Compensation-Concept, Methods, Principles and Practice

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Prepared by Environics Trust for NLTA
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Chapter I - Introduction - Concepts, methods and principles

1.1. Compensation: A pivotal cause of concern in Land Acquisition:

Compensation is the central concern of land acquisition authorities, project proponents and most importantly the affected persons. It is important to understand what compensation is in its entirety within the framework of the Land Acquisition Act. Although, the word compensation has not been defined in the Land Acquisition Act, the word figures in a number of provisions. Thus for example a “person interested” includes all persons claiming an interest in compensation to be made on account of acquisition of land under the Land Acquisition Act.

1.2. Who are persons interested to claim an interest in compensation in LAA?

In the LAA the person interested in land means any person (emphasis supplied) claiming an interest in compensation on account of acquisition of land. The Act is silent as to who are the persons who have an interest in the compensation and therefore can claim the same. It, however, categorically mentions that a person is to be considered interested in land if he is interested in an easement affecting the land. Further, as per the notice which is required by the Collector to be served upon all the interested persons after the declaration of the intention of acquisition of land is published, it includes occupiers of the land and all such persons either known or believed to be interested in such land.

In another provision of the LAA the Collector may require all such persons who claim to have any interest in land to make a statement containing the names of persons who have interest in the land in the capacity of a co-proprietor, sub-proprietor, mortgagee, tenant or otherwise and the nature of such interest and of the rents and profits if any received or receivable on account.

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1 Due acknowledgment to Ms Archana Vaidya, an independent legal consultant for assisting in this
Technical Note
2 Section 3(b) of LAA
3 Section 9(3) of LAA
of such above mentioned interest. Therefore by implication again the above mentioned categories of people are also included in the list of interested persons.

The Collector is also required to make an enquiry as to the true area of the land being acquired, the amount of compensation payable in his opinion for such land and the apportionment of the compensation among all the persons known or believed to be interested in land of whom, or of whose claims he has information whether or not they have appeared before him. It means that even if an interested person doesn’t appear before the Collector but he has reasons to believe that such person has an interest in land, the same shall be recognized in his award.

Further, particulars of the apportionment are to be specifically mentioned in the award made by the Collector if all the persons interested have agreed to such division. But if the amount of compensation is settled and there is a dispute as to the persons to whom it is payable or the proportion of share of the persons interested then such dispute shall be referred to the court by the Collector. Therefore the Collector is competent to decide who are the persons interested in compensation but any dispute in this regard shall have to be referred to the court.

After a careful reading of the LAA the following emerge as the persons who are interested in land.

**Persons Interested:**
- Proprietor, co-proprietor and sub-proprietor
- Occupier of land
- A person having a right of easement in the land.
- Mortgagee
- Tenant
- Any person either known or believed to be interested in such land.

It is thus clear that any compensation envisaged under the Act has to take into account the above persons who are interested in the land.

### 1.3 Damage versus Compensation: Legal Framework on Compensation

Broadly, two kinds of compensation are envisaged under the Land Acquisition Act. The first is more in the nature of payment of damages while preliminary survey or setting out boundaries, cutting of trenching etc. are being carried out after the preliminary notification for land acquisition. Here too the affected

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4 Section 10(1) of LAA
5 Section 11(1) of LAA
6 See section 29 and 30 of LAA
person has a redressal mechanism in place regarding the sufficiency of the amount paid while performing the above acts.

The second type of compensation is perhaps more important which starts with the award\textsuperscript{7}.

The Act, among other things, provides for the time line\textsuperscript{8} for such award and its finality\textsuperscript{9} and the manner in which such value of land that is proposed to be acquired has been arrived at. It also includes the redressal mechanism by way of reference to court by any person who has not accepted the award\textsuperscript{10}, the obligation of the Collector towards the court\textsuperscript{11}. The two most important provisions for arriving at compensation are listed in Sections 23 and 24 where the matters that are to be considered in determining compensation\textsuperscript{12} and matters that are to be neglected in determining compensation\textsuperscript{13} are listed out.

It is also stated clearly that the amount of compensation awarded by court shall not be lower than the amount awarded by the Collector\textsuperscript{14}. Further, the Act also lays down the form of awards\textsuperscript{15}, costs\textsuperscript{16} and interest on excess compensation\textsuperscript{17} as well as re-determination of the amount of compensation on the basis of the award of the Court\textsuperscript{18}. The Act also lays down the apportionment of compensation\textsuperscript{19} and finally the payment of such compensation\textsuperscript{20}. Last but not the least the Act also provides safeguards where even if acquisition is not complete, compensation is compulsory\textsuperscript{21}. Let us now understand the most important and substantive provisions on compensation including how it has been interpreted by the judiciary at the highest level.

1.4. Compensation: Principles and Bases:

At the outset it is important to understand some of the principles that have emerged on compensation. Foremost is the cardinal principle - “What one takes must be paid for is the basis on which the initiation of the law of acquisition commenced”. It is also well known that every person who is affected by acquisition makes an attempt to enhance the value of

\textsuperscript{7} Section 11 of LAA
\textsuperscript{8} Section 11A ibid
\textsuperscript{9} Section 12 ibid
\textsuperscript{10} Section 18 ibid
\textsuperscript{11} Section 19 ibid
\textsuperscript{12} Section 23 ibid
\textsuperscript{13} Section 24 ibid
\textsuperscript{14} Section 25 ibid
\textsuperscript{15} Section 26 ibid
\textsuperscript{16} Section 27 ibid
\textsuperscript{17} Section 28 ibid
\textsuperscript{18} Section 28 A ibid
\textsuperscript{19} See part V especially Section 29, 30 ibid
\textsuperscript{20} Section 31 ibid
\textsuperscript{21} Section 48 of LAA
compensation that is paid to him/her. It is almost a given rule that invariably, affected persons approach the Court to re-determine the principles of arriving at the compensation value. It would be thus useful to understand the principles on compensation, which is mandated by both legislation as well as judicial interpretation.

