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ABOUT US



WHITE BLACK LEGAL is an open access, peer-reviewed and refereed journal providededicated to express views on topical legal issues, thereby generating a cross current of ideas on emerging matters. This platform shall also ignite the initiative and desire of young law students to contribute in the field of law. The erudite response of legal luminaries shall be solicited to enable readers to explore challenges that lie before law makers, lawyers and the society at large, in the event of the ever changing social, economic and technological scenario.

With this thought, we hereby present to you

LAND ACQUISITION: LAND USE AND STATE POLICIES IN INDIA.

AUTHORED BY - AKSHAYA SHREE.D & MAHALINGAM. V

Abstract

This paper looks at the land acquisition Land Acquisition, land use, challenges and also explores key social policies in land acquisition in India including pre-existing laws and land acquisition act of 1894, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 In particular, it explores issues relating to key provisions such as 'public purpose,' rehabilitation and resettlement, compensation, processes including the urgency clause, applicability of the proposed enactment as well as crucial areas of non- applicability. This paper also concentrates on the advantage of the enactment of these acts which thereby contributes in the increased compensation for acquired land, mandating a social impact assessment to be undertaken and requiring the prior consent of land holders in particular cases, the Act has no doubt corrected the imbalance that existed between the interests of land-owners and of the government as the custodian of public interest in the earlier land acquisition procedures. It has significantly increased transparency in the land acquisition process and given a voice to land owners in decisions on land acquisition.

Introduction

In India, agricultural land represents the main block of the geographical area, with forests being the next biggest user. Non-agricultural users such as urban settlements, industries, and infrastructural projects constitute a small percentage of total land use so far, but their share is rising much faster than expected since they are proceeding with modernization and urbanization. For public purposes the government acquires land in large parcels through the principle of compensation under land acquisition laws. While changes in land use take place insidiously throughout time through the incremental decisions of landowners, major changes call for decisions on the part of government, and compulsory land acquisition remains the main vehicle through which transformation and changes on such a scale are rendered possible. In

1973, the landmark Supreme Court judgement *Kesavananda Bharati and Others vs. State of Kerala* challenge the validity of the land acquisition in which the court enunciated the doctrine of the basic structure of the Constitution cast some serious doubts over the constitutionality of the land acquisition law. The issue was whether compulsory land acquisition would amount to an abuse of the right to property, one of the foremost fundamental rights guaranteed by the Constitution. This was amended when the right to property, set forth in the Constitution as a fundamental right, was removed from that status by the 44th Amendment. But it is inevitable for the government to not to acquire land for other developments on the other hand.

The objective of this paper is to study the land acquisition law and its evolution in the country, and evaluate how would the LARR Act 2013 change the patterns of land use in the country. What is the need for making the changes proposed in the LARR (Second Amendment) Bill, 2015? This paper presents the contiguous landscape of land use development in the country from 1950-51 to 2016-2017. Former land laws including the Land Acquisition Act of 1894, discussing their drawbacks from 1894-2013. This paper also explains the salient features of the LARR Act, and also explains the changes proposed under the LARR (Second Amendment) Bill, 2015 from the standpoint of landowners and users.

Evolution of land use pattern in India

There are trends in the evolution of land use pattern in the country during the last seven decades. The Directorate of Economics and Statistics provides an estimate of agricultural land from year to year which can be observed from the table given below.

Trends in land use in India in million hectares Agricultural land by use in India

