

# LAND Policies & RURAL Development



**C. ASHOKVARDHAN**



**CENTRE FOR RURAL STUDIES**  
**LBS National Academy of Administration**  
Mussoorie - 248179 (Uttarakhand)

LAND POLICIES & RURAL DEVELOPMENT

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**&**  
**RURAL DEVELOPMENT**

2002

Dr. C. Ashokvardhan

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Centre for Rural Studies  
LBSNA



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**LAND POLICIES & RURAL DEVELOPMENT**

**2008**

**Dr. C. Ashokvardhan**  
**IAS**

**Centre for Rural Studies**  
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## **DEDICATION**

**Presented to Shri Rudhra Gangadharan, IAS, Director, and Shri Padamvir Singh, IAS, Joint Director, LBS National Academy of Administration, Mussoorie, in recognition of their persistent endeavour to bring the Academy in tune with current demands and pressures on today's superior civil services.**

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## **FOREWORD**

Land is crucial to rural livelihood. Hence any programme for development of rural areas must take into account the administration of land in specific regions.

2. Dr. C. Ashokvardhan has made an impressive study on land administration policy and its linkages with rural development. I believe this publication will be of great use to administrators, policy makers and academics, alike.

**RUDHRA GANGADHARAN**

Director  
LBS National Academy of Administration  
Mussoorie- 248 179 (India)



## FOREWORD

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**RUDRA GARGALHARA**

Director

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## **PREFACE**

**PADAMVIR SINGH**  
**IAS**

**Joint Director**  
**Lal Bahadur Shastri National**  
**Academy of Administration**  
**Mussoorie**

This work is an incisive probe into land issues that usually crop up in the process of development. As industry grows and expands, the demand for land increases. There will be acquisitions and involuntary displacements.

The acquisition of farm land for setting up industries has become a highly emotive issue because Indian agriculture is currently in a state of crisis. Everybody from the Prime Minister to the farmer is painfully aware that although the economy as a whole is growing at an impressive clip of over 8 per cent a year, the agricultural sector is growing by barely 1.5 - 2 per cent. Farm productivity has stagnated and declined, public and private investments in irrigation and rural development have fallen (though this is often not reflected in official statistics) and farmers have been committing suicide because of their inability to repay loans.

To hold a position that compensation is rehabilitation is not true. Compensation is defined as the average of the registered price in an area for three years. It is a public secret that land prices are grossly under-quoted in the sale deeds. Since the registered price is used as the norm, land losers do not get the full price. Key issues are not restricted to compensation alone. For instance, why should the State acquire land for private entities instead of asking them to buy it through negotiations with landowners? Can landowners and other dependents be deprived of their livelihood without their consent?

It is not only the cost of the land which is an issue, it is important to ensure that the displaced people become productive citizens. The shift in focus from the compensation-centred to the reconstruction-centred is not just about money, it is about participation. Progress always requires paradigm shifts, and in dealing with the issues of involuntary re-settlement we need a shift in thinking. We cannot wait ad-infinitum.

In the new paradigm, more and more responsibility may have to be transferred to the private enterprises to administer their own relief and rehabilitation programmes. The State may serve as a watch-dog with a common minimum policy on R&R. The role of the State in the context of the liberalized economy is to balance the benefits of liberalization against the risks and costs to the displaced people, in particular to the vulnerable segments of the population.

Dr. C. Ashokvardhan is to be complimented for bringing together the land policies followed by various State governments, at one place. That gives a unique chance to the Academy's Officers Trainees to acquaint and update themselves on issues resolved and issues evading solutions.

**PADAMVIR SINGH**

## INTRODUCTION

**T. K. MANOJ KUMAR**  
**IAS**

**Former Deputy Director  
(Senior) and  
Co-ordinator-cum-Vice  
Chairman  
Centre for Rural Studies  
Lal Bahadur Shastri National  
Academy of Administration  
Mussoorie**

The recent shift of focus on the human side of land acquisition crystallized in consent awards in the land acquisition deal. The fact remains, nonetheless, that the kind of monetary compensation policy that we have, ignores the issue of livelihood and habitat. Direct and indirect loss of livelihood, is usually not compensated for and the destruction of the habitat and ecology never constituted a part of cost computation.

Robert Merton said in his famous "self-destroying prophecy" that to the extent that we can use our analytical skills we should be able to develop models that give us self-destroying prophecy because now we know what is likely to happen and, therefore, we should be able to guard against it. This enables us to target component planning and financial allocation. Now the ideal result is that the risks are prevented or minimized. The word 'minimised' is important. It will not be possible to have perfect situation every time.

The crux of the matter is how quickly we get the displaced to re-engage in the mainstream productive activity. Such an approach is non-adversarial, minimizes bureaucracy and involves the community all along. These are the hallmarks of the tool. That implies the involvement of the community and understanding its options of what is likely to happen, the involvement of the host community and deciding how to engage them as well. Participation is the glue that

holds societies together. It is the glue that holds communities together. Participation, therefore, is the key to any successful re-settlement venture. It means involving frequently the organization groups at the grassroots levels.

Acquiring cheap land by piggyriding on government's shoulders, thanks to the Land Acquisition Act, 1894, is set to end soon. What's more, private sector companies will now have to shell out higher prices as a new Act will ensure hiking circle rates by several times. The new overhauled Land Acquisition Act proposes to disallow states to acquire land on behalf of the private sector. It also seeks to tighten the definition of public purpose- for which the state has the power to compulsorily acquire land from owners -by restricting it to just a handful of sectors. The GOI is now taking cautious steps to work out the compensation package for the land losers. Valuation of land holds the key to the compensation package and therefore, the Government is trying to work out separate valuation packages, depending upon the end use.

Dr. C. Ashokvardhan, an expert on land-related issues, has developed focus on the human side of diverse land policies and their impact on rural development, in the main, in the present work. His academic association with the LBS National Academy of Administration and its Officer Trainees is fairly long and he possesses the skill to convey the requisite information to the Academy's trainees in a logical yet non-technical manner.

This pioneer book on land policies and rural development will definitely occupy a place of pride among the publications of the Centre for Rural Studies, LBSNAA, Mussoorie.

**T. K. MANOJ KUMAR**

## ABOUT THE BOOK

**ASHISH VACHHANI**  
**IAS**

**Deputy Director**

**and**

**Coordinator**

**Centre for Rural Studies**

**Lal Bahadur Shastri National**

**Academy of Administration**

**Mussoorie**

The work entitled "**Land Policies and Rural Development**" by Dr. C. Ashokvardhan is almost a pioneer study of the issues involved, based as it is on a recent coverage of the states concerned by the author.

Land is capital and it is more appropriate to hold so in the wake of the post-liberalization paradigm shift. There is a renewed thrust on industrialization mounting tremendous pressure on the scarce land resource. Striking a neat balance between the demands of the industry and those of the land-loser is posing the biggest challenge before the policy makers today and in this backdrop a study of the human side of land acquisition, rehabilitation and resettlement assumes paramount importance and relevance.

The need of the hour is to figure out how agriculture and industry can coexist. And facilitating such coexistence is not difficult. All that is needed is to strike a clear distinction while notifying land for such projects. Agriculture is still the source of sustenance for most Indian families. In what could be seen as a major paradox, cultivable land in India has been shrinking every year. At present, India's total cultivable area is estimated to be about 173 million hectares. At the same time, an estimated 108 million hectares of land precisely because it is either forested or unsuitable for agriculture due to its topography, can be developed for non-

agricultural uses. The onus to ensure that fertile land is not notified for industrialization should be on the respective State Governments. They should also ensure that such projects are limited to barren and waste land. What must be understood is that the creation of new industrial townships, meant to supplement the crumbling urban infrastructure of the country, can no longer be postponed. That apart, SEZs are important also because they would aid the much needed decentralization of development and urban governance.

The good news is that India's growth spurt and rosy economic prospects have turned land valuable. Industrialization produces long-term benefits for all. It is indisputable that without industry India's millions do not stand much chance of a prosperous future. The bad news is that we are doing a poor job of managing this transition, which is from where the violence stems.

The decision to frame a comprehensive R&R Policy comes in the wake of massive protests triggered by farm land acquisitions in Nandigram and Singur. There have been protests not only against land acquisition for the Nandigram SEZ but also against the Singur Project, which is a non-SEZ. All this chaos is the result of a singular act of omission. The Land Acquisition Act has lost its legitimacy, but it has not yet been replaced by an updated set of norms that takes oustees' interests into account.

To work out sensitive packages, cash for land, even if at prevailing market rates, does not have to be the only form of compensation. Some of it could be in the form of annuities payable at regular intervals. To incorporate the future market value of land acquired for industry, packages could include shares in the new venture. Given prevailing low skill levels, a job for a member of each displaced family may not be practical, but training and skills enhancement programmes for its younger members would be. A draft

rehabilitation policy for people displaced from their farm lands is said to be on the anvil but has not seen the light of the day yet. Till a policy that is transparent and fair to all concerned can be devised, protests over land acquisitions will go on. Irredentists who see evil as inherent in industrialization and modernity will continue to jump on the bandwagon of protests.

The Centre for Rural Studies values its continued association with the author and it is to be hoped that the present focused study on land policies will go a long way in enriching the knowledge base of the IAS OTs at the LBSNAA.

**ASHISH VACHHANI**



rehabilitation policy for people displaced from their farms tends to sail on the wind but has not seen the light of the day yet. Till a policy that is transparent and fair to all concerned can be devised, protests over land acquisitions will go on. Urbanites who are well as informed in industrialization and modernity will continue to jump on the bandwagon of protests.

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ARISHI WACHSARI

## **ACKNOWLEDGEMENT**

**Dr. C. ASHOKVARDHAN**      **Principal Secretary**  
**IAS**                              **Deptt. of Revenue & Land**  
   **Reforms**  
   **Main Secretariat, Govt. of**  
   **Bihar**  
   **Patna- 800 015**

This book is a product of assistance received from many quarters in many states. There are constraints of space coming in the way of individually acknowledging the contributions made by scores of persons during my trips from West Bengal and Orissa, in the east, to Kerala, in the extreme south, in 2006. The purpose of my visits was to collect on the spot, to-date information on land policies pursued in different states with regard to land acquisition on the one hand and public and estate land management, on the other. Apart from meeting officials in the revenue and land reforms departments of the concerning states, I made it a point to interact with officials in the urban development and industries departments and in their respective corporations etc. as well, since the texture of land policy in the current context has become multi-disciplinary.

A research and fact-finding work of this type, would have, at its best, kept confined to file and desk movements in public offices, had it not got the approval of Shri Rudhra Gangadharan, Director, Lal Bahadur Shastri National Academy of Administration, Mussoorie for publication in the shape of a volume for wider use. I owe a special debt of obligation to Shri Gangadharan and to Shri Padamvir Singh, Joint Director, LBSNAA, who considered it fit to be brought to light and to be used by successive batches of the IAS trainees at the Academy. It will remain a challenge as well as an opportunity for the young leaders of today to learn from lacunae whatsoever and try to improve upon the state of affairs, for a better tomorrow.

Nothing is perfect, and yet, there has to be a move from the imperfect towards perfection. Stagnation simply annihilates. Shri Rudhra Gangadharan and Shri Padamvir Singh, using their acumen and singular traits of leadership have given a distinctive forward-looking image to the premier training Academy in the country and it can be hoped that the Academy will rise to still further heights of excellence in the days to come.

Shri T.K. Manoj Kumar and Shri Yatendra Kumar have left behind a track record of glorious innings as Deputy Directors (Senior) as well as outstanding in-house managers of the C.R.S. team. The Centre for Rural Studies will be missing them and so will the "outsider" participants, like me, who had the audacity to boast of a sense of belongingness, all through his stint over there.

Saying a word of thanks to Shri Ashish Vachhani, Deputy Director, the present incumbent in the C.R.S./LBSNAA, appears like a formality. But I think I must do this formality. I thank him sincerely for considering the inter-state experiences, as compiled in this work, to be of some use for the IAS OTs in the Academy. It can be hoped that he will continue in his endeavour to expose the young civil servants to the green and the gray of policies and programmes, impinging on the overall rural distress, deprivation and development scenario, in the days to come.

With the recent appointment of Dr. N.K. Kumaresan Raja as a Professor in the CRS, the much needed academic focus is bound to build up over there. The combination of the academic, the empirical and the administrative is all set to give strength to our convictions and our commitment to meet the challenges ahead.

There is always a set of role-takers, who though off-the centre-stage, create the kernel of the art performed.

While saying so, I have in my mind, Dr. Ms. Saroj Arora, the silent but restless off- the scene academic, who raced against time along with the author to bring this volume out on schedule, who extended the constant, much needed moral support to the entire CRS team, and who remained the veritable heart and the soul of this massive exercise throughout.

Lastly, I wish to place on record my gratitude for the patience with which Shri Samar Singh Kashyap, Shri Adesh Kumar, Shri Dalip S. Bist, Shri S.S. Kharola, Ms. Anju Bhoyte, Shri Ramesh Kothari and Ms. Anita Gupta toiled round the clock, fighting monotony and fatigue in the process, to finalize an elegant print script of the text.

The aid and assistance of all the colleagues over there in the LBSNAA remains invaluable. A sincere word of thanks will perhaps convey my feelings to some extent.

**C. ASHOKVARDHAN**

While writing to I met in my mind, Dr. Mrs. Mary Anne, the  
sheep and wolves - the same animals, who each meant  
from along with the motion to deny the volume out on  
students who examined the constant, much needed work  
support to the center OCS team, and who received the  
variable hand and the soul of the massive revision  
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The aid and assistance of all the colleagues over time  
in the LORNA remains invaluable. A sincere word of thanks  
will perhaps convey my feelings to some extent.

C. ASHOURAHAN

## CHAPTER - 1

### **CONSENT AWARDS IN LAND ACQUISITION IN WEST BENGAL, ANDHRA PRADESH, PUNJAB AND HARYANA**

There is unprecedented pressure on land especially in the wake of the entry of private players in the sphere of urban renewal and industrial upsurge. Whereas the urban focus is on peripheral expansion, the industry is making steady inroads into the country's heartland, particularly along the major highways. Additionally, sprawling infrastructure, germane to various sectors has, in turn, its own demand upon land. Land policies are being chalked out to provide the semblance of some system, contrasted to ad-hocism, in matters of town planning and land use.

Nonetheless, while all said, there are certain key issues, on which a final view remains to be taken. Land acquisition being a compulsory act carried out on behalf of the Sovereign State to subserve "public purpose" (or even "Public Utility": the recent coinage), and the bandwagon of development, unleashed, cannot and need not be stopped (rather delayed land acquisition has its own costs), there is little wonder, the tree is very often, lost for the wood. Whether there could still be a human face of land acquisition is the central theme of discussion in this paper.

Two factors, with regard to land are fairly critical in respect of land acquisition:

- (a) Determining and awarding adequate compensation for the land involved; and
- (b) Re-creating life itself anew in the aftermath of land acquisition, vis-à-vis the land-loser, calls for

measures to regenerate social, economic and cultural activities and ethos on the debris of the past.

The ground reality remains that monetary calculations of land value have got nothing to do with the actual, reigning price-structures, in the informal market. To add insult to injury, the half-hearted and half-baked measures aiming at socio-economic resuscitation are nowhere a palliative to the extremely painful process of the severance of the land-loser from the snug of a traditional home. Seldom is a tear shed on the snapping of his ties with agricultural pursuits, which ensured him, either as a farmer or a farm labourer, the bare minimum bulwark for survival. Hence, with the loss of land, the life hinging around the land is lost, too. Hence, the issues are:

1. Ensuring that the displaced are significantly better off than before, not just economically but also in terms of human development and security;
2. Integrating rehabilitation concerns into the development planning and implementation.
3. Securing the community's consent before approving a project; and
4. Subjecting development projects that involve transfer of 100 acres or more to holistic appraisal that will focus on its desirability and justifiability.

While oustees are to be relocated as an organic whole and not in fragments, lands are to be given to all agricultural families, mandatory employment in the new projects is to be the rule and there has to be an endeavour to ensure that the new settlements are as close to the factory (or project) sites as possible.

This paper is aimed mainly at the determination of market value for the land acquired under the Land Acquisition Act, 1894, inclusive of modes of reaching at consent award, followed in various states, again under the same Act.

Consent award as a matter of public policy is provided under section 11 (2) of the Land Acquisition Act itself. It provides an opportunity to the land-loser/ interest-holder to make a self-assessment of the Award due to him, taking note of damages as well. The self-assessment is to be discussed across the table, with the land-loser, the Land Acquisition Collector and the Requiring Body present. Various State Governments have delineated specific procedures for such self-assessment and deliberation on ceilings upto which enhancements beyond the original award could be made. There may or may not be the land-loser's consent. But at least an opportunity for self assessment and deliberation is provided by the system. In case the land-loser agrees to receive the consent amount, no reference to courts will be allowed, the acquisition process will be expedited and may be concluded as per the time-limit prescribed under section 11-A of the Act. Besides, the consent award may be supplemented by a mutually agreed upon RR package, again through the same deliberation process. Area and condition-specific packages, with the Requiring Body present in the course of deliberations, will definitely act as a palliative to the painful process and outcome of the compulsory land acquisition measures.

### **THE LEGAL FRAMEWORK**

The principles for determining compensation have been laid down in Sections 23 and 24 of the Land Acquisition Act, 1894. Section 25 provides that the



amount of compensation, awarded by the Court will not be lower than the amount awarded by the Collector. Section 11 provides for enquiry and award by the Collector. Section 11 (2) provides for consent awards. Section 11-A provides the period within which an award shall be made. A quick look at the relevant provisions will be useful for closer appreciation of the issues involved.

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

- (i) the true area of the land;
- (ii) the compensation which in his opinion should be allowed for the land; and
- (iii) the apportionment of the said compensation among all the persons known or believed to be interested in the land, of whom, or of whose claims, he has information, whether or not they have respectively appeared before him;

Provided that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government or such officer as the appropriate Government may authorize in this behalf;

Provided further that it shall be competent for the appropriate Government to direct that the Collector may make such award without such approval in such class of cases as the appropriate Government may specify in this behalf.

1) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry, make an award according to the terms of such agreement.

2) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

3) Notwithstanding anything contained in the Registration Act, 1908 (16 of 1908), no agreement made under sub-section (2) shall be liable to registration under that Act.

11-A. Period within which an award shall be made- (i) The Collector shall make an award under section 11 within a period of two years from the date of the publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse.

Provided that in a case where the said declaration has been published before the commencement of the Land Acquisition (Amendment)

Act, 1984, the award shall be made within a period of two years from such commencement.

Explanation- In computing the period of two years referred to in this Section, the period during which any action or proceeding to be taken in pursuance of the said declaration is stayed by an order of a Court shall be excluded.

23. Matters to be considered in determining compensation- (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration-

Firstly, the market-value of the land at the date of the publication of the notification under section 4, sub-section (1):

Secondly, 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 the Collector's taking possession thereof;

Thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

Fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

Fifthly, if in consequence of the acquisition of the land by the Collector the person interested is compelled to change his residence or place of business

the reasonable expenses (if any) incidental to such change; and

Sixthly, the damage (if any) bona fide resulting from diminution of the profits of the land between the time of publication of the declaration under section 6 and the time of the Collector's taking possession of the land.

(1-A) In addition to the market value of the lands, as above provided, the Court shall in every case award an amount calculated at the rate of twelve per centum per annum on such market value for the period commencing on and from the date of the publication of the notification under section 4, sub-section (1), in respect of such land to the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

Explanation-In computing the period referred to in this sub-section, any period or periods during which the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.

(2) In addition to the market-value of the land as above provided the Court shall in every case award a sum of (thirty per centum) on such market value, in consideration of the compulsory nature of the acquisition.

24. Matters to be neglected in determining compensation- But the Court shall not take into consideration--

Firstly, the degree of urgency which has led to the acquisition;

Secondly, any disinclination of the person interested to part with the land acquired;

Thirdly, any damage sustained by him which, if caused by a private person, would not render such person liable to a suit;

Fourthly, any damage which is likely to be caused to the land acquired after the date of the publication of the declaration under section 6, by or in consequence of the use to which it will be put;

Fifthly, any increase to the value of the land acquired likely to accrue from the use to which it will be put when required;

Sixthly, 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;

Seventhly, any outlay or improvements on, or disposal of, the land acquired, commenced, made or effected without the sanction of Collector after the date of the publication of the notification under section 4, sub-section (1); or

Eighthly, any increase to the value of the land on account of its being put to any use which is forbidden by law or opposed to public policy.

24 A. Further provisions for determining compensation..... In determining the amount of compensation to be awarded for any land acquired under this Act, the Court shall also have regard to the following provisions, namely:-

(1) When any interest in any land acquired under this Act has been acquired after the date with

reference to which the market-value is to be determined, no separate estimate of the value of such interest shall be made so as to increase the amount of compensation to be paid for such land;

(2) If, in the opinion of the Court, any building is in a defective state, from a sanitary point of view, or is not in a reasonably good state of repair, the amount of compensation for such building shall not exceed the sum which the Court considers the building would be worth if it were put into a sanitary condition or into a reasonably good state of repair, as the case may be minus the estimate cost of putting it into such condition or state;

(3) If, in the opinion of the Court, any building which is used or is intended or is likely to be used for human habitation, the amount of compensation for such building shall not exceed the value of the materials of the building, minus the cost of demolishing the building.

25. Amount of compensation awarded by Court not to be lower than the amount awarded by the Collector-- The amount of compensation awarded by the Court shall not be less than the amount awarded by the Collector under Section 11.

## **GENERAL PRINCIPLES OF VALUATION**

Chapter V of the West Bengal Land Acquisition Manual, 1991 enunciates the general principles of valuation. The principles are fairly elaborate and are of universal applicability.

## **CONSENT AWARDS IN WEST BENGAL**

Land & Land Reforms Department, Government of West Bengal G.O. No. 1703 -3M-07/06, Kolkata dated, the 6<sup>th</sup> June, 2006 delineates the procedure to be followed in consent awards. Vide this order; the LAC (Land Acquisition Collector) is required to follow the revised and innovative procedures and administrative re-arrangements (as specified in the G.O.) for the expeditious disposal of land acquisition cases within the prescribed time-frame for the acquisition of land under the Land Acquisition Act, 1894.

The LAC in his notification under section 4 of the Act, shall, in addition to inviting objections, if any, for proposed acquisition of the land, shall also invite all persons having the rights and title or other interest in land proposed to be acquired, to exercise their right to submit claims for compensation to get compensation benefits under "Consent Award" which may be allowed by the Collector under sub-section (2) of section 11 of the Act. The claim of compensation shall include claim for compensation for the loss of land, trees standing on the land, building, structures and machineries attached to the land, value of water body, separately for different categories/ classification of land and anything attached to the land. The persons having title, rights and interest in the land, may also claim for the settlement and rehabilitation if shifting of own homestead is involved. Application for consent award shall be submitted in the prescribed form in the Annexure of G.O. No. 1703-3M-07/06, Kolkata, dated 6.6.2006 mentioned above. It will be the responsibility of the applicant to enclose the sale data of at least 10 sale deeds of his /her similar lands relating to the same mauza or contiguous mauzas, registered within a period of 12 months. The sale price as mentioned by

the vendor and the vendee in the deed shall be considered for the calculation of average land price of any type-class of land, but not, repeat not, the price fixed by the registration office for the purpose of stamp duty and registration.

The petitioner shall, after self-assessment of the market value add thereupon such amount as is to be derived calculating @ 12% p.a. also for the period of 3 months or from the date of notification u/s 4 and the date of submission of consent application whichever is more; but the LAC shall add thereupon additional amount if due on the date of actually setting the consent award. This will not, however, deprive any recipient from getting interest as prescribed in law in case payment or any part thereof under consent award has been delayed and such interest should be as prescribed in Section 34 of the Act. The petitioner shall separately calculate the solatium @ 30% of the gross value of the land and things attached to the land.

The LAC shall, at any stage after the publication of declaration under section 6 of the Act, may, if so satisfied on the basis of the examination of the claims and supporting documents submitted to establish the claim and also being satisfied that such claim is not exceeding 10% of the internally assessed value, may sanction the amount of claim including compensation and RR submitted by the petitioner as a "Consent Award" under section 11 (2) of the Act. The LAC shall be entitled to call the petitioner who has submitted application for consent award for an interview and bargain across the table to fix up the consent award money including the RR, where the authorized representative of the requiring body may also be allowed to attend and sign the agreement leading to



consent award. The petitioner agrees to receive the money under consent award and undertakes that he/she shall not make further claim for the enhancement of the compensation money including RR through any court of law.

The procedure for assessing market value has been laid down vide the Land & Land Reforms Department, Government of West Bengal G.O. No. 1705-LA-3M-07/06, Kolkata, dated the 6<sup>th</sup> June, 2006.

### **REHABILITATION & RE-SETTLEMENT (R&R) POLICY IN WEST BENGAL**

Guidelines for providing RR benefits to the evicted BPL families have been issued vide the Land and Land Reforms Department, Government of West Bengal G. O. No. 1706-LA-07/06, Kolkata, the 6<sup>th</sup> June, 2006. The RR package shall apply to such projects as taken-up by the State Government, its subordinate offices, undertakings, Development Authorities, local bodies or a joint venture or any State Government- planned and sponsored private sector projects taken up in the state of West Bengal. The RR package is mandatory, and will be two fold:

- (a) One-time cash assistance of Rs. 2000/- per BPL family as transportation or trans-shipment cost to carry away its family belongings, viz. cattle, utensils, all removable materials from the left-out house and homestead;
- (b) One-time cash assistance to each BPL family to help it to construct its own dwelling house or a living shelter at the rate prescribed below:

(i) BPL families evicted from own homestead which had a pukka structure which shall mean and include all mud-house, wooden houses or brick houses having tiles or tin shed or RCC slab as roof..... Rs. 25,000/-

(ii) BPL families evicted from a dwelling house/ shelter/ shed, being kachcha structure which shall mean and include any type of hut, dwelling shelter, Jhopri, used for physical residence of the family on any land not belonging to it ..... Rs. 10,000/-

Application of additional alternative RR package: The following additional alternative RR package shall apply only to such projects as taken up by the State Government of West Bengal, its subordinate offices, undertakings, Development Authorities, local bodies or Joint Venture or any State Government - planned and sponsored private sector. It has been decided that, for the time being and until further orders, in the township development projects, industrial complex development projects including SEZ and Infrastructure Development projects taken up by the Government Departments or any development authority or any joint venture, or Government planned-and-sponsored private sector, the evicted families should be resettled in the nearest vicinity, as far as possible, in the manner prescribed below:

(a) If the LA project is taken up within an existing municipality/ corporation or a proposed urban or industrial township area, the evicted families are to be given resettlement and rehabilitation by allotment of a two katha plot of land to each evicted family or in lieu thereof by freely allotting a constructed flat, with the help of or in the line of Valmiki-Ambedkar Abasan Prakalpa: and if such RR benefits are made available

to the evicted families, the responsibility of providing mandatory cash assistance prescribed at para 3 (b) above shall not apply.

(b) Similarly, if the LA project is taken up in the rural areas for any of the aforesaid purposes, the evicted families are to be given resettlement and rehabilitation by the allotment of a two katha plot of land to each evicted family or in lieu thereof by allotting a constructed house in the pattern or within the prescribed amount as fixed for Indira Awas Yojana; which shall exempt the requiring body from the responsibility of providing mandatory cash assistance at the rate prescribed in para 3 (b) above.

The requiring bodies shall have, however, all the rights and privileges to offer any better package, above or in lieu of, the aforesaid mandatory financial assistance, to BPL or any other families to be evicted in connection with their concerned project, on the basis of mutually agreeable terms and conditions for mutual benefit. And in all cases, the cost to be necessarily incurred for the implementation of the above State RR packages shall be borne by the requiring body and all such RR cost shall be treated as a part of the LA cost.

The District Magistrate and Land Acquisition Collectors shall ensure, assist, supervise and monitor proper implementation of the aforesaid RR package by ensuring the physical involvement of the requiring bodies and associating any other organizations or agencies as may be required for effective and timely implementation of the RR packages in any land acquisition project taken up with effect from 1<sup>st</sup> June, 2006, and submit a report of completion after full execution of the RR package in all concerned LA cases

to the State Government in the Department of Land & Land Reforms. They may, however, bring to the notice of the Government if there are any problems in the proper and time bound implementation of the RR package.

### **THE INTERESTS OF THE SHARE- CROPPERS**

A unique feature of the West Bengal model is the concern for protecting the interests of the share croppers subsisting on the land being acquired. Applications for consent award shall be submitted in the prescribed forms annexed to the concerning G.O. of the Department of Land & Land Reforms, Government of West Bengal, bearing No. 1703-3M-07/06, Kolkata, dated, the 6<sup>th</sup> June, 2006. The application forms are different for the rural areas, for the urban areas within municipalities/ corporations and for the "barga- held land".

In the Land Acquisition Act, 1894, sub-section 4 of section 23 has been added and amended by the West Bengal Act XLIX of 1981 for providing compensation to the Bargadars cultivating a raiyati land acquired or proposed to be acquired. Clause 'seventhly' has also been added to sub-section (1) of section 23 of the Act for the same purpose (Vide Appendix No. V).

A bargadar is a person who under the system generally known as adhi, barga or bhag cultivates the land of another person on condition of delivering a share of the produce of land to that person and includes a person who under the system generally known as 'Kisani' cultivates the land of another person on condition of receiving a share of the produce of

such land from that person. Compensation payable to a bargadar for loss of earning under clause 'seventhly' of sub-section (1) shall not exceed six times the net average annual income which the bargadar derived or might have derived from the land during three years immediately preceding the date of acquisition. The net annual income of a bargadar in any year shall be taken to be fifty per cent of the total produce of the land cultivated by him in that year where plough, cattle, manure and seeds necessary for cultivation are supplied by the person owning the land and seventy five per cent of the total produce of the land in all other cases. Bargadars, who have already been recorded in the records of rights; bargadars, who hold barga certificates under the West Bengal Land Reforms Rules and bargadars, who are found to be so by the Revenue Officer concerned under section 50 of the West Bengal Land Reforms Act 1955, are all entitled to compensation for the loss of earnings when any land cultivated by them is acquired.

(3) The Collector should ensure that the bargadars are duly compensated for their loss of earnings. It is compensation as per sub-section (1) of section 23 and shall be included in the award as per sub-section (1) of section 26 of the Act.

(4) The average produce of the land is to be assessed from the records of the concerned Agriculture Development Officer and value of the produce is to be verified from the District Agriculture Marketing Office.

## **CONSENT AWARDS IN ANDHRA PRADESH**

A reference to a couple of G. O.s issued by the Irrigation & CAD (Projects Wing T.G.P.II) Department, Government of Andhra Pradesh seems essential here.

### **(1) G.O. Ms. No. 34, dated 08-03-2004**

The background to this G.O. was that in the cases where the decretal enhancement in the award amount u/s 18 (1) references of the L.A. Act, 1894, was more than 50%, the Land Acquisition Officers were moving the Government seeking orders whether to file an appeal before the High Court or not. In order to simplify the process for avoiding delays and accumulation of huge amounts towards interests it was decided to decentralize the decision-making process to the district level.

The G.O. mentioned above constituted the District Level Land Acquisition Monitoring Committees to review the proposals where the enhancement made by the Reference Courts and High Court was above 50% and less than 100% and take suitable action either to prefer appeals or to make payment of decretal charges. The Committee was constituted as follows:-

1. Joint Collector of the district Chairperson concerned
2. Special Collector of the Project Associate Chairperson concerned, if any
3. Land Acquisition Officer Member/ Convener
4. Superintending Engineer Member concerned
5. Government Pleader/ Assistant Member Government Pleader concerned.

Para 5 (i to vii) laid down the duties of the Committee. But certain amendment was made in para 5 (v) of G.O. No. 34 dated 8.3.2004, by the following G.O.

**(2) G.O. Ms. No. 79, dated 19-04-2006**

Sub para V of para 5 of G.O. No. 34 dated 8.3.2004 was substituted by para (V) (a) and (b) as noted below-

(a) The District Collectors/ Special Collectors have been authorized to examine and take decisions whether to prefer an appeal or to deposit the decree charges in respect of the land acquisition court cases relating to the Irrigation and CAD Department where the enhancement ordered by the Reference Court/ High Court, as on the date of the order, including all the benefits such as the market value, solatium, additional market value and interest and the future liability arising out of Section 18 references and Section 28-A applications, concerned by the same notification under Section 4 (1) of the Land Acquisition Act is above 100% but below 150% and the total additional financial involvement is less than Rs. 10.00 lakhs only.

(b) In cases, where the enhancement ordered by the Reference Court is 100% or more over the award made by the Land Acquisition Officer as on the date of the order, including all benefits such as solatium, additional market value and interest and also the future financial liability on account of Section 18 references and Section 28-A applications covered by the same notification under section 4 (1) of the L.A. Act, 1894 is Rs. ten lakhs and above, in so far as the Land Acquisition Court cases relating to Irrigation and

CAD are concerned, appeals will be filed before the Appellate Court i.e. High Court without waiting for the opinion of the Government Pleader or the clearance of the District Collectors/ Special Collectors concerned.

