



Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

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Abstract

In India the Government has the power to acquire land for a public purpose. The legislation that was enacted to govern the same was very old and there were no provisions for compensation or rehabilitation on acquiring land. This led to the passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which replaces the old Act. The Government of India believed there was a heightened public concern on land acquisition issues in India. Of particular concern was that despite many amendments 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 that legally requires rehabilitation and resettlement necessarily and simultaneously follow government acquisition of land for public purposes.

Land acquisition refers to the process by which government forcibly acquires private property for public purpose without the concurrent of the land owner. The land

owner is not a willing seller, therefore, compensation and the way in which compensation were payable, is to be fair and reasonable. TRTFCAT in LARR Act 2013 (The LARR Act) provides for land acquisition as well as rehabilitation and resettlement (R & R) and replaces the Land Acquisition Act 1894. For the last two years, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 has been in the eye of debate and discussed for the controversial changes. The Act soon faced resistance from the industry due to the impact of clauses like social impact assessment, compensation to land owners, rehabilitation and resettlement, and consent requirements on projects done in public interest.

This paper captures the overall progression of the land laws starting from the Land Acquisition Act 1894 to Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Ordinance, 2014. It maps the role and the influence of the three primary stakeholders - Government, industry and landowners - at various stages of the evolution of the land acquisition law in India. Further the paper aims at bringing about a critical review of the 2013 Act and 2014 ordinance. It also ensues a comparative analysis of the provisions of the earlier 1894 Act and the LARR Act of 2013.

Introduction

The majority of the Indian population is dependent on lands. Most of them are on agricultural lands, while some on urban properties. In view of ever increasing demand and rising prices of land, a



person/family affected by land acquisition will suffer heavily as it will be impossible for him/them to purchase similar extent of land lost in the acquisition. Therefore, the Parliamentarians' enacted The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and replaces the Land Acquisition Act of 1984 which was a pre-Constitutional Act. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 would be operative from a notified date within 3 months from the date it received the assent of the President of India. It aims to acquire the land in consultation with institution of local self-government and gram sabhas established under the Constitution. Humane, participative, informed and transparent process of Land Acquisition for industrialization, development of essential infrastructure facilities and urbanization with least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected family and whose land has been acquired or proposed to be acquired on affected persons by such acquisition. And make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post-acquisition social and economic status.

History

In India, the Land Acquisition Act 1894 had served as the basis for all government

acquisition of land for public purposes. The first land acquisition law was enacted during the British Raj in 1824, which underwent several modifications and was finally replaced by the Land Acquisition Act, 1894. The Government of India in 1947 adopted the Land Acquisition Act, 1894. The land acquisition process as per the Land Acquisition Act, 1894 is given in Exhibit 2. The Constitution of India placed 'Acquisition and requisitioning of property' as Entry 42 in the Concurrent List. This meant that both the Centre and States could make laws governing land acquisition. However, in case of a conflict between the central and state law, the central legislation would prevail.

The Act was reviewed by various committees appointed by the Government of India. In 1967, a committee was appointed by the Government of India to study, consult and recommend principles to amend the 1894 Act. As a result of such reviews, the LAA 1894 was amended 17 times, after independence in 1947, by various elected governments. The major amendments to LAA 1894 are described in Exhibit 3. Various State Governments also amended the Act in order to respond to the local demands, like in the case of Land Acquisition (Amendment and Validation) Act of 1967 by the state of Karnataka.¹

The Standing Committee on Rural Development (SCRD), in its report on the Land Acquisition, Rehabilitation and

¹"Land Acquisition Law in India: A historical perspective", Vikas Nandal, International Journal of Innovative Research and Studies, May 2014, Vol 3 Issue 5, accessed on Oct 9, 2017; http://www.ijirs.com/vol3_issue-5/33.pdf.



Resettlement (LARR) Bill 2011, a precursor to RFCTLARR, explained the amendments made over the years².

