

# LAND ACQUISITION ISSUES

*M.M.K. Sardana* \*

**Abstract:** *Accentuation of conflicts involving land acquisitions is assuming alarming proportions. It is partly because of trust deficit that has come to exist in the peasantry because the promises accorded to them on earlier occasions for rehabilitation and settlement in case of displacement due to land acquisition have not been fulfilled; the compensation amount has been paltry and irregular. They have been denied benefits of the intended use of their land after acquisitions. Government, influenced by the Industry, has been widening the concept of public purpose indiscriminately and enriching it at the cost of the peasants. The Bill of 2007 seeking to amend Land Acquisition Act and the Rehabilitation and Resettlement Bill 2007 are the Government's initiatives to address the issues. The Bills would not suffice in their present form. Structural Changes are to be brought about and also it would be desirable to make rehabilitation and resettlement (R&R) a part of the Land Acquisition (Amendment) Bill so that multiplicity of agencies is reduced and there is accountability towards settlement by those who take up acquisition proceedings. There would be a need to lay hands on land locked up in factories and plantations. Provisions have to include that acquired land, if not used or found to be in excess of requirement at a later date can be resumed. R&R provisions would be commenced along with the issuance of First Notification for Acquisition. Before Acquisition proceedings are initiated, the requiring and acquiring authorities should satisfy a forum headed by a Judicial officer about (a) Public Purpose, (b) Quantum and specification of land, and (c) Suitability of the site after excluding alternate sites.*

The Central and State Governments bias towards industry *vis-à-vis* agriculture since 1990 begs no description. Industry and related infrastructures and facilitating centres like Special Economic Zones (SEZ's) have to come up on *land*; a source which cannot be created and hence with increasing avenues for its alternate use there would be a fierce competition for possessing it and in such a scenario its cost should rise and the difficulty in its acquisition should increase.

Before 1990, location of industry was decided at the time of grant of license for setting up the licensed industry. The licensing authority took into consideration many factors while deciding upon the same. One such factor was fulfilling the objective of maintaining regional balances. However, in the post 1990 period, the system of licensing has been considerably diluted. Entrepreneurs are free to set up their enterprises, free of location constraints subject to environmental clearances. Such a freedom resulted in competition among states to devise lucrative schemes for attracting the entrepreneurs towards their states. The

---

\* The author is a Visiting Fellow at the Institute.

situation has changed. Entrepreneurs now have a wide choice in locating their enterprises and ancillaries. Naturally they will look for not only maximization of fiscal incentives, but also the best locations for their enterprises and related ancillaries. Urban India and media, and also politicians, perceive the need to boost industrialisation and developing related infrastructures at all costs. The progressive leadership in a state reckoned with the interest shown by the industrialists and entrepreneurs for a particular state. In such an atmosphere, the entrepreneurs press for best site irrespective of the socio-economic costs involved. In their hurry to woo the industrialists, the socio-economic studies became the focus of the academicians. Some states, which had an impressive record of growth with justice and fairness for all, and also inclusive growth through progressive legislations and implementing them, lost out to the glamour created by the euphoria of industrialisation which was increasingly perceived as an engine of GDP growth that would ensure ultimate welfare of people through percolation effects. Such progressive states also could not escape falling in line and joined the bandwagon for FDI/Joint ventures in almost all spheres including real estate.

Such a situation generated tremendous pressure on the states to not only provide competitive fiscal incentives, but also competitive sites which could be approached easily and be near to the sites of raw materials necessary for the particular industry. This resulted in locating such sites on fertile lands and involved displacement of traditional rural agricultural families affecting them socially and culturally on the one hand while productivity in agriculture suffered, on the other.

The only instrument available with the State Governments for delivering the land to the entrepreneurs has been the Land Acquisition Act, 1894 through which the peasants would be dispossessed of their land in consideration of monetary compensation accorded to them. With the loss of land, the families would lose their identity and traditional possessions and thus would be disempowered despite financial compensation which in any case they would not have capacity to gainfully use. Earlier the State Governments had been gearing themselves to empower the peasantry by recording their rights and vesting surplus land obtained by the States under Land Reforms Act. The acquisition of land under the Act of 1894 is reversing the forces of empowerment. Even in the State of West Bengal, which takes pride in implementing Land Reform Measures, land acquisition had taken place at a faster pace than land reforms.

Dispossession from one's own means of production results in loss of (a) economic security; (b) social status; (c) empowerment achieved through earlier movements and land reforms; (d) home; and (e) kinship. According to Cernea<sup>1</sup>, "Expropriation of land, removes the main foundation upon which people's productive systems, commercial activities and livelihood are constructed. This is the principal form of decapitalisation and pauperization for most rural and many urban displacements, who lose this way both natural and manmade capital."

