

Second Reading

THE LAND ACQUISITION (AMENDMENT) BILL

(NO. XIV OF 2013)

Order for Second Reading read.

The Minister of Housing and Lands (Dr. A. Kasenally): Mr Speaker, Sir, I move that the Land Acquisition (Amendment) Bill (No. XIV) be read a second time.

Mr Speaker, Sir, this is a very short Bill, but it is very important in the sense that it is an amendment to the Land Acquisition Bill, and any amendment to the State Land Act on that matter requires a comfortable three-quarter majority. Also, it is important that because we are taking possession of what is very dear to any human being here, which is a portion of land which is theirs, therefore, we have to ensure that it is done in a very fair and equitable manner.

Mr Speaker, Sir, this Bill provides first and foremost for owners of private land to be paid an interim compensation representing the value of the land as assessed by the Valuation Office. As the House may be aware, Government resorts to compulsory acquisition whenever it has to implement a project of national interest which cannot be implemented on State land. In the process, private land owners are called upon to cede to the State their private properties against compensation. However, generally, the former owners are paid the compensation long after the land is transferred to the State, and in many cases long after the completion of the project for which the land has been acquired.

Mr Speaker, Sir, in Mauritius, as in many parts of the world, landowners are very much emotionally attached to their properties. Some of them have acquired the property through hard-earned income and savings, implying lots of sacrifice and deprivation, while others have obtained land through inheritance. Moreover, in many cases, the property or land being acquired is the main source of income of the landowner. In other cases, there stands on the land the sole residential unit or a commercial unit representing the sole source of family income.

While Government has to ensure that development happens or occurs, and while one can understand that such development can only take place on private land being acquired through a legal process, the State has the obligation to ensure that in the process it does not

cause harm or hardship to the owners concerned. It has a duty not only to ensure that the landowners are fairly and adequately compensated, but that payment of such compensation is effected promptly, so as not to cause any further prejudice to the owners.

The fact that a landowner is being in a way deprived of his property does cause some hardship. Today, the legal provisions do not allow payment of any compensation until there is agreement on the amount.

It is very difficult and in many cases heartbreaking for the owner to part with his private land, the more so that there is uncertainty as to the final quantum of compensation he will benefit, and the timing of such payment.

The law as it stands today allows the owner to refuse or reject the offer of the State as regards the quantum of compensation. When there is such disagreement, inevitably the matter is referred to the Board of Assessment, the award of which may take months, and in many cases years.

Mr Speaker, Sir, compulsory acquisition has been resorted to in respect of some major road projects: Terre Rouge-Verdun-Trianon Link Road, Phoenix- Beaux Songes Link Road, and the Triolet-Bypass.

For the purpose, some 1,300 lots have been required. While most of the projects have been completed or are nearing completion, payment of compensation has been finalised in respect of some 600 cases only. These are facts. The remaining 800 cases are still under process.

Furthermore, Mr Speaker Sir, as at today, there are over 100 cases pending before the Board of Assessment, where the State has already acquired the land and has implemented, or is implementing the intended project.

Mr Speaker, Sir, this Bill aims at providing some relief to former owners. It introduces more fairness and equity. With a view to redressing a situation which is causing much hardship to landowners, I am proposing an amendment to the Land Acquisition Act, which would allow an interim payment of compensation to the former owner pending the determination of the amount by the Board of Assessment. In effect, payment of the interim compensation would be made almost immediately after assessment of the Valuation Office as regards the value of the land acquired.

This will allow the former owners to have cash in hand to continue his business, albeit on some other site, or to find an alternative accommodation. Moreover, there will not be much resistance for former owners to allow the State to enter the site, and implement the required project. This is a win-win situation.

Hon. Members have also noted that the Bill makes provision for the expeditious hearing of appeals which seek to challenge the legality of the compulsory acquisition of the property.

In view of the sensitive nature of this proposal, I am of the opinion that there needs to be further consultation on this respect. I am, therefore, proposing to move for amendment at Committee Stage to delete clause 3 of the Bill. I trust, Mr Speaker, Sir, that this amendment will obtain the full support of this House and I commend the Bill accordingly.

Thank you, Mr Speaker, Sir.

Dr. A. Boolell rose and seconded.

(5.20 p.m.)

The Leader of the Opposition (Mr A. Ganoo): Mr Speaker, Sir, we, on this side of the House, agree with this Bill which is being presented before the House today and I shall be very brief.

I shall come, first of all, to the part of the Bill that is being deleted today. The hon. Minister has just informed us that Government, by circulating the amendment to the Bill is, therefore, doing away with clause 3 of the Bill pertaining to section 10 of the Principal Act. Therefore, this Bill which deals with the expeditious hearing of appeals seeking to challenge the legality of the compulsory acquisition of property will no longer form part of the Bill before this House.