“Initially, the exercise of the doctrine of Eminent Domain was limited to acquiring land for public purpose such as roads, railways, canals, and social purposes like state run schools and hospitals. The Act, however, added the words ‘or Company’ to ‘public purpose’ to distinguish land acquisition by the State for ‘public purposes’ from land acquisition by the State for ‘a Company’. Moreover, acquisition of land for ‘Companies’ was restricted to Railway Companies, until by an amendment effected in 1933, acquisition was permitted for the ‘erection of dwelling houses for workmen employed by the Company or for the provision of amenities directly connected therewith’.

The Ambit of the LAA 1894 was then significantly expanded by a number of amendments in 1962 which permitted acquisition for a Company ‘which is engaged or is taking steps for engaging itself in any industry or work which is for a public-purpose’. The amendments made in 1984 in the LAA 1894 extinguished any differentiation between acquisition for a State purpose and ‘acquisition for a private enterprise’ or ‘State enterprise’ by amending

section 4³ of the original Act to insert the words ‘or for a Company’ after ‘any public purpose’.

However, the law failed to address some important issues associated with land acquisition, particularly forcible acquisitions, the definition of ‘public purpose’, widespread misuse of ‘urgency clause’, compensation, lack of transparency in the acquisition process, participation of communities whose land was being acquired and lack of R&R package.

Due to a lack of clear definition of ‘public purpose’ there had been considerable difference of opinion among various judgments of the Supreme Court (SC), which resulted in granting very broad discretionary powers to the state in terms of deciding the contours of ‘public purpose’ under particular circumstances.

In the *State of Bombay v. R. S. Nanji*⁴, the SC observed, —It is impossible to precisely define the expression ‘public purpose’. In each case, all the facts and circumstances will require to be closely examined in order to determine whether a public purpose has been established. Prima facie, the government is the best judge as to whether public purpose is served by issuing a requisition order, but it is not the sole judge. The courts have the jurisdiction and it is their duty to determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose⁵.

²Standing Committee report on the Land Acquisition and Rehabilitation and Resettlement Bill, 2011, Department of Land Resources, Ministry of Rural Development, Government of India, accessed on Oct 10, 2017; <http://dolr.nic.in/dolr/downloads/pdfs/Land%20Acquisition,%20Rehabilitation%20and%20Resettlement%20Bill%202011%20-%20SC%28RD%29%27s%2031st%20Report.pdf>.

³Section 4 of the 1894 Act deals with the publication of preliminary notification for acquisition of a particular land and the powers of the officers thereon.

⁴AIR 1956 SC 294.

⁵“Judicial interpretation of Public Purpose with respect to land rights”, Sreya B, Social Science



In the 1988 case of *Coffee Board v. Commissioner of Commercial Taxes*⁶, the SC again stated, “Eminent domain is an essential attribute of sovereignty of every State and authorities are universal in support of the definition of eminent domain as the power of the sovereign to take property for public use without the owner’s consent upon making just compensation”⁷.

Acquisition of Land

As per the Land Acquisition Act, 1984 the acquisition of land is of two kinds:

- Acquisition of land by the government for public purpose,
- Acquisition of land for companies.

The public purpose is defined in section 3(f) of the Land Acquisition Act, 1984. It is an inclusive definition. ‘Public purpose’, as mentioned in the Act, is not capable of precise definition and has to be tested in the light of the purpose for which land is sought to be acquired. From time to time the apex court and various high courts have expanded the scope of public purpose. The concept of public purpose is not static. It changes with the requirements of the society from time to time and in accordance with the conditions of the country.

In *EMMAR Properties’ case*⁸, establishment of integrated project for providing business-

cum-leisure tourism infrastructure centre like villas, golf course, hotels and banquet halls was held to be for public purpose. But as per the Act, 2013 the ‘public purpose’ is clearly defined as the activities specified under sub-section (1) of section 2 of the Act, 2013.

