

TAMIL NADU STATE JUDICIAL ACADEMY - HEADQUARTERS, CHENNAI
PROFESSIONAL DEVELOPMENT PROGRAMME-I FOR SENIOR CIVIL JUDGES (BATCH-I) -
31.07.2021

Event Report

The programme commenced with Mr. D. Lingeswaran, Director, TNSJA, explaining the scope and object of the programme. The Director highlighted the significance and relevance of the topics dealt with in the two-day programme i.e., issues and challenges in land acquisition cases, and the complexities in forensic and medico-legal evidence, and emphasized on the need for constant updation of knowledge with interdisciplinary interaction to uphold the constitutional mandate of securing social equity within a liberal framework.

Issues and Challenges in LAOP Cases – Group Presentations

In this session, each group of Senior Civil Judges represented by a group leader/presenter presented the issues and challenges they face in handling and disposing LAOP cases.

Mr. C.B. Vedagiri, XIX Metropolitan Magistrate, Chennai, Officer on Special Duty (Information Technology), High Court of Madras and Mr.M. Vadivel, Special Judge No. I (LAOP), Jayamkondam from Group A provided a brief overview of the provisions of the Land Acquisition Act, 1894 and the 2013 Act and discussed the challenges pertaining to consent and participation of the persons interested, abuse of urgency provisions, fragmented ownership of land, illegal occupation. The difference between public use and public purpose, which has a wider definition, was discussed. The discrepancies due to assumption of willingness to sell, arbitrariness and uncertainties in rehabilitation were highlighted. It was discussed that mechanical application of

provisions and misplaced sympathies should be avoided so as to not result in unreasonable compensation. The Referral Court can either confirm or enhance the compensation granted by the Special Officer/Collector, but cannot reduce the same. The Judge is to decide on the compensation as a hypothetical willing seller.

Ms. K. Jyothi, Spl. Sub Judge (LAOP), Vellore from Group B discussed that the reference to the Court by the Referral Officer is often delayed, due to non-cooperation of the Referral Officer. The complications arising out of death of the claimant during the proceedings were discussed, and doubts were shared and clarified on these aspects. The procedures for maintenance for various registers were also discussed.

Ms. K. Sudha Rani, Spl. Sub Judge (LAOP), Tiruvallur from Group C discussed that the 2013 Act dealt with the aspects that were not covered by the 1894 Act, particular on the aspects of rehabilitation, resettlement, Public-Private Partnership projects and Social Impact Assessment. The recent developments such as the Draft Rehabilitation and Resettlement Scheme and their objective of achieving economic development and providing compensation for landless people who depend on utilisation of that land for their livelihood were discussed.

Ms. R. Jagatheeswari, Spl. Sub Judge (LAOP), Arakkonam from Group D discussed the specific challenges involving delays at various stages, frequent change in the Referring Officer, forced evictions and lack of proper details of address of claimants or their legal heirs. It was highlighted that right to property was re-classified as constitutional right vide the 44th Constitutional Amendment, and therefore the Court must strive to protect the right to property of the citizens.

**An Overview of Land Acquisition Act, 1894 and
Right to Fair Compensation and Transparency in Land Acquisition,
Rehabilitation and Resettlement Act, 2013
– A. K. Natarajan, Advocate, Chidambaram**

In this session, important provisions in the two land acquisition legislations namely, Land Acquisition Act, 1894, and Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013- as well as the similarities and differences therein were discussed. The resource person shared his experiences of appearing for Neyveli Lignite Corporation, and discoursed that the entity for whom the land is taken, whether a PSU as an industrial concern, is liable to pay compensation, and therefore needs to be impleaded to the LAOP proceedings.

Sec.30 provides for apportionment of compensation. Sec.11 states that the tahsildar 'may' refer the matter to Court, however the same is not stated with respect to Sec.30 r/w Sec.18, which gives rise to an anomaly. As per the decision in Hazara Singh v. Sundar Singh, the discretion is left to the tahsildar. As per AIR 1940 Patna 102, when the aggrieved person interested makes a written objection, the tahsildar is bound to refer the matter to Court. In AIR 1959 Ker 136, it was held that if the tahsildar cannot effectively decide, the matter can be referred to Court. The difference between the reference in Sec.18, being mandatory and the reference in Sec.30 being discretionary was reflected upon, by referring to decisions in AIR 1966 SC 237, AIR 1982 AP 86, AIR 1978 Mad 313. As per the decision in 2011 3 CTC 654, appeal or reference is available after tahsildar's award, however a fresh suit in civil courts is liable to be dismissed. As per the decision in 2004 3 CTC 19, compensation for lands assigned by the government is possible.

Sec.23 provides for the manner of determining compensation. It was reflected that value can be determined based on the sale value of the surrounding land.

In this regard, the Supreme Court decisions in 1992 1 MLJ 378, AIR 1994 SC 1836, AIR 1995 SC 186 were highlighted. In Ajay v. Union of India, AIR 1970 SC 564, the traditional method of capitalisation was applied.

It was highlighted that the 2013 Act is a people-oriented legislation, and with the requirement of Social Impact Assessment, the State cannot take away land for public purpose without analysing the impact on surroundings. The landmark decisions in 2001 4 CTC 434, 2021 2 CTC 178, 2021 2 CTC 300, 2017 3 CTC 833 and 2017 3 CTC 740 were discussed.

Special Address on LAOP Cases – Hon'ble Mr. Justice R. Subramanian

His Lordship discussed the decision in G. Mohan Rao v. State of Tamil Nadu dated 29.06.2021, 2021 SCC Online SC 440, which upheld the exemption of three legislations from the purview of Sec.105-A of the Tamil Nadu Amendment to the 2013 Act. The method of valuation of different types of lands and plantations, and the two primordial methods of valuation namely, the capitalisation method and comparative sales method were discussed.

The session deliberated that mechanical deduction of development charges should be avoided. The purpose of acquisition needs to be considered for determining development charges, as for instance, the charges may be high for residential projects and relatively lesser for industrial projects. Double deduction i.e., deduction on two grounds (ex. development charges and largeness in area) for the same land is not allowed. The judgement suggesting that such double deduction can be done has been overruled by the Supreme Court.

The special address was followed by Mr. J. Balagopal, Advocate, High Court of Madras, highlighting his views on the deduction of various charges, concurring with His Lordship, Hon'ble Mr. Justice R. Subramanian.