

# **Procedural Fairness and Natural Justice Principles in Acquisition**

**Justice C.V. KARTHIKEYAN,  
Madras High Court  
Refresher Course on Land Acquisition  
P-1339  
Session 2**

# **GENERAL PRINCIPLES OF LAND ACQUISITION**

- Any Person whose land has been acquired compulsorily by the State Authority cannot challenge Acquisition Proceedings. There are very Limited Grounds for Challenging the Acquisition.
- Acquisition is Unlawful, i.e. where acquiring authority has exceeded its statutory powers and is taking the land for a purpose outside the scope of the Act or Ostensibly for one purpose but intended for another.
- Principle Ground on which an expropriation can be challenged is that the acquiring authority has exceeded its powers i.e. it has acted Ultra Vires.

# **MUNICIPAL COUNCIL OF SYDNEY VS CAMPBELL 1925 AC 388 (PC)**

- Court rejected Compulsory Acquisition where the real motive for Acquiring the land was for the purpose of enjoying the substantial increase in the value that was to accrue to the Land.
- **LAMFORD HOLDINGS SDN BHD Vs KERAJAAN NEGERI JOHOR & Ors. (1998) 1 MLJ 8 607**  
Where the Acquisition was challenged on the ground of Malaefide
- **KRISHNAN MOORTHY MANICKAM Vs PTG JOHOR (1996) 4 CLJ 233**  
No need for Pre-acquisition hearing as the Audi- alteram Partem rule did not apply when the Executive Committee decided to acquire the Plaintiff's Land.

# **AUDI ALTERAM PARTEM IN ACQUISITION**

- Means to hear the other party, or, no one should be condemned unheard.
- Audi Alteram Partem becomes an Essential part of the Law pertaining to Land Acquisition for a Public Purpose.
- While acquiring the Land the sufficient opportunity should be given to the affected person for the defence and also to avoid the Monopoly of the government officials.

# **Mr. J. DORAIBABU Vs STATE OF TAMILNADU**

- No Doubt, the Industrial Purposes Act has been enacted as a special act to speed up the Acquisition of land for Industrial Purposes. But, the Act has never dispensed with the procedure of **AUDI ALTERAM PARTEM** and in fact, the Legislature was very cautious in blending the terms in the Act. While clarifying under section 21 of the Act that the provisions of the Land Acquisition Act, 1894 shall cease to apply.
- In spite of sufficient safeguards have been inducted into the act by legislature, Keeping in mind not only the welfare of the land owners but also the other who are interested in such land. Strict Compliance of the procedure contemplated under the act is a must, particularly when the procedure contemplated under the act itself being a summary one.

# **MAIN OBJECTIVE OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION & RESETTLEMENT ACT 2013**

- Transparent Process of Land Acquisitions
- Informed Consultation & Participative Approach
- Rehabilitation & Resettlement
- Least Disturbance
- Just & Fair Compensation

