

Land Acquisition in India-Past and Present

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1. Introduction

“Our land is more valuable than your money. It will last forever. It will not even perish by the flames of fire. As long as the sun shines and the waters flow, this land will be here to give life to men and animals. Compulsory acquisition of land not only leads to loss of economic assets and livelihood but also disrupts communities, cultural identities, local markets for goods and labour, consequently placing the oustees in a “spiral of impoverishment.”¹

INDIA IS a country where more than 70% of the population lives in rural areas and is heavily dependent on the primary sector *i.e.* agriculture. Hence, there is hardly any land which is not occupied. When the government intends to carry out some developmental work like construction of dams, flyovers, bridges, mines etc., it requires vast expanse of land. Since land is a scarce resource, in order to carry out developmental work, the government has to acquire land thereby depriving the existing occupants from its use. This leads to large-scale displacement and forced transfer of people from their land. Of course, development is a necessity in the present world, but the question which arises is ‘development at what cost?’ Should it be at the cost of the land owners who are extremely possessive about their land, or the farmers for whom land is the only source of livelihood who they treat like a mother? Should the government blindly go for development without bothering to secure the interest of the landowners and the farmers or should strive to strike balance between the two. This paper attempts to analyse the law relating to land acquisition in India, the merits and demerits of the 1894 as well as the 2013 Acts and gives suggestions for the improvement of the same.

2. Historical Perspective

The history of land acquisition began with the Bengal Regulation I of 1824 to promote British commercial interests. Land for construction of Railways was acquired under the said Regulation and finally the first Railway came up in 1853. The Bengal Regulation I of 1824 was replaced by Act I of 1850, by which the provision for land acquisition was extended to Calcutta town. By 1857, various laws on land acquisition were consolidated as Act VI of 1857 and it was made applicable to the whole of British India. The 1857 Act was replaced by the Land Acquisition Act (Act X of 1870).

However, as noted by the Hon’ble Supreme Court in *Radhey Shyam(D) Through LRs and others v. State of U.P. and others*,² the Act was ineffective. The Act of 1870 was repealed and the Act of 1894 was enacted for the purpose of facilitating acquisition of private land by the Government for public purposes. But the Act of 1894 did not provide any opportunity to the landowners/persons having interest in land to raise objection against the acquisition of land. Their objections were confined to the amount of compensation and matters connected thereto. Absence of opportunity to the landowners to raise objections to the acquisition led to large-scale resentment among the landowners. This further led to the amendment of the 1894 Act in 1923 by which Section 5A was added under which any person interested in land which was needed or likely to be needed for a public purpose or for a Company, could within 30 days from the date of publication of the Notification under Section 4(1), file objections to the acquisition of the land plus under 5A(2), an opportunity of being heard was to be provided by the Collector to the person interested in the land. By this amendment, *audi alterem partem* which is the cardinal principle of Natural Justice was incorporated into the process of acquisition under the 1894 Act.

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¹ Isapo Muxika or Blackfoot, 19th Century Chief of Siksika First Nation Tribe in Current Day, Canada. Cited from Sharon O’ Brien, *American Indian Tribal Governments*, 70 (University of Oklahoma Press: Norman and London, 1993).

² “The history of land acquisition shows that in Eighteenth century, Bengal Regulation I of 1824, Act I of 1850, Act VI of 1857, Act XXII of 1863, Act X of 1870, Bombay Act XXVIII of 1839, Bombay Act XVII of 1850, Madras Act XX of 1852 and Madras Act I of 1854 were enacted to facilitate the acquisition of land and other immovable properties for roads, canals and other public purposes by paying the amount to be determined by Arbitrators. The Act of 1870 provided for proper valuation of the acquired land. In case of a dispute on the amount offered in lieu of acquisition, the Collector could make a reference to the Civil Court who were assisted by the assessors. In case of disagreement between the Civil Court and assessors, then an appeal can be filed in the High Court. The mechanism proved ineffective because a lot of time was consumed in litigation.” Division Bench comprising S Sighvi and Asok Kumar Ganguly *Radhey Shyam(D) Through LRs and others v. State of U.P. and others* Civil Appeal No. 3261 decided on April 15, 2011.

