

THE LAND ACQUISITION ACT

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THE LAND ACQUISITION ACT

[22nd May, 1947.]

Cap. 204.
Law
48 of 1955
S. 15.
Acts
3 of 1968,
42 of 1969
3rd Sch.
32 of 1976.

PART I. *Preliminary*

1. This Act may be cited as the Land Acquisition Act. Short title.

2. In this Act—

Interpreta-
tion.

“Commissioner” means the Commissioner of Lands;

“Court” means the Supreme Court;

“land” includes benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth;

“person interested” includes every person claiming an interest in compensation to be made on account of the acquisition or occupation of land under this Act, but does not include a tenant by the month or at will.

PART II. *Acquisition. Preliminary Investigation*

3.—(1) Whenever it appears to the Minister that land in any locality is likely to be needed for any public purpose, a notification to that effect shall be published in the *Gazette* and a copy thereof served upon the owner of such land and the Commissioner shall cause public notice of the substance of such notification to be given at convenient places in such locality, and thereupon any officer either generally or specially authorized by the Minister in this behalf and his servants and workmen may—

Power to
enter and
survey.

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

(b) dig or bore into the sub-soil;

[The inclusion of this page is authorized by L.N. 31/1977]

- (c) do all other acts necessary to ascertain whether the land is adapted for the purpose for which it is required;
- (d) set out the boundaries of the land proposed to be taken and the intended line of the work, if any, proposed to be made thereon;
- (e) mark such levels, boundaries and line by placing marks and cutting trenches; and
- (f) cut down and clear away any standing crop, fence, bush or woodland, where otherwise the survey cannot be completed, the levels taken or the boundaries or line of the work marked.

(2) No person shall enter into any building or upon any enclosed yard, court or garden attached to a dwelling-house unless with the consent of the occupier thereof, without previously giving such occupier at least seven days' notice in writing of his intention so to do.

Payment for
damage.

4. So soon as conveniently may be after any entry made under section 3 the officer so authorized as aforesaid shall pay for all damage done and, in case of dispute as to the amount to be paid for such damage, he shall at once refer the dispute to the Commissioner whose decision shall be final subject to an appeal to the Minister.

Declaration of Intended Acquisition

Declaration
that land is
required for
a public
purpose.

5.—(1) Whenever it appears to the Minister that any particular land is needed for a public purpose a declaration shall be made to that effect under his signature.

3/1968
S.2.

(2) No such declaration shall be made unless the compensation to be awarded for such land is to be paid out of—

- (a) the Consolidated Fund or loan funds of the Government;

- (b) the funds of any Parish Council or of the Kingston and St. Andrew Corporation or of the National Water Commission, 17/1968
S. 16(2)

or partly out of funds arising from any of the sources mentioned in paragraphs (a) and (b).

(3) Every declaration shall be published in the *Gazette* and shall state—

- (a) the parish in which the land is situated;
- (b) the particular purpose for which it is needed;
- (c) its approximate area and all other particulars necessary for identifying it; and
- (d) if a plan has been made of the land, the place where and the time at which such plan may be inspected.

(4) Any such declaration shall be conclusive evidence that the land is needed for a public purpose.

(5) For the purpose of this section compensation which is to be paid by the issue of land bonds in accordance with the provisions of the Land Bonds Act, shall be deemed to be compensation which is to be paid out of loan funds of the Government of this Island. 48/1955
S. 15(a).

6. Whenever any land has been so declared to be needed for a public purpose the Minister shall direct the Commissioner to take proceedings for the acquisition of the land. Acquisition
of land after
declaration.

7. The Commissioner shall thereupon cause the land, unless such land has already been marked out under section 3, to be surveyed, and a plan thereof made, if no plan exists. Land to be
surveyed.

8.—(1) The Commissioner shall then cause the land to be valued and shall enter into negotiations for the purchase, by private treaty, of the land. Power to
value land
and to
negotiate for
purchase by
private
treaty.

