

State Lands and Land Laws A Hand Book



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**State Lands and Land Laws
A Hand Book**



Law & Society Trust

No. 3, Kynsey Terrace,

Colombo 08

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National Environmental Act No 56 of 1988

Prescription Ordinance No. 22 of 1971

State Land (Recovery of Possession) Act No 7 of 1979

State Lands Ordinance No 8 of 1947

State Lands Encroachments Ordinance No. 12 of 1840

Thoroughfares Ordinance No 10 of 1861

STATE LAND

What is State Land?

The state owns over 80% of the land in Sri Lanka. The remainder is owned by private parties. Under the State Lands Encroachments Ordinance, all waste lands, forest lands, unoccupied and uncultivated lands are presumed to belong to the state until the contrary is proved (section 7) and all cinnamon land which have been uninterruptedly possessed by the state for over 30 years are held and deemed to belong to the state (section 6).

Crown land is administered under the LDO and the Crown Lands Ordinance, and come under the purview of the Land Commissioner. The Land Commissioner can (and does) delegate his powers to the Government Agent/Divisional Secretary (hereinafter DS/GA).

Several laws and enactments deal with state land- how grants are made, how it is recovered from unlawful encroachers, how it is regulated and controlled and managed etc. The law also sets out how encroachers are to be dealt with.

As the owners of the land, the state can grant permits to persons to use the land. It can make outright grants (for example the Land Reforms Commission can make outright grants of land), and it can lease the land out to either private parties, or to state owned entities themselves (for example the JEDB which runs many estate companies, have a 99 year lease of tea and rubber lands which belong to the Land Reform Commission)

The State Lands Ordinance deals with the grant and disposition of state land in Sri Lanka, and provides for grants, dispositions, management, and control of such lands, and also the foreshore, and for the regulation of the use of water of lakes and public streams.

Who really owns state land?

The Supreme Court has held that state land is held by the state IN TRUST for the people. (Land Ownership Bill Special Determination No.26A-36/2003)

The Centre vs. the Provinces

According to the 13th Amendment to the Constitution of Sri Lanka, rights in or over land, land tenure, transfer and alienation of land, land use, land settlement and land improvement are all reserved for the Provincial Councils (item 18 of the Provincial Council List).

However, State Land is vested in the Central Government. State land can only be alienated under the seal of the President (Appendix II, 13th Amendment). The Supreme Court has held that State Land is outside the purview of Provincial High Courts. Court held that the Central government has not ceded its power over state land to the provincial councils, except in

limited circumstances (S.C. Appeal No. 21/2013), i.e the powers provided in the Provincial Council List.

Can you prescribe to state land?

No. Private parties cannot claim a prescriptive right to state land. This is different when it comes to private land- uninterrupted, undisturbed, adverse possession for 10 years gives rise to the claim of prescriptive title to private land (within the requirements set out in the Prescription Ordinance).

But this will not apply to state land (section 103, State Lands Ordinance). A private party can never make a prescriptive claim on state land (section 15, Prescription Ordinance). This applies to all state land (after the State Lands Ordinance came into effect (1947), and applies to lands taken over by the Crown under the LAA, or resumed under the Land Resumption Ordinance.

The State Lands Ordinance (section 52 and 53) clearly states that no person can gain title to a state reservation by use or possession, not even compensation for improvements made on such reservations. Under this Act, unlawful encroachers on state reservations can be summarily ejected (section 54).

In terms of the Crown Lands Ordinance and the Prescription Ordinance, illegal occupants of Chena lands /slash and burn cultivations, cannot claim such land on prescription, since prescription does not run against the state.

No person can acquire prescriptive title to state land by virtue of having a permit (section 161, LDO).

Developing and managing State Land

The LDO deals with the development and alienation of state land.

Under the Mahaweli Authority of Sri Lanka Act, administration of all areas that are designated under the Act, including agriculture, irrigation, forest and wild life, all come under the Mahaweli Authority.

Land declared as forest land are administered by the Department of Forest Conservation. The Department has no authority to alienate such lands on long term lease, although they can release land on renewable annual permits, although lands within strict reserves and conservation cannot be released at all. If the land is required for a public purpose though, the DFC can release land to the relevant line Ministry after the environmental requirements set out by the National Environmental Act have been satisfied (for prescribed projects in the NEA).