3. The Land Acquisition Act, 1894³

This Act was enacted by the British with the definite objective of building infrastructure like railways, post-telegraph lines, roads, bridges, canals, communication network and means to transfer their army and weaponry to different parts of the country. Their basic intention was to extend, control and further consolidate their rule throughout the country. Hence, land belonging to rural landowners was acquired under the Act. The ownership and control of the infrastructure and communication network built after land acquisition remained completely with the Government for utilization in public purpose.

After independence, the process of acquisition of land from farmers for building steel plants, fertilizer plants, defence related plants and dams (number of villages were submerged to create dams) continued, all for public purposes. Thereafter, the government entered into housing, urban development and industrial sector and resorted to acquisition of land from farmers for developing housing colonies, laying electricity poles, and industries. All these activities were for public purposes.

After the liberalisation of economy leading to privatisation, the share of private initiative in various sectors increased and the private sector started taking the responsibilities which were earlier discharged by the government in return for a number of incentives from the latter. As a result of which, private players are present in almost all the sectors like housing, education, health services, industry, construction of commercial complexes, media/news channels. Presently, private sector is flourishing well, competing with its public counterpart and is in fact stealing the show as these are controlled by big business houses. For all the public purpose projects, the most important requirement is land. Here, the question arises, where does the land come from for these private initiatives?

In the recent years, large scale acquisition of land has been made for companies under Part VII of the 1894 Act,⁴ proposing to use the land for a public purpose. The state governments have acquired large tracts of land in rural areas, belonging to farmers/rural landowners at throwaway prices in the name of development projects. Later, after changing the land use, land was handed over to private builders for construction of multi storey residential and commercial complexes, industries etc. These private entrepreneurs later sold these complexes to the general public at very high prices. The rural landowners have been taken for a ride by the concerned state governments in collusion with the private entrepreneurs.

There have been cases where the landowners/farmers were assured of employment generation for their kith and kin, but that did not happen as they were neither skilled for the job nor qualified for the same. The farmers have been cheated in the name of land acquisition for public purpose – as they do not get the market price for their land due to the under rated sale deeds and the government playing broker/agent for the private players.

Even if the landowners/farmers receive compensation from the government, it does not provide any monetary benefit to them, as the money received is either wasted or spent unwisely reducing them to landless/unemployed individuals. From a respectable and a dignified landowner, the person now becomes a landless rogue because he has no skills apart from farming. Moreover, there is no agency to counsel these farmers/landowners for proper use or long term investment or management of the money.

4. Drawbacks of the 1894 Act

'Urgency clause' is the most criticised and misused section of the 1894 Act. The blatant misuse of Section 17⁵ by the state governments is a serious cause for concern. The Land Acquisition Act, 1894 has been referred to as a draconian law, because the landowner whose land is proposed to be acquired cannot seek injunction against it. He can only file objections under Section 5A⁶ against the proposed land acquisition which is a basic right of the landowner under the principles of Natural justice – *audi alterem partem*. But there have been a number of

³ Hereinafter referred to as the 1894 Act.

⁴ Part VII of the 1894 Act provides for the Acquisition of Land for Companies. (Sections 38A-44B).

⁵ Section 17 reads Special powers in cases of urgency. Clause (1) In cases of urgency, whenever the [appropriate Government] so directs, the Collector, though no such award has been made, may, on the expiration of fifteen days from the publication of the notice mentioned in section 9, sub-section (1), [take possession of any land needed for a public purpose]. Such land shall thereupon [vest absolutely in the [Government]], free from all encumbrances.

⁶ Section 5A reads Hearing of objections. Clause (1) Any person interested in any land which has been notified under section 4, sub-section (1), as being needed or likely to be needed for a public purpose or for a company may, [within thirty days from the date of the publication of the notification], object to the acquisition of the land or of any land in the locality, as the case may be.

cases where various state governments have acquired land by misusing the provision of Section 17(4)⁷ of the ‘urgency clause’. Under this provision, the state government may direct that the provisions of Section 5A shall not apply and take away the basic rights of the landowners to file his objections. Hence state power is used to misuse the provisions of urgency. The acquisition of land under Section 4(1) read with Section 17(1) and 17(4) has generated substantial litigation in the last 50 years.

