

Different Methods of Acquisition and Transfer Under Allied Laws in Himachal Pradesh

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DRAFT**

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Technical Note -II B

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Chapter I- Acquisition of land under allied laws in the state

Introduction:

There are several land laws and other specific subject matter laws applicable in the state where land is acquired for the purposes of the Act under the provisions of the relevant Acts. Some of these Acts have their own procedure for acquisition of land and some of them refer to the parent Land Acquisition Act for the acquisition and computation of compensation for such acquisition. A careful review of the legislations that mandates acquisition under its respective framework brings out that there are atleast three basic ways to categorize the allied land related Acts on the basis of how acquisition is dealt with in these Acts³.

- A. Where Land Acquisition Act (LAA) is referred back for acquisition of land and computation of compensation required for the purpose of the allied Act
- B. Where allied laws have specific provisions for acquisition of land and computation of compensation for the same.
- C. Where land is deemed to be acquired by the state government for a public purpose and the method of computation of compensation to be paid in lieu of such deemed acquisition is also mentioned in the Act itself.

¹ Legal Consultant; The Author wishes to acknowledge Ms Archana Vaidya an independent Legal Consultant for assistance and research on this topic

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³ It is important to understand here that the other Central legislations which may be sectoral in nature such Coal Bearings, Indian Railways and which have provisions on land acquisition are not being considered in the state context here.

A. Where LAA is referred back for acquisition of land and computation of compensation required for the purpose of the allied Act

1.1 Acquisition of land under the Panchayati Raj Act: Two options- either by agreement or under LAA

If any land is required for carrying out any functions as given under this Act and the Panchayat is unable to acquire the land by agreement, then the Panchayat can request the State Government to acquire the land on the recommendation of the Collector under the provisions of the Land Acquisition Act, 1894.⁴ The Panchayat has to pay for the cost of acquisition and after payment of the compensation awarded under the LAA, the land vests with the Panchayat. The Panchayat cannot transfer or divert the acquired land for any purpose other than the purpose for which it has been acquired without the prior sanction of the state government. The Panchayati Raj Act enables the acquisition of land under the provisions of LAA and payment of compensation as per the scheme of LAA.

1.2. Acquisition of land in a scheduled area: Gram Sabha Consultation is a must

In case of acquisition of land for developmental projects in a scheduled area⁵ the H.P. Panchayati Raj (Second Amendment) Act, 1997 (H.P. PESA) which incorporates the Central Act of Provisions of Panchayats (Extension to Scheduled Areas) Act, 1996 (Central PESA) provides for consultation with the Gram Sabha before land acquisition for development projects and before resettlement of evicted persons. However, while the Act provides for a consultative role for the Gram Sabha, this provision also does not make the adoption of the recommendations of the Gram Sabha mandatory. In fact, the provisions do not even specify the consequence of difference of opinion between the Gram Sabha and the Acquisition authorities regarding the resettlement. Further, the law does not establish any mechanism to ensure control and accountability of the acquisition authorities to the Gram Sabha.

In view of the H.P. PESA, amendments are required in the Land Acquisition (Himachal Pradesh Amendment) Act, 1986 so that in appropriate sections consultation with Gram Sabha becomes mandatory.

⁴ Section 198 The Himachal Pradesh Panchayati Raj Act, 1994

⁵ In the State of Himachal, three districts, namely Kinnaur, Chamba and Lahaul & Spiti District, have Scheduled Areas. While the whole of Kinnaur and Lahaul and Spiti Districts are scheduled, in the Chamba District only the Pangi Sub-Tehsil and the Bharmour Tehsil (earlier it was a sub tehsil) have been declared as Scheduled Areas vide the Scheduled Areas (H.P) Order of 1975

1.3. Acquisition under Himachal Pradesh Roadside Land Control Act

This enactment is primarily to assume control over road side land to prevent haphazard and sub-standard development along scheduled roads and in controlled areas in the state of HP. Although, there is no direct acquisition under this law, a detailed procedure of declaration of such scheduled road and controlled area is provided for in the Act⁶. These include intention, a due process where persons affected have right to object, transparency, process for application and compensation for such declaration of scheduled road and controlled area. Further, the government has powers under this Act to restrict the use of any property or restrict or prohibit certain activity within these areas to ensure controlled, regulated development around these roads and area⁷.

