

Land Acquisition: Issues and Way Forward

Abstract

Land acquisition is one of the most controversial pieces of legislations in India. Since land is very fragmented, the Government considers acquisition an important tool for development purposes. But, the history of rehabilitation and resettlement has mostly been inadequate for communities being affected by it. In this sense, the 2014 amendment to the 2013 legislation has brought into focus yet again the issues of land rights. It may be better to move away from acquisition to a market based solution where no parties feel to be at the losing end.

Keywords: Land acquisition, Act 1894, Rehabilitation and Resettlement Act 2013, Land ownership, Environment, Special Economic Zone.

Introduction

Leo Tolstoy, in his story "How Much Land Does a Man Need?" has questioned the need and greed behind man's quest for land ownership. The story concluded with the message that man, in reality, needed no more than six feet of land, that is, amount of land required for his burial¹. Despite the obvious fact, ownership of land remains a rather emotive issue. Why is land so important? One important reason for its unparalleled value is the fact that we live on land. All our requirements are derived, in one way or the other from it and more often than not, our identity is based on it. The other factor which makes land such an important resource is its limited availability- it cannot be expanded beyond what is provided by Nature and the question remains on how to allocate a particular land parcel. Writing for Down to Earth, Jitendra (2015) points out, in India, land pressure is already high. The country accounts for about 2.4 per cent (328.73 million hectares) of the world's geographical area but supports about 17 per cent of the world's human population and 15 per cent of livestock².

In the recent years, the issue of Land Acquisition has emerged yet again. Put it simply, land acquisition is the process by which the government *acquires* private property for public purpose (which can be through coercion). It is thus different from a land purchase, in which the sale is made by a willing seller, at the market price³. Till the end of 2013, land acquisition was governed by the Land Acquisition Act, 1894. The erstwhile UPA Government, in 2013 replaced it with the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (LARR). In 2015, the BJP led NDA, who came with the huge mandate to deliver on its private sector led development sought amendment to the LARR, which was not passed by the Rajya Sabha. Let us first discuss the provisions under the laws, and then understand its real world ramifications, particularly on the displaced and the environment. Finally, we discuss some of the other alternate models which balance the concerns of landowners and development.

Aim of the Study

To study the challenges associated with land acquisition in India and suggest possible solutions.

Land Acquisition: The Past and Present

The colonial British Government had enacted the Land Acquisition Law way back in 1894. The power to take property from the individual is rooted in the idea of Eminent Domain. Land ownership in India is highly disorganized and fragmented, making it difficult for the private sector to acquire it for operations. Thus, successive Governments have used this route to create land banks which can then be used for industrialization. However, amongst other things, the law was silent on the issue of compensation, consent of landowners and others who depended on the land. Land acquisition has led to large-scale protests against Mega projects



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like the Sardar Sarovar dam in Gujarat; a special economic zone in Nandigram and a Tata Motors plant in Singur (both in West Bengal) as well as Vedanta's bauxite mining plans in Niyamgiri and Posco's steel project in Jagatsinghpur (both in Odisha)⁴.

Over the years, the law was guilty of providing an unfair deal to most of the landowners, whose consent was rarely required, and the

compensation paid (if at all) was not adequate. This Century old law was replaced in 2014, with the LARR. Among the key features where LARR differs from the 1894 law are compensation, consent, social impact assessment (SIA) and rehabilitation and resettlement. LARR mandates compensation up to twice the market value in rural areas, but keeps it at market value in urban areas, like in the 1894 act⁵. Fig 1 provides key differences between the two statutes.

