

**Refresher Course on Land Acquisition [P-1368]
28th- 29th October, 2023**

Programme Report

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The National Judicial Academy (NJA) organized a “**Refresher Course on Land Acquisition**” on **28th & 29th October, 2023** at NJA, Bhopal. The participants were judges from the district judiciary nominated by all High Courts of the country. The course facilitated deliberations among participant judges on themes including Land Acquisition: Land Reforms and Amendments in Land Acquisition Laws; Procedural Fairness and Natural Justice Principles in Acquisition; Determination of Compensation and Rehabilitation and Resettlement of Affected Persons; Continuity and Lapse of Acquisition Proceedings; and Adjudication of Offences & Penalties under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

Session 1: Land Acquisition: Land Reforms and Amendments in Land Acquisition Laws

The session was commenced with discussion on reasons for framing the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 [2013 Act]. It was opined that the Land Acquisition Act, 1894 [1894 Act] was very old legislation and in the last 100 years several lacunas have been observed in the old legislation because of which cases related to land acquisition were pending for a very long time. In order to rectify those lacunas and to streamline the process of compensation and rehabilitation of affected persons, the 2013 Act was passed. The addition of provisions for resettlement was highlighted in the 2013 Act. The historical background of the land acquisition laws was highlighted and Article 31A of the Constitution of India dealing with the acquisition of property was referred. Article 300A which provides that no person shall be deprived of his property save by authority of law was referred. The First Amendment Act, 1951 of the Constitution inserting Article 31A and 31B and the 9th Schedule to the Constitution was referred and beginning of agrarian reforms was explained.

The speakers explained various reasons for the acquisition of land including public purpose and other grounds. It was opined that government does not have its own land and for creating infrastructure for public services and public amenities the land is acquired. While discussing public purpose as a major justification of land acquisition, it was opined that proper procedure for the acquisition should be followed and the social impact assessment should not be an empty formality. The judgments of Supreme Court in *State of Bombay v. R.S. Nanji.*, AIR 1956 SC 294) and *DDA v. Godfrey Phillips (I) Ltd.*, AIR 2022 SC 2282 were referred.

The acquisition of land for Bullet Train Project in *Godrej & Boyce Manufacturing Co. Ltd. vs. State of Maharashtra* 2023 SCC OnLine Bom 341 was discussed where the High Court held that public purpose will prevail and the petitioner should request for raised claim to the authority constituted under Section 51 of 2013 Act. Section 4 of the 2013 Act dealing with Social Impact Assessment [SIA] and Section 5 of the 2013 Act dealing with public hearing for SIA and prerequisites were highlighted and the importance of SIA was emphasised. It was opined if the SIA is not performed according to law then acquisition can be declared as nullity. Section 11 dealing with publication of preliminary notification and further process identical thereto describing the reason for acquisition of the land and Section 12 dealing with preliminary survey of the land, Section 15 dealing with hearing of objections by interested persons, Section 19 dealing with declaration to be issued by appropriate government and Section 25 mentioning that award has to be made by the Collector within 12 months from the publication of declaration of 2013 Act were discussed.

Section 24 of 2013 Act was referred and it was opined that paper possession is sufficient compliance under Section 24 and if that is done and compensation is paid then proceedings will not lapse. The judgment *Indore Development Authority, Delhi Development Authority vs Jagan Singh and Others* 2023 SCC Online SC 151 were referred. The speaker then focussed on the provisions related to compensation. Then Section 37 dealing with award by the collector, Section 38 dealing with possession after full payment of compensation, rehabilitation and resettlement, Section 40 dealing with special power for taking possession, Section 63 barring jurisdiction of civil court to entertain a dispute relating to land acquisition, Section 64 dealing with reference to authority by a person not accepting the award of 2013 Act were discussed.