1.4.1 Factors to be taken into account in assessment

There are certain factors that ought to be taken into account for assessment of compensation. These include, among others,

• nature of land,
• its present use and capacity for a higher potential,
• its precise location in relation to adjoining land and
• the use to which neighboring land has been put and the impact of such use on the land acquired.

1.4.2 Compensation: Land for Land- Cannot be a mandatory condition

Under the framework of the Act, in the past the Supreme Court had overruled the contention of livelihood needs on compulsory acquisition of land on the ground that the Act provides for payment of solatium and other monetary payments for deprivation of the land. The fact that for most marginal communities, monetary compensation for loss of land can never be a sustainable source of dignified living is often missed by the Courts. In recent cases before the Supreme Court the argument that new piece of alternative land of equal quality should be given to those dispossessed from land due to acquisition for public purpose, has been asserted. The general response has been that though the State is not obliged to provide alternative site, yet if the State comes forward with a proposal to provide alternative sites, certainly the Court gives effect to that proposal. But that principle cannot be extended as a condition in every case.

In a recent case, however, alternate land was ordered to be provided. Large piece of land was acquired for Mata Mansa Devi shrine Board and a writ was filed challenging the same which failed but the court issued directive to the government to provide alternate plots of similar sizes to small landowners who apply for the same and establish that the land which was acquired belonged to them.

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22 Adusumilli Gopalkrishna v. Special Deputy Collector (Land Acquisition), AIR 1980 SC 1870
24 Hukum Chand Gupta V. State of Haryana 2005(1) SCC 572
1.4.3. Determination of compensation

In determining compensation the Courts have evolved some general principles which are essential to understand. Thus for example, in fixation of compensation under LAA there is always some element of guesswork but that has to be based on some foundation. It must spring from:

- Totality of evidence,
- Pattern of rate,
- Pattern of escalation of price in the years preceding and
- Succeeding section 4 notification.

1.4.4. Alternative employment and Minimum wages:

Alternative employment and minimum wages have also been recognized as a reasonable method to be adopted in case of land acquisition. The most forceful pronouncement of the Supreme Court made on this issue was the case of displacement of the people arising out of submergence caused by construction of the dam across the river Karjan. The Court held that “Simultaneously with taking possession of the acquired land from any person in occupation of it, such person shall be provided either alternative land of equal quality but not exceeding three acres in area and if that is not possible, alternative employment where he would be assured minimum wages...no possession of any part of the acquired land shall be taken from any person unless and until he is either provided with alternative land or alternative employment which is not temporary in character so that he and the members of his family do not remain without means of subsistence...if for any reason the State Government is not able to provide alternative land or arrange for alternative employment, the State Government will subject to the same exception, pay to the head of the family at the latter’s place of residence, compensation equivalent to minimum wage, every fortnight, during the period alternative land or employment is not provided.”

All the above general principles have arisen, as stated earlier, due to the two most important sections in the Land Acquisition Act relating to compensation viz. Section 23 and Section 24. Sections 23-25 lay down the principles upon which compensation is to be awarded, the first two sections being applicable to the enquiry before the Collector (Sec. 15) as well as to that before the Court. Section 23 deals with the matters to be considered in determining compensation and Section 24 includes matters that are to be neglected while determining compensation. It is thus important to understand the ambit and scope of these two provisions in detail, as they are central to the issue of compensation.

25 LAO V. B Vijyender Reddy 2001 (10) SCC 669
26 Karjan Jalasay Yojana Assargraslh Shakhar Ane Snagharsh Samiti Vs. State of Gujarat AIR 1987
Supreme Court 532
1.5. **Matters to be considered in determining compensation**

There are six essential parameters [See Box 1] that are required to be considered in determining compensation as per the Act. In addition to the essential parameters an interest of 12% on market value from the date of intention notification of Section 4 and a 30% solatium in addition to the market value for the compulsory nature of acquisition has been added for determining compensation.

**Box 1: Parameters of Compensation**

a) market value on date of intention notification under Section 4;
b) damage sustained by persons due to taking of standing crops or trees on land acquired;
c) damage (if any) due to severing of acquired to be land from other lands;
d) damage (if any) where acquisition injuriously affects his other property (movable or immovable) in any other manner or his earnings;
e) where person is compelled to change his residence or place of business then reasonable expenses incidental to such change; and
f) damage (if any) which are *bona fide* resulting from diminution of profits on land between declaration and taking possession.

1.5.1 *Determination of Market Value*:

The first parameter is the market value of the acquired land and is perhaps most contentious and is often the substantial portion and part of compensation. It is important to mention here that the Court is obliged to take into consideration the matters referred to in Sec, 23 of the Act, while the Collector in view of the provisions of Sec. 15 of the Act, has to take guidance from Sec. 23 and 24 while determining the compensation. It is well established that market-value of property in such cases should be determined not necessarily according to its present disposition, but laid out in the most lucrative and advantageous way in which the owner could dispose of it.

