

Determination of Compensation and Rehabilitation and Resettlement of Affected Person

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Madras High Court
Refresher Course on Land Acquisition
P-1339
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Introduction

- Land is scarce Natural Resource.
- Article 300(A) of the constitution says no person can be deprived of his property save by authority of law. Land Acquisition Act fulfils the constitutional obligation.
- Land Acquisition Act 1894 was 128 year old.
- Absence of cohesive national law that address fair compensation, rehabilitation and resettlement to the land owner.
- Absence of provision to address the issue directly affected from the loss of livelihood.
- Absence of proper mechanism for arriving market value of land.
- Absence of provision for weaker sections of the society(Section 41).

- Land Acquisition Act 1894 has governed Land Acquisition till Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 came into force from 01.01.2014.

Definition of Affected family (Section 3)

A family whose land or other immovable property has been acquired;

- A family which has lost its livelihood;
- A family of Tribes and other traditional forest dwellers that have lost any of their traditional rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 due to acquisition of land;
- A member of the family who has been assigned land by the Govt.
- In Old act Affected family was limited to the land losers

Market Value

- Market value is higher of
 - (a) Minimum land value as per Indian Stamp Act, 1899
 - (b) Average sale price for similar type of ;land in the vicinity
 - (c) Average sale price already paid or agreed to be paid in private or PPP project.
- Any price paid earlier as compensation for land Acquired under this Act on an earlier occasion not to be taken into consideration.
- Collector to take necessary steps to revise the market value of land before initiating Acquisition proceeding.

- Further, to ensure adequate compensation to the land owners, the market value calculated shall be multiplied by a factor of two in the rural area and by a factor of one in the urban area as specified in the First Schedule.
- Solatium of one hundred percent of the compensation amount.
- The calculation process is detailed in the first schedule.

Awards towards Compensation and Resettlement & Rehabilitation

- Sec. 27 empowered Collector to calculate the total compensation, including the damage of the standing crop and trees, incidental charges, cost incurred due to severing such land from his other land.
- Sec. 30 empowers the Collector to pass Resettlement & Rehabilitation Award that includes Resettlement and Rehabilitation amount, particulars house site and houses to be included in case of displacement, after ensuring provisions of infrastructure amenities in the resettlement area as per the third schedule of the Act u/s 32.
- In the old Act, there is no provision of making award for resettlement and rehabilitation nor there is a provision for compensation double the amount of the original estimate incase of the double displacement.

Determination of Compensation

- The collector is required by Section 28 to take the following factors into account when assessing the amount of compensation to be given for land acquired under this Act:
 1. The award amount is determined in accordance with the First and Second Schedules and the market value as assessed in accordance with Section 26;
 2. The harm incurred by the interested party as a result of the removal of any standing crops and trees that may have been on the property at the time the Collector obtained control of it;
 3. The damage incurred by the interested party upon the collector's taking control of the property as a result of disconnecting it from his other property;
 4. The harm incurred by the interested party when the collector took possession of the property as a result of the acquisition negatively impacting his other property, whether movable or immovable, in any other way, or his earnings;
 5. The interested party must relocate or change his place of business as a result of the collector's acquisition of the land, and shall bear all reasonable moving-related costs;
 6. The genuine harm brought on by the reduction in the land's revenues between the time the declaration under Section 19 was published and when the collector took control of the property; and
 7. Any other basis that would be beneficial to the affected families and in the interests of equality and justice.

Value of attached items

- The services of a qualified engineer or any other specialist in the relevant field, as may be considered necessary by him, will be used by the collector to determine the market value of the building and other immovable property or assets attached to the land or building that are to be acquired under Section 29 that:
- The collector may use the assistance of experts in the fields of agriculture, forestry, horticulture, sericulture, or any other subject he may see as essential in order to assess the worth of the trees and plants related to the property acquired.
- The services of experienced individuals in the agricultural sector may be used by the collector, as he may deem them essential for determining the worth of the standing crops destroyed during the land acquisition procedure.

- Hon'ble Supreme Court in the case of **Major General Kapil Mehra and Others v. Union of India and Another, (2015) 2 SCC 262**, the first question that emerges is what would be the reasonable market value which the acquired lands are capable of fetching. While fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors:
 - i. existing geographical situation of the land;
 - ii. existing use of the land;
 - iii. already available advantages, like proximity to National or State Highway or road and/or developed area and
 - iv. market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.

