

Critical Analysis & Legality of (Re-) Declaration for Land Acquisition Under Maharashtra Regional & Town Planning Act, 1966 and Impact of Land Therein in excess of Development Plan Reservation: A Case Study

Vinod Maheshwari

Abstract: The article examines parallel provisions of land acquisition under Maharashtra Regional & Town Planning Act, 1966 and Land Acquisition Act, 1894 in respect of lands reserved in a Development Plan of the town for public purpose. It specifically focuses on a circumstance where, land acquisition is commenced under MR & TP Act, 1966 r/w LA Act, 1894 but before award is declared, the provisions of RTFC & T in Land Acquisition, R & R Act, 2013 came into force. Instant paper also examines the scope and legality of acquisition of land beyond the defined boundaries of the reservation of DP for which, land is being acquired. In a nut shell, the article deals with following key issues: 1) Scope of land acquisition exceeding reservation site of Development Plan, 2) Lapsing of LA proceedings if award is not made within statutory time, 3) Need of re-declaration after coming into force of LA Act of 2013 and 4) Right to challenge constitutionality of LA proceedings before High Court.

Keywords: Development Plan, Reservations in DP, Notification, Declaration, lapsing of LA proceedings, Award

1. Aims & Objectives

Development of the towns/cities within India is regulated by the proposals of Development Plan. The DP is prepared as per the provisions of Town Planning Act of the concerned State. The reservation of lands are made in the DP for various public purposes looking to the socio-economic needs of the projected population of the town/city. The Planning Authority is entrusted the responsibility of acquisition and development of reserved lands. Implementation of DP, on one hand takes care of the needs of the public and on the other hand, compensates the affected persons whose land are being compulsorily acquired. The ultimate impact is upon public funds and private rights. In order to keep proper balance between the two and to confine the Planning Authority within the limits of statutory powers, sacrosanct Art. 300-A of The Constitution of India prescribes that:

- Private land shall be acquired for public purpose only,
- Affected persons shall be adequately compensated and
- The proceedings shall be under a valid law and procedure thereunder.

Infringement of above vitiates entire LA proceedings. The principle aim of this paper is to examine the said proceedings by a Planning Authority in acquisition of land within the case study and correctness or otherwise of the steps taken by the affected land owners. The ultimate objective is to enlighten both including the readers so that future cases of similar nature can be adequately dealt with.

2. Facts/ Problem statement

The case history is classic example of ignorance of law by the implementing authorities as well as affected persons.

SN	Date	Particulars
1	02.9.93	DP, New Chandrapur published u/s 26 of MR&TP Act, 1966
2	30.6.98	DP sanctioned by Government u/s 31.
3	26.9.08	Acquisition proposal by MHADA to Collector for 2.68 Hect.
4	16.3.11	Joint Measurement Report of TILR for 3.25 hectares.
5	16.8.12	Declaration u/s 126(4) of MR & TP Act r/w 6 of LA Act, 1894
6	01.1.14	Enactment of RTFC & TI Land Acquisition ... Act, 2013
7	22.4.16	(Re-) Declaration u/s 19 of LA Act of 2013.
8	21.1.17	Notice to owners u/s 21(4) for filing claim of compensation.
9	22.2.17	Objection/claim filed individually by owners stating that: - Reservation lapsed u/s 127 of MR & TP Act, 1966, - Acquisition is illegal as sec. 4-18 of LA Act of 2013 not done - No opportunity of hearing granted u/s 21, - Land has NA potential, being close to prominent users, - Rate of land is more than Rs.5,000/- per sft, - Rehabilitation be done.
10	22.4.17	Award passed with following important recitals: - Award could not be made as LA Act, 2013 came into force. But as section 4 & 6 did not lapse, proceedings initiated u/LA Act, 2013. - For above proposal u/MR & TP Act, sec.11 is not required; so Declaration done directly u/s 19(1) of Act of 2013. - TP, Chandrapur, scrutinizing draft award on 18.4.17 (wrongly) observed that: "declaration dt 22.4.16 is u/s 19 of LA Act of 2013 r/w section 126(2) of MR&TP Act & is correct".

