
LAND ACQUISITION IN INDIA: LEGAL ISSUES AND CHALLENGES

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Introduction

Land is a free gift of the nature and it is an abundant source of formation, nourishment and demolition for living and non-living things. It plays a significant role to progress and development of any country. Land is such a subject of nation that shape up geographical nature, yielding quality, intrinsic value and the extent of its territory. It is also a symbol of social status since the inception. In the primitive society, it has played important role in the existence and survival of human beings. Every land belongs to some owner or some authority i.e. king or any sovereign authority.

In the present context, the Land acquisition has been very serious and concerned issue in the pre and post Indian context. It relates with political, economic, social, environmental aspects of the nation. With media's articulation, the issues related with land acquisition have reached to various masses and polity. Land acquisition has become a most vexing problem for policymakers in India. The areas like Singur, Nandigram, Kalinganagar, Jaitapur and Bhatta Parsaul have entered issues as distressing descriptions of social conflict. The post-liberalisation economic development continues to create a greedy desire for space to achieve the demands of industrialisation, infrastructure building, urban expansion and resource extraction. Finding a way to balance the needs of economic growth, equitable distribution and human rights, rescuing these complex and sometimes conflicting objectives from the demagoguery of single issue advocates (Bardhan 2011) and political opportunists, is perhaps the greatest challenge facing our democracy.¹

Significance of Property

The concept of property emerged since the inception of human beings. The appeal of the property was different in various phases from historical to present scenario. In the development of Natural Law theory, the significance of property laid down by several eminent jurists like Saint Thomas Aquinas. At initial phases, the property used to be considered as symbol, status or existence of an individual identity. Right to private property was asserting and considered as needful and essential at primary phases. In primitive society, man started living together in a society and formed a state. Gradually, when society was expanded then groups comes into existence and they started living with the search of the same pursuit of food, water and shelter. The groups and families were expanding then for the future development and advent civilisation, the property especially land & its production became very significant.

The concept of property went on expanding gradually to bring in certain rules of acquiring and holding property. The rules governing these subjects have been evolving and have now reached a stage where, and the role of society has become more complex, the ownership, possession and enjoyment of property was regarded as legal rights in which the society must recognise and protect from invasion by the outsiders. The concept of private property has played vital role in the development of an individual personality, though it has an evil tendency to enable exploitation of one individual by

another resulting in mal-distribution of national wealth. Protection of private property in varying degrees has, therefore, been accorded by all modern Constitutions.²

In every society property has played significant role to bring a social order in contemporary era. In pre-independence period, the matters related with Property were regulated by ordinary law of the land. During the British period in India, there was no laws which could guarantee for the right to acquire, hold and enjoy the property through Constitution. In 1870, there was legislation, Land Acquisition Act of 1870 which were dealing with right to property. Later, another law came into force, Land Acquisition Act of 1894 to provide for acquisition of private property for public purposes and which also laid down various machineries for determining the market value of compensation. However, property rights were not constitutional guaranteed prior to independence, therefore it was easy to modify and amend the laws related with the property.

But the Land Acquisition Act, 1894 ensured the appropriate compensation if there is acquisition of property for public purposes. There was enormous litigation and plethora of decisions of the courts on the subject. But being constitutionally unguaranteed law may hamper to the rights of individuals in case of compensation is unreasonable. In 1946, the Privy Council, in *Babu Kailas chandra v. Secretary of State*³ held that while deciding the market value of any land, only present use of the land will be considered and not the possibilities of potentialities of future growth could be taken into consideration. In another case, *Chicago Railway v. Chicago*⁴, wherein compensation was made permissible without taken into consideration of market value of the land. Having such scenario, the considerable debate and discussion had started whether to incorporate property rights as fundamental right and policies regarding compensation when acquisition is for the public purpose.⁵

In post-independence era, India has started to make reform to laws related to right to property. It has taken number steps to strengthen the right to property which will be suitable, just, and reasonable for the betterment of the society from socio, economic, political views. Since the development of natural law theory in primitive society, right to property was considered a most sacrosanct and sacred right. The same observations were put forth in constituent assembly debate while considering right to property as one of the most important and sacrosanct fundamental rights. Hence they were included as a Fundamental Right under Articles 19(1)(f) and 31. Through this significant development in the Constitution of India, right to property got recognition but under Article 19(5) reasonable restrictions are imposed by law in the interest of general public or for tribe. On the other hand under Article 31 property right guaranteed to every person irrespective of citizenship and it provides that right against deprivation of property right unless it acquired by the state for public purpose. Article 31(1) provides that a person cannot be deprived of his property right merely by executive fiat but it can be deprived by legislative enactment. However, Article 31(2) guaranteed the compensation to the individual when his property acquired for public purpose. The principle embedded in Article 31(2) derived from doctrine of eminent domain i.e., the sovereign power of the state to appropriate for purpose of public utility the land within the limits of its jurisdiction. The principle underlying appropriation of private property by the State rests upon two famous maxims i.e., *salus populi est suprema lex* which means that welfare of the people or the public, is the paramount law, another maxim *necessitas publico major est quam private* which means, 'public necessity is greater than private'. "The law imposed these principles on every subject that he prefers the urgent service of his prince to the country before the safety of his life".

