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Comparative Study of Land Acquisition Practice in India and the UK

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ABSTRACT

The development of infrastructure in any country makes the land acquisition a necessary evil. It is imperative for any government to acquire land for developmental activity and this is done through the power vested in the government which finds legitimization through constitutional provisions or statutes. Different nations follow different practices however no practice can be called best practice. India's land acquisition laws are plagued by defects which result in dissatisfaction amongst the land owners who are deprived of the land. This paper seeks to study the land acquisition practices of India and the UK comparatively and come up with suggestions to make the Indian land acquisition practices more considerate towards the interests of the landowners.

I. INTRODUCTION

One of the key difficulties in the improvement of the infrastructure in India is the securing of land vital for developmental projects. Albeit no single "best practice" exists, seeing the practices adopted by different nations for land acquisition. No nation can be said to be wholly following a set of practices for land acquisition which can be termed as the best taking into consideration both the development of the nation and securing the welfare of the people affected by the acquisition.

However, we can definitely draw a comparison between the practices followed around the world to determine which practice is most beneficial and practically viable. When we take up a comparative study of the land acquisition practices then the comparative study can be based on three broad heads –

- The principles
- The process
- The compensatory framework

The land acquisition followed in different countries. The paper narrows down the study to draw a comparison between India and UK.

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Principles of Land Acquisition

Almost all the nations around the world exercise the power to acquire private land for the use of public purposes and in turn, the landowners are paid compensation by the government. The power to acquire land has been in practice for a long time in most countries. This power is either vested in the government by the constitution of the country or by different legislations. There are a few Nations where this power is given by the constitution whereas in some nations legislation empowers the government to acquire lands.

The acquisition is for a public purpose and this public purpose may have different connotations in different nations. Certain nations have explicitly stated the cases which would fall under the term public purpose, whereas in certain nations it is not explicitly provided and left to the discretion of the authorities to determine as the definition is more of a general nature which can be interpreted in a wide manner. In Singapore, land can be acquired by the state if it is for "public benefit or public interest projects"², in Australia for "purposes that the Parliament has the power to define by legislation" and in the UK for "planning and public purposes if it is suitable for, and required for develop"³. Such generic definitions leave it for the authorities to determine what would come under public purpose.

What principles guide the nations around the world are founded on one basic principle and that is the landowner should be compensated fairly. Different nations follow this basic underlying principle under different nomenclatures like 'reasonable compensation' 'fair compensation' 'value to the owner' etc. The acquisition of land is justified on this principle only that reasonable compensation has been provided to the land owner and thus the greater public interest should not be compromised.

Land Acquisition Processes

The processes are different when it comes to acquiring lands by the government. There is compulsory acquisition in some nations where the consent of the landowners is irrelevant and they are paid compensation which is also pre-determined and fixed. Other nations follow negotiation methods where the landowners are consulted. The compulsory acquisition takes place mostly for public purposes as those cannot be put on hold whereas the negotiation process is followed when the land is not required strictly for a public purpose and there are alternatives available with the authority. Some nations use a combined technique as well where negotiation

² H S Sindhu & Jaskaran Singh, "Socio-economic study of farmers whose lands were acquired or sold for non-agricultural uses" (<https://www.psf.org.in/studies/land%20acquisition%20sale.pdf>) (visited on April 15, 2022).

³ Ashwin Mahalingam And Aditi Vyas, "Comparative Evaluation of Land Acquisition and Compensation Processes across the World", *ECONOMIC AND POLITICAL WEEKLY*, Vol. 46, No. 32.

is for the compensation and acquisition is compulsory.

Japan is a nation which employs negotiation for reaching the compensation which is to be paid to the stakeholders. Singapore and the Philippines recommend that government agencies and developers first negotiate with stakeholders to arrive at a mutually acceptable compensation package that may include monetary as well as non-financial compensation for the property acquired⁴. Such an approach leads to a satisfactory and economically efficient way out for both the government and the stakeholders.

Compensatory Framework

There are again various techniques through which the value of compensation is ascertained in different nations and this compensation is primarily based on the value of the land acquired. This land's value can be calculated by following different criteria like the market value of the land or the income generated from the land or the use to which the land is put. The negotiation method is also used for deciding the compensation in which first these factors are taken into consideration by the government agencies for negotiating with the landowners.