The speaker then focussed on the role of authority appointed under the 2013 Act. The power and functions of authority was discussed in detail. Section 74 dealing with the appeal to the High Court against the award passed by the authority, Section 76 dealing with reference to authority in situation of dispute relating to apportionment of compensation, Section 77 dealing with the payment of compensation by depositing the amount in the bank account by the Collector of 2013 Act were discussed. The judgments of the Supreme Court in *Gherulal Parakh v. Mahadeodas Maiya & Ors.* AIR 1959 SC 781, *State of Bihar v. Dharendra Kumar*, AIR 1995 SC 1955, *Laxmi Chand v. Gram Panchayat Kararia*, AIR 1996 SC 523 and *Devinder Singh & Ors v. State of Punjab & Ors*, AIR 2008 SC 261, *Babu Barkya Thakur v. State of Bombay*, AIR 1960 SC 120; and *Aflatoon v. Lt. Governor of Delhi.*, AIR 1974 SC 2077, *Munshi Singh v. Union of India*, AIR 1973 SC 1150, *State of Punjab v. Gurdayal Singh*, AIR 1980 SC 319, *Gulam Mustafa v. State of Maharashtra.*, AIR 1977 SC 448, *Awadh Bihari Yadav v. State of Bihar*, AIR 1996 SC 122, and *Satyendra Prasad Jain v. State of Uttar Pradesh.*, AIR 1993 SC 2517, *State of U.P. v. Pista Devi* (1986) 4 SCC 251 and *Aflatoon and Ors. vs. Governor of Delhi and Ors* AIR 1974 SC 2077 were referred in the session.

Session 2: Procedural Fairness and Natural Justice Principles in Acquisition

The session commenced with discussion on the adherence to the principles of natural justice especially *Audi Alteram Partem* in the acquisition. It was opined that there was lot of delay in litigation under the 1894 Act and the 2013 Act has solved this issue. The 2013 Act encourages participative approach rather than imposing the doctrine of eminent domain from above. The speaker referred to the Statement of Objectives of the 2013 Act and it was opined that the 2013 Act sought to create least inconvenience to land owners while creating public infrastructure. It was suggested that the entire framework of law dealing with land acquisition should be considered in deciding disputes related to land acquisition.

The discussion then focussed on the principles of natural justice and the judgments *Canara Bank v. V.K. Awasthy*, (2005) 6 SCC 321, *Uma Nath Pandey v. State of U.P.*, (2009) 12 SCC 40, *Suresh Chandra Nanhorya v. Rajendra Rajak*, (2006) 7 SCC 800 and *UP Awas vs. Gyan Devi* 1995 (2) SCC 326 were referred. It was opined that principles of natural justice should be scrupulously followed in the acquisition proceedings and they are not empty formalities. The provisions of 2013 Act related to notice to public and notice to interested persons were discussed. The scope of public hearing in the acquisition proceeding was discussed and the Section 5 of 2013 Act which provides for public hearing during preparation of Social Impact Assessment was referred. Then Section 11 dealing with notice to the affected persons, Section 15 dealing with the hearing of objection, Section 64 dealing with the reference to authority, Section 66 dealing with service of notice by authority and Section 69 dealing with

determination of award by authority of the 2013 Act were discussed. The judgments *Suresh Chandra Nanhorya v. Rajendra Rajak*, (2006) 7 SCC 800, *Union of India v. Bal Ram Singh*, 1992 Supp (2) SCC 136, *Gullapalli Nageswara Rao v. A.P. SRTC*, AIR 1959 SC 308 and *Automotive Tyre Manufacturers Assn. v. Designated Authority* (2011) 2 SCC 258 were discussed. The issue that if the principles of natural justice are not followed in the acquisition proceeding then what are the consequences was deliberated upon. The judgments *Shiv Kumar vs. Union of India* 2019 AIR 5374 and *Dharam Paul v. Deputy Commissioner of Excise* 2015 (8) SC 519 were referred in this regard.

The issues related to locus standi to challenge the acquisition and other related proceedings were also discussed and Section 11(4) of Act, 2013 was referred. The judgements *Pandit Leela Ram v. Union of India*, AIR 1975 SC 2112, *Sneh Prabha v. State of Uttar Pradesh*, AIR 1996 SC 540; *U.P. Jal Nigam v. M/s. Kalra Properties Pvt. Ltd.*, AIR 1996 SC 1170 and *Ajay Kishan Singhal v. Union of India*, AIR 1996 SC 2677 were discussed. The issue that whether subsequent purchaser has the locus standi to challenge the acquisition proceedings was deliberated. It was opined that subsequent purchaser do not have the locus standi in this regard as held by the Supreme Court.

