

De Jure

September 3, 2013

**A BRIEF WRITE UP ON THE HIGHLIGHTS OF THE RIGHT TO FAIR
COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION,
REHABILITATION AND RESETTLEMENT BILL, 2013.**



MEANING OF LAND ACQUISITION

In simple terms, land acquisition means acquiring of land by the Central or the State Government or a government agency, for some public purpose, as authorised by the law, from an individual landowner(s) after paying compensation to such land owner(s), as determined in accordance with law, in lieu of the loss suffered by such land owner(s) due to the surrendering of his/their land to the concerned government/government agency.

BRIEF HISTORY AND INTRODUCTION TO LAND ACQUISITION ACT, 1894

The Land Acquisition Act, 1894 (the "**Act**") was enacted by the British during their regime in India, in order to acquire land from the Indian Land owner(s) by paying a mere pittance, with a view to serve their own colonial interests. The Act, as it then stood, was arbitrary, against the interest of the general public and lacked a humanitarian touch and a sense of justice. Over a period of years, the Act underwent several changes by way of amendments. Even thereafter, it failed to address the several controversies and major issues and concerns which resulted from the acquisition of land under the Act, particularly, issues relating to the interpretation of the term "public purpose", inadequate compensation, misuse of the "urgency clause" and issues arising out of forcible acquisitions.

"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. For years, the acquired land remains unused and unutilised. To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly Article 300A." **Supreme Court in RamjiVeerji Patel &Ors. vs. Revenue Divisional Officer &Ors.**

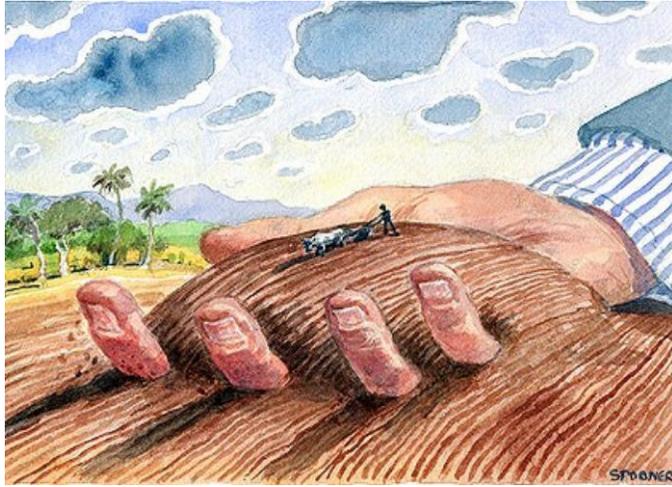
NEED FOR A NEW LAW

The following major issues and concerns arising out of the Act, made it imperative for the Government to introduce a new law replacing the existing ancient Act:

- **Definition of "public purpose":** The definition of "public purpose" as provided under Section 3(f) of the Act is not merely an inclusive definition but also very vague. This vagueness in the definition has been exploited by the Government on several occasions, to serve its needs by placing upon the definition, a very wide and suitable-to-the-situation interpretation.
- **Arbitrariness:** In several cases, the lands were acquired arbitrarily by the government, under the guise of "public purpose" and there was a lack of transparency in the process of acquisition of the lands. Further, the urgency clause in the Act does not truly

define 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 resulted in the complete dispossession of the land without even the token satisfaction of the processes listed under the Act.

- **Inadequate Compensation:** Under the Act, the compensation payable to the land owner(s) whose lands have been acquired, is determined mainly on the basis of the market value of the property as on the date of the publication of the notification under Section 4(1) of the Act of the intention to acquire the land, together with an additional 15% on the market value so determined. This resulted in huge losses to the land owner(s) as though, the compensation was determined as on the date of the notification, the same was paid to the land owner(s) only at the time of the land being actually acquired, which was only after a period of some years from the date of such notification, thereby ignoring the resultant escalation in the market



value of the property. Also, the Act does not consider the potential value of the land after the complete development of the land, thereby causing further losses to the land owner(s).

- **Lack of Rehabilitation and Resettlement facilities for the affected families:** Save and except the payment of compensation, the Act provides no measures for the rehabilitation or resettlement of the people who lose their land overnight.
- **Insufficient and ineffective measures of Dispute Resolution:** The only recourse provided under the

Act against the acquisition of land or the amount of compensation awarded is, to file an objection under Section 5 before the Collector or the Chief Revenue Officer within thirty (30) days from the date of the publication of the notification. Suits to a civil court are barred and no independent judicial body is established for the purpose of determination of the claims of the land owner(s).

