

THE PROCESS OF REHABILITATION AND RESETTLEMENT UNDER THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013: A CRITICAL ASSESSMENT

Written by *Vishek Bhuyan*

2nd Semester LLM (1 year) Student, National Law University, Assam

INTRODUCTION

The topic of Land Acquisition is a controversial one. This issue has been a hot topic in the area of public policy of post-independent India. Despite its existing from the era of pre-independence, this issue has been receiving increased attention in the past few years. The Land Acquisition Rehabilitation and Resettlement Act, 2013¹ was introduced to replace the old act of 1894².

There are many definitions of the term “land acquisition”. They vary widely from one to the other. But in general sense of the term, Land Acquisition is nothing but the process by which the sovereign government acquires land from the private individuals which does not amount to a purchase. The reason for such acquisition might vary, from urbanisation, industrialisation to development of essential infrastructure and facilities.

Since land is a major source of livelihood in India, therefore the government’s role in land acquisition has been faced with several controversies. Such as in Singur, Yamuna Expressway, Noidahas, etc has seen unrest in face of forceful taking away of the land.

¹ Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013, Act No. 30, Acts of Parliament, 2013(India).

² Land Acquisition Act, 1894, Act No. 1 of 1894(India).

The earlier act of 1894 was inadequate and also draconian. Therefore in order to bring the laws relating to land acquisition more up to date, the Land Acquisition Act of 2013 was introduced. This act was enacted with an aim to strike a balance between two important components, i.e. the development & progress of the nation and the importance of individual rights. This act tries to harmonise the need for improving public infrastructure, facility, economic growth along with importance of livelihood of those classes that depend on their land to earn a living, such as the peasants, farmers, etc. There are many unique features of this act that were not present in the earlier act of 1894, these features and the various essential provisions of the act will be discussed in the subsequent chapters³.

When land is taken by the government in order to carry out the various developmental projects, it is the duty of the government to ensure that those displaced are rehabilitated and resettled.

Resettlement is also known as population transfer, which involves large scale movement of people from one region to another region, which is can be as a result of any of the following reasons:

- Construction of dams, irrigation canals, reservoirs, etc.
- Development of infrastructure projects such as bridges, flyovers, etc.
- Building of roads, highways, etc.
- Construction of energy generation of projects such as power plants, mining activities.
- Agricultural projects.

Whereas, rehabilitation implies the restoration of someone to a useful place in the society.

The process of resettlement is faced with many issues such as very less amount of compensation, loss of livelihood, lack of facilities in the new areas, increase in health problems, etc. This research paper will look into as to how the act of 2013 tackles such problems in the subsequent chapters and also how the provisions relating to the issue of rehabilitation and resettlement compare with those of the earlier act of 1894.

³ Id.

RIGHT TO FAIR COMPENSATION AND TRANSPERANCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013

Brief Overview

Due to increased concern of the public regarding acquisition of land by the Government, a need for a new and improved legislation regarding the above was felt. The old act of 1894⁴ received several amendments and updates but despite that there was no proper and uniform laws which provided for compensation by the government when an individual's private land is acquired for some public purpose. Also, along with the above the earlier act also did not provide for the rehabilitation of the owners of these, as many of them depended upon it for their livelihood and hence were left without any source of income. As a result of the above factors, the government felt the need of bringing in a new act which provided for the rehabilitation and resettlement of those who have been negatively impacted by the effect of such acquisition.

On the 7th of September, 2011 the Land Acquisition, Rehabilitation and Resettlement Act, 2011 was introduced in the lower house. The act was then subsequently passed by the Lok Sabha on the 29th of August, 2013 and by the Rajya Sabha on the 4th of September, 2013. And it finally received the presidential assent on the 27th of September, 2013⁵.

Need for the new Act

Due to widespread criticism which the Land Acquisition Act of 1894 received, the need for the new act was felt. Some of these criticism are:

- One of the most important reason was that the earlier act did not give any importance to rights of the private individual with respect to their lands. Which means that once the Government decided or formed the intention that they want to take over a particular piece of land then they can carry out such acquisition without considering the claims and objection of the owners, hence forced acquisition.

⁴ Land Acquisition Act, 1894, Act No. 1 of 1894(India).

⁵ Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013, Act No. 30, Acts of Parliament, 2013(India).

