



MONTSERRAT

CHAPTER 8.08

LAND ACQUISITION ACT

Revised Edition
showing the law as at 1 January 2002

This is a revised edition of the law, prepared by the Law Revision Commissioner under the authority of the Revised Edition of the Laws Act.

This edition contains a consolidation of the following laws—

LAND ACQUISITION ACT

Act 20 of 1958 .. in force 15 December 1958

Amended by Acts: 42 of 1961

18 of 1966 .. in force 31 December 1966

8 of 1999 .. in force 10 November 1999

5 of 2000 .. in force 1 August 2000

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NOTE: Declarations under section 3 (relating to land needed for public purposes) and other notices of a personal nature, are not of legislative effect and are not included in this revised edition.



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CHAPTER 8.08

LAND ACQUISITION ACT

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CHAPTER 8.08

LAND ACQUISITION ACT

(Acts 20 of 1958, 42 of 1961, 18 of 1966, 8 of 1999 and 5 of 2000)

Commencement

[15 December 1958]

Short title

1. This Act may be cited as the Land Acquisition Act.

Interpretation

Interpretation

2. In this Act—

“authorized officer” means any person who may from time to time be appointed as such by the Governor in Council for the purposes of this Act;

“person interested” means every person claiming, or entitled to claim, compensation under this Act:

Provided that a tenant by the month or at will shall be deemed not to be a person interested for the purposes of this Act;

“public purpose” means a purpose determined to be a public purpose in accordance with the provisions of section 3 and shall include a purpose that is necessary or expedient in the interests of defence, public safety, public order, public morality, public health, town and country planning or the development or utilisation of any property in such manner as to promote the public benefit or the economic well-being of the community. *(Amended by Act 5 of 2000)*

Acquisition of Land and Abandonment of Acquisition

Acquisition of land

3. (1) If the Governor in Council considers that any land should be acquired for a public purpose he may, with the approval of the Legislative Council, cause a declaration to that effect to be made by the clerk of the Executive Council in the manner provided by this section and the

declaration shall be conclusive evidence that the land to which it relates is required for a public purpose.

(2) Every declaration shall be published in two ordinary issues of the *Gazette* and copies thereof shall be posted on one of the buildings (if any) on the land or exhibited at suitable places in the locality in which the land is situate, and in the declaration shall be specified the following particulars relating to the land which is to be acquired—

- (a) the parish or district in which the land is situate;
- (b) a description of the land giving the approximate area and such other particulars as are necessary to identify the land;
- (c) in cases where a plan has been prepared, the place where, and the time when, a plan of the land can be inspected;
- (d) the public purpose for which the land is required.

(3) Upon the second publication of the declaration in the *Gazette* as aforesaid the land shall vest absolutely in the Crown, and the authorized officer and his agents, assistants and workmen may enter and take possession of the land accordingly.

(4) Nothing in this section shall be deemed to prevent the acquisition of lands for public purposes by private treaty.

Preliminary notification and power to enter land

4. If it appears to the Governor in Council that any land is likely to be required for any purpose which, in the opinion of the Governor in Council, is a public purpose and it is necessary to make a preliminary survey or other investigation of the land, he may cause a notification to that effect to be published in the *Gazette* and at the same time in notices to be exhibited at suitable places in the locality in which the land is situate, and thereupon it shall be lawful for the authorized officer and his agents, assistants, and workmen, to do all or any of the following things—

- (a) to enter upon and survey and take levels of any land in any locality to which the notification relates;
- (b) to dig or bore into the sub-soil of such land;
- (c) to do all other acts necessary to ascertain whether the land is adapted to such purpose;
- (d) to demarcate the land intended to be taken, and the intended line of work, if any, proposed to be done thereon;
- (e) to mark levels and lines by placing marks and cutting trenches;
- (f) where otherwise the survey cannot be completed, the levels taken or the boundaries or line of the work demarcated, to cut down and clear away any standing crop, fence, tree or bush;

- (g) to do all such other acts as may be incidental to or necessary for any of the purposes aforesaid:

Provided that—

- (i) the authorized officer shall not enter into any building, or into or upon any enclosed yard, court or garden attached to a dwelling house, except at all reasonable hours, and except with the consent of the occupier thereof, without previously giving to such occupier at least seven days' notice in writing of his intention to do so;
- (ii) compensation shall be assessed and paid to the persons interested in the land so entered for any actual damage or injury resulting to them by reason of the exercise of the powers conferred by this section—
 - (A) in so far as it relates to land the acquisition of which is subsequently deemed to be abandoned under section 9 or abandoned under section 10, as though it were compensation payable under this Act for the acquisition of the land;
 - (B) in so far as it relates to land the compulsory acquisition of which is subsequently completed under section 3, as though it were part of the compensation for the acquisition of the land.

