

Land Acquisition for Infrastructure and Industry

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FAST ECONOMIC growth in the last two decades has increased demand for land from many sources, such as infrastructure, industry, resource extraction (such as mining), and urbanization, including real estate. Even when many of these activities are funded privately and driven by profit motive, they serve a social purpose, as employment generation per unit of land is higher in non-agricultural uses than in agriculture. For instance, a 4000 MW thermal plant may displace about 250 households but would create tens of thousands of new jobs by providing power to small industry and tubewells that would increase both gross cropped area and productivity. At present the share of urban dwellers in total population of India is 32 percent, but they occupy only 6 percent of the total area of the country. Thus growth through industrialization and urbanisation would not only increase labour productivity but will reduce pressure on farm land

by pulling people away from land to non-farming occupations. However, land acquisition has emerged as the most important structural constraint in India to the process of fast industrialization and improvement in infrastructure. Delays in procuring land leads to uncertainty and cost escalation, and thus affects development.

Acquisition of land by government has lately drawn resistance in many cases due to inadequate compensation for the land and loss of livelihoods of the affected people, as well as for involuntary displacement without proper rehabilitation. Moreover, people are not willing to give up their present dwelling and occupation of farming for a dark future totally dependent on the vagaries of market. The present land acquisition law has been quite hostile to the interests of the landowner, as it attempts to make land available to industry through government at a minimal price. So far the practice in most state governments has been to coerce

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people to give up their lands by using the legal powers of eminent domain, and in some cases even through the use of force. Thus the model followed has been, 'let some people lose out so that others (this includes some enterprising poor too) may gain'. Unfortunately the losers tend to be the poorest with little skills, often tribals, who are unable to negotiate with the market forces and cope with the consequences of their forced expulsion from land, and end up much worse off than before acquisition.

Some estimates suggest that at least 60 million people were displaced between 1947 and 2004, amongst whom at least 40 percent were tribals and 20 percent Scheduled Castes. Of those displaced, less than 18 percent were resettled. This has turned millions of independent producers into property less labourers, which could have been avoided with imaginative land acquisition and rehabilitation policies.

Rising conflicts over forced acquisition

Before 1990, most land was acquired by government for large irrigation projects, public sector enterprises, and other explicit public purposes such as new townships of Chandigarh, Gandhinagar, and Bhubaneswar, and therefore the use of coercive legal powers carried at least some credibility in the eyes of the public. In the last two decades however powers of eminent domain have also been used for acquisition for private industry and real estate, which is driven, not by the 'noble cause of national development,

but profit motive'. Though such private enterprise may contribute to direct and indirect employment generation, people's perception of these activities being in 'public interest' is generally negative, and therefore they are less tolerant of being made to leave the area or accept unfair compensation. Consequently, there has been growing protest and militancy leading to tension, conflict and violence, besides litigation that increases uncertainty and costs involved in delayed possession of land.

Low compensation is not the only cause for resistance. It is also because of trust deficit that exists today between government and the peasantry because the promises made to them on earlier occasions for rehabilitation and settlement have not been fulfilled; and the compensation amount has been uncertain and irregular. Thousands of families displaced by various projects are still awaiting compensation payments. In a few cases, those displaced in early 1970's are yet to receive compensation. In many cases the true beneficiaries are the absentee landlords and intermediaries, but not the poor peasantry.

The new Land Acquisition and Rehabilitation & Resettlement Bill (LARR), 2011 –An Overview

The problems discussed above can be addressed only by making radical changes in the present Land Acquisition Act, 1894. The Ministry of Rural Development, Government of India, in consultation with the National Advisory Council (NAC),

has in 2011 introduced a new Bill in Parliament which has tried to do justice to the people affected by compulsory land acquisition, and at the same time ensure that land is made available for infrastructure and other public purposes without any hassle.

Some of the salient features of the Bill are described below.

Consent and compensation

If land is acquired by Government for public sector companies, or PPP projects, or for private companies for the production of public goods or provision of public services, consent of at least 80 percent of the project affected people (this includes both land owners and those dependent on that land as agricultural labour, tenant, etc.) shall be obtained through a prior informed process. In other words, land would be acquired by government for private companies and PPP projects only when at least 80 percent of the project affected people (PAPs) have given their written consent. Even when initial possession is with government but it acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose (including PPP projects) consent would be required.

Obviously people will give their consent when they are happy with the compensation and relief package. Therefore for all acquisition, including when land is needed solely by government, compensation would be increased to a minimum of four times the present registered value of that

land in rural areas, and double the registered value in urban areas. This includes solatium.

Often land values go up after acquisition and the original owners feel cheated when they find that their land after a few years is being sold for ten times the price that was paid to them. Therefore, whenever land acquired by government is transferred to an individual or a company for a consideration, 20 percent of the difference between such consideration and compensation will be given to the original land owner. For future transactions too, there should be a capital gains tax on land value, a part of it to be shared with the people who lost land, so that they too benefit from the increases in future value of land. Fundamentally, the problem is one of guaranteeing to the original owner of land a fair share in the augmented value of the land in future for at least twenty years, as the value can really shoot up once the land is put to non-agricultural use.