- The earlier act of 1894 also did not have any sort of any sort of mechanism for hearing of appeals. Though, it did include a particular provision about for hearing but such views were not mandatory to be taken into consideration. And hence it did not have any sort of safeguards.
- Another very important factor was that, the act of 1894 did not have provision for rehabilitation and resettlement of the displaced owner. This meant that once the government acquired their land, then they would be left landless and no means of livelihood.
- One of the most criticised aspect of the earlier act was its “urgency clause”. The urgency clause allowed the government to acquire the land of the owner without giving them any chance of hearing. The controversy lies in the fact that, in no part of act the term “urgent” have been defined. And as result most of the acquisitions took place by invoking the urgency clause⁶.
- The act of 1894 also provided for very low rate of compensation. The rates that were provided were vastly disproportionate to the actual value of the land⁷.
- The Supreme Court also once observed that the earlier act of 1894 was fraudulent in nature. The law was made with the sole intention of causing difficulty to the owner without “any regard for the welfare of the common man”.

Aims and Objectives of the act

The various aims and objects of the act are:

- To coordinate between the various levels of governance such as the local self-government, gram sabhas, in order to develop and formulate a process for land acquisition which is transparent, owner friendly, and involves the participation of all the parties regarding land acquisition.
- To provide a fair compensation to those who have been displaced and whose land has been acquired by the Government.

⁶ Sec.40, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

⁷ Sec.31, The Land Acquisition Act,1894.

- To include provisions which consists of rehabilitation and resettlement of the affected parties.
- To make sure that the developmental purpose for which the land has been acquired, involves the participation of the affected party. This would allow for improvement in their economic condition after the land has been acquired.

Highlights of the act

- *Compensation*- the new act provides for proper compensation to the affected person. The amount which is proposed by the act varies between rural and urban areas. In rural areas the amount is four times of the market value and in urban areas it is two times the market value⁸.
- *R&R*- the older act did not provide for rehabilitation and resettlement but the new act has several chapter which is dedicated for this purpose. Five chapter and two schedules have been included in the new act which provides in details about the process of rehabilitation and resettlement,
- *Retrospective Operation*- this is another unique feature of act, where it tries to compensation for the wrongful loss caused by the earlier act. This act applies retrospectively to those cases where the land has been acquired by the government but no compensation have been paid.
- *Multiple Checks and Balances*: the new act also provides for a well elaborated and a comprehensive process before any land acquisition takes place. This process involves the participation of various institutions and levels of governance, which in turn makes sure that no wrongful loss is caused to the affected person. And also to ensure the enforcement implementation of the above process, various monitoring committees have been set up at central as well as state level.
- *Safeguard for disadvantaged groups*- when it comes to land acquisition in scheduled areas, then no acquisition can take place without the consent of the gram sabhas⁹. The

⁸ Sec.77, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

⁹ Sec.10, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

act also consist of provision which makes sure that the provisions of the Forest Act, 2006 or any other acts relating to natural resources are complied with.

- *Displacement*- the new act provides the government cannot take possession of the land until and unless the owner have received the proper compensation. Also, in cases where the land was inhabited upon by the owners, then the government can only takes possession of the land if proper arrangement for rehabilitation and resettlement has been made.
- *Public Private Partnership*- In cases where land has been acquired for use by private enterprise, then the act consist of a provision which provides that in such cases, the consent of at least 80% has to be taken so as to make sure that there is no forceful dispossession.
- *Livelihood compensation*- There are many cases where the land which is acquired is a source of income for the owner. In such cases the act makes sure that such persons are adequately compensated.
- *Limits on Agricultural acquisition*- where the acquisition of land involves those which has been used for agricultural purposes. Then the act lays down a limit on the amount of such land that can be acquired. This is done in interest of food security¹⁰.
- *Unused Land*- where the land which was acquired by the government is lying idle and has not been put to any sort of use, then it such cases the act provides for returning of such unused land to the owner.
- The new act also consists of provision which states the in cases where the acquired land is sold to a third party, then in such cases the act contemplates an amount up to forty percent of the appreciated value will be given to the original owner.

¹⁰ Sec.10, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

CRITICISMS LEVELLED AGAINST THE LAND ACQUISITION ACT, 2013

The Act of 2013 which came into force on the 1st of January 2014 has faced its fair share of criticism. This act according to various members of the society has failed to create an equilibrium between the growth & development of the country on one hand and Individual rights on the other.