The Supreme Court in *Radhey Shyam (D) through LRs and others v. State of U.P. and others*⁸ held as under:

“In cases where the acquisition is made by invoking Section 4 read with Section 17(1) and 17(4)...excluding the application of Section 5A is likely to make the landowner a landless poor and force him to migrate to the nearby city only to live in a slum. A departure from this rule should be made only when the land is required to meet really emergent situations like those enumerated in Section 17(2). If the acquisition is intended to benefit private person(s) and the provisions contained in Section 17(1) and/or 17(4) are invoked, then the scrutiny of the justification put forward by the State should be more rigorous in cases involving the challenge to the acquisition of land.”⁹

Thus, according to the Supreme Court, Section 5A represents the statutory embodiment of the rule of *audi alteram partem* and the urgency provision under section 17(1) should not be invoked unless there is real and substantive urgency.

Apart from the misuse of the urgency clause, there are certain other drawbacks of the 1894 Act.

4.1 Rehabilitation and Resettlement-There is no provision for rehabilitation and resettlement of persons displaced due to acquisition of land. This generates a lot of discontentment amongst the people.

4.2 Low Rates of Compensation – The compensation paid under the Act is at prevailing circle rates in the area which are not even remotely indicative of the actual rates. As a result the government pays at their own market rate which is nowhere near to the actual prevailing market rates. According to Professor Ram Singh of the Delhi School of Economics:

“Market value is always hard to ascertain. Market rate is decided on the basis of ‘circle rates’ (the registry rate or the stamp duty rate is the minimum rate decided by the government for valuation of land for determining the tax imposed at the time of registration of sale deed of a property), or ‘sale deeds’ of a similar property, whichever is higher. But people often under quote prices in the sale deeds to avoid paying a high tax. As a result, the government only pays a certain amount as compensation, which is well below the market price of the property.”¹⁰

There are no safeguards as there is compulsory forced acquisition of land. Once the government expresses its desire to acquire a particular plot of land, there is no mechanism whatsoever to stop the process of acquisition. There is only a provision for providing an opportunity of being heard to the person whose land is proposed to be acquired by filing objections to the Collector under Section 5A within 30 days from the date of publication of notification. But the Collector is not bound by the objections.¹¹ He prepares a report to be submitted to the appropriate government. On the basis of this report, the government gives a notification under Section 6 declaring its intention to acquire the land for a public purpose.

⁷ Section 17(4) reads- In the case of any land to which, in the opinion of the appropriate Government, the provisions of sub-section (1) or sub-section (2) are applicable, the provisions of section 5A shall not apply where the appropriate Government so directs to where possession of the land has been taken with the consent of the person interested.

⁸ *Supra* Note 2 at p. 9.

⁹ *Ibid.*

¹⁰ Namita Kohli, “Landing in Trouble”, *The Sunday Hindustan Times of India*, New Delhi, March 01, 2015, p. 4.

¹¹ Section 5A Clause (2) Every objection under sub-section (1) shall be made to the Collector in writing, and the Collector shall give the objector an opportunity of being heard [in person or by any person authorised by him in this behalf] or by pleader and shall, after hearing all such objections and after making such further inquiry, *if any, as he thinks necessary*, [either make a report in respect of the land which has been notified under section 4, sub-section (1), or make different reports in respect of different parcels of such land, to the appropriate Government, containing his recommendations on the objections, together with the record of the proceedings held by him, for the decision of that Government]. The decision of the [appropriate Government] on the objections shall be final. (*emphasis supplied*)

4.3 Forced Acquisition – Once the government develops an intention that a particular piece of land may be acquired, nothing can stop the government from acquiring that land without sparing any thought for the person whose land is being acquired. The individual so deprived cannot go to the Court and seek injunction against the proposed acquisition. What he can do is file objections in the written form under Section 5A and to appear before the Collector under Section 5A (2). The Collector shall prepare a report on the basis of his objections which shall be submitted to the appropriate government, the decision of the appropriate government shall be final. The government can overrule the objections on the ground that land is required for a public purpose under Section 6. Thereafter, the acquisition cannot be challenged. The landowner can only challenge the amount of compensation decided by the government. Under the Act, the collector's award of compensation is final, unless altered by a decree of a Civil Court in a regular suit.