### **STATE LEVEL NEGOTIATION COMMITTEE**

The Andhra Pradesh Land Acquisition (State Level Negotiations Committee) Rules, 1998 were issued vide G.O. Ms. No. 431 Revenue (L.A. 2) dated 18<sup>th</sup> June, 1998. Earlier district negotiation committees had been constituted under the Andhra Pradesh Land Acquisition (Negotiation Committee) Rules, 1992.

The Andhra Pradesh Land Acquisition State Level Negotiation Committee for the settlement of the claims of compensation and total benefits payable under the Act through negotiations shall be constituted at the state level. The State Level Committee shall be Chaired by the Commissioner, Land Revenue and shall have Secretary to Government, Revenue, Secretary to Government, Law, Secretary to Government, Finance, besides others, as members. The Convener of the State Committee notices through the concerning Gram Panchayats the persons interested and authorized by the Gram Panchayat to attend the meetings of the State Committee. The State Committee may take up local inspections whenever deemed necessary or the Chairman of the State Committee may nominate a team of officials to inspect the lands and submit a report. The State Committee after going through various material papers, documentary evidence and after holding negotiations with the persons interested shall determine the total benefits payable and shall communicate its decision to the District Collector's



Committee or the Requisitioning Department Authority or to the Government, as the case may be.

### **REHABILITATION & RESETTLEMENT (R&R) POLICY IN ANDHRA PRADESH**

The Irrigation & CAD (Projects Wing-LA-IV-RRI) Department G.O. Ms. No. 76 dated, the 13<sup>th</sup> April 2006 lays down the following RR policy for the PDF (Project Displaced Family):

(a) Any Project Displaced Family (PDF) holding upto an area of 5 cents of village site and whose site has been acquired shall be allotted house site to an extent of 202 square metres (5 cents) of land in rural areas or 75 square metres of land in urban areas in the Re-settlement Zone besides payment of compensation for the structures, if any, therein;

(b) In case if any Project Displaced Family (PDF) holds village site of more than 5 cents, such holder shall be allotted village house-site to an extent of 202 square metres (5 cents) of land in rural areas or 75 square metres of land in urban areas in the Re-settlement zone and also be paid ex-gratia for the site in excess of 5 cents.

(c) The ex-gratia payable as above shall be on par with the package deal payable in case of acquisition of private/ patta lands.

### **CONSENT AWARDS IN PUNJAB**

Standing Order No. 28 issued by Financial Commissioner (Revenue) was modified by the Department of Revenue, Government of Punjab Letter No. 1/55/78-LR-1-1979, Chandigarh dated 13-3-2000.

The Land Acquisition Act, 1894 provides that a land owner should be paid the market value (plus interest and solatium) for the land compulsorily acquired. It is, however, observed that as per procedures set forth, what the land owners actually receive, in the first instance, is only a fraction of the market price. This is primarily because of the outdated and faulty procedures followed in assessing the market value of the land. The Land Acquisition Collectors base their awards on prices of land worked out by the Deputy Commissioners, who in turn, base these rates on 'Chhant' i.e. the average sale price of one year as per registration deeds. Even then the sale deeds having unusually high rates are ignored and the situation is worsened by a tendency amongst the farmers to undervalue their land to save on stamp duty, and in urban areas, by a temptation to reduce liability on account of capital gains. The aggrieved land owners have to wage a long and costly battle in different courts to get their legitimate dues. After litigation often lasting 10-15 years, what the land owners manage to get falls far short of the market value. Very often even after securing favourable verdicts from the courts, the farmers have to wait for many years to get the price. In the meantime, land prices soar up and the farmers whose lands are acquired are altogether unable to purchase any alternative land at a reasonable price. In Punjab, particularly, farmers have a great attachment for land and it is difficult for land owners to get reconciled to its loss particularly when this is the only source of livelihood. Therefore, in the type of situation which presently prevails, acquisition brings in its wake a sense of physical loss and emotional insecurity. The money received in installments is invariably frittered away on unproductive expenditure.

2. Based on this experience, it was decided that the existing procedures should be streamlined to ensure that in case of compulsory acquisition the owners not only get the full market price but are also assured that this price is paid in lumpsum in the first instance itself, and there should be no need for the landowners to waste time and money in going to courts to get their dues through endless litigation.

The guiding factor for determining the basis of market price would be what is the price at which an owner would be willing to sell his land and what is the price a buyer would be willing to pay if acquisition proceedings were not to take place. With increase in urbanization and the land becoming a scarce commodity, locational factors like proximity to a road, a town, an urban agglomeration or even the direction in which a city is expanding have assumed far greater importance than whether a land is 'chahi' or 'barani' or even 'Banjar'. Theoretically, two adjacent 'chahi' and 'barani' 'taks' may carry different values for compensation purposes on the basis of 'Chhant' but there may be hardly any difference in their market price. Moreover, with the development of sophisticated means of irrigation, and advanced watershed management, in a large number of cases now whether the land is 'barani' or 'chahi' depends largely on the capital and financial resources at the disposal of the owner or the size of his holding. A distinction in pricing on the basis of its quality/ class may place a premium on economic affluence of the land owner and may also leave a lot of discretion in the hands of the Land Acquisition Collector. Therefore, the distinction between various classes of land such as 'chahi' and 'barani' etc. would no longer be considered relevant unless there are strong reasons to act otherwise. Thus a distinction would have to be made if the land is

rocky or there are steep hills, 'pahar', deep depressions and sand dunes, which in the normal course would fetch very little market price as their land use would be very much restricted and the cost of development would be high. Shares of khewatdars in "nadis" would also fall in the same category.

In a large number of cases a lump sum amount is recommended by these Committees for each 'quality' or class of land. When justification for this figure is sought the amount is merely split into price, solatium, and interest by backward calculation. It needs to be reiterated that as per legal provisions market price is to be computed on the date of notification under section 4 and not on the date recommendations are made by DLPFC. A lump sum amount should only be proposed if it represents negotiated price, and even here, it should be ensured that it is not too exorbitant. It may, however, be kept in view that negotiations may turn out to be cheaper in the long run, as there would be a saving of solatium and interest (unless payment is heavily delayed after that) as also litigation. It may be noted that there is no bar for such negotiation at any stage of the proceedings in compulsory acquisition. The services of DLPFC should be utilized by the Department if there is any hesitation on its part to attempt negotiations single-handedly. The reasons for the absence of non-official members shall also be clearly brought out in the proceedings indicating efforts made to ensure their presence.

### **Issue of No Objection Certificate (NOC)**

Authorities competent to issue N.O.C.:

The State Level Land Acquisition Board (SLLAB) shall be the competent authority for issuance of No Objection Certificate for the following classes of cases:-

(i) All cases of land acquisition under the Land Acquisition Act, 1894 involving an area of more than 25 acres;

(ii) Cases of acquisition of area more than 5 acres in and on the periphery of all Municipal Towns.

(iii) All cases of acquisition under the Land Acquisition Act, 1894 involving an area declared surplus under the Punjab Land Reforms Act, 1972.

The cases of the acquisition of land under the Land Acquisition Act, 1894 for the construction of drains for the purpose of flood control or anti-water logging operation are exempted from the requirement of 'No Objection Certificate' from the State Level Land Acquisition Board.

In all cases which are not referable to the State Level Land Acquisition Board the competent authority for the issuance of N.O.C. shall be the Deputy Commissioner concerned.

### **Constitution of the State Level Land Acquisition Board (SLLAB)**

The State Level Land Acquisition Board shall consist of the following:-

Financial Commissioner, Revenue : Chairman

Financial Commissioner and Secretary to Government, Punjab, Agricultural Department : Member

Principal Secretary, Town and Country Planning Department : Member

Principal Secretary, P.W.D. (B&R) : Member

Principal Secretary, P.W.D. (PH) : Member

Principal Secretary, Finance : Member

Principal Secretary, Irrigation and Drainage : Member

Principal Secretary, Housing and Urban Development : Member  
Principal Secretary, Local Government : Member  
Director Land Records / Acquisition : Member  
Deputy Commissioner of concerned district : Member  
Spl. Secy. Rev./ Addl. Secy. Rev./ Joint Secy. Rev. : Convener.

Note: - The Secretary of the Acquiring Department, if he happens to be the Secretary of a Department other than those constituting the SLLAB, shall be co-opted a member of the Board for the purpose of consideration of the proposal of that department.

If the case falls within the competence of the D.C., he shall, keeping in view the opinion of the said authorities and matters mentioned above, either issue 'No Objection Certificate' or suggest any practicable alternative in the scheme or suggest an alternative site or may express his reservations to the acquisition giving reasons. If the alternative proposed by the Deputy Commissioner is to be rejected by the acquiring department then cogent reasons shall be recorded before acquisition is further proceeded with.

If the case falls within the competence of SLLAB, Deputy Commissioner shall send his detailed report to A.D. for submission to SLLAB. An advance copy of this report shall also be sent to the Revenue Department. The SLLAB may require the acquiring department to submit reasonable details of the project to ensure that the financial tie-up exists and that the land is not excessive and shall not be left un-utilized indefinitely. The acquiring department shall be required to render an account of the utilization of its own lands within the district. The SLLAB may also require the acquiring department to indicate utilization

of its land elsewhere in the State as in the case of acquisition relating to Industrial Estates and Housing Estates. The Board may require the department to satisfy about the manner in which the cost of acquisition is proposed to be funded.

The Deputy Commissioner or the SLLAB should issue N.O.C. within a period of three months from the date of receipt of the proposal complete in all respects. In case the proposal is not found defective or incomplete but if the decision is not taken within the above said period, it should be presumed that the Deputy Commissioner or the SLLAB as the case may be, has no objection to the acquisition of the proposed land.

#### **Constitution of District Land Price Fixation Committee (DLPFC)**

For the determination of market price there shall be a Standing Committee at the District level called the District Land Price Fixation Committee. The Committee shall consist of:-

1. Deputy Commissioner : Chairman
2. M.P. of the area
3. M.L.A. of the area
4. (For rural area)

- (a) Chairman, Block Samiti and where there is no Chairman, the Block Development and Panchayat Officer;
- (b) Sarpanch of the village concerned.  
(For urban area)

Mayor/ President of Municipal Corporation/ Municipal Committee/ Nagar Panchayat. Where there is no Mayor/ President, the Commissioner of the

Municipal Corporation of the Executive Officer, as the case may be.

5. District Revenue Officer

6. Sub-Divisional Magistrate : Convener

The factors which can be considered relevant while arriving at the market price of land can at best be illustrative and can never be exhaustive. Just as in partition cases a mode of partition is framed in consultation with the parties and certain clauses are listed as relevant/ crucial to decision-making, in the same manner after the initial scrutiny of the data, the members of the DLPFC should list out important considerations that should determine the price of the area and also list out factors which need to be ignored. They may even prioritize these factors and visit the site, if considered necessary. This would give an idea regarding the factors which would be relevant for price fixation in the circumstance peculiar to that particular area.

In case the recommendation of the DLPFC is acceptable to the Administrative Department the same shall be transmitted to the LAC. In case the market rates recommended by the Deputy Commissioner/ DLPFC are found to be unrealistic the acquiring department may refer them back to the committee for re-consideration stating the grounds necessitating it. After the matter is reconsidered by the Committee and their revised recommendations are still found to be unacceptable, the matter may be referred to the SLLAB together with reasons for difference of opinion and the entire data relevant for decision making. It must be ensured that the needful is done prior to issuing a notification under section 6 of the Act.



The Land Acquisition Collector will also report to the Administrative Department the objections filed by the landowners and other interested parties.

### **CONSENT AWARDS IN HARYANA**

Floor prices for the acquisition of land for public purposes were fixed for various zones in Haryana vide the Department of Revenue, Government of Haryana Memo No. 2025-R-5-2005/4299 dated 28.4.2005. It was further clarified that no award for the acquisition of land to be announced on or after 5<sup>th</sup> March, 2005, shall be on rates lower than the floor rates communicated as aforesaid.

#### **Memo No. 2025-R-5-2005/4299 dated 28.4.2005**

The memo took note of the fact that the rates of compensation fixed for acquisition are quite low as compared to the market rates prevalent in that area. This leads to court references and delays. Agricultural land has become very valuable and more so in the region surrounding Delhi. The farmer who is deprived of his only livelihood is entitled to a fair compensation based on the market rates prevalent in the area. The Government divided the State in three zones and fixed zone-wise floor rates, as follows, for purposes of land acquisition:-

- (i) The urbanisable area of Gurgaon will have a minimum floor rate of Rs. 15.00 lakhs per acre.
- (ii) Rest of the Haryana sub-region of NCR including Panchkula and area of Chandigarh periphery in the Haryana State will have a minimum floor rate of Rs. 12.50 lakhs per acre.

(iii) For the rest of the State, the minimum floor rate will be Rs. 5.00 lakhs per acre.

(iv) These rates do not include the solatium and interest payable under the provisions of the Land Acquisition Act.

The Committee headed by the Divisional Commissioner will continue to perform its duties while fixing the rate of compensation for various categories of land under acquisition based on these floor rates.

**State Amendments with regard to Section 11 (2) of the L.A. Act, 1894.**

**Gujarat**

(i) In Section 11, the section shall be renumbered as sub-section (1) thereof and in sub-section (1), so renumbered for the proviso, substitute the following proviso, namely:

“Provided that no award shall be made by the Collector under this section without previous approval of the State Government or of such superior officers as the State Government may authorize in this behalf”:

“Provided further that it shall be competent for the State Government to direct that the Collector or such class of officers specially appointed by the State Government to perform the functions of a Collector under this Act may make such award without the approval in such class of cases as the State Government may specify in this behalf”.

(ii) After sub-section (1), insert the following sub-sections namely:-

"(2) Notwithstanding anything contained in sub-section (1) if at any stage of the proceedings, the Collector is satisfied that all the persons interested in the land who appear before him are agreeable to the award which he proposes to make under this section, the Collector may without making further enquiry, require such persons to execute an agreement in the form prescribed by the State Government and make an award according to the terms of such agreement.

(3) The determination of compensation for any land under sub-section (2) shall not in any way affect the determination of compensation in respect of other lands in the same locality or elsewhere in accordance with the other provisions of this Act.

(4) Notwithstanding anything contained in the Indian Registration Act, 1908 no agreement made under sub-section (2) shall be liable to registration under that Act." (Vide Gujarat Act 20 of 1965, dated 15.8.1965)

### **Court Rulings with regard to Section 11 (2) of the L.A. Act, 1894**

#### **1. Special Land Acquisition Officer, Belgaum vs. Siddappa Omanna Tumari 1994 (5) Kar. L. J. 428-B (SC)**

Compensation determined on the basis of agreement between Collector / LAO and Claimants- Evidentiary value of such voluntary settlement for determination of compensation payable for other lands not covered by agreement -- Evidentiary value depending on proportion of area of lands covered by agreement may bear to total area of lands notified for acquisition -- Court not to ignore such awards made under section 11 (2).

K. Ramaswamy, S.C. Agarwal and N. Venkatachala, JJ, Held: As per the mandate of Section 23 (1) of the Act, the market value of the acquired land as on the date of Notification published under section 4 (1), is the main component of compensation payable for the acquired lands. But the market value of the acquired land must be the near estimate of the price which the claimant by voluntarily selling the awarded land would have got from a willing purchaser. Such near estimate of market price has to be made on the basis of authenticated transactions of sales or agreements to sell relating to the same land or a portion of it wherever possible because such transactions of sale or agreements to sell are always regarded as the best evidence available for the purpose. When lands are notified for acquisition, all the persons interested in any of those lands who are entitled to obtain compensation therefore, taking advantage of the statutory provisions for voluntary settlement of the amount of compensation payable for their lands, enter into an agreement with the Collector in that behalf and receive such amount from the Collector as per his award made accordingly under the provisions of the Act. Ordinarily, no room for doubting the authenticity or genuineness of the award for compensation made by the Collector on the basis of such agreement can arise. The evidentiary value of such award under Section 11 (2) of the Act, ought necessarily to increase depending on the proportion which the area of the lands covered by the award may bear to the total area of the land covered by the Notification. The Court determining the compensation payable for other acquired lands covered by the same Notification cannot ignore altogether from its consideration such award made under Section 11 (2) of the Act -- Special Land Acquisition Officer, Belgaum

Vs. Siddappa Omana Tumari, 1994 (5) Kar. L.J. 428 B (SC).

**2. N. Narasimhaiah vs. State of Karnataka, AIR 1994 Kant. 224**

Owner of land given consent- No approval of any other authority required- In view of the fact that the petitioner had given consent to the determination of compensation in terms of sub-section (2) of Section 11, no approval of any other authority was required for order passed by the second respondent. Therefore, the said order is an award in terms of Section 11 of the Land Acquisition Act- N. Narasimhaiah V. State of Karnataka, AIR 1994 Kant. 224.

**3. Ishwar Lal Premchand Shah vs. State of Gujarat, AIR 1996 SC 1616 at 1617, 1618.**

Agreement- Owner and body for which land acquired.... Agreement in prescribed Form 14- Not necessary.....In this case, the agreements were between the owners and the GIDC for whose benefit the lands were acquired. Even before the notification under section 4 was issued, the owners and the GIDC had entered into an agreement whereby the owners had agreed to part with possession of their lands so as to enable GIDC to establish Udyog Nagar thereon. Under the said agreements, the GIDC was permitted to enjoy continuous possession of those lands till the process of acquisition under the Land Acquisition Act was to be completed. While entering into these agreements, the owners had agreed to accept compensation @ Rs.6,100/- per acre. Thereafter, Section 4 notification was published on August 2, 1984. While the proceedings were pending before the Land Acquisition Officer, the owners and GIDC again in the year 1985, entered into separate agreements,

where under the Corporation agreed to pay and the owners agreed to accept compensation @ Rs. 22,657/- per hectare inclusive of solatium and additional benefits payable under the Act. These agreements duly signed were presented before the Collector. On being satisfied about the voluntary nature of the said agreements, the Collector passed an award in terms of those agreements. Under these circumstances, it cannot be said that the essential requirement of sub-section (2) of Section 11, as applicable in the State of Gujarat, was not complied with. Moreover, Form no.14 as such would not be relevant in a case where the agreement is between the owners and interested persons on the one hand and the body for which the land is being acquired on the other hand. Form no.14 would apply to a case where the owners and the persons interested in the land appear before the Collector and express their willingness to accept an agreed amount as compensation. In such cases, the agreement is required to be executed in the prescribed Form No. 14. Therefore, even though in the present case, the agreements were not in the prescribed form, there being no prescribed form for a case like this, the award cannot be said to be illegal or void- *Ishwar Lal Premchand Shah V. State of Gujarat*, AIR 1996 SC 1616 at 1617, 1618.

**4. Orissa Industrial Infrastructure Development Corporation vs. Supai Munda, AIR 2004 SC 390 at 393**

Passing of subsequent award by Collector pursuant to alleged agreement with land owner not permissible- When the award is made by the Collector under Section 11 of the Act, the proceedings before him stand terminated as soon as the award is made. The provision of sub-section (2) of Section 11 is

attracted only at any stage of the proceedings before the Collector, that is to say, if the Collector has not passed the Award under Section 11 of the Act and the proceedings before him were still subsisting in the present case, it clearly appears from the Award dated 25.7.1992 itself that it was made under Section 11 of the Act. The claimant Shri Supai Munda (respondent herein) has categorically stated that he received the compensation amount pursuant to the notice under Section 12, (2) of the Act, which was issued on 27-7-1992. That statement remains uncontroverted. In Court's view, therefore, there was no occasion for the learned Collector to have recourse to sub-section (2) of Section 11 of the Act. There can never be two awards, one under section 11 of the Act and another under Section 11 (2) of the Act over the same land acquired-Orissa Industrial Infrastructure Development Corporation V. Supai Munda, AIR 2004 SC 390 at 393.

### **SUMMING UP**

1. The policy to adopt the people's participatory process in the matter of the acquisition of land involving them in claiming their due compensations duly approved by the West Bengal Cabinet in its meeting held on 14<sup>th</sup> February 2006.

2. In exercise of the power conferred by sub-section (3) of Section 55 of the Land Acquisition Act, 1894 as subsequently amended, the Governor of Andhra Pradesh after having published the draft rules in Rules Supplement to Part-I Extraordinary of the Andhra Pradesh Gazette as required under sub-section (2) of Section 55 of the said Act made the Andhra Pradesh Land Acquisition (State Level Negotiations Committee) Rules, 1998.

3. The State level committee in Andhra Pradesh may take up local inspections whenever deemed necessary or the Chairman of the State Committee may nominate a team of officials to inspect the lands and submit a report. The State Committee after going through various material papers, documentary evidence and after holding negotiations with the persons interested shall determine the total benefits payable and shall communicate its decision to the Collector's District Committee or the Requisitioning Department or to the Government, as the case may be.

4. The powers and duties of the District Level Committee in Andhra Pradesh and the procedure to be followed have been laid down in the Andhra Pradesh Land Acquisition (Negotiation Committee) Rules, 1992.

5. In West Bengal, the consent award claim will not exceed 10% of the internally assessed value.

6. In Andhra Pradesh, where the enhancement ordered by the Reference Court/ High Court, including all the benefits such as the market value, solatium, additional market value and interest and the future liability is above 100% but below 150% and the total additional financial involvement is less than Rs. 10.00 lakhs, the District Collector will take a decision whether to pay the decree charges or prefer an appeal.

In cases where the enhancement is 100% or more over the award made by the Land Acquisition Officer, including the liability on all benefits such as solatium, additional market value and interest and also the future financial responsibility, is Rs. 10.00 lakhs and above, the LAO concerned is obliged to file an appeal.



7. Special R&R package has been provided in West Bengal for the BPL families.

8. Allotment of house sites/ payment of ex-gratia is made in Andhra Pradesh to any Project Displaced Family (PDF) holding upto an area of 5 cents of village site.

9. Special provisions exist in the West Bengal system to protect the interests of the share croppers (Bargadars) attached to the land under acquisition.

10. In Haryana, the State has been divided into three Zones for the purpose of fixing floor rates for land acquisition. The Committee headed by the Divisional Commissioner will continue to perform its duties while fixing the rate of compensation for various categories of land under acquisition based on these floor rates.

11. In Punjab, the State Level Land Acquisition Board (SLLAB) and the District Land Price Fixation Committee (DLPFC) discharge their respective duties with regard to land acquisitions. Detailed procedure for the functioning of the two Committees has been laid down in the Department of Revenue, Government of Punjab Memo No. 1/55/78-LR-I/1979, Chandigarh, dated, the 13<sup>th</sup> March, 2000.

12. Necessary supervision over the LAO's determination of market value under section 15-A of the L. A. Act is quite necessary. The said Section runs as follows:-

"15-A. Power to call for records etc:- The appropriate Government may, at any time, before the award is made by the Collector under Section 11 call for any proceedings (whether by way of enquiry or

otherwise) for the purpose of satisfying itself as to the legality or propriety of any finding or order passed or as to the regularity of such proceedings and may pass such order or issue such direction in relation thereto as it may think fit."

"Provided that the appropriate Government shall not pass or issue any order or direction prejudicial to any person without affording such person a reasonable opportunity of being heard."

This paper is intended to bring forth the participatory process being followed in the land acquisition process in the study area. It also aims at highlighting R&R packages available for the ESW sections in the society. The shape and working of the participatory process and the extent of the R&R package to be adopted elsewhere lies within the executive discretion of the concerned State Governments. While all said, it must be emphasized that fair valuation of the land acquired and the provision of R&R packages will go a long way in warding off people's resistance, minimizing court references and cutting down on time over-runs and cost over-runs. This will provide the much needed human face to the acquisition proceedings and hopefully, the consequential marginal increases in the project costs will in no way act as a dis-incentive to a discerning entrepreneur.

## **CHAPTER - 2**

### **CONSENT AWARDS IN LAND ACQUISITION IN UTTAR PRADESH**

Section 11(2) of the Land Acquisition Act, 1894 lays down the general modality of arriving at consent awards as follows:-

"(2) Notwithstanding anything contained in sub-section (1), if at any stage of the proceedings the Collector is satisfied that all the persons interested in the land who appeared before him have agreed in writing on the matters to be included in the award of the Collector in the form prescribed by rules made by the appropriate Government, he may, without making further enquiry make an award according to the terms of such agreement."

#### **Consent Awards in Uttar Pradesh**

In exercise of the powers conferred by sub-section (1) of section 55 of the Land Acquisition Act, 1894, the Governor, Uttar Pradesh made "The Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997".

A reference is made here to Notification No. 2382/XC-VII-2-4(1)/85-24. Rev. 13 dated Lucknow, September 16, 1997.

The Rules referred to above, shall extend to the whole of Uttar Pradesh.

The Rules provide that the body or Department for which the land is being acquired may, at any stage of the proceedings, settle down the terms and conditions and rates of the land under acquisition, with the landowners and appear before the Collector

and make an application indicating the terms and conditions so settled down and its readiness and willingness for the determination of compensation and the declaration of award in accordance with the agreement. The Collector shall, if satisfied, issue notice to the persons interested in the land under acquisition to express their readiness and willingness to execute the agreement in writing, on the matters to be included in the award.

The Collector may, after hearing the parties, and upon being satisfied that the persons interested in the land are ready and willing to execute the agreement, grant the permission unless, for reasons to be recorded in writing, he decides to refuse it.

The Collector shall, where he grants the permission, inform the persons interested in the land by registered post, about the date, time and place, for the execution of the agreement. The agreement shall be executed in the form appended to these rules, with necessary details as to whether possession has, or has not, been taken before the award. If the persons so informed fail to turn up and execute the agreement on such date, time and place or the extended date, as the case may be, the Collector shall proceed to make enquiry under Section 11 from the stage, at which the application was made.

The amount of compensation to be settled in the agreement shall always abide by the instructions issued by the State Government of Uttar Pradesh from time to time.

When an agreement is discovered to have been fraudulently executed, the Collector shall, *suo motu*, or on an application made in that behalf, cancel the

agreement after affording a reasonable opportunity of being heard to the persons who have executed the agreement. In case of the cancellation of the agreement under sub-rule (1), the executants shall have no right to claim any compensation or damages from the State Government.

The terms and conditions as per the Form of Agreement will be as follows:

1. that the Land Acquisition Officer shall be competent to declare the award as per the terms of this agreement without any further enquiry which is required to be held under the provisions of the Land Acquisition Act, 1894;

2. if the Government deems it necessary to take immediate possession of the land under acquisition even though there is a standing crop on it, the Government will be entitled to do so provided that compensation for the standing crop, as shown in the award, is paid;

3. that the owner/owners and interested party/parties shall not claim any amount in addition to the amount agreed upon as aforesaid as compensation and accept it without any protest:

4. if hereafter or after the payment of compensation as per the award it transpires that the owner/owners and / or the interested party/ parties is/ are not entitled at all or is/are not exclusively entitled to the entire amount of compensation awarded by the Land Acquisition Officer as per the terms of this agreement in respect of the said land/lands as mentioned at the end, and the Government is required to pay any compensation to any other person, the owner/owners and the interested party/ parties shall, on demand, refund to the Government the entire

amount of money received by him/them or such amount as may be determined by the Land Acquisition Officer as refundable by him/ them to the Government and shall also indemnify (jointly and severally) the Government against any claim or compensation or part thereof by any other person/persons and against all proceedings and liabilities of any loss or damage suffered or any costs, charges or expenses incurred by the Government by reason of the payment to him/them and the owner/owners and the interested party/parties shall pay the interest at the rate of 9% on the amount so refundable for the first year and at the rate of 15% for the subsequent years:

5. if the owner/owners and/or interested party/parties fails/fail to refund to the Government the amount mentioned in the preceding para, the Government shall have the full right to recover the same as arrears of land revenue or order to proceed under any law in force for the recovery of such amount.

6. without prejudice to any other remedy for the enforcement of any refund or indemnity, the Government may recover any sum determined and certified by the Land Acquisition Officer to be due and payable by the owner/owners and interested party/parties to the Government by way of refund or otherwise under these presents as arrear of land revenue;

7. if any Government dues/shares/premium from this land/lands are payable by the owner/owners or interested party/parties and the loans of any public financial institutions are outstanding against the land/lands the same shall be deducted from the said compensation amount that may be awardable under these presents.

8. the Government shall bear the stamp duty payable in respect of this agreement.

It will be pertinent here to mention the following G.O.s issued by the Revenue Department, Government of Uttar Pradesh Land Acquisition (Determination of Compensation and Declaration of Award by Agreement) Rules, 1997-

1. G.O. No. 1718 dated 29.9.2001
2. G.O. No. 1232 dated 6.9.2006
3. G.O. No. 1291 dated 15.9.2006.

**1. G.O. No. 1718 dated 29.9.2001**

Revenue Department, Government of Uttar Pradesh No. 1718/1-13-2001-20 (124)/2001-Ra-13, Lucknow, dated 29.9.2001 issued instructions regarding the constitution of district level committees for the determination of the rates of compensation on the basis of market value through the procedure laid down for consent awards.

The above G.O. acknowledges that the land-losing farmers/persons had not been getting their due compensation in the event of compulsory acquisition of their lands by NOIDA, Greater NOIDA, Development Authorities and Housing and Development Councils. That was on account of the fact that market value was not being assessed correctly. This has led to an obstruction of the land acquisition proceedings, at different levels, by organizing protest rallies and challenging the compensation rates determined by the Collector, Land Acquisition, by the persons interested. The delay in land acquisition has had its telling effect on the execution of the development schemes. There is an escalation in the project cost too.

With a view to finding out a solution to the above problem, the Government of Uttar Pradesh, under Section 11(2) of the Land Acquisition Act, 1894 (Act 1 of 1894) read with Section 55 of the said Act, issued Notification No. 2382 dated 16.9.1997, delineating the Uttar Pradesh Land Acquisition

1. District Collector : Chairman
2. Secretary, Development Authority or the representative of the Housing Commissioner : Member
3. Concerning Additional District Magistrate : Member

(Determination of Compensation and Declaration of Award by Agreement) Rules, 1997. It was envisaged that the requisitioning body or the Department for which the land was being acquired may, at any stage of the proceedings, settle down the terms and conditions and the rates of the land under acquisition with the land-owners and appear before the Collector and make an application indicating the terms and conditions so settled down and its readiness and

1. Concerning District Collector : Chairman
2. Concerning Superintending Engineer : Member
3. Concerning Additional District Magistrate : Member

willingness for the determination of the compensation and the declaration of the award in accordance with the agreement. The Collector shall, if satisfied, issue notice to the persons interested in the land under acquisition to express their readiness and willingness to execute the agreement in writing, on the matters to be included in the award. It was hoped that consent



awards will keep all parties contented and there would be no chance of obstruction in the land acquisition proceedings.

The G.O. No. 1718 dated 29.9.2001 goes on to state that inspite of the Rules coming into effect in 1997, the Government had been receiving complaints that in the absence of specific guidelines, interested persons were not getting adequate compensation. There is also the possibility of compensation amount fixed in excess of the actual market value. Keeping these facts in mind, the Revenue Department vide its G.O. No. 2644 dated 24.1.2001 provided for (before the award under the Rules of 1997), the prior approval of the competent authority.

Similarly, the Housing Department also, with regard to land acquisition through consent, vide its G.O. No. U.O. -9-Aa-3-93-11/93 dated 16.8.1993 constituted a district level committee, as follows, for the determination of the value of the land being acquired:

The above G.O. provides for an award based on a recommendation by the above-mentioned committee as approved by the Divisional Commissioner.

Similarly, G.O. No. 3935 dated 21.6.1999 issued by the Irrigation Department, provides for the following Committee for determining the land value rates at the district level with regard to the land acquisition through the consent mode:

Evidently, the various departments of the Government have taken certain steps in determining compensation on the basis of consent and for checking possible irregularities in the process.

The Revenue Department G.O. No. 1718 dated 29.9.2001 with a view to bringing about uniformity in the approach of the various departments with regard to consent awards under the 1997 Rules, makes the following provisions:

1. The following committee at the district level is constituted for determining the rate of compensation on the basis of the market value of the land through the consent mode for various requisitioning bodies/departments:

- (i) District Collector :Chairman
- (ii) Authorized representative of the requisitioning body/ :Member/Convener department.
- (iii) Additional District :Member  
Magistrate (Finance)/  
District Registrar
- (iv) Concerning Sub- Registrar :Member

2. The above Committee will lay down clear rationale for the rates of compensation determined, mention the representative sale deeds selected, and submit its recommendation to the concerning Divisional Commissioner. After obtaining his prior approval further action under the 1997- consent award rules will be taken.

The Government hoped that the interested persons/ farmers will, henceforth, be getting adequate market value for their land. The Government also decided that compensation will be fixed in matters of compulsory land acquisition as well. This will avoid

references from the districts to the Board of Revenue and consequent delays.

