

**Land Acquisition Procedures and Grievance Redressal Processes:
Comparison between National Highway and State Highway**

Sector – Roads and Highways

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1. Introduction

Road infrastructure in India has expanded manifold in terms of spread and capacity. Road transport has emerged as the dominant segment in India's transportation sector with a share of 4.5 per cent in India's GDP in 2005-06. Over the last six years (2000-01 to 2005-06), the annual average growth in road transport sector GDP at 9.5 per cent was much higher than the overall GDP growth of 6.5 per cent.¹

The main objective in undertaking the present case study is to draw a comparison between the land acquisition processes under the National Highways Act (NHA) as executed by National Highways Authority of India and construction of state highway under the Land Acquisition Act. The Ratanpur-Himmatnagar-Chiloda-Gandhinagar stretch of National Highway-8 (107 Km)² constructed by the National Highway Authority of India and the Godhra Bypass on the Halol-Godhra-Shamlaji State highway-7(10.2 Kms)³ being constructed by Roads and Building Department were identified. The focus is to understand the constraints and working of land acquisition processes and issues of resettlement and rehabilitation in a linear project and also whether the land acquisition process has any lesson for mainstream acquisition under the Land Acquisition Act. Another aspect addressed is the procedure followed for Grievance Redressal. Since a part of acquisition for the NHAI is in Scheduled Area the study also presents the special provisions.

The National Highways Authority of India (NHAI) was established on 15th June, 1989 under the National Highways Authority of India Act, 1988. The Authority is an autonomous body with executive responsibility for the development, maintenance and management of the National Highways and for all matters connected or vested in it by the Ministry of Road Transport and Highways. The Authority was operationalised in February 1995⁴ with the appointment of a full time Chairman and other members. There are two laws on land acquisition existing in the state. One is provided under the Bombay Highways Act, 1955⁵ and the other is under Land Acquisition Act, 1894.

2. Framework and Procedures adopted by NHAI

The National Highways Act, 1956 is used to acquire land, which is required for the building, maintenance, management or operation of a National Highway⁶. The Act was enacted for the declaration of certain highways to be national highways and for other supplementary matters connected to this process. The Act in addition to other matter

¹ National Transport Policy as recommended by Thangaraj committee at http://morth.nic.in/writereaddata/sublinkimages/ROAD_TRANSPORT_POLICY7406816237.htm

² Notification under section 3A(1) NHA dated 07.10.2003 issued by Ministry of Road Transport and Highways

³ Personal consultation with Deputy Engineer, Gujarat State Road Development Corporation, Godhra, Panchmahal

⁴ <http://www.nhai.org/>

⁵ BHA does not apply to this case study

⁶ Section 2 National Highways Act, 1956

broadly deals with (1) acquisition of land (2) taking over possession of land (3) assessment of compensation and (4) payment of compensation. The various stages in the procedure of acquisition are enumerated below to have a clear understanding of the processes involved.

Stage I

The Central Government stating that a particular land is needed for a ‘public purpose’ issues a preliminary notification also known as the ‘intention notification’.⁷ Any land that is required by the National Highways Authority of India for maintenance, management or operation of a National Highway or any other ancillary purposes like construction of buildings is deemed ‘public purpose’. This essentially connotes that all acquisition under the NHA are for ‘public purpose’. A description of land to be acquired is to be given in the intention notification. The intention notification is published in two local newspapers one being in the vernacular language.⁸

Stage II

After the publication of the intention notification the act provides that any ‘person interested’ in any land, may within 21 days from the date of publication of the notification, object to the acquisition of the land.⁹ A ‘person interested’ is not defined under the Act but it is defined in Land Acquisition Act, 1894 to mean a person who is interested in land and is entitled to claim an interest in compensation if the land is acquired under the Act. It also includes a person who is a holder of an easement that is going to be acquired. The objections are given in writing to the ‘competent authority’¹⁰ that is required to give the objector an opportunity of being heard. In the present case the Central Government appointed the Special Land Acquisition Collector (SLAO), Himmatnagar as the ‘competent authority’ for the purpose of carrying out functions of land acquisition for the project. After hearing the objections SLAO has to decide the objections and record the reasons for the decision. The decision of the ‘competent authority’ on these objections is final.

