

Law and Economics: Analysis of Land Acquisition Issues in India – Case Study of Singur

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Abstract

The land acquisition process in India has lately assumed a controversial and debatable dimension. The recent opposition against the land acquisition in Nandigram, Singur and Greater Noida highlighted the inadequacies of the colonial Land Acquisition Act of 1894, which has been used to promote widespread land grab at the expense of the poor. The recent introduction of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 aims at making the process of land acquisition more efficient, fairer and transparent.

This paper attempts to examine the land acquisition issues in India by analyzing the Singur case and how the new Land Acquisition Act, 2013 can address these issues.

KEYWORDS: Land Acquisition Act 1894; New Land Acquisition Act (LARR) 2013; Singur; Eminent Domain

I. Introduction

Eminent Domain in common law is the inherent power of the state to seize a citizen's private property, expropriate property, or seize a citizen's rights in property with due monetary compensation, but without the owner's consent. It is one of the most controversial and politically sensitive instruments of state power anywhere in the world. Depending on how it is used, it can clear the way for rapid economic transitions, technological progress and inclusive growth, or it can trample on property rights, the economic interests of poor and vulnerable groups, and fundamental principles of justice.

Though the Constitution originally provided for the right to property under Articles 19 and 31, later on the 44th amendment act of 1978 deleted the right to property from the list of Fundamental Rights. The Land Acquisition Act, 1894 allowed the government to acquire private land for public purposes after paying a government-fixed compensation to cover losses incurred by landowners from surrendering their land to the concerned government agency. This act of acquisition has been criticized due to its coercive nature, in that the state is authorized to acquire the land even without the willingness of the owner to part with it.

The rapacious use of Land Acquisition Act 1894 by the government to secure land for 'development' projects has caused over 100 million people to be displaced from their land, livelihoods and shelters. These have traumatic, psychological and socio-cultural consequences for the affected population, which call for protecting their rights, including those of the weaker sections of the society, particularly tribal, tenants etc. The rehabilitation and resettlement of the people affected by involuntary acquisition of private land and immovable property is of paramount importance.

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (LARR), 2013 which has come into effect from 1 January 2014 has replaced the Land Acquisition Act, 1894, a nearly 120-year-old law enacted during British rule. The principle objective of the new Act is fair compensation, thorough resettlement and rehabilitation of those affected, adequate safeguards for their well-being and complete transparency in the process of land acquisition

LARR 2013, is clearly a long overdue attempt to address the inadequacies of the colonial Land Acquisition Act of 1894, which has been merrily exploited by commercial interests, corrupt politicians and an indifferent state to promote widespread land grab at the expense of the poor.

This article is organized as follows. Section 2 examines major land acquisition issues in India. Section 3 analyses the Singur case. Section 4 looks at the provisions of Land Acquisition Act 2013 to address the issues.

II. Land Acquisition Issues in India

Low rates of compensation: One of the major issue concerns the principle of basing compensations on market values. Dissatisfaction with compensation amounts has triggered protest and violence all over the country. The Land Acquisition Act of 1894 lays down such a principle – compensation should be equal to the local market price for land. More specifically, the law says that it should be the average price of all land transactions completed in the area in the previous three years. Many owners value their land more than their market values on account of other attributes of land, such as financial security, complementarity with farming skills, locational factors, or considerations of identity or social prestige. That is why long-standing owners have not exercised the option to sell their land at market prices¹. To ensure that such owners are adequately compensated would require raising compensations above market values. Moreover, in many regions, transactions are few and not well documented, leaving considerable room for officials to manipulate the figure by use of selective sampling or fake deals. Distress sales constitute a bulk of the transactions, and the full value is often concealed to escape stamp duty. Furthermore, any industrial or development project will cause significant appreciation of real estate prices, making it impossible for displaced farmers to buy back land with compensation money if they so wished.

Forced acquisitions: Under the 1894 legislation once the acquiring authority has formed the intention to acquire a particular plot of land, it can carry out the acquisition regardless of how the person whose land is sought to be acquired is affected. The Land Acquisition Act 1894 has been criticized as being harsh due to the coercive nature of the act of acquisition, in that the state is authorized to acquire the land without paying heed to the willingness of the owner to part with it.