As per the Act, 1984, there are two modes of acquisition, one is ordinary acquisition where possession of land can be taken only after an award is passed, and the second one is acquisition of land by invoking urgency clause where advance possession can be taken by giving notice of 15 days. In case of company acquisition any company for whose purpose the land is sought to be acquired has to bear the costs of acquisition. It should enter into a prior agreement with the appropriate government for payment of compensation, transfer of land and other terms as may be necessary in connection with such acquisition. Such agreement between the appropriate government and the company has to be published in the official gazette under section 42 of the Act, 1984 which is obviously to ensure transparency in the matter.

Act, 2013 at Glance

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is contained totally 114 sections which are incorporated in 13 Chapters, and Four Schedules.

Chapter I deals preliminary i.e. short title extent and commencement, application of the Act and definitions part (sections 1 to 3),

Research Network, July 8, 2013, accessed on Oct 13, 2017;
http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2290863.

⁶AIR 1988 SC 1487.

⁷*Ibid.*

⁸*Sooraram Pratap Reddy v. District Collector, Ranga Reddy District* (2008) 9 SCC 552.



Chapter II deals the provisions regarding to determination of Social Impact and Public purpose (sections 4 to 9),

Chapter III deals the special provisions to safeguard food security (section 10),

Chapter IV deals the provisions for notifications and acquisition (section 11 to 30),

Chapter V deals VII deals the provisions for National Monitoring Committee for Rehabilitation and Resettlement (section 48 to 50),

Chapter VIII deals the provisions for establishment of land acquisition, rehabilitation and resettlement authority (Sections 51 to 74), Chapter IX deals the provisions for apportionment of compensation (sections 75 and 76),

Chapter X deals the provisions for payment (sections 77 to 80),

Chapter XI deals the provisions for temporary occupation of land (sections 81 to 83),

Chapter XII deals the provisions for offences and penalties (section 84 to 90),

Chapter XIII deals the miscellaneous provisions (section 91 to 114). First Schedule deals the compensation for land owners, Second Schedule deals the elements of rehabilitation and resettlement entitlements for all the affected families (both land owners and the families whose livelihood is primarily dependent on land acquisition) in addition to those provided in the First Schedule. Third Schedule deals the

provisions of infrastructural amenities and Fourth Schedule deals list of enactments regulating land acquisition and rehabilitation and resettlement.

Unique feature of the Act, 2013 is to make adequate provisions for affected persons for rehabilitation and resettlement. The affected person and affected family have been defined. The affected families include not only whose land has been acquired but also families depend on agriculture labour, tenants widely categorized or artisans whose work may be affected in the area for 3 years prior to the acquisition of the land whose primary source of livelihood stand affected by the land acquisition. Schedule Tribe in the notified Act under Schedule Area has also been dealt with. Infrastructure projects have been elaborately mentioned. Acquisition also for strategic purposes relating to naval, military, air force and armed forces of the Union for vital national security for defence of India or state police. The projects include for affected families housing schemes specified by the appropriate government.

Market value of the acquired land means as determined under section 26, persons interested, patta holders have also been brought within the preview of the Act. Determination, social impact a public purpose also has been dealt with Chapter II. Appraisal of social impact assessment report is to be by an expert group is mentioned in section 7. Whereas urgency provisions are invoked under section 9, it has been given power thereto to exclude social impact assessment study before acquisition. Provisions also have been made to safe guard food security.