Complex Procedure

The process of land acquisition which has been laid down in this act has been criticised by business owners.

The procedure that has been laid down very is a long one which involves various factors which might be completely out of the control of the acquirer. The first step involves the assessment of the various social as well as economic impact upon the inhabitants of the particular land, this assessment has to be done in consultation with the respective residents association or village council as the case may be. And also a result of this assessment shall be laid down in a report which will then become the deciding factor as to whether such land is capable of being acquired.¹¹

Another step consist of examination of the report by a body of person which shall consists of a expert panel including two social scientist, two rehabilitation expert and also a technical expert with expertise in the area for which the land is being acquired. And once such report has been submitted the acquirer must make his intention of acquisition clear, which is to be done within a period of 12 months from the date of submission of the report. Objections, if any regarding the acquisition, shall be made to the administrative head of the particular area.

Therefore, the government in order to acquire the land has to follow the above steps¹². But a particular clause which is known as “urgency clause” allows them to bypass these steps.

¹¹ Samling, C.L., Ghosh, A.K., Hazra, S. 2015. *Resettlement and Rehabilitation: Indian Scenario*. DECCMA Working Paper, Deltas, Vulnerability and Climate Change: Migration and Adaptation, IDRC Project Number 107642. Available online at: www.deccma.com, date accessed 21 March 2019.

¹² Id.

Now, the main area of criticism against the above procedure is that it involves many steps before the project is finalised. And in a country like India where every procedure involves red-tapism, the process of getting clearance for the project is a very difficult hurdle to overcome. Also the time involved in getting the clearance is another factor which has received flak.

Costs involved

Another criticism that has been levelled against the act of 2013¹³ is the amount of expense involved in acquisition.

The act of 2013 has laid down that in urban area the amount of compensation will be two times the market value whereas in rural areas the compensation is four times the market value. This amount according to various critics of the legislation is absurdly high and hence it might in fact have a negative impact upon the process of acquisition, it will have a deterring affect and therefore prevent land acquisition, which is necessary for the growth and development of the country. According to the Confederation of Indian industries, “the new law would raise the cost of land acquisition by 3-3.5 times and the cost of R&R by 3 times.”

The above will therefore have a negative impact on the progress of the nation.

The criticism also lies against the basis upon which such compensation was formulated. According to critics, there has been no proper reason or justification been given for such high amount of compensation, in fact the draft proposal of the act contemplated an amount which is 6 times of the existing market value.

Role of the Government

The act of 2013 contemplates the acquisition of land for the only public purpose. The act does not allow the private companies to acquire land but the government can acquire for these companies to be used for public purpose.

¹³ Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013, Act No. 30, Acts of Parliament, 2013(India).

According to critics, the government should play the role of a facilitator in order to allow the private sector to acquire lands.

Other criticisms

The land acquisition act of 2013 allows¹⁴ for acquisition of land only after obtaining the consent of the affected families. Now, affected families might consist of a group which separate from the owner of the particular land. This act only takes into account the consent of the former and not the latter. But the criticism lies in the fact that the term “affected family” has been defined vaguely, which in turn makes the task of obtaining consent very difficult.

Another area of criticism is the amount of restrictions imposed for acquisition of land which is involved in agriculture. The argument brought forth by the critics is that the overall development of the nations should receive higher priority than food security.

And finally, there are 13 other acts which deal with the procedure of land acquisition, and hence without bringing those acts in line with the new act, the current act cannot be implemented properly.

REHABILITATION AND RESETTLEMENT

National Policy on R&R

The National Policy on Rehabilitation and Resettlement was introduced with the primary objective of filling the gaps which were left out in the act of 1984, this mainly refers to the policy of rehabilitation and resettlement, which were not addressed before. The new act seeks to create an equilibrium between two opposing facts which includes the growth and development of the economy on one hand and the need of the affected families on the other¹⁵. The act seeks to help out those people who were either directly or indirectly adversely impacted by the acquisition. The number of people involved is a non-factor while dealing with the same.

¹⁴ Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013, Act No. 30, Acts of Parliament, 2013 (India).

¹⁵ National Policy on Rehabilitation and Resettlement, 2007.

