



Research Paper

Land Acquisition Acts: A Long History of Injustice

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ABSTRACT: Land is the basic requirement for the survival of human being. In ancient times, social groups controlled over the land to support their life and livelihood called Common Property Resources (CPRs). These groups allotted land to the individual for utilization. This was the beginning of rights over land. Individual ownership of land started on the basis of land surveys in the British period and the land belongs to no one become the State's property. British Government passed several Land Acquisition Acts by which individual land can also be acquired in lieu of monetary compensation. Under Article 372 of the Constitution, the Government of India followed these legislations even after Independence with minor amendments which led to injustice to the masses. In this paper it is tried to analyze the loopholes in the previous acts and their removal in the present act to do justice with the masses.

KEYWORDS: History, Land Acquisition, Amendments, Injustice

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I. INTRODUCTION

In ancient times, social groups controlled over the land to support their life and livelihood. The group defended the territory they occupied. These groups allotted land to the individual for utilization. This was the beginning of rights over land. "Whoever cleared a plot of the unlimited jungle had the right to use that land, developed into a new land right, the right of the first clearer. Need for mutual help in strenuous clearing work, defense of the cleared land and repeated use of that land year after year led, in the course of time, to the formation of villages which assumed the regulation of land rights. (Kuhnen:1989;66). Uncultivated land was used jointly, later called Common Property Resources (CPRs). Invaders and rulers occupied these lands and CPRs and inhabitants are forced to pay money or share of crop as revenue to save their land resources. Thus, ruler became the owner of all land, later ruler replaced by the State. "The colonial view was derived from the principle expressed in Latin word 'terra nullius' (no body's land) which implies that the land (property) which is not burdened by any validly acquired ownership belongs to no one and hence accrues to the state" (Sexena; 2008:366, Fernandes:1998;2705).

Land Acquisition Act

The land acquisition law was originated from the Bengal Regulation Act of 1824 enacted by the East India Company (Verma:2015). "The 1824 Regulation I of the Bengal Code had two purposes, one was to acquire land at a "fair price" for the construction of "roads, canals or other public purposes," and the second one dealt with the contentious issue of land required for salt manufacture" (Bhattacharyya:2015;48). After the introduction of railways, legislation was needed to acquire land for the development of railways. In 1850 the Company extended some provision of Bengal Regulation Act of 1824 to Calcutta Presidency. In the meanwhile, there were legislations enacted in presidency towns of Bombay and Madras. Building Act XXVIII of 1839 provided for acquiring land in Bombay and Colaba for public purpose" (Mohan and Shiju:2011;14).

As the need for construction of railways and other public purpose was increasing, these Acts were consolidated into a single law applicable to all the territories of British India called 'The Land Acquisition Act, 1857 for Railways and other Public Purpose. A major Drawback was that it contained no provision for the acquisition of land by private parties and companies for providing public utility services. So, the ongoing dissatisfaction forced to amend the present act by Act II of 1861 and XXII of 1863 and provided for acquisition by private individuals and companies and primarily applied to works of public utility, namely: bridges, roads,

railroads, transport, tramroads, canals for irrigation and navigation, works of improvement of a river or harbor and so on (Mohan and Shiju:2011;14). This amendment was done to ease the acquisition of land for the private companies. Many problems were there in the procedure of the Act. The method of determination of compensation was not satisfactory. The decision of arbitrator could not be challenged and there was no provision to revise his decision. The corruption at implementation level and incompetence of the arbitrator were big hurdles in settlement and distribution of compensation. "Valuation and compensation of acquired land on immovable property were made by the Collector by agreement, if possible. If there was no agreement the dispute had to be referred to arbitrators and there was no appeal against their decisions. The decisions could be impeached only on the ground of corruption and misconduct of arbitrators. As those laws did not lay down any instruction for their guidance in performing their tasks and the arbitrators were sometimes incompetent and complacent, Act X of 1870 was introduced in order to abolish the system" (Das:2011;102). A new act was passed by the Government called The Land Acquisition Act, X of 1870. In 1870, it was for the first time that the compensation rate of the land based on market value was defined. Judiciary was also involved as an arbitrator between the state and the persons whose land was being acquired. The Land Acquisition Act 1870 was also not found satisfactory. There were no guideline for the arbitrator to follow and generally incompetent which led to corruption in many cases (Mohan and Shiju:2011;14). The provision of appointment of Assessor did not bring a meaningful result because "in actual practice it was found that it was difficult to obtain the service of qualified assessors. It was also often found that the assessors were more partisans" (Singh, 1991:18). Moreover, the involvement of judiciary in determination of compensation made the procedure more time consuming and more lavish (expensive).

