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The new land law: Are the states up to the challenge?

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In the third part of the land law debate, Ram Singh asserts that the Act is biased against projects of state governments, and emphasises the need for states to undertake long overdue land reforms. He suggests amending the Act such that Public Private Partnerships and private companies are clearly distinguished, and there is no scope for strategic manipulations during the acquisition process.

The President of India has granted consent to the Parliament approved 'Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Bill'. On several counts, the new law is better than the extant Land Acquisition Act, 1894. It is for the first time that the project affected people have been entitled to Rehabilitation and Resettlement (R&R) benefits as a legal right. However, the legislation has serious flaws too.

For instance, it offers enough opportunities to the resourceful to make money simply by engaging in sales and purchases while the acquisition process is on. Moreover, it confuses Public Private Partnerships (PPP) with private companies, and in the process makes infrastructural development by the states and urban local bodies unnecessarily difficult. The timeline for various activities to be undertaken as a part of the acquisition process is unreasonably lengthy. Indeed, the Act throws up serious challenges for the states.

Discriminating against the states

The lawmakers have failed to notice that the Act discriminates between projects of the centre and those of the states. All of its provisions apply to projects of the state governments, including Social Impact Assessment (SIA), increased compensation to land owners, and R&R of project affected people. However, as many as 13 categories of projects of the central government including mining, coal, and railways projects have been let off, at least as of now. The list of laws governing the exempted projects is provided in the fourth Schedule of the Act.

True, the centre is required to amend the exempted laws so as to provide for better compensation and R&R benefits. Further, the process of amendment is required to start within one year of notification of the Act. At the same time, the Act provides room for exemptions and modifications with which its terms should apply to the laws proposed to be amended. Besides, all of the amendments will have to be introduced in and passed by both houses of the Parliament. There is no reason to believe that the central legislature will amend as many as 13 laws any time soon - it took more than seven years to amend the archaic Land Acquisition Act, 1894. In any case, there is no time limit within which the whole process has to be completed. Therefore, the large number of people affected by mining, coal, railways and the other currently exempted projects will continue to get awfully low compensation and no R&R benefits, at least in the foreseeable future.

The bias is even worse when it comes to projects funded through PPPs. These partnerships have been

used by the centre as well as the states to mobilise private investment for public goods and services. The land is provided by the concerned government. Under the new law, the centre can carry on with this practice. For instance, for highways' PPPs, the central government can continue to acquire land using the National Highways Act, 1956. However, the PPP route has become unnecessarily difficult for the states and local bodies. If a state or municipality would need land for a road or flyover funded through PPP, it will require consent of 70% of land owners. Besides, it will have to comply with all other provisions of the Act.

There are instances of states facilitating real estate projects of private companies in the garb of PPPs. Such practices should be banned altogether. At the same time, the PPP mechanism has enabled funding of many genuinely public-purpose projects such as national and state highways, ports, airports and urban development projects.

There is no valid reason to treat land acquisition for PPPs differently from that for publicly-funded projects, as long as the land is used for a genuine public good, its ownership remains with the government, and there is no real estate component to the project. This discrimination, by discouraging private sector participation in the PPPs, can deliver a blow to the resources available to states and urban local bodies for infrastructure development. Moreover, it is against the spirit of federalism enshrined in our constitution, and its legality can be questioned.

Vulnerable to litigation

Besides, the Act is open to strategic manipulations. It requires the compensation to be based on sale deeds pertaining to the period of three years prior to the date of notification under Section 11 of the Act. The problem is that the stipulated three years include the time period between the dates of Section 4 and Section 11 notifications. Through the Section 4 notification, the government will announce its intention to acquire land and start the SIA, and the acquisition decision will be confirmed formally by the Section 11 notification. The time gap between these two notifications can be as much as 18 months. Therefore, the resourceful can make money simply by engaging in sales of small plots at artificially high rates, and then using these transactions as evidence to demand higher compensation. There is nothing in the Act to prevent this misuse. Predictably, disputes over compensation will abound.

