if practicable.
3. If he cannot be found service may be made on any adult male member of his family residing with him. If no such adult male member can be found notice may be affixed.
  - (1) On the outer door of the house in which the person ordinarily resides or
  - (2) Carries on business or
  - (3) In some conspicuous place in the office of the officer or Collector or
  - (4) In the Court House and in some conspicuous part of the land.

### **SERVICE BY POST**

Notice may be served by sending it by registered post to the last known residence or place of business to the person concerned.

### **SERVICE NOT THROUGH COLLECTOR**

(H.C. Circular 30/71)

Process in L.A.cases shall be served through courts and should not be sent to the Collector for service.

### **PLEADINGS**

(R. 378 C.R.P.)

The following constitute pleadings in the case.

1. The application filed by claimants for reference (plaint).
2. Written statement filed by the claimants on their appearance in court.

3. The statement in reply filed by the respondent, Collector or company (written statement).
4. written statement.

**SCOPE OF TRIAL**  
(S. 21 R 378 (3) C.R.P)

The trial shall be restricted to the consideration of interest of the person. The investigation shall be with reference to the claim in the reference application.

**THE NATURE OF THE PROCEEDINGS IN COURT**

It is an original proceedings the court does not prove or disprove the reasoning of the L.A.O or correct his error or affirm, modify or reverse the conclusion reached by him. (AIR 1988 S.C. 1652; 1996(1) KLT 658).

**EXAMINATION OF WITNESSES**  
(R.378 (7) CRP & High Court Circular No.4/80)

Witnesses examined by one claimant shall be numbered as AW1, AW2 etc. by another claimant as BW1, BW2 etc. according to the array of the claimants. Witnesses examined by the respondents shall be numbered as RW1, RW2 etc.

**WHAT DOCUMENTS CAN BE RELIED ON**

Documents not marked in the case shall not be acted upon by the court. The notes prepared by the L.A. Officer also cannot be relied on unless they are marked.

**MARKING EXHIBITS**  
(R.378 C.R.P. & High Court Circular No.4/80).

Documents filed by the one claimant shall be marked as Exts.A1, A2 etc. Documents filed by another claimant as B1, B2 etc. Documents filed by respondents shall be marked as R1, R2 etc. Court documents shall be marked as Exts.X1, X2 etc. Third party documents shall be marked as T1, T2 etc.

**MARKING UNDER SEC.51 (A)**

A certified copy of registered document may be accepted as evidence of the transaction recorded in the document (Sec.51A). It is not necessary to examine anyone to prove the contents. But the court is not bound to accept it as a reliable evidence. (AIR 2001 SC 1117; 2001 (3) KLT 130; AIR 2003 SC 4382; 2004(3) KLT 737; AIR 2005 SC 3467).

**CERTIFIED COPIES RELIED ON BY THE COLLECTOR**

The certified copies relied on by the Collector could be regarded acceptable as evidence by court unless it is shown by contra evidence on behalf of the claimants that such document could not have been relied on in making the award by the Collector. The reason is that they would only support his evidence and not establish something independent of the award. In such a case it is not necessary to examine anyone (1995 (2) S.C.C. 305; 1996 (1) KLT 658; 2000 (3) KLT 661).

**IMPLEADMENT**

A party may be impleaded to the proceedings in a reference court. The impleadment is not under Order 1 Rule 10 C.P.C. But it is by virtue of the provisions in Section 50(2) L.A.Act (AIR 1996 SC 1513).

**THE COURT SHOULD ANSWER ONLY REFERRED QUESTION**

The court has jurisdiction only to answer the question referred to it by the Collector(2003(5) SCC 561).

### PRINCIPLE OF RES JUDICATA APPLICABLE

The principle of res judicata is applicable to proceedings under the L.A.Act (1995(2) SCC 734; AIR 2004 SC 3491).

### JUDGMENT

(S.26. High Court Circular No.1/89 and O.M.No.D1-60482/96)

The statement of the grounds of every award shall be deemed to be a judgment (S.26).

High Court Circular No.1/89 directs that in the judgment the following particulars should be given.