Permits to state land

- 1. Permits under LDO**
- 2. Permits under State Lands**

Permits can be granted to private parties for the occupation of state land. These permits are given on certain conditions. Permits are personal to the permit holder, and after his death, the permit can devolve on his nominee or successor based on the provisions of the law.

1. LDO Permits

These permits are granted under the LDO (hereinafter called LDO permits). The LDO permits are issued with the intention of cultivating and developing land, and they are issued with certain conditions such as occupation of the land and/or cultivating the land.

Issuing LDO Permits:- LDO permits are issued under section 19(chapter III) of the LDO. The recipients of an LDO permit are selected at a Land Kachcheri by the DS/GA. They are renewed annually by the DS/GA upon payment of annual fees.

Protection of permit land:- Lands granted under a permit/protected holding cannot be seized and sold in execution of a court action (section 39). They cannot be leased or mortgaged (section 43) except in limited circumstances that are also set out in the Act.

Renewing a permit:-They are usually renewed annually. The DS/GA can decide to either renew a permit or to convert the permit into a land grant. Several land grant schemes have been in place from time to time- the Middle Class Scheme, the Swarnabhoomi Scheme, etc. Crown grants give out right ownership to the grant holder, subject to conditions in the grant.

Cancelling a LDO permit:- A permit can be cancelled for non-compliance with the conditions of the permit (LDO, section 109-110). A DS/GA can issue a notice on a permit holder asking him to show cause as to why a condition of the permit has been violated. After notice has been issued ordering a permit holder to appear and show cause for violation of a permit condition (section 106),

If the permit holder fails to appear:- the permit can be cancelled under section 109. The GA has to wait 28 days after the date specified in the notice, before making a recommendation to cancel a permit/making an order of cancellation. The DS/GA's decision will be final, there is no appeal available if the permit holder fails to show cause.

If the permit holder appears and shows cause as to why the permit should not be cancelled(on the date specified in the notice or within the 14 days following such specified date):- The DS/GA will make an order thereafter, and the order will be served on the permit holder and posted on the land (section 112). A permit holder has a right of appeal from such an order to the Land Commissioner (section 113).

A permit holder has the right to be represented by an agent at these proceedings.

Ejectment:- Once a permit has been cancelled, the DS/GA can seek ejectment of the permit holder from the land, from the Magistrate Court (summary proceedings under section 125 of the LDO). There is a right of appeal to the Court of Appeal from the order of the Magistrate (section 126).

Compensation:- The Act does not provide for grant of compensation when a grant has been cancelled.

Alienating lands under a LDO permit:- Lands granted under a permit cannot be alienated without the permission of the DS/GA. However, if an alienation does occur, without such permission, that is a violation of the conditions of the permit, so the permit holder will lose the LDO permit as well. Such an alienation will not be valid.

Rights of permit holders:- A permit holder can institute a vindicatory action in the District Court against a trespasser on his land. The GA/DS can also take action under the LDO against an illegal encroacher on permit land.

Succeeding to permit land (sections 48-87, LDO):-

A permit holder can nominate a successor to the permit land. If the successor is not one of those listed in the 3rd Schedule (spouse or blood relation etc.), then the GA has to approve the successor. A nomination can be cancelled at any time by the nominator i.e. the permit holder. (A nomination is not a disposition, which is not valid)

Before his/her death, the permit holder can nominate the person (a child/blood relative or spouse) who will succeed to the permit after his death. If he dies without a will/intestate, then the LDO specifies as to who will succeed. A spouse or next of kin can succeed to permit land, by applying to the DS/GA within 6 months of the death of the permit holder. The DS/GA will issue a permit to such next of kin.

Disposition of permit land:- Permit land cannot be transferred or relinquished to another's care without the permission of the DS/GA (sections 42-47). Such dispositions are invalid.

Surrendering a permit:- A permit holder can surrender his permit to the Crown. In such a case the Crown cannot seek ejectment of the possessor of the land from the Magistrate's Court (section 125, LDO).