Power to apply land to purposes of acquisition without waiting for formal vesting

5. If, at any time after the publication of a notification in accordance with the provisions of section 4, it appears to the Governor in Council that the land or some parcel of the land to which it refers should be acquired but that for any reason it is not possible to make an immediate declaration to that effect, it shall be lawful for the Governor to direct the authorized officer to do any work on the land or parcel thereof connected with the use to which the land is intended to be put on its acquisition, and thereupon the authorized officer may proceed with the execution of the work:

Provided that compensation shall be paid to the persons interested for any actual damage or injury resulting to them by reason of the exercise of the powers conferred by this section and shall be determined in the same way as compensation for actual damage or injury resulting from the exercise of the powers conferred by section 4.

Authorized officer to treat with landowner

6. (1) As soon as any declaration has been published in accordance with the provisions of section 3, the authorized officer shall without delay, enter into negotiations (or further negotiations) for the purchase of the land to which the declaration relates upon reasonable terms and conditions, and by voluntary agreement with the owner of the land.

(2) It shall not be necessary for the authorized officer to await the publication of the declaration before he endeavours to ascertain from the owner the terms and conditions on which he is willing to sell his land, but no negotiations or agreement shall be deemed to be concluded unless and until the conditions of sale and acquisition have been approved in writing by the Governor.

Demarcation of land and issue of notice of acquisition

7. (1) As soon as may be after any land has been acquired compulsorily, the authorized officer shall, if the land has not been demarcated or if it cannot be identified by reference to any plan, cause the same to be demarcated, and he shall also issue a notice of acquisition in accordance with the provisions of this section.

(2) Every notice of acquisition under this section shall—

- (a) state the decision of the Governor in Council to acquire and take possession of the land compulsorily;
- (b) contain the particulars which, in relation to the land, were included in the declaration provided for by subsection (2) of section 3; and
- (c) require all persons interested, as soon as is reasonably practicable, either—
 - (i) to appear personally or by attorney or agent before the authorized officer to state the nature of their respective interests in the land and the amounts and full particulars of their claims to compensation in respect of those interests, distinguishing the amounts under separate heads and showing how the amount claimed under each head is calculated; or
 - (ii) to render to the authorized officer a statement in writing, signed by them or by their attorneys or agents, setting forth the like matters.

(3) The authorized officer shall cause a copy of the notice of acquisition to be served, either personally on, or by post addressed to the last known place of abode or business of, every person who is known or believed by the authorized officer to be entitled to compensation in respect of the acquisition, and whose whereabouts are known to the authorized officer:

Provided that where the whereabouts of any such person are not known, the authorized officer shall cause copies of such notice to be posted on one of the buildings (if any) on the land or exhibited at suitable places in the locality in which the land is situate.

(4) Any person who, without lawful authority or excuse, removes or destroys any landmark placed, or removes or defaces or destroys any notice posted or exhibited, by the authorized officer in or upon the land or any

building thereon in accordance with the provisions of this Act, shall be liable, on summary conviction to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding three months. (*Amended by Act 8 of 1999*)

Authorized officer may require information as to interests in land

8. (1) The authorized officer may, by notice served personally, or by post addressed to the last known place of abode or business of the person concerned, require the owner or occupier of, or any person interested in, any land, or in any part thereof, in respect of which a declaration or a notification has been published in the *Gazette* under section 3 or 4 respectively, to deliver to him within a time to be specified in the notice, being not less than twenty-one days after service of the notice, a statement in writing containing, so far as may be within his own knowledge, the name of every person possessing any interest in the land, or any part thereof, whether as partner, mortgagee, lessee, tenant or otherwise, and the nature of such interest.