The collector is to submit draft Rehabilitation and Resettlement scheme with suggestion to the commissioner for its approval. The commissioner shall ensure publication of the approved scheme in the local language in the panchayat etc., published in the prescribed manner. The Act also mandates to upload on the website of government which was lacking in the old Act. The government after considering the report and satisfying itself is required to publish a declaration of the identified resident area for the purposes of rehabilitation and resettlement of the affected family under the hand and seal of the Secretary to the government or an authorized authority. Different declaration may also be made in respect of different parcels of land covered by the preliminary notification. The collector shall publish not only rehabilitation and resettlement scheme but also the declaration under section 19(1) as is mandatory to make such declaration. The requiring body shall deposit the amount promptly to enable the government to publish the declaration within a period of 12 months at the pain of its invalidation. Section 25 mandates the collector to make the award within 12 months from the date of declaration under section 19, saving period of 3 months for its publication is provided, and otherwise the acquisition of land shall lapse. The collector shall record reasons for such extension and uphold on its website. Temporary occupation of waste or arable land procedure is also laid down in this Act under Chapter XI.

The Land Acquisition Rehabilitation and Resettlement Authority is one established under section 51. The meaning of the Collector is the same as in the old Act. The

commissioner for Rehabilitation and Resettlement is appointed under section 44. The cost of acquisition is not only of solatium but also compensation ordered by Land Acquisition Rehabilitation and Resettlement Authority or the court. After determining total compensation including solatium at 100% of the compensation which is a new provision under the Act, he is also required to calculate interest @12% per annum on a market value commencing from the date of publication of social impact assessment study till the date of collector's award or taking possession of the land, whichever is earlier.

Most notable change in the Act, 2013

Notable change is introducing a unique feature of determination of Social Impact Assessment Study for public purpose, which was inserted in Chapter II of the Act, 2013 i.e. sections 4 to 9 deals the provisions for determination of Social Impact and Public Purpose. Social Impact Assessment Study (SIAS) to be done by the authorities before preliminary notification under section 4 of the Act, 2013, if the government intends to acquire land for public purpose, which means the authorities have to conduct public hearing and give a report about the social impact by consulting with the Panchayats/Municipalities/Municipal Corporations (local authority) as the case may be prior to issuing preliminary notification under section 11 for acquisition of land. During such study the gross-root level authorities also have a say to give their opinion whether the proposed acquisition serves public purpose, number of family members likely to be affected in the acquisition, whether alienate land can be



acquired, the extent of public land/house settlement likely to be affected in the acquisition, as to whether the extent of land proposed to be acquired is bare minimum requirement for the project. Under Social Impact Assessment Study, the authorities are bound to take into consideration the impact the project is likely to cause on various components such as livelihood of the affected families, properties, assets, sources of drinking water for cattle, community ponds, grazing lands etc. After such study, a report is prepared and it is mandatory that it should be made available in local language at Panchayats/Municipalities/Municipal Corporations as the case may be.

The Social Impact Assessment Study will be done by a group of persons comprising of two unofficial social scientists, representatives of the Panchayat / Grama Sabha / Municipality / Municipal Corporation, two experts on rehabilitation, technical experts etc. Then such report has to be forwarded to the appropriate government and the appropriate government after ensuring that the purpose of acquisition is bonafide and recommended such area for acquisition which would ensure minimum displacement of people disturbance of infrastructure, ecology etc. However, under section 9 of the Act, 2013 the government may exempt the undertaking of Social Impact Assessment Study if the acquisition is made under urgency clause, under section 40 of the Act, 2013.

Key features of LARR, 2013

- As per Section 10 of the Act, 2013, no irrigated multi crop land shall be acquired. If under exceptional circumstances such land is acquired, the government should ensure

that equivalent area of cultivable waste land shall be developed for agricultural purposes or the amount equivalent to the value of the land acquired shall be deposited with the appropriate government for investing in agricultural for enhancing food security. This is in consonance with the Food Security Act, 2013. So, in case of acquisition of multi crop fertile lands, the object is to see that cultivable lands are not diminished, and thereby to ensure that there is no shortage of food production.