**2. G.O. No. 1232 dated 6.9.2006**

This G.O. aimed at simplifying the process of land acquisition in view of the delays incurred therein. In this regard, the following decisions were taken by the Government-

(i) A committee under the Chairmanship of the Collector will be constituted, with the chief of the requisitioning body/ Additional District Magistrate (Land Acquisition) as members, after the presentation of the land acquisition proposal by the requisitioning body. The chief of the requisitioning body and the Additional District Magistrate (Land Acquisition) will complete a joint survey in respect of the land being acquired and will present the land acquisition proposal within 3 months before the committee headed by the District Collector. The said committee will meet at least once in a month and review the acquisition proposals.

(ii) Within 1 month of the receipt of the land acquisition proposal from the District Collector, the Director, Land Acquisition will forward the same to the Government.

(iii) The following Committee will be constituted at the State level for examining, removing errors and for approving the land acquisition proposals received from the Director, Land Acquisition within 1 month, under the "single window system":

- (a) Principal Secretary/ Secretary of : Chairman  
the concerning Department
- (b) Director, Land Acquisition, U.P. : Member
- (c) Chief of the concerning : Member  
requisitioning body

(d) Concerning District Collector : Member

Notification u/s 4 of the Land Acquisition Act will necessarily be issued, within 1 month of the Committee's decision and approval of the proposal.

Notification u/s 6 of the Land Acquisition Act will be issued by following the same procedure.

Within 1 month of the issue of Notifications u/s 4 and 6 respectively by the concerning administrative departments at the Government's level, the said Notifications will be published in two local daily newspapers. Within 15 days of the publication of the said notifications, general notice/beat of the drum action regarding the lands covered by the notification will necessarily be completed.

(iv) The District Collector will be responsible for the publication of the notifications u/s 4 and 6 in two local daily newspapers, out of which one being a prominent newspaper, within 1 month of the issue of the notifications and the costs for publication will be borne by the requisitioning body.

(v) After the publication of notices under sections 6/17 and after 15 days of issuing notices u/s 9 to the affected persons and within 6 months of the Collector taking possession of the acquired land, award will necessarily be declared.

(vi) Lands required by the U.P. Housing and Development Council, too, will be acquired under the provisions of the Land Acquisition Act, 1894 (as amended in 1984).

### **3. G.O. No. 1291 dated 15.9.2006**

It was decided that a decision to release any land from the land acquisition process, will be taken by the administrative department of the requisitioning body, which had initiated the land acquisition proceedings.

The above decision pertains, in fact, to Section 17 of the Land Acquisition Act, 1894 which provides special powers in case of urgency. The portion of the land acquired under Section 17 of which possession has not been taken or which is no longer required, will have to be released by the concerned administrative department u/s 48 (1) of the Land Acquisition Act.

#### **Compensation by the Grant of other Land**

Section 31(3) of the Land Acquisition Act, 1898 provides for the grant of other lands, in exchange, to the land-loser, in lieu of monetary compensation. The said sub-section (3) runs as follows:

(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.

(4) 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 contact in respect thereof.

Vide Notification No. 3063 1-A, 1-LA/64 dated 9.6.1967, the following rules have been framed by the Government of Uttar Pradesh to give effect to the provision under sub-section (3) of Section 31-

1. Any person desirous of receiving land in exchange for his land acquired under the Land Acquisition Act, 1894 (Act no. 1 of 1894), may make an application to the Collector in writing in reply to the notice given under section 9 of the Act.

2. The Collector may entertain such application, if any land belonging to the State Government or any land vested in the Gaon Sabha (S) under section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 (Act no. 1 of 1951), is available in the vicinity for being granted for such purpose.

3. If the land proposed to be granted to the applicants happens to be a land vested in the Gaon Sabha (s) under section 117 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950 (Act no. 1 of 1951) the Collector shall, before accepting the proposal, submit a proposal to the Administrative Department of the State Government for the resumption of the land in question under sub-section (4) of section 117 of the said Act and for a sanction of the proposal.

4. The land may, after having been resumed by the State Government from the Gaon Sabha (s), be granted by the Collector to the applicant (s) referred to in rule 2 on behalf of the State Government through a registered deed under **the Government Grants Act,**

**1895**, as amended in its application, to Uttar Pradesh subject to the conditions that:

(i) the market value of the land so granted shall not be more than that of the acquired land in exchange whereof the land is granted ; and

(ii) the grantee and his heirs and successors- in-interest shall hold only such rights, interests, title and privileges in respect of the land so granted to him as were being held by him in respect of the acquired land in exchange whereof the land is granted to him.

5. In the event of the land applied for being a land owned by the State Government, the Collector shall submit a proposal to the Administrative Department of the State Government for the grant of the land to the applicant under the said Act of 1895.

6. After obtaining the approval of the State Government to the land referred to in the preceding rule being granted to the applicant, the Collector shall grant the same to the applicant in accordance with the provision contained in sub-rule (4).

7. If while granting any land to the applicants under sub rules (4) and (6) the Collector finds that the area of land available for being granted to the applicants is limited and the number of applicants is more he shall grant the land to the applicants in accordance with the order of preference contained in section 198 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act 1950 (Act no. 1 of 1951), read with rules 174-A and 174-B of the U.P. Zamindari Abolition and Land Reforms Rules, 1952.

## **Policy of Re-Settlement & Re-habilitation in Uttar Pradesh**

It will be pertinent to point out here that the Government of Uttar Pradesh has, with certain modifications, adopted the national Re-settlement and Re-habilitation Policy- 2003 of the Government of India, with regard to the re-settlement and re-habilitation of project-affected people in the cases of land acquisition. A reference is made in this context to the Revenue Department, Government of Uttar Pradesh G.O. No. 1321 dated 10.8.2004.

Vide the G.O. mentioned above, the State Government has adopted the GOI Policy in this regard, with the following modifications-

1. The Government of India Re-settlement and Re-habilitation Policy -2003 will be deemed to cover the families concerning the land to be acquired under the Land Acquisition Act, 1894.
2. The above Policy of the Government of India will be deemed to cover all departments of the State equally and if a certain department, in view of its specific needs/objects, intends to extend to the family affected by the land acquisition some additional facility, the department concerned will be free to do so by taking a decision at the competent level. Nevertheless, it will be obligatory on all the departments to comply with the GOI Re-settlement and Re-habilitation Policy, 2003.
3. The appointment of 'Administrator' and 'Commissioner' for the re-settlement and rehabilitation work under Chapter 4 of the GOI Policy, 2003 will be made by the Revenue Department on the recommendation of the administrative department and



the specification of such rehabilitation areas will be done through a Notification.

4. No 'Administrator' and 'Commissioner' will be appointed in cases where the number of project affected families is less than 500, but all the benefits enumerated in Chapter 6 of the GOI national policy under reference will be extended to such families as well with equality and uniformity.

5. The G.O.s pertaining to giving of jobs and land for land and other benefits to the project displaced persons, issued from time to time by the Revenue, Personnel and other departments will be deemed to be superseded/ ineffective after the enforcement, with immediate effect, of the GOI Re-settlement and Rehabilitation Policy, 2003.

## CHAPTER - 3

### CONSENT AWARDS IN LAND ACQUISITION IN ORISSA

Para 6 of the Orissa Resettlement and Rehabilitation policy 2006 deals with the concept of consent awards in land acquisition as follows:

“The project proponent may opt for direct purchase of land on the basis of negotiated price after issue of notification requiring acquisition of land under relevant Act (s). If acquisition of land through direct purchase fails, other provisions of the relevant Act may be invoked”

#### **Rehabilitation and Periphery Development Advisory Committee (RPDAC)**

Para 16 of the Orissa Resettlement and Rehabilitation policy 2006 provides for the constitution of a Rehabilitation-cum-Periphery Development Advisory Committee (RPDAC) in order to encourage participation of displaced people and their elected representatives in the implementation and monitoring of the R&R package and to oversee and monitor periphery development. The detailed composition of the Committee shall be notified by the Government and it may include people's representatives, one or two leading NGOs of the affected area and select Government officers, and any other persons to be notified by the Government. Adequate representation will be given to women and indigenous communities (wherever applicable) in the committee. The Chairman of the Committee will be at liberty to co-opt members for the efficient discharge of its functions.

**G.O. No. 25093 Revenue & Disaster Management,  
Bhubaneswar, dated 6-7-2006**

In pursuance of para 2(O) read with para 212 of the Orissa Resettlement and Rehabilitation Policy, 2006, the State Government issued the following guidelines for the constitution and functioning of the Rehabilitation and Periphery Development Advisory Committee (RPDAC) for all projects situated in the State.

(a) Constitution of the RPDAC for projects coming within one district:-

1. Revenue Divisional : Chairman  
Commissioner under whose jurisdiction the district comes
2. Collector and District Member Convener  
Magistrate
3. All MPs (Lok Sabha) of the : Members  
concerned district/ districts
4. All MPs (Rajya Sabha) : Members  
whose nodal district / districts come under the project
5. All M.L.As of the concerned : Members  
district
6. President, Zilla Parishad : Member
7. Chairpersons of the affected : Members  
Panchayat Samitis
8. Representatives of two : Member  
NGOs working in the affected area to be nominated by the Chairman
9. Representatives of two Local : Members  
Women Self Help Groups

functioning in the area to be nominated by the Chairman

10. Two persons nominated by the Chairman from among the displaced and affected families : Members
11. Project Director, DRDA : Member
12. Sub-Collector(s) concerned : Member
13. Land Acquisition Officer/ Special Land Acquisition Officer concerned : Member
14. Representative of the Project concerned having decision-making power on behalf of the project : Member

(b) Constitution of RPDAC for projects covering more than one district:-

The Government shall specifically constitute RPDAC for such projects on the recommendation of the RDC concerned.

(c) The Chairman is authorized to co-opt any person as member or invite to the meetings any person who, in his opinion, can substantially contribute to the amicable settlement of issues involved. He will also notify specific constitution of the RPDAC indicating the membership with copy to the Government.

(d) Powers and functions of the RPDAC

1. The RPDAC will meet at least once in three months.

2. Issues, which cannot be resolved at the level of district administration or project authorities, shall be referred to the RPDAC. The decisions of the RPDAC in so far as it conforms to the approved policy of the state shall be final and binding on all concerned.

3. Where the recommendations or decisions of the RPDAC makes any deviation from the approved policy and guidelines issued by the Government from time to time such decisions or recommendations shall be subject to approval of the Government in the Revenue Department.

4. Issues on which the RPDAC may take decisions within the approved policy and guidelines issued by the Government from time to time:-

(a) Socio-economic survey conducted to identify displaced or other affected facilities relating to the project.

(b) Acquisition of land, alienation of Government land and payment of compensation thereof.

(c) Resettlement and rehabilitation plan and modifications or improvement thereof.

(d) Periphery development issues with specific reference to infrastructure and common facilities to be provided in resettlement habitats.

(e) Dovetailing the existing development programme with periphery development programmes.

(f) Bottlenecks in the implementation of rehabilitation and periphery development process.

## **The District Compensation Advisory Committee**

Para 15 of the Orissa Resettlement and Rehabilitation Policy 2006 provides for the constitution of a Compensation Advisory Committee at the district level. The Government in the Revenue Department may constitute a District Compensation Advisory Committee (DCAC) under the chairmanship of the Collector to determine negotiated price. Adequate representation will be given to women and indigenous communities (wherever applicable) in the committee.

If any dispute arises on the recommendation of the DCAC, the matter will be referred to the State level Compensation Advisory Committee chaired by the Member, Board of Revenue whose decisions shall be final and binding on all concerned. The composition of this state level Compensation Advisory Committee will be notified by the Government.

### **G.O. No. 39321 Revenue & Disaster Management, Bhubaneswar, dated 13-10-2006**

In pursuance of the provisions of sub-para (C) of para 22 read with para 15 of the Orissa Resettlement and Rehabilitation Policy, 2006, the following guidelines were issued vide G.O. No. 39321 dated 13-10-2006, for the constitution and functioning of the District Compensation Advisory Committee (DCAC) for all the projects situated within the state.

(a) Constitution of the DCAC for Projects coming within one district:-

- 1 Collector and District : Chairman  
Magistrate of the concerned  
district

2. Project Director, R&R (Where exists) or ADM : Member
3. Divisional Forest Officer : Member
4. Executive Engineer, R&B, RD or DRDA to be nominated by the Chairman : Member
5. District Sub-Registrar : Member
6. Representative of the Project having decision making powers : Member
7. Sarpanches of the Gram Panchayats affected due to the acquisition of land in their area : Member
8. Two representatives of the displaced/ affected families to be nominated by the Chairman : Member
9. One woman representative of the displaced affected families to be nominated by the Chairman : Member
10. One representative of the indigenous community to be nominated by the Chairman (if applicable) : Member
11. Land Acquisition Officer/ Special Land Acquisition Officer concerned : Member - Convener

(b) Constitution of the DCAC for projects covering more than one district:-

1. Revenue Divisional Commissioner concerned : Chairman
2. Collector of the concerned district having maximum area in the affected zone : Member-Convener
3. Collector of other concerned districts : Member

4. Chief Conservator of Forest : Member  
under whose jurisdiction the  
affected area comes
5. Superintending Engineer, R&B : Member  
or RD to be nominated by the  
Chairman
6. Inspector General of : Member  
Registration
7. Sarpanches of the Gram : Member  
Panchayats affected due to  
acquisition of land in their  
areas
8. Two representatives of the : Member  
displaced/ affected families  
from each district to be  
nominated by the Chairman.
9. One woman representative of : Member  
the displaced/ affected families  
of each district to be  
nominated by the Chairman
10. One representative of : Member  
indigenous community from  
each district to be nominated  
by the Chairman (if applicable)
11. Land Acquisition Officer/ : Member  
Special Land Acquisition  
Officer of the concerned  
district

(c) Powers and functions of the District Compensation  
Advisory Committee (DCAC)

1. The DCAC will meet as and when required.
2. Issues, which cannot be resolved at the level of  
the Land Acquisition Officer, ADM, Project Director,



R&R or Project Authorities concerned, shall be referred to DCAC.

3. The DCAC will have the power to resolve disputes relating to the amount and determination of compensation where the concerned project authorities have opted for direct purchase of land on the basis of negotiated price in pursuance of the provisions laid down in para 6 of the Orissa Resettlement and Rehabilitation Policy 2006.

4. The DCAC will have the power to settle issues relating to the negotiated price up to 150% of the market value or benchmark the valuation approved by the Government whichever is less.

5. In case of multi-district DCAC, Collectors of other districts shall frame the issues to be placed before the DCAC and forward the same sufficiently in advance to the Member-Convener so as to facilitate consideration of the issues to be placed before the DCAC in the meeting.

6. In case of single district DCAC, the Collector will submit a monthly report on the activities of the Committee to the RDC concerned with a copy to the Government in Revenue and Disaster Management Department. In case of multi-district DCAC, the RDO and Chairman of the Committee will obtain the reports from all Collectors concerned and submit a monthly report to the Government in the Revenue and Disaster Management Department.

7. All decisions taken in the D.C.A.C. shall be subject to the final approval of the Government in the Revenue and Disaster Management Department. The Government in the Revenue and Disaster Management

Department shall have the power to accept, reject, and amend the decisions of the DCAC in full or part.

### **The Land Acquisition Act and the Land-related State Laws**

Section 4 of the LA Act deals with the publication of preliminary notification and powers of the officers thereupon. Section 4(1) provides that whenever it appears to the appropriate Government or the Deputy Commissioner that the land in any locality is needed or is likely to be needed for any public purpose or for a company, a notification stating the purpose for which the land is needed or is likely to be needed with other details as per Section 4(1) and 4-1-A, will be published. Section 6 deals with the declaration that the land is required for a public purpose or for a company. As per Section 6(3) the said declaration shall be conclusive evidence that the land is needed for a public purpose or for a Company, as the case may be, and after making such declaration, the appropriate Government may acquire the land in the manner prescribed.

The provisions u/s 4 and 6 of the Land Acquisition Act, by implication, operate irrespective of any other law for the time being in force. "Land" is a subject matter of the State List (vide Item 18 of List II under Schedule VII of the Constitution of India). Acquisition and requisition of property falls (as Item 42) under the Concurrent List (List III under Schedule VII) of the Constitution of India. The Land Acquisition Act, 1894, a Central Legislation, covers, in the nature of things, both "Land" (State List) and "acquisition and requisition" (Concurrent List). The inference that with the operation of Section 4 and 6 of the Land Acquisition Act, the operation of the land-related State

laws, including laws on ceiling, consolidation of land holdings, tribal alienation and the like, will be superseded, is not without reason.

The following provisions in the Constitution of India tend to support the above argument.

### **Article 245**

Extent of laws made by Parliament and by the Legislature of States

(1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation.

### **Article 246 (4)**

Parliament has power to make laws with respect to any matter for any part of the territory of India not included (in a State) notwithstanding that such matter is a matter enumerated in the State List.

### **Article 254**

Inconsistency between laws made by Parliament and Laws made by the Legislatures of States.

(1) If any provision of a law made by the Legislature of a State is repugnant to provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters

enumerated in the Concurrent List, then, subject to the provisions of Clause (2), the law made by Parliament whether passed before or after the law made by the Legislature of such State, or as the case may be, the existing law, shall prevail and the law made by the Legislature of the State shall, to the extent of the repugnancy, be void.

(2) Where a law made by the Legislature, of a State with respect to one of the matters enumerated in the Concurrent List contains any provision repugnant to the provisions of an earlier law made by Parliament or an existing law with respect to that matter, then, the law so made by the Legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in the State.

Provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter including a law adding to, amending, varying or repealing the law so made by the Legislature of the State.

### **Legal Aspects of Direct Purchase by the Companies: in the Orissa Context**

In Orissa, the conversion of the agricultural land for purposes other than agriculture has already been made permissible. There is also an exemption to Lands held by the industrial or commercial undertakings, as on the date of the promulgation of the concerning provision in the ceiling law. Nonetheless, usual restrictions on the ceiling area of a company not covered by exemption, do apply. Lastly,

the restrictions on the tribal land alienation also apply in matters of direct purchases by the companies.

The above issues are being discussed at length in the following:

### **1. Conversion of Agricultural into Non-Agricultural Land:**

#### **The Orissa Land Reforms Act, 1960**

##### **SECTION 8-A**

Conversion of agricultural land for purposes other than agriculture.

(1) Notwithstanding anything contained in Section -8

(a) the authorised officer may, whether an application is made to him by a raiyat in the prescribed form for conversion of the use of any agricultural land belonging to him for purpose other than agriculture, allow such conversion, if he is satisfied that such conversion shall not violate-

(i) any master plan, improvement scheme, development plan or town planning scheme, made or published under the Orissa Town Planning Improvement Trust Act, 1956 (Orissa Act 10 of 1957) or under the Orissa Development Authorities Act, 1982 (Orissa Act 14 of 1982) or under any law for the time being in force and applicable to such land; and

(ii) any other condition or conditions as may be prescribed for the purpose of dealing with bonafide cases of such conversions:

(b) in every case where the authorised officer allows conversion of the use of any agricultural land under clause (a), the raiyat shall be deemed to have surrendered his raiyati right in respect of the land in favour of the Government and thereafter the land shall be settled on lease basis, on such terms and conditions as may be prescribed, with the person whose raiyati right is so deemed to have been surrendered, subject to, and with effect from the date of payment by him in the prescribed manner the premium for such land calculated at the rate specified in sub-section (3), and every such settlement shall be deemed to have been made under the Orissa Government Land Settlement Act, 1962 (Orissa Act 33 of 1962).

(c) Where the conversion of the use of any agricultural land by a raiyat for purposes other than agriculture has been made prior to the commencement of the Orissa Land Reforms (Amendment) Act, 1993, it shall be deemed that the raiyat has surrendered his raiyati right in respect of that land in favour of the Government and, in every such case, the land shall be deemed to have been settled, on lease basis under the Orissa Government Land Settlement Act, 1962, (Orissa Act 33 of 1962) with the person whose raiyati right is so deemed to have been surrendered or, where the land has been transferred by the raiyat to any other person prior to such commencement, with the transferee, and the person, with whom the land shall be so deemed to have been settled, shall pay, within such period and in such manner, a premium in respect of that land calculated at the rate equivalent to fifty percent of the rate of premium specified against that category of land in sub-section (3):

(1) Provided that if the premium so payable is not paid within the prescribed period it shall be recoverable as an arrear of land revenue.

(2) The order of the authorised officer under clause (a) of sub-section (1) shall be final:

Provided that no order refusing to allow any conversion under the said clause shall be made unless the concerned raiyat has been given an opportunity of being heard in this matter.

(3) The rate at which the premium shall be payable per acre of agricultural land situated at different places of the State, for conversion of its use for any purpose other than agricultural on and after the commencement of the Orissa Land Reforms (Amendment) Act, 1993, shall be as follows:

- (i) Land situated within any Rs. 3,00,000/-  
Municipal area within one-half kilometer on either side of such National Highways as the State Government may, by notification, specify from time to time
- (ii) Land situated in any area Rs. 1,00,000/-  
within one-fourth kilometer on either side of such State Highways as the State Government may, by notification, specify from time to time
- (iii) Land situated in a Rs. 75,000/-  
Municipal area or in a notified area or in any area

notified as urban area under the Orissa Government Land Settlement Rules, 1983 made under the Orissa Land Settlement Act, 1962 other than any land mentioned in clauses (i) and (ii)

- (iv) Land situated in such Rs. 30,000/- developing areas as the State Government may, by notification, specify from time to time, other than any area covered by clauses (i), (ii) and (iii)
- (v) Land situated in any area Five percent of not covered by clause (i), (ii), (iii) and (iv) the market values of such land or Rs. 1,000 whichever is more.

Explanation- For the purpose of this sub-section:-

- (a) 'Municipal Act' means the Orissa Municipal Act, 1950 (Orissa Act 23 of 1950).
- (b) 'Municipal area' means an area included in a Municipality constituted under the Municipal Act; and
- (c) 'Notified area' means a Notified area within the meaning of Section A 417 of the Municipal Act."



## 2. Exemption from Ceiling

As per Section 38 (b) and (c) of the Orissa Land Reforms Act, 1960 the following lands have been exempted from the operation of the ceiling law:

### SECTION 38

“(b) lands held by industrial or commercial undertakings or comprised in mills, factories or workshops, where such lands are necessary for the use, for any non- agricultural purpose, of such undertakings, mills, factories or work-shops:

Provided that where the said lands are not actually used within a period of five years from the commencement of the Orissa Land Reforms (Amendment) Act, 1973 (President's Act 17 of 1973), for the purpose for which they had been set apart, the Collector may, after giving notice to the persons concerned, by order, direct that the provisions of this chapter shall apply to the said lands:

Provided further that the Collector may, on an application made to him in this behalf and on being satisfied that it is necessary or expedient so to do, extend the said period of five years by such further period or periods as he may deem fit, so however, that the total period of such extension shall not exceed in any case, eight years:

#### (c) Plantations

Explanation- “Plantation” means any land used principally for cultivation of coffee, cocoa, or tea (hereafter in this Explanation referred to as “plantation crops”) and includes lands used for any purpose

ancillary to the cultivation of the plantation crops or for the preservation of the same for their market.”

Evidently, land held by the industrial or commercial undertakings as on the date of the commencement of the Orissa Land Reforms (Amendment) Act, 1973, were exempted from the operation of the ceiling law. If the said lands are not actually used within a period of five years (subject to a total period of extension of eight years) the same will be brought within the operation of the ceiling law.

For providing the benefit of exemption to industrial and commercial undertakings which came into existence after the commencement of the Orissa Land Reforms (Amendment) Act, 1973, a new subsection to that effect will be needed. However, utmost caution, checks and balances will have to be exercised in exempting such undertakings from the operation of ceiling laws, or else the move might be construed as a colourable provision and exercise of power.

A reading of Section 38 (b) and the proviso indicates that where land is held by an industrial or commercial undertaking or any factory or workshop and the land is necessary for the use for any non-agricultural purpose of such undertaking, then Chapter IV relating to the ceiling of the Orissa Land Reforms Act will have no application. Having provided for that exemption a proviso was inserted stating therein that such exemption will apply for a period of five years and if for five years from the date of the commencement of the Orissa Land Reforms (Amendment) Act, 1973, the land in question is not used for the purpose for which it had been set apart, then the Collector after giving due notice and hearing

the person concerned can pass an order applying the provisions of chapter IV to that land. The object and purpose of the proviso aforesaid is clear. It is intended to make the ceiling laws applicable in respect of land which is held by an industrial undertaking of the Government for utilizing the same for any industrial purpose and yet not utilizing the land for the said purpose. But where the land held by the industrial undertaking is earmarked and set apart for different purposes of the company or the undertaking and yet the company is prevented from using the land for the purpose in question because of several supervening factors and the five year period as provided in the proviso to section 38(b) expires then in such case it cannot be said that the land is not actually used within the ambit of the proviso. In other words, the expression, lands are not actually used, must be construed to mean lands which are not deliberately put to use by the industrial concern for the purpose for which it has been set apart. But, where the use in question has become impossible on account of certain statutory impediments or on account of non-availability of sanction of the appropriate authority or on account of some such similar reason over which industrial concern has got no control, then it cannot be said that the land is not actually used (M/s Orient Paper, and Industries Ltd. V State of Orissa and others; 70 (1990) CLT 77).

### **3. Ceiling Area for a Company not covered by Exemption**

As per Section 37 of the Orissa Land Reforms Act, 1960.

“(a) “Person” includes a company, family, association or other body of individuals, whether

incorporated or not, and any institution capable of owning or holding property”

Thus “Person” has been defined u/s 17 (a) to include a “Family” which has again been defined in section 37 (b).

Further, Section 37-A provides that “the ceiling area in respect of a person shall be ten standard acres;

Provided that where the person is a family consisting of more than five members, the ceiling area in respect of such person shall be ten standard acres increased by two standard acres for each member in excess of five, so however, that the ceiling area shall not exceed eighteen standard acres”.

The above ceiling will apply to a company desirous of making a direct purchase from the land holder. Since the company will not be moving through the public route of land acquisition, as laid down by the Land Acquisition Act, 1894, the Company, unless given exemption in the ceiling law, will be able to directly purchase lands as per the ceiling restrictions provided in Section 37-A as aforesaid.

#### **4. Restrictions on the Alienation of Tribal Lands**

The Orissa Land Reforms Act, 1960 puts certain restrictions on the alienation of the tribal lands, which have to be borne in mind, while discussing direct purchase of lands by the interested companies/ investors. Section 22 of the said Act runs as follows:

#### **SECTION - 22**

Restriction on alienation of land by Scheduled Tribes:

(1) Any transfer of a holding or part thereof by a raiyat, belonging to a Scheduled Tribe shall be void except where it is in favour of :

(a) a person belonging to a Scheduled Tribe; or

(b) a person not belonging to a Scheduled Tribe when such transfer is made with the previous permission in writing of the Revenue Officer;

Provided that in case of a transfer by sale, the Revenue Officer shall not grant such permission unless he is satisfied that a purchaser belonging to a Scheduled Tribe willing to pay the market price for the land is not available, and in case of a gift unless he is satisfied about the bonafides thereof.

(2) The State Government may, having regard to the law and custom applicable to any area prior to the date of commencement of this Act by notification, direct that the restrictions provided in sub-section (1) shall not apply to lands situated in such areas or belonging to any particular tribe throughout the State or in any part of it.

(3) Except with the written permission of the Revenue Officer, no such holding shall be sold in execution of a decree to any person not belonging to a Scheduled Tribe.

(4) Notwithstanding anything contained in any other law for the time being in force, where any document required to be registered under the provisions of clause (a) to clause (e) of sub-section (1) of Section 17 of the Registration Act, 1908 (16 of 1908) purports to effect transfer of a holding or part thereof by a raiyat belonging to a scheduled Tribe in favour of a person not belonging to a Scheduled Tribe, no

registering officer appointed under that Act shall register any such document, unless such document is accompanied by the written permission of the Revenue Officer for such transfer.

(5) The provisions contained in sub-section (1) to (4) shall apply, mutatis mutandis, to the transfer of a holding or part thereof of a raiyat belonging to the Scheduled Caste.

(6) Nothing in this section shall apply

(a) To any sale in execution of a money decree passed, or to any transfer by way of mortgage executed, in favour of any scheduled bank or in favour of any bank to which the Orissa Co-operative Societies Act, 1962 (Orissa Act 2 of 1962) applies; and

(b) To any transfer by a member of a Scheduled Tribe within a scheduled area

## **THE ORISSA REGULATION NO. 2 OF 1956**

The Orissa Scheduled Areas Transfer of Immovable Property (by Scheduled Tribes) Regulation, 1956.

3. (1) Notwithstanding anything contained in any law for the time being in force any transfer of immovable property by a member of a Scheduled Tribe, except by way of mortgage executed in favour of any public financial institution for securing a loan granted by such institution for any agricultural purpose, shall be absolutely null and void and of no force or effect whatsoever, unless such transfer is made in favour of another member of a Scheduled Tribe:

Provided that -

(i) nothing in this sub-section shall be constructed as to permit any member of a Scheduled Tribe or his successor-in interest to transfer any immovable property which was settled with such member of Scheduled Tribe by or under any authority of the State or the Central Government or under any law for the time being in force:

(ii) in execution of any decree for realization of the mortgage money, no property mortgaged as aforesaid shall be sold in favour of any person not being a member of a Scheduled Tribe; and

(iii) a member of a Scheduled Tribe shall not transfer any land if the total extent of his land remaining after the transfer will be reduced to less than two acres in case of irrigated land or five acres in case of un-irrigated land.

Explanation I-

For the purposes of this sub-section, a transfer of immovable property:-

(a) in favour of a female member of a Schedule Tribe, who is married to a person not belonging to any Scheduled Tribe, shall be deemed to be a transfer made in favour of a person not belonging to a Scheduled Tribe; and

(b) shall include a transfer of immovable property to a person belonging to a Scheduled Tribe for consideration paid or provided by another person not belonging to any such Tribe.

Explanation II- For the purposes of clause (iii) of the proviso, the expression "irrigated land" shall mean such land which is irrigated at least for one crop in a year and the expression "un-irrigated land" shall be construed accordingly.

## **CONCLUSION**

### **Liberalization and Relaxation in the Revenue Laws Restrictions**

It will be essential, in the wake of liberalization to relax some of the restrictions imposed by the revenue laws of the States, with certain checks and balances and pre-qualifications, to facilitate the process of direct purchase by the companies. In this context, it will be appropriate to cite the following exemptions granted in the ceiling law of Kerala to facilitate industrial, commercial, educational or charitable uses of lands in that state.

### **The Kerala Land Reforms Act, 1963**

#### **Chapter-III**

#### **Restriction on Ownership and Possession of Land in Excess of Ceiling Area and Disposal of Excess Lands**

##### **Section-81 Exemptions**

The provisions of this Chapter shall not apply to

(c) lands comprised in mills, factories or workshops and which are necessary for the use of such mills,



factories or workshops and which are necessary for the use of such mills, factories or workshops;

.....  
(e) Plantations  
.....

(k) lands belonging to or held by an industrial or commercial undertaking at the commencement of this Act, and set apart for use for the industrial or commercial purpose of the undertaking:

Provided that the exemption under this clause shall cease to apply if such land is not actually used for the purpose for which it has been set apart, within such time as the District Collector may, by notice to the undertaking, specify in that behalf;

.....  
(q) Commercial sites  
.....

(3) The Government may, if they are satisfied that it is necessary to do so in the public interest:-

(a) on account of any special use to which any land is put;

(b) on account of any land being bona fide required for the purpose of conversion into plantation or for the extension or preservation of any existing plantation or for any commercial, industrial, educational or charitable purpose, by notification in the Gazette, exempt such land from the provisions of this Chapter, subject to such restriction and conditions as they may deem fit to impose;

Provided that the land referred to in clause (b) shall be used for the purpose for which it is intended within such time as the Government may specify in that behalf; and where the land is not so used within the time specified, the exemption shall cease to be in force.

The degree and extent to which such relaxations in the respective state laws will be effected is a subject matter of judicious decision and exercise of discretion for the concerning states.

## **CHAPTER - 4**

### **LAND ACQUISITION BY MUTUAL AGREEMENT IN RAJASTHAN**

#### **A. Package for Land Procurement by Local Bodies**

Initially, the Government of Rajasthan adopted the following policy in 2005, with regard to procuring land by mutual agreement (Ref. Urban Development Department, Government of Rajasthan Notification No. F. 6(29) UD/3/2004 Jaipur, dated 27.10.2005);

To simplify the process of seeking land by mutual agreement in cases of land acquisition, for the schemes of Jaipur Development Authority/ Rajasthan Housing Board/ Urban Improvement Trust/ Urban Local Bodies; and for the time bound implementation of different schemes on acquired lands, a provision for allotting 15% developed residential land to the tenant / landowner in lieu of land, surrendered free of cost, by him, was made in the law. Presently, due to the sharp increase in the market price of land, the farmers are constantly demanding an increase in their share of land, considering this 15% developed land (compensation) provision as grossly inadequate. In this context, after due deliberations, the State Government has decided to allot, upto maximum of 20% residential and 5% commercial developed land, as compensation, in lieu of the acquired land. Therefore, in supersession of all earlier circulars/ orders, the following guidelines have been issued:

1. In cases of land acquisition, a maximum of 20% residential and 5% commercial land could be allotted to the same tenant whose land has been acquired; in lieu of free of cost surrender of the acquired land by

the tenant. This allotment will not be permissible to any other person, whosoever, even though authorized by the original tenant.