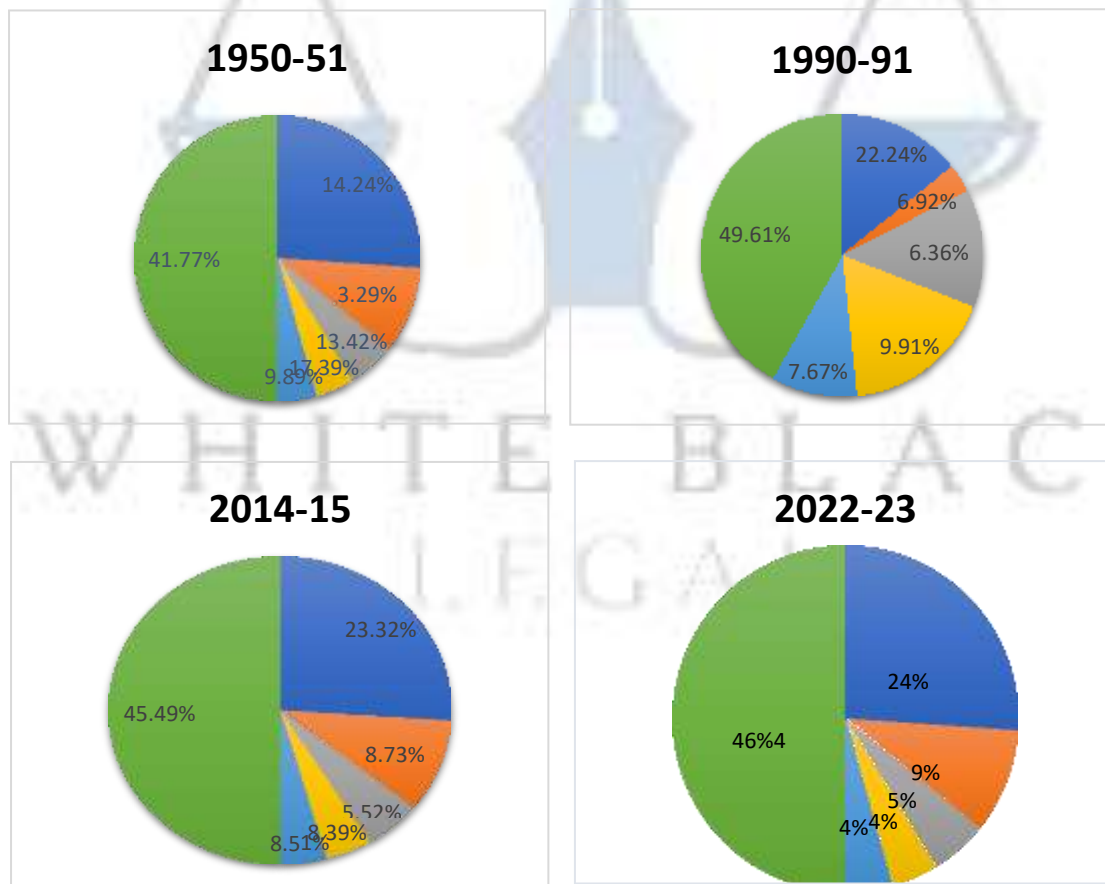
Classification	1950-1951	1990-1991	2000-2001	2010-2011	2016-2017
Geographical area	328.73	328.73	328.73	328.73	328.73
Reporting area	284.32	304.86	305.19	307.48	308.32
Forest	40.48	67.81	69.84	71.59	72.02
Not available for cultivation	47.52	40.48	41.23	43.58	44.82
Other uncultivated land including shallow	49.45	30.22	27.74	26.15	25.70
Fallow lands	28.12	23.37	25.04	24.60	26.36
Net area sown	118.75	143.00	141.34	141.56	139.42

Total cropped area	131.89	185.74	185.34	197.68	200.20
Area sown more than once	13.15	42.74	44.00	56.12	60.79
Cropping intensity	111.07	129.89	131.13	139.64	143.60
Net irrigated area	20.85	48.02	55.20	63.67	68.65
Gross irrigated area	22.56	63.20	76.19	88.94	98.15

Source: Land Use Statistics 2016-17, Directorate of Economics & Statistics

In between 1950-51 and 1990-91 the gross area sown increased to 143 million hectares from 118.7 million hectares; but after that came a slow decline. There has been an increase over the same period in land used for non-agricultural purposes (urbanisation, industrialisation and infrastructure) from 9.36 million hectares in 1950-51 to 21.09 million hectares in 1990-91 and increased to 26.88 million hectares in 2014-15.

