

Determination of Market Value for Land Acquisition

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1. Introduction

The Government of India believed there was a heightened public concern on land acquisition issues in India. Of particular concern was that despite many amendments, over the years, to India's Land Acquisition Act of 1894, there was an absence of a cohesive national law that addressed fair compensation when private land is acquired for public use, and fair rehabilitation of land owners and those directly affected from loss of livelihoods. The Government of India believed that a combined law was necessary, one that legally requires rehabilitation and resettlement necessarily and simultaneously follow government acquisition of land for public purposes.

Land acquisition refers to the process by which government forcibly acquires private property for public purpose without the concurrent of the land owner. The land owner is not a willing seller, therefore, compensation and the way in which compensation were payable, is to be fair and reasonable. TRTFCAT in LARR Act 2013 (The LARR Act) provides for land acquisition as well as rehabilitation and resettlement (R & R) and replaces the Land Acquisition Act 1894.

Section 26 of land acquisition act of the Land Acquisition, Rehabilitation And Resettlement Act, 2013- "Determination of market value of land by Collector."

- (1) The Collector shall adopt the following criteria in assessing and determining the market value of the land, namely:—

(a) the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds or agreements to sell, as the case may be, in the area, where the land is situated; or

(b) the average sale price for similar type of land situated in the nearest village or nearest vicinity area; or

(c) consented amount of compensation as agreed upon under sub-section (2) of section 2 in case of acquisition of lands for private companies or for public private partnership projects,

whichever is higher:

Provided that the date for determination of market value shall be the date on which the notification has been issued under section 11.

Explanation 1.— The average sale price referred to in clause (b) shall be determined taking into account the sale deeds or the agreements to sell registered for similar type of area in the near village or near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made.

Explanation 2.— For determining the average sale price referred to in *Explanation 1*, one-half of the total number of sale deeds or the agreements to sell in which the highest sale price has been mentioned shall be taken into account.

Explanation 3.— While determining the market value under this section and the average sale price referred to in *Explanation 1* or *Explanation 2*, any price paid as compensation for land acquired under the provisions of this Act on an earlier occasion in the district shall not be taken into consideration.

Explanation 4.—While determining the market value under this section and the average sale price referred to in *Explanation 1* or *Explanation 2*, any price paid, which in the

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opinion of the Collector is not indicative of actual prevailing market value may be discounted for the purposes of calculating market value.

(2) The market value calculated as per sub-section (1) shall be multiplied by a factor to be specified in the First Schedule.

(3) Where the market value under sub-section (1) or sub-section (2) cannot be determined for the reason that—

(a) the land is situated in such area where the transactions in land are restricted by or under any other law for the time being in force in that area; or

(b) the registered sale deeds or agreements to sell as mentioned in clause (a) of sub-section (1) for similar land are not available for the immediately preceding three years; or

(c) the minimum land value has not been specified under the Indian Stamp Act, 1899 by the appropriate authority, the concerned State Government shall specify the floor price or minimum price per unit area of the said land based on the price calculated in the manner specified in sub-section (1) in respect of similar types of land situated in the immediate adjoining areas:

Provided that in a case where the Requiring Body offers its shares to the owners of the lands (whose lands have been acquired) as a part compensation, for acquisition of land, such shares in no case shall exceed twenty-five per cent. of the value so calculated under sub-section (1) or sub-section (2) or sub-section (3) as the case may be:

Provided further that the Requiring Body shall in no case compel any owner of the land (whose land has been acquired) to take its shares, the value of which is deductible in the value of the land calculated under sub-section (1).

Provided also that the Collector shall, before initiation of any land acquisition proceedings in any area, take all necessary steps to revise and update the market value of the land on the basis of the prevalent market rate in that area:

Provided also that the appropriate Government shall ensure that the market value determined for acquisition of any land or property of an educational institution established and administered by a religious or linguistic minority shall be such as would not restrict or abrogate the right to establish and administer educational institutions of their choice.

According to the Land Acquisition Act 2013, the appropriate Government shall constitute multi-member land pricing commission or authority to finalize cost of land acquisition/compensation State-wise/area-wise as determined under Section 30(1) read with Schedule I to the Act. The Second Schedule lists eleven (11) elements of Rehabilitation and Resettlement entitlements in addition to those provided in the First Schedule.

Third Schedule enumerates twenty five (25) infrastructural amenities to be provided for resettlement to the affected families. Fourth Schedule lists thirteen (13) Central legislations, which are sought to be exempted from the provisions of the Act.

