

LAND ACQUISITION – Philosophy, Process and Procedure
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PHILOSOPHY

History is usually a reliable guide as to how we arrived at the place we find ourselves at any point in time, and so provide a means of moving forward, avoiding the pit falls that lurk in unexpected shadows. The philosophy of Compulsory Land Acquisition has its foundation in the land laws of feudal Europe and Britain, some will say England in particular. Under the old feudal systems all land was owned by the Monarch, now replaced by the 'State', and his subjects held portions of it at his best. The underlying obligation was of course loyalty, but the price comprised of services, military or personal such as looking after his personal well being by supplying his wants whether nourishment or accoutrement. In time however it all came down to money and land was taxed in return for possession. The underlying philosophy remained, that is, ultimate ownership by the State, as it replaced the absolute Monarchy with the Constitutional Monarchy. One recalls the more recent exhibition of that manifestation in what I tend to call euphemistically 'Burnham's Guyana, where a statutory attempt was made to acquire lands without compensation to the holder. A case of the State recovering, that which it considered to be, its' own. It was however Blackstone speaking in 1765 that gives us a glimpse of the earliest perspective of Compulsory Acquisition of land:

"If a road, for instance, were to be made through the ground of a private person, it might perhaps be extensively beneficial to the public...In this and similar cases, the legislature...can, and indeed frequently does, interpose and compel the individual to acquiesce. But how does it interpose and compel.

Not by absolutely stripping the subject of his property in an arbitrary manner; but by giving him a full indemnification for the injury thereby sustained. The public is now considered as an individual, treating with an individual for an exchange. All that the legislation does is to oblige the owner to alienate his possession for a reasonable price."

PROCESS

Coming out of that background into a modern democratic social order, the state is forever faced with the task of balancing the rights of the individual with the needs of the citizenry. Anthony Walton speaking on the Land Compensation Act 1973 in the UK says "Essentially it provides for better compensation for those members of the community who are adversely affected by public works carried out to benefit the community as a whole..... After all, it is public money which is serving the public and protecting some hard hit sections of the public".

The State has sought to retain its right to recover that which it considers its own, when and wherever it is required for public purposes. In so doing, it offers compensation to the current holders by way of payment for whatever interests held in the lands taken, and some consideration for inconveniences caused, income lost or injury suffered (disturbance), and the reimbursement of expenses incurred in recovering such compensation. The main objective of the current legislation is to vest (or more correctly re-vest) the lands absolutely in the state. This is achieved by way of a Declaration (published in accordance with section 5 of the Act) to that effect, in the prescribed manner.

Once a parcel or parcels of land is identified as being required for a public purpose, the state sends in the necessary persons to investigate the suitability of the lands for the purpose for which it is required and to mark out the extent of lands which is actually needed and proceeds to acquire. The whole process is contained in Sections 3-5 of the Land Acquisition Act No. 28 of 1994. Section 3 provides for the State to enter onto lands in order to determine whether the lands are suitable for the purpose for which it is to be acquired. Section 4 allows the President to authorize the agents of the State to enter the lands in order to carry out the works for which the lands are required. And Section

1 5 provides for the vesting of the lands in the state or any agency designated by the State. The State
2 of course is personified in the President whose actions are undertaken by the Cabinet in his name,
3 who, through Parliament, represents the people. 'The State,' ultimately, being the persona of 'The
4 People.'

5
6 **PERSONS AFFECTED BY COMPULSORY PURCHASE.**

7 It is important to identify the purchaser and vendor in this transaction and, in a strange way, they
8 turn out to be the same person. The person, as part of the general population represented by the
9 President, is purchasing land from himself, as an individual, for use by himself, as part of the popula-
10 tion entitled to use the lands, purchased for a public purpose. The law, in effect, creating a vendor
11 and a purchaser, for the purpose of effecting a transaction which, in all respects, must imitate an
12 arms' length sale between the parties so created. But there are other persons affected by compul-
13 sory acquisition of lands besides the vender and purchaser; these are persons without compensato-
14 ry interests in the lands acquired and include tenants at will or at sufferance, or tenants holding
15 from month to month or less than a month. Then there are those persons having lands, not being
16 required by the state for the particular project, but who may suffer injury as a result of the use to
17 which the lands acquired are put or the works associated by the construction of such uses. This last
18 group is easiest dealt with since their remedy lies in remedial or amelioration works, intended to
19 eliminate as far as possible any injury resulting from the works or after use as a consequence of the
20 acquisition and use of the lands. The former group raises issues that are social, moral and financial.

