#### Land Acquisition

# Land Acquisition by Local Governments: Processes and Compensation Liabilities

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#### Means of acquiring land

- By agreement
- ➤ Taking order: Land Administration Act 1997 (LAA), Part 9
- ➤ Planning and Development Act 2005, s. 191
- Ceding of land as condition of subdivision approval
- Election to purchase following claim for compensation for injurious affection



#### Selecting the land for a public purpose

- > Reservation
- > Structure plan
- > Other
- > Balancing precision and expedition











# Attempt to acquire by negotiated acquisition



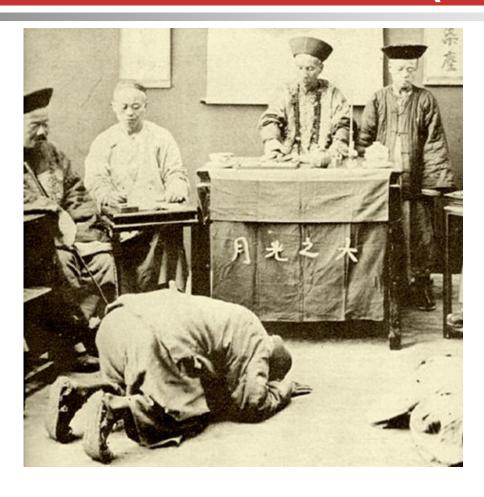


### Attempt to acquire by negotiated acquisition

- Provide Statement of Procedures
- > Amount of compensation to be guided by LAA s. 241
- Contract of purchase and transfer of land
- ➤ Lease-back some possible complications
- ➤ If agreement cannot be reached → proceed to compulsory taking



## Persuade Minister for Lands to issue Notice of Intent to Take (NOITT)





### Persuade Minister for Lands to issue Notice of Intent to Take (NOITT)

- Explain background and need for the acquisition
- Demonstrate reasonable endeavours to acquire by agreement
- Council must resolve to indemnify State



#### The nuts and bolts





### Minister issues Notice of Intention to Take (NOITT)

- > LAA s. 170
- > NOITT registered on title
- > Published in West
- Served on registered proprietor/s
- > Also on occupiers
- ➤ Generally, no transactions to be entered into without Minister's approval: s. 172
- NOITT must be acted on within one year unless extended



# Opportunity for owner etc to object to proposed taking





### Opportunity for owner etc to object to proposed taking

- > s. 175
- Minister decides whether to cancel or amend NOITT, or determines that it stands unchanged



#### Minister signs taking order

- > ss. 177-179
- > Terminology: resumption, acquisition, taking
- > To be published in West
- Served on each holder of a registered interest in the land
- Land becomes State land
- Every registered and unregistered interest is extinguished
- > Every interest is converted into a claim for compensation
- Minister must advise interested holders of procedures for compensation
- > Acquiring a lesser interest eg. Easement



#### **New titles**

- > Taking order registered on title
- > New titles issue for
  - > Land taken: State land
  - > Balance of freehold land, if applicable
- By reference to Deposited Plan already prepared



#### Early entry onto land

➤ s. 184 – 186





#### Making a claim for compensation

- Within six months of registration of taking order: s. 207
- > Time extendable by Minister: s. 207(2)
- Any person with an interest in land may claim: s. 202
- > Formal requirements: s. 211



### Local government as acquiring authority to make an offer: s.217

- Examine claim and obtain valuation within 90 days
- ➤ Make an offer as soon as possible thereafter
- Offer to be in approved form
- Not 'without prejudice'



# If offer not rejected, then deemed accepted



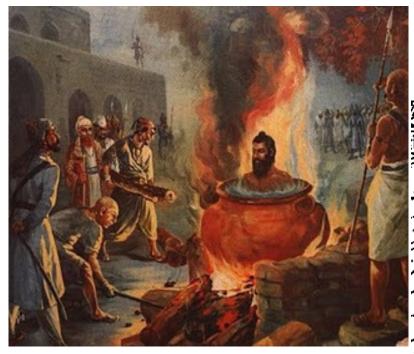


### If offer not rejected, then deemed accepted

- >s. 219
- ➤ If not rejected within 60 days of service, offer deemed accepted



### Means of resolving disputes as to amount of fair compensation







### Dispute as to amount of fair compensation: forums for determination

- >s. 220
  - (1) By agreement;
  - (2) Court action;
  - (3) State Administrative Tribunal
- > Election of forum is up to claimant
- ➤ But if claimant fails to proceed within 120 days, local government can commence in SAT: s. 222
- Opportunities in all of these processes for continued negotiations



# Making or offering to make advance payment





### Making or offering to make advance payment

- >s. 248
- ➤ Interest only runs on balance (if any) of ultimate successful compensation amount: s. 241(12)



#### How compensation is assessed

- ➤ By Court or Tribunal
- > Also guides offers and negotiations
- >s. 241



#### Some aspects of s. 241

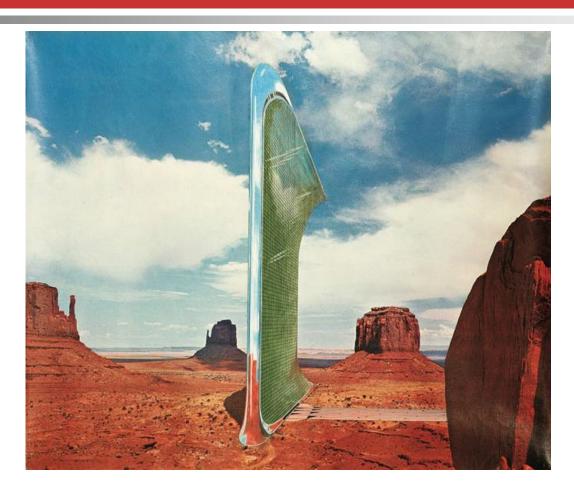
- > '... value ... discounting any increase or decrease in value attributable to the proposed public work'
- > Disturbance
- Severance and injurious affection
- > Valuation methodologies
  - > Comparable sales
  - → 'Before and after' s. 241 not a 'log of claims'
  - > 'Hypothetical development'













#### Some more aspects of s. 241

- > Solatium
- > Interest





# Another word about '...value... discounting any increase or decrease in value attributable to the proposed public work'

- > Pointe Gourde principle
- > San Sebastian principle: disregarding 'steps in the process'