Some of the benefits include, land, depending on the amount of govt. Land in the area of resettlement. The project which is proposed to be set up would ordinarily require man power for its completion, therefore another benefit under the policy provides for employment of one member of the family, which should be an “affected family”. Under the policy the government shall also impart proper training which in turn will make that particular individual able to seek employment and also capacity building for self-employment. The government shall also, whenever there is an eligible person in the affected family, shall provide scholarships in order to enable the pursuance of education. The government shall also give preference to the affected family in cases of allotment of contract or any other opportunity which yields economic benefit under the project. And finally it is the duty of the government to provide housing facilities to those who have been displaced as a result of the acquisition¹⁶.

Further the policy also stipulates costs to be provided for the following-

- Cattle sheds
- Shops
- Working sheds
- Transportation costs
- Temporary and transitional accommodation \
- Comprehensive infrastructure and facilities in areas of resettlement such as education, health care, clean drinking water, roads, electricity, sanitation, etc.

Where the displaced person consists of an individual with disability, in such cases the policy contemplates a life time pension which is to be paid monthly. This section of individuals also consists of orphans, widows, abandoned women, person above 50 years, etc.

The policy also consists of special provisions relating to the SC and ST community. Such as preference is given to these two communities in cases where land is granted by the government in return for land acquired. Also a development scheme which includes a development plan for alternate fuel to be used by these communities. In addition to the above the 2007 policy also

¹⁶ Id.

provides for consultation with the respective gram sabhas and tribal advisory councils, protection of the rights of these communities to fish or fishing rights, etc¹⁷.

Under this policy there is a multi-layered grievance redressal mechanism-

- Rehabilitation and resettlement committee at district level.
- R&R committee at project level.
- An ombudsman duly empowered.

The policy of 2007 has also put in place a monitoring mechanism in order to ensure the progress of the rehabilitation and resettlement plans. It is mandatory for the States and the Union territory to share information relating to implementation of R&R with the National Monitoring Cell and also the oversight committees of the respective departments which are responsible for the projects¹⁸.

In order to ensure that there is transparency in the process of R&R it is mandatory for the concerned departments to put information relating to displacement, R&R, the compensation package provided and the details of the affected family on the internet. And also such information shall be shared with the gram sabhas and the panchayats¹⁹.

The policy provides for setting up of a National Rehabilitation Commission which will look over the rehabilitation and resettlement of the affected families.

No project shall be taken up in cases where such project involve the displacement of people which is beyond the contemplated threshold. And where such project is essential to the development, then it can only be taken up once a Social impact Assessment is done. This assessment shall take into account the following-

- The impact upon property belonging to both the public and the community
- The impact upon various assets and infrastructure.
- The measure taken by the government to reduce the intensity of the impact.

¹⁷ National Policy on Rehabilitation and Resettlement, 2007.

¹⁸ Id.

¹⁹ Id.

The above Social impact assessment report shall be examined by an expert group consists of experts from various disciplines such as science or rehabilitation expert. All the above steps relating to SIA are compulsory in cases where the mandated threshold is crossed by the project.

The policy also states that in cases where the acquisition has affected the community then in such cases it is mandatory that these communities be informed and consulted at each stage. Such as, for the purpose of social impact assessment there shall be public hearing in the affected areas, consultation with the gram sabhas, consultation with the affected families and also women, NGOs, elected representatives, etc.

This policy also lays down the rule that a land which has been acquired for a public purpose cannot be transferred for any private purpose; therefore it can only be transferred for another public purpose which also requires the prior consent of the government. In cases where the acquired land has been left unused for a period of more than five years than in such cases the land shall revert back to the government concerned. In cases where the land acquired is sold then, eighty percent of the net proceeds shall be shared with person from whom the said land was acquired.

The person from whom the land has been acquired shall be given the option to obtain 20 percent of the rehab grant and compensation in form of shares.

The main object of this policy is to ensure that the displaced people are not affected adversely or to minimise the displacement as much as possible. It also states only that amount of land shall be acquired which is absolutely necessary, which should be as less as possible. Also agricultural as well as multi crop land shall be exempted from acquisition. While acquiring lands for projects, preference shall be given to wastelands.

The national policy on rehabilitation and resettlement, 2007 was formulated after consultation with the various concerned departments of the state/UTs. Public, industries, etc.

The Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation and Resettlement Act, 2013

Notification and acquisition

Under this act, Section 11 provides about notification which is to be published once the government has decided to acquire a certain piece of land of land. Public purpose under this act had been defined under Section 2(1), which means purpose relating to the armed forces, various kinds of infrastructure projects including agricultural & related purposes, industrial or mining activities, preservation natural resources such as water, sports and health related projects, etc. Coming to Section 11(2), it states about the consultation that is to be carried out with the gram sabhas, municipalities, once the notification has been published²⁰.

