

LAWS OF BRUNEI

CHAPTER 41

LAND ACQUISITION

1 of 1949
(Cap. 41 of 1951)

Amended by:
16 of 1955
S 99/59

LAWS OF BRUNEI

CHAPTER 41
LAND ACQUISITION

ARRANGEMENT OF SECTIONS

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LAND ACQUISITION ACT

An Act to provide for the acquisition of land for public purposes

Commencement: 3rd January 1949

PART I

PRELIMINARY

1. This Act may be cited as the Land Acquisition Act. Short title.

2. In this Act unless there is something repugnant in the subject or context — Interpretation.
 - “company” means a company formed or registered in Brunei Darussalam under the Companies Act; Cap. 39.

 - “Court” means the High Court;

 - “document of title” have the same meaning as in the Land Code; Cap. 40.

 - “Land Officer” means the officer in charge of the Land Office and includes any officer specially appointed by His Majesty the Sultan and Yang Di-Pertuan to perform the functions of a Land Officer under this Act;

 - “person interested” includes every person claiming an interest in compensation to be paid on account of the acquisition of land under this Act but does not include a tenant by the month or at will;

 - “register” have the same meaning as in the Land Code. Cap. 40.

PART II**ACQUISITION**

Purposes for which land may be acquired.

3. (1) Land may be acquired under the provisions of this Act whenever it is needed —

(a) for a public purpose; or

(b) for a residential site area; or

(c) for a factory area; or

(d) for any person, association of persons or company undertaking a work of public utility.

(2) Before any proceedings towards acquisition under subsection (1)(d) are undertaken the following preliminary conditions shall be complied with —

(a) His Majesty in Council after thorough investigation and inquiry shall be satisfied that such acquisition is needed for the construction of some work which is likely to prove useful to the public; and

(b) the person, association of persons or company shall have executed an agreement providing to the satisfaction of His Majesty in Council for all or any of the following matters —

(i) the payment to Government of all or of any specified portion of the cost of acquisition;

(ii) the transfer on such payment of the land to such person, association of persons or company or his or its nominee;

(iii) the terms on which the land shall be held;

- (iv) the time within which and the conditions on which the work shall be executed and maintained;
- (v) the terms on which the public shall be entitled to use the work.

(3) Every such agreement shall so far as regards the terms on which the public shall be entitled to use the work have the same effect as if it had formed part of this Act.

4. (1) Whenever His Majesty in Council passes a resolution that land in any locality is likely to be needed for any of the purposes specified in section 3 the Land Officer shall cause public notice of the substance of such resolution to be given at convenient places in such locality and thereupon any officer or other person either generally or specially authorised by His Majesty in Council in this behalf and his servants and workmen may enter upon such land and may survey, bore, take levels, set out and mark boundaries and do all other acts necessary to ascertain whether the land is adapted for such purpose.

Power to enter and survey.

(2) So soon as conveniently may be after any such entry the officer or other person so authorised as aforesaid shall pay for all damage done and in case of dispute as to the amount to be paid for such damage he shall at once refer the dispute to the decision of the Land Officer whose decision shall be final subject to an appeal to His Majesty in Council.

5. (1) Whenever it appears to the Minister that any particular land is needed for any of the purposes specified in section 3 the Minister shall make a declaration to that effect.

Declaration that land is required for a public purpose.

(2) The declaration shall be posted in the local Land Office and shall state the situation of the land the particular purpose for which it is needed, its approximate area and all other particulars necessary for identifying it and also the place where a plan of the land if any has been made may be inspected. Such declaration shall be conclusive evidence that the land is needed for the purpose specified therein.

(3) Upon the posting of such declaration an entry thereof shall be made in the register in respect of the land affected.

Plan to be made and notices given.

6. (1) The Land Officer shall thereupon cause a plan of the land to be made if none already exists and shall cause notices to be posted at convenient places on or near the land to be taken stating that the Government intends to take possession thereof and that claims to compensation for all interests therein may be made to him.

