# COMPULSORY LAND ACQUISITION IN SINGAPORE

## I

## GENERAL BACKGROUND

Not infrequently political as well as legal philosophers would, where it is politically convenient, try to rationalize the State's arbitrary power in expropriating private rights in land for public purposes by having recourse to some ideological scales. Unfortunately, the fact that the concept of compulsory land acquisition is getting substantial recognition in countries having social orders that are opposed to each other would appear to have exposed the futility of their efforts. What is nearer to the truth is that compulsory land acquisition, like many other legal and sociological concepts espoused by political elites all over the world seeking a happy medium between the extremes of all-private and all-State ownership, is borne of practical necessity rather than any socialistic theory. That land acquisition is for public benefit does not necessarily mean it will create a wider diffusion of ownership. It would therefore appear more appropriate and safer if one stops at such abstract but convenient maxims like *salus populi est suprema lex* (that the welfare of the people or of the public is the paramount law) and *necessitas publica major est quam privata* (public necessity is greater than private).

About 140 years ago, when the East India Company was the overlord in the Colony of Singapore, the general land policy was dictated by a sheer desire to create more revenue by granting to the subjects land tenure in one form or another. It is not until the latter half of last century that the Colony felt the need to keep for itself the right to resume possession of land in certain chosen locality for essential public developments. This took the form of a covenant in most of the leases granted after 1854, empowering the Crown to resume possession of the land "for the making of roads or any other public works" in consideration of "such satisfaction or compensation as shall be fixed by two Arbitrators".

Social conditions in the early 20th century were very much different from those existing fifty years earlier. The rapid growth of population and the expansion of commercial activities necessitated a better system of administration. In order to meet the increasing demand for land for developmental activities, the Colonial Government enacted the Land Acquisition Ordinance in 1920 conferring upon the Governor a general power to acquire private land for public purposes. The principles underlying the Ordinance were drawn heavily from the Indian Land Acquisition Act of 1894 and remained the basis of the law of compulsory land acquisition in Singapore even to this date.

Amendments to the Ordinance were made from time to time. The Land Acquisition (Assessment of Compensation) Ordinance, 1946, was introduced providing special basis for assessment of compensation for

land acquisition under emergency powers during the war. Another amendment was made in 1955, providing for acquisition of land for comprehensive development as new town, and seeking a stabilisation of land prices by stipulating the 22nd day of April 1955 as the material date for assessing the market value of land acquired within the succeeding 5 years. Other amendments of a more permanent nature were incorporated into the principal Ordinance in its revised version.[1]

The defects and weaknesses inherent in the old law gradually came to the surface in the light of the challenging events that have so thoroughly reshaped Singapore in the last decade. The nation is now committed to the arduous if not impossible task of meeting the needs of a population that increases at an average rate of 4%. Ambitious and massive projects are embarked upon to create more opportunities of employment and to solve the housing problem upon the success thereof lies the very survival of the State. Times have changed and so must the laws that have become a retarding force. The Benthamite belief that law must must be a determined agent in the creation of new norms and effective social reforms is certainly relevant here. A Bill was introduced in 1964 but not passed until late 1966 owing to constitutional niceties and the careful scrutiny by the Select Committee. This new Act of 1966 repealed the old Ordinance and was brought into operation on 17th June, 1967. It forms the basis of this article on the law of compulsory land acquisition in Singapore.

## II

## THE SCOPE OF THE STATE'S ACQUIRING POWERS

The State's power to acquire private land is derived from the general authorisation conferred by section 5 of the Act. All that is required to set the acquisition proceedings in motion is the publication of a declaration stating that any particular land in any locality is needed

(a) for any public purpose; *or*

(b) by any person, corporation or statutory board, for any work or an undertaking which, in the opinion of the Minister, is of public benefit or of public utility or in the public interest; *or*

(c) for any residential, commercial, or industrial purposes. (s.5(1)).

It may be observed that section 5 is worded in very much the same way as the corresponding provisions in the Malaysian Land Acquisition Act, 1960, although clauses (a) and (b) have embodied in themselves the spirit of our pre-existing law.

*The Concept of Public Purpose*

The term "public purpose" is not defined under the Act, nor is any limitation made regarding what is "public benefit", "public utility" or "public interest". It may be presumed that these are matters left to

1. Laws of Singapore, 1955 (Cap. 248).

the absolute discretion of the Minister. Provision for school, highway, sewage works, public clinics, community centres, construction of large scale housing flats for the lower income groups and other Government projects of an utilitarian nature are all familiar instances justifiable on the grounds of public purpose or public utility. The elasticity of the concept is tellingly demonstrated when judicial decisions in India held that the provision of suitable housing accommodation for Government officers was also a public purpose, and that public purpose "includes any object which secures the good of the public by securing the efficiency of those servants of the Crown on whose service public good materially depend".[2] Consider the situation where the current user of the private land to be acquired is manifestly of a public nature. Supposing the Government intends to put up an office-building in the High Street area for the use of some essential departments. The only available site is a church-owned compound which has throughout the past years served more or less the purposes of a public park and come to be regarded as a show-piece in that busiest part of the city. In such a given situation, what will be the criteria in giving priority to these two competing purposes? The test it is submitted, could be very subjective.

It is unlikely that a court of law will be prepared to review an exercise of the ministerial discretion since it has been stipulated that the declaration shall be conclusive evidence that the land is needed for the purpose specified therein, i.e., "public purpose" or "public utility" or "public benefit" as the case may be (s. 5(3)). Under the Act, the Minister is not required to name in the declaration the specific purpose for which a particular land is to be taken. When the specific purpose is not disclosed, the question whether it constitutes a "public purpose" can never be subject to judicial review. However, in the light of experience under the old law, the Minister (in fact it is also the Cabinet in every case) will not approve a decision to acquire private land unless he is sufficiently convinced that

(a) the purpose contemplated is of a public necessity sufficiently strong to justify overriding the individual's or a smaller section of the community's right in the enjoyment of his or their property; *and*

(b) the particular property is the only one, or at any rate, the one which can most fairly be taken for the purpose.

*Acquisition of Land for Private Developers*

Under the old Ordinance before any land could be acquired for any private company, an enquiry should be held to satisfy the Government that the land was needed for the construction of some work which was likely to prove useful to the public. The company should also come into an agreement with the Government on the terms on which the land should be held by the company and the terms on which the public should be entitled to use the work. As far as it is known, this power has never been invoked in post-war years in favour of any private company.

2. See *University of Bombay* v. *Municipal Commissioner of the City of Bombay*, I.L.R. 16 Bom. 217.

This might be the result of the out-moded thinking that public development must always be the sole responsibility of the Government. Another reason could well be the severity of the statutory requirement itself. The procedure is very much simplified now and there is no longer any requirement as to holding of an enquiry and entering into any agreement with the Government. The declared object of this modification is "to ensure that private development considered beneficial to the community is not held up by obstructive owners of small bits of land which are incapable of development on their own".[3] It is believed that this is intended to pave the way for more participation by the private sector in the general development of the island. Nevertheless, as far as acquisition under clause (b) is concerned, it would appear that the Minister will have to be satisfied in one way or another that the purpose for which a particular land is needed by a private corporation is of public benefit or public utility.

