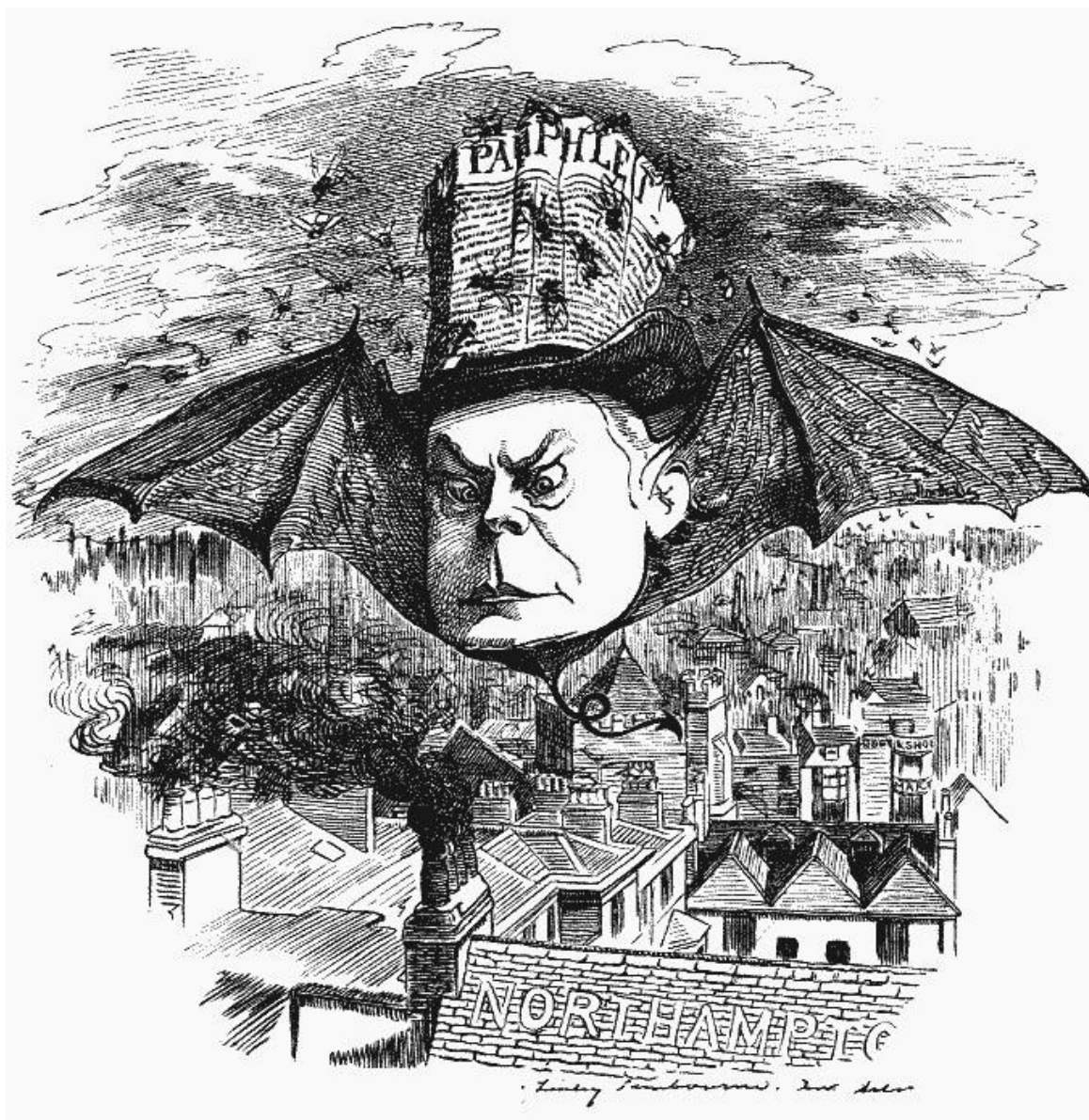


Local Authorities and Land in Sri Lanka

A Hand Book



Law & Society Trust
Economic, Social & Cultural Rights Programme

Local Authorities and Land in Sri Lanka
A Hand Book



Law & Society Trust
No. 3, Kynsey Terrace,
Colombo 08

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Law & Society Trust,
No. 3, Kynsey Terrace,
Colombo 08,
Sri Lanka.
Telephone : +94 (0) 11 268 48 45
Fax : +94 (0) 11 268 68 43
Web : www.lawandsocietytrust.org

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Statutes:

