

Land Acquisition Manual: Assessment and Review

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Gujarat Land Acquisition Manual: Review and Assessment

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1.1 Introduction

The detailed procedure of Land Acquisition is laid down in Manual of Land Acquisition. The Manual of Land Acquisition is the primary foremost referral document for Land Acquisition Officer/Collector undertaking acquisition of land. The objective of compiling a manual is to provide information and knowledge on the processes involved in acquiring land. The Manual of Land Acquisition operationalises the Land Acquisition Act, 1894 (hereinafter referred to as LAA). In view of its importance it is imperative in any process reviewing the land acquisition procedure to review the Land Acquisition Manual. As the Land Acquisition Manual forms the basis for conduct of land acquisition it becomes imperative to assess the relative strengths and weaknesses of the process and procedure being followed in the state. The present status analysis exercise would result in identifying the gap areas. The broad outline of the exercise adopted is a description of processes and the recommendations for strengthening the procedure.

1.2 Manual of Land Acquisition: Background

F.G Hartnell Anderson compiled manual of Land Acquisition for the erstwhile State of Bombay in 1918 who was Commissioner of Settlement and Director of Land Records at the relevant time. The manual was revised in the years 1926, 1936 and 1941 and 1958 to incorporate the various amendments made to Land Acquisition Act (Bombay Amendments). After 1958 the manual of land acquisition has only been reprinted but not revised. When the State of Gujarat came into existence in 1960 the manual of land acquisition was adopted for carrying out acquisition. The Gujarat Legislature by way of *The Land Acquisition (Gujarat Unification and Amendment) Act, 1965* adopted the LAA with its Bombay Amendment in its application throughout state of Gujarat. The Manual of Land Acquisition is a compendium of executive instructions, acts and rulings of court on relevant provisions. The Manual provides a framework of instructions for acquisition by negotiation or compulsory acquisition.

Consolidated Recommendations:

- First and foremost amendment required in the Manual is to change the name of manual to Gujarat Land Acquisition Manual to have jurisdictional clarity on the applicability of Manual. Government of Gujarat in 1961 adopted it and considerable time has lapsed for its actual assimilation in the state of Gujarat keeping in mind the peculiarities of state and

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its uniqueness. Any reference to word 'Bombay' is to be deleted or substituted by word 'Gujarat' depending upon its relevance to the contents of the para.

- Another exercise that needs to be undertaken urgently with regard to Land Acquisition Manual is its revision in view of various significant amendments carried out in Land Acquisition Act since 1958. The amending acts of 1967 and 1984 are to be incorporated in the main act and consequently in the manual at places where these are dealt with.
- Another aspect is the revision of nomenclature of officials undertaking land acquisition. In this respect the government resolutions issued by state government from time to time have to be incorporated. This is a state specific exercise and executive instructions on the subject need to be incorporated in the Manual.
- There is provision for making rules³ under the LAA for the guidance of officers enforcing the provisions of the act. The state government has not formulated rules under the LAA to effectively operationalise the LAA.
- The only act that needs inclusion is the up to date Land Acquisition Act, 1894 with Gujarat amendments. There have been significant state amendments to land acquisition Act that need incorporation in LAA.
- This task of analysis of the Manual has to be a parallel process with the analysis of the Bombay Land Revenue Code as both are intrinsically linked with each other. The Manual includes various terminologies, which are part of Revenue Code.

³ Section 55 LAA

Chapter I

Introductory

Para 1

The introductory para of the manual elucidates the power of provincial governor to frame rules. It further states that most of the provincial governors have not done this exercise including the governor of Bombay except framing rules under section 5A LAA. It states that manual does not cover all legal decisions on technical points of procedure, appeals, and legal costs. For in-depth study on the relevant decisions commentaries of various authors on the subject can be referred. The second para talks about the applicability of Privy Council decisions to the Indian scenario.

Recommendation

- The reference to provincial governor has to be deleted not only in this para but the entire Manual. It has to be substituted with the relevant functionary in charge of revenue department in State Government. The head of the revenue department is Principal Secretary (Revenue).
- The reference to commentaries by Messers H. Campbell (1911), F.E Pargiter should be replaced by up to date commentaries that have incorporated decisions of Supreme Court, as all these commentaries would contain only Privy Council decisions.
- The second para of para 1 should be suitably amended to include reference to Supreme Court instead of Privy Council.

Para 2

The para talks about applicability of LAA to British territories. It further states that the present Manual has to be adopted for acquisition of land in states. Before any acquisition can commence in the Indian States consent of local Political Officer is required.

Recommendation

This para is to be deleted, as the same is redundant in the present context with India gaining Independence and abolishing of British territories.

Para 3

The contents of this para are previously deleted.

Para 4

This para deals with acquisition of land for city improvement in City of Bombay. The act employed for acquisition is as per special provisions in Chapter XII-A of City of Bombay Municipal Act, 1888.

Recommendation

- This entire para should be deleted, as it has no relevance to state of Gujarat.

Para 5

This para talks about non-applicability of Acquisition of Mines Act to Bombay.

Recommendation

- This entire para should be deleted, as it has no relevance to state of Gujarat.

Para 6

This para deals with applicability of LAA to acquisition proceedings under Irrigation Act, 1879. There is reference to District Munl. Act, 1901 Bombay Munl. Boroughs Act, 1925 providing an alternative procedure for setbacks by local arbitration, allowing no appeal or withdrawal.

Recommendation

- In the context of Gujarat there is a list of allied laws employing LAA for acquisition under those acts or following their own land acquisition procedure should be enumerated here.
- This para could also be deleted, as it seems incongruous at its present place.

Para 7

This para deals with the necessity of not disposing rights over land, which will have to be acquired again. The land revenue laws bestow upon the governor many rights over land. It is recommended that leases over land should be granted so that when they are acquired they could be surrendered at the same rate at which they were granted. When reclamation leases⁴ are given, without occupancy price a similar condition of surrender free of cost or at a pre-determined rate is applied. This was usually inserted in *sanads*⁵ granting permission to build as per Land revenue code and in all free grants and alienations. This was a condition pursuant to which wasteland was

⁴ Reclamation leases were granted to persons who were bound to reclaim and keep the land fit for agricultural use

⁵ 'Sanad' is issued to the holder to property under provisions of Land Revenue Code after the completion of enquiry work. Sanad is an important & original title for the property holder normally issued on a plain paper. (http://www.revenuedepartment.gujarat.gov.in/Revenuefinal/gujarati/sch_udp3.htm)

granted to the Munys. Of Hubli and Dharwar. This was done to reduce payment of compensation for acquisition of rights, which already belonged to the Governor.

Recommendation

- The reference to Bombay City and to Hubli and Dharwar needs to be deleted.

