

Speech on Land Acquisition Bill

In submitting this Bill to the House it is my earnest hope that this Bill will not become a matter for controversy. This Bill is essentially a consolidating measure containing largely a re-statement of existing laws in which changes are kept to a minimum.

As Honourable Members are aware, land acquisition is a State matter and is at present governed by five separate laws and the fact that we are able to enact one Federal law covering the whole country is indeed a great step forward. This Bill was discussed carefully with the States in the National Land Council and various views expressed by States examined. The provisions in the Bill represent the measures so far agreed with the States.

Some people may also feel that we should take the opportunity to modernize the whole of the law relating to land acquisition and introduce entirely new concepts. We have looked into the possibility of this and have examined examples of legislation in other countries. However the introduction of some entirely new entity such as a Land Valuation Court or of the procedures which are used elsewhere would not be of any assistance to the Federation. To give one example, a prerequisite for the establishment of a Land Valuation Court would be the existence of a body of highly qualified valuers incorporated in a society or institute maintaining professional standards. Until it is possible, and is proved desirable, to make a fundamental change in the whole system of acquisition this Government intends to hold as closely as possible to that system which is already well-known both to officers, Members of the Bar, Land Surveyors and the public as a whole.

Accordingly I will now turn to the provisions of this Bill which is before the House today and in the first instance I must make it clear that this is a Federal Bill introduced under Article 76 (4) of the Constitution for the purpose of ensuring uniformity between all the States in the matter of compulsory land acquisition. This course has been agreed to by all State Governments and upon its passage by Parliament this Act will repeal all existing State legislation upon land acquisition matters and replace them by a uniform system which, where it differs from the old, is, I hope, improved and simplified. This uniform system will come into operation in each State as soon as this Act is passed: it will not be necessary for a State to adopt this Act by a special motion in its own Legislature.

As I have said, this is mainly a consolidating law and the features in which uniformity has now been secured and minor inconsistencies removed are fully explained in the Explanatory Statement attached to this Bill. As mentioned there, there have been no fewer than five separate laws relating to land acquisition - none of which was entirely satisfactory in itself. Therefore a multiplicity of these minor changes has been necessary. This House will not wish me to go into further detail on these measures which are in fact a form of "tidying-up" without any really significant change, and are all fully dealt with in the Explanatory Statement.

In four important respects however fundamental changes were found most necessary and we have taken this opportunity of introducing them. I am convinced Hon'ble Members will agree that these amendments are entirely justifiable.

These four matters, in the order in which they appear in this Bill, are:-

- I. The introduction of a summary acquisition procedure in appropriate cases.
- II. Amended provisions for entry on land in cases of urgency.
- III. The conferment on the State of the right of appeal against a Collector's award.
- IV. Provisions for obtaining temporary access across land for public purposes.

I. Summary Acquisition Procedure (Part III)

Hon'ble Members will realise that in many cases of compulsory acquisition e.g. for roads, canals or bunds and even more perhaps in the case of pipe-lines, the land to be acquired may extend over many miles of country and although the aggregate area is large the amount of land to be taken from any one landowner may be exceedingly small. The full procedure provided in this Act should be one which provides the fullest protection to landowners from whom large areas of valuable land is to be taken. However this procedure is not really appropriate for use in cases such as I have just mentioned in which a great number of separate landowners may be losing no more than a few poles and of which the value may not be more than a few dollars.

Accordingly this new Part III enables the Collector to proceed in a summary manner, if necessary in the field, by reaching oral agreement with the owner or occupier and by paying compensation on the spot. In this way a great deal of unnecessary travelling on the part of landowners and a great deal of unnecessary book work, preparation of forms, recording of evidence, etc. etc. can be avoided. At the same time the rights of the individual landowners are fully preserved in that:-

- (a) the summary procedure cannot be commenced until the full process of notification of all persons interested has been completed vide Section 17 (1) and
- (b) where any person rejects the award offered or fails to appear before the Collector the enquiry is either resumed as a full enquiry under Section 12 or the award can be paid into Court and the person aggrieved will have the full rights of objection given under Part V of the Act.

II. Entry in cases of urgency (Sections 19, 20, 21)

The fact that Government may need to take possession urgently before full acquisition proceedings have been taken is recognised in all the existing acquisition laws of the States. However the extent of this recognition and of the powers to enter upon land are widely different. In Johore, for example, the Government is empowered to enter upon "any land needed for a public purpose". In the States which have adopted the F.M.S. Enactments, Government may enter only upon "Unoccupied land". The position in the States of Penang and Malacca, arising from the old S.S. Ordinance, is roughly mid-way between these two extremes since there Government may enter upon "any waste or arable land". It is clearly absurd that within the Federation there should be these widely different powers in different places and in drafting the appropriate section of this Act, namely sections 19, 20 and 21, uniformity has been established and, more important, the needs of the present day have been taken into account. In modern conditions there is more and more occasion to take early possession of land for urgent works and this need has become even more insistent in view of the Rural Development Programme.