2. The Aims And Objectives Of The Act

The aims and objectives of the Act include:

- To ensure, in consultation with institutions of local self-government and Gram Sabhas a humane, participative, informed and transparent process for land acquisition for industrialization, development of essential infrastructural facilities and urbanization with the least disturbance to the owners of the land and other affected families.

- Provide just and fair compensation to the affected families whose land has been acquired or are affected by such acquisition.
- Make adequate provisions for such affected persons for their rehabilitation and resettlement.

Purpose and scope:

The Act aims to establish the law on land acquisition, as well as the rehabilitation and resettlement of those directly affected by the land acquisition in India. The scope of the Act includes all land acquisition whether it is done by the Central Government of India, or any State Government of India, except the state of Jammu & Kashmir.

The Act is applicable when:

Government acquires land for its own use, hold and control, including land for Public sector undertakings Government acquires land with the ultimate purpose to transfer it for the use of private companies for stated public purpose. The purpose of LARR 2013 includes public-private-partnership projects, but excludes land acquired for state or national highway projects.

Government acquires land for immediate and declared use by private companies for public purpose.

The provisions of the Act does not apply to acquisitions under 16 existing legislations including the Special Economic Zones Act, 2005, the Atomic Energy Act, 1962, the Railways Act, 1989, etc.

3. Jurisdiction Of Courts

No lower civil court, u/s 63 shall have jurisdiction to entertain any dispute relating to land acquisition in respect of which the collector or the authority is empowered and no injunction shall be granted by any court in respect of any such matter. If aggrieved by the Award of the Collector by person interested in compensation and any reference is made to Authority u/s 64 by the Collector, the final Award shall be in accordance with S. 69.

Appeal to High Court: The appropriate Government or a Requiring Body or any person aggrieved by the Award passed by an Authority under section 69 may file an appeal to the High Court within sixty days from the date of Award; provided that the High Court may, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within the said period, allow it to be filed within a further period not exceeding sixty days as per S. 74. A period of six months is the time limit for disposal of case.

Retrospective operation: Where no award under the 1894 LA Act has been made, the new Act shall apply with regard to compensation in the following circumstances: where an award has been made but the affected individuals have not accepted compensation or have not yet given up possession, and the proceedings have been pending for 5 years or more and where a majority of individuals in an affected area have not received compensation, then the new law shall apply.

4. Definitions

U/s: 3(c) “Affected families”:

(i) A family whose land or other immovable property has been acquired,

(ii) a family which does not own any land but a member or members of such family may be agricultural labourers, tenants including any form of tenancy or holding of usufruct right, share-croppers to artisans or who may be working in the affected area for three years prior to the acquisition of the land, whose primary source of livelihood stand affected by the acquisition of land,

(iii) the Scheduled Tribes and other traditional forest dwellers who have lost any of their forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 due to acquisition of land,

(iv) family whose primary source of livelihood for three years prior to the acquisition of the land is dependent on forests or water bodies and includes gatherers of forest produce, hunters, fisher folk and boatmen and such livelihood is affected due to acquisition of land,

(v) a member of the family who has been assigned land by the State Government or the Central Government under any of its schemes and such land is under acquisition, and

(vi) a family residing on any land in the urban areas for preceding three years or more prior to the acquisition of the land or whose primary source of livelihood for three years prior to the acquisition of the land is affected by the acquisition of such land.

Section 3 (i): Cost of acquisition includes:

i) amount of compensation which includes solatium (i.e., extra compensation for the forcible nature of acquisition), any enhanced compensation ordered by the Land Acquisition and Rehabilitation and Resettlement Authority or the Court and interest payable thereon and any other amount determined as payable to the affected families by such Authority or Court;

ii) demurrage to be paid for damages caused to the land and standing crops in the process of acquisition;

iii) cost of acquisition of land and building for settlement of displaced or adversely affected families

iv) cost of development of infrastructure and amenities at the resettlement areas.

Section 3 (u): "Market Value" means the value of land determined in accordance with Section 26.

Section 3 (x) is: "person interested in AWARD" means —

(i) all persons claiming an interest in compensation to be made on account of the acquisition of land under this Act;

(ii) Scheduled tribes and other traditional forest dwellers, who have lost any forest rights recognized under the Scheduled Tribes and Other Traditional Forest Dwellers Recognition of Forest Rights Act, 2006;

(iii) a person interested in an easement affecting the land;

(iv) persons having tenancy rights under the relevant State laws including share-croppers by whatever name they may be called; and

(v) any person whose primary source of livelihood is likely to be adversely affected.