- 1) Date of S 4(1) Notification.
- 2) No. and area of land acquired
- 3) the relevant date with reference to which compensation is required to be determined.
- 4) date of taking possession.
- 5) date of Award.

The O.M. mentioned above directs the courts to attach a separate statement to the judgment showing the following particulars.

- 1) Purpose of acquisition.
- 2) Date of notification u/s. 4(1)
- 3) Date on which possession was taken.
- 4) Date of Award by the L.A.O. and the rate at which it is given.
- 5) Whether the court has enhanced the compensation or not.  
and
- 6) If the court has enhanced the compensation, the break up figures including the centage.

### AWARD

(Sec.26)

Every Award shall be signed by the Judge and shall specify the amount awarded by it and the grounds of awarding the amount. The Award is deemed to be a decree. The grounds of Award shall be deemed to be a judgment.

### DECREE TO BE DRAWN UP

(R.379 C.R.P. AND HIGH COURT CIRCULAR NOS. 5/71 & 4/80.)

In L.A.cases the court shall draw up a decree in the manner as in original suit. The terms of the decree shall be given in the decretal portion.

### FREE COPY

(Sec. 51 R 239(4) CRP)

A person claiming under the Award is entitled to a free copy of the award.

A copy of the judgment and decree will be supplied to the Government pleader free of cost if applied for.

**ADVOCATE FEES**  
(Advocate Fees Rules 14(5))

On the amount claimed in excess at the rate prescribed for suits for money minimum Rs.100/- and maximum Rs.3,000/-.

Between rival claimants:

Fee is calculated on the amount in dispute as in original suits.

**COURT SHALL NOT REDUCE COMPENSATION**  
(Sec.25)

The court cannot reduce the compensation awarded by the Collector. But it can award compensation exceeding the claim (AIR 2002 SC 1045).

**DUTY OF COURT TO ANSWER REFERENCE**

Evenif the claimant remains absent or fails to adduce evidence, the court has to answer the question referred to it. It cannot dismiss the reference for default (1998 (2) KLT 298; 1991 (2) KLT 69 ; AIR 2002 S.C. 726).

**DISMISSAL FOR DEFAULT/EX-PARTE ORDER**

Remedy

If a reference happens to be dismissed for default of the claimant or answered against the claimant ex-parte, two courses are open to the claimant.

- 1) He may file an appeal under Sec. 54.
- 2) He may file an application under Order 9 Rule IX r/w Sec. 159 C.P.C. (1996 (5) SCC 701 & AIR 2002 SC 726).

**BURDEN OF PROOF**

The burden to prove the market value of an acquired property is always on the State (AIR 2001 S.C. 1117 ; AIR 2003 SC 4382). But the burden to prove that he is entitled to enhance compensation is on the claimant (AIR 1994 S.C.1142).

**AMENDMENT OF REFERENCE APPLICATION**

Order 6 Rule 17 C.P.C. is applicable and a reference application may be amended (AIR 2003 SC 1004; 2005 (12) SCC 1).

**MISTAKE IN SURVEY NUMBER**

The court can decide whether the survey number given in the Award is correct (1992 (1) KLT 472).

**AMENDMENT OF DECREE**

If the court fails to allow the benefits u/s.23(1)A, 23(2) and 28 an application to amend the decree incorporating those benefits is not maintainable as it is not a clerical mistake (1996(4) SCC 533 ; 1996 (2) KLT 280).

## REVIEW OF JUDGMENT

A judgment may be reviewed under O. 47 R.1 C.P.C. (2005 (1) KLT SN. 28 ; 2004(7) SCC 753).

### Time barred applications referred by Collector

The court has power to decide whether the reference made by the Collector is valid and the court gets jurisdiction to answer the reference only if it is valid. If the reference is invalid the court shall reject it. If the Collector has referred a time barred application, it is not a valid reference (AIR 1979 SC 404; AIR 1996 SC 1513; 1997(9) SCC 710, 2002 (2) KLT 56, AIR 2003 Ker.263; AIR 2003 SC 942).