(2) Every person who is required to make and deliver a statement under this section and who, without reasonable excuse, refuses to make or deliver such statement, or wilfully makes any such statement which is false or incomplete in any material particular, shall be liable, on summary conviction, to a fine not exceeding \$1,000 or to imprisonment for a term not exceeding three months. (*Amended by Act 8 of 1999*)

Claim of person interested to have land acquired or abandoned

9. If, within three months after entry shall have been made on any land under the provisions of section 4, such land shall not have been acquired or abandoned, any person interested in the land or any part thereof may serve a notice on the authorized officer requiring that the acquisition of the land or part thereof be completed or abandoned, and, if within one month thereafter, the acquisition of such land or part thereof be not completed or abandoned in accordance with the provisions of this Act, the acquisition of the land or part thereof shall be deemed to have been abandoned.

Abandonment of acquisition

10. (1) At any time before any land has been acquired compulsorily the Governor may, by notification published in the *Gazette*, declare that the intended acquisition of such land is abandoned.

(2) When the acquisition of any land is abandoned in accordance with the provisions of this section, or is deemed to have been abandoned under section 9, any compensation payable by virtue of this Act shall, in default of agreement, be assessed as though it was compensation payable under this Act for the acquisition of land.

(3) No compensation shall be payable in any case for loss of bargain or for damages for breach of contract.

*Appointment and Powers of Board of Assessment***Determination of questions by Board of Assessment**

11. (1) All questions and claims relating to the payment of compensation under this Act and to the apportionment of such compensation shall, save as is hereinafter provided, be submitted to a Board of Assessment to be appointed in each case in accordance with the provisions of section 12.

(2) A Board of Assessment shall have full power to assess, award and apportion compensation in such cases, in accordance with the provisions of this Act.

Appointment of Board of Assessment

12. (1) As soon as it becomes necessary to do so the Governor shall cause a Board of Assessment (hereinafter referred to as “a Board” or “the Board”) to be appointed.

(2) A Board for the purposes of this Act shall in every case be constituted of—

- (a)* a Judge of the High Court who shall be the Chairman of the Board (hereinafter referred to as “the Chairman”);
- (b)* a member to be appointed by the Governor;
- (c)* a member to be nominated by the owner of the land to be acquired:

Provided that where in any case the Governor is satisfied that the owner of the land has refused to exercise his right to nominate a member of the Board, or has unreasonably delayed such nomination, or where the persons interested in the land have failed to agree upon such nomination, the Governor, by order in writing, may direct the Chairman to proceed with the inquiry notwithstanding that there has been no such nomination by the owner, and in every such case the Board shall be deemed to be lawfully constituted without the presence of such member, and, if there is any difference of opinion as to the amount of compensation that should be awarded, the decision of the Chairman shall be deemed to be the decision of the Board.

Documents, etc., to be forwarded to the Board

13. (1) Upon the appointment of a Board, or where proceedings are taken before a Magistrate for the determination of any question relating to the payment of compensation, the authorized officer shall forward to the Chairman, or to the Magistrate, as the case may be, those of the following documents and particulars which relate to the acquisition or the intended acquisition of the land, as the case may be—

- (a)* a copy of any notification and declaration which has been published in the *Gazette*;

- (b) a copy of the notice of acquisition;
- (c) a copy of any notice issued or received by him;
- (d) a copy of all statements received by him in compliance with any notice issued by him;
- (e) the names and addresses of the persons whom the authorized officer has reason to believe are interested in the land; and
- (f) a copy of the report required by this section.

(2) The report to be sent to the Board shall state the opinion of the authorized officer, and his reasons for such opinion, upon each of the following matters—

- (a) what is a fair and proper description of the land acquired, including particulars of any building, trees or standing crops thereon;
- (b) the approximate acreage of the land;
- (c) the value of the land for the purposes of compensation under this Act;
- (d) the amount of provisional compensation which should be paid for the land, including any damage payable in respect of entry into possession;
- (e) the apportionment of the provisional compensation among the persons interested in the land, in respect of their interests.

(3) The authorized officer, in assessing the amount of any compensation for the purpose of a report under this section, shall have regard to the rules prescribed by this Act which may and may not be taken into consideration in assessing compensation.

