

Study on the Effects of Damage and Betterment on Expropriation of Land Under Land Acquisition Act of 1950: Special Reference to Injurious Affection, Separate Entity and Betterment

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Introduction

State is empowered itself to acquire any land for public purpose (which is not specifically stated in the Act) under section 38(a) of Land Acquisition Act No. 9 of 1950. However, for this, the forms of land tenure, other legal system, political background, and the community participation etc in the country have severe effects on the system of expropriating land for public purposes and the nature of compensation payment for such acquisitions. In a public development project of a country, the expropriation is always a measure of last resort in the transfer of land ownership rights from private hands to community. A more gradual means of transferring the ownership to the public authorities is through the establishment of private treaty right, which gives public authorities the rights of direct purchase of any land that is offered for sale by a private individual (Dochester, 2011). In this scenario, the rationale of the Act is to compensate the damages and losses caused as a result of expropriation of a property for public purposes. However, it is evident that current system of compensation has given rise to various problematic issues due to a great dissatisfaction by the owners whose lands were acquired under the Act. The Act is about 67 years old and this may be one of the reasons to the problems arose today because legislature framed the provisions of the Act to cater the problematic environments then existed.

The road expansion, construction of high ways, and construction of reservoirs and irrigation projects are in the prominent place in the development activities within the island as per the past and present case are

concerned. In this process, the private lands are being acquired in small pieces and strips that appear to have created many problems in terms of equitable compensation.

Conventionally, the owner's consent is ignored, in the event of acquisitions by the state and the computation of compensation is done under the provisions of the Act (Stand, 1971). Hence, there are arguments among scholars and professionals that present provisions in the Act, such as "entity principle" as discussed in the case of "MC Colombo v Letchman Chetty, (1946)" and injurious affection that may not fully compensate the real value of property lost by the owner (Hettiarachchi, 2016).

It was observed that at present, different methods of calculation of compensation are being practiced for lands acquired under the Act as follows:

- (a) Calculations clearly based on the provisions of the Act.
- (b) Calculations based on the statute by which the acquisition of lands is carried out. (eg. Urban Development Authority Act of 1978).
- (c) Additional allowances paid other than the payments calculated under the Act. Regulations (2008) passed by the legislature.

Identification of problem

In spite of the measures taken by the state to compensate the owners whose lands were acquired under the Act, there are situations due to which claimant are still suffering from damages and unjust enrichments. Preliminary survey revealed that claimants are dissatisfied with the current quantum of compensation under the Act. Among current development projects road widening and construction of public high way take a prominent place and the payment of compensation is restricted as most of land acquisitions limited to smaller extents comprised of strips of land where the value is comparatively on lower side. On the other hand, it is evident that undue benefits too exist as a result of acquisition of land for public purpose. Hence the identified factors from this scenario are the insufficient compensation and undue betterment. This problem needs to be resolved to maintain a balance between losses and unjust enrichments.

Scope of Study

The study is limited to concepts of "injurious affection", "separate entity" and "betterment" in the Act.

Objectives: this study attempted,

- To identify the damages and undue benefits to the society due to land acquisitions in terms of provisions of Land Acquisition Act with reference to the “injurious affection”, “separate entity” and “betterment”.
- To suggest resolution to compensate the real damage and minimize undue benefits to the society.

Methodology

The objectives were framed focused on identified problems cropped up from the compulsory acquisitions of land under the Act. This encompasses the concepts of unjust enrichments and damages occurred in the selected areas of injurious affection, separate entity and betterment. In spite of the unavailability of past studies directly related with the subject matter the questionnaire survey and interviews with professionals in valuation and legal fields and discussions with claimants were done to collect primary data. Secondary data collected from published literature, doctoral and master thesis and relevant statutes.

Judicial decisions were studied and analyzed with reference to the interpretation of terms of damages and compensation; and how it should be applied in real terms, in an event where actual loss has to be compensated against the loss. Since the paper intended to assess the injustice in current systems of compensation in Sri Lanka, more relevant judicial decisions and the views of judges were examined with special reference to the principles stemming from Law of Equity.