- Rehabilitation and Resettlement: in case of land-owners/landless people whose lands are affected in acquisition, rehabilitation and resettlement scheme has to be prepared under sections 16 and 17 of the Act, 2013. A special provision is made for the benefit of the people belonging to Schedule Castes and Scheduled Tribes under section 41, and their lands should not be acquired as far as possible and in case of demonstrable last resort, their lands are acquired under a special development plan for their rehabilitation and resettlement.
- Land acquired for one purpose cannot be used for another purpose under section 99. However, if the land is rendered useless for the originally notified purpose, the appropriate government may use it for another purpose. If the land acquired is not utilized within a period of five years from the date of taking possession, it shall be redelivered to the original owner under section 101 of the Act, 2013.
- Section 24 of the Act, 2013, protects certain category of persons whose lands have been notified/acquired under the Act, 1984. The provisions of the Act, 2013 will apply



(a) Where no award has been passed under section 11 of the Act, 1984 for payment of compensation,

(b) Where award has been passed under section 11 of the Act, 1984, more five years or more prior to the commencement of the Act, 2013, but physical possession has been taken or compensation has not been paid,

- Then in the above two circumstances, the proceeds under the Act, 1984 are deemed to have lapsed. Further, where award is passed and compensation of majority land-holdings has not been deposited in the account of beneficiaries, then all the beneficiaries specified in the section 4 notification under the Act, 1984 will be entitled to compensation under the Act, 2013.
- Compensation payable to the land-owners is provided in Schedule-I of the Act, 2013. The land-owner will get market value multiplied by one or two times (for urban and rural lands as the case may be), along with interest which includes 100% *solutum*. Similarly, Schedule-II is also provided detailing out the manner in which the land-owners and landless poor will be rehabilitated and resettled.

RECTLARR Ordinance, 2014

The winter session of the Parliament, which started on November 24, 2014 was marred by disruptions. Proceedings of RS were washed out as opposition parties stalled the House by pressing the demand for a statement by the PM on alleged forced religious conversions in Agra. Several crucial bills, including RFCTLARR Amendment Bill, Goods and Services Tax

Bill and Insurance Bill, could not be discussed in the Parliament due to stiff opposition by some parties.

The political composition of both the Houses of Parliament was evident in the functioning of each of the Houses. The LS was more productive with 126 hours of functioning during the stipulated 20 sittings. The productivity percentage of the Lower House was as high as 105 percent. In contrast, productivity of RS was only 68 percent. This could be viewed in juxtaposition with the numerical strength of NDA in each of the Houses. In the LS it had an overwhelming majority of 334 out of the 543 seats but in the RS, it had just 62 out of the 250.

On December 23, 2014 the Cabinet Committee on Political Affairs recommended to the President to prorogue both the Houses of the Parliament to enable promulgation of two official ordinances namely Coal Amendment Ordinance and Insurance Amendment Ordinance. Proroguing of the session was crucial because, as per the rules laid down in the Constitution, an ordinance could be passed only when the Parliament was not in session and the previous session had been prorogued. Consequently, both the Houses were prorogued by President Pranab Mukherjee on December 23.

On December 27, 2014 the Government of India decided to take the ordinance route to make amendments to RFCTLARR. The Government of India sources informed that the necessary directions had been issued to the MoRD to get the draft ordinance vetted



by the Law Ministry⁹. Article 123 of the Constitution enabled the President of India to promulgate an ordinance if both the Houses of Parliament were not in session and ‘circumstances existed, which rendered it *necessary* for him to take *immediate* action’. Every ordinance had to be laid before Parliament, and ceased to exist six weeks from the end of the next sitting of Parliament. Since the Constitution mandated that Parliament to be called into session at least once every six months, an ordinance has a *de facto* expiration period of approximately seven and a half months¹⁰. The constitutional provision with respect to the ordinance is provided in Exhibit 11.

On December 29, 2014 the Union Cabinet chaired by the PM approved the amendments and recommended the President to promulgate the RFCTLARR Ordinance 2014. The RFCTLARR Ordinance was the eighth ordinance passed in seven months of the NDA Government and the ninth for the calendar year.