Para 8

This para states that before the coming into force of Land Revenue Code, recognized tenures like inami, mirasi and upri if required for public purpose were resumed. Most of the agricultural land in province was granted on a proprietary tenure with a right to construct only farm building. The purchasers of land have the building potentiality in mind at the time of purchase thinking that permission for constructing buildings would be easily sanctioned. In such a scenario G. will have to pay an enhanced amount at the time repurchase of property. It was thus decided that steps should be taken to prevent escalation of price of land in reasonably defined area where this probability is more. Another way is to warn potential purchasers that permission for building would not be granted for the area.

Recommendation

- In view of abolition of tenures like inami, mirasi reference to the same should also be deleted.
- The constant reference to province should also be deleted.
- The reference in the para about warning and preventing purchasers from buying land is antithetical to our legal right to hold property under Constitution and also violation of fundamental right to settle in any part of the country.

Para 9

Under LAA G. cannot acquire its own land but can give notice of termination to the leases, licenses granted for land. In spite of having control over minerals including quarries, licenses are granted by C. for carrying out work of quarrying. The carrying of quarrying work entitles enhancement for compensation. Detailed commentaries are there on working out details of mineral assessment.

Recommendation

- The appropriate authority in charge of these functions as per the present administrative set up should substitute reference to G and C. This exercise should be for the entire manual and not restricted to only this para.
- Further, reference to inam in this para is to be deleted.

Para 10-10A

In this para it is ordered that in vicinity of areas like railway stations where land can be required, then in such areas long leases should not be granted. The intention to reserve such areas for building of roads etc. should be previously notified. In case application seeking permission to build in such areas is received then railway authorities should be given one months notice to raise objections.

Para 11-12

Burden imposed by the act on private owners Fairness and strict regularity essential: This para talks about the ambit of compensation payable for acquisition. It progressively talks about the principle of reinstatement in case of displacement on account of acquisition. The para also states that this principle is not followed as per Act and it is confiscatory in nature. The act only aims at compensating for the land acquired and paying market value for it. It does not aim at compensating sentimental losses, which cannot be aid for, because they have no market value. It is emphasized in this para about the need to be fair in approach to the claimants whose land is acquired. The legitimate aim of the Land Acquisition Officer is to secure for the public all land required for use of the state at the least burden for tax paying public, on the other hand no one should be deprived of his or her property even on the ground of state necessity without giving him what a prudent purchaser would pay. The aim is to act in favour of private party and that is why solatium is paid at the rate of 15% to the valuation.

Recommendation

- The figure of 15% towards payment of solatium is to be substituted by 30% in view of the amendment.

Para 12A

Selection of sites for residential purposes: In this para it is stated that acquisition for residential sites should first be approved by prant Officer in consultation with Assistant Director of Public Health.

Para 13

Other modes of acquisition and formalities: This para states that land taken as per the provision of LAA does not require deed of transfer, or registration, or any other document. There is acquisition by private contract. This para emphasizes the need to distinguish between acquisition under the act and acquisition by private contract.

Para 14

Collector must assent: private negotiation can be resorted to only with the prior assent of the Collector.

Para 15

Their undesirability, except when temporary: G is not in favour of acquisition b private contract. Any acquisition should be done under the act, as there are some advantages as given below:

- The procedure under the act shortens correspondences
- Makes certain of the title to the land
- Secures an indefeasible title to the land

Though it is also states that issuance of negotiations should not in any way impede the process of private negotiations. An agreement to that effect can be arrived at and the agreed price can be awarded as per preamble of R.1171-05. Even if price is not agreed to normal award as per the act can be rendered. In such a case title will be secured which is not possible in case of private negotiations. If an agreement is entered into under this act then registration is not required but if the agreement is not under the act then registration of agreement is essential.

Recommendation

- The entire process of entering into and the manner of conducting private negotiations with claimants needs to clearly delineate all the instructions in the manual and consolidate them at one place to ensure clarity.

Para 15A

Temporary acquisition should be resorted to if the land is not permanently required. Such temporary arrangement can be arrived at by private treaty in writing.

Recommendation

The temporary acquisition as contemplated under the Manual is at variance to the provisions⁶ to this effect in LAA. An entire process is provided under LAA and as per this instruction it should

⁶ Section 35. Temporary occupation of waste or arable land. Procedure when difference as to compensation exists. -

(1) Subject to the provisions of Part VII of this Act, whenever it appears to the [appropriate Government] that the temporary occupation and use of any waste or arable land are needed for any public purpose, or for a Company, the [appropriate Government] may direct the Collector to procure the occupation and use of the same for such term as it shall think fit, not exceeding three years from the commencement of such occupation.

(2) The Collector shall thereupon give notice in writing to the person interested in such land of the purpose for which the same is needed, and shall, for the occupation and use thereof for such term as aforesaid, and for the materials (if any) to be taken there from, pay to them such compensation, either in a gross sum of money, or by monthly or other periodical payments, as shall be agreed upon in writing between him and such persons

be resorted to by way of treaty. So this instruction needs to be revised in view of the provisions of LAA and also in view of redundancy of the use of words like 'treaty'.

Para 16

Except in case of local bodies: the rules governing private negotiations are not applicable to local bodies who have power to negotiate privately before coming to governor for aid.

Para 17

Forest Act cases: the forest act contemplates acquisition of land in private possession, which comes within a notified forest.

Para 18

Dangers of other methods: The procedure for acquisition by negotiation though provided in executive instructions is not propagated much as a way of acquisition. This is on account of some inherent problems faced after land was acquired through private negotiation. The biggest impediment to acquisition by 'private contract' is unclear title to land. It is stated that acquisition by 'private contract' can be resorted to even after issuance of notification. There are various issues that arise in acquisition by 'private contract' or 'private negotiation'. Some are outlined below:

- Execution of sale deed whether it should be registered,
- Whether the person entering into the contract of sale is competent to execute the contract. Sometimes it is discovered that person who has accepted the market value of the land is not the owner of land.
- Sales have been challenged on ground of coercion and undue pressure of officials.
- Challenge by sons about the contract entered into by the father on the ground that in a joint family father individually had no right to execute the contract.

respectively.

(3) In case the Collector and the persons interested differ as to the sufficiency of the compensation or apportionment thereof, the Collector shall refer such difference to the decision of the Court.

36. Power to enter and take possession and compensation on restoration. - (1) On payment of such compensation, or on executing such agreement, or on making a reference under section 35, the collector may enter upon and take possession of the land, and use or permit the use thereof in accordance with the terms of the said notice.

(2) On the expiration of the term, the Collector shall make or tender to the persons interested compensation for the damage (if any) done to the land and not provided for by the agreement, and shall restore the land to the persons interested therein:

Provided that, if the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the [appropriate Government] shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose or for a Company.