(2) It shall not be necessary for the Commissioner to await the publication of the declaration under section 5

before entering into negotiations for the purchase of the land by private treaty.

(3) An agreement by private treaty shall not be deemed to be concluded until it has received the approval of the Minister.

(4) Nothing in this section shall be deemed to prohibit or delay the procedure provided by this Act for compulsory acquisition of land.

Notice to
persons
interested.
3/1968
S. 3.

9.—(1) Where no agreement by private treaty for the purchase of any land in respect whereof a declaration under section 5 has been made is arrived at within such time as the Commissioner may consider reasonable (whether because the owner of such land cannot after reasonable enquiry be found, or otherwise) the Commissioner shall cause notices to be posted at convenient places on or near the land to be acquired stating that claims to compensation for all interests therein may be made to him.

(2) Every such notice shall state the particulars of the land and shall require all persons interested therein to appear personally or by agent before the Commissioner at a time and place to be specified in such notice, such time not being earlier than twenty-one days after the date of publication of the notice, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections, if any, to the survey made under section 7. The Commissioner may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Commissioner shall also serve notice to the same effect on the occupier, if any, of such land and on all persons known or believed to be interested therein, or to be entitled to act for persons so interested, as reside or have agents authorized to receive service on their behalf, within the parish in which the land is situated, provided that if any

such person resides elsewhere and has no such agent the notice may be sent to him by registered post if his address can be ascertained after reasonable enquiry.

10.—(1) The Commissioner may also require any person interested to deliver to him within a time to be specified, not being less than thirty days, a statement in writing containing, so far as may be within his knowledge, the name of every other person possessing any interest in the land or any part thereof as co-owner, mortgagee, lessee, sub-lessee, tenant or otherwise, and of the nature of such interest, and of the rents and profits, if any, received or receivable on account thereof for three years immediately preceding the date of the statement.

Power to
require
information.

(2) Every person required under subsection (1) to make any such statement who fails so to do shall be guilty of an offence against this Act.

*Enquiry into Measurements, Value and Claims and
Award by Commissioner*

11.—(1) On the day specified in the notice under section 9, or on any day to which the enquiry may be adjourned, the Commissioner shall enquire—

Enquiry and
award by
Commis-
sioner.

- (a) into the objections, if any, which any person interested has stated, pursuant to the aforesaid notice, to the survey made under section 7;
- (b) into the value of the land; and
- (c) into the respective interests of the persons claiming the compensation, and shall make an award under his hand as to—
 - (i) the true area of the land;
 - (ii) the compensation which in his opinion should be allowed for the said land;

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

(2) When the amount of compensation has been settled under subsection (1), if any dispute arises as to the apportionment of the same or any part thereof, or as to the persons to whom the same or any part thereof is payable, the Commissioner may refer such dispute for the decision of the Court.

When award of Commissioner to be final.

12.—(1) Every award shall be filed in the office of the Commissioner and shall, except as hereinafter provided, be final and conclusive evidence as between the Commissioner and the persons interested, whether they have respectively appeared before the Commissioner or not, of the true area and value of the land and the apportionment of the compensation among the persons interested.

(2) The Commissioner shall serve a copy of the award on all persons interested whose addresses are known or can be ascertained upon reasonable enquiry at the time the award is made.

Power to summon and enforce attendance of witnesses, etc.

13. For the purposes of an enquiry under this Act the Commissioner shall have the power to summon and enforce the attendance of witnesses, including the persons interested or any of them, and to compel the production of documents by the same means, and, so far as may be, in the same manner as is provided in the case of a Resident Magistrate's Court.

Determination of compensation.

