

The Land Acquisition Ordinance

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The ruling government's Land Acquisition Ordinance is viewed with suspicion by most politically active groups, as well as the industry. Consent, compensation, relief and rehabilitation are some of the issues for the landowners/farmers, while bureaucratic delays and cumbersome procedures repel industrialists from pursuing ambitious projects. This article attempts to draw a timeline of recent developments with regards to the Bill, and also considers policy options from various perspectives.

Land acquisition continues to be a political hot potato. The Bharatiya Janata Party (BJP) government's attempt to tinker with the Land Acquisition Act of 2013 through the ordinance route has met with vigorous resistance. Anna Hazare, whose thunder was stolen by Arvind Kejriwal on the corruption issue, has found a new cause to help revive his own brand of agitprop. Opposition parties, who were demoralised by a drubbing in the Lok Sabha elections, have found fresh energy to stir up trouble. Of course farmer interest groups have been vocal, including the ruling party's own affiliate, the BJP Kisan Morcha.

Although stung by the sharp reactions and amidst the usual outbreak of dharnas and walkouts, the government has gone ahead and placed the ordinance before the Lok Sabha for approval during the budget session. While improving the investment climate is a pressing need, an anti-farmer tag is the political kiss of death in a country where two-thirds of the electorate is still rural. The government seems nervous and conciliatory even while it stays its course.

The 2013 Act raised compensation amounts to four times the market price in rural areas and twice in urban areas, topped up by a Relief and Rehabilitation (R&R) package for affected families. It also made the acquisition process more arduous by requiring a social impact assessment as well as consent of 80 per cent of the affected families (70 per cent for PPP projects) whenever land is acquired for private companies.

The ordinance leaves compensation amounts and R&R obligations untouched. It tries, instead, to ease the burden of acquisition by doing away with social impact assessment as well as the consent requirement for projects involving defence, housing, infrastructure and industrial corridors. It also tries to shield government officials from prosecution on account of any violations of the Act.

A Muddled Law

One can think of three broad approaches to eliminate the extraordinary conflicts surrounding land acquisition that we have witnessed in the last decade. One is to let money speak – hiking minimum compensation amounts significantly to win farmers’ support. The second is to let farmers speak – making project clearance contingent on a referendum among affected households. The third approach is to let the bureaucrats and experts speak – getting it vetted by an empowered committee doing its own social cost-benefit assessment.

Whatever one’s views on the relative merits of these approaches, it should strike most people that they are alternatives rather than complementary measures. If there is a mechanism in place for securing the consent of evacuees, why impose a high minimum price that will impede case-by-case price negotiations? People can reject the deal if offers are too low. Similarly, it is difficult to see what “social impact” a committee of experts is supposed to assess beyond identifying project affected persons whose consent is being sought. Either farmers get to decide if it is a good enough deal or the government decides it for them. The kitchen sink approach is precisely what made the new law such an ungainly piece of legislation.

For those who have tracked the Land Acquisition Act of 2013 from its inception in the National Advisory Council (NAC), it is not difficult to see why it is so over-burdened with orthogonal and even contradictory ideas. N.C. Saxena, a member of the working committee which drafted the first version of the bill, thought the best bet for conflict resolution is to pull out all the stops on compensation (Saxena 2013). Other members – former bureaucrats turned civil society activists – had different ideas. These authors of the bill are enamoured with grassroots democracy as well as bureaucratic paternalism. The result is a document that had to include something to make everyone happy. It stacks up all kinds of disparate remedies and resembles a hypochondriac’s medicine chest.

All this has made the new process of land acquisition not only expensive but also cumbersome and slow. The point this Gordian knot of safeguards has completely missed is that protecting farmers’ interests is not the same thing as making land acquisition difficult.

Why Is the Public Sector A Holy Cow?

The Modi government has, so far, not shown any radical departure from the UPA’s economic policies. One notable difference is that it looks much more decisive and displays a certain impatience with slow and byzantine decision making processes. In keeping with its penchant for speed and simplicity, it is trying to get rid of aspects of the new law that served as a recipe for slowdown or even quagmire, without slashing compensation amounts.

A remarkable trait among many critics of state policy in India is their reflexive statism – a habit of putting on a pedestal the very institution being condemned. A fine illustration of this mindset can be found in the brouhaha over withdrawal of the consent requirement in the

ordinance. In the 2013 Act, the government happily waived for itself the onus of putting its own projects to the vote. The criterion was imposed only on projects which involved the private sector.