Indeed, when this Bill was presented for the first time before this House a few months ago, the then Leader of the Opposition, hon. Paul Bérenger, did in fact signify his reserve, made certain comments about whether in fact the Executive could impose upon the Judiciary the question of a delay for the hearing. I am reading from the Bill –

“The Court shall cause the matter to be fixed for hearing not later than three months from the date of the receipt of the documents.”

This was the point, in fact, that was wisely made at that time by hon. Bérenger and the Bill was postponed. Today we are happy that Government has come back to its decision, has taken on board the proposal made by hon. Paul Bérenger to the effect that this clause, which appears in the Bill, might give rise to certain difficulties.

Sir, the information that we have received is that the Judiciary is also of the opinion, perhaps for administrative reasons or other reasons, that we better do away with this clause, which leaves me to say therefore that there will be no expeditious hearing of appeals which seek to challenge the legality of compulsory acquisition of property since we are doing away with clause 3 of the Bill.

Nevertheless, Mr Speaker, Sir, the solution will be for the Prime Minister or the Attorney General to liaise with the Chief Justice, with the Head of the Judiciary to see that administratively such type of cases be given a fast track. This was the idea of formal proposal in our law. This was the idea of the amendment in the Bill. But since now Government is not going forward with this specific proposal, the possible solution would be unofficially, informally for such cases to be given a speedy hearing and be treated with celerity because, as the hon. Minister was saying, it concerns the property of poor people and of citizens of this country who, in the framework of our democratic system, have the right to appeal when Government is seeking the compulsory acquisition of their property. That would be the solution I am sure. I have no doubt that the Judiciary will agree with this course of action if the Minister of Justice tries to find a solution in substitution of the formal amendment that we are removing from the Bill today. This could be the possible solution.

Mr Speaker, Sir, but now that this is done or now that this part of the Bill has been done away with, has been removed, I suppose that the Minister must do away with this part in the Explanatory Memorandum itself. Because now that there will be no more clause 3 of the Bill - it has been deleted - it is therefore necessary for the removal of that part which deals with the expedition hearing of the appeals in the Explanatory Memorandum. Because clause 3 has been removed in the Bill, I suppose that it stands to reason that the Explanatory Memorandum also can no longer contain that part which is dealing with the expeditious hearing of the appeals.

Having said this, Mr Speaker, Sir, we are in agreement with the other proposal of interim payment, of course. This is a way of providing relief and solace to landowners whose lands are being compulsorily acquired. But, the question that I would like to ask the hon.

Minister is about the interim payment. I mean, who will decide the quantum of the interim payment? The hon. Minister has not shed any light on that issue. The Bill says the authorised officer may, pending the award of the Board, make an interim payment of compensation to any interested person, as may be determined by the Director of Valuation. I mean, what happens if the landowner is not agreeable to the determination of the Director, valuation and real estate consultative service?

True it is that the law invests the Director of Valuation to determine the amount, but in case there is no agreement, in case the landowner does not agree and thinks that he deserves more in terms of interim payment, what will happen?

M. le président, l'Opposition est entièrement d'accord avec la proposition de ce projet de loi. It is a just legislative proposal which, as I said, will definitely come to the relief of landowners of this country.

But, before I resume my seat, Mr Speaker, Sir, I would like to make another comment in terms of compulsory acquisition of land of the citizens of this country. I am referring to the Report of the Director of Audit and, I suppose, what I am going to say has an incidence as a direct bearing on this Bill because in the two reports of the Director of Audit, ending 2009 and 2010, Mr Speaker, Sir, the Director of Audit underlines, in a very elaborate manner, the case of land acquisition. This is what he had to say. I am quoting the Director of Audit -

“The services of the Ministry of Housing and Lands were resorted to by various Ministries for the acquisition of privately owned land whether compulsory or by private agreement for implementation of Government projects”.

For the period July 2008 to December 2009, the Government disbursed some Rs130 m. for the acquisition of private owned lands, but then, the Director of Audit says that -

“Since a complete database was not available, as a result, true it could not be ascertained to what extent these acquired lands have been utilised”.

But, in the years 2007-2008, the Director of Audit carried out an exercise and found out, Mr Speaker, Sir, that some 49 undeveloped lands were identified. Out of 49 projects, 30 of them covering an extent of 67 *arpents* of land were still kept in abeyance. Some portions of land were acquired as far back as the year 2001 and the Director of Audit lists several projects,

examples of lands which had been acquired by the Government but these were examples of undeveloped land for years. Then, he gives several projects, Mr Speaker, Sir.

In the next report of the Director of Audit, 2010, the same comment was made, Mr Speaker, Sir. The conclusion of the Director of Audit's report is as follows -

“In respect of the 30 projects mentioned above, in most of the cases land was compulsorily acquired for implementation of the projects. Government has had to disburse huge amount of money to acquire these lands which have to date remained idle”.