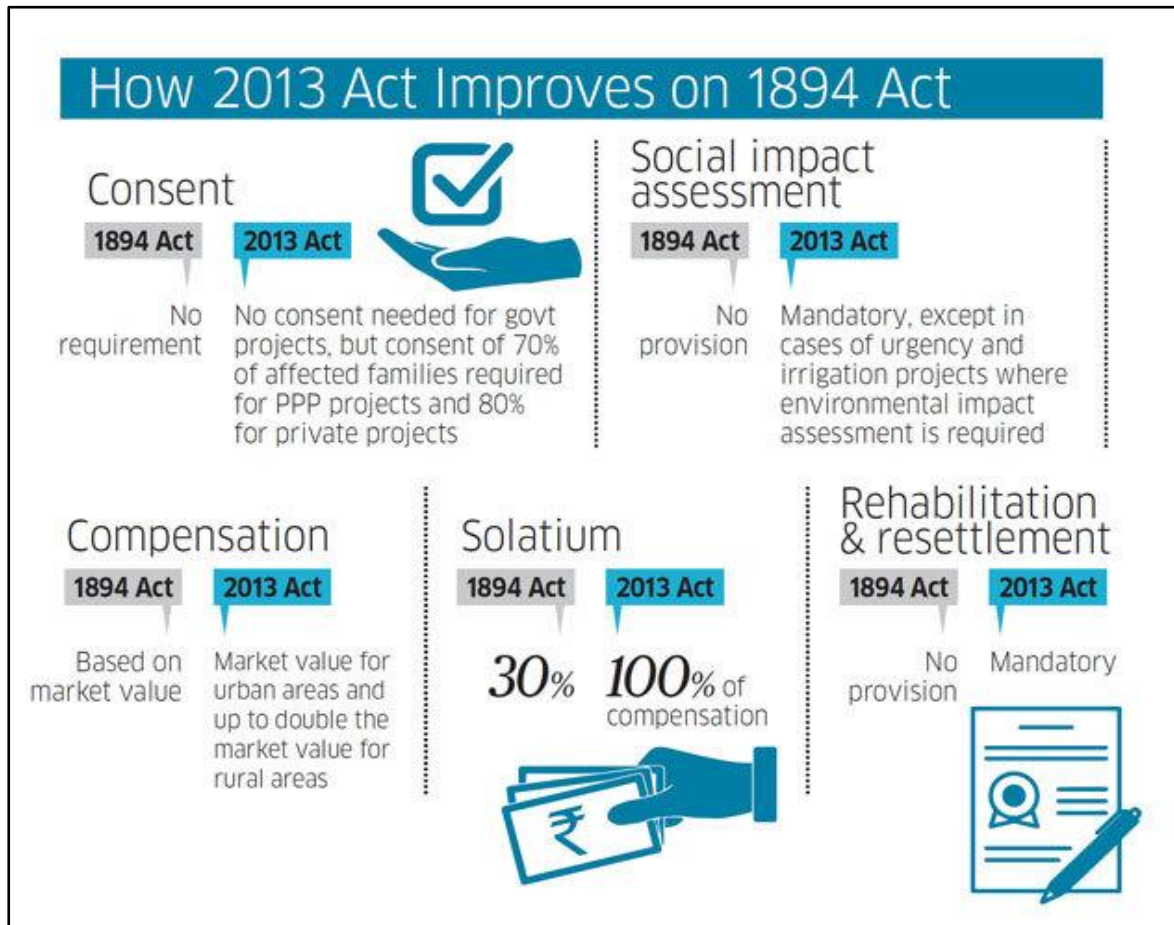


Figure 1: The difference between 1894 and 2014 laws

In December 2014, the NDA Government brought in an ordinance to amend the LARR. The ordinance also exempted five categories of projects — including rural infrastructure and affordable housing — from clauses relating to consent, SIA and the one that says acquired land not used for five years has to be returned to the original owners or occupants⁶. Essentially, it means that if land acquisition falls under any of those five categories, government or private companies do not require getting consent in making acquisitions. Also the compensation is given only to the land owner, since SIA used to understand how many people were benefiting from the land has been done away with⁷. Even farmer-friendly fertile land (irrigated multi-crop land according to the amendment) can be acquired under the five sectors. Additionally, the earlier Act prohibited the government from acquiring land for private hospitals, private educational institutions and private hotels. However, the definition of 'public

purpose' which was earlier restricted to mining, roads, defence, etc. has been redefined to include private hospitals and educational institutions; the word 'private company' replaced with 'private entity'⁸ (which could mean an individual as well).

To compensate, the Government brought in its ambit 13 laws which were earlier excluded, i.e., no compensation/rehabilitation was provided if land was acquired for these purposes- such as Coal Bearing Areas Acquisition and Development Act of 1957⁹, National Highways Act of 1956, Metro Railways (Construction of Works) Act of 1978, etc.

The ordinance caused a backlash from the opposition and activists. The Ordinance lapsed in August 2015. Though land is a state subject, "acquisition and requisitioning of property" is in the concurrent list and the Central Government asked to state to enact its own laws. In 2016, Gujarat and Rajasthan, and in 2017, Maharashtra, Telangana and Jharkhand amended the LARR Act to substantially

incorporate the provisions of the lapsed Central ordinance¹⁰.