Inquiry by Board

14. Where a Board has been appointed under this Act, the Board shall hold an inquiry at a place, date and time to be fixed by the Chairman, of which not less than fourteen clear days notice shall be given to the parties concerned, and every such inquiry shall be conducted in public.

Procedure at inquiry

15. The procedure at an inquiry before a Board, the summoning and remuneration of witnesses for attendance thereat, and all questions incidental to the inquiry shall be governed by the provisions of the laws for the time being in force relating to civil proceedings in the High Court:

Provided that in the case of any doubt arising on any question of practice and procedure the same may be settled by the Chairman.

Power of entry for purpose of inquiry

16. The Board, or any person authorized by them, may at any time before, during or after an inquiry under this Act, enter upon and inspect any land for any purpose connected with such inquiry.

Award of Board

17. (1) At the conclusion of the inquiry the Board shall decide upon the claims for compensation and apportionments submitted to them and shall make an award under the hand of the Chairman who shall cause the same to be filed in the High Court.

(2) The decision of the majority of the members of the Board with respect to the compensation to be paid shall be deemed to be the decision of the Board, and, if all the members of the Board differ, the mean between the amount decided upon by the Chairman and that one of the amounts decided upon by the two other members of the Board which approximates most nearly to the amount decided upon by the Chairman shall be deemed to be the compensation awarded by the Board.

(3) An appeal shall lie against a decision of the Board to the Court of Appeal.

*Determination of Small Claims for Compensation***Procedure where claim for compensation does not exceed certain amounts**

18. (1) Anything in any law to the contrary notwithstanding, in any case in which the compensation claimed does not exceed \$10,000, and in any case in which the compensation claimed does not exceed \$20,000 and, in the latter case, the parties agree in writing to the settlement of the claim by a Magistrate, the amount of the compensation to be paid in any such case shall be determined by a Magistrate. (*Amended by Act 8 of 1999*)

(2) It shall be lawful for any Magistrate, upon the application of either party with respect to any question of disputed compensation in either of the cases mentioned in subsection (1), to summon the other party to appear before him at a time and place to be named in such summons and to hear and determine such question of disputed compensation.

(3) For the purposes of any proceeding under this section—

(a) the procedure to be followed thereat, the summoning and remuneration of witnesses and all questions incidental to such proceeding shall be governed by any law for the time being in force relating to the recovery of claims under \$240 before a Judge of the High Court and all the provisions of any such law shall apply *mutatis mutandis* to any such proceeding; and

(b) the provisions of sections 16, 19, 20, 21, 22 and 25 shall apply with such verbal alterations (not affecting the substance) as may be necessary to make the same applicable.

(4) An appeal shall lie against the determination by a Magistrate of any question of disputed compensation under this section in like manner as if such determination was given in the exercise of the summary jurisdiction of a Magistrate in a civil matter under the provisions of the Magistrate's Court Act, and for the purposes of such appeal the determination of the Magistrate under this section shall be deemed to be an order of the Magistrate's Court made in the exercise of its civil jurisdiction.

Provisions Governing Assessment of Compensation, etc

Rules for assessment of compensation

19. Subject to the provisions of this Act, the following rules shall apply to the assessment and award of compensation by a Board for the compulsory acquisition of land—

(a) the value of the land shall, subject as hereinafter provided, be taken to be the amount which the land, if sold in the open market by a willing seller, might have been expected to have realized at a date twelve months prior to the date of the second publication in the *Gazette* of the declaration under section 3:

Provided that this rule shall not affect the assessment of compensation for any damage sustained by the person interested by reason of severance, or by reason of the acquisition injuriously affecting his other property or his earnings, or for disturbance, or any other matter not directly based on the value of the land;

(b) the special suitability or adaptability of the land for any purpose shall not be taken into account if that purpose is a purpose to which the land could be applied only in pursuance of statutory powers, or for which there is no market apart from the special needs of a particular purchaser or the requirements of any Government department;

(c) where the value of the land is increased by reason of the use thereof or of any premises thereon in a manner which could be restrained by any court, or is contrary to law, or is detrimental to the health of the inmates of the premises or to public health, the amount of that increase shall not be taken into account;

(d) where land is, and but for the compulsory acquisition would continue to be, devoted to a purpose of such a nature that there is no general demand or market for land for that

purpose, the compensation may, if the Board is satisfied that reinstatement in some other place is *bona fide* intended, be assessed on the basis of the reasonable cost of equivalent reinstatement;