Of course, I am not blaming the present Minister because this has been done in the past, Mr Speaker, Sir. The point I wish to make is to remind the House what the Director of Audit had said in these two reports –

“Several long acquired lands were still undeveloped due to projects being kept abeyance.”

Yes, within our democratic framework, the law entitles Government to acquire compulsorily lands belonging to the citizens of this country, Mr Speaker, Sir. But I think no abuse should be made of the provisions of our law and our Constitution. This is the point I wanted to make on this issue of the remarks of the Director of Audit concerning compulsory acquisition of land. I think Government must show greater perspicacity, discernment in deciding when to acquire compulsorily land belonging to the citizens of this country.

With these words, Mr Speaker, Sir, I reiterate our agreement with the proposals in this Bill because as I said we have no doubt that it will help in relieving many of the land owners of this country whose lands have been compulsorily acquired by Government.

Thank you.

(5.33 p.m.)

The Attorney General (Mr Y. Varma): Mr Speaker, Sir, I would like to congratulate the hon. Minister of Housing and Lands for introducing this piece of legislation in the House.

In fact, the proposed amendment purports to provide an interim payment of compensation to a person whose land has been compulsorily acquired. Such amount, Mr

Speaker, Sir, will be based on the determination by the Director, Valuation and Real Estate Consultancy Services.

As already stated by the hon. Minister, he has given notice of the amendment which he proposes to move at Committee Stage with regard to clause 3 of the Bill. In fact, the hon. Leader of the Opposition raised the point earlier on. Clause 3, Mr Speaker, Sir, provides for the expeditious listing of appeals, which seek to challenge the legality of compulsorily acquiring property is being deleted. In fact, Mr Speaker, Sir, this is being done after consultation with the hon. Chief Justice. I can reassure the House that the hon. Chief Justice was consulted and he has given assurance that these cases where lands are in dispute will be dealt with expeditiously.

Mr Speaker, Sir, as regards the interim payment of compensation, it carries undoubted advantages. The interested person will receive an interim payment pending the award of the Board. Since the award of the Board can also be subject to an appeal and the whole process could take some time before it is finally disposed of, this interim payment will enable the recipient to enjoy and benefit from the said interim payment shortly after the compulsory acquisition. Such interim payment, Mr Speaker, Sir, will, however, not prejudice an interested person who wishes to claim additional compensation, as it is only an interim payment and subject to the final decision on the claim for compensation following compulsory acquisition.

Mr Speaker, Sir, this has proved to be an effective and practical way of compensating the interested person pending the award of the Board and in certain instances the final determination of the claim, if subject to appeal. This method of interim payment or advance payment of compensation has been implemented and is effectively working in other jurisdictions. In the United Kingdom, for instance, section 52 of the Land Compensation Act 1973, provides for a right to an advance payment of compensation following compulsory acquisition. Likewise, in Australia, section 51 of the Land Acquisition and Compensation Act 1986 provides for the claimant to obtain an advance payment of compensation equal to the amount offered.

In fact, Mr Speaker, Sir, this Bill, which purports to amend the law relating to the compulsory acquisition or taking of possession of any property. Under section 8(4)(a) of the Constitution, will have to be supported, at the final voting in the Assembly, by votes of not less than three-quarter of all Members of the Assembly. It is comforting to note, Mr Speaker,

Sir, that the Opposition has shown its concurrence with the piece of legislation before the House.

I thank you for your attention.

(5.38 p.m.)

Mr J. F. François (Third Member for Rodrigues): Thank you, Mr Speaker, Sir, for the opportunity to speak on this Land Acquisition (Amendment) Bill. As a technician, first of all, this Bill deals with an expeditious hearing of appeal and seeks to challenge the legality of compulsory acquisition of properties and the interim payment of compensation to interested persons.

Mr Speaker, Sir, allow me to congratulate the hon. Minister and the technicians for coming forward with these amendments which also require further amendments. This fine tuning of a Land Acquisition Act is undoubtedly guaranteeing partly, the objects of the amendments in a transparent, equitable, meaningful, fair land valuation and fair compensation.

Moving the country forward, Mr Speaker, Sir, requires coherent and serious engagement and vision in an era where land is a very important State subject, which is undergoing reform on many fronts, be it in terms of legal, administration, information, management and valuation. Despite this progress, Mr Speaker, Sir, I have to point out also that there have been lots of fishy land transactions, as I observed, both here in Mauritius and Rodrigues.