5. Market Value

Market value is the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in arm's length transaction, after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

According to Supreme Court in the case of *Maj. Gen. Kapil Mehra v. Union of India (UOI)*¹, the first question that emerges is what would be the reasonable market value which the acquired lands are

¹ 2014(145)DRJ497

capable of fetching. While fixing the market value of the acquired land, the Land Acquisition Officer is required to keep in mind the following factors:

- i. existing geographical situation of the land;
- ii. existing use of the land;
- iii. already available advantages, like proximity to National or State Highway or road and/or developed area and
- iv. market value of other land situated in the same locality/village/area or adjacent or very near to the acquired land.

The standard method of determination of the market value of any acquired land is by the valuer evaluating the land on the date of valuation publication of notification Under Section 4(1) of the Act, acting as a hypothetical purchaser willing to purchase the land in open market at the prevailing price on that day, from a seller willing to sell such land at a reasonable price. Thus, the market value is determined with reference to the open market sale of comparable land in the neighbourhood, by a willing seller to a willing buyer, on or before the date of preliminary notification, as that would give a fair indication of the market value.

*In Viluben Jhalejar Contractor v. State of Gujarat*² this Court laid down the following principles for determination of market value of the acquired land: (SCC pp. 796-97, paras 17-20)

“(17) Section 23 of the Act specifies the matters required to be considered in determining the compensation; the principal among which is the determination of the market value of the land on the date of the publication of the notification Under Sub-section (1) of Section 4.

(18) One of the principles for determination of the amount of compensation for acquisition of land would be the willingness of an informed buyer to offer the price therefore It is beyond any cavil that the price of the land which a willing and informed buyer would offer would be different in the cases where the owner is in possession and enjoyment of the property and in the cases where he is not.

(19) Market value is ordinarily the price the property may fetch in the open market if sold by a willing seller unaffected by the special needs of a particular purchase. Where definite material is not forthcoming either in the shape of sales of similar lands in the neighbourhood at or about the date of notification Under Section 4(1) or otherwise, other sale instances as well as other evidences have to be considered.

(20) The amount of compensation cannot be ascertained with mathematical accuracy. A comparable instance has to be identified having regard to the proximity from time angle as well as proximity from situation angle. For determining the market value of the land under acquisition, suitable adjustment has to be made having regard to various positive and negative factors vis-a-vis the land under acquisition by placing the two in juxtaposition....”

While taking comparable sales method of valuation of land for fixing the market value of the acquired land, there are certain factors which are required to be satisfied and only on fulfillment of those factors, the compensation can be awarded according to the value of the land stated in the sale deeds. In *Karnataka Urban Water Supply and Drainage Board and Ors. v. K.S. Gangadharappa and Anr.*³- factors which merit consideration as comparable sales are, *inter alia*, laid down as under:

It can be broadly stated that the element of speculation is reduced to minimum if the underlying principles of fixation of market value with reference to comparable sales are made:

- (i) when sale is within a reasonable time of the date of notification Under Section 4(1);
- (ii) It should be a bona fide transaction;

² (2005) 4 SCC 789

³ MANU/SC/0598/2009 : (2009) 11 SCC 164,

- (iii) It should be of the land acquired or of the land adjacent to the land acquired;
and
- (iv) It should possess similar advantages.

It is only when these factors are present, it can merit a consideration as a comparable case (*Special Land Acquisition Officer v. T. Adinarayan Setty*⁴)

Compensation for land is often complicated, particularly the estimation of land values. The market value is one option used. This is commonly defined as “the estimated amount that the land might be expected to realise if sold in the open market at valuation date after proper marketing between a willing seller and a willing buyer and they had acted knowledgeably, prudently, and willingly”.⁵

Fair market value might be used exchangeable with market value, but there is a distinction between them. The fairness of market value herein reflects the estimated price for the transfer of a property between willing parties who have the respective interests of those parties. It is necessary to carry out the assessment of the price that is fair for those parties taking consideration on the respective advantages and disadvantages that each is able to obtain from the transaction. Meanwhile, market value entails the strong points that are not available to market participants generally to be ignored, and therefore the concept of market value is narrower than fair market value.⁶

6. Acquisition Awards

The new Act stipulates that the minimum compensation is to be a multiple of the total of the ascertained market value, plus value of the assets attached to the property, plus a solatium equal to 100% of the market value of the property including value of assets.