2. Permits under the State Lands Ordinance

Issuing authority:- These types of permits are issued by the President for the occupation of state land (section 2(4)). Permits may be personal to the permit holder, and all rights under it will be decided at the death of the permit holder/grantee.

Succession to a permit under State Lands Ordinance:- If a permit is issued as personal to the grantee, no one can claim it upon the death of the grantee. The land and the permit reverts

to the state. No person claiming through the grantee can claim the land, or even compensation for improvements upon it (section 16).

Cancelling a permit:- If a condition of the permit is violated, the permit can be cancelled. This is done when the DS/GA is of the opinion that there has been a violation of the permit conditions. No compensation is available by reason of cancellation of a permit (section 17 and 18).

Grants to State Lands

- 1. LDO Grants**
- 2. State Lands Ordinance Grants**
- 3. Land Grants (Special Provisions) Grants**

Land Grants under the LDO

Issuing a grant:- An LDO grant is issued only at a Land Kachcheri (section 20).

Converting a permit into a grant:- An LDO permit can be converted into a grant at a Land Kachcheri (section 20, LDO). The DS/GA can convert a permit into a grant under the LDO. These lands are registered with the DS and are depicted in a plan.

Alienating state land under a grant:- Under the LDO, no crown land can be alienated as a grant except at a Land Kachcheri (section 20, LDO). The selection of persons to receive such grants are selected at a Land Kachcheri (except under special circumstances, such as for a public purpose, or where the Land Commissioner makes a grant of less than 8 acres).

Surveying of Land for a grant-Land which has not been surveyed cannot be alienated under a grant (section 30 and 19(3)).

Grant conditions:- the conditions which are set out in the 1st Schedule to the LDO apply to land grants, as well as any additional conditions which may be imposed. The conditions attach to the land, so whoever acquires the land, gets title subject to those conditions (section 37). Where a grant holder violates those conditions, the DS/GA can issue notice on her/him to show cause as to why the grant should not be cancelled.

A grant holder has a right to be represented by an agent at these proceedings.

Appealing:- There can be an inquiry by a Magistrate under section 125. An appeal is available to the Court of Appeal from the decision of the Magistrate (under section 126).

If the grant holder has not shown cause (section 91(1)) there is no appeal from the decision of the DS/GA- it is submitted to the Governor General. The Governor

General may cancel the order cancelling the permit, if he considers it just to do so (section 101).

Authenticity of the Grant:- The instrument must have the signature of the President (a facsimile signature is acceptable). The DS/GA must also sign any copies of the instrument. The instrument must be registered with the Registrar of Lands in the District.

Succeeding to a Grant:- the owner of a holding can nominate a successor or a life-holder before he dies. A life-holder will not be able to nominate another successor/life-holder. A life-holder also cannot dispose of the holding. The owner of a 'protected-holding' cannot nominate a successor/life-holder without the permission of the DS/GA. Although several successors can be nominated, only one life-holder can be nominated. The owner can cancel a nomination at any time and make a different nomination.

The nomination has to be done before a GA/DS/Registrar of Lands/Divisional Revenue Officer/JP/notary. It has to be registered by the Registrar of lands before the death of the owner, otherwise it will be invalid.

If there is no nomination, then succession is in terms of the Act (3rd Schedule). The priority in succession is to the surviving spouse. Thereafter the order of priority is gender discriminatory- sons before daughters, grandsons before granddaughters, and fathers before mothers, brothers before sisters. Relatives must be blood relations and not by marriage.

Land Grants under the State Lands Ordinance

These grants are of two kinds:-

1. Special Grants (charitable, educational, philanthropic, religious or scientific purpose etc.)
2. Free Grants

All grants under this law must be approved and signed by the President. The grant can be absolute or provisional (section 2).

Partitioning land given under a grant:- If a grant holder (absolute/lease) wants to partition his land, he can surrender the grant to the President, and request that it be granted to her/him in parcels (section 4, State Lands Ordinance).

Cancelling a grant:- Even here, where a lessee/grant holder fails to comply with the conditions of the Grant, the DS/GA can follow the procedure in sections 106-128 of the LDO to eject her/him (section 17). No compensation is available if the grant is cancelled under these grounds.

