

LAND ACQUISITION BY GOVERNMENT: FAIR COMPENSATION AND REHABILITATION UNDER NEW ENACTMENT

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INTRODUCTION

When the subject of fair compensation arises, there has always been a debate as to whether the compensation given by government for acquisition of land from private individual is sufficient or not. Since Independence, there have been many instances where the government has acquired any land from private individual for public purpose as defined under section 3(j) of Land Acquisition Act, 1894. And the question that remains constant in all such acquisition is whether the land owners have received fair compensation or not. In many cases, suits have been filed in different appropriate court, having jurisdiction, stating the compensation given by the government for acquisition of land is not fair and they are entitle for more compensation due to loss of land.

Also, when the private companies acquire any land for such purposes as prescribed, owners does not get fair compensation from the companies after acquisition of land. Although the previous legislation (Land Acquisition Act, 1894) provides for the compensation or solatium to be given to the land owners, there has been found many disputes arising out because of such transactions. Also, there had been a problem which had seen many times, i.e. in many instances, people file suit for their right to fair compensation and they deem to continue such suits for longer period as to get more interest from government. There has been huge financial loss to government due to such practices.

Therefore, in order to deal with such problems and loop holes in the old legislation, the new act called Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been passed by the parliament and it shall come into force on January 1, 2014.

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RIGHT TO FAIR COMPENSATION

According to both old and new legislation, the government has power to acquire land for public purpose as been defined in the acts itself and it is very necessary to look whether the land owners are getting fair compensation for their land being acquired. It is right of every land owner to have fair compensation for their own land. Therefore in order to protect such interest of land owners and other affected people, the new act called Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been come into force to provide just and fair compensation.

OLD LEGISLATION- LAND ACQUISITION ACT, 1894

The act was passed in 1894 for the purpose of acquisition of land by the government and since then, many amendments have been made. The act describes the procedure in which the land can be acquired by the government and private companies. Section 4 to 15 of the Act deals with the procedure to be followed by the government for land acquisition and Section 38 deals with acquisition of land by private companies and procedure thereto. The Act also says about compensation and award to be given by the government to the land owners for such acquisition.

Though the provisions have been made under the Act for compensation, there has been number of suits filed in court of law in stating the compensation received against the land is not fair. Also, there are many loopholes in the Act as to procedure for land acquisition and computation of amount of compensation to be given to land owners. The Act does not take into account policy of Rehabilitation and Resettlement, social and economic impact on the affected families and environmental impact also.

Due to overcome this gapes, the draft amendment bill of Land Acquisition Act, 1894 has been presented and at the same time, draft proposal of giving statutory status to the Rehabilitation and Resettlement policy has been given. In the year 2011, Central Advisory Committee has recommended to combine both the bills and make new legislation¹. In 2011, draft Land

¹ Press release dated May 25, 2011 of the National Advisory Council available at http://nac.nic.in/press_releases/25_may_2011.pdf

Acquisition and Rehabilitation and Resettlement Bill was published by ministry of Rural Development for public comments². In September, the bill was introduced in Lok Sabha and in 2013, the bill was signed by President on 23rd September, 2013³ and published in official gazette.

NEW ENACTMENT- RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

The new enactment Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter called the Act) has repealed old legislation Land Acquisition Act, 1894⁴. It consists of provisions not only for land acquisition but also for rehabilitation and resettlement which were absent in the previous legislation. In the previous decades, there has been absence of proper legislative framework and cohesive national law that address right of fair compensation when private land is acquired for public purpose. The Act of 2013 attempts to fulfill these gaps from previous legislation.

The object of the act is to ensure⁵:

- a. Humane, participative, informed and transparent process for land acquisition
- b. Development of essential infrastructure and urbanization with least disturbance to owners
- c. Provide just and fair compensation to affected families
- d. Make adequate provisions for rehabilitation and resettlement
- e. Ensure that cumulative outcome should be that affected persons become partners of development

² The Draft Land Acquisition and Rehabilitation and Resettlement Bill, 2011, which was published by the Ministry of Rural Development for public comments, available at <http://rural.nic.in/sites/downloads/policies/Final.pdf>

³ “President Pranab Mukherjee gives nod to Land Acquisition Bill”, *NDTV*. 27 September 2013. Retrieved on 10 October 2013

⁴ Section 114 of the Act

⁵ Preamble of the Act, Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013

According to the act, the process of land acquisition involves a Social Impact Assessment Study, preliminary notification stating intent of acquisition, declaration of acquisition and compensation to be given to affected parties⁶. All such acquisitions requires Rehabilitation and Resettlement provided to the people affected except in the case where such acquisition is done under Section 81⁷ of the Act. Compensation given to the owners of the acquired land shall be four times of market value in rural areas and twice of market value in urban areas.