The Asian Development Bank defines the fair market value of land as "the amount that the land might be expected to realize if sold in the open market by a willing seller to a willing buyer"⁵

India and the USA among some other countries use the method of comparable sales in which the sales transactions of the nearby lands in the past are taken into account to determine the sales value of the land. An average price is then arrived at which is supposedly taken to be the market price of the land. Apart from the techniques mentioned above, there is another method called the replacement value method in which the entire costs involved in replacing the land are paid to the landholders. The replacement value encompasses not just the value of the land but all the costs that would be incidental in acquiring such land.

For the calculation of the value of farmlands, the valuation of the land is done based on the net income that the land generates. Most of these methods have their drawbacks.

Some countries even compensate the landowners in non-monetary terms i.e. land in exchange for land. The land provided to the landowner is comparable with his original holding. This method is not exercised much as the availability of suitable land is a prerequisite and land is not always available to be provided in exchange.

⁴ Ashwin Mahalingam And Aditi Vyas, "Comparative Evaluation of Land Acquisition and Compensation Processes across the World", *ECONOMIC AND POLITICAL WEEKLY*, Vol. 46, No. 32.

⁵"Involuntary resettlement safeguards, A Planning And Implementation Good Practice Sourcebook- Draft Working Document", ASIAN DEVELOPMENT BANK (<https://www.adb.org/sites/default/files/institutional-document/32827/files/ir-good-practices-sourcebook-draft.pdf>)

There are several other ways in which the stakeholders get adversely affected by the acquisition and which remain uncompensated. Many countries take that into consideration and provide additional support to the affected people. For instance in India, the people are not just provided compensation but also resettled and rehabilitated by the government. Likewise in Brazil, in addition to the compensation for the land, the stakeholders are also provided with a social subsidy to buy replacement estate.

II. LAND ACQUISITION

- **Prevalent Indian law for land Acquisition**

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which came into force in 2014 is the law that governs the land acquisition practices throughout India. It was enacted to undo the historical wrong done after the British rule by the Land Acquisition Act, 1894 as it provides for a “humane, participative, informed and transparent process for land acquisition” which comes as an improvement over the past processes under the various acts. The purposes which are mentioned in the act are “Industrialisation, development of essential infrastructural facilities and urbanization”.

The government of West Bengal, in 2006 gained 997 acres of land of agricultural land in Singur to empower Tata Motors to construct an assembling plant for a sort of vehicle. The State utilized its powers under the 1894 Act to obtain land and compensate the impacted people. The nearby local area was disappointed by this activity as no assent was acquired from individuals and consequently, they opposed the State activity. This before long transformed into a dissent development including the resistance, Trinamool Congress.

Thus, the State government proposed to further enhance the rate of compensation by expanding it by 25%. It was simply payable to individuals who possessed land and not comprehensive to farming labourers who professed to have lost work on the government’s gained lands. The matter got public and worldwide media consideration with far and wide savagery breaking out locally. In the end, because of the far and wide fights and non-obtaining, following two years, Tata Motors pulled out of their arrangement to set up assembling in West Bengal and moved to Gujarat⁶.

An overview led by towns in the Singur region uncovered that many farmers were seriously under-compensated, and their plots were additionally misclassified in the land record of the State. The workers confronted a few difficulties in engaging in any employment and

⁶ Kedar Nath v State of West Bengal and Ors , CIVIL APPEAL NO.8438 OF 2016

inconsistent compensation in situations where they had the option to secure positions in contrast with those labourers who stayed unaffected by the land acquisition. Subsequently, the land procurement in Singur brought about financial difficulties for countless individuals including occupants, labourers and proprietors.

Inhabitants and proprietors have not been compensated adequately, and labourers were not compensated by any means. This case features the challenges looked at at the ground level that should be overseen properly to best fill the need of the land acquisition law of 1894.