This is ironic given that since Independence, only 8.2 per cent of the human displacement has happened due to industrial projects and as much as 65 per cent can be attributed to the building of water works, transportation networks and administrative structures (Chakravorty 2013). It is the state, not the private sector, which has been the hungry monster gobbling up people's land. Civil society activists who wrote the law and people protesting the ordinance did not find this objectionable. It is hard to escape the conclusion that their instincts are more anti-industry than pro-farmer.

A similar double standard is embedded in the dubious notion that eminent domain should only be invoked for projects with a 'public purpose'. The meaning of this permissive concept is rarely spelt out but it seems to roughly correspond to public goods in the sense that economists use the term. A little reflection shows that the provision of public goods is not synonymous with serving the poor.

Building an airport does little to improve the welfare of the common man whose preferred mode of long distance travel is often the roof of railway carriages. Conversely, a private factory making simple, cotton garments can create a lot of low skilled jobs and supply a useful consumption good to low income households. Why is the airport more deserving of coercive land acquisition than the garment factory? And why should farmers' consent suddenly become a moral imperative if we hand over the construction to GMR instead of the Airport Authority of India? Surely the merit of a project derives from its intended use, not its mode of financing.

The Price is Wrong

Social impact assessment added a needless layer of bureaucracy and was simply an invitation to red tape and bribery. To that, we say good riddance. The same could be said of the consent requirement if the mechanism for determining compensation was participatory and rational. Unfortunately it is not and our feeling about the latter is consequently more mixed.

The main problem in arriving at a fair compensation figure is that an industrial or infrastructure project often raises the local price of land many fold, making historical prices irrelevant for the purpose. The government has to find a way of determining what the market price is in the new economic landscape. Elsewhere (Ghatak and Ghosh 2011, 2012) we have suggested that this can be done by holding a land procurement auction on and around the project site once it has been announced.

Farmers' asking bids will then reflect both their idiosyncratic need for cultivable land and the opportunity cost of land on the open market after information about the project has been factored into people's calculations. Compensation needs to be tied to such a transparent method of price discovery and not to an arbitrary mark-up over past prices as specified in the new Land Acquisition Act.

There will be some landowners within the project site whose dependence on land is too great to make selling worthwhile even at this auction determined price. Such farmers can be awarded land-for-land compensation instead of cash, making use of surplus land around the project site that is procured through the auction. If rural land markets were well functioning, the task of finding alternative arable plots for the land hungry could be taken off the government's hand because displaced farmers could buy back land with compensation money if they wished. A rural land market is highly imperfect in reality but an auction, fortunately, will offer the added benefit of simulating its allocative functions.

The problem with the consent clause is that it is democratic without being pragmatic. Land acquisition can be viewed not just as a threat to the farmer's livelihood, but also as an opportunity to escape the poverty trap of subsistence farming. Industrialisation is not innately opposed to farmers' interests. Indeed, it is ultimately the only ticket out of poverty.

A simple up-down vote gives the farmer the right to reject unfair deals but not an opportunity to strike fair deals and win-win outcomes. What is needed is not voting rights on arbitrary compensation but bidding rights to determine the compensation itself. The traditional Left is too busy saving the farmer from becoming a victim of development and has no time or inclination for finding ways to make him a partner in development.

The government at the Centre has shown a willingness to clear some of the unnecessary hurdles to industrialisation and growth that were erected in the name of protecting farmers' interests. This should not be surprising. Narendra Modi came to power with a business friendly reputation and though dependent on the rural vote as much as any other Indian politician, he carries none of the ideological baggage or the activist doppelgangers the previous government had to deal with.

However, to make real headway, he will have to fix the land acquisition law where it is truly broken. He will have to find a better way of determining compensation amounts, one that is flexible and responsive to local needs and opportunities rather than the rigid formula devised by unimaginative bureaucrats. Even as it weathers the storm trying to prune the excesses of UPA's land legislation, the government is yet to rise to the real challenge.

References

Chakravorty, Sanjoy. 2013. *The Price of Land: Acquisition, Conflict, Consequence*. Oxford University Press, New Delhi.

Ghatak, Maitreesh and Parikshit Ghosh. 2011. "The Land Acquisition Bill: A Critique and A Proposal." *Economic and Political Weekly*, Vol. 46, Issue41, pp. 65-72.

Ghatak, Maitreesh and Parikshit Ghosh. 2012. "Will the Bill Bring Desired Outcomes?" eSocialSciences policy note.

Saxena, NC. 2013. "The Power of Populists and Naysayers." *Indian Express*, January 2.