14.—(1) In determining the amount of compensation to be awarded for land acquired under this Act—

- (i) the following and no other matters shall be taken into consideration—

- (a) the market value at the date of the service of the notice under subsection (3) of section 9;
 - (b) any increase in the value of the other land of any person interested likely to accrue from the use to which the land acquired will be put;
 - (c) the damage, if any, sustained by any person interested at the time of the taking possession of the land by the Commissioner by reason of the acquisition injuriously affecting the actual earnings of such person; ^{3/1968} S. 4(b).
 - (d) the reasonable expenses, if any, incidental to any change of residence or place of business of any person interested which is necessary in consequence of the acquisition.
- (ii) The following matters shall not be taken into consideration—
- (a) the degree of urgency which has led to the acquisition;
 - (b) any disinclination of the person interested to part with the land acquired;
 - (c) any damage sustained by the person interested which, if caused by a private person, would not be a good cause of action;
 - (d) any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under section 5 by or in consequence of the use to which it has been put;
 - (e) any increase to the value of the land acquired which is likely to accrue from the use to which it will be put;

- (f) any outlay on additions or improvements to the land acquired, which was incurred after the date of the publication of the notice under section 5, unless such additions or improvements were necessary for the maintenance of any building in a proper state of repair;
- (g) the fact that the land has been compulsorily acquired;
- (h) whether or not compensation is to be paid in whole or in part by the issue of land bonds in accordance with the provisions of the Land Bonds Act.

32/1976
S. 2(b).

(2) For the purposes of sub-paragraph (a) of paragraph (i) of subsection (1)—

- (a) if the market value of land has been increased by means of any improvement made by the owner or his predecessor in interest within two years immediately preceding the service of the notice under subsection (3) of section 9, such increase shall be disregarded unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for the land being taken under this Act;
- (b) when the value of land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court or is contrary to law or is detrimental to the health of the inmates of the premises or to the public health, the amount of that increase shall not be taken into account.
- (c) in determining the market value, regard shall be had to any subsisting valuation of the unimproved value of the land pursuant to the Land Valuation

32/1976
S. 2(c).

Act and all assessments and returns acquiesced in or made in that behalf.

Taking Possession

15.—(1) The Commissioner may, if the Minister so directs, at such time subsequently to the publication of the notice required by subsection (1) of section 9 as the Minister may specify, take possession of any land needed for a public purpose.

Taking possession in case of urgency.

(2) The Commissioner shall in such case offer to the persons interested compensation for the loss of standing crops and fruit.

(3) If such offer is not accepted, the value of such crops and fruit shall be allowed for in awarding compensation for the land.

16.—(1) In every case, so soon as the Commissioner enters into possession of any land in accordance with any of the provisions of this Act relating to acquisition, the land shall vest in the Commissioner of Lands in trust for Her Majesty in right of the Government of Jamaica from the date of such entry into possession, and a notice to that effect shall be published in the *Gazette*.

Vesting of land in Her Majesty.

42/1969
3rd Sch.

(2) The Commissioner shall furnish the Registrar of Titles with a copy of every notice published under this section, and the Registrar shall forthwith enter the particulars thereof in a book to be kept by him for such purpose.

(3) So soon as a plan of the land has been prepared in accordance with the requirements of the Registration of Titles Act, the Commissioner shall cause application to be made to the Registrar of Titles for the purpose of bringing the title to the land under the operation of the Registration of Titles Act.

PART III. *Reference to Court and Procedure thereon*Reference to
Court.

17.—(1) Any person interested who is dissatisfied with any award may, by written application to the Commissioner, require that the matter be referred by the Commissioner for the determination of the Court, whether his objection be to the survey, the amount of the compensation, the persons to whom it is payable, or the apportionment of the compensation among the persons interested.

(2) The applicant shall state specifically the grounds on which objection to the award is taken and at the hearing no other grounds shall be given in argument without the leave of the Court.

(3) Every such application shall be made—

- (a) if the person making it was present or represented before the Commissioner at the time of the enquiry under section 11, within six weeks from the date of the Commissioner's award;
- (b) in other cases, within six weeks of the actual receipt of the notice from the Commissioner under subsection (2) of section 12 or within twelve months from the date of the Commissioner's award, whichever shall first expire.

(4) The periods within which an application for reference to the Court shall be made shall not be capable of enlargement by any Court.

Commis-
sioner's
statement to
the Court.