- **Union of India v. Raj Kumar Baghal Singh (Dead) Through LRS. & Others , (2014) 10 SCC 422** In the instant case, deduction towards development cost at the rate of 20% was perfectly justified considering that acquired land was situated next to municipal limits and had potential for developing it into residential or commercial area. It was held that it is well settled in determining compensation for the acquired land, price paid in a bona fide transaction of sale by a willing seller to a willing buyer is adopted subjected to such transaction being for land adjacent to acquired land, Roxy made to the date of acquisition and possessing similar advantages. Of course, there are other well-known methods of valuation like opinion of experts and yield method. In absence of any evidence of a similar transaction, it is permissible to take into account transaction of nearest land around the date of notification under section 4 of the act by making a suitable alliance. There can be no fixed criteria as to what the suitable addition or subtraction from the value of would be the relied upon transaction. Fair market value might be used exchangeable with market value, but is a distinction between them.

- Though the Land Acquisition Amendment Act, 1984 came into force on 30 April 1982, land owners could not claim additional benefits provided U/S 23 (1A) of the Amended Act, for awards passed before 30th April 1982. **Union of India v. Giani, AIR 2011 SC 977**
- In **Vithal Rao & Anr. Etc. v. The Special Land Acquisition Officer**, The Hon'ble Supreme Court made a landmark observation that can act as a precedent for future determination of land value in a land acquisition process and how a value can be arrived at for such acquisition in the absence of previous large land sales in the area. Arriving at a price point has remained a tricky proposition in all land acquisitions either by governments or other wings/departments of governments. With no standard to go by, this has often led to large scale protests/agitations that have stymied developments in the past, especially in areas where there has been little or no precedent to fall back on. Also, when land is not developed, it would be necessary to deduct a certain percentage for the development process from the overall value. The Supreme Court was dealing with appeals filed by land owners against the order passed by the High Court of Karnataka, whereby the High court allowed appeals in part and modified an award dated of August 24, 2012 passed by the Court of Senior Civil Judge, Mudhol

The High Court had re-determined compensation at Rs. 13,93,920 per acre as against Rs. 6,75,000 per acre with all statutory benefits as envisaged U/S 23 of Land Acquisition Act, 1894. The court in several cases laid down that, 'while determining true market value of acquired land and especially when acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held that, at what percentage deduction should be made vary from 10 percent to 86 percent land, area under acquisition, whether land is developed or not and, if so, to what extent, purpose of acquisition, etc. It has also been held that, while determining market value of a large chunk of land, value of smaller pieces of land can be taken into consideration after making proper deduction in the value of lands and when sale deeds of larger parcel of land are not available." The Judgment further says: "This Court has also laid down that, a court should also have taken into consideration potentiality of acquired land apart from other relevant considerations. This court has also recognized that courts can always apply reasonable amount of guesswork to balance equities in order to fix a just and fair market value in terms of parameters specified U/S 23 of the Act".

In **Purna Chandra v. Fakir Mohammed, AIR 1955 NOC 1541**, It was held that a covenant in the lease deed directing the lessee and not to claim any portion of the compensation which may be awarded if the property leased out, be compulsory acquired, is valid in law and enforceable. But in the case of a dispute with respect to the apportionment of award, the Collector shall refer the matter to a Civil Court.

In **State of Madras v. Subramania Iyer, AIR 1962 Mad 313**, The Madras High Court Observed that, “It is obvious that when the Government exercises its power of eminent domain and acquires property, public funds have to be utilized for the payment of compensation to the true owner, and not merely to any claimants who cares to appear on the scene”.

Determination of Social Impact and Public Purpose

- Section 4 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013, is important section as it deals with preliminary investigation for determination of social impact and public purpose.
- **Preparation of Social Impact Assessment study (Section 4)**
 1. Whenever the Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, in the affected area and carry out a social Impact Assessment study in Consultation with them. Afterwards, notification issued by the Government shall be made available in the local language and published in the affected area and also uploaded in the website of Government.

2. Further, it is directed under section 4(2), that the Social Impact Assessment study must be completed within a period of six months from the date of its commencement.
3. Consultation with the local bodies, issue of notification, its publication in local language, uploading it on the website of the Government and publication of Social Impact Assessment study report are the initial stages in the preparatory work.
4. Section 4(3) makes availability of Social Impact Assessment Study report to the public mandatory.

