

## **Chapter 4**

### **4.0 LARR 2013 and Land Acquisition conflicts in India**

#### **4.1 Context of LARR 2013 Introduction**

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In the post independent India Land Acquisition Act (LAA1894) was amended twice, once in 1962 and the next time in 1984. But that could not meet the aspirations of the high growth post- liberalization era. For faster economic growth hassle free land was required for rapid infrastructure growth and industrialization. China's economic growth during late twentieth century drew international attention and applause. India wanted to emulate China's SEZ policy for faster growth. In 2005, the UPA government passed the SEZ Act, whose rules came into operation in 2006. The objective might be to boost growth and exports. But in reality this was used to grab land quickly and cheaply for the lucrative housing sector, especially on the urban fringe. (Chakravorty S. , The Price of Land-Acquisition Conflict Consequence , P118, 2013). This added fuel to the already brewing fire. "Nearly 200 SEZ (special economic zones) were sanctioned and many of them close to major cities. More than half are being developed by Real Estate Companies" (MALLIKARJUNA, 2014), raising suspicion. Land buyers can be public or private sectors, but formal land acquisition was to be undertaken by government authorities. This had put the state and the land owners on a collision course whenever there was a need for land for private or public projects. The protest movement in Nandigram (West Bengal) where 14 protesters died in police firing drew national and international attention,. In and around the same time the protest movements over Maha Mumbai SEZ, Vedanta land in Orissa, TATA's Singur land hogged the news headlines. Demand to scrap the Land Acquisition Act (LAA 1894) gained momentum. Quick reach and constant scrutiny by electronic and print media spread public awareness, making eviction politically more difficult to execute. Resistance movements of Singur and Nandigram which led to fall of thirty four years of Left Front rule in West Bengal were the tipping point. Strength of rural backlash became apparent. This brought the much awaited urgency in changing the century old land acquisition act. Land Acquisition Amendment Bill 2007 which could not pass in Rajya Sabha or the Amendment Bill which remained dormant suddenly came in the forefront of political activities. With the heightened

political compulsion, The Land Acquisition Act 1894 was replaced by LARR 2013 (Land Acquisition, Rehabilitation and Resettlement Bill 2013). This bill has made rehabilitation and resettlement of the evicted population a part of the Act itself. Compensation amount was quadrupled for agriculture lands. Parliament election in sight, the pro-farmer land acquisition bill could muster support of almost all the major political parties. The Act was made operational from 1<sup>st</sup> January 2014. But this could not improve the investment scenario.

Land remained one of the major worries in the faster economic growth of India. In 2015-16 nearly 2.5lakh crores of investment was stalled (Vyas, 2016). Cost and time push (through consent clause of the Act and SIA) became the new issue from LARR 2013 slowing down investment. Finance Minister Mr Arun Jaitley in his Face book posting had commented “A larger public interest always prevails over private interest. A highly complicated process of acquisition which renders it difficult or almost impossible to acquire land can hurt India’s development.” The government focused to simplify the process of acquisition of the Act. LARR 2013 was taken up for amendment before it was even one year old. On 31st December 2014 the Act was amended through an Ordinance. In March 2015 the Ordinance was replaced with a Bill- “The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Second Amendment) Bill, 2015”. However, the Bill could not master political consensus and was not passed by the Indian Parliament.

#### **4.2 Land Acquisition Amendment Bill, 2015**

The amendment is to cut short the delays in the process of acquisition due to SIA or Consent clauses in certain sectors of investments and to widen the scope of the benefit of exclusion to a larger segment of investment destinations. However, the land acquisition process had often been time consuming in the past and the delay was not due to SIA or Consent clauses. It was rather because of the absence of the contextual definitions of certain fundamentals of the Act in the LAA1894 Act. To clear the ambiguities judicial interventions were necessary. Judicial interpretations being case specific the resolution could not be achieved to move out of the conflict helix.

The new Act (LARR2013) also did not try to bring clarity through legislative clarifications in number of areas. There was no attempt during the amendment process either. Ambiguities remained for a clearly defined scope of “Public purpose” in the context of macroeconomic priorities of the states in twenty first century. Nations around the world are seeking private investments to provide public services. India’s telecom and information technologies have reached the remote villages of India because of private investments and there is a clear need to recognize this in the scope of the new Act. Similarly the amount of compensation can only be “just” when it considers the larger tax paying population also as one of the stake holders in the decision making. Compensation increased up to 4 times the market value may not commensurate with the gain the tax payers can actually get from the project directly or indirectly.