Next, Section 12 of the act states about the assessment of the amount of land that is to be acquired, this assessment will help in determining the extent to which the land acquisition is necessary and for this purpose a survey has to be carried out by any officer on behalf of the government who has been authorised²¹.

Section 14 lays down that after the submission of the Social Impact Assessment Report as mentioned under Section 7, the preliminary report has to be published within 12 months from the date of appraisal or else it lapses²².

Section 15 states about the time limit set for objections against the notification published under Section 11. Such objection has to be raised within 60 days from the date of publication of the notification. This section also lays down the manner in which such objection is to be heard as well as raised²³.

Section 16 states about the conduct of survey of the affected family upon the publication of Section 11. This survey is to be carried out by the administrator for R&R. The survey shall take into account the following-

- Details of the land to be acquired
- The impact upon the income of those dependent upon such land.

²⁰ Sec.11, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

²¹ Sec.12, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

²² Sec.14, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

²³ Sec.15, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

- Where the affected families are to be resettled then in such cases, the public resources as well as government properties that will be impacted
- The amenities and the infrastructure which will be impacted due to resettlement²⁴.

The Section then lays down that once the survey has been completed the administrator shall prepare a draft scheme which shall include the amount to be received by each of the owners of the lands, and also those who were dependent upon the particular land for their income. Section 16(3) states about the time limit for implementation of the scheme, to be mentioned in the draft. And Section 16(5) states that a public hearing is to be conducted relating to the draft scheme, in manner prescribed. And once the hearing is done, the administrator shall submit the draft to the collector and it shall be accompanied by a report on claims and objections.

Section 17 states about the reviewing of the scheme to be done by the collector, this review is to be done along with the R&R committee at project level. And once the review has been done, the collector shall then submit the draft to the commissioner R&R, along with his suggestion regarding the scheme.

Section 18 of the act states that once the draft scheme has been approved by the commissioner, then the approved R&R scheme shall be available in the local dialect to the panchayats, municipalities, District Collector, SDMS, affected areas, etc²⁵.

Section 19, states that once the appropriate government is satisfied with the report made under Section 15, that such land is required for public purpose, then a declaration to that affect shall be made, and also a notification regarding the area which has been identified as a resettlement area, where the affected families shall be rehabilitated. Section 19(7) lays down that such declaration shall be made within a period of 12 months from the date of publication of the preliminary notification²⁶.

Section 21 states that, it is the duty of the collector to publish a notice showing the intention of the government to acquire the land, and also state that any claims relating to compensation as

²⁴ Sec.16, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

²⁵ Sec.18, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

²⁶ Sec.19, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

well as R&R shall be made to him. Section 21(2) states that the person with claims can appear in person or through an agent or advocate before the collector. The appearance before the collector shall be within a period of 30 days to 6 months from the date of publication of the notice. They shall also state the amount of compensation they seek along with R&R, and also objections, if any, with regards to the particulars of the land²⁷.

Section 23 states about award as well enquiry by the collector into the objection raised under Section 21. It lays down the duty of the collector to enquire into the objection regarding measurements of the particular land and also the value of the land along with the claims of compensation as well as R&R of the various individuals having interest in the land²⁸.

Section 25 lays down the time limit within which the award of compensation is to be made. Under this section, it has been stated that the award shall be made within a period of 12 months from the date of publication of the notice under Section 19. This section also vests with the government the power extend the period of 12 months, if under any circumstances it deems appropriate.

Section 26 states about the calculation of the value of the land. While determining the value of the land, the collector has to take into account the market value regarding the registration of the sale deed, if any, as mentioned under the Indian Stamp Act, 1899. The collector shall also take into account the average selling price of similar plot of land situated nearby. Also, in cases of acquisition for private companies, the consented amount of compensation as agreed upon²⁹.

Once the market value of the land has been determined as stated in the above section, the collector shall then assess the compensation payable to the owner of the acquired land, while calculating the amount, the Collector shall also include the value of all the assets attached to such land. This has been provided under Section 27 of the act.