- **Contents of the Social Impact Assessment Study Report:**

According to section 4(4) the study report should including the following matters, namely:-

- a) Assessment as to whether the proposed acquisition serves public purpose;
- b) Estimation of affected families and the number among them likely to be displaced;
- c) Extend of lands, public and private, houses, settlements and other common properties likely to be affected by the proposed acquisition;
- d) Whether the extent of land proposed for acquisition is the absolute bare-minimum extent needed for the project;
- e) Whether land acquisition at an alternate place has been considered and found not feasible;
- f) Study of social impacts of the project, and the nature and cost of addressing them and the impact of these costs on the overall costs of the project vis-à-vis the benefits of the project.

- Environmental Impact Assessment study should be carried out simultaneously. It should not be contingent upon the completion of the Social Impact Assessment study (Section 4(4))
- What are things that should be taken into consideration while Government undertaking a Social Impact Assessment Study? Section 4(5)
 - The Government while undertaking the study, it should consider the following components:- livelihood of affected families, public and community properties, Assets and infrastructure, particularly roads, drainages, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities, such as post offices, fair price shops, food storage goodowns, electricity supply, health care facilities, school and educational or training facilities, anganwadis, children parks, place of worship, land for traditional tribal institutions and burial and cremation grounds.

- Section 4(6) speaks about the preparation of a social Impact Management Plan.
- **PUBLIC IMPACT FOR SOCIAL IMPACT ASSESSMENT:**
section 5 of this Act seeks to provide public hearing for Social Impact Assessment to ascertain the views of the affected families and to be recorded and included in the Social Impact Assessment Report.
- **PUBICATION OF SOCIAL IMPACT ASSESSMENT STUDY:**
section 6 of this Act states that the Social Impact Assessment study report and Social Impact Management Plan are to be prepared and made available in the local language to concerned bodies as in the case of publication of notification. Its copy should be sent to the central Government Agency.

APPRAISAL OF SOCIAL IMPACT ASSESSMENT REPORT BY AN EXPERT GROUP

- Section 7 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, deals with the evaluation of expert group, its constitution, and its recommendation and publication of recommendation of expert group.
- Every Social Impact Assessment Report must be evaluated by an independent multi-disciplinary Expert Group.
- The Expert Group constituted under Section 7(1) shall include the following, namely,-
 - a. Two non official social scientists;
 - b. Two representative of Panchayat, Municipality, etc;
 - c. Two experts on rehabilitation; and
 - d. A technical expert in the subject relating to the project.
- Section 7(4) and (5) speak about opinion of expert Group either in favour of report or against the report.

Exemption from Social Impact Assessment

- Section 9 of this Act states under what circumstance that the Social Impact Assessment may dispense with. Where land is proposed under 40, the Government may exempt undertaking of Social Impact Assessment study.

Environmental Impact Assessment

Section 6(2) :

Wherever Environment Impact Assessment is carried out, a copy of the Social Impact Assessment report shall be made available to the Impact Assessment Agency authorized by the Central Government to carry out environmental impact assessment:

Provided that, in respect of irrigation projects where the process of Environment Impact Assessment is required under the provisions of any other law for the time being in force, the provisions of this Act relating to Social Impact Assessment shall not apply.

Land Acquisition, Rehabilitation & Resettlement Authority (Sec. 51—75)

- Single member authority
- Reference to Authority within six weeks of the Collector's award
- Cases to be decided in six months
- Jurisdiction of civil courts barred
- Appeals to High Court within sixty days

Return of Land

Section 101

- If any land or part thereof acquired under the Act remains unutilized for a period of five years from the date of taking of the possession, the same shall return to the Land Bank/returned to the original land owners as specified by the appropriate Government.

Land Acquisition Officer, A.P v. Ravi Santosh Reddy AIR 2016 SC 2579

In a 1987 land acquisition case, the Andhra Pradesh Government pursued the landowner into court for 20 years to challenge his Rs. 50,000 claims. Meanwhile, the claimant died in the middle of this lengthy legal process. When the state government sought the Supreme Court, the deceased's heirs failed to attend. However, in May 2016, the Supreme Court issued a decision in which it slammed the state government for abusing the legal system, saying, *"In our opinion, the State unnecessarily pursued this pity matter to this Court in this appeal, which does not involve any arguable point either on facts or in law, nor does it involve any point of public importance, nor does it involve any substantial claim."* It was just a calculation of the payment of interest on the decretal sum for a specific term. In this Court, however, learned counsel was unable to demonstrate any illegality or perversity in the executing court's assessment of the state's responsibility in paying Rs.50,000/- in interest. *"As a result, it was, in our opinion, a clear abuse of process on the part of the state to pursue a matter by filing a misconceived appeal against an interim order, which we do not approve,"* further adding, *"It is unfortunate that the state did not satisfy a genuine claim of the land owner for such a long time."*