Land Grants (Special Provisions) Act

Land vested in the Land Reform Commission (LRC) can be distributed to the land less as land grants. For this, the Minister, by an order published in the Gazette, can vest in the State, land that is vested in the LRC. The grants are administered by the Land Commissioner. If in any doubt any public officer must consult the Land Commissioner (section 16).

Authenticity of the Grant:- The instrument must have the signature of the President (a facsimile signature is acceptable). The DS/GA must also sign any copies of the instrument. The instrument must be registered with the Registrar of Lands in the District.

Grant conditions:- These grants are also given with conditions which attach to the land. So whoever receives the grant, as well as whoever he nominates, or whoever inherits the grant from him, are all subject to the conditions of the grant. If the grant conditions are violated, then the state can cancel the grant. The DS/GA can enter the land at any time to make sure the grant conditions are not being violated (section 15).

Who can receive the Grant:- The President of the Republic can thereafter transfer any of these lands to any citizen (who is over 18 years). He must consider whether the recipient of the grant has other land, whether s/he can develop the land, and the income of the family of the recipient. (section 3).

Dispositions:- The Grant holder cannot effect a disposition of the land, without the consent of the Land Commissioner (section 5(1), section 12).

Nomination of successor:- The successor to the grant can be nominated, by a last will, or by filling out the prescribed form before a DS/GA, a notary, a registrar of lands or a JP. There is no limit on who can be nominated to succeed.

Inheritance of a grant:- If a grant holder dies without nominating a successor, then the surviving spouse will inherit the grant. If the spouse is also dead, then the Act sets out who will inherit, in order. E.g:- the sons, then daughters, then grandsons, then granddaughters. This nomination order is gender discriminatory. Men are preferred over women when it comes to intestate succession to land grants under this Act. The oldest will be preferred over the others if there are more than one who is eligible to inherit the grant.

Compensation for improvements:-

A person who improves state land with bad faith (*mala fides*), i.e., knowing that it is not her/his land and without a permit, has no claim for compensation. This includes clearing land, cultivating on it, erecting buildings or structures, felling trees and in any way encroaching in state land. Such persons are guilty of an offence and can be fined or even imprisoned (section 168, LDO).

On a policy level, the National Policy on Involuntary Resettlement provides for the payment of resettlement cost, resettlement itself, and rehabilitation where necessary, to people who are displaced as a result of a development project. The Ministry of Land/Land Development administers/implements the National Policy on Involuntary Resettlement (which was approved by the Cabinet on 16 May 2001). This policy is to apply to people who are affected by compulsory land acquisitions. It applies to both acquisition of private lands as well as to recovery of possession of state land.

Building Roads

The Thoroughfares Ordinance was amended in 2008. Under this law, the Highways Authority can acquire lands vested in a local authority, make special grants under the Crown Lands Ordinance, construct roads, divert roads etc., purchase lands for resettlement sites and can authorize surveyors to enter lands in order to mark acquisition boundaries (previously, surveyors could only enter after a section 2 notice under the LAA).

Distribution of State Land

Distribution schemes of state land must take account of national ethnic ratios, and priority will be given those who are displaced by a project and/or landless persons in the District (Appendix II, 13th Amendment).

Evictions from state lands

What can the state do if a private person is encroaching on state land?

Under the State Lands (Recovery of Possession) Act (as amended), the state can initiate proceedings to recover possession of state land. Once a ‘competent authority’ forms an opinion that a person is in possession of state land without authorization, s/he can serve a notice on the occupier, notifying him/her to vacate and deliver vacant possession within 30 days (or more). The ‘opinion’ of the authority must be formed on objective grounds, and the form of the notice, application and affidavit (containing the opinion of the competent authority) has to be in the format set out in the Schedules to the Act (Kandiah v. Abeykoon (1986) 3 CALR 141). If it is not in that format, the occupier can apply to have the quit notice quashed by the Court of Appeal (writ jurisdiction).

Issuing a quit notice:- The quit notice can be personally served on the possessor or if that is impractical, it can be posted on a conspicuous place on the land, requiring the possessor to vacate the land and deliver vacant possession of the land (section 3) thirty days after the notice is served.