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11	22.6.17	Notice by SLAO to owners to take payment
12	xx.7.17	Writ xxxx/2017 filed in HC u/Art. 226 with mutually conflicting pleas: - Reservation lapsed u/s 127 within 10 yrs from DP, - Acquisition void ab initio for violation of 126(2), 127 - Section 6 lapsed u/s 11-A, - Declaration u/s 19 illegal for want of sec. 4 to 18 & 20, - Consent not taken u/Rule 16 to 18, no hearing. - Land has NA potential & @ above 5,000/sft Prayer: Quash LA proceedings, Award/pay market value.

3. Relevant extract of Legal provisions

1) Maharashtra Regional & Town Planning Act, 1966:

- Section 26: Publication of Development Plan:** The Planning Authority shall prepare the development plan and publish a notice in gazette and newspapers stating that the DP has been prepared, can be inspected in its office and further that objections/suggestions can be made to the proposals thereof within 30 days. The objections/suggestions so received within the time will be heard and recommended by the planning committee to the government for final decision thereon.
- Section 31: Sanction to Development Plan:** The State Government, after consulting Director of Town Planning shall sanction the DP with or without modifications which shall be final and binding upon the planning authority.
- Section 126:** The Planning Authority, after the publication of DP may acquire the reserved land by mutual agreement or by making an application to Government. The Government, if satisfied may make a Declaration u/s 6 (19 of 2013 Act) of LA Act, 1894. The record date for determining of market value shall be the date of publication of DP u/s 26 of MR & TP Act. Provided that if the declaration is made after 1 year from publication of DP, the RD shall be the date of declaration u/s 6 or 19. Thereafter, the provisions of Land Acquisition Act shall regulate the acquisition proceedings as to passing of award, payment of compensation, challenge to it in Reference, appeal etc.
- Section 127:** If the land under DP reservation is not acquired within 10 years from sanction of the DP, the owner may serve a purchase notice upon PA. If PA fails to take steps for acquisition within 2 years therefrom, the reservation in the land shall be deemed to have lapsed.

2) The Land Acquisition Act, 1894 (corresponding provisions of LA Act of 2013):

- Notification u/s 4 (section 11 of 2013 Act):** Whenever it appears to the Govt or LAO (upon application of planning authority) that any land is likely to be needed for any public purpose, it may publish a notification in the gazette & newspapers inviting objections/suggestions from the affected persons.
- Objection & Hearing u/s 5-A (section 15 of 2013 Act):** The objections / suggestions so received shall be heard by the SLAO and decided.
- Declaration u/s 6 (19 of 2013 Act):** The Collector shall publish a declaration in gazette and newspapers stating that the land is needed for the public purpose and proceed to compulsorily acquire the land.
- Inviting claim u/s 9 (22 of 2013 Act):** The SLAO shall invite the affected person to file his claim as to compensation within 15 days from the date of service of

notice. The claim, if filed as to market value of the land shall be considered.

- Award u/s 11 (23 of 2013 Act):** The Collector shall, in consideration of claim, if filed shall pass the reasoned award and notify it to the affected persons.
- Lapsing of LA Proceedings u/s 11-A (25 of 2013 Act):** If award is not passed within prescribed time from declaration, entire LA proceedings shall lapse.
- Reference to Civil Court u/s 18 (to Tribunal u/s 64 of 2013 Act):** Any person aggrieved with the award may within 6 weeks from notice of award may prefer a Reference to the Civil Court for determination of compensation.
- Right to Fair Compensation & Land Acquisition.... Act, 2013: Section 24:** In cases where acquisition proceedings have been initiated under LA Act, 1894 but award u/s 11 has not been made on or before 1.1.2014, then it shall continue and provisions of 2013 Act relating to determination of compensation shall apply.