The ordinance brought in the following amendments:

- Compensation and R&R specified in the Act was extended to the acquisition under thirteen Acts mentioned in the Fourth Schedule.

⁹“Centre to take ordinance route to effect changes in the Land Acquisition Act” IBN Live dated December 27, 2014, accessed on Oct 10, 2017; <http://ibnlive.in.com/news/centre-to-take-ordinance-route-to-effect-changes-in-land-acquisition-act/520030-37-64.html>.

¹⁰“Ordinance route” Frontline dated August 9, 2013, accessed on Oct 15, 2017; <http://www.frontline.in/the-nation/ordinance-route/article4944717.ece>.

- Projects in the areas of i) defense and defense production ii) rural infrastructure iii) affordable housing iv) industrial corridors v) social infrastructure projects including PPPs in which ownership lies with the government, were exempted from conducting SIA and taking the consent of affected families.
- Definition of public purpose was widened to include private hospitals and private educational institutions
- The term ‘private company’ was changed to ‘private entity’ to encompass other forms of companies like proprietorship, partnership, corporation, non-profit organization, and other non-governmental entities
- ‘Companies Act 1956’, which was the reference for the definition of ‘Company’ was replaced by ‘Companies Act 2013’
- The period after which unutilized land had to be returned was extended to any period specified at the time of setting up the project. RFCTLARR 2013 required land, which remained unutilized for five years, to be returned to the original owners or the land bank.

On December 31, 2014 President Pranab Mukherjee sought further clarification regarding the urgency to promulgate the ordinance since the Amendment Bill was not presented before the Parliament. According to the Constitution, an ordinance could be promulgated by the President only after he was ‘satisfied that circumstances exist which render it necessary for him to take immediate action.’



Another reason for the clarification was said to be the increased instances of the NDA Government taking the ordinance route to avoid the logjam in the Parliament. The Government of India had issued seven ordinances within a fortnight of the end of the winter session which had also raised concerns within the Cabinet¹¹. The number of ordinances issues during various LS sessions is given in Exhibit 12.

Since the Rural Development Minister Chaudhary Birender Singh was unavailable to brief the President, three senior Union Ministers including Finance Minister Arun Jaitley, Law Minister D V Sadananda Gowda and Highways Minister Nitin Gadkari met the President. Nitin Gadkari who had earlier held the rural development portfolio explained that an ordinance was necessary to bring the 13 Central Acts at par with the compensation and rehabilitation provisions of RFCTLARR¹². After the discussion, the President gave his assent to the RFCTLARR Ordinance 2014.

Conclusion

As per the Act, 1984 the agriculturist/landless poor are unduly deprived on their valuable lands. Several

people have been displaced from their villages, meager compensation is being paid, and acquisitions being made in colorable exercise of power, all these problems compounded have triggered our Parliamentarians to come up with a new Land Acquisition Act, 2013. As evident from the contents of the Act, 2013, at various stages substantial safeguards have been provided to the land owner so as to ensure that the authorities do not act arbitrarily and in discriminative manner to deprive the land-owner of his land. Ultimately the Act, 2013, will go a long way to protect the interests of farmers and land-owners who are solely depended on the lands and this mechanism takes care of the longstanding grievances of the land-owners/displaced persons by ensuring the acquisition of property will be made only as a last resort and if the purpose is bonafide and genuine.

¹¹ “Ordinance Raj: President questions urgency behind Modi-government issuing seven ordinances”, Indian Express dated January 08, 2015, accessed on Oct 20, 2017; <http://indianexpress.com/article/india/india-others/ordinance-raj-three-cabinet-ministers-had-raised-objections>.

¹² “Rural Development Minister gave the government a scare by remaining incommunicado”, DNA dated January 02, 2014, accessed on Oct 20, 2017; <http://www.dnaindia.com/india/report-how-rural-development-minister-gave-government-a-scare-by-remaining-incommunicado-2049070>.