When the quit notice is served the possessor must vacate the land, there is no right to a hearing (section 4). If s/he does not vacate, the competent authority can apply to the Magistrate for ejectment of the possessor. Once ejectment proceedings have begun, the possessor will be asked by the Magistrate to show cause as to why s/he should not be ejected.

If s/he cannot show cause, the Magistrate will issue an order for ejection. Ejection proceedings must be completed within 3 months of the application according to the Act (section 6A). Once the ejection order has been made, the Magistrate will order the fiscal or the police to act upon it and eject the unauthorized possessor.

Showing cause :-The only acceptable reason that a possessor can show to continue in possession, is a permit or written authority of the state, which is valid and in force (section 9). The Magistrate's decision is final, and there is no appeal against his order (section 10). However, a writ proceeding does lie to the Court of Appeal, if the possessor can show that the competent authority has exceeded his authority, did not have authority to act, or has not exercised his authority properly.

Appealing and order of ejection:-Once the Magistrate has made an order of ejection, no appeal can be maintained against such an order. Once an application has been made by the Competent Authority, to a Magistrate, for an order of ejection, the Magistrate will only examine whether the alleged encroacher is in possession of state land on a valid permit. If there is no permit, the encroacher will be ejected. However under section 13 of the State Lands (Recovery of Possession) Act the encroacher may be granted compensation for damages sustained as a result of the ejection (if the person succeeds in a vindicatory action against the state in terms of section 12).

A person who has been ejected cannot re-enter the land within the next 10 years (unless on a valid permit or written authority of the state). If he does enter, it is a criminal offence carrying a maximum sentence of 5 years imprisonment, or a fine of Rs. 1,000 or both (section 11A).

You can be evicted from State land if you have built/occupied a building, in a reserved forest (Forest Ordinance). It is an offence to build in a reserved forest area and you can be fined for such activity.

If you have not paid irrigation rates for state land given under a grant/lease, you can be evicted (State Lands Ordinance, Land Settlement Ordinance, LDO, Land Grants (Special Provisions)).

State land includes the following:-

1. Land to which the state is lawfully entitled
2. Land under the control of any authority for developing state land: includes lands vested in the Mahaweli Development Board and the River Valleys Development Board or any other authority that is developing state land.
3. Land vested in a local authority

A competent authority is:-

1. Government Agent/District Secretary
2. Additional GA
3. General Manager of Railways
4. Commissioner of National Housing
5. Commissioner of Local Government

6. Any other public officer authorized by the GA

A corporate body can appoint a ‘competent authority’ to send out quit notices under this Act.

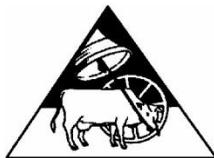
Abandoned state land

Under the Land Resumption Ordinance, if a land which has been alienated (granted under a permit/grant), is abandoned for more than 8 years, the GA/DS can inquire into the claimants on the land. After inquiry by the GA/DS, if the claimant can’t be found, then the GA/DS can publish a notice on the land. If after the notice is published no claim is made within 12 months or more as specified in the notice, then the land is resumed by the state (section 2).

ACRONYMS

Department of Forest Conservation	DFC
Government Agent/ Divisional Secretary	GA/DS
	JEDB
Justice of the Peace	JP
Land Acquisition Act No 9 of 1950	LAA
Land Grants (Special Provisions) Act No 43 of 1979	
Land Resumption Ordinance No 4 of 1887	
Land Development Ordinance No 19 of 1935	LDO
Land Reform Commission	LRC
Mahaweli Authority of Sri Lanka Act No 23 of 1979	
National Environmental Act No 56 of 1988	NEA
Prescription Ordinance No. 22 of 1971	
State Land (Recovery of Possession) Act No 7 of 1979	
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The Law & Society Trust (LST) is a not-for-profit organization established in 1982 in Colombo, Sri Lanka. It is engaged in human rights documentation research and advocacy across three programme areas: Civil and Political Rights; Economic, Social and Cultural Rights and Human Rights in Conflict. Its regular publications include 'LST Review' and 'Sri Lanka: State of the Human Rights' report. LST is a member of regional networks including the Asian for Human Rights and Development (FORUM-ASIA) and South Asians for Human Rights (SAHR).



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