37. Difference as to condition of land. - In case the Collector and persons interested differ as to the condition of the land at the expiration of the term, or as to any matter connected with the said agreement, the Collector shall refer such difference to the decision of the Court.

- Minors have challenged the contracts of sale on attaining of majority, as they are not bound by the acts of their guardian.

Recommendation

- Specific guidelines can be laid down for entering into negotiated settlement so that the route to compulsory acquisition can be avoided.
- In these instructions ‘private contract’ and ‘private negotiation’ are used interchangeably. At the first instance it should be clarified that whether these terms are interchangeable and whether there are different legal connotation to these terms. This is to ensure clarity to the process of acquisition by negotiation.
- The State of Gujarat should frame rules for providing an enabling framework for negotiated settlement under provisions of LAA. For e.g. the State of Uttar Pradesh has enacted rules termed as ‘*The Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997*’ to provide a legal framework for negotiated settlement. In a similar manner the state government can frame rules.
- There is an urgent need to define the procedure for entering into private negotiation using LAA. It should be clearly set out if private negotiations should culminate as per section 11 (2) LAA or should it be terminated at the stage of issuance of intention notification. The method is to let the notification lapse after private negotiations have fructified or to let Land Acquisition officer render a consent award.

Para 19

Arresting speculation arising from an impending acquisition is to be checked and as such the brokers involved in this have to be tackled.

Para 20

Possession may not be taken in anticipation and only as per provisions of LAA. If land is urgently required then process provided for invoking urgency clause can be invoked.

Para 20 A

Inquiries should not be adjourned arbitrarily as it causes delay in the process of acquisition.

Recommendation

It should be specified as to the number of adjournments that can grant during the process of acquisition.

Para 21

Dangers of irregular haste results in complications such as claim for damages for loss caused in the process of taking possession by person interested. If possession of land has to be taken then it should be done with the consent of the parties by entering into an agreement as per one which has been prescribed in the manual.

Para 22

PWD Orders that none of its officers should enter upon the land until it is made over by revenue department.

Para 23

Liability of cost on the officer if the earlier instructions on the process to be followed for taking possession of land are not adhered to.

Para 24

Collector must prevent such irregularities where possession of land is taken without following the prescribed procedure.

Paras 24 A-24F

These paras states that taking of possession before the completion of proceedings under the act results n claim for payment of interest which starts to accrue from the date of taking possession to the time till it is paid. If urgency is involved then urgency clause should be resorted. Certain examples are enumerated where urgency clause⁷ can be invoked.

Para 25

Basic date for preliminary notification is the cut off date for valuations. The coming paras deal with issuance of preliminary notification.

Para 26

The contents of this para are deleted in the manual.

Para 26 A

Entry in record of rights notified under section 4 notification

⁷ Section 17 LAA

Para 27

The new act of 1923 makes it obligatory for issuance of intention notification for carrying out acquisition. It is further submitted that at the time of submitting proposals for acquisition it should be stated that there is budgetary provision for carrying out acquisition. This is not to say that intention notification cannot be published in the absence of budgetary provision for acquisition.

Para 28

Particulars needed for issuance of preliminary notification stating the surveys numbers of villages so that identification of the village is clear from notification.

Para 28 A

Officers authorised to do acts specified in section 4. This specifies a list of officers who have the power to exercise powers under section 4 for the district.

Recommendation

- Government has issued G.R from time to time amending this list so that updated list of officers should be included in Manual.
- Reference to special Land acquisition officer for Bombay City and Bombay Suburban District and superintendent, Bombay City Survey and Land Records Office should be deleted and substituted by District Land Records Office

Para 28 B

Commissioners under Bombay Commissioners of division Act, 1957 authorised to do acts specified under sections 3 (3), 3-A, 4, 5, 5-A for acquisition of land for companies and local bodies.

Recommendation

- In the state there is no special commissioner, which is looking after acquisition for companies and local bodies. The land is acquired for the company by the same set of officers as any other acquisition.
- The reference to Bombay act is redundant in present context and needs to be deleted.

Para 29

An award for damages caused by surveyors in performance of action under the act is to be assessed and awarded by the collector. There is no appeal from decision of collector on this issue.

Para 29 A

Statement of area in the intention notification should be larger than what would be finally declared. This is done to take care of any increased demand for land.

Para 29 B

On publication of intention notification steps should be taken to complete the proceedings of hearing objections so that declaration notification can be issued.

Para 30

The intention notification should be issued as expeditiously as possible to avoid speculative deals being brokered to push up the price of the acquired land.

Para 30 A

Notice under section 4 (1): The issuance of intention notification is first step in the direction of initiation and eventual completion of process of land acquisition. It has been specifically laid down that at the time of submitting acquisition proposals it should be mentioned if budgetary allocation for the acquisition has been taken care of. The village officers are required to make an entry against the survey numbers, which had been notified to avoid any possibility of the lands being sold off in case there is delay in land acquisition proceedings. The area of land notified under intention notification should be more than which is finally notified for acquisition. The Manual specifies various forms for issuance of intention notification. The Collector has to give public notice of the substance of the notification published in gazette at convenient places in the locality where land is being acquired. There are instructions for issuance of individual notices to 'persons interested' after issuance of intention notification.⁸ **(Form issued under section 4(1) LAA is Annexure A)** Though the Land Acquisition Officer (LAO) has the discretion to do away with service of individual notices if 'persons interested' have consented to acquisition during the time of preliminary survey. This service of notice can be dispensed if LAO is of the view that service of individual notices would cause delay and public notices will suffice the requirement of law.

Recommendation

- The state of Gujarat has a provision for preliminary survey⁹ of lands which it intends to acquire to determine the need for 'public purpose'. No guidelines are provided in Manual for exercise of power under this provision. There is a need to frame instructions on this aspect by incorporating them in the Manual. The provision of preliminary survey is an important component of the Land Acquisition process but one, which is being under

⁸ Para 3 (ii) of G.R No. LAQ 2555 G dated 10.1.1956

⁹ Section 3A LAA

utilized. **See Annexure B** for details of what could be incorporated under Preliminary Survey.

- All references in draft forms and notifications to state of Bombay should be deleted and substituted by department of revenue, Government of Gujarat.

Para 30 B

This para deals with rules¹⁰ formulated under section 5-A LAA for hearing objections to acquisition proceedings. There is a procedure to be followed for hearing of objections. The rules formulated for the purpose lay down the following:

1. An objection must be in writing and presented within 30 days after the date of notification or within the time specified in notice under section 4 LAA.
2. The objection raised should be on the ground that there is no public purpose.
3. Land notified is not suitable for the purpose in hand.
4. Area proposed is excessive
5. Land of the claimant has been acquired maliciously.
6. Acquisition will destroy historical antiquity.