The problems in determining compensation was discussed and transparency and fairness in determination of fair compensation were emphasised. Section 99 of the 2013 Act which provides that no change from the purpose or related purposes for which the land is originally sought to be acquired shall be allowed was discussed. Challenge to acquisition in civil court was discussed and Section 63 which bars the jurisdiction of civil court to entertain any dispute relating to land acquisition in respect of which the Collector or the Authority is empowered and prevents civil court to grant any injunction was discussed. The judgment *Tukaram Kanaji Joshi v. MIDC* (2013) 1 SCC 353 was discussed.

Session 3: Determination of Compensation and Rehabilitation and Resettlement of Affected Persons

The session was commenced with issues related to mandatory parameters and criteria regarding determination of market value & compensation. Section 23 of the 1894 Act and Sections 26, 27 & 28 of the 2013 Act were discussed. The determination of compensation by the district collector was discussed and it was opined that many factors affects the determination of compensation by the district collector including circulars issued by several departments and senior offices. Sections 26, 27 & 28 of the 2013 Act sought to remedy many problems in the determination of compensation. The issues in determination of compensation in Maharashtra were highlighted.

Then discussion focussed on the Social Impact Assessment [SIA] according to Sections 4 to 9 of the 2013 Act. It was opined that SIA is a very crucial part of acquisition process under the 2013 Act and the inclusion of local administrative bodies such as panchayat and municipality and giving them the right of hearing in the process of acquisition forms an integral part of the SIA. It was further suggested that these local bodies can take care of the rights of scheduled tribes and poor persons if they are displaced due to acquisition. Then Sections 6 (2) of the 2013 Act dealing with Environment Impact Assessment was discussed. The issue regarding false property documents and inflated sale deeds was discussed and it was opined that if it appears to authorities that inflated sale transaction showing unreal value of the land has been submitted then the authorities should consider the price of land in the similar type of land in nearby villages or areas.

It was opined that parameters under Section 28 clearly mentions how to determine compensation and if a dispute regarding compensation comes to the authority then it should be disposed of in a timely manner because the delayed compensation will carry a high rate of interest. Then discussion focussed on award of solatium, final award in rural areas and final award in urban areas according to Schedule 1. Section 31 and Schedule 2 dealing with rehabilitation and resettlement award by the collector was discussed and it was opined that other assets attached to the land should also be considered while calculating compensation.

The judgment of the Bombay High Court in *Gangadhar Jadhav vs. Union of India 2023 SCC Online Bombay 715* was discussed where petitioner's land was acquired under one of the enactments mentioned in the 4th Schedule and ordinances were not passed within one year by the government. The High Court in this case held that the government cannot invoke Section 113 which deals with power to remove difficulties and the compensation should be paid according to the enactment under which the land is acquired and the benefit of 2013 Act cannot be provided. Section 105 (2) and 105 (3) were discussed in this regard.

The role of authority in the acquisition process was discussed and various issues which can come up before the authority were highlighted. It was opined that the authority can only pass the award and that the authority is not a civil court in true sense. The authority has limited powers and it cannot do much in the dispute resolution process. The authority cannot frame issues, cannot call evidence and cannot decide the disputed questions. The issue of delay caused by the owner in the acquisition proceedings was discussed and various strategies to address this issue were suggested.

Session 4 - Continuity and Lapse of Acquisition Proceedings

The Session on Continuity and Lapse of Acquisition Proceedings commenced with the interpretation of Section 24 of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act, 2013 [hereinafter Land Acquisition Act, 2013]. The judgment of *Pune Municipal Corporation and Anr. v. Harakchand Mirsimal Solnaki*, (2014) 3 SCC 183, *Sree Balaji Nagar Residential Association v. State of Tamil Nadu and Ors.*, (2015) 3 SCC 353, *Indore Development Authority v. Shailendra Nath*, (2018) 3 SCC 412 and *Yogesh Neema and Ors. v. State of Madhya Pradesh and Ors.*, (2016) 6 SCC 387 were referred in this regard. Thereafter, the conditions under which the lapse of acquisition proceedings takes place was discussed. In this context the case of *Indore Development Authority v. Manoharlal and Others*, (2020) 8 SCC 129 was discussed in detail wherein the Apex Court held that in case possession has been taken, compensation has not been paid then there is no lapse. Similarly, if compensation has been paid, possession has not been taken then there is no lapse. The provisions of Section 24(2) providing for a deemed lapse of proceedings are applicable in case authorities have failed due to their inaction to take possession and pay compensation for five years or more before the Act of 2013 came into force. In case a person has been tendered the compensation as provided under Section 31(1) of the Act of 1894, it is not open to him to claim that acquisition has lapsed under Section 24(2) due to non-payment or non-deposit of compensation in court. It was opined that the language of Section 24 of the Land Acquisition Act, 2013 talks about the continuity of the law. It was stated that with the enactment of the Land Acquisition Act, 2013, the landowners whose land had been acquired under the old Land Acquisition Act, 1894 sought higher compensation under the new Land Acquisition Act, 2013.