Provincial Councils Act No. 42 of 1987
Urban Development Authority Act No. 41 of 1978
13th Amendment to the 1978 Constitution of the Democratic Socialist Republic of Sri Lanka
Urban Development Projects (Special Provisions) Act No. 2 of 1980
State Lands (Recovery of Possession) Act No. 7 of 1979
Pradeshiya Sabhas Act No. 15 of 1987
Land Acquisition Act No 9 of 1950
Urban Councils Ordinance No. 61 of 1939 as amended
Municipal Councils Ordinance No. 29 of 1947 as amended

STATE OWNERSHIP OF LAND

Rights over land in the provinces are reserved for Provincial Councils under the 13th Amendment;

However, state land can only be alienated by the President;

Courts have decided that the Central Government has not entirely given up its power over state land to Provincial Councils- the powers of the Provincial Councils is only in certain limited circumstances;

1. Introduction: The Centre and the Provinces

According to the 13th Amendment to the Constitution of Sri Lanka, rights in or over land, land tenure (land tenure is the way in which people have access to and use land) transfer and alienation (transfer of the ownership of property rights) of land, land use, land settlement and land improvement are all reserved for the Provincial Councils (item 18 of the PC List).

State Land belong to the Central Government. State land can only be alienated under the seal of the President (Appendix II, 13th Amendment). The Supreme Court has also held that State Land is outside the purview of Provincial High Courts. Court held that the Central government has not given up its power over state land to the PCs, except in limited circumstances (S.C. Appeal No. 21/2013), i.e the powers provided in the PC List.

2. The UDA

The UDA is established under the Urban Development Authority Act No. 41 of 1978. Under this law, the UDA can acquire immovable property. Under section 15 if the Minister determines that any land that is vested with a local authority is required by the UDA, the Minister can by order published in the Gazette, vest such land in the UDA. Further, where land has been declared as a development area, the State can acquire such land for a public purpose under the LAA (private land).

Under the Urban Development Projects (Special Provisions) Act No. 2 of 1980, land can be acquired by the UDA as being urgently required for special projects. The Executive President can make an order by Gazette, declaring a land as urgently required for urgent urban development, and thus acquire it. Once such an order has been made, the State (or the UDA in this case) can take possession of that land under section 7 of the State Lands (Recovery of Possession) Act No. 7 of 1979. However, even in this case, the affected land

owners can still challenge the ‘public purpose’ of such an acquisition in a court of law. The UDA cannot circumvent the provisions of the LAA, that private land can only be acquired for a public purpose.

- The Courts of Sri Lanka have defined a public purpose.
 - **What is NOT a public purpose:-**
 - “an undisclosed purpose”¹ (Exceptions allowed for reasons of national security and the like²)
 - “private purpose or no purpose at all”³
 - “personal benefit or private revenge”⁴
 - A hidden collateral purpose inconsistent with the stated purpose⁵
 - Purpose that confers a direct benefit on an individual or small number of individuals⁶
 - Purpose that is ‘marginal, indirect or tenuous’⁷
 - Potential and nonexistent future public purpose⁸
 - Fancied public purpose⁹.
 - A purpose that will become a reality only in distant future¹⁰.
 - **What is a public purpose?**

Purpose which promotes common good,¹¹ ‘general interest of the community’¹²
‘public utility and benefit of the community as a whole’¹³
A benefit of a ‘sufficiently direct nature’ to the local community affected¹⁴
Public purpose should be definite,¹⁵ real and present¹⁶

¹*Manel Fernando v Jayaratna* [2000] 1 SriLR 126

²*Horana Plantations Ltd. v. Min. of Agriculture, Livestock, Lands and Irrigation* SC Appeal No. 6/2009 9.

³*Sirisena and others v. Hon. H. S. R. B. Kobbekaduwa, Minister of Agriculture and Lands* (1974) 80 NLR 1.

⁴*De Silva v Athukorala, Minister of Lands, Irrigation and Mahaweli Development and another* [1993] 1 SriLR 283.

⁵*Horana Plantations Ltd. v. Min. of Agriculture, Livestock, Lands and Irrigation* SC Appeal No. 6/2009 9.

⁶*Sugathapala Mendis v Ms. Kumarathunga* SC FR 352/07(02/08/2009) 23.

⁷*Sugathapala Mendis v Ms. Kumarathunga* SC FR 352/07(02/08/2009) 23.

⁸*DFA Kapugeekiyana v JB Tennakone* S.C. Appeal No. 161/2010 (18.11.2013) 5.