Under **Section 23** the Collector shall proceed to enquire into the objections which any person interested has stated pursuant to a notice given under Section 21 and into the respective interests of the persons claiming the compensation and rehabilitation and resettlement, shall make an award under his hand of—

- (a) the true area of the land;
- (b) the compensation as determined under Section 27 along with Rehabilitation and Resettlement Award as determined under Section 31 and which in his opinion should be allowed for the land; and
- (c) the apportionment of the compensation among all the persons known or believed to be interested in the land, or of whose claims, he has information, whether or not they have respectively appeared before him.

Period for Award:

Under **Section 25** the Collector shall make an award within a period of 12 months from the date of publication of the declaration and if no award is made within that period, the entire proceedings for the acquisition of the land shall lapse Provided that the appropriate Government may take the decision to extend the period of 12 months if in its opinion, circumstances exist justifying the same but such decision shall be recorded in writing and the same shall be notified and be uploaded on the website of the authority concerned.

Determining Market Value:

The claimant will be entitled to the compensation which is determined on the basis of the market value of the land determined as on the date of preliminary notification. The market value of the proposed land under **Section 26** to be acquired shall be set as the higher of:

⁴ MANU/SC/0114/1958 : AIR 1959 SC 429

⁵ Asian Development Bank (ADB), Compensation and Valuation in Resettlement: Cambodia, ADB, People's Republic of China and India; Report No. 9; ADB: The Philippines, 2007.

⁶ International Valuation Standards Council. International Standard Framework. Available online: <http://www.ivsc.org/sites/default/files/IVS%20Framework.pdf> (accessed on 24 October 2013).

- the minimum land value, if any, specified in the Indian Stamp Act, 1899 for the registration of sale deeds in the area, where the land is situated; or
- the average of the sale price for similar type of land being acquired, ascertained from the highest fifty per cent of the sale deeds registered during the preceding three years in the nearest village or nearest vicinity of the land being acquired.; or
- the consented amount in case the land is acquired for private companies or public-private partnership projects.

The market value would be multiplied by a factor of, at least one to two times the market value for land acquired in rural areas and at least one times the market value for land acquired in urban areas.

Example: The **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013** mandates compensation and entitlements without limit to number of claimants. Thus, for clarity and as an example, if 1000 acres of rural land is to be acquired for a project, with market price of Rs.2,25,000 per acre, 100 families claim to be land owners, and 5 families per acre claim their rights as livelihood losers under the new Act, the total cost to acquire the 1000 acre would be

- Land compensation = Rs.90,00,00,000
- Land owner entitlements = Rs.6,30,00,000 + 100 replacement homes
- Livelihood loser entitlements = Rs.365,00,00,000 + 5000 replacement homes

The average effective cost of land, in the above example will be at least Rs.41,00,000 per acre plus replacement homes and additional services.

The new Act of 2013 proposes the above benchmarks as minimum. The state governments of India, or private companies, may choose to set and implement a policy that pays more than the minimum proposed.

Value of Things Attached:

The Collector in determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, under **Section 29** will use the services of a competent engineer or any other specialist in the relevant field, as may be considered necessary by him.

The Collector for the purpose of determining the value of trees and plants attached to the land acquired, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

The Collector for the purpose of assessing the value of the standing crops damaged during the process of land acquisition may use the services of experienced persons in the field of agriculture as may be considered necessary by him Determination of Compensation:

The Collector having determined the market value of the land to be acquired shall under **Section 27** calculate the total amount of compensation to be paid to the land owner whose land has been acquired by including all assets attached to the land.

In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall under **Section 28** take into consideration—

- the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;
- the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;

- the damage sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;
- the damage sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;
- in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses incidental to such change;
- the damage bona fide resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land: and
- any other ground which may be in the interest of equity, justice and beneficial to the affected families.

Award of Solatium:

The Collector after having determined the total compensation to be paid shall, to arrive at the final award, under **Section 30** impose a "**Solatium**" which is the amount equivalent to 100% of the compensation amount.

This solatium amount shall be in addition to the compensation payable to any person whose land has been acquired. The Collector shall issue individual awards detailing the particulars of compensation payable and the details of payment of the compensation as specified in the First Schedule.

