

MALAWI GOVERNMENT



Act

No. 21 of 1970

I assent

Handwritten signature of Hastings Banda
PRESIDENT

24.8.70

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An Act to provide for the acquisition of land and for matters relating and incidental thereto

ENACTED by the Parliament of Malawi as follows—

PART I—PRELIMINARY

Short title

1. This Act may be cited as the Lands Acquisition Act, 1970.

Interpretation

2. In this Act, unless the context otherwise requires—

“land” includes land covered with water, all things growing on land, buildings and other things permanently affixed to land, and any interest in land;

“transfer” includes convey, assign, surrender or otherwise alienate or dispose of and “transfer” and “transferor” as nouns shall be correspondingly construed;

“public land” has the meaning ascribed to that term by the Land Act.

Cap. 57:01

PART II—ACQUISITION

Power to acquire land

3. Subject to the provisions of this Act the Minister may, whenever he is of the opinion that it is desirable or expedient in the interests of Malawi so to do, acquire any land, either compulsorily or by agreement, paying such compensation therefor as may be agreed or determined under this Act.

Preliminary investigation

4.—(1) Whenever it appears to the Minister that it may be desirable or expedient to acquire any land under this Act it shall be lawful for any person authorized by the Minister in that behalf and for his servants and agents to—

(a) enter upon the land in question or any land in the vicinity thereof and survey and take levels;

(b) dig or bore under the sub-soil;

(c) do all other acts necessary to ascertain whether the land is or may be suitable; or

(d) clear, set out and mark the boundaries of the land proposed to be acquired and the intended line of the work (if any) proposed to be done thereon:

Provided that no person shall enter into any building or upon any enclosed court or garden attached to a dwelling house (except with the consent of the occupier thereof) unless he has previously given such occupier not less than seven days' notice of his intention so to do.

(2) As soon as conveniently may be after any entry made under subsection (1) the Government shall pay for all damage done by the persons so entering.

5.—(1) If the Minister resolves that it is desirable or expedient compulsorily to acquire any land under this Act, he shall serve notice upon the persons who are possessed of an interest in the land or upon such of those persons as are after reasonable enquiry known to him.

Notice of intention to acquire

(2) Every notice under this section shall with all reasonable dispatch be published in the *Gazette*.

(3) Every notice under this section shall invite any person claiming to be entitled to any interest in the land to which the notice relates to submit particulars of his claim to the Minister within two months of the date of the publication of such notice in the *Gazette*.

6.—(1) The Minister may by notice under section 5 direct the persons upon whom such notice is required to be served by that section, or may by any subsequent notice direct such persons, and any other persons believed by him to be in possession of the land to which the notice in question relates, to yield up possession of such land upon the expiration of the period specified in the notice which period shall not be less than two months from the date of the service of the notice:

Notice to yield up, and power to take possession

Provided that where the Minister considers that the land is urgently required the persons aforesaid may be required to yield up possession on the expiration of such lesser period as the Minister may direct.

(2) On the expiration of the period referred to in subsection (1) the Minister and all persons authorized by him may take possession of the land.

7.—(1) Every notice under section 5 or section 6 shall be served either personally on the persons to be served or by leaving it at their last usual place of residence or business if any such place can after reasonable enquiry be found; and if any such person is absent from Malawi or if he or his last usual place of residence or business cannot after reasonable enquiry be found, such notice shall be left with the occupier of such land or his agent or, if such occupier or agent cannot after reasonable enquiry be found, shall be affixed upon some conspicuous part of such land.

Service of notices, etc.

(2) If any such person be a body corporate such notice shall be deemed duly served if it be left at the principal office of such body corporate in Malawi or if no such office can, after reasonable enquiry, be found, such notice shall be deemed duly served if

served upon some officer (if any) or agent (if any) of such body corporate in Malawi if such officer or agent can, after reasonable enquiry, be found.

(3) Where any such notice has been published the acquisition of the property to which it relates shall not be invalid by reason only of any irregularity in the service or publication of the notice.