After the evidence is allowed on behalf of objector then the opposite party is given an opportunity to cross examine the evidence or rebut it with other evidence.¹¹ After this a final decision is taken on the objections. A report on the objections is forwarded for final decision to state government. The Manual also provides for hearing of the objections at the time of site inspection if there is urgency in the acquisition. If objections are serious and involve religious sentiments, or political considerations, then report under section 5-A is to be submitted by Land Acquisition Officer to Collector. In other cases the report should be sent to Government directly. (Format of report under section 5-A LAA is **Annexure C**)

Recommendations

- The definition of ‘person interested’ has tremendously expanded in view of judicial decisions. The manual should incorporate these judicial decisions to elucidate the categorization of persons covered under the definition of ‘person interested’. This exercise would be like a ready reckoner for officials conducting land acquisition.

¹⁰ under section 55 LAA (R.9173, 30.3.1926)

¹¹ R. 9173 dated 30.3.1926

Para 30 C

Collector or prant officer to hear the objections under the act.

Para 30 D

The collector is empowered to transfer land acquisition cases from one Land acquisition Officer to another without the issuance of a notification.

Chapter II

Proposals for Acquisition

This stage is where the acquisition has to be scrutinized for adhering to principles of ‘public purpose’. The Manual lays down some specific rules and procedure for acquisition for a) village sites b) railways, c) Indian States railways, d) local bodies and companies.

Recommendation

- As per scheme of LAA preparation of acquisition proposals is a stage prior to issuance of intention notification. Keeping the chronological sequences of stages in Land Acquisition Process in mind this chapter should come before issuance of intention notification.
- The nomenclature requires to be modified as ‘Indian States Railway’ is archaic in present context.

Paras 31-32

This para discusses various decisions of Privy Council on the question of what constitutes ‘public purpose’.

Recommendation

- The Manual can incorporate judgments of Supreme Court on the issue of what constitutes ‘public purpose’. Some known commentaries on the subject can be referred for the purpose in hand.

Para 33

After the scrutiny of acquisition proposal special rules have been formulated for acquisition for village sites, railways and Indian States Railways. Some general rules are specified below:

1. All orders for acquisition must emanate from revenue department.
2. Civil authorities must assist Military authorities in acquisition related matters
3. In cases of acquisition for department of works carried out by PWD, acquisition proposal is to be forwarded by executive engineer to Collector.

Para 34

This para deals with procedure involved in acquisition of land for village sites and the process to be followed by Mamlatdar. The village panchayat has to give a no objection to acquisition of land for extension of village site.

Recommendation

- The manual does not incorporate the procedure followed for acquisition of land in Scheduled area. The process of consultation before initiating land acquisition proceedings in scheduled area is required to be incorporated in the manual. The steps to be followed for consultation are given below¹²:
 - 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 PAFs¹³ and details on environmental impacts both short and long term.
 - b. The Collector to the Gram Sabha and the affected persons conveys the above information. 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 PAFs¹⁴. 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 rose. 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.

¹² State government guidelines

¹³ Project Affected Family

¹⁴ Project affected Person

Chapter III

Acquisition for Railways

Paras 35-37

These paras states on the different classification of railways in Bombay province.

Recommendation

- Reference to Bombay province is to be deleted.

Para 38-41

Estimates

After the issuance of intention/preliminary notification and before the issuance of final notification/declaration an estimate of probable cost of acquisition is to be prepared. There needs to be reasonable accuracy in preparation of these estimates. This could form the basis for some important decisions with regard to furthering the acquisition process. The data on estimates is to be furnished in rates per acre. A statement showing the total estimate of cost of land is to be prepared in the given format. (Format is **Annexure E**).

Recommendations

- In this format at column no. 11 under the heading of additional compensation under section 23 (2) 15% as solatium is given, the percentage is to be revised to 30% (Amendment Act, 1984).
- As this step is after issuance of intention notification this should be placed at the end of Chapter I.

Para 42-77

Land For Railways in Indian States or required by states in British India

If land is required for railway for Indian states as per classification given above then estimate for the same has to be prepared and furnished to Collector.

Recommendation

- The procedure given in these paras should be deleted as Indian States are no longer in existence.

Chapter IV

Acquisition for local bodies and companies

Para 78

The application for acquisition follows the same procedure as that of PWD or railways.

Para 80(1)

If land has to be acquired for municipality then an agreement as per prescribed format is to be executed. The agreement is exempted from payment of stamp duty. It is submitted that housing societies and industrial concerns who want acquisition for housing of labour will not be required to pay solatium at the rate of 15%. The compensation is also going to be fixed at value prevalent on 1.1.1948.

Recommendations

- This section in manual needs to be deleted as there is no statutory basis for this exemption from payment of solatium and in effect is contrary to provisions of LAA.

Para 81

Acquisition for Companies

In case of land being acquired for companies then the Land Acquisition Officer should prepare a draft agreement¹⁵ on the prescribed format.

Paras 82-85

These paras provide for an agreement that the company has to enter into before land can be acquired for the company.

Recommendation

The reference to Governor of Bombay has to be deleted from the prescribed format.

¹⁵ Section 40 LAA

Chapter V

Final Notification (Section 6)

Para 86-89A

This is a stage when Collector has a formal application from PWD, Railway Co. or a local body for acquisition. The documents and necessary formalities are submitted and objections under section 5A have been heard. The collector has to take steps for issuance of declaration notification.

At the point of issuance of final notification several steps have to be kept in mind. At this point whatever actions have been taken are to be scrutinized. In short the acquisition proposal has to be checked. At the first instance it has to be seen is whether acquisition is not proceeding on incorrect particulars as regards to land. Then it has to be checked whether land has been demarcated. Correct measurement of land is very important part of acquisition. At the initial stage gross area is measured and for this purpose the limits must have been determined especially City survey plot are mapped and surveyed in official records, then fresh demarcation would not be necessary. This is based on the fact that various boundary marks are in existence by which the plot can be identified. Where boundary marks have disappeared they should be re-established.

Delay in measurement of land happens on account of the following reasons:

1. Cases being sent for measurement before the issuance of intention notification;
2. Complete plans and schedules of the land to be acquired not being sent with the case papers to the land records department;
3. The area to be acquired not being demarcated on the ground
4. The absence of the representative of the acquiring department on the day fixed for joint measurement or the failure on the part of the acquiring department to supply stones, labour etc.
5. Change of plan after the measurement is completed.
6. Discrepancies between the areas reported by the acquiring department and that found on actual measurement and this entails lot of correspondence for reconciling the discrepancies. This delay could be avoided if the acquiring department, while approaching the Collector, made it clear that the lands to be acquired were either demarcated or will be demarcated by a particular date and measurement is undertaken after such demarcation. This can be taken care of by going in for joint measurement of land to avoid any discrepancy in the area to be acquired. At the time of demarcation it has to be kept in mind that whether acquisition leaves any fragment of land such that

there would be excessive demands for severance. Excessive demands means a demand which exceeds the value of severed fragment.¹⁶ In this regard instructions¹⁷ are issued by Director of Land Records to surveyors and District Inspectors.

