LAND ACQUISITION ISSUES REVISITED

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*[**Abstract**: It appears from the Report of the Department Related Standing Committee of Parliament that consensus on the LARR Bill 2011 is not emerging. Many of the core provisions of the Bill have been discounted in the Recommendations of the Standing Committee. Government has already indicated its disagreement on these recommendations and corporate sector has expressed its shock. Representatives of the land owners and the civil society supporting them perceive that the LARR Bill 2011 incorporates all the provisions of LAA1894 to benefit the Corporates compulsorily acquiring land from the peasants. The Bill may meet the fate of its predecessors—the Land Acquisition (Amendment) Bill, 2007 and the Rehabilitation and Resettlement Bill, 2007—which were pushed through in Lok Sabha but could not cross the Rajya Sabha and finally lapsed. Even if the Bill is passed by a fractured mandate, it would get into the web of extensive litigation and difficulties arising out of conflicts thereof. Trust deficit which has come to exist between the land owners and the Government has to be bridged in the interests of overall development. Trust deficit has grown out of misgovernance of the existing Act and the other regulatory regulations governing land issues at the behest of nexus among politicians, corporates and willing and conniving bureaucracy. Essentially the influence of such a nexus is to be checked. It is possible to narrow down the trust deficit by an imaginative application of existing enactment and regulations through a set of executive directions meeting the test of equity and natural justice without groping for a new law which can also be manipulated by the deeds of nexus. Regulatory framework should create conditions to facilitate voluntary transactions between the developers and the land owners by overhauling regulations on Change of Land Use and making the change automatic. Powers of Government for acquisition of land should be used for residuary cases and it is possible to accomplish this within the provisions of existing act without causing attrition and in the process obtaining funds and commitment from the acquires of land for R&R of the affected land owners and others with minor amendments, if required. State Governments can authorise the Centre to make a model R&R law which they would follow amending the provisions suiting their local conditions.]*

The Discussion Note[1] on *Land Acquisition Issues* pointed out that trust deficit between the land owners and the state and central governments has been widening for some the following reasons:

(i) The governments have not fulfilled their promises on rehabilitation and resettlement of the displaced persons.

(ii) The compensation amount to the land owners has been paltry and irregular.

(iii) Governments, in nexus with industrialists and entrepreneurs have been widening the scope of public purpose indiscriminately and enriching it increasingly at the cost of peasants.

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1 Sardana, M.M.K. (2010), "Land Acquisition Issues," ISID Discussion Note DN2010/01, August.

(iv) Benefits of development on the acquired lands have not accrued to the peasants and others dependant on acquired land.

(v) Not unoften the party and the purpose for which land was acquired were changed to suit the economic and business interests with the potential of higher returns negating altogether the social and economic benefits conceived at the time of acquisition.

(vi) Acquired lands remained vacant for a number of years without any activity and became standing symbols of unfulfilled promises though the acquisitions were made under the emergency provisions of the Land Acquisition Act (LAA).

(vii) Quantum of land requirement for a particular project was not assessed independently to check excess land being locked up in a situation of increasing requirement of land for development projects.

(viii) There was no effort on behalf of the states to examine the feasibility of identifying equivalent quantum of land in non-arable or less fertile areas to take into account concerns of food security.

(ix) No thought was accorded towards identifying land that will become surplus to the requirements of the existing and/or redundant projects with a view to utilising the same for the upcoming projects or rehabilitation and thus reducing the requirement of acquiring fresh lands.