- (e) no allowance shall be made on account of—
- (i) the acquisition being compulsory or the degree of urgency or necessity which has led to the acquisition;
 - (ii) any disinclination of the person interested to part with the land acquired;
 - (iii) any damage sustained by the person interested which, if caused by a private person, would not render such person liable to an action;
 - (iv) any damage, not being in the nature of deprivation of or interference with an easement, servitude or legal right, which, after the time of awarding compensation, is likely to be caused by or in consequence of the use to which the land acquired will be put:

Provided that nothing herein shall prejudice any claim under this Act for damage subsequently sustained in consequence of the use to which the land acquired is put;
 - (v) any increase to the value of the land acquired likely to accrue from the use to which the land acquired will be put;
 - (vi) any outlay or improvement of such land which has been made, commenced or effected within twelve months before the publication of the declaration under section 3, with the intention of enhancing the compensation to be awarded therefor in the event of such land being acquired for public purposes.

Special rule as to severance

20. As to severance, compensation may be assessed on the footing that any specified works, crossings, or access agreed to on behalf of the Governor shall be erected, provided, and allowed, and any such agreement shall be reduced into writing and be signed by the Chairman and shall be valid and effectual and binding on the parties.

Interest

21. The Board, in awarding compensation, may add thereto interest at the rate of four *per centum* per annum, calculated from the date upon which the authorized officer entered into possession of the land acquired until the date of the payment of the compensation awarded by the Board.

Rules as to costs

22. (1) The authorized officer shall pay to the claimant the reasonable costs incurred by him in or about the preparation and submission of his claim, unless the Chairman considers that the claimant has failed to put forward a proper claim within a reasonable time after the service of the notice under section 7 or that the claim put forward is grossly excessive or that he has been a party to some deceit or fraud in respect of his claim.

(2) Subject to the provisions of subsection (1), where an unconditional offer in writing of any amount as compensation had been made to any claimant by or on behalf of the authorized officer and the sum awarded as compensation does not exceed the amount offered, the Chairman shall, unless for special reasons he thinks it proper not to do so, order the claimant to bear his own costs and to pay the costs of the authorized officer so far as the costs of the authorized officer were incurred after the offer was made; and, where the claimant has failed to put forward a proper claim in sufficient time to enable the authorized officer to make a proper offer, the foregoing provisions of this section shall apply as if an unconditional offer had been made by or on behalf of the authorized officer at the time when, in the opinion of the Board, a proper claim should have been put forward and the claimant has been awarded a sum not exceeding the amount of such offer.

(3) Subject to the provisions of subsection (1), where a claimant has made an unconditional offer in writing to accept any amount as compensation and has put forward a proper claim in sufficient time to enable the authorized officer to make a proper offer, and the sum awarded is equal to or exceeds that amount, the Chairman shall, unless for special reasons he thinks it proper not to do so, order the authorized officer to bear his own costs and to pay the costs of the claimant so far as the costs of the claimant were incurred after the offer was made.

(4) Subject to the preceding provisions of this section, the costs shall be in the discretion of the Chairman who may direct to and by whom and in what manner those costs or any part thereof shall be paid, and he may in any case direct such costs to be taxed by the Registrar of the High Court.

(5) The mode of enforcing any order as to costs shall be in the manner prescribed by the practice of the High Court.

(6) Where the Chairman orders the claimant to pay the costs or any part of the costs of the authorized officer, the authorized officer may deduct the amount so payable by the claimant from the amount of any compensation which may be payable to him.

*Miscellaneous***Absentee owners**

23. (1) Where there is no person competent to alienate land or to receive or to give a sufficient discharge for any compensation awarded or where any person interested in land, by reason of his absence from Montserrat and of his not being represented therein by a duly authorized attorney, does not submit a statement to or appear before the authorized officer as required by section 7, and where such person, after diligent inquiry, cannot be found, the authorized officer may pay the compensation into the High Court to the credit of the person entitled thereto.

(2) Any compensation paid into the High Court by virtue of this section may, on the subsequent application of any person claiming to be entitled thereto, be paid out to such person on the order of a Judge of the Court.