1.3.1. Nothing in this Act to affect government's power to acquire land under LAA

The Act further provides that the government or any other authority's power to acquire land in the controlled area shall not be affected because of the operation of the provisions of this Act in the same⁸. They can also impose restrictions upon the use and the development of land under any other Act for the time being in force in the controlled area. Further, nothing in this Act shall affect the right of the government to have a negotiated settlement of claim, which becomes due because of the operation of this Act by mutual agreement.

1.4. Acquisition under HP Housing and Urban Development Authority Act 2004 (HPHUDAA)

This Act was made to re-enact the law to provide for the creation of a development authority to plan and develop land and create infrastructure to meet the housing needs of different income groups and to provide for development schemes for mobilizing public and private resources for the promotion of housing colonies and related infrastructure and to provide for the creation of appropriate authority and mechanism for planned development of housing colonies.

1.4.1. Acquisition of land under the Act

When any land is required for any of the purpose of the Act, the state government may at the request of the authority acquire it under LAA. The HPHUDA shall make the payment that is to be awarded as compensation and any other charge which the government might have incurred for acquiring

⁶ Sections 3(1-4) of the Act

⁷ Section 5 read with HPRSLC Rules 1970 no.3

⁸ Section 10

the land and the land thereafter vests in it free from all encumbrances⁹. If the HPHUDA cannot acquire the land by buying the same from the party concerned with mutual agreement then the same shall be acquired by the state government on the HPHUDA's requisition as per the LAA.

So here too there is a provision for mutual agreement and only in case it is not mutually possible then there is a compulsory acquisition under the LAA.

1.5. The Punjab Town Improvement Act, 1922 (PTIA)

This Act is applicable only in the merged areas of Himachal Pradesh as per the provisions of the Punjab Reorganization Act 1966. This Act was made to have a legal framework for the improvement and expansion of towns in the state of Punjab and was made applicable only in the merged parts of Himachal Pradesh. Under this Act, a town improvement trust is created for a concerned town for the purposes of carrying out the objectives and purposes of this Act¹⁰. The trust is empowered to make general improvement schemes or rebuilding schemes, street schemes or deferred street schemes, development and expansion scheme, housing accommodation scheme, re-housing scheme, re-housing of displaced residents house-owners or a combination of any of the above named schemes for the improvement and development of the town concerned¹¹.

1.5.1. Affected person can ask for acquisition of his land:

Any person whose property is to be affected by the deferred street scheme can ask the trust to acquire the property anytime after the sanction of such scheme by the state government because of the diminished value of the property in view of the looming inevitable acquisition. The trust in such cases shall have to acquire the said property within a period of 6 months of such notice. For any other property the trust shall have to give six months notice to the person whose property is to be acquired¹².

1.5.2. Procedure for land acquisition under improvement scheme:

When an improvement scheme under this Act has been framed the trust has to prepare a notice¹³ stating:

- a) The fact that the scheme has been framed,
- b) The boundaries of the locality comprised in the scheme; and also
- c) The place at which the land proposed to be acquired under the scheme with a detailed map of the locality.

The details of the scheme can be inspected by public at large.

⁹ section 32

¹⁰ Section 3 of Punjab Town Improvement Act, 1922 (PTIA)

¹¹ see section 22-28 of PTIA

¹² section 32

¹³ section 36

The above-mentioned notice has to be published by the trust for three consecutive weeks in the official gazette and in a newspaper or newspapers along with the time frame within which the objections can be entertained. The municipal committee of the locality also has to be given the above-mentioned notice. Within thirty days of the first publication of the above-mentioned notice, the trust shall also serve a notice upon all those people, who after holding an enquiry it has reasons to believe to be the owner and occupier of the immovable property, which it proposes to acquire for the execution of the improvement scheme¹⁴. Such notice shall require the owner or the occupier as the case may be to present objections in writing if any within sixty days of the receipt of the notice.

1.5.3. Abandonment of acquisition in consideration of special payment¹⁵

When in any locality which is comprised in any scheme under the provisions of this Act, the state government has approved acquisition of land and which the government later on discovers to be unnecessary for the execution of the scheme, the owner of the property or any other person who has an interest therein may make an application to the trust to abandon the acquisition of land in consideration of the payment by such person of the sum fixed by the trust in this behalf. However when such an abandonment is done following the procedure mentioned in this behalf, it does not bar any fresh declaration for the acquisition of the same land if it is required for any of the purposes of the trust under this enactment ¹⁶.

