

CIRCULAR

Sub: Land Acquisition - Acquisition and payment of compensation to various components of Patta lands viz., Plots, OSR lands etc., falling under the housing layouts in both approved and unapproved - Detailed instructions issued - Reg.

Ref: Connected records.

In order to implement various infrastructural development projects by different Government Departments / agencies, Public Sector Undertakings and Boards in the State, the private lands are being acquired by the Land Acquisition Officers and the Land Plan Schedule also contain the lands categorized as housing layouts (approved / unapproved), where development made or no / least development had taken place. Usually, apart from the housing plots, the housing layouts so formed would contain the Open - Space Reservation (OSR) lands such as roads, parks and play fields, etc.,

2. Generally, the approval for housing layouts are / were issued by the authorities concerned subject to compliance of certain conditions by the layout promoter / owner, including the one that the layout promoter / owner should convey the lands earmarked for OSR category to the local body concerned by way of registered gift deed.

3. However, instances have come to notice that in some cases, where the housing layouts have been approved by the competent authority, the layout promoters have resorted to sell the plots covered in the said layouts to general public without conveying / handing over the OSR lands to local body by way of registered gift deed. When such layouts are subjected to acquisition for various infrastructure projects as stated above, the layout promoters claiming the compensation for the lands that have been earmarked for OSR category on the view that those lands weren't gifted to the local body and that the title over those lands still vested with them. This has led to various complications in deciding the ownership of those lands and to whom the compensation has to be paid in those cases.

4. In connection to the above matter, the present rule provisions and related judgements have been examined. As per section 4, 7 and section 8 of the Tamil Nadu Regularization of Unapproved Layouts and Plots Rules, 2017, certain restrictions / conditions have been imposed in case of regularization of unapproved layouts / plots and the relevant provisions are reproduced as below for better understanding of the issue.

4. Restrictions for regularization of unapproved plots and layouts:-

(3) No plot or layout in Open space reservation (OSR) land, Park or Playfield reserved in any approved layout or sub-division shall be considered for regularization.

(6) No plot with any encroachment on to a public road or street or on any other land over which the applicant does not possess ownership right and lands affected by the repealed Tamil Nadu Urban Land (Ceiling and Regulation) Act, 1978 (Tamil Nadu Act 24 of 1978) shall be considered for regularization.

7. Guidelines for regularization: -

The unapproved individual plot and the unapproved layout seeking regularization should confirm to the following, namely:-

"(g) In case of layouts:

(ii) The reservation of land for Open Space Reservation shall be provided by amalgamating or altering the unsold plots to an extent not less than 10% of the total area of unsold plots. However, it would not be essential to provide 10% of the unsold plot area in a layout in one contiguous stretch or in definite dimension. **All the roads and Open Space Reservation area in the layout as shown in the layout framework shall be deemed to have been vested with the concerned local authority.**

8. Effect of regularization. -

(1) Plots under earlier regularization schemes implemented by the Government shall be deemed to be regularized for residential usage irrespective of the land use zone in the development plans concerned. Further, the unapproved layout or sub-divisions formed,

(i) prior to 05.08.1975 in Chennai Metropolitan Area; or

(ii) prior to 29.11.1972 in rural areas and prior to 01.01.1980 in urban areas outside the Chennai Metropolitan Area,

*Shall be deemed to have been approved. **The roads and Open Space Reservation area, if any, in such layout shall be deemed to have been vested with the concerned local authority.**"*

5. Further, it is to be noted that, the Hon'ble High Court of Madras have delivered landmark judgments in certain cases connected with the above issues and concluded the matter in the way that there is no necessity for the Government or the local body to initiate the land acquisition proceedings to take over the road portion/other OSR lands in the layout since the layout owner/developer has no right over the lands earmarked for the roads/other public lands in an approved/unapproved layout.

The crux of such landmark Judgements is reproduced as below.

a) In the High Court of Judicature at Madras, Writ Appeal No.1525 of 2001 Dated: 31.7.2007 T.N.Rajasekaran vs State of Tamil Nadu, and 2 Others: (DIVISION BENCH)

15. Once a lay-out has been approved by the appropriate authority, the portions earmarked for road and street would be left to the benefit of the plot owners, who purchased the plots from the original owner or promoter, as the case may be, and **after the said approval, all the roads and streets shall become public and, thereafter, the original land owner cannot lay his hands on the portions left out for the purpose of laying roads and streets, claiming that he is still holding ownership over them since there cannot be any approved lay out without making any provision for road.** Thus, in case, any plea has to be raised either objecting the acquisition or the quantum of compensation, it should be either by the local authority or the purchasers of the plots, but not the petitioner, since has sold away the lands.