(2) Every such notice shall state the particulars of the land and shall require all persons interested therein to appear personally or by agent before the Land Officer at a time and place in such notice mentioned, such time not being earlier than 21 days after the date of posting of the notice, and to state the nature of their respective interests in the land and the amount and particulars of their claims to compensation for such interests and their objections, if any, to the measurements as surveyed. The Land Officer may in any case require such statement to be made in writing and signed by the party or his agent.

(3) The Land Officer shall also serve notice to the same effect on the occupier if any, of such land and on all such persons known or believed to be interested therein or to be entitled to act for persons so interested as reside or have agents authorised to receive service on their behalf within Brunei Darussalam: Provided that if any such person resides elsewhere and has no such agent the notice may be sent to him by registered post if his address can be ascertained after reasonable inquiry.

Power to require statements as to names and interest.

7. (1) The Land Officer may also require any such person to deliver to him within a time to be specified, being not less than 15 days, a statement in writing containing, so far as may be practicable the name of every other person possessing any interest in the land or any part thereof as co-owner, mortgagee, lessee, sub-lessee, tenant or otherwise, and of the nature of such interest, and of the rents and profits, if any, received or receivable on account thereof for 3 years next preceding the date of the statement.

(2) Every person required to make a statement under this section or section 6(2) shall be deemed to be legally bound to do so within the meaning of sections 175 and 176 of the Penal Code.

Cap. 22.

8. (1) On the day so fixed, or on any other day to which the inquiry has been adjourned, the Land Officer shall proceed to inquire into the objections, if any, which any person interested has stated pursuant to a notice given under section 6 to the measurements as surveyed and into the value of the land and into the respective interests of the persons claiming the compensation and shall make an award under his hand of —

Inquiry and
award by
Land Officer.

(a) where the land has been surveyed to the satisfaction of the Land Officer, the true area, or where the land has not been so surveyed, the approximate area;

(b) the compensation which in his opinion should be allowed for the said land in accordance with the directions contained in sections 17 and 18;

(c) the apportionment of the said compensation among all 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.

(2) In any such inquiry the Land Officer shall have the same power of summoning and enforcing the attendance of witnesses including the parties interested or any of them and of compelling the production of documents by the same means and so far as may be in the same manner as is provided in the case of a Court under the written law with regard to civil procedure.

(3) When the amount of compensation has been settled under subsection (1), if any dispute arises as to the apportionment of the same or any part thereof or as to the persons to whom the same or any part thereof is payable the Land Officer may refer such dispute to the decision of the Court.

When award
of Land
Officer to be
final.

9. (1) Such award shall be filed in the Land Office and shall, except as hereinafter provided, be final and conclusive evidence as between the Land Officer and the persons interested, whether they have respectively appeared before the Land Officer or not, of the true area and value of the land and the apportionment of the compensation among the persons interested.

(2) The Land Officer shall serve a copy of his award on all persons interested, provided that their addresses can be ascertained after reasonable inquiry when the award is made.

Power to take
possession.

10. (1) When the Land Officer has made an award under section 8 he may take possession of the land.

(2) In cases of urgency whenever the Minister so directs the Land Officer though no such award has been made may on the expiration of 15 days from the date of the posting of the notices mentioned in section 6(1) take possession of any land other than land on which any building is situate needed for any of the purpose specified in section 3. The Land Officer shall offer to the persons interested compensation for the loss of standing crops and fruit. If such offer is not accepted the value of such crops and fruit shall be allowed for in awarding compensation for the land under the provisions hereinafter contained.

Entries to be
made in
Register.

11. (1) When the Land Officer has taken possession of land under the preceding section the registering authority shall make an entry in the Register in respect of such land declaring that possession has been taken of the whole or if a part only the approximate area thereof and after such entry has been made shall serve a notice in writing on the person in possession of the issued document of title requiring him to deliver up the same to the registering authority aforesaid and such person shall deliver up the issued document of title in accordance with the terms of such notice.