One more such example when the government exercised its powers going beyond the provisions of the act of 1894 and demonstrating how the acquisition of land should be executed on the ground is the Koyambedu wholesale market complex case. This laid the basis of a law that was better than the existing one. In 1996, the Chennai Development Authority proposed the wholesale market complex to reduce the congestion in the central region of business⁷. As a result of the execution of the plan, the market stood arranged externally to the areas that were blocked and stayed open for the city's inhabitants. It got the connectivity by highways to Chennai International Airport, two railway stations and the transport terminal. The total area for the market was 295 acres which were divided into blocks. There were fruits, vegetables, and flowers markets which observed visits from around 1 lakh people each day.

During the time spent securing land, the Chennai Development Authority went past the 1894 Act. They paid cash to pay to the landowners equal to the market worth of the land, standing harvests (if any) and paid a loan cost of 12% from the period among notice and securing. Further, a legitimate rehabilitation and resettlement process was done and the impacted families were successfully moved.

The act of 2013 aimed at making amends for the wrong which were done by the act of 1894 by the inclusion of a provision for rehabilitation and resettlement, consent of 70% of the landowners for the PPP (Public-Private Partnership) project and 80% in case of Private entities to prevent forced acquisitions⁸, better compensation.

As the title suggests that rehabilitation and resettlement of the affected families are taken care of, the act provides a mechanism⁹ for the same. "The collector passes an award under section

⁷ "Koyembedu wholesale market complex" CHENNAI METROPOLITAN DEVELOPMENT AUTHORITY (http://www.cmdachennai.gov.in/koyambedu_wholesale_market.html) (visited on March 30, 2022)

⁸ Section 2(2), The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

⁹ Chapter V and chapter VI, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

31¹⁰ of the act. The calculation of market value has also changed to facilitate better compensation to the people. The Collector shall adopt the market value, if any, specified in the Indian Stamp Act, 1899 (2 of 1899) for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or the average sale price for a similar type of land situated in the nearest village or nearest vicinity area; or consented amount of compensation as agreed upon under subsection (2) of section 2 in case of acquisition of lands for private companies or for public-private partnership projects, whichever is higher”.¹¹ This ensures a better compensation as it is four times the market value in case the land is in a rural area and twice the value in case the land is in an urban area.

There are many safeguards provided to ensure that rehabilitation and resettlement provisions are complied with. The National Monitoring Committee for rehabilitation and resettlement¹² and the State Monitoring Committee for rehabilitation and resettlement¹³ are established for reviewing and monitoring the implementation of rehabilitation and resettlement plans under the act.

Principles

The Indian law providing for land acquisition is based upon the principle that private land can be acquired for public purposes¹⁴. It legalizes the acquiring of private property of the individuals and compensates fairly in return. It also recognizes the need of providing rehabilitation and resettlement to those who are affected by the acquisition. The public purpose under the act is exhaustively laid down in the provisions.¹⁵

The phrase public purpose has to be construed according to the spirit of the times in which the particular legislation is enacted and so construed, acquisition of estates to prevent the concentration of huge blocks of land in the hands of a few individuals and to do away with intermediaries is for a public purpose.¹⁶ The West Bengal Land development and Planning act, 1948 provided for the acquisition of land for the relocation of immigrants, the land was held

¹⁰ The Collector shall pass Rehabilitation and Resettlement Awards for each affected family in terms of the entitlements provided in the Second Schedule

¹¹ Section 26, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

¹² Section 48, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

¹³ Section 50, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

¹⁴ Defined under section 3 (za) of the act.

¹⁵ Section 2(1), The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

¹⁶ State of Bihar v Kameshwar Singh AIR 1952 SC 252

valid¹⁷

Development of infrastructure is a legal and legitimate public purpose for exercising the power of eminent domain¹⁸. It is impossible to precisely define the expression 'public purpose'. In each case, all the facts and circumstances will require to be closely examined to determine whether a public purpose has been established. Prima facie, the Government is the best judge as to whether the public purpose is served by issuing a requisition order, but it is not the sole judge. The courts have the jurisdiction and they must determine the matter whenever a question is raised whether a requisition order is or is not for a public purpose¹⁹.

It will thus be noticed that the expression 'public purpose' has been used in its generic sense of including any purpose in which even a fraction of the community may be interested or by which it may be benefited²⁰.