For the computation of “just” compensation purpose, market value of the acquired land is derived from the average of actual sale price in the near vicinity during the previous 3 years. It assumes all lands in near location command the similar premiums or sufficiently close to permit averaging and their average represents the market value of any land in the locality and the same is true for the acquired land. But the land value varies based on their qualitative and quantitative attributes and with smaller plots this is more so. Further in a thin land market number of recorded sales is normally not many and by their characters these are not arm’s length sales. The negotiated prices are not always the true market value. And when it comes to comparable land sales with similar attributes the reliability drops further because of both account. Thus simple average of the local sales data without making suitable adjustments in their price figures for the varying attributes, cannot meet the accuracy demand of a fair estimate. LARR 2013 has tried to address the serious weakness of the straight average by increasing the compensation amount using solatium and changing the computation of average which states that “for determining the average sale price one-half of the total number of sale deeds or the agreements to sell in which the highest sales price has been mentioned shall be taken into account”(Sec. 26(1), Explanation 2). This ignores the natural process of land valuations where land value changes with attributes. This brings discontent among the evictees, since they cannot

relate the compensation with their lands vis-à-vis others. Average compensation rate may be higher, but a person who owns lands which has a higher value feels cheated. LARR 2013 fails to bridge the gap. Solatium is used to make the compensation higher than the fair market values but it cannot take care of individual variations. Since one size does not fit all, an ad hoc solatium without appropriate adjustments for attributes which are land specific, cannot meet the requirements of “making victims subjectively indifferent to whether [the taking] . . . took place or not” (Craswell, 2003).

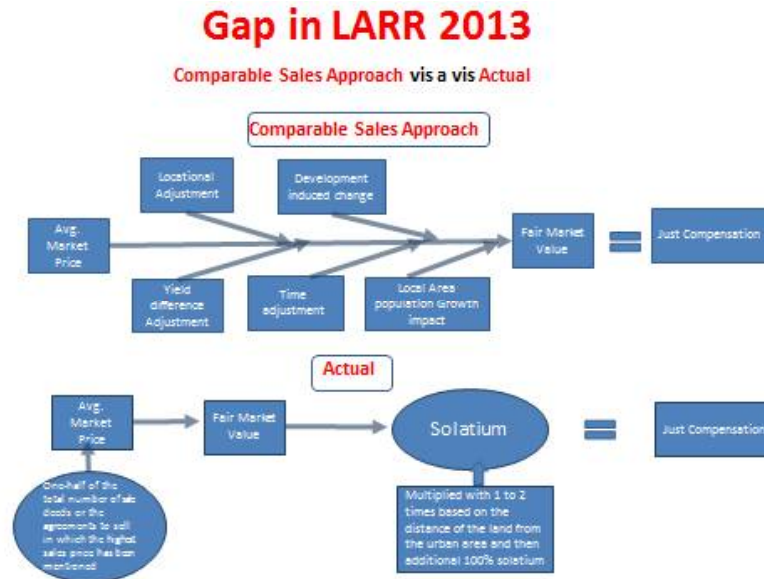
#### *4.2.2 Sliding scale for compensation and Judicial interpretations-*

LARR 2013 defined “fair compensation” as a multiple of average market price of comparable land sold in the preceding 3 years but does not clarify whether it should be a computed value or an assessed one. To make it “more rational” it has on the other hand added more ambiguity by introducing a sliding scale for agricultural land valuation. The scale uses distance from the urban centers as a basis for variation and it varies from 1 to 2. This is to be applied on the average market price of the comparable lands as multiplier (Section 30(2), The First schedule, LARR 2013). The Act has left the decision of designing the sliding scale to the state governments without providing any basis for designing the scale (from the distance) which can be used by the states to act consistently. In absence of clarity, this has often led to litigations. In one of such litigations judiciary tried to add clarification when it had commented “The basic reason which seems to be considered for providing higher multiplier factor even up to two for lands situated in rural area sought to be acquired for the project is dependence of the people on such land for their survival and livelihood, coupled with low market price of such remotely located land, as compared to land situated in urban area” (Panjabrao Ganpatrao Borade vs The State Of Maharashtra And ... on 9 March, 2015, 2015). The clarification has left more unanswered questions than it had answered. The concept of distance from the urban centers is based on the gravitational pull of the urban centers. The pull is dependent on two factors- size of the urban center and the distance of the land from the urban centers. In a given geographical boundary there may be more than one urban center. Their sizes may vary, so also their affluence level and their growth in prosperity. All these have direct impact on urbanization of the adjoining rural lands and consequent increase in the

