

LAWS OF KIRIBATI
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CHAPTER 95B

STATE ACQUISITION OF LANDS

Arrangement of Sections

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SCHEDULE

An Ordinance to regulate the acquisition of land by the Republic for public purposes

3 of 1954
8 of 1968
13 of 1972
(Cap. 24 of 1973)
14 of 1974
L.N. 16/74
21 of 1977
8 of 1986

Commencement: 25th June 1954

Short title

1. This Ordinance may be cited as the State Acquisition of Lands Ordinance.

Constitutional provision relating to Banaba

2. This Ordinance shall be read subject to section 119 of the Constitution.

Declaration of public purpose

3. The following purposes are hereby declared to be public purposes for the purposes of

this Ordinance and of section 8 of the Constitution -

- (a) exclusive Government use; and
- (b) general public use; and
- (c) the laying out of a new township, Government station or Government housing scheme; and
- (d) the extension or improvement of an existing township, Government station or Government housing scheme; and
- (e) the making of sanitary improvements of any kind; and
- (f) the obtaining of control over land contiguous to a port, railway, road or other public works of convenience, constructed or to be undertaken by the Government; and
- (g) the purpose of or purposes connected with the construction, maintenance or improvement of a highway; and
- (h) any other purpose declared by the Beretitenti, acting in accordance with the advice of the Cabinet, or by a law, to be a public purpose.

Interpretation

4. In this Ordinance unless the context otherwise requires "public purpose" means a purpose referred to in section 3;

Appointment of Republic Statistician

5. (1) The Minister may acquire, on behalf of the Republic, any land required for any public purpose, paying such consideration or compensation as may be agreed upon or determined under the provisions of this Ordinance.

(2) Acquisition of land under subsection (1) of this section includes:

- (a) the acquisition of the freehold;
- (b) the surrender of a lease, sublease, or licence; and
- (c) the acquisition for a term of years as the Minister may think proper.

Preliminary investigation

6. (1) Whenever it appears to the Minister that land in any locality is likely to be needed for any public purpose it shall be lawful for any person either generally or specially authorised by the Minister in that behalf and for his servants and workmen to do all or any of the following things -

- (a) to enter upon and survey and take levels of any land in such locality; and
- (b) to dig or bore under the subsoil; and
- (c) to do all other acts necessary to ascertain whether the land is adapted for such purpose; and
- (d) to clear, set out and mark the boundaries of the land proposed to be taken and the intended line of the work, if any, proposed to be made thereon:

Provided that no person shall enter into any building or upon any enclosed land attached to a dwelling-house (except with the consent of the occupier thereof) without previously giving such occupier at least 7 days' notice of his intention to do so.

(2) As soon as conveniently may be after any entry made under this section the person so authorised as aforesaid shall pay for all damage done, and in case of dispute as to the amount to be paid either such person or the person claiming compensation may refer such dispute to the High Court.

Notice of intention to take lands

7. Whenever the Minister resolves that any lands are required for a public purpose the Minister shall give notice to the proprietors of the said lands and to the mortgagees, encumbrances and lessees thereof, or to such of them as shall after reasonable inquiry be known to him, which notice may be in the form in the Schedule or to the like effect.

Notice of intention to take and power to take possession

8. (1) The Minister may, by such notice aforesaid or by any subsequent notice, direct the person or persons aforesaid to yield up possession of such lands after the expiration of the period specified in the notice, which period shall not be less than 6 months from the service of such notice unless the and in the opinion on the Minister is urgently required for the public purpose.

(2) At the expiration of such period the Minister and all persons authorised by him shall be entitled to enter into and take possession, on behalf of the Republic, of such lands accordingly.

Service of notice

9. (1) Every notice under section 7 or 8 shall either be served personally on the person to be served or left at their last usual place of abode or business, if any such place can after reasonable inquiry be found, and in case any such parties shall be absent from Kiribati or if such parties or their last usual place of abode or business after reasonable inquiry cannot be found, such notice shall be left with the occupier of such lands or his agent or, if there be no such occupier or agent, shall be affixed upon some conspicuous part of such lands.

(2) If any such person be a corporation, company or firm, such notice shall be left at the principal office of such corporation, company or firm in Kiribati, or, if no such office can after reasonable inquiry be found, shall be served upon some officer, if any, or agent, if any, of such corporation, company or firm in Kiribati.

