

15 -ാം കേരള നിയമസഭ

5 -ാം സമ്മേളനം

നക്ഷത്ര ചിഹ്നം ഇല്ലാത്ത പോദ്ദം നം. 3648

14-07-2022 - ൽ മറുപടിയ്ക്ക്

പൊതു കാര്യത്തിന് വഖഫ് ഭൂമിയുടെ കൈമാറ്റം

പോദ്ദം		ഉത്തരം	
ശ്രീ എൻ എ നെല്ലിക്കുന്ന്		ശ്രീ വി. അബ്ദുറഹിമാൻ (മത്സ്യബന്ധനം, കായികം, വഖഫ്, ഹജ് തീർത്ഥാടന വകുപ്പ് മന്ത്രി)	
(എ)	<p>വഖഫ് വസ്തുക്കളുടെ വില്പന, ദാനം, ഒത്തുമാറ്റം, പണയപ്പെടുത്തൽ, കൈമാറ്റം എന്നിവ സാധ്യതയില്ലാത്തതാണോ എന്ന് വ്യക്തമാക്കാമോ;</p>	(എ)	<p>1995-ലെ വഖഫ് നിയമത്തിൽ 2013-ന് ഉണ്ടായ നിയമ ഭേദഗതി അനുസരിച്ച് 51 (1A), 104 A എന്നീ വകുപ്പുകൾ പ്രകാരം വഖഫ് വസ്തുക്കളുടെ വിൽപന, ദാനം, ഒത്തുമാറ്റം, പണയപ്പെടുത്തൽ, കൈമാറ്റം എന്നിവ സാധ്യതയില്ലാത്തതാണ്. എന്നിരുന്നാലും ടി നിയമം ഇതേ വകുപ്പിലെ പ്രൊവൈസോ പ്രകാരം സംസ്ഥാന വഖഫ് ബോർഡുമായി ആലോചിച്ച് 1894-ലെ ലാന്റ് അക്വിസിഷൻ ആക്ട് (പ്രസ്തുത ആക്ട് റിപീൽ ചെയ്ത് ഭൂമി ഏറ്റെടുക്കലിൽ ന്യായമായ നഷ്ടപരിഹാരത്തിനും സുതാര്യതയ്ക്കും പുനരധിവാസത്തിനും പുനഃസ്ഥാപനത്തിനുമുള്ള അവകാശ ആക്ട് 2013 നിലവിൽ വന്നിട്ടുണ്ട്) പ്രകാരം പൊതു കാര്യത്തിനായി ഭൂമി ഏറ്റെടുക്കുവാൻ വ്യവസ്ഥയുണ്ട്.</p>
(ബി)	<p>എങ്കിൽ വഖഫ് നിയമത്തിലെ ഏത് വകുപ്പുകൾ പ്രകാരമാണിതെന്ന് വ്യക്തമാക്കാമോ;</p>	(ബി)	<p>എ യുടെ മറുപടി</p>
(സി)	<p>പ്രസ്തുത നിയമത്തിലെ മേൽപ്പറഞ്ഞ വകുപ്പിലെ വ്യവസ്ഥ പ്രകാരം സംസ്ഥാന വഖഫ് ബോർഡുമായി ആലോചിച്ച് 1894 ലെ ലാന്റ് അക്വിസിഷൻ ആക്ട് പ്രകാരം പൊതു കാര്യത്തിനായി ഭൂമി ഏറ്റെടുക്കാൻ വ്യവസ്ഥയുണ്ടോ എന്ന് വ്യക്തമാക്കാമോ;</p>	(സി)	<p>എ യുടെ മറുപടി</p>
(ഡി)	<p>എങ്കിൽ വഖഫ് നിയമത്തിലെ മേൽപ്പറഞ്ഞ വകുപ്പുകളുടെയും പ്രൊവൈസോവിന്റെയും ലാന്റ് അക്വിസിഷൻ ആക്ടിലെ ബന്ധപ്പെട്ട പേജിന്റെയും പകർപ്പ് ലഭ്യമാക്കാമോ;</p>	(ഡി)	<p>വഖഫ് നിയമത്തിലെയും 1894-ലെ ലാന്റ് അക്വിസിഷൻ ആക്ട് (പ്രസ്തുത ആക്ട് റിപീൽ ചെയ്ത് ഭൂമി ഏറ്റെടുക്കലിൽ ന്യായമായ നഷ്ടപരിഹാരത്തിനും സുതാര്യതയ്ക്കും പുനരധിവാസത്തിനും പുനഃസ്ഥാപനത്തിനുമുള്ള അവകാശ ആക്ട് 2013 നിലവിൽ വന്നിട്ടുണ്ട്) -ന്റെ</p>