The data related to unjust benefits and losses in terms of the Act collected from the field, were compiled and analyzed to achieve the set targets of the paper.

Literature Review Compensation

In *Livingstone vs Rawyards Coal Company* (1980), it was said that in setting a sum of money to be given for reparation of damages, you should as nearly as possible get at that sum which will put the party who has suffered, in the same position as he would have been in, if he had not sustained the wrong for which is now getting his compensation. The term compensation refers to an act of giving something to someone to compensate for loss, suffering or injury, which implies that no one in society should be unjustly affected by an act of another (Hettiarachchi, 2016). In other words as a result of payment of compensation, any person who suffered should be reverted to the position where he was in, before such suffering, occurred (Peiris, 1972). The compensation is also defined as a solution, which refers to the sum of money payable to a person to make up for loss or inconvenience and sum of money payable over and above the actual damage as compensation for injured feeling (*Watson v Murry*, 1955); (Paul, 2012) and (Calamlaw .Com/blog/legal–updates/unjust enrichment, 2015).

Legal term of market value

All measures of damages, whether based on market value or replacement cost should comply with the principle in Tort that claimant should be restored to his former position (legal definition). In the case of *G.A. Southern Province vs Silva*, Bonsor CJ held that market value of a house does not depend on the money expended on it, nor on the difficulties which had to be overcome in building it. Withers J held that the market value of a given land depends on its extent, situation, relative position and its adaptability for any particular use; also upon the rent and rate of interest obtained in the district. Among the tests of market value of a piece of land, it is the price which any one would give for it at a public auction and the price given at recent sales for land similarly situated. As in the case of *Steven vs. Munasinghe*, it was held that the market value of a land acquired by the crown should be determined by the best use to which it could be put, there must be evidence that there would be a demand for the land when put to such use having regard to its nature and situation.

In the case of *Municipal Council of Colombo vs Lechiman Chettiar* (1942), it was held that Land Acquisition Act empowers the government to acquire any land that it thinks necessary for a public purpose. In the appeal forwarded to the Privy Council which took a different view and their Lordships set aside the decision of the Supreme Court and restored the original decision of the District Court which allowed compensation based

on the strip value. This is a celebrated case decided on the early ordinance before the current Land Acquisition Act was in force.

The judgment of the Privy Council in the above case endorsed the separate entity principle in the valuation of land for compensation purposes. This was decided before the enactment of LA Act.

Ponnambalam et.al v M.C. Commissioner (Land Acquisition) confirmed that the market value of the land which is sought to be acquired under the Act of 1950 should be ascertained as though all the owners of separate interests in the land have combined to sell it, for what is acquired is the aggregate of rights in that land and not merely the soil rights in it. It was clearly decided that existing rights, such as easements, could be acquired, but not those that did not exist at the time. In any event, the compulsory purchase order must clearly specify the rights that authority is seeking to acquire.

Statutory definition of market value

Section 45 of the Act defined the market value as the price fetched for a land in an open market when sold by a willing seller. In other words it means that the price expected to have realized in the open market as an entity.

Finding of the Study

As per data obtained from the interviews and questionnaire survey with qualified professionals, over 95 percent of valuers endorsed the concept that compensation should be equal to the actual loss to the claimant, but the valuation as 'separate entity' does not always give actual loss to the claimant, where injustice caused creating unjust enrichments by the state. In this regard, the courts also in the view of that the compensation should be equal to the actual loss (*Victoria Laundry Ltd. v Newman 1949*).

In such circumstances, it is no doubt that under current practice, the compensation paid under the Act creates many instances of losses and unjust enrichments and in such situations principles stemming from laws of natural justice are strongly violated.