In addition to the market value of the land provided under section 26, the Collector shall, award an amount calculated at the rate of 12% per annum on such market value for the period commencing from the date of the publication of the notification of the Social Impact Assessment study under section 4(2), till the date of the award of the Collector or the date of taking possession of the land, whichever is earlier.

7. Judicial Precedents (Supreme Court Of India)

Larger agri-use land *vis-à-vis* smaller residential plot: In *Haridwar Development Authority v. Raghbir Singh and Others*⁷. In the said case, this Court held as follows: "When the value of a large extent of agricultural land has to be determined with reference to the price fetched by sale of a small residential plot, it is necessary to make an appropriate deduction towards the development cost, to arrive at the value of the large tract of land. The deduction towards development cost may vary from 20% to 75% depending upon various factors. Even if the acquired lands have situational advantages, the minimum deduction from the market value of a small residential plot, to arrive at the market value of a larger agricultural land, in the usual course, will be in the range of 20% to 25%. In this case, the Collector has himself adopted a 25% deduction which has been affirmed by the Reference Court and the High Court. We, therefore, do not propose to alter it." Therefore, it is clear that mere reliance made by a Court on sale deeds of smaller residential area for determination of market value of larger agricultural area, the same will not render the determination illegal until and unless it is shown that the determination was not proper.

Supreme Court on the Fourth Amendment

The Supreme Court considered the extent to which the Fourth Amendment had excluded the courts' jurisdiction in respect of compensation under Article 31(2) in *Vairavelu Mudaliar vs Spi Deputy Collector*⁸ on the one hand, and in *State of Gujarat vs Shantilal Mangal-das*⁹ and *R C Cooper vs*

⁷ (2010)11 SCC 581

⁸ (1965) 1 SCR 614.

Union of India (the bank nationalisation case)¹⁰ on the other. The basis on which the Court found jurisdiction in this respect in the first case is different from that in the other two cases. In *Vairavelu Mudaliar's* case the Court found jurisdiction under the doctrine of fraud on power or colourable legislation. In the view of the Court, the word 'compensation' in Article 31(2) continues to mean 'just equivalent' but after the Fourth Amendment "neither the principles prescribing the 'just equivalent' nor the 'just equivalent' can be questioned by the Court on the ground of the inadequacy of the compensation fixed or arrived at by the working of the principles". This is because the word 'compensation' still exists in Article 81(2) and the clause which has excluded the jurisdiction of the courts uses the word 'compensation' indicating thereby that what is excluded from the courts' jurisdiction is the adequacy of the compensation. Then the Court went on to illustrate the matters which pertain to questioning the adequacy of compensation and laid down that, where different principles of compensation are applicable and if one principle gives higher value than the other and the legislature selects the one which gives lesser value, it is not for the court to say that the law should have selected the principle which gives the higher value, for it relates only to the question of adequacy. From these illustrations the Court deduced the following general propositions: "If the legislature makes a law for acquiring a property by providing for an illusory compensation or by indicating the principles for ascertaining the compensation which do not relate to the property acquired or to the value of such property at or within a reasonable proximity of the date of acquisition or the principles are so designed and arbitrary that they do not provide for compensation at all, one can easily hold that the legislature made the law in fraud of its powers If the question pertains to the adequacy, it is not justiciable; if the compensation fixed or the principles evolved- for fixing it disclose that the legislature made the law in fraud of powers in the sense we have explained, the question is within the jurisdiction of the court."

On the facts of this case the Court held that the principle which provided for determining compensation on the basis of five years' average market value, excluding potential value and giving solatium at 5 per cent of the market value rather than 15 per cent as in the Land Acquisition Act, if questioned, would relate to adequacy of compensation which is excluded by the Fourth Amendment. In the bank nationalisation case (which is a culmination of the theory propounded by the Court in the *Shantilal Mangaldas case*) the Court for finding jurisdiction made a distinction between 'just equivalent' and 'equivalent', and argued that, keeping in view the reasons for enacting the Fourth Amendment, the exclusion of 'adequacy of compensation from the courts' jurisdiction only means that it is not open for the court to enquire whether the compensation provided by law is 'just or fair equivalent' of the property acquired, and that the basic 'compensation' guarantee under Article 31(2), ie, an equivalent in money of the property According to Supreme Court in *Chimanlal Hargovinddas v. Special Land Acquisition Officer, Poona and Anr.*¹¹

The following factors must be etched on the mental screen:

(1) A reference under Section 18 of the Land Acquisition Act is not an appeal against the award and the Court cannot take into account the material relied upon by the Land Acquisition Officer in his Award unless the same material is produced and proved before the Court.