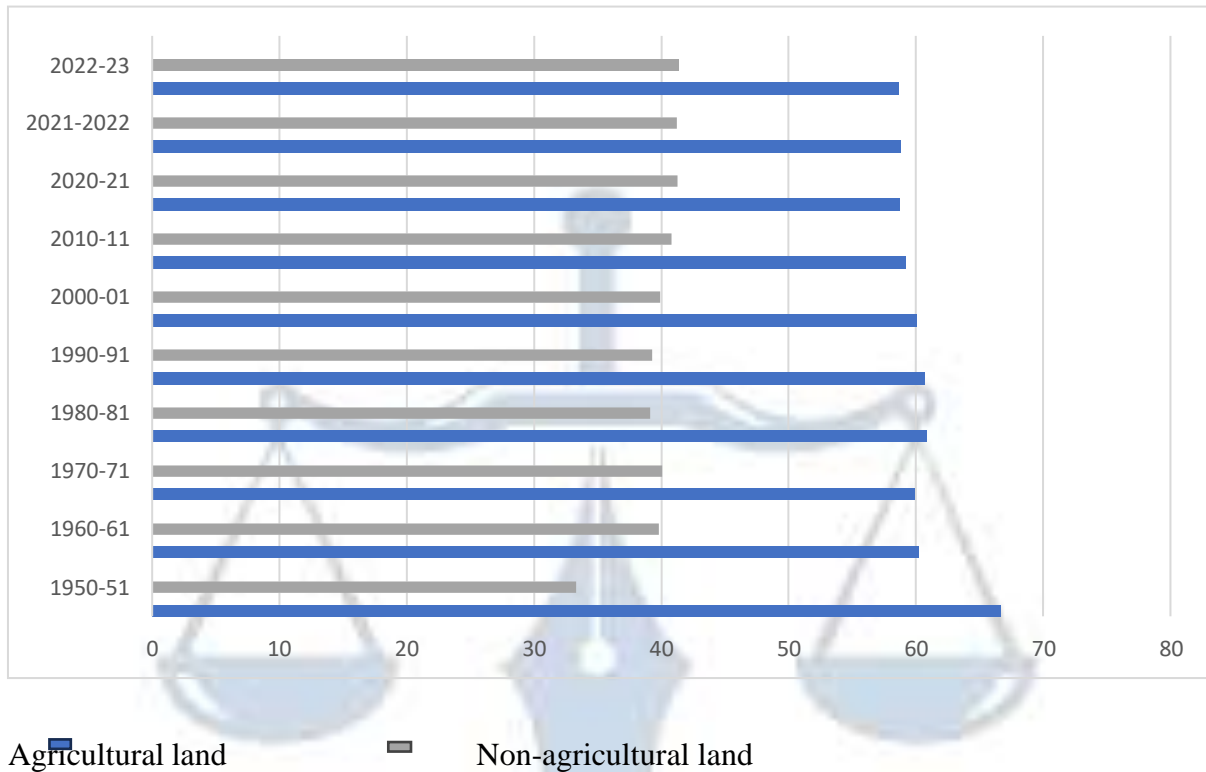
Changing land use in India



Forest Area under non-agricultural uses Barren and un-culturable land
 Other cultivable land excluding fallow Fallow lands

Source: Ministry of Agriculture and Farmer's Welfare, Pocket Book of Agricultural

Percentage Share of Agriculture and Non- Agriculture Land to the Total Reported Area for different years



Source: Land Use Statistics 2016-17, Directorate of Economics & Statistics

Pre-existing land acquisition laws

The land acquisition Act of 1894 was the principal legislation laying down regulations for the private acquisition of land for any public purpose by the government. Besides this core legislation on the issue of land acquisition, there were separate stipulations concerning land acquisition in many other laws enacted for specific purposes such as construction of railways, national highways, tramways, etc.

Land acquisition act, 1894

The salient features of the legislation, which were repealed with the simultaneous passing of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act, 2013), are presented as follows.

Public purpose

The 1894 Act became the very first legislation of the colonial era, to define the term "public purpose". The 2013 Act effected a repeal of the 1894 Act and provided a modified definition of "public purpose". However, even although the new definition is relatively restrictive, it still encompasses within its ambit: projects connected with defence and national security, roadways, railways, and ports; projects connected with residential schemes for the poor and landless; and planned development for the betterment of villages.

The definition of 'public purpose' in both, the 1894 Act and the 2013 Act is quite expansive. The definition in the 1984 Act, provides that "any scheme of development sponsored by the government" would fall within the definition of public purpose. In comparison, the definition provided for in the 2013 Act, is slightly restrictive. However, it is not restrictive enough to exclude purposes other than those concerning public purpose. The government may acquire land in any locality for any purposes or for a company. This expression is defined under Section 3 (f) of the Act. In finding out whether the purpose is really a public purpose the Court has to apply two tests. Firstly whether the purpose benefits the community at large or a section thereof and secondly whether the Government is satisfied about the need of the land acquisition for the declared purposes. The public purpose need not be expressly stated in the Notification or declaration but if the purpose be challenged before the Court of Law, as not a public purpose, the same has to be established by Evidence aliunde [*Ganjodhen Ghosh vs State of West Bengal*] (AIR 1963 Cal 565 at 572).