Para 89 B

The procedure and instructions to be followed by the Land Acquisition Officer for accelerating the proceedings:

1. *Establishment*: the revenue department staff should handle the land acquisition work and the *Prant* officer should be the Land Acquisition Officer. In cases of large acquisition a separate establishment cell can be designated for carrying out acquisition proceedings, if the resources for running this establishment are paid by the acquiring body.
2. *Principles in acquisition*: manual lays emphasis on the care to be taken for not acquiring rich agricultural land for non-agricultural or urban purposes. This can be avoided by selecting non-agricultural land. In this exercise opinion of District Agricultural Officer can be sought. The Land Acquisition Officer should take into consideration the effect of acquisition on means of livelihood of the person concerned. So land should be acquired in such a way so that the person is least affected. It is land acquisition officer who has to provide necessary information provided in Form A, B, C depending on type of acquisition (company, extension of village sites etc.)(Format of Form A, B, C are **Annexure G**)

It is laid down that as soon as notification is sent for publication the concerned officer should initiate the process of issuance of public and individual notices to 'persons interested'.

Recommendation

The format of a proposal for issuance of section 4 notification has been given at this stage. It should be annexed at the proper place, which is at the stage of issuance of intention notification.

Paras 90-118

These paras also talks about the concept of reinstatement and the judicial pronouncements on the same.

The surveyor of the revenue department surveys the land as per the rules in Manual of Land Records not only the broken fragments, but whole survey numbers or sub-division, plot by plot, the area and the owner or 'persons interested' as per the record of rights. The surveyor from the revenue department and the official of the acquiring department prepares a statement jointly. So

¹⁶ Para 90 Manual of Land Acquisition

¹⁷ L.R 281-28.5.23

a joint measurement statement is prepared. For columns 1-5 only the revenue surveyor is responsible and for particulars in columns 6-8 surveyor of acquiring department/body is responsible.¹⁸ (Format of statement under Para 104 is **Annexure F**). The joint measurement statement and the report under section 5A are submitted along with the draft notification.

Recommendations: As per the manual joint measurement statement is prepared after issuance of intention notification, but in practice it is prepared before the issuance of intention notification. This gap between principle and practice needs to be clarified and rectified.

¹⁸ Para 104 Manual of Land Acquisition

Chapter VI

Proceedings

Para 119

All the matters referred above relate to preparation of preliminary and other notifications. After the declaration notification is gazetted the land acquisition Officer acquires a legal basis to carry out purposes of the act. In this section the powers of Land Acquisition Officer are dealt.

Para 120

The cost of carrying out land acquisition proceedings comes within the establishment of Collector's office.

Paras 121-125

In cases of acquisition is for local bodies then establishment costs are borne by local bodies.

Para 126

The contents of this para are deleted as per the Manual.

Para 127

After the sanction of budget to carry out acquisition, the Land Acquisition officer or A.O has to act expeditiously as sometimes as per state budget amount is set aside for a scheme and if it is not utilised then the same lapses.

Paras 127 A-149-A

These deal with the power of A.O to conduct proceedings of acquisition. They further provide the various formats to be followed while conducting acquisition proceedings.

Recommendation

- In order to have clarity on the formats if the same are annexed at the end of the manual as annexures it would be much more useful.
- The state government should exercise its powers and formulate timelines for various steps in acquisition process. It is must and essential in order to brook any delay in acquisition proceedings.

Chapter VII

Valuation

Paras 150-153

Para 154-171

The manual incorporates the principles elucidated in early cases on land acquisition. It lays down the definition of 'market value' as defined in some judgments. The valuation principles and their explanation are given. There is a judgment on accepted awards being the basis for determining the market value of the acquired land. The land acquisition officer before conducting the exercise of determining the market value should have the following documents:

1. The plan of notified area showing on as large scale as possible all survey numbers and boundaries of separate properties.
2. A statement of all sales effected in the neighborhood of the acquisition during the last three years;
3. a similar scale map showing the location of notified land, adjacent lands of which the values are to be taken in to consideration;
4. Notes of any previous inspection of the notified land or the land sold in the neighborhood. The joint measurement statement and all the other reports leading up to the issuance of declaration notification.¹⁹

The materials for valuation and other factors which have to be taken into consideration are the principles as provided in section 23 and 24 of LAA and the general principles lay down by the courts on computation of market value. It also discusses the need to recognize potentiality of acquired land in the ambit of computation of market value.

Recommendations

The Manual needs to be updated by incorporating the principles laid down in the latest cases of Supreme Court and High Court. **(See for example the Report on Role of Courts on Compensation)** There is a requirement to make the manual easier to use and comprehend. There is lot of knowledge incorporated in the Manual but it is not user friendly. The entire process of land acquisition should be elaborated in a simple and clear form. The commentary on the processes can be given separately. There is a need to re-structure the Manual so that Land Acquisition Officer having no previous knowledge of land acquisition can use it in a comprehensive manner. Valuation of acquired land is of utmost importance as it has greatest impact on 'persons interested'. The Manual talks about following the principles laid out in

¹⁹ Para 171 Manual of Land Acquisition

section 23 and 24 LAA and the court judgments but does not elaborate as to what are these principles and in what manner can they be applied to the factual situation on ground.

Para 172

Betterment

The comments contained in the manual are a commentary and criticism of the act not instructions to be followed.

Para 173-177

Agricultural Land

The valuation of agricultural land starts with the description of the land in the record of rights. For agricultural land gross rent is to be worked out after deducting the land revenue and after deduction of land revenue and other charges, it has to be capitalized at 5 or 7%. Another way is to rely upon the sales of agricultural land.

Recommendation

The principles of valuation of agricultural land need to be delineated from the commentary given in the manual.

Paras 178-187

Non-agricultural Land

In this case the land has to be valued as building sites or for some other non-agricultural purpose. There is a pamphlet titled "Hints to A.O. on valuation, etc" by A.E Mirams, Consulting Surveyor to Government which is used for the purpose of valuation in this case. The first step is to estimate how many years it will be before the increased value for building purposes will become operative. The next is to capitalize the agricultural rent for this term of years. What has to be determined is the enhanced value and arrive at its 'present value" by the help of Mirams Tables. The potentiality of land is to be assessed.

Recommendation

- The pamphlet should be made part of the manual or relevant part of it can be extracted here.
- The principles enunciated by Supreme Court on potentiality of land being an important component of market value.

Paras188-198A

Trees

Trees are categorized as timber trees or fruit trees but some like Tamarind tree are both. So in case of such trees it has to be valued as to its most profitable use. For assessing the value of the trees expert opinion of a forest officer or a forest contractor is taken.