INTRODUCTION TO THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT BILL, 2013

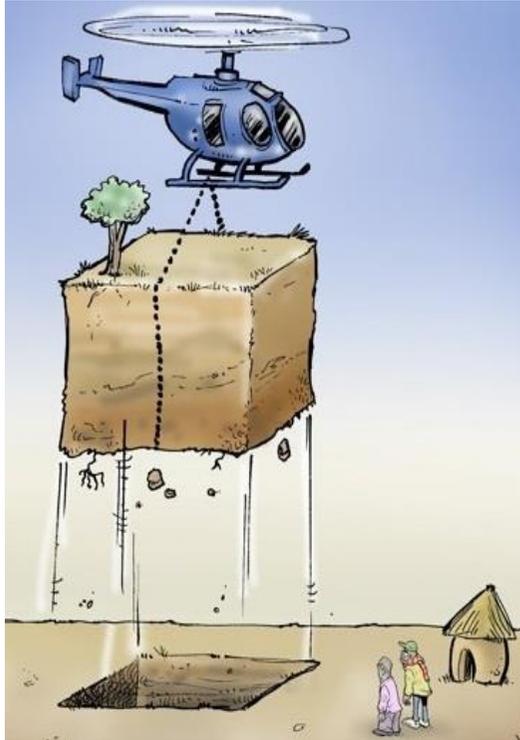
“There will be no forceful acquisition of land under this law. This legislation will provide lawful right of the farmers over their land and no right of forceful acquisition to governments” - Jairam Ramesh (Rural Development Minister).

On September 7, 2011, 'The Land Acquisition, Rehabilitation and Resettlement Bill, 2011' was first introduced before the Lok Sabha. On August 29, 2013 and the bill has been approved by the Lok Sabha by a majority of 216 votes in favour and 19 votes against it, with certain modifications, also it has renamed as bill as The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill, 2013 ("**Bill**").

The Bill aims to provide fair compensation to those whose land is taken to bring transparency to the process

of acquisition and details the measures for rehabilitation of those who are displaced. The Bill takes away sweeping powers of the State to impound and acquire land. The Bill now provides for a Social Impact Assessment ("**SIA**") survey, preliminary notification stating the intent for acquisition, a declaration of acquisition and compensation to be given to the land owner(s) in a particular time frame. The Bill further requires rehabilitation and resettlement of the affected people in all cases of acquisitions.

HIGHLIGHTS OF THE BILL



- **Clause 2(1):** The Bill re-defines "**public purpose**" to include **[A]** strategic purposes relating to naval, military, air force and armed forces of the Union, including central paramilitary forces or any work vital to national security or defence of India or State police, safety of the people; or **[B]** For infrastructure projects, which includes the following, namely: **(i)** All activities or items listed in the notification of the Government of India in the Department of Economic Affairs (**Infrastructure Section**) number 13/6/2009-INF, dated March 27, 2012, excluding private hospitals, private educational institutions and private hotels; **(ii)** Projects involving agro-processing, supply of inputs to agriculture, warehousing, cold storage facilities, marketing infrastructure for agriculture and allied activities such as dairy, fisheries, and meat processing, set up or owned by the appropriate Government or by a farmers' cooperative or by an institution setup under a statute; **(iii)** Project for industrial corridors or mining activities, national investment and manufacturing zones, as designated in the National Manufacturing Policy; **(iv)** Project for water harvesting and water conservation structures, sanitation; **(v)** Project for Government administered, Government aided educational and research schemes or institutions; **(vi)** Project for sports, health care, tourism, transportation of space programme; **(vii)** Any infrastructure facility as may be notified in this regard by the Central Government and after tabling of such notification in Parliament; **[C]** Project for project affected families; **[D]** Project for housing, of such income groups, as may be specified from time to time by the appropriate Government; **[E]** Project for planned development or the improvement of village sites or any site in the urban areas or provision of land for residential purposes for the weaker sections in rural and urban areas; **[F]** Project for residential purposes to the poor or landless or to persons residing in

affected by natural calamities, or to persons displaced or affected by reason of the implementation of any scheme undertaken by the Government, any local authority or a corporation owned or controlled by the State.