It is undoubtedly not easy to define what is public service and each activity has to be considered by itself for deciding whether it is carried on as a public service or not.²¹

The concept of public purpose necessarily implies that it should be a law for the acquisition or requisition of property in the interest of the general public, and the purpose of such a law directly and vitally subserves the public interest. Broadly speaking the expression 'public purpose' would however include a purpose in which the general interest of the community, as opposed to the particular interest of the individuals, is directly and virtually concerned²².

It is for the State Government to decide whether the land is needed or is likely to be needed for a public purpose and whether it is suitable or adaptable for the purpose for which the acquisition was sought to be made. The mere fact that the authorized officer was empowered to inspect and find out whether the land would be adaptable for the public purpose, it is needed or is likely to be needed, does not take away the power of the Government to make a decision ultimately.²³

Process

The process of land acquisition begins with the preliminary investigation the determination of the social impact of the acquisition and the public purpose²⁴. The social impact assessment gives the estimates of affected families, the extent of land which is likely to be affected, whether

¹⁷ State of West Bengal v. Bela Banerjee, A.I.R. 1954 S.C. 170

¹⁸ Sooraram Pratap Reddy v District Collector, Ranga Reddy District 2008 (9) JT 622

¹⁹ the State of Bombay v. R. S. Nanji 1956 AIR 294

²⁰ Babu Barkya Thakur v. The State of Bombay & Others 1960 AIR 1203

²¹ Satya Narain Singh v. District Engineer, P.W.D., Ballia and Anr A.I.R 1962 S.C 1161

²² Bhim Singhji v. Union of India AIR 1981 SC 234.

²³ Laxman Rao Bapurao Jadhav v. State of Maharashtra (1997) 99 BOMLR 220

²⁴ Section 4, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

the acquisition would serve a public purpose, any alternate land which could be acquired, etc. The social impact assessment is examined by an experts' independent committee which reviews the same to determine how far it serves the public needs and costs and benefit comparison for the project is also drawn. This is followed by a public hearing of the social impact assessment and publication of the study. Then the appraisal and examination of the assessment are carried out.

The notification is published by the appropriate government and objections are heard if any. This is followed by the preparation of the rehabilitation and resettlement scheme. The collector after conducting an inquiry passes the land acquisition award. The market value of the land is determined by the collector²⁵ and the compensation to be paid. The collector also passes the rehabilitation and resettlement award for the affected families.

If the land acquired under the provisions of the act is not put to use for five years or any time specified for the project to be set up whichever of the two is later then the land acquired would be returned to the landholders. The Act additionally expresses that in ascertaining the time-frame during which the procedures of procurement were at a pause because of court stay request or then again if belonging has been taken yet compensation has not been paid, this period will not be included in deciding the prescribed period.

Thus the process of land acquisition takes into due consideration the interests of the people who are affected by the acquisition.

However, the urgency clause²⁶ was much criticized as being arbitrary and neglecting the rights of the people. The urgency clause was also one of the most criticized provisions of the 1894 act. However, the Supreme Court ruled that the government cannot compulsorily acquire private properties by casually invoking the "urgency clause" unless there was a genuine need which cannot brook any delay.

The invoking of the urgency provisions can be justified only if there exists real emergency which cannot brook the delay of even few weeks or months²⁷. The concept of public purpose in land acquisition has to be viewed from an angle which is consistent with the concept of a welfare state...The Courts must examine these questions very carefully when little Indians lose their small property in the name of mindless acquisition at the instance of the State. If public

²⁵ Section 26, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

²⁶ Section 40, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

²⁷ Darshan Lal Nagpal vs. Government of NCT of Delhi (2012)2 SCC 327

purpose can be satisfied by not rendering common [people] homeless and by exploring other avenues of acquisition, the Courts, before sanctioning an acquisition, must in the exercise of its power of judicial review, focus their attention on the concept of social and economic justice, While examining these questions of public importance, the courts, especially the Higher Courts, cannot afford to act as mere umpires.²⁸

In *Radha Shyam v state of UP*²⁹ the court referred to the judgment in *Narayan Govind Gavate v. the State of Maharashtra*³⁰ and also adverted to other judgments, in which the importance of the rules of natural justice has been highlighted, and culled out the following principles: “Eminent domain is a right inherent in every sovereign to take and appropriate property belonging to citizens for public use. To put it differently, the sovereign is entitled to reassert its dominion over any portion of the soil of the State including private property without its owner’s consent provided that such assertion is on account of public exigency and for the public good”.