Clause (c), though taken from the Malaysian Act, is considered radical and has provoked bitter criticisms. It is thought that the clause as it stands may lead to abuse and private property may be acquired by the Government for some favoured individuals in the absence of any public benefit or interest.[4] What is the object of this new proviso? The Minister for Law said, "What we have in mind is the acquisition of land for implementation of urban renewal plans which may at some future date envisage the acquisition of large pieces of encumbered and occupied lands which, though ready for development, cannot be developed by the owners themselves because of various legal and occupational hindrances. The Government may acquire such land and subsequently clear them after which the Government may alienate them to private individuals for development in accordance with an overall urban renewal plan. This will only be possible if we have a clause like this. Again, I am thinking of large scale industrialisation in the coming years which may also envisage similar forms of acquisition and subsequent alienation".[5]

It would indeed be difficult not to agree with the suggestion[6] that all the circumstances said to have necessitated clause (c) could well be dealt with under clauses (a) and (b). As a matter of fact, as early as 1959, the Government has already started acquiring land under the old Ordinance for the purpose of urban renewal. Subsequently private developers were invited to participate in the development of some designated areas which have already been cleared and reparcelled.[7] Again, the old Ordinance was invoked to acquire land for the Jurong Industrial Project and it would appear that nothing could prevent the Government from alienating the land in parcels for development by industrialists in accordance with an overall plan. However, it is believed that the insistance on this additional clause might be attributed to the fear on the part of the Government that if it acquires and clears land under clauses (a) and (b) and then alienates it to private developers, even

3. At p. C4 of the Report of the Select Committee on the Land Acquisition Bill, Parl. 9 of 1966, hereinafter referred to as Select Committee's Report.
4. T.T.B Koh, *The Law of Compulsory Land Acquisition In Singapore,* (1967) 2 M.L.J. x. Hereinafter referred to as T.T.B. Koh's article.
5. At p. C31 of the Select Committee's Report.
6. *Ibid;* also T.T.B. Koh's article at p. xi.
7. Minister for Law, Press Statement on 15th June, 1967.

though such subsequent alienations are conditional upon the private developers undertaking to develop the land within a certain period in accordance with an overall plan, it might well be argued that the land has not been acquired for public purposes. Whether this fear is genuine or not is of course a matter of opinion. It is also believed that, as a matter of policy, before the Minister is prepared to exercise his power in favour of a private developer, he may insist upon being satisfied first that the applicant has exhausted all the avenues open to him. It is most probable that rent-controlled property owners, for instance, may come forward and press the Government to invoke the acquiring power on their behalf so as to avoid dealing with their tenants. The fact that in spite of this apparent extention of the acquiring power the Government is still considering the establishment "of a tribunal to fix the amount of compensation to be paid by a landlord to a tenant when the landlord wishes to recover possession of his land for redevelopment"[8] might very well imply that land acquisition under the Act could only be the last resort.

There is no denial that the law as it stands may be open to abuse if given an unscrupulous Government. It is submitted that the position will not be rendered any more satisfactory even if clause (c) was completely deleted. As has been pointed out earlier, the concept of "public purpose" is so flexible that there is always ample room for manoeuvers by an irresponsible administration.

*Preliminary Investigation before Publication of the Declaration*

Section 3 of the Act is a carry-over of the old law authorising the Government to carry out preliminary investigation on any land to ascertain the suitability of the land for a specific purpose. A notification stating that land in a certain locality is "likely to be needed" for any purpose specified in section 5 of the Act may be published in the Gazette and thereupon it shall become lawful for any officer authorised by the Minister to enter upon such land to do any acts necessary to ascertain whether the land is suitable for that purpose. The immediate effects of this notification is to bring the land under the provisions of the Land Encroachment Ordinance[9] and warrants will be issuable by Court to remove any unlawful occupants found on the land after the notification. It may be noted that there is no limitation of time within which the Minister is required to make a decision as to whether he will proceed with the acquisition. It may be feared that undue hardship would be caused to the owner should the Government remain inert after the publication of the notification either through administrative inefficiency or, in the event of a rapid rise in the land market, a desire to freeze the market value of the land which it may want to acquire in a future date when funds are available. The safeguard is to be found in the provision of section 33(1) (a) that, in determining the market value of the land, the date of the publicaton of the notification is not to be taken as a material date unless such notification is within six months followed up with a declaration under section 5.

It may be observed that in making an acquisition the wishes of the owner of the land are irrelevant under the Act. There is no provision

8. See note 7.
9. S. 20 of State Land Encroachment Ordinance: (Cap. 245).

for any objection on the part of the owner to the acquisition itself to be made. Section 10 of the Act confines the owner's objections to measurement of the area and the claim for compensation. The Government is not bound to carry out preliminary investigation under section 3 before making a decision to acquire, there being no requirement that a declaration under section 5 should be preceded by a notification under section 3. The old Ordinance[10] from which most of the provisions inclusive of section 3 of the new Act are taken, owes its origin to the Indian Land Acquisition Act, 1894. The Indian Act has since been modified to the effect that no land should be declared to be needed for public purpose unless time has been allowed after the publication of a notification for persons interested in the land to put in objections and for such objections to be considered by the Government.[11] The objections likely to be raised are that the purpose for which the land is to be acquired is not a *bona fide* public purpose or that the particular land notified is not the best adapted to the purpose intended or that its area is greater than that actually required for the purpose. The position in England is not dissimilar. Where land is to be acquired under general empowering Acts, there is avenue for objections to be heard in public enquiry conducted much as proceedings in an open Court.

Theoretically, much could be said for adopting a similar procedure in our law, the most important being the principle of natural justice that one must be heard before something is compulsorily taken from him. However, a closer look at the elaborate procedure in the Indian and the English law will reveal that in the final analysis, the decision to acquire land is nonetheless a matter of ministerial discretion. In both instances, it is the Minister who considers the report of the enquiry and makes the decision which is not subject to appeal. Sections 3 and 5 of our new Act do not in fact preclude the Minister from hearing objections in one manner or another if he so desires. The fact is that ours is such a compact society that it is by no means difficult for the Government to collect the information necessary for the making of a decision on land acquisition. In practice, the power to carry out preliminary investigation was seldom invoked when it was part of the old Ordinance. Presumably it is to be invoked only when gazetting under section 5 is likely to be delayed for one reason or another and it is desirable in the meantime to bring the land under the State Land Encroachment Ordinance so as to keep the land free from possible squatting.

*What can be acquired as land*

It is to be noted that what has to be acquired in every case under section 5 is the aggregate of all rights in the land and it is not open to the Government to acquire merely some subsidiary rights such as that of a tenant. Section 5 speaks of acquisition of "land" and 'land' is defined under the Act as including "benefits to arise out of land and things attached to the earth or permanently fastened to anything attached to the earth" (s. 2). Again, when possession is taken by the Collector, the land shall be vested in the State "free from encumbrances" (s. 18).

10. Laws of Singapore, 1955 (Cap. 248).

11. Land Acquisition Act, 1923 (No. 38 of 1923).

It may be of interest to consider here whether the Government may acquire an easement without acquiring the land, when the easement might be sufficient for carrying out the specified purpose. In *Pinchin* v. *London and Blackwell*[12] it has been observed that "The legislature did not mean, that if I have a field free from a right of way, I shall be bound upon any compensation to substitute for that a field subject to a right of way; if it is taken from me, it must be taken in solido." This interpretation of the English Land Clauses Act. 1854, was quoted with approval by Lord Watten in *Great Western Railway* v. *Swindon*[13] when His Lordship held that the content of the general Act forbade the application of section 18 to lands which were not corporeal hereditaments. Power to acquire incorporeal hereditaments must be found in a special Act.[14] Since our Act, like the English Land Clauses Act, 1854, speaks of acquisition of land generally without any provision as to acquisition of an easement, it would appear that it is not open to the Government to acquire under the Act an easement without acquiring the land at the same time.

If it is only intended to occupy temporarily a particular piece of land for some public purpose, the appropriate procedure to be followed is that spelt out under Part VI of the Act. The Government may occupy any land for a maximum period of three years (s. 42 (1)). Compensation must be paid not only for the occupation but also for any damage that may be done to land. The owner has a right of appeal on the quantum of compensation to the Appeals Board (s. 42(3)). The Government may be compelled to acquire the land if the land has become permanently unfit for the purpose for which it was used immediately before the occupation *and* if the person interested shall so require (s. 43(3)).

*Power to Acquire Additional Land*

In accordance with section 50 of the Act, the Government may at any time before the Collector has made his award order the acquisition of the whole or any additional portion of the land of which the land first sought to be acquired forms a part. No fresh declaration shall be necessary, though an order must be served upon the person interested. This additional power is comparable to the American concept of "excess condemnation" or "marginal land acquisition". The primary object is to avoid paying severance damage which may be so heavy as to make it more economical to acquire the entirety of the land. It is also intended to prevent the creation of small, uneconomic remnants of private land and to provide land for future development at reasonable costs.