agriculture land price. How much is their impact requires detailed mapping. In absence of this, sliding scale can become an often disputable area and subjected to manipulation based on arm twisting power of the beneficiaries. Making a continuous scale is virtually impossible. In the middle of the above inadequacies of the new Act and its pending Amendment Bill there are many discontents,

LARR 2013 has been criticized for “another troublesome possibility. The multiplication of “market value” may set off price increases in geometric progression. The quadrupled market price in the first round may have to be quadrupled again if there is a second round of land acquisition in the same area. It is hard to imagine how any land market can function under these conditions” (Chakravorty, *The Price of Land* (page 193), 2013). Such problems are unavoidable as India is trying to use market based solution when her agricultural land markets are predominantly informal (Wallace, 2010). Merrill has also mentioned about the difficulty in ascertaining “fair market value” in a thin market (Merril, *Incomplete Compensation for Takings*, 2002). The inadequacy of the use of “fair market value” for just compensation in a thin land market has also been identified by World Bank and ADB. Their recommendation is to compensate, based on ‘replacement value’. But there has not been much work in determining “replacement cost”. There is a need. India with LARR 2013 has opted for a quick fix solution through overpayment to landowners to avoid resistance and reach deals quickly. With compensation becoming 2 to 4 times the market value, the cost of land in India has become one of the costliest in the world (Chakravorty, *The Price of Land* (chapter 9), 2013) raising the opportunity cost for the investors and affecting investment.

Gap in LARR 2013 is summarized below.



### 4.3 LARR 2013 fails to meet the Expectation

There were all-round dissatisfactions from the stake holders. The amendment bill coming within one year only highlighted that.

#### 4.3.1 States resented

Maharashtra government pleaded for exemption from LARR Act, when Chief Minister Devendra Fadnavis requested the Central Government to exempt the state from the scope of the LARR2103. (Mumbai, 07-01-2015).

#### 4.3.2 Industry Captains' view

R V Kanoria, Chairman, FICCI said “It is completely a retrograde step and does not augur well for manufacturing. Cost of land will go up significantly. Process of acquiring land will also get stretched.” Lalit Kumar Jain Chairman, Confederation of Real Estate Developers Association of India said “While we agree that the bill will increase transparency in land deals, the higher compensation to land owners could make several real estate projects unviable”. S Gopalakrishnan, President, CII said the new Act is

“making industrial projects unviable and raising costs in the overall Indian economy”. (G. Raghuram, 2015) Some government officials also shared this concern. “Land acquisition for roads, ports and similar other economic activities has not been happening ever since the new Land Acquisition Act came into being,” Kant said, emphasizing the need to amend the Act (Sharma, 2014).