21 **Tenants from month-to-month or less than a month:**

22 Invariably there would be clauses in the agreements which speak to the determination of such ten-
23 nancies, and the landlord would be responsible for any expenses incurred in the removal of such ten-
24 nants, out of the compensation received for the unencumbered interests for which he is paid. These
25 expenses do not arise as a consequence of the acquisition but because it is necessary to make the
26 lands available to the purchaser, unencumbered.

27 **Tenants at will and at sufferance:**

28 These tenancies are difficult tenants to deal with, because they are seldom witnessed in writing,
29 there is seldom any basis for determination of such tenancies. Even when they are witnessed in
30 writing as some tenancies-at-will may be, the agreement may not ordinarily be inheritable and is on-
31 ly likely to bind successors in title if included in some other document such as a will, and even so it is
32 most unlikely to bind the second generation inheritor.

33
34 **PROCEDURE.**

35 The procedure for the acquisition of lands is laid down in a document produced by the Commission-
36 er of State Lands which identifies the agencies involved in the process, and the steps taken to comp-
37 ply with the Land Acquisition Act no.28 of 1994.

38 Unless otherwise stated in enabling legislation, all Compulsory Acquisition by the State is underta-
39 ken by the Commissioner of State Lands through the Ministry responsible for land matters, now be-
40 ing the Ministry of Food Production, Land and Marine Resources. The Highways Act specifically
41 makes the Minister of Transport responsible for the acquisition of land for highways purposes. All
42 Compulsory Acquisition of Lands for public purposes however must be undertaken in accordance
43 with the Land Acquisition Act No. 28 of 1994.

44 Generally the process requires the Publication of a notice under Section 5 vesting the lands, de-
45 scribed in the notice in accordance with the requirements of the legislation, in the State. Usually,
46 more information would be required by the State in order to satisfy itself of the suitability of the
47 lands for the purpose for which it is being acquired. In that event, entry needs to be secured to in-

1 vestigating officers. A notice of intended acquisition is published in accordance with Section 3 of the
2 Act to facilitate any such actions.

3 On occasions when the execution of the works cannot await the publication of Section 5 vesting the
4 lands in the State, but no sooner than two months after the publication of the Notice under Sec-
5 tion3, the President may, if he is persuaded by the circumstances, authorize the State to enter any
6 lands described in the notice published under Section 3, and undertake the works for which the
7 lands are being acquired.

8 More specifically in respect of the various notices, the process requires that a note be prepared and
9 presented to Cabinet in the following terms with full and clear justifications.

10 That the purpose for which the lands are required be identified as a public purpose and while a
11 'public purpose' is not specifically defined in the legislation, it has been limited to some extent by
12 the common law.

13 That the request for the acquisition made to Cabinet must be accompanied by a sketch/map of the
14 lands showing the location and acreage, and the approval for the proposed use by the TCPD.

15 Comment: It is questionable the accuracy to which acreage is expected for the publication of the
16 notice under Section 3 since the Notice is required to enable entry for the carrying out of the sur-
17 veys which will determine the precise quantum of lands required. In any event, the lands need only
18 be described in general terms at this time.

19 An estimate of the cost of the acquisition of the lands required *may* accompany the request.

20 That a place be identified, at which more detailed information and description of the lands to be ac-
21 quired, is obtainable.

22 Once Cabinet has approved the note, a Legal Notice is prepared for publication. Usually this notice is
23 made to comply with the requirements of Section 3 of the Act but, depending on the urgency of the
24 operations which gives rise to the acquisition and the information available, the Notice may be pre-
25 pared in compliance with section 5 directly.