(3) All notices served under the provisions of this Ordinance shall be published in the Gazette as soon as practicable after such service.

Acquisition of land for roads

10. (1) Subject to the provisions of this section and without limiting the generality of the powers conferred by or under section 5, the Minister may acquire on behalf of the Republic, by agreement or compulsorily, land which in his opinion is required for or in connection with the construction, maintenance or improvement of any road designated a highway (in this Ordinance referred to as a "public highway") by order made by the Minister and published by exhibition at the public office of the Beretitenti.

(2) The Minister shall not be enabled by virtue of subsection (1) to acquire otherwise than by agreement land on either side of a public highway so as to provide a total width including the road surface exceeding 18 metres.

(3) Where the boundary of a public highway will be altered in consequence of any construction or improvement effected or to be effected pursuant to subsection (1) then, for the purposes of subsection (2), the centre of a public highway shall be taken to be the centre of it as proposed to be constructed or improved.

No building to be permitted within road reserve

11. (1) A building shall not be constructed either completely or partially within 9 metres of either side of the centre of a public highway (such area being referred to in this Ordinance as a "road reserve").

(2) No trees, shrubs or crops may be planted or grown within a road reserve except in accordance with an order made by the Minister and published by exhibition in the locality of the public highway.

(3) Any building constructed or tree, shrub or crop planted contrary to the provisions of this section may be removed, cut or felled without liability to the owner thereof.

Minister to acquire land within a road reserve in certain circumstances

12. (1) Where the whole or part of any parcel of land is comprised in land subject to the provisions of section 11 and any person claims that -

- (a) he is entitled to an interest in that parcel of land; and
- (b) since the date of the commencement of this Ordinance he has made reasonable endeavours to sell that interest; and
- (c) he has been unable to sell that interest except at a price substantially lower than that for which it might reasonably have been expected to sell if no part of the land were comprised in land subject to the provisions of section 11,

he may serve on the Minister a notice in the prescribed form requiring the Minister to purchase his interest in the land.

(2) Where a notice has been served in accordance with the provisions of subsection (1) the Minister shall be deemed to be authorised to acquire compulsorily, on behalf of the Republic, the interest of the claimant in the land to the extent of the area affected by the operation of section 11.

(3) The amount of compensation if any payable to any such claimant shall be assessed as if the said interest in land had not been affected by the operation of section 11.

Disputes as to compensation and title to be settled by High Court

13. If at the expiration of 6 months from the service as aforesaid of such notice no claim shall have been lodged with the Minister in respect of such lands, or if the person who may have lodged any claim and the Minister shall not agree as to the amount of the compensation to be paid for the estate or interest in such lands belonging to such person, or if such person has not given satisfactory evidence in support of his claim, or if separate and conflicting claims are made in respect of the same lands, the amount of compensation due, if any, and every such case of disputed interest or title shall be settled by the High Court, which shall have jurisdiction to hear and determine in all cases mentioned in this section upon a summons taken out by the Minister or any person holding or claiming any estate or interest in any land named in any notice aforesaid.

Decision in absence of parties

14. Where any person upon whom a summons has been served shall not appear at the time appointed, a decision may be given ex parte upon hearing the evidence adduced, and such decision shall be as effectual as if given after hearing in the presence of such person.

Certain reports as to value to be evidence

15. (1) The written report of the Chief Lands Officer, or of any person whom he considers to be suitably qualified appointed in writing by him to be a valuer for the purposes of this section, as to the value of the lands or of any buildings or trees or crops thereon shall be evidence thereof.

(2) The Chief Lands Officer or any such valuer may, on giving 3 days' notice in writing to the occupier, enter upon any such lands or into any buildings thereon for the purpose of ascertaining the value of such lands and the buildings, trees and crops thereon, and any person having an interest in such lands may call the Chief Lands Officer or any such valuer as a witness and may also adduce any other evidence as to value.

(3) The report of the Chief Lands Officer or any such valuer may be proved by a copy thereof under his hand and proof of the signature of such copy shall not be required unless the High Court sees reason to doubt the genuineness thereof.

(4) If any party so desires the Chief Lands Officer or any such valuer shall be called as a witness for cross-examination.