The new law is vulnerable to litigation on yet another count. Under it, as is the case under the extant law, government officials are required to assess market rate on the basis of sale deeds. There is tendency among officials to play safe and award compensation using relatively low-value sale deeds. In contrast, courts tend to use higher-value sale deeds. Consequently, the average of court-awarded compensation is several times higher than that of government, as is confirmed by a study of Punjab and Haryana High Court judgments (Singh 2013). Obviously, acquisition-affected parties have reasons to approach courts to get their dues.

There is no reason to expect government officials to act more diligently in the future. In fact, the incentive to litigate can be even stronger under the new law. Now, the compensation will be two to four times the assessed market value – as opposed to 1.3 times currently. Consider an example of a piece of land measuring 100 square meters. Say, the government officer uses sale-deed rate of Rs. 1,000 per square meter for determining compensation, and the court (or the Authority provided by the Act) uses a sale-deed rate of Rs. 1,400 per square meter. A simple calculation shows that the gains from litigation increase from Rs. 42,000 under the current law to as high as Rs. 160,000 under the new law, making

litigation all the more attractive.

Contrary to the popular perception, the largest proportion of projects affected by the new law will be of states and local bodies. Therefore, the cost of disputes and litigation is also likely to be highest for them.

Options for the states

On a positive note, the new law nudges the states to undertake much needed reforms related to the ownership, transfer and use of land. The Act severely restricts the scope of compulsory land acquisition for companies. However, it puts no restrictions on the transfer of agricultural land to other developmental activities, as long as the land is purchased directly from the owners. The terms of such transactions are to be decided by the states. There is consensus that the condition of R&R should not apply to projects of size less than 50 acres in urban areas and 100 acres in rural areas. However, even within these limits whether the project developers will actually be able to buy the required land will depend on transaction costs – whether land titles are clear, records are updated and land use regulations are transparent. Poor land records and resulting disputes have held back development of an efficient land market, and farmers' access to bank credit. In fact, they have hampered the overall development of the economy. These issues fall in the domain of the states, and need to be addressed without delay. The states failing to do so, will pay high price.

The transactions cost of direct purchases can be reduced greatly by making ownership and land-type records clear and verifiable. First of all, land records should be updated and digitalised. These records should be publicly available to enable their use by owners, potential buyers and courts for verification of titles. In addition, the states should ensure real-time coordination between the agencies responsible for registration of land deals and those responsible for maintenance of land records. By removing uncertainty regarding ownership, these measures can go a long way in facilitating voluntary transactions.

Moreover, land use regulations need to be transparent. The existing regulations are discretionary and therefore a source of rent seeking. There is a need for transparent zoning regulations, wherein different zones are set up for different activities. Also, basic infrastructure such as roads, water, sanitation and power should be provided. Having done that, there should be no further regulations imposed on the land, its use, sales and purchases, as long as the land use is among the permitted ones.

As far as big projects are concerned, collective bargaining with the owners or their representatives seems to be an important channel for reducing transaction costs. There are several instances where owners themselves have taken initiative to pool and provide contiguous land (For illustration, see Singh 2012). Besides, it will help create a facilitating environment for lease agreements over the land, under which the industry gets land and farmers get regular income. In addition to enhancing availability of land for developmental purposes, such agreements permit sharing of ownership and its benefits over time, thereby making farmers stakeholders in the project rather than land losers.

Concluding Remarks

To sum up, the Act will go a long way in giving project-affected people their dues. However, the states will have to undertake long overdue land reforms to reduce transaction costs of voluntary transactions over land. The Centre should consider amending the Act to rectify the problems discussed above. In particular, the amended Act should distinguish between PPPs formed only to tap private funds and

expertise for public purpose services, and those involving transfer of ownership or long-term rights over land to the private sector. Vulnerability to litigation can be reduced if an independent authority is created to determine compensation based on full information about the market value of land. Finally, the modified Act should have no scope for strategic manipulations of the types discussed above.

A shorter and slightly different version of this article has appeared in the Economic Times.

Further Reading

- Singh, Ram (2012), “Inefficiency and Abuse of Compulsory Land Acquisition: An enquiry into the way forward”, *Economic and Political Weekly*, 2012, Vol. XLVII (19), pp. 46-53.
- Singh, Ram (2013), “Litigation over Eminent Domain Compensation”, International Growth Centre, LSE, Working Paper, Published on 6th September 2013, Available at http://www.theigc.org/sites/default/files/Singh%202013.pdf