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A Detailed Study on Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

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ABSTRACT

The right to fair compensation and transparency in land acquisition, rehabilitation and resettlement act, 2013, this law regulating the land acquisition in the country due to the heightened concern and issues and paved a way to shape distinguished management categorized by market linked reimbursement, socio-economic appraisal and proper rehabilitation and resettlement ways for the affected people. The paper talks about the evolved and contemporary ways the country has legislated the law regarding land acquisition also states the key issues and suggestions for more advantageous usage and welfare.

Keywords: LARR Act, land acquisition, compensation, rehabilitation, land revenue.

I. INTRODUCTION

India is an agriculture-driven country with a high population, so acquiring land is a very sensitive issue as balancing the interest of the owner along with development. The land acquisition has always been a controversial issue. Thus with effect from 1st January 2014, the Central Government passed the RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013 repealing the century-old colonial Land Acquisition Act 1894.

(A) Land Acquisition Act, 2013

Land acquisition is a process by which the government (state or union) can acquire private land for various purposes. In return, the government pays a suitable compensation to the land owner and would be responsible for the rehabilitation and resettlement of the affected land owners. The Land Acquisition Act, 2013, regulates and governs the entire process of land acquisition. The Act chalks out the provision for providing fair remuneration to the land owners. The Act

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has 13 chapters, 114 sections and 4 schedules.

(B) Objectives of the act

1. To ensure a transparent process for acquiring land, in consultation with all the stakeholders and local governing bodies.
2. To ensure minimum displacement of the existing population, owning or staying on the land.
3. To provide fair compensation to the families who are affected or whose land has been acquired or livelihood has been affected, because of the land acquisition.
4. To provide adequate provision for rehabilitation and resettlement of the families affected.

(C) Background of the act

Despite many amendments over the years to India's Land Acquisition Act of 1894, there was an absence of a cohesive national law that addressed fair compensation when private land is acquired for public use, and fair rehabilitation of land owners and those directly affected from loss of livelihoods. The Government of India believed that a combined law was necessary, one that legally requires rehabilitation and resettlement necessarily and follow government acquisition of land for public purposes.

Forty-Fourth Amendment Act of 1978 omitted Art 19(1) (f) with the result being:-

1. The right not to be deprived of one's property save by authority of law has since been no longer a fundamental right. Thus, if government issues to take away the property of a person, that person has no right to move the Supreme Court under Art 32.

2. No one can challenge the reasonableness of the restriction imposed by any law the legislature made to deprive the person of his property.

The Land Acquisition, Rehabilitation and Resettlement Bill, 2011 was introduced in Lok Sabha. Two Bills on similar lines were introduced in Lok Sabha in 2007.

(D) Purpose under the act

The government can procure land for its own use or for public sector companies or for 'public purpose', which can include any of these:

1. For any work related to state or national security or defence services of India, which includes naval, military, air force or other armed forces, under the purview of the state or central government.

2. For building public infrastructure but excluding private hospitals, private educational institutional and private hotels.
3. For any project involving agriculture or allied industries, such as dairy, fisheries or meat processing, owned by the government or by farmer's cooperatives.
4. For industrial corridors, manufacturing zones or other projects listed in the National Manufacturing Policy. This can also include mining activities.
5. For water harvesting, conservation structure projects or for planned development or improvement of village sites.
6. For government-aided educational and research institutions.
7. For planned development, such as creating housing projects for the weaker sections, in rural or urban areas.
8. For developing residential projects for the poor or landless, or for people affected by natural calamities.

(E) Rehabilitation and resettlement of award under the act

As per the provisions of the Act, the collector is mandated to provide for a separate award for every family that is affected as per their entitlements that have been given in Schedule II. The Resettlement area shall comprise of necessary infrastructure facilities and basic minimum amenities listed in Schedule III. The Collector is entitled to take possession of the land post full payment of the compensation as well as the rehabilitation and resettlement entitlements to the people. Within 3 months from the date of the award, the compensation shall be paid. The rehabilitation and resettlement entitlements are to be provided within 6 months from the said date. Nonetheless, the infrastructural entitlements that fall under Schedule II and Schedule III can be provided within 18 months from the date of the award. If the Collector disposes family which has already been displaced for land acquisition under LARR Act, 2013, the family is entitled to seek additional compensation.

(F) Land acquired under the act

The Land Acquisition Act 2013 notes the following steps which are followed during the process of acquisition-

1. Social Impact Assessments (SIA) are carried out after consulting with the relevant local government.
2. State government accesses the SIA.

