

Policy Options Note

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The new Land Acquisition Act comes into force

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (Act), came in force from January 1, 2014, pursuant to a Gazette notification by the Ministry of Rural Development, Government of India.¹ Draft rules under the Act were published on December 31, 2013, and comments are invited within one month. The rules include provisions for social impact assessment and consent requirements.

CUTS has been tracking the development of the Act since its inception and has kept the stakeholders updated through its various online publications.² The following sections offer brief critique of key provisions of the Act and suggest possible alternatives.

Why such a long name?

The name of the Act is an unnecessary mouthful. It tries to cover everything and thus creates limitations; why can't law makers just give it a shorter name: Fair Land Acquisition Act for example. A longer name with multiple highlights misses the central theme around which a land acquisition law must be built - fairness to the parties affected. A short name, as suggested, would have highlighted the pivotal balanced theme. While fairness is a subjective term that differs with individual perceptions, meticulous attention to it could have resulted in thoughtful appraisal of land markets and asset pricing backed by sound economic rationale, instead of coming up with an ad hoc formula, as provided under the Act. A fair compensation mechanism, such as large-scale land auctions at project site and surrounding region, would have been forward looking and not based on historical prices that have little relevance to the new economic landscape.³

The new land acquisition law that has replaced the earlier one of 1894 vintage is expected to make land more costly for businesses, because of not just the higher cost but also compulsory rehabilitation and resettlement conditionalities, and social impact studies. Project approvals will have to clear several layers of committees operating without concrete criteria.⁴ Such detailed procedures have the potential to delay projects, and exacerbate financial and opportunity costs.

Mixed reactions

Businesses in India have warned that the Act will impact industrialisation process at large. Several experts are of the view that it will also create uncertainty and push back growth. According to them, the Act would also hamper the process of acquiring land by stretching the whole process by 4-5 years. Reducing uncertainties in land acquisition seems not to appear in the priority list of Government. Some feel that absence of linkage between compensation and progress of project, which could have been achieved through partial compensation in form of land bonds, could also result in delays and increased costs. However, business

groups such as Federation of Indian Chambers of Commerce and Industry (FICCI) are hopeful that government would adopt appropriate measures in order to simplify the process and will provide necessary assistance to the private sector in acquiring land.

The Act treats land acquisition for public private partnerships (PPPs) differently from that for publicly-funded projects. Concerns have been raised that such confusion of PPPs with private companies makes infrastructural development by the states and urban local bodies unnecessarily difficult. In addition, due to increased compensation amount, the incentives to litigate could be greater under the new law.⁵

On the other hand, certain sections of society do believe that the new Act is expected to bring in more transparency to the whole system, by introducing appropriate checks and balances at various stages. In its attempt to create a balance between fair compensation to land owners and economic growth of the nation, Government through this Act is trying to satisfy both objectives to some extent.

Escalating the political patronage system

Many have labelled this law as a vote politics law, which is evident in how the ruling party has launched this message in the ensuing election campaign, among others like food security, as something which they have done for the poor, which might not turn out to be true. In order to get over 80 percent land owners to agree to sell their land to an industry, it is but natural that local politicians will play a greater role...another dimension of the egregious political patronage system which exists rampantly in our country. The indispensability of State level independent regulatory bodies needs to be highlighted here, which could play a crucial role in ensuring transparency and fairness and preventing political patronage.

Need for an independent regulator

CUTS has raised various apprehensions with respect to the Act at various forums. These include the possibility of the Act becoming an instrument of circumventing regulatory

prescriptions by creative business structures and nourishing greater corruption (in form of bribery) rather than achieving its purpose; the scope of public purpose in the Act; and protection of landless labourers and share croppers, amongst others. In addition, issues such as suitable compensation for State governments for their involvement in acquiring land for Central government projects and special provision of compensation to affected families in situations when government acquires a piece of land (even if it is wasteland under private holding), for resale to private players at a huge profit subsequent to undertaking mining or similar activities, have been highlighted.⁶

CUTS has also advocated need for independent regulators (at Central and State levels) to ensure fair returns to farmers. The regulators should address two central questions: (a) why are our farmers increasingly restive while parting with their land for non-agricultural use; and (b) under what conditions would they be a willing partner of large-scale industrialisation and infrastructure development. Evidence suggests that, setting aside isolated incidents, farmers are not averse to changes in land-use pattern if adequate trust is built between sellers and buyers. One of the functions of the regulators could be building such trust amongst parties to the transaction.

