

CHAPTER V

ACQUISITION OF LAND AND DISPOSAL OF PROPERTY OF THE AUTHORITY

Power of
State
Government
to acquire
land.

41. (1) Where, on any representation from the Authority or any Board it appears to the State Government that, in order to enable the Authority to discharge any of its functions or to exercise any of its powers or to carry out any of its proposals plans, or projects, it is necessary that any land should be acquired, the State Government may acquire the land by publishing in the *Official Gazette*, a notification to the effect that the State Government has decided to acquire the land in pursuance of this section :

Provided that, before publishing such notification, the State Government shall by notice published in the *Official Gazette*, and served in the prescribed manner, call upon the owner of, or any other person who, in the opinion of that Government, may be interested in, such land to show cause, why it should not be acquired and after considering the cause, if any, shown by the owner or any other person interested in the land, the State Government may pass such order as it thinks fit :

¹[Provided further that, if the land proposed to be acquired falls within the Scheduled Areas then the State Government shall before such acquisition and before re-setting or rehabilitating of persons affected consult,—

(i) the *Gram Sabha* and the *Panchayat* concerned, if the land falls within the area of one *Panchayat* ;

(ii) concerned *Gram Sabhas* and the *Panchayat Samiti*, if the land falls within the area of more than one village in the Block concerned ;

(iii) the concerned *Gram Sabhas* and the *Zilla Parishad* concerned, if the land falls within the jurisdiction of more than one Blocks in the district concerned ;

such consultation shall be done in the manner as may be laid down by the State Government by issuing general or special order issued in this behalf :

Provided that, the decision taken by the majority of the *Gram Sabhas* concerned by passing a resolution in the above matter shall be binding on the concerned *Panchayat Samiti* or the *Zilla Parishad*, as the case may be.

Explanation.—for the purpose of these provisos,—

Bom.
III of
1959. (i) the expressions "*Gram Sabha*", "*Panchayat*" and "*Scheduled Areas*" shall have the meaning respectively assigned to them in the Bombay Village Panchayat Act, 1958 ;

¹ These Provisos were added by Mah. 46 of 1997. s. 12.

(ii) the expressions "*Panchayat Samiti*," and "*Zilla Parishad*" shall have the meanings respectively assigned to them in the Maharashtra Zilla Parishads and Panchayat Samitis Act, 1961.]

Mah.
V of
1962.

(2) The acquisition of land for any purpose mentioned in sub-section (1) shall be deemed to be a public purpose.

(3) Where notification aforesaid is published in the *Official Gazette*, the land shall, on and from the date on which the notification is so published, vest absolutely in the State Government free from all encumbrances.

Power of
State
Government
to require
person in
possession of
land to
surrender or
deliver
possession
thereof to
State
Government.

42. (1) Subject to the provisions of section 51, where any land is vested in the State Government under sub-section (3) of section 41, the State Government may, by notice in writing, order any person who may be in possession of the land to surrender or deliver possession thereof to the State Government or any person duly authorised by it in this behalf within thirty days of the date of service of the notice.

(2) If any person fails or refuses to comply with an order under sub-section (1) the State Government may take possession of the land, and may, for that purpose use or cause to be used such force as may be reasonably necessary.

(3) Where any land is taken possession of as aforesaid, the State Government shall make that land available to the Authority for the purpose for which the land has been acquired and for discharging its functions, performing its duties and exercising its powers.

Right to
receive
amount for
acquisition.

43. Every person having any interest in any land acquired under this Chapter shall be entitled to receive from the State Government an amount as provided hereafter in this Chapter.

Lands in Municipal Areas

Basis for
determination
of amount for
acquisition of
lands in
municipal
areas.

44. (1) Where any land including any building thereon is acquired and vested in the State Government under this Chapter and such land is situated in any area within the jurisdiction of any Municipal Corporation or Municipal Council, the State Government shall pay for such acquisition an amount which shall be determined in accordance with the provisions of this section.

(2) Where the amount has been determined with the concurrence of the Authority, by agreement between the State Government and the persons to whom it is payable, it shall be determined and paid in accordance with such agreement.