3) Analysis of the problem & Observations:

- Preliminary:** a) Lands reserved under a development plan is treated as a land required for public purpose. b) Land reserved under a DP can be acquired principally under MR & TP Act, 1966. However, for procedural purposes of inviting claims, determination of compensation, award, payment, reference and appeals, the provisions of Land Acquisition Act are read into it. c) In such an event, direct Declaration can be made bypassing notification u/s 4 (11 of 2013 Act) and hearing of objections u/s 5A(15 of 2013 Act) as it is deemed to have been dealt with while publication of DP u/s 26 & 28 of MR & TP Act, 1966. d) Affected land owners can file their claim of compensation to the SLAO u/s 9 (section 22 of 2013 Act).
- Observations as to stand of Petitioners i.e. land owners:**
 - 15 group of persons are individual and not joint owners. They are not entitled to make a joint WRIT.
 - S. 127 not applicable for want of purchase Notice. Reservation in land alive.
 - Declaration u/s 126(2&4) of MR&TP Act r/w sec.6 of LA Act, 1894 is quite legal (except for the excess land therein).
 - GR No. LCN-3072.HL-331-B(I) dated 23.6.1972 of Maharashtra Govt.
 - LA proceedings did not lapse u/s 11-A as initiated under Town Planning Act.
 - Maharashtra vs S.J. Singh. 1995-1.MLJ-SC.793,
 - Girnar Traders vs Maharashtra. 2011-3-SCC.1
 - Notice u/s 21 was for filing of claim:** If owners are objecting to acquisition, they ought to have filed WRIT immediately. Challenge to legality after Award and

seeking increased compensation u/Art.226 of Constitution is not tenable.

contemplate 2 record dates for determination of market value.

4) Issue No.1: Legality of land acquisition due to Excess land:

a) The site no.9 of DP, New Chandrapur has been reserved for Garden. It admeasures **2.68** hectares as per sanctioned DP. A proposal for acquisition for 2.68 hectare land was rightly made by MHADA u/s 126(2&4) of MR & TP Act, 1966 r/w section 6 of Land Acquisition Act, 1894 on 16.8.12.

b) **Excess 0.59 hect land notified for site no. 9:** However, the Declaration dated 16.8.2012 u/s 124(2&4) r/w section 6 for acquisition was for **3.27** hectares. The 0.59 hectare of excess land so notified is outside the boundaries of DP site no.9. The said boundaries cannot be altered by TILR or SLAO without initiating modification proceedings u/s 37 of MR & TP Act, 1966.

Section 126(2&4) of MR & TP Act does not apply to the said excess land in the purported name of site no.9 being beyond it. This excess land is **incapable of being severed** from rest of the land being scattered into 3 different khasra numbers at 3 or more different places & cannot be severed from the award without disturbing it as a whole. Moreover, it will involve remeasurement and redetermination of market value afresh as new components viz injurious affection u/s 28(fourth) of the left- over land will adversely affect market value. It will consequently lead to re-determination of solatium and additional amount afresh u/s 30. This, as a whole will amount to rewriting of award which is impermissible and so is the severance of such excess land.

c) The same illegality continued in Declaration dated 22.4.16 as well u/s 19 and 3.27 hectares of land has been notified for acquisition for site no.9 for garden. As a result, entire proceedings including award for acquisition of 3.27 hectares of land for site no.9 for garden is **illegal**.

5) Issue No.2: Declaration u/s 19 without sec. 4 to 18 of 2013 Act is illegal:

- Section 24(1) of LA Act of 2013 states: “where no award u/s 11 of LA Act, 1894 has been made till 1.1.14, all provisions **relating to determination of compensation** shall be done under Act of 2013”. No lapsing contemplated.

- ii) LA Rule No.19(3) of 2014 states: “where a land is reserved for public purpose in MR & TP Act and a declaration u/s 6(1) of LA Act, 1894 has been made prior to 31.12.13 but award has not been made, then the LA proceedings be continued therein as per formula provided in sections 26 to 30 of LA Act, 2013”.

- Thus, section 126(4) r/w section 6 was very much subsisting sans excess land even after LA Act of 2013 and award ought to have been declared thereunder without there being any statutory need to re-declare it afresh u/s 19(1) of LA Act, 2013.