The most important job of the regulator should be to lower the transaction cost of doing business-in this case, acquisition of agricultural land for industrial purpose. They should act as an interlocutor between buyers and sellers of land, and reduce negative externalities or obstacles to make collective choice by dynamically engaging with all relevant stakeholders. The regulators should identify agricultural lands for industrial purposes and fix their price and other benefits to land owners. While fixing the price and other benefits, returns to over-lapping generations must be kept in mind by the regulators.

India needs more land for manufacturing to create jobs

India needs industrialisation in the manufacturing sector, which requires land, and creation of jobs for the landless and marginal farmers. Nearly 86 percent of farm workers are landless, and protection to the poor through such a law is not clear. Even when the special economic zones were launched we heard the same stories, while many

farmers were happy to sell their land and get some reasonable amount of money, which they would never have earned in their lifetime. However, the reality was quite different, as due to non-judicious use of compensation amount, such farmers soon had to revert back to their old lifestyle.

More sanguine and pragmatic approach needed

Further, the Act emancipates delays which are latent in form of procedures. As every private purchase is subject to administrative discretions, it could contribute towards more delays and this time bureaucratic. The Act could possibly start new problems than solving old ones, and could prove to be a road block for upcoming projects, a breeding ground for litigation and delays.⁷ A process with an inbuilt mechanism of deemed approval, on non-communication of reasoned denial within a specified time period, could be the way out.

The Act has the potential make both actual and transactional cost of land buy prohibitively high. Also, it might not guarantee the right return for our farmers and others dependent on land for their livelihoods.

A more pragmatic and sanguine approach would thus be useful before implementation of the Act. It must be realised that with the right set of information in place such as location, soil quality and cropping pattern, it is possible to calculate the correct price of a piece of agricultural land and estimate its future value over a period of time, as opposed to relying on often undervalued registered sale deeds.

It is also possible to address uncertainties related to future livelihood concerns of our farmers. Long-term prospects in the form of creation of human capital and other assets must be available for tenants and farm workers. While immediate beneficiaries of changes in land-use pattern should bear the non-recurring, fixed costs of such offers and should also offer a part of future returns in the form of equities, the State should bear the costs of recurring benefits for a mutually agreeable finite period.⁸

Thus, a more scientific approach to cost determination, appropriate checks and balances implemented by independent State level regulators to ensure fairness to affected parties could ensure long-term benefits from land acquisition.

Endnotes

- 1 http://www.rural.nic.in/sites/downloads/NewReleases/Noti_Commencement_LR19dec13.pdf
- 2 http://www.parfore.in/As_parties_wrangle_Parliaments_productivity_shrinks.htm,
http://www.parfore.in/India_Inc_still_unhappy_activists_slam_modified_land_bill.htm,
http://www.parfore.in/Govt_to_move_land_acquisition_bill_during_winter_session.htm
- 3 Ghatak and Ghosh, *The Land Acquisition Act is deeply flawed*, at http://ideasforindia.in/article.aspx?article_id=207
- 4 Saxena, *The power of populists and naysayers*, <http://archive.indianexpress.com/news/the-power-of-populists-and-naysayers/1052986/2>
- 5 Singh, *The new land law: Are the states up to the challenge?*, at http://ideasforindia.in/article.aspx?article_id=208
- 6 http://www.cuts-international.org/pdf/CUTS_International_Comments_on_Land_Reform_Bill.pdf
- 7 http://circ.in/pdf/Landing_Another_Blow.pdf
- 8 http://www.cuts-ccier.org/Article-A_Regulator_for_Land_Acquisition.htm

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