3. Following approval, a public notice is printed in two local newspapers and the official gazette.
4. People have 60 days to voice their objections.
5. Land surveys are completed together with assessments of relief and rehabilitation.
6. The use of measured, demarcated, and planned land.
7. Acquisition, relief, and rehabilitation claims are addressed.

(G)Need for the act

1. The need for urbanisation and land has grown as a result of industry expansion, globalisation, Special Economic Zones etc. Reasonable compensation, must be offered to landowners whose property must be acquired by the government as the affected populations must not suffer as a result of the acquisition.
2. The instance of eminent domain acquisition by the state or acquisition for a private enterprise for a project connected to a public purpose, the prior laws provided no provisions for relocation and rehabilitation.
3. Previously, the collector had the ability to decide on compensation. The quantum of the compensation was to be determined using the worth of the local market. However, there was no detailed process for calculating compensation or any other rules. In certain instances, the landowner was deceived.
4. The previous law lacked a provision requiring permission from the owner of the property the government intended to acquire. Instances like Nandigram, where the government chose to acquire the land of the farmers and gave them short notice so that a Special Economic Zone could be established, occurred as a result of the lack of such laws.
5. Section 17 of the 1894 legislation, which discusses the urgency clause, was a significant flaw. The government and private businesses have abused this urgency clause a great deal.

(H)Special features of the act

1. Prior Consent For Acquisition

Land can be acquired for such public purposes as defined under the Act, namely strategic purposes relating to the naval, military, air force, infrastructure projects, public-private partnership projects. In case the land is acquired by Government for Public-Private Partnership or on behalf of Private Companies for carrying on Public Purposes then the consent of 70% and

80% respectively of affected families shall be required for Land Acquisition. The provision relating to rehabilitation and resettlement shall also apply in case Private players acquire land exceeding the limit prescribed by the appropriate government through Private negotiations.

2. Purpose of acquisition

Government cannot acquire land for Private Players except in the case of public-private partnership projects or for Private Companies for public purposes. If Private Players acquire land for any purpose through Private Negotiation over the limit as may be notified by the appropriate Government the provisions for Rehabilitation and Resettlement will become applicable

3. Social impact assessment study

Before determining whether the land shall be acquired or not, a social impact assessment is conducted on the identified land by the Government in consultation with local bodies (Panchayat, etc) to assess the social impact of the acquisition, its cost, and how it shall be addressed or compensated. Only after receiving a favourable Social Impact report where potential benefits outweigh the social impact of the Project, the subject land is sought to be acquired.

4. Rehabilitation and resettlement

The Rehabilitation and Resettlement Package under the Acts is broader in terms of elements, apart from monetary compensation it has provision to provide for employment, allotment of alternative housing units, another land, and other entitlements, allowance and grants to make up for the loss of occupation or opportunity owing to displacement, infrastructure facilities at the resettled place. In case of acquisition of land that exceeds one hundred acres a Rehabilitation and Resettlement Committee is constituted containing the representative of various stakeholders to monitor and implement the Rehabilitation and Resettlement scheme.

5. Special provisions

To ensure food security, multi-crop irrigated land shall not be acquired under normal circumstances; it can be acquired only under exceptional circumstances, as a last resort after making suitable provision for another agricultural land for a similar purpose to cover the loss. No acquisition of land shall be made in the Scheduled Areas, further without the prior consent of the concerned Gram Sabha or the Panchayats or the autonomous District Councils, at the appropriate level is required in all cases of land acquisition in such areas, including acquisition in case of urgency.

6. Compulsory acquisition

In case of defence or national security or any emergencies arising out of natural calamities or any other emergency with the approval of Parliament, subject land can be compulsorily acquired by the Collector on the direction of appropriate government without following the due process of land acquisition under the Act.

7. Compensation

The most highlighted feature of the New Act which is reflected in its title itself is the fair compensation. The Act stipulates a mechanism to provide for minimum compensation which includes payment of 1 to 2 times the Market Value of land, value of asset attached to the land together with Solatium. Solatium is the amount payable in addition to compensation equalling 100 % of the Compensation Amount. Nevertheless, the quantum amount of compensation is quite higher than the Old Act.

8. Retrospective effect

In a certain way, this Act also applies to previous transactions initiated under the 'Old Act' that is where an award under the previous Act has been made five years or more before the commencement of this Act but the physical possession of the land has not been taken or the compensation has not been paid the land acquisition proceedings under Previous Act shall be deemed to lapse and the appropriate Government, if it so chooses, shall initiate the proceedings of such land acquisition afresh in accordance with the provisions of this Act.