			പ്രസക്ത ഭാഗത്തിന്റെ പകർപ്പുകൾ അനുബന്ധമായി ചേർത്തിട്ടുണ്ട്.
(ഇ)	ഇത്തരത്തിൽ പൊതു കാര്യത്തിനായി ഏതെല്ലാം സ്ഥലങ്ങളിൽ ഭൂമി ഏറ്റെടുത്തിട്ടുണ്ടെന്ന് ജില്ല തിരിച്ച് വ്യക്തമാക്കാമോ; ഏതെല്ലാം കാര്യങ്ങൾക്കായി ഏതെല്ലാം വർഷങ്ങളിലാണ് ഭൂമി ഏറ്റെടുത്തത്;	(ഇ)	പ്രസ്തുത വിവരങ്ങൾ റെക്കോർഡുകളായി നിലവിൽ വെബ് ബോർഡ് സൂക്ഷിച്ചു വരുന്നില്ല. ഇനി മുതൽ അത്തരത്തിൽ റെക്കോർഡുകൾ സൂക്ഷിക്കുവാൻ വെബ് ബോർഡിന് നിർദ്ദേശം നൽകിയിട്ടുണ്ട്.
(എഫ്)	പൊതു കാര്യത്തിനായി വെബ് ഭൂമി ഏറ്റെടുക്കുമ്പോൾ പകരം ഭൂമി നൽകണമെന്ന് നിയമമുണ്ടോ; വെബ് സ്വത്തുകളുടെ കൈമാറ്റം സാധ്യതയില്ലാത്തതാണെങ്കിൽ പകരം ഭൂമി വാങ്ങി വെബ് ഭൂമി കൈമാറുന്നത് നിയമാനുസൃതമാണോ എന്ന് വ്യക്തമാക്കാമോ?	(എഫ്)	1995-ലെ വെബ് നിയമം 51(1A) വകുപ്പിലെ 3-ാം പ്രൊവൈസോ പ്രകാരം സംസ്ഥാന വെബ് ബോർഡുമായി ആലോചിച്ച് പൊതു കാര്യത്തിനായി സർക്കാർ വെബ് ഭൂമി ഏറ്റെടുക്കുമ്പോൾ ടി എറ്റെടുക്കുന്ന വെബ് ഭൂമിയ്ക്ക് പകരം നിലവിലുള്ള മാർക്കറ്റ് വില നഷ്ടപരിഹാരമായോ അല്ലെങ്കിൽ ന്യായമായ നഷ്ടപരിഹാരം സഹിതം അനുയോജ്യമായ ഭൂമിയോ നൽകേണ്ടതാണ്. പൊതു ആവശ്യങ്ങൾക്ക് സർക്കാരിന് അല്ലാതെ പകരം ഭൂമി വാങ്ങി വെബ് ഭൂമി കൈമാറുന്നത് നിയമാനുസൃതമല്ലാത്തതാണ്.

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or remit the amount so certified, either in whole or in part, and may also make such order as to costs as it may think appropriate in the circumstances of the case.

(3) No application made under sub-section (2) shall be entertained by the Tribunal unless the amount certified by the auditor under sub-section (2) of section 47 has first been deposited in the Tribunal and the Tribunal shall not have any power to stay the operation of the order made by the Board under sub-section (1).

(4) The order made by the Tribunal under sub-section (2) shall be final.

(5) Every amount for the recovery of which any order has been made under sub-section (1) or sub-section (2) shall, where such amount remains unpaid, be recoverable in the manner specified in section 34 or section 35 as if the said order were an order for the recovery of any amount determined under sub-section (3) of section 35.

49. Sums certified to be due recoverable as arrears of land revenue.—

(1) Every sum certified to be due from any person by an auditor in his report under section 47 unless such certificate is modified or cancelled by an order of the Board or of the Tribunal made under section 48, and every sum due on a modified certificate shall be paid by such person within sixty days after the service of a demand for the same issued by the Board.

(2) If such payment is not made in accordance with the provisions of sub-section (1), the sum payable may, on a certificate issued by the Board after giving the person concerned an opportunity of being heard, be recovered in the same manner as an arrear of land revenue.

50. Duties of mutawalli.—It shall be the duty of every *mutawalli*,—

(a) to carry out the directions of the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(b) to furnish such returns and supply such information or particulars as may from time to time be required by the Board in accordance with the provisions of this Act or of any rule or order made thereunder;

(c) to allow inspection of [waqf] properties, accounts or records or deeds and documents relating thereto;

(d) to discharge all public dues; and

(e) to do any other act which he is lawfully required to do by or under this Act.