Analysing the Land Acquisition Bill 2007 and RR Bill 2007 seeking to address the increasing concerns of peasants, it was surmised in DN2010/01 that both the Bills, if enacted, in the form as introduced, would not suffice as the Bills were not bringing about structural changes as would be necessary to bridge the trust deficit. Rather, the multiplicity of agencies being contemplated would complicate the process of rehabilitation because of divided responsibilities of the authorities acquiring land and the authorities responsible for rehabilitation and resettlement. It was further suggested, that a mechanism needs to be placed in position whereby the quantum of land needed for a particular project is précised and suitable sites of précised areas are located taking into consideration the concern of food security. A suggestion was also made that if acquired land was not brought under use within a specified time

frame, the same would revert to the state for reassignment to some other project, and gains, if any, be shared with the erstwhile owners equitably. It was also suggested that provisions of existing laws be invoked and/or amendments incorporated to empower the states to identify lands in excess becoming surplus to the requirements of existing projects with a view to realloting such lands for the upcoming projects or rehabilitation/resettlement (R&R). With a view to demonstrating expediency towards rehabilitation, it had been proposed that R&R activities should commence along the issue of first notification for acquiring land and the land required for the purpose of R&R should stand identified.

However, Government at the Centre pushed both the Bills in the form they were introduced after incorporating, in part, the suggestions of the Standing Committee of the Parliament. Reluctance to pass the Bills as introduced on February 25, 2009 was so intense that the Government could barely manage the quorum—one-tenth of the strength of Lok Sabha and that too after adjourning the House twice for lack of quorum. None was present on behalf of the main opposition alliance while the left accused the Government of being in haste and ignoring some of the vital recommendations on R&R of the Standing Committee.[2]

Fracture within the legislature and among the civil societies at large was intense relating to the Bills pushed through the Lok Sabha as the Bills suffered from many short comings. The Bills as passed by Lok Sabha incorporated many unresolved uncertainties which would continue to give rise to conflicts and would also build avenues for litigation which would continue to delay the acquisition proceedings. Thus, the very purpose of passing the legislation in the Lok Sabha seemed to be an exercise in futility. The Bills could not cross the barrier of Rajya Sabha. Finally both the Bills lapsed with the dissolution of the 14th Lok Sabha.

Taking note of the criticism that the main cause for delays in infrastructure and industrial projects was the delay in acquiring land[3], the Government attempted to

[2] "Land Acquisition Bill Rushed Through LS," The Indian Express, February 26, 2009.
[3] *India Infrastructure Report 2009* on Land Acquisition.

reintroduce the Bills as passed by the 14th Lok Sabha for reconsideration by the 15th Lok Sabha but its efforts to resolve the differences over the provisions of the Bill did not yield results[4].

Fresh look was given to provisions of the Bills in consultation with a wide spectrum of stakeholders. Finally, the Government introduced the Bill in the Lok Sabha on September 7, 2011. Some of the distinctive features of this Bill are:

(i) Acquisition, Resettlement and Rehabilitation provisions have been provided at one place and an attempt is towards synchronising the two processes.

(ii) Compensation quantum has been liberalised for land owners and further it is proposed to compensate those whose livelihood is affected by the proposed acquisition.

(iii) R&R benefits would also be available to all those who part with their lands directly when developers/entrepreneurs acquire/buy land beyond the prescribed ceiling.

(iv) Role of grassroots institutions has been defined.

(v) Government can acquire land for its own use, hold and control.

(vi) Government can acquire land with the ultimate purpose to transfer it for the use of private parties for stated public purpose which also includes private-public partnership projects.

(vii) Government can acquire land for immediate and declared use by private companies for public purposes.

(viii) Stringent restrictions on the misuse of 'urgency clause' limiting its applications on national security and natural calamities.

Reactions on the Bill from different stakeholders are divergent reflecting that the Bill is falling short of its objective of striking a balance between the rights of land owners/users and the urgent requirement of land viz. urbanisation and industrialisation. It is being argued that the Bill is tilted in favour of land owners/users and may actually result in stifling industrial growth as enormous costs

[4] Bhaumik, Anirban, "Softening Land Acquisition," *Deccan Herald*, July 27, 2012.