- Declaration dt 16.8.12 ceased due to re-Declaration dated 22.4.16:** The SLAO however **committed a mistake** and re-declared the land for acquisition on 22.4.16 u/s 19(1) of LA Act, 2013. As a result, the earlier declaration [u/s 126(2 & 4) of MR & TP Act r/w sec. 6 of LA Act] dated 16.8.12 immediately **ceased to exist** as both the declarations cannot coexist together as the statute do not

6) Declaration u/s 19(1) is u/ LA Act of 2013 & not u/ MR & TP Act:

a) The declaration published in gazette of 5 to 11 May, 2016 states to be made u/s **19(1) of LA Act of 2013**. **Mention of Section 126(4) therein is mandatory for the acquisition to be under MR & TP Act, which is missing.** The acquisition therefore is deemed to be made under LA Act, 2013.

b) **ii) This illegality** (i.e. omission of section 124(4) of MR & TP Act, 1966) **has not at all been cured by the SLAO through publication of corrigendum or addendum before proceeding to section 21 & 25.**

c) **iii) This Declaration** dated 22.4.2016 states to derive its genesis from notification dated 30.6.1998 whereby, Government has sanctioned the Development Plan of New Chandrapur(part) including site no.9 of Garden u/s 31 of MR & TP Act, 1966. However, that by itself, though indicates that land acquisition is for a public purpose, it does not make it to be acquisition under MR & TP Act in the absence of specific mention of section 126(4) in the notification.

d) MR & TP Act is a complete code for acquisition of property under Town Planning Act and provisions relating to compensation & award are derived from LA Act through incorporation. Thus, mentioning of section 126(4) and name of the Act viz MR & TP Act, 1966 is mandatory for the acquisition to be under Town Planning Act, which is absent in the declaration dated 22.4.2016.

Hence, instant land acquisition initiated with Declaration dated 22.4.16 u/s 19(1) is under Land Acquisition Act of 2013 & not under MR & TP Act, 1966.

e) Therefore, benefit of publication of DP dated 2.9.93 u/s 26 of MR & TP Act, 1966 to be treated as equivalent to section 11 of LA Act of 2013 is not available to the authority for directly doing Declaration u/s 19. Omission of section 126(4) of MR&TP Act, 1966 in the declaration dated 22.4.16 evidences that acquisition is made under LA Act for which, commencement point is section 4 and not 19. It was mandatory to take steps u/s 4 to 18 prior to 19 of LA Act of 2013.

f) Merely mentioning in the award that the proceedings have been made u/s 126(4) of MR & TP Act, 1966 r/w section 19(1) of LA Act, 2013 to salvage the damage without rectification of the Declaration is incapable of curing illegality.

g) **Assumption of Town Planner during scrutiny/approval of draft award:** It is important to note that the Town Planner, while scrutinizing the draft award observed in his letter dated 18.4.17: “Declaration done u/s 19 of LA Act r/w section 126(2) of MR & TP Act is correct”. It evidences that mentioning of section 126 (4 instead of 2) is essential in the declaration for the acquisition to be within MR & TP Act without which, doing section 19 and subsequent proceedings would not be legal. He committed 2 fatal illegalities which perpetuated into the award.

1st, he did not sincerely read the Declaration of section 19(1). Had he been cautious to read omission of sec.126(4) of MR&TP Act therein and pointed it out, the illegality could

have been cured by issue of corrigendum before making award. Blinking of eyes in performance of statutory duty is not permissible in any Law.

2nd, he made casual scrutiny of the draft award. He did not note that the land under Declaration for acquisition of site no. 9 is in excess by 0.59 hectare from the area thereof in DP sanctioned by Government u/s 31 of MR & TP Act and even from the proposal of the requiring authority i.e. MHADA. The severance thereof is not possible as the excess land is spread over 3 survey nos. and situated at more than 3 different locations. He could have advised for revised joint measurement and re-Declaration or corrigendum for rectification of illegality.

