retired judicial officers to maintain impartiality towards grievance redressal of street vendors.

(l) The Bill also provides for promotional measures to be undertaken by the Government, towards availability of credit, insurance and other welfare schemes of social security, capacity building programmes, research, education and training programme *etc.*, for street vendors.

THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT BILL, 2012 (LARR, 2012) - AN OVERVIEW

By

—Dr. PETIKAM SAILAJA*

The Government of India claims there is heightened public concern on land acquisition issues in India. Of particular concern is that despite many amendments, over the years, to India's Land Acquisition Act of 1894, there is an absence of a cohesive national law that addresses:

* 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 believes that a combined law is necessary, one that legally requires rehabilitation and resettlement necessarily and simultaneously follow Government acquisition of land for public purposes. Forty-Fourth Amendment Act of 1978 omitted Article 19(1)(f) with the net 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 a fiat to take away the property of a person, that person has no right to move the Supreme Court under Article 32.

2. Moreover, no one can challenge the reasonableness of the restriction imposed by any law the Legislature made to deprive the person of his property.

Article 31(2) in the original Constitution embodied the principle that if the Government makes a compulsory acquisition or requisitioning of private property, then it must take following actions:

(a) make a law

(b) such law must be for public purpose

(c) compensation must be paid to the owner of the property

First, the 25th Amendment Act, 1971 replaced the requirement of 'compensation' by 'an amount', the adequacy of which cannot be challenged in any Court. Then the real killer 44th Amendment Act, 1978

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came and omitted the Article 31 along with Article 19(1)(f). Thus individual's right to compensation for loss of property was also lost.

In recent times, there have been multiple incidents where farmers were protesting against the Government as it took away the land from them without paying the adequate compensation and against the wishes of many farmers. The whole debate about Right to Property needs to be re-initiated under this background. The Right to Property, which was enshrined in the original Constitution of India, as Fundamental Right should be re-instated by voiding the changes made by 44th Amendment Act of 1978 in this respect.

Now The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2012 has been introduced, The Bill will replace the existing Land Acquisition Act, 1894.

The Bill aims to establish the law on land acquisition, as well as the rehabilitation and resettlement of those directly affected by the land acquisition in India. The scope of LARR 2011 includes all land acquisition whether it is done by the Central Government of India, or any State Government of India, except the State of Jammu & Kashmir.

The Bill is applicable when:

* Government acquires land for its own use, hold and control, including land for Public sector undertakings.

* Government acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose. The purpose of LARR 2011 includes public-private-partnership projects, but excludes land acquired for State or national highway projects.

* Government acquires land for immediate and declared use by private companies for public purpose.

When land can be acquired: For private projects, public-private partnerships (PPPs) and for Government projects, provided it is for a public purpose

What is public purpose for Land Acquisition: Strategic use by the armed forces, paramilitary, State police; for national security; for infrastructure projects, including activities listed under the department of economic affairs (infrastructure section), excluding private hospitals, private education institutions and private hotels; projects related to industrial corridors, mining, national investment and manufacturing zone, sports, healthcare, tourism and space programmes; housing projects for income groups specified by Government, projects planned for development of village sites, residential areas for lower income groups in urban areas; projects involving agroprocessing, warehousing, cold storage, marketing infrastructure, dairy, fisheries and meat processing cooperatives

Pre-condition for acquiring: For a private entity or a PPP project, State has to conduct a social impact assessment (SIA) and an environmental impact assessment (EIA), to identify the families who would be affected if land was acquired. The private entity seeking land must then get the consent of 80 per cent of the affected families before it gets the Government to acquire land for it. In the case of PPPs, the entity has to secure consent of 70 per cent of affected families. The third condition for getting possession of land acquired through State intervention is payment of compensation and fulfilling of R&R requirements

Compensation package: Upto four times the market value in rural areas and twice the market value in urban areas; the Bill provides compensation to those dependent on the land for livelihood; where acquired land is sold to a third party for a higher price, 40 per cent of the appreciated land value (or profit) will be shared with the original owners. This would be exempt from tax and stamp duty

R&R package: The definition of affected family includes farm labourers, tenants, sharecroppers and workers in the area for three years prior to acquisition. The compensation would be Rs.5 lakh or a job, if available, to the affected family; subsistence allowance of Rs.3,000 a month for one year; miscellaneous allowances of upto Rs.1.25 lakh for each family

Dispute authority: A Land Acquisition and Rehabilitation and Resettlement Authority to be established

Retrospective clause: Applicable on cases where no land acquisition award made. In cases where land was acquired five years ago but no compensation has been paid or no possession happened, the acquisition process to start again

Lease option: The Bill allows industry to take land on lease, instead of buying. But the decision rests with the State rather than the landowner

Why industry is upset: Make the land acquisition process slower; compensation would raise costs of projects fivefold; retrospective application clause not favourable

Multicrop farmland: Irrigated farmland out of acquisition ambit for non-farm uses. But State can decide to what extent farmland should be protected. The farmer does not have any say in the matter

Problematic clauses: No guarantee of jobs in R&R package; compensation calculated according to circle rates much less than market prices; no protection to farmland; State Government to decide if unused acquired-land should be returned to the farmer or added to its land bank. This applies even if owners return the compensation.