It is for example intolerable that an urgent project to build a road for the public benefit should be held up by the obstruction of perhaps a single landowner. It is essential and this House will agree justifiable that where Government needs to commence urgent development works it should be able to take immediate possession of any land provided that the owner's rights to full compensation are not prejudiced.

Clauses 19,20, and 21 accordingly provide that in cases of urgency any "country or arable land or unoccupied land" may be entered upon once the need for urgency has been certified by the State Authority. Definitions of the three types of land are included in the provisions. "Country land" is a term employed with a definite meaning in all Land Codes in the Malay States and "arable land" in respect of Penang and Malacca has been defined to follow that meaning as closely as possible. By the definition of "unoccupied land" it is intended that land within a town or urban area whether or not it is "town land" within the meaning of the Malay State Land Codes shall be liable to immediate entry where it is not developed for urban purposes or for purposes prescribed in the document of title.

Briefly the intention is that Government shall have a right to enter upon land or such portions of any land as have no buildings. It is accepted that where a building exists on land, whether urban or country, the owner or occupier of that building has definite rights which cannot be terminated as abruptly as land which is unoccupied or bears cultivation. It is the purpose of sections 20 and 21 to provide safeguards for such buildings and their occupants. At the same time the public right to early access must be considered and accordingly a term of 60 days is fixed as the outside limit for continued occupation.

Hon'ble Members may be interested to learn that a Bill is being introduced in the Singapore Legislature to amend the Acquisition Ordinance of that territory, which of course is the same S.S. Ordinance as in force in Penang and Malacca, by the deletion of the words "waste or arable". The effect of this amendment will be to put the Singapore law on all fours with the law which has so far prevailed in the State of Johore. This Government however has not gone as far as to provide for urgent entry to any land but only unoccupied land.

III. Right of Appeal by the State (section 37 (4)).

In none of the existing State laws is Government given any right of appeal against a Collector's award. This would seem to proceed from a laudable but entirely mistaken view that Government should not be able to appeal against the act of one of its own officers. The view is mistaken in that when hearing an enquiry and making an award the Collector is acting in a quasi judicial capacity and is not subject to administrative direction. The initial valuation made in any acquisition case may be substantially modified as a result of evidence given to the Collector during an enquiry and the final award may be greatly enhanced. Any other party to an acquisition proceeding, including a public corporation for whom an acquisition is being made, have the right of appeal against a Collector's award and there is no reason whatever why the same relief should be denied to the State or the Government itself.

Further the existing laws take no cognizance of the fact that "Government" is not a single entity and that the Government aggrieved by an award is not necessarily the Government by whom the Collector was employed.

A great and possibly increasing amount of acquisition will need to be done on behalf of the Federal Government and the Federal Government cannot in any way be regarded as in a position to influence the decision of a Collector who is in all cases an officer employed by the State.

Accordingly in Section 37(3) the Federal or any State Government may appeal in any case where the total amount of an award for a particular piece of land has exceeded \$5,000/-.

IV. Temporary access to or across land (Part VII)

Provisions already exist for temporary occupation of any land up to a limit of 3 years where this is necessary for public purposes. However the existing provisions are confused and unsatisfactory and do not cover all possible cases. It happens, for example, that drainage works or other construction works which will benefit a vast tract of land cannot be commenced until heavy machinery and other equipment has been brought to the spot: frequently there is no route to that particular spot except across privately-owned land. This situation is similar to that for which the "right of way" procedure is provided in State Land Codes but that procedure cannot be invoked in these cases. It is considered that justice will be done by the new provision in Section 61 by which temporary access can be taken across any land subject to full compensation for any damage which is done.

Since this is the first occasion upon which any legislation with regard to land matters has been uniformly applied both to the Malay States and to the States of Penang and Malacca in which the basic system of land tenure are entirely different, I will in conclusion refer briefly to this aspect of the Act.

A considerable number of new definitions and new sections have been required to bring Penang and Malacca within the scope of this Act but in fact these new provisions do not relate to the introduction of any principles: they are required solely because of the complications of the system of recording interests in land in those two States.

Sir, I beg to move

In order to enable the administration of this subject to be carried out satisfactorily and smoothly there is a provision under Section 69.