Paras 199-205

Wells

The well is valued not as per the cost incurred on it but as per the use it is being put to and it is a combination of factors like situation and distance of village to that well etc.

Paras 206-223

Land covered or occupied by buildings

The land and building are valued by capitalizing their net annual rent for the probable life of building. After ascertaining the gross possible rent, then there are deductions like taxes, annual cost of ordinary repairs, and premium of the insured value.

Paras 224-228

Tenancies and Factories

The need for valuation of a factory arises in very few cases. The books of the company gives an idea as to original cost, depreciation, net average earnings and the aggregate market value of the whole interests of a company at a given point in time can be ascertained by the value of its shares.

Paras 229

Tenants Profit Basis

This valuation arises in case of unusual business.

Paras 230-239

Crops and Quarries and special adaptability

The best way of dealing with crops is to make an award of bare land and refrain from taking possession until the crop has been matured and removed. As far as quarry is concerned nothing extra will be paid for land alleged to be valuable as a quarry if permission for quarrying has been done and consequent upon that some development work has been done, then the value of the quarry will be amount of fees paid and the cost of development works carried out on the quarry. In some cases the special adaptability of land for quarrying purpose is a special feature to be

taken into account on basis of judgment of the district court where market value was enhanced on the basis of this feature.

Para 240-243

Severance and Injurious affection

The manual lays down the principles for calculation of severance charges as they are an important part of the calculation of market value.

Para 244

Easements

On acquisition of land all aspects and rights associated with are acquired. Compensation for the acquisition of easement has to be ascertained as per the principles in the manual

Paras 245 -246

Subsequent claims and mathematical formulae and rental compensation

Some are given for calculation of market value of acquired land.

Chapter VIII

Payment and Account Adjustment

This chapter deals with payment of awarded amount to the claimants/person interested.

Para 247

Under this para payment is required to be made by acquisition officer in Form A²⁰. The sanction given at the time of issuance of notification implies the availability of funds for payment of the award. The first step is to give notice to all the parties whether they have filed claim or not. The notice has to be given with reasonable speed. It is further specified that before payment is made it needs to be ascertained that provision for payment of award money has been made.

Recommendation

- The payment Form A though mentioned in this para has not been included as a format or annexed with the manual. It is necessary to include the requisite forms as annexure at relevant places to enable clarity on documents required at different stages of acquisition.
- Reasonable speed for giving notice to the parties is not specified in the manual nor is there any indication as to what constitutes reasonable speed. Here timeline for specific step of giving notice should be given. Whether it is 10 days or 20 days for completing this activity is to be decided keeping in mind different variables like geographical location of different areas under acquisition etc.
- The step of checking up budgetary provision for making payment of award delays the process as it would involve sourcing of information through different levels of bureaucratic legalese. This step can be deleted and the A.O should proceed with payment of awarded amount.

Para 248

This para talks about the agreement to be entered into when land is acquired by private arrangement or contract. When award is being made by this mode then it should state that the award is by private settlement. A deed for sale as given in the format is to be entered into. The same is annexed as **Annexure**. On the basis of the deed necessary changes in revenue record can be affected.

Recommendation

- In the format of sale deed the 'Governor of Bombay' has to be substituted by revenue officer who is competent to enter into this transaction. As per the present administrative setup,

²⁰ Standard form No. RLA.10C revised by G.R., R.D No. LAQ 2257/124900-V dated 19.9.1958)

Principal Secretary (Revenue) is the highest authority and competent authority for entering into such transactions.

- Further the necessary particulars as regards to registration of sale deed have to be incorporated in this para. It has to be stated whether sale deed is to be registered or not. If state government has exempted such transactions then it should be incorporated in this para.
- The format of sale deed should be added as an Annexure to the Manual.

Para 248A

New Tenure Lands-Backward Classes

This para deals with payment of compensation to members of backward classes having new tenure land.²¹ It was felt that if compensation is paid in cash then it could be frittered away and the entire purpose behind giving of new tenure land is defeated. It is directed that in lieu of compensation in cash alternative land should be made available, especially where members of backward classes are concerned.²²

Recommendation

- The guidelines provide for giving of land if available instead of cash as compensation is laudable. But it is seen that land is usually not available so the compensation should not be disbursed in cash but in securities as the interest can be made available to the persons.

Para 249

Exchanges

Exchanges of land and remission of land revenue is covered as a separate category carved under LAA²³ where compensation is not paid in cash. Exchange of land is not a right, which can be demanded by a claimant. It is sole discretion of the Acquisition officer. If exchange of land involves religious building, which is not having absolute ownership, then previous sanction is

²¹ New tenure land is the one, which was allotted to different classes of persons for cultivation with state having proprietary right over the land. This was essentially done to protect means of livelihood of persons like members belonging to backward classes, landless persons. Under this tenure lands are granted at concessional rates of occupancy price only to *bonafide* cultivators belonging to backward classes and that too on condition that the land shall not be transferred except with the permission of the Collector.

²² R. (circ.memo) 1209/39-23.8.39

²³ Section 31(4) LAA Nothing in the last foregoing sub-section shall be construed to interfere with or limit the power of the Collector to enter into any arrangement with any person interested in the land and competent to contract in respect thereof.

required.²⁴ The exchange is arrived at mutual agreement and on account of that there is no money award leading to payment of 15% interest.

Para 250

Limited Interests

This para deals with cases under section 31(3) LAA where the person in possession of the land has a limited interest meaning that the person in charge has no power to sell or alienate the land. There are some restrictions, which are put on such lands. The para delineates the various examples of restrictions found in various enactments like Ahmedabad Talukdar's Act, Broach and Kaira Encumbranced Estates Act, Gujarat Talukdars Act.

Recommendation

- The restriction based on certain enactments needs amendments as some acts might have been subsequently repealed²⁵.

Para 251

This para lies down that clear title to the land is to be acquired. The restrictions imposed are to be dealt as per provisions of law.

Para 252

Service Lands

This para states that in case of acquisition of service lands²⁶ the award should contain a direction that the compensation to be awarded should be invested so that it can be disbursed in form of a pension or as a reduction of land tax.

Recommendation

- With the coming into force of various land reform legislations service lands whether private or religious were abolished. The relevant legislations for Gujarat are Gujarat Devasthan Inam Abolition Act, 1969, Bombay Personal Inam Abolition Act, 1952,

²⁴ Section 31(3) LAA (3) Notwithstanding anything in this section the Collector may, with the sanction of the [appropriate Government] instead of awarding a money compensation in respect of any land, make any arrangement with a person having a limited interest in such land, either by the grant of other lands in exchange, the remission of land-revenue on other lands held under the same title, or in such other way as may be equitable having regard to the interests of the parties concerned.

²⁵ This needs reconfirmation.