1.5.4. Tribunal as Courts for reference on Land Acquisition: LAA modified for the purposes of the Trust

Instead of a court a tribunal is required to be constituted for references arising out of acquisition of the land for the trust, under the LAA¹⁷. The land acquisition Act shall stand modified¹⁸ in the following respects whenever the land is being acquired for the purposes of the trust.

1. The tribunal shall be deemed to be the court and the president of the tribunal shall be deemed to be the judge under the said Act. The tribunal shall have a president and two assessors¹⁹. The procedure to be followed for the determination of the award by the tribunal is also mentioned in detail in this enactment.²⁰

¹⁴ Section 38

¹⁵ Section 56

¹⁶ Section 57

¹⁷ Section 58

¹⁸ Section 59

¹⁹ Section 60

²⁰ Section 65

2. All the changes, which the LAA shall be subject to have been mentioned in the schedule, attached to this enactment. To name a few important changes,
 - a. Amendments in the definition of local authority to include the trust under the expression local authority,
 - b. Intention and declaration notification under LAA to be deemed to be replaced by the provisions contained in the present Act,
 - c. Power of acquisition in case of urgency shall also to apply to an area certified to be unhealthy by the magistrate first class after following the requisite procedure mentioned in the schedule.
 - d. The Collector shall hand over the said land to the trust immediately upon the payment of cost of acquisition.
 - e. There is a provision added to compensate the persons whose land is being acquired if the acquisition is not completed within a period of one year from the date of the declaration notice.
 - f. An explanation is also added to clarify the extent of land, which shall be considered to be the part of the house.

1.5.5. Relevance of this law in the state

The most important fact to be found out is to see in how many towns in the merged parts of HP is this Act applicable. Whether this Act been invoked and the town improvement trust has been made. We can then examine the procedure followed by these trusts to acquire land for the purposes of the Act. Further, we can compare it with the procedure which is normally followed under LAA and assess the efficacy, suitability or non suitability of having such special procedure for acquisition.

As mentioned above the Act primarily follows the mandate of the LAA for the acquisition of the land with necessary modifications mentioned in the schedule attached with the Act. These modifications which have been introduced for the trust to be able to carry out the acquisition without having to go to the court as there would be a special tribunal to deal with the cases and thereby avoiding any delays on that front. The other amendments, which deal with the invocation of urgency provisions and the matters to be considered for arriving at the amount of compensation and the matters to be neglected, are required in view of the purposes of improving and expanding the towns.

1.6. Acquisition under Himachal Pradesh Town and Country Planning Act, 1977(HPTCPA):

1.6.1. Obligation to acquire land

The state government shall be obliged to acquire land when the owner of the land, which has been marked or designated, as to be acquired for public purpose in the development plan claims:

- a) That the same can not be used beneficially in the existing state or
- b) The value of the land has diminished as a result of the same having been designated for acquisition or
- c) That the land cannot be put to the same use as it was put to with the conditions, which now have been imposed upon the usage in view of the development plan.

The state government shall have to pass a final order regarding the above three types of claims within one year from the date when such owner serves the notice and if no decision is taken within a period of one year then this notice is considered to have got confirmed and the government has to acquire the said land within one year from the date on which the said notice got confirmed²¹. The state government or the Director Town and Country Planning (TCP) also have powers to delete any designated area for acquisition from the developmental plan if the appropriate authority is of the opinion and requests that such land is not required for any public purpose²².

1.6.2 Acquisition either by negotiations if not possible then as per LAA

The acquisition of land is authorized to be done by the Town and Country Development Authority (TCDA) and Special Area Development Authority (SADA) under the Act by negotiated agreements. If however the said authorities can't buy the land in the above mentioned manner then they may requisite the same to the state government who in turn acquire the land for the respective authorities under the LAA.

1.7 The Himachal Pradesh Municipal Act, 1994

The Act was enacted to amend and consolidate the law relating to the Municipalities in the state of Himachal Pradesh.