*Government not bound to complete acquisition*

With the exception of acquisition of land which has been temporarily occupied by the Government by virtue of the provisions under Part VI, the Government is not bound to complete acquisition proceedings unless possession of the land has been taken (s. 48(1)). Upon withdrawal of the acquisition proceedings, the Government must compensate the person interested for any damage done to his land and all such costs as shall have been reasonably incurred by him by reason of the acquisition pro-

12. (1854) I. K. &J. 34.
13. (1884) 9 App. Cas. 787.
14. *Hill* v. *Midland Ry.* (1882) 21 Ch. D. 143.

ceeding, together with any damage he may have sustained by reason of such proceedings (s.48(2)). This provision is obviously intended to enable the Government to withdraw from the acquisition proceedings in some exceptional circumstances, e.g. where the public project for which the land is being acquired may have to be abandoned for some unforseeable reasons; or, where a more suitable site can be obtained on more reasonable terms. However, in view of the fact that the interests of the owner may be greatly jeopardised and also that public money may be wasted by reason of the payment of compensation the Government will always have to think twice before deciding to withdraw. It is understood that very rarely has this provision been invoked in the past years. In a recent case the proceedings were dropped because part of the land gazetted for acquisition happened to come under the building complex of a manufacturing centre which had obtained approval for development.[15]

## III

## THE ACQUISITION PROCEDURE BEFORE THE COLLECTOR

*The Collector as an Acquiring Officer*

It would appear from the Act that for all practical purposes the Collector is the proper acquiring officer. It may therefore be useful to consider his position first. The Collector can act only when directed by the Minister under section 6. In the past the Minister's power in this connection was delegated to the Commissioner of Lands.[16] The Collector as defined by the Act is "any officer appointed by the President to be a Collector of Land Revenue or Deputy Collector of Land Revenue" (s. 2). There is no requirement that he must possess adequate training and experience in valuation.

The Collector is primarily concerned with the holding of enquries to look into claims made by persons interested and to make awards for compensation (s. 10). Although he is given some powers of a quasi-judicial nature under the Act, he is by no means a judicial officer. Although he has powers as to enforcement of attendance of witnesses and production of documents for the purposes of the enquiry (s. 14), there is no requirement that the proceedings before him should be governed by any code of civil procedure. He has no power to administer oaths either. It follows that no one can be held liable for perjury by tendering false information in the course of the enquiry. The only deterrent against this is the Collector's practice of referring to the court or the Appeals Board everything that has been said in the enquiry in the event of a reference or an appeal. Although the Collector must value the land in accordance with the principles of compensation stipulated under the Act (s. 15), he is in fact not required to base his valuation upon the materials produced before him as evidence. As such, he is at liberty to rely upon information which is not disclosed in the enquiry.

*The Nature of the Collector's Award*

The position of the Collector being such, the award made by him can be anything but a final order as to the true value of the land acquired.

15. The proposed acquisition of land at Henderson Road and Tiong Bahru. *Vide* G.N. 3518, Gazette No. 100 of 1st December, 1967.

16. *Vide* G.N. 532, Gazette No. 26 of 25th March, 1960.

Nor is the award per se evidence of the market value without considering all the evidence on which it was based.[17] In this connection their Lordships of the Judicial Committee observed that "the proceedings resulting in the award are administrative and not judicial; that the award in which the enquiry results is merely a decision (binding only on the Collector) as to the sum that shall be tendered to the owner of the land; and that if a judicial ascertainment of value is desired by the owner he can obtain it by requiring the matter to be referred by the Collector to the Court".[18]

The award is to be conclusive evidence of the area and value of the land only if accepted by the owner (s. 11(1)). It is rather doubtful if any contractual relationship will be created thereby. Specific performance is out of question in view of the Government's power to withdraw the acquisition before taking possession and at any rate it is not available in proceedings against the Government.[19]

An instance was quoted to the Select Committee where the Collector made an ex gratia payment after the award has been made.[20] Recently, an appeal to the Appeals Board was settled "out of Board" by way of an ex gratia payment to the appellants. In announcing the settlement, the Commisioner of Appeals, Buttrose J., remarked that "I accept that this settlement is made purely as an ex gratia matter, no question of principle is involved in the making of it, and is made entirely and independently of the merits or demerits of the particular acquisition".[21] It is not known what is or should be the legal standing for this ex gratia payment, the Act making no provision for it. Again is the Collector competent to reopen his award which has been filed by making an ex gratia payment or a supplementary award? It would appear that so long as it does not prejudice the right of any person interested the regularity of an ex gratia payment or a supplementary award will not be called in question.

*Notices under section 8*

The first thing a Collectior is required to do after being directed to act is to serve what may be conveniently called "public" and "specific" notices under section 8. The "public notice" is to be served at some conspicuous places on the land notifying the intended acquisition and the right to make claims. The "specific notices" are to be served on the persons known or believed to be interested in the land. These notices are important in view of the fact that an acquisition under the Act covers all the rights or interests in the land to be acquired. Time is therefore needed for the Collector to trace all the reports or information available to him in order to ascertain the persons interested. This may account for the absence of any time limit for such notices to be served. Under section 9 the Collector is given power to require from any person interested the names of any other persons that may possess any interest in the land.

17. *In the matter of Karim Tar Mohamed* I.L.R. 33 Bom. 325.

18. *Ezra v Secretary of State* 32 Cal. 605 (P.C.).

19. Government Proceedings Ordinance, 1956, s. 27(1).

20. At p. C12 of the Select Committee's Report.

21. *Indo-Australian Trading Co.* v. *Collector of Land Revenue* A.B. No. 5 of 1967.

What would then be the position of a person interested who is not served with a "specific notice". Most probably if he presents himself to the Collector before the making of the award, the Collector will have to serve a notice on him and take into account his claims. His position would be more complicated if his knowledge of the acquisition came after the award has been made. If his claim does not prejudice the rights of other claimants, the Collector could rectify the position by making a supplementary award. Failing this, there is no reason why a separate suit could not be maintained against the Collector. However, the suit, if maintainable, can only be for the payment of the compensation to which the claimant is entitled and will definitely not result in the award being set aside or the proceedings declared null and void (s. 53).

Section 8 requires a minimum period of 21 days to lapse between the service of notices and the holding of enquiry. However, the Act is silent as to the maximum period within which the Collector must conduct his enquiry. By analogy, there is no time limit within which a person interested must put forward his claim. Can a claim made after the enquiry has been completed be entertained? Judicial decision in India would seem to consider it a duty of the Collector to admit claims or supplementary claims made at any time before the making of the award and claims so made are proper.[22] As far as it is known, the Collector has always adopted a liberal and practical approach to this question of time for making claims, his primary object being to examine the claims as far as is possible and to slash down litigations.

*The Rule as to Limit of Compensation*

It may be convenient at this point to consider the provisions of section 35. It stipulates that if the owner has made a claim pursuant to the notice under section 8 the amount awarded by the Appeals Board shall not exceed the amount so claimed or be less than the amount awarded by the Collector. If the owner has not made the claim without sufficient reasons to be allowed by the Board, then the amount awarded by the Board shall not exceed the amount awarded by the Collector. This is another rule carried over from the repealed Ordinance. Similar provisions exist in the Indian as well as the Malayan law, except that in the latter the Court may award less than the Collector's award even if a claim has been made.[23] It is believed that this provision was originally intended to put the claimants on the alert and to deter them from lying idle and then putting forth artificially inflated claims after the award has been made. The claimants would thus be held to their own bargains and prevented from increasing their claims at every stage from the Collector to the Board. It is also thought that this would have the effect of enabling the Collector to make a reasonable award with the view to being accepted by the owners and minimising litigation.

To what extent, if at all, has the rule achieved the intended objectives since it was introduced by our pre-existing ordinance? In fact it has been pointed out as early as 1955 that "if the dispossessed owner has sufficient acumen, he may gamble upon the award being increased by the

22. See *Secretary of State* v. *Sohan Lal*, 44 Ind Cas. 883.

23. Rule 4 in the first schedule of the Malayan Land Acquisition Act, 1960.

Court and if he does not base his claim upon a too outrageously high figure he runs apparently little risk of having to meet the cost of the claim".[24] It is interesting to note that most of the references under the old Ordinance have in the past resulted in awards lying somewhere between the Collector's awards and the owner's claims. This means the owners will always get something more than what has been awarded by the Collector. The logical consequence is that the Collector will be induced to make a lower award while the owners will ask for more. The combined effect of sections 10 and 35 is thus nothing more than an open invitation to litigation.