¹Ghatak, Maitreesh and Ghosh, Parikshit (2011) The Land Acquisition Bill: A Critique and a Proposal *Economic and political weekly, Vol- XLVI No. 41, October 08,2011*

No safeguards: There is no real appeal mechanism to stop the process of the acquisition. A hearing (under section 5A) is prescribed but this is not a discussion or negotiation. The views expressed are not required to be taken on board by the officer conducting the hearing².

No resettlement and rehabilitation of those displaced: There are absolutely no provisions in the 1894 law relating to the resettlement and rehabilitation of those displaced by the acquisition. Displaced tenants and workers who constitute the poorer sections of these rural communities also need to be compensated in some way to avoid undesirable adverse impacts on their livelihoods.

Urgency clause: This is the most criticized section of the Law. The clause never truly defines what constitutes an urgent need and leaves it to the discretion of the acquiring authority. As a result almost all acquisitions under the Act invoke the urgency clause. This results in the complete dispossession of the land without even the token satisfaction of the processes listed under the Act.

III. Case Study: Singur

In the second half of 2006, the West Bengal government acquired 997 acres of prime agricultural land in order to enable Tata Motors, a leading industry house in India, to build a factory for Nano, its new model for a small and cheap car. In order to do so, the state government used its power of eminent domain under the aegis of the 1894 Land Acquisition Act. The West Bengal government subsequently decided to acquire the area required for the factory and offer compensation to those whose lands were being acquired as required by the 1894 Act. The local community of Singur was incensed by this action, generating resistance from households facing forced acquisition. This resistance soon snowballed into a protest movement, which the main opposition party, the Trinamool Congress (TMC) subsequently galvanised. The state government subsequently offered to improve the terms of compensation, including 25% compensation for tenant farmers engaged in cultivation of acquired plots. No plans were offered to compensate agricultural workers claiming to have lost employment on acquired lands. Local outbreaks of violence occurred, and the protests acquired national and international media attention. Eventually, two years later, Tata Motors decided to withdraw from West Bengal, and took the Nano car factory to Gujarat.

A household survey in 12 Singur villages, which were acquired for Tata Car Factory was conducted by Maitreesh Ghatak, Sandip Mitra, Dilip Mookherjee, Anusha Nath³. The results of the study shows that most of the land was acquired from marginal landowners, and from those engaged in cultivation on the acquired plots. For most affected owners, more than half the land they owned in 2005 was acquired. A significant fraction of

² Row, Sanjiva (1907) *The Land Acquisition Act, 1894. (Act I of 1894) Harvard University*

³ Ghatak, Maitreesh & Mitra, Sandip & Mookherjee, Dilip & Nath, Anusha, 2013 "Land Acquisition and Compensation in Singur: What Really Happened?" *CAGE Online Working Paper Series 120*

landowners were under-compensated owing to misclassification of their plots in the official land records, besides inability of the latter to incorporate other sources of plot heterogeneity. Acquisition of land resulted in 40% lower income growth for owners and half that for tenants. Agricultural workers that were directly affected experienced significant reductions in employment earnings compared with unaffected agricultural workers, who in turn, experienced smaller earnings growth compared with non-agricultural workers.

Hence, land acquisition in Singur imposed significant economic hardships on a large fraction of affected owners, tenants and workers. A large fraction of owners were undercompensated relative to market values. Tenants were undercompensated and agricultural workers were not compensated at all.

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

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 is a legislation that regulates land acquisition and provides new rules for granting compensation, rehabilitation and resettlement to the affected persons in India. It has been introduced with the intention to address the inadequacies of the colonial Land Acquisition Act of 1894 and provide 'fair' compensation to the land owners and Rehabilitation & Resettlement for the affected families. The provisions of the Act to address the land Acquisition Issues are-

Public purpose

Section 2 of the Act defines 'public purpose' for which land can be acquired. The Act defines public purpose to include: defence and national security; roads, railways, highways, and ports built by government and public sector enterprises; land for the project affected people⁴; planned development; and improvement of village or urban sites and residential purposes for the poor and landless, government administered schemes or institutions, etc.

Process of land acquisition

For a private entity or a PPP project, state, in consultation with the Gram Sabha 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 (sec 2.2.b). The third condition for getting possession of land acquired through state intervention is payment of compensation and fulfilling of R&R requirements.