1.5.2 *Burden of Proof: On Claimants? Not always*

It is settled law that the burden of proof of market value prevailing as on date of publication of Section 4(1) Notification is always on the claimants. Although in some cases it has also been held that the burden of establishing market value of the acquired lands is not always shifted to the claimants. In fact,

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27 Clause 2nd of Sec. 23 (1) of the Act Dayaparakash Trikambhai v. Special Land Acquisition Officer, Baroda, AIR 1969 Guj. 34 at p. 38.
28 Muhammad Ismail v. Secretary of State, AIR 1936 Lah. 599 at p. 601.
29 Special Land Acquisition Officer, Devangere v. Kottarai, (1976) 2 Kar LJ 181
burden is also on the Land Acquisition Officer to establish the validity and the adequacy of the compensation awarded by him.\(^{30}\)

1.5.3. **Principle of Prudent purchaser:**
The Supreme Court has held that for determining just and adequate compensation for lands acquired under Land Acquisition Act, “Court must not indulge in feats of imagination but, sit in the armchair of a prudent purchaser in open market and to put a question to itself whether as a prudent purchaser it would offer same price in open market as is to be determined”\(^ {31}\).

1.5.4. **Reasonable market value: Guess Work Possible**
While assessing the market value when there are no documentary evidences on record along with the other evidence available, the Court has to do some guess work to arrive at a reasonable market value. In a case where acquisition of land was for widening of railway tracks, the Court relied on the well-settled decision of *Chiman Lal Hargovind Das v. Special Land Acquisition Officer*\(^ {32}\). It said that the land situated on the frontage having special advantage and land situation in the interior undeveloped area will not have the value at par since the latter will have lower value than the land situated near developed area. Some guess work is permissible in determining the value and on this basis the Court did not interfere with the fixation of the market value by the High Court.

1.5.5. **Future Potential Value of Land: Distinguishing Potentiality and Realizable Potentiality**
In another case where future potential value of land in case of acquisition for construction of over bridge was considered. In determining the market value prevailing on the date of notification, the Court distinguished potentiality of the land possessed and realizable potentiality. Infact, this issue was well settled by the Privy Council\(^ {33}\) where it has been that the Court, in determining the market value under Section 23 of the LAA stated ‘it is the possibility of the market value of the land and not realized possibility that must be taken into consideration. The very concept of potential value would mean existing in possibility but not enact’. It is also a settled view that the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in future\(^ {34}\).

1.5.6. **Factors in determining Market Value:**
The court has laid down factors while determining market value of the land\(^ {35}\).

\(^{30}\) Land Acquisition Officer, Devangere v. Nagappa (1973) 2 Mys LJ 380

\(^{31}\) [Hookiyar Singh v. Special Land Acquisition Officer, 1996(5) Supreme 97 AIR 1996 SC 3207]

\(^{32}\) AIR 1988 SC 1652

\(^{33}\) *V.N. Gajapati Raju v. Revenue Division Officer, Vishakapatnam* [AIR 1939 PC 98]

\(^{34}\) Tribeni Devi Sarawgi v. Collector, Ranchi, 1981 (29) B.L.J.R. 27 at pp. 31, 32

\(^{35}\) Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and another AIR 1988 SC 1652
a) One of the first principles that the Court has to adopt is that the court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.
b) The determination has to be made standing on the date line of valuation (i.e. date of publication under Section 4) as if the value is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.
c) In doing so by the instances method, the court has to correlate the market value reflected in the most comparable instance, which provides the index of market value.
d) Only genuine instances have to be taken into account. (Sometimes instances are rigged up in anticipation of acquisition of land)
e) Even post-notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.
f) The most comparable instances out of the genuine instances have to be identified on the following considerations: (i) proximity from time angle (ii) proximity from situation angle
g) Having identified the instances, which provide the index of market value the price reflected therein, may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-à-vis land under acquisition by placing the two in juxtaposition.
h) A balance sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.
i) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.
j) The exercise indicated above has to be undertaken in a common sense manner, as a prudent man of the world of business would do. We may illustrate some such illustrative (non exhaustive) factors: -

<table>
<thead>
<tr>
<th>S No.</th>
<th>Plus Factors</th>
<th>Minus factors</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>Smallness of size</td>
<td>Largeness of area</td>
</tr>
<tr>
<td>2.</td>
<td>Proximity to a road</td>
<td>Situation in the interior at a distance from the road</td>
</tr>
<tr>
<td>3.</td>
<td>Frontage on a road</td>
<td>Narrow strip of land with very small frontage compared to depth</td>
</tr>
<tr>
<td>4.</td>
<td>Nearness to developed area</td>
<td>Lower level requiring the depressed portion to be filled up</td>
</tr>
<tr>
<td>5.</td>
<td>Regular shape</td>
<td>Remoteness from developed locality</td>
</tr>
<tr>
<td>6.</td>
<td>Level vis-a -vis land under acquisition</td>
<td>Some special disadvantageous factor which would deter a purchaser</td>
</tr>
</tbody>
</table>
1.5.7. Evaluation of factors:

The evaluation of these factors of course depends on the facts of each case. There cannot be any hard and fast or rigid rule. Common sense is the best and most reliable guide. For instance, take the factor regarding the size. A building plot of land say 500 to 1000 sq yards cannot be compared with a large tract or block of land will have to be developed by preparing a lay out, carving out roads, leaving open space, plotting out smaller plots, waiting for purchasers (meanwhile the invested money will be blocked up) and the hazards of an entrepreneur. The factor can be discounted by making a deduction by way of an allowance at an appropriate rate ranging approx, between 20% to 50% to account for land required to be set apart for carving out lands and plotting out small plots. The discounting will to some extent also depend on whether it is a rural area or urban area, whether building activity is picking up, and whether waiting period during which the capital of the entrepreneur would be locked up, will be longer or shorter and the attendant hazards.