Acquisition of Land²³

The Act provides that if land is required for carrying out the purposes of the Act then the Municipality has to requisition the state government for acquisition of the land under the provisions of the Land Acquisition Act. The municipality has to deposit the amount of compensation payable for the acquisition with the state government. The land acquisition under the Act is as per the provisions of Land Acquisition Act and no special procedure is adopted for land acquisition.

²¹ section 35

²² section 36

²³ Section 61 of the Act

B. Where allied laws have specific provisions for acquisition of land and computation of compensation for the same.

2.1. Acquisition made under Tenancy and Land Reforms Act (TLRA)

There is a difference between acquisition made under LAA and acquisition requested for by the landlord under TLRA. The acquisitions, which are done under TLRA, are because of the fact that the landlords want to sell the land and the state government is willing to acquire the same for a certain reasonable amount of money, which is also acceptable to the landlord. The land thus acquired by the government is then distributed among the needy people in a certain order of preference, which is mentioned in the TLRA on payment of some nominal amount of money.

2.1.1. Procedure for acquisition and computation of compensation under TLRA²⁴

- a) If any agriculturist is interested to sell his land to the state government he shall make an application in the prescribed form to the Collector mentioning therein the price at which he/she is willing to sell. The Collector shall make an enquiry to ascertain the value of the land and shall forward the case to the state government for its consideration.
- b) The state government within six months shall communicate its decision to the Collector or directly to the persons concerned and it shall normally base its decision on the report of the Collector.
- c) The Collector shall make the payment of reasonable price as determined by him in case the government decides to buy or communicate the refusal of the government in case it decides not to buy.
- d) On the payment of money the land shall vest absolutely in the state government without any encumbrance whatsoever. The reasonable price as determined above when confirmed by the state government becomes final.
- e) The rights of the tenants are not affected by such transfer of land to the state government

2.2. Acquisition under the Himachal Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1976

The Act provides for acquisition of protected monument²⁵ and protected areas²⁶ containing antiquity of interest in case there is danger of it being destroyed, damaged and misused through the provisions of the Land Acquisition Act, 1894. After the acquisition of the protected monument and protected areas it would stand vested in the state government. The present

²⁴ Section 119

²⁵ Section 13

²⁶ Section 20

act provides for acquisition for specific purposes that are considered to be 'public purpose' under the provisions of LAA.

2.3. The Himachal Pradesh Slum Areas (Improvement and Clearance) Act, 1979

The Act was enacted for the improvement and clearance of the slum areas and for the protection of tenants in slum areas from eviction. The Act has its own mechanism for acquisition of land and for determination of compensation. The provisions of LAA come into focus at the time of dispute on apportionment of amount determined among the interested persons and for determination of the title of the persons who are entitled to receive the compensation/ amount. In this Act the land is automatically transferred to the state government on the publication of notice acquiring the land as before the publication of notice a preliminary fact finding exercise is conducted by the competent authority by issuance of a show cause notice to the owner of the land or to any person interested in the land. In some measure this is a faster method of acquiring land as any grievance related to the factum of acquiring land is addressed at a preliminary stage.

2.3.1. Land Acquisition under the Act

The Act provides for acquisition of land required for redevelopment of clearance²⁷ area or for execution of any work of improvement in slum area²⁸. The process for acquisition starts with the State Government calling upon the owner of land asking the owner as to why his land should not be acquired under this Act. Subsequently, on receipt of the reply an order is passed on the show cause and then a notice is issued by the state government.²⁹ On the date of publication of the notice the land stands vested in the government. After the acquisition, the land is made available to the competent authority to carry out the necessary works under the Act.³⁰

C. Where land is deemed to be acquired by the state government for a public purpose and the method of computation of compensation to be paid in lieu of such deemed acquisition is also mentioned in the Act itself

3.1. HP Land Ceiling Act

The land ceiling laws specifically exempt the quantum of land owned by the state or the central government from the provisions of this Act. All surplus land which vests in the government as per the provisions of this Act is considered to have been acquired by the state for public purpose thus it is

²⁷ Section 2(b) means the area notified under section 10 of the Act

²⁸ Section 2(h) means any area declared as such under section 3 of this Act

²⁹ Section 13

³⁰ Section 14

deemed acquisition. The right in the surplus area shall vest in the state government free from all encumbrances from the date of taking the possession of the same either by the government or on behalf of the state government. The surplus land so taken by the government is deemed to be acquired by the state government for a public purpose on payment of amount³¹ which is computed in accordance with the following principles.