In case of acquisition of land by private companies or public private partnership, consent of 80% of the displaced people shall be required⁸. Purchase of large pieces of land by private companies will require provisions for rehabilitation and resettlement. Also the provisions of the act shall not apply for acquisition under existing 16 legislations including Special Economic Zones, 2005, Atomic Energy Act, 1962, The Railways Act, 1989, National Highway Authority Act, etc.

Process of land Acquisition under new Act

The government shall conduct a Social Impact Assessment (SIA) survey before preliminary notification. The report of social impact assessment shall be analyzed by group of experts. It is further examined by committee and when the group is in the opinion that the land proposed

⁶ Section 11 to 30, Notification and Acquisition, Chapter IV of the Right to Fair Compensation and Transparency in land Acquisition, Rehabilitation and Resettlement Act, 2013

⁷ Section 81 (1) Whenever it appears to the appropriate Government that the temporary occupation and use of any waste or arable land are needed for any public purpose, the appropriate Government may direct the Collector to procure the occupation and use of the same for such terms as it shall think fit. not exceeding three years from the commencement of such occupation.

⁸ Section 2(2)(b) of the Act:-

“Provided that in the case of acquisition for-

(i) private companies, the prior consent of at least eighty percent of those affected families, as defined in sub-clauses (i) and (v) of clause (c) of section 3;

and

(ii) public private partnership projects, the prior consent of at least seventy per cent of those affected families, as defined in sub-clauses (r) and (v) of clause (c) of section 3,

shall be obtained through a process as may be prescribed...”

meets the specified requirement, than it shall give such recommendations to appropriate government.

The government will issue preliminary notification indicating the intent to acquire such land within 12 months of the SIA survey report. In case where period of 12 month expire, then fresh SIA survey shall be conducted by the government. The government shall also conduct a survey to determine the extent of the land and all the objections in this process shall be heard by the Collector. When the government is in the opinion that particular piece of land is required for public purpose, then declaration shall be issued by the government stating the acquisition of land. Once the declaration is published, the government shall acquire the land.

The compensation for land acquisition shall be determined by the collector and award shall be made to the land owner within the period of two year from the date of publication of declaration. The amount of compensation shall be four times market value in rural areas and twice the market value in urban areas. The value of all attached immovable property shall be added to the amount and 100% solatium (i.e. extra compensation for forcible nature of acquisition) shall be given.

Rehabilitation and Resettlement

The act required that for every acquisition, Rehabilitation and Resettlement (R & R) shall be undertaken. Once the preliminary notification is issued, then the government shall appoint administrator to conduct survey and prepare rehabilitation and resettlement scheme⁹. Any objections as to the scheme shall be heard by the administrator. The report of the scheme shall be forwarded to the Collector and Collector shall submit it to Commissioner of R & R scheme. Once the Commissioner approves the scheme, the administrator so appointed shall execute the

⁹ Section 16 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

scheme¹⁰. In addition to this, National Monitoring Committee shall be established at central level to monitor all the R & R Schemes¹¹.

National Monitoring Committee

The central government may by notification, constitute National Monitoring Committee for reviewing and monitoring the implementation of Rehabilitation and Resettlement Scheme or plans¹². The state and union territories shall provide all the information on the matters covered under the Act to the National Monitoring Committee. The States may constitute State Monitoring Committee for reviewing and monitoring implementation of R & R schemes in the concerned state.

The Authority appointed under the Act

The appropriate government shall for the purpose of providing speedy disposal of disputes relating to land acquisition, compensation; rehabilitation and resettlement establish 'Land Acquisition, Rehabilitation and Resettlement Authority'¹³. The Authority shall consist of one person known as Presiding Officer and shall hold his terms for 3 year until he attains the age of 65 years. The government may also appoint a registrar and such other employees as it deems fit. The presiding officer may by application in writing given to government resign his office.