1.5.8. Well-recognized principles of valuation of Market Value:

Apart from the observations made above, the Courts have endorsed some well recognized principles to determine the market value of land. A Court ruling emphasized this point by stating that it is the duty of the Land Acquisition Officer to hold a careful enquiry and determine the market value in accordance with the principles laid down in Section 23 and on the basis of the well recognized principles of valuation. It is well settled law that the amount awarded by the Land Acquisition Collector forms an offer and that it is for the claimants to adduce relevant and material evidence to establish that the acquired lands are capable of fetching higher market value and the amount offered by the Land Acquisition Collector was inadequate.

a) Comparative Sales Method

Comparative sales method is perhaps one of the most well recognized and accepted methods in Courts. Under this method the Land Acquisition Officer (LAO) has to enquire about transaction of sale of similar lands. The market value of the land is to be assessed on basis sale price of other comparable lands in the adjoining area. To elaborate this point further, in a case when there was evidence that the land had potentialities for development as a building site since construction of various nature existed in the neighborhood. Thus the land was required to be evaluated as urban property and not as agricultural

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38 Periyar and Pareekanni Rubbers Ltd. V. State of Kerala, AIR 1990 SC 2192
Recently it has been held\(^{41}\) by the Court that in comparable instances of land for the determination of the market value there should be proximity from time and situation angle. No mathematical accuracy is required. Further, Purpose of acquisition, relevancy of purpose for which the acquisition is made is also a relevant factor for determining the market value and must be taken in to consideration.

**b) Other Methods of valuation of Market value:**

There are several other methods of arriving at market value. One such standard method includes:

i) Opinion of expert

ii) The price paid within a reasonable time in a bonafide transaction of purchase of land acquired or lands adjacent to land acquired possessing similar advantages.

iii) Capitalization method or its potential value being close to the developed or developing colonies, nearness to the road etc.\(^{42}\).

**c) Methods of capitalization of the net income as an alternative method:**

Capitalization method mentioned in the preceding paragraph needs to be understood in a greater detail. It is also now settled practice that if evidence of comparative sales is not available; then alternative methods of valuation is followed which include the method of capitalization of the net income. Under this method it is determined as to what is average gross yield from agricultural lands; what is the cost of cultivation and what is the average price of the agricultural commodity grown on the lands, all such matters which require investigation should be incorporated into the determination of the market value.\(^{43}\) In other words, in case of no comparable land sale deeds, the most accepted and recognized method to find out the value of the land prevailing on the date of notification u/s 4, is to find out the annual income of land which the owner is deriving or expected to derive from the use of the land and capitalize the same by adopting a multiplier.\(^{44}\)

**d) Willing Purchaser and Willing Buyer:**

Another well known test is the test of willing purchaser and willing buyer. In awarding compensation in acquisition proceedings, the Court has necessarily to determine the market value of the land as on the date of the relevant notification. It is useful to consider the value paid for similar land at that time

\(^{40}\) Bhagat Ram v. State of Punjab, AIR 1981 P&H 163

\(^{41}\) Viluben Jhalejar Contractor V. State of Gujarat 2005 AIR (SC) 2214

\(^{42}\) R.P.Singh V. UOI 200597) SCC 24

\(^{43}\) Special Land Acquisition Officer, Devangeree v. Kotraiah, AIR 1977 Kant 33: (1976) 2 Kant LJ 318

\(^{44}\) Executive Director V. Sarat Chandra Biso 2000 AIR (SC) 2619
under genuine transactions. The market value envisages the price, which a willing purchaser may pay under bonafide transfer to a willing seller.

e) Principle of Deduction

In fixing the market value of a large property on the basis of a sale transaction for smaller property, generally a deduction is made taking into consideration the expenses required for development of the larger tract to make smaller plots within the area in order to compare it with the smaller plots dealt with under the sale transaction. The principle of deduction in the land value covered by the comparable sale is thus adopted in order to arrive at the market value of the acquired land. Further, It is also true that where no evidence of sale of large pieces of land or area comparable with the acquired land is available, the sale transactions of smaller pieces of land can be taken into consideration and a reasonable cut can be imposed in the market price as represented by them so as to arrive at the correct market value of the acquired land. In a recent case it has been held that there is no bar in law to have small plot sale deed as exemplar for acquiring large portions of land especially when there is no other relevant or material evidence available. However such exemplars can be used after making adequate discount.

1.5.9. Determination of compensation, past transaction not the only criterion

It could hardly be the only reason for determining the compensation amount. There are other factors which have to be taken into consideration, e.g. the land is not to be valued merely by reference to the use to which it is being put at the time at which its value has to be determined, but also by reference to the uses to which it is reasonably capable of being put in the future; and market value is the potential value of the property at the time of acquisition which would be paid by a willing buyer to a willing seller, when both are actuated by business principles prevalent in the locality at that time. The Court, therefore, emphasized that while determining the value of the land acquired by the Government and the price which a willing purchaser would give to the willing seller, only the ‘past sales’ should not be taken into account but the value of the land with all its potentialities may also be determined by examining (if necessary as a Court witness) local property dealers or other persons who are likely to know the price that the property in question is likely to fetch in the open market.

1.5.10. Interest on solatium

In determining market value an additional factor is the solatium. In fact court decisions have also mandated that appellant is entitled to get interest on

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46 Rishi Pal Singh V. Meerut Development authority 2006 (3) SCC 205
solatium and amount awarded under section 23 (1A) of the LAA Act. The legitimacy of this additionality was derived from an earlier case where the issue of interest on solatium was settled. In view of Sunder V. Union of India, it was held that the expression “awarded amount” would mean amount of compensation worked out in accordance with the provisions contained in section 23, including all subsections thereof. State is liable to pay interest on amount envisaged under section 23(2) of the Act. Interest awarded u/s 28 would include within its ambit both the market value and statutory solatium. Expression awarded amount in section 34 would mean the amount of compensation worked out in accordance with the provisions contained in section 23 including all the subsections thereof. It has been held that the amount of award under section 34 means the aggregate amount of compensation calculated in accordance with the provisions of the sub-sections of section 23, which includes solatium. In another case, it was held that if the award of the decree doesn’t specifically refer to the question of interest on the solatium or where the claim for interest has not been made and rejected then it would be open to the execution court to apply the ratio of Sunder’s case and compensation awarded would include solatium.