Compensatory Framework

The collector determines the amount of compensation to be awarded to the affected families and for that, he considers certain parameters for the determination³¹. These parameters are the market value of the land, the damage caused by the removal of any crops, severance of a part of the land, injurious effect on any other property, or his earnings, expenses for change of place of business or residence, diminution of profits due to acquisition etc. He also determines the value of the things including any immovable property attached to land or building with the help of a competent engineer or any other specialists³². For the determination of the value of trees and plants attached the services of persons experienced in forestry, agriculture etc are taken by the collector.

The award which is then payable as compensation had to be increased almost 4 times to the estimated local market value in rural areas and at least two times the market value in the urban areas. The solatium³³ is paid in addition to the amount of compensation which is equal to one hundred percent of the amount determined to be paid as compensation.

²⁸ *Surendra Singh V State of UP* (2011)

²⁹ *Radhy Shyam v. State of U.P.* (2011)5 SCC 553

³⁰ *Narayan Govind Gavate v. State of Maharashtra* 1977 AIR 183

³¹ Section 28, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

³² Section 29, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

³³ Section 30, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Rehabilitation and resettlement award passed by the collector includes the rehabilitation and resettlement amount to be paid, mandatory employment to the members of affected families, particulars of the house or house sites to be allocated, land to be allotted, one-time transportation allowance and subsistence allowance, one-time allowance for small traders and artisans, payment for cattle shed and petty shops, fishing rights, annuities, other entitlements etc. if a family is displaced multiple times then additional compensation is paid. The rehabilitation and resettlement package is to be paid to all those who are affected in addition to the compensation for lost assets as mandatory. As far as deciding the ambit of who establishes as an affected party, the Act grows it to be comprehensive of people and families who relied on the land as their essential livelihood means. This likewise incorporates farming labourers, tenants, beneficiaries and so on.

The collector has to ensure infrastructural facilities and basic amenities for the displaced people at the site of resettlement. Any arithmetical or clerical mistakes in the awards or any errors in the award can be corrected by the order of the collector not later than six months from the date of the award. The persons concerned would be given notice of the correction immediately. The Collector shall take possession of the land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30. The Collector shall be responsible for ensuring that the rehabilitation and resettlement process is completed in all its aspects before displacing the affected families.

UK- Compulsory Purchase

The eminent domain is referred to under different names in different countries. While it is an eminent domain in US, land acquisition in India, in the UK is referred to as compulsory purchase. The principal Acts are the Lands Clauses Consolidation Act 1845, the Land Compensation Act 1961, the Compulsory Purchase Act 1965, the Land Compensation Act 1973, the Acquisition of Land Act 1981, part IX of the Town and Country Planning Act 1990, the Planning and Compensation Act 1991, and the Planning and Compulsory Purchase Act 2004. The law that regulates compulsory purchase is a mix of both statutes and case laws. The laws which regulate the procedure of providing compensation after purchase are collectively referred to as the compensation code.

Compulsory purchase enables the acquiring authorities to acquire land without the land

owner's consent. The acquisition is made for the furtherance of public interest in the development of infrastructure, regeneration and any kind of developmental activity which in turn facilitates the improvement of economic, social and environmental well-being. The laws are however complex which makes the acquisition process cumbersome.

Principles

The compulsory purchase has its basis founded on the principle that the owner of the land which is compulsorily purchased must be provided with compensation and that he would neither be worse off nor better off in terms of finance than he was before such acquisition. This means the compensation cannot be more than what is needed to remedy the financial loss. The calculation of the compensation is done after taking into account the value of the property acquired without having regard to the compulsory purchase and its related effects.

Process

The statutes lay down the principles of acquisition but do not per se allow the acquiring authorities to acquire any land. For acquisition, the authorities are required to make a compulsory purchase order which in turn has to be confirmed by the confirming authority. The confirming authority is the relevant government minister or an inspector who is authorized to act on his behalf and is appointed for that purpose.