Subsequently, with the vast globalisation and growing progressive industrialization of the country, the subject of land acquisition has gained momentous importance. As a result of social and economic development, Articles 19(1) (f) and 31 were repealed by the constitutional forty Fourth Amendment, now property right is only a legal right. Thus, the only effect of deletion of Articles 19(1) (f) and 31 is that the right to property is no more a fundamental right and such deletion does not abolish the right of property as they exist under the ordinary law, as for example, the right of a landlord to evict a tenant under the Rent Control Act. Article 31(1) and 31(2) and followed interdependent clauses 3, 4, 5 & 6 were repealed and Article 31(1) was redrafted as Article 300-A. Now compulsory acquisition of land for public purpose is implied in the Article 300A. State Government may require land for various public purposes, especially to uplift the down trodden people where economic disparities are prevalent. For meeting this contingency almost all the countries of the world reserve the right to acquire or require land for public purpose.

Development of Land Acquisition Laws

In the globalisation, industrialisation and urbanisation era, there was high demand on land in India. Private land became very important for the growth of the private projects or state sponsored projects. In the Post-independence period, government of India had not made any basic and significant changes regarding land acquisition as per values and needs of times, which has resulted in legal, social, cultural, economic and political fallouts. Earlier Land Acquisition Act, 1894 has been found inadequate in present scenario on several grounds of social and economic developments. In 2007, the attempt was made to amend the laws, i.e. Land Acquisition (Amendment) Bill, 2007 and Rehabilitation and Resettlement Bill, 2007 but unfortunately the Bill lapsed due to dissolution of the 14th Lok Sabha.⁶ It was an attempt to repeal the colonial Land Acquisition Act, 1894. It was replaced by the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013. The main objective of this act was to balance principles of eminent domain, public purpose, rehabilitation and resettlement, compensation, safeguards the Project Affected Persons (PAPs), land acquisition processes (including the urgency clause), linkages with environment protection. The 2013 act gave a momentum to systematized land acquisition process from land owners and affected people such as farm labour and slum dwellers, point of view. The 2013 act stated that, matters in which private companies involves or acquires the land for PPP projects then 70% of consent of private companies and 80% landowners' consent is required. This guarantees that no forcible or threatening acquisition can take place. This law also provides fair payments to landowners. It has provided that for payment of compensation up to four times the market value in rural areas and up to twice the market value in urban areas. This act also has provided for the obligation over the Resettlement and Rehabilitation of projects affected persons and landless people as well. In reality private parties and industries did not welcome this law because it was harmful for the industrial zone. Public purpose under section 3(e) Land Acquisition Act includes the acquisition of land for village sites, town or rural planning, 'planned development', providing residence to poor or landless displaced by natural calamities or any Government scheme, for carrying out any social welfare and slum clearing schemes, for any 'other scheme of development' locating a public office or for any Corporation owned by the State.⁷ In contrast, the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 defines the word "public purpose" in a relatively narrow manner, specifying five heads:

- 1) for strategic purposes for use of the Union or work vital to the State police or National Security
- 2) for constructing railways, highways, ports, power stations or irrigation projects,
- 3) for project affected people,
- 4) for development or improvement of rural or urban areas and land required thereby for residential purposes of the 'weaker sections' and also land for Government administered education and health facilities or research projects and
- 5) or residential use by communities affected by natural calamities and any Governmental scheme or policy.

Prior to the 1984 amendment, the orientation of nation building probably made judges to feel that development was not possible unless acquisition was done freely. Therefore public purpose had given the widest possible scope. But to continue with such an approach in the period of globalization where land acquisitions were done to promote corporate interests with the State becoming an estate agent of the companies. As a result, large tracts of lands throughout the country, mainly of small farmers, have been forcibly acquired and people displaced. Tilt towards corporation and away from the poor was legally articulated in the following way. First, it was said that public purpose is incapable of being defined. Secondly, the benefit must come to come for the Supreme Court to heed the dissent of Justice Subba Rao in *Somawanti's case*⁸ and the observations of the Supreme Court in *National Textile Workers Union v. P R Ramakrishnan*,⁹ we cannot allow the dead hand of the past to stifle the growth of the living present. Law cannot stand still; it must change with the changing social concepts and values.¹⁰