In search for industrialisation and developing the related infrastructures, states made acquisitions under the Act of 1894. The Act provided for monetary compensation and did not include any commitment for rehabilitation of the displaced. Such a situation was bound to head for a confrontation. The process of confrontation was fuelled by the increasing distrust of peasantry in the Government and the enterprises in going slow on the rehabilitation process and in providing jobs to the displaced families. Though, as stated earlier, rehabilitation provisions were not part of the Act of 1894; promises were held out to the outstees for the same when they had shown their muscles in opposing acquisitions. The peasants also noticed that in many cases the acquired lands were just fenced and no industry was coming up there. There were also instances when the acquired lands were passed on to other parties at a premium. Such situations and instances were bound to cause resentment and increase the measurement of distrust of the peasantry *vis-à-vis* government and industry.

Abhijit Guha in his study has addressed the above state of affairs in West Bengal, a decade earlier to the eruption of Singur and Nandigram.<sup>2</sup> Since the forcing out of Tata's from Singur, a large number of projects in West Bengal and elsewhere have been halted; the latest notable one being halting of work on Yamuna Express Highway.

Most projects require an enormous amount of land. South Korea's Posco's proposed steel mill in Orissa<sup>3</sup> will be built on 16,000 hectares. A six lane highway between the city of Agra and New Delhi will require 43,000 hectares. Compensation ranges, between \$4300 per

---

<sup>1</sup> Cernea, Michael (1999), "Why Economic Analysis is Essential to Resettlement: A Sociologist's View," in Michael Cernea (ed.) *The Economics of Involuntary Resettlement: Questions and Challenges*, Pp. 5-49, The World Bank, Washington DC.

<sup>2</sup> Guha, Abhijit (2007), "Peasant Resistance in West Bengal a Decade before Singur and Nandigram," *Economic and Political Weekly*, September 15, Vol. 42, No. 37, Pp. 3706-3711.

<sup>3</sup> Kuncheria, C.J. (2010), "India confronts land grabs in industrialisation push," *Reuters*, August 19. <http://in.reuters.com/article/http://in.reuters.com/article/idINIndia-50942720100819?feedType=RSS&feedName=everything&virtualBrandChannel=11709>

hectare in the case of Mittal's plant of over 4400 hectares in Jharkhand, to \$14,600 per hectare offered to farmers displaced by Posco's Orissa Mill. Despite seemingly attractive prices, protests against the possible displacements of farmers persist. Farmers do not like the prospect of sharing fruits of the economic growth even though millions like them would be pulled out of poverty. The sceptics believe that the upcoming jobs would be shut to them on the grounds that they do not have requisite skills.

Such a scenario seems to be unfolding in China and Indonesia as well.

Chastened by these experiences, the Central Government has brought about Land Acquisition (Amendment) Bill 2007 and Rehabilitation and Resettlement Bill 2007. According to Priya Parker and Sanita Vanka, Centre for Policy Research, the salient features of the Land Acquisition (Amendment) Bill<sup>4</sup> are:

- The Bill redefines 'public purpose' as land acquired for defence purposes, infrastructure projects, or for any project useful to the general public where 70% of the land has already been purchased. The Bill bars acquisition for companies except under the 70% condition.
- For acquisition resulting in large scale displacement, a social impact assessment study must be conducted. Tribals, forest dwellers, and those with the tenancy rights are also eligible for compensation.
- Acquisition costs will include payment for loss or damages to land, and costs related to settlement of displaced persons.
- While determining compensation, the intended use of land and value of such land in the current market is to be considered.
- The Bill establishes the Land Acquisition Compensation Disputes Settlement Authority at the state and central levels to adjudicate disputes resulting from acquisition proceedings.

The Resettlement and Rehabilitation Bill has the following salient features<sup>5</sup>:

- a. Policy covers all cases of involuntary displacement;

---

<sup>4</sup> Parker, Priya and Sanita Vanka (2008), "New rules for seizing land," *India Together*, May 9. <http://www.indiatogether.org/2008/may/law-land.htm>

<sup>5</sup> Government of India, "Land Acquisition: Resettlement & Rehabilitation," *Business Portal of India*. [http://www.business.gov.in/land/policies\\_procedures.php](http://www.business.gov.in/land/policies_procedures.php)

- b. Social Impact Analysis would be compulsory if 400/200 of more families are being displaced in plains/tribal areas;
- c. Rehabilitation before displacement;
- d. Land for Land as compensation, if possible;
- e. Skill development programmes;
- f. Preference for jobs for one person in a family in the project;
- g. Housing benefits to all including the landless;
- h. Monthly pension to vulnerable sections like disabled, destitutes, orphans, widows, unmarried girls, etc.;
- i. Monetary benefits linked to Consumer Price Index;
- j. Infrastructure and amenities in resettlement areas;
- k. Consultations with *Gram Sabha* and public hearings made compulsory; and
- l. Special provisions for Scheduled Castes/Scheduled Tribes.