Section 28 states about the various considerations while determining the amount of award payable. The first thing to be considered is the value as determined under Section 26 of the act,

²⁷ Sec.21 Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

²⁸ Sec.23, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

²⁹ Sec.28, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

of the land. The second consideration is the loss sustained by any person having interest in the land, as a result of cutting down any standing crops or trees. The collector shall also take into account the loss sustained by an interested person, in cases where the land acquired was detached from another portion of land. Also the collector shall also include the loss sustained as a result of damage caused to any movable or immovable property. Fifthly, the collector shall also consider the loss suffered due to change of residence or place of business as a result of acquisition³⁰.

In cases where assets are attached to the land, then to determine the value of such assets the collector shall enlist the help of a person having expertise in the said field. This has been stated under section 29.

Rehabilitation and Resettlement Award

Section 31 states about the particular of the R&R award, it shall include; the amount of R&R payable, bank account number of the individual to whom the amount is payable, where the affected family is displace, then the particulars of the house to be allotted. Particulars of the land to be allotted. In cases of displaced families, the particulars of subsistence allowance. In cases of artisans, the particulars of the one time amount payable. Particulars of fishing rights, if any. Any annuity to be provided³¹.

Section 36 and 35 lays down the powers of the collector with respect to R&R award, this includes the power to enforce the attendance of witness as well as production of document. The collector has also been vested with power to call for records of proceeding, in cases where it is required to satisfy the legality of finding arrived at.

Section 37 lays down that the award is to be filed in the collector's office and it shall be conclusive proof whether the interested party has appeared before the collector or not. It shall be also be final proof as to the market value of the land as well as the attached assets³².

³⁰ Sec.28 Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

³¹ Sec.31, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

³² Sec.37, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

Section 38 states that once compensation as well as R&R amount has been paid, the collector gains the power to acquire the land. But the amount shall be paid within a period of 3 months in case of compensation and 6 months in case of R&R amount. This Section also states that it is the responsibility of the collector to ensure that the R&R process is fully completed before moving the affected families³³.

Section 39 of the act states about multiple displacement, it lays down that in cases where a family has been displaced more than once for the purpose of acquisition of the land, then in such cases the government has to pay additional compensation to the displaced family. This section also states that, if it is possible, then to prevent such multiple displacement of the same family.

Section 40 of the act is also known as **urgent clause**, firstly it states that the cases which are deemed to be urgent by the government, then here this section allows for acquisition of land without the payment of the award by the collector. But 30 days must have passed from the date of publication of the notification as given under Section 21. This section states the following as being urgent circumstances:

- Defence of the nation
- National security
- Emergency due to natural disaster
- Any emergency declared by the parliament.

The above circumstances constitute as urgent, and in these cases the power of the government to acquire shall be minimum area required for the above. Also it has been stated that, the owner of the land shall at least be given a 48 hour notice of the intention to acquire by the collector in order to enable him to remove any movable property from the building or land³⁴.

Section 40(3) states that 80 percent of the compensation to the person who is entitled shall be paid before possession is taken.

³³ Sec.38, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

³⁴ Sec.40, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

Section 41 states about acquisition of land in cases of Schedule casts and Schedule Tribes. This section lays down that no land acquisition shall take place in scheduled areas. But in cases where the acquisition does take place, it shall only be done as a matter of last resort when rest of the options have been exhausted³⁵.

Section 41(3) states that where the land is to be acquired in these scheduled areas, then the consent of the gram sabha, panchayat, district council, shall be obtained beforehand. Section 41(4) states that where the acquisition involve the involuntary displacement of these tribes, then a development plan shall be put forward which shall lay down, in details as to the settlement of land rights. This plan shall consist of scheme to develop alternate fuel, fodder, non timber forest produce, within a period of 5 years.

Procedure of Rehabilitation and Resettlement

Section 43 states about the appointment of administrator. Clause (1) of this section states that the administrator of R&R shall be appointed by the government in cases where it is satisfied that there will be involuntary displacement as a result of acquisition. The administrator shall be an officer not below the rank of Joint Collector or Additional/Deputy Collector³⁶.

Section 44 of the act states about the appointment of commissioner for R&R. It is the duty of the state government to appoint the commissioner of the government for the purpose of R&R of the affected families and he shall be responsible for the formulation of the R&R schemes and its timely implementation.