Acquisition
of portion
of house
or other
building
Compensa-
tion

8. Where he is willing and able to yield up possession of the whole thereof, no person shall be required to yield up to the Minister possession of part only of any house or other building.

9.—(1) Subject to the provisions of this Act, where any land is acquired by the Minister under this Act the Minister shall on behalf of the Government pay in respect thereof fair compensation agreed or determined in accordance with the provisions of this Act.

(2) The Minister may, in his discretion, direct in each case that any compensation payable under this Act be paid either—

(i) in one lump sum; or

(ii) in such instalments, at such times, and at such rates of interest on outstanding balances, as he may specify.

Assessment
of fair
compensa-
tion

10.—(1) Unless otherwise agreed between the parties fair compensation shall be assessed by the Minister.

(2) An assessment of compensation made by the Minister under this section shall be calculated by adding together—

(a) the consideration which the person entitled to the land paid in acquiring it;

(b) the value of unexhausted improvements to the land made at the expense of the person entitled thereto since the date of his acquisition thereof; and

(c) any other appreciation in the value of the land since the date of such acquisition.

(3) In this section “unexhausted improvements” means anything permanently attached to the land directly resulting from the expenditure of capital or labour and increasing the productive capacity, utility or amenity thereof, but does not include the results of ordinary cultivation other than standing crops and growing produce.

(4) In calculating an assessment of compensation under this section no amount shall be included under paragraph (c) of subsection (2) in any case where the Minister is satisfied that the person entitled to the land has, either through absence from the country or otherwise, failed unreasonably to develop the land, or otherwise, failed unreasonably to develop the land, or in the case of agricultural land to cultivate or supervise it satisfactorily.

(5) In any case where the Minister is satisfied that a person acquired the land by way of gift or inheritance or otherwise without payment of full consideration, or by way of any fictitious or artificial transaction, he shall substitute for the compensation referred to in paragraphs (a) and (b) of subsection (2) an amount equal to the consideration paid on the last preceding acquisition of the land concerned plus the value of unexhausted improvements made to the land since the date of such preceding acquisition at the expense of the person entitled to the land at the time the improvements were made.

(6) Notwithstanding any other provisions of this section, no compensation assessed under this section shall exceed the current market value of the land.

(7) Where the Minister is required to be satisfied as to certain facts under subsections (5) or (6) and has declared that he is so satisfied, such declaration shall not be enquired into by any Court.

(8) No proceedings in any Court shall constitute grounds for any delay in yielding up possession of any land in accordance with the provisions of section 6.

11. The payment to the person who appears to be entitled thereto (or into court if the identity of such person, or any question of apportionment, is in dispute) of compensation under this Act shall operate as a complete discharge of the Minister from all claims in respect of the land, but shall not bar any subsequent proceedings against the person to whom the same was awarded by any person claiming to have a better right to the compensation or the right to a share thereof:

Effect of
payment of
compensa-
tion

Provided that no proceedings under this subsection by any person claiming to have a better right to any compensation or a right to a share therein shall be commenced after the expiration of three years from the date of the payment of the compensation by the Minister.

PART III—TRANSFER

12. Where a notice to acquire any land under this Act has been published in terms of section 5, the persons entitled to transfer the land shall, notwithstanding anything to the contrary contained in any other law or in any order of any court within two months of the publication of such notice transfer the same to the President as public land.

Transfer
to the
President

13. Where two months have elapsed since publication in terms of section 5 of a notice to acquire land and no transfer of such land has been executed in accordance with the terms of such notice or such other terms as may have been agreed between the Minister and the person entitled to transfer the land the Minister may himself execute the transfer of such land as transferor and such execution shall be valid and effective for all purposes.

Minister
may execute
transfer in
certain
circum-
stances

Vesting of
land
acquired
Cap. 58:02
Cap. 58:01

14. A transfer to the President under this Act on presentation to the Deeds Registrar, or the Chief Lands Registrar, as the case may be, shall be registered under the Deeds Registration Act or the Registered Land Act as may be appropriate and such registration shall vest the land in question in the President as public land free from all adverse or competing rights, title, trusts, charges, claims or demands whatsoever, but subject to any terms and conditions contained in such transfer.

