

LAWS OF FIJI

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CHAPTER 135

CROWN ACQUISITION OF LANDS

ARRANGEMENT OF SECTIONS

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CHAPTER 135

STATE ACQUISITION OF LANDS

*Ordinances Nos. 24 of 1940,
11 of 1942,
15 of 1943,
9 of 1955.
Order 31st January, 1967.
Order 8th October, 1970.*

**AN ACT TO REGULATE THE ACQUISITION OF LAND BY THE CROWN FOR
PUBLIC PURPOSES**

[8th November, 1940]

Short title

1. This Act may be cited as the State Acquisition of Lands Act.

Interpretation

2. In this Act, unless the context otherwise requires-

*"acquiring authority" means the Minister, in relation to the Government, or, in relation to any other person or authority empowered compulsorily to acquire property, that person or authority, intending to take possession of, or acquire the right or interest in, the property compulsorily or who has taken possession of, or acquired the interest or right in, the property compulsorily, as the context may require;

'acquisition', in relation to land, includes an acquisition of an interest in the land;

"Court" means the Supreme Court;

"Director of Lands" means the Director of Lands, and Surveyor-General, and includes an Assistant Director of Lands;

(Substituted by 9 of 1955, s. 16.)

'interest', in relation to land, means-

- (a) any legal or equitable estate or interest in the land;
- (b) a restriction on the use of the land; or
- (c) any other right, power or privilege over or in connection with land;

'public purpose' means-

- (a) a purpose of defence, public safety, public health or town or country planning;
- (b) a purpose of providing a public amenity or public facility; or
- (c) a purpose of preserving property of national, archaeological, palaeontological, historical, cultural, architectural or scenic value.

*Inserted by Order 8th October, 1970.

Power to acquire land

3. *Subject to the provisions of the Constitution and the other provisions of this Act, an acquiring authority may acquire any lands required for any public purpose, paying such consideration or compensation as may be agreed upon or determined under the provisions of this Act.

(2) An acquisition under this section must not proceed unless the necessity for the acquisition is such as to provide reasonable justification for the causing of any resultant hardship to a person having an interest in the lands.

*Inserted by Order 8th October, 1970.

Preliminary investigation

+4. Whenever it appears to the acquiring authority that land in any locality is likely to be needed for any public purpose, any person either generally or specially authorised by the acquiring authority in this behalf, and the servants and workmen of such person, may do all or any of the following things:-

(a) to enter upon and survey and take levels of any land in such locality;

(b) to dig or bore under the subsoil;

(c) to do all other acts necessary to ascertain whether the land is adapted for such purpose;

(d) to clear, set out and mark the boundaries of the land proposed to be taken and the intended line of the work, if any, proposed to be made thereon:

Provided that no person shall enter into any building or upon any enclosed land attached to a dwelling-house (except with the consent of the occupier thereof) without previously giving such occupier at least seven days notice of his intention to do so.

+Replaced by Order 8th October, 1970.

Notice of intention to take lands

*5.-(1) Subject to the provisions of section 8, whenever the acquiring authority determines that any lands are required for a public purpose, the acquiring authority shall give not less than thirty days written notice to every person having any interest in such lands which would be affected by the taking of possession or acquisition of the lands that, upon the expiry of such period of notice, the acquiring authority intends compulsorily to take possession of or to acquire such lands.

*Inserted by Order 8th October, 1970.

(2) The notice referred to in subsection (1) shall specify clearly the land intended to be taken possession of or acquired and shall further be published in the Gazette.

**Application to Court*

*6.-(1) The acquiring authority shall not compulsorily acquire any land unless he has applied to the Court and has obtained therefrom an order authorising such acquisition.

(2.) In the event of an acquiring authority compulsorily taking possession of any land he shall within thirty days of so entering into possession apply to the Court for an order authorising such taking of possession.

(3) The Court shall not grant an order referred to in either of subsections (1) or (2) unless it is satisfied that the taking of possession or acquisition is necessary or expedient for a public purpose.

(4) If the taking of possession or the acquisition is for a purpose referred to in paragraph (c) of the definition of "public purpose" in section 2, the Court must also take into account whether the need to ensure the preservation of the heritage of the State at a cost that is justifiable outweighs any hardship to a person having an interest in the land.

* Replaced by Order 8th October, 1970.

**Damages and compensation*

*7.-(1) An acquiring authority shall pay damages to all persons owning the property or having any other interest or right therein that would be affected by the taking of possession or acquisition thereof in respect of the taking of possession prior to the application to the Court under the provisions of subsection (2) of section 6 in a case where the Court does not grant the order for which application has been made.

(2) Adequate compensation for the taking of possession or the acquisition of property where an order has been granted by the Court under the provisions of section 6 shall be paid to the persons entitled thereto within thirty days of such order being granted.

(3) If no agreement has been concluded with any person claiming to be entitled as to the amount or manner of payment of compensation referred to in this section within thirty days of the grant of the order of the Court, the acquiring authority shall, immediately upon the expiry of such period of thirty days, apply to the Court for the determination of those matters in relation to such claimant including where necessary any question as to the entitlement of such claimant to compensation.

(4) The acquiring authority shall pay all costs reasonably incurred by any other party in connection with the proceedings before the Court under the provisions of this and section 6 and including any appeal not made unreasonably or frivolously from any decision of the Court or the Court of Appeal given for those purposes.

* Replaced by Order 8th October, 1970.