2. This allotment of developed land, in lieu of the acquired land, shall be from the same acquired land of the tenant or from within the scheme, for which land is to be acquired. If it is not possible to allot from the same land/scheme, cash compensation will be paid for the acquired land.

3. If residential land, in lieu of the acquired land, is allotted at the same place, no compensation will be payable to the applicant for constructed building. In the case of residential land allotment at different place in the same scheme, separate compensation will be payable for constructed building. No compensation will be payable for wells, trees etc.

4. This provision will be applicable only in cases of future land acquisitions. Where award has already been declared by L.A.O. and cash compensation has already been paid/ deposited in court or where a provision for allotment of 15% developed land has already been made in award, this provision will not be applicable.

5. The concerned institutions will submit, to the State Government and L.A.O., layout plan of schemes, for which land is being acquired, before issuing notification under Section 6 and after issuing notification under Sec. 4 of the Land Acquisition Act, 1894 (Central Act No. 1 of the 1894). The L.A.O. shall inform the tenants that they are entitled to get developed land in place of cash compensation, if they so desire. The tenant/ land- owner will have to submit

his option in this regard. The L.A.O. will show the layout plan to the tenant/ landowner, so that, he faces no difficulty in submitting his option.

6. The L.A.O. could recommend either cash compensation or developed land, upto a maximum of 20% residential & 5% commercial. The concerned institution/local body shall form a committee of at least the following four officers to recommend the allotment of developed land in lieu of the acquired land:-

(i) Chairman of the concerned Authority/Trust/Local Body

(ii) Secretary of the concerned Authority/Trust/Local Body

(iii) Head of the finance and accounts wing of the concerned authority/ Trust/Local Body

(iv) Representative of the Town Planning Department

7. This committee could recommend allotment of upto maximum of 20% residential and 5% commercial land, looking to the market price of the land to be acquired. If the cost of the developed land being allotted is found to be in excess of market price of the land being acquired, the proportion of developed land could be reduced accordingly. The L.A.O. shall make provisions in the award, on the basis of this recommendation. After approval of the award, the concerned institution/local body shall submit proposals of allotment of developed land, according to

the recommendation of its committee, to the State Government, for sanction.

8. The tenant/ landowner will be entitled for land-use change (for commercial or other purposes) of the developed residential land allotted in lieu of acquired land, under the provisions of law for the time being in force.

The salient features and effects of the Rajasthan Package for land procurement by local bodies can be summed up as follows:

1. The Government of Rajasthan have authorized (since 1998) local municipal bodies/ development authorities to acquire land for public purpose from the land owners by giving them 15% developed residential land as compensation;

2. Because of rising land prices, land owners have been requesting the State Government to raise the level of compensation, some have gone to the courts of law for raising the compensation that resulted in inordinate delay in the availability of land for public/developmental project to be undertaken by local municipal body/ developmental authorities;

3. After detailed discussions with all the stakeholders, the Government of Rajasthan have issued an order on 27<sup>th</sup> October, 2005 raising the level of compensation upto 25% developed land(20% residential + 5% commercial);

4. This practical decision and farmer-friendly decision has been welcomed by the farmers all over the state because by this RAJASTHAN PACKAGE they are

getting 25% to 50% more value for their land compared to the prevailing market prices of the land;

5. Since most of the local authorities are not cash-rich, it has helped these bodies in easy procurement of land without paying huge amounts as compensation for the price of land;

6. Farmers have welcomed these steps because they are getting developed chunks of residential and commercial land which they can hold and dispose of as and when they need the money or else they can transfer these properties to their legal heirs;

7. As a result in Jaipur alone more than 2000 acres of land have been surrendered by the farmers to the Jaipur Development Authority, more and more farmers are coming forward all over the state and offering their land to the local bodies/development authorities for public/developmental purposes;

8. Most of the local bodies/development authorities in the state have constituted Land Banks by procuring land through this package and the number of court cases pertaining to land acquisition has come down drastically.

## **B. Acquisition of Land for Companies**

The Rajasthan Land Acquisition Act, 1953 is an Act to consolidate and amend the law for the compulsory acquisition of land in the State of Rajasthan. Rules 32 to 37 of the Rajasthan Land Acquisition Rules, 1956 deal with the acquisition of land for Companies in the following manner:-

Rules 32: State Government to be satisfied with regard to certain matters before initiating proceedings:-

(1) Whenever a Company makes an application to the State Government for acquisition of any land, the Government shall direct the Collector or submit a report to it on the following matter, namely:-

(i) that the company has made its best endeavour to find out lands in the locality suitable for the purpose of acquisition;

(ii) that the Company has made all reasonable efforts to get such lands, by negotiation with the persons interested therein on payment of reasonable price and such efforts have failed;

(iii) that the land proposed to be acquired is suitable for the purpose;

(iv) that the area of land proposed to be acquired is not excessive;

(v) that the Company is in a position to utilize the land expeditiously; and

(vi) where the land proposed to be acquired is good agricultural land and that no alternative suitable site can be found so as to avoid acquisition of that land.

2. The Collector shall, after giving the company a reasonable opportunity to make any representation in this behalf, hold an enquiry into the matters referred to sub-rule (1) and while holding such enquiry he shall:-



(i) in any case where the land proposed to be acquired is agricultural land, consult the District Agricultural Officer of the district whether or not such land is good agricultural land;

(ii) determine, having regard to the provisions of Secs. 23 and 24 of the Act the approximate amount of compensation likely to be payable in respect of the land, which, in the opinion of the Collector, should be acquired for the Company; and

(iii) ascertain whether the Company offered a reasonable price (not being less than the compensation so determined), to the persons interested in the land proposed to be acquired.

Explanation:- For the purpose of this rule "good agricultural land" means any land which, considering the level of agricultural production and the crop pattern of the area in which it is situated, is of average or of above average productivity and includes a garden or grove land.

(3) As soon as may be after holding the enquiry under sub-rule (2), the Collector shall submit a report (in duplicate) to the State Government.

(4) No declaration shall be made by the State Government under Sec. 6 of the Act unless the agreement under Sec. 41 of the Act has been executed by the company.

**Rule 33** Matters to be provided for in the agreement under Sec. 41 - (1) The terms of the agreement referred to in Sec. 41 of the Act shall include the following matters, namely:

(i) that the Company shall not, except with the previous sanction of the State Government, use the land for any purpose other than that for which it is acquired.

(ii) that the time within which the dwelling-houses or amenities directly connected therewith shall be erected or provided, or the building or work shall be constructed or executed, shall not exceed three years from the date of transfer of the land to the Company;

(iii) that where the State Government is satisfied, after such enquiry as it may deem necessary, that the company was prevented by reasons beyond its control from erecting, providing, constructing or executing dwelling houses or amenities or any building or work within the time specified in the agreement, the State Government may extend the time for that purpose by a period not exceeding one year at a time so however that the total period of extension shall not exceed three years.

(iv) that if the Company commits a breach of any of the conditions provided for in the agreement, the State Government may make an order (a) declaring the transfer of the land to the Company as null and void, whereupon the land shall revert back to the State Government; and (b) directing that an amount not exceeding one-fourth of the amount paid by the Company to the State Government as the cost of the acquisition under clause (1) Sec. 41 of the Act shall be forfeited to the State Government as damages and the balance shall be refunded to the Company and the order so made shall be final and binding;

(v) that if the Company utilizes only a portion of the land for the purpose for which it was acquired and the State Government is satisfied that the Company can continue to utilize the portion of the land used by it even if the unutilized part thereof is resumed, the State Government may make an order declaring the transfer of the land with respect to the unutilized portion thereof as null and void whereupon such unutilized portion shall revert back to the State Government and directing that an amount not exceeding one-fourth of such portion of the amount paid by the Company as cost of the acquisition under Cl. (1) Sec. 41 of the Act as is relatable to the unutilized portion shall be forfeited to the State Government as damages and that the balance of the portion shall be refunded to the Company and the order so made shall , subject to the provisions of Cl. (vi) be final and binding;

(vi) that where there is any dispute with regard to the amount relatable to the unutilized portion of the land, such dispute shall be referred to the Court within whose jurisdiction the land or any part thereof is situated and the decision of the Court thereon shall be final.

(2) Where the Company commits a breach of any of the terms of the agreement the State Government shall not make an order under Cl. (iv) of sub-rule (1) unless the Company has been given an opportunity of being heard in the matter.

Rule 34: Additional matters which may be provided for in the agreement under Sec. 41 - (1). Without prejudice to the provisions of rule 33, the terms of the agreement

referred to in Sec. 41 of the Act may also include the following matters, namely:

that in any case of urgency where possession of any land is proposed to be taken under Sec. 17 before an award has been made under Sec. 11 of the Act, the Company shall deposit with the Collector free of interest, such amount (being not more than two third of the approximate amount compensation payable in respect of the land as determined under Cl. (ii) of sub-rule (2) of the 33, and within such time as the Collector thinks fit, to specify in this behalf.

(2) Where any amount has been deposited with the Collector under sub-rule (1), the Collector shall tender payment of amount so deposited to the person interested who in the opinion of the Collector, are entitled to receive payment of compensation under sub-section (1) of Sec. 31 of the Act and shall, pay it to them unless prevented by one or more of the contingencies mentioned in sub-section (2) of Sec. 31 of the Act, subject to the following conditions namely:

(i) the execution of any agreement by each receipt that the amount received by him would be adjusted against the compensation finally awarded and that where the amount received by him exceeds the amount of the compensation finally awarded, the excess amount shall be recoverable from him as an arrear of land revenue and that he shall not claim any interest under the provisions of the Act in respect of the amount received by him under this sub-rule, and

(ii) the execution of a bond by each recipient with or without security as the Collector may decide, undertaking to indemnify the State Government

against any claim for compensation or part thereof by any other person.

(3) If the amount deposited by the Company under sub-rule (1), or any part thereof is not paid under sub-rule (2), the Collector shall, as soon as practicable, refund the same to the Company.

Rule 35: Submission of periodical reports- For the purpose of ensuring that the conditions provided for in the agreement executed by the Company are complied with, the State Government may direct the Collector, or such other officer as the Government may appoint for the purpose, to submit to it and to the Committee a periodical report, at such interval of time as it may specify, indicating the conditions which have been or have not been complied with as well as the steps taken by the Company towards their compliance.

Rule 36: Conditions under which sanction may be given for transfer of land- Where a Company for which land has been acquired under the Act applies, for previous sanction of the State Government for the transfer of that land or any part thereof by sale, gift, and lease or otherwise, no such sanction shall be given unless:

(i) the proposed transfer of land along with dwelling houses, amenities, buildings or work, if any, is to some other company, or where the Company is a co-operative society, such transfer is to any or all of its members, or

(ii) Where the land has been acquired solely for the erection of dwelling houses for workmen employed in the Company, the proposed transfer of the land

alongwith dwelling-house, if any, is to such workmen or their dependent heirs.

**Rule 37:** Special provisions in relation to certain companies - (1) When an application is made to the State Government for acquisition of any land by a Company, other than a Company owned or controlled by the Central Government or any State Government, such acquisition shall ordinarily be made in accordance with the provisions of Part VII of the Act.

(2) Where any land is proposed to be acquired for a Company other than a Company owned or controlled by the Central Government or any State Government the special powers conferred on the State Government under Sec. 17 of Act shall not be exercisable unless it is satisfied that it is necessary to do so in order to avoid danger to life or property or that it is otherwise necessary to do so in public interest.

## CHAPTER - 5

### **THE BIHAR LAND ACQUISITION, REHABILITATION AND RE-SETTLEMENT POLICY, 2007**

The Government of Bihar resolved to extend the following additional benefits to the land-losers, over and above those enshrined in the Land Acquisition Act, 1894 (Ref. Land Reforms Commissioner, Bihar, Memo No. 15/D.L.A. Policy (Rehabilitation/07/06-395 Ra. Dated 19.2.2007):

#### **1. Determination of the Price of Land**

As per the existing provisions, the determination of the price of the land to be acquired is done against the registration value of the equivalent land as prevailing immediately prior to the Notification under Section 4. The Government resolved to add 50% over the aforesaid market rate to arrive at the market value of the land to be acquired.

The land will be accordingly acquired on the price determined as above by adding 30% solatium. However, in cases where the land-holder offers to part with the land voluntarily, the solatium rate will be 60%.

The concerning Notification tends to illustrate the above new policy as follows:-

#### **Procedure for Price Determination Prior to the New Policy**

If the price of the land is Rs. 1.00 lakh per acre, the amount to be given to the land loser will be Rs. 1.00 lakh and Rs. 30,000/- as solatium, that is Rs. 1,30,000/- in toto.

## **Determination of the Price in the Wake of the New Policy**

(a) Normal Procedure: If the price of the land is Rs. 1.00 lakh per acre, a sum of 50% of this will be added, bringing it to Rs. 1,50,000/-. In a normal situation, 30% solatium (Rs. 45,000/-) will be added, bringing the total amount due to Rs. 1,95,000/- instead of Rs. 1,30,000/- as was in practice earlier.

(b) On Voluntary Transfers: If the price of the land is Rs. 1.00 lakh per acre, 50 % will be added to the same bringing it to Rs. 1,50,000/- If the land loser volunteers to part with the land 60% solatium (Rs. 90,000/-) will be added to Rs. 1,50,000/- bringing the total amount due to Rs. 2,40,000/-. Hence, instead of Rs. 1,30,000/- due earlier, Rs. 2,40,000/- will be due in cases of voluntary transfers.

## **2. Amount Due on the Acquisition of Residential Land**

If the residence or the residential land of a landholder is acquired under the land acquisition procedure, then to the extent of the residential land acquired, land upto maximum 5 decimals, will be acquired and made over to the said land loser.

Every land loser whose residential land has been acquired will be given lump-sum assistance of Rs. 10,000/- for temporary shelter.

Every land loser whose residential land has been acquired will be given lump-sum assistance of Rs. 5,000/- for the transportation of his residential articles.



### **3. Compensation for the Displaced Agricultural Labourers**

Such of the displaced agricultural labourers who were attached for livelihood, for at least during the last 3 years, with the land under acquisition, and have since become unemployed, will be given lump-sum minimum wages, as fixed by the Government, for 200 days and job cards under the National Rural Employment Guarantee Scheme.

### **4. Amount payable by the Requisitioning Authority for Land Acquisition and Rehabilitation**

Besides the amounts due under the Land Acquisition Act, the entire costs on rehabilitation and re-settlement will be borne by the Requisitioning Authority. The Requisitioning Authority will make available all dues to the Collector, on demand.

Besides paying for the establishment costs under the Land Acquisition Act, the Requisitioning Authority will make available a sum of 0.5% of the estimated value of the land to the Collector-cum-Administrator, Re-habilitation and Re-settlement for rehabilitation survey, monitoring, stationery, POL and other incidental expenses like the ones on transport, computer, outsourcing of computer operator, Amin, draftsman, Chainman etc. The Collector will put this amount in a savings bank account in a nationalized bank and will be able to use the interest accrued as well in the contingency head. The said savings bank account will be jointly held by the Collector and Additional Collector/District Land Acquisition Officer and will be operated jointly for withdrawal purposes.

The provisions of the new policy in the foregoing will be applicable in all such cases where an Award has not been declared under Section 11.

**RE-SETTLEMENT FOR PROJECT AFFECTED FAMILIES IN ANDHRA PRADESH**

The resettlement and rehabilitation (RRR) benefits shall be extended to all the Project Affected Families and Project Displaced Families (PAF) whether belonging to the below poverty line (BPL) or non-BPL except to the extent where specifically restrictions are mentioned in the policy.

**Free House Site:** Any Project Displaced Family (PDF) owning house and whose house has been acquired shall be allotted free of cost house-site to a maximum extent of 150 sq. mts. of land in the rural and 75 sq. mts. of land in the urban areas.

**Grant for House Construction:** Each PDF of BPL category which has been allotted free house-site shall get a one-time financial assistance of Rs. 40000/- or as fixed by the Government from time to time for house construction. Non-BPL families shall not be entitled to receive this assistance.

**Allotment of Government Land to PAFs,** who become small, or marginal farmers or landless after acquisition, in lieu of the acquired land.

In the case of the allotment of waste/degraded or agricultural Government land, if available within the District, in lieu of the acquired land and if agreed by the PAF for the allotment of such land, each such PAF shall also get financial assistance of Rs. 10000/- per hectare or as fixed by the Government from time to time for land development and in the case of allotment of agricultural land, Rs. 5000/- per PAF or as fixed by

## **CHAPTER - 6**

### **RE-SETTLEMENT & REHABILITATION BENEFITS FOR PROJECT AFFECTED FAMILIES IN ANDHRA PRADESH**

The resettlement and rehabilitation (R&R) benefits shall be extended to all the Project Affected Families and Project Displaced Families (PAF) whether belonging to the below poverty line (BPL) or non-BPL except to the extent where specifically restrictions are mentioned in the policy.

**Free House Site:** Any Project Displaced Family (PDF) owning house and whose house has been acquired shall be allotted free of cost house-site to a maximum extent of 150 sq. mts. of land in the rural and 75 sq. mts. of land in the urban areas.

**Grant for House Construction:** Each PDF of BPL category which has been allotted free house-site shall get a one-time financial assistance of Rs. 40000/- or as fixed by the Government from time to time for house construction. Non-BPL families shall not be entitled to receive this assistance.

Allotment of Government Land to PAFs, who become small, or marginal farmers or landless after acquisition, in lieu of the acquired land.

In the case of the allotment of waste/ degraded or agricultural Government land, if available within the District, in lieu of the acquired land and if agreed by the PAF for the allotment of such land, each such PAF shall also get financial assistance of Rs. 10000/- per hectare or as fixed by the Government from time to time for land development and in the case of allotment of agricultural land, Rs. 5000/- per PAF or as fixed by

the Government from time to time, for agricultural production.

However, such allotment of Government land will be restricted to an extent of land acquired from the PAF or 2.5 ha of dry or 1.25 ha wet land whichever is lesser.

Provided further that in such cases:

(a) no compensation will be payable for the lands acquired from the PAF for the project, to the extent of the Government land allotted.

(b) no ex-gratia will be payable for the lands, resumed from the PAF for the project, to the extent of the Government land allotted.

The Land Acquisition Officer shall pass the award for the lands acquired or resumed from the PAF accordingly.

Allotment of land acquired by the Government from the project benefited area to the Scheduled Tribe PAFs, who become small, or marginal farmers or landless after acquisition, in lieu of the acquired land from them.

The Government may acquire land within the project benefited area, as per the guidelines issued by the Government from time to time so that no person should become small or marginal farmer or landless due to such acquisition, for allotment of such land to the ST PAFs (who become small or marginal farmers or landless due to the acquisition of their land for the project), if such PAFs so desire, in lieu of lands acquired from them.

However, such allotment will be restricted to the extent of land acquired from such PAFs or 2.5 ha dry land or 1.25 ha wet land whichever is lower. Further provided that in such cases:

(a) no compensation will be payable for the lands acquired from the PAF for the project, to the extent of such land allotted.

(b) no ex-gratia will be payable for the lands resumed from the PAF for the project, to the extent of such land allotted.

The Land Acquisition Officer shall pass the award for the lands acquired or resumed from the PAF accordingly.

The land allotted shall be free from all encumbrances. The land allotted may be in the joint names of the wife and husband of the PAF.

**Grant for cattle shed:** Each PAF having cattle, at the time of acquiring his house, shall get financial assistance of Rs. 3000/- or as fixed by the Government from time to time for the construction of cattle shed in the new allotment.

**Grant for transporting materials:** Each PAF shall get a lump sum one time financial assistance of Rs. 5000/- or as fixed by the Government from time to time for transportation/ shifting of his building materials, belongings and cattle etc. from the affected zone to the resettlement zone.

**Income Generating Scheme Grant:** Each PAF comprising of rural artisan/ small trader and self employed person shall get one time lump sum financial assistance of Rs. 25000/- or as fixed by the

Government from time to time for the construction of working shed/ shop.

Wages, if after acquisition, the land owner becomes landless: Each PAF owning agricultural land in the affected zone and whose entire land has been acquired shall get a one time financial assistance equivalent to 750 days minimum agricultural wages for "the loss of livelihood" if no land is allotted in lieu of the acquired land.

Wages, if after acquisition, the land owner becomes marginal farmer: Each PAF owning agricultural land in the affected zone and who consequently becomes a marginal farmer shall get a one time financial assistance equivalent to 500 days minimum agricultural wages if no land is allotted in lieu of the acquired land.

Wages, if after acquisition, the land owner becomes small farmer: Each PAF owning agricultural land in the affected zone and who consequently becomes a small farmer shall get one time financial assistance equivalent to 375 days minimum agricultural wages if no land is allotted in lieu of the acquired land.

Wages to labourers: Each PAF belonging to the category of 'agricultural labourer' or 'non-agricultural labourer' shall be provided a one time financial assistance equivalent to 625 days of the minimum agricultural wages.

Subsistence allowance to the displaced family: Each PAF who is also a project displaced family shall get a one time subsistence allowance equivalent to 240 days of minimum agricultural wages. It will be in addition to any other benefit available to him as PAF.

In the case of the acquisition of land in emergent situations such as under Section 7 of the Land Acquisition Act, 1894 or similar provision of any other Act in force, each PAF shall be provided with transit accommodation, pending resettlement and rehabilitation scheme. Such families shall also get R&R benefits as mentioned in the Policy.

The Project Affected Families, who were in possession of forest lands prior to 25<sup>th</sup> October, 1980 shall get all the benefits of R&R as given in the Policy.

The PAFs enjoying reservation benefits in the affected zone shall be entitled to get the same reservation benefits in the resettlement zone.

### **Basic Amenities to be Provided at the Resettlement Centre for Projects**

While shifting the population of the affected zone to the resettlement zone, the Administrator for R&R may, as far as possible, ensure that:

(a) In case the entire population of the village/ area to be shifted belongs to a particular community, such population/ families may be resettled en masse in a compact area so that socio-cultural relations (social harmony) amongst the shifted families are not disturbed.

(b) The Re-settlement centre shall be provided with the basic amenities and infrastructural facilities of drinking water, internal roads, drainage, electricity, primary school building, playground, community centre and access road to the resettlement site. In addition to these facilities, other community facilities

which were available in the village, at the time of the acquisition, shall also be provided.

**R&R Benefits for the Project Affected Families of the Scheduled Tribes**

(a) Each Project Family of the ST category shall be given preference in the allotment of land.

(b) Each tribal PAF shall get additional financial assistance equivalent to 500 days minimum agricultural wages for the loss of customary rights/ usages of forest produce.

(c) Tribal PAFs will be re-settled close to their natural habitat of their choice, to the extent possible, in a compact block so that they can retain their ethnic, linguistic and cultural identity.

(d) Tribal PAFs, resettled out of the district or outside the tribal area will get 25% higher R&R benefits in monetary terms.

(e) The tribal land alienated in violation of the laws and regulations in force on the subject would be treated as null and void and the R&R benefits would be available only to the original tribal landowner.

(f) The tribal families residing in the Project Affected Areas having fishing rights in the river/ pond/ dam shall be given fishing rights in the reservoir area.

**Constitutional Benefits to the ST/ SC/ BC/ PAPs at the Re-settlement Centre**

The PAPs shall enjoy all the Constitutional benefits at the new settlement also to which they were entitled in the village that was acquired for the project.



### **Dispute Redressal Mechanism: R&R Committee at the Project Level**

(a) In respect of every project to which this Policy applies, the State Government shall constitute a committee under the chairmanship of the Administrator of that Project to be called the Resettlement and Rehabilitation Committee to monitor and review the progress of the implementation of the scheme/ plan of the resettlement and rehabilitation of the Project Affected Families.

(1) a representative of women PAPs residing in the affected zone;

(2) a representative each of the Scheduled Castes and Scheduled Tribes PAPs residing in the affected zone;

(3) a representative of a voluntary organization;

(4) a representative of the lead bank;

(5) chairperson of the PRIs located in the affected zone;

(6) MPs/ MLAs of the area included in the affected zone.

(b) Procedure regulating the business of the Resettlement and Rehabilitation Committee shall be framed by the Appropriate Government.

### **Grievance Redressal Cell**

(a) In respect of every project to which this Policy applies, the State Government shall constitute a Grievance Redressal Mechanism under the

Chairmanship of the Commissioner for Resettlement and Rehabilitation for the redressal of the grievances of the PAFs.

(b) The composition, powers, functions and other matters relating to the functioning of the Grievance Redressal Mechanism shall be such as may be prescribed by the Appropriate Government.

(c) Any Project Affected Family, if aggrieved, for not being offered the admissible R&R benefits as provided under this Policy, may move an appropriate petition for redressal of his grievances to the Grievance Redressal Mechanism.

(d) The form and manner in which and the time within which complaints may be made to the Grievance Redressal Mechanism and disposed off shall be such as may be prescribed by the appropriate Government.

The Grievance Redressal Mechanism shall have the power to consider and dispose off all complaints relating to the resettlement and rehabilitation against the decision of the Administrator/ R&R Committee at Project level and issue such directions to the Administrator for Resettlement and Rehabilitation as it may deem proper for the redressal of such grievances.

The Commissioner for Resettlement and Rehabilitation may by order in writing delegate such of the administrative powers conferred and duties imposed on him by or under this Policy to any officer not below the rank of a Joint Collector.

## CHAPTER- 7

### **POLICY FOR THE ACQUISITION OF LAND FOR PUBLIC PURPOSE IN PUNJAB**

The Department of Revenue and Rehabilitation (Land Revenue Branch), Government of Punjab vide LD No. 1/72/06-LR-1 7659 dated 6.12.2006 notified a new policy for the acquisition of land for public purpose. The new policy aimed at taking care of the payment of adequate compensation and eliminating the delay in such cases. The policy further intends to strike a balance between the interests of the land-losers on the one hand and the concern for the development of the State, on the other.

The procedure for land acquisition in Punjab has been laid down in the Standing Order No. 28 of the FCR. Whenever the land is compulsorily acquired, it hurts the interest of land owners and they feel that they are not adequately compensated. They are also deprived of their means of livelihood in some cases and therefore, are required to be rehabilitated. There is a need to strike a balance, while acquiring land, to ensure that land is made available for public purposes and at the same time the farmers are adequately compensated and rehabilitated. As such it is desirable that the compulsory acquisition of land is kept to the minimum.

2. The expression "Public Purpose" as defined u/s 3 (1) of the Land Acquisition Act, 1894 includes:

- (i) the provision of village-sites, or the extension, planned development or improvement of existing village-sites;

(ii) the provision of land for town or rural planning;

(iii) the provision of land for planned development of land from public funds in pursuance of any scheme or policy of Government and subsequent disposal in whole or in part by lease, assignment or outright sale with the object of securing further development as planned;

(iv) the provision of land for a corporation owned or controlled by the State;

(v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State;

(vi) the provision of land for carrying out any educational, housing, health or slum clearance scheme sponsored by Government or by an authority established by Government for carrying out any scheme, or, with the prior approval of the appropriate Government by a local authority, or a society registered under the Societies Registration Act, 1860, or under any corresponding law for the time being in force in a State, or a cooperative society within the meaning of any law relating to cooperative societies for the time being in force in any state;

(vii) the provision of land for any other scheme of development sponsored by the Government, or, with the prior approval of the appropriate Government or by a local authority;

(viii) the provision of any premises or building for locating a public office, but does not include acquisition of land for Companies.

3. It has been felt that land should normally be acquired through negotiations. Compulsory acquisition may be done only after paying adequate compensation at market value and providing for the rehabilitation of the landowners, for a public purpose listed below, which list is illustrative and not exhaustive:

(i) Public buildings such as schools, hospitals, veterinary dispensaries, bus stands and railway stations etc. and offices/ residences for Government and its entities.

(ii) Physical infrastructure such as roads, water supply and sewerage, public works, canal and other irrigation networks, ports and airports etc.

(iii) Urban infrastructure projects such as the setting up of townships, housing, slum clearance schemes, industrial estates and other infrastructure relating thereto and planned development of land from public funds etc.

4. Indiscriminate acquisition should not be resorted to by the PUDA or any other urban development agencies and the prime focus should be on acquisition for economically and socially backward groups.

5. The land for industrial parks, projects and urban development projects such as residential colonies and commercial establishments for

development by private sector will be acquired through negotiation with the land owners. However, land not exceeding 20% of the total project, may be compulsorily acquired by the government at their cost to provide contiguity and connectivity for such projects after paying adequate compensation to the farmers and undertaking their rehabilitation.

6. It has been noted that sometimes land acquisition proceedings are initiated by the Administrative Departments indiscriminately, sometimes for a purpose which can be achieved otherwise by acquiring land through negotiations by the private sector. Therefore, all proposals for acquisition of land u/s 4 may first be referred to the State Level Land Acquisition Board (SLLAB). The SLLAB may consider the proposal of the Administrative Department and issue a No Objection Certificate within one month of the receipt of the proposal, if the acquisition is found to be for a public purpose as illustrated above. While doing so, the SLLAB will ensure that NOC is granted for the minimum land required for the public purpose.

7. It has been noted that due to delay in the land acquisition proceedings, there is great variation in the land prices as on the date of notification u/s 4 and the date on which the award is announced and possession is taken. The land owner who expects to be compensated adequately, feel aggrieved when they are offered compensation at the rates prevailing on the date of notification u/s 4. Therefore, the time period between the issue of notification u/s 4 and a declaration u/s 6 shall be confined to 6 months only. The Administrative Department must issue the declaration u/s 6 within a period of 6 months of the notification u/s 4 of the Act. Similarly, the time period

between the date of issue of declaration u/s 6 of the Act and the announcement of award shall also be confined to 6 months. If the award is not announced within 6 months of the issue of declaration u/s 6, the acquisition proceedings will lapse and will have to be started de novo, if required.

8. To make the process of land acquisition more transparent, the market value of the land shall be determined within a period of 3 months from the date of issue of notification u/s 4 of the Act and shall be incorporated in the declaration/ notification to be issued u/s 6 of the Act.

9. The compensation award should be based on the market value of the land being acquired. The District Level Committee should take into account the actual market rates prevailing in the area and then make its recommendations. An additional "no litigation premium" would be provided on the determined market value of the land in the case of compulsory acquisition @ 10% of this value. This will encourage better compliance and cut delay on land acquisition due to Court interventions. An attempt should also be made to have a negotiated settlement with the land owners, before the rates are recommended by the District Level Committee to the Government.

10. PUDA and other Development Authorities such as GMADA, PDA, PSIEC and Improvement Trusts shall prepare schemes such as Land Pooling Scheme, oustee policy etc. where the land owner is given some developed land in lieu of compensation or is provided developed land on reserved price in addition to compensation given to him on market rates. Such schemes cannot, however, be implemented where the land is not being acquired for residential or Industrial Estates.

11. The land owners and other persons dependent on the land being acquired are immediately deprived of their livelihood, as soon as possession of the land is taken by the acquiring Department. The land owners and other affected families shall be rehabilitated in accordance with the provision of "National Policy on Resettlement and Rehabilitation for Project Affected Families- 2003".

12. On the approval of the policy, the Standing Order No. 28 of FCR shall be amended accordingly to implement the same.

#### Delegation of Powers to D.Ce.

To achieve greater efficiency, the Government has delegated powers to Deputy Commissioners in respect of approving general awards upto Rs 50 lakhs. The Commissioner for Land Acquisition and Resettlement in the Upper Krishna Project is delegated with all the powers of Principal Secretary to the Revenue Department in respect of enquiry under Section 5A, approval of final notification under Section 5 (i) and approval of all awards upon any amount in respect of all acquisitions for the Upper Krishna Project and all other acquisition matters in erstwhile Gulbarga and Bellary Divisions.

#### Consent Awards

In recent years the State Government is following and encouraging consent awards under section 11 (5) of Land Acquisition Act to fix



## **CHAPTER - 8**

### **LAND ACQUISITION, DISPLACEMENT AND RESETTLEMENT IN KARNATAKA**

The Land Acquisition Act 1894 and the Karnataka Land Acquisition Rules provide the basic enabling procedures and powers. There are many other special statutes dealing with land acquisition such as the Karnataka Industrial Area Development Board Act, 1966, the Bangalore Development Authority Act 1976, and the Karnataka Urban Development Authority Act, 1989. Excluding these laws and the special bodies which are authorized to acquire lands for industrial, housing, road development or urban development purposes, all acquisition for other purposes is done by the Revenue Department.