- a) **Comparison of 2 Declarations:** Even otherwise also, if declarations dated 16.8.12 and 22.4.16 are compared, the former incorporates section 126(4) of MR & TP Act whereas, the later omits it. Had it not been essential, it would not have been incorporated in the former declaration. The later Declaration is not the extension of the former, it is independent of it.
- b) That being so, action u/s 4 to 18 of LA Act, 2013 must have preceded Declaration u/s 19. Without this, all the proceedings u/s 19 & beyond i.e. 21(4) inviting claims but not affording hearing, section 25 for making an award etc are **void ab initio**.
- c) **Violation of Art. 300-A of The Constitution of India:** There is a Constitutional guarantee that no land will be acquired save by authority of law and procedure established under a law. In the instant case, acquiring the land under Land Acquisition Act of 2013 and bypassing sections 4 to 18 thereof amounts to violation of essential procedure established under a law. Hence, entire LA proceedings are illegal being violative of Art. 300-A of Constitution of India and liable to be quashed.
- d) **Issue No. 3: No hearing violated Art. 14 of Constitution:** The SLAO has taken the objections/claim of land owners u/s 21(4) on record and referred it to acquiring body viz MHADA. The ADTP of MHADA however did not address the issues raised by the petitioners as to legality of the proceedings for want of section 4 to 18 and remarked that it is related to SLAO.

The SLAO too does neither hear the petitioners on this issue nor address it but simply rejected it as is evident from passing the award. Had he heard it, the illegality of the Declaration including of excess notified land could have been explained to him for rectification by issue of corrigendum.

For failure to provide effective opportunity of hearing, the entire LA proceedings including award is liable to be quashed being in violation of principles of natural justice enshrined u/Art. 14 of Constitution as held essential by various courts:

- SS Brar Vs Union of India. (2013).1. SCC. 403
- Womens Edn.Trust vs Haryana. (2013).8. SCC. 99
- Hindusthan Petroleum vs DS Chenai. (2005).7. SCC.627
- Kolkata MC Vs BK Shah (2024).10. SCC.533
- Agra Devp.Authority vs SLAO (2001). 2. SCC.646

Remedy to affected land-owners

- a) Modify the petition and state that:
 - They had no other occasion to know fate of their objection as to legality of the LA proceedings until they

read it in the award. Immediately whereafter, the same was challenged before this hon'ble court u/Art. 226 mainly seeking to quash the Award & ancillary explained market value commanded by land.

- **Main challenge is to the legality of acquisition:** The jurisdiction of High Court has been invoked as the legality of the acquisition proceedings & award could not have been challenged before the Tribunal. The instant writ petition has been filed u/Art. 226 **mainly** to challenge the legality of LA proceedings/award as aforementioned and ancillary raised plea as to potential of land and market value commanded by it.
- b) The High Court might quash the award and direct the SLAO to reinitiate land acquisition proceedings by re-declaring 2.68 hectares of the land afresh u/s 126(4) of MR&TP Act r/w sec.19 of 2013 Act & redetermine of compensation.
- c) As a result, the record date will get advanced to present date, evidences as to sale/purchase of lands in the vicinity will be considered as of present, land owners will get opportunity to file their detailed claim based upon evidences as to market value and valuation report, to accept the compensation under protest (if award is not in accordance with law) and challenge the award as to insufficiency of market value before the appellate tribunal u/s 64 of 2013 Act subject to appeal before the High Court u/s 74 of 2013 Act.

4. Conclusion

- 1) The land owners shall be vigilant not only as regards their rights but duties as well. Had they been so, they could have pointed out excess land being measured by TILR during joint measurement, they could have objected as to illegality of LA proceedings while filing the claim and could have timely challenged it before High Court. Refusal to accept the compensation does not go in their favour unless timely challenged in Reference u/s 64 before the Tribunal. Moreover, they ought to have consulted **competent** consultants as to proper course of action to safeguard their legal rights and financial benefits.
- 2) SLAO is an administrative officer but the Town Planner is a technical person. He is entrusted the responsibility of preliminary scrutiny of draft award so as to take care of technical aspects of land acquisition relating to reservations of development plan. The shortcomings of such technical persons in proper performance of duties must be taken by the departmental head of Town Planning as regular training need of the subordinate staff for proper performance of effective service. The re-declaration, if directed by hon'ble High Court will lead to enhancement of compensation in crores due to advancement of Record Date from 2012 or 2016 to present day say 2026; a matter for jubilation for land owners but undue burden on state exchequer for the misfeasance of its officers.