## EXECUTION

### Mode of Payment into Court (R.14)

All payments in the court shall be made by D Form Cheques drawn in favour of the Presiding Officer payable by the order of the court to the credit of Civil Court Deposits.

### I.T.Deductions:

If the claimant is liable to pay income tax on compensation it is for the L.A.O. to deduct it. Only balance is to be deposited in court (1999 (1) KLJ (NOC) P.35). He should issue tax deduction certificate to the claimant direct or produce it before the Court (Sec. 203 I.T. Act) (See 2005(1) KLT 773).

### Succession Certificate

If a claimant dies his legal representatives need not produce a succession certificate as the amount covered by the Award is not a debt (1998 (2) KLT 912).

### Appropriation

The court shall not mix up the Award of the Collector and the Award of the Court. The amount due to the claimant should be calculated only on the basis of the award of the court. The Award passed by the Collector should not be taken into consideration.

“When the deposit is made towards the specified amounts, the claimant is not entitled to deduct from the amount of compensation towards cost, interest, additional amount u/s.23 (1) (A) with interest and then to claim the total balance amount with future interest”. The liability to pay interest will cease on deposit of compensation (1996 (2) SCC 71). The claimant cannot adjust the amount deposited and received towards principal amount as against interest. The doctrine of Sec. 60 of the Contract Act is inapplicable (1996 (4) SCC 178; 2005 (1) KLT 173).

## FAILURE TO GRANT CERTAIN RELIEFS

Executing Court cannot go behind the decree. It cannot examine the correctness of the decree and grant reliefs the Reference Court has omitted to grant (1996(4) SCC 533 ; 2005(1) KLT SN.28).

## NO ATTACHMENT OF PROPERTY OF BENEFICIARY

The obligation to pay the amount is that of the Government. The beneficiary has no obligation. Executing court cannot order attachment of the assets of the beneficiary (1995 (2) K.L.T.320).

## ISSUANCE OF CHEQUE

(High Court O.M. No.D1 – 12316/94)

Cheques in L.A. cases shall be issued by the court in the name of the party only.

## MARKET VALUE

### WHAT IS:

Market value is the "price a willing purchaser would pay to a willing seller having due regard to its existing condition with all its existing advantages and its potential possibilities when laid down in the most advantageous manner" (AIR1977 SC 1560).

## POTENTIAL VALUE

Potential value is the best use one can make of one's property. What it is actually used for is not relevant. Potential value should be decided as on the date of Sec.4(1) notification (1997 (1) KLT S.N.58 and 1997 (4) JT 191).

A property may be used for dumping garbage. That is not relevant for deciding the potential value. It may be used as a building site, which is its potentiality.

Future potentialities shall not be considered (2000(3) KLT 130).

## ORAL EVIDENCE

Oral evidence as to market value is not acceptable (AIR 1998 SC 2470).

## DIFFERENT METHODS OF VALUATION

### Instance method (comparable sales)

- a). It must be within reasonable time before Section 4(1) notification.
- b). It should be a bonafide transaction.
- c). It should be a sale of the adjacent land.
- d) It should possess similar advantages.(1991 (4) S.C.C. 195; AIR 2003 SC 1987).

The size also should be comparable (2002(1) KLT 381). The property should be similar and similarly situated; but need not be identical. Two properties may be similar, but not similarly situated. They may be similarly situated, but not similar. Comparable sale should be of property having similar potentiality and nature

(2004(1) SCC 467). In exceptional cases sale of small properties may be relied on to determine the market value of large plots (AIR 2003 SC 1987; 1998(1) KLJ 141; AIR 2005 SC 1136). But when they are acted upon certain deductions are to be made towards development of the area. The deduction may range from 33% to 50% (See 2004 (2) SCC 184; AIR 1977 SC 580; AIR 1980 SC 633; AIR 1995 SC 840; 1999(3) KLT 613).

### EVALUATION OF PLUS & MINUS POINTS

A balance sheet of plus and minus points of comparable sales shall be prepared and they should be evaluated. Small size, frontage to road, proximity to developed areas, regular shape, even land and other special advantages are plus points.