#### **Delegation of Powers to D.Cs.**

To achieve greater efficiency, the government has delegated powers to Deputy Commissioners in respect of approving general awards upto Rs. 50 lakhs. The Commissioner for Land Acquisition and Resettlement in the Upper Krishna Project is delegated with all the powers of Principal Secretary to the Revenue Department in respect of enquiry under Section 5A, approval of final notification under Section 6 (1) and approval of all awards upon any amount in respect of all acquisitions for the Upper Krishna Project and all other acquisition matters in erstwhile Gulbarga and Belgaum Divisions.

#### **Consent Awards**

In recent years the State Government is following and encouraging consent awards under section 11 (2) of Land Acquisition Act to fix

compensation to avoid prolonged litigation as well as dissatisfaction of the land losers.

### **Lok Adalats**

The Government is also encouraging and resorting to the settlement of cases pending in civil courts for enhancements of compensation in special Lok Adalaths organised with the co-operation of the State Legal Aid Board.

### **Projects**

At present, the largest land acquisition is being done for the irrigation projects in the state managed by the special corporations such as the Krishna Bhagya Jal Nigam, the Karnataka Nirawari Nigam and the Cauveri Nirawari Nigam. State Highways, Power Projects under the Karnataka Power Corporation and power distribution companies also acquire huge lands.

### **Rudrabhumi Acquisition**

To provide grave-yards in villages which do not have them, the government is acquiring private lands. During 2005-2006 an amount Rs. 100 lakhs was spent on it.

### **Progress in Land Acquisition**

During 2005-06 the Government approved final notification under section 6 (1) of Land Acquisition Act 1894 in 845 cases; enquiry reports were cleared in 297 cases, and permission was given for emergency acquisition (under section 17 of Land Acquisition Act) in 190 cases. Final awards were approved in 26 cases which exceeded Rs. 50 lakhs. There was no case of the de-notification of the acquired land during the year.

## **DISPLACEMENT AND RESETTLEMENT**

As a consequence of the acquisition of lands and buildings, a considerable number of families and persons get displaced. Although compensation is paid to them, it does not suffice or cannot meet the cost of replacing lost assets and resettlement in newer places. The people who sacrifice their livelihood sources for the development projects giving benefits to large populations end up as victims of development themselves. The state government is, therefore, following a generous policy of providing special benefits over and above the compensation to the land losing and other indirectly affected people.

In all major development projects acquiring lands there is a special policy for Resettlement and Rehabilitation of projects affected and displaced people.

At present, some special schemes are as follows:-

- (i) Resettlement and Rehabilitation (R & R) policy for the Upper Krishna Project
- (ii) R & R Package for the Karnataka Nirawari Nigam Projects such as Hipparagi Barrage, Bheema Barrage, Karanja Project, Markandeya Project, which is the same as the Upper Krishna R & R Packages (Entire North Karnataka)
- (iii) Seabird Naval Project and R & R Packages (North Kanara district)
- (iv) Jurala Project R & R Package (Raichur District)
- (v) Hemavathi Project R & R Package

(vi) Kudremukh National Park R & R Package

(vii) Mangalore Airport R&R Package

The R & R Packages generally provide the following benefits:

(i) Free House Sites to the oustees and their major sons/ brothers

(ii) House Construction Grant

(iii) Income generation grant

(iv) Transportation Grant for shifting

(v) Subsistence Allowance

(vi) Resettlement Centres with fully developed basic infrastructure including water supply, road, electricity, school etc.

(vii) Some Projects like the Upper Krishna Project which is the largest R & R Project in India provide several other benefits. It has a huge R & R Organisation headed by the Commissioner for Land Acquisition, Resettlement and Rehabilitation who is of the rank of Revenue Secretary. This R & R Project is hailed as the best R & R exercise in the country. It is nearly complete.

(viii) 5% reservation of posts in 'C' and 'D' categories in all government recruitments for the oustees of projects

(ix) Free of cost re-use of salvage materials from the acquired buildings.

## CHAPTER - 9

### LAND POLICY FOR INDUSTRIAL DEVELOPMENT IN HARYANA

The Department of Industries and Commerce, Government of Haryana, vide Notification No. 49/48/2006-41-B1 dated 4<sup>th</sup> May 2006 formulated policy regarding the procurement of land for private deployment and in public-private partnership for setting up of Special Economic Zones, Technology Cities, Industrial Parks and Industrial Model Townships etc.

#### **Introduction**

Haryana's Industrial Policy, 2005 lays down that the objective of industrial and economic growth shall be achieved, amongst other factors, by encouraging public-private partnership in infrastructure projects. In particular, the development of industrial infrastructure with private sector participation has been emphasized. So far, the task of the development of industrial infrastructure viz, Industrial Estates has been entrusted to the Haryana State Industrial Development Corporation (HSIDC). This Corporation has developed industrial areas at different locations in the State. This also includes two growth centres at Bawal and Saha and an Industrial Model Township at Manesar (Gurgaon).

The positive sentiment created by the Industrial Policy, 2005 and coordinated initiatives of various departments of the Government have given a tremendous boost to the industrial sector and as a result, many investment proposals have been received by the State Government. Practically the entire area developed in the Industrial Estates of HSIDC stands

allotted. It is imperative to take immediate steps to acquire and develop fresh land at strategic locations for the creation of additional industrial infrastructure to sustain the momentum of industrial growth. The HSIDC has proposed to develop additionally about 10000 acres of land all over the State. This huge development work would strain the resources of the HSIDC and further investment may not be possible in the near future. At the same time, 23 proposals for setting up Special Economic Zones in the State have been granted approval, in principle, by the Government of India. Some of these proposals envisage large scale SEZs which are multi-product and when they come up, investments would flow to the State creating large scale employment.

Interest has been shown by the private sector in developing Industrial Model Townships, Industrial Parks and Technology Cities as well through private initiatives and public-private partnership.

In this context, it became essential for the State Government to come out with a policy to facilitate the private sector initiatives that supplement the State's own initiative in the creation of industrial infrastructure. The critical factor in the creation of industrial infrastructure is the availability of land and, therefore, intervention of the State Government to facilitate the private sector in the acquisition of land becomes important. In respect of the SEZs, this is even more critical since notification of such zones requires the contiguity of the area for custom bonding.

### **Location of SEZs, Industrial Parks & Technology Cities**

For the creation of infrastructure for the SEZs and Industrial Model Townships, huge investment is

required to be made by the private sector. Even in cases where the initiative is in the public private partnership, the bulk of the investment has to come from the private sector. The investment decision in the private sector would primarily be motivated by commercial viability and most of the investment is expected in the NCR (National Capital Region) due to locational advantages as generally indicated by the prospective industrial investors. It is equally important for the State Government to ensure development of the industrially backward regions of the State. In order to reconcile the State's objective with the preference shown by the private sector, it is envisaged that the State Government may assist the private sector in developing not more than 5-6 multi-product SEZs in the NCR. As far as possible, it shall be the endeavour of the State Government to ensure the dispersal of these SEZs even within the NCR. Similarly, not more than two Industrial Model Townships would be encouraged in the NCR. However, no such restriction shall be placed on developers who approach the State Government for assistance in land acquisition outside the NCR. The State Government would also encourage setting up of Technology Cities mainly outside the NCR.

The State Government would leave it to the private sector to purchase land directly from the land owner for single product IT/ITES, biotechnology and Warehousing SEZs where area requirement is much smaller. The State Government would, however, assist the private sector developer in acquiring left out pockets to ensure the contiguity of the SEZs.

In respect of the multi- project SEZs, the State Government would encourage the purchase of land from the owners by mutual consent. However,

considerations of the minimum area requirement of 2500 acres and its contiguity as a pre-requisite for the approval of the SEZ would generally necessitate State support. Such a provision for assistance to the private sector by the State Government exists in section 7 (1) of the Haryana Special Economic Zone Act, 2005.

Outside the NCR region, the State Government may assist the private sector in the acquisition of land even in respect of the single product SEZs where the minimum area requirement is 250 acres only.

The area restrictions on Industrial Parks/ Industrial Model Townships within the NCR would be 1500 acres.

This restriction shall not apply to the industrial parks outside the NCR.

The minimum size stipulated for technology cities in the Industrial Policy, 2005 is 1000 acres and there is no maximum size restriction. The State Government shall assist in the acquisition of land in technology cities only outside the NCR.

### **Public Private Partnership**

Wherever the developer approaches the HSIDC for the development of SEZ, Industrial Park or Technology City in public private partnership, the decision on the terms and conditions of such partnership including the extent of participation in the equity of such projects shall be left to the Board of Directors of the HSIDC. The State Government shall assist in the acquisition of land for all such joint venture projects. The extent of land acquisition in such projects shall be decided by the State Government. However, in joint ventures where the HSIDC/ State



Government would have 26% or more share in equity, the State Government shall acquire the entire land for the project.

### **Selection of project for State assistance in the acquisition of land**

The proposals received by the State Government for assistance in the acquisition of land shall be put up before the Haryana Industrial Promotion Board (HIPB) set up under the Chairmanship of the Chief Minister under the Industrial Policy, 2005. The Board shall consider such proposals keeping in view the various parameters enshrined in the Industrial Policy to achieve the intended purpose of industrialization. Where the Board is satisfied that the setting up of such a project would be in public interest, the Board may approve the acquisition of land by the State Government not exceeding 25% of the total project area falling in the National Capital Region or Panchkula district and not exceeding 50% of the project area falling outside the NCR/Panchkula district. The Board may stipulate such additional conditions for providing the required assistance over and above the general terms and conditions, as it may deem necessary. The Board may also consider customized incentives and support for successful implementation of such projects, including such relaxation as it may deem necessary for achieving the objectives of economic growth.

### **General Terms & Conditions**

While the State Government would endeavour to encourage the private sector to purchase land directly from the land owners, it would not be feasible to expect large scale industrial infrastructure projects without the State intervention through the acquisition of land

for such projects. Keeping in view the need to give adequate compensation to the land owners, the State Government has also fixed floor rates in tune with the prevailing market rates for the purpose of giving suitable compensation to the land owners. In addition, the following general terms and conditions shall be applicable in all cases of acquisition of land for the private developers as well as for projects in private public partnership for the setting up of the SEZs, Technology Cities, Industrial Parks and Industrial Model Townships:

i. The developer shall pay to the Government the total cost of the acquisition of land and the administrative expenses incurred for such acquisition as well as any enhancement which would be ordered by the competent courts.

ii. The developer shall pay to the State Government administrative expenses @ 15% of the total cost of acquisition including enhancement expected where HIPB decides to reduce or waive off such expenses as special incentive for the project.

iii. The developer shall be bound to provide, to the satisfaction of the State Government, the rehabilitation of population by providing built up house or residential plots along with the cost of construction in case relocation of village abadi is necessitated for the setting up of such projects.

iv. The developer shall undertake to provide essential services, like roads, street lights, drainage and sewage, drinking water supply and the building of suitable medical care and schooling alongwith Community Centre, in all such villages where the village abadi is relocated at a new place.

v. Where relocation is not necessary but more than 25% of the total land of the village gets acquired, similar social infrastructure as at (iv) above shall be provided in the existing abadi.

vi. The developer shall undertake to set up industrial training institutes, vocational training institutes and polytechnics to provide training to the wards of persons whose land is acquired to the satisfaction of the State Government. Such training institutes shall be fully funded and run by the developer.

vii. The developer shall undertake to provide the right of way and develop such infrastructure by way of creation of roads and bridges as may become necessary to avoid inconvenience to the general public within the project area.

viii. The developer shall undertake to provide independent power plant or shall purchase power from a plant set up outside the project area of the State, to meet with the power requirements of such projects.

ix. The developer shall undertake to pay for the water supply schemes of the State Government for augmenting the water supply requirement in such project on such terms and conditions as may be determined by the State Government.

x. The developer shall undertake to pay such external development charges as may become applicable in the event of the external services being provided by the Haryana Urban Development Authority or Local Body or any other State Government Department.

xi. The developer shall undertake to give employment to at least one member of the family whose land is acquired for setting up the project. The nature of employment provided shall be to the satisfaction of the Industries Department.

xii. The developer shall undertake to employ at least 25% of the total employment provided by him to the Haryana domicile in all categories except the technical posts where preference shall also be given to the Haryana domicile.

xiii. The developer shall enter into a written agreement with the State Government in the Industries Department to comply with the above terms and conditions and any such conditions that may be imposed by the Haryana Investment Promotion Board.

### **Monitoring of Compliance of Terms & Conditions of Acquisition**

The compliance of the terms and conditions as contained in the Policy shall be monitored by a Committee constituted by the State Government. Non-compliance of the conditions shall make the developer liable for the resumption of land and payment of such penalty as may be determined by the State Government.

## CHAPTER - 10

### LAND POLICY FOR INFRASTRUCTURE & INDUSTRIAL DEVELOPMENT IN GUJARAT

It will be pertinent to study the land policy of the Government of Gujarat under the following heads:

- A. Infrastructure Development
- B. Strengthening of Industrial Estates
- C. Facilitating the allocation of land to Industries

#### A. INFRASTRUCTURE DEVELOPMENT

##### Strengthening Road Network

Though Gujarat has relatively a good network of roads, it plans to strengthen this network further by converting existing roads into multi-lane roads and expressways depending upon the traffic requirements.

##### Pipeline for Bulk Supply of Water

The Government also is in the process of laying pipeline across the State for bulk supply of water for drinking and industrial purposes from the network of Narmada canals especially in the areas of Saurashtra, Kutch and North Gujarat. This will ease the perennial shortage of water in these areas and it should be possible to promote industries requiring substantial quantities of water in these areas.

##### Gauge Conversion of Railway Tracks

The State Government will pursue the Ministry of Railways to complete the gauge conversion of all the rail tracks in the State as early as possible. The Government is also considering implementing metro

rail project between Ahmedabad and Gandhinagar to ease traffic congestion.

Recently, the Government came out with ordinances to encourage private developers to set up SEZs and Industrial Parks. Both these ordinances will be converted into Acts very soon. The Government will also continue to offer financial assistance for employment-oriented parks, high-tech parks and investment-oriented parks under the present scheme.

### **Upgradation of GIDC and Private Estates**

The Government is committed to bring about qualitative change in the conditions of the existing GIDC estates. Some of the estates were set up in the decades of 60s and 70s and the infrastructure was designed and developed with the then requirements. The Government has planned to convert the existing land allotted on leasehold basis to freehold basis to the allottees by charging appropriate premium. A portion of the premium so collected would form an integral part of a special fund to be created for the upgradation of GIDC and other industrial estates, known as Industrial Estate Development Fund (IEDF). The Government also plans to facilitate broadband access in major industrial estates. The new industrial estates being set up by the GIDC now will have all modern amenities.

### **Greater Emphasis on Upgradation of Urban Infrastructure**

Again, keeping in mind the need to provide better quality of life to the citizens in the State, greater emphasis will now be laid on upgrading the urban infrastructure including civic amenities. For the

purpose, the local bodies would be strengthened by way of greater autonomy, expertise and funding not only to maintain the existing infrastructure and systems but also to upgrade the same on a continuous basis.

### **Establishment of Trade Centres**

Setting up of new trade centres with private investment will be encouraged and for the purpose, the existing scheme of providing subsidy for such trade centres will be continued. Looking at the present status of developments, it is felt that there is a good scope for setting up international trade centres for textiles and diamond at various places in general and more particularly in Ahmedabad and Surat. For the purpose, the State will provide all necessary facilitation services to the developers.

### **B. STRENGTHENING OF THE INDUSTRIAL ESTATES**

The process of facilitation would be incomplete without an active involvement and support from the representative bodies of trade and industry. For the purpose, the industrial estates will be empowered to undertake developmental activities. The Industrial Estates will aggressively take up the issues of development, maintenance and upgradation of infrastructure in their respective estates. Various innovative measures have been devised to be implemented through representative bodies of industries by redefining their role by way of developing physical, social and service infrastructure as also strengthening the member units in terms of their capacity to compete at international levels. A special fund, Industrial Estate Development Fund (IEDF) would be created for the purpose. A portion of the

premium received from the conversion from leasehold land to freehold land would constitute a part of IEDF, besides the fund available through other schemes as well as market borrowings. The quantum of this fund to be made available to the individual industrial estates would depend upon their performance rating by private accredited agencies in terms of various quantitative and qualitative parameters, including managerial competence and financial management acumen. At the industrial estate level, a committee would be constituted to take decisions on the use of the funds with a representative each of GIDC and Government.

### **Performance Rating and Appraisal**

As outlined above, the Government plans to empower the industrial estates by placing funds for the implementation of various developmental projects in respective estates/ clusters at their disposal. Each estate/ cluster may have varying capacities to handle the nature and size of the projects. Before deciding the quantum and nature of assistance, the Government would arrange for the performance appraisal of the industrial estates from the viewpoint of technical and managerial competence as well as acumen of financial management. Past record would also be taken into account, while deciding the grading of individual estates. This rating will be carried out with the help of accredited private agencies every year and on the basis of the grading, the Government will decide the quantum of financial assistance. The rating system would infuse a culture of competition among the industrial estates, which would ultimately result in the development of member units.



### **C. FACILITATING THE ALLOCATION OF LAND TO INDUSTRIES**

Making the land available in time for industrial use at a reasonable and competitive price without any hassle is the main concern of every investor to ensure that the project goes on stream without undue delay and the policy therefore has rightly given due weight age to this issue. The important issues involved are easy availability of private land/ Government land, clearing of NA permission, land acquisition and evaluation of land. Keeping in view the objective to promote industrialization in Gujarat, the Revenue Department has so far taken the following steps vide different GRs to facilitate allocation of land to industries:

- (a) A provision of Deemed NA has been made which allows a bona fide industrialist to acquire agricultural land and commence activity without prior NA permission, as per the provisions under Sections 63 & 65 (as amended) of the Land Acquisition Act.
- (b) Land under restricted tenure is now easily convertible to old tenure for industrial purposes.
- (c) Section 63AA of the Gujarat Tenancy Act which came into effect from 6<sup>th</sup> March 77 enables a bona fide industrialist to possess agricultural land for setting up industrial undertaking without the prior approval of the District Collector.
- (d) For the evaluation of the Government land, the value upto Rs. 50 lakhs is decided by the District Level Pricing Committee. Value exceeding Rs. 50 lakhs is decided by the State Level Pricing Committee. This

mechanism facilitates appropriate and quick evaluation of land.

(e) As regards land acquisition, urgency clause is also invoked in deserving cases of public or private limited companies to facilitate quicker possession of land for industrial purposes.

The Government, however, proposes further simplification in these matters.

### **Government/ Private Land**

(i) The valuation procedure of the Government land is being simplified further to help quicker disposal of the proposals for the allotment of land.

(ii) Rationalization steps in stamp registration are also being taken up to help speed up the valuation procedure.

(iii) Geographical Information System (GIS) will be developed in due course along with updating and upgradation of land records to identify parcels of Government land available for potential development. The object is to have a decentralized approach to enable an entrepreneur to get all the information at one point at the district level. The Government also plans to make available this information online in due course. This will also help to reduce the time of processing drastically.

(iv) The Government also proposes to dispense with the necessity to obtain NA permission in case of areas marked under the Town Planning Scheme.

(v) The Government proposes to consider the concept of the allotment of the Government land initially at full price to be neutralized over a period of time commensurate with the progress of project implementation.

### **GIDC Land**

(i) In case of the allotment of land within the GIDC estate, the present policy of fixing the cost of land at "cost plus price" principle will be changed and the cost shall now be fixed on "Average Pricing" principle so as to generate demand for the development of the estate at a price less than the actual cost. Subsequently, on the development of an estate, the price could be raised depending upon the demand.

(ii) In order to minimize the payment of NA assessment charges, the GIDC would identify and earmark the land and acquire the same only before the actual allotment. In other words, the time between the allotment and acquisition would be minimized.

(iii) To reduce the hassles for the transfer, subletting and mortgaging the leasehold interests in favour of financial institutions and to generate funds for the Exchequer and for providing support to strengthen the clusters including GIDC estates, the Government, as approved in principle earlier, would constitute a Committee under the Chairmanship of Hon'ble Minister of State for Industries to decide the "premium" to be charged on the conversion of leasehold land to freehold land in the GIDC estates.

(iv) It is further decided that a portion of this premium would constitute "Industrial Estate Development Fund", which shall be administered by a Committee headed by the Industries Commissioner.

(v) From the Industrial Estate Development Fund, the Government would consider sanctioning the assistance in the form of grant to the existing industrial estates for upgradation of infrastructure facilities. The quantum of the fund will be decided on the basis of the rating of performance and capacity of the respective industrial estates. This would help them to tie up market borrowings for such developmental projects.

(vi) For the purpose, infrastructure is defined as the facilities of physical, social and service infrastructure. Physical infrastructure includes internal roads, CETPs, water pipelines, sewage disposal system, effluent disposal system and land filled sites, street lightings, desalination plants, captive power plants, water recycling plants, etc. The social sector of infrastructure includes such facilities as health (e.g. clinics, trauma centres, emergency, wards and hospitals), education (e.g. primary schools, colleges and technical training institutes) and sports (e.g. swimming pools, tennis courts, badminton courts, gymkhana, etc.), housing development, entertainment and shopping complexes. The service infrastructure would include the facilities of library, testing laboratories, centres of excellence, creativity centres, training centres, etc.

(vii) The Government would consider offering financial assistance for development and upgradation of infrastructure in the industrial estates/ clusters only towards capital cost from the Industrial Estate Development Fund. The recurring cost for the maintenance of the facilities will have to be raised by

the member units/ beneficiary units of the estates/ clusters.

(viii) The Government would lay down detailed guidelines for funding the industrial estates out of the Industrial Estate Development Fund. Both GIDC and private estates would be assisted through this fund for infrastructure development, as per the norms laid down by the Government. The estates desiring to seek assistance for an infrastructural project, should prepare a detailed Project Report indicating the funding pattern and returns on the project to ensure viable operations. Other schemes like Critical Infrastructure Fund, Industrial Estate Development, etc. of the Government will also be used for financing infrastructure projects.

(ix) The eligibility and the extent of financial assistance from Industrial Estate Development Fund shall depend upon the rating of the estate in terms of needs, technical and managerial competence, acumen of financial management, past track record, etc. This rating will be carried out through private accredited agencies.

(x) Towards privatization, the Government has decided to encourage the estate agencies/ associations to convert the present system of power and supply on a cooperative basis by setting up Common Power Plants and Common Desalination Plants. Such activities would be encouraged by the Government through funding from the Industrial Estate Development Fund.

(xi) The Government would also encourage the replacement of the present street light systems by a solar street light system in large Industrial estates/

parks. Such activities would be entitled to funding from Industrial Estate Development Fund.

(xii) The Government would also encourage the industrial estates to set up cooperative banks to help member units to avail of finances. The Government help would come in the form of proper monitoring and regulation of the banks, development of necessary manpower and arrangement of fund from other sources. The credit rating agency will also consider the efficiency of the management of the bank as an important factor to rank the industrial estate for the purpose of Government assistance.

(xiii) At present many industrial estates and clusters have been declared as Notified Areas under the GID Act, 1962 and an officer of the GIDC is appointed to act as Notified Area Authority. To make the member units, the Associations and the Presidents of such clusters/ estates more involved and responsible towards the upkeep and upgradation of the estates/ clusters, the Government is considering through a provision in GID Act, the appointment of a Legal Committee viz. Board of Management in place of the Notified Area Authority. Such a Committee would be provided with autonomy and independence in the estate management. Efficient functioning of such Board of Management would be considered by the private accredited agencies as one of the key factors while rating and according the grading. The estates would be entitled to funds from IEDF for the betterment of the estate. In addition, they would also be entitled to borrow funds through instruments available in the markets for developmental projects.

(xiv) The Committee may also decide to privatize all aspects relating to the execution of services including the collection of taxes and funds, maintenance and upkeep of infrastructure and all other activities, falling within its purview.

(xiii) At present many industrial estates and clusters have been declared as Notified Areas under the GID Act, 1962 and an officer of the GIDC is appointed to act as Notified Area Authority. To make the member units, the Associations and the Presidents of such clusters/estates more involved and responsible towards the upkeep and upgradation of the estates/ clusters, the Government is considering through a provision in GID Act, the appointment of a legal Committee viz. Board of Management in place of the Notified Area Authority. Such a Committee would be provided with autonomy and independence in the estate management. Efficient functioning of such Board of Management would be considered by the private accredited agencies as one of the key factors while rating and according the grading. The estates would be entitled to funds from IEDF for the betterment of the estate. In addition, they would also be entitled to borrow funds through instruments available in the market for developmental projects.

## CHAPTER - 11

### LAND POLICY FOR PLANNING & DEVELOPMENT IN WEST BENGAL

The Government of West Bengal vide Urban Development Department Notification No. 5607/UD/Y-7/99 dated Calcutta, the 7<sup>th</sup> December 1999 revised the guidelines for the allotment of plots for cultural, institutional, industrial, commercial etc. purposes at Bidhannagar (Salt Lake). The Government constituted a Committee for recommending the allotment of plots for the above purpose. The Committee will be formed with the following officials:-

i.	The Chief Secretary, Government of West Bengal	Chairman
ii.	The Principal Secretary/ Secretary, Urban Development Department	Convenor Member
iii.	The Principal Secretary/ Secretary to the Chief Minister	Member
iv.	The Principal Secretary/ Secretary, I. & C. A. Department	Member
v.	The Principal Secretary/ Secretary, C. & S.S.I. Department	Member
vi.	The Principal Secretary/ Secretary, C. & I. Department	Member
vii.	The Managing Director, West Bengal Industries Development Corporation	Member

The procedure and/ or guidelines for the allotment of the plots shall be framed by this Committee. Open advertisements are to be published in the national daily newspapers and after receipt of the application, the same shall be considered by the above Committee.



## **TRANSFER OF INDUSTRIAL/ COMMERCIAL LEASES**

Ref: Government of West Bengal, Urban Development Department Notification No. 1721-UD/O/M/SL (AL/NR)/ 8 L-8/2004 (pt.), Kolkata, dated, the 6<sup>th</sup> May, 2005

It had come to the notice of the Government of West Bengal that quite a good number of industrial/ commercial plots and industrial/ commercial plots with industrial/ commercial units in Bidhannagar were still lying unutilized although the lessees had taken delivery of possession of such plots of land from the Government long ago. In some cases, the lessees of industrial/ commercial plots became unable to carry on their industrial/commercial units any longer.

Sometimes many of the lessees approached the Government for permission to transfer their plots of land to other entrepreneurs for various reasons: one of the major reasons being their financial inability to implement the project or to carry on their projects further. The Government had been dealing with such proposals case by case according to their merit. The process became lengthy and time consuming. The plots of land, in the process, remained unutilized although there was a huge demand for land for the expansion of industries in the State.

In order to streamline the entire process and to ensure that all the unutilized plots of industrial and commercial land along with industrial/ commercial units in Bidhannagar are put to effective use in all manners, the Governor, in terms of clause 2 (8) and clause 2 (6) (a) of the lease-deed or the relevant clause of the lease-deed restricting transfer, ordered that the Government of West Bengal shall allow the lessees of Bidhannagar industrial/ commercial plots of land and

industrial/ commercial land with industrial/ commercial units to outright transfer the leasehold right of his/her industrial/ commercial land and industrial/ commercial land with industrial/ commercial units either partly or wholly to others for the unexpired period of lease-term subject to certain conditions. The Governor further ordered that for the aforesaid purpose the words "the lessee" shall mean proprietor (s)/ partner (s)/ private limited company/ public limited company and "the transferee" shall mean proprietor (s)/ partner (s)/ private limited company/ public limited company. To seek the permission of the Government to transfer his leasehold rights to others, the lessee shall have to apply to the Principal Secretary to the Government of West Bengal, Urban Development Department, specifying the reasons for such transfer. The transfer of the above leasehold rights to the close blood relations will, however, continue to be governed by the order which is already in force.

The Governor ordered that if such permission is granted by the Government of West Bengal in the Urban Development Department for transfer of leasehold rights to others by the lessees of the aforementioned plots all the terms and conditions of the original lease deed executed between the Government of the State of West Bengal and the lessee (here the transferor) of the industrial/ commercial land and industrial/ commercial land with industrial/ commercial units shall apply to the transferees of such plots. The Governor further ordered that the lessees shall have to deposit an amount of Rs. 1,50,000/- (Rupees one lakh fifty thousand) only per cottah for industrial plots and Rs. 3,00,000/- (Rupees three lakhs) only per cottah for commercial plots as

permission fee before the final permission order is issued by the Government.

The Governor also ordered that if there is subsequent- transfer of leasehold right of the same plot, the same terms and conditions and the procedure as mentioned in this notification shall apply. In the event such permission/ order is issued by the Government, the character of the land (industrial/ commercial) shall have to be retained by the transferee of the leasehold right. A deed of transfer shall have to be executed between the transferor and the transferee and the said executed deed should be registered at the Office of the Addl. Dist. Sub-Registrar, Bidhannagar or the District Registrar/ Addl. Registrar of Assurances, ..... with due approval by the Government in the Urban Development Department. On production of the certified copy of the transfer-deed to the Government by the transferor of such leasehold right, the Government shall issue the necessary mutation order.

The Government further ordered that for the purpose of the registration of the transfer-deed usual rules shall be followed and in no case concession shall be allowed. The head of account under which the permission fee shall have to be deposited by the transferor to get permission for transfer of the leasehold right of his land/ land with the industrial and commercial units from the Government will be communicated in due course in each such final permission order.

#### **THE WEST BENGAL METROPOLITAN PLANNING COMMITTEE**

The West Bengal Act XXV of 1994 (The West Bengal Metropolitan Planning Committee Act, 1994)

sought to provide for the constitution of a Metropolitan Planning Committee in every metropolitan area in West Bengal for the preparation of draft development plans for the metropolitan area as a whole.

The Committee shall, in preparing the draft development plans:-

(a) have regard to -

i) the plans prepared by the Municipalities and the Panchayats in the Metropolitan area;

ii) matters of common interest between the Municipalities and the Panchayats, including co-ordinated spatial planning of the area, sharing of water and other physical natural resources, the integrated development of infrastructure and environmental conservation;

iii) the overall objectives and priorities set by the Government of India and the State Government;

iv) the extent and nature of investments likely to be made in the Metropolitan area by the agencies of the Government of India and of the State government and other available resources, whether financial or otherwise.

## **PUBLIC PRIVATE PARTNERSHIP**

### **State Government Policy on Infrastructure Development through Public Private Partnership (PPP)**

Notification No. 3892-UD/O/M/SUS-18/2001 dated 27<sup>th</sup> August 2003 (Issued by the Department of Urban Development, Government of West Bengal)

The experience of the State Government in working with private sector for infrastructure development has been rather limited. For a wider practice of private sector participation in infrastructure development, it is necessary to instill confidence in the minds of prospective private sector investors and also to streamline the process of the selection of private partners. For achieving this, it is imperative to have a comprehensive policy on private sector participation in infrastructure development or in other words, a policy on Public Private Partnership (PPP).

Infrastructure sectors such as power, telecommunication, transport-waterways, airports and surface facilities such as roads, bridges/ ROBs/ flyovers etc., water supply; drainage and sanitation, township,

Area development, housing and commercial development etc. can be considered for private sector participation in suitable form.

The major elements of operational guidelines for PPP shall be as follows:

Any department/agency of the State Government may invite private or joint sector entities to undertake the development of infrastructure. The State government shall have the power to permit private investment in the establishment of new infrastructure facilities in such manner and on such terms and conditions, as it may think necessary and expedient in the public interest.

There are various ways by which the involvement of private investors/developers can be secured. One of the means to achieve private sector

participation is Build, Operate and Transfer (BOT), although there are variants of BOT like BOO, BOOT, BOLY etc. The scope, obligations, and rights of the participating private developers shall be clearly defined in the form of a framework for BOT project. Another form of private sector participation can be joint Sector Projects. Private sector participation can also be attracted through leasing and annuity payment wherever necessary.

There may be a number of private entities interested in participation in infrastructure development. It is essential to carry out an assessment of capability of those firms through a method of pre-qualification bids. Only the qualified private entities should be considered for partnership in infrastructure development.

It is essential that a private partner be selected through transparent process. It should thus be important to invite offers/ bids-technical and financial/commercial-from among the pre-qualified firms for each project proposal. In order to provide a common platform or bidding, it may be necessary to have Techno-economic Feasibility Report prepared by the department or an independent professional agency, which will realistically frame a cost estimate and also carry out a financial viability exercise pertaining to the project proposal. Without this, the extent of financial stake of the public sector agency entering into concession agreement with private developers cannot be adequately determined. There shall be standardized and streamlined procedures for the approval of projects and selection of developers.