51. Alienation of [waqf] property without sanction of Board to be void.—²[(1) Notwithstanding anything contained in the waqf deed, any lease of any immovable property which is waqf property, shall be void unless such lease is effected with the prior sanction of the Board:

1. Substituted by Act 27 of 2013, S. 4, for "wakf" (w.e.f. 1-11-2013).

2. Substituted by Act 27 of 2013, S. 29, for sub-S. (1) (w.e.f. 1-11-2013). Prior to its substitution, sub-S. (1) read as under:—“(1) Notwithstanding anything contained in the wakf deed, any gift, sale or exchange mortgage of any immovable property which is wakf property, shall be void unless such gift, sale, exchange or mortgage is effected with the prior sanction of the Board:

Provided that no mosque, dargah or khangah shall be gifted, sold, exchanged or mortgaged except in accordance with any law for the time being in force.”

Provided that no mosque, dargah, khanqah, graveyard, or imambara shall be leased except any unused graveyards in the States of Punjab, Haryana and Himachal Pradesh where such graveyard has been leased out before the date of commencement of the Wakf (Amendment) Act, 2013.

(1-A) Any sale, gift, exchange, mortgage or transfer of waqf property shall be void *ab initio*.

Provided that in case the Board is satisfied that any waqf property may be developed for the purposes of the Act, it may, after recording reasons in writing, take up the development of such property through such agency and in such manner as the Board may determine and move a resolution containing recommendation of development of such waqf property, which shall be passed by a majority of two-thirds of the total membership of the Board:

Provided further that nothing contained in this sub-section shall affect any acquisition of waqf properties for a public purpose under the Land Acquisition Act, 1894 (1 of 1894) or any other law relating to acquisition of land if such acquisition is made in consultation with the Board:

Provided also that—

(a) the acquisition shall not be in contravention of the Places of Worship (Special Provisions) Act, 1991 (42 of 1991);

(b) the purpose for which the land is being acquired shall be undisputedly for a public purpose;

(c) no alternative land is available which shall be considered as more or less suitable for that purpose; and

(d) to safeguard adequately the interest and objective of the waqf, the compensation shall be at the prevailing market value or a suitable land with reasonable solatium in lieu of the acquired property.]

[***]

1. Sub-S. (2) omitted by Act 27 of 2013, S. 29 (w.e.f. 1-11-2013). Prior to its omission, sub-S. (2) read as under:—“(2) The Board may, after publishing in the Official Gazette, the particulars relating to the transaction referred to in sub-section (1) and inviting any objections and suggestions with respect thereto and considering all objections and suggestions, if any, that may be received by it from the concerned *mutawalli* or any other person interested in the wakf, accord sanction to such transaction if it is of opinion that such transaction is—

(i) necessary or beneficial to the wakf;

(ii) consistent with the objects of the wakf;

(iii) the consideration thereof is reasonable and adequate:

Provided that the sale of any property sanctioned by the Board shall be effected by public auction and shall be subject to confirmation by the Board within such time as may be prescribed:

Provided further that the Tribunal may, on the application of the aggrieved *mutawalli* or other person, for reasons to be recorded by it in writing, permit such sale to be made otherwise than by public auction, if it is of opinion that it is necessary so to do in the interest of the wakf.”.

104. Application of Act to properties given or donated by persons not professing Islam for support of certain ¹[waqf].—Notwithstanding anything contained in this Act where any movable or immovable property has been given or donated by any person not professing Islam for the support of a ¹[waqf] being—

- (a) a mosque, idgah, imambara, dargah, khangah or a maqbara;
- (b) a Muslim graveyard;
- (c) a choultry or musafarkhana,

then such property shall be deemed to be comprised in that ¹[waqf] and be dealt in the same manner as the ¹[waqf] in which it is so comprised.

²[104-A. Prohibition of sale, gift, exchange, mortgage or transfer of waqf property.—(1) Notwithstanding anything contained in this Act or any other law for the time being in force or any waqf deed, no person shall sell, gift, exchange, mortgage or transfer any movable or immovable property which is a waqf property to any other person.

(2) Any sale, gift, exchange, mortgage or transfer of property referred to in sub-section (1) shall be void *ab initio*.]

³[104-B. Restoration of waqf properties in occupation of Government agencies to waqf Board.—(1) If any waqf property has been occupied by the Government agencies it shall be returned to the Board or the *mutawalli* within a period of six months from the date of the order of the Tribunal.

(2) The Government agency may, if the property is required for a public purpose, make an application for determination of the rent, or as the case may be, the compensation, by the Tribunal at the prevailing market value.]