- a) For the land up to 10 acres, ninety-five times the land revenue payable for such land (including rates and cesses)
- b) For the land in excess of 10 acres but below 30 acres, 75 times the land revenue payable for such land (including rates and cesses)
- c) For the remaining land i.e. above 30 acres, 45 times the land revenue payable for such land (including rates and cesses)

3.2. Conservation Laws: Many have inbuilt provisions of LA for deemed public purpose

There are many conservation laws which have inbuilt provisions of taking land in the name of public purpose. Without going into the merits of the same it would be important to list them here although they are not directly related to the sectors of interest under the study. Thus for example, the Indian Forest Act, 1927 as applicable in Himachal Pradesh which creates reserved³², protected³³ and village forests³⁴, the Wildlife Protection Act which creates, protected areas namely national parks³⁵, sanctuaries³⁶, conservations reserves³⁷, follow the scheme of the LAA also allows a provision for agreement³⁸ that the affected persons and settlement officer may enter into. This becomes important as 23% of land is under such reservation and in control of the Forest Department. Any development in and around such areas follows a different procedure for de-reservation³⁹ as well as compensation⁴⁰.

³¹ Section 14

³² See Sections 4-20 of the Indian Forest Act, 1927

³³ Section 29 *ibid.*

³⁴ Section 28 *ibid.*

³⁵ See Section 35, 38 of the Wildlife Protection Act, 1972

³⁶ See Sections 18 to 26A, 38 *ibid.*

³⁷ See Section 36 A *ibid.*

³⁸ See Section 25 *ibid.*

³⁹ See Section 27 of Indian Forest Act, 1927

⁴⁰ The net present value and the compensatory afforestation, which is presently being discussed and finalized in the on-going Godavarman case is instructive in this regard

Chapter II-Land Transfers

Apart from land acquisition a sizeable amount of land which is already under various line departments also change hands for various public purposes as and when the need arises and in accordance with state priorities. It is equally important to examine the principles followed in such land transfers between government agencies.

4.1 Transfer of land between government departments ⁴¹

First of all in land transfers the provisions of the LAA are not applicable. The Standing Orders 28 issued in Himachal Pradesh clearly states that in fact when it is proposed to transfer land in possession of government from one government to another or from one department to another within the same government, proceedings under LAA are inappropriate⁴².

Various kinds of land transfer may be done within the state and hence it is important to understand the variety and nature of land that may go such transfer. These lands may be of any of the following description:

1. Land in possession of the government of India.
2. Land in possession of the state government which could further be any of the following
 - Land
 - Town sites in colonies.
 - Proprietary rights held by the government in land occupied by the tenants in colonies or elsewhere.
 - Undeveloped agricultural land
 - Departmental land including land in charge of the forest department

4.2 Transfer of state lands and buildings between central and state government⁴³

There are detailed rules that have been prescribed to regulate the transfer of state lands and buildings from the central government to the state government and vice versa.

⁴¹ Para 496 A ibid

⁴² See para 1 part A of So 28 of LAA

⁴³ See para 2 of SO 28 of LAA

4.2.1 Position of Central Government Land: other occupants to only have usufruct rights

In pre-independence era the Standing Orders 28 clearly stated that any land irrespective of occupation, after the passage of such orders shall vest in the government of India or the local government as the case may be. The occupants shall only have a right of use on these lands for the discharge of their respective duties.

The Standing Orders further stated that the Government of India shall have a right to have undisturbed possession of land which it had been in possession since April 1st 1921 and which it still requires for the discharge of its duties. However this possession shall be subject to those conditions, which it was subject to when it originally came in to their possession.

4.2.2 Position of State Government on Central Government Land: No power to interfere, but representation on land lying waste or unused possible

The state government does not have any power to interfere or alienate in any way any of the government of India's land, which is located within the territory of their state. In case the local government/state government is of the opinion that the land in occupation of the government of India within their territory is lying waste as it is not required by the latter for the discharge of their duties any more or is actually not being used for the purpose originally intended then the state government concerned shall make a representation to the central government on this subject. However if there is any dispute as to the usage or the requirement of this land between the state and the central government the matter shall be referred to the adjudication of the authority which is equivalent of the erstwhile secretary of state in the council, which in the current context would be equivalent to the Cabinet Secretary in the National Government.