(2) Any person failing to comply with the provisions of a notice served upon him under this section shall be guilty of an offence: Penalty, a fine of \$250.

(3) Upon such entry being made as in this section provided the whole of the land or part thereof as the case may be shall vest in His Majesty.

(4) The Land Officer shall, in cases where part only of the land has been acquired, cause to be prepared documents of title for the unacquired part or parts of the land and shall, after cancellation of the existing documents of title, issue such documents of title to the persons entitled thereto.

12. (1) Whenever, on final survey of the land, a difference is found to exist between the area as surveyed and the area as found by the Land Officer under section 8(1)(a), such difference shall be valued at the same rate as that at which the land has been valued for compensation in the final award, and the amount so arrived at with interest at 6 per cent from the date at which possession was taken or compensation paid shall, as the case may be, be either paid by the Land Officer or refunded by the person to whom compensation has been paid:

Adjustment of compensation.

Provided that where the difference found to exist on final survey does not exceed or fall short of the area as found by the Land Officer under section 8(1)(a) by more than one per cent, there shall be no further payment or refund under this section.

(2) Every refund due under this section shall be an arrear and shall be recoverable in the manner prescribed by law for the collection of arrears of land revenue.

PART III

REFERENCE TO COURT AND PROCEDURE THEREON

13. (1) Any person interested who has not accepted the award or any person paying the cost of acquisition may by written application to the Land Officer and on payment of the prescribed fee require that the matter be referred by the Land Officer for the determination of the Court whether his objection be to the measurement of the land, the amount of the compensation, the persons to whom it is payable, or the

Reference to Court.

apportionment of the compensation among the persons interested.

(2) The application shall state the grounds on which objection to the award is taken.

(3) Every such application shall be made —

(a) if the person making it was present or represented before the Land Officer at the time when he made his award within 6 weeks from the date of the Land Officer's award;

(b) in other cases within 6 weeks of the receipt of the copy of the award from the Land Officer under section 9(2) or within 6 months from the date of the Land Officer's award whichever period shall first expire.

Land Officer's
statement to
the Court.

14. (1) In making the reference the Land Officer shall state for the information of the Court in writing under his hand —

(a) the situation and extent of the land with particulars of any trees, buildings or standing crops thereon;

(b) the names of the persons whom he has reason to think interested in such land and the addresses of such persons;

(c) the amount awarded for damages and paid or tendered under sections 4 and 10 or either of them and the amount of compensation awarded under section 8;

(d) if the objection be to the amount of the compensation the grounds on which the amount of compensation was determined.

(2) To the said statement shall be attached a schedule giving the particulars of the notices served upon and of the statements in writing made or delivered by the parties interested respectively.

15. The Court shall thereupon cause a notice specifying the day on which the Court will proceed to determine the objection and directing their appearance before the Court on that day to be served on the following persons —

Service of notice.

(a) the applicant;

(b) all persons interested in the objection except such if any of them as have consented without protest to receive payment of the compensation awarded; and

(c) if the objection is in regard to the area of the land or to the amount of the compensation, the Land Officer.

16. (1) The Court shall appoint 2 persons for the purpose of aiding the Court in determining the objection. Every person so appointed shall be legally bound to attend and serve as an assessor unless excused for some reason to be approved by the Court.

Appointment of assessors.

(2) If an assessor dies or becomes incapable of acting or is excused by the Court some other person shall be appointed in his stead.

17. (1) In determining the amount of compensation to be awarded for land acquired under this Act, the Court shall take into consideration —

Matters to be considered in determining compensation.