In 1894, a new Land Acquisition Act was enacted by the British Government. The major change in the act was that the land could be acquired for the public purposes as well as for a company.

"There have been a number of cases where various state governments have acquired land by misusing the provision of Section 17(4)7 of the 'urgency clause'. Under this provision, the state government may direct that the provisions of Section 5A shall not apply and take away the basic rights of the landowners to file his objections. Hence state power is used to misuse the provisions of urgency. The acquisition of land under Section 4(1) read with Section 17(1) and 17(4) has generated substantial litigation in the last 50 years" (Danyal:2016;2-3).

The British Rule in India ended in 1947, but the governing principles of Land Acquisition Law remained unchanged (Verma:2015, Somayji and Talwar:2011). It was followed by the Government of India After the sixty years of our independence with minor amendments. Under Article 372 of the Constitution of India allowed all colonial laws to remain in force unless they were explicitly repealed (Veram:2011;49) and this applied to the land acquisition law as well.

After a decade of independence, the Government of India appointed a Law Commission to review the Land Acquisition Act in 1956. The Commission received a large number of suggestions urging that the term public purpose should be clearly defined. The Commission submitted its 10th report and recommended that it is not possible to attempt a proper definition of the term public purpose. Thus, the problem remained unsolved. "In view of the appalling prospect facing a person whose land is compulsorily acquired by the Government, not only the right to life guaranteed by Article 21 of the Constitution but the various freedoms guaranteed by the Article 19 too would seem to be nothing more than 'paper' right" (Vaswani, 1992:159).

The ongoing protests and dissatisfaction led the Government to amend the Land Acquisition Act again. "In 1984, the Land Acquisition Act (hereafter LA Act) was comprehensively amended based on the recommendations of the Law Commission. A Land Acquisition Review Committee headed by Justice A. N. Mulla was constituted which held due consultations with the state governments. The aim was to make the L A Act internally efficient, while strengthening the right of the individual and guaranteeing modicum of public accountability. The governing principles, however, remained the same" (Sinha:1996;1454).

"But instead of giving it a pro-people orientation, the 1984 amendments made acquisition easier. It empowered the state to acquire the land for private industry" (Fernandes:1998;2704). "After the liberalization of economy leading to privatization, the share of private initiative in various sectors increased and the private sector started taking the responsibilities which were earlier discharged by the government in return for a number of incentives from the latter. As a result of which, private players are present in almost all the sectors like housing, education, health services, industry, construction of commercial complexes, media/ news channels. Presently, private sector is flourishing well, competing with its public counterpart and is in fact stealing the show as these are controlled by big business houses. For all the public purpose projects, the most important requirement is land" (Danyal:2016;2). In a long history of amendments, millions of people were displaced and parted with their land, which is a productive asset and functions as a source of income, employment and livelihood to many people other than the owner. After the acquisition of land, these people displaced but not rehabilitated. The Samatha Judgement by the Supreme Court has held that mining activities in remote and interior areas must be carried out through a cooperative of the indigenous peoples and private mining should not

be banned. And further, at least 20 percent of the profit should be spent on welfare of the affected people like health and education etc. But this judgement has been completely ignored in practice and eminent domain still holds sway in India.

“With the enactment of the Special Economic Zone Act, 2005 the political parties irrespective of their colour or ideology, industrialists, irrespective of their size and global agents of privatization and liberalization have come together to acquire land and use all their power and money to take the process of globalization to the next level and alienate the people from their own natural resources” (Janhavi:2014;141). “Development does not merely imply ‘economic growth’; it also denotes ‘social development’. In India imbalance in the development front is conspicuous because ‘economic growth’ has not been tuned to social justice” (Behura:1993;70).