Large size, remoteness from road and undeveloped area, irregular shape, uneven level etc. are minus points.

### BELTING

This is the method of classifying lands into different categories (blocks). This is resorted to when the acquired land is very large in extent and the entire property does not have all the advantages. This is a highly artificial method. It should be done in a scientific and logical manner by experts. This method is not applicable to lands used as urban lands (ILR 1995 (3) Ker.344, AIR 1998 SC 781; 2000(7) JT 77; 1997(4) JT 592; 1984 KLT 617; AIR 2003 SC 4382).

### CAPITALISATION

“The capitalized value of a property is the amount of money whose annual interest at the highest prevailing interest at any time will be its annual income. In other words, it is the amount of money that will fetch the interest equal to the annual income from the property. The net annual income from a land is arrived at by deducting from gross annual income all outgoing such as expenditure on cultivation, land revenue etc. The method of valuation involves capitalizing the net income, the property can fairly be expected to produce and the rate of capitalization is the percentage of return on his investment that willing buyer would expect from the property during the relevant period” (Union of India Vs. Shanti Devi AIR 1983 S.C.1190). See State of Kerala Vs. Chacko (1977 KLT 850 F.B.): State of Kerala Vs. Geevarghese (1980 KLT 880).

In **Special L.A.O. Vs.Veerabhadrapa (AIR 1984 S.C.774)** the Supreme Court has said “It is unrealistic to adhere to the traditional view of capitalized value being linked with gilt edged securities when investment in fixed deposits, N.S.C., U.T.I. etc. command much higher return”. When compensation for a land with building is fixed adopting capitalisation method, separate compensation cannot be given for land and building (**Tejumol Bhojwani Vs.State of U.P. 2003 (10) SCC 525**).

### VALUATION ON THE BASIS OF RENT

The rent of a number of years purchase multiplier is capitalized in this method. It can be resorted to only when no other method is available. If the rent is very low or very high this method is unsafe.

#### The method:

1. Find out the fair rent

2. Deduct repair charges, insurance, bad debts, expenses for collecting rent etc.
3. Determine the return and find out the multiplier (rate per cent).
4. Using the multiplier capitalize the value of property (See AIR 1973 S.C. 701).

### EXPERT'S VALUATION

When claimant produces remarks of experts regarding market value, the court may act upon it if the materials on the basis of which the report has been prepared are produced in the court and its authenticity is proved (AIR 1995 S.C. 840).

### LAND WITH BUILDING

#### Definition of land

Under Sec. 3(a) of the L.A.Act 'land' includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to earth (See AIR 1978 S.C. 515; 2005(1) SCC 553). The land with a building should be taken as a single unit. But it is difficult to get comparable sales with regard to such properties. Also see (AIR 2002 SC 1423; AIR 1988 SC 943). Then value of land and building has to be determined separately.

### GARDEN LANDS

Separate compensation cannot be awarded for fruit bearing trees standing on the land acquired (AIR 2002 S.C. 1423; AIR 1991 S.C.2027). Either market value of the land including trees treating them as timber, or annual net income of fruit bearing trees multiplied by a proper multiplier should be given. When market value is determined on the basis of the yield from the trees or a plantation the multiplier shall be 8 and in the case of agricultural properties it shall be 12 (maximum) (AIR 2002 SC 1423; 2005(3) KLT 408).

Tree growth cannot be valued with reference to its horticultural value or value of yield. Timber value should be given (AIR 1988 S.C. 943).

#### Rubber

The High Court has recognized the method of conducting test tapping of rubber trees for determining the annual income (1980 KLT 800).

#### Peppervine

The proper multiplier is 8 (2005(3) KLT 408)

### HOUSE SITE WITH FRUIT BEARING TREES

To value a site as house site and then add to it the value of the trees is duplication. Only one of the two has to be valued (AIR 1970 Madras 184). But the Andhra Pradesh High Court has disagreed with this view (AIR 1981 A.P.310). The view of Andhra Pradesh High Court is said to be correct.