# Step by Step Procedure followed for Land Acquisition as per RFCTLAR&R Act , 2013

Requisitioning Authority submit Proposal for Land Acquisition to Collector

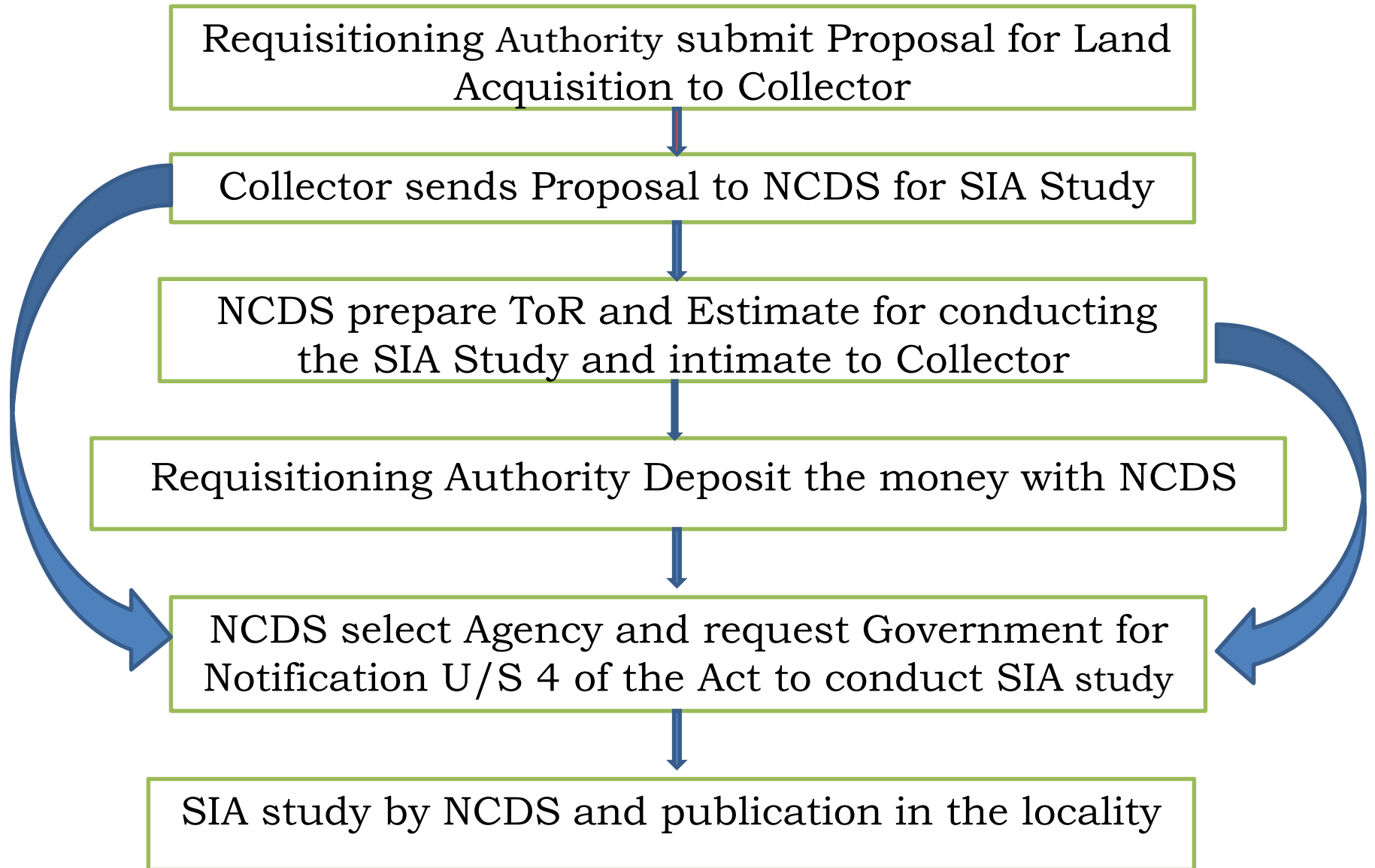
Collector sends Proposal to NCDS for SIA Study

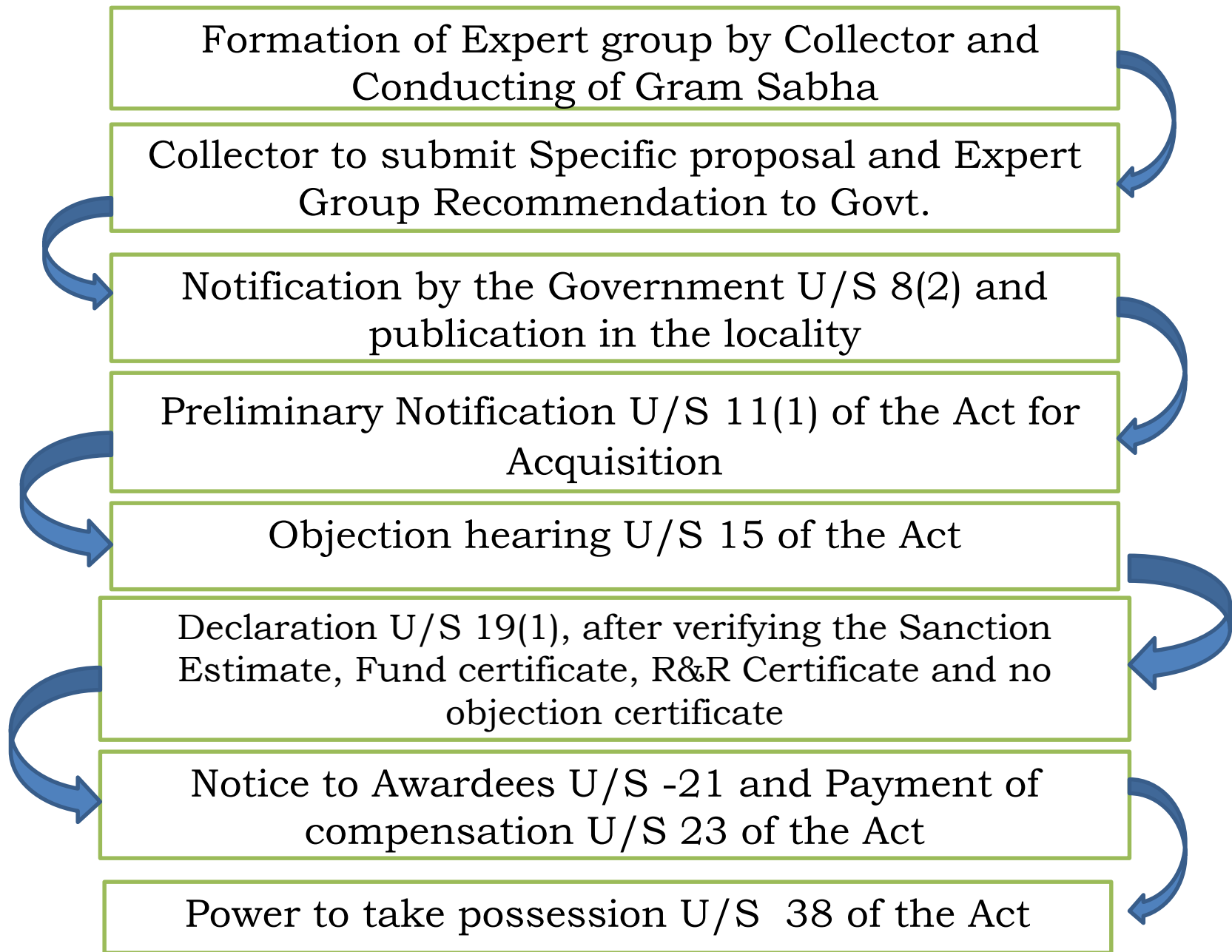
NCDS prepare ToR and Estimate for conducting the SIA Study and intimate to Collector