1.5.11. The Practice of “Safe Market Value”:

It was also found out during the state visits and interviews that there are variances both on perception and practice on what is the substantive law and the manner in which the process of land acquisition is carried out. Thus for example it was observed that often the process of arriving at market value in compensation cases, the state authorities often do not consider the real market value. This is primarily to avoid the allegation of being branded as colluder with the person affected by the superior authorities. It is thus a safe practice to undervalue the land so that the Courts can arrive at just compensation through careful perusal of records that is submitted before them. Hence the burden of computing the market value is shifted to a judicial process rather than an executive one.

1.6 Matters to be neglected in determining compensation

There are at least eight parameters that need to be disregarded by the court in determining compensation under Section 24 of the LAA. These are:

**Matters Disregarded in Compensation:**

1. Degree of urgency that led to acquisition.
2. Any disinclination of the person to part with his land

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47 Karimbanakkal Sulaiman V. Special Tehsildar for KAKPIP 2004(13) SCC 642
48 2001(7) SCC 211
49 Chairman Neyveli Lignite Corporation Ltd. V. C Govinda Padayachi 2006(9) SCC 725
50 Gurpreet Singh V. UOI 2006(8) SCC 457
3. Any damage caused by a private person would not render such person liable to a suit.
4. Any damage caused to the land acquired after declaration notification, which may be required for consequent use.
5. Increase in value of land acquired due to the use to which it may be put.
6. Increase in value of other land of the person due to the use to which acquired land may be put.
7. Improvements or outlays or disposal of the land acquired without the sanction of the Collector after the intention notification.
8. Increase in value of land by putting to any use, which is forbidden by law or opposed to public policy.
Chapter II- Current Approaches, Methods and Role of Court in Himachal Pradesh on Compensation

2.1. What actually happens is a matter of enquiry:

In the context of Himachal Pradesh it is important to understand as to how the Collector compiles the data of all the interested persons, enquires the veracity of a claim of any person as being interested to claim compensation and what kind of documentary evidence is required by him/her to substantiate the claim so made. Who are the persons who are finally considered entitled to the compensation and how is the amount of compensation apportioned among them.

2.2. Land Administrative Manual and Standing Orders 28: The Guide Books to be adhered

The state of Himachal Pradesh has adopted the Punjab Land Administration Manual (hereinafter PLAM). The land administration manual is a compendium of rules and regulations regarding the detailed procedures to be followed by the revenue officers in the discharge of their functions and duties. It is absolutely essential for them to follow the procedures contained in the manual. The manual covers all aspects of land administration in detail and adherence to the same ensures uniformity of procedure and process across the entire spectrum of land administration. It is a reference point in the field of land administration. There is a chapter on acquisition of land for public purpose in PLAM. This chapter deals with the following aspects of the land acquisition for public purpose among other things.

2.2.1. Preliminary Estimate of Cost

The departmental officer shall ask the Collector for the data to be supplied to him in regard to the price of land, building or trees etc for him to be able to make an estimate of the value of the land to be acquired. If any damage is done to the land or to the crops in the process he must offer compensation and if the same is not acceptable to the landowner the matter must be referred to the DC whose decision in this regard shall be final. After the plan is made, data from the DC office is sought, to make a preliminary estimate of the cost of acquiring the land. The estimate shall have ordinary rate per acre which land of the same description is fetching in the neighbourhood and a rough valuation of trees and buildings. This should also have a note on any valuable trees or buildings or other property for which compensation will have to pay in addition to the value of the land.

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51 Chapter XIV of Punjab Land Administration Manual (PLAM)
52 Para 465 ibid
2.2.2. Market value of land\textsuperscript{53}

In order to decide the amount of compensation due the Collector first has to settle the market value of the land and then fifteen per cent is added on top of that value. The Collector shall pay special attention to the matters and directions given in the LAA in this regard\textsuperscript{54}. To determine the market value of the land on the date of the publication of the intention notification, the chief factors, which the Collector shall keep in mind, would be the prices paid for similar lands recently acquired under the LAA, prices paid in private transactions which are recorded in registered deed or judicial proceedings etc. It shall be open to the Collector to consult respectable people who are disinterested in such acquisition to be able to arrive at a just and fair market value. His main data however shall be the preliminary estimate made as mentioned above. Though he is not bound by the preliminary estimate but any significant departure from that estimate if any should be explained in writing by the Collector in his award\textsuperscript{55}. However this 15\% is added only on the market value of the land and not on the total award. Land as per the LAA includes lands, trees and building and not on any other component of the award.\textsuperscript{56} If the Collector finds the amount of compensation so arrived at to be much in excess of the preliminary estimate referred to in para 465 above then he should refrain from making an award and ask for further instructions.

2.2.3. Consequential damages\textsuperscript{57}

The Collector also has to keep in mind whether the persons interested in land have any claim for consequential damage which can fall chiefly under two categories namely loss of standing crops or trees and damage to other land of the right holder by taking up of the land required. In case the person interested demands his harvest then the value for the same should be deducted from the amount of compensation granted in lieu of such crops.