9. Urgency clause

Only in the case of defence or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament, the land is acquired without following the whole process of Social Impact Analysis and Public Hearing is waived and possession of land is acquired on the expiration of thirty days from the publication of the notice.

(I) Advantages of the act

1. The Act kept 13 most frequently used acts for Land Acquisition for Central Government Project. These acts are applicable for national highways, metro rail, atomic energy projects, electricity related projects, etc. The present amendments are for the purpose of compensation, rehabilitation and resettlement. Therefore, the amendment benefits farmers and affected families.
2. The proposed changes in the Land Acquisition Act would allow a fast track process for defense production, rural infrastructure including electrification, affordable housing,

industrial corridors and infrastructure projects including projects taken up under Public Private Partnership mode where ownership of the land continues to be vested with the government.

3. Multi-crop irrigated land can also be acquired for purposes like national security, defense, rural infrastructure including electrification, industrial corridors and building social infrastructure.

(J) Disadvantages of the act

1. The original Land Acquisition Act, 2013 had a consent clause for acquiring land – industrial corridors, Public Private Partnership projects, rural infrastructure, affordable housing and defense. But after the central government changed, it exempted five categories from the rule of acquitting land in the Bill tabled on February 24.
2. Social assessment which was mandatory before acquitting land has also been exempted in the Bill tabled in the Lok Sabha.
3. As per the existing law, land will be given back to the farmer if it remains unused for five years. The proposed amendment says the land will be returned only if the specified project on the land fails to complete the deadline.
4. Bureaucrats will be punished if found guilty of violating any clause of the existing Land Act. However, the new clause makes government sanction necessary to prosecute civil servants.

(K) Key issues/ suggestion

They are as follows

1. It is not clear whether Parliament has jurisdiction to impose rehabilitation and resettlement requirements on private purchase of agricultural land.
2. The requirement of a Social Impact Assessment for every acquisition without a minimum delay the implementation of certain government programmes.
3. Projects involving land acquisition and undertaken by private companies or public private partnerships require the consent of 80 per cent of the people affected. However, no such consent is required in case of PSUs.
4. The market value is based on recent reported transactions. This value is doubled in rural areas to arrive at the compensation amount. This method may not lead to an accurate adjustment for the possible underreporting of prices in land transactions.

5. The government can temporarily acquire land for a maximum period of three years. There is no provision for rehabilitation and resettlement in such cases.
6. The given compensation, rehabilitation and resettlement to the deprived land owners may not be sufficient in reality. So that could be carefully valued for the landowners not to be at loss.
7. The land provided for resettlement may not be convenient, suitable and fit for their purpose also there is no option for exchange of such land. As there could be such necessary option to help those landowners.
8. Also, the lack of awareness among the people especially in rural areas – need to be helped by the government.

(L) Impact of the act

In March 2018 the Lok Sabha passed the Specific Relief (Amendment Bill), 2018 amending the existing Specific Relief Act, 1963 whereby the legislation if passed by the Rajya Sabha, will alter the fundamental principles of property in India by prohibiting courts from granting injunctions in contracts involving infrastructure projects. Thus for instance if there is an infrastructure project like a building a metro line or highway involving a private firm and it decides to violate a citizen's right by illegally dumping construction material on their land, earlier the property owner could have moved for an injunction restraining the company from violating his property rights. After this amendment, the ramifications will be massive as it will incentivize government and private owners to violate property rights with impunity rather than comply with the legal provisions of the Land Acquisition Act, 2013.

Also in recent decision, the union ministry is planning to form a committee to sort out land issues with the states. The land issues are presently posing challenges in front of the central government in strategic disinvestment of public sector undertakings. According to a highly placed official, most states are not ready to let go of their land resources. The disinvestment of the PSU land is also struck as the states have leased land tracts to PSUs. The high level committee will also expediate this process. The terms of reference of the committee are being framed and it will recommend solutions on a case by case basis.

II. CONCLUSION

There is an improvement over the old statute, which provided no compensation (monetary or non-monetary) to people harmed by the land acquisition process. This legislation is a start, paying persons who would be impacted by land acquisition prior to the establishment of the

infrastructure or development project, both monetarily and non-monetarily, the statute also provides for land-for-land compensation. Thus, the legislation proved to be more helpful and concerned about people.

III. REFERENCES

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