Thus on the face of it, the Bills for Acquisition and Resettlement are inclusive, exhaustive and have taken into account many aspects which have not been covered in earlier legislative endeavours. However, when legislation becomes exhaustive, the implementation becomes challenging on the verge of touching the domain of impossibility. Some such difficulties also arise because the conflict in concepts remains unresolved and in the face of legislative measures the unresolved conflicts become the basis of litigations and prolonged ones. The interpretation of public purpose would come under such a domain. Would it be mandated public purpose if a party buys 70% of its requirement through its own efforts? Both the Acts do not capture the groups of people who are not directly dependent on land being acquired. Will the landowners who parted with their land to the entrepreneurs in direct sale, be left out of the R&R? If so, would there be another conflict potential? Should the procedures become so cumbersome that the project implementation is delayed and results in cost overruns and the whole exercise of acquisition and R&R becomes meaningless, leaving unmanageable events in the trail?

Issue would, however, remain that land would be needed for growth in industry; which is necessary to reduce the dependence on agriculture for sustaining a growing population and improving the standard of living. There would be limitation on procuring land directly from farmers. State would be required to exercise its power to acquire land. Strategies would have to be devised so that minimum use of such power is resorted to and pain caused to the affected families is minimized by providing them compensation, which includes the benefits

of the use of acquired land in future. Accordingly, in-built legislative provisions should be in the above direction and also should be such that acquisition is done expeditiously to insulate the projects from cost over runs and uncertainties. This would be possible if trust deficit described earlier is bridged through legislation on rehabilitation issues and demonstrative administrative initiatives are taken towards that end. To ensure that acquisition proceedings are resorted to at low scales, land locked up in defunct factories and plantation crops should be taken into account. Similarly land with some establishments may be in excess of their requirements. Account should be taken of such excess possessions.

Hence, there should be clearly understood advocacy on:

- (a) There would be requirement of land that would have to be obtained either through acquisition or through open purchase for industrial and infrastructure development;
- (b) Process of acquisition, if necessary, be expeditious and on the principles of equity;
- (c) The Project Authorities to require as much land and of description and location which is determined by a forum headed by a person of the rank of a High Court Judge and includes people in Public Affairs and Administration. This forum would satisfy itself about the public purpose stated. Further, the forum would satisfy itself that *prima facie* conditions exist towards relief and rehabilitation measures;
- (d) Project should be come up in the non-arable monocrop and multicrop areas, in that order of preference;
- (e) Projects not taken up by the requiring authority in the prescribed time frame, the land would automatically revert to the state who would be free to settle the land so reverted in the manner it deems fit taking into consideration the interest of the original owners of land;
- (f) Earlier, when there was abundance of land, the enterprises had taken huge chunks of land for their factories and plantations. A large number of such premises could have become defunct or would be in areas where they need to be relocated. Excess land with such premises or plantations lying not in use needs to be taken over through a mechanism, if necessary, by way of legislation to accommodate emerging needs of sunrise projects;
- (g) As a corollary to the above, if the acquired land is being handed over to the industry, infrastructure or the Government or its undertakings, is perceived to be in excess of their requirements, then the excess land can be resumed by the state. Amendment to this effect may be brought about in the Acquisition Bill 2007 as well. In fact,

amendments in the Bill may be required to accommodate the above-given issues at (c), (d), (e) and (f); and

- (h) Prior consultation of *Gram Panchayats* and people involved, whose areas are to be acquired after going through the process at (c) and (d) before the notification for acquisition is issued.

The West Bengal Estates Acquisition Act, 1953 has a provision in Section 6(3) wherein government has a right to take over such lands which are in excess of the requirement of factories and plantations. Recently the State Government has made an amendment to that Act to take over land lying with closed units and the plantations. Such a measure could bring down the requirement of land acquisition to some extent and at least it would be reflective of state's intention to not let go the industry sector without a proper scan regarding its overall requirement of land.

Process of rehabilitation and resettlement should begin along with the issuing of first notification under the Acquisition Act. In fact the long gap between promise and its fulfilment is the reason for distrust and disaffection among the peasantry against the acquisitions now being attempted. National Human Resource Commission (NHRC) and National Human Rights Commission observations on the Rights of Displaced made in 2008 are pertinent. The compensation and rehabilitation packages announced by the concerned states lack credibility as there are thousands of families displaced by various projects 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, intermediaries and faults that confront Government agencies.

The Resettlement and Rehabilitation Bill as it stands at present may not be able to bridge the gap of distrust that surrounds the peasantry on account of the historical reasons stated above. It is perceived that after the land is parted with, the process of rehabilitation would move at a snail's pace and the peasants would be at the mercy of an unsympathetic administrator as before. Demonstrative implementation of rehabilitation and resettlement measures would bring down their distrust level, which may otherwise become unmanageable and create conflicts.

The two legislations proposed, i.e. Bill of 2007 seeking to amend Land Acquisition Act and the Rehabilitation and Resettlement Bill are complementary. However, both the legislations define different agencies to meet the objectives of the legislations. Such a multiplicity of

agencies may not be conducive for getting the desired results expeditiously and in a straightforward manner. Peasants and Project Authorities would have to interact with multiple agencies who under different dispensations may work at cross purposes. Would it not be desirable to make R&R Bill part of the Land Acquisition Bill so that adjudicating bodies merge and also acquisition process is resorted to by those who ultimately become responsible for R&R? There seem to be too many levels of implementation/monitoring in the existing R&R. Such multiplicity needs to be minimized.