The rule would appear all the more undesirable as it would have the effect of penalising the poor and the ignorant who are most likely to fail to respond to such notices.[25] If an owner 'sleeps upon his rights' without even making an appearance at the enquiry, his appeal against the award will be as good as lost. So will be the fate of those humble small-holders who appear before the Collector and say, "I leave it to the Government to give a fair price". The big owners having all the experienced valuers and lawyers at their service therefore will stand to gain while the poor and the ignorant will have to suffer.

*Reference to Court by the Collector*

At any time before making his award the Collector may refer for determination by the Court of such matters as apportionment and construction of instruments (s. 10 (2)). The same provision existed under the old Ordinance except that now the Collector may also refer the question as to cost of enquiry. It is not clear whether this implies that costs will be chargeable for the enquiry under section 10. It is believed that this provision, like clause (c) of section 5(1), is another transplantation from the Malaysian Act. In the case of the Malaysian Act, there is a clear-cut provision for costs to be charged for the Collector's enquiry (s. 14 (5)). Nevertheless, the propriety of charging cost for the Collector's enquiry might very well be questioned since the enquiry is nothing more than part of the administrative function of a Government officer. The suggestion that any party to the proceedings should have the same right to make the reference[26] does not seem to advocate the needful. It is believed that an extension of the right to the parties will only result in the acquisition proceedings being delayed through frivolous applications. In any event, the Collector's award is in no way an adjudication of the claimant's rights *inter se.* The apportionment he makes is based upon the best of his judgment on the materials produced before him. If the disputants are not satisfied with his judgment, and the Collector does not deem it necessary to make a reference under section 10(2), they can always have their respective rights determined by appealing to the Appeals Board in accordance with sections 23 and 38.

*The Question of Time Limits*

The absence of time limits for the various stages leading to the

24. J.F.N. Murray, *A Report on Control of Land Prices, Valuation and Compulsory Acquisition of Land* at p. 43.

25. T.T.B. Koh's article, at p. xviii.

26. At p. B34 of the Select Committee's Report.

making of the award has been much complained of.[27] Suggestions were made to the Select Committee to lay down in the Act certain time limits compelling the Collector to act as soon as possible.[28] It has to be conceded that the omission might well turn out to be a legal sanction for a bureaucratic executive to indulge in delaying tactics with total disregard for the interests of the land owners. Nevertheless, it is felt that the very nature of the procedure before the Collector is such that it can hardly admit of rigid limitations as to time without defeating the very purposes of the proceedings. As it has been noted earlier notices under section 8 are so important that ample time must be allowed for the Collector to trace all the persons interested. It is also in the interest of the persons interested that they should be given time to formulate their claims with the aid of valuers. Indeed, it should always be the duty of the Collector as well as the desire of the owner to try to reach an award that is mutually acceptable. Enquiries therefore tend to be protracted and time-consuming. At times the Collector will have to adjourn the enquiry either at the request of the owner or for himself to refer fresh information to the Government valuer for advice. The proceedings can become very tedious when a single declaration involves a great number of lots coming under different ownership. The Collector will be expected to conduct more enquiries and make more than one award. It is therefore believed that imposition of time limits in proceedings of this kind can only bring about harsh awards to be followed by litigation.

As a matter of fact, complaints about possible delays do not come from the landowners alone. A report in 1955 has this to say: "the procedure under the Land Acquisition Ordinance is unnecessarily complicated and leads not only to delays and frustrations but also as a result, in many instances to amounts of compensation grossly in excess of the sums they may justly be entitled to receive being paid to dispossessed owners of land".[29] Regrettably the old procedure as regards the making of awards was re-enacted apparently without any effort to simplify or streamline it. It may be observed that as the law stands now a landowner may, if he chooses to, delay proceedings in various ways. One of this would be to insist upon section 7 being complied with, i.e., to require the Collector to mark out the land and to cause survey and plan to be made. In order to save time the Collector always gives the scaled area only, leaving survey to be done after the acquisition proceeding has been completed. On the other hand, if he is guilty of unjustifiable delay amounting to a refusal to make the award, the prerogative order of mandamus would lie against him because "he is acting under a statutory power which imposes upon him a duty to the public".[30]

*Taking Possession*

As soon as an award has been made, the Collector may take possession of the land by posting thereupon an appropriate notice (s. 16(1)).

27. T.T.B. Koh's article, at p. xii.
28. At p. B27 of the Select Committee's Report.
29. See note 20.
30. *Bukit Sembawang Rubber Co., Ltd.* v. *Collector of Land Revenue,* (1961) 27 M.L.J. 269.

Before taking possession he must make payment of the compensation to the persons interested or deposit it with the High Court in case of a dispute as to apportionment or any other contingencies (s. 40(1)). Failing this he will have to pay interest at the rate of 6% per annum from the time of taking possession until the amount of compensation has been paid or deposited (s. 41).

In cases of urgency, the Collector with the prior approval of the Minister may take possession of land on the expiration of seven days from service of notices under section 8 (s. 17(1)). The Collector may also be directed to take possession of land before the publication of a declaration, provided that such declaration is published not later than seven days after he has taken possession. As far as it is known, instances where this emergency power was resorted to were rare. There must certainly exist some overwhelming public necessity of an urgent nature to warrant this deviation from the normal procedure. An instance where this provision was invoked was the acquisition of the Bukit Ho Swee fire site a few years back. It was thought desirable to take immediate possession because of the need for speedy clearance.

## IV

## PRINCIPLES OF COMPENSATION

### *Persons entitled to Compensation*

The Act provides in general terms for compensation to be made to all persons who are known, or believed, to be interested in the land acquired. Section 2 defines "persons interested" as including "every person claiming an interest in compensation to be made on account of the acquisition of land under this Act, but does not include a tenant by the month or at will". Literally, it would thus appear to include any person claiming an interest in the compensation to be made so long as he is not a tenant by the month or at will, whether the claim be valid or not. The Collector's duty under the Act is to assess and offer compensation for the land as a whole and then distribute the amount so assessed among the various claimants. In case of disputes as to the interest of the various claimants, he will have to refer the point in dispute for determination by the Court or leave it to the claimants to appeal to the Appeals Board.

The only persons whose claims can be ignored by the Collector are persons who are tenants by the month or at will. It is understood that the Collector's practice has been to exclude any claims made by a tenant not holding a lease-hold interest irrespective of whether or not he enjoys statutory protection under the Control of Rent Ordinance.[31] It was thought that the words "tenant by the month" must be given their plain connotation and so construed, they include a monthly tenant of rent-controlled premises. The fact that the monthly tenant of rent-controlled premises cannot be deprived of possession of his premises except on the grounds specified in the Rent Control Ordinance does not in any way make him any less a monthly tenant. Being trespassers upon

31. Laws of Singapore, 1955 (Cap. 242).

the land, the squatters are not in any better position than the rent-controlled tenants by the month. However, the Collector has adopted the practice of making small amount of ex-gratia payments to them as removal or disturbance allowances.

*The Concept of Market Value*

The main principles of compensation applicable in Singapore are spelt out in a condensed form under sections 33 and 34 of the new Act. The concept of market value remains as in the past the basis for the measurement of compensation. It may also be noted that the same concept is widely adopted in India, Australia, Malaysia and some other countries. About 50 years ago, in the absence of general legislation providing for the law of compensation, judicial decisions in England postulated and upheld the principle that the value of the land acquired was to be taken as its value to the owner. However, later legislation changed this by adopting market value as a measure of compensation.[32]

When assessing the amount of compensation, the Appeals Board as well as the Collector are required to take into consideration the market value of the land at the date of the publication of the Declaration under section 5. Some consider it unfair to the landowner to have picked the date of the publication of the Declaration as the material date especially when proceedings are protracted and land value escalating rapidly.[33] The sentiment of an owner placed in such position is no doubt real and understandable. But his sense of gratitude for the rule can be as real and legitimate if the land market happens to operate in an opposite direction.