The process of compulsory purchase has several steps in it-

- 1- Preliminary inquiries- in this step the acquiring authorities take into consideration whether or not the land is required to be acquired and to what extent.
- 2- Compulsory purchase order preparation- when the acquiring authority decides to go ahead with the acquisition it gathers information about the ownership of the land etc and prepares the compulsory purchase order. It submits the order for confirmation to the confirming authority and publishes it.
- 3- Objections to the order- the objections to the order are invited and those who have any submit those objections.
- 4- Compulsory purchase order decision- the confirming authority decides whether to accept or modify or reject the Compulsory purchase order.
- 5- Possession and acquisition- the ownership of the land is taken by the acquiring authority.
- 6- Compensation- the compensation is then paid to those entitled to it.

Once the Compulsory purchase order is confirmed then acquisition takes place. There are different ways in which acquisition can take place-

1- Agreement- the acquiring authority first attempts to acquire the land required by an agreement before the Compulsory purchase order. Even when the Compulsory purchase order is made it does not stop the acquiring authority to purchase the land by agreement.

2- Notice to treat/notice to entry- the land can also be acquired by serving a notice of treat followed by a notice to entry or by the service of both the documents together. The notice to treat would state that the acquiring authority is ready to negotiate the terms of acquisition and the notice is to be served within three years of the publication of the compulsory purchase order.

3- General vesting declaration- an alternative to notice to treat/entry, the acquiring authority can acquire land by general vesting declaration. A general vesting declaration in addition to granting a right to entry and possession also transfers the title of the land to the acquiring authority.

4- Acquiring short tenancies- the short tenancies here refer to the interests no longer than a year and these can be acquired through landlord or tenant powers or notice to treat/entry and not by general vesting declaration.

5- Blight notice- when the value of a property is reduced as an effect of development proposals or planning, blight occurs. This makes the land owners sell the property below the market price. Whenever this happens the aggrieved person can serve a blight notice to the body which is responsible for it and require the body to buy the affected property at its unrestricted value.

Compensatory framework

The principal laws that deal with the compensatory framework after the compulsory purchase are the compulsory purchase act 1965 and the Compensation Acts. There are five basic elements while determining the compensation payable and which are-

1- Land's value- the value of the land is the first basic element in the determination of the compensation payable. The owner of an interest in land would be entitled to receive the open market value of the property³⁴. Interest also includes freehold, leasehold or easement of the property³⁵. This is the "value of the land... if sold on an open market by a willing seller".

³⁴ Section 5 rule 2, Land Compensation Act, 1961

³⁵ Re Ellenborough Park [1955] EWCA Civ 4

“The Privy Council ruled that compensation could not include any increases which were the result of the scheme for which the acquiring authority was purchasing the land. In addition, the no-scheme rules³⁶ in the Act disregard any decrease in value which is the result of the scheme. The land must be valued as if there was never any scheme, and the valuers must imagine what developments would or would not have occurred in its place³⁷”.

2- Severance and injurious affection- where only a part of the property is acquired and not the whole then it results in severance and if the severance causes any effect which is detrimental to the remaining property then compensation can then be claimed for it. Injurious affection³⁸ is a detrimental effect on the property after the acquisition.

3- Disturbance- compensation arising from disturbance to the occupiers of the property is available too³⁹ which is an account of the loss and cost that the occupier bears because of being displaced from the property acquired by the authorities. This encompasses the loss of goodwill, rent, profits etc and expenses involved in shifting.

4- Home loss payments- Section 29-33 of the Land Compensation Act 1973 deal with the home loss payment which is a sum additional recognizing the discomfort of the people who have to move out of their homes. The amount of the compensation is generally a said percentage of the property’s market value at the date of acquisition.

5- Fees- the fees which the landowners are required to pay and which are directly related to the compulsory purchase order and are also reasonable for instance the legal fees and surveyors fees etc are payable in compensation.

In the event of compensation not reaching an agreement through negotiations, the same can be referred to the Upper Tribunal (Lands Chamber). Anyone of the two parties, either the affected person or the acquiring authority can refer the same to the tribunal and the tribunal would henceforth determine the disputed compensation⁴⁰.