Infrastructure development projects are generally not attractive to the private investors because

of potentially low or even negative returns on investment. It is thus necessary to extend certain concessions to private entities. The norms and kind of support including concessions and subsidies that the Government could provide shall be spelt out. The types of concessions can be determined only after a techno-economic feasibility study has been undertaken. The invitation of offers around such concessions would bring about competitiveness among the private enterprises and a selection on that basis would ensure transparency. There is also a need for designing checks and balances for the PPP projects and the same being built in the concessionaire agreement itself.

There shall be a Committee of Secretaries headed by the Chief Secretary, Government of West Bengal and the Secretary of the concerned departments of the Government of West Bengal to review the proposal of the concerned department/agency for the selection of private partners and give its recommendation. The Secretary of the concerned department will function as the convenor and place the proposal to the Committee with the approval of the Minister-in-charge of the department. After obtaining the recommendation of the Committee, the initiating department/agency shall put it up before the respective Minister-in-Charge for onward transmission to the Chief Minister/ Cabinet for approval.

The identification of project to be taken up should be made by the concerned department/agency. Such department/agency shall prepare bid documents, invite expression of interest, shortlist prospective developers and carry out processing of bid formalities including the evaluation of bids and

formulating proposal on the selection of private partner.

The department/agency initiating a PPP project shall have to secure the recommendation of the Committee of Secretaries and the approval of the Chief Minister/Cabinet for each individual project before implementing the same.



## **CHAPTER - 12**

### **AGRICULTURAL & COMMERCIAL INTERFACE IN KERALA'S INDUSTRIAL POLICY (2007)**

The Industrial Policy (2007) of Kerala aims at achieving high and sustainable economic growth, without losing sight of social objectives, through rapid industrialization and leaps in commercial activities. The Government intends to achieve these goals by modernizing the traditional industries, developing world class infrastructure, providing adequate quality, power and water, supporting the introduction of state-of-the-art technology in the existing industries, optimizing the utilization of natural resources, bringing in Central investments, attracting private capital on mutually beneficial terms and making use of the potential of rich human resources. The policy is sought to be worked out without affecting ecology and environment. It aims at creating large-scale employment opportunities for the people of Kerala and ensuring them fair wages. The objectives of the Industrial Policy can be specified as follows:

1. Convert Kerala into a favored destination for manufacturing, agro processing, health services, and knowledge based industries and services.
2. Strengthen the State Level Public Enterprises (SLEPs) by technological upgradation, diversification, efficient management system and synergizing with Central Public Sector Undertakings.
3. Make traditional industries competitive by modernization, value addition and skill development.

4. Promote and support SMSEs as an ancillary to large scale industries as well as a self - sustaining entity considering its role as a large employment provider in the State.
5. Make use of the abundant and highly rich mineral resources of the State to the fullest extent protecting environment and ecology and restricting the mining activity in the Public Sector.
6. Equip the State to harness the industrial and commercial potentials to be opened up with the commissioning of Vallarpadam International Container Terminal, Vizhinjam Deep Sea Port and the Petronet L.N.G. Terminal.
7. Generate massive employment in industrial, commercial and service sectors.
8. Attract huge capital investment on mutually beneficial terms.
9. Tap the rich industrial potential of biotechnology.
10. Accelerate growth in the service sector and to make Kerala a major commercial hub.
11. Develop Kerala as a global centre of excellence with state- of- the -art education and skill and prepare a pool of multi skilled, technically competent individuals and organizations.

## **AGRICULTURAL & COMMERCIAL INTERFACE**

### **Handlooms, Khadi and Village Industries**

- a) Revamp Handloom Co-operatives, Hantex, Hanveev and approved cluster/ consortium by special

economic, technical and managerial support projects for result oriented production and marketing.

b) Strengthen Handloom clusters with financial, technical and managerial support to sustain the cluster base without depriving the benefits to those who fall outside the cluster.

c) Develop regional brands for high quality handloom products to compete in the domestic and international markets.

d) Develop high quality infrastructure facility for handlooms for pre-loom processing, loom processing and post-loom processing.

e) Encourage all Malayalees to use Handloom and Khadi products through mass campaigns inculcating the pride of Swadeshi.

f) Inspire Government servants, students and other sections of the society to wear handloom and khadi at least once in a week.

g) Introduce a system of distribution of quality raw material by streamlining operations of apex societies and TEXFED.

h) Ensure smooth credit-flow to the sector through the Directorate of Handlooms and Textiles.

i) Introduce schemes for the welfare of handloom weavers in the unorganized sector through a welfare division created in the Handloom and Textile Directorate.

j) Formulate special schemes and assistance to set up industrial units under the Khadi & Village Industries Board ensuring good returns on their produce.

- k) Encourage establishment of handloom units by master weavers.

### **TEXTILE SECTOR**

Promote Garment manufacturing as a thrust area through specific schemes and packages, skill upgradation and market development.

- (i) Revitalize textile mills in the Public and Co-operative Sector through capital up-gradation, smooth credit flow, professional marketing, skill development etc. and make them self sustainable.

- a) Develop a special package to capture a reasonable share in the growing global market of technical textiles.

- b) Special projects for technology upgradation of powerloom and encourage homestead production.

- c) Extend clustering facilities to achieve the highest level of production.

### **HANDICRAFTS, HERITAGE PRODUCTS & SOUVENIR INDUSTRY**

- a) Granting of project based support to apex organizations in the handicraft sector.

- b) Financial assistance to acquire state-of-the-art tooling to improve productivity and value addition.

- c) Develop professional marketing outfit to tap the opportunities in the global market by extending need based capacity building measures.

- d) Create Common Facility Centres to cater to the needs of expensive processing equipment.
- e) Develop innovative designs in association with pioneers in design field, to improve marketability of handicraft products in the global market.
- f) Encourage the development of heritage homes, souvenir industry and allied products befitting the State of Kerala in association with tourism promotion agencies.

### **Coir**

- a) Promote raw husk defibering mills in private and co-operative sector targeting a conversion of minimum 50% husk produced in the state.
- b) Formulate specific schemes with incentives to encourage procurement of raw husk involving 'Kudumbasrees', self help groups and other non-governmental agencies.
- c) Revamp De-fibering Mills set up under the ICDP Scheme.
- d) Value addition of coir and coir pith through process and product innovation ensuring effective pollution control measures
- e) Tapping of overseas market for coir, coir blends and coir pith through export promotion agencies.
- f) Setting up of a raw material bank and marketing consortiums of small scale producers and co-operative societies through Cluster Development Programmes.

g) Procure accumulated stock of coir and coir products from co-operatives, small scale producers and private producers through designated agencies.

h) Strengthen "National Coir-Research and Management Institute" for conducting basic and applied research in fibre technology to improve the process and products.

i) Create an umbrella brand for Kerala coir and coir products to tap the internal and export markets through promotional activities.

j) Set up modern coir factories in co-operative sectors.

k) Develop special schemes and programmes to promote application of geo-textiles for erosion and soil stabilization through State agencies and co-operative sectors.

## **SERICULTURE**

a) Adopt advanced post cocoon technology to promote diversification and value addition of sericulture products.

b) Establish forward and backward linkages, quality linked cocoon procurement, timely reeling of cocoons, production and sale of silk yarn, fabrics and garments.

## **BAMBOO**

a) Infusion of fresh technology for product and process innovation with the support of the National

**Bamboo Mission (NBM) and the Indian Plywood Industries Research & Training Institute (IPIRTI).**

b) Establish Primary Processing Centre at the place of cultivation to improve the supply chain management and cost reduction.

c) Develop new designs to create lifestyle and industrial products in association with premier design institutions.

d) Develop mechanized community weaving centres with the support of the National Mission for Bamboo Application (NMBA).

e) Promote bamboo and reed plantation in non-forest areas as homestead cultivation, harvesting and utilization.

f) Impart capacity building measures to improve the dexterity of bamboo workers.

g) China has made big strides in developing bamboo-based industries using advanced technology. The Government will study the successful experience of China and the model adopted by China.

### **CASHEW**

a) Initiate steps to modernize cashew processing to improve value addition to compete effectively in the world market.

b) Promote the cultivation of high yielding varieties of cashew with the support of National Research

Institutes and financial assistance from the Government of India.

c) The Government will support and strengthen the public sector and co-operative units engaged in the cashew processing industry.

d) Promote value addition and diversification of cashew products.

e) Infuse new process technology and introduce professional marketing methods.

f) The Government will take steps to develop international and domestic market of cashew.

g) Promote the development of new products from cashew fruit and cashew shells using advanced technology.

### **BEEDI**

a) Avail scheme-based Central Assistance to rejuvenate beedi sector.

b) Strengthening of the Beedi Welfare Board.

c) Introduce health schemes of the workers.

d) Initiate alternative employment schemes for the beedi workers in view of the prevailing crisis.

e) Re-skill the employees through appropriate capacity building measures.



## **TILES**

- a) Promote manufacturing of more value added products with the support of National Research Institutes.
- b) Set up incubation centres and common test laboratories.
- c) Promote use of tiles highlighting eco-friendliness.
- d) Modernize tile factories with infusion of the new technology and equipments.
- e) Earmarking of areas suitable for clay mining.

## **FISH PROCESSING**

- a) Promote technology based value addition process and encourage diversification.
- b) Introduce quality management system and inculcate world class hygienic process.
- c) Introduce state-of-the-art packaging and preservation systems.
- d) Encourage domestic and international market penetration of value added products through specific schemes and packages.
- e) Formulate schemes to avail Central assistance for fish processing and allied diversification.

## **INDUSTRIAL COOPERATIVES**

Industrial cooperatives played a vital role in many sectors like wood industries, handlooms, dairy, coir, service and health sector. The contribution made by these cooperatives to improve the quality of life of the citizens is commendable. Of late, the cooperatives face innumerable problems to mobilize adequate resources to sustain their operation especially in the context of opening up of the economy. Besides, lack of professional management and appropriate technology prevent the cooperatives from effectively competing in the open market. The Government intends to provide fiscal and non-fiscal support with a view to ensure level playing field. The multi-product cooperatives like RUBCO will be given scheme based support to strengthen and expand their operations.

## **AGRO BASED INDUSTRIES**

Kerala is blessed with the bounty of agricultural produce like coconut, rubber, coffee, tea, cardamom, pepper, arecanut and other hill products. Despite having this very vast potential, agro-based industries are lagging in the State. Considering the emerging market for organic food, both domestic and international, the State has an enormous capacity to cater the market with quality products. Agricultural sector is the backbone of the State and the plantation sector plays a very vital role in its economy. The Government will ensure that all measures are taken for the development of this sector by attracting new investment for replanting of more remunerative/high yielding plants, establishing a chain of agro-based industries and helping to create a Kerala brand. In order to promote this sunrise industry, the

Government shall formulate special schemes and packages. The following measures are envisaged:

- a) Promote organic agro-based products considering the growing demand in the global market through appropriate schemes and programmes.
- b) Collaborate with the Spices Board to set up Spices Park at potential locations like Idukki and Wayanad.
- c) Encourage State-owned agencies to manufacture value-added spices based on pepper, cardamom, ginger, turmeric etc. to explore the domestic and international market.
- d) Develop mega food processing zones in select districts.
- e) Create umbrella brands for the agro products of the State.
- f) Set up organised production centres and infuse post-harvesting technology.
- g) Promote the application of bio technology in agriculture and food processing industries.
- h) Develop institutional mechanism to source expertise from premier research institutes for the prevention and processing of agricultural products.
- i) Strengthen the activities of National Centre for HACCP Certification (NCHC) and Agency for Development of Food Processing Industries in Kerala (ADFIK).

- j) Synergize with the tourism industry for the promotion of ethnic food products of the State.

## **MANUFACTURING AND SERVICE SECTORS**

The manufacturing sector plays a very dominant role in the industrial sector for value addition. The present global situation facilitates the State to source latest technology and equipments for value addition, productivity, and scale of economy, cost competitiveness and consistency in quality. The Government is all set to go in for capitalizing the opportunities thus benefiting the manufacturing sector as a whole. Similarly, the Government is preparing to encash the global boom in the service sector to enlarge the employment opportunities and to strengthen the overall economic development. In order to exploit the potential of growing service industry, it is intended to:

- a) Develop a dedicated service hub for trade, finance, logistics, knowledge sector etc.
- b) Formulate schemes to attract FDIs including NRIs and NRKs to channelise their investible surpluses to the State enabling them to harness their expertise in the key areas of manufacturing and services.

## **INFRASTRUCTURE DEVELOPMENT**

The major hurdle which comes in the way of the industrial development of the state has been the inadequate infrastructure facilities. The Government intends to give topmost priority to develop world-class infrastructure facilities to attract massive investments in the manufacturing and service sectors. The Government has evolved special schemes to build up

such facilities to convert the State into an investment friendly destination. The initiatives include:

- a) The proposed infrastructure company, Infrastructures Kerala Limited (INKEL), will commence its operation during the fiscal 2007-2008 to facilitate accelerated development of industrial infrastructure to attract massive investment.
- b) Constitute a Land Data Bank for disseminating information to the prospective entrepreneurs regarding availability, nature, area, value and other pertinent details of the industrial land.
- c) Ensure uninterrupted supply of quality power for industrial and commercial purposes.
- d) Develop highways, approach roads and bridges at par with the international standards.
- e) Develop world-class inland waterways and minor ports.
- f) Develop major industrial water supply projects, power supply projects, sewerage and effluent treatment plants etc. in industrial areas.
- g) Setting up of exclusive Industrial Parks for NRI investors.
- h) Communication is the key driver of industrial growth and it is catching up very fast globally. The State Government is committed to provide state-of-the-art infrastructure for setting up of a chain of telecommunication industries in the State.

## **THRUST AREAS FOR FUTURE FOCUS**

For the accelerated industrial development and balanced regional development, the Government shall adopt an integrated approach to develop industrial and supportive infrastructure in the State through the creation of more Industrial Parks/ Industrial Townships/ Industrial Corridors/ Special Economic Zones.

The major initiatives proposed during the Plan period are:

a) **Mega Industrial Parks:** In order to make Kerala a destination of choice for investors, both global and domestic, KINFRA will help to develop Mega Industrial Parks in selected thrust sectors. Integrated Textile Parks at Palakkad and Mega Food Park at Wayanad are envisaged.

b) **Industrial Townships:** Industrial Townships, which would be compact industrial areas providing necessary support to industrial entrepreneurs and offering world class facilities, will be set up. The Palakkad Industrial Township Area Project, Development of Knowledge Cities in Trivandrum, Ernakulam and Palakkad, etc. are being envisaged.

c) **Special Economic Zones:** Product specific SEZs including Service SEZs, which suit the Kerala condition with Industry-specific infrastructure alongwith all basic and supporting facilities, will be encouraged in the State. KSIDC/KINFRA will be setting up sector specific SEZs at Kozhikode, Kannur, Kasargod and Malappuram and KINFRA for the development of gem & jewellery, textile and biotechnology. In order to improve trade, the KSIDC

shall take steps to set up a Free Trade and Ware Housing Zone (FIZ) at Kochi.

d) Industrial Corridors: Three zones in the State as Industrial Corridors, which would qualify as commercial districts are proposed:

i. IT & ITES Corridor from Kazhakuttam to Kovalam and from Kazhakuttam to Kollam along the NH Bypass.

ii. Biotechnology & Hitech Electronics Corridor along the Seaport- Airport road at Kochi.

iii. Food Processing & Textile corridor from Kanjikode to Walayar along NH at Palakkad.

c) Sector-specific Industrial Parks: Industrial Parks will be developed in certain selected thrust sectors. Watercraft Park at Kochi, Print Village at Kochi, etc. are on the anvil and more such sector-specific Industrial Parks will be developed progressively. KSIDC shall facilitate setting up of a world-class electronic hub for attracting global leaders in electronic hardware and equipment, home appliances, semi-conductor devices etc.

Initiatives for Land Acquisition & Land Use: The Government will encourage lease of land for industrial and commercial purpose as equity participation by the landowners for developmental projects. The Government will also address the concerns of the landowners through a time-bound implementation of attractive rehabilitation schemes.

Fast Track Mechanism for Land Acquisition-The Government shall evolve a transparent mechanism for

land acquisition and its utilization for the development of infrastructure in the State through Public Private Partnerships.

Acquisition of adjacent land for future expansion- In order to avoid the problem of non-availability of land for future expansion/implementation of later phases, the developer will be allowed a 'call option' on buying adjacent land in future by remitting an annual premium to the Government for a fixed period of years. While acquiring land for industrial purpose, the market value will be given to the landowner. As far as possible, agricultural land will not be utilised for industrial purposes.

Land Bank- A major stumbling block in the industrial development of the State is the availability of adequate land. The Government through a new company shall acquire land at strategic locations in the State for the orderly development of industries. These lands will be kept as 'land bank' for future industrial and infrastructure requirements.

Permission to be granted to existing industrial land/plots for conversion into Industrial/Commercial Parks/Estates- Conversion will be allowed for an industry established on the concerned land/plot and remaining in production for at least 5 years. Any industry, which commenced production, but has been closed due to Court Order/Government Order/declared sick by BIFR will also be considered for conversion, in relaxation of the condition of being in production for 5 years.

Public Private Partnerships for the creation of infrastructure.... To attract massive investments into the State as well as the techno-managerial efficiencies



associated with it, the Government will promote Public Private Partnerships (PPPs) in infrastructure development. In projects involving PPP, the Private Sector Company shall be selected through a transparent and open bidding process.

**Institutional Mechanisms-** Adequate mechanisms and safeguards will be put in place to address the various needs of infrastructure creation and investment promotion in the State. Suitable amendments shall be incorporated in the Kerala Infrastructure Development Act to make it adaptable to the rapid industrialization of the State.

#### **OTHER KEY INPUTS**

- a. Existing DA, DP, IE, Growth Centres etc. will be modernized, expanded and upgraded to meet the requirements of the industry.
- b. Unused land/unused infrastructure facility already allotted will be resumed and reallocated for starting new units.
- c. Distribution of Pattayam for DA/DP plots will be done on a fast track basis, SIDCO plots will be allotted expeditiously.
- d. Industrial plots will not be utilized for non industrial purposes and speculation of land will not be allowed.
- e. Permanent Exhibition Centres will be set up in all districts of the State and initially in Thiruvananthapuram, Kochi and Kozhikode.

## **ILLUSTRATIONS OF PARKS**

1. **The Kinfra International Apparel Park-** The park offers a self- contained zone to the result- driven players in the garment industry. It is located at Thumba, Thiruvananthapuram. It is spread across 50 acres of well- developed land. The investor can choose from units of around 1 acre (4047 sq. mt.) or can move into modules built along globally popular standards. The Park nurtures a high-profit environment by extending a host of incentives. These include: capital subsidy upto 15% of the Fixed Capital Investment (FCI) with a ceiling of Rs. 2 million; margin money (soft loan) of Rs. 0.5 million; subsidy upto 15% of the cost of installation with a ceiling of Rs. 0.5 million for DG sets for captive consumption.

### **2. Herbal Park (Wayanad) -**

- Allotable land- Approximately 450 acres Unit size of 20 acres each.
- Research and Development Centre- Herbarium, Gene Bank.
- Neighbourhood Village- Courtyard cultivation, Buy Back facility
- On Site Semi Processing- Value addition, Reduction in Qualitative Losses

Vanaspati Vanam Scheme- Afforestation Programme

### **3. Rubber Park (Ernakulam)**

It is a joint venture with the Rubber Board:

Location-	Irapuram near Perumbaroor, Ernakulam District.
Thrust Area-	Rubber/rubber wood products, latex.
Park Area-	107 acres.

#### 4. **Seafood Park (Aroor)**

It is a joint venture with MPEDA and Seafood Exporters.

Location-	Aroor, Alappuzha District
Thrust Areas-	Pre-processing units (peeling) cleaning and storage
Park Area-	One hectare

#### 5. **Western Indian Kinfra Ltd.**

It is a joint venture between WISE Infrastructure Ltd. New Delhi and KINFRA

Location-	Kanjikode (Palakkad)
Thrust Areas-	Rubber/ plastic products, textile and garments, coir products, chemicals, engineering products, food/ agro-products/ beverages, pharmaceuticals/ herbal medicines/ ceramic products/ leather products.
Park Area-	750 acres

#### 6. **Food Parks**

The Kerala Industrial Infrastructure Development Corporation (KINFRA) has put together 2 Food Parks and one Seafood Park to aid food processing entrepreneurs who need to set up operations within minimal time. These parks provide world- class food processing infrastructure.

Kerala is a land rich in diverse natural resources, spices and seafood. For the last two millenniums European and Arab sailors braved the trying seas in search of her shores that abound in taste. Over the centuries, the diverse people of Kerala quietly evolved their culinary traditions, through a process of invention and adoption. Creating a deliciously curious mix of Hindu, Christian and Muslim legacies, with influences that can be traced to overstaying guests- the Jews, the Portuguese, the Dutch and the British. In the process, a great new cuisine was in the making. Also, a good deal of Kerala cuisine uses ethnic organic resources, which are grown naturally and are available in plenty, adding unique flavours, such as the jack fruit jam. Today, the Kerala cuisine is fast finding its place on dining tables all over the world. And Kerala, the land of infinite flavours, is all set to host a food processing revolution. With matching infrastructure, manpower, natural resources and enviable location advantages, Kerala is racing to the position of the food processor for the whole world.

## CHAPTER - 13

### GOVERNMENT LAND LEASES IN ORISSA

#### The Connotation of "Government Lands" in Orissa

"Government Lands" are dealt with under the Government Grants Act, 1895 (Act 15 of 1895), the Orissa Government Land Settlement Act, 1962 (Act 33 of 1962), the Orissa Prevention of Land Encroachment Act, 1972, the Orissa Land Reforms Act, 1960, the Orissa Merged Territories (Village Officers' Abolition) Act, 1963 etc. The Government Grants Act does not define the Government land. It only bars application of the Transfer of Property Act to the Government Grants. The Orissa Government Land Settlement Act, 1962 in sub-section (b) of section 2 defines the Government land as follows:

2 (b) "Government Land" means any waste land belonging to Government, whether cultivable or not recorded as House-site, Anabadi, Chot Jungle, Puratan Patti, Nutan Patti, Parityakta Bedakhali, Gochar or by any other description, whatsoever.

According to an Explanation to Section 2 (b), the expression "any other description, whatsoever" shall include:

- (i) Khasmahal lands, that is to say Mahals held under Khas which are treated as Government estates and the rents of which are payable under Section 3 of the Bengal Land Revenue Settlement Regulation, 1822 (Bengal Regulation VII of 1822) or under Section 4 of the Bengal Land Revenue Settlement Regulation, IX of 1825
- (ii) Nazul lands situated in the State

(iii) Gramakantha Poramboke lands in the ex-Madras areas; and

(iv) Abadi lands situated in the State.

The lands brought under the category of any other description were included only by Act I of 1991. Till then such lands were governed under the respective tenancy laws and under executive instructions.

### **Khasmahal Lands**

The word 'Khasmahal' literally means "the estate under self" or Government's estate. The origin of such estate has a direct link with the system of land administration introduced by the British Government. The estates which were excluded from assignment to the proprietors were being retained under direct management and were termed as Government estate. In Orissa, there were 19 Khasmahals held as 'khas' under the Government by the year 1922 in Cuttack alone including town Khasmahal and cantonment Khasmahal according to the final report on the revision settlement of Orissa (1922-32) by W. W. Dalziel. Besides, there were Khasmahals in Jambu Hoktola, light house area, and Chandabali, Balasore, Angul, Jatni, Puri and Phulbani.

The Khasmahal lands were controlled and regulated under the Bengal Land Revenue Settlement Regulation (Regulation VII of 1922) and the Bengal Land Revenue Settlement Regulation (Regulation XI of 1928). In the Khasmahal areas, leases were being granted to persons for the occupation of land for a term of years subject to renewal. The leases did not allow the lessees to transfer their holding in full or in

part without the previous permission of the landlord and they had no right on the timber of the trees standing on their holding whether self-grown or planted by them. Sub-letting of holdings without the previous permission of the Collector was prohibited. The power of the Collector to create darpattadari right on sub-leases was withdrawn by the Government in their order No. 66767 dated 8.11.1989.

### **Nazul Lands**

The Nazul lands carry the characteristics of escheated lands. In the aftermath of the First War of Indian Independence (1857), the then Governor escheated properties of a large number of persons either suspecting their involvement in the uprising or for some other reason. The escheat of the property by the Government continued even after 1987 for some reason or another. The properties taken over under the control of the Government were managed directly by the Government and in certain cases were used for public purpose like bazaar, market, club house and in some cases were placed at the disposal of the local bodies for their management. The Sambalpur Manual in para 1 mentions the location of the Nazul lands in Sambalpur, Jharsuguda, Kesinga, Bhawanipatna, Junagarh and few other urban areas. The Nazul lands were leased out ordinarily for a period of 30 years with option of renewal and the right, title and interest over the lease-hold property were governed under the terms and conditions of the lease deed and the lessees were treated as pattadars.

### **Poramboke Lands**

'Poramboke' is a Tamil compound word which literally means 'excluded places' or outside tracts. Baden

Powell (The Land Systems of British India) spells this word as purambokku and refers to the uncultivated lands in the village reserved for certain purposes. It comprises lands set apart for public purposes, such as village sites, tanks, channels, roads, cattle stands. It also includes hills, jungles, salt paras, sand ridges and other tracts originally classed as uncultivable. Communal lands are one of the species of poramboke lands. These lands are governed by section 20, 20-A and 20-B of the Madras Estates Land Act.

### **Abadi Lands**

The term "Abadi" is defined in Section 71 of the Central Provinces Land Revenue Act, 1917. The section says, the Settlement Officer shall, in every inhabited village, ascertain and determine the area to be reserved for the residence of the inhabitants or for purposes ancillary thereto and such area shall be deemed to be the 'Abadi' of the village. The word 'Abadi' connotes habitation in contradistinction to uninhabited.

### **General Principles of Settlement**

Section 3 (4) of the Orissa Government Land Settlement Act, 1962 lays down the following general principles of the settlement of the Khasmahal, Nazul, Gramakantha Poramboke and Abadi lands:

(4) Notwithstanding anything to the contrary contained in the preceding sub-sections or in any law or any custom, practice or usage having the force of law:

(a) any Khasmahal land or Nazul land, except where such land is used as homestead in any urban area, which has been leased out prior to the appointed date, shall, whether the lease, where it had already expired,



has been renewed or not prior to such date, be deemed to have been leased out under this Act to the person holding such land whether as a lessee, or as a sub-lessee either under the lessee or under a sub-lessee:

Provided that -

(a) (i) any such lessee who is entitled to receive any rent from a sub-lessee under him, or

(ii) any such sub-lessee who is entitled to receive any rent from a subsequent sub-lessee under him,

under any instrument executed for such lease or sub-lease, as the case may be, shall be paid a compensation by the said sub-lessee or subsequent sub-lessee, as the case may be, equivalent to ten times of the said rent in the manner as may be prescribed:

(b) the compensation so payable shall, if not paid by the concerned sub-lessee or subsequent sub-lessee, as the case may be, within the prescribed period, be recoverable from him by the Tehsildar having jurisdiction over the area as arrears of land revenue and be paid to the concerned lessee or sub-lessee as the case may be, in the manner as may be prescribed:

any Gramakantha Poramboke land or Abadi land, except where such land is used as homestead in any urban area, which is in occupation by any person for not less than five years as on the appointed date, shall be settled with the said person in such manner, by such Officer and subject to such terms and conditions as may be prescribed:

**provided that** any such land which is situated in an urban area shall be settled on lease hold basis and in case of other lands settlement shall be on raiyati basis.

(c) any Khasmahal land, Nazul land: Gramakantha Poramboke land or Abadi land, which is used and is in occupation by any person as homestead in any urban area for not less than five years as on the appointed date, shall, subject to the payment of compensation in the case of Khasmahal and Nazul land as mentioned in the proviso to clause (a); be settled -

(ii) in the case of Khasmahal or Nazul land, with the person lawfully holding such land on and from the date the compensation is paid, and

(ii) in the case of Gramakantha Poramboke and Abadi land, with the person in occupation of such land on and from the appointed date, on permanent basis with heritable and transferable rights,

Explanation - For the purpose of this sub-section, the expression "appointed date" shall mean the date of publication of the Orissa Government Land Settlement (Amendment) Act, 1990 in the Official Gazette.

In exercise of the power conferred by sub-section (2) of Section 1 the Orissa Government Land Settlement (Amendment) Act, 1973, the Revenue Department, Government of Orissa vide Notification No. 6171-GE-3/74 dated 29.1.1974, appointed 1.2.1974 as the date on which the provisions of the said Act shall come into force.

The Orissa Government Land Settlement Rules, 1983 (as amended till date) prescribed, besides other things, the manner of the settlement of the

Government lands, the principles for settlement, the settlement of land for homestead purpose in rural areas, the settlement of house-sites in the urban areas, the terms and conditions of settlement, authorities competent to dispose settlement and the like.

Schedule 7 of the Orissa Government Land Settlement Rules, 1983 delineates the rules for the lease and settlement of Khasmahal and Nazul lands etc. Schedule V, in turn, is based on Rule 5-B of the Orissa Government Land Settlement Rules, 1983, which runs as follows:

“5-B. Notwithstanding anything contained in rules 3, 5-A, 8, 11, 12, 13, settlement of Khasmahal and Nazul land, Gramakantha Poramboke and Abadi land leased out prior to the 9<sup>th</sup> day of January, 1991, shall be made in the manner prescribed in Schedule V.”

#### **Schedule V of the Orissa Government Land Settlement Rules, 1983**

Rule 1 of Schedule V prescribes the manner of the recording of leases, sub-leases etc. in respect of Khasmahal and Nazul lands and the payment of compensation. This provision shall not apply to cases of Khasmahal/ Nazul lease hold lands utilized for homestead purposes in any urban area. The Tehsildar shall record the holder of Khasmahal (Nazul lease-hold land and a lessee if such land was leased out prior to 9.1.1991). The holder of such land includes a lessee, sub-lessee and a subsequent sub-lessee. In the event of sub-lessees and subsequent sub-lessees being recorded as lessees, the person immediately under

whom they were holding the land as such shall be entitled to compensation equal to an amount ten times the annual rent stipulated in the lease agreement. Compensation will be recoverable as arrear land revenue.

Rule 2 of Schedule V provides for the settlement of Gramakantha Poramboke/ Abadi lands. The Tehsildar shall settle Gramakantha Poramboke/ Abadi land with the person in occupation of such land for a period of not less than five years as on the appointed day.

In the urban areas, such land used only for the non-homestead purposes shall be settled on lease-hold basis subject to the execution of a lease deed in Form III.

In the rural areas, such land shall be settled on raiyati basis irrespective of the use of land and the rent thereof shall be assessed in accordance with that of similar lands in the vicinity.

Rule 3 of Schedule V provides for the settlement of Khasmahal and Nazul lands used as homestead in the urban areas. The Tehsildar, on being satisfied that any Nazul/ Khasmahal land is used and is in occupation by any person as homestead for a period of not less than five years as on the appointed day shall settle the said land in favour of the person holding such land, on execution of lease deed in Form IV. In case of a sub-lessee and subsequent sub-lessee such settlement shall take effect on production of stamped receipt in Form I from the date of the payment of such compensation to the person (s) immediately under whom they held the land. The amount of

compensation shall be equal to ten times of the annual rent as provided in the lease deed. On each such settlement, the approval of the Collector shall be obtained.

Rule 4 of Schedule V relates to the settlement of the Gramakantha Poramboke/ Abadi land, used as homestead in the urban areas. The Tehsildar shall initiate a case record suo motu or on application in Form II from the occupants of such land and after making a spot enquiry, shall find out individual occupation of the land, determine area of such occupation and prepare a map of the area assigning separate plot/ plots for each such occupation. He will also record a finding as to the period of actual occupation by such person. The period should not be less than five years as on the appointed date. Objections will be invited and disposed off. The settlement of the land shall be made after obtaining prior approval of the Collector and on the execution of a lease deed in Form IV. The rent of such land shall be fixed with reference to that of similar lands in the vicinity.

## **CONVERSION OF LEASE-HOLD GOVERNMENT LANDS TO FREEHOLD**

### **New Rule 5-C**

Vide the Orissa Gazette Extraordinary Revenue & Excise Department Notification No. 1111 dated 11.8.1998 the following rule was inserted after Rule 5-B in the Orissa Government Land Settlement Rules, 1983:

"5-C. Notwithstanding anything contained in rules 3, 5, 5-A, 5-B, 8, 11, 12 and 13, settlement of Government Land on leasehold basis for homestead purpose, in the urban areas of the State as mentioned

in Schedule-VI, may be converted into free-hold on permanent basis with heritable and transferable rights in the manner prescribed in the said Schedule.”

New Schedule VI (Rules for conversion of Leasehold into Freehold of the Government Land Leased out for Homestead/ House-site purpose in the Urban Areas of the State excepting Bhubaneswar and Sunabeda).

