

## RED COVER STORY

# What to do when your property is acquired by the government?

**FAIR COMPENSATION:** If your land is compulsorily acquired by the government, you can ask for higher compensation and expenses

Malaysia upholds the Rule of Law. Within the confines of the Law, Malaysians have the right to live freely and without fear. However, there are times when the rights of citizens may be subject to restrictions in the interest of and for the common good of the local community and Malaysian society at large.

One such scenario when Malaysians sacrifice their personal rights to meet the needs of Malaysian society at large is when their personal landed properties are subjected to compulsory acquisition by the Government for public purposes.

For the average Malaysian, coming face to face with the prospect of having your property, particularly the house you live in, compulsorily acquired by the Government can prove to be an unpleasant and sometimes traumatic experience.

Sometimes, however, we can't avoid it, living in this ever-changing and growing modern society.

## What is Compulsory Land Acquisition?

The compulsory acquisition of land is one of several government activities that affect the personal rights of property owners. It is a drastic form of governmental intervention as it results in the dispossession and eviction of private property owners from their properties. Governments only resort to the use of these draconian powers as a last resort to improve, control and develop better use of land as the population grows. The rationale behind the compulsory acquisition of privately owned landed properties is that to act in the public good is more important than anything else, including the protection of the personal rights of individual property owners.

## Who can compulsorily acquire private landed properties in Malaysia?

In Malaysia, the Land Acquisition Act 1960 (LAA 1960) and the National Land Code 1965 (NLC 1965) empower the respective State Governments to compulsorily acquire privately owned landed properties without having to procure their prior consent or agreement.

## When is it allowed?

Section 3 of the LAA 1960 provides

that the State Authority may acquire any (privately owned) land which is needed:

- For any public purpose;
- By any person or corporation for any purpose which in the opinion of the State Authority is beneficial to the economic development of Malaysia or any part thereof or to the public generally or any class of the public; or
- For the purpose of mining or for residential, agricultural, commercial, industrial or recreational purposes or any combination of such purposes.

## What is 'Public Purposes'?

Public purposes would generally include building hospitals, public schools, colleges and universities, military camps and bases, roads, highways and causeways, ports and public utilities infrastructure.

## Frequently asked questions

Next to the subject of Public Auction Sale, the subject of Compulsory Land Acquisition is among the least understood and sometimes shrouded in "mystery". I will list some of the commonly asked questions and attempt to answer them.

### 1. Can the Landowner or other persons challenge the State Government's decision to compulsorily acquire the landed property?

The State Government's decision to acquire may not be challenged unless:

- The State Government did not follow the procedures stated in the LAA 1960
- The State Government did not acquire the Subject Landed Property for the purposes stated in and thus has violated the provisions in Section 3 of LAA 1960.

In the case of **Syed Omar bin Abd Rahman Taha Alsogoff v Government of the State of Johore [1979] 1 MLJ 49 (PC)** the Court held that:

"Their private interests in or sentimental attachments to their lands cannot override public needs. There are other areas where they can develop their private interests and give new attachments with the compensation which they have received from the Government for the acquisition. If they are dissatisfied with the amount given, they should seek



redress in the appropriate manner.

"People are sentimentally attached to their lands and we are of course sorry for the applicants, but we regret that the law is clearly on the side of the Government."

### 2. Will the dispossessed Landowner receive fair and adequate compensation for the loss of his land?

Yes, a dispossessed Landowner must be paid adequate compensation. Article 13 of the Federal Constitution also provides that:

- No person shall be deprived of property save (except) in accordance with law; and
- No law shall provide for the compulsory acquisition or use of property without adequate compensation.

### 3. Who should be compensated?

In Malaysia, unlike in the United Kingdom, there is a right to be compensated only if land is acquired. Australia and Singapore adopt the same legal position as Malaysia. Only a "person interested" as defined in Section 2 of the LAA 1960 can claim for and be paid compensation in respect of the compulsorily acquired landed property.

Section 2 of the LAA 1960 defines "person interested" to mean every person claiming an interest in compensation to be made on account of the acquisition of land under the LAA 1960, but does not include a tenant at will who occupies the property on a month-to-month basis without a Tenancy Agreement or without a Lease.

Following the above definition,

Persons Interested would include freeholder, leaseholder/tenant, chargee, business occupier, easement-holder, option-holder, trustee and beneficiary, beneficial owner and others.

### 4. How to assess compensation?

The general rule is that the measure of compensation is to be based on the Market Value of the acquired land.

According to an English case, **Ricketts v Metropolitan Rail Co L.R. 2 H.L. 175** which is also applied by Malaysian Courts, the principles for computation of compensation include:

- Compensation to be paid must not be only for the Land taken; and
- Compensation to be paid must also be for other losses suffered in consequence of the compulsory acquisition of the Land.

According to the English Court Judgment in **Ricketts v Metropolitan Rail Co**, "compensation is the amount required to put the dispossessed landowner in the same position as if his property had not been acquired".

The ideal position is for the dispossessed landowner to be placed in "no worse no better position" (in so far as money can buy) after the dispossession.

### 5. Matters to be considered in determining Compensation to be paid?

As stated above, in Malaysia there is a right by "persons interested" to be compensated only if land is acquired. The fundamental principle for payment of compensation in respect of the com-

pulsory acquisition of private properties is in the English case **Ricketts v Metropolitan Rail Co**.

When private properties are compulsorily acquired, payment of compensation for only the land taken is not enough. Compensation payment for damages to the remaining un-acquired land of the proprietor/owner is also provided for in the LAA Act 1960 and these provisions have been upheld by Malaysian Courts.

In attempting to reflect the sentiment of the "no worse no better" principle, the First Schedule of LAA 1960 provides the statutory basis for the assessment of compensation as follows:

- Market Value of the Land taken;
- Severance Damage to the remaining Retained Land where only part of a property is acquired;
- Injurious Affection to remaining Retained Land where only part of a property is acquired;
- Any loss directly attributable to the compulsory acquisition of the Subject Property; and
- Removal expenses to be incurred.

### i) Market Value

Market Value is "the price that would be paid by a willing purchaser to a willing seller in circumstances where both parties are actuated by fair business principles and there is no disinclination on the part of the vendor to sell and the purchaser is not compelled by any urgent necessity to buy".

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