26 Comment: Where the lands required are clearly defined by map or plan and there is no need for in-
27 vestigative works to determine the suitability of the lands for the purpose for which it is required
28 and of course funds are available, the Notice under Section 3 may be dispensed with and the notice
29 under section 5 proceeded with immediately. This has implications for the payment of compensa-
30 tion since the land will vest immediately on publication of the Legal Notice under section 5 and the
31 land owner becomes entitled to compensation for the lands in the same way as a vendor becomes
32 entitled to his consideration once the sale of property is executed by deed or memorandum of
33 transfer.

34 Once the Legal Notice is properly prepared in accordance with the Act, it has to be published in the
35 T&T Gazette and twice in at least one daily newspaper having circulation throughout T&T and, with-
36 in seven days, individual notices are to be served on each person known to be a 'person interested'
37 in the lands, in accordance with the Act.

38 **Comment:** A person interested is any person claiming or entitled to claim compensation under the
39 Act but specifically excludes a tenant at will or at sufferance, or holding a tenancy from month to
40 month or some lesser period.

41 Notwithstanding the publication of Legal Notice under Section 3, circumstances may still dictate that
42 entry onto the lands is required to carry out the works needed to fulfill the purpose of the acqui-
43 sition. In those circumstances the President on substantiated request may, by Order, authorize such
44 entry onto the lands under Section 4 of the Act. Once such authority is sought and obtained, another
45 Legal Notice is published and served in the same manner as the Notice published under Section 3,
46 but not earlier than two (2) months after the publication of the first notice. The Order, which is is-
47 sued in accordance with the Act, must be acted upon within six months or it lapses. Once it is acted

1 upon and possession of the lands is taken, persons interested immediately become entitled to com-
2 pensation as if the Legal Notice under Section 5 was published.

3
4 **PAYMENT.**

5 Payment to claimants fall under three distinct headings;

6 Compensation;

7 Interest on Compensation;

8 Reimbursement of Fees incurred in the negotiation and settlement of the claim;

9
10
11 Compensation:

12 Compensation falls under three headings;

13 Value of Land taken

14 Severance and Injurious Affection

15 Disturbance payments

16 Value of land taken;

17 Land carries its legal definition and includes anything that is attached to the land such as buildings,
18 vegetation, plant and machinery. The common law is replete with definitions with what 'attach-
19 ment' infers and the degree of annexation which would constitute attachment, but generally what-
20 ever is present on the land that cannot be removed in a manner that will make it beneficial to the
21 owner is accepted as being attached to the land and falls to be valued with the land. The rules go-
22 verning the valuation of the lands are set out in Part III of the Act and more particularly in Section
23 12.

24 The date on which the land falls to be valued is determined by the earlier of two events; either the
25 date on which the land becomes the property of the State, that is, the date of publication of the Le-
26 gal Notice under section 5. Or, the date on which the owner losses possession of the land, and that
27 is the date at which the State or its agents or assigns takes physical possession of the land under the
28 operation of Section 4 of the Act.

29 It was noted above that the law creates a vendor and a purchaser and in that vein the value which is
30 sought may be seen as the value to that created vendor. One which he can expect to receive from
31 any purchaser willing and able to complete a purchase of the subject parcel that constitutes 'land
32 taken'. The rules which govern the determination of value of lands acquired are contained in Section
33 12 of the Act.

34 Severance and Injurious affection;

35 If as a result of lands being acquired from a land owner the parent parcel is severed in such a way as
36 to make a remaining portion inaccessible or unusable by the owner: Or if the lands left to the owner
37 after the acquisition loses any of its value as a result of the acquisition: compensation is recoverable
38 by the owner for the resulting loss or injury suffered.