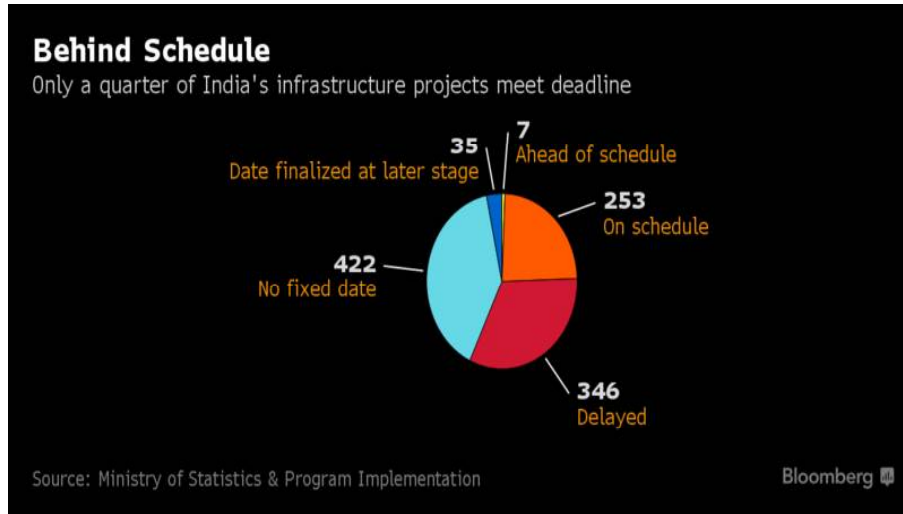
#### *4.3.3 Impact on National Highway*

In December 2014 Indian Parliament had amended the new 2013 Act to address some of the investor’s concerns to reduce procedural delays in the land acquisition process when 13 department centric legislations were brought under the purview of the Act which was earlier exempt. With this amendment, land costs of many development projects were expected to increase significantly. In a press interview a National Highway ministry official told Telegraph (5<sup>th</sup> Jan2015) “Land acquisition costs for national highway projects till now was 18 to 20 per cent of the project cost. Under the provision of the new land acquisition act, the higher compensation rates are likely to raise them to 40 to 50 per cent, increasing the total cost by 30 to 60 per cent only on this count.” Such ad hoc increase in land cost may ultimately prove detrimental to all the stake holders. There is a need to build an equitable basis for “fair compensation” which will be “just” to the project affected land losers and at the same time does not become a road block to developments.

#### **4.4 Land Acquisition affecting Business**

LAA 1894 with its 1984 amendments and the subsequent incarnation of LARR 2013 has failed to reduce project delays due to land acquisition conflicts. Only 25% of the India’s infrastructure projects are on schedule.

**Figures 4.1: Business Loss**



Delays have cost federal government projects over 1.5 billion rupees or more (Beniwal, 2016). Study reveals that land acquisition hurdles is one of the major causes of project delays. In many cases this comes to the surface after the initial hurdles of environmental clearances and contractual issues are sorted out. Financial Express, 21 Nov. 2014 has commented that ““Land acquisition hurdles have resulted in cost escalation, project delays and slowing down of investments in Indian industries”. A cursory view of the projects delayed due to Land Acquisition is given below.

**Table 4.1: Project Delays**

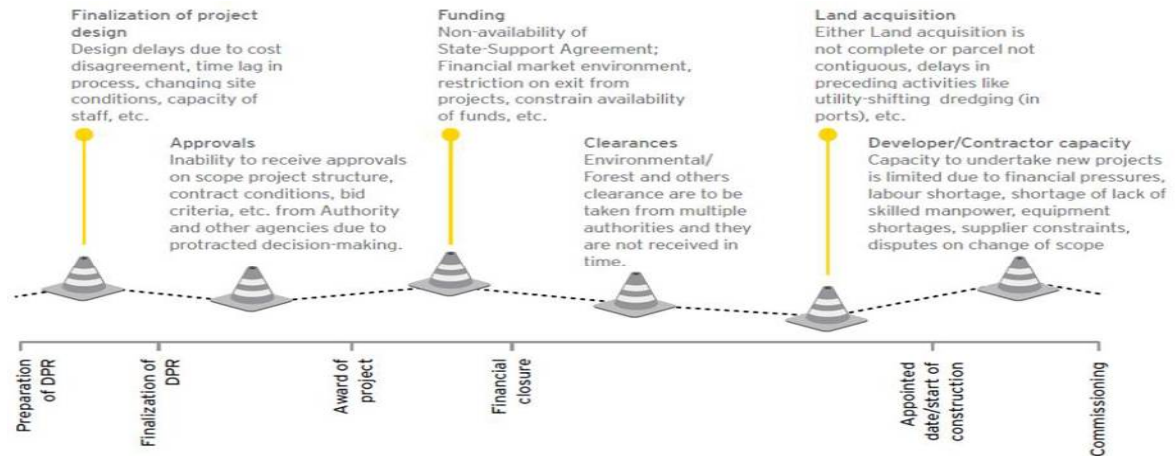
<b>PROJECTS DELAYED DUE TO LAND ACQUISITION WOES</b>		
<b>Company</b>	<b>Project</b>	<b>Cost</b>
Arcelor Mittal	6 MT each steel plant in Jharkhand & Orissa	₹15,000 cr
Posco India	Karnataka Steel plant	₹32,300 cr
Navi Mumbai SEZ	Special Economic Zone	₹25,000 cr
Vavasi Telegence	Bikaner Silicon manufacturing complex	₹45,000 cr
Gujarat Vittal Innovation City	Empi Multi Project SEZ	₹11,500 cr
Nuclear Power Corporation	Haripur Nuclear Power Plant	₹45,000 cr
Reliance Power	Ultra mega power project in Jharkhand	NA
CIDCO	Navi Mumbai International Airport	NA
Sterling Biotech	Special Economic Zone	NA
Tamil Nadu Ind Develop Corp	Special Economic Zone	NA
GVK Group	Special Economic Zone	NA
BGR Group	Kadallur Power Project	NA
AAI	Goa Airport in Mopa	NA
Kerala State Electricity Board	Cheemeni Gas super thermal project	₹9,600 cr