⁹*DFA Kapugeekiyana v JB Tennakone* S.C. Appeal No. 161/2010 (18.11.2013) 5 at 13

¹⁰*DFA Kapugeekiyana v JB Tennakone* S.C. Appeal No. 161/2010 (18.11.2013) 5 at 13

¹¹*De Silva v Athukorala, Minister of Lands, Irrigation and Mahaweli Development and another* [1993] 1 SriLR 283

¹²*Sugathapala Mendis v Ms. Kumarathunga* SC FR 352/07(02/08/2009) 23.

¹³*Ibid* 23-24.

¹⁴*Ibid* 22.

¹⁵*DFA Kapugeekiyana v JB Tennakone* S.C. Appeal No. 161/2010 (18.11.2013) 7

¹⁶*Ibid* 13.

AQUIRING YOUR LAND

Even a Pradeshiya Sabha or the UDA or even a Municipal or Urban Council, must have a public purpose to acquire private land;

Even if the UDA acquires your land on a urgent basis, under a declaration by the President, you still have the right to challenge the public purpose of such an acquisition;

You have a right to know what that public purpose is;

When a Pradeshiya Sabha takes over land to widen or create a road, it has to publish three separate notices at three stages. If this is not done, you have a right to challenge the process before the Court of Appeal or a Provincial High Court;

You have a right to object to a roadway being declared over your private land;

If a decision by a Pradeshiya Sabja, that your land is needed for a 'public purpose,' is not justifiable, you have a right to challenge that decision before the Court of Appeal or a Provincial High Court;

3. What are the steps that local authorities should follow in acquiring private land?

1. The Pradeshiya Sabhas

Pradeshiya Sabhas are governed by the Pradeshiya Sabhas Act (PS Act) and regulations issued under it.

a. Can a PS Survey the land?

The Chairman of the Council can direct his officials to survey and examine the private lands, buildings or premises' which appears necessary for 'any local public purpose.' If any damage is done to the land the state is liable to pay compensation for the damage. The surveyors can dig and bore, mark boundaries, clear any crop or jungle that is in the way and do any other act necessary to determine whether the land should be adopted for the 'public purpose'. In order to enter an occupied building or enclosure, the officer must either get the permission of the occupant, or the Chairman of the Pradeshiya Sabha (section 20(3)).

b. Can a PS acquire private land?

When any land or building required for the purpose of a PS, it is deemed to be a public purpose. Land and buildings required for such a public purpose may be acquired for the PS by the Government under the provisions of the Land Acquisitions Act (LAA) (section 128, PS Act). Therefore such acquisitions must follow the procedure set out in the LAA, and must be done by the central government on behalf of the PS.

Section 28 of the Pradeshiya Sabhas Act says that acquisitions can be done under section 128 of the Act, when it is necessary for a Pradeshiya Sabha to take over private land for "turning, diversion, widening, opening, enlargement, or improvement of any thoroughfare (main road)", and where "a Pradeshiya Sabha cannot agree with the owner of any land as to the compensation to be paid under subsection (1), or where such owner cannot be found, or where the Pradeshiya Sabha does not deem it advisable to enter into

any agreement with the owner of any land". In such a situation it can acquire land under section 128. *Therefore it is arguable that acquisitions for a PS by the central government, must be for the purposes set out in section 28, i.e for the purpose of turning, diversion, widening, opening, enlargement, or improvement of any thoroughfare.*

c. How do roads vest in the PS as Pradeshiya Sabha Roads and Paths?

With the enactment of the PS Act, all thoroughfares in the area are deemed to be vested in the PS (except those that are specifically vested by another enactment, and principal roads).

According to the Act, the PS has to demarcate the limits of Pradeshiya Sabha roads within 3 years of its commencement. If they do not demarcate within 3 years, they must have the permission of the Minister (for special circumstances) to demarcate roads as PS roads.

Such roads must be maintained by the PS, and the PS must make a plan of such paths and roads. When demarcating a Pradeshiya Sabha road, the PS must publish a series of notices and follow a process which complies with the Act.

The notices:-The notices must be served either personally to the person (i.e the owner or occupant), or by leaving it with some member of his household, or by affixing it to some conspicuous part of his residence. The notice must be in 'the prescribed form'.

The first notice:- The first notice should be published setting out a list of the roads and paths (section 24(1), PS Act).

Once the 1st notice is published, persons who are owners of the affected properties can establish action in the appropriate court (the District Court) and establish his title to the land. Failure to do so can result in the PS taking the next step, which is to serve a second notice deeming the land to be a PS road or pathway.

The second notice:-Thereafter a second notice should be published after 3 and before 6 months after that date, incorporating any alterations that are to be made under court orders. Where a final decision is pending on such a road/path, it should not be included in a second notice.