I remind here the recent introduction of the affidavits of Prescription Act and we are waiting for a favourable report from the Commission of Enquiry about prescription. It is absolutely fundamental also that the valuation and acquisition system do not deprive the land owner of an adequate compensation from compulsory acquisition, Mr Speaker, Sir. This is where I believe that this amendment forms part of an integrated approach together with the introduction of various related acts namely: the Environmental and Land Use Tribunal, Building Control Act, Cadastral...

Mr Speaker: I am sorry, whatever comments the hon. Member wants to make, he has to be relevant and his relevance is linked with the amendments proposed only. I will not allow general debate on land acquisition or prescription or land environment.

Mr François: Certainly I do accept your ruling, Mr Speaker, Sir, but this is a very technical piece of amendment which has a certain interdependency.

Mr Speaker: I do agree with you, precisely because the amendments are technical that you have to be technical in your comments.

Mr François: I thank you, Mr Speaker, Sir. With regard to this amendment, under the technicality of these amendments, our constitution under article 8 sub section 126; guarantees our citizen's right to protection from deprivation of their property. Article 8 sub section 1 provides that –

‘No property of any description shall be compulsorily taken possession of, and no interest in or right over property of any description shall be compulsorily acquired, except where –

(a) the taking of possession or acquisition is necessary or expedient in the interests of defence, public (...)”

And mainly as the hon. Minister said the development of utilisation of any property in such a manner as to promote the public benefit and the social and economic well being of the people of our country. Part (c) also states that –

“The provision is made by a law applicable to that taking possession or acquisition –

(i) for the payment of adequate compensation;(...)”.

The same Constitutional legality, Mr Speaker, Sir, of acquisition provision, as I have just mentioned, is subject to challenge under the Land Acquisition Act in the Supreme Court as provided in section 10 and I won't quote section 10, but however what is missing under this present provision is the time bound factor for hearing which, unfortunately, has been deleted from this Bill. That would have forced the Supreme Court to expedite matters in the interest of any person having a right over the property and that would have been most welcome if matters are fixed for hearing in a period of time. At present the legislation and this Bill do not fully meet the object of this Bill as specified in part (a) of the Explanatory Memorandum.

Further, Mr Speaker, Sir, to this Constitutional right the proposed amendments to the act raises a few questions on the overall application of the Land Acquisition Act that requires some scrutiny. It shall be clear that the Constitutional Right should not lead to abuse, though by anybody where land can be acquired for economic development through either

privatisation or democratisation. In that connection I have a point of concern about compulsory acquisition or payment or interim whatever. Where an extra extent of a portion of land is being acquired what will happen to the remaining portion of land which is not marked for any future development. My question: how long a portion of land acquired for future use can remain idle and what are the extents with regard to the cases where extra land is acquired for public purposes than the required extent?

Mr Speaker: No, I am sorry hon. Member. I have said this is not a full debate on the Principal Act, we are concerned with two amendments and you are fully aware of the amendments. So, therefore, I appeal to you to be relevant and speak on the amendments. Otherwise, I will have to stop you. You decide!

Mr François: I am a bit taken away by the technicality of the amendment Mr Speaker, Sir, but I abide by your ruling. With regard to the interim payment pending the deterioration of the amount by the board of assessment, my question is – what is the stand of the board of assessment where portion of land required for the reason as will be specified for acquisition, has been prior advertised by the owner or real estate agent for public sale of the owner or otherwise indicates that the land is available for sale. Will the Board consider the transaction on the basis of land acquisition or will it be a simple land sale transaction where the State will buy the portion of land to decide on the interim payment or not Mr Speaker, Sir. Because why I said that – under normal practice there must be negotiation with the sellers on the basis of fair market value through land acquisition process following well established standards. But these standards are not clearly defined enough in our evaluation system which I am sure the hon. Minister will come up with amendments and with code of practice to prescribe in due course. The public, in general, Mr Speaker, Sir, need to have clear access to the key parameters and standards on which land is evaluated today to avoid any irregular transaction. Here again, this amendment to section 9, Mr Speaker, Sir, is indirectly related under emergency acquisition and it is not clear what are the parameters for compensation of acquisition in case of public emergency.

Mr Speaker: I'll have to stop you again. You mention section 9 of the Principal Act. Are we concerned with section 9 of the Principal Act? I want to give you time to talk, but I want you to be relevant hon. Member!

Mr François: Certainly, Mr Speaker, Sir, because my question is afterwards, if there is compensation under urgency what will be the implication under compensation with relation

to payments, whether there will be additional economic cost which has certain implications on the amount of the quantum to be paid under interim payment. That is why I make this interlink.

Mr Speaker, Sir, another point of concern is about amendment in section 14 subsection (3) of the circulated Bill which stipulates that –

‘Notwithstanding sub section (2), the authorised officer may, pending the award of the Board, make an interim payment of compensation to an interested person of such amount as may be determined by the Director, Valuation and Real Estate Consultancy Services’.