(3) Where no such agreement can be reached, the amount payable in respect of any land acquired shall be an amount equal to one hundred times the net average monthly income actually derived from such land, during the period of five consecutive years immediately preceding the date of publication of the notification referred to in section 41 as may be determined by the Land Acquisition Officer.

(4) The net average monthly income referred to in sub-section (3) shall be calculated in the manner and in accordance with the principles set out in the First Schedule.

(5) The Land Acquisition Officer shall, after holding an inquiry in the prescribed manner, determine in accordance with the provisions of sub-section (4) the net average monthly income actually derived from the land. The Land Acquisition Officer shall then publish a notice in a conspicuous place on the land and serve it in the prescribed manner calling upon the owner of the land

and every person interested therein to intimate to him, before a date specified in the notice, whether such owner or person agree to the net average monthly income actually derived from the land as determined by the Land Acquisition Officer. If such owner or person does not agree, he may intimate to the Land Acquisition Officer before the specified date what amount he claims to be such net average monthly income.

(6) Any person, who does not agree to the net average monthly income as determined by the Land Acquisition Officer under sub-section (5) and the amount for acquisition to be paid on that basis and claims a sum in excess of that amount may prefer an appeal to the Tribunal, within thirty days from the date specified in the notice referred to in sub-section (5).

(7) On appeal, the Tribunal shall, after hearing the appellant, determine the net average monthly income and the amount to be paid on that basis and its determination shall be final and shall not be questioned in any court.

45. (1) Where the owner of the land and the owner of the building thereon are different persons, or several persons claim to be interested in the amount for acquisition determined under the last preceding section, the Land Acquisition Officer shall determine the persons who in his opinion are entitled to receive the same and the sum payable to each of them.

Apportionment of amount for acquisition.

(2) If any dispute arises as to the apportionment of the amount or any part thereof or as to the persons to whom the same or any part thereof is payable, the Land Acquisition Officer may refer the dispute to the decision of the Tribunal ; and the Tribunal in deciding any such dispute shall follow the provisions of Part III of the Land Acquisition Act, 1894.

I of
1894.

46. (1) After the amount for acquisition has been determined, the Land Acquisition Officer shall, on behalf of the State Government, tender payment of and pay the amount to the persons entitled thereto.

Payment of amount for acquisition or deposit of same in court.

(2) If the persons entitled to the amount do not consent to receive it, or if there be any dispute as to the title to receive the same or as to the apportionment of it, the Land Acquisition Officer shall deposit the amount in Greater Bombay, in the Bombay City Civil Court, and in any other municipal area in the Court of the District Judge, and that Court shall deal with the amount so deposited in the manner laid down in sections 32 and 33 of the Land Acquisition Act, 1894.

I of
1894.

47. (1) The Land Acquisition Officer may, for the purpose of determining the amount for acquisition or apportionment thereof, by order require any person to furnish such relevant information in his possession as may be specified in the order.

Powers of Land Acquisition Officer in relation to determination of amount for acquisition, etc.

(2) The Land Acquisition Officer shall, while holding an inquiry under sub-section (5) of section 44 of this Act have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely :—

V of
1908.

(a) summoning and enforcing the attendance of any person and examining him on oath ;

(b) requiring the discovery and production of any document ;

(c) receiving evidence on affidavit ;

(d) requisitioning any public record from any court or office ;

(e) issuing commissions for examination of witnesses.

Payment of
interest.

48. When the amount for acquisition is not paid or deposited on or before taking possession of the land, the Land Acquisition Officer on behalf of the State Government shall pay the amount determined with interest thereon, from the date of taking possession until the amount is paid or deposited, at the rate of 4 per cent. per annum for the first six months, and thereafter at the rate of 9 per cent. per annum.

Appointment
of Land
Acquisition
Officer.

49. The State Government may, by notification in the *Official Gazette*, appoint an officer who is holding or has held an office, which in its opinion is not lower in rank than that of Deputy Collector or Assistant Director of Town Planning to be a Land Acquisition Officer for the purposes of this Act, and one or more such officers may be appointed as may be necessary.

Lands in Rural Areas.