2.2.4. Damage to other land of right holder\textsuperscript{58}: Special Instructions from Railways and Irrigation

This is considered a difficult head for the Collector to deal with. It is very desirable to avoid claims for consequential damages, where possible, because it is difficult to calculate the compensation under this head which is fairly due. If unreasonable claims are made under the head of severance, government may direct the Collector to acquire the whole of the objector’s land\textsuperscript{59}. There are

\textsuperscript{53} Para 476 PLAM  
\textsuperscript{54} Para 50 ibid  
\textsuperscript{55} Para 50  
\textsuperscript{56} See para 54 of SO28 of LAA  
\textsuperscript{57} Para 477 PLAM  
\textsuperscript{58} See para 478 PLAM and para 51 of SO28 of LAA  
\textsuperscript{59} Section 49(2) of LAA
clear instructions in various departments such as Railways to ensure that fullest consideration is given to the convenience of the landowners even if it means slight alteration in alignment if feasible to avoid the consequential damages.\textsuperscript{60} Even in the Irrigation Department strict orders exist forbidding the excavation of canal water courses through land belonging to a well until a suitable pipe, culvert or siphon is completed and the cultivator’s water-course is connected at both ends with the same at the government cost.\textsuperscript{61}

\section*{2.3. Matters to be excluded from consideration in estimating market value}\textsuperscript{62}

In estimating the market value, only the condition of the land at the time of intention notification has to be taken into consideration. As stated earlier, LAA specifically mentions the matters, which should be excluded from consideration while determining the market value of the land.\textsuperscript{63} The urgency of the requirement of land by the government or the reluctance of the owner of the land to part with it has no bearing whatsoever on the market value of the land.

\section*{2.4. Compensation other than in money}\textsuperscript{64}: \textit{Land for Land-Conditions}

Usually persons who are being deprived of their land for public purpose would prefer to take other land in exchange rather than money compensation. Land in lieu of land can be granted as compensation when the person interested asks the government for it or if the government has land available with it which can be given as compensation\textsuperscript{65}. With the sanction of the local government an arrangement to give alternate land can be done. The Collector, however, at the first instance has to evaluate the compensation in terms of money and moreover no one can be compelled to take land instead of money\textsuperscript{66}.

Another form in which compensation can be granted is the reduction or remission of the land revenue payable on the remainder of the right holder’s land but this also needs prior approval of the state government\textsuperscript{67}. However since this remission/reduction in land revenue introduces complications in the revenue accounts it is not desirable to adopt this mode of compensation payment.

\textsuperscript{60} GOI circular No. IV Railway dt 4\textsuperscript{th} September 1897 mentioned in para 478 of SO 28 of LAA
\textsuperscript{61} Irrigation department circular no. 46-I dated 6\textsuperscript{th} January, 1904 mentioned in para 478 of SO 28 of LAA
\textsuperscript{62} See para 479 PLAM
\textsuperscript{63} Section 24 LAA
\textsuperscript{64} See para 481 PLAM
\textsuperscript{65} See para 57,58,59 and 60 of SO 28 of LAA
\textsuperscript{66} See para 58-60 of So 28 of LAA
\textsuperscript{67} Section 31(3) of LAA
2.5. Apportionment of compensation

If the right holders agree between themselves regarding their respective shares in the compensation then their agreement should be incorporated in the award. However where the right holders are of different classes e.g. superior owners, inferior owners or occupancy tenants then the Collector usually have to divide the compensation between them. The share of the occupancy tenant would properly be measured by the proportion between the price at which he could sell his tenant right and that at which the landowner could sell the land, if unencumbered by the subordinate title. Another way to arrive at the share of the occupant tenant would be to look at the way the profits arising out of the land are divided. Different classes of occupancy tenants are also required to be treated differently.

2.6. Compensation to assignees:

The loss of income or reduction of income derived from an assignment or the loss of position of assignee is very unpalatable and should be first evaluated and then adjusted against the remaining estate if there is any left. In other cases the government through the financial Commissioner/Deputy Commissioner can also make a proposal for the grant of a pension or of a new assignment. Such proposals should not be routinely made as they should only be made in favour of a deserving assignee who keenly feels the loss of the same. In case where the cash compensation is awarded and the assignment is for more than one life or in perpetuity, the compensation is to be calculated at twenty years purchase of the government revenue assessable on the land. If the assignment is for life the value is to be calculated excluding months and days according to the scale laid down by the government for buying out pensions according to which a fixed graduated value is given with reference to ages. Where nazrana is paid annually by the jagirdar, this is really a deduction from the revenue of the jagir and in such a case proportionate amount of nazrana should be remitted and the amount of the compensation should be calculated after deducting the nazrana proportionate to the amount of assignment extinguished. If the said assignment is for the term of the settlement, the compensation must be calculated with reference to the number of years the settlement has to run however in no case the limit of the perpetual grant be more than twenty years.

2.7. Compensation for damage done during occupation

The Collector has to pay compensation for any damage to the land owners if such damage is done during the course of their occupation of this land and which is

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68 Para 482 PLAM
69 Section 29 LAA
70 See para 482 of PLAM for details.
71 Para 489 PLAM
72 See para 53 SO 28 of LAA
73 Para 491 PLAM
not covered by the agreement. In cases where the land has become unfit for the purpose to which it was put immediately before the occupation of the government by the landowner, they can ask the government to buy it from them. Any dispute regarding the condition of the land between the government and the landowners should be referred to the district judge.

2.8. Compensation and State of Himachal Pradesh: Some specific sectoral concerns

Apart from the statutory and administrative instructions on compensation, which has been explained above the courts too, have ruled on specific sectors and issues in Himachal Pradesh which should be understood in the context of compensation.

2.8.1. Acquisition of land with fruit trees: Both are essential in determining compensation

The state of Himachal also presents some unique situations regarding compensation. As is well known horticulture remains an important source of income in Himachal Pradesh, it was held that in the case of acquisition of land with the fruit bearing trees, the land owners are entitled to compensation for the land as well as trees which is to be assessed separately in view of the standing order 28 issued by the Financial Commissioner, H.P as well as the ratio of the Division Bench in the case of Collector LAC Mandi vs. Karam Singh and Others and Harbans Singh’s formulae.

