

India's Controversial Land Acquisition Laws

Introduction

On March 10, 2015, the controversial amendments to the land acquisition law were finally passed by the Lok Sabha¹ after facing severe criticism both from the opposition parties as well as from the government's own allies. Once the amendment bill - Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 ("**2015 Law**") - becomes an act², it will become easier for the government to acquire private land for public purposes and companies. India has had an archaic land acquisition law – the Land Acquisition Act, 1894 ("**1894 Act**") which was replaced in 2013 by The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 ("**2013 Act**"). The 2013 Act was criticized as being anti-industry – it was too rigorous which made land acquisition process difficult and long-winding, thereby reducing the availability of land for industry.

The scope of this newsletter is comparing the old land acquisition law (1894 Act) with the new (2013 Act) by highlighting their key features and also to look at the changes being brought about now by the 2015 Law.

1. The 1894 Act

The 1894 Act was enacted to enable compulsory acquisition of privately owned land by government for public purposes as well as for companies. The law suffered from various shortcomings.

Firstly, it was undemocratic. Although it provided for a procedure that involved issuance of public notice and holding of inquiry, practically speaking, these were mere formalities as private interest of landowners always had to yield to the declared public purpose such as building of road, railway line, school, industrial estate, etc. Once the acquiring authority had formed the intention to acquire a particular piece of land, it could carry out the acquisition process regardless of how the landowner was affected. Acquisition was not dependent on land owner's consent at all. Although the 1894 Act provided for a hearing, it was not a negotiation. Moreover, in cases of urgency, the land acquisition authority enjoyed special powers.³ The provision enabled bypassing of the normal procedure in cases of urgency, not all of which were defined. As a result, a lot of acquisitions under the 1894 Act invoked the urgency clause. This resulted in the complete dispossession of land without even following the processes listed under the Act. Secondly, payment for the land acquired used to be made as per the prevailing circle rates⁴ which were notorious for being outdated and, hence, not even remotely indicative of the actual rates prevailing in the area. As a result, the compensation given to landowners

¹ This is the House of People, the lower house of the Indian Parliament.

² The bill needs to be passed by both the houses of Parliament and then receive the President's assent.

³ Under Section 17 of the 1894 Act.

⁴ The official area-wise rates of land determined by the government.

used to be substantially less than the actual market value of the land. Thirdly, there were absolutely no provisions in the law regarding the resettlement and rehabilitation of those displaced by the acquisition. A farmer losing his agricultural land also lost his means to livelihood but the old law did not address such issues. Finally, a lot of acquisitions, especially those done in recent years, ended up in litigation, usually after being challenged on the ground that the compensation awarded was inadequate. This resulted in stalling of legitimate infrastructure projects.

The 1894 Act and the manner in which it was being used by acquiring authorities had been receiving widespread criticism, including from the judiciary. In a 2011 case⁵, the Supreme Court observed that “.....the provisions contained in the Act, of late, have been felt by all concerned, do not adequately protect the interest of the land owners/persons interested in the land. The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected ...To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300A of the Constitution. We expect the law making process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.”

2. The 2013 Act

Although the 1894 Act was enacted by a colonial government, it was adopted unchanged by the government of independent India in 1947. It did not meet the evolving requirements and gradually, the injustices caused by it began to generate resistance in the society, causing abandonment of several projects, including the Tata Motors' small car project at Singur. Therefore, new land acquisition law was drafted, circulated, discussed, tweaked and finally became an act of Parliament in 2013.