What is market value? It is left undefined as is also the case in places where the law makes "market value" the basis for the measurement of compensation. At least in India it was thought that the matter should be left for the decision primarily of the Collector and ultimately of the Court.[34] It would however appear proper to translate the concept into the rule of "willing seller and willing buyer". As approved by judicial decisions in America, it means "the price which it will bring when it is offered for sale by one who desires, but is not obliged to sell, and is bought by one who is under no necessity of having it."[35] A "willing seller" does not mean a person willing to sell without reserve for any price that he can obtain, but one who is willing to sell making the most, in the circumstances, of his property.[35a] A willing or potential purchaser is a man who proposes to tie up a certain amount of capital in the land and the price he will be prepared to pay at a given time will be influenced largely by the rule of supply and demand.[35b] In simple terms, the elements of sentiment, urgent need or compulsion should not come into play. It is therefore essential that in arriving at the true

32. S. 2(2) of the Acquisition of Land (Compensation) Act, 1919.

33. T.T.B. Koh's article, at p. xv.

34. A. Ghosh, *Laws of Compulsory Acquisition and Compensation* (5th ed.), p. 218.

35. Lewis on *Eminent Domain* (2nd ed.), s. 478.

35a. Gripps, *Compulsory Acquisition of Land,* (llth ed.), p. 887.

35b. David M. Lawrance, W. H. Rees and W. Britton, *Modern Methods of Valuation of Land, Houses arid Buildings,* (5th ed.), p. 2.

market value of the land, the degree of urgency which has to part with the land should be disregarded, (s. 34 (a) & (b)).

For the purposes of arriving at the market value, the appraisal experts or the courts will always look for evidence of *bona fide* transactions in the land acquired at a reasonable date. In a recent appeal to the Appeals Board, Choor Singh J. observed that "in ascertaining the market value of a piece of land at a particular date the first matter to be considered is whether there is evidence of previous sales of the same property in the open market within a reasonable time".[36] However, the question likely to arise is the weight to be given to such evidence. It would appear to be well-established that there is no reason why the amount of compensation cannot be less or more than the price previously paid by the owner, so long as it truly reflects the market value at the material date. Some judicial decisions seemed to have thought otherwise. It was once held that "it is never a correct procedure to compensate persons whose lands have been compulsorily acquired, by offering them substantially less than what they have paid for the land .... The applicant (landowner) may have paid more than what was worth to a cautious purchaser but, even so, the principle remains the same .... Different considerations might apply in any case it could be shown that a purchaser speculated in the purchase of the land on the chance that it would be acquired by the Government".[37] In the absence of evidence of previous sales of the subject land, one must turn to the prices at which lands in the vicinity have been sold, making all due allowance for differences in the conditions of the land. More refined methods will have to be resorted to when evidence in the first two instances is not available.

*Factors Qualifying the Concept of Market Value*

(1) *The 'Seven-Year Rule'*

The new enactment introduces important factors qualifying the rule of market value. The most important of this is what may be called the "seven-year rule". Any increment of value in the land acquired by reason of public developments in the neighbourhood within seven years preceding the date of the Declaration is to be ignored (s.33(2) (c)). The principle underlying this rule is that no one should stand to benefit from a rise in the land market through no efforts of his own. The inequity will become more evident and unbearable when the gain is to be at the expense of the public coffer. Obviously the rule is resultant from the State's bitter experience in having had to pay higher costs for acquisition in consequence of its earlier acquisitions and development of the neighbouring lands. The development in the Jurong industrial area and the consequential rise in prices in that area could be the most glaring example calling for an answer to the problem of betterment.

Critics of the new legislation do not seem to dispute the soundness and the equitable basis of the rule. The criticism is whether the seven-year rule as it stands now is feasible and whether it will achieve the

36. *Nasir Mallal* v. *Collector of Land Revenue,* A.B. 4 of 1967.

37. *Er Boon Yan* v. *The Collector of Land Revenue, Port Dickson,* (1955) 21 M.L.J. 133.

objectives desired. It has been suggested that since land prices could be changed by a combination of causes, it would be difficult to ascertain the extent to which the increase is attributable to betterment in the neighbouring lands.[38] Another difficulty or ambiguity in the rule is the time when the rule begins to run.[39] These are no doubt difficult problems posed by the rule. It is however not impossible that in time to come, valuation experts and the courts may agree upon some criteria qualifying the working of the rule. It is not unlikely that the rule is intended to be flexible so as to give room for special conditions when its rigid adherence is likely to produce discriminatory effects. It is submitted that the complications in the rule are over-emphasized by the misconception that the measurement of market value is a matter of mathematical or scientific precision. Like the development charge, the rule is only a partial treatment of the difficult problem of betterment in the absence of comprehensive legislation.

(2) *Taxed Value as the Upper-limit of Market Value*

Another qualifying factor is where, within two years preceding the date of the Declaration the value of the land has been stated and accepted for the purposes of assessing any tax or duty payable thereon, the market value of such land at the date of such statement shall be deemed not to exceed the value contained therein (s. 33(2) (d)). Presumably, the rule is intended as a deterrent against evasion of tax or duty by property owners. It would produce the effect of a supplementary device aimed at securing revenue for the Government. It may be noted that when the Land Compensation Act, 1911, reversed the basis of compensation in England by embodying the concept of market value, a special proviso was inserted stating that "the arbitrator shall be entitled to consider all returns and assessments of capital value for taxation made or acquiesced in by the claimants". In actual fact, it has been a common practice for the local valuers to take taxed value into consideration when assessing the market value of the land acquired at a certain date. The new rule goes a step further by stipulating that the market value at the date when the taxed value is stated should not exceed such taxed value. An upper-limit of the market value of land at a certain day within two years preceding the Declaration is therefore fixed. As to the suggestion that an innocent buyer within that two years may be discriminated against if the taxed value is understated by the previous owner,[40] it is arguable if the misgivings of such 'innocent buyer' deserve consideration. The fact is that low assessment for purposes of taxation is always a material consideration inducing a purchaser to take the property. A prudent purchaser can indeed be reasonably expected to understand the implications of an understated taxed value, and if he is not honest enough to get it rectified upon his purchasing the property, he can only have himself to blame when the property comes to be acquired later.

(3) *Planning Restrictions*

Another controversial element brought about by the new Act is the requirement to take into consideration the planning restrictions on the

38. At p. B19 of the Select Committee's Report.

39. T.T.B. Koh's article, at p. xiv.

40. *Ibid.*

land acquired (s. 33(2) (e)). It is a well-established principle that the potential value of the land acquired must be taken into account when measuring the market value of land. The presumption must always be that the man makes the best use of his property. All future possibilities on which a prudent purchaser would calculate and a vendor would place his expectations must have a bearing on the market value. The principle has been fully accepted in England. "Tribunal assessing compensation may take into account not only the present purpose of which the land is applied but also all other beneficial purposes to which in the course of events it might within a reasonable period be applied, just as an owner might have if he was bargaining with the purchaser in the market. The principle is applicable whether the owner has acquired the land in order to use it for some particular purpose or whether he has no such present intention".[41] The same principle is also recognised in India for purposes of assessment of compensation under the Indian Land Acquisition Act, 1894. It was held that "the potential value .... are the elements that necessarily come in, when applying 'the current price of similar land in the neighbourhood' that is, what other people had paid for similar land when thrown in the market. The buyer would look ahead and calculate on the reasonable possibilities of the land to yield a better income by proper utilization according to its suitability or special adaptability according to prevailing demands, or by suitable development".[42] It has also been said in a Malayan case that "the Collector is wrong in valuing land solely upon the value of the rubber on the land and not upon the land itself and he should have taken into account all the potentialities of the land for other purposes".[43]

What will be the impact of this new rule on the concept of potential value? Fear has been expressed that the rule might be used to exclude the developmental potential of the land based upon the prospects of a change in the restrictions of the Planning Ordinance applicable to the land.[44] It remains to be seen whether such an interpretation can stand up under the scrutiny of either the valuation experts or judicial review. It is a well-known fact that planning restriction has all along been an important consideration in assessing the value of land which has been compulsorily acquired. This does not necessarily mean that consideration is not given to other possibilities of the user of the land. In a recent appeal to the Appeals Board involving an acquisition taking place under the old Ordinance, in increasing the amount of compensation for a plot of land zoned for agricultural purpose the Commissioner, Choor Singh J. said that the Government valuer "has valued the land as purely agricultural land and has failed to consider its potential use for holiday bungalows".[45] Although the law applicable in this particular case is the old Ordinance it is however believed that there is no difficulty for the Appeals Board to interpret the new rule, if it chooses to, in such a way as not to disregard altogether the other potential value of the land. It is submitted that the doctrine of potential value must be accepted with

41. Halsbury, *Laws of England,* (2nd Ed.), Vol. 6 p. 45.

42. *Prem Chand Burral* v. *Collector of Calcutta* I.L.R. 2 Cal. 103.