After a long period of protest and demand, the UPA government introduced the “twin bills”-the Amendment Bill 2007 and the R&R Bill 2007” (Sampat:2013;43). This bill made the Resettlement and Rehabilitation policy an integral part of the land acquisition. This Bill is presented before the Standing Committee of the Ministry of Rural Development before its discussion in the Lok Sabha. The Committee made a number of recommendations on social impact assessment, compensation urgency clause, utilization of land and rights of tribals. Committee recommended that it should be made mandatory for Collector to prove that wasteland or barren land was not available for the project. There should be an act to protect agricultural land like forest act. The acts should apply retrospectively. “The Rehabilitation Policy does not specify any retroactive effect, and it will therefore only apply to projects taken up after 1 November 2007” (Sexena:2011;32). Problem of those, who displaced or affected before November 2007, remained unsolved.

The government seems to be unable to protect the rights of the people. If the corporate bodies are denied the land of their choice, they would have shifted their project elsewhere. Thus, the government does not have much of a choice, but to deliver the land they want. But this bill could not be enacted and lapsed with the dissolution of the 14th Lok Sabha. The involuntary displacement due to large scale of acquisition of land for development projects, without a proper rehabilitation, is causing a disastrous impact on the lives of the people. Millions of people are marginalized in the name of development. It is extremely unfortunate that putting aside every possible democratic precedent and institution, and the progressive pronouncement of the Supreme Court, the UPA government, ruling in the name of ‘Aam Aadmi’, is bringing a law to legitimize forcible acquisition by the government for private and public private partnership projects in the name of development and to placate investors and their representatives in the ministries of trade and commerce, finance, urban development and the Planning Commission.

This is the bill, which is lapsed, but the acquisition of land is going on. “In the two and a half decades after neo-liberal and market reforms were initiated, land acquisition for public and private purposes have increased manifold, drawing criticisms and protests across the country, such public forced the UPA-II to pass a new land acquisition act” (Verma:2015;19).

Due to pressure of political parties, international organizations and many NGOs, the government appointed National Advisory Council to prepare a new draft for Land Acquisition Resettlement and Rehabilitation Bill, 2011. It was introduced in Lok Sabha on 7 September, 2011 and referred to Standing Committee of the Ministry of Rural Development. It submitted the report on 17 May 2012. Then presented in Lok Sabha and received assent of President on 26 September 2012. It came into force on 1 January 2014 as ‘The Right to Fair Compensation and Transparency in Land Acquisition and Resettlement Act, 2013. But all recommendations of the NAC draft were not included in the bill as suggested. “The union government has, however, been quit pro-industry in defining “fair price” and reduced the compensation liability in the Land Bill, which prescribes four times the market value instead of six times as suggested by the NAC. It has also shifted from its original draft of restricting acquisition of any multi-crop irrigated land for public purpose to allowing acquisition of irrigated multi-crop land up to 5 % of the total land area in a district” (Bandyopadhyay and Roy:2012;23, Sampat:2013). This is the irony that, ban on acquisition of cultivable land as recommended in the draft of NAC, faced stiff resistance. “Opposition to the clause of no multi-crop land being acquired largely came from the chief ministers of fertile green revolution states who felt that they would not be able to “invite” any industry into the state with this clause” (Sampat:2013;44). In this bill the compensation is increased, but not as per the recommendation of the National Advisory Council.

After few months Lok Sabha completed its tenure and NDA government was formed in center. BJP laid emphasis on Infrastructural and industrial growth. “The industry and corporate houses continuously pressurized the government to come with a new land acquisition legislation. Finally, the government came up with a LARR Ordinance modifying the LARR Act, 2013- and providing the private sector a major benefit” (Verma: 2015;19).

By this amendment a new chapter IIIA is inserted to exempt some projects (defense, rural infrastructure, affordable housing, industrial corridors up to 1 KM on either side of the road) from chapter II and Chapter III. Chapter II is related with Social Impact Assessment (SIA) and Chapter III is related with prohibition of acquisition of multi cropped land.