Basis for
determination
of amount for
acquisition of
lands in rural
areas and
other
procedure.

50. (1) Where any land (including any building thereon) is acquired and vested in the State Government under this Chapter and such land is situated in any area outside the jurisdiction of any Municipal Corporation or Municipal Council (in this Chapter referred to as "a rural area"), the State Government shall pay for such acquisition an amount, which shall be determined in accordance with the provisions of this section.

(2) Where the amount has been determined, with the concurrence of the Authority, by agreement between the State Government and the person to whom it is payable, it shall be determined and paid in accordance with such agreement.

(3) Where no such agreement can be reached, the State Government shall refer the case to the Collector, who shall determine the amount for acquisition in accordance with the principles for determining compensation laid down in the Land Acquisition Act, 1894, and the provisions of that Act (including provisions for reference to Court and appeal) shall apply thereto *mutatis mutandis* as if the land has been acquired and compensation had to be determined, apportioned and paid under the provisions of that Act, subject to the modifications that reference in sections 23 and 24 of that Act, to the date of publication of the notification under section 4, sub-section (1), were references to the date on which the notice under the proviso to sub-section (1) of section 41 of this Act is published, and the references to the time or date of the publication of the declaration under section 6 of that Act were references to the date of publication of the notification referred to in sub-section (3) of section 41 of this Act in the *Official Gazette*.

I of
1894.

Explanations.—In this section, "Collector" means the Collector of a District and includes any officer specially appointed by the State Government or by the Commissioner to perform the functions of a Collector under the Land Acquisition Act, 1894.

I of
1894.

Alternative Accommodation

Alternative
accommoda-
tion to
occupiers of
residential
premises
where any
acquired
building is to
be
demolished.

51. Where any building acquired under this Chapter which is vested in the Authority is proposed to be demolished, it shall be the duty of the Authority, before evicting the occupiers, to allot such alternative accommodation, at such place and of such nature and size, as the Authority may determine, only to those persons who are occupiers of residential premises in the building, either as owner or tenant, and who are actually residing in the building at the time of their eviction. If any occupier fails to accept and occupy the alternative accommodation allotted to him within 45 days from

the date of allotment, the responsibility of the Authority to provide him with such accommodation shall cease. The decision of the Authority as regards any matter contained in this section shall be final and shall not be questioned in any court.

Explanation.—In this section "building" means a house or a tenement or tenements let or intended to be let or occupied separately, but does not include any building which is unauthorised or which is a temporary building as defined in clause (sb) of section 3 of [the Mumbai Municipal Corporation Bom. Act], with this modifications that the expression "Commissioner" in that III of clause shall include an officer or authority which is competent to allow a 1888. temporary building to be built within his or its jurisdiction.

52. The Authority may also enter into an agreement with any person for the acquisition from him by purchase, lease or exchange, of any land which is needed for the purpose of any proposal, plan or project of the Authority or any interest in such land or for compensating the owners of any such right in property in respect of any deprivation thereof or interference therewith.

Power to
purchase or
lease by
agreement.

Betterment Charges

53. (1) Where for the purpose of any proposal, plan or project, any land in the area comprised therein which is not required for the execution thereof will in the opinion of the Authority, be increased in value, the Authority may for the purposes of any such proposal, plan or project in lieu of providing for acquisition of such land, declare that the betterment charges shall be payable by the owner of the land or any person having an interest therein in respect of the increase in value of the land resulting from the execution of such proposal, plan or project.

Betterment
charges.

(2) Such increase in value shall be the amount by which the value of the land on the completion of the execution of the proposal, plan or project estimated as if the land were clear of the buildings exceeds the value of the land prior to the execution of the proposal, plan or project estimated in like manner and the betterment charges shall be one-half of such increase in value.

(3) No betterment charges shall be payable by the Government in respect of any land which is the property of the Government or is managed by any Government or by any Corporation (including a company or subsidiary company thereof) owned or controlled by the State or by any local authority or any public institution in respect of any land belonging to such authority or institution if and so as long as, such land is used for public, charitable or religious purpose.