(2) So also the Award of the Land Acquisition Officer is not to be treated as a judgment of the trial Court open or exposed to challenge before the Court hearing the Reference. It is merely an offer made by the Land Acquisition Officer and the material utilised by him for making his valuation cannot be utilised by the Court unless produced and proved before it. It is not the function of the Court to suit in appeal against the Award, approve or disapprove its reasoning, or correct its error or affirm, modify or reverse the conclusion reached by the Land Acquisition Officer, as if it were an appellate Court.

(3) The Court has to treat the reference as an original proceeding before it and determine the market value afresh on the basis of the material produced before it.

⁹ AIR, 1969, SC 624.

¹⁰ Writ Petition Number 222 of 1969 decided on February 10, 1970, by a majority of 10: 1.

¹¹ AIR (1988) SC 1652

(4) The claimant is in the position of a plaintiff who has to show that the price offered for his land in the award is inadequate on the basis of the materials produced in the Court. Of course the materials placed and proved by the other side can also be taken into account for this purpose.

(5) The market value of land under acquisition has to be determined as on the crucial date of publication of the notification under Section 4 of the Land Acquisition Act (dates of Notifications under Sections. 6 and 9 are irrelevant).

(6) The determination has to be made standing on the date line of valuation (date of publication of notification under Section 4) as if the valuer is a hypothetical purchaser willing to purchase land from the open market and is prepared to pay a reasonable price as on that day. It has also to be assumed that the vendor is willing to sell the land at a reasonable price.

(7) In doing so by the instances method, the Court has to correlate the market value reflected in the most comparable instance which provides the index of market value.

(8) Only genuine instances have to be taken into account. (Some times instances are rigged up in anticipation of Acquisition of land).

(9) Even post notification instances can be taken into account (1) if they are very proximate, (2) genuine and (3) the acquisition itself has not motivated the purchaser to pay a higher price on account of the resultant improvement in development prospects.

(10) The most comparable instances out of the genuine instances have to be identified on the following considerations:

(i) proximity from time angle,

(ii) proximity from situation angle.

(11) Having identified the instances which provide the index of market value the price reflected therein may be taken as the norm and the market value of the land under acquisition may be deduced by making suitable adjustments for the plus and minus factors vis-a-vis land under acquisition by placing the two in juxtaposition.

(12) A balance-sheet of plus and minus factors may be drawn for this purpose and the relevant factors may be evaluated in terms of price variation as a prudent purchaser would do.

(13) The market value of the land under acquisition has thereafter to be deduced by loading the price reflected in the instance taken as norm for plus factors and unloading it for minus factors.

(14) Every case must be dealt with on its own facts pattern bearing in mind all these factors as a prudent purchaser of land in which position the Judge must place himself.

(15) These are general guidelines to be applied with understanding informed with common sense.

8. Land Acquisition Process

According to the high court of tripura at agartala in *The State of Tripura and Ors. v. Dinabandhu Debnath and Ors.*¹²—“Law in respect of determination of market value of the land acquired under the provisions of the L.A. Act, is fairly well settled and the best method to determine the same is to consider the prices obtained by contemporaneous sale deeds whether of the same land or of lands in the vicinity. Various factors may be taken into consideration, namely the size and shape of the land, the locality and its situation, the tenure of the property, the user, the potential value and the rise or depreciation of valuation of the land in the locality. Where sale instances of comparable lands are available on record, the court can safely take into consideration such sale instances and make the award relying on such sale transactions. It is also a settled law that where there are several

¹² MANU/TR/0044/2015

exemplars with reference to similar lands the highest exemplars should be taken into consideration for determination of compensation.”

Where consent of people is involved, it shall be along with SIA Study.