on long term basis are sought to be brought on the projects on account of compensation and R&R provisions as built in the Bill. Further there is no clarity in the Bill on the definition of persons affected whose consent and rehabilitation would fall on the project[5]. It has been elaborated that the LARR 2011 would mean an increase in project delays for developers as not only basic compensation would stand increased manifold, they would be required to provide new homes, jobs, monthly stipends and a cut of profits to the former land owners. Such a state of affairs, according to the corporate, would make a lot of projects unfeasible both in short and long term; and growth will be hurt[6]. According to an estimate for a 3 acre piece of land, whose annual income may be ₹11,136 per year, the land acquirer may have to pay ₹18,36,000 to the land owner, which would be a total of ₹6,36,000 for R&R allowances and ₹12,00,000 which is 4 times the market value of land. Besides, the acquirer may have to provide cost for a house of not less than 50 sq. mt. in plinth area plus other benefits under schedule III-VI and yet another sum of ₹6,36,000 each to any additional family claiming to have lost its livelihood because of acquisition[7].

The criticism from the proponents of the other segment since soon after the introduction of LARR 2011 has been equally resonant[8]. It is argued that the Bill carries all essential features of the 1894 LAA—that the government has right to acquire land of people; public interest is to be decided by the government. It is recalled that the country is at a stage where there are rapacious acquisitions of land by the private and public sectors and acquisitions have been far in excess of need. According to such proponents, LARR 2011 is an instrument to woo the farmers who would be told that they will get more compensation and RR as well, but private industry and private-public partnerships would reap huge profits. The Bill ignores the basic development needs of the nation and its working people[9]. Thus, the LARR Bill

5 Menon, Avinash, "Re-visit Land Acquisition Bill," Lakshikumaran & Sridharan attorneys *News and Publications*, January 10, 2012.

6 "India Inc. balks at Land Acquisition Bill," *The Indian Express*, September 23, 2011.

7 "Land Acquisition & Rehabilitation and Resettlement Bill," Wikipedia.

8 Dhavan, Rajiv, "New Land Acquisition Bill is anti-poor," *Mail Today*, November 21, 2011.

9 Mittal, Ashish, "Comments on the LAAR 2011," Communist Party of India (Marxist-Leninist), New Democracy, August 12, 2011. http://www.cpimlnd.org/miscellaneous/comments-on-the-larr-2011.html

2011, which was claimed to have been introduced after extensive consultations among the diverse stakeholders, consensus on the same has been eluding. Professional economists (Gangopadhya, 2011[10]; Ghatak & Ghosh, 2011[11]) have also criticised the arbitrary manner of the basis of compensation.

Standing Committee of Parliament on Rural Development examined the provisions of LARR 2011 and took independent inputs from Central Ministries, State Governments, Civil Society, farmers and industry associations and experts as the Committee felt that the Central Government had been in somewhat of a hurry introducing the legislation in Parliament without giving adequate time to State Governments, Central Ministries and others furnishing their views on draft of the Bill. Thus, it was inevitable that there would be divergence on many provisions of the Bill. The Standing Committee finally gave its report on May 17, 2012 in which many core clauses of the Bill have been discounted. The Committee has gone ahead in recommending that Government should no longer help private sector buy land. Instead, the Committee recommended that Government should intervene in negotiations with land owners—typically farmers or people classified as tribals—only when projects that serve the public interest are involved, for example, projects on schools, hospitals, irrigation systems and defence. "Since there is no question of acquisition of Capital or Labour, why should state at all be involved in acquiring Land for private purposes or even public enterprises?", the Standing Committee has observed in its report. This recommendation totally overturns the provision of the Bill which terms that industrial and infrastructure projects can be considered as serving public interest, meaning they are eligible for government assistance. The Standing Committee dissuades the government from acquiring land even for those projects where state-run agencies partner with private agencies. The Standing Committee has noted clauses 2(2)(a) and 42 of the Bill that seek to provide resettlement and rehabilitation to affected families on sale/purchase of land on a mutually agreed basis where the sale/purchase of the land is equal to or more than

[10] Gangopadhyay, Subhashish, "Land for Growth; Imaginative land acquisition policies can foster inclusive growth," *Business Standard*, September 24, 2011.

[11] Ghatak Maitreesh and Parikshit Ghosh (2011), "The Land Acquisition Bill: A Critique and a Proposal," *Economic and Political Weekly*, Vol. 46, No. 41, Pp. 65–72.