Benefits and effects of the Bill:

The 2011 LARR Bill, if enacted into law, is expected to affect rural families in India whose primary livelihood is derived from farms. The Bill will also affect urban households in India whose land or property is acquired.

Per an April 2010 report, over 50% of Indian population (about 60 crore people) derived its livelihood from farm lands. With an average rural household size of 5.5, LARR Bill 2011 R&R entitlement benefits may apply to about 10.9 crore rural households in India.

According to Government of India, the contribution of agriculture to Indian economy's gross domestic product has been steadily dropping with every decade since its independence. As of 2009, about 15.7% of India's GDP is derived from agriculture. LARR Bill 2011 will mandate higher payments for land as well as guaranteed entitlements from India's non-agriculture-derived GDP to the people supported by agriculture-derived GDP. It is expected that the Bill will directly affect 13.2 crore hectares (32.6 crore acres) of rural land in India, over 10 crore land owners, with an average land holding of about 3 acres per land owner. Families whose livelihood depends on farming land, the number of livelihood-dependent families per acre varies widely from season to season, demands of the land, and the nature of crop.

LARR Bill 2011 proposes to compensate rural households - both land owners and livelihood losers. The Bill goes beyond compensation, it mandates guaranteed series of entitlements to rural households affected. According to a July 2011 report from the Government of India, the average rural household per capita expenditure/ income in 2010, was Rs.928 per month (US$ 252 per year).

For a typical rural household that owns the average of 3 acres of land, the LARR 2011 Bill will replace the loss of annual average per capita income of Rs.11,136/- for the rural household, with:

* four times the market value of the land, and
* an upfront payment of Rs.1,36,000 (US$ 3,000) for subsistence, transportation and resettlement allowances, and
* an additional entitlement of a job to the family member, or a payment of Rs.5,00,000 (US$ 11,000) up front, or a monthly annuity totaling Rs.24,000 (US$ 550) per year for 20 years with adjustment for inflation - the option from these three choices shall be the legal right of the affected land owner family, not the land acquirer, and
* a house with no less than 50 square meters in plinth area, and
* additional benefits may apply if the land is resold without development, used for urbanization, or if the land owner belongs to SC/ST or other protected groups per rules of the Government of India

If the affected families on the above rural land demand 100% upfront compensation from the land acquirer, and the market value of land is Rs.1,00,000 per acre, the 2011 LARR Bill will mandate the land acquirer to offset the loss of an average per capita 2010 income of Rs.11,136/- per year created by this 3 acre of rural land, with the following:

* Rs.18,36,000 (US$ 41,727) to the rural land owner; which is the total of R&R allowances of Rs.6,36,000 plus Rs.12,00,000 - which is four times the market value of the land, plus
* a house with no less than 50 square metres in plinth area and benefits from Schedule III-VI as applicable to the rural land owner, plus
* additional payments of Rs.6,36,000 each to any additional families claiming to have lost its livelihood because of the acquisition, even if they do not own the land

The effects of LARR Bill 2011, in certain cases, will apply retroactively to pending and incomplete projects. The Bill exempts land acquisition for all linear projects such as highways, irrigation canals, railways, ports and others.

Criticisms:

The proposed Bill, LARR 2011, is being criticized on a number of fronts, they are as follows

* LARR 2011 as proposed mandates that compensation and rehabilitation payments to land owners and livelihood losers be upfront. This misaligns the interests of land acquirer and those affected. Once the payment is made, one or more of the affected families may seek to delay the progress of the project to extract additional compensation, thereby adversely affecting those who chose long term employment in the affected families. The Bill, these economists suggest, should link compensation and entitlements to the progress and success of the project, such as through partial compensation in form of land bonds. These success-linked infrastructure bonds may also help poor States reduce the upfront cost of land acquisition for essential public projects such as hospitals, schools, universities, affordable housing, clean drinking water treatment plants, electricity power generation plants, sewage treatment plants, flood control reservoirs, and highways necessary to bring relief to

affected public during fires, epidemics, earthquakes, floods and other natural disasters. The State of Kerala has decided to pursue the use of infrastructure bonds as a form of payment to land owners.

