

A COMPARATIVE STUDY ON LAND ACQUISITION ACT, 1894 & 2013

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ABSTRACT:

In India, Land Acquisition has been brought out by Land Acquisition Act, 1894, Land Acquisition, Rehabilitation and resettlement Bill, 2013 (UPA Government), Land Acquisition, Rehabilitation and resettlement Ordinance, 2015 (NDA government). The Land Acquisition Act, 1894 is that the primary legislation in India that deals with the acquisition of land by the govt. for a public purpose. It forms the Parent Act and is that the basis of all Central and State laws about required acquisition and therefore the compensation collectible to the interested person upon such acquisition. Thus it's vital to notice that the facility of the govt. during this regard isn't absolute and is subject to payment of adequate and simply compensation to the property owner. Therefore the law of compensation is tangled with the law of acquisition. What any statute about acquisition or requisition seeks to attain is acquisition and not arrogation. The cardinal principles touching on acquisition area unit contained in 2 intrinsic conditions, viz., the correct of the taken owner to receive compensation and, no acquisition is permissible while not a public purpose.

This research completely deals with the comparison of the land acquisition act 1894 and 2013. In comparison to the old act and the new act we have observed that the 1894 act primary purpose was for acquisition of land while the act of 2013 main principle was for the purpose of fair compensation, thorough resettlement and rehabilitation of those affected, adequate safeguards for their well-being and complete transparency in the process of land acquisition. The rates paid for the land acquired are the prevailing circle rates in the area

which are outdated and hence not even remotely indicative of the actual rates prevailing in the area according to 1894 act. The 2103 bill proposes the payment of compensations that are up to four times the market value in rural areas and twice the market value in urban areas.

KEY WORDS: Land acquisition, Transparency, Schedules, Property, Legislation.

INTRODUCTION:

Land acquisition is very important for economic development of country so as to produce employment, social infrastructure, physical infrastructure and different amenities. Legal right law is that the power of the state to require over citizen's property with due financial compensation, however while not property owner's consent. It's thought of to be a polemical instrument of workout State power that is employed across the planet. In India, Land Acquisition has been brought out by: Land Acquisition Act, 1894 Land Acquisition, Rehabilitation and resettlement Bill, 2013 (UPA Government) Land Acquisition, Rehabilitation and resettlement Ordinance, 2015 (NDA government) The Land Acquisition Act, 1894 is that the primary legislation in India that deals with the acquisition of land by the govt. for a public purpose. It forms the Parent Act and is that the basis of all central and State laws about required acquisition and therefore the compensation collectible to the interested person upon such acquisition. Thus it's vital to notice that the facility of the govt. during this regard isn't absolute and is subject to payment of adequate and simply compensation to the property owner. Therefore the law of compensation is tangled with the law of acquisition. What any statute about acquisition or requisition seeks to attain is acquisition and not arrogation. The cardinal principles touching on acquisition area unit contained in 2 intrinsic conditions, viz., the correct of the taken owner to receive compensation and, no acquisition is permissible while not a public purpose.

AIM OF THE STUDY:

To analyse the comparison of the land acquisition act 1894 and 2013

HISTORY OF LAND ACQUISITION LAWS IN INDIA:

The first piece of legislation in respect of acquisition of property in India was the geographic area Regulation I of 1824 that was applicable throughout the total of the provinces instantly subject to the presidency of Fort William. This regulation provided rules for facultative the officers of presidency to accumulate, at a good valuation, land or different

stable property needed for roads, canals or different public functions.¹ In 1850, a number of the provisions of the Regulation were extended to the city of city with the article of confirming the title, to lands in city taken for public functions. In 1850, once the Railways were being developed, the Railways were declared as construction conjointly the } Regulation was extended to the Railways also. As Regards Bombay, the Building Act XXVIII of 1839 was the primary piece of legislation that provided for acquisition of land "for the needs of widening or sterilization any existing public road, street or different route or drain or for creating any new public road street or different route among, the stands of Bombay and Colaba.² This Act was extended to Railways within the year 1850. In Madras, Act XX of 1852 was passed, for the aim of facilitating the acquisition of land for public purpose within the Madras presidency. Railways were brought beneath the range of 'public purpose' in 1850. Thus, it may be seen that until 1857, there was no law of land acquisition applicable to the total of British India. The First Legislation on the topic of land acquisition for the total of British India was the Act VI of 1857 that repealed all previous enactments about a hundred seventy five acquisitions. As declared in its preamble, its object was to create higher provisions for the acquisition of land required for public functions within the territories within the possession and beneath the governance of the East Indies Company and for determination of the quantity of compensation to be bought identical. beneath this legislation, the collector was authorised to repair the quantity of compensation by agreement if possible; however if there was no such agreement, the dispute had to be observed arbitrators whose call was to be final and will not be assailed, aside from their misconduct or corruption. Thus it may be seen that the Collectors are given a outstanding role right from 1857 and still they're enjoying a key role in grant compensation even these days equally, the therefore referred to as different Dispute Resolution (ADR) was introduced in acquisition proceedings manner back in 1857.³ Then it had been found that the strategy of settlement of compensation by agreement or arbitration was unsatisfactory because the arbitrators were incompetent and even corrupt. Additional it had been conjointly completed that there was no proceeding mechanism against the awards given by the arbitrators. In different to correct this anomaly, the assembly intervened and passed the Act X of 1870. The notable contribution of this Act was that, for the primary time, the Act provided for a regard to a Civil Court for the