Human Costs of Land Acquisition

Continuous Industrialization, coupled with fragmentation of land, degrading natural resources and climate change have intensified pressure on land. Since economic liberalisation in the early 1990s, millions of hectares of land have been diverted for non-agricultural purposes, jeopardizing food security, environment and making the society vulnerable to conflicts and migration.

Eminent domain doctrine has been widely used in India since the era of Independence, with over 21.6 million people in the period of 1951-90¹¹. The process of land acquisition in India has proven unpopular with the citizenry. The amount reimbursed is fairly low with regard to the current index of prices prevailing in the economy¹². Furthermore, due to the low level of human capital of the displaced people, they often fail to find adequate employment. The draft of the government's National Policy for Rehabilitation states that around 75% of the displaced people since 1951 are still awaiting rehabilitation¹³.

Calculations by the Delhi-based non-profit Centre for Science and Environment show that close to 0.57 million hectares (ha) of land was diverted for industrial and non-agricultural purposes between 2007 and October, 2014¹⁴.

Another study by the Society for Promotion of Wastelands Development released in 2012 shows that at current pace of expansion four industrial sectors—agri-business, infrastructure, extraction activities and non-conventional energy—will require an additional 11,447,559 hectares by 2035. Currently, these sectors possess 6,511,266 hectares of mainly common and forest land¹⁵.

According to this study, titled Rights and Resources Initiatives, between 1970 and 2010, the number of national parks in India increased from five to 99, covering an area of 3.82 million ha. In the same period, the number of sanctuaries increased from 62 to 514, covering an area of 11.84 million ha. This displaced 4 million people¹⁶.

Alternative Models

The question of land acquisition ultimately boils down to whether it is justified strip someone of their resources for the benefit of others? It is very often found that the land owner/farmer was seen being uprooted from his only source of livelihood for the benefit of the industry or large infrastructure projects and does not receive a fair deal or market price for the land¹⁷. The 2014 LARR was formulated keeping in mind the shortcomings of the archaic 1894 Act, but has it made the task of acquiring even more cumbersome? How does one manage the land requirements for the industry while retaining the interest of the land owners?

One of the alternatives suggested is agricultural land being made available through a long term lease based approach. This arrangement will not only provide land owners/farmers with regular income from the land but also help improve occupational mobility by encouraging people to enter new vocations. Corporate sector can fast track much-

needed private investment in agriculture as well. In fact, thousands of farmers can become partners of such corporate initiatives and grow crops, as per their requirements¹⁸.

Another model is land pooling. The concept involves amassing small rural land parcels into a large parcel, provide it with infrastructure and return approximately 60 per cent of the redeveloped land to the owners after the development is complete¹⁹. It is assumed that the smaller land parcel has a higher market value after infrastructure redevelopment. Already, farmers have agreed to become partners in a land pooling scheme proposed by the Andhra Pradesh Capital Region Development Authority (APCRDA), for the development of the upcoming Andhra Pradesh state capital at Amaravati, contributing about 33,000 acre to the government for the purpose. The Delhi Development Authority (DDA) identifies 200 villages along the outskirts of Delhi in a land pooling scheme, to convert around 90 villages into development areas and another 90 into urban villages. DDA has recently passed a modified land pooling policy within the Master Plan Delhi 2021. Similarly, City and Industrial Development Corporation (CIDCO) is developing an international airport at Navi Mumbai and villages coming under Navi Mumbai Airport Influence Notified Area (NAINA) are participating in a land pooling scheme to facilitate its construction²⁰.

Conclusion

In conclusion, given the state of our land records, the asymmetry between demand and supply and given that land markets are imperfect, a land acquisition law may deem necessary for the time being. However, going forward, land should not be acquired, but be bought. The transaction should be bilateral between those who want the land and those who have the land. Land acquisition, which is different from land purchase, should be under the rarest of rare circumstances²¹. For this, a systematic digital infrastructure must be placed which settles the issue of traceability. Moreover, the impact study should be thoroughly done since most development projects are permanent in nature and can have long term environmental and social consequences. It will also be important to streamline the Dispute Settlement Mechanism to adjudicate disputes on claims and counter-claims.

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