100 acres in rural areas and 50 acres or more in urban areas. Though these provisions are intended for the welfare of the affected population, legal experts and a few state governments have submitted that the sale/purchase of land and related matters come in the State List, and as such the Bill being enacted by the Central legislature cannot include conditions on the sale/purchase of land. A recommendation has been made by the Standing Committee towards amending the respective clauses calling upon the State Governments for devising limits/ceilings of private purchases by parties beyond which conditions of R&R would set in. Nevertheless, in the Bill there are elements which leave scope for centre/state conflict. Even the recommendation of the Standing Committee, if variedly implemented by the State Governments, would give rise to obvious conflicts when R&R benefits in states vary. The Committee has observed that conditions on purchase of land may be countering the Transfer of Property Act & Contract Act. The Standing Committee also seeks to ban the acquisition of agricultural land, irrespective of how productive a particular field, is in the name of food security. Such a recommendation, regressive in economic utilisation of land resource, seeks to shrink the availability of land for non-agricultural purposes and would hit the projects hard. Even within the Government, there are not many takers of such a recommendation and also of its recommendation that the Government should not acquire land for the private projects or for public-private partnership[12]. According to the reports appearing in media the Rural Development Minister would seek cabinet approval to continue with the provision of acquiring land for projects involving private investment with caveats; though, for e.g., the government will be able to acquire land only after the consent of 80% of affected families.[13] Though corporates may hail the move as pragmatic, there may by a collision course open. From the foregoing it is evident that irreconcilable differences have emerged among the stakeholders on the sufficiency of the LAAR Bill 2011 despite many provisions being viewed as positive. Even if the Government is able to push through the legislation, it

[12] Bhattacharya, Prasenjit, "Buying Land in India May Get Much Tougher," *India Real Time*, May 23, 2012.

[13] "Jairam's land bill allows govt to buy land for pvt projects too," *Infrawindow News Bureau*, July 6, 2012.

would only cause an increase in litigations and conflicts on unresolved issues which would further cause delays and attritions and thus the purpose of enacting the legislation would not be served. Two decades-long national effort to place in position an "agreed-to legislation" has not been successful.

The way forward perhaps does not lie through an all embracing legislation. The executive may look at reorienting its functioning, particularly around the existing regulatory instruments rather than searching for an ideal law which, also, could be a victim of machinations of the nexus among the vested parties. The Discussion Note on Democracy, Development and Growth[14] and Niranjan Sahoo[15] have brought out that government's involvement in land acquisition—using the principle of 'eminent domain'—has increased several notches since 1990s; political leaders of every hue are in collision with officials in making huge amounts of money by facilitating transfer of land to selected private players. Apart from exercise of 'eminent domain', politicians and officials use 'regulatory' and information arbitrage to benefit from the application of 'eminent domain' powers. The state governments are turning into a bunch of property brokers—buying land cheap and selling it at higher prices[16]. Most entrepreneurs, aware of the government's power over land, cultivated political parties and state governments to get undue access[17]. The internal control mechanisms have been allowed to fail by the officers of the government[18]. The safeguards provided in the LAA, 1894 against the capricious land grabs have been diluted by the officials at the bidding of the powerful. Part VII of the LAA allows acquisitions for private companies, subject to restrictions imposed by sections 38–44 and for the purposes specified thereon. There is no provision for acquisition of land under this part on application of emergency provisions. However, in actual practice the executive has not only acquired land for the purposes other than specified, but

[14] Sardana, M.M.K. (2010), "Democracy, Development and Growth: The Indian Experience," ISID Discussion Note DN2010/04, October.

[15] Sahoo, Niranjan (2011), "In Search of a Model Land Legislation: The New Land Acquisition Bill and Its Challenges," ORF Occasional Paper # 28, Observer Research Foundation.

[16] Kumar, Avinash (2011), "The Battle for Land: Unaddressed Issues," *Economic and Political Weekly*, Vol. XLVI, No. 25, Pp. 20–23.