18.—(1) In making the reference the Commissioner shall state for the information of the Court in writing under his hand—

- (a) the situation and extent of the land with particulars of any trees, buildings or standing crops thereon;
- (b) the names of the persons whom he has reason to think are interested in such land and the addresses of such persons;

- (c) the amount awarded for damages and paid or tendered under sections 4 and 15 or either of such sections and the amount of compensation awarded under section 11;
- (d) if the objection be to the amount of the compensation, the grounds on which the amount of compensation was determined.

(2) To the statement required under subsection (1) shall be attached a Schedule containing particulars of the notices served upon, and of the statements in writing made or delivered by any persons interested.

19. The Court shall thereupon cause to be served upon— Service of notice.

- (a) the applicant;
- (b) all persons interested in the objection, except such, if any, of them as have consented without protest to receive payment of the compensation awarded; and
- (c) if the objection is in regard to the area of the land or to the amount of the compensation, the Commissioner,

a notice specifying the day on which the Court will proceed to determine the objection, and directing their appearance before the Court on such day.

20. If the objection is in regard to the amount of the compensation and the award of the Commissioner is not less than two thousand dollars, the Court shall appoint two assessors for the purpose of aiding the Court in determining the objection. Such assessors may also be appointed in any other case in which the Court considers it desirable to make such appointment. Every person so appointed shall attend and serve as an assessor unless excused by a Judge. Appointment of Assessors.

Death, etc.,
of Assessor. **21.** If an assessor dies or becomes incapable of acting or is excused by a Judge, some other person shall be appointed in his stead.

Restriction
on scope of
enquiry. **22.** The scope of the enquiry in every such proceeding shall be restricted to a consideration of the interests of the persons affected by the objection.

Proceedings
to be in open
Court. **23.** Every enquiry by the Court shall take place in open Court.

Rules as to
amount of
compensa-
tion. **24.—(1)** Where the applicant has made a claim to compensation pursuant to any notice under section 9, the amount awarded to him by the Court shall not exceed the amount so claimed or be less than the amount awarded by the Commissioner under section 11.

(2) Where the applicant has refused to make such claim or has omitted, for any reason which the Judge may consider insufficient, to make such claim, the amount awarded by the Court may be less than, but shall in no case exceed, the amount awarded by the Commissioner.

(3) Where the applicant has omitted, for any reason which the Judge may consider sufficient, to make such claim the amount awarded to him by the Court may be less than or may exceed the amount awarded by the Commissioner.

(4) The provisions of this section and of section 14 shall be read and explained to the assessors (if any) by the Judge before they give their opinions as to the amount of compensation to be awarded.

Record of
Assessor's
opinion. **25.** The opinion of each assessor shall be given orally and shall be recorded in writing by the Judge.

26.—(1) In case of a difference of opinion between the Judge and the assessors or either of them upon a question of law or practice or usage having the force of law the opinion of the Judge shall prevail.

Difference of
opinion be-
tween Judge
and
Assessors.

(2) In case of a difference of opinion between the Judge and both of the assessors as to the amount of compensation or as to the amount of any item thereof the decision of the Judge shall prevail.

27. Every assessor shall receive such fee not exceeding twenty dollars as the Judge shall direct for each day upon which he shall sit as an assessor or upon which he shall be engaged in inspecting the land the subject of the proceedings. Such fee shall be deemed to be costs in the proceedings.

Assessor's
fees.

28. Every award made under this Part shall be in writing signed by the Judge and the assessor or assessors (if any) concurring therein and shall specify—

Awards to
be in
writing.

- (a) the amount awarded under paragraph (a) of subsection (1) of section 14;
- (b) the amount (if any) deducted under paragraph (b) of subsection (1) of section 14;
- (c) the amounts (if any) respectively awarded under paragraphs (c) and (d) of subsection (1) of section 14; and
- (d) the grounds upon which such amounts were awarded or deducted.

29.—(1) The costs of any proceedings under this Part shall be in the discretion of the Court.

Costs.