The third notice:-The third notice is published after the release of final decisions of the pending cases- it should contain a supplementary list of the roads and paths. Before this is published, any alterations to demarcations must be made in the plans and in the supplementary list.

COMPENSATION

You have a right to compensation if your private land is acquired for a public purpose;

Compensation can either be in cash, or by giving you an alternate land/part of the previous roadway;

You will have absolute right over any land that is given to you as compensation;

Once the second and third notices are published, the roads and paths in those notices are deemed Pradeshiya Sabha roads. Once they are deemed PS roads and paths, no one can claim a prescriptive title or ownership to those lands (section 25, PS Act).

If this process is not followed by a Pradeshiya Sabha, then the owner of private land whose land has been demarcated as Pradeshiya Sabha road or pathway, will be entitled to challenge such acquisition process in the Court of Appeal under writ jurisdiction against the Pradeshiya Sabha for exceeding its statutory authority.

d. How does the PSs acquire land for Diversions and Enlargements? (section 28)

When the PS needs to acquire land for diverting a road or enlarging a road, it can enter into an agreement with the owner of the land to pay compensation for that land or give another land in exchange, or both (section 28, PS Act). If it can't enter into an agreement, then the PS can possess the land and pay compensation under section 128 of the Act. Under this section, compensation can be paid for such land and any building, boundary wall, gateway, fence or tree situated in that land.

e. What are the methods of compensation available?

1. Allowing the owner to possess a portion of former road
2. Grant of other land
3. Cash compensation
4. Any 2 or more such methods

f. What are the rights of the persons who got compensation according to 1 and 2 above?

- Certificate of the GA/ the Chairman of the Pradeshiya Sabha to that effect -and-
- a survey thereof

shall constitute sufficient proof of the right of that person for such ground or land.

g. What happens where?

- If Compensation cannot be agreed between the Pradeshiya Sabha and the owner,
- Or where the owner cannot be found,
- Or Where Council deems it unadvisable for them to enter into any agreement with the owner of any land,

Proceedings may be taken to obtain possession of the land, and for compensating the owner, in the manner prescribed in the LAA (i.e. acquisition under section 128, PS Act).

h. What powers do PSs have to take lands adjoining new street for building purposes?

In constructing any new street or thoroughfare (or otherwise improving any street/thoroughfare) a PS may, in addition to the land taken for constructing the new street, also purchase (buy) land necessary or required to form/or line the said street or thoroughfare. This land that is purchased by the PS then can be sold /leased etc subject stipulated conditions in section 18 and also in conformity with the class and description of houses/buildings to be put up as the PS may think fit

i. What powers do PSs have in relation to the trees, bushes/shrubs, leaves/branches and roots of trees that may grow or overhang the streets under PS control?

The proper officers of PS can cut, remove and place them in any adjoining/neighbouring land. They can enter the private land for this purpose with persons, animals and instruments that are necessary and take all actions required to cut, lop or remove the trees, bushes, etc. However the trees, bushes, etc placed by such officers on private land must be cleaned by such officers within a reasonable time (sec 43, PS Act).

j. What powers do PSs have in relation to fences?

Proper officer of PS can put up/make fences, hedges, ditches, drains or banks by the side of the streets under PS control as he decides necessary. Afterwards, owners or occupiers of each land adjoining such fences, hedges, etc have a duty to repair and maintain them in good condition (sec 44, PS Act).

k. What powers do PSs have in relation to ditches, gutters, drains and watercourses along streets under their authority?

Proper officers of PS have the power to make, secure, cleanse and keep open such ditches, gutters, etc. They can further make and lay such drains, watercourses, trunks, tunnels, plants or bridges as they deem necessary for the protection, preservation,

improvement, repair or construction of any street or intended streets or any land/ ground adjoining such streets (sec 45, PS Act)

ii. Municipal Councils and Urban Councils

a. What similar powers do the MCs and UCs possess?

MCs and UCs can survey lands just like PSs. They also can acquire land in the same way as PSs to improve the streets, subject to the same conditions as set out in the PSs Act. They have similar powers as PSs in relation to maintenance of the streets under their authority.

b. What powers do MCs and UCs have which exceed the powers that are vested in the PSs?

Section 44 of the MCO and section 41 of the UCO state that the land and buildings can be acquired for general public purposes without disclosing the purpose for which it is acquired.

Notes

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).



Law & Society Trust

3, Kynsey Terrace, Colombo 8, Sri Lanka

Tel: +94 (0) 11 – 2684845/ 2691228/ 2684853

Fax: +94 (0) 112686843

Web: www.lawandsocietytrust.org