19. From the above Rules, **it is clear that all streets shall become public and the land owners/developers shall hand over these street/roads portion through a deed to the local authority concerned, after forming the roads.** But, as could be seen from the original records produced before us, the appellant/petitioner has not executed any deed in favour of the local authority handing over these street/roads portion, only with a malafide intention of making this type of fictitious claims, to illegally enrich himself at the cost of the exchequer, by violating the mandatory provisions of law.

b) In the High Court of Judicature at Madras, Writ Appeal No.340 of 2019 Dated: 30.04.2021, T.G.Naveen vs The Chairman, Tamil Nadu Electricity Board and 2 Others: (DIVISION BENCH)

51. One other contention of the learned Senior Counsel appearing on behalf of the appellants is that the Government has to acquire the private land from the parties to convert it as public road. In this regard, the learned Senior Counsel relied upon the decision made in the case of *N.R. Krishnamoorthy Raja. V Special Commissioner and Commissioner for land administration and 5 others* reported in 2018 (7) MLJ 13. The facts of the said case is that the owner of the property made a construction leaving his private property to be used as road and that private road has been taken over as public road without payment of compensation. Therefore, the said land owner filed a Writ Petition seeking compensation and the Court granted compensation, as the petitioner's private property has been taken over for laying the road. **However, in the instant case, the road which is sought to be used by the private respondent is not a private property but it is the one which is shown as road in the layout to have access to the plots.** Whenever a sale is made, the purchasers not only purchase the plots but also the right to use the piece of land shown as road and the sale consideration of the plot would also involve the component of right to use the road portion. **The land portion shown in the private layout developed by the appellants is meant for all the persons who purchase the plots in the layout. Hence, it has to be dedicated only for the purpose of road and it should have been handed over by the appellants to the local body.** There is a failure on the part of the appellants to hand over the road portion to the local body and he cannot take advantage of his failure to make erroneous claim. **Therefore, there is no necessity for the Government or the local body to initiate the land acquisition proceedings to take over the road portion in the layout for the purpose of make it as a public road.** Thus, the argument put forth by the learned Senior Counsel for the appellants is liable to be rejected.

6. Taking into consideration of the relevant rule provisions and the judgments delivered by the Hon'ble High Courts in this regard, the following guidelines / instructions are issued with regard to acquisition and the payment of compensation for the lands earmarked as OSR category viz., Roads, Parks etc., in an approved/un-approved layout.

Category: 1: In case of approved layouts where OSR lands are already conveyed to the local bodies :

- a) **In respect of acquisition of Plots :** Undoubtedly, the final award need to be passed to acquire the housing plots on payment of full compensation to the concerned plot owners without any deduction.
- b) **In respect of acquisition of OSR lands :** In case of OSR lands, the procedure being followed for Transfer/Alienation in favour of the Requisitioning Departments/Agencies to be adopted and no award to be passed and no compensation to be provided in such cases.

- c) **In cases where the OSR land (part/full) registered as a plot :**
After getting layout approval, usually the OSR lands will be conveyed by way of gift deed to the local body concerned. However, if any OSR land such as park, road etc., registered as a plot in the name of any person, then such sale/registration become null and void since such land is already registered in favour of the local body and vested with the Government and necessary action to be taken by the Local body to nullify/cancel the document through Registration Department. Further, criminal action to be initiated against the layout promoter/owner by the local body concerned. **In such cases, the procedure being followed for Transfer/Alienation in favour of the Requisitioning Departments/Agencies to be adopted and no award to be passed in such cases.**

Note: To consider a layout as an "approved layout", the orders of approval by the competent authorities for that layout should be made on or before the date of publication of preliminary notification under the relevant land acquisition Act. Further, a mere regularization of a particular plot in a layout before or after the publication of preliminary notification will not be considered as a plot in an approved layout and it is mandatory to deduct 33.33% of land compensation amount in such cases.