(2) Any costs, payable by an applicant may be recovered as if they were costs incurred in a suit in the Supreme Court.

Commissioner may be directed to pay interest on compensation.

30. If the sum which in the opinion of the Court the Commissioner ought to have awarded as compensation is in excess of the sum which the Commissioner did award, the Court may direct that the Commissioner shall pay interest on such excess at the rate of five *per centum* per annum from the date on which he took possession of the land to the date of the payment of such excess to the Court or to the person interested.

Rules of Supreme Court applicable.

31. Save in so far as they may be inconsistent with anything contained in this Act, the provisions of the Rules of the Supreme Court shall apply to all proceedings before the Court under this Act.

Appeal from decision of Court.

32.—(1) Where the amount of compensation awarded by the Court exceeds two hundred dollars, the Commissioner or any person interested may appeal therefrom to the Court of Appeal.

(2) Every appeal under this section shall be presented within the time and in the manner provided for appeals by Rules governing civil appeals to the Court of Appeal from the Supreme Court.

PART IV. *Apportionment of Compensation*

Determination of apportionment of compensation.

33.—(1) When the amount of the compensation has been settled and there is any dispute as to the apportionment thereof, a Judge in Chambers shall determine the proportions in which any persons interested are entitled to share in such compensation.

(2) An appeal from any such decision shall lie to the Court of Appeal.

(3) Every appeal shall be presented within the time and in the manner provided for civil appeals by the Court of Appeal Rules.

34. The costs of all proceedings for apportioning the amount of compensation shall be borne by such of the persons interested in such proportions as the Judge shall determine.

Costs of apportionment to be borne by persons interested.

PART V. *Payment*

35.—(1) After an award under section 11 has been made, the Commissioner shall offer in writing to pay the compensation awarded by him to the persons interested entitled thereto according to the award, and shall pay it to such persons unless prevented by one or more of the contingencies mentioned in subsection (2).

Payment of compensation.

(2) If any of the persons interested do not consent to receive such compensation, or if there be no person competent to alienate the land, or if there be any dispute as to the right to receive the compensation or as to the apportionment of it, the Commissioner shall apply *ex parte* to a Judge in Chambers for an order authorizing him to deposit the amount of the compensation in Court.

(3) Every application under subsection (2) shall be supported by an affidavit.

(4) Any person interested upon providing sufficient security to the satisfaction of the Court may receive such payment under protest as to the sufficiency of the amount and such receipt shall not be deemed to prejudice his right to make application under section 17:

Provided, however, that no person who has received such payment otherwise than under protest shall be entitled to make application under section 17.

(5) Notwithstanding anything in this section, the Commissioner, instead of awarding a money compensation in respect of any land, may enter into any arrangement

with a person having a limited interest therein in such a way as may be equitable having regard to the interests of the parties concerned.

Payment of interest.

36. When the amount of compensation is not paid or deposited on or before taking possession of the land, the Commissioner shall pay the amount awarded with interest thereon at the rate of five *per centum* per annum from the time of taking possession until it has been paid or deposited.

PART VI. *Temporary Occupation of Land*

Temporary occupation of land.

37.—(1) Whenever it appears to the Minister that temporary occupation and use of any land is needed for any public purpose he may direct the Commissioner to procure the occupation and use of the same for such term not exceeding three years as he thinks fit.

(2) The Commissioner shall thereupon give notice in writing to the persons interested that the land is required for a public purpose to be specified in the notice and he shall for the occupation and use thereof and for the materials (if any) to be taken therefrom pay to such persons such compensation either in a lump sum of money or by monthly or other periodical payments, as shall be agreed upon.

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

Power to enter and take possession of land.

38.—(1) Upon service of the notice referred to in subsection (2) of section 37, the Commissioner may enter upon and take possession of the land and use or authorize its use for the purpose specified in such notice.

(2) On the expiration of the term the Commissioner shall make or tender to the persons interested compensa-

tion 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.