## QUARRIES

See (1981 KLT 913).

## LEASE

Compensation shall be apportioned between the landlord and the tenant according to the value of their interests (1958 KLJ.613; 1994(5) SCC 239; 1997(5) JT 623; 2003(2) KLT 394; AIR 1971 SC 1253).

## EASEMENT

Easement is an interest in the property. The following criteria will arise for consideration in easements:-

- 1) To what extent the value of the servient tenement is reduced by the existence of easement rights.
- 2) To what extent is the value of the dominant tenement reduced by the extinction of the easement right (1975 KLT 497; AIR 2001 SC 3431).

## Easement of Necessity

Easement of necessity is not extinguished by acquisition (AIR 2005 SC 954).

## MORTGAGE

Where a mortgaged property is acquired the mortgagee is entitled to the mortgage money out of the compensation (Sec. 73(2) T.P. Act). That claim has preference and can be enforced though the principal amount on the mortgage has not become due (Sec. 73(3) T.P. Act).

## RELEVANCY OF SOME DOCUMENTS IN ASCERTAINING MARKET VALUE

### Previous Judgments and Awards:

They are relevant but not binding. See (1976 (1) SCC 973; 1976(4) SCC 9; AIR 1993 SC 225 & 227; 1980 KLT 957; 1984 KLT 822).

### Valuation register maintained by Government

Valuation fixed by Government under the Stamp Act for fiscal purposes is not relevant (1995 (5) SCC 310; 2004(2) SCC 283).

## DAMAGES FOR SEVERANCE

(S. 23 Clause thirdly and S.49(2))

Clause thirdly of S. 23 entitles a person to compensation for the damage caused, if any, to a part of his land by the acquisition of another part. The claimant must prove the fact that he suffered injury as well as the extent of the injury (1996(2) KLT 58; 1968 S.C. 1425; AIR 1975 S.C. 1097; AIR 1990 S.C. 2192).

## **BUSINESS DISPLACEMENT**

(Section 23 Clauses Fourthly & Fifthly).

A person who is compelled to stop his business on account of acquisition cannot claim increase in compensation on the basis of loss of earnings till he resettled in business. Only loss caused to the claimant at the time of taking possession is contemplated (1997 (2) SCC 640). In the case of shifting of business the claimant is entitled to transport charges only (1997 (2) SCC 640 & 2004 (7) SCC 388).

## **ADDITIONAL AMOUNT**

(S. 23(1)(A))

This provision entitles a claimant to an amount calculated at the rate of 12% per annum on the market value for the period from the date of publication of Sec. 4(1) notification to the date of Award of the Collector or taking possession of the land, whichever is earlier. This is not interest. This is an amount given in addition to the market value. No solatium is payable on this amount (1995 (2) SCC 305). Even in cases in which possession is taken before Section 4(1) notification benefit is available only from the date of notification (AIR 2001 SC 2951; 2004 (4) SCC 79).

## **SOLATIUM**

(Sec. 23 (2))

A claimant is entitled to a solatium of 30 % of the market value (1992(1) KLT 402; 2002(2) SCC 605).

## **INTEREST ON SOLATIUM**

Interest is payable on solatium also (2001 (3) KLT 489).

## **NO ADDITIONAL AMOUNT ON THE SOLATIUM**

The additional amount payable u/s.23(1)(A) is only on market value and not on solatium (1996 (1) KLT 452 & 560; 1998(1) KLT 812).

## **INTERST ON EXCESS COMPENSTION**

(Sec. 28)

If the court awards any amount as compensation in excess of the amount awarded by the Collector, the claimant is entitled to get interest on such excess amount at 9% per annum from the date of possession till the date of payment. If payment is not made within one year interest should be paid at 15% per annum from the date of expiry of one year. The amount awarded under each sub section of Section 23 will carry interest (2001(3) KLT 489; 2002(7) SCC 657; 2005(1) KLT 598).

Quotable Quote

"It takes considerable knowledge just to realize the extent of your own ignorance"- Thomas Sowell, *Creators Syndicate*.

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