S: 4(1) Preparation of Social Impact Assessment (SIA) Study by the appropriate Government. The Act mandates a SIA of every project which must be completed within a period of six months. "SIA is being done to assess the nature of public interest involved, study of socio-economic impact upon the families residing the adjoining area of land acquired, extent of lands, public and private, houses, settlements and other common properties likely to be affected, study of social impact from the project and the nature and cost of addressing them etc. Reports prepared under the SIA are to be shared with concerned individuals in their local language along with a summary. S: 5 Whenever a Social Impact Assessment is required to be prepared under section 4, the appropriate Government shall ensure that a public hearing is held at the affected area, after giving adequate publicity about the date, time and venue for the public hearing, to ascertain the views of the affected families to be recorded and included in the Social Impact Assessment Report. S: 6 (1) The appropriate Government shall ensure that the SIA study report is prepared and published in the affected area, in such manner as may be prescribed, and uploaded on a website created especially for this purpose. (2) Wherever Environment Impact Assessment (EIA) is carried out, a copy of the Social Impact Assessment report shall be made available to the Impact Assessment Agency authorized by the Central Government to carry out environmental impact assessment. The SIA process for irrigation projects shall be waived, if EIA has been already conducted by Central Government Agency, S: 7 the appropriate Government shall ensure that the Social Impact Assessment report is evaluated by an independent multi-disciplinary expert group, as may be constituted by the appropriate government. The Experts Group can accept or reject the SIA Study with recorded reasons.S:8 Examination of report of the Collector and appraisal report of experts group on SIA study by the appropriate government, including determining a legitimate and bona fides public purpose. The Government concerned can override the appraisal report but only if they have sufficient reason that is recorded in writing; and u/s S: 8, the decision is made public.

S: 11 (1) is Publication of Preliminary Notification and powers of officers thereupon. After issuance of notice u/s 11.(1), the Collector shall, before the issue of a declaration under section 19, undertake and complete the exercise of updating of land records as prescribed within a period of two months. As per S: 26(3) while determining the market value for award, the collector shall update and revise the land records before making compensation.

De novo SIA Report is mandated if PN u/s 11.1 is not issued within twelve months of appraisal report of Experts; As per S: 14. Hearing of objection shall be completed within sixty days from 11(1) PN. Administrator u/s 43 for R&R shall prepare R&R Scheme upon PN 11(1) and submit it to the Collector. Review with suggestion of R&R Scheme by the Collector is forwarded to the R&R Commissioner (Appointed u/s 44) for approval of the scheme. S: 19 (1)

Publication of declaration & summary of RR under the hand and seal of a Secretary to the appropriate Government & (2) the Collector's publication and (4) publication on the Gazette process completed. S.20 deals with Land are to be marked out, measured and planned including marking of specific areas.

S.21 deals with Notice to persons interested. S.22 deals with Power to require and enforce the making of statements as to names and interests and S.23 Enquiry and land acquisition award by the Collector and the compensation as determined under section 27 along with Rehabilitation and Resettlement award as determined under section 30 and which in his opinion should be allowed for the land. S: 38 Power to taking possession only “after ensuring that” the compensation and R&R responsibilities have been discharged.

Section 29. Determination of value of things attached to land

(1) The Collector in determining the market value of the building and other immovable property or assets attached to the land or building which are to be acquired, use the services of

a competent engineer or any other specialist in the relevant field, as may be considered necessary by him.

(2) The Collector for the purpose of determining the value of trees and plants attached to the land acquired, use the services of experienced persons in the field of agriculture, forestry, horticulture, sericulture, or any other field, as may be considered necessary by him.

(3) The Collector for the purpose of assessing the value of the standing crops damaged during the process of land acquisition, may use the services of experienced persons in the field of agriculture as may be considered necessary by him.

9. Time Limit For Award Assuming No Extension

Payment of compensation within a period of three months for compensation and six months for monetary part of R & R entitlements listed in the Second Schedule from the date of award and the components of R & R package in the Second and Third Schedules that relate to infrastructural entitlements shall be provided within a period of eighteen months from the date of the award. In case of acquisition of land for irrigation or hydel project, being a public purpose, the rehabilitation and resettlement shall be completed six months prior to submergence of the lands proposed to be so acquired. Reference to Authority by the Collector u/s 64 (2) (b) within six weeks of the receipt of the notice from the Collector u/s 21 or within six months from the date of Collector's AWARD whichever period shall first expire.

U/s 69 (1) in determining the amount of compensation to be awarded for land acquired including the Rehabilitation and Resettlement entitlements, the Authority shall take into consideration whether the Collector has followed the parameters set out under section 26 to section 30 and the provisions under the Second Schedule (The R&R entitlements). (2) In addition to the market value of the land, as above provided, the Authority shall in every case award an amount calculated at the rate of twelve percent per annum on such market value for the period from 4(2) SIA study publication to the date of award of the Collector or the date of taking possession of the land, whichever is earlier. (3) In addition to the market value of the land as above provided, the Authority shall in every case award a solatium of one hundred per cent. over the total compensation amount.