Matters to be considered in determining compensation

16. In determining the amount of compensation to be awarded for land acquired under this Ordinance--

(a) the High Court shall take into consideration -

(i) the market value of the land at the date of the notice of intention to take such land; and

(ii) the damage sustained by the person interested by reason of the taking of any standing crops or trees which may be on the land at the time of taking possession thereof; and

(iii) the damage, if any, sustained by the person interested, at the time of taking possession of the land, by reason of severing such land from his other land; and

(iv) the damage, if any, sustained by the person interested, at the time of taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

(v) if, in consequence of the acquisition of the land, the person interested is compelled to change his residence or place of business, the reasonable expenses, if any, incidental to such change; and

(b) the High Court shall not take into consideration -

(i) the degree of urgency which has led to the acquisition; or

(ii) any disinclination of the person interested to part with the land acquired; or

(iii) any damage sustained by him which, if caused by a private person, would not render such person liable to a suit; or

(iv) any increase to the value of the land acquired likely to accrue from the use to which it will be put when acquired; or

(v) any increase to the value of the other land of the person interested likely to accrue from the use to which the land acquired will be put; or

(vi) any outlay or improvements on or disposal of the land acquired, commenced, made or effected after the date of the notice of the intention to take such land.

Compensation for loss of rents and profits

17. When the Minister has in pursuance of a notice under section 8 entered into possession, on behalf of the Republic, of any lands, the High Court may award compensation to the owner of such lands

and to all parties entitled to any estate or interest therein for loss of rents and mesne profits for the period between the time the Minister so entered into possession and the time when the consideration due under an agreement has been paid to the persons entitled thereto, or compensation has been paid into court, under the provisions of this Ordinance.

When the Minister may withdraw from the acquisition of land

18. Nothing in this Ordinance shall be taken to compel the Minister to complete the acquisition of any land unless he shall have entered into possession of the land or has failed within 1 month of the judgment of the High Court to intimate to the Court that he does not intend to proceed with the acquisition:

Provided however that the owner of the land and all persons entitled to any estate or interest in the land shall be entitled to receive from the Republic all such costs as may have been incurred by them by reason or in consequence of the proceedings for acquisition and compensation for the damage, if any, which they may have sustained by reason or in consequence of the notice of intended acquisition; and the amount of such costs and compensation, if not agreed upon, shall be determined by the Court.

Costs

19. In any proceedings under this Ordinance to which the Republic is a party, the parties thereto shall be entitled to receive costs against each other in the same manner as if such proceedings were conducted and had between subject and subject, and every sum directed to be paid by the Republic as costs shall upon production of an office copy of the order of the High Court be paid by the Minister of Finance:

Provided that where the amount awarded by the Court as the consideration or compensation due to the owner of any estate or interest in any lands, taken for public purposes, does not exceed the sum offered by the Minister to such person as consideration or compensation for such estate or interest, such person shall pay the costs of all proceedings under section 8 rendered necessary by the action of such person.

Republic exonerated upon payment

20. The payment to any person to whom any consideration or compensation shall be paid or the payment into court of any compensation upon a decision of the High Court shall effectually discharge the Republic from seeing to the application or being answerable for the misapplication thereof:

Provided that where any person is in possession in virtue of any estate less than an estate of inheritance or where any person is in possession in any fiduciary or representative character, the Republic may pay such consideration or compensation to such persons and in such proportions and instalments and after such notices as the High Court may direct.

Penalty for hindering the taking of possession of lands

21. Every person who shall wilfully hinder or obstruct any person duly authorised by the Minister from entering upon or taking possession of or using any land in pursuance of the provisions of this Ordinance, or who shall molest, hinder or obstruct such person when in possession of such land, or shall hinder or obstruct any officer of the sheriff or police officer when executing a writ or order of possession, shall be liable to imprisonment for 3 months and to a fine of \$50.

Service of notice of intended acquisition not to have certain effects

22. The fact that a notice has been served upon any person under section 7 or 8 shall not be taken as an admission by the Republic that the person on whom such notice has been served or any other person has any estate or interest in the land specified in the notice, or debar the Republic from alleging in any proceedings under this Ordinance or otherwise that such land is State Land.

SCHEDULE

(Section 7)

Notice is hereby given that the Republic requires for public purposes [*absolutely*] or [*for a term of years*] or [*for so long as the same may be used for public purposes*] or [*the surrender of the lease, sublease or licence of*] the following lands [*describe land, giving measurements and showing boundaries whenever practicable*].

(incomplete form)