What is a public purpose? Section 3 of the 1894 Act gives an inclusive definition of public purpose. Let us see how this term has been defined in the Black's Law Dictionary.¹² The term public purpose has been defined as –

“ A public purpose or public business has for its objective the promotion of public health, safety, morals, general welfare, security, prosperity and contentment of all the inhabitants or residents within a given political division, as, as, for example, a state, the sovereign powers of which are exercised to promote such public purpose or public business.”

In *Rajiv Saran v. State of Uttarakhand*¹³ the Constitution Bench of the Supreme Court held:

“The incident of deprivation of property within the meaning of Article 300A of the Constitution normally occurred mostly in the context of public purpose. Clearly, any law, which deprives a person of his private property for private interest, will be amenable to judicial review. In just sixty years, though the concept of public purposes has been given quite interpretation, nevertheless, the “public purpose” remains the most important condition in order to invoke Article 300A of the Constitution.”¹⁴

“Acquisition of private land for companies under the 1894 Act raises a question mark on the desirability of such state intervention when the land could be arranged by the company through private negotiations on a ‘willing seller willing buyer’ basis, which could be seen to be a more fair arrangement from the point of view of the landowner.”¹⁵

The Supreme Court finally in *Ramji Veerji Patel and others v. Revenue Divisional Officer*¹⁶ held that:

“The provisions contained in the Act, of late, have been felt by all concerned, do not adequately protect the interest of the landowners/persons interested in the land. The Act does not provide for rehabilitation of persons displaced from their land although by such compulsory acquisition, their livelihood gets affected. For years, the acquired land remains unused and unutilised. To say the least, the Act has become outdated and needs to be replaced at the earliest by fair, reasonable and rational enactment in tune with the constitutional provisions, particularly, Article 300A of the Constitution. We expect the lawmaking process for a comprehensive enactment with regard to acquisition of land being completed without any unnecessary delay.”¹⁷

¹² The Black's Law Dictionary, 5th Edition, 1979.

¹³ Civil Appeal No. 4772 of 1998 decided on August 09, 2011.

¹⁴ *Ibid.*

¹⁵ The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, 2 (Universal Publishing Co. Pvt. Ltd, New Delhi, 2013).

¹⁶ 2011 (2) SCALE 364.

¹⁷ *Ibid.*

5. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013¹⁸

This Act adopts 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. It makes provision for a just and fair compensation, rehabilitation and resettlement for the affected persons. It further ensures that the cumulative outcome of compulsory acquisition should be that the affected persons become partners in development leading to an improvement in their post-acquisition social and economic status and for matters connected thereto or incidental thereto.

5.1 Analysis of the 2013 Act

Section 2 of the Act provides for the application of the provisions of the Act to various types of land acquisitions. It classifies the acquisition of land into three categories – (1) appropriate government acquire land for its own use and for public purposes; (2) appropriate government acquires land for PPP projects/ for private companies for public purpose; (3) purchases by private companies through private negotiations.

According to the Section 3 (za) of the Act, '*public purpose*' means the activities specified under Section 2 (1), and includes the following: (a) For strategic purposes relating to naval, military, air force, armed forces of the Union, including paramilitary forces or any work vital to national security or defence of India or State policy, safety of the people; (b) For infrastructure projects, agriculture, industry, educational purposes, sports, tourism and transportation and any other infrastructural facility; (c) Relief Development; (d) Planned Housing; (e) Planned Development; (f) Housing for Displaced Persons.

When the government acquires land for its own use, hold and control including for any Public Sector Undertaking (PSU) and for public purpose, the provisions of the Act relating to acquisition, compensation, rehabilitation and resettlement shall apply.¹⁹ But where the government acquires land (i) for public private partnership projects, where the ownership of the land continues to vest in the government, for public purpose and (ii) for private companies for public purpose, the provisions of the Act relating to land acquisition, consent, compensation, rehabilitation and resettlement shall also apply.²⁰ Under the proviso to Section 2 (b), in case of acquisition of land for public private partnership, the *prior consent* of at least 70% of the affected families²¹ is required and in case of acquisition of land for private companies, the prior consent of at least 80% of the affected families is required. Whereas, there is no requirement of prior consent in case the government acquires land for its own use, hold and control, including for Public Sector Undertaking.