(a) the market value at the date of the publication of the notification under subsection (1) of section 4 or if no such notification has been published the market value at the date of the posting of the declaration made under section 5;

(b) any increase in the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put;

(c) the damage if any sustained by the person interested at the time of the Land Officer's taking

possession of the land by reason of severing such land from his other land;

(d) the damage if any sustained by the person interested at the time of the Land Officer's taking possession of the land by reason of the acquisition injuriously effecting his other property whether movable or immovable in any other manner or his actual earning;

(e) if in consequence of the acquisition he is compelled to change his residence or place of business the reasonable expenses, if any, incidental to such change; and

(f) any improvements to the land made with the prior consent of the Land Officer after the publication of the notification under subsection (1) of section 4 or the posting of the declaration under section 5 whichever is the date in respect of which the market value is taken in accordance with the provisions of paragraph (a);

(2) For the purposes of paragraph (a) of subsection (1) of this section —

(a) if the market value has been increased by means of any improvement made by the owner or his predecessor in interest within 2 years before the notification was published under subsection (1) of section 4 or, if no such notification was published, within 2 years before the declaration under section 5 was published such increase shall be disregarded unless it be proved that the improvement was made *bona fide* and not in contemplation of proceedings for acquisition of the land being taken under this Act;

(b) when the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any Court or is contrary to law or is detrimental to the health of the inmates of the premises or to the public health the amount of that increase shall not be taken into account.

18. In determining the amount of compensation to be awarded for land acquired under this Act the Court shall not take into consideration —

Matters to be disregarded in determining compensation.

(a) the degree of urgency which has led to the acquisition;

(b) any disinclination of the person interested to part with the land acquired;

(c) any damage sustained by the person interested which if caused by a private person would not be a good cause of action;

(d) any damage which is likely to be caused to the land acquired after the date of the posting of the declaration under section 5 by or in consequence of the use to which it will be put;

(e) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired;

(f) any outlay on additions or improvements to the land acquired which was incurred after the date of the posting of the declaration under section 5 unless such additions to improvements were necessary for the maintenance of any building in a proper state of repair; and

(g) any improvements to the land made without the prior consent of the Land Officer after the publication of the notification under subsection (1) of section 4 or, if no such notification was published, any improvements made without the consent of the Land Officer after the posting of the declaration under section 5.

19. (1) Where the applicant has made a claim to compensation pursuant to any notice under section 6 the amount awarded to him shall not exceed the amount so claimed or be

Rules as to the amount of compensation.

less than the amount awarded by the Land Officer under section 8.

(2) Where the applicant has refused to make such claim or has omitted without sufficient reason to be allowed by the Court to make such claim the amount awarded by the Court may be less than and shall in no case exceed the amount awarded by the Land Officer.

(3) Where the applicant has omitted for a sufficient reason to be allowed by the Court to make such claim the amount awarded to him by the Court may be less than or may exceed the amount awarded by the Land Officer.

(4) The provisions of this and sections 17 and 18 shall be read and explained to the assessors by the Court before they give their opinions as to the amount of compensation to be awarded.

Assessor's
opinion to be
recorded.

20. The opinion of each assessor shall be given orally and shall be recorded in writing by the Court.

Difference
of opinion.

21. In case of a difference of opinion between the Court and the assessors or either of them the opinion of the Court shall prevail.

Assessor's
fees.

22. Every assessor shall receive such fee as the Court shall direct. Such fee shall be deemed to be costs in the proceedings.

Award to be
in writing.

23. Every award made under this Part shall be in writing signed by the Minister and shall specify the amount awarded under paragraph (a) of section 17 (1) the amount (if any) deducted under paragraph (b) and the amount (if any) respectively awarded under paragraphs (c), (d) and (e) of the same section together with the grounds of awarding or deducting the said amounts.

Costs.

24. (1) When the amount awarded does not exceed the sum awarded by the Land Officer the costs of all proceedings under this part shall be paid by the applicant.

(2) When the amount awarded exceeds the sum awarded by the Land Officer the costs shall ordinarily be paid by the Land Officer but if the Court is of opinion that the claim of the applicant was so excessive or that he was so negligent in putting his case before the Land Officer that some deduction from his costs should be made or that he should pay a part of the Land Officer's costs the Court may at its discretion make such order as to costs as it may think fit.