Until 2013, the land acquisition in India was governed by The Land Acquisition Act 1984. In 2013, the UPA government passed the Right to Fair Compensation and Transparency in Land Acquisition, Resettlement and Rehabilitation Act to repeal the 19th century act. The UPA Act was aimed at ensuring the land is acquired strictly for public welfare projects and land owners are adequately compensated and rehabilitated. According to Finance Minister Arun Jaitley, the ordinances were aimed at speeding up development in five areas: development of industrial corridors, social infrastructure such as education, rural infrastructure such as roads and power, housing for the poor, and the country's defense capabilities. The ordinance makes land acquisition easier in these areas by exempting them from several provisions of current law. The new bill has decided to bring changes to Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 .

- 1) It proposed that 'consent clause' for acquiring land shall be removed for five purposes i.e. industrial corridors, Public Private Partnership projects, Rural Infrastructure, Affordable housing and Defence.
- 2) According to the ordinance promulgated by the NDA government, the period after which unutilised land needs to be returned will be five years, or any period specified at the time of setting up the project.
- 3) According to the previous 2013 Act, land can be acquired by any private company. But new bill proposed that land can be acquired by any private entity.
- 4) As per the new proposed law, the sanction of government is required, if any government official commits an offence during the process of acquisition. Till then he/she cannot be prosecuted.

- 5) The amendments propose to include 13 legislations that are currently exempted under purview of the Act in the compensation, rehabilitation and resettlement provisions. This is, however, seen as a pro-farmer move as there was no uniform central policy of rehabilitation and resettlement.

Present Debate & Suggestions

Land acquisition is a sensitive subject.¹¹ The problem with the land acquisition bill 2015 is that it set aside some major safeguards that were:

- Social impact assessment.
- Mandatory consent of the affected people.
- Provisions to safeguard food security of the communities.
- Returning unutilized land to original land owners.

These criteria's are there in the land acquisition bill, 2015 makes it easier for people to take farmers lands forcefully. Though government argues that it is for the public purpose of public interest but who will define or lays down the parameters of the public interests. Though it is land acquisition is matter of concurrent list but it will more appropriate if the powers are kept within the purview of local government. Let the local government decides the public interest of particular area as per their social, economic, political, geographical situation.

The major suggestion regarding land acquisition bill will be that the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 shall be implemented strictly in following areas :

- 1) Under section 2(2) of the said act, wherein consent of 80% of project affected families through prior informed process shall be mandatory in case of acquisition of property for private companies or for public private partnership projects for infrastructure projects. This restriction must be strictly observed by the acquisition authorities to control the abuse of eminent domain power in land acquisition cases.
- 2) Section 4 of said act, provides for social impact assessment of every proposed project to ascertain the views of the affected families. This helps to spread information and enable public participation in land acquisition process.
- 3) There must be an Independent Expert Committee to make recommendation to the government either to acquire or not to acquire a particular piece of land to serve the public purpose. To overcome this problem under section 7 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act provides for constitution of an independent multi-disciplinary Expert Group to make recommendations within two months from the date of its constitution whether the project serves any public purpose or not and whether the social costs and adverse social impact of the project outweighs the potential benefits. Hence, the said provision shall be effectively implemented.
- 4) Rehabilitation and resettlement should be provided to land losers, affected families and it shall also be provided even to all involuntary displaced persons. Failure to comply with these provisions should be viewed strictly and made punishable.

(Endnotes)

- 1 Maitreesh Ghatak, Parikshit Ghosh, *The Land Acquisition Bill: A Critique and a Proposal*, xlv no 41 Economic & Political Weekly EPW, 65 (2011)
- 2 G.S. Pande, *Constitutional Law of India*, 596 (10th ed. 2007), p.596
- 3 ILR (1946) ALL738
- 4 166 US 226 (1897).
- 5 M. Hidayatulla, 'Constitutional Law of India' 359 (1986)
- 6 G. Raghuram Simi Sunny, *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Ordinance 2014: A Process Perspective*, 3 Indian Institute Of Management (2015)
- 7 Nihal Joseph & Shrinidhi Rao, *The land ACQUISITION bill, 2011: one step forward and two steps back*, 5 NUJS Law Review 219, 222 (2012)
- 8 (1963 2 SCR 774).
- 9 (1983 1 SCC 228).
- 10 Colin Gonsalves, *Judicial Failure on Land Acquisition for Corporations*, vol xlv no 32 Economic & Political Weekly, (2010) 37
- 11 The Draft National Land Acquisition And Rehabilitation & Resettlement Bill, 2011, (Draft Bill July 2011)