Section 45 states about the appointment of R&R committee in cases where the land to be acquired exceeds 100 acres, the collector shall be the chairman of this committee. The duty of the committee is to oversee as well review the progress of the proper implementation of the R&R scheme and also work along with the gram sabhas of the rural areas to carry out post implementation social audits. Clause (2) sates about the constitution of the committee, it shall include a women representative for the women in rural area, ST/SC representative, representative of a voluntary org working in the particular area, a nationalised bank

³⁵ Sec.41, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

³⁶ Sec.43, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

representative, the chairperson of panchayats, land acquisition officer responsible for the project, etc³⁷.

Section 47 of the act states that where the obligation of the requiring body in relation to R&R can be quantified into monetary terms, then in such cases the collector can permit the payment of such money into the account which shall be in complete satisfaction of the obligation. And this shall be administered by the administrator appointed under Section 43.

National Committee on Rehabilitation and Resettlement

Section 48 vests the power to establish a National monitoring committee for national as well as inter state project, with the Central government. It is the duty of this committee to oversee the implementation of R&R schemes³⁸.

Clause (2) states that this committee shall include members with expertise in the relevant fields. The Central government is also responsible to provide the necessary officers and manpower required for the efficient functioning of this committee.

Section 49 states that it is the responsibility of states and UTs to report any information regarding matters covered in this act to the monitoring committee. Section 50 lays down about the establishment of a State monitoring committee for R&R³⁹.

Land Acquisition and Rehabilitation & Resettlement Authority

Section 51 of the act vests the power with the appropriate government to establish a land acquisition, rehabilitation and resettlement authority for the purpose of deciding disputes relating to compensation, R&R, land acquisition in a speedy and timely manner⁴⁰.

Section 52 lays down that the authority shall be made up of one person and not more, and that person shall be referred to as the presiding officer. Section 53 lays down the qualification of

³⁷ Sec.45, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

³⁸ Sec.48, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

³⁹ Sec.49, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

⁴⁰ Sec.51, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

the presiding officer, he shall either have served as a district judge or practised for a period not less than 7 years. Clause (2) of Section 53 states the appropriate government shall appoint the presiding officer in consultation with the chief justice of the respective high court⁴¹.

Section 54 states that the presiding officer shall serve for a term of 3 years from the date of appointment or 65 years of age attainment, whichever is earlier⁴².

Section 55 states about the composition of the rest of the staff of the authority. It vests the power with the appropriate government to appoint a registrar and such officers as it might deem fit. The presiding officer shall oversee the functioning and performance of the duties by the rest of the staff. Section 56 states that the salary and allowance of the presiding officer shall be such as it may be prescribed.

Section 58 of the act states about resignation and removal. The presiding officer can resign by giving a notice of resignation to the appropriate government. Clause (2) states that the presiding officer can only be removed from the office on the ground of misbehaviour or incapacity. Such grounds shall be proved by an inquiry. The power to make the order of removal lies with the appropriate government. Section 59 states that order as to the appointment of presiding officer made by the government shall be final and cannot be called into question⁴³.

Section 60 lays down the power of the authority-

- Summoning and examining any witness by giving him oath.
- Production and discovery of documents and other evidence.
- Obtaining evidence on affidavit
- Power to issue commission to examine witness
- Power to review its own decisions and orders

⁴¹ Sec.52, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

⁴² Sec.54, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

⁴³ Sec.58, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

Clause (3) of section 60 lies down that the authority is bound by the provisions of the procedural laws but by the principles of natural justice. And it is the duty of the authority to deliver copies of the award within 15 days of the decision to the concerned parties.

Section 61 lays down that every proceeding before the authority of R&R shall be deemed to be judicial proceeding and the authority has same status as that of a civil court. And section 62 states that members of the authority shall be deemed to be public servant. Section 63 provides for exclusion of the jurisdiction of any civil court in matters relating to land acquisition except of High Court under Article 226 and 227⁴⁴.

Section 64 of the act states about reference of objections to the authority. Here it has been stated that, any objection relating to land measurements, compensation, and person to whom payable, R&R amount, etc, shall be written down in application to be addressed to the collector. And the duty has been cast upon the collector by this section to refer such matter for the final determination by the authority, and such reference shall be made within a period of 30 days by the collector.⁴⁵

The collector while making the reference shall state the following information; the extent of land along with trees, buildings, standing crops, etc, names of interested persons, amount of compensation/damage awarded, objection as to the compensation amount.⁴⁶ This has been laid down in Section 65 of the act.