Further when the government acquires land either (i) for its own use... for a public purpose, (ii) for a private company for a public purpose or (iii) for public private partnership for a public purpose, all the provisions of the 2013 Act relating to land acquisition, compensation, rehabilitation and resettlement shall apply. That is, if the land is acquired by the government for a private company or for a public private partnership or for its own use, then provisions of land acquisition shall apply and compensation has to be paid and rehabilitation and resettlement of the parties shall also to be done. In case of a land acquired by the government for a public private partnership, the land continues to vest with the government.

Section 4 of the 2013 Act provides for *Social Impact Assessment Study* to be conducted before acquisition of land by the government for a public purpose in consultation with the concerned *Panchayat*, Municipality or MCD in the affected area. That is, this provision provides for study of impact of the impending project on the society.

“While undertaking a Social Impact Assessment study, the government has to consider the impact that the project is likely to have on various components such as livelihood of affected families, public and community properties, assets and infrastructure, particularly roads, public transport, drainage, sanitation, sources of drinking water, sources of water for cattle, community ponds, grazing land, plantations, public utilities such as post offices, fair price shops, food storage godowns, electricity supply, health care facilities, schools and educational or training facilities, *anganwadis*, children parks, places of worship, land for traditional tribal institutions and

¹⁸ Hereinafter referred to as the 2013 Act.

¹⁹ Section 2(1).

²⁰ Section 2(2).

²¹ The term 'affected families' is defined in section 3(c) of the Act.

burial and cremation ground.”²²

Section 9 provides that where the land is proposed to be acquired invoking the urgency provisions under Section 40²³ of the Act, the government may exempt the undertaking of the Social Impact assessment Study. Further under proviso to Section 6, in respect of irrigation projects where the process of Environment Impact Assessment is required under the provisions of any other law, the provisions relating to Social Impact Assessment shall not apply.

Once the social impact assessment process has been executed satisfactorily, the proceedings of *acquisition* of the identified land can begin with a ‘Preliminary Notification’ issued under Section 11. This is an initial notice to the public at large that a certain parcel of land is to be acquired along with details relating to the area. This notification is different from its 1894 counterpart in the sense that it must contain a statement on the nature of the public purpose involved along with the reasons necessitating the displacement of the affected persons. This has to be accompanied with a Social Impact Assessment Report and particulars of the Administrator appointed for the purposes of rehabilitation and resettlement who is required to conduct a survey and undertake a census of the affected families under Section 16 of the Act.

Further, under Section 14, when the preliminary Notification under Section 11 is not issued within 12 months from the date of appraisal of the Social Impact Assessment Report, then such report shall be deemed to have lapsed and a fresh Report is required to be taken prior to issue of Notification of acquisition under Section 11.

Once the Preliminary Notification has been issued, any person interested in the land which has been notified for acquisition may within sixty days from the date of publication of the Preliminary Notification, raise objections under Section 15 of the Act with regard to the area and suitability of land to be acquired, the justification offered for public purpose or the findings of the Social Impact Assessment Report. This is followed by a survey and census of the affected families by the Administrator for Rehabilitation and Resettlement and declaration for acquisition under Section 9 of the Act. Under Section 23, the Land Acquisition award is passed by the Collector. It contains the following details - the true area of the land, the compensation as determined, the Rehabilitation and Resettlement award as determined and the apportionment of compensation among all individuals who have an interest in the land.

Under the old Act, possession could be taken without satisfactorily compensating or resettling the families. But under the 2013 Act, the Collector can take possession of the land only after ensuring the full payment of compensation including the rehabilitation and resettlement entitlements to the entitled persons.²⁴

Under the 2013 Act, the amount of Compensation must be sufficiently fair so as to justify the forcible acquisition of land. Under the 1894 Act, compensation was required to be paid at market value. But as discussed earlier,²⁵ quantum and basis for determining market value was the root cause of a number of disputes, injustices to the landowners and litigation. The Court has also recognized in *Ram Jiyawan v. State of Uttar Pradesh*²⁶ the importance of paying compensation as “Acquisition without payment of compensation is violative of Article 14”.