Source: Financial Express, 21Nov. 2014



Ernst & Young in their study on project delays have identified Land Acquisition as the single-largest roadblock.

**Figures 4.2: Major causes for Project Delays**



“Business Problem” continues to haunt the industrial and infrastructure growth of India.

#### 4.5 The War continues

LARR 2013 has not been able to reduce the land acquisition hurdles, especially in more rural areas. In reality the new compensation policy has some sobering effect in the peri-urban areas where the average market price for computation of compensation is close to the land owner’s reserve price. 4 times the value as compensation is seen as wind fall gain by the owners. The same is not true in most of the major projects which are held up for land for nearly a decade, since large land requirements are primarily in rural areas and not limited in peri-urban areas. New disputes are coming up. Some of them are shown below.

**Figures 4.3: Protest site in Chiru Barwadih Village, Hazaribagh, Jharkhand State of India**



On October 1, 2016 “Five (protesters were) dead as Jharkhand police fire at farmers protesting against land acquisition for coal mine”. Farmers’ land lie over the Rs 33,000 crore- Pakri Barwadih coal block. With a 1.6 billion-tonnes reserve, it is one of the largest coal blocks in the country. The affected families said that the compensation is inadequate. (<https://scroll.in/latest/818001/>).

Bhargar land acquisition protests, West Bengal, India

The resistance movement in Bhargar is against a power substation being built by Power Grid Corp. of India Ltd, a electricity transmission enterprise owned by the central government ( Express Web Desk , 2017)..

**Figures 4.4: Protest Site -2017- Bhargar**



### Singur land agitation- TATA NANO car site

Recent decision of the Supreme Court of India on TATA Nano car factory in Singur (West Bengal) may be of interest as an another unique case study where more than Rupees 1600 crore of investment was lost. An independent study conducted by a team of academicians revealed that the resistance movement by the farmers of Singur was fueled by “under compensation” to a section of land owners owing to misclassification of their plots. This was in spite of the fact that the average pay out in the compensation by the government was more. (Maitreesh Ghatak, 2013).

**Figures 4.5: Singur Judgment at SCI- 2016**



“Government offered compensation at the market value on average. But a significant fraction of land-owners were under-compensated owing to misclassification of their plots as sali rather than sona in the official records, besides inability of the latter to incorporate other sources of plot heterogeneity.

Maitreesh Ghatak et al, in May 25 2013, Vol. XLV III NO. 21 EPW, Economic & Political Weekly has said in **Land Acquisition and Compensation- What really happened in Singur ?** Owners with under-compensated types of plot were significantly

more likely to reject the compensation offer. An obvious implication for future land acquisition policy is the need to base compensation on better measures of land values than is permitted in the official land records.”

**Land Acquisition and Compensation- What really happened in Singur ?** by Maitreesh Ghatak et al, May 25 2013, Vol. XLV III NO. 21 EPW, Economic & Political Weekly

#### **4.6 Business Problem**

Land Acquisition conflicts due to absence of suitable pricing norms have slowed down investments causing project delays and cost increase.