After the above, it is the duty of the authority to give notice with the necessary details upon the applicant, any other interested person, the collector, etc.⁴⁷ This has been stated in section 66.

Section 69 states about the determination of award. The authority while determining the amount of compensation and R&R amount, shall make sure that the collector has complied with the relevant provisions of this act. While determining the market value of the land, the authority shall award an interest of 12% per annum, to be calculated from the date of publishing

⁴⁴ Sec.61, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

⁴⁵ Sec.64 Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

⁴⁶ Sec.65, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

⁴⁷ Sec.66, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

of the preliminary notification. Section 70 states that every award shall be made in writing and also signed by the presiding officer. It shall specify the amount of compensation awarded along with the subsections as well as the grounds of award. Clause (2) of this section states that every such award shall be deemed as a decree.⁴⁸

If the authority is of the opinion that the sum which the collector should have awarded is more than the sum actually awarded, then the authority has the power to impose interest on the excess at the rate of 9 percent per annum, and this shall be calculated from the date on which the collector took possession to date of payment of the excess to the authority.

Section 74 states that an appeal lies to the High Court, if the person is not satisfied with the award. Such appeal may be filed within a period of 60 days from the date of award.⁴⁹

Apportionment of award

Where several people who have an interest agree in the apportionment of compensation, then the details relating to the apportionment shall be mentioned in the award. And any dispute arising out of the apportionment between the persons interested, the collector shall refer such dispute to the authority. The above has been stated in Section 75 and 76 of the act.

Payment of Compensation

Section 77 states that the collector shall deposit the amount awarded in the bank account of the entitled interested person.⁵⁰

Section 80 states about interest to be paid when the collector did not pay the compensation on the date of taking possession. In such cases the collector shall pay a interest at the rate of 9 percent per annum from the date of taking passion to date of depositing the compensation.⁵¹

⁴⁸ Sec.69, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

⁴⁹ Sec.74, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

⁵⁰ Sec.77, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

⁵¹ Sec.80, Right to Fair Compensation and Transparency in Land acquisition, Rehabilitation & Resettlement Act, 2013.

CONCLUSION

The new land acquisition law came into force on the 1st of January, 2014. The Right to fair compensation and transparency in land acquisition, rehabilitation and resettlement, 2013 was introduced to replace the land acquisition, 1894 which existed from the colonial times.

The new act brought in many changes which was much need and was not provided for in the old act. Some of the various changes brought by LARR Act, 2013 are; the title of the new act reflected the primary objective of the law which included compensation as well as Rehabilitation and resettlement but the old act did not reflect this in its title. Secondly, the old act of 1894 provided for forced acquisition of land without due consideration given to the owner's right but LARR, 2013 has been provisions to safeguard the rights of the affected person such as obtaining of consent, etc. Thirdly, the old act had no provision relating to appeal but the 2013 act provides for multiple mechanisms of checks and balances, such as consultation with various local bodies. Fourthly, when it comes to compensation, the old act provided for rates which are inadequate and outdate whereas the new act provides for large amounts of compensation which can be up to 4 times the market value.

Another significant and the most important set of changes brought forward by the new act is Rehabilitation and resettlement. The 1894 act was absolutely silent when it came to this matter, where there was no R&R of the displaced and affected people. The new act has several chapter which is dedicated for this purpose. Five chapter and two schedules have been included in the new act which provides in details about the process of rehabilitation and resettlement. All these provision relating to R&R under LARR, 2013 has been dealt in detail in the previous chapters of this paper.

But despite the significant improvement brought about by the new act, it still faced criticism in various other areas. Such as, the new act favours owner over the needs of the poor, the complex procedure which consists of many qualification before acquisition which might be outside the control of the acquirer, and also the amount of costs involves which includes an exorbitant amount of compensation which acts as a hindrance to the development progress of the nation, etc.

Though the new act is a welcome change and it bring in much needed improvements in the process of land acquisition, there are still some areas which still needs some more work to done. Firstly, the procedure for acquisition needs to be amended to make it less complex, this process consists of several steps which are beyond the control of the acquired. Secondly, the amount of compensation that the new act stipulates shall be lowered to a reasonable amount, as the current amount is too much which might hinder the development of the country in the long run. And finally, the act favours food security instead of overall development of the country, as evidenced by several restriction by the act on acquisition of agricultural or land consisting of standing crops, here also some changes are necessary, wherein the developmental process shall always receive more priority over food security.