- **Clause 41:** The Bill proposes that in case of urgency, the Collector may acquire the land after thirty (30) days from the date of the issue of the notification (*without Social Impact Assessment*). However, this clause can be used only for defence, national security, emergency arising out of a national calamity or any other emergency with the approval of the Parliament. It is further provided that in such cases, an additional compensation of 75% of the total compensation shall be paid to the land owner(s) and 80% of the compensation shall be tendered by the Collector before taking possession of the land.
- **Clause 27:** The Bill further provides that the compensation for the land acquired shall be based on the higher of: **(i)** market value specified in the Indian Stamp Act for the registration of sale deeds; or **(ii)** average of the top 50% of all the sale deeds in the similar type of land situated in the vicinity; or **(iii)** the amount agreed upon as compensation for acquisition of land for private companies or Private Public Partnerships. For valuing the compensation, the value of the assets (trees, plants, buildings, etc.) attached to the land being acquired will further be added.
- **Clauses 26 and 31:** Under the Bill, the Collector is required to make an award within 12 months from the date of the publication of the declaration of land identified for acquisition. It is further provided that in order to arrive at



the final award, a “Solatium” amount equivalent to one hundred per cent of the compensation amount shall be awarded by the Collector.

- **Clause 2(2):** The Bill now requires the obtaining of the consent of 80% of the land owners in case of acquisition of land for private companies and consent of 70% of the land owners in case of acquisition of land for Public Private Partnerships, and such process is required to be carried out along with an Environmental Impact Assessment and SIA study in order to consider the impact of the project on the livelihood of affected families, among other factors.
- The Bill provides for Rehabilitation and Resettlement facilities to be provided to the families affected by the acquisition of land, which facilities are to be implemented within the time frame provided in the Rehabilitation and Resettlement Scheme drafted for the benefit of such families. It also confers various other benefits such as houses for affected families, choice of annuity or employment, subsistence allowance, training and skill development, etc.
- **Clause 105:** The Bill also provides an option to the appropriate government to take a land on lease rather than acquiring the same.
- **Clauses 52, 65 and 75:** The Bill provides for the establishment of the Land Acquisition, Rehabilitation and Resettlement Authority ("**Authority**") to which reference can be made against the award passed by the Collector. The Bill also makes a provision for an appeal to the High Court against the award passed by the Authority.

- **Clause 102:** Under the Bill, if the acquired land has remain unutilized for a period of five (5) years from the date of taking the possession of the land, then it shall be returned to the original owner or owners or their legal heirs or to the Land Bank.

PRIMA FACIE ISSUES

- Projects involving land acquisition for private companies or public private partnerships require the consent of 80 percent and 70 percent respectively of the people affected. However, no such consent is required in case of Public Sector Undertakings.
- The market value of the land is based on recent reported transactions. This method may not lead to an accurate adjustment for the possible underreporting of prices in land transactions.
- The Government can temporarily acquire land for a maximum period of three years, however, in such cases, there is no provision for rehabilitation and resettlement.
- In view of the fact that several elaborate provisions are made in the Bill, the same may not only result in delay, but may also be faced with practical difficulties while implementing the same.

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OUR VIEW



**“When the hair grows too long,
cut your hair, not your head.”**

- The Bill aims to make the process of acquisition more transparent and providing fair and adequate compensation to the land owner(s) whose land has been acquired. The amount of solatium to be awarded under the provisions of the Bill is significantly higher as compared to the Act.
- The provision in the Bill for SIA and Resettlement and Rehabilitation of the affected people, though may delay the process of acquisition, is only for the benefit of the affected people.
- The Bill has also restricted, to a certain extent, the unfettered powers which the Government enjoyed under the Act and in particular, the exercise of the powers by the Government under the 'urgency' clause.
- The Bill has further provided time limits for different steps involved in the procedure of acquisition, thereby preventing undue delay in the payment of compensation of the affected land owner(s).
- The Bill also provides for an Appellate Authority to whom a reference can be made against the award passed by the Collector and an appeal there from to the High Court, and as such, makes a provision for appeals thereby further safeguarding the rights of the land owner(s).
- In view of the past experience of the people as regards the acquisition of land under the Act, it is only justified that the Bill is viewed by many with scepticism. However, whether the Bill actually achieves what it is enacted for, is something which can only be answered with the passage of time. If the mechanism provided by the Bill is discovered to be mired in excessive red-tape, then it can be shown the door through debate and amendments rather than denouncing the entire concept.

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