54. (1) The Authority shall give notice to any person who is the owner of, or has interest in the land in respect of which the betterment charges are to be levied, and shall give such persons an opportunity to be heard.

Notice to
person liable
for better-
ment charges.

(2) After hearing such person, or if such person fails to appear after the expiry of the period within which such person is required to appear before the Authority, the Authority shall proceed to assess the amount of betterment charges.

(3) Where the assessment of betterment charges proposed by the Authority is accepted by the person concerned within the period prescribed, the assessment shall be final.

¹ These words were substituted for the words "The Bombay Municipal Corporation Act", by Mah. 25 of 1996, s. 2, Sch. para (3).

(4) If the person concerned does not accept the assessment proposed by the Authority, the matter shall be referred to the Tribunal.

(5) The Tribunal shall, after holding an inquiry and after hearing the person concerned, assess the amount of the betterment charges payable by the person.

Agreement for
Payment of
betterment
charges.

55. (1) Any person liable to pay betterment charges in respect of any land may at his option, instead of paying the same to the Authority, execute an agreement with the Authority to leave the payment outstanding as a charge on his interest in the land, subject to the payment in perpetuity of interest at such rate as may be prescribed.

(2) Every payment due from any person in respect of betterment charges and every charge referred to in sub-section (1) shall, notwithstanding anything contained in any other enactment and notwithstanding the execution of any mortgage or charge, created either before or after the commencement of this Act, be the first charge upon the interest of such person in such land.

Recovery of
betterment
charge.

56. All sums payable in respect of any land by any person in respect of betterment charges under section 53 or by any person under an agreement under section 55 shall be recoverable on behalf of the Authority as an arrear of land revenue on a certificate of an officer appointed by the State Government in this behalf.

Certain Provisions for Purposes of this Act.

Transfer to
Authority for
purposes of
this Act land
vested in
Municipal
Corporation,
Municipal
Council or
Zilla Parishad.

57. (1) Whenever any street, square or other land, or any part thereof, situated in any area within the limits of a Municipal Corporation, Municipal Council or Zilla Parishad and vested in such Corporation, Council or Parishad is required for any of the purposes of this Act, the Authority shall give notice accordingly to the Corporation, Council or Zilla Parishad, as the case may be.

(2) Where the Municipal Corporation, Municipal Council, Zilla Parishad concurs, such street, square or other land, or part thereof shall vest in the Authority.

(3) Where there is any dispute, the matter shall be referred to the State Government. The State Government, shall, after considering any representation, or after hearing any officer of the Municipal Corporation, Municipal Council or Zilla Parishad concerned, decide the matter. The decision of the State Government shall be final. If the State Government decides that such street, square or lands or part thereof, shall vest in the Authority, it shall, vest accordingly.

(4) Nothing in this section shall affect the rights or powers of the Municipal Corporation, Municipal Council or Zilla Parishad in or over any drain or water work in such street, square or land or the rights or powers of any authority in respect of any of its works or installations duly laid in such street, square or land under any law for the time being in force in the State.

Payment in
respect of land
vested in
Authority.

58. (1) Where any land vests in the Authority under section 57 and the Authority makes a declaration that such land shall be retained by the Authority only until it reverts in the Municipal Corporation, the Municipal Council or the Zilla Parishad as part of a street or an open space under section 61, no amount shall be payable by the Authority to the Municipal Corporation, the Municipal Council or the Zilla Parishad, as the case may be, in respect of that land.

(2) Where any land vests in the Authority under section 57 and no declaration is made under sub-section (1) in respect of the land, the Authority shall pay to the Municipal Corporation, the Municipal Council or the *Zilla Parishad*, as the case may be, an amount equal to the value of such land.

(3) If, in any case where the Authority has made a declaration in respect of any land under sub-section (1), the Authority retains or disposes of the land contrary to the terms of the declaration so that the land does not revert in the Municipal Corporation, the Municipal Council or *Zilla Parishad*, as the case may be, the Authority shall pay to the Municipal Corporation, the Municipal Council or the *Zilla Parishad* an amount in respect of such land in accordance with the provisions of sub-section (2).

59. (1) The Authority may turn, divert, discontinue the public use of, or permanently close, any public street vested in it or any part thereof.