Compensation provisions are contained in Sections 26-30, 39 and the First Schedule of the Act. Section 26 provides for determination of the market value of the land by the Collector according to the criteria mentioned therein which lays down “(a) the market value, if any, specified in the Indian Stamp Act, 1889 for the registration of sale deeds or agreements to sell;” 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 in case of acquisition of lands for private companies or for public private partnership projects.” The Act provides a method for calculating the

²² Section 4(5) of the 2013 Act.

²³ Section 40. Special powers in case of urgency to acquire land in certain cases.–(1) In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

²⁴ Section 38 Power to take possession of land to be acquired.–(1) The Collector shall take possession of land after ensuring that full payment of compensation as well as rehabilitation and resettlement entitlements are paid or tendered to the entitled persons within a period of three months for the compensation and a period of six months for the monetary part of rehabilitation and resettlement entitlements listed in the Second Schedule commencing from the date of the award made under section 30

²⁵ See part 2 and 3 of the paper.

²⁶ AIR 1994 All 38.

average sale price referred to in clause (b). It 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.”²⁷

The market value calculated as average of the last three years on the basis of the Collector’s rate or the sale deeds, is to be multiplied by a factor to be specified in the First Schedule. Multiplying factor mentioned in First Schedule in case of rural areas is 1.00 (One) to 2.00 (Two) based on the distance of the project from urban area as may be notified by the government. In the case of urban areas, multiplying factor is only one.

Section 30 provides for award of solatium (compensation for emotional harm caused) and the manner of determination of *solatium* is provided under the First Schedule. It has to be paid in addition to the compensation payable to any person whose land has been acquired. The Collector having determined the total compensation to be paid, to arrive at the final award, impose a *solatium* equivalent to 100% of the compensation paid. *Solatium* is not a new concept as it had already existed under the 1894 Act, in which by the 1984 amendment, affected individuals were required to be paid an additional 30% of the market value in consideration of the compulsory nature of the acquisition [Section 23(2) of the 1894 Act]. Hence under the 2013 Act, the landowner will get the full compensation as calculated above while the compensation to be paid to the affected families as referred to in clause (c) of Section 3 shall be in proportion to be decided by the appropriate government.

In addition to the market value of the land under Section 26, the Collector shall award under Section 30(3), an amount at the rate of 12% per annum on such market value for the period from the date of publication of the Notification of the Social Impact Assessment Report till the date of award of the Collector or the date of taking possession of the land whichever is earlier.

The 2013 Act provides for land acquisition along with compulsory *rehabilitation and resettlement* due to past experiences in case of large scale projects like the Narmada Dam. In case of acquisition for the purposes of building dams, entire villages got submerged but the displaced families were never resettled. Section 31(1) of the 2013 Act provides that the Collector shall pass Rehabilitation and Resettlement awards for each affected family (both landowners and the families whose livelihood is primarily dependent on the land acquired) in terms of the entitlements provided in the Second Schedule. This is in addition to the compensation provided under the First Schedule. There are provisions of housing units in case of displacement both from rural and urban areas; land for land; offer for developed land; choice of annuity or employment; subsistence grant for displaced families for a period of one year; transportation cost for displaced families; cattle shed/petty shops cost; one time grant to artisans, small traders and certain others; fishing rights; one time resettlement allowance and stamp duty and registration fee.

When an entire population is moved to a new area, it would be a farce to suggest that all the people have been rehabilitated. For resettlement and rehabilitation in a true sense, basic infrastructural facilities have to be provided at the proposed site. These have to be constructed at the cost of the authority at whose behest the acquisition is taking place. The Third Schedule provides for infrastructural amenities to be provided.

The 2013 Act provides that the 1894 Act will continue to apply in certain cases where an award has been made under the 1894 Act. Section 24 makes provision for application of the provisions of the 2013 Act to land acquisition proceedings initiated under the 1894 Act as follows:

1. “If no award has been made under Section 11 of the 1894 Act, then all provisions of the 2013 Act relating to compensation shall apply [Section 24(1)(a);”
2. “Where an award under Section 11 of the 1894 Act has been passed, then such proceedings shall continue under the provisions of the 1894 Act, as if the Act has not been repealed [Section 24(1)(b);”
4. “Where an award has been made under Section 11 of the 1894 Act and compensation in respect of a majority of land holdings has not been deposited in the account of the beneficiaries specified in the Notification for acquisition under Section 4 of the said Land acquisition Act, shall be entitled to compensation in accordance with the provisions of the 2013 Act [proviso to Section 24(2)].”