The Urgency Clause can only be invoked in the following cases:

1. National defense and security purposes
2. R&R needs in the event of emergencies or natural calamities

R&R package

Irrespective of the area involved in acquisition, all project affected people including the landless who lose their livelihoods would be entitled to the following package:

1. Subsistence allowance at Rs.

3000 per month per family for 12 months;

2. The affected families shall also be entitled to:

(a) Where jobs are created through the project, mandatory employment for one member per affected family

or

(b) Rupees 5 lakhs per family;

or

(c) Rupees 2000 per month per family as annuity for 20 years, with appropriate index for inflation;

The option of availing (a) or (b) or (c) shall be that of the affected family.

3. If a house is lost in rural areas, a constructed house shall be provided as per the Indira Awas Yojana specifications. If a house is lost in urban areas, a constructed house shall be provided, which will be not less than 50 sq mts in plinth area. In either case the equivalent cost of the house may also be provided in lieu of the house as per the preference of the project affected family;
4. One acre of land to each landowning family in the command area, if land is acquired for an irrigation project;
5. Rs 50,000 for transportation;
6. A one-time 'Resettlement Allowance' of Rs 50,000;

In addition to the above R&R package, SC/ST families will be entitled to 2.5 acres of land or

extent of land lost to each family in every project, and one time financial assistance of Rs. 50,000 per family.

Where land is acquired for urbanization, 20 percent of the developed land will be reserved and offered to land owning project affected families, in proportion to their land acquired and at a price equal to cost of acquisition and the cost of development. In case the project affected family wishes to avail of this offer, an equivalent amount will be deducted from the land acquisition compensation package payable to it.

NAC has calculated that in most cases, the total cost, which the industry will bear, will not be more than 2 percent to 5 percent of the project cost. For instance, the total project cost of POSCO is Rs 54,000 crores and it will displace 700 households. If POSCO had decided to spend even 1 percent on the displaced people, each one of them would have received Rs 80 lakh as compensation. Similarly, a 4000 MW thermal plant would cost about Rs 20,000 crore and would displace about 250 households. Here again earmarking a little more than 1 percent would make each displaced family a crorepati!

Therefore, the industry should be quite happy with the above proposals because they would get quick possession over land plus good relations with the people. This will also help avoid delays in implementation of such projects. It is delay which is the main cause for escalation in the project cost.

Timelines

1. Compensation will be given within a period of three

- months from the date of the award;
2. Monetary R&R entitlements will be provided within a period of six months from the date of the award;
 3. Infrastructure R & R entitlements will be provided within a period of eighteen months from the date of the award;
 4. No involuntary displacement will take place without completion of R&R;
 5. In irrigation or hydel projects, R&R shall be completed six months prior to submergence

Large Projects

Each large development project (involving transfer or change in land use of one hundred acres of land or more, or affecting hundred families) must be first subjected to a legally binding holistic appraisal as to the desirability and justifiability of the project. The public, and particularly the people likely to be affected, must be given due opportunities of information and hearings, and allowed to examine all aspects of the project, including the 'public purpose', and also the possibilities of achieving the same objectives through non-displacing or less displacing alternatives.

Wherever the people are not willing to give their land or shift, it must be assumed that the fault is either in the package being offered, or in the progress of implementation or in the approach to the displaced communities. Alternatively, it could be because the implementation

of resettlement and rehabilitation programmes in other cases has been so unsatisfactory that the affected people do not feel confident of receiving what they have been promised. In any case, this must be recognised as a failure of the rehabilitation process.

Recommendations of the Parliamentary Committee

The proposed Bill has been examined by a Parliamentary Committee, which has recommended that no acquisition should be done for private companies, and they should be forced to buy the entire land directly from landowners. Profit enterprises will have to purchase land in the open market. This recommendation may help farmers of the developed regions who are aware of the market conditions, but may result in large scale cheating and deception in tribal and remote areas where goondas will be hired by the land mafia and tribals will be forced to sign land transfer deeds. In any case, in many central Indian states tribal land cannot be sold to non-tribals through market transactions. To get possession over such lands, industry would have to use extra-legal methods of showing sale in the name of some non-existent or compliant tribal. It may also legalise transfer of land that originally belonged to tribals, but is now alienated from them, and has not been restored back to them despite laws to the contrary. Moreover, land records are hopelessly out of date in many states, which will delay private transfer of land. Often, land is cultivated by the

poor, especially tribals, but their possession has not been recorded in the official documents. Such people would be compelled to give up their possession without any compensation.

Further, land purchased under "lawful contract" will not carry the responsibilities of R&R, which will deprive benefits that are proposed under the Bill to the landless livelihood losers. Besides, even in developed areas where farmers are aware of markets it is seen that small farmers are the first ones to sell to a buyer as they need immediate cash to meet other pressing exigencies, and large farmers who delay their sale are able to get a higher price, often several times what was paid to the small farmers.

The Bill in fact does not rule out the possibility of willing-buyer and willing-seller negotiations. In fact by increasing the cost of acquisition several times than the present practice it gives a signal to the industry to discourage approaching government for acquisition. In any case GOI cannot legislate on land purchase, which is a state subject. The Bill gives an option to the farmers who could say 'no' to industry if they think that government would offer a better package. The same choice is available to those seeking land; either negotiate directly or go to the government.

The stand of government on the recommendations of the Parliament Committee is not yet known (June 2012). It is likely to be finalized in the coming few months. □

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