I fully agree with this interim payment of compensation which is acceptable. However, the Bill does not specified the exact quantum or percentage of payment which, with due respect, may be subject to the whims and caprices of the Director of Evaluation and the Real Estate Consultancy Services.

Mr Speaker, Sir, in such case, I believe that the words, such amount as may be determined, shall be a fixed reasonable percentage of the compensation amount. I believe it should be, at least, 50% of the market value to be paid to the publication of notification to the date of possession or compensation paid instead of the words ‘such amount’ as may be determined.

In that line, Mr Speaker, Sir, I propose that the new subsection 3 in section 14 be amended, so that the Bill clearly specifies the quantum or exact percentage of the market value to be paid for interim payment to the owner. Why not? We may have cases where the Director may decide to pay as a measure of precaution, without exaggeration, less than 5% of the total amount to be compensated or agree to pay a nominal percentage of only 1% of total amount pending final decision. That will be unfair and unjust to the owner. I just specified a few percentages to clarify my points.

Mr Speaker, Sir, another point of concern is why there is no consequential amendment in relation to section 2 of the relevant Act, namely the Interpretation clause of the Environment and Land Use Appeal Tribunal Act, under Section 3(1), to cater for amendment, where matters can be referred to the Environment and Land Use Appeal Tribunal. Why? This is because, Mr Speaker, Sir, the Tribunal provides for hearing of appeals.

Mr Speaker, Sir, an important aspect of the amended Act needs to provide for regulation of compulsory acquisition, and the hon. Minister referred to a few examples, namely the ring road, the Verdun Road, where about 1300 lots have been acquired. Here also, I refer to acquisition of property on State land, which makes a difference. You can acquire private land, but you can acquire property on State lands, and that is not clear in this definition and in this amendment, Mr Speaker, Sir. One direct fundamental of this Bill is to better facilitate true owners of land to enjoy the benefits of transactions of their property while consolidating a true partnership in the property development sector.

However, the question remains: what will happen to interim payments in cases of compulsory land acquisition, where the true owners or absolute owners of the land are untraceable, or in a situation of non-determination of true ownership? I refer to a case, Mr Speaker, Sir, where there is a confusing situation with regard to a portion of about 324 acres of concession land in Rodrigues. The Regional Assembly i.e. the Regional Government has constructed a Community Centre on a portion of concession land at Grand' Baie, which required compulsory acquisition in the interest of the community. But the 'true owner' determination is uncertain at present. It is uncertain.

(Interruptions)

Mr Speaker: I did not get you. Could you repeat what you have just said?

Mr François: What I am saying is that the Regional Government has built a Community Centre on a portion of concession land in Rodrigues, and at present the true owner of this concession land is untraceable. On the other hand, some people are challenging in the Supreme Court the ownership of this concession of land. It is very confusing. That is why I am raising this point, on which I won't go any further because the case is before the Supreme Court, so as not to cause any prejudice, as a judicial decision is pending on the matter. However, if it is difficult to determine to whom compensation is payable under section 13, that is, determination of persons entitled, as was the case when a portion of land was acquired on the same concession for the construction of a football pitch, for which, till now, no compensation has been effected to anyone. My question is: what steps shall be taken by the authorised officer with regard to an interim or full payment, as per the amended section 14, subsection 3?

Mr Speaker, Sir, in that case, this situation necessitates further amendment with regard to section 13 of the Act to provide, if true owner is untraceable or true owner determination is uncertain, the market value of the acquired property for compensation shall be invested in a community development project where the property is located or associated.

A final issue on the implication of interim payment, Mr Speaker, Sir, is the question of sale back to owner, where the whole or part of any land, which has been compulsorily acquired, is no longer required for any purpose. My query is: what will be the conditions attached to pay back guarantee to the owner who has owned the property, in relation to fluctuation of market value? There shall be additional amendments to section 14 and subsequently to section 31 of the main Act - sale back to owner - to provide for consideration for original owner.

Mr Speaker, Sir, to conclude, I do support the Land Acquisition (Amendment) Bill, together with the few remarks and queries made to consolidate the Act for expediting matters and effect interim payment for compulsory property acquisition, and in that sense I won't go into any further technical details.

I thank you for your attention.

Mr Pillay Chedumbrum: Mr Speaker, Sir, I move that the debate be now adjourned.

Dr. Jeetah rose and seconded.

Question put and agreed to.

Debate adjourned accordingly.

Second Reading

Order read for resuming adjourned debate on the Land Acquisition (Amendment) Bill (No. XIV of 2012).

Question again proposed.

(4.37 p.m.)

The Minister of Information and Communication Technology (Mr T. Pillay Chedumbrum): Mr Deputy Speaker, Sir, first of all I would like to thank and congratulate my dear friend hon. Dr. Kasenally, Minister of Housing and Lands, for bringing these amendments to the House. At the same time, I would also like to thank the Opposition for their positive response to the amendments.