¹ Dr Chetan Upadhyay "Research Paper on Land Acquisition in India" Vol 5 No 6, 2015 South Asia Journal of Multidisciplinary Studies available at www.gjms.co.in/index.php/SAJMS/article/view/1098.

² Maitreesh Ghatak, Parikshit Ghosh "The Land Acquisition Bill: A critique and a Proposal" Vol XLVI No 41, October 8 2011, Economic & Political Review, Pg 65, available at <http://econ.lse.ac.uk/staff/mghatak/GG.pdf>.

³ Act VI of 1857.

determination of the quantity of compensation once the collector couldn't settle it by agreement. It arranged down a transparent procedure for the acquisition of land and conjointly provided definite rules for the determination of compensation. But the Act couldn't plug several loopholes within the then existing system, and had to be eventually replaced by the Land Acquisition Act, 1894. The Land Acquisition Act, 1894 originally applied to the British India solely and therefore the Native States passed their own Acts, as an example the Mysore Land Acquisition Act, 1894, the Travancore Land Acquisition Act, 1089 and therefore the Hyderabad Land Acquisition Act, 1309 Fasli etc.

In fact beneath the govt. of India Acts 1919 and 1935 the provinces had the facility to ordain with relation to required acquisition of land and by workout such power several provinces amended in respect of sure provisions, the Act of 1894. once the Indian Independence Act, 1947, by virtue of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948 the Act was created applicable to any or all the provinces of India. After the Constitution, came into force it had been created applicable to the total of India except half B States.⁴

COMPARISON OF THE LAND ACQUISITION ACT, 1894 AND THEREFORE THE RIGHT TO TRUTHFUL COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013:

Following area unit comparative study of Land Acquisition Act, 1894 and therefore the Right to truthful Compensation and Transparency in Land Acquisition, Rehabilitation and resettlement Act 2013:

1. The LARR Act, 2013 has received the Presidential assent on Gregorian calendar month twenty seven, 2013 and came into result from Jan one, 2014. in keeping with the govt. of India Acts 1919 and 1935 the provinces had the facility to ordain with relation to required acquisition of land and by workout such power several provinces amended in respect of sure provisions, the Act of 1894. once the Indian Independence Act, 1947, by virtue of the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948 the Act was created applicable to any or all the provinces of India. However currently this Act has been repealed.⁵

⁴ Nandal Vikas, "Land Acquisition Law in India: A Historical Perspective"; Vol.3 Issue 5, 2014 International Journal of Innovative Research and Studies, Pg 468.

⁵ Paul Van Der Molen, Eugene. H Silayo, Arbind M. Tuladhar on " A Comparative study of Land Policy in 9 countries in Africa & Asia" available at

2. Within the LARR Act, 2013 parliament additional Section four of preparation of social impact assessment study i.e. before government problems notification to accumulate any land, the govt. should take 2 steps foremost to appoint committee to organize a report on social impact associate decreed second appoint an authority for rehabilitation and resettlement. It's completely new procedure for acquisition of lands. In Section five once completion of procedure of Section four next step is public hearing for social impact assessment once beneath section six government publish social impact assessment study than beneath section seven associate degree professional cluster appraisal of assessment report than according section eight applicable government examination of proposals for land acquisition and social impact assessment report. once these According section nine government officer to enter the land and survey identical, fix boundaries examine minerals, existence of crops, trees, buildings and different movables mounted land once notification issued and once district collector hold enquiry foremost on the question of public functions and second finalized the question of the schemes of rehabilitation and resettlement. And once issue notification beneath section nine and if there's delayed section lapses and a contemporary assessment report ought to be ready and accepted and just in case of urgency, the regime might exempt the proceedings of land acquisition from the supply about rehabilitation and resettlement. However in recent Act government is supply instantly a notification beneath section