39 Disturbance payments.

40 These payments are intended to compensate the claimant for any loss or injury suffered, or ex-
41 penses incurred as a direct result of the acquisition but not included in the value of the land. It in-
42 cludes a myriad of items and circumstances that might occur or obtain in any given situation and is
43 constrained only by the test of remoteness. The common law is replete with examples of what con-
44 stitute direct consequences and what is considered too remote for consideration to be compen-
45 sated. For instance business loss demonstrated by a reduction in profits or cessation of income may
46 attract compensation but loss of opportunity to derive profits or income is considered too remote.
47 Disturbance payments may be avoided by the state undertaking such remedial works as to mitigate

1 injury to land left after lands are taken from the claimant, but disturbance payment does not arise if
2 the injury occurs in the absence of any lands being acquired from the injured party.

3 Interest payment.

4 Interest is payable on compensation from the time the person interested becomes entitled to the
5 compensation. Persons interested become entitled to claim and receive compensation once they
6 lose possession of the lands in which the interests are held. This may occur in the present Act either
7 on the date on which entry is made under Section 4, or when the land vests in the State on the date
8 that Legal Notice under Section 5 is published. Interest does not form part of the compensation but
9 is paid on any unpaid compensation, at the prescribed rate of 9% for the period that any part of the
10 compensation to which the claimant is entitled remains unpaid.

11 Loss of Use: Prior to the promulgation of the current Land Acquisition Act No. 28 of 1994, persons
12 interested had no entitlement to claim or receive compensation for lands taken when the State its
13 agents or assigns entered lands under the authority of section 4. Indeed there was no provision for
14 the publication of the Presidential Authority granted to the State to exercise the right of entry. In
15 the event such entry was made, the persons interested would lose possession on being simply noti-
16 fied that authority was handed down. Not only would they lose possession, but also, any income or
17 benefit that would otherwise flow from ownership of the lands. Compensation for Loss of use of
18 lands prior to the publication of section 5 therefore ranked as an item of disturbance. The main cha-
19 racteristic of the loss was that it should be actual, not perceived, speculative or hypothetical; and it
20 should be measurable in money terms. This characteristic has being largely ignored with a curious
21 consequence. The injury was assumed to be reflected in the loss of a return, exigible from the use of
22 the land whether or not the lands were used or intended to be used. No effort was made to deter-
23 mine any internal interest that might have accrued from the use of the lands. Instead the prescribed
24 rate of 9% was used across the board with an even more curious result. The payment came to be
25 viewed as interest rather than a disturbance payment and was ruled ineligible for interest payment
26 along with other heads of claim. With the promulgation of the present act, entry without entitle-
27 ment to compensation does not arise and Loss of Use payment is likely to disappear except in cases
28 where entry was made prior to the Act. In these circumstances, Loss of Use will be paid for the pe-
29 riod between Date of Entry and July 16 1994, and interest paid for the period after that date.

30
31 **THE EFFECTS OF THE PUBLICATION OF THE LEGAL NOTICES IN ACCORDANCE WITH THE ACT.**

32 Publication of the Legal Notice prescribed in Section 3 allows the State, its officers, servants, agents
33 or assigns to enter onto the lands described in the notice at all reasonable times to carry out all or
34 any of the operations listed in the Act.

35 To Survey and take levels of the lands stated in the notice.

36 To dig or bore into the subsoil of such lands.

37 To do all other acts necessary to ascertain whether the land is adaptable to the purposes for
38 which it is required.

39 To mark levels, boundaries by placing marks and cutting trenches.

40 To cut down and clear away any standing crop, fence, tree or bush where otherwise the sur-
41 vey cannot be completed, the levels taken or boundaries or line of work marked.

42 To set up and maintain gauges in any stream or watercourse, and have access to same from
43 time to time for purposes of observation; and

44 To do all such other acts as may be incidental to necessary for any of the purposes aforesaid

45
46 The notice must be served on any person known by the Commissioner of State Lands or believed by
47 the Commissioner to be a 'person interested', either personally or by registered mail to the last
48 known address of the person, or posted on the land in a prominent place where it can be seen, with-

1 in **seven (7)** days of the publication of the Notice in the T&T Gazette. The notice must also be pub-
2 lished in a Daily Newspaper circulating within Trinidad & Tobago.