Power of
Authority to
turn or close
public street
vested in it.

(2) Whenever the Authority discontinue the public use of or permanently closes any public street vested in it or any part thereof, it shall, as far as practicable, provide some other reasonable means of access to be substituted in lieu of the use, by those entitled, of the street or part thereof, and pay a reasonable amount to every person who is entitled, otherwise than as a mere member of the public to use such street or part as a means of access and has suffered damage from such discontinuance or closing.

(3) In determining the amount payable to any person under sub-section (2) the Authority shall make allowance for any benefit accruing to him from the construction, provision or improvement of any other public street at or about the same time that the public street or part thereof, on account of which the amount is paid, is discontinued or closed.

(4) When any public street vested in the Authority is permanently closed under sub-section (1), the Authority may sell or lease so much of the same as is no longer required,

60. If there is any dispute as to whether any amount is payable under section 58 or as to the quantum of amount payable under section 58 or section 59, as the case may be, the matter shall be referred to the Tribunal.

Reference to
Tribunal in case
of dispute
under section
58 or 59.

61. (1) Whenever the State Government is satisfied—

(a) that any street laid out or altered by the Authority has been duly levelled, paved, metalled, flagged, channelled, sewered, and drained as required for any proposals, plans or projects included in the budget, and

(b) that such lamps, lamp-posts and other apparatus as the Municipal Corporation, the Municipal Council or *Zilla Parishad*, as the case may be, considers necessary for the lighting of such street and as ought to be provided by the Authority have been so provided, and

(c) that water and other sanitary conveniences have been duly provided in such street,

the State Government may declare the street to be a public street, and the street shall thereupon vest in the Municipal Corporation, Municipal Council or *Zilla Parishad*, as the case may be, and shall hence forth be maintained, kept in repair, lighted and cleaned by the Municipal Corporation, Municipal Council or *Zilla Parishad*.

Vesting in
Municipal
Corporation,
Municipal
Council or
Zilla Parishad
of streets laid
out or altered
an open space
provided by
Authority
under any
proposal, plan
or project
under this Act.

(2) Where any open space for purposes of ventilation or recreation has been provided by the Authority in executing any proposal, plan or project under this Act, the Authority may at its option by resolution transfer such open space to the local authority concerned on completion of the proposal, plan or project, and thereupon, such open space shall vest in, and be maintained at the expense of the local authority :

Provided that, the local authority may require the Authority before any such open space is so transferred to enclose, level, turf, drain and layout such space and provide footpaths therein, and if necessary, to provide lamps and other apparatus for lighting it.

(3) If any difference of opinion arises between the Authority and the Municipal Corporation, Municipal Council or *Zilla Parishad* in respect of any matters referred to in the foregoing provisions of this section, the matter shall be referred to the State Government, whose decision shall be final.

Disputes
regarding
reconstitu-
tion of plots.

62. (1) Where under any proposal, plan or project under this Act, any plots comprised in the area included therein are reconstituted or any person is dispossessed, any person affected by such reconstitution or dispossession may apply to the Authority for damages. The Authority may, after making such inquiry as it thinks fit, decide whether the applicant is entitled to any damages, and if so to what extent. If the person is dissatisfied with the decision of the Authority in the matter, he may refer the matter to the Tribunal.

(2) The Tribunal shall, after making an inquiry, determine the amount of damages and direct the Authority to pay the same to the person entitled thereto.

Authority to
assume
management
of
requisitioned
lands.

63. The Authority shall, subject to the general control of the State Government, assume management of all such lands, requisitioned or deemed to be requisitioned or continued to be subject to requisition, by or under the Authority of the Authority of the State Government under the Bombay Land Requisition Act, 1948 or by or under any corresponding law for the time being in force, as the State Government may direct.

Bom.
XXXIII
of
1948.

Power to
dispose of
property.

64. Subject to any rules made by the State Government under this Act, the Authority may retain, lease, sell, exchange or otherwise dispose of, any land, any building or other property vesting in it and situate in the area comprised in any proposal, plan or project permitted under this Act, in such manner as it thinks fit.