Vide the Gazette Notification of the Revenue & Excise Department referred in the foregoing, a new Schedule-VI was added after Schedule-V in the Orissa Government Land Settlement Rules, 1983. The salient features of the conversion scheme, as per Schedule VI are as follows:

1. (a) A lease-holder who is desirous of the conversion of his leasehold lands to freehold with permanent, hereditary and transferable rights and is willing to pay the conversion fee may apply in Form No. I to the Tehsildar for such conversion in any urban area/ other than that of Rourkela.

(b) As regards Rourkela, such an application is to be made to the Additional District Magistrate, Rourkela in the said form.

(c) The conversion will apply only in respect of land for which the land use is specified in the lease deed/ allotment letter as homestead/ residential.

(d) Only leasehold lands taken from the Government/ competent authority under the Orissa Government Land Settlement Act, 1962 and the Rules framed there under or under the provisions of the Orissa State

Urban Land Settlement Rules, 1959 or under the authority of executive instructions issued by the Revenue Department, Government of Orissa prior to the commencement of the Orissa Government Land Settlement Act, 1962, will be considered for conversion into freehold. The scheme shall not apply to the lands leased out to the agencies like the Development Authorities, Improvement Trusts or the Housing Board for the execution of various housing schemes.

(e) No conversion shall be allowed in respect of any land the title of which is under dispute or is questioned in any court of law.

(f) In cases where mutation of the land or substitution of legal heir or heirs to the lease-holder is pending, conversion will be considered only when the mutation/substitution has been carried out.

(g) In the case of lands mortgaged, the application for the conversion of such land shall be considered only after the submission of a "No Objection Certificate" from the mortgagee.

(h) Application forms can be obtained from the office of the Tehsildar or the Additional District Magistrate, Rourkela, as the case may be, on the payment of the prescribed sum.

(i) The following documents will have to be submitted along with the application form:

(a) Undertaking in Form No. 2 duly attested by Notary or an Executive Magistrate;

(b) Affidavit in Form No. 3 sworn before the Notary or an Executive Magistrate; and

(c) Indemnity Bond in Form No. 4 duly attested and executed by the witnesses.

The Tehsildar or the Additional District Magistrate, Rourkela, as the case may be, shall enquire into applications and shall recommend conversion in respect of bona fide and eligible converttees, to the appropriate authority. The Collector of the District in case of the urban areas other than Rourkela and the Land Allotment Committee as prescribed in Schedule IV (of the Orissa Government Land Settlement Rules, 1983) in the case of the urban areas of Rourkela, shall be the competent authority for allowing conversion. Objections will be invited by the appropriate authority through public media. After considering recommendations/ objections, if any, the appropriate authority shall draw up the final list of converttees. The final list will be published in the office of the Tehsildar or the ADM, Rourkela, as the case may be. The converttees will be asked to deposit the conversion fees within 15 days from the date of receipt of the intimation and for the execution of the conversion deed within a period of one month in Form No. 5.

### **The Conversion Fees**

The conversion fee shall be at the rate of 10% (ten per cent) of the prevailing market rate/ price of the land approved by the competent authority for the area where the leasehold plot situates:

Provided that the rate of conversion fee shall be 15% (fifteen per cent) of the prevailing market rate/ price of the land approved by the competent authority of the area in respect of the leasehold plots lying vacant.



On deposit of the conversion fees and upon the execution of the conversion deed, the Tehsildar or Additional District Magistrate, Rourkela, as the case may be, shall send to the applicant an intimation regarding the conversion of his/ her household to freehold in Form No. 6. The Tehsildar shall also arrange the correction of records of rights pertaining to the land in question. Similarly, in the case of Rourkela, the Additional District Magistrate, Rourkela shall send a copy of the intimations issued by him to the Tehsildar concerned for necessary correction of the record of rights.

An appeal against the orders of the appropriate authority shall lie -

- (a) to the Revenue Divisional Commissioner in respect of the urban areas other than Rourkela; and
- (b) to the Government in the Revenue Department in respect of lands in Rourkela;

Within 30 days from the date of publication of the list of converttees under Clause 5 (a).

On conversion to the freehold, the existing annual rent payable for the leasehold land used for homestead/ house-site shall be re-fixed as per the provisions contained in Section 19 of the Orissa Survey and Settlement Act, 1958. Wherever necessary, cess will be revised accordingly. However, the rent and cess so revised should, in no case, exceed the amount of the existing rent and cess of similar homestead lands held with permanent, heritable and transferable rights in the vicinity.

Section 19 of the Orissa Survey and Settlement Act, 1958 runs as follows:

19. Principles for fixing rent – (1) The Government may prescribe the principles for fixing fair and equitable rent for any land used for agriculture having regard to:

- (a) the average price of crops, during the preceding ten years other than the years which the Government may notify to be or to have been either famine years or abnormal years in respect of any local area;
- (b) the crop or crops normally grown on such land;
- (c) the situation of the land, the nature of the soil; and
- (d) the maximum rent assessed on land of similar quality and productivity elsewhere in the State.

Explanation – For the purpose of this sub-section –

- (a) “agriculture” includes raising of crops, grass or garden produce, horticulture or use of land as pasture or forest or for any other purpose ancillary to agriculture other than residential purpose;
- (b) the cultivable waste land of a tenant shall be deemed to be land used for agriculture; and
- (c) the crop or crops, which could have been grown in any land referred to in the preceding clause or in any land which is used for any purpose ancillary to agriculture shall be deemed to be the crop or crops normally grown on such land.

(2) The Government may prescribe the principles for fixing fair and equitable rent for lands used for any purpose other than agriculture including all kinds of

homestead lands in urban and rural areas of the State, having regard to –

- (a) the situation of the land;
- (b) purpose for which it is used;
- (c) communication and marketing facilities; and
- (d) market value of the land.

(3) The rent so fixed shall be deemed to be the rent payable, for the land:

Provided that Government may, subject to such conditions as they may impose, direct remission or reduction of the fair and equitable rent so fixed in respect of any land which is owned by any religious or charitable institution of a public nature and is utilized for the promotion of education, health, culture, fine arts, sports of games for social welfare.

(4) The provisions of this section shall have effect notwithstanding anything contained in any law, custom or contract for the time being in force.

### **SUMMING UP**

The following latest position on the conversion of lease-hold lands into free-hold emerges from the foregoing discussion:

1. The new Rule 5-C inserted to the Orissa Government Land Settlement Rules, 1983 talks about Government Land leases. The term "Government Land" includes Khasmahal lands, Nazul lands, Gramakantha Poramboke lands and Abadi lands.

2. The settlement on lease, which is sought to be converted into free-hold pertains to homestead leases in urban areas.
3. The scheme is optional.
4. Permanent, hereditary and transferable rights in the lands concerned will accrue, after the conversion, to the converttee.
5. Conversion will be allowed in cases where title over the land is disputed or is sub-judice.
6. Conversion will be allowed only in cases where mutations/ substitution by legal heirs (as the case may be) has been carried out.
7. Conversion of mortgaged lands will not be done, unless the mortgagee gives a No Objection Certificate.
8. Most importantly, the conversion fee shall be at the rate of 10% of the prevailing market rate/ price of the land approved by the competent authority for the area in which the leasehold plot lies.

The rate of the conversion fee shall be 15% of the prevailing market rate/ price of the land approved by the competent authority of the area in respect of the leasehold plots lying vacant.

9. On conversion to the free-hold, the existing annual rent payable for the leasehold land used for homestead/ house-site shall be re-fixed as per the provisions contained in Section 19 of the Orissa Survey and Settlement Act, 1958.
10. The new Rule 5-C and the new Schedule VI added to the Orissa Government Land Settlement

Rules, 1983 provide for conversion only with respect to the genuine lessees/ legal heirs. Transferees from lessees, illegal occupants or encroachers are not entitled to avail of the conversion facility. Further, the said Rule/ Schedule confines itself to the conversion of lease-hold into freehold of the Government land leased out for homestead/ house-site purpose in the urban areas. There is no mention of how to deal with the persons who, originally were lessees for homestead/ house-site purpose and yet they, with or without permission from the competent authorities and in violation of the lease-deed, changed the purpose of the lease to commercial/ there is no mention whether enhanced conversion fee will be chargeable from such persons for allowing conversion, once the fact of change of purpose comes to the notice of the authorities.

## CHAPTER - 14

### NAZUL AND ESTATE LANDS IN UTTAR PRADESH

#### The Connotation of "Nazul"

The expression 'Nazul' has nowhere been clearly defined even though it has been used in the context of the Government estates in Uttar Pradesh, Orissa, Bihar (Khas Mahal), Andhra Pradesh (Retroceded Areas- areas vacated by the Army) and the Delhi Development Authority. Nor is any clear-cut line of demarcation drawn between the Nazul lands and the Government estate land. In fact, more often than not, Nazul and Government estates are held to connote almost the same and are used differently in respect of specific public assets as per local usage and practice excluding one from another.

Before explaining the situation in Uttar Pradesh it will be pertinent to shed light on the said public assets with a reference to some other enactments in the country. Rule 5 of the Andhra Pradesh (Secunderabad Area) Land Administration Rules, 1976 classifies lands situate in the Secunderabad Division of the Municipal Corporation of Hyderabad as follows, for the purpose of general land register:

"Class 'A':- (i) Lands under the occupation of the Government Departments.

(ii) Vacant lands reserved for the occupation of the State or Central Government Departments or for the use of Institutions or Corporations owned or controlled by the Government.

Class 'B': (i) the land under the occupation of lessees.

(ii) lands available for assignment, auction, lease or otherwise, to public.

Class 'C'- lands belonging to the Municipal Corporation or transferred to it for public purposes".

Rule 7 of the said Rules runs as follows:

"7. Management of lands - (1) Land under the occupation of Government Departments shall be managed by the concerned Departments.

(2) All vacant lands in Class 'A' reserved for the occupation of the Departments of the State or Central Government or for the use of Institutions or Corporations owned or controlled by these Governments and lands in Class 'B' shall be managed by the Estates Officer.

(3) All lands in Class 'C' shall be managed by the Municipal Corporation".

A Glimpse of "Nazul Lands" may be had from Section- 22 of the Delhi Development Act, 1957 which runs as follows:-

"Section 22 (1) The Central Government may, by notification in the Official Gazette and upon such terms and conditions as may be agreed upon between that Government and the Authority, place at the disposal of the Authority all or any developed and undeveloped lands in Delhi vested in the Union (known and hereinafter referred to as 'nazul lands') for the purpose of development in accordance with the provisions of this Act.

(2) No development of any nazul land shall be undertaken or carried out except by, or under the

control and supervision of, the Authority after such land has been placed at the disposal of the Authority under sub-section (1).

(3) After any such nazul land has been developed by, or under the control and supervision of, the Authority it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf.

(4) If any nazul land placed at the disposal of the Authority under sub-section (1) is required at any time thereafter by the Central Government, the Authority shall, by notification in the Official Gazette, replace it at the disposal of that Government upon such terms and conditions as may be agreed upon between that Government and the Authority."

The dictionary meaning of the word 'nazul' is descending, alighting, escheated property, including land. 'Escheat' means the lapsing of the property to the sovereign or State on the death of the owner intestate and without heir as per Section 29 of the Hindu Succession Act. Therefore, this word 'nazul' was interpreted, as early as 1949, by the head of the Board of Administration, Mr. Barkley in Circular No. 77, dated 14<sup>th</sup> May, 1949 as: all immovable property belonging to the Government'. Later, the Punjab Government Letter No. 434, dated 20<sup>th</sup> February, 1877 defined the word 'nazul' as consisting of lands and houses in the immediate neighbourhood of a town which came into the hands of the Government which are not distinctly connected with mahal or estate and cannot be deemed to belong to land revenue proper, or escheats or gardens, land or building belonging to Governments and comprised in the limits of town or municipality.



Lastly, by Corrigendum No. 14, dated 29<sup>th</sup> September, 1938 issued by the Punjab Government, this term was defined as:

“Nazul property, within the limits of a municipality notified area or small town not being a colony town, means land and buildings of all kinds which belong to Government and are not in departmental charge. Nazul property, outside the limits of a municipality, notified area or small town, means all immovable property, other than agricultural land and wells and tanks used primarily for agricultural purposes, which belongs to Government and is not in departmental charges.”

Here, we are concerned with ‘land’, which according to its definition adopted for the purpose of this Act, includes not only building but all benefits also arising out of land and things attached to the earth or permanently fastened to the earth, i.e. wells, tanks, etc. as covered by the aforesaid definition. And not that every land but only that land which is placed by the Central Government at the disposal of the Authority for the purpose of development in accordance with the provisions of this Act.

It is in this view of the matter that sub section 22 of the Act referred all or any developed and undeveloped lands in Delhi vested in the Union as ‘nazul lands’. In short, ‘nazul land’ means the land vested in the Union, in so far as this Act is concerned.

In the context of the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981, it has been held in Prem Lata and others Vs. Union of India and others (114 (2004) DLT 613) that

the legislative intent of the Nazul Land Rules appears to be that public money must be administered with responsibility and without extravagance. It means that it is not available for charity. By carving out certain categories of persons as entitled to allotment at predetermined rates, the Central Government has restricted the generosity of the DDA. A fairly even balance has been struck by the Nazul Rules between the recipients of the benefit and the tax-payers who have to bear the cost. Permissible philanthropy as a form of social assistance is reasonably incidental to a power to acquire and dispose off the land.

Nazul lands may be allotted by competent authorities for public utilities, community facilities, open spaces, parks, playgrounds, residential purposes, industrial and commercial uses and such other purposes as may be specified from time to time by the competent Government- Central or State.

### **THE CONCEPT OF NAZUL IN UTTAR PRADESH**

Nazul lands in Uttar Pradesh are not governed by any specific enactment. The U.P. Nazul Manual, which is a collection of Rules in four parts, lays down the underlying principles for the management of such lands. The parts and Rules therein are as follows:-

<b>Part No.</b>	<b>Part Title</b>	<b>Total No. of Rules.</b>
1.	Rules pertaining to such Nazul which is in the occupancy of the departments of the State Government or the Collector.	1-41
2.	Rules pertaining to the Nazul placed in the management of municipalities, district boards, notified and town area committees.	42-78

3.	Special Rules pertaining to the management of the Lucknow Nazul by the Lucknow Vikas Parishad.	79-88
4.	Special Rules pertaining to the management of the Kanpur Nazul by the Kanpur Vikas Parishad	1- 14

Nazul land falling in part- 1 of the Nazul Rules connotes such land and building which even though being a Government estate, is not administered as a Government estate by any department of the State or Central Government. The management of the Nazul falling in the occupancy of a department of the State Government will be carried out by the said department. The term "Nazul" under part-2 of the Nazul Rules connotes such land and building of the State Government, the management of which has been delegated to a local body. This delegation will be subject to the observance of rules in this regard and a modification in the rules will be effected if experience justifies it. The State Government may resume such land on payment of the amount paid to it by the local body at the time of delegation as well as on payment of the expenses incurred by the local body on any building or structure raised by the local body on such land, with the permission of the State Government, or its current value, whichever is less.

Nazul lands in Uttar Pradesh are dealt with by the Housing and Urban Planning Department, Government of Uttar Pradesh. The following Government Orders have been issued by the said Department from time to time laying down the principles governing the management of Nazul lands in Uttar Pradesh.

**Nazul Policy as Reflected in the Housing & Urban Planning Department, Government of Uttar Pradesh:**

**Government Orders**

Sl.	G.O. No./ Dated	Gist of Policy
1.	2092/ 8.6.1979	Allotment of Nazul Lands to Public Institutions.
2.	1562/ 23.5.1992	Nazul Land Free-hold Policy
3.	3632/ 2.12.1992	-do-
4.	2093/ 3.10.1994	-do-
5.	3082/ 1.1.96	-do-
6.	82/ 17.2.96	-do-
7.	1300/ 29.8.96	-do-
8.	2029/ 26.9.97	-do-
9.	2268/ 1.12.1998	-do-
10.	2961/ 3.12.1999	-do-
11.	2873/ 10.12.2002	-do-
12.	1738/ 5.10.2005	-do-
13.	1642/ 4.8.2006	-do-

A gist of the Nazul policies, in force from time to time through the G.O.s referred to above, is as follows:

**1. G.O. No. 2092 dated 8.6.1979**

The 1979 circular mentioned above held that the allotment of Nazul lands to private individuals for commercial purposes will be made only through public auction. Besides, the concessions on premia and rents will not be available to separate individuals or body of individuals not registered under the Societies Registration Act or a body which aims at religious propagation. Only such institutions will qualify for such concessions as offer to abide by the conditions imposed by the Government. The pattas granted on concessional rates will be subject to the condition that the land given on patta will be used for the purpose

delineated in the patta and that no departure, without the permission of the State Government, will be made. The concessional rent will not be beyond 50% of the rent-assessed.

The 1979 circular goes on to classify various public institutions in the light of social services rendered and elaborates concessions admissible in premia and rents.

## 2. G.O. No. 1562 dated 23.5.1992

The Government, vide the circular referred above, provided for:

(a) The making of available Nazul land Free-hold, on an optional basis.  
and

(b) the procedure for the disposal of the balance vacant Nazul land.

### AMOUNTS PAYABLE FOR FREE-HOLD

#### A. Leases in Perpetuity (Residential)

The patta-holder may obtain free-hold rights by depositing the amounts given in the following table:

Sl.	Land Size	Payable by the patta-holders who have <u>not violated</u> the lease conditions	Payable by the patta-holders who have <u>violated</u> the lease conditions
1	2	3	4
1.	50 square metres	25% of the market rate.	50%
2.	51-200 sq. metres	35% of the market rate.	60%
3.	201-500 sq. metres	45% of the market rate.	75%
4.	Above 500 sq. metres	75% of the market rate.	125%

### Current Pattas (Residential)

The patta-holder may obtain free-hold rights by depositing the amounts given in the following table:

Sl. No.	Land	Payable by the patta-holders who have <u>not</u> violated the lease conditions	Payable by the patta-holders who have violated the lease conditions
1	2	3	4
1.	50 square metres	40% of the market rate	100%
2.	51-200 sq. metres	75% of the market rate	125%
3.	201-500 sq. metres	90% of the market rate	150%
4.	Above 500 sq. metres	100% of the market rate	175%

The May, 1992 circular further postulates that in cases where the patta-holder is using a residential household commercially he, in cases of both perpetual and current leases, will be required to pay 200% of the market rate.

The amount payable shall be determined on the basis of the prevailing stamp rate.

In the case of a commercial patta, free-hold will be made on the payment of double the stamp rate prevailing. However, in the case of a violation of the terms of the commercial lease, free-hold will be made after realizing 300% of the prevailing stamp rate.

The May' 1992 circular further provides that 15% of the continuously vacant Nazul land will be earmarked for Government use. Lands not yet leased

will also be earmarked for playgrounds, Government offices, parks, public conveniences and the like. The balance vacant land will be made free-hold through open public bidding. A committee headed by the Divisional Commissioner was to look into the identification and earmarking of Nazul lands described above. Public bidding of vacant Nazul land too will be ensured by a committee headed by the Divisional Commissioner, in large cities (Mahanagar) mentioned in the circular. Elsewhere, the concerning District Collector will be heading such a Committee.

**3. G.O. No. 3632 dated 2.12.1992**

The above circular made certain modifications in the G.O. No. 23.5.1992 summarized in the foregoing. The December 12, 1992 circular classified all patta holders in two classes only- (a) such persons who have abided by the terms and conditions of the lease and (b) such persons who have violated such terms and conditions. The distinction between perpetual and current leases too was done away with. A new category of group housing was added. The following payments will be required, henceforth, for making lease-hold a freehold:

Sl.	A. Such patta-holders who have not violated the lease conditions	B. Such patta-holders who have violated the lease conditions
1.	Single dwelling residential building	Percent of circle rate 50% 100%
2.	Group Housing	-do- 75% 125%
3.	Commercial use	-do- 150% 250%

The May 23, 1992 circular had provided for the determination of the market rate in accordance with the stamp rate. The December 2, 1992 circular provided that upto May 23, 1993, the prevailing stamp rate as on 30.11.1991 will form the basis for such calculation.

With regard to Development Authorities, it was held that in case the said Authorities intended to create park or any community facility, without profit on the Nazul land, the same will be allotted to them free of cost. But in case the Development Authorities wanted to use the Nazul land commercially, they will have to pay an amount at par with what the Central Government pays on taking the Nazul land.

The December 2, 1992 circular put an end to the system of putting Nazul property on rent or temporary patta by the municipalities and municipal corporations. Such property, rent out or given on temporary patta (without any deed) will have to be compulsorily made freehold, as per fixed rates. The first preference will be given to the persons on rent. In case they do not agree, they will be outright dispossessed and the land will be disposed off as per the fixed procedure.

The December 2, 1992 circular also put an end to the system of the Nazul land being allotted on agricultural and horticultural patta.

In cases of current pattas, where the 90-year lease period is over and the patta-holder has not violated the conditions enshrined in the Patta, and where the patta-holder opts for free-hold, the same will be done as per rates fixed. In case he does not opt for free-hold, a new patta for 30 years will be granted to him. In the case of a new patta, the premium will be



20% of the current market rate and annual rent will be 1/60<sup>th</sup> of the premium.

**4. G.O. No. 2093 dated 3.10.1994**

The following modifications were effected by G.O. No. 2093 dated 3.10.1994 in the G.O. No. 3632 dated 2.12. 1992.

1. The calculation of the price for making current and perpetual patta land into freehold will be made on the basis of the circle rate prevalent on 30.11.1991. Accordingly, freehold price will be as follows (% against the said circle rate).

Sl. No.	Land Use	Patta holders who have not violated the lease conditions	Patta holders who have violated the lease conditions
1	2	3	4
1	Single residential house	50%	100%
2	Group Housing	75%	125%
3	Commercial	150%	250%

A rebate of 20% will be provided to such petitioners who apply within a period of 3 months from the issue of the above G.O. and deposit the free-hold price in one go within 90 days of the issue of the demand letter. The persons who are unable to deposit the price assessed in one go, will have to deposit 25% of the price assessed. The balance amount may be deposited in 6 (six) monthly instalments along with 15% ordinary interest.

G.O. No. 3632 dated 2.12.1992 had provided for the approval of a 30- year patta in the case of such

current pattas wherein 90 years' period has expired and where the previous patta holder has not violated the patta conditions. G.O. No. 2093 dated 3.10.1994 put an end to this facility with immediate effect. In such cases, no new patta will be approved. In all such cases where the entire period of patta has expired, steps will be taken to make it freehold in favour of the previous patta- holder at the prices mentioned in the foregoing.

Saleable vacant Nazul land and surplus declared (urban) Nazul land will be, made free-hold on the basis of auction/bid. Through a likewise process horticultural/ agricultural patta land will be made freehold.

**5. G.O. No. 3082 dated 1.1.1996**

The above G.O. decided that the illegal residential occupations of Nazul land on or before 1.1.1992 by persons whose monthly income is Rs. 1250/- or less, will be regularized by taking premium and fixed annual rent against such occupied land calculated on the basis of circle rate prevalent on 30.12.1991 and as per the following chart;-

Sl. No.	Area	Premium	Annual Rent (Rs.)
1	2	3	4
1.	Upto 45 sq. metres	25%	60.00
2.	More than 45 sq. metres but upto 100 sq. metres	40%	120.00

**6. G.O. No. 82 dated 17.2.1996**

Keeping in view the various types of land uses in the greater plan (Maha-yojana) the current and perennial patta lands will be made free-hold on the

basis of 30.11.1991 circle rates, after taking the land value as per the following percentage and land uses: -

Sl.	Land use	Pattaholders who have not violated the lease conditions	Pattaholders who have violated the lease conditions
1.	Single Residential houses	50%	100%
2.	Industrial	40%	80%
3.	Government Offices	50%	100%
4.	Group Housing	75%	125%
5.	Traffic	75%	123%
6.	Commercial	150%	250%

#### 7. G.O. No. 1300 dated 29.8.1996

The following policy decisions were taken by the above G.O.: -

A. In cases, where there is no violation of the patta conditions, freehold will be made in favour of the nominee in accordance with the normal rate prescribed in the G.O. No. 82 dated 17.2.1996.

B. In cases, where the patta conditions have been violated, freehold will be made as per the penal rate fixed by the G.O. No. 82 dated 17.2.1996.

C. For the conversion into freehold in favour of a nominee, over and above the amount payable as above, 5% of the assessed value will have to be paid as nomination fee.

D. Other conditions and restrictions laid down by G.O. No. 82 dated 17.2.1996 in making free hold in favour of the nominee will hold good.

**8. G.O. No. 2029 dated 26.9.1997**

In respect of the following types of land uses, freehold rates will be as follows:-

<b>Land use in Maha-Yojana</b>	<b>In the case of non-violation of the Patta conditions.</b>	<b>In the case of the violation of the Patta conditions.</b>
School	40%	80%
Hospital	40%	80%
Nursing Home	50%	100%

**9. G.O. No. 2268 dated 1.12.1998**

A noteworthy feature of the December 1998 G.O. lies in the fact that applicants desirous of freehold were required to deposit, on self-evaluation, 25% of the amount due for free-hold, along with their application.

**Amount of Self-Evaluation**

Circle rates for the concerning land as prevailing on the cut-off date x area x fixed rate for the proposed use of the land as freehold x 25%.

The rates for conversion into free-hold were fixed as follows:-

<b>Sl.</b>	<b>Lease Type</b>	<b>% of circle rate as on 30.11.1991</b>
1.	<b><u>Residential</u></b> A. Single residential B. Group housing	40%

<b>2.</b>	<b><u>Non-Residential</u></b>	
	A. Industrial	
	B. School	
	C. Dispensary	
	D. Nursing Home	60%
	E. Office	
	F. Transport	
	G. Commercial	

At places where one year prior to 30.11.1991 (that is between 30.11.90 and 29.11.91) circle rates have been changed, a concession of 30% will be given in the free-hold amount.

Free-hold facility (on payment of to-date arrear lease rent) is applicable in (a) where lease period has expired and (b) in view of the violation of any terms/conditions of the patta, the Government has acquired the right to resumption. If despite notices, there is no application for Free-hold, the Patta will be set aside and legal proceedings for resumption will start.

(Ref. G.O. No. 2029 dated 26.9.1997).

Patta holder's nominees/transferees too will be entitled for free-hold on payment of free-hold price and 5% nomination free/10% transfer free, respectively.

As regards un-authorized occupations, the December 1998 circular postulates that such occupations made prior to 1.1.1992 may be regularised by realizing 120% of prevailing circle rate in the case of residential land and 200% of such circle rate in the case of commercial land.

The December 1998 circular also envisages situations in which Nazul lands have been sold away vide registered sale deeds, by persons/ institutions, unauthorized. The purchasers in such cases will be

entitled to certain concession in Freehold. The concession will be 50% of the free-hold price for illegally occupying 101 sq. metres to 150 square metres of the Nazul land. The payable price for area above 150 square metres will be 75% of the free-hold price. The cut-off date for such unauthorised sale/purchase has been fixed at 1.1.1992. Persons in illegal occupation after this date will be proceeded against for dispossession.

**10. G.O. No. 2961 dated 3.12.1999**

The above G.O. clarified that on free-hold applications received after 30.6.1999, the free-hold price will be calculated as per circle rate prevailing on 1.4.1994.

**11. G.O. No. 2873 dated 10.12.2002**

It will be pertinent to take note of the previous reference, as given in the G.O. No. 2873 dated 10.12.2002 with regard to the management and disposal of the Nazul land. The said G.O. mentions that G.O. No. 1562 dated 23.5.1992 was the first to promulgate the Freehold policy. Subsequently, the following G.O.s were issued seeking to modify the first G.O.:

Sl. No.	G.O. No.	Dated
1.	3632	2.12.1992
2.	2093	3.10.1994
3.	3082	1.1.1996
4.	82	17.2.1996
5.	148	28.2.1997
6.	2029	26.9.1997
7.	2268	1.12.1998

G.O. No. 2873 dated 10.12.2002 made the following provisions with regard to freehold:

1. In residential cases, freehold of patta-Nazul land or expired patta-Nazul land will be done in favour of the pattaholder or his legal heir by charging 40% of prevailing circle rate and in non-residential cases by charging 60% of such rate subject to land use as per greater plan (Mahayojana). Timely deposit of dues will fetch certain concessions as enunciated in the said G.O.

2. Nazul land with ditches, without access or not auctionable due to any reason will be allotted to Development Authority Housing and Development Council/ local bodies by charging the following percentage of prevailing circle rate:

<b>Land Use</b>	<b>Undeveloped</b>	<b>Developed</b>
Residential	25%	40%
Non-Residential	25%	40%

3. Earlier provision for freehold in favour of the nominees was done away with. Freehold facility can now be availed of only by the original patta-holder or his legal heir or such purchaser from him who has purchased the land through a registered deed on payment of stamp rates. Such vendees will have to pay 40% of prevailing circle rate in residential cases and 60% of the prevailing circle rate in commercial cases.

4. Unauthorised residential occupations of undeveloped Nazul land by poor people will be available to an individual with an income of Rs. 1700/- per month or persons coming under the BPL category as per the GOI guidelines issued in this regard. The

regularization will be made at the circle rates prevailing on 1.1.1996.

5. Illegal occupation made upto 1.12.1998 will be regularised at 100% of the prevailing circle rate and proof like telephone bill, power bill, house tax receipt, voters' list, ration card, address given in the bank account will be admissible in this regard.

6. Public institutions which refrain from charitable or other obligatory public duties in violation of the conditions of the Patta will be given 3 months' time limit to make residential land use into freehold by paying 60% of the prevailing circle rate and 80% of such rate in commercial land use cases.

7. Local bodies have already been empowered to make freehold such Nazul land properties where constructions were made and rented out. It is clarified that if the concerning local body fails to make freehold within 3 months of the G.O. dated 10.12.2002, freehold will be made directly in favour of shopkeepers/ tenants by charging 40% in residential and 60% in non-residential cases, of the prevailing circle rate. Local bodies desirous of getting freehold themselves will have to deposit 10% in lieu of 25% of the conversion price at the stage of self-evaluation. Such bodies may make further deposits in 10 6-monthly instalments, without interest.

**12. G.O. No. 1738 dated 5.10.2005**

Vide the above-mentioned G.O., Para- 10 of the G.O. No. 2268 dated 1.12.1998 was recast as follows: -

"The entire freehold proceeding will be subject to the final order passed by the Hon'ble High Court in CWJC No. 32605/1991 (Satya Narayan Kapoor Vs. State of Uttar Pradesh & Others), CWJC No.



20430/1992 (Smt. Rafi Kunnisan Vs. State of Uttar Pradesh and CWJC No. 16325/ 1994 (Mohammed Ali Vs. the State of Uttar Pradesh and others)”.  
1

### **13. G.O. No. 1642 dated 4.8.2006**

Vide the above- mentioned G.O., the Government notified its decision not to regularize illegal occupations on Nazul lands, in supersession of its earlier decisions in this regard.

## **PART - TWO**

### **GOVERNMENT ESTATE LANDS IN UTTAR PRADESH**

The term “Government estates” denotes estates under the direct management of the Government whether these are the property of the Government or are the estates of private individuals brought under the direct management of the Government. It may also mean any land, which is the property of the Government and as such would include estates owned by the Government which have been let in farms and leased for periods.

The Department of Revenue, Government of Uttar Pradesh deals with the control and management of the Government estate lands. The following Rules have been issued till date in this regard:

<b><u>Sl. No.</u></b>	<b><u>Rules/Year</u></b>
1.	The Government Estate Management Rules, 1987
2.	The Government Estate Management (Amendment) Rules, 2003.

## **THE GOVERNMENT ESTATE MANAGEMENT RULES, 1987**

Rule 1 of the 1987 Rules defines the Government lands as follows: -

- (i) Land owned by the State Government at the time of Independence: This includes the Government estate land in the rural areas, rural nazul land, as are under the management of the Commissioner, Land Administration. It further includes urban lands under the management of the District Collector. It also comprises lands lying under the management of forest and other departments. It also includes civil and "soyam" land situated in the hilly areas.
- (ii) Land vested in the State Government after the promulgation of the Zamindari Abolition legislation: By and large such lands have already vested in the Gram Sabhas and local bodies for purposes of management.
- (iii) Land vested in the State Government under the ceiling law of 1960.
- (iv) Escheat lands vested in the State in the event of a land-owner dying intestate and heirless.
- (v) Land earmarked by the Government under any law to that effect, in force.
- (vi) Land coming into the ownership or the management of the State Government under any specific law.

Rule 3 of the said 1987 rules laid down the principles for the disposal of the Government lands as follows:-

- (a) By sale on full market value or by exchange with private land of equivalent value.
- (b) By grant (without any rent concession) to public institutions, associations or individuals for public purpose as per conditions laid down.
- (c) By gift or grant to public institutions, associations or individuals for public purpose.
- (d) By gift or grant to an individual by way of reward for public services rendered.
- (e) To individuals through Pattas (Leases)

Transfers from items (a) to (d) will be made by the Revenue Department of the State Government, while transfers prescribed in (e) will be made by the officials authorised by the State Government. Furthermore, sub-soil rights will not be transferred.