The compensation is valued at whichever is the earliest- the date on which compensation is agreed upon, the date which is decided by the lands chamber of the upper tribunal or the date

³⁶ The effect of the scheme underlying a compulsory purchase order to be disregarded in assessing compensation, there are three sets of rules that require the scheme underlying the CPO to be disregarded: the scheme cancellation rules. These apply to the determination of the planning status of the land for the purposes of LCA 1961, s 5(2), the scheme disregard rule, and the judicial rule to disregard increases and decreases in value due to the scheme underlying the acquisition set out in *Pointe Gourde Quarrying and Transport Co Ltd v Sub-Intendent of Crown Lands*

³⁷ *Myers v Milton Keynes Development Corp* [1974] 1 WLR 696

³⁸ Section 10 of the Compulsory Purchase Act 1965

³⁹ Section 37, Land Compensation Act 1973

⁴⁰ Tribunal Procedure (Upper Tribunal) (Lands Chamber) Rules 2010

when the acquiring authority acquires the land by entering and taking possession or vesting of rights.

III. CONCLUSION AND SUGGESTIONS

As far as the law per se is concerned, the statute governing land acquisition in India is at par with what can be considered as best both for the interests of the landowners and the government. The problems arise with the implementation of the provisions. In the middle of making of regulation, what's more, its implementation, people can observe escape clauses and the issue continues in an alternate structure. Any activity taken by the public authority brings about change in the method for exploitation. Destitution figures that exist in the farming class for quite a long time are an immaculate confirmation or proof that land acquisition reforms have failed to satisfy the pointed targets.

There are various issues which can be identified-

- Poor implementation of rehabilitation and resettlement- the provisions provided for rehabilitation and resettlement are very crucial for the affected families and the provisions seem to have been made in good faith for protecting their utmost interests but the ground reality when it comes to implementation of these provisions is strikingly different. The rehabilitation and resettlement provisions are very poorly implemented in reality. This leads to the marginalization of the already poor landowners and their families.
- Compensation not paid- there are numerous instances where the farmers are not paid compensation at all let alone fair compensation. One of such numerous instances was when three farmers were not paid compensation by the state government of Telangana despite a court order which required them to not dispossess them without payment of compensation and rehabilitation. The farmers belong to Pragnapur of Kondapaka mandal and Jaganguda of Shameerpet mandal. Their land was acquired for the construction of the Mallanna Sagar reservoir, which is part of the Kaleswaram irrigation project⁴¹.
- Transaction costs- the farmers after being displaced face hardships in settling on new land. They are unaware of the alternatives for the land, the land characteristics; they face information constraints etc which results in their marginalization as they settle for inferior lands.
- Dilution of the law by states- land acquisition is a subject of the concurrent list and both centre and state can enact laws on this subject. Thus states can amend the laws with the assent

⁴¹“Why farmers not paid for acquisition: HC”, THE TIMES OF INDIA <https://timesofindia.indiatimes.com/city/hyderabad/why-farmers-not-paid-for-acquisition-hc/articleshow/87230701.cms>

of the President. The Land Acquisition, Rehabilitation and Resettlement Act makes provisions for the protection of the interests of the landowners but these provisions are diluted by the states. Exemption of certain sectors from a cost-benefit analysis, social impact assessment, obtaining the consent of farmers etc is the way of diluting the law. This becomes a way of forcible acquisitions and unfair compensation. In the state of Maharashtra, only projects of a private nature need to adhere to the two clauses. In the state of Tamil Nadu exemption has been provided from consent and SIA clauses to those acquisitions which are made under the four state laws. In the state of Andhra Pradesh, the notice period for the public hearing has been reduced to one week from three weeks for SIA. In the state of Jharkhand, there is no provision which provides for the return of land which is unused for five years.⁴²

Suggestions

- Greater emphasis on consultation- the provisions governing land acquisition should incorporate more participation and require consultation from the people who are affected by the acquisition. These consultations can be ranging from the selection of sites to the form and quantum of compensation. Moreover, the participation of the affected people in terms of making them aware of the process and their rights is much needed.