At per the interviews held and in response to the structured questionnaires filled by incorporated real estate valuers and real estate managers strongly responded to the effect that the actual loss caused to the owner of acquired

land under the Act, shall be fully compensated not allowing any gap between the actual loss and the estimated compensation. This position has been confirmed by 90 percent of lawyers interviewed.

Hundred percent of interviewers strongly agreed that the compensation under provisions of the current Act is insufficient and cause damages to one party while other party is unjustly enriched. This complied with the judicial decision of *Blundell vs R* (1905). In situations where strips of land acquired for road widening, a strip valuation as an entity is estimated for award. The valuers responded were confident that the market value of a strip is much more less than market value of a similar land but buildable. On the other hand, owner of such strip of land will never be a “willing seller” to satisfy the requirement laid down in Section 45 of the Act.

This ‘entity principle’ has been discussed in *Vajira road case* (*M.C. Colombo vs Lechimi Chettiar*, 1942) and affirmed that, under the Act, a strip of land should be valued as entity. Most of the real estate professionals were of the view that this is a great injustice to the owner whose land was acquired. On the other hand this restricts the development on balance land.

Injurious Affection and Separate entity and Betterment Injurious affection

On the question which referred to injurious affection (IA) and betterment, which were restricted to a maximum of twenty percent of the valuation, sixty percent of valuers interviewed were of the view that, in most of the instances they were convinced with the fact that twenty percent IA is insufficient to cover the actual injury to the balance land. The questionnaire survey revealed that 94% of professionals agreed that current Injurious Affection is unreasonable.

A typical calculation shows that the effects of IA to the owner of acquired land. (Annexure 1)

Value of entire land	= Rs.3,000,000.00
Value of portion retained before acquisition	= Rs.1,800,000.00
Value of portion acquired	= Rs.1,200,000.00
Value of portion retained after acquisition	= Rs.1,080,000.00
Actual loss to the client (1,800000 – 1080000)	= Rs. 720,000.00
Calculation of Injurious Affection under LA act	= Rs. 240,000.00
Loss to the client (720,000 – 240000)	= Rs. 480,000.00

However, the valuation according to the Act, value of strip acquired as a small extent and the cost of acquired portion of a building which is much lower than the actual market value of acquired property. However, twenty percent of injurious affection calculated on the value of land acquired is much lower than the actual injury because the value of acquired land was restricted by the separate entity principle of the Act. The injury to the balance land has no connection with the 20 % of the value of land acquired.

Separate entity

When a 2P land is put to market as a strip with a smaller piece of building the demand as a separate entity is very low. Following calculation shows that effects of separate entity principle. 2 P land out of 11 P is acquired under the Act. Market value in the vicinity is Rs. 100,000.00 PP whereas the strip may fetch a rate of Rs. 10, 000.00PP as a separate entity. Therefore, the loss to the owner of land expropriated is Rs.90000.00PP. Accordingly, for 2P has lost Rs.180, 000.00

Betterment (For calculations vide annexure 2)

The betterment is an increase of value of property acquired under the Act. This may happen to the subject land as well as the lands close to the land acquired for a development purpose. This is identified as a loss to the client and an unjust benefit to the other land owners close to the land acquired (Hettiarachchi, 2016). This has been illustrated in the Annexure 02. Ninety four percent of professionals agreed that the unjust benefit to the other land owners in the vicinity as betterment is unreasonable. On the other hand questionnaire survey revealed that 90 percent of professionals accepted that the levy of 20 percent betterment on the claimant is unreasonable.

Conclusions

The compensation under the Act does not comply with legal principle of compensation. The computation of injurious affection is not realistic since 20 percent limit of value of acquired land does not equal to the actual loss. Separate entity principle does not reflect the actual loss to the claimant since it is always much lower value in comparison to the balance land due to poor demand. The charge of betterment adversely affects the owner while other land owners in the vicinity are unjustly enriched at the expense of the state who acquired the land for development purpose. The state is unjustly benefited by the acquisitions under the Act. The current methods of

compensation do not comply with the legal definition of compensation and Equity principles.