* LARR 2011 places no limit on total compensation or number of claimants; nor does it place any statute of limitations on claims or claimants. The beneficiaries of the Bill, with guaranteed jobs for 26 years, will have no incentive to be productive. The Bill should place a limit on total value of entitlement benefits that can be annually claimed per acre, this entitlement pool should then be divided between the affected families, and the Government should run this program if it is considered to be fair.

* LARR 2011 as proposed severely curtails free market transactions between willing sellers and willing buyers.

* *Amartya Sen*, the India-born Nobel Laureate in economics, claims prohibiting the use of fertile agricultural land for industries is ultimately self-defeating. *Sen* claims industry is based near cities, rivers, coast lines, expressways and other places for logistical necessities, quality of life for workers, cost of operations, and various reasons. *Sen*, further suggests that even though the land may be very fertile, industrial production generates many times more than the value of the product produced by agriculture. History of industrialisation and global distribution of industry hubs, *Sen* claims, show that the locations of great industry, be it Manchester, London, Munich, Paris, Pittsburgh, Shanghai or Lancashire, these were all on heavily fertile land. Industry always competes with agriculture, *Sen* claims, because the shared land was convenient for industry for trade and transportation. *Amartya Sen* further argues that in countries like Australia, the US or Canada, where agriculture has prospered, only a very tiny population is involved in agriculture. Agriculture prospers by increasing productivity and efficiency. Most people move out to industry. Industry has to be convenient, has to be absorbing. When people move out of agriculture, total production does not go down; rather, per capita income increases. For the prosperity of industry, agriculture and the economy, India needs industrialisation. Those in India, who in effect prevent industrialisation, either by politically making it impossible for entrepreneurs to feel comfortable in starting a business, or by making it difficult to buy land for industry, do not serve the interest of the poor well, claims Sen. The proposed LARR 2011 bill prohibits the acquisition of fertile agriculture land beyond 5% per district.

* The current definition of "public Purpose" can be interpreted vaguely. In leaving public purpose too vague and porous, it would ensure that land acquisition will remain hostage to politics and all kinds of disputes. More clarity is needed, perhaps with the option that each State have the right to hold a referendum, whereby the voters in the State can vote to approve or disapprove proposed public purpose land acquisitions through the referendum, as is done through local elections in the United States for certain public acquisition of private or agricultural land.

* The Confederation of Real Estate Developers' Association of India claims that the proposed LARR 2011 bill is kind of one-sided, its ill-thought-out entitlements may sound very altruistic

and pro-poor, but these are unsustainable and will kill the goose that lays the golden egg. This group further claims that the bill, if passed, will increase the cost of acquisition of land to unrealistic level. It will be almost impossible to acquire 50-acre or 100-acre land at one place for planned development. They suggest that if India does not facilitate urbanization in an organized manner, all the incremental population will be housed in disorganized housing developments such as slums with dire consequences for Indian economy. In the long run, even farmers will suffer as fringe development of urban centres will largely be in the form of unauthorized developments and they will not realize the true economic potential of their lands.

* The bill inflates the cost of land to help a small minority of Indians at the cost of the vast majority of Indian citizens, as less than 10% of Indian population owns rural or urban land., The LARR Bill 2011 favours a privileged minority of land owners as the Bill mandates above market prices for their land plus an expensive rehabilitation package. The Bill does not mandate a process by which the time involved in land acquisition is reduced from current levels of years. Nor does the Bill consider the effect of excessive costs upfront, and expensive rehabilitation mandate over time, on the financial feasibility of large-scale, socially necessary infrastructure projects needed by 90%+ of Indians who are not landowners. In an editorial, *Vidya Bala* writes that the most important weakness in the Bill is bringing non-Government transactions too under its purview. Private players buying 50+ acres of urban land tracts or 100+ acres of rural areas would be required to comply with the R&R package stated in the Bill.

* LARR 2011 Bill's Sections 97, 98 and 99 are incongruous with other laws of India in details and intent. Section 98, for example, says that the provisions of the Bill shall not apply to the enactments relating to land acquisition specified in the Fourth Schedule of the Bill. According to Indian Legal Code, the Fourth Schedule referred to by LARR 2011 Bill, consists of 16 bills, including the Ancient Monuments and Archaeological Sites and Remains Act, 1958, the Atomic Energy Act, 1962, the Special Economic Zones Act, 2005, the Cantonments Act, 2006, the Railways Act, 1989 amongst others. Laws can not be in conflict with each other. LARR Bill carve outs through Sections 97, 98 and 99 add confusion, offering a means for numerous citizen petitions, law suits and judicial activism. The LARR 2011 Bill thus fails to deliver on the goals motivating it.

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