Stage III

After the objections are decided the central Government makes a formal declaration of the intended acquisition¹¹. The declaration is to be published within a period of one year

⁷ Section 3A NHA “Power to acquire land, etc.- (1) Where the Central Government is satisfied that for a public purpose any land is required for the building, maintenance, management or operation of a national highway or part thereof, it may, by notification in the official gazette, declare its intention to acquire such land.”

⁸ Section 3A (3) NHA

⁹ Section 3C NHA

¹⁰ section 3 (a) “competent authority” means any person or authority authorised by the Central Government, by notification in the Official Gazette, to perform the functions of the competent authority for such area as may be specified in the notification”.

¹¹ Section 3D “ Declaration of acquisition.- (1) Where no objection under sub-section (1) of section 3C has been made to the competent authority within the period specified therein or where the competent authority

from the date of the intention notification. On declaration the land vests with the Central Government. After land is vested in the government any person can enter the land to carry out various operations connected with the national highway.

Stage IV

The SLAO is required to publish notice¹² to the 'persons interested' to submit their claim for compensation. The 'person interested' submits its claim on the nature of interest in the land and the compensation payable for the acquired land. The SLAO has to determine the amount of compensation payable to a person whose easementary right has been acquired or affected. It is computed at 10% of the amount of compensation determined for that land. The compensation determined by the SLAO comprises of the market value of the acquired land on the date of intention notification, severance charge for the damage sustained while acquiring a part of the land, damages sustained on account of the acquisition affecting the earnings of the person and expenses for shifting of residence or place of business on account of acquisition. After conducting the inquiry the SLAO announces the award containing particulars on the compensation payable to 'persons interested' and its apportionment among the various claimants. If the compensation determined by the SLAO is not acceptable the matter is then referred to an arbitrator for deciding on the compensation. The arbitrator is appointed by the Central Government.¹³ In the present case Collector, Himmatnagar is the arbitrator. The act does not provide for any time limit for appointment of the arbitrator. The proceedings before the arbitrator are regulated as per the Arbitration and Conciliation Act, 1996. The advantage of the proceeding under the Arbitration and Conciliation Act, 1996 is that the award can only be challenged on the grounds specified in the act.¹⁴ If the amount of compensation determined by the arbitrator is more than what was awarded by 'competent authority' then interest of 9% is payable on the difference from the date possession was taken on declaration to the date of actual deposit.

Stage V

The 'competent authority' can take possession of the land after determination and deposit of compensation for the acquired land. A notice¹⁵ for a period of 60 days is given to the 'person interested' to hand over the possession of land to the 'competent authority'. The Central government has to deposit the compensation within a period of seven days¹⁶ of determination of the compensation by 'competent authority' and the arbitrator. In the

has disallowed the objection under sub-section (2) of that section, the competent authority shall, as soon as may be, submit a report accordingly to the Central Government and on receipt of such report, the Central Government shall declare, by notification in the official gazette, that the land should be acquired for the purpose mentioned in sub-section (1) of section 3A."

¹² Section 3G (3) NHA

¹³ Section 3G (5) NHA

¹⁴ Section 34 Arbitration and Conciliation Act, 1996

¹⁵ Section 3E (1) NHA

¹⁶ Section 2 (b) National Highways (Manner of Depositing the Amount by The Central government with the Competent Authority for Acquisition of Land) Rules, 1998 vide G.S.R 12 (E) dated 4.1.1999

event of a dispute as to the person entitled to receive the compensation or apportionment among various persons, the matter is referred by the SLAO to the civil court for a decision. There is an express prohibition on the application of Land Acquisition Act, 1894 to an acquisition under the present act.¹⁷

3. Framework and Procedures adopted for State Highways under Land Acquisition Act, 1894

The land was acquired for the construction of Godhra Bypass under the provisions of Land Acquisition Act, 1894. The Act broadly deals with (1) acquisition of land (2) taking over possession of land (3) assessment of compensation and (4) payment of compensation. The various stages in the procedure of acquisition are enumerated below to have a clear understanding of the processes involved.