(3) If the claim of the applicant exceeds by 20 per centum or more the amount awarded he shall not be entitled to his costs.

(4) The fee payable under section 13(1) shall be refunded if the Court awards a sum exceeding the sum awarded by the Land Officer.

(5) Every award shall state the amount of costs incurred in the proceedings under this Part and by what persons and in what proportions they are to be paid.

25. (1) When the amount of compensation awarded or claimed is not less than \$25,000 the Land Officer or any person interested may appeal from the decision of the Court to the Court of Appeal. No appeal shall lie from the decision of the Court in any other case:

Appeal to the
Court of
Appeal.

Provided that the Court may reserve any question of law arising therein for the decision and directions of the Court of Appeal.

(2) Every appeal under this section shall be presented within the time and in the manner provided for appeals in civil matters to the Court of Appeal.

26. If the sum which in the opinion of the Court the Land Officer ought to have awarded as compensation is in excess of the sum which the Land Officer did award as compensation the award of the Court may direct that the Land Officer shall pay interest on such excess at the rate of 4 per cent, per annum from the date on which he took possession of the land to the date of payment of such excess to the Court or to the person interested.

Payment of
interest on
excess
compensation.

Procedure.

27. (1) Save in so far as they may be inconsistent with anything contained in this Act the provisions of the written law with regard to civil procedure shall apply to all proceedings before the Court and the Court of Appeal under this Act.

(2) The costs, if any, payable by the applicant may be recovered as if they were costs incurred in a civil suit and as if the award were the order or decree therein.

PART IV

PAYMENT

Payment of
compensation
or deposit
thereof in
Court.

28. (1) On making an award under section 8 the Land Officer shall make a written offer of the compensation awarded by him to the persons interested entitled thereto according to the award and shall pay it to them unless prevented by one or more of the contingencies mentioned in the next subsection.

(2) If they do not consent to receive it or if there be no person competent to alienate the land or if there be any dispute as to the title to receive the compensation or as to the apportionment of it the Land Officer shall deposit the amount of the compensation in court:

Provided that any person admitted to be interested may receive such payment under protest as to the sufficiency of the amount:

Provided also that no person who has received the amount otherwise than under protest shall be entitled to make any application under section 13:

Provided also that nothing herein contained shall affect the liability of any person who may receive the whole or any part of any compensation awarded under this Act to pay the same to the person lawfully entitled thereto.

(3) Notwithstanding anything in this section, the Land Officer instead of awarding a money compensation in respect of any land may enter into any arrangement with a person having

an interest therein in such a way as may be equitable having regard to the interests of the parties concerned.

29. When the amount of such compensation is not paid or deposited on or before taking possession of the land the Land Officer shall pay the amount awarded with interest thereon at the rate of 4 per cent per annum from the time or so taking possession until it has been so paid or deposited.

Payment of interest.

PART V

TEMPORARY OCCUPATION OF LAND

30. (1) Whenever it appears to the Minister that temporary occupation and use of any waste or arable land are needed for the purposes specified in section 3, he may direct the Land Officer to procure the occupation and use of the same for such term as he shall think fit not exceeding 3 years from the commencement of such occupation.

Temporary occupation of waste or arable land.

(2) The Land Officer shall thereupon give notice in writing to the persons interested in such land of the purposes for which the same is needed, and shall for the occupation and use thereof for such term as aforesaid and for the materials, if any, to be taken therefrom pay to them such compensation either in a gross sum of money or by monthly or other periodical payments as shall be agreed upon in writing between him and such persons respectively.

(3) In case the Land Officer and the persons interested differ as to the sufficiency of the compensation or the apportionment thereof the Land Officer shall refer such difference to the decision of the Court.