43. *Er Boon Yan* v. *Collector of Land Revenue, Port Dickson,* (1955) 21 M.L.J. 133.

44. T.T.B. Koh's article, at p. xiv.

45. *Nasir Mallal* v. *Collector of Land Revenue,* A.B. 4 of 1967.

certain limitations. Experience has shown that this doctrine always leads to fantastic claims founded on pure imagination or possibilities which are so remote and speculative. It is not unlikely that the rule is intended as a limitation to the wider principle of potential value, though not necessarily a denial of the very concept itself.

(4) *Value increased by private development and illegal user of land*

The other two qualifying factors are self-evident. One of these is that the increase in the value of the land to be acquired consequent upon some improvement made within 2 years preceding the declaration shall be disregarded unless two conditions are satisfied (s.33(2)(a)). First, the improvement must have been made by the owner or his predecessor in interest. Secondly, the improvement must have been made *bona fide* and not in contemplation of the acquisition.

Increase in value due to the user of the land in a manner contrary to law or detrimental to public health is also to be disregarded (s. 33(2) (b)). The simple example will be where the land acquired is zoned for agricultural purpose, but the owner has erected thereupon some permanent structures without any planning approval. The value of these structures will not be taken into account when assessing compensation for the land.

*Matters relevant to the Assessment of Compensation*

(1) *Increase in the value of other land to be set-off*

The Act also lays down some matters which are to be taken into account when assessing the amount of compensation. One of these is "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" (s. 33(1) (b)). This is another matter related to the difficult problem of betterment and makes our position very much like that in the United States where "some devices have fused the betterment and compensation activities into a single approach".[46] The principle of "off-set of benefits" is generally accepted in the United States. The Indian Act of 1894, however, expressly provides for this matter to be ignored[47] so as to prevent, presumably, owners' claims for injurious affection provided for by the Act from being set-off on account of a prospective increase in the value of *other land.* In the early law of compensation in England, it was thought that "such increased value could not be set-off against the damage for severance or injurious affections to which the claimant was entitled".[48] The Land Compensation Act, 1961, embodies the principle by providing generally for the set-off of betterment of land retained by the owner part of whose land has been acquired.[49]

Needless to say, the rule of prospective increase presupposes a unity of title in the land acquired and the *other land* whose value is increased. It would appear from the wording of our provision that the two pieces of land need not be contiguous or adjoining so long as increase in the

46. David R. Levin, *Aspects of Eminent Domain in the United States, (Law and Land).*
47. S. 24 (b) of the Land Acquisition Act, 1894.
48. *Eagle* v. *Charing Cross Mail Co.* (1867) L.R. 2 C.P. 638.
49. S. 7 of the Land Acquisition (Compensation) Act, 1961.

value of the *other land* can reasonably be attributed to the development of the land acquired. The rule has been criticized as being ambiguous in that it does not specify whether the whole or only a part of the increase will be deducted.[50] In fact, the rule is clear-cut on this as what is to be deducted is the increase "likely to accrue from the use to which the land acquired is to be put". As in the seven-year rule, the complication is to what extent is the increase attributable to the user to which the land acquired is to be put. This again is a matter of fact and can only be ascertained after taking into account all the relevant factors contributory to the increase.

It is submitted that gross injustice may be done if that "other land" comes to be acquired at a later stage. Will the seven-year rule be applied again to set-off from its market value that increase which has already been taken from the owner in the previous acquisition of his land? The English law makes provisions ensuring that any increase in value which has been set-off in previous acquisition should be taken into account and paid for on a subsequent acquisition.[51] In the absence of a similar provision in our law it is submitted that equitable principles should be adhered to.

(2) *Damage for Severance*

It is only equitable that damage for severance should be compensated for. The principle is fully accepted in our law (s. 33(1) (c)). Whether there is something in the nature of a severance causing damage to the other land of the owner is of necessity a question of fact in each case. The position in English law seems to have been well settled. "In order to make the claim for severance it is not necessary for the remaining land to be contiguous to the land acquired or held under the same title. It is enough if both parcels of land are held by the same owner and if the unity of ownership conduces to the advantage or protection of the property as one holding".[52] The bare fact that before the exercise of the compulsory power the claimant was common owner of both parcels is insufficient. The criteria is that the land taken must be so connected or related to the remaining part that by reason of severance the owner is prejudiced in his ability to use or dispose of the remaining land to advantage. The extent to which damage by severance is compensable is therefore the diminution in the value of the remaining land. In other words, this can be the loss of potential value of the remaining land for development. As has been pointed out earlier, the Government has power to acquire additional land which is part of the land first sought to be acquired. This has in practice rendered the important concept of severance of very little significance.

(3) *Injurious Affection*

The rule of injurious affection as formulated by the new Act contemplates injuries in any other manner and includes also injury to movable property and the loss of earnings (s. 33(1) (d)). The concept

50. T.T.B. Koh's article, at p. xv.
51. S. 8 of Land Acquisition (Compensation) Act, 1961.
52. R.D. Stewart-Brown, *Encyclopedia of Compulsory Purchase and Compensation,* p. 1055.

is not based upon any tortious liabilities. Compensation may be claimed notwithstanding that the damage would not have been actionable even if not done in pursuance of statutory power. In simple terms, injurious affection really means a depreciation in value. It has been suggested that the rule as it stands now will not cover damage likely to result from the user to which the land acquired will be put.[53] It is submitted that this is not true in view of some judicial decisions elsewhere. In an English case involving an acquisition of part of land for the construction of sewage works, evidence was given that the existence of that works even if conducted so as not to create an actionable nuisance would depreciate the market value of the owner's other land for building purposes. The House of Lords held that compensation might be awarded for damage for injurious affection not only by the construction of the sewage works but by their use.[54] The principle was later held to be applicable to cases in India, as "otherwise it would be difficult to see to what classes of cases section 33, clause 4, can properly apply".[55] Section 33 clause 4 of the Indian Act is worded exactly the same way as our section 33(1)(d). Some familiar instances of claims by way of injurious affections are loss of frontage when the front portion of the land is taken or loss of easements generally. The English law also allows claims for loss of privacy and loss of amenities.[56] It has been doubted whether compensation for injurious affection will cover loss of goodwill.[57] There is no reason why the expression "loss of earnings" in section 33(1)(d) cannot be taken to include loss of earnings from a business which was a growing concern before the acquisition. It is therefore submitted that loss of goodwill can certainly be compensated under the rule if it reduces the claimants' earnings. A claim for loss of goodwill can only be ignored when the goodwill is a personal one or the business does not depend for its success on the use of the particular site.

(4) *Reasonable Expenses Incidental to Change of Premises*

Reasonable expenses incidental to change of residence or place of business by reason of the acquisition must also be compensated (s. 33(1)(e)). Expenses of removal would be the most familiar item to be allowed under this particular provision.

It may be noted here that English law allows an exception to the general principle of market value. Compensation may be assessed on the basis of the reasonable cost of equivalent reinstatement provided that reinstatement is *bona fide* intended and the land acquired is devoted, and but for the acquisition would continue to be devoted, to a purpose of such a nature that there is no general demand or market for land for that purpose.[58] This rule is better known as the principle of reinstatement which means to award the costs of placing the claimant in the same position, or in an equally advantageous position, to that he occupied when he was dispossessed because of the compulsory acquisition. This would include the cost of purchasing an equally convenient site and of rebuilding, or adapting existing buildings thereon.

53. T.T.B. Koh's article, at p. xvi.
54. *Cowper Essex* v. *The Acton Local* Board, (1889) 14 A.C. 153.
55. *Guru Das* v. *Secretary of State,* 18 Gal. L.J. 244.
56. R.D. Stewart-Brown, *op. cit.*, at p. 1055.
57. T.T.B. Koh's article, at p. xvi.
58. S. 5(5) of the Land Acquisition (Compensation) Act, 1961.