Thus, there is no dilution of the absolute power of the government in the name of 'Eminent Domain'. "It is the time to shun the eminent domain framework rather than expend it to be a tool in service of private capital. Expanding the scope of eminent domain will be a move for the worse; it will fundamentally damage the socialist and egalitarian fabric of the Constitution, as propounded in the Directive Principles of State Policy or mandated in Article 243" (Reddy,2012:5). It became very difficult for the government to satisfy the corporates on one side and the project affected people on the other side. The bill has been sent to NITI Aayog for deliberation. "The NITI Aayog, on 14 July 2015, discussed the Land Ordinance where Chief Ministers of few states (Punjab, Haryana and Maharashtra) demanded permission to frame their own laws if the Government fails to get the bill approved in the Parliament. Playing cleverly on such demand, the Cabinet has decided to add a provision permitting the states to pass their own laws. The provision will also let states decide whether they want the consent clause and SIA in their laws before acquiring land from farmers" (Verma:2015;20)

II. CONCLUSION

The analysis revealed that earlier the land acquisition act was passed by the colonial government to connect the interior areas of the countryside for the exploitation of resources there. As the land acquisition started for the construction of road and railways. After Independence, the colonial rule remained in force with amendments but the governing principles did not change. Great efforts are made to remove the loopholes time to time. Beside landowners, landless people are also included in the affected families as most of the affected people belong to this category. Due to unawareness and ignorance, they remained uncompensated.

REFERENCES

- [1]. Bandyopadhyay, J. and Tapas Roy, Political Challenges of an Intensifying Conflict Over Land. *Economic and Political Weekly*, 2012. 47 (7): p. 22-25.
- [2]. Behura, N.K., Tribes of India: Planned Development. *Social Change*, 1993. 23 (2): p.68-78
- [3]. Danyal, Kahkashan Y., Land Acquisition in India-Past and Present. *Jamia Law Journal*, 2016: p. 1-10.
- [4]. Das, Sanjava Kumar, Land acquisition livelihood concerns and adivasi protests a case study of Jajpur district Orissa. Online Thesis, 2011: Centre for Political Studies, Jawaharlal Nehru University, New Delhi.
- [5]. Fernandes, W., Land Acquisition (Amendment) Bill, 1998 Rights to Project Affected People Ignored. *Economic and Political Weekly*, 1998. 33 (42-43): p. 2703-06.
- [6]. Janhavi, S.S., Legal regime on land acquisition in India: a critical study", Online Thesis. 2014. Department of Studies and Research in Law, Karnataka State Open University, Karnataka.
- [7]. Kuhnen, Frithof, The Development of Man-Land Relationship in Asia. *Quarterly Journal of International Agriculture*, 1989. 77 (1): p. 64-79.
- [8]. Mohan and Shiju, Land Acquisition Act, 1894: Historical Overview of Judicial Interpretation" in *Development-Induced Displacement, Rehabilitation and Resettlement in India: Current Issues and Challenges*, by Somayji, Sakarama and Smrithi Talwar 2011. (eds) Routledge, Taylor and Francis Group, London, New York,
- [9]. Sampat, Preeti, Limits to Absolute Power: Eminent Domain and the Right to Land in India. *Economic and Political Weekly*, 2013. 48 (19): p.40-52.
- [10]. Sexena, K.B., Development, Displacement and Resistance: The law and the policy and Land Acquisition. *Social Change*, 2008. 38 (3): p. 351-410.
- [11]. Singh, Vijay, Planned urban land development in a metropolitan city: a spatial analysis of the land acquisition process in Delhi and its socio-economic implications, Online Thesis, 1991 School of Social Sciences, Jawaharlal Nehru University, New Delhi
- [12]. Sinha, B.K., Draft National Policy for Rehabilitation: Objectives and Principals. *Economic Political Weekly*, 1996. 31 (24): p.1453-60.
- [13]. Somayji, Sakarama and Smrithi Talwar, *Development-Induced Displacement, Rehabilitation and Resettlement in India: Current Issues and Challenges*, 2011. Routledge, Taylor and Francis Group, London, New York,
- [14]. Veram, Harish Kumar, Rights of dam oustees _ a critical study of the project affected people of Kol Dam in Himachal Pradesh", Online Thesis, 2011. Department of laws, Himachal Pradesh University, Himachal Pradesh.
- [15]. Verma, Santosh, Subverting the Land Acquisition Act, 2013, *Economic and Political Weekly*, 2015. 50 (37): p. 18-21.
- [16]. Vaswani, Kalpana, Rehabilitation Laws and Policies: A Critical Look", in Thukral, E.G. (eds) *Big Dams Displaced People: River of Sorrow River of Change*, 1992. Sage Publications, New Delhi.

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