Mr Deputy Speaker, Sir, any citizen of this country can hold property in their own personal name. This right is enshrined in our Constitution at section 3 and section 8 and also in the Civil Code, Article 537 and following. However, these rights are not absolute; we may have restrictions imposed on those rights.

As regards right to property, the State can purchase back forcibly from the individual upon payment of certain compensation and this also, in some cases which are enumerated like cases which are linked to defense, public safety, public order, public morality, public health, or so as to promote social benefit for the well-being of the citizens. As a consequence, the Constitution provides that there should be a law pertaining to compulsory acquisition and this law is the Land Acquisition Act.

Before addressing those amendments, I think the best thing is we must first understand the mechanism set up by the Act regarding compulsory acquisition.

Mr Deputy Speaker, Sir, the procedure is well-defined where the Minister wishes to compulsorily acquire any property, notice of same must be given in the Government Gazette and in two daily newspapers and at the same time it must be served on the owner of the land. The owner of the land must then, on receipt of that notice, claim compensation in writing from the Minister, who, in his wisdom, can agree to pay him the full compensation claimed or try to negotiate for a lower amount. Where the Minister is able to settle the matter within 28 days of receipt of the claim, a compromise will be reached between parties.

Mr Deputy Speaker, Sir, where the matter has not been settled within 28 days, the matter must be referred to the Board of Assessment, set up under the Act, which will then give an award pertaining to same. This, therefore, is the background against which the amendments must be considered.

Mr Deputy Speaker, Sir, section 14(1) of the Land Acquisition Act enables a person, whose land is compulsorily acquired, to make a claim for the apportionment of compensation. The amendment brought to section 14 enables the authorised officer, who is an officer designated by the Minister, to make an interim payment of compensation to an interested person - which term would include an owner - of such amount as may be determined by the Director, Valuation and Real Estate Consultancy Services. The authorised officer shall cause the Board of Assessment to be informed of any such payment made. The Board will then deduct any interim payment made from its award.

Mr Deputy Speaker, Sir, the amendments, therefore, expressly provide to the Minister of Lands via an authorised officer to make interim payments and further provide for the Board of Assessment to be informed so as to be in a position to deduct same from the award it has to make. The amendments clarify the law, adding a greater certainty to it. They are, therefore, welcome. Therefore, all the amendments contained in the Bill are welcome. They provide for greater clarity and certainty in the law pertaining to compulsory acquisition of land. They show that Government is alive to existing *lacunes* in our existing legislation and is taking steps to correct this.

With these few words, Mr Deputy Speaker, Sir, I commend the Bill to the House.

(4.42 p.m.)

Mr G. Lesjongard (Second Member for Port Louis North & Montagne Longue):
Mr Deputy Speaker, Sir, when one has a look at the list of orators for the Land Acquisition Bill which has been circulated today, one takes note that debates were adjourned on 07 May and it is today that we are resuming the debates. Those who were present on that day still remember how hon. Members of Government were embarrassed on that day for not having the three quarter majority required to allow this Bill to go through.

Mr Deputy Speaker, Sir, when one has a look at the speech of the hon. Minister, at the very first paragraph, this is what the hon. Minister had to say. He stated that this is a very short Bill, and we see that it is taking a long time to get this Bill through. But it is very

important in the sense that it is an amendment to the Land Acquisition Bill. And any amendment to the State Land Act on that matter requires a comfortable three quarter majority, Mr Deputy Speaker, Sir.

Ce qui est arrivé ce mardi là est incompréhensible, M. le président. Je qualifierai cela comme le summum de l'incompétence d'un gouvernement, M. le président.

They knew, Mr Deputy Speaker, Sir, from the very beginning that a three quarter majority was required to get that Bill through. They had ...

(Interruptions)

Why?

(Interruptions)

I am talking! We have adjourned the debates!

The Deputy Speaker: Hon. Lesjongard, please carry on!

Mr Lesjongard: They had consultations with the Opposition on that day, Mr Deputy Speaker, Sir. And we played the game all through. We were here in the House, Mr Deputy Speaker, Sir. We ensure that on our side, we have the three quarter majority required and more than that, Mr Deputy Speaker, Sir. Now, I do not want to put the blame on the Whip although that was his job on that day. We understand the difficulties that he had on that day, Mr Deputy Speaker, Sir, because when we look at the role of the Whip, his role is to ensure that the elected representatives of his party are in attendance when important votes are taken. But, this was not the case on that Tuesday. We have another interesting term used by Whips which is a hunting term that is, "whipping in". There is a very nice British expression which states -

"Whipping in, that is, preventing hounds from wandering away from the pack."

