

KARNATAKA LAND ACQUISITION LAWS

In Karnataka following laws are under operation regarding land acquisition matters:-

1. Land Acquisition Act 1894
2. Land Acquisition (Karnataka) Rules 1965
3. Land Acquisition (Companies) Karnataka Rules 1973
4. Land Acquisition (Mines) Act 1885.
5. Land Restriction on transfer Act 1991 & Rules 1994
6. Bangalore Development Authority Act 1976
7. Karnataka Industrial Area Development Act 1966
8. The Karnataka Acquisition of Land for Grant of House sites Act 1972. & Rules 1999
9. Karnataka Urban Development Authorities Act 1987
10. Karnataka Town and Country Planning Act 1961
11. Karnataka Slum Areas (Improvement and Clearance) Act, 1973
12. Petroleum and Mineral Pipelines (Acquisition of Right of user in land) Act 1962.
13. Karnataka Improvement Boards Act 1976.
14. Electricity and Telegraph Acts.
15. The Requisitioning and Acquisition of Immovable Property Act 1952.

The Land Acquisition act 1894 is the basic act governing all acquisitions. The above acts by name themselves indicate under which circumstances the acquisition proceedings are commenced. The process of acquisition has to start with a notification issued under Section 4 of the Act, which is mandatory, and even in cases of urgency, the issuance of notification under Section 4 is a condition precedent to the exercise of any further powers under the Act. Any serious lapse on the part of the acquiring authority would vitiate the proceedings and courts will not ignore it.

The object of issuing a notification is to have a public announcement by the government and a public notice by the Collector to the effect that the land, as specified therein, is needed or is likely to be needed by the government for the "public purpose" mentioned therein; and thereby anyone affected by such acquisition may file objections to that, the notification also authorises the departmental officers or officers of the local authority, as the case may be

to do all such acts as are mentioned in the Act. The notification has to be published in the locality and particularly persons likely to be affected by the proposal have to be put on notice that such an activity is a head. The objections filed by the interested persons have to be placed on record and oral hearing has to be given to them. Later Acquiring officer has to consider such objections and give reasons either for accepting the objections or for rejecting the same in his 5-A Report to the government. The Government after evaluating the report will decide whether to go ahead of acquisition or drop the same or to modify the same. The final notification under Section 6 will be made there by further necessitating award enquiry. In award enquiry compensation and the documents for it will be considered for making award. After passing of award, the party will have opportunity to file application under section 18 seeking reference to civil court for fixing up compensation.

Possession:- Regarding taking up of possession the act is silent. The supreme court of India Laid down following principles in the matter of taking possession in acquisition proceedings in a very recent case of Banda Development authority case (26 April 2011).

a) If the acquired land is vacant, the act of the concerned State authority to go to the spot and prepare a panchnama will ordinarily be treated as sufficient to constitute taking of possession.

b) If crop is standing on the acquired land or building/structure exists, mere going on the spot by the concerned authority will, by itself, be not sufficient for taking possession. Ordinarily, in such cases, the concerned authority will have to give notice to the occupier of the building/structure or the person who has cultivated the land and take possession in the presence of independent witnesses and get their signatures on the panchnama. Of course, refusal of the owner of the land or building/structure may not lead to an inference that the possession of the acquired land has not been taken.

c) If the acquisition is of a large tract of land, it may not be possible for the acquiring/designated authority to take physical possession of each and every parcel of the land and it will be sufficient that symbolic possession is taken by preparing appropriate document in the presence of independent witnesses and getting their signatures on such document.

d) If beneficiary of the acquisition is an agency/instrumentality of the State and 80% of the total compensation is deposited in terms of Section 17(3A) and substantial portion of the acquired land has been utilised in furtherance

of the particular public purpose, then the Court may reasonably presume that possession of the acquired land has been taken.

In so far as the acquisition under the Karnataka Industrial Area Development Act, 1966 is concerned the same is dealt with in Chapter-VII of the KIADB Act. Section 28(1) of the KIADB Act corresponds to Section 4(1) of the Land Acquisition Act. However, after hearing the objections of the owner or the occupier of the land if their objections are overruled and the State Government proceed to acquire the land and makes a declaration under Section 28(4) of the Act, on publication of such declaration the land shall vest absolutely in the State Government free from all encumbrances. Thereafter, the State Government by a notice in writing order the person in possession of the land to surrender or deliver possession thereof to the government. On taking such possession the government may transfer the land to the board for the purpose for which the land has been acquired.

Land Acquisition Officer is bound to pass an award setting out the true area of the land that is acquired, the amount of compensation payable for the said land and the person for whom the said amount is to be paid and if there is any dispute regarding apportionment, deposit such amount in a Civil Court and require the parties to settle the disputes inter se between them in the competent Civil Court as Section 30 of the KIADB Act makes it very clear that the provisions of the Land Acquisition Act, 1894 shall mutatis mutandis apply in respect of the enquiry and award by the Deputy Commissioner, the reference to Court, apportionment of compensation and the payment of compensation, in respect of lands acquired under the said Chapter.

Environmental concern by courts

The High court of Karnataka has said “we hold that in order to maintain ecological equilibrium and pollution-free atmosphere of the villages, the authorities under the KIADB Act are directed to leave land area of 1 k.m. as a buffer zone from the outer periphery of the village in order to maintain a 'green area' towards preservation of land for grazing of cattle, agricultural operation and for development of social forestry and to develop the area into green belt. This would measure the preservation of ecology without hindering the much needed industrial growth thus striking a balance between industrial development and ecological preservice. We

further direct that whenever there is acquisition of land for industrial purpose or commercial or on non-agricultural purposes, except residential area, the authorities must leave 1 k.m. area from the village limit as a free zone or green area to maintain ecological equilibrium as stated above.” (C. Kenchappa And Others vs State Of Karnataka And Others 2000 (4) KarLJ 1, ILR 2000 Kar. 1072)

In every acquisition by its very compulsory nature for public purpose, the owner may be deprived of the land, the means of his livelihood. The State exercises its power of eminent domain for public purpose and acquires the land. So long as the exercise of the power is for public purpose, the individual's right of an owner must yield place to the larger public purpose. For compulsory nature of acquisition, Sub-section (2) of Section 23 provides payment of solatium to the owner who declines to voluntarily part with the possession of land. Acquisition in accordance with the procedure is a valid exercise of the power. It would not, therefore, amount to deprivation of right to livelihood. Section 23(1) provides compensation for the acquired land at the prices prevailing as on the date of publishing Section 4(1) notification, to be quantified at later stages of proceedings. For dispensation or dislocation, interest is payable under Section 23(1-A) as additional amount and interest under Sections 31 and 28 of the Act to recompensate the loss of right to enjoyment of the property from the date of notification under Section 23(1-A) and from the date of possession till compensation is deposited.

Under Karnataka Land Laws the pro's and con's are many, when a company needs to acquire land on its own there are several procedures under different Acts and Rules. There are many acts which prohibits purchasing of several types of land. The Land acquisition through KIADB is seen by industrialists as safe way to avoid so many acts and rules in this regard. But still when KIADB is coming under clouds of allegations it is better, if govt frames a policy and transparent procedure in land acquisition.

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