The 2013 Act marked a paradigm shift in the land acquisition process and contains many provisions to protect the interests of not only the land owners but also landless project affected persons such as farm labour and slum dwellers. Under the new law, in cases where PPP projects are involved or acquisition is taking place for private companies, consent of 70% and 80% respectively of the landowners is required. This ensures that no forcible acquisition can take place. Given the inaccurate nature of circle rates, the law provides 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 ensures fairer payment to the landowners. The new law links land acquisition with the accompanying obligation for Resettlement and Rehabilitation (“R&R”) of all project affected persons, including the landless people. The law contains elaborate processes and entitlements for R&R. It outlines the benefits (such as land for land, housing, employment and annuities) that shall accrue in addition to the one-time cash payments. The new law even has retrospective application in certain cases. It applies retrospectively to land acquisitions under the 1894 Act, where no land acquisition award has been made. Also in cases where the land was acquired over five years ago but no compensation has been paid or no possession has been taken, the land acquisition process must be started afresh in accordance with the provisions of the 2013 Act. In case land remains unutilized after acquisition, the 2013 Act empowers states to return the land either to the owner or to the state land bank. The law

⁵ Ramji Veerji Patel and Ors. Vs. Revenue Divisional Officer and Ors., [MANU/SC/1288/2011](#).

provides that no income tax shall be levied and no stamp duty shall be charged on any amount that accrues to an individual as a result of the provisions of the new law. In cases where the acquired land is sold to a third party for a higher price, 40% of the appreciated land value (or profit) is required to be shared with the original owners. In cases where the land is acquired for urbanization, 20% of the developed land has to be reserved and offered to the landowners, in proportion to the area of their land acquired and at a price equal to the cost of acquisition, plus the cost of development. All affected families are entitled to a house, provided they have been residing in the area for five years or more and have been displaced. If they choose not to accept the house, they are offered a one-time financial grant in lieu of the same. Finally, under the new law, R&R provisions are applicable even to acquisitions by private parties, subject to size thresholds to be determined by state governments. If a private investor buys land directly from farmers and if the size of acquisition exceeds the set threshold, the private purchaser must also bear the R&R costs.

Predictably, the industry did not welcome the new law. According to CII's estimates, the new law was likely to increase land acquisition costs by up to 3.5 times, severely affecting the viability of industrial projects across the board and eroding the competitiveness of the Indian manufacturing sector.

3. The latest amendment: 2015 Law

The 2015 Law has tried to address industry concerns by reducing the rigour of some of the provisions of the 2013 Act. It does away with the social impact assessment and consent requirement, in cases where the land is being acquired for the purposes of five specified sectors, namely: (i) national security and defence, (ii) rural infrastructure including electrification, (iii) industrial corridors, (iv) affordable housing and housing for the poor and (v) infrastructure and social infrastructure projects, including PPP projects where ownership of land continues to be vested with the government. These five categories are quite wide in scope and will cover a lot of projects. Moreover, as long as the land acquisition is for the aforesaid five purposes, there will be no cap on the area of multi-crop fertile agricultural land that can be acquired. The amendment replaces the word "private company" wherever appearing in the 2013 Act, with the word "private entity", thereby enabling acquisition of land for and by other types of privately controlled entities such as proprietorship concerns, partnerships, societies, trusts, etc. It enables acquisition of land for private hospitals and private educational institutions also which was not allowed earlier. Under the 2013 Act, if the acquired land remained unutilised for a period of five years from the date of taking over the possession, the land was to be returned to the landowners. However, under the 2015 Law, if the period specified for setting up of any project exceeds five years, then such period (and not the five year period) is to be taken into account; also there is no cap on what such period can be.

Conclusion

Due to stiff opposition, including from some of the government's own allies, the 2015 Law had to be diluted by removing some of the amendments. Thus, social infrastructure has been removed as an exempted category as also private hospitals and private educational institutions. For industrial corridors, land can now be acquired only up to 1km on both sides of

the designated railway line or road. Compulsory employment is required to be given to at least one member of the affected family of a farm labourer. It remains to be seen what further amendments will be made by the Rajya Sabha which is yet to pass it. Business organizations planning to set up projects requiring substantial land have no option but to face the reality of higher acquisition costs, given the increasing pressure on land caused by ever growing population and rapid urbanization in the country.

Author:
Mahendra Singh