2.8.2. Road Sector: acquisition of land of different classification: Conflicting Views

In another road related case in Himachal Pradesh, land of different classification was proposed to be acquired for the construction of National Highways-21 by the Public Works Department where the LAC assessed the market value of the land on the basis of different classification i.e. Barani, Gair Mumkin, Banjar Kadim etc. The landowners filed for enhancement before the District Judge who enhanced the compensation maintaining the assessment on the basis of the classification of the land. The landowners further filed appeals against the judgment of the District Court. The court held that one of the landowners was entitled for payment of compensation on account of loss of goodwill and loss of earning/ carriage. The conclusion arrived by the District Judge pertained to grant of uniform compensation irrespective of classification.

74 Section 36 ibid
75 Section 37 ibid
76 Ramesh Chand and Others Vs. Land Acquisition Collector 2004(1) S.L.J 453
77 Latest HLJ 2000 (HP) 694
78 The Valuation of Fruit trees, Basic Principle and Methods
79 Smt. Gulabi vs. State of HP 1997 (2) SLJ 1338
and nature of the acquired land ignoring the purpose to which it was being put prior to the acquisition, as well as to the one it is likely to be put after the acquisition however, the Supreme Court in its latest judgment has averred that purpose for acquisition is a relevant factor to be taken into consideration for fixing compensation. An important to be considered here in the state context in relation to the Supreme Court is that there are numerous views expressed at the High Court level which has been modified or over ruled by the Supreme Court and this needs a constant vigil especially in a state context on sensitive issues such as compensation.

In another recent case on acquisition for roads, the High Court has affirmed the decision of the District Court where the Collector assessed the land at a flat rate irrespective of land classification and the District Court assessed the market value of the acquired land on the basis of the classification of the land and enhanced the market value. Further, the High Court upheld the method adopted by the lower court in arriving at the market value by taking consideration sale instance of a smaller piece of land to assess market value of a large tract of land.

2.8.3. Road Sector: Additional compensation from date of notification or date of possession: Conflicting views

In another case where possession of the land was taken before the issuance of notification under section 4 of the LA Act for construction of National Highway-21 in Kullu Himachal Pradesh, it was held that while fixing the market value of the acquired land sale price of small parcel of land can be the basis for arriving at the market value of the acquired land after effecting deduction towards development charges. But more importantly a potential contentious issue was also addressed where the High Court decided on the question of benefits being paid under section 23(1-A) and it was held that the possession been taken before the publication of intention notification, benefits under section 23(1-A) are payable from the date of possession till the date of award of the Collector, LA. This, however, is contrary to the ratio of the Supreme Court where it has held that the benefits are payable only from the date of issuance of intention notification.
2.9. Grazing Rights and entitlement to Compensation

In another significant case in Himachal, the appellants had been granted a decree whereby grazing rights had been reserved in their favour in Shamlat Deh of the village. The land was acquired and the compensation under LAA was paid to the proprietors of the land excluding the appellants. The question arose whether the non-proprietors who have been given grazing rights in the Shamlat Deh are entitled to share in the compensation for the land which has been acquired under LAA. After examining the provisions of the Punjab Village Common Lands (regulation) Act, 1961, Indian Easements Act and LAA it was held that the persons having grazing rights in the Shamlat Deh were persons interested and were entitled to compensation and the courts below ought to have apportioned 1/4th of the compensation in favour of the appellants.

2.10. Development Cost and Development Charges:

Ordinarily the quantum of developmental cost is one third but it can be less also depending upon the circumstances of the case. It has been held that in acquisition of large piece of land a deduction of 33.33% must be made towards development cost. In fact deduction of development charges ought to be adequately provided for but it varies from place to place and area to area and amount of developments, which are required to be carried out. There cannot be any fixed amount of deduction towards development charges.

84 Dayalo and others v. Smt. Dhano and others 2005 (2) SLJ 923(Punjab and Haryana High Court
85 Land Acquisition officer and Revenue Division Officer V Ramanjulu 2005 (9) SCC 594
86 Himachal Pradesh Housing Board V Bharat S. Negi 2004 AIR (SC) 1800
87 Simla Development Authority and others V Santosh Sharma and others AIR 1997 SC 1791 referred in Tejumal Bhojwani V State of UP 2003 (supp-2) JT 194
Chapter III- Allied Laws related to Land Acquisition and compensation in Himachal Pradesh

Apart from the compensation methods, principles, process as well as court decisions described above it is equally and often ignored other land related laws where the issue of compensation is discussed but not well known. These also include some unique methods of arriving at compensation value or the manner in which compensation is dealt with which should be understood in a sectoral context.

3.1. Himachal Pradesh Roadside Land Control Act:

Although there is no acquisition under this Act but in declaring the scheduled road or controlled areas under the Act if any interest of the concerned person gets prejudicially affected because of such order, then it could be the basis of compensation. As a matter of process, the compensation\(^{88}\) claimed under this Act can either be disposed off by the Financial Commissioner by deciding to acquire the said land as per the provisions of LAA or refer the matter for disposal to an officer who is exercising the powers of Collector under LAA. If the Financial Commissioner decides to acquire the land then the claimant shall have to be paid the expenses for preparing the case to be initiated before the Collector if s/he refers the same to the Collector for acquisition to be carried out. In case no such expense is paid then the acquiring authority shall take that also in to account while determining the amount of compensation to be paid in lieu of land to be acquired under LAA. There is no provision in this Act, which prevents the parties concerned, in case the matter has been referred to the Collector for the acquisition of land under LAA, to have a mutual agreement as to the price of the land or the amount of compensation payable.