PART IV—MISCELLANEOUS AND GENERAL

Minister
may with-
draw from
acquisition

15. Nothing in this Act shall be construed as requiring the Minister to complete the acquisition of any property unless he has taken possession thereof:

Provided that where the acquisition of any land is not completed the Government shall pay to the owner thereof all such costs and expenses as may have been incurred by him by reason of or in consequence of the proceedings for acquisition and compensation for any loss or damage which may have been sustained by reason or in consequence of the notice of intended acquisition.

Service of
notice not
an admission

16. The fact that a notice has been served or published in terms of this Act shall not be regarded as an admission by the Minister that the person named in any such notice or the person on whom any such notice was served or any other person has any interest in the land specified in the notice or any part thereof, or debar the Minister from alleging in any proceedings under this Act or otherwise that all rights in or in relation to such land are vested in the President.

Penalty for
hindering or
obstructing

17.—(1) Any person who wilfully fails to comply with a notice to yield up possession, or who wilfully hinders or obstructs any duly authorized person taking possession of any land in terms of this Act or exercising any rights or performing any functions under this Act in relation thereto, shall be guilty of an offence and liable to a fine of one hundred pounds and to imprisonment for six months.

(2) If any person hinders or obstructs any duly authorized person from taking possession of any land in terms of this Act, the Minister may issue an order of ejectment addressed to any officer of the court or to any police officer and such officer or police officer shall forthwith eject any person so withholding possession.

Regulations

18. The Minister may make regulations for the better carrying out of the provisions of this Act and in particular, but without derogating from the generality of the foregoing, may make regulations prescribing anything which in terms of this Act may be prescribed.

19.—(1) The Acquisition of Land for Public Purposes Act (hereinafter referred to as the former Act) is hereby repealed.

Repeal and
savings
Cap. 58:04

(2) Notwithstanding the repeal of the former Act—

(a) all proceedings commenced under the former Act and pending before any court immediately before the commencement of this Act shall be continued and concluded as if this Act had not come into force:

Provided that where any proceedings are pending before any court otherwise than on appeal from another court and such proceedings are for the assessment of compensation, compensation shall, if it has not been assessed, be determined in accordance with the provisions of this Act;

(b) all orders, notices, directions, appointments and other acts and things lawfully made, issued or done under any of the provisions of the former Act before the commencement of this Act shall be deemed to have been made, issued or done under the corresponding provisions of this Act;

(c) any order of the High Court made before the commencement of this Act may be enforced as if this Act had not been passed.

(3) Section 35A of the Land Act is hereby repealed.

Cap. 57:01

20.—(1) Section 12 (1) of the Malawi Housing Corporation Act is hereby repealed.

Consequen-
tial
amendments
Cap. 32:02
Cap. 69:03

(2) Section 3 of the Railways Act is hereby amended as follows—

(i) by deleting the following words from subsection (1) thereof—

“In case the Minister as aforesaid shall provisionally approve the scheme sections 4 and 37 of the Acquisition of Land for Public Purposes Act shall be applicable to the lands likely to be needed for the purposes of such railway.”; and

(ii) by deleting subsection (2) thereof.

(3) Section 6 of the Railways Act is hereby repealed.

(4) Section 9 of the Railways Act is hereby amended as follows—

(i) by the insertion, immediately before the full stop at the end of subsection (1) thereof the words “as soon as may be after such exercise.”.

(5) Section 30 of the Electricity Act is hereby amended as follows—

Cap. 73:01

(i) by repealing subsection (1) thereof; and

(ii) by substituting for the words “under subsection (1) or (2)” where they appear in subsection (3) thereof, the words “subsection (2) or the Lands Acquisition Act, 1970,”.

Passed in Parliament this thirtieth day of July, one thousand, nine hundred and seventy.



Clerk of Parliament