**Acquisition during public emergency etc*

*8. Notwithstanding the other provisions of this Act, possession of land may be taken compulsorily by the Government as an acquiring authority during a period of public emergency or in the event of any other emergency or calamity that threatens the life or wellbeing of the community in any of which cases the following provisions shall apply:-

(a) the Minister, or the Director of Lands acting under the authority of the Minister, shall promptly and in writing inform the owner of the land of the taking of possession thereof, and such owner may notify his objection to such taking of possession to the Director of Lands;

(b) in the event of any objection being notified to him under the provisions of paragraph (a), the Director of Lands shall within thirty days of the receipt of such objection apply to an independent and impartial tribunal, to be appointed by the Chief Justice from among persons who are qualified to practise as barristers and solicitors, for a determination of the entitlement of the Minister to compulsory possession of the land;

(c) unless the tribunal is satisfied that the taking of possession is reasonably justifiable in the circumstances of the situation existing, for the purpose of dealing with that situation, it shall order possession of the land to be returned to the owner;

(d) adequate compensation for the taking of possession shall be paid to the person entitled thereto and the tribunal shall be empowered upon the application of any person claiming to be entitled to compensation to determine the amount and manner of payment of compensation in relation to that claimant including where necessary any question of his entitlement to compensation.

* Replaced by Order 8th October, 1970.

Decision in absence of parties

9. Where any person upon whom a summons has been served shall not appear at the time appointed, a decision may be given *ex parte* upon hearing the evidence adduced; and such decision shall be as effectual as if given after hearing in the presence of such person.

Issue of certificate of title

10. The Registrar of Titles shall upon presentation to him of a certified copy of any judgment or order of the Court made under the provisions of section 6 register the Crown as proprietor and issue a certificate of title according to the judgment or order in the name of the Director of Lands.

Report of Government officers as to value to be evidence

11. The written report of any officer of the Public Works, Lands or Agricultural Departments as to the value of the lands or of any buildings or trees or crops thereon shall be evidence thereof. Such officer may, on giving three days notice in writing to the occupier, enter upon any such lands or into any buildings thereon for the purpose of ascertaining the value of such land and the buildings, trees and crops thereon. Any person having an interest in such lands may call such officer as a witness and may also adduce any other evidence as to value. The report of such officer may be proved by a copy thereof under his hand. Proof of the signature of such copy shall

not be required unless the Court sees reason to doubt the genuineness thereof. If any party so desires the officer shall be called as a witness for cross-examination.

Matters to be considered in determining compensation

12. In determining the amount of compensation to be awarded for land acquired under this Act-

(a) the Court shall take into consideration-

- (i) the market value of the land at the date of the notice of intention to take such land;
- (ii) the damage sustained by the person interested, by reason of the taking of any standing crops or trees which may be on the land at the time of taking possession thereof;
- (iii) the damage, if any, sustained by the person interested, at the time of taking possession of the land, by reason of severing such land from his other land;
- (iv) the damage, if any sustained by the person interested, at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other property, real or personal, in any other manner, or his earnings;
- (v) if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change;

(b) but the Court shall not take into consideration-

- (i) the degree of urgency which has led to the acquisition;
- (ii) any disinclination of the person interested to part with the land acquired;
- (iii) any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;
- (iv) any increase to the value of land acquired likely to accrue from the use to which it will be put when acquired;
- (v) any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or
- (vi) any outlay or improvements on or disposal of the land acquired, commenced, made or effected after the date of the notice of the intention to take such land.

Compensation for loss of rents and profits

13. When the *acquiring authority has in pursuance of a notice under section 5 entered into possession of any lands, the Court may award compensation to the owner of such lands and to all parties entitled to any estate or interest therein for loss of rents and mesne profits for the period between the time the *acquiring authority so entered into possession, and the time when the consideration due under an agreement has been paid to the persons entitled thereto, or compensation has been paid into Court under the provisions of this Act.

** Amended by Order 8th October, 1970.*

*When the *acquiring authority may withdraw from the acquisition of land*

14. Nothing in this Act shall be taken to compel the *acquiring authority to complete the acquisition of any land unless he shall have entered into possession of the land or has failed within one month of the *order of the Court to intimate to the Court that he does not intend to proceed with the acquisition.

** Amended by Order 8th October, 1970.*

Government exonerated upon payment

15. The payment to any person to whom any consideration or compensation shall be paid or the payment into Court of any compensation upon a decision of the Court shall effectually discharge the *acquiring authority from seeing to the application or being answerable for the misapplication thereof:

Provided that where any person is in possession in virtue of any estate less than an estate of inheritance or where any person is in possession in any fiduciary or representative character the *acquiring authority may pay such consideration or compensation to such persons and in such proportions and instalments and after such notices as the Court may direct.

** Amended by Order 8th October, 1970.*

Penalty for hindering the taking of possession of lands

16. Every person who shall wilfully hinder or obstruct any person duly authorised by the *acquiring authority from entering upon or taking possession of or using any land in pursuance of the provisions of this Act, or who shall molest, hinder or obstruct such person when in possession of such land, or shall hinder or obstruct any officer of the sheriff or police officer when executing a writ or order of possession, shall be liable to imprisonment for three months or to a fine of fifty dollars or to both such imprisonment and fine.

** Amended by Order 8th October, 1970.*

Service of notice of intended acquisition not to have certain effects

17. The fact that a notice has been served upon any person under section **5** shall not be taken as an admission by the *acquiring authority that the person on whom such notice has been served or any other person has any estate or interest in the land specified in the notice, or debar the *acquiring authority from alleging in any proceedings under this Act or otherwise that such land is Crown land.

** Amended by Order 8th October, 1970.*

Controlled by Ministry of Lands and Mineral Resources