3. Regime not needs following any provisions of latest LARR Act, 2013.

4. In keeping with section eleven of the LARR Act, 2013, the objection shall be filed among the sixty days from the date of publication of the notification beneath section nine of this Act. In keeping with section four of the recent Land Acquisition Act, 1894 the objection shall be filed among the thirty days from the date of publication of the notification beneath section four.⁶

5. Beneath section eleven of the LARR Act, 2013 publication of preliminary notification and powers of officers. However, this sort of provision are not obtainable within the recent Land Acquisition Act, 1894.

https://www.fig.net/resources/proceedings/fig_proceedings/fig2008/papers/ts06b/ts06b_04_vandermolen_etal_3_037.pdf.

⁶ Omitted by the Constitution (44th Amendment) Act, 1978, S.6 (w.e.f. 20-6-1979).

6. Beneath section thirteen of the LARR Act, 2013 the licensed officer UN agency enters the land for the needs of survey shall purchase all the damages and if the quantity paid is controversial, the Distinct Collector is that the competent Authority to terminate the quantity.

8. Beneath section five of the Land Acquisition Act, 1894 the authorize officer UN agency enters the land for the needs of survey shall pay or tender payment for all necessary damages and just in case of dispute the choice of the collector or different chief revenue officer of the district shall be final.

9. In keeping with section fourteen of the LARR Act, 2013 shows the importance of social impact assessment i.e. if the appraisal of the social impact assessment report isn't finalized among the twelve months and preliminary notification beneath section eleven isn't issued, it shall be deemed that this report has irreligious and contemporary inquiry during this regard shall be undertaken or recurrent transferral the advantages up to-date where necessary. However this sort of provisions isn't obtainable within the recent Land Acquisition Act, 1894.⁷

10. If somebody has any objection for acquisition of land shall be created to the collector in writing among sixty days of date of publication and once creating additional inquiry and build report and deliver this report back to the central government and call of central government is final. However beneath the recent Act if somebody has any objection solely among thirty days shall be created to the collector and once creating additional inquiry send report back to government and call of appropriate government is final.

11. Beneath the LARR Act, 2013 there are unit provisions of preparation of rehabilitation and resettlement theme by the administrator, review of the rehabilitation and resettlement theme and approved rehabilitation and resettlement theme to be created public. However within the recent acquisition act no provisions for rehabilitation and resettlement for UN agency lose their land.

12. Once the approval of rehabilitation and resettlement theme the govt. shall issue a notification by that the choice to no heritable and conjointly declare outline of rehabilitation and resettlement. Within the recent Land Acquisition Act once hearing of objections directly declaration that land is needed for a public purpose and once the declaration collector to require order of acquisition.

⁷ State of Bihar v. Kameshwar Singh 1952 1 SCR 889.

13. In keeping with section twenty four of the LARR Act, 2013 if the land notified beneath the previous Land Acquisition Act isn't appropriated or if the compensation isn't paid totally, this case treated as a unfinished case therefore the provisions about rehabilitation and resettlement shall be provided.

14. Beneath the LARR Act award shall be created among one year from the date of publication however in recent Act award shall be created among 2 years from the date of publication.⁸

15. Once the determination of compensation collector declared rehabilitation and resettlement award for affected families and conjointly created provision of infrastructural amenities in resettlement space. These provisions not enclosed within the recent Act.

16. During this LARR Act, 2013 additional another new purpose is that if families already displaced just one occasion and all over again displaced so that they area unit entitled to further compensation.⁹

17. Beneath the LARR Act, 2013 within the case of land no heritable in regular areas or land no heritable from members of regular Castes and regular Tribes; they shall be paid further compensation. With the exception of the extra compensation, they ought to be relocated ideally within the regular areas during a compact block in order that they will retain their ethnic, linguistic and cultural identity. just in case if the regular Castes and regular Tribes area unit settled outside their areas during a completely different district, they ought to be paid additional compensation furthermore as further reliefs due beneath the rehabilitation and resettlement schemes. Still the amendment of location the foundations of reservation in posts, in services and seats in instructional establishments, they were enjoying shall continue within the new locations wherever they're relocated. during this act enclosed provisions of appointment of administrator, commissioner for rehabilitation and resettlement, and rehabilitation and resettlement committee at project level, provisions about rehabilitation and resettlement to use just in case of sure persons aside from given persons, quantification and deposit of rehabilitation and resettlement quantity, institution of national watching committee for rehabilitation and resettlement, news necessities, institution of state watching committee for rehabilitation and resettlement, institution of land acquisition rehabilitation and resettlement authority, composition of authority, qualifications for appointment as leader,

⁸ Ambika Mishra v State of UP, 1980 AIR 1762.