Stage I

The government stating that a particular land is needed for a ‘public purpose’ or for a company issues a preliminary notification also known as the ‘intention notification’.¹⁸ In the present context the notification was issued for construction of Godhra Bypass. The definition of ‘public purpose’¹⁹ under LAA includes the provision of land for village sites, or its extension, planned development, town or rural planning, for residential purposes for the poor, landless etc.

Stage II

After the publication of the intention notification the act provides that any ‘person interested’ in any land, may within 30 days from the date of publication of the notification, object to the acquisition of the land.²⁰ A ‘person interested’²¹ is a person who is deemed to be interested in land and is entitled to claim an interest in compensation if the land is acquired under the Act. It also includes a person who is a holder of an easement that is going to be acquired. The objections are given in writing to the Collector who is required to give the objector an opportunity of being heard. After hearing the objections Collector’ has to decide on the objections and record the reasons for the decision. The report of the Collector on the objections is sent to the ‘appropriate government’ for its decision. The ‘appropriate government’ means in relation to acquisition of land for the purposes of the Union it is the Central Government, and, in relation to acquisition of land for any other purposes, the State Government. The ‘appropriate government’ considers the veracity of the decision of the Collector on the objections of the landowners. The decision of the ‘appropriate government’ on these

¹⁷ Section 3J NHA

¹⁸ Section 4 LAA

¹⁹ Section 3(f) LAA

²⁰ Section 5-A (1) of the Act, “Hearing of objections- (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, within thirty days from the date of the publication of the notification, object to the acquisition of the land or of any land in the locality, as the case may be.”

²¹ Section 3(b) LAA

objections is final. There is no provision for an appeal against this order passed by the 'appropriate government' under the LAA. The only remedy to challenge the decision of the government is to file a petition²² in the High Court.

Stage III

The government after deciding the objections is required to make a formal declaration of the intended acquisition. The publication of this declaration²³ is to be done in the same manner as the 'intention notification' i.e. in the official gazette, in two newspapers and posting notices in public places in the village/town where the land in question is located. Thereafter, the collector is to take the order from the government for acquisition and the land is to be marked out, measured and planned.²⁴

Stage IV

The Collector is required to publish notice²⁵ to the 'persons interested' to submit their claim for compensation. At this stage the landowners or 'persons interested' can raise objections²⁶ within 15 days of the publication of the notice on a) the measurement of the land being acquired, b) the nature of interest in the land c) amount and particulars of the claims to compensation for such interests. After conducting the inquiry the Collector announces the award²⁷ containing particulars on the true area of the acquired land, the

²² Under Article 226 of the Constitution of India

²³ Section 6 LAA

²⁴ Section 7,8 LAA

²⁵ Section 9 (1) LAA "Notice to persons interested. - (1) The Collector shall then cause public notice to be given at convenient places on or near the land to be taken, stating that the Government intends to take possession of the land, and that claims to compensations for all interests in such land may be made to him"

²⁶ Section 9 (2) LAA "(2) Such notice shall state the particulars of the land so needed, and shall require all persons interested in the land to appear personally or by agent before the Collector at a time and place therein mentioned (such time not being earlier than fifteen days after the date of publication of the notice), and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests, and their objections (if any) to the measurements made under section 8. The Collector may in any case require such statement to be made in writing and signed by the party or his agent"