Recommendations

Separate entity principle should be removed from the Act by an amendment to pave way for the claimant to get the actual loss to him as a result of acquisition. The compensation should be in accordance with equity principle. Betterment charge on the acquired land should be removed from the Act and the unjust enrichment by the adjoining land owners from betterment should be collected by the state by levy of taxes. The unjust betterment by the state should be minimized. The compensation should be based on actual loss to claimant. The loss and betterment should be assessed by a team of competent professionals in the fields of real estate, law and construction management.

Annexure 1

Extent of land	-	8 P
Extent acquired	-	3 P
Free market rent	-	Rs. 10 per sq ft pm
Total floor area	-	1200 Sq ft
Acquired area	-	200 Sqft
Land value	-	Rs. 100,000.00 PP
(i) Value of acquired portion		
200 sq.ft x 10 x 12 (net)	-Rs.	24,000.00
YP @ 4%		<u>25</u>
Value	-	<u>Rs. 600,000.00</u>
(ii) Value of portion retained		
1000 sq ft x 10 x 12 (net)	-Rs.	120,000.00
YP @ 4%		<u>25</u>
Value	-	<u>Rs. 3,000,000.00</u>
(iii) Value of portion retained after acquisition		

Original rent decreased due to loss of originality of the building
resulting lower demand.

Rent – say Rs 6.00 per sq ft pm

1000 sq ft x 6 x 12 (net) Rs. 7 2000.00
YP @ 4%

25

Value Rs.1, 800, 000.00

Loss to remaining portion

Above (ii) - (iii) -Rs.1,200,000.00

(iv) Calculation of IA as per Act

(a) Investment Method

600,000 x 20/100 (20%) - Rs.

120,000.00

(b) Contractor's Method

3P @ Rs. 30,000.00 p.p. - Rs. 90,000.00

200 sq ft @ Rs. 2500.00 per sq ft Rs.

500,000.00

Total - Rs. 590,000.00

590,000 x 20/100 (20%) - Rs.

118,000.00

Comparison

Real IA (Damage to balance land) - Rs.1, 200, 000.00

IA calculated under Act -

Rs.120,000.00

Loss to owner - Rs.1080, 000.00

Annexure 2

A land in extent 2 Roods was acquired by the state for a development activity, which resulted in increase in land values at a faster rate. Around boundary of the acquired land, price went up by 20 percent. Prior to acquisition rate per perch fetched Rs. 100,000.00 and in subsequent to acquisition, rate rested at Rs. 120,000.00 per perch in the market.

Calculation of market value and betterment under LA Act

80 P @ Rs. 100, 000.00 P.P. - Rs. 8,000,000.00

Land adjoining boundary of acquired land

Accordingly each adjoining owner gets betterment of Rs. 20,000.00 PP

i.e. for 80 P @ Rs. 120,000.00 PP Rs. 9,600,000.00

From owner's point of view

Market value Rs. 100,000.00 x 80 Rs. 8, 000,000.00

(Benefit of increase not given to owner by the Act)

Less 20 % for betterment Rs 1,600,000.00

Owner's share Rs.

6,400,000.00

Loss to claimant 9, 600,000 –
6,400,000

Rs. 3, 200,000.00

From adjoining owners' point of view

Enhanced value (80 x 1,200,000) Rs. 9,600,000.00

Value existed (Rs. 100000 x 80 P)

Value of land acquired Rs. 8, 000,000.00

Enrichment by adjoining owners Rs. 1, 600,000.00

Under LA Act of 1950 the state does not collect the betterment from the adjoining owners and therefore, they are unjustly enriched at the expense of the state and those who lost lands. When adjoining land owners are gaining Rs. 1, 600,000.00 the owner of acquired land suffered a loss of Rs. 3,200,000.00. This is undoubtedly contrary to the principles stemming from the law of Natural Justice.

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