Thereafter, the judgment in *Union of India, Ministry of Defence, Government of India v. Arjun Yadav and Ors., Letters Patent Appeal No.418 of 2018 (High Court of Patna)* was discussed wherein the compensation was raised 80 times was discussed in detail. The neglect of the land acquisition officer in the case was highlighted. The arbitrary increase in the compensation and Section 24 (1) (B) of Land Acquisition Act, 2013 were highlighted and the legal framework of the continuity and lapse of acquisition was discussed. Lastly, an interesting case of *Govt. of NCT of Delhi Through the Secretary, Land and Building Department And Anr. v. M/s. K.L. Rathi Steels Limited And Ors, 2023 SCC OnLine SC 288* was pointed wherein the Apex Court gave a split verdict on the issue of whether the overruling of the judgment in *Pune Municipal Corporation v. Harakchand Misirimal Solanki (supra)* by a Constitution Bench judgment in *Indore Development Authority v. Manoharlal (supra)* a ground to review judgments which followed Pune Municipal Corporation?

Session 5 - Adjudication of Offences & Penalties under the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and Open House Discussion: Major Challenges in Adjudication

The Session commenced with a discussion on the jurisdiction of court in relation to fraud and misrepresentation in land acquisition matters. Various provisions relating to offenses and penalties under the Land Acquisition Act, 2013 were delineated. The punishment for false information and contravention of the provisions of the Act, commission of offences by companies and commission of offences by government functionaries were highlighted.

The issue regarding the acquisition of land which is a matter of suit for partition in civil court was discussed. A specific situation where partition suit in civil court and compensation proceedings before the authority is pending simultaneously was deliberated. It was opined that if the property has been acquired by the State then it does not remain the property of the family, hence, the question of partition does not arise. The judgment *Ratnam Chettiar & Ors v. S. M. Kuppuswami Chettiar (1976) 1 SCC 214* was referred. It was opined that restitution is possible in cases where the dispute regarding partition is not disclosed to the State and the compensation has been wrongfully paid.

Thereafter, the three major challenges in adjudication of land acquisition were identified. They were identified as follows:

1. Challenge in respect of utilised land

It was asserted that during the transition from the Old Act of 1894 to the New Act of 2013, one primary issue that arises in matters of land acquisition is whether the acquisition can be set aside when possession is taken by the State but without compliance of the mandatory provisions as opposed to the principle that reversion of possession to land owner is not possible?

2. Locus to challenge proceedings and mandatory nature of notice

It was asserted that settled position of law that since the primary condition to maintain a challenge is *locus standi*, any subsequent purchaser cannot challenge the proceedings. But what happens when the purchase is prior to acquisition, but the notice is not served upon the owner?

3. Section 99 and Section 101 of Land Acquisition Act, 2013

It was asserted that Section 99 of the Land Acquisition Act, 2013 deals with change of use of acquired land. It prohibits the change in usage. Although it contains a proviso, which provides that if the land is unusable for the purpose acquired due to a fundamental change because of any unforeseen circumstances, then the appropriate Government may use such land for any other public purpose. But this proviso gives a leeway for the Government as it does not define the terms “fundamental change because of any unforeseen circumstances”. Whereas, Section 101 provides that if the land remains unutilized for a period of 5 years from taking of possession, shall be returned to the owner.

It was opined that it is difficult to harmonize the two provisions.

It was opined that there is no direct precedent on the above adjudicatory questions, hence such questions will trouble the Courts in near future.

Lastly, it was opined that the judicial approach shall be towards benefitting the land losers. The Supreme Court’s decision in *Kazi Moinuddin Kazi Bashiroddin v. Maharashtra Tourism Development Corporation*, 2022 SCC Online SC 1325 was highlighted wherein it was observed that when the matter relates to payment of compensation to the land losers, if at all two views are possible, the view that advances the cause of justice is always to be preferred rather than the other view, which may draw its strength only from technicalities.