Section 24(2) came as a ray of hope for a number of farmers whose land was acquired by the respective state governments number of years ago and the award was made five years or more prior the 2013 Act, but in case the

²⁷ Explanation 1 to section 26.

physical possession of the land has not been taken or the compensation has not been paid, the acquisition shall lapse or stand cancelled. These farmers found the 'retrospective clause' or Section 24(2) a great respite as they could benefit from the provision and get justice.

5.2 Judicial Approach on the Retrospective Clause:

The very first case on the 'retrospective clause' was *Pune Municipal Corporation v. Harakchand Solanki*²⁸ wherein eighteen appeals were filed before the Supreme Court invoking the application of the retrospective clause. In all the applications, a period of five or more years had passed since the land acquisition award had been made under Section 11 of the 1894 Act and the applicants had refused to accept the compensation. The respondents, the Pune Municipal Corporation (the acquiring authority) argued that they had deposited the amount in the treasury of the government in fulfilment of their obligation and had therefore satisfied the requirement of paying compensation. The Court held that compensation would only be deemed to have been paid if it had been deposited with the Court and after having been offered to the individual concerned. In this case, the compensation had only been deposited in the treasury. As a result, compensation could not be deemed to have been paid and the acquisition was considered to have lapsed in conformity with Section 24 of the 2013 Act.

This was followed by a spate of judgments of the Supreme Court. In *Bharat Kumar v. State of Haryana*^{29a} a similar judgment was pronounced. In the case of *Bimla Devi v. State of Haryana*³⁰ award had been passed in 1995 and the parties had still not accepted compensation or parted with possession. The Court relying on the 'retrospective clause' ordered the return of the land to the original owners. This was followed by the case of *Shiv Raj v. Union of India*³¹ in which the Court ordered the return of the land to its original owners who were fighting the case for the last two decades and held that the acquisition had lapsed.

Coming to the position of Delhi and NCR region:

“In a series of judgments pronounced in recent months (as late as March), the Delhi High Court has scrapped acquisition of several acres of land in Delhi by government agencies, some of them dating back to 1986. Delhi Development Authority (DDA) officials told TOI about 150 such judgments have come and the total land that could be released would be at least 100 acres.”³²

In the case of *Jagjit Singh v. Union of India*³³ the Delhi High Court quashed a number of pending acquisitions by the Delhi Development Authority as it was found that the parties had satisfied the terms of Section 24(2) of the 2013 Act. This was followed by other judgments like *Surender Singh v. Union of India*,³⁴ *Girish Chabra v. Lt. Governor of Delhi*,³⁵ *Raman Grover v. Union of India*³⁶ and *Ashwal Vadera v. Union of India*³⁷ continued to add to the growing jurisprudence on the interpretation and application of Section 24(2) benefitting the landowners and farmers.

By the Gazette of India, Ministry of Law and Justice, an Ordinance titled as “*The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014*”³⁸, a second proviso to Section 24(2) was inserted which is as follows:

“Provided further that in computing the period referred to in Sub-section, any period or periods during which the proceedings for acquisition of the land were held up on account of any stay or injunction, issued by any Court or the period specified in the award of any Tribunal for taking possession or such period where possession has been taken but the compensation is lying deposited in a Court or in any account maintained for this purpose shall be excluded.”

²⁸ (2014) 3 SCC 183.

²⁹ (2014) 3 SCALE 393.

³⁰ (2014) 6 SCC 583.

³¹ (2014) 6 SCC 564.

³² Dipak Kumar Dash and Abhinav Garg, “UPA Act helps owners reclaim land”, *The Times Of India, New Delhi*, April 13, 2015, p.03.

³³ 211(2014)DLT15.

³⁴ W.P.C. 2294/2014 decided on September 12, 2014.

³⁵ W.P.C.2759/2014 decided on September 12, 2014.

³⁶ W.P.C.13814/2009 decided on August 22, 2014.