A public purpose would generally mean acquisition of land for a purpose which would go to the benefit of the general public or for the purpose of establishing some institution which might be utilised by the public for certain benefit. Following are held to be for public purposes. (1) construction of factories for handloom complex (2) to provide amenities and conveniences to pilgrims visiting renowned Devasthanam (3) acquisition of land for providing house sites to landless labourers in rural areas (4) provision for house sites for Harijans (5) for building a library (6) construction of temple (7) for establishing biological park in a forest (8) accommodation for Government Servants (9) a playground and a hostel for educational institution and (10) establishing an industrial area by a Corporation etc.

Procedure for acquisition

Publication of notification

The Notification under Section 4 is the starting point of the acquisition (AIR 1957 Cal 495 at 499). The purpose of Notification under Section 4(1) is to give a notice of warning to all persons interested in the land notified. It is given for two purposes

- i. that persons interested in the land may if they so desire file objections against the acquisition of the land Notified or of any land in the locality
- ii. to fix the date with reference to which ultimately compensation is to be paid for the land acquired.

The Notification should set out sufficient information giving the notice to the owners of land that their properties are intended to be compulsorily acquired. Otherwise not only the Notification but all subsequent proceedings founded on it become invalid.

Hearing of objections

Section 5A of The Land Acquisition Act, 1894, speaks about the right of a person having interest in land to raise objections and an opportunity of being heard. Any person interested in any land which has been notified may object the acquisition of land within 30 days from the date of publication of the Notification. The objection has to be filed in writing before the Collector. Then it will be directed to Government or the Commissioner of Land Administration and that decision will be final. This Section does not apply when action under Section 17(4) is taken. Section 17 deals with special powers of Government in cases of urgency.

Declaration of intended acquisition

Section 6 of the Land Acquisition Act, 1894, deals with declaration issued by the Government that land is required for a public purpose. Section 6 consists of 3 sub sections. Section 6(1) deals with the declarations made by the appropriate Government.

Section 6(2) deals with publication of such declaration. The explanation under this subsection was added by the Tamil Nadu Act 16 of 1997.

Section 6(3) speaks about the effect of such declaration subject to the provisions of part VII of this Act.

Publication of declaration

The sub-section (2) of Section 6 says every declaration shall be published in the Official Gazette and in two daily newspapers circulating in the locality in which the land is situated, of which at least one shall be in the regional language and the Collector shall cause public notice of the substance of such declaration to be given at convenient places in the said locality. Such declaration shall state the district or other territorial division in which the land is situated, the its purpose approximate area.

Enquiry and award by collector

Section 11 of the Act deals with enquiry and the award by the Collector. On the day so fixed, the Collector will proceed to enquire with the land deemed to be acquired and it is the duty of the Collector to make an award in regard to three matters

- i. the area of the land included in the award;
- ii. the total compensation to be allowed for the land and
- iii. the apportionment of that compensation among all the persons interested in that land.

It is important to note that the proviso to sub-section (1) of Section 11 says that no award shall be made by the Collector under this sub-section without the previous approval of the appropriate Government and Once the award was made and the possession was taken, the land owners could not be allowed to challenge the acquisition.

Determination of compensation

The compensation to be paid to the interested persons should be the market value of land at the time of the initial notification. There should be added interest of 12 per cent for the period between the publication of notification and the date of award or possession, whichever was earlier. Most importantly, the compensation was to be enhanced by 30 percent of the market value, "if it is a compulsory nature of the acquisition." In addition, compensation should come in lieu of damage to standing crops or other property damages occurring at the time of taking possession. Provisions were also made for rehabilitation and resettlement.

Possession

After award had been made, the Collector would be in-possession of land, which is to be considered to them as vested under the government, free of all encumbrances. In case of urgency, the Collector may take possession of the land well before that is during the awarding of the compensation only after the notice had been given of the intention of the government

to make the acquisition of the land and the declaration of acquisition can even be made in absence of hearing of objections. The criticism of the relevant provision was that the law does not define urgency and that the measure of what constituted urgency is left at best to the subjective determination of the government.

Other pre-existing laws

There were two legislations enacted for specific purposes, with provisions on the acquisition of land, were enacted in the British era, namely the Land Acquisition (Mines) Act, 1885, and the Indian Tramways Act, 1886. Several laws relating to infrastructure, enacted after independence e.g., the Damodar Valley Corporation Act, 1948, the National Highways Act, 1956, the Coal Bearing Areas Acquisition and Development Act, 1957, the Petroleum and Minerals Pipelines (Acquisition of Right of User of Land) Act, 1962, the Metro Railways (Construction of Works) Act, 1978, the Railways Act, 1989, also contain specific provisions for acquisition of land. The salient features of these laws were the same as those of the Land Acquisition Act, 1894.