5. Keywords

- 1) **Development Plan:** It is prepared on behalf of Planning Authorities like municipal councils/corporations, nagar panchayats, development authorities for development of

towns. Procedure for preparation thereof is regulated under Maharashtra Regional & Town Planning Act, 1966 in Maharashtra and corresponding Town Planning Acts under different states. It commences with declaration of intention to prepare DP, survey, publication of DP, inviting objections/suggestions, hearing by planning committee, publication of substantial modifications and sanction to it by State Government.

- 2) **Reservations in Development Plan:** looking to requirements of future population of the town/city, the lands are reserved under Development plan for various socio-economic facilities like garden, parks, playground, primary/secondary school, vegetable/weekly markets, shopping centres, dispensary & maternity homes, town hall, road widenings etc. The DP is intended to be implemented by acquisition of reserved lands and development thereof with/without financial assistance of the State Government. The reservations of the DP are deemed to be lands required for public purpose.
- 3) **Notification:** It means preliminary notification u/s 4 of Land Acquisition Act, 1894 or section 11 of LA Act of 2013. In respect to land reserved under DP, it is attributable to section 26 of MR & TP Act, 1966 as regards publication of draft development plan. The notification is made in government gazette and 2 local newspapers for information to the public. By this notification, objections/suggestions are invited from public as to likely future need of the land for acquisition for a public purpose. The objections/suggestions, if received are heard and judiciously decided.
- 4) **Declaration:** This is an intimation to the affected persons in gazette and 2 newspapers that the land so notified earlier is finally decided to be acquired. No objection/suggestion is invited herein and no hearing is contemplated. It is for crystalizing record date for determination of compensation. For this purpose, the sale-purchase data of land in vicinity of land under acquisition executed as on or before the record date are collected and becomes basis for determining market value and additional amount.
- 5) **Lapsing of Land Acquisition proceedings:** The Declaration starts the time clock for SLAO to pass award. If the award is not passed within 2 years (1 year under Act of 2013) from the date of declaration, the land acquisition proceedings lapses u/s 11-A of LA Act, 1894 (Section 25 of Act of 2013) and acquisition of land is required to be commenced by redeclaration afresh.
- 6) **Award:** It is passed u/s 11 of LA Act, 1894 (section 25 of Act of 2013) as to final amount of compensation payable to the affected persons. It is reasoned documents describing facts relied upon and procedure adopted for determining compensation. It includes market value of the property, additional amount, solatium and rent of land for advance possession, if applicable. The compensation carries interest, if not paid within reasonable time. It is interesting to note that the compensation so declared in the award can neither be reduced by the tribunal in reference nor by the High Court in appeal.

- c) LA Act of 2013: Right to Fair Compensation & Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013.
- d) MR & TP Act: Maharashtra Regional & Town Planning Act, 1966,
- e) r/w: Read with,
- f) RD: Record date of valuation
- g) SLAO: Special Land Acquisition Officer.
- h) u/s: Under section,

References

- [1] "Encyclopaedia of Land Laws with court judgments: A Ready Reckoner for Architects, Civil Engineers, Valuers, Supervisors, Builders, Developers & Building Consultants" by Vinod Maheshwari. (Available on Amazon)
- [2] Maharashtra Regional & Town Planning Act, 1966,
- [3] The Land Acquisition Act, 1894,
- [4] Manual of Land Acquisition for State of Maharashtra,
- [5] The Right to Fair Compensation & Transparency In Land Acquisition, Rehabilitation & Resettlement Act, 2013,
- [6] Judgments of Hon'ble Supreme Court of India and High Courts.

Author Profile

Vinod Maheshwari, B.Arch, LL.M, MBA, PGDCL (Gold Medal), CHR, PGCCCL, PGDUPDL, PGCGPS, Architect & Valuer, 125, Indira Nagar, Tumsar (MS)- 441 912. [vinodm58\[at\]gmail.com](mailto:vinodm58[at]gmail.com)

Abbreviations

- a) DP: Development Plan prepared under MR & TP Act, 1966.
- b) LA Act, 1894: Land Acquisition Act, 1894,