105. Power of Board and Chief Executive Officer to require copies of documents, etc., to be furnished.—Notwithstanding anything contained in any law for the time being in force, it shall be lawful for the Board or the Chief Executive Officer to require any person having the custody of any record, register, report or other document relating to a ¹[waqf] or any immovable property, which is ¹[waqf] property, to furnish subject to the payment of necessary costs, copies of, or extracts from, any such record, register, report or document and every person to whom such a requisition is made, shall furnish, as soon as may be practicable, to the Board or Chief Executive Officer copies or extracts from the required record, register, report or other document.

106. Powers of Central Government to constitute common Boards.—

(1) Where the Central Government is satisfied that by reasons of—

- (i) the smallness of the Muslim population in two or more States,
- (ii) the slender resources of the ¹[auqafs] in such States, and
- (iii) the disproportion between the number and income of the ¹[auqafs] and the Muslim population in such States,

it is expedient in the interests of the ¹[auqafs] in the States and the Muslim population of such States, to have, instead of separate Boards for each of

1. Substituted by Act 27 of 2013, S. 4, for "wakf" and "wakfs", respectively (w.e.f. 1-11-2013).

2. Inserted by Act 27 of 2013, S. 53 (w.e.f. 1-11-2013).

3. Inserted by Act 27 of 2013, S. 54 (w.e.f. 1-11-2013).

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND
ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

ACT No. 30 OF 2013

[26th September, 2013.]

An Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto.

BE it enacted by Parliament in the Sixty-fourth Year of the Republic of India as follows:—

CHAPTER I

PRELIMINARY

1. Short title, extent and commencement.—(1) This Act may be called the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

(2) It extends to the whole of India except the State of Jammu and Kashmir.

(3) It shall come into force on such date¹ as the Central Government may, by notification in the Official Gazette, appoint:

Provided that the Central Government shall appoint such date within three months from the date on which the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013 receives the assent of the President.

2. Application of Act.—(1) The provisions of this Act relating to land acquisition, compensation, rehabilitation and resettlement, shall apply, when the appropriate Government acquires land for its own use, hold and control, including for Public Sector Undertakings and for public purpose, and shall include the following purposes, namely:—

(a) for strategic purposes relating to naval, military, air force, and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or

(b) for infrastructure projects, which includes the following, namely:—

(i) all activities or items listed in the notification of the Government of India in the Department of Economic Affairs (Infrastructure Section) number 13/6/2009-INF, dated the 27th March, 2012, excluding private hospitals, private educational institutions and private hotels;

(ii) projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution set up under a statute;

(iii) project for industrial corridors or mining activities, national investment and

1. 1st January 2014, *vide* notification No. 3729 (E), dated 19th December, 2013, *see* Gazette of India, Extraordinary, Part II, sec. 3(ii).

manufacturing zones, as designated in the National Manufacturing Policy;

(iv) project for water harvesting and water conservation structures, sanitation;

(v) project for Government administered, Government aided educational and research schemes or institutions;

(vi) project for sports, health care, tourism, transportation or space programme;

(vii) any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament;

(c) project for project affected families;

(d) project for housing for such income groups, as may be specified from time to time by the appropriate Government;

(e) project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas;

(f) project for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

(2) The provisions of this Act relating to land acquisition, consent, compensation, rehabilitation and resettlement, shall also apply, when the appropriate Government acquires land for the following purposes, namely:—

(a) for public private partnership projects, where the ownership of the land continues to vest with the Government, for public purpose as defined in sub-section (1);

(b) for private companies for public purpose, as defined in sub-section (1):

Provided that in the case of acquisition for—

(i) private companies, the prior consent of at least eighty per cent, of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3; and

(ii) public private partnership projects, the prior consent of at least seventy per cent. of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3,

shall be obtained through a process as may be prescribed by the appropriate Government:

Provided further that the process of obtaining the consent shall be carried out along with the Social Impact Assessment study referred to in section 4:

Provided also that no land shall be transferred by way of acquisition, in the Scheduled Areas in contravention of any law (including any order or judgment of a court which has become final) relating to land transfer, prevailing in such Scheduled Areas.

(3) The provisions relating to rehabilitation and resettlement under this Act shall apply in the cases where,—

(a) a private company purchases land, equal to or more than such limits in rural areas or urban areas, as may be prescribed by the appropriate Government, through private negotiations with the owner of the land in accordance with the provisions of section 46;

(b) a private company requests the appropriate Government for acquisition of a part of an area so prescribed for a public purpose:

Provided that where a private company requests the appropriate Government for partial acquisition of land for public purpose, then, the rehabilitation and resettlement entitlements under the Second Schedule shall be applicable for the entire area which includes the land purchased by the private company and acquired by the Government for the project as a whole.