Shortcomings of pre-existing land acquisition laws

In India, the majority of the population having very small piece of agricultural and they were depended on it for their livelihood. In such a country, compulsory acquisition of land can create a deep sense of deprivation. The effect of compulsory land acquisition of landholders, suffered from the erstwhile land acquisition laws for the following main reasons:

(a) Although the act mandated payment of compensation on the basis of the market value of land, the market value was determined on the basis of rates shown in registered sale deeds, in which both the vendor and the vendee had a vested interest in underquoting the price, in order to evade the stamp duty which was basically wrong. As a result, the landholder ended up getting a compensation that was lower than the market rate. (b) Although there was a provision in the law for objections to be raised on the land acquisition itself, the authorities did not really take it into consideration once a preliminary decision had been taken. (c) The most importantly there was absence of a provision for the rehabilitation and resettlement of the persons displaced by the acquisition.

Changes in the land acquisition law

This enactment Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act, 2013) was made with the intention to redress the above lacuna. The salient features of the LARR Act, 2013 are

Broadening of the concept of interested people:

The interested persons in the land include not only title holders but also holders of rights of easements and tenancies, including sharecroppers, and equally importantly "any person whose primary source of livelihood is likely to be adversely affected".

Purpose of land acquisition:

Land can be acquired to be used by the government for its needs. For the own use, including the public sector undertakings and any public purpose including the strategic which could be purposes, infrastructure projects or urbanisation or housing projects.

Enhancement of compensation:

The most far-reaching change produced by the 2013 Act is a steep increase in the compensation to be paid to the landholder by acquiring his land compulsorily. For land in rural areas the compensation, including solatium, is four times the value of the Average of registered sale deeds and it is twice the amount for any land in an urban area.

Rehabilitation and resettlement:

Rehabilitation and Resettlement package to be provided by the act is for the constructed house in lieu of a house lost in land acquisition. Affected persons shall be provided with one of the following choices:

- (i) employment for at least one member of the affected family; or
- (ii) one-time money payment of INR five lakh; or
- (iii) annuity policies that pay not less than rupees two thousand per month per family for twenty years.

Furthermore, each affected family displaced from the acquired land is entitled to a subsistence allowance of Rs 3,000 per month for 12 months

Urgency clause

The LARR Act, 2013 has curtailed the urgency clause to the extent that possession can be taken even prior to the award of compensation only to "the minimum area required for the defence of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament".

Changes proposed in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015

The provisions of the LARR Act, 2013, will result in a significant increase in the cost of acquisition and place procedural hurdles leading to delays in the implementation of projects.

The main change being sought in the bill is to exempt the following categories of cases from the requirement of obtaining prior consent of affected persons:

- i. Projects vital for national security or defence
- ii. Rural infrastructure projects
- iii. Affordable housing and housing for the poor
- iv. Industrial corridors
- v. Infrastructure and social infrastructure projects

Return of unutilised land

The LARR Act, 2013 required land acquired under it which remained unutilised for five years, to be returned to the original owners or the land bank. The Bill states that the period after which unutilised land will need to be returned will be: (i) five years, or (ii) any period specified at the time of setting up the project, whichever is later. The LARR Act, 2013 excluded the acquisition of land for private hospitals and private educational institutions from its purview. The Bill removes this restriction. While the LARR Act, 2013 was applicable for the acquisition of land for private companies, the Bill changed this to acquisition for 'private entities'

Conclusion and recommendations

The land acquisition laws that India received from colonial times were heavily loaded against land owners and other persons dependent on land for their livelihood. The Land Acquisition, Rehabilitation and Resettlement Act in 2013 greatly improved the sides related to compensation paid to land owners in addition to rehabilitation and resettlement (R&R)

entitlements to displaced persons. Transparency in the land acquisition process is presumed considerably higher since it now provides for social impact assessment processes and the prior consent of landowners and other affected persons in certain cases. Thus, not only do they get increased compensation, but they would also have a right to raise objections regarding the acquisition. The proposed amendments mainly relate to the facilitation of raising concerns regarding prior consent, social impact assessment, and restrictions on the use of agricultural land. The RFCTLARR Act, 2013 is a comprehensive legislation that provides enlarged benefits to the affected families, incorporates detailed transparency provisions to be carried out by the state agencies during the acquisition process and includes a plethora of safeguards to curb the misuse of the provisions of the acquisition law.

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