²⁶ Service lands: are lands in respect of which service is rendered whether to administration or to the village community and the profits of which are assigned as remuneration for an officiator. An officiator as per Bombay Hereditary Office Act, 1874 is a person who actually performs the duty of the hereditary office for the time being.

Gujarat Surviving Alienations Abolition Act, 1963. In the present scenario the procedure concerning payment of compensation on acquisition of service lands should be deleted.

- The issues with regard to service lands and their acquisition relates to the operation of these aforementioned acts and consequent legal relations. So the related disputes would revolve around questions arising from apportionment or title, which can be decided by competent court as per LAA.²⁷

Para 253

This para also deals with specified types of service lands like Devasthan²⁸ and Shetsandi²⁹ lands. On acquisition of such lands most appropriate action was to enter into an arrangement under section 31(3) with persons interested for the grant of other lands in exchange. The exchange means that the land given shall be held on same terms and conditions as the land which had been acquired. In case there is no exchange of land then an arrangement for providing cash allowances should be made. If cash allowance is made then 15% interest should also be included in the principal amount. It further enunciates situations when cash allowance is not to be given. This is in case where service which was being rendered has been dispensed though lands are regarded as service lands. Another situation is when remuneration/profits from service inam³⁰ land are not being given to the officiator.

Recommendation

- This also deals with service lands that stand abolished by various land reform legislations so instructions with regard to service lands should be deleted from the Manual.

Para 254-255

The instruction in these paras also deals with payment associated with service lands.

Para 256

²⁷ Section 31(2) LAA

²⁸ Devasthan Inams/lands these is land granted to religious bodies for maintenance of temples and mosques or similar institutions. The grant is made in perpetuity and the fixed amount of land revenue is not liable to revision. *Devasthan inams* are ordinarily inalienable and also impartible. Succession to them is regulated by the terms of the grant and the customs and usages of the endowments. The holder for the time being manages the *inam* in the capacity of a trustee for the benefit of the endowment. (http://www.maharashtra.gov.in/english/gazetteer/KOLHAPUR/agri_tenures.html)

²⁹ land granted for special local service as divisional police

³⁰ An Inam is a gift of land or land revenue. The origin of the Inam can be traced back to the times of Hindu, Mohammadan periods of rule. Parcels of lands were granted by the Hindu and Mohammadan Rulers to persons for services rendered by such persons or the services to be rendered by such persons in future.

The importance of taking sanction from the state government is emphasized in cases where exchanges or arrangements are affected pursuant to section 31(3) LAA.

Para 257

This para deals yet again with payment of cash allowances in case of acquisition of service land.

Recommendation

- In view of abolition of service land provisions relating to payment of compensation are redundant.

Para 258

At the time of announcement of award the presence of claimants/person interested is to be recorded. Notice³¹ is issued to those not present at the time of announcement of the award. Utmost care is required to be taken at the time of service of notice as the date of service of notice determines the period of limitation for making a reference to court by the claimant/person interested.

Recommendation

- A time line is required to be set for completing this activity. Executive instruction in this regard would suffice the purpose.
- The modes of service of notice should be specified to provide clarity on following this step.

Para 259

This para deals with the manner of payment of awarded amount. It specifies payment by cheque, cash, and money order. Detailed instructions dealing with this aspect are specified in Annexure 7 to the CAC Vol I. These instructions are elucidated in para 260 of the Manual.

Para 260

This para gives a detailed step by step account of the procedure to be followed for disbursing awarded amount and the manner of doing it.

Recommendation

- In order to ameliorate some difficulties which arise in the process of disbursement like disputes over who is entitled to get the compensation or identity of the person to whom compensation is awarded. The process of giving out compensation should be conducted

³¹ Section 12(2) LAA

in the concerned village. The names of the 'person interested' to whom compensation is being disbursed should be announced on the mike with the amount being awarded so that identity and the compensation being given are checked. After that the cheque should be given in the presence of the village headman who signs further identifying the identity of the person.

- The entire process of disbursement should be video graphed to ensure transparency and to lessen disputes on the identity of person to whom compensation is disbursed.

Para 261

This para emphasizes the need to make payment at the earliest as any delay results in payment of statutory interest.

Recommendation

- In order to brook any delay in payment a pert chart specifying the time lines should be prepared for the direction of the Land Acquisition Officer.
- If the time lines specified in the pert chart are not adhered to then consequences of such lapses should also be specified to ensure clarity in the mind of land acquisition officer. In cases where the work is done before the time specified for a given activity then consequent reward should also be forthcoming.

Para 261A

This para deals with a situation of making advance payment of compensation to the claimants/person interested in cases where there might be delay in completion of award proceedings. In a case where possession of land has been taken under the act or in cases where declaration notification has been issued and possession of land is taken by private negotiation the Land Acquisition Officer with prior approval of the Collector make an interest free advance payment of compensation not exceeding 2/3rd of the likely compensation award. There are certain conditions to be fulfilled before advance payment can be made and that are enumerated below:

- The person interested has to apply for the same
- The title of land for which advance payment is being made should be clear and without any dispute on ownership.
- A bond is to be executed by the person interested for the adjustment of advance payment of compensation against the actual compensation amount. Bond will also indemnify the government against any future claim for compensation by any other party. Copy of Bond is annexed as **Annexure** .

- No claim for interest can be made on the advance payment.

Recommendation

- The provision of advance payment is hardly resorted to by 'person interested' as they are not aware of these instructions. As these instructions are in favour of the claimants/person interested they should be brought to their knowledge through different methods.

Para 261B

This para is on method of calculation of interest payable under section 34³² LAA.

Recommendation

- On account of amendment the rate of interest payable is 9% not 4% as specified in the para. Further, if compensation is not paid or deposited within one year of taking possession then interest at the rate of 15% has to be paid from the expiry of period of one year to its deposit or payment.

Para 262

For the payment of award previous sanction of the state government is not required.³³

Para 263

The content of this para are deleted in the Manual.

Para 264

This para deals with a situation where the claimant/person interest intentionally avoids receipt of compensation to collect higher interest on awarded amount. In such a case land acquisition collector can deny payment of interest to such a claimant.

³² 34. Payment of interest - When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited:

[Provided that if such compensation or any part thereof is not paid or deposited within a period of one year from the date on which possession is taken, interest at the rate of fifteen per centum per annum shall be payable from the date or expiry of the said period of one year on the amount of compensation or part thereof which has not been paid or deposited before the date of such expiry.]

³³ (R.1800-98)

Para 265

This para states that if payment relates to petty payment and the claimant has not come to collect the compensation even after receipt of notice, money can be remitted by way of money order. Certain rules are specified for payment of compensation by way of money order.

Recommendation

- The petty amount specified for payment by way of money order needs revision from the amount specified in the para, which is Rs.100.

Para 266

The work of making payment should be entrusted to Mamlatdars/Mahalkaris.