4.2.3 Conditions of Transfer of Central Government Land to State Government:

a. Value of land should not be reduced

If the central government does not require any land which is in its possession then it shall give an option to the concerned state government in whose territory the land is situated to take possession of the land either completely or of a part of this land. However the possession to the state government of a part of the above mentioned land shall only be granted if the value of the land not taken over is not reduced materially by such division.

b. Defence Land to be excluded

The local government is also barred from asking for surrender of isolated plots of land within cantonment or other area on the ground that such land are not required for the discharge of military duties.

4.2.4 Central Government Land Acquired before April 1, 1931 - Compensation for Transfer

In case the land was acquired by the Government of India in any province/state before 1st April 1931 and was thereafter surrendered to the local government then the compensation if any payable by the state government to the central government shall be determined on the following principles:

1. If the land happens to be relinquished by any department other than the railway administration and the government of India has to spend money to buy alternate land or if the land was being used by the military establishment for the effective discharge of their duties before it was surrendered then the local government shall have to pay a compensation which would be equal to the market value of the building on such land and plus the cost incurred by the government of India in acquiring and improving the acquired land or half the market value of the land so surrendered by the government of India whichever shall be greater.
2. In other cases the amount of compensation payable by the state government shall be the market value of the land, if any, plus the cost, if any, for the acquisition and improvement of alternate land or the market value of the surrendered land whichever is less.
3. In case of land surrendered by the military authorities in the presidency towns where the price of land has especially high value the terms of the transfer shall be determined by the mutual agreements of the governments.
4. The local government shall have the authority to sell or lease the land which it gets after the surrender of the central government to any person. However if such sale or rent happens within five years of the state government getting possession and the value of the rent or sale price is more than double the price paid by the state government in compensation to the central government then the amount payable to the central government shall be raised to half the value of money received by the state government in the sale or rent.
5. Any dispute regarding the portion of the central government in the above mentioned sale or rent received by the state government can be decided by their mutual agreement in this regard or can also be referred to the adjudication of coordinate authority to the competent authority of the

central government. If however after taking possession of the land from the central government the state government has done some improvement then the latter shall be entitled to deduct the cost of the improvement from the sale price before it can be divided between them and the central government.

6. In case the land is acquired by the central government in any province after April 1st 1921 then on the transfer of the same to the local /state government the amount of compensation payable by the state government shall be the market price of the land and the building.
7. In case the state government is not desirous of taking the land on the terms and conditions mentioned above then the central government shall be at liberty to sell this land to any third person. However while doing so it shall consult the state government regarding the manner of the disposal of the land and any conditions if at all required by the state government to be put for the usage of this land after sale.
8. A state government shall have to acquire and hand over land to the central government in case the latter requires it for the discharge of its duties and the same shall be done on the payment of compensation. The amount of the compensation by the central government shall be the amount incurred by the state government in acquiring this land in case it did not have the said land in its possession and the market value of the land in case it was in its possession. The government of India with the consent of the state government can refer any dispute regarding the reasonableness of the market value of the land to arbitration.
9. Any of the above explained rules governing the transfer of land between the central and the state government and the payment of compensation shall not stop these governments from having an agreement regarding the transfer of the lands even though the agreement is not as per these rules.
10. Any dispute regarding the application of these rules shall be referred to the coordinate authority of the erstwhile secretary of state if the state government desires.
11. It shall not be competent for the state government to dispose of any land located within its territory and which was in occupation of the erstwhile governor general in council (its equivalent at present) except in accordance with these rules.

4.3 Acquisition of land owned by the municipalities⁴⁴

When nazul land⁴⁵ is vested in or occupied by the municipal authority then the following procedure is adopted to acquire the said land from them when required for any public purpose.

4.3.1 When municipal committee is a custodian: LAA not applicable

If the municipal committee is merely the custodian of the land on behalf of the government the provisions of the LAA are inapplicable. In such cases the committee should be consulted to see if they have any objection to the said transfer of land. The land could have been leased to the committee for a certain period or it is quite possible that it is still required by the committee. If however there is no objection by the committee the government can resume the land and transfer it departmentally. If the committee has a problem as mentioned above then the procedure to be followed is not mentioned.