Category: 2: In case of approved layouts where OSR lands are not conveyed to the local bodies :

- a) **In respect of acquisition of Plots :** In all such cases, where the layout is an approved one by the competent authority and the concerned layout owner/promoter has failed to convey the OSR lands to the local body as per rules, then final award to be passed in the name of the plot owner with full compensation (without deduction of 33.33%).
- b) **In respect of acquisition of OSR lands :** Here, as per section 7(g)(ii) of Tamil Nadu Regularization of Unapproved Layouts and Plots Rules, 2017, all the roads and Open Space Reservation area in the layout as shown in the layout framework shall be deemed to have been vested with the concerned local authority. Hence, **it is very clear that, though the OSR lands including roads are not conveyed properly to the local bodies by way of registered gift deed, such lands shall be deemed to have been vested with the concerned local authority even in case of unapproved**

layout. However, in practice, the OSR lands intended for acquisition have been included in the Final Gazette notification under the relevant Acts since the lands are not conveyed to the local body and still stands in the name of the layout owner/promoter in revenue records. In such cases, **speaking orders to be issued by the LAO with "Nil" compensation for such OSR lands.** Here, the procedure for Transfer/Alienation of such OSR lands does not arise.

- c) **In cases where the OSR land (part/full) registered as a plot :**
As stated supra in category : 2(b), if any unconveyed OSR land of an approved layout to be acquired and the same has been already registered in the name of any other person, then final award to be passed by the LAO as speaking orders with "Nil" compensation for such unconveyed OSR lands cum registered plot. Here, the illegal/unauthorized registration of a plot in the unconveyed OSR lands will not be considered for the compensation at any cost.

Category: 3: In case of Un-approved layouts where OSR lands are conveyed to the local bodies :

- a) **In respect of acquisition of Plots :** The final award has to be passed to acquire the same and 33.33% of the land compensation has to be deducted as per the instructions issued vide this office Circular No. M2/7304/2018, dated: 16.10.2020 in case of wet/dry lands if its guideline value stands in Sq.ft / Sq.mtrs.
- b) **In respect of acquisition of OSR lands :** The guidelines issued for category - 1(b) will be applicable in toto for this category also.
- c) **In cases where the OSR land(part/full) registered as a plot :**
The guidelines issued for category - 1(c) will be applicable in toto for this category also.

Category: 4: In case of Un-approved layouts where OSR lands are not conveyed to the local bodies:

- a) **In respect of acquisition of Plots :** The final award to be passed to acquire the same after deduction of 33.33% of the land compensation as per the instructions issued vide this office Circular No. M2/7304/2018, dated: 16.10.2020 in case of wet/dry lands if its guideline value stands in Sq.ft / Sq.mtrs.,
- b) **In respect of acquisition of OSR lands :** The guidelines issued for category -2(b) will be applicable in toto for this category also.

- c) **In cases where the OSR land (part/full) registered as a plot :**
The guidelines issued for category-2(c) will be applicable in toto for this category also.

Category: 5: In case of common amenities subjected to acquisition in a housing layout (approved / unapproved):

In respect of other lands provided for common amenities in a housing layout such as School, Hospital, Community Hall, Library, etc., which are belonging to the layout promoter and which are salable to be used for designated purpose only, need not be handed over to the local body concerned. Those lands shall be treated as private properties and in case of acquisition of such lands, final award to be passed and the compensation for those lands shall be made to the respective rightful persons who are competent to receive the compensation as per the documents. **Here, the 33.33% deduction will be applicable in respect of 1) approved layouts where OSR lands are not conveyed to the local body and 2) unapproved layouts where OSR lands are conveyed / not conveyed to the local body.**

7. This Circular shall take immediate effect and the above guidelines should be strictly adhered to by all concerned without any deviation. In case of any doubt in the issues covered in this circular, the LAOs can write to this office for clarification and they should act only in accordance with the clarification to be issued in such matters.

Sd/- S.NAGARAJAN
Commissioner of Land Administration

To

1. All District Collectors.
2. All District Revenue Officers.
3. Special District Revenue Officers (Land Acquisition).

Copy to:

1. All Sections in Land Acquisition Branch
2. PS to CLA.


For Commissioner of Land Administration
[Joint Commissioner (Land Acquisition)]