On the very day, Mr Deputy Speaker, Sir, Members of Government did wander very far away from the pack.

Now, like I said, debates were adjourned. One question that we should ask is: did we have to adjourn the debates, Mr Deputy Speaker, Sir? We, on this side of the House, we do

not think so. We could have gone through the Second Reading and the Committee Stage, and then as it is stated in the Standing Orders of our National Assembly, we could have adjourned the debates on the Third Reading. Because section 62(1) states that -

“A Bill having passed through a Committee of the whole Assembly, or having been reported to the Assembly by a Select Committee and the report of the Select Committee having been approved by the Assembly, may, on motion made forthwith, be read the third time and passed, or, if the Assembly so direct, the third reading may be postponed.”

And then, after that we could have taken the Third Reading today and gone through the voting, Mr Deputy Speaker, Sir.

Here again, we see that on the other side of the House, they do not master our Standing Orders. We do understand the Government embarrassment. Like I *said*, Mr Deputy Speaker, Sir, the First Reading of this Bill was made almost a year ago. When it was circulated at that time, we were supposed to amend two sections of the Land Acquisition Act; one pertaining to compensation and the other one pertaining to appeal. Now, we understand that we are no more going ahead with section 10 and that we are amending only section 14 of the Act. As observed by the hon. Leader of the Opposition last time, since we are deleting now that section 14 of the Land Acquisition Act, it would be proper to delete also in the explanatory memorandum, that is, the object of this Bill, part (a) which deals with expeditious hearing of appeals.

Now Mr Deputy Speaker, Sir, when Government acquires compulsorily land, they have an obligation to ensure that the process is completed in an equitable and transparent manner. One question that we should ask is: is it the case in our country? People should not become poor because Government has acquired their land. Legislation to establish the Government's power to compulsorily acquire land should be written clearly and with precision. One of the fundamental issues is to ensure that people know what their rights are, all throughout the process of acquisition, Mr Deputy Speaker, Sir, and that decisions Government Officials take are well structured and controlled. It should not be that those whose land is being acquired, that is, owners and occupants are at a disadvantage and that the burden is on those people.

Now, Mr Deputy Speaker, Sir, it is important to note that whenever we have such discussions going on, those people whose land is being acquired have discussions with very experienced officials and supported with all the powers and resources of Government and very often it is the land of the poorest that is being acquired compulsorily for projects. Why? The reasons are multiple, Mr Deputy Speaker, Sir, because the value of the land is usually low as compared to land owned by others and it becomes less costly to acquire such land and it is also known that it is much easier to locate an unpopular public project in a very poor area and also that those residents, those owners of those land, they lack the political influence. It is for this reason that people whose land is being compulsorily acquired need full support. They need assistance to contest decision; they need to get second opinion on the value of their land to ensure that compensation will be paid in a timely manner. It is for this reason and I refer to that paragraph, Mr Deputy Speaker, Sir, that the habitat agenda reaffirmed by the Istanbul declaration on human settlement asserts that –

“Government should proactively provide advocacy assistance to affected individuals (...).”

It states that Government should -

“...Provide access to effective judicial and administrative channels for affected individuals and groups so that they can challenge or seek redress from decisions and actions that are socially and environmentally harmful or violate human rights (...).”

The primary responsibility of the Government is to ensure that those affected owners and occupants do not suffer injustice as a result of compulsory acquisition.

Mr Deputy Speaker, Sir, I come to the second amendment to this piece of legislation, that is, with regard to an interim payment of compensation. Compensation Mr Deputy Speaker, Sir, whether it is in the financial form or whether it is swapping or replacement of land is the heart of compulsory acquisition. As a result of compulsory acquisition by Government people lose their homes, land and, at times, their means of livelihood. In other words, Mr Deputy Speaker, Sir, compensation is to repay them for these losses. Any compensation should be based on the principal of equity and equivalence.

J'ai envie de terminer mon discours parce que j'ai comme l'impression qu'ils sont en train de compter le nombre de députés présents. Mr Deputy Speaker, Sir, financial compensation on the basis of equivalence of only the loss of land rarely achieves its aim Mr

Deputy Speaker, Sir. What one should understand about the factors that lead to unjust compensation, one of the main factors is that if negotiations are not carried out in good faith and very often this is the case and this leads to appeals Mr Deputy Speaker, Sir. Now fair and transparent compensation, negotiations can help to break down those barriers. This will allow each party to have better understanding of their needs. It is a fact that many laws, say that compensation should be paid promptly. Now what we are stating in this piece of legislation is that an interim payment of compensation is to be paid to the interested party pending the determination of the amount by the board of assessment. We go along with that amendment, Mr Deputy Speaker, Sir, but we fear that while Officers make that interim payment they can later tell these persons, when they come forward to claim for the rest of the payment; that you have already benefited from an interim payment and that you should wait for the final payment to be made. That is why I believe in such legislations we should make provisions for payment plans, time limits and other provisions by which people can be forced to effect payment.