Balakrishnan v. UOI 2017 Tax Pub (DT) 0362 (SC)

- In this case, the Kerala State Government acquired around 27 acres of agricultural land for the expansion of a technopark in South Kerala. The landowner was dissatisfied with the compensation provided, so he negotiated with the concerned party for more compensation; nonetheless, in order to avoid litigation, he decided to sell the land at the price offered by the state. Following payment of the compensation, the state revenue agency assessed capital gains tax on the sum received from the landowner, claiming that the transaction was a “*voluntary sale*” and so did not qualify for exemption under Section 10 of the Income-Tax Act as a compelled acquisition. The landowner then challenged this judgment in the High Court, which dismissed the appeal. The case was then heard by the Supreme Court, which decided that the owner “*succumbed to the measures taken by the government*” in order to avoid litigation. As a result, the transaction was not a “*voluntary sale*,” but rather a “*compulsory acquisition*,” and therefore it should be excluded from capital gains tax.

Special Land Acquisition Officer v. Anasuya Bai (2017) 3 SCC 313

- In this case the land was acquired under the Karnataka Industrial Areas Development Act; however, the compensation to the landowner was not paid in the stipulated time frame, where in this case such time limit was set by the old Land Acquisition Act, and the acquisition was quashed by the High Court. This decision of the High Court was set aside by the Supreme Court and observed that the Karnataka Industrial Areas Development Act is a self-contained code and the Central Act is not supplemental to it. It was, therefore, held that where a subsequent Act incorporates provisions of a previous Act, then the borrowed provisions become an integral and independent part of the subsequent Act and are totally unaffected by any repeal or amendment in the previous Act.

- In the case of **Indore Development Authority v. Manohar Lal, (SLP(C) No.-009036-009038 / 2016)** it was argued by the landowners that acquisitions have lapsed under the Land Acquisition Act of 1894, and fresh proceedings must start under the Land Acquisition Act, 2013.

In this important judgment the Supreme Court ruled that pending cases under the 2013 Act will lapse under two circumstances and the process of acquisition will need to start over again.

The apex court ruled that fresh proceedings under the Land Acquisition Act of 2013 will need to be initiated only if:

Possession of land hasn't taken place.

Scheme for Rehabilitation and Resettlement

- The Administrator must prepare the Rehabilitation and Resettlement Scheme in accordance with section 16. The Administrator of Rehabilitation and Resettlement is responsible for conducting a survey and doing a census of the affected families following the issuance of the preliminary notification by the Collector.
- Details on the lands and other immovable property each impacted household is buying;
- Livelihoods lost for those who are landless and who depend heavily on the lands being acquired;
- A list of public utilities, government structure, amenities, and infrastructure that are impacted or are anticipate to be impacted, where relocation of impacted families concerned;
- Informed on any resources that are obtained as common property.

- The Rehabilitation and Resettlement Scheme and a statement must be published by the collector. But unless the summary of the Rehabilitation and Resettlement Scheme is published alongside it, no disclosure under this shall be made.
- The court ruled in **Habib Ahmed vs State of UP**, the acquisition of the property was not necessary for a public purpose, and hence neither the notification nor declaration could be revoked. The state government must be the exclusive authority to determine whether the land is needed for a public purpose or not.

Acquisition of land in case of Emergency

Section 40 of the Act deals with the acquisition of the land in case of urgency. It is provided that whenever the appropriate Government so directs, the Collector can possession of the land to be acquired. This power of the appropriate government is however restricted to the Minimum area required for:

- The defense of India, or
- For national Security, or
- For any emergencies arising out of natural calamities, or
- For any other emergency with the approval of parliament.

Temporary Occupation of the Land

Section 81 to 83 of the Act deals with the temporary occupation of the land. The collector must give notice in writing to the person interested in such land is needed. The collector must pay to the interested person compensation and use of the land of such term and materials, If any, to be taken there from. When the time for which such land was temporarily occupied expired, the collector must restore the land to the person interested therein and also make or tender to such persons, compensation for damage, if any, done to the land if this not provided for in the agreement.

Thank You!!!