- Pooling- Under pooling, a gathering of landowners surrender their territory to a governmental agency, which fosters the land with amenities and infrastructure and gets a piece of it once again to the proprietors. The thought behind this is that with all the turn of events, the smaller land pieces got back to the proprietors will be worth as much as the original land, and the public authority saves money on costs incurred in acquisition. An example of pooling has been the farmers' offering 33000 acres of land to the Andhra Pradesh government for the development of Amravati⁴³. Another example is where farmers pooled their 400 acres of ancestral land on Pune's fringes for the Margapatta city model⁴⁴.

- Information delivery- the notifications regarding acquisitions are made through general announcements and when made personally the notification is delivered to the registered owners only. In the case of an owner not being registered and in the case of a third-party interest holder the information often does not reach them and they are left unaware of the process which would

⁴² "Five years on, has land acquisition act fulfilled its aim?", THE ECONOMIC TIMES (https://economictimes.indiatimes.com/news/economy/policy/five-years-on-has-land-acquisition-act-fulfilled-its-aim/articleshow/65639336.cms?utm_source=contentofinterest&utm_medium=text&utm_campaign=cppst)

⁴³ "Farmers offer 33000 acre land for Andhra Capital at Amravati", THE INDIAN EXPRESS (<https://indianexpress.com/article/india/farmers-offer-33000-acre-land-for-andhra-capital-at-amravati-4710013/>)

⁴⁴ "Kolhapur to replicate Magarpatta model", THE TIMES OF INDIA (<https://timesofindia.indiatimes.com/city/pune/kolhapur-to-replicate-magarpatta-model/articleshow/61176742.cms>)

be affecting their interests. The information delivery needs to be improved in such a way that information reaches every person who is going to be affected by the acquisition. Moreover, the notification period can be elongated a little to enable the person to understand the implications of the process and then react.

- Timely payment of compensation- payment of compensation promptly is critically important. The non-timely payment of compensation to the affected families marginalizes them. Though a time frame of three months has been provided in the act for compensation under section 32 yet the implementation of the provision on the ground is not as expected. The land owners have to wait for an unduly long duration of time for getting paid which leaves them stuck with no land and no money.

- Negotiation - Japan is a nation which employs negotiation for reaching the compensation which is to be paid to the stakeholders. Singapore and the Philippines recommend that government agencies and developers first negotiate with stakeholders to arrive at a mutually acceptable compensation package that may include monetary as well as non-financial compensation for the property acquired⁴⁵. Such an approach leads to a satisfactory and economically efficient way out for both the government and the stakeholders. The negotiations can be held within a competitive and liberal framework which would facilitate fetching a value close to the market value.

- Inadequate compensation- A typical reason for the disdain concerning the amount of compensation among recent landowners is the expansion in the worth of the land post-acquisition and improvement, none of which builds to the dislodged landowners themselves, yet could accumulate to other landowners who own land on the edges of the development. In a recent case, the Supreme Court held “The potentiality of the acquired land is one of the primary factors to be taken into consideration to determine the market value of the land. Potentiality refers to the capacity or possibility for changing or developing into the state of actuality. The market value of a property has to be determined while having due regard to its existing conditions with all the existing advantages and its potential possibility when led out in its most advantageous manner⁴⁶. Thus this must be taken into consideration during the determination of the value of compensation to be awarded.

Innovation in acquisition- there can be innovation in the acquisition of land, more than one

⁴⁵ Ashwin Mahalingam And Aditi Vyas “Comparative Evaluation of Land Acquisition and Compensation Processes across the World”, ECONOMIC AND POLITICAL WEEKLY, Vol. 46, No. 32

⁴⁶ **Up Awas Evam Vikash Parishad Versus Asha Ram Thr. Lrs. & Ors.**
[Arising out of SLP (Civil) No. 4445 of 2020]

method can be used in the process. An instance of such an innovative method has been the acquisition of Salboni where JSW Bengal steel gave job per family, shares in the company and offered cash compensation⁴⁷.

⁴⁷ *JSW Steel told to pay compensation by West Bengal*, MINT, <https://www.livemint.com/Industry/15Ma3Y5i7pMb3J2VcQ2DVN/JSW-Steel-faces-new-threat-from-West-Bengal.html>