3.2. Procedure to determine the amount of compensation\(^{89}\)

When a claim is transferred to an officer who is to exercise the powers of a Collector under the LAA he/she shall determine the amount of compensation payable to the person. The amount of compensation so determined shall in no case exceed the difference between the market value of the land before the notification of the area as controlled area and the diminished market value after the exercise of any right thereon has been restricted, regulated or controlled after such notification. In order for the claimant to be able to get compensation he/she shall have to prove to the satisfaction of the officer concerned that the proposal of development of land for which an application had to be made to the Collector in view of the concerned area having been declared as controlled area is immediately practicable or would have been so if no restriction, regulation or prohibition had been imposed upon the land

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\(^{88}\) See section 8
\(^{89}\) Section 9
concerned under this Act. No compensation shall be payable if the controlled land was under similar or substantially similar restrictions under the provisions of some other Act for the time being in force at the time of being made subject to them under the provisions of this Act. The compensation shall not be paid in case compensation in regard to the restrictions has already been made though the restrictions in question happen to be imposed under some other Act but are quite similar to the ones imposed under this Act. All the relevant provisions of the LAA shall be applicable to the award, which shall be made while exercising authority under the provisions of this Act. 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.

3.3. Tenancy and Land Reforms Act: Procedure for acquisition and computation of compensation

I. 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.

II. 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.

III. The Collector shall make the payment of reasonable price as determined by him incase the government decided to buy or communicate the refusal of the government in case it decided not to buy. The reasonable price of the land, any building made on it, any well, embankment constructed, permanent fixtures and trees planted are determined within a period of three months of the date of the receipt of notice by him by the government communicating its decision to buy such land and shall be based on the following factors.

a. The rental value of the land used for similar purpose in the locality
b. The structures, wells, embankments constructed or permanent fixtures affixed to and trees planted on the land.
c. The profits from agriculture in respect of similar land in the locality
d. The price of crops and commodities current in the locality
e. The improvement made in or on land
f. The land revenue other sums or cess payable in respect of this land
g. Such other factor as may be prescribed

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90 Section 119
91 Section 120
IV. 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.

V. The rights of the tenants are not affected by such transfer of land to the state government.

3.4. Himachal Pradesh Ancient and Historical Monuments and Archaeological Sites and Remains Act, 1976: Compensation under the Act

The Act details the principles of compensation to be followed while determining market value of property or the compensation to be paid. In case of a dispute with regard to market value or compensation it will be decided as per provisions of sections 3, 5, 8, to 34, 45 to 47, 51, and 52 of Land Acquisition Act.\(^\text{92}\) At the time of making an enquiry under the LAA the Collector for the determination of market value will be assisted by two assessors one of whom shall be nominated by the state government and the other to be nominated by the owner and in case the owner has not nominated an assessor then the Collector will nominate the assessor.\(^\text{93}\)

3.5. The Himachal Pradesh Slum Areas (Improvement and Clearance) Act, 1979: Determination of Compensation under the Act

The Slum Act enumerates the formula for calculation of the amount payable for the acquired land. The amount to be paid shall be an amount equal to sixty times the net average monthly income\(^\text{94}\) derived from the land for five consecutive years and the net average income is determined on the basis of principles set out in the schedule to the Act.

3.6. Dispute Resolution on compensation, apportionment

After the amount is determined a notice is issued to the owner or any person interested to accept the amount being disbursed. If the person refuses to accept the amount as determined then an appeal is preferred to the state government.\(^\text{95}\) The state government after hearing makes an order that is final and cannot be challenged in any court of law. The competent authority under the Act is empowered to apportion the amount to the different persons. If case of a dispute the matter is referred to the state government for its decision. While deciding on merits provisions of part III of the Land Acquisition Act are to be followed.\(^\text{96}\) The determination of amount payable for acquisition and its apportionment being decided the payment is made to the persons. In an event

\(^{92}\) Section 28
\(^{93}\) Section 28
\(^{94}\) Section 16
\(^{95}\) Section 16(4) (5) (6)
\(^{96}\) Section 17
of a dispute on the title of the person entitled to receive the amount or on its apportionment, the amount is deposited by the competent authority in the court of the District Judge and it has to be dealt in the manner prescribed under sections 32, 33 of the LAA, 1894.

Concluding Remarks:

Compensation mechanisms are quite complex as it is now quite clear. One of the key reasons for this complexity is the fact that it has been dealt with in parts. The need is to understand the issue for compensation from a holistic perspective. First there is a need to understand the exact statutory frame. Basic conceptual clarity on who is a person interested, how payment for damages is different from compensation is a pre-requisite. The exact understanding of how awards are made and the factors that are taken into account in determining compensation is crucial. Compensation and market value are often interchangeably used which may not be a correct approach. Arriving at a market value of the proposed acquisition is a substantial part of the compensation but not a whole by itself. There are certain factors that need to be considered while determining compensation and there are certain factors that need to be disregarded while determining compensation.

Clearly there are methods of computing market value. No precise mechanism exists but it is a combination of administrative methods within the statutory frame as well as court interpretations Court rulings have proved to be guidelines in not only determining market value but also set the broader parameters of compensation. Any new strategy must integrate the administrative orders as well as use the context specific court decisions. The state procedures are again unique due to the combination of the Punjab Land Administration Manual as well as Standing Orders 28 under the LAA. The courts too have dealt with unique situation of fruit trees, grazing land as well roads in Himachal Pradesh differently and uniquely. The other lands related laws such as land control and land reforms also deals with compensation in a unique manner and must be considered uniquely while computing compensation.