(3) All moneys paid into the High Court under the provisions of this section which remain unclaimed for twelve years after such payment shall be transferred and paid into the general revenue of Montserrat, and all claims thereto shall be forever barred.

Compensation to persons interested in adjacent land

24. A person interested in any land which, without any portion thereof being compulsorily acquired, has been injuriously affected by the erection or construction on land compulsorily acquired of any works in respect of which the land was acquired, shall be entitled to compensation in respect of such injurious affection:

Provided that compensation shall not be payable under this section in respect of any injurious affection which, if caused by a private person, would not render such person liable to an action.

Special provisions as to leases

25. (1) If any land shall be comprised in a lease for a term of years unexpired and part only of such land shall be acquired compulsorily, the rent payable in respect of the land comprised in such lease may, on the application of the lessor or the lessee to a Judge of the High Court, be apportioned between the land acquired and the residue of the land.

(2) After such apportionment the lessee shall, as to all future accruing rent, be liable to pay only so much of the rent as shall be so apportioned in respect of the residue of the land, and as to the residue of the land, and as against the lessee, the lessor shall have all the same rights and remedies for the recovery of such portion of the rent as previously to such apportionment he had for the recovery of the whole rent reserved by such lease, and all the covenants, conditions, and agreements of such lease, except as to the amount of rent to be paid, shall remain in force with regard

to the residue of the land in the same manner as they would have done in case the residue of the land only had been included in the lease.

(3) Where it is shown that the compulsory acquisition of a portion of land comprised in a lease has rendered the residue unsuitable for the purpose for which the land was leased or where in the circumstances the said Court considers it just so to do the Court may rescind the lease altogether, and in such case the lessee shall only be liable to pay the rent due at the date of the occurrence of the circumstances on which the rescission order is based.

(4) Where as the result of such rescission of lease the lessor or lessee suffers any loss or injury he shall be entitled to compensation as hereinbefore provided in this Act.

Persons in possession to be deemed owners

26. Where any question arises touching the title of any person to any land which may be entered upon or acquired for the purposes of this Act, or touching any estate or interest therein, the person having the ostensible possession or enjoyment of the rents and profits of such land shall, for the purposes of this Act, be deemed to be the owner of the same until the contrary is proved.

Fees and expenses of Board

27. (1) Every assessor shall receive for his services such fee as the Governor, on the recommendation of the Chairman, may direct.

(2) The Governor may also authorize the reimbursement of the travelling and subsistence expenses incurred by the Chairman and members of a Board appointed under this Act.

Conveyancing, etc. costs to be paid by authorized officer

28. All reasonable costs, charges, and expenses incurred by the owners of the land or persons interested therein for all conveyances, assurances, transfers and transmissions of any lands purchased or acquired, and of any outstanding terms of interest therein, and of deducing, evidencing and producing title to such lands, terms and interest, and of making out such abstracts and attested copies as the authorized officer may require, shall be paid by the authorized officer.

Payment of compensation, etc

29. All amounts which have been awarded by way of compensation under this Act, including interests and costs to be paid by the authorized officer, and all other costs, charges and expenses which shall be incurred under the authority of this Act, shall be paid out of the Treasury on the warrant of the Governor.

Exemption from stamp duty and fees

30. Anything in any law to the contrary notwithstanding, no instrument or document relating to anything lawfully done under, or for the purposes of this Act, shall be chargeable with any stamp duty, registration or recording fee.

Limitation of time for making claims

31. Except with the approval of the Governor in Council in any case in which he considers that injustice may otherwise be done, no claim for compensation which may be made under the provisions of this Act shall be admitted or entertained unless the same shall be made within twelve months after the date on which entry has been made on the land under section 4 or, if a declaration has been made under section 3, within a similar period after the date of the second publication of such declaration.

Assaulting or obstructing officer

32. If any person—

- (a) assaults or obstructs or aids and abets any person in assaulting or obstructing the authorized officer or any of his agents, assistants or workmen in the execution of his or their duty under this Act; or
- (b) opposes or impedes the lawful occupation or taking of possession of any land under the provisions of this Act,

he shall be liable, on summary conviction, to a fine not exceeding \$5,000 or to imprisonment for a term not exceeding three months. (*Amended by Act 8 of 1999*)

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