⁴ The Act defines "affected family" to include (i) landowners; (ii) agricultural labourers, tenants who have been working in the affected area for three years prior to the acquisition; (iii) tribals and forest dwellers; (iv) families whose livelihood for the previous three years is dependent on the forests or water bodies; and (v) families who have been given land by the state or central government.

Urgency Clause

Section 40 of the Act restricts the use of urgency clause to defence of India or national security or emergency arising out of natural calamities. Before taking possession of land in such cases, 80 per cent of the compensation must be paid.

Compensation to the land owners

Section 26-30 and Schedule One deals with the various provisions of calculation of compensation for land acquired. First, the market value of the acquired land is computed as the higher of (i) the land value specified in the Indian Stamp Act, 1899 for the registration of sale deeds; or (ii) the average of the top 50 per cent of all sale deeds in the previous three years for similar type of land situated in the vicinity.

Once the market value is calculated, it is doubled for land in rural areas. There is no doubling of value in urban areas. Then, the value of all assets attached to the land (trees, buildings, etc) is added to this amount. On this amount, a 100 per cent solatium, (i.e., extra compensation for the forcible nature of acquisition), shall be given to arrive at the final compensation figure. Thus, Compensation for the owners of the acquired land shall be four times the market value in case of rural areas and twice in case of urban areas.

Rehabilitation and Resettlement (R&R) entitlements

Sec 26-30, Schedule II of the act specifies resettlement and rehabilitation benefits.

Every resettled area is to be provided with certain infrastructural facilities. These facilities include roads, drainage, provision for drinking water, grazing land, banks, post offices, public distribution outlets, etc.

The Act also provides the displaced families with certain R&R entitlements. These include, among other things, (i) land for a house as per the Indira Awas Yojana in rural areas or a constructed house of at least 50 square metres plinth area in urban areas; (ii) a one-time allowance of Rs 50,000 for affected families; and (iii) the option of choosing either mandatory employment in projects where jobs are being created or a one-time payment of Rs 5 lakh or an inflation adjusted annuity of Rs 2,000 per month per family for 20 years⁵.

Retrospective clause

Sec 24 of the act deals with the retrospective application of the R&R provisions. It is 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.

Caps on acquisition of multi-crop and agricultural land

In any district, land acquisition will be restricted to a maximum of five per cent of irrigated multi-crop land. When acquiring agricultural land, the state has to cultivate an equivalent area of land elsewhere as agricultural land. If they cannot do this then they

⁵ The Gazette of India Extraordinary, Ministry of Law And Justice, The Right to fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

must deposit an amount equivalent to its value in an account to be used for the purposes of enhancing food security.

Table1: Comparison of 1894 Act and 2013 Act
some key features between the 1894 Act and 2013 Act

	1894 Act	2013 Act
Public Purpose	Includes several uses such as infrastructure, development and housing projects. Also includes use by companies under certain conditions.	No significant change.
Consent from affected people	No requirement.	Consent of 80 % of displaced people required in case of acquisition for private companies and public-private partnerships.
SIA	No provision.	SIA has to be undertaken in case of every acquisition.
Compensation	Based on the market value.	Market value doubled in rural areas and not in urban area.
Market Value	Based on the current use of land. Explicitly prohibits using the intended use of land while computing market value.	Higher of: (a) value specified for stamp duty, and (b) average of the top 50% by recorded price of sale of land in the vicinity.
Solatum	30 %	100 %
R&R	No provision for R&R.	R&R necessary for all affected families. Minimum R&R entitlements to be provided to each family.

Source: www.prsindia.org

CONCLUSION: Ever since its enactment, the Land Acquisition Act, 1894 has been subject to controversies and fierce debate. Notwithstanding rounds of amendments, including the 1984 changes, it has failed to address some important issues associated with land acquisition particularly “forcible acquisitions”, widespread misuse the of "urgency clause", compensation, lack of transparency in the acquisition process, participation of

communities whose land is being acquired and virtually no rehabilitation and resettlement package. Further weak implementation and ineffective administration at the ground level has increased the suffering and anguish of the people. The recent introduction of Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 that aims at providing fair compensation to farmers, obtaining consent of affected families, and mandating resettlement and rehabilitation of affected families will make the process of land acquisition more efficient, fairer and transparent.

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