There is no provision in our law corresponding to this principle of reinstatement. It is however submitted that legally there would appear to be no objections to applying it in some deserving cases. For example, where a landowner is deprived of his employment or a farmer-owner is deprived of his livelihood by reason of the acquisition, there can be strong reasons for applying the principle so that he may be rehabilitated properly. Of course this does not mean that the owner can by right request compensation to be assessed on the basis of this principle. Even in England, the principle is considered discretionary and the discretion will not be exercised in favour of a claimant carrying on a commercial undertaking, where the cost of reinstatement exceeds the value of the undertaking.[59]

*Matters Irrelevant to Assessment of Compensation*

The Act specifies some negative factors which are the antithesis of the matters which must be taken into account. The following items are to be disregarded (s. 34) :

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

(b) the owner's disinclination to part with the land acquired;

(c) any damage which if caused by a private person would not be actionable;

(d) any damage or increase in value to the land acquired in consequence of the use to which it will be put;

(e) any expenditure on additions or improvements to the land acquired made after the declaration unless this is necessary to maintain any building in a proper state of repair.

Items (a) and (b) refer to matters which are not capable of measurement in monetary terms, but the Collector as well as the Appeals Board are required not to allow themselves to be influenced by the owner's sentiment. Item (d) ensures that the owner does not take advantage of the Government's proposed development for making an exorbitant claim for compensation. Item (e) is repetitive of the principle underlying the rule in section 33(2) (a), and ensures that a landowner does not carry out improvements to the land with a view to enhancing the value and the consequential compensation claim.

*Fire Site Provisions*

The controversial fire site proviso must now be examined. It was first introduced in 1961 by way of an amendment to the old Ordinance. It refers to acquisition of:

(a) any land devastated or affected directly or indirectly by fire or any act of God, or;

(b) any land immediately adjoining such devastated or affected land.

59. R.D. Stewart-Brown, *op. cit.*, at p. 1052.

The amount of compensation payable should not exceed one-third of the value of such land had it been vacant, not subject to any encumbrances, tenancies, etc., *unless* the Minister in his discretion specifies otherwise by a notification in the Gazette. (Proviso to s. 33(1)).

The intention of the rule, as it has been so often repeated, is to ensure that any appreciation in the value of land consequent upon an act of God clearing all encumbrances thereon should not go to the landowner. The example frequently quoted as giving birth to the proviso is the calamity in Bukit Ho Swee some years back when a fire cleared all the squatters and, but for this proviso, the landowners would have been able to dispose of their land as vacant sites with considerably enhanced value. It may be argued whether an owner so benefitted could properly be said to have been "unjustly enriched" as there can be no ethical objection so long as he does not set fire to his own property.[60] It is however feared that if landowners are to be fed with windfalls, some unscrupulous owners not being able to get rid of whatever encumbrances on their land either because of legal hindrances or their unwillingness to compensate the occupiers, might well be tempted to commit arson. The victims would be none other than the poor squatters or the rent-controlled tenants on the land. The rule is prohibitive against such foul play. The State, being the organised power of the community, is considered more entitled to receive the windfalls in view of the fact that it takes upon itself the duty to look after the general welfare of the victims.

To what extent must the calamity ruin the property in order that it could be said to have been "devastated or affected directly or indirectly"? Assuming the fire has taken place gutting down only a small portion of a godown, could the rule be applied to acquire the whole of the godown with its other subsidiary buildings? The answer would appear to be yes. Could the expression "land immediately adjoining" be taken to cover the entirety of an adjoining land many times bigger than the fire site itself? Again, the rule is capable of being interpreted that way. The rule as it stands is therefore comprehensive and may cover situations very much different from those justifying its existence.

It is submitted that the rule should be used sparingly, and interpreted equitably so as not to produce undue financial loss to the owner. Since the rule is intended to capture for the State what may be properly considered "windfalls" its application will never be justifiable where the act of God brings not windfall but irreparable financial loss to the property owner. The owner of a godown could hardly rejoice at an act of God destroying his godown and ruining his business miserably. Apparently, the legislature is aware of the harshness and oppressiveness of the rule if it is to be applied indiscriminately. The fact that the Minister is given a discretion to waive the rule is clear evidence that the rule is not intended to be of general application. Unfortunately, the legislature chose to remain silent on the circumstances under which the Minister may exercise his discretion. The well-recognised canon of construction being not to interpret an Act of the legislature in such a way as to take away property without just compensation unless such intention is clearly ex-

60. T.T.B. Koh's article, at p. xvii.

pressed or implied, the Minister may well be considered to have a duty to exercise his discretion when a given situation is such that the application of the rule is likely to prove harsh or oppressive.

## V

## RIGHT OF AND PROCEDURE FOR APPEALS

### *Permanent Boards to hear Appeals from Collector's Awards*

For the purpose of hearing appeals against Collector's awards the Act provides for one or more Appeals Boards to be set up. Critics of the new legislation saw in this "an incursion into the vested and inherent right of appeal" and requested that the old procedure in the pre-existing law be retained with "suitable modifications".[61]

Previously, appeals against the Collector's awards were by way of reference to the High Court. Proceedings in the hearing of appeals were as formal and cumbersome as in an ordinary civil suit. It was felt that such a machinery could only suit the needs of a situation under which the acquisition of land was restricted to the barest minimum. It was however out of the context of a new situation where land acquisition activities must necessarily be intensified to meet the needs of vigorous development. A permanent body is needed to deal with the objections that are increasing as a result of frequency of acquisitions. The prevalent trend elsewhere is for grievances of this nature to be redressed by administrative tribunals. The legislature saw in this a solution to our problems and hence the establishment of the Appeals Board. The obvious advantages are that the tribunals are less formal, more expeditious and more likely to produce justice speedily. The procedure of the Board is to be "such as the Board may determine", and it may "admit or reject any evidence adduced, whether admissible or inadmissible under the provisions of any written law for the time being in force relating to the admissibility of evidence" (s. 25(4) (d)).

Lest the informality of the new procedure should tend to encourage litigation, some new requirements are made casting upon the appellant the onus of initiating the appeal and proving that the award is inadequate. Previously all that an intending appellant was required to do was to inform the Collector within the statutory period that he did not accept the award. Thereupon the onus of making the reference and justifying the award devolved upon the Collector. This was thought an unsatisfactory system for making things too easy for the property owners. Any person interested aggrieved by an award shall now lodge notice of appeal with the Board and make or authorise the making of a deposit amounting to one-third of the award or $5,000/-, whichever is the less (s.23(1) (a) & (b)). If the purpose of the deposit is to serve as security for cost alone then the amount is no doubt, as it has been suggested, excessive and prohibitive.[62] It is believed the legislature intended this to be one of the measures aimed

61. At p. B33 of the Select Committee's Report.

62. At p. B17 of the Select Committee's Report.

at discouraging appeals. However, the severity of the requirement is very much neutralised by the possibility of the owner authorising payment of the deposit from the compensation awarded by the Collector. The owner is not required to, to use the Minister's words, "fork it out in cash".[63] It is submitted that no valid objections could be maintained against putting upon the appellant the onus of providing the inadequacy of the Collector's award. As has been pointed out early if a claim has been made pursuant to the notice under section 8, the Board may not reduce the amount awarded by the Collector. The primary concern of the Board will therefore be whether the award should be increased. The owner may reasonably be expected to have in possession facts inducing him to make a higher claim. It is therefore incumbent upon him to make out a *prima facie* case for raising the award. In this connection, he is facilitated by the requirement that the Collector must submit his grounds of award (s. 23(2)).

*Composition of the Boards*

The omission to lay down the qualifications of the Commissioners and to provide for them security of tenure of office has given rise to some apprehension that the persons selected may not be free from influence by the executive.[64] It is believed that the omission is deliberate in order not to limit the Government's choice of suitable candidates which is considered undesirable. To reassure the public of the Government's sincerity and to inject into them confidence in the Board, two High Court judges have been appointed to head two Appeals Boards for a period of two years.

Presumably for the same reason, members of the panel of assessors need not be "qualified assessors". As a result of shortage of "qualified assessors" in this part of the world not infrequently some of the assessors did in the past represent landowners in some cases and sat as Court assessors in others. This position was undoubtedly abnormal, though it did not necessarily reflect any doubt on the integrity of the profession as a whole. The present twelveman panel of assessors consist of distinguished citizens from a variety of professions. Only two of them are qualified assessors. Only in cases where the Collector's award exceeds two hundred and fifty thousand dollars is the Commissioner required to sit with two assessors to be selected by him (s. 26).

