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Analysis of Land Acquisition Amendment

Introduction

In early 2014, the Congress Government implemented The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 which replaced the previous Land Acquisition Act, 1894. The Act was meant to better balance the power of eminent domain of the government to forcibly acquire land with the rights of citizens affected by such land acquisitions. After the Modi Government took office, it proposed changing the law through an amendment in Parliament. The proposed amendment was dropped due to opposition from various quarters. This article examines the proposed amendment law, why it was needed and why the amendment law was not workable.

Key issues with Amendment Law

The Act required a social impact assessment (SIA) to be conducted. The requirement of an SIA was proposed to be exempted in the case of certain sectors. The government was right that an SIA is difficult in the case of defence related projects as public enquiry and information on the purpose of the project will result in disclosure of sensitive information. The government however provided no explanation for why it has exempted several non-defence sectors. An SIA is required anyway as part of identification of owners, and working out compensation and rehabilitation. One reason could be that the SIA which starts the acquisition process occurs at least 6 months before the preliminary notification which is the date on which the market value of the property is determined. So there is time for prices of the land to appreciate before the market value is fixed. This is a matter of public policy but given that compensation is between 2 to 4 times market value and interest has to be paid at 12% for the same period, it does seem impractical. Market price must be determined based on the price at the time the Government announces its intention to acquire the property and not take into account the obvious increase in the price of the property because of the acquisition and proposed project itself.

Next we look at the consent clause, perhaps the most important aspect of the amendment. This provision requires the consent of affected families, 70% in the case of private-public projects and 80% in the case of private projects. Unfortunately, the consent clause in the current law simply does not work. It requires the consent from all "affected families", that is, including persons who rely on the land for their livelihood and not merely owners. Given the unorganised nature of this sector and the lack of documentation, identifying non owners who depend on the land would seem like a nightmarish exercise.

Even otherwise, the consent requirement is hard to meet. The chances are not high that if you announce you want to do a project and require land in a particular area, 80% of the owners will voluntarily sell their land to you. While there are land aggregators who purchase pieces of land from farmers, build a large contiguous parcel and then sell the same for a much higher price, this is generally done slowly and not in a time sensitive manner as a business needing the land would require.

It is interesting to examine US law on this issue – the power of eminent domain of the government and particularly, its power to purchase land for a private party not for public use (direct use by the public such as a railway station or post office) but for a public purpose – projects that result in overall economic benefit. Using the power of eminent domain for private projects is somewhat ideological and different states and courts in the US have taken a different position on this. In a country like India which badly needs development, has overcrowded cities and is competing with authoritarian China, the argument in favour of using this power for private projects seems to be powerful.

Some commentators in the US contend that eminent domain is not required for a private party because it could instead acquire land surreptitiously through third parties. This argument does not consider "strategic holdouts" – people who hold out till most of the land is acquired and then try to sell their land at an astronomical price. Or that some people simply don't want to sell. The consent

requirement for use of eminent domain might work well then – assuming you acquired land up to the consent threshold, you could rely on the government to acquire the rest of the land. Unfortunately, the current law does not make this possible. It should have stated that the land you have already acquired as part of the land parcel would be considered towards meeting the consent requirement.

There are concerns as to whether even this solution would work. It is hard to maintain confidentiality when everyone is receiving offers for purchase of their land. Or, what if after purchasing most of the land, the government refuses to acquire the balance? There is also a requirement that if you exceed notified limits on acquisition of land, you have to register with the government and meet the rehabilitation requirements of the Act. Doing so will surely kill secrecy, which is the key to acquiring large land parcels.

Instead of providing this kind of a rational explanation for why the consent clause does not work, the government stated that the current law allows for 13 exempted areas and they are merely adding another 5. This is not entirely correct as infrastructure, industrial corridors and social infrastructure, all of which are undefined, cover more or less everything. In fact, the latter would cover golf courses, resorts, etc.

The third key amendment is the power of the government to prescribe a longer deadline for utilization of the land than 5 years. There is in fact a need for both strictness, so that land owners are protected, and flexibility, especially with regard to certain types of projects that may take longer to complete. I believe that the law can provide some safe harbours - if you are building the project on the land, this amounts to use, even if the construction is not completed. There could be a minimum threshold of say at least 80% of the land should have been utilized and a plan in place for utilization of the remainder must be accepted by the government. Or that the extension should be justifiable. The law could also provide an exemption for very large projects, such as development of a new city. Past experience has shown that an unfettered power to the government to prescribe any

period leaves too much scope for abuse so it is really a question of building legitimate exceptions to the 5 year rule. The 5-year rule is absolutely important however so that land owners are not kept in limbo endlessly, which has been the case quite often till now.

Finally, there is a provision in the Act that multi crop irrigated land cannot be acquired. The government seeks to exempt this in the case of the same exempted sectors. The main criticism of this provision is that it cannot work for extremely large projects, such as development of new cities, because as the Nobel Laureate Amartya Sen has pointed out, many important cities in the world are situated on fertile land. The amendment could instead state that it should not be more than a prescribed percentage of the total land parcel or exempted this provision for large projects of a prescribed size. In fact, in general, the current law does not sufficiently

consider the requirements of developing new cities.

One welcome proposal is the applicability of provisions relating to compensation and rehabilitation in the law to 13 statutes which were hitherto not covered.

Conclusion

The current law passed in 2013 is a far reaching one which goes much further in its effort to compensate an individual for the loss of his land than possibly any legislation in the world. It deals not just with compensation but with rehabilitation and building in safeguards in terms of procedures and deadlines. It does however need some tweaking so that practical difficulties are removed. In fact, there are many more changes that are required than what the government proposed. The government and

the opposition need to carefully try to balance interests so that unnecessary litigation and agitations are avoided and the law becomes an instrument for development. We should hope that both will put aside narrow political interests to work together to do this in the same spirit in which the 2013 law was enacted.

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