²⁷ Section 11 LAA "Enquiry and award by Collector. - [(1)] On the day so fixed, or on any other day to which the enquiry has been adjourned, the Collector shall proceed to enquire into the objection (if any) which any person interested has stated pursuant to a notice given under section 9 to the measurements made under section 8, and into the value of the land [at the date of the publication of the notification under section 4, sub-section (1)], and into the respective interests of the persons claiming the compensation and shall make an award under his hand of-

(i) the true area of the land;

(ii) the compensation which in his opinion should be allowed for the land; and

(iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, or whom, or of whose claims, he has information, whether or not they have respectively appeared before him :

[Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or of such officer as the appropriate Government may authorize in this behalf: Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate

compensation payable to the ‘persons interested’ and its apportionment among the various claimants. The possession of the land can be taken by the ‘appropriate government’ after the award is announced.

Stage V

The compensation awarded by the Collector is disbursed to ‘persons interested’ and in their respective shares. If ‘persons interested’ are not satisfied by the compensation awarded by the Collector then within a period of six weeks an application is made to the Collector for referring the reference to the District Court for deciding the compensation to be awarded for the acquired land.²⁸

4. Dispute Resolution Mechanisms: NHAI and GSRP

The grievance redressal systems through each of these acts are as follows:

	National Highways Act	Land Acquisition Act
Dispute Resolution Forum	In the event if the amount determined by the competent authority is not acceptable then on application of the parties it will be determined by the <i>arbitrator</i> . (Section 3G (5) NHA)	Reference is made to the <i>Civil Court</i> of jurisdiction after the application is made to the Collector. (Section 18 LAA)
Applicable Statute	Arbitration and Conciliation Act, 1996	Code of Civil Procedure, 1908
Prescribed period for claims	Not prescribed	Within a period of <i>six weeks</i> from the date of award or receipt of notice under section 12.
Determination of compensation	Award by the ‘competent authority’	Award by the Collector though there is leeway to enter into negotiation with the ‘persons interested’.

The award was determined on the basis of the sale instances of the land pertaining to five years, valuation report of district Town Planner and valuation fixed by the government for recovery of stamp value (Jantri value) in the district.

Timeline	
3 rd December 2001	Proposal Received from Central Government
25 th December 2001 to 4 th February 2002	Joint Measurement by DLIR and Project Director, NH-8 (Ratanpur-Gandhinagar)
15 th June 2004 to 24 th August 2004	Declaration of Award

Government may specify in this behalf.

²⁸ Section 18 LAA

The case of scheduled area the computation of market value is more difficult as there is restriction on the transfer of land to non-tribal. The sale instances of the land in non-scheduled areas were taken as the benchmark to compute the market value of the acquired land.

On the declaration notification being issued in the year 2004 the land stood vested in Central Government. After declaration of the award the possession of land was taken and the work commenced for the NHAI stretch. The Central Government has appointed District Collector as the arbitrator for these cases in the year 2005 and till 2007 no hearing had taken place before the arbitrator. The award rendered under the Arbitration and Conciliation Act renders some amount of finality to the proceedings in view of the provisions on challenging the award. The delay in proceedings before the arbitrator can be ascribed in the present case to paucity of time with the district collector who is the arbitrator. So the function of an arbitrator is in addition to all other functions, which have to be performed by the District Collector in administration of the District. In comparison is the grievance redressal system under Land Acquisition Act. The claims for reference are preferred within a specified period before the District Civil Judge. The District Civil Judge adjudicates on the award as in normal civil proceedings. Even before the civil judge no time period is prescribed for decision in the case. The decision of the District Civil Judge can be challenged in appeal in the High Court as per the provisions of LAA.²⁹

Key Aspects of Land Acquisition for the Ratanpur-Gandhinagar NH	
Number of Villages affected	51
Talukas Involved	Bhiloda, Modasa, Himatnagar, Prantij, Gandhinagar
Area Acquired	107-70-61
Number of Persons eligible for Compensation	894
Total Compensation Amount (Undisbursed)	Rs 230,45223 (Rs 12,70556)
Number of Persons Still to be compensated (16.12.2006)	64 (from 26 villages)
Number of Cases before Arbitrator	64