Requisitioning Authority Deposit the money with NCDS

NCDS select Agency and request Government for Notification U/S 4 of the Act to conduct SIA study

SIA study by NCDS and publication in the locality





# Difference between Old and New Act

OLD ACT	NEW ACT
No detailed procedure for calculation of compensation. Only market value taken into account.	First Schedule contains the details of calculation of compensation
No separate chapter on R&R	A separate Chapter V on R R. It provides Rehabilitation and Resettlement and entitlements to the displaced and affected persons.
No separate provision for SCs and STs	Section 41 says for Special provision for SCs and STs
No such special Provision for ensuring food security	Provision for ensuring food security, U/S 10 of the Act.

# Difference between Old and New Act

OLD ACT	NEW ACT
No concept of SIA Study	Under Section 4 SIA study is mandatory
Separate provision for private companies (Chapter VII)	No such separate provision for private companies. Concept of Direct purchase under Section 46 and Sub section 3 of Section 2 of the Act.
The procedure for acquisition involves sending of notification by the District Collector and invitation of objection (Section 4 & Section 5)	After a detail SIA study and Expert Group Appraisal Collector can send preliminary notification under Section 11

# **DEFINITION OF AFFECTED FAMILIES**

- **LAND OWNERS**

- Family or Company whose Land/other immovable properties has been acquired.
- Those who are assigned land by the Government under various schemes.
- Right Holders under the Forest Rights Act 2006.

- **LIVELIHOOD LOSERS**

- Over the Last Three Years, a family whose livelihood is primary dependent on the land being acquired, including agriculture labourers, tenants or sharecroppers.

# **NOTIFICATION UNDER SECTION 11**

- Every Notification and Declaration shall be mandatorily published in
  - The Official Gazette
  - Two Widely Circulated Daily Newspaper ( One in Local Language)
  - Office of Panchayat, Local Bodies, Collector, Sub-Divisional Officer & Tahsildar
  - Uploaded on the Website of the Appropriate Government.
  - In the Affected Areas

# **NOTIFICATION TO AFFECTED PERSON UNDER SECTION 11**

- Under 1984 Act, There is no Specific Provision regarding the Notice to the Affected Person.
- Under the 2013 Act, There is a mandatory Consent from the Owners of the Land, 70% for the Public Private Participation Projects and 80% for Private Projects the same was raised to 100% by state Government.
- **SOCIAL IMPACT ASSESSMENT**
  - Analyze Project Context
  - Identify & Analyze Stakeholder
  - Identify Social Factors/Variable
  - Analyze data and Assess Priorities
  - Consult Stakeholders & Develop Imitative plans
  - Implement Mitigation Plan & Public Participation
  - Ensure Monitoring with active stake holder involvement

## **LATEST AMENDMENTS IN SIA**

- The Social Impact Assessment of Land to be acquired will be the prerogative of the state Governments
- The amendments include dropping of exemption to “social infrastructure” Projects as there were fears that private individuals may use this clause to open colleges and hospitals which are actually business models.’
- Multi Crop lands will not be acquired
- Land will be returned to the farmer if the project is not completed, but the time consumed by court cases and injunctions will not be counted.
- The Most important clause-The Consent Clause has not been dealt with yet, this being the major reason for the widespread opposition against the ordinance.