I shall conclude Mr Deputy Speaker, Sir, with something which I believe we should look into, that is, valuation and compensation of religious sites. Valuation and compensation of religious sites, Mr Deputy Speaker, Sir, are very difficult. In the case of a Temple, Church or Mosque it may be possible for the acquiring agency, that is, in this case the Ministry of Housing and Lands, either to provide the group with an equivalent building or another site or to pay compensation that covers the cost of construction of an equivalent place of worship at a new site. But I think - this is my personal opinion Mr Deputy Speaker, Sir - that financial compensation is often inappropriate when the religious site is a burial ground. Some sacred areas simply cannot be replaced and whenever possible, measures should be taken to avoid destruction of these sites and I have, in mind, the cremation ground at Montagne Longue which has been destroyed to accommodate the Terre Rouge/Verdun Highway.

Thank you Mr Deputy Speaker, Sir.

(5.00 p.m.)

Dr. Kasenally: Mr Deputy Speaker, Sir, I think for the first time a Whip has had the opportunity of whipping up, the Chief Whip using his whip recently. He has been provoked, but I think perhaps sometimes you have to use your scalpel, I am afraid. In fact, it is regrettable that we had to postpone it. Anyway, salt has been rubbed on our wounds, and I think we take lessons from that.

I have listened with interest to the interventions of all hon. Members, and I wish to refer to a few points raised. In the course of his intervention, hon. Ganoo, Leader of the Opposition, requested for the removal of the part which deals with expeditious hearing of appeals in the Explanatory Memorandum. I have been advised that there is no need to amend the Explanatory Memorandum, as the Explanatory Memorandum is not voted, and moreover when the Bill becomes an Act and is published in the Gazette, the Explanatory Memorandum does not appear.

Regarding the question as to who will decide the quantum of interim payment, in fact, I have dealt with that extensively. But just to make things quite clear, I wish to state that, in the first instance, the Government Valuer will assess the value of the land and recommend the amount offered as compensation. The former owner will have the choice to agree or to refuse the offer. In case he does not agree to the offer, the matter will be referred to the Board of Assessment. At the same time, the amount recommended by the Government Valuer will be paid to the former owner promptly. This is the interim payment. On final award of the Board of Assessment, if the amount payable is higher than the amount of the interim payment, the difference will be paid with interests.

The hon. Leader of the Opposition also referred to the comments made by the Director of Audit in his Report. I wish to inform the House that it is now the practice and policy of my Ministry to resort to acquisition only –

- (i) when the project cannot be implemented on land already acquired, and
- (ii) financial clearance has been obtained as regards the implementation of the proposed project.

Furthermore, a database is presently available in respect of land already acquired. The Attorney General, in his intervention, has rightly pointed out the numerous advantages of granting an interim compensation, and that such practice is common in other countries.

Hon. François has been very passionate in his intervention. However, numerous points he raised are outside the ambit of this legislation. I wish to reiterate that the proposed amendments ensure justice, fairness, equity, as the former owners will receive their compensation as assessed by the Government Valuer *in toto* and not a percentage of it, as the hon. Member was thinking. The Boards of Assessment are quasi-judicial instances, and all issues regarding compensation payable are normally dealt with at that level. On final

assessment, the former owner, as has been said, will be paid the balance, again with interests, as the record indicated.

Hon. François also raised the issue of land acquired which has remained idle. I wish to reiterate that no acquisition is now resorted to unless there is financial clearance for the implementation of a well-defined project.

Hon. François also mentioned that, for cases where no agreement has been reached regarding quantum of compensation, such cases should be referred to the Environment and Land Use Appeal Tribunal. I wish to point out that the Environment and Land Use Appeal Tribunal provides for appeal regarding the environmental licence and land use permit, and does not deal with any offer of compensation for land acquisition. Hon. Members may note that if we are not using the land, we will have to sell it back to the owner at market value.

Finally, regarding the point which hon. Lesjongard has made, the final payment will be made immediately and promptly after the award of the Board assessment. I have also noted his proposals for religious sites. As far as possible, we will tend to avoid it. But let me inform the House that if it is inevitable, as it will be happening in the case of the Harbour Bridge, where there is one religious site which has to be moved, they will be getting full compensation, especially for setting up the building, and they will get the land at a nominal price. Therefore, it is not so much of a problem for them as far as the financial aspect is concerned, but they will have to be moved, and Government does provide a suitable alternative site.

I wish to thank everybody for their attention, and I move that the Bill be read a second time.

Question put and agreed to.

Bill read a second time and committed.

(5.07 p.m.)