The Authority shall have the same powers as vested in the civil courts under Code of Civil Procedure, 1908¹⁴. The authority is not bound to follow Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and subject to the other provisions of the Act.

¹⁰ Further procedure and award under R & R is given under section 31 to 47 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

¹¹ Section 48 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

¹² Ibid

¹³ Section 51(1) of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

¹⁴ Section 60 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

According to Section 63, no civil court is empowered to entertain any dispute arising out of land acquisition in which the collector or the Authority empowered by the act except appeal in the High Court can be made under Article 226 and 227 of the Constitution and in Supreme Court.

In a case whether the Authority has passed any award under section 69 of the Act, any person aggrieved can appeal in the High Court against such award within the period of sixty days from the date of award¹⁵.

Temporary Acquisition of Land

Section 81 of the Act provides that whenever the appropriate government thinks fit to acquire any land for temporary occupation and use of waste or arable land are needed for public purpose, it shall direct the collector to procure the occupation except the use of such shall not exceed three years from the commencement of occupation. The rehabilitation and resettlement scheme shall not be applicable in case of temporary acquisition of land.

Also the new legislations talks about various offenses and penalties under the Act, power of Central government and State government to make rules in certain cases. The offences and penalties mentioned under section 84 to 87 of the Act is non-cognizable in nature unless anything contained in Code of Criminal Procedure, 1973. The government is at the liberty to withdraw such acquisition of which the possession has not been taken (section 93).

KEY FEATURES AND ISSUES OF NEW LEGISLATION

Due to many loopholes in the old act, the need of new legislation gave birth to the new act Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. In the new legislation, many new policies have been made by the parliament for rehabilitation, resettlement and transparency in land acquisition.

- Provisions for food security have been enacted.
- New provision for temporary acquisition of land has also been made in the act.

¹⁵ Section 74 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

- The new policy for Social Impact Assessment has been made. Also Environmental Impact Assessment has also to be made in certain cases.
- Rehabilitation and Resettlement policy has been included in the Act which was previously absent in old act.
- The provisions of new act shall only be applicable to the matters given in Section 2 of the Act.
- Amount of Solatium has been increased from 30% in old act to 100% in new Act.
- The provisions for temporary acquisition of land have been newly enacted.
- 16 acts have been exempted from the application of new legislation.
- According to new act, National Monitoring Committee shall be made for rehabilitation and resettlement policy.
- Also the appropriate government shall make the Authority for speedy trials of land acquisition cases.
- The new legislations repeals old act of 1894.
- In case of any dispute arises in the act or contravention of any provision, the suit maybe file to metropolitan magistrate or judicial magistrate of first class.

Despite of many new enactments and amendment in old provisions, there have been certain issues in the new legislations also:

- It is not clear from the act whether the parliament have jurisdiction to require R & R on purchase of agricultural land through private negotiations.
- The act requires Social Impact Assessment survey to be done for every acquisition; this may make delay in implementation of various governmental schemes.
- The act does not talk about detailed guidelines for Expert groups under Social Impact Assessment.
- The act states that consent is required from project affected people that means it also includes people other than land owners who are affected by such schemes or projects.
- In case of acquisition by private company or public private ownership for public purposes, the provisions have been laid down but it does not include Public Sector Units.

- There are provisions for Rehabilitation and Resettlement for temporary acquisition of land by government.

CONCLUSION

In a case where there are several disputes as to acquisition of land, the new legislation have emerged so that to solve all such possible issues. Though, there have been many gaps to be filled in the new legislation also, it has solved many loopholes which were present in the previous act of 1894. As India is developing, in future, there is a possibility that the government may require to acquire land for public purposes such as construction of roadways, metros, railways etc. and in such times, it will be necessary to fill all the gaps which are present in the new legislation.

The implementation of the new act can be difficult in certain ways e.g. the owners of the land might not give consent to sell their land or they may file suit of *lis pendense* where the whole scheme will be affected as the entire procedure will be stayed until final judgment of the court. This may lead to monetary loss and delays termination in implementation of governmental schemes. Therefore it is necessary to be take care of such practices. Though having many loopholes, the new enactment is very helpful in the sense that new policies have been introduced and now the land owners will get just and fair compensation for their land.