## **SECTION 15 OF LAND ACQUISITION**

- Any Person interested in any land which has been notified under the Sub Section (1) of Section 11 has to be used for the Public Purposes
- Within 60 days of the Notification under Sub section (1) of Section 11 the affected person can object to
  - The area and suitability of land purposed to be acquired
  - Justification offered for public purpose
  - The Findings of Social Impact Assessment
- The Objections should be made to the Collector in Writing and the Collector shall give the objector an opportunity of being heard in person or by any person authorised by the objector.

# **ASHOK KUMAR PADHA V. STATE OF J & K and others**

- In the Instant Case and placing reliance on precedents in order to clarify the laws pertaining to land acquisition, came to the conclusion that Section 5-A(2) which represents statutory embodiment of the rule of Audi Alteram Partem, gives the opportunity to the objector to make endeavour to convince the collector that the land is not required for the Public Purpose and consequently allowed the petition and quashed the notification dated 05.02.2016.

# **REFERENCE UNDER LAND ACQUISITION ACT**

- Any person interested who has not accepted the award may, by written application to the collector requires that the matter be referred to the Appropriate Authority
- The Appropriate Authority means the Land Acquisition and Resettlement authority established under Section 51 of the Act.
- The Reference shall be made within a period of Thirty days of receipt of application.

# Cont..

- In making the reference, Collector's statement shall be forward in writing.
- Collector may be directed to pay interest on excess compensation or re-determination of amount of compensation by the authority
- Disputes as the apportionment of the compensation may be referred by the collector to the Authority.

## **TIMELINES**

- Compensation will be given within a period of 3 months from the date of the award.
- Monetary Rehabilitation & Resettlement entitlements will be provided within a period of 6 months from the date of the award.
- Infrastructure R & R entitlements will be provided within a period of 18 months from the date of the award.
- No involuntary displacement will take place without completion of R & R.
- In Irrigation or hydel Projects , R & R shall be completed 6 months prior to submergence.

## **SERVICE NOTICE BY AUTHORITY**

- The Authority shall thereupon cause a notice specifying the day on which the authority will proceed to determine the objection and also issue direction of the appearance before the authority and the notice shall be issued to the following persons:-
  - The Applicant
  - All the persons interested in the objection except to those consented without protest to receive payment of the compensation awarded
  - If the objection is in regard to the area of the land or to the amount of the compensation, the Collector.

## **DETERMINATION OF AWARD SECTION 69 OF LAND ACQUISITION ACT 2013**

- While determining the amount of compensation awarded for the land acquired the authority shall take consideration about the acquisition was done by the collector and the collector has followed the parameters under Section 26 to Section 30 and chapter of the Land Acquisition Act 2013.
- The Authority in every award an amount calculated at 12% per annum on market value for the period commencing on and from the date of Publication of the Preliminary notification under section 11.

## **CONT....**

- While computing the period referred to in Sub-Section (2) of 69 in Land Acquisition Act 2013 any period or periods during the proceedings for the acquisition of the land were held up on account of any stay or injunction by the order of any court shall be excluded.
- The Authority in every case award a solatium of 100% in addition to the market value of the land over the total compensation amount.

## **NG TIOU HONG Vs COLLECTOR OF LAND REVENUE GOMBAK (1984) 2 MLJ 35**

- Selangor State Authority acquired a property co-owned by 14 owners. The Owners being dissatisfied with the compensation referred to the High Court Judge apportioned land into two different areas and assessed it differently. On appeal to Federal Court it was held that land should be valued as a whole unit.

# **HOW TO CHALLENGE THE LAND ACQUISITION PROCEEDINGS**

- Reference to the court.
- Reference by Land Administrator under Section 36(2) of Land Acquisition Act, 1960.
- Objection by Person Interested under Section 36(2) of 2013 Act.
- Objection by any person or Government or Corporation on Whose behalf such land is Acquired under section 37(3).

# WHO CAN CHALLENGE

- Registered Proprietor (Title Holder)
- Registered Interest Holder
  - Charges
  - Lessees
  - Sub-lessee
  - Lienholder
  - TER
  - Easement Holder
  - Other Registrable interest or title holder

# Challenges

- Timely completion of SIA study.
- Conducting Gram Sabha and getting people consent.
- Calculation of Market Value of land.
- Identifying the Affected Families.
- Litigation due to inheritance.
- Multiple sales which have not been properly recorded.
- Tough Resettlement and Rehabilitation laws.
- More need of land for Make In India and Smart Cities.
- Land Record updation.

# Way Ahead

- Complete digitization and real time updation of land records.
- Using of latest technology in revenue offices for land record updation.
- Assurance of stable high speed internet connectivity for real time land records updation.
- Rent Abatement and Revision of Records in a time bound manner
- Effective R&R Mechanism

Thank You!!!