[17] *Op. cit*. 15

[18] The State Reports of NIRD

also by applying emergency provisions. Ample misapplication of provisions have been made to acquire land for companies under part II of LAA which provides softer safeguards as the acquisition under this part is to be done for public purposes. Judicial pronouncements on the applicability of public purpose clause have also been bizarre when it was held that even a token contribution from the state to the company would be sufficient for it to claim "public purpose" status.[19] The Discussion Note[20] on *Land Acquisition Issues* refers to massive acquisitions resorted to by the states to woo industrialists from outside to set up their units in their states without reference to a proper economic analysis about the optimum utilisation of the site being acquired.

Essence of the matter is that as long as governance of the Government is allowed to be flawed, even sound legislation would fail to deliver. When there is hue and cry against the unjust implementation of the provision of law, the executive and the nexus under which the executive malfunctions would—like all bad workmen quarrel with their tools (e.g., legislations)—lay the blame on them calling for a change of the tools/legislations. In the process, the nexus and its supporting executive is able to camouflage its misdeeds leaving the public to expect a better deal through the new legislation. The manipulating nexus and supporting executive get a new lease to continue with their manipulation undeterred by the new legislation while the public is lulled into believing in better times ahead. In the instant case, a new legislation is not likely to come up and/or even if it is pushed through, the attributions would not abate. In such a situation, there seems to be only one way forward: stress the importance of improving governance, under the mounting trust deficit, through proper and imaginative application of existing regulations and in tune with judicially sustainable executive directions that satisfy the test of natural justice and equity. Facilitating environment needs to be brought about to encourage private purchases by the developers directly from the land owners at prices which induces the latter to part with their land and in the process state's intervention is reduced to the

[19] *Indrajit C. Parekh Vs. State of Gujarat and Ors.*, AIR 1975 SC 1182
[20] *Op.cit*. 1

minimum. Ram Singh (2012)[21] has demonstrated that it is the regulatory hold-up and not the hold-out by the owners that is the biggest impediment for voluntary transactions in land. At present, the use of agricultural land for other purposes is subject to many obstructive regulations. These regulations preclude a large number of potential transactions, and put heavy downward pressure on the transaction prices. This would naturally call for immediate changes in the application of legal and regulatory framework governing land and its use.

According to Ram Singh, the very nature a voluntary transaction ensures that the land transfer takes place only if buyer's valuation of the land is higher than that of the existing owner, and at a price that is at least equal to the latter's evaluation. The voluntary transactions as a means of land transfer give rise to two serious concerns. When agricultural land is put to non-agricultural use, generally a large number of non-owners—sharecroppers, agricultural workers, artisans, etc.—are affected, who may end up losing their primary source of livelihood altogether. Such a concern can be mitigated by regulating a voluntary transaction making it incumbent on the purchases that they compensate such third parties on the same lines as have been conceived in the LARR Act. Such a regulation can be brought about by the state governments on the developer as change of land use charges as determined by the revenue authorities in respect of the parcels of land under transaction. Discretionary power of the State Government in allowing change of use of land from agricultural to non-agricultural purposes is the second concern that limits the voluntary transaction between the developers and land owners. Very few transactions, other than distress sale, are observed when agricultural land is transacted for agricultural purposes because the buyer and seller remain unaffected from the change in economic value of land; which in fact remains unchanged. Major productivity differences arise when agricultural land is used for non agricultural purposes. However, the change in land use is subject to several regulations and the decision makers use these regulations to extract rent from the project sponsors. When granted exemptions from such a set of regulations, the project developers have been able to buy large tracts through

[21] Singh, Ram (2012), "Inefficiency and Abuse of Compulsory Land Acquisition," *Economic and Political Weekly*, Vol. 47, No. 19.

voluntary transactions. The formal and informal costs of the clearances are a significant component of the project costs and sometimes equal the cost of land paid to the land owner. These regulatory costs put a downward pressure on the price of transaction, thereby affecting the distribution of surplus against the farmers.