4.3.2 When land is vested in municipal committee: notice and compensation are must

If the land is vested in the municipal committee under the Punjab Municipal Act III of 1911, a notice is required and compensation also have to be paid under the LAA. Ordinarily however in such circumstances the municipal committee shall proceed under the above-mentioned Municipal Act and the compensation would be settled by the private negotiations.

4.3.3 Other Nazul Land, Town Sites And Undeveloped Land: DC in Charge

The other nazul land, town sites in colonies and undeveloped land are in charge of the Deputy Commissioner. The department for which the land is required should apply to the Financial Commissioner through the Deputy Commissioner and the Commissioner.

4.4 Acquisition when the land in possession of the military department

In all such cases where the land is in cantonments or is otherwise occupied for military purposes it is necessary to take the consent of the military authorities before one can enter upon such land or occupy the land or any work can be started upon such land. The detailed procedure when the military land is required for the purposes of the railways is laid down⁴⁶.

⁴⁴ Para 3 of So 28 of LAA

⁴⁵ Land vested with the public authority for developmental purpose as per the stipulations of the authority

⁴⁶ See Circular no. 2650-RG of the Government of India dated 2nd September 1913.

4.5 Procedure when the land required by the irrigation department is with the forest department⁴⁷

When the land required by the irrigation department is with the forest department the following procedure is required to be followed.

1. As soon as a scheme is proposed whereby the land in the possession of the forest department is required the notice of such scheme is required to be given to the local forest officer.
2. Then the superintending engineer shall forward a map and schedule of land required to the conservator of the forests in that area. The index map and the schedule shall be the same as is required to be prepared under the LAA.
3. In case the said land is not situated in a reserved or a protected forest is required for canal water course or any such subsidiary work, the local forest officer may hand the said land over to the canal officer concerned in anticipation of the permission from the Financial Commissioner which shall be sought by him through the conservator of forests.
4. In case however the said land is situated in a reserved or a protected forest or is required for the purpose of colonization then the sanction of the Financial Commissioner is not anticipated.
5. In any scheme of irrigation department, which involves alienation of land, the conservator's consent shall have to be obtained and in case such consent is not granted the matter is referred to the decision of the government in the revenue department by the irrigation department.

The above administrative procedure may be necessary but in the current scenario especially post Godavarman case⁴⁸ not sufficient. Numerous procedures and principles have evolved in the ongoing case and are bound to be followed in case of forest areas. The clearance from the Centrally Empowered Committee constituted by the Supreme Court, compensatory afforestation, payment of net present value in case of forestland and clearance from National Board of Wildlife through the Standing Committee and the Chief Wildlife Warden of the State in case of National Parks and Sanctuaries are some of the mandatory requirements.

4.6 Procedure when the land required by the irrigation department is unclassified forest⁴⁹

In case of unclassified forest or other undeveloped agricultural land, which is in the possession of the Deputy Commissioner and required by the irrigation department the procedure to be followed is the same as mentioned in case of the land being in possession of the forest department. To begin with in such cases intimation is given to the Deputy Commissioner about the requirement of

⁴⁷ Para 4 of So 28 of LAA

⁴⁸ See WP No. 202 of 1995 in Supreme Court

⁴⁹ Para 5 of SO 28 of LAA

the land, then the index map and the land schedule shall be forwarded through the Commissioner to the Financial Commissioner. If such land is required for merely subsidiary purposes then the land shall be handed over by the Deputy Commissioner in anticipation of the sanction of the government, which he shall seek through the Commissioner and the Financial Commissioner. In case the alienation of land is involved then the permission/sanction of the government is required to be received before anything can be done. The new conditions as described above would also hold for unclassified forests as forests have been defined, uniquely and comprehensively whereby it means forest in the dictionary sense and irrespective of ownership, by the Supreme Court in the ongoing Godavarman case.

4.7 Transfer of land already in possession of one department to another department of the state government⁵⁰: Financial Commissioner is the nodal authority

Departmental land under the state government or under the following departments i.e. forests, irrigation, building and roads, electricity, excise and taxation, stamps, judicial, jails, registration, police, education, animal husbandry, agriculture, health and medical, industries, co-operative societies, fisheries, reclamation, development department etc shall follow the below mentioned procedure.