⁹ Waman Rao v.UOI,1980 SCC (3) 587.

terms of workplace of leader. The recent act wasn't given vital to regular areas and members of regular castes and regular tribes.

18. If the person isn't happy with the order of the collector among thirty days build associate degree application a regard to the suitable authority and regard to authority than offer statement to authority and continuing in command publicly and in recent act regard to the court continuing to be in open court.

19. LARR Act, 2013 if somebody contravenes any of the provisions about payment of compensation or rehabilitation and resettlement, each such person shall be susceptible to a penalization of six months which can reach 3 years or with fine or with each, offences by corporations, offences by department, cognizance of offences by court, offences to be non-cognizable, offences to be cognoscible solely on criticism field by sure person. This provisions not as well as beneath recent Act.¹⁰

20. Beneath the LARR Act, 2013 no amendment of purpose to be allowed, no amendment of possession while not permission to be allowed, come of unutilized land, distinction in worth of land once transferred for higher thought to be shared, provisions to be additionally to existing laws, opinion of applicable government to lease, provisions of this act to not apply in sure cases or to use with sure modifications, power of state legislatures to enact any law a lot of useful to affected families and choice to affected families to avail higher compensation and rehabilitation and resettlement. All this provisions not obtainable in the recent Act.

21. Within the LARR Act, 2013 four schedules additional. within the 1st schedule some elements obtainable that area unit unbroken in mind whereas deciding compensation for land owner, second schedule parts of rehabilitation and resettlement claim for all affected families, third schedule provisions of infrastructure amenities and within the fourth schedule list of 13 enactments control land acquisition and rehabilitation and resettlement obtainable during which exemption given by the central government that this act isn't apply. These provisions are conjointly not obtainable within the Land Acquisition Act, 1894.

22. Within the LARR Act double crop wet land shall not be heritable.

23. A lot of over within the LARR Act, entry of presidency offices for the needs of survey are going to be permissible once the beneficiary deposits the compensation quantity.

¹⁰ Bengal Resolution I of 1824.

24. The schemes of rehabilitation and resettlement area unit required once the govt. acquires a land. it's obligatory once the personal establishments acquire land for his or her comes, whether or not the land no heritable or purchased extends on the far side one hundred acres no matter whether or not any a part of such comes has any land that belongs to government.

25. Wherever somebody is granted land or stabile property had a region of compensation of encompasses a part of edges, identical is also recorded within the name of lady, woman, adult female, spouse, partner, married person mate, better half or oldest woman member within the family. but it's going to be noted that infrastructural comes as is also notified area unit exempt from providing Rehabilitation and resettlement strategies.¹¹

CONCLUSION:

An act that was born during a completely different context, amended beneath numerous compulsions, and continues to be in conflict with sundry different laws. Whereas the demand for the land continues to extend, its offer is mounted. so as to fulfil the rising demand of the land, it's to be no heritable and its use pattern should be modified beside numerous policies implementation. However, the necessity and convenience between lands continues and it's lead the consecutive governments at the centre cross-check the Land Acquisition Act, 1894 time and once more so as to search out resolution to the present drawback. The foremost question these days is that whether or not dynamical a selected law may overhaul the system of overlapping laws that has allowed the misuse of restricted land resources? The current BJP government but has fully denied the allegations that the amended bill is anti-poor and anti-farmer. The effort of the government is power to bring forth the changes in LARR Act area unit commendable.

Though the necessity of the hour for the developing country of ours is to expand its infrastructure and welcome the technological advancements with open hearts so as to bridge the gap between developing and developed countries, still the foremost issue that India is associate degree agricultural primarily based country cannot be neglected. The initiatives by Modi government area unit laudable as land acquisition hurdle creates abundant delay and obstacle in completion of even public welfare comes i.e. metro, railway, roads etc. The approach of exempting thirteen sectors from the strictures governing land acquisitions is in right direction however beside this government ought to conjointly take into thought of land owner's interest. The govt. has to compensate as per growing valuation over time instead just

¹¹ Laxman, "Emergence of Articles 31A,31B & 31C", available at <http://www.legalservicesindia.com/article/article/emergence-of-article-31-a-b-and-c-and-its-validity-1435-1.html>.

one occasion settlement that too supported governmental valuation that perpetually remains abundant lesser than market valuation. The recent proposals concerning compensation supported lease or rent is value thought.

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