

LANDING ANOTHER BLOW?

With the Land Acquisition Act, 1894, being ready to be replaced by the Land Acquisition, Rehabilitation and Resettlement Bill, 2013 (LARR), many think that the history of abuse of the power of eminent domain is set to be expunged. However, having given the emphasis on the transparency and swift acquisition of land for industrialisation and development of essential infrastructure facilities, is the bill really expunging the abuse of its predecessor or creating a new bureaucratic abuse & legislative ambiguity?

The Indian Government is only a step away from successfully enacting one of India's most significant policy changes with a near consensus among political parties on a new land acquisition law,¹ taking the country to the verge of removing what is perceived as the biggest impairment to the next wave of industrialisation. However, the new law ignores both the reality of land markets in India and the States' past record and as highlighted by one of the columnist of a national daily, "In an unexpected affirmation of Karl Marx's view on capitalism, this bill carries within it the seeds of its own destruction."²

India is a growing economy, and one of the things that a growing economy needs is *land*. There has been increase in demand for land from many sources, such as infrastructure, industry, mining, and urbanisation, including real estate. These activities are often seen as driven with profit motives however, they boost social purposes too. The Preamble of the LARR Bill, envisages the legislative intent of transparent land acquisition process fostering better post acquisition social and economic status. Given that, what is pertinent to note, that the Bill not only paves way for an impending disaster in land pricing mechanism but also is so cumbersome and impractical that neither industry nor land owner will benefit.

To begin with, the LARR Bill has been promoted for R&R (Rehabilitation and Resettlement) provisions; perhaps an attempt to regulate development induced displacements, though strangely it exempts 16 other Acts from its application.² This is strange as the percentage of affected persons under these exempted Acts is more than persons affected by acquiring land for industrial purposes yet many of these do not provide for R&R provisions. Another interesting provision laid down is, mandatory R&R for all private purchases through private negotiations if the land purchased is over 100 acres in rural areas or 50 acres in urban areas.³ But what is more interesting is the attempt of the Parliament to regulate matter concerning State legislatures.

Section 2(2)(a) of the Bill though provides for R&R application over land acquired/purchased by private companies, however it is ambiguous with reference to the type of land (agricultural/ non-agricultural). Parliament by defining it as a blanket provision has exceeded its legislative power, as power to make laws on *transfer and alienation of agricultural land* is the States' prerogative.⁴ Therefore, inviting future disputes on the interpretation and scope of States' power and striking a blow to the constitutional sovereignty of the States in India.

This Bill also introduced the concept of Social Impact Assessment (SIA), a study to be conducted for every

¹ The LARR Bill has been passed by both, the Rajya Sabha and the Lok Sabha, with President's approval, LARR Bill will become an Act replacing the Land Acquisition Act, 1894.

² Sanjoy Chakravorty, 'On land, No lessons Learnt', *The Indian Express*, 30th August, 2013. Available on <http://www.indianexpress.com/news/on-land-no-lessons-learnt/1161987/>, last accessed on 30th September, 2013.

² The Fourth Schedule, (Section 98), the Land Acquisition, Rehabilitation and Resettlement Bill, 2013

³ Section 2(2)(a) & Proviso to section 2(2)(a), the Land Acquisition, Rehabilitation and Resettlement Bill, 2013

⁴ Item 18, State List, 7th Schedule, Constitution of India

acquisition of land⁵, though there is still an ambiguity pertaining to the threshold limit provided for the acquired land.

This ambiguity would engulf projects as small in scale as building public toilets or bus shelters, etc. with unnecessary delays. Further it is provided that each SIA report will undergo evaluation by multi-disciplinary expert group, however, there are no guidelines to determine the methodology for such assessment and the Bill does not provide for such guidelines to be delegated to the Rules, thus leading to discrepancies in the assessment of each SIA study submitted and inadvertently, this time, to more delay.

Though the introduction of consent of 70 per cent of the project affected people in case of PPP projects (80 per cent in case of land acquired by private companies) has been debated by many columnists/scholars⁶ but on the contrary industries must not get scared as in most cases of mono-cropped agriculture, farmers themselves are keen to get out of uncertain and risky crop production. On the other hand, endorsing common expectations, the bill tries to do justice to the landowners and other affected persons by prescribing that besides compensation, each affected house-hold is either provided employment, or given a monthly sum of Rs. 2000 for 20 years, or Rs. 5 lakh as a lump sum. The total cost, which the industry will bear, will not be more than 1-3 per cent of the project cost.

Now, considering costs (employment/monthly/ lump sum amount) as usually industries employ the regional labour force, this is not a concern for industries. Also, such costs are easily recoverable along a period of time. It's the *delay* in getting secure possession over land that is a matter of concern. The Bill makes it mandatory to file a SIA report and that such report is to be duly passed by the group of experts. Furthermore, there would be

R&R committee, a state level committee and a national monitoring committee to pontificate on the reports generated by junior committees. As now under the Bill every private purchase is subject to administrative discretions, it will thus contribute towards more delays and this time bureaucratic. The Bill emancipates delays which are latent in form of procedures. To give an example, considering the time limits for following each procedure, without any time extension, SIA (6 months) + Appraisal by Expert Group (2 months) + Preliminary notification (12 months) + Declaration (12 months) + Award (12 months) + Possession (6 months) equals to 50 months (4 years). Such delays will delay the inception of the project, thereby delaying payment of compensation and somehow vitiating the legislative intent to endorse the farmers/landowner's interest.

With reference to the so called overfed land costs under the Bill, critics assume it would significantly push up land costs in the country leading investors to choose competing countries.⁷ However, inadvertently or perhaps advertently, such elevated land costs, four times the market rate for rural land purchases and two times the market rate for urban purchases, the legislatures are promoting the idea of setting up industries in remote/rural areas, and in a way de-urbanising the urban.

The Bill has been founded on many impractical and tedious bureaucratic principles, and therefore lacks general support, as some define it as anti-farmer and pro-bureaucracy⁸, this Bill surely will start new problems than solving old ones, and undoubtedly will prove to be a road block for upcoming projects, a breeding ground for litigation and delays.

⁵ Section 4 (1) the Land Acquisition, Rehabilitation and Resettlement Bill, 2013

⁶ One such objection has been raised by Mr. Rajiv Kumar & Mr. Prashant Kumar, in their article, *Land Bill a mortal blow to India's modernisation*, Financial Express, published on 05th September 2013, New Delhi.

⁷ *Ibid.*

⁸ N.C. Saxena, Member, National Advisory Council, in his article, *The land Bill is pro-bureaucracy, anti-farmer*, Business Standard, published on 02nd September, 2013, New Delhi.

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