Recommendation

- The work of land acquisition is a mammoth task, and there is lack of manpower³⁴, as revenue officials have to do the work of land acquisition in addition to their other revenue functions. A separate department should be created for conducting this function in a more efficient and delay free manner.
- The proper infrastructure for carrying out the functions of land acquisition requires to be provided and attendant allowances for taking care of such expenses.

Para 267

This para deals with a situation of whether money with land acquisition Officer can be attached by a creditor, for payment of outstanding land revenue, or a mortgagee. The mortgagee had the opportunity for claiming compensation at the time of hearing so money cannot be deducted in such a scenario. The land Acquisition Officer for payment of land revenue can deduct the compensation. If a creditor obtains an attachment³⁵ to the compensation money then the amount would have to be deducted to that extent.

Para 268-270

The para talks about the account statement, which is required to be maintained for the purpose of disbursement of compensation to the claimants. There is a time limit provided for the disposal of A.S³⁶ as end of financial year or six months from the date of A.S whichever is earlier.

³⁴ As per personal interaction with Special Land Acquisition Collector, Himmatnagar and mamlatdar

³⁵ Attachment is pursuant to execution proceedings for executing a decree (judgment) in favour of the decree holder.

³⁶ The full form of A.S has to be ascertained.

Recommendation

- The reference to 'G' should change to the relevant designation and department as per present administrative setup of the state government.

Para 271

The content of this para are deleted.

Para 272

After the completion of A.S, the Land Acquisition Officer is to report on the total amount awarded to the government. After this government resolution is issued for transfer of land.

Recommendation

The small note³⁷ at the end of this para should be deleted as it talks about treaty revision with Indian States is redundant in the present setup.

Paras 273-288

These paras deal with the land revenue aspect of the acquisition proceedings in terms of abatement of land revenue and other related matters.

Recommendation

- The analysis of the contents requires in-depth study of revenue functions
- The terminology with respect different revenue functionaries now in charge of these functions requires to be changed. As also reference to East India Railway should be deleted.

³⁷ N.B It may here be noted that if it is proposed to adjust debit to Indian states by revision of treaty payments, reference must be made to the political dpt. Of G. of I. (R.4149-85)

Chapter IX

References to the Court

Paras 289-293

These paras deal with references³⁸ under the LAA. The Manual lays down the instruction to be followed as to conducting of references and also the grounds on which reference can be filed. Following are some of the grounds given in the manual. This a compilation of decisions rendered by the Privy Council on the issue of reference.

- As to the total amount of compensation, including crops, trees and damage
- As to true area taken
- As to the apportionment of the compensation
- As to investments
- For settlement of minor disputes as to damages during temporary occupation or whether any land is part of house or factory.

Recommendation

- The judgments rendered by the Supreme Court on the issue of reference needs to be updated in this section of the manual. This is imperative, as the manual has not been updated since 1958. For e.g. on the question of the term ‘person interested’ for the purpose of making reference has been interpreted by Supreme Court in *Union of India v. Sher Singh*³⁹ to mean a person for whose benefit the land is acquired. The definition of ‘person interested’ must be liberally construed so as to include a body, local authority or a company for whose benefit the land is acquired. Another instance is of case a titled *Ashwani Kumar v. State of Punjab*⁴⁰ on the right of a person to make a reference. It was stated in the case when compensation awarded in pursuance of the award is accepted by the claimant in protest, right of such person to make a reference is not affected in any manner in order to show that the person concerned has not accepted the award because once compensation awarded is accepted without protest the person concerned lost his right to seek reference.
- In keeping with the earlier recommendation of updating the manual in view of the amendments made post 1958, an important amendment needs mention. This is in relation

³⁸ Section 18 LAA

³⁹ 1993(1) SCC 608

⁴⁰ AIR 1992 SC 974

to inclusion of section 51-A⁴¹ LAA. It simply lays down that certified copy of a document registered under the Registration Act, 1908 will be accepted as evidence in any proceedings under LAA. It is most useful in determining market rate of acquired land on basis of comparable sales method. In *Land Acquisition Officer and Mandal Revenue Officer v. V.Narasaiah*⁴² it was held that by virtue of section 51-A certified copy of a document registered under registration act may be accepted as evidence of transaction recorded in such documents. It is open to the court to accept the certified copy as reliable evidence and without examining parties to the documents. It is recommended that appropriate instructions to be included in Manual to make this section operational.

- Statutory provisions do not support the grounds enumerated in the manual. The LAA provides for making of a reference on four grounds namely *measurement of land, the amount of compensation, the persons to whom it is payable and the distribution among the 'persons interested'*. The rest of the grounds should be deleted.

Para 294

The contents of this para are deleted.

Para 294A

This para talks about coordination between the Land Acquisition Officer, District Government Pleader and body for whom the land is acquired. This is to ensure proper care for land reference cases pending before civil court.

Paras 295-297

This para enumerates the instructions for conduct of land references.

Paras 298-302A

These paras are dealing with the issue of apportionment of compensation among different claimants.

⁴¹ 51A Acceptance of certified copy as evidence. - In any proceeding under this Act, a certified copy of a document registered under the Regulation Act, 1908 (16 of 1908), including a copy given under section 57 of that Act, may be accepted as evidence of the transaction recorded in such document

⁴² 2001 AIR SCW 867:AIR 2001 SC 1117

Chapter X

Withdrawals

Paras 303-307

These para reiterates the power of the state government to withdraw from an acquisition before possession of land is taken. It lays down instructions to deal with exercise of power to compute compensation for the damages⁴³ caused to the land in the process of acquiring it.

⁴³ Section 48(2) LAA Completion of acquisition not compulsory, but compensation to be awarded when not completed. - (1) Except in the case provided for in section 36, the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

(2) Whenever the Government withdraws from any such acquisition, the Collector shall determine the amount of compensation due for the damage suffered by the owner in consequence of the notice or of any proceedings there under, and shall pay such amount to the person interested, together with all costs reasonably incurred by him in the prosecution of the proceedings under this Act relating to the said land.

Chapter XI

Taking Possession and Correction of Land Records

Para 308

After the payment as per award, possession of the land is to be taken and consequent change in revenue records is to be made. For the time gap between taking possession of land after the award has been given requires payment of statutory interest.

Paras 309-323

These paras state the instructions to be followed for taking possession of land and other attendant matters.

Recommendation

- References to inam lands and instructions with regard require to be deleted.

Para 324

The contents of this para are deleted.

Chapter XII

Disposal of the land after acquisition

Paras 325-328

The manner of use of land after acquisition is dealt in these paras.

Recommendation

- The Supreme Court judgments on the question of use of land for a different purpose other than the public purpose it was acquired for needs incorporation in the manual in the form of executive instructions.

Para 329

The contents of this para are deleted.