3 The operations which can be undertaken by or on behalf of the State are listed in the Act and is sub-
4 ject to two important constraints (1) that any damage to property causing loss or injury to the per-
5 sons interested must be paid for or ameliorated by the State; and (2) entry to buildings, enclosed
6 yard, garden or courtyard attached to a dwelling must have the consent of the owner and not un-
7 dertaken without giving at least twenty-four hours notice in writing of the intent so to do.

8 Any time after the publication of the Notice but before the publication of any subsequent notice,
9 the President may, by publication of a Statutory Notice under section 8, abandon the acquisition of
10 all or part of the lands to which the previous notice applied. If no action is taken by the President,
11 his agents or assigns for the period of six months following the publication of the Legal Notice under
12 Section 3, persons interested or affected may, by notice under section 9 and in the prescribed form,
13 request that the President either continue the process or abandon the acquisition in respect of the
14 lands in which the persons are interested. If no action is taken the Legal notice published under sec-
15 tion 3 is deemed to be abandoned.

16 No earlier than two (2) months after the publication of a Legal Notice as prescribed by Section 3 the
17 President may issue an order under section 4 which would allow the State its agents or assigns to
18 enter onto the lands and undertake the works necessary to implement the public purposes for
19 which the lands are to be acquired. The President would need to be satisfied that the circumstances
20 justify the issuance of such an order.

21 Once the order is issued by the President, another Legal Notice needs to be published and served in
22 the same manner as that required under section 3 above. It is important to note that not only is
23 publication and service in the same manner as under section 3, but the words used in section 3 (2)
24 (c) are not repeated in Section 4 (2) it is replaced by the words of section 3 (3)d in Section 4(2) (c) .
25 This begs the question 'why Section 4 at all?' Would it not have been simpler to do the investiga-
26 tions permitted under Section 3 and having decided on the suitability and extent of the lands re-
27 quired, publish the Legal Notice allowed by section 5 and allow the land to vest absolutely and free
28 of encumbrances in the State? The answer lies in the circumstances of necessity. In order to have
29 the President issue an order under section 4 he needs to be satisfied that the circumstances war-
30 ranted the order, a clear indication that the section was intended to be used in circumstances where
31 time was not available to meet the requirements for section 5. More will be said about this when we
32 deal with the Legal Notice published under Section 5.

33 When the State enters and takes possession under the order issued under section 4, persons inter-
34 ested becomes entitled to claim and receive compensation in the same way as if a Legal Notice un-
35 der Section 5 was published. The persons interested is required to supply information by the Com-
36 missioner of State Lands under Sections 6, and the persons interested are required to respond in like
37 manner as if an Order under Section 5 was made and a consequential Legal Notice published.

38 Section 5 is referred to as a vesting section in that on publication the land vests absolutely in the
39 State. That is to say that all subsisting interests merge into the *Fee Simple Absolute*, without encum-
40 brances. The lands acquired then become the property of the State and vests in the President or
41 such other agency as may be determined by Parliament through any existing Law.

42 On the date of publication of the legal notice under Section 5, or indeed the order under Section 4,
43 the Registrar General is informed and given such information as would allow him to record the
44 transfer of the lands in the relevant registers.

45 On publication of section 5, all persons interested are required by notice under Section 6 to appear
46 in person or by attorney or agent before the Commissioner of State Lands (or persons legally autho-
47 rized to act in his stead) to state the nature of their respective interests in the land and the amounts
48 and full particulars of their claims to compensation in respect of those interests, distinguishing the

1 amounts under separate heads and showing how the amount claimed under each head is calcu-
2 lated; and informed of the date by which claims will not be admitted or entertained.
3 By notice under section 7 persons interested are also required to submit in writing the names and
4 addresses of any other persons whom, to their knowledge, possess any interests in the lands ac-
5 quired and the particulars so far as they are aware of the nature of such interests.
6 MCT