5. Special Provisions in Scheduled Area

In the present case study acquisition of land for the NHAI stretch brings within its ambit land of some of the villages like Ansol fall within the Bhiloda Taluka a scheduled area.³⁰ Consultation with Gram Sabha is mandated as per the provisions of the Panchayats (Extension to Scheduled Areas) Act, 1996 when area whose land is being acquired falls within Schedule V³¹ area. The steps to be followed for consultation are given below³²:

²⁹ Section 54 LAA

³⁰ The scheduled Areas (states of Bihar, Gujarat, Madhya Pradesh and Orissa) Order, 1977 published vide notification No. G.S.R 797 (E) dated 31.12.1977

³¹ Constitution of India

³² State government guidelines

- a. Acquiring body has to submit a proposal to the Collector to initiate acquisition proceedings containing the information on full details of land proposed to be acquired, purpose of acquisition along with the details of specific use each segment is going to be put to, justification of acquisition that particular land, any rehabilitation plan prepared for resettlement of PAFs and details on environmental impacts both short and long term.
- b. The above information is conveyed by the Collector to the Gram Sabha and the affected persons. This could be by way of (a) publication in two local newspapers, (b) beat of drum, (c) pasting on the notice board of the Gram Panchayat and (d) individual notices to all PAPs. In this process the help of elected representatives, NGOs, social activists, district panchayat can be elicited.
- c. Time is given to the affected persons and Gram Sabha to respond to the notice of acquisition.
- d. A date is fixed for a meeting where the Collector and a representative of the acquiring body are present to clarify on the objections raised. If there is a disagreement on the issue raised then the Collector has to record submissions of both the parties and pass a decision by recording an order to that effect. A copy of the order is sent to state government and Secretary, Department of Rural Development, Government of India.
- e. After an order is passed then land can be acquired.

6. Conclusions and Recommendations

The NHA prescribes for issuance of intention notification for acquisition of land, decision on the objections if any from the affected persons that results in issuance of declaration notification. On issuance of declaration notification the land stands vested in the Central Government free from all encumbrances. After this the ‘competent authority’ adjudicates on the compensation aspect for the acquisition of land and other incidental damages. On the deposit of the compensation as per the award of the ‘competent authority’ the Central Government on giving notice to the affected persons can within a period of 60 days take possession of the land. In the event of any opposition to this activity the act empowers the authority to take help of the district administration in taking the possession of the land. In this manner acquisition of land is speedier but iniquitous.

The LAA prescribes issuance of intention notification for acquisition of land, and time period is prescribed for preferring objections against the acquisition to the Land Acquisition Officer. After the decision on objections the government issues declaration notification. Then LAO initiates the process of issuing notice to the affected persons for preferring their claims of compensation adjudicated by the LAO. The LAO renders an award regarding the compensation payable to the affected persons. After the award is rendered the government can take possession of the land and then land stands vested in the government free from all encumbrances. As no time period is prescribed for taking possession of the land the land acquisition process is time consuming.

The grievance redressal system with regard to land acquisition claims under NHA is a time consuming process as it commences with appointment of an 'arbitrator'. The arbitrator as enumerated above is appointed under NHA. There is no time period prescribed for the appointment of an arbitrator. The appointment is dependent on the Central government. There is no urgency in the appointment of the arbitrator as land stands vested in the National Highways Authority after the government issues declaration notification. The possession of the land can be taken after deposit of the compensation payable to the claimants which after the declaration of the award.

In the present case study there is lack of information³³ and its dissemination concerning the project and the various options available to the 'persons interested'. They are not aware of the legal options available to them. There is a need for establishing systems whereby there is greater transparency in sharing of information concerning the project with the affected persons and also setting up of avenues for redressal of grievances arising from implementation of the project.

³³ As per personal consultation with villagers of Ansol, Bhiloda Taluk ,Sabarkanta District