31. (1) On payment of such compensation or on executing such agreement or on making a reference under section 30 the Land Officer may enter upon and take possession of the land and use or permit the use thereof in accordance with the terms of the said notice.

Power to enter and take possession.

(2) On the expiration of the term the Land Officer shall make or tender to the persons interested compensation for the damage, if any, done to the land and not provided for by the agreement and shall restore the land to the persons interested therein.

(3) If the land has become permanently unfit to be used for the purpose for which it was used immediately before the commencement of such term, and if the persons interested shall so require, the Minister shall proceed under this Act to acquire the land as if it was needed permanently for any of the purposes specified in section 3.

Dispute as to
condition of
land.

32. If the Land Officer and the persons interested differ as to the condition of the land at the expiration of the term or as to the compensation mentioned in subsection (2) of section 31 or as to any matter connected with the said agreement the Land Officer shall refer such difference to the decision of the Court.

PART VI

MISCELLANEOUS

Service of
notice.

33. (1) Service of any notice under this Act shall be made by delivering or tendering a copy thereof signed in the case of a notice under section 4 by the officer therein mentioned and in the case of any other notice by or by order of the Land Officer or the Court.

(2) Whenever practicable the service of the notice shall be made on the person therein named.

(3) When such person cannot be found the service may be made on any adult male member of his family residing with him, and if no such adult male member can be found the notice may be served by fixing the copy on the outer door of the house in which the person therein named ordinarily dwells or carries on business, or by fixing a copy thereof in some conspicuous place in the Land Office and also on some conspicuous part of the land to be acquired:

Provided that if the Land Officer or the Court so directs the notice may be sent by registered letter addressed to the person named therein at his last known residence, address or place of business and service of it may be proved by the production of the registration receipt. It shall be presumed that such registered letter was received by the addressee in the ordinary course of the post.

34. Whoever wilfully obstructs any person in doing any of the acts authorised by sections 4(1) or 6(1) or wilfully fills up, destroys, damages or displaces any trench or mark made under section 4(1) shall on conviction by the Court of a Magistrate be liable to imprisonment for 6 months and a fine of \$5,000.

Obstructing
survey, etc.

35. If the Land Officer is opposed or impeded in taking possession under this Act of any land he shall apply to the Commissioner of Police, who shall enforce the surrender of the land to the Land Officer.

Police to
enforce
surrender.

36. (1) Except in the case provided for in section 31 the Government shall be at liberty to withdraw from the acquisition of any land of which possession has not been taken.

Government
not bound to
complete
acquisition.

(2) Whenever the Government withdraws from any such acquisition the Land Officer shall determine the amount of compensation due for the damage, if any, done to such land under section 4(1) or section 6(1) and not already paid for under section 4(2) and shall pay such amount to the person injured and shall pay to the persons interested all such costs as shall have been incurred by them by reason or in consequence of the proceedings for acquisition together with compensation for the damage, if any, which they may have sustained by reason or in consequence of such proceedings.

(3) The provisions of Part III shall apply so far as may be to the determination of the compensation payable under this section.

37. No award or agreement made under this Act shall be chargeable with stamp duty and no person claiming under any such award or agreement shall be liable to pay any fee for a copy of the same.

Exemption
from stamp
duty and fee.

Bar of suits to set aside awards.

38. No suit shall be brought to set aside an award or apportionment under this Act.

Power to make rules.

39. His Majesty in Council may make rules —

(a) to prescribe the conditions and procedure under which the acquisition of a part only or of any house, manufactory or other building or of any land which is the subject of a claim under section 17(1)(c) may be made or proceeded with;

(b) to prescribe either generally or in particular cases the persons by whom any charges incurred in any acquisition shall be defrayed;

(c) to give directions for the guidance of officers in all matters connected with this Act;

(d) generally to carry out the provisions of this Act.

SUBSIDIARY LEGISLATION

NOTE. The Fees Rules (B.R.O.N. 5/49) have been omitted.