The register of the Government estates is maintained in Form R-34 in the Tehsils. The class of land, like forest, orchard etc. and the appurtenances thereto, like buildings; trees etc. should be entered in the said register.

The Collector will have to cross-check entries made in the Record of Rights with regard to the Government estates. It will be the duty of the Lekhpal/ Patwari to make entries regarding unauthorised occupations in the prescribed proforma, found out during the partial. They will also make note of damage done to the Government lands. Proceedings for the dispossession of the unauthorised occupants and for recovery against damage done, will have to be initiated.

The Government lands may be granted on patta, for any specific purpose, like agriculture, residential, commercial, industrial or charitable, with or without premium, subject to specific instructions issued by the State Government with respect to specific areas, under the provisions of the Government Grants Act, 1895.

The agricultural and horticultural pattas will be issued subject to the following rules:

1. For instance, agricultural land coming to the Government on account of its being fallow, barren or heirless or land otherwise under the ownership of the Government, in which agricultural, horticultural or animal husbandry, fisheries or poultry activities may be pursued, may be granted on patta. However, land being used or earmarked for public purposes, like road, irrigation, tank etc. will, in no condition, be allotted on patta.

3. The following preferential order will be maintained while giving land on patta:

(a) A widow (residing in the village) of a person, who while serving the Armed Forces of the Union, during combat, has sacrificed his life, his landless son, his landless married daughters or his landless parents.

(b) A person who, while serving the Armed Forces of the Union, has become totally invalid during combat.

(c) A landless agricultural labourer, residing in the village, and belonging to the Scheduled Castes or the Scheduled Tribes. Since all residents under pargana Jaunsar Bawar (Tehsil Chakrata) in the Dehradun district, belong to the Scheduled Tribes, preference will

be given to the relatively weaker classes of Kolta, Bajgi and Dom landless agricultural labourers.

(d) Any other landless agricultural labourer residing in the village.

The allottee will be allotted, as far as possible, 1 acre of land.

The conditions of the patta will be as follows:-

- (a) The patta will be for ever
- (b) The patta-holder's rights will be permanent and hereditary.
- (c) The Patta-holder will not have the right to transfer the land but he may mortgage the land (without parting with occupation) against loan from the Government or financial institutions.
- (d) The land will be used only for agricultural, horticultural, animal husbandry (which includes fisheries and poultry farming) purposes only.
- (e) The rent payable by the patta-holder will be equivalent to the land-holders' rent based on the principles laid down by Section 245 of the Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950.
- (f) In the event of the violation of any of the conditions of the patta, the Government will be entitled to resume possession of the land without paying any compensation and free from all encumbrances.

### **BUILDING PATTAS**

The grant of building pattas will be subject to the following Rules:-

1. Agricultural, barren or non-arable land may be granted on pattas for buildings for residential, commercial, industrial or charitable purposes.

2. The following preference order will be observed while allotting land in the rural areas for residential/construction purposes:

(a) Agricultural labourer or rural artisans residing in the village and belonging to the Scheduled Castes or Scheduled Tribes.

(b) Other agricultural labourers or rural artisans residing in the village.

(c) A landholder or a tenant, residing in the village who has less than 1.26 ha. (3.125 acres) of land.

As per Rules, only homeless individuals will be eligible for house-site allotment on the Government land.

The following priority order will be maintained while allotting land for residential purposes in the urban areas:

(a) A person with less than Rs. 5000/- income per annum.

(b) A person who is in the lower income group even if his income is more than Rs. 5000/- pa.

(c) A person belonging to the middle income group.

It has been clarified that no person belonging to the higher income group will be eligible for an allotment of the Government land for residential purposes. In conformity with the priority order, the State Government may also formulate a group-housing

scheme. Cottage industries will get preference in land allotments for industrial purposes. The Rules lay down the underlying principles for rent and premium with regard to building pattas for different categories of the allottees.

The following will be the conditions for the building pattas, unless provided otherwise in specific cases or for specific categories of the allottees:-

(a) Initially, the patta will be for 30 years with an option for renewal twice for 30 years each. The Government shall have the right to enhance the rent which will not be less than  $1\frac{1}{2}$  times of the previous rent.

(b) The patta-holder and his legal heirs shall have hereditary rights over the allotted land.

(c) The patta holder will have to construct a building within 3 years of the date of the patta and will have to use the building for the purpose specified.

(d) No transfer will be made by the patta holder without the prior permission of the District Collector. The Collector will have to guard against profiteering. A Scheduled Caste patta holder cannot make transfer in favour of a person not belonging to the Scheduled Castes.

However, the patta holder may mortgage the land against a house-building loan, without parting with its occupation.

(e) The land will have to be surrendered to the Government, without any charge, if the same is not required for the purpose specified.

(f) If the building has been abandoned or its owner has expired heirless the building along with the land, will, free of any charge, demise to the State Government.

The building patta cases in the urban areas, which are not covered by these Rules, will be governed by the rules laid down in the Nazul Manual.

## **THE GOVERNMENT ESTATE MANAGEMENT**

### **(AMENDMENT) RULES, 2003**

The salient features of the amended Rules are as follows:

#### **Rules Pertaining to Residential Leases**

The following provisions have been made in respect of such of the following four classes of residential patta holders, whose patta period is either over or is yet to be over:

#### Rules 3 (1)

(a) Patta-holders holding patta granted by the Government or by an authorised representative of the Government;

(b) Such of the occupants who do not have a written patta document but whose names have been recorded in the last settlement (for example 1320 Fasli or 1913 in Allahabad);

(c) Such of the transferees, who in violation of the terms and conditions of the patta or Wajib-ul-Arz have taken land through a registered deed of transfer from the person mentioned in (a) and (b);



(d) Such persons, who in violation of the terms and conditions of the Patta or Wajib-ul-Arz have taken possession of the land from the persons under categories (a) and (b) vide an unregistered sale document.

The persons under category (a) above, in case they have not violated the terms and conditions, may continue to hold lease hold rights as per the conditions of the patta, but if they want to obtain a patta with transferable rights (which they do not have as a Patta-holder), he will have a patta with transferable rights on payment of 30% of the prevailing circle rate for the first 500 square meters and 40% of the prevailing circle rate for the additional area.

Persons falling in category (b) and (c) will have the following two options, out of which they will have to go in for one-

OPTION-1 As regards residential use, they may obtain patta with transferable rights on payment of 40% of the current circle rate whereas in cases of non-commercial usage, they can obtain a patta with transferable rights by depositing 60% of the circle rate.

OPTION-2: In residential use cases, a patta with non-transferable rights may be obtained by depositing 20% of the current circle rate, whereas in cases of non-residential use a patta with non-transferable rights may be obtained by depositing 30% of the current circle rate.

Category (d) persons also will have to select one out of two options, which are as follows: -

OPTION-1 In cases of residential use they may obtain transferable rights by depositing 50% of the current circle rate, whereas in cases of non-residential use they will obtain a transferable rights patta by depositing 70% of the current circle rate.

OPTION-2 In cases of residential use, a non-transferable rights patta may be obtained by depositing 25% of the current circle rate whereas in cases of non-residential use, a non-transferable rights patta may be obtained by depositing 35% of the current circle rate.

The revised rules further provide that in cases where the lease period has expired, the to-date payment of lease rent will be obligatory. Further for any title dispute or decretal fine or penalty, the petitioner himself will be liable.

While disposing off the Government lands as per Rule 3(1) (a) and (c), the following points should be kept in mind-

From such Government land which is vacant continuously and has not been managed in any way earlier or is purely an estate land as of now, 20% of the land will be earmarked for the Government. As regards the remaining land after determining how much of the land will have to be earmarked for the Government Offices, parks etc. an option will be exercised to grant the land to the concerning Development Authority/ Housing Development Council and Industrial Development Councils such as the U.P. State Industrial Development Corporation, NOIDA, Greater NOIDA, GIDA/BIDA. Land will be allotted to the said Council/ Authority on market value, to be assessed by the Divisional Commissioner. If the land

is not required by the Council/ Authority, it will be disposed off through open bid in such a way that the Government gets maximum advantage. The minimum reserved price in the open bid will be fixed by the Collector which will be finally approved by the Divisional Commissioner. If the price fetched falls below the reserved amount, the Government's approval will be mandatory.

## **RULES PERTAINING TO AGRICULTURAL AND HORTICULTURAL LEASES**

Agricultural and horticultural lessees will be classified into the following four categories:

### **RULES 4 (i)**

- (a) Such of the recorded khatedars (Class 6-A,8, 12) or agricultural or horticultural lessees who are engaged in agriculture or horticulture as the case may be, in other words, who have not violated any terms and conditions.
- (b) Such of the recorded Khatedars (Class 6-A, 8, 12) or agricultural or horticultural lessees who either themselves or whose legal heirs have constructed residential/non-residential structures and have been paying agricultural rent;
- (c) Such transferees, who, in violation of the terms of the lease or Wajib-ul-Arz have taken land through a registered deed of transfer from persons in category (a) and (b);
- (d) Such persons, who in violation of the terms of the lease or Wajib-ul-Arz have taken occupation of

land through an unregistered sale deed from persons in category (a) and (b).

The persons falling in category (a) do not presently have transferable rights and if they so desire, may continue to avail the current lease-hold rights while ensuring compliance of the terms of the lease. However, in case they want to obtain a patta with transferable rights, which they do not presently have, they may obtain such a patta by depositing 40% of the prevailing residential circle rate.

The persons falling in category (b) and (c) will have to select either of the following options:....

#### OPTION - 1

In the case of residential use, they may obtain a patta with transferable rights by depositing 40% of the current market rate, whereas in the case of non-residential use they may obtain a transferable rights patta by depositing 60% of the current circle rate.

#### OPTION-2

In the case of residential use, they may obtain a non-transferable rights patta by depositing 20% of the prevailing circle rate, whereas in cases of non-residential use, they may obtain a non-transferable rights patta by depositing 30% of the prevailing circle rate.

The persons belonging to category (d) will have to select either of the following two options-

#### OPTION -1

In the case of residential use, such persons may obtain a patta with transferable rights by depositing 50% of the current circle rate, whereas in the case of non-residential use they may obtain a transferable rights patta by depositing 70% of the current circle rate.

### OPTION-2

In the case of residential use, they may obtain a patta with non-transferable rights by depositing 25% of the current circle rate and in the case of non-residential use such a patta may be obtained by depositing 35% of the current circle rate.

The Rules further point out that it will be obligatory to get the annual rent deposited in cases where the period of the lease is over. The applicant himself will bear all liability with regard to any title dispute or fine/penalty imposed by the Court. Leases granted for charitable purposes, without premium, will not be covered by the option for obtaining transferable rights. The circle rate will be assessed in the light of land use in the Maha-Yojana (Greater Plan). The stamp fee will be borne by the lease-holder/ regularised lease-holder.

### **ILLEGAL OCCUPATIONS**

The revised Rules postulate the following sub-classes under the class of illegal occupation-

- (a) such occupants who (class 6-A, 8, 12) have come into illegal occupation, without any sale deed, from the recorded Khatedar or agricultural or horticultural lease-holder or his representative;

(b) such occupants who have made illegal construction over class 10A and class 20 lands;

(c) those who have illegally occupied and raised structures on such Government estate land not granted to anybody for management;

(d) such occupants who have purchased through registered or unregistered sale deed, land from the occupants of class 10-A and class 20 or from the illegal occupants of the Government estate land;

(e) such occupants who have occupied Class 15 land (besides the occupants under the last settlement).

The revised Rules extend an opportunity to exercise either of the following two options to the classes of illegal occupants mentioned above:

OPTION - 1

The said illegal occupants may obtain a patta with transferable rights after depositing 100% of the current circle rate.

OR

OPTION-2

The said illegal occupants may obtain a patta with non-transferable rights after depositing 50% of the current circle rate.

Regularization of the Unauthorised Residential Occupations of the Un-developed Government Estate Land by Poor Persons

The regularization of the unauthorised/ illegal occupation of the un-developed Government estate land by the poor persons, whose income is upto Rs. 1700/- per month or who come below the poverty line as per the Government of India guidelines, as updated from time to time, upto the cut-off date of 1.4.1992, will be made as per the following procedure:

(i) A patta of non-transferable rights will be given after depositing 25% of circle rate prevalent as on 1.1.1996 for an area upto 45 square metres and 40% of the said circle rate for an area from 45 square metres upto 100 square metres.

(ii) Illegal occupations on an area more than 100 square metres will not be regularised in any case.

(iii) The amount due for a patta with non-transferable rights will be realised in 6-monthly instalments on a 10-year spectrum, without interest. However, if someone wants to deposit the entire amount or arrears at one time he will be able to do so.

The revised Rules fix 1.4.1992 as the cut-off date for the violation of the terms and conditions, illegal transfer or illegal occupation or for availing the admissible concessions or benefits in matters of granting patta with non-transferable rights. It means that pattas with non-transferable or transferable rights will be granted after regularizing illegal occupations or illegal transfers made prior to the cut-off date of 1.4.1992. Reliable documents like telephone bills, power bills, house tax receipts and the like will have to be produced as proof of unauthorised occupation.

Pattas with transferable rights on part land of current pattas and recorded Khatedars will be granted only on the production of an affidavit that the remaining land will be disposed off as per the Rules pertaining to Government estate management in future.

No Pattas with transferable or non-transferable rights will be granted with respect to unauthorised occupations concerning public places, parks, roads, rail-lines, sewerage systems, road expansion or affecting other public properties.

No pattas with transferable rights will be granted to anyone against such of the Government estate land which is situated near places of administrative importance or which may be considered useful for public purpose presently or in future. A decision in this regard will be taken in a committee headed by the Collector in which secretary of the Development Authority of the concerned district, local superintending engineer of the PWD or a senior officer of the Public Works Department, and Chief Municipal Officer or executive officer of the Municipal Corporation or the municipality will be the members of the said Committee.

The Rules further prescribe that if a person fails to file an application for the grant of a patta with transferable or non-transferable rights, within 3 months of the coming into force of the revised Rules, he will be proceeded against under the Uttar Pradesh Land & Household (unauthorised) Occupants' Dispossession Act, 1972. The cost of dispossession will be realised from the illegal occupant.



The Revised Rules stipulate that a Scheduled Caste patta-holder will not be allowed to make a transfer in respect of a non-Scheduled Caste person.

The Rules further provide that a patta-holder with transferable or non-transferable rights shall have the right to mortgage the land, without parting with possession, for obtaining a construction loan.

The Rules explain that "circle rate" stands for the rate determined by the Collector for assessing the minimum market value of immovable properties under the Uttar Pradesh Stamp (Valuation of Property) Rules, 1997. The minimum market value (residential or non-residential) will be determined in accordance with the purpose for which the land is being used. In such cases, a patta will be first executed for 30 years, with a provision for renewal every 30 years twice. The maximum period for a patta will be 90 years.

### **SUMMING UP**

1. The Government Estate Management (Amendment) Rules, 2003 (w.e.f. 3.1.2003) pertains to the management of the following types of leases granted earlier-

- A. Residential
- B. Agricultural and horticultural

The 2003 Rules tend to revise the 1987 Rules framed in this regard.

2. The Revised Rules classify the lessees under both the leases under four sub-classes each.

**TABLE - 1**

<b>Classes of Residential Lease land-holders</b>	<b>Classes of Agricultural and Horticultural Lease Land holders</b>
1	2
A. Authorised and legal patta-holders abiding by the terms of the lease.	A. Authorised and legal Patta-holders abiding by the terms of the lease.
B. Such persons who do not have patta but whose names have been recorded in the Last Survey and Settlement.	B. Bonafide lessees who have constructed residential/ non-residential structures over lease lands and are paying agricultural rent.
C. Transferees from the persons in A & B, through a registered transfer deed (in violation of the terms of the patta)	C. Transferees who have taken land from persons in A & B, through a registered transfer deed. (in violation of the terms of the patta).
D. Occupants taking possession from the persons in A & B vide an un-registered transfer document (in violation of the terms of the patta).	D. Occupants taking possession from the persons in A & B vide an un-registered transfer document (in violation of the terms of the patta).

3. Table 2 represents a summary of the revised Rules pertaining to the accrual of transferable or non-transferable rights over the leasehold land, with respect to Residential Leases.

**TABLE - 2**  
**RESIDENTIAL LEASES**  
**(ORIGINAL)**

Sl. No.	Cate-gory	Actual Current use	Options		
			(1)	Or	(2)
1.	A.	Residentia 1	May continue in lease- hold	Or	May obtain transferable rights by depositing 30% of the current circle rate for the first 500 square metre areas and 40% for the additional areas.
2.	B and C	Residentia 1	May obtain transferab le rights by depositing 40% of the current circle rate.	Or	May obtain non- transferable rights by depositing 20% of the current circle rate.
		Non- Residentia 1 (in violation of the original lease).	May obtain transferab le rights by depositing 60% of the current circle rate.	Or	May obtain non- transferable rights by depositing 30% of the current circle rate.

3.	D.	Residential	May obtain transferable rights by depositing 50% of the current circle rate.	Or	May obtain non-transferable rights by depositing 25% of the current circle rate.
		Non Residential (in violation of the original lease).	May obtain transferable rights by depositing 70% of the current circle rate.	Or	May obtain non-transferable rights by depositing 35% of the current circle rate.

4. Table-3 represents a summary of the revised Rules pertaining to the accrual of transferable or non-transferable rights over the leasehold rights, with respect to agricultural and horticultural lands.


**TABLE - 3**  
**AGRICULTURAL & HORTICULTURAL LEASES**  
**(ORIGINAL)**

Sl. No.	Category	Actual Current use	Options		
			(1)	Or	(2)
1.	A.	Agricultural & Horticultural (originally envisaged in the lease: No violation).	May continue in the lease-hold.	Or	May obtain transferable rights by depositing 40% of the current circle rate.
			(1)		(2)
2.	B and C	Residential (in violation of the original lease)	May obtain <u>transferable rights</u> by depositing 40% of the current circle rate.	Or	May obtain <u>non-transferable rights</u> by depositing 20% of the current circle rate.
		Non-Residential (in violation of the original lease)	May obtain <u>transferable rights</u> by depositing 60% of the current circle rate.	Or	May obtain <u>non-transferable right</u> by depositing 30% of the current circle rate.
			(1)		(2)
3.	D.	<u>Residential</u> (in violation of the original lease)	May obtain transferable rights by depositing	Or	May obtain <u>non-transferable right</u> by depositing 25% of the

			50% of the current circle rate.		current circle rate.
			(1)		(2)
		<u>Non-Residential</u> (in violation of the original lease)	May obtain transferable rights by depositing 70% of the current circle rate.	Or	May obtain non-transferable rights by depositing 35% of the current circle rate.

5. The commonly used word "Free-hold" is to be viewed as "accrual of transferable rights in the leasehold land" in the context of the Uttar Pradesh system.

The U.P. system envisages an extra situation, in which non-transferable rights, too, may accrue in the leasehold land.

6. A reference may be drawn to the first class of leases under both types of leases reflected in Table-1 above. Only persons belonging to category-A (bonafide lessees, who abide by the terms of the lease), have been given two choices; either to continue the leasehold land as such or to convert the same into land with full transferable rights.

Category	Lease Type	Choices
A.	Residential Agricultural/ Horticultural	Lessees may continue in lease  OR Apply for Transferable Rights

It is noteworthy that persons falling in category B, C and D are not lessees from the Government at all. They are either unauthorised transferees from the original lessees or unauthorised occupants. No new leases will be granted to them under the conventional sense of the term. Rather a choice between a patta with transferable rights or one with non-transferable rights lies with persons belonging to such categories, with varying circle rates as illustrated in Tables-2 and 3 above.

7. It is noteworthy that exercising an option for either transferable or non-transferable rights within 3 months of the coming into force of the 3<sup>rd</sup> January 2003 revised Rules is obligatory on persons belonging to category B, C and D. If they do not apply for the grant of a patta with transferable or non-transferable rights within time, they will be proceeded against for dispossession. Thus, such persons cannot afford to use the property without a patta mentioned above, for which the required amounts will have to be deposited.

8. The circle rate is to be the prevailing rate with respect to persons belonging to category A, B, C and D.

The circle rate as on 1.1.1996 will be taken into consideration with respect to poor people as discussed in the foregoing.

9. No patta with transferable rights will be granted in respect of estate lands lying adjacent to places of administrative importance or which will subserve public purpose presently or in future.

10. Vacant estate land has to be managed in a rather special manner. 20% of such land has to be earmarked for the Government. Such land has to be set aside for parks, Government offices, etc. Options will be available for allotment to Government

councils/Authorities etc. on market value to be determined by the Divisional Commissioner. Balance lands are to be disposed off through open bid in order that the Government gets maximum benefit.

11. Uptodate lease rent has to be realized in cases where lease period is over already.

12. Provisions have been made for the regularization of lands held by the illegal/unauthorised occupants.

13. Special provisions have been made for the unauthorized residential occupation of un-developed estate lands by poor people.

14. No pattas, with transferable or non-transferable rights will be granted against unauthorised occupations of public places, parks, roads, railway lines and the like.

15. While summing up the rather lengthy narrative of the chequered evolution of the free-hold policy of the U.P. Government with regard to the Nazul and Estate lands, it can be pointed out that while the applicable circle rates of the Nazul free-hold pertain to quite a few years back, the currently prevailing circle rates are the basis for calculating the estate free-hold value. This is a veritable discrepancy in as much as, but for nomenclature, both the categories of lands denote public lands and the concerning allottees have to pay different rates for the two categories.

16. The Nazul policy is sub-judice and the judgement of the Hon'ble High Court will determine the shape of things to come in this respect.

(Ref. G.O. No. 1738/ 5.10.05)



17. It has also been gathered that some modification in the existing free-hold policy with regard to the Estate lands is under the active consideration of the State Government. It will take quite some time in getting at the to-date thinking of the Government in this regard.

## CHAPTER - 15

# CONVERSION OF LEASE-HOLD LANDS INTO FREE-HOLD IN ANDHRA PRADESH, U. T. OF CHANDIGARH AND DELHI DEVELOPMENT AUTHORITY

### INTRODUCTORY

This paper is based upon my recent study trip to Andhra Pradesh, the Union Territory of Chandigarh and the Delhi Development Authority. During my study trips I held detailed interactions on the theory and practice of the scheme of the conversion of lease-hold lands into free-hold alongwith discussions on the nuances of legal measures undertaken to that effect.

#### Andhra Pradesh

The management of Government lands in the Secunderabad area of Andhra Pradesh is governed by the Andhra Pradesh (Secunderabad Area) Land Administration Rules, 1976. Leases granted under the Andhra Pradesh (Secunderabad Area) Land Administration Rules, 1976 are the subject matter of conversion into free-hold on a large scale in recent years. Detailed schemes for such a conversion have been formulated and are being implemented. The scheme has been kept purely voluntary and time limits for application from willing lessees were prescribed. Extensions were granted wide successive G.O.s with extension fees. The conversions pertain to residential and commercial leases.

Lease land also exists in the Telangana area of Andhra Pradesh. However, there is neither any move on the part of the lessees nor the Government to convert the lease-hold lands into free-hold. Leases in

the Telangana area are governed by the Andhra Pradesh (Telangana Area) Grant of Lease of Lands for Non-Agricultural purpose Rules, 1977. In the rest of Andhra Pradesh leases are scarce and there is no talk of conversion.

The revenue position is indicated as follows:-

In Rs.

1.	Total demand of conversion charges as on 31-07-2006 in 1389 cases.	41,43,91,765
2.	Amount collected upto 31-07-2006	37,15,84,198
3.	Balance to be collected	4,28,07,567

## UNION TERRITORY OF CHANDIGARH

First, the Chandigarh Lease Hold of Sites Building Rules, 1973 came into existence. Subsequently, the Chandigarh Conversion of Residential Lease-Hold Land Tenure into Free-Hold Tenure Rules, 1996 were framed. The implementation of the free-hold scheme is being done in accordance with the 1996 Rules. These rules shall apply only to the sites, mentioned in the Master Plan/ Zoning Plan as "residential". The proposed conversion can be given effect to in respect of the following sites-

- (i) All the residential built up sites where the lease has been granted for residential purposes.
- (ii) EWS, LIG, MIG, HIG and Self Financing Scheme Flats, Industrial Labour Houses, Cheap Houses and Tenements allotted on lease-hold basis.
- (iii) All the built up sites where the lease has been granted to the Cooperative House Building Societies,

Army Welfare Housing Organisations, Central/ State Governments, Semi-Government bodies, Chandigarh Housing Board for residential purposes in respect of all sites of plots.

The 1996 Rules lay down the procedure for conversion in detail. Conversion charges are mentioned on Annexure- A to these rules, which will be updated from time to time. In respect of original lessees/ applicants, 25% remission in the conversion fee shall be allowed. This commission will also be applicable to the lessees/ applicants in case where properties have changed hands after obtaining permission to sell, on payment of unearned increase, as applicable. Remission of 33¼% in respect of all categories of ready- built flats and tenements shall be allowed. The conversion shall also be allowed in the cases where the lessees/ sub lessees (allottees have parted with the possession of the property, subject to certain conditions. All arrears of ground rent along with interest shall be paid by the applicant, before the conversion is permitted. Conversion to freehold shall be allowed in the cases where residential buildings on the sites have been constructed and completion certificates have been issued by the Estate Officer.

According to an amendment in the 1996 Rules (effected vide Notification No. 11/1/18- UTFI (2) - 2002/ 6222, the land rate applicable for calculating the conversion charges of lease-hold land revenue into free-hold land tenure in terms of Annexure-A of the Rules was fixed at Rs. 1710.00 per square metre, subject to the condition that the conversion charges shall be at least five times of the annual lease money/ ground rent. In the case of ready- built flats/ dwelling units, the one time conversion charges shall be charged either at the rates notified vide Chandigarh

Administration Notification No. 11/1/18-UTFI (2)- (2002/ 237 dated 9<sup>th</sup> January 2002 or five times of the annual lessee money/ ground rent, whichever is higher.

### **Progress Report upto August 2006**

i.	Total Leases	9000
ii.	Total applications for conversion received upto August 2006	3756
iii.	Total No. of conversions allowed	3140
iv.	No. of Application in process	470
v.	No. of cases where objections have been conveyed.	146

Objections relate mainly to non-clearance of mortgage, absence of GPA/SPA agreement to sell, building violation, calculation of conversion charges.

### **DELHI DEVELOPMENT AUTHORITY**

Lease-hold property under the Delhi Development Authority is governed by the provisions enshrined in the Delhi Development Act, 1957 and the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981.

While 60% of conversion charges are payable by the original lessees, the buyer/ GPA holder is required to pay 100% conversion charge and 33% surcharge on the same. Conversion charges are to the tune of 10% of the uptodate market value (revised year to year in area to area) Conversion schemes pertain to plots of the 1993 (when free-hold policy was made) market value by number of storey , FAR (Floor Area Ratio) and the like.

There is thinking in the DDA to discourage conversion of industrial plots into free-hold. The residential plots bear flats constructed by the plot-

lessees themselves. Hence, conversion charge is as per plot- scheme, not as per DDA's flat scheme. The conversion charges mentioned in the schemes will amount to 10% of the market value indicated. For example, at page 17 of the scheme the market value for Azmal Khan Road is given as Rs. 11,550/- per square metre. The conversion charge will be 10% of the said amount = Rs. 1155/-. The original lessees will pay 60% of Rs. 1155/- while Rs. 1155 + 33⅓% will be payable by GPA/ buyer.

As far as flats constructed and leased out by the DDA are concerned, no conversions charge is levied against EWS/Janata flats. For LIG, MIG, HIG, SFS (Self Finance Scheme) flats, fixed rates are given in the scheme. The calculation formula has not been disclosed. However, it takes into account, for instance, averages charged for parks/ the division.

If we look at the related systems in Andhra Pradesh, the Union Territory of Chandigarh and the Delhi Development Authority, we find that the powers of rule-making resulting eventually into systematizing free-hold, emanated from a certain parent Act. The Andhra Pradesh (Secunderabad Area) Land Administration Rules, 1976 have been framed in exercise of the powers conferred by Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli (Act VIII of 1317 Fasli) and in supersession of the Secunderabad Land Administration Rules of 1355 Fasli. Sub-section 2 (F) of Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 F. deals with "the disposal of attached land". This clause facilitated the conversion of lease-hold land into free-hold in subsequent years. The Andhra Pradesh (Telangana Area) Grant of Lease of lands for Non-Agricultural Purposes Rules, 1977, too, had been made

in exercise of the powers conferred by Section 172 of the Andhra Pradesh (Telangana Area) Land Revenue Act, 1317 Fasli.

The Chandigarh Lease Hold of Sites and Building Rules, 1973 were made by the Administrator, Union Territory of Chandigarh in exercise of the powers conferred by Section 3 and 22 of the Capital of Punjab (Development and Regulation) Act, 1952 as adapted by the Punjab Reorganization (Chandigarh) Adaptation of Laws (On State and Concurrent Subjects) Order 1968. Subsequently, the Chandigarh Conversion of Residential Lease-Hold Tenure into Freehold Tenure Rules, 1996 were framed with a reference to the same sections of the Capital of Punjab (Development and Regulation) Act, 1952.

The Delhi Development Act, 1957 and the Delhi Development Authority (Disposal of Developed Nazul Land) Rules, 1981 deals with the lease-hold property in Delhi. A reference may be made here to clause (J) of sub-section (2) of Section 56 read with sub section (3) of Section 22 of the Delhi Development Act, 1957 (61 of 1957). Section 56 (2) (J) deals with the manner in which nazul lands should be dealt with after development. Section 22 (3) provides that after any such nazul land has been developed by or under the control and supervision of the Authority, it shall be dealt with by the Authority in accordance with rules made and directions given by the Central Government in this behalf.

Article 13 (3) (a) of the Constitution of India provides that "Law" includes any Ordinance, order, by-law, rule, regulation, notification, custom or usage having in the territory of India, the force of law.

## Author's Profile

A gold medalist in M.A. (Political Science) from Patna University, Dr. C. Ashokvardhan had been a lecturer in Ranchi College for a brief spell and subsequently served Patna College for about 5 years. HRD in Bokaro Steel Plant represents his field of doctoral and post doctoral research. His doctoral dissertation has been published by the SAIL: Bokaro Steel Plant.



Dr. Ashokvardhan belongs to the 1980 batch of the IAS and to the Bihar Cadre. He has served in various capacities in the Government of Bihar and his exclusive revenue & land reforms postings include: Settlement Officer, Dhanbad; Additional/ Special Secretary in the Department of Revenue & Land Reforms; Director, Land Records & Survey, Bihar; Additional Member, Board of Revenue, Bihar and Director, Consolidation Bihar, spanning a length of about 15 years exclusively in this sector. He has covered the country extensively as a member of numerous expert groups set up by the Ministry of Rural Development, GOI/ National Commission for SCs & STs and his papers and presentations carry the scent of ground realities. He has had training stint abroad in Thailand, China and the U.K.

Dr. Ashokvardhan is a creative writer having published quite a few collections of his poems. He has published extensively on various themes and has been a recipient of various awards from the Ministry of Steel, Ministry of Rural Development, Ministry of Personnel and Public Grievances and Bureau of Police Research & Development, Ministry of Home, GoI. And



yet his primary interest lies in revenue and land reforms. His publications in this sector include:

1.	Land Reforms in Kerala: the Myth and the Reality	National Institute of Rural Development, Hyderabad	1992
2.	Land Records Management in 14 States of India	-Do-	1998
3.	Tenancy Reforms Re-visited	LBS National Academy of Administration, Mussoorie	2000
4.	Socio-Economic Profile of Rural India (Vol. 2) North-East India (ed.)	Concept Publishing Company, New Delhi	2002
5.	Readings in Land Reforms	LBS National Academy of Administration, Mussoorie	2003
6.	Studies on Ceiling Laws	-Do-	2004
7.	Ceiling Laws in India	-Do-	2005
8.	Studies in the Jharkhand Tenancy Laws	-Do-	2005
9.	Tribal Land Rights in India	-Do-	2006
10.	Attacking Rural Poverty through Farm Productivity	-Do-	2008

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The Centre for Rural Studies (formerly Land Reforms Unit) of the Lal Bahadur Shastri National Academy of Administration was set up in the year 1989 by the Ministry of Rural Development, Government of India, with a multifaceted agenda that included among others, the concurrent evaluation of the ever-unfolding ground realities pertaining to the implementation of the Land Reforms and Poverty Alleviation Programmes in India. Sensitizing the officer trainees of the Indian Administrative Service in the process of evaluating of land reforms and poverty alleviation programmes by exposing them to the ground realities; setting up a forum for regular exchange of views on land reforms and poverty alleviation between academicians, administrators, activists and concerned citizens and creating awareness amongst the public about the various programmes initiated by the government of India through non-governmental organisations are also important objectives of the Centre for Rural Studies. A large number of books, reports related to land reforms, poverty alleviation programmes, rural socio-economic problems etc. published both externally and internally bear testimony to the excellent research quality of the Centre.

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