(3) If the land has become permanently unfit to be used for the purpose for which it was used immediately before the occupation thereof, and if the persons interested shall so require, the Minister shall proceed under this Act to acquire the land as if it was needed permanently for a public purpose.

39. Where the Commissioner and the person interested differ— Dispute as to condition of land.

- (a) as to the condition of the land at the expiration of the term; or
- (b) as to the compensation to be paid under subsection (2) of section 38; or
- (c) as to any matter connected with the agreement, the Commissioner shall refer such difference for the decision of the Court, and upon such reference or upon a reference under subsection (3) of section 37 a Judge in Chambers shall decide the dispute.

PART VII. *Miscellaneous*

40.—(1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof duly signed to the person to whom such notice is addressed. Service of notices.

(2) When such person cannot be found, the service may be made on any adult member of his family residing with him; and if no such adult member can be found, the notice may be served by affixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by affixing a copy thereof in some conspicuous place in the office of the Commissioner and also on some conspicuous part of the land to be acquired :

Provided that, if the Commissioner or the Court so directs a notice may be sent by registered letter addressed to the person named therein at his last known residence or place of business, and service of it may be proved by the production of the registration receipt.

Obstructing
survey, etc.

41. Every person who wilfully obstructs any person in the execution of any of the acts authorized by section 3 or 7, or wilfully fills up, destroys, damages or displaces any trench mark made under section 3 shall be guilty of an offence against this Act.

Police to
enforce
surrender.

42.—(1) If the Commissioner is opposed or impeded in taking possession of any land under this Act, he shall apply to the Commissioner of Police who shall enforce the surrender of the land to the Commissioner.

(2) The Commissioner of Police may use force as may be necessary to enforce the surrender to the Commissioner.

Government
not bound to
complete
acquisition.

43.—(1) Except in the case provided for by subsection (3) of section 38 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 Commissioner shall determine the amount of compensation due for the damage, if any, done to such land and not already paid for under section 4, and shall pay such amount to the person injured, and shall pay to the persons interested all such costs as have been reasonably incurred by them by reason or in consequence of the proceedings for acquisition, together with compensation for the damage, if any, which they have sustained by reason or in consequence of such proceedings.

(3) The provisions of section 14 and of Part III shall apply, so far as may be, to the determination of the compensation payable under this section.

44.—(1) The provisions of this Act shall not be put in force for the purpose of acquiring a part only of any building which is reasonably required for the full and unimpaired use of such building if any person interested desires that the whole of such building shall be acquired. Acquisition of part of building.

(2) The question whether a part of any building is reasonably required for the full and unimpaired use of the building shall, if the parties cannot agree, be referred by the Commissioner to the Court for determination.

(3) If any question arises as to whether any land proposed to be taken under this Act does or does not form part of a building which is reasonably required for the full and unimpaired use of the building within the meaning of this section, the Commissioner shall refer the determination of such question to the Court and shall not take possession of such land until the question has been determined.

45. Where the provisions of this Act are put in force for the purpose of acquiring land at the cost of any Parish Council or of the Kingston and St. Andrew Corporation or of the National Water Commission, the charges incurred by the Commissioner in such acquisition shall be defrayed from or by such any Parish Council or the Kingston and St. Andrew Corporation or the National Water Commission, as the case may be. Payment of Commissioner's charges by Parish Council and K.S.A.C.

46. No award or agreement made under this Act shall be chargeable with stamp duty, and no person claiming under any such award or agreement shall be required to pay any fee for a copy of any such award or agreement. Exemption from stamp duty, etc.

Bar of suits
to set aside
awards.

47. No suit shall be brought to set aside an award or apportionment under this Act.

Regulations.

48.—(1) The Minister may make regulations generally for the better carrying out of the provisions of this Act.

(2) Regulations made under this Act shall be subject to affirmative resolution.

42/1969
3rd Sch.

Penalties.

49. Every person guilty of an offence against this Act shall be liable upon conviction before a Resident Magistrate to a fine of one hundred dollars or in default of payment of such fine to imprisonment for any period not exceeding six months.