The principle that the opinions of the assessors do not bind the Commissioner remains unaltered (s. 27(1)). It was thought by some that the existence of a panel of assessors would serve no purpose unless the rule of majority is to prevail.[65] A review of past references would reveal that in a great majority of cases judgments were announced unanimously. It would appear that judges hearing the references were always prepared to be convinced by assessors, and to accept their reasoning as expert opinions. In the reference relating to acquisition of 78 acres of land for housing development at Toa Payoh,[66] for instance, in announcing an increase of the award C. H. Whitton J. added that "I was

63. At p. C38 of the Select Committe's Report.
64. At p. B35 of the Select Committe's Report.
65. At p. B36 of the Select Committe's Report.
66. Land Acquisition Reference No. 5 of 1954.

convinced by the views of the assessors .... a case had been made out for raising the rate from 15 cents to at least 18 cents". The extent to which a trial judge could be influenced by the assessor's opinion was fully illustrated in another reference. Though convinced that on the evidence put before the Court the appellant had completely failed to make out any case for increasing the Collector's award, Taylor J. agreed with the assessor's opinion that the award must be increased and said "since valuation is largely a matter for expert opinion, I feel I must defer to the views of the assessors".[67]

Broadly speaking, the function of the assessors is to assist the Board with their professional knowledge and experience in arriving at a fair amount of compensation by giving an objective appraisal and interpretation of all the evidence put before the Board. Their service is all the more indispensable in cases involving technical intricacies. As a general rule, they should form their opinions upon the facts produced before the Board. In the reference last quoted, the assessors' conclusion to raise the award was substantially based upon some valuations of their own which were not disclosed. If this is to be considered normal, then, as someone else has said, "the formality of a Court (or Board) hearing would appear to be superfluous".[68]

*Jurisdiction of the Boards*

In one of the appeals heard by the newly-established Appeals Board, the Commissioner, Buttrose J., obited that "if there is a question of title, I should have to stop the proceedings right now because I do not think I have jurisdiction to deal with it. It should be by way of case stated in which case I have power to do it or it should be done by somebody. I am merely sitting here to try to assess the value".[69]

The question that may properly be asked is what is the jurisdiction of the Board? That the Board is primarily concerned with the question of valuation goes without saying. Does the Board have jurisdiction on points of law? Section 19 of the Act says that the Board is constituted "for the purpose of hearing appeals in respect of any award". The expression "appeals in respect of any award" may well cover appeals on question of law, say, where the Collector values the land at a date other than the date of the publication of the Declaration. Part IV of the Act says "the Commissioner sitting alone" shall decide the dispute, if any, as to apportionment (s. 38(1)). A dispute as to apportionment would naturally involve points of law like construction of documents, etc. Again, as already discussed, the Government may be compelled under section 40(3) to acquire land temporarily occupied by it but which has become permanently unfit for the purpose for which it was used before occupation by Government. Section 44 says in case of dispute as to the condition of the land, the Collector shall refer the matter for determination of the Board.

The picture is however confounded by some other seemingly contradictory provisions. As has been pointed out earlier, the Collector may

67. Land Acquisition Reference No. 6 of 1954.

68. See note 20.

69. *Indo-Australain Trading Co.* v. *Collector of Land Revenue* A.B. No. 5 of 1967.

in the course of his enquiry refer any question of law for the determination of the courts. Section 49 prohibits the acquisition of part only of a house which is reasonably required for the full and unimpaired use of the house. In case of dispute as to whether a part of a house is reasonably so required, the Collector may refer the matter for the determination of the High Court. But why is the Board side-stepped? Is all this indicative of the Board's incompetence to decide on points of law? Section 30 refers to the Board's power to refer for the determination of the Appellate Court on matters of law. Though this provision would appear to be discretionary, it does cast some doubts on the Board's jurisdiction on points of law.

The true position is, it is submitted, that the Board has discretionary jurisdiction to decide on points of law. It is probable that the legislature, fully aware of the likelihood of a layman presiding over the Board as a result of its omission to stipulate qualifications required of the Commissioners, does not deem it advisable to impose upon the Board a duty to decide on points of law. It is left to the discretion of the Board whether to take up the dispute on points of law right up to the Appellate Court or to decide on it leaving it to the appellant to appeal.

*Appeal from the Board's decisions*

The Board's decisions are not appealable, except on points of law when the amount of award by the Board exceeds 5,000 dollars (s. 29 (2)). This limitation is contributory to the charge of 'incursion into the subject's right of appeal' by the new legislation. It is submitted that a distinction must be made between right of appeal against the Collector's award and that against the Board's decision. In the former, the right is completely unfettered. Certain limitations to the right of appeal in the second instance are considered desirable as otherwise the existence of the Board would become superfluous. The usefulness of extending the right to points of fact is rather dubious in the light of the experience under the old law. There was always a reluctance on the part of an appellate court to interfere with the trial judge's basis of compensation unless some serious errors were committed. In this connection, their Lordships in the court of appeal observed that "in matters of this kind an appeal tribunal is loth to interfere with the judgment of the trial court, especially when, as in this case, the learned trial judge had the assistance of two qualified assessors, unless it has been demonstrated that there was some substantial error in the basis of assessment".[70]

## VI

## CONCLUSION

The evolution of the concept of land acquisition has all along been a painful adjustment of some conventional value judgments to the increasing complexities of modern life. It is certainly not unnatural that any extension of the State's power in this direction will invariably meet with every resistance on the part of those who so ardently believe in the inalienablity of the citizen's right to property and its immunity from governmental and individual's interference. It has been apparent

70. Land Acquisition Reference No. 2 of 1956. Appeal No. 23 of 1958.

throughout our discussion of the law of compulsory land acquisition in Singapore that the State has been given a wider latitude in the field of acquisition activities. It has also to be acknowledged that the new law has since its birth created much suspicion and fear in the minds of a great number of property owners in the country. However, it is reassuring to note that very few have thought it convenient to question the propriety of the State's claim for wider powers in order to discharge efficiently its functions as dispenser of social services and as promoter of economic growth. Complaints and criticisms have centred around the possibility of abuse and misuse and the alleged discriminatory nature of some of the provisions. Accordingly, checks and balances, judicial or otherwise, have been advocated.

The formula stated by Dicey[71] a century ago that a Government must not have "arbitrary or even wide discretionary powers" and that "the rule of law demands equal subjection of all classes to the ordinary law of the land as administered by the ordinary law courts" has almost become a matter of academic interest in view of the growth of administrative powers and justice that is the prevalent trend everywhere and that is, it is submitted, the moving spirit behind many of the innovations in our new law of land acquisition. In spite of all its advantages and expediency, administrative justice carries with it an irreducible minimum of risks that must be taken for granted. One of these is its liability for abuse and misuse. Checks and balances against executive excesses might be devised as have been so often attempted by some leading text-books on administrative law. It would be ideal if every exercise of administrative discretion could be placed against judicial review, particularly when what is at stake is the individual's fundamental right to property and liberty. However, that the efficacy of judicial review and procedural safeguards must not be overstated is clearly demonstrated when Woodrow Wilson says that "Government is not a machine but a living thing .... No living thing can have its organs off-set against each other as checks, and live .... Government is not a body of blind forces; it is a body of men, with highly differentiated functions no doubt, in our modern day of specialization, but with a common task and purpose. Their co-operation is indispensable, their warfare fatal . . . .".[72]

It is therefore submitted that no amount of conceptual absolutes and procedural safeguards can stop a government from abusing its authority if it is really so determined. In this connection, it may not be out of context to quote the Prime Minister, "We could have all the checks and balances we want within the Constitution. But if you have a bad elected government the whole Cabinet consisting of people properly elected and determined to wreck the country, there is nothing that could be done other than get such a government out as quickly as possible, if possible constitutionally, if not some other means must be found by the community. It is as simple as that".[73]

71. *Law of the Constitution,* (10th ed.), (1959), Chap. 4.

72. *Constitutional Government in the United States,* p. 56.

73. In his speech on the Report of the Constitutional Commission, reported in Hansard Vol. 25 No. 18 at p. 1298.

To conclude, let us take the advice of Professor W. Friedmann, "instead of devoting all our attention to the minute details of safeguards, we should, perhaps do a little rethinking on the meaning of such basic values as liberty and property in the legal and social context of contemporary society".[74]

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74. *Law in a Changing Society* (abridged ed.) (1959) at p. 281.

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