³⁷ W.P.C.1897/2014 decided on July 30, 2014.

³⁸ Ordinance 9 of 2014.

This proviso was argued by the government agencies such as DDA, MCD and L&DO but the High Court of Delhi cited the Supreme Court judgment in *M/s. Radiance Fincap (P) Ltd. and others v. Union of India and others*³⁹ wherein the Court held:

“The said Ordinance is prospective in nature and the rights created in favour of the petitioners on 01/01/2014 by virtue of the 2013 Act are undisturbed by the second proviso to Section 24(2) of the Act which has been introduced by the Ordinance.”⁴⁰

This view was reinforced in the case of *Karnail Kaur and others v. State of Punjab and others*⁴¹ in which again it was reiterated that:

“The Ordinance in so far as insertion of proviso to the Section 24(2) by way of an amendment is prospective....The right of appeal is a vested right....which can be taken away only by a subsequent enactment if it so provides expressly or by necessary intendment and not otherwise.”⁴²

Thus, the Court held that the right conferred to the landowners of the acquired land under Section 24(2) of the Act is a statutory right and therefore, cannot be taken away by an Ordinance by inserting the above proviso and giving it a retrospective effect. The Ordinance will not have retrospective effect but it has a prospective effect. In *J. L. Sarna v. Union of India*⁴³ DDA pleaded helplessness in taking possession pointing out that they were unable to do so as there was a court stay. The Court held:

“These conditions [in Section 24(2) of the Act] are unqualified. It does not matter as to what was the reason behind the non-payment of compensation or for not taking possession. If the legislature wanted to qualify the above conditions by excluding the period during which the proceedings of acquisition of land were held up on account of stay or injunction by way of an order of a Court, it should have been expressly spelt out.”⁴⁴

In *Surjan Singh v. Union of India*⁴⁵ DDA argued that compensation payable to landowners was deposited in the treasury. In the process, the land-owning agency maintained that it is shielded from Section 24 and protected by another insertion made in the Ordinance that if the government deposits money in the treasury without the seller accepting it later, the acquirement process is valid. In this case, the Delhi High Court held:

“In so far as the payment of compensation is concerned, this much is clear that compensation has not been paid to the petitioner, but has only been deposited in the treasury, which does not amount to payment of compensation”.⁴⁶

5.3 Drawbacks of the 2013 Act

The 2013 Act although far better than its earlier counterparts is not perfect and has a number of drawbacks. Some of which are enumerated as under-

1. Regarding determination of the market value by the Collector under Section 26(b), the market value calculated as average of the last three years on the basis of the sale deeds, is to be multiplied by a factor to be specified in the First Schedule. Multiplying factor mentioned here in case of rural areas is 1.00 to 2.00 based on the distance of the project from urban area as may be notified by the government. In the case of urban area, multiplying factor is only 1.00. Compensation has to be paid to the landowners on the basis of the market value of the land. In India, it is really difficult to calculate the market value because of a running parallel economy involving black money, cash transactions often made with black money, corruption in the form of understating the market value in the sale documents to avoid payment of stamp duty at the time of registration of the sale deed. All this leads to a loss to the landowner as the government steps into the shoes

³⁹ C.A.4283/2013 decided on January 12, 2015.

⁴⁰ *Ibid.*

⁴¹ I.A. No.8 of 2013 in C.A. No.7424/ 2013 decided on January 22, 2015.

⁴² *Ibid.*

⁴³ W.P.(C) 4965/2000,decided on March 10, 2015.

⁴⁴ *Ibid.*

⁴⁵ W.P.(C)No. 9175/2014 &CM 20876/2014

⁴⁶ *Ibid.*

of the landowner at the time of acquisition and pays only a small amount of compensation which is below the actual sale price.

2. The 2013 Act provides for Rehabilitation and Resettlement, a commendable step for the first time in India's legislative history, that a law on land acquisition has been tied up with the necessity to carry out rehabilitation and resettlement. But in case of land which is temporarily acquired, there is no such policy of rehabilitation and resettlement.
3. Under Section 2(2)(a) and (b), the provisions of the Act relating to 'prior consent' of the 'affected families' apply where the land is acquired for public partnership project or for a private company (both for a public purpose). This means that in these