Such regulatory hold-ups and costs to overcome greatly add to the tendency among project developers to bribe the authorities to use the Acquisition Act because that would save them from the bother of seeking change of land use and related expenses. The ultimate loser is the land owner as the compensation amount payable to him would be lower than what he could have received through voluntary sale in an environment which would not restrain him in the change of land use, and which, in any case, is happening on the land being acquired.

Therefore, it would be in order if the process of change of land use is overhauled to make it simple and transparent by setting different zones for different activities. As long as the land is used for the purposes permitted by these regulations, the state should have no role in further governing of land transactions except by way of charging fees for automatic conversion of land use to defray the costs of rehabilitation of those whose livelihood is affected by such changes in land use.

Voluntary transactions could get a further boost if records are maintained in such a manner that would guarantee the authenticity of title on the land. Though, the central government has introduced a Land Titling Bill but its passage is fraught with delays because of complicated systems prevalent in different regions which enable a person to claim title on land despite someone else having a registered deed in relation to that land. Even otherwise the land records as available are in such disarray that there is no easy access to them. Therefore, those who wish to set up large projects requiring large tracts of land would continue to seek acquisition of land through state efforts. Further, even for mid-sized projects, there is requirement for land, but acquisition of land for these projects is being hampered because of hold-up by some land owners even though a large majority, say 80%, have voluntarily sold their lands. Such requirements, even after creating facilitating regularity environment for voluntary purchases would remain, notwithstanding the

recommendations of the Standing Committee otherwise. Procedures for land acquisition can be taken up under the existing LAAR of 1894 if governments at the Centre and the States take into account the causes of present trust deficit, to regulate their functioning by a host of imaginative guidelines and directions. For example, governments may take a stand that all the acquisitions would take place only after observing the safeguards as provided under Part VII of the Act and not otherwise and the obligation of performing rehabilitation and resettlement would be the legal and enforceable obligation of the project developers. Under the same part, Government can enlarge the scope of its regulations to include socio-economic and environmental studies and further incorporate the stages and processes through which the consent of the local bodies would be obtained. Part VII gives a scope to government to exclude the benefit of acquisitions to those private parties who fail to do voluntary purchase of land up to the prescribed percentage of the requirement of the project. Part VII also enables the government to include fee/cost on acquisition equivalent to the requirement of funds for R&R for the persons affected by the proposed acquisition.

Before the government decides to issue a notification under section 4, the government should be able to satisfy itself that firm and legally enforceable contracts between the State and the project sponsors are in position which is flexible to include changes as may be required following the procedure of settlement of objections. The notification under section 4 can include not only the description of land, but also the safeguards and obligations in the light of Part VII of the Act that are being enacted by the project sponsors so that the draft scheme of acquisition is transparent and subsequent procedures for settlement of objections are also transparent and focussed. There may be requirement of consequential and minor amendments in the LAAR Act in relation to quantum of compensation and to include the third parties in the list of eligible persons to file objections u/s 5A, etc.

In the above format, states would administer and reorient their regulatory powers in a manner that encourage voluntary transactions between the project developers and land owners and would include automatic conversion of land use on payment of

fee to meet the costs of R&R of those affected by such a mode of acquisition of land. When the project developers have obtained the consent of 80% of the land owners and purchased lands from them, State may resort to acquisition proceedings for them only under Part VII of the Act and under obligations and safeguards worked out by the State. There may be a need for some minor amendments in the Act, particularly in relation to the need for enhancing compensation in tune with LARR and also to include third parties in the process of settling objections.

States have pointed out that conditions on sale and purchase can be brought out by their legislatures since as the subject of "Land" falls in the State List. It would be appropriate that states should formulate their own enactments or submit to a "model legislation" by the Central legislature devising a mechanism of R&R and fee/sum to be collected from the project developers at the stage of acquisition and credited to a Fund for R&R purposes. The Administrative Cost of R&R would also be borne by the project sponsors and the fees for acquisition would include such costs also.

If LARR Bill 2011 does not become law, the processes of project developments should not be held up in the uncertainties of land acquisitions, voluntary or otherwise. It should be possible to move forward even within existing legislative and regulatory framework given the commitment of good governance.