The department for which the land is required should first of all consult the local authorities of the department, which is in possession of the land required to ascertain whether they have any objection regarding the same. The requiring department is then supposed to apply to the Financial Commissioner for the necessary transfer order in case there is no difference of opinion between the two departments i.e. the requiring department and the department in actual possession of the land. If however there is a difference of opinion then an application is made by the requiring department to the government. Note that for forestland the conditions mentioned above will have to be adhered to.

4.8 Rules regarding credits and debits when land /building is transferred from one department to another department⁵¹

There are some general rules governing the transfer of lands and buildings from one department to another department.

1. Normally such transfers are free of all charges.
2. If any such land /building are transferred from or to a department which happens to be a commercial department for which regular revenue and capital accounts are kept then the market value of such land/building

⁵⁰ Para 6 ibid

⁵¹ Para 6-A ibid

- are debited or credited as the case may be to such department. The commercial departments for the purpose of this para are the railway department of the government of India, the colonization department, irrigation department and all those major and minor works for which regular revenue and capital accounts are kept, and the electricity department.
3. In case of all other departments which are non-commercial no credit or debit is to be made.
 4. When the transfer is from a commercial to a non-commercial department no credit or debit is to be made unless the cost of the land or the building transferred was previously debited to the capital head of the transferring commercial department.
 5. When the transfer is from a commercial to a commercial department there should always be a debit to the latter and a credit to the transferring department as per the instructions mentioned.
 6. When the transfer is from a non-commercial department to a commercial department there should be a debit to the latter and a credit to the transferring department as per the instructions.
 7. The land should be transferred to the electricity department free where the government has incurred no cost in acquiring the same or if any cost has been incurred the lesser actual cost or the present market value whichever is less.

4.9 Acquisition of land for the railways

There are detailed instructions in the standing orders for the acquisition of land for the railways⁵². Indian railways have their own code containing all the details regarding land acquisition for the purposes of railways and have not been described here, as the railway sector is not a focus of the present study.

⁵² Para 94-130 ibid

Concluding Remarks:

After a careful perusal of the above description of acquisition process and computation of compensation procedure under different allied laws it is evident that essentially allied Acts such as HP Housing and Urban Development Authority Act, Himachal Pradesh Town and Country Planning Act have a provision to attempt and have a negotiated acquisition of land by mutual agreement. In case the requisite land in required measure can not be acquired by mutual agreement there is provision that the concerned authorities can ask the state governments to make acquisitions for them under LAA. It has been seen that mutual agreement mode is not used as much as it should have been and in most cases the land is finally acquired under LAA by the state government. There should be a clear provision in these Acts that the concerned authorities should make sufficient efforts to arrive at a mutual agreement with the private party and before the state government decides to acquire the land under the LAA the concerned authority has to show and prove to the satisfaction of the state government that mutual agreement was not possible and sufficient efforts in this regard were made by them. If there is no such safeguard in the allied Acts to this regard then the mutual agreement proviso for acquisition of land becomes defunct as there is no legal obligation on the concerned authorities to exhaust all means to have the same.

There are clearly two perspectives about negotiated agreement. Negotiated agreement is a more evolved and advanced mode of acquisition of land which is more in tune with times and the respective authorities should always opt for the negotiated settlements and offer realistic compensation to the parties concerned so that the compulsory acquisition and the consequent problems can be avoided. On the other hand sometimes this can also result into harassment of small land owners as the authorities concerned shall have more bargaining power and if the big land lords are willing to sell in a particular area the small land owners would not have much option. Moreover this kind of negotiated agreements shall only recognize the rights of the land owners or any other legal right holder and not of the people who are dependent upon that land for subsistence. So this shall inevitably lead to a lot of heartburn and inequity and the government in such a case shall not have any obligation to resettle and rehabilitate people who get uprooted because of the acquisition of land.

In case of allied Acts which have their own procedure i.e. Tenancy and Land Reforms Act, Himachal Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Act and Himachal Pradesh Slum Areas (Improvement and Clearance) Act for acquisition and computation of compensation, the purpose of acquisition is very specific and limited and the

methods mentioned in them are evolved keeping in mind the objective of these Acts only.

As regards land transfer both between centre and state as well as between line departments within state, new developments have taken place especially due to court interventions. The conditions of transfer and compensation mechanisms need to be revised accordingly.