S: 9/40 Urgency Clause can be invoked after Section 19 declaration or the expiry of 30 days from section 21 Notice. It provides special powers to the appropriate Government to acquire land in urgency cases for the purposes of defence of India or national security or for any emergency arising out of natural calamities. Compensation payable shall be as per section 30 (1) and the First Schedule of the Act Say "MV" plus 75% of "MV", out of which 80% shall be payable prior to taking possession. Any one or many provisions from chapter II to VI are exempted. I.e. SIA to Food Security, R & R: Local administration shall make available temporary camp accommodation to the families whose house has been acquired till total compensation is paid or 90 days whichever is earlier.

Section 28. Parameters to be considered by Collector in determination of award.

In determining the amount of compensation to be awarded for land acquired under this Act, the Collector shall take into consideration—

firstly, the market value as determined under section 26 and the award amount in accordance with the First and Second Schedules;

secondly, the damage sustained by the person interested, by reason of the taking of any standing crops and trees which may be on the land at the time of the Collector's taking possession thereof;

thirdly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of severing such land from his other land;

fourthly, the damage (if any) sustained by the person interested, at the time of the Collector's taking possession of the land, by reason of the acquisition injuriously affecting his other property, movable or immovable, in any other manner, or his earnings;

fifthly, in consequence of the acquisition of the land by the Collector, the person interested is compelled to change his residence or place of business, the reasonable expenses (if any) incidental to such change;

sixthly, the damage (if any) *bona fide* resulting from diminution of the profits of the land between the time of the publication of the declaration under section 19 and the time of the Collector's taking possession of the land; and

seventhly, any other ground which may be in the interest of equity, justice and beneficial to the affected families.

10. Conclusion

There are many more detailed points in the Act which need attention, but overall, the Act doesn't protect land rights or deals with the historic injustices committed in the name of development and public purpose. It is solely aimed at facilitating land acquisition for corporates without any stock taking of the land acquired, used or lying vacant and so on. The rapacious use of LAA by the government to secure land for 'development' projects has caused over 10 crore people to be displaced from their land, livelihoods and shelters. The country is dotted with communities resisting state-sponsored land grab which resonate the demand for a just law to ensure that there is no forced acquisition of land and resources, including minerals and ground water. The government must respond to the voices from movements across places such as Narmada, Koel Karo, Singur, Nandigram, Sonbhadra, Chindwara, Bhavnagar, Kalinga Nagar, Kashipur, Raigarh, Srikakulam and mining areas in Central India with genuine efforts to address the longstanding crisis concerning land acquisition and R&R.

Following are certain points which the author seeks to highlight as major faults in the LARR Act, 2013 regarding issues of compensation-

1. Coming to R&R benefits, Section 26-30, Schedule II, promotes the principle of cash compensation rather than livelihood-based R&R. It is a retrogressive step, since it negates land and employment based R&R as mandated in the Narmada Water Dispute Tribunal (NWDT) Award, and various other projects. The proposed provisions of compensating employment with money and high rates for land acquired will only lead to speculative land market and will destroy the fragile economy of the rural hinterland which will lead to further urban migration.
2. Land for land provision is limited to one acre for general category farmers and two-and-a-half acre for scheduled caste (SC) and scheduled tribe (ST) families in case of irrigation projects. By its own definition, marginal farmers are those who have one hectare of un-irrigated or half hectare of irrigated land. Hence, the provision of one acre land in command area is nothing but a cruel joke on farmers.
3. Section 26-30, Schedule I, deals with the various provisions of calculation of compensation for land acquired, but the power remains with the collector. It would have been fairer to set up a land price determination commission which would have had participation of affected communities and also taken in account the various factors.
4. Much hype has been generated that two times and four times of compensation amount would be paid in urban areas and rural areas respectively. However, Schedule I mentions of a sliding scale, to be fixed by state governments, which will mean that farmers in rural areas won't get four times the market price of the land.

Thus, despite the new act covering various fallacies of the 1894 law on land acquisition, it severely lacks in certain areas, such as the area of provision of compensation at market value as has been discussed in detail by the author in the various chapters of this research paper. However, by way of effective amendments and decentralization of power in regard to provision of compensation, immediate relief can be granted to people whose lands need to be acquired for public purpose. Besides, amendments to the Schedules, making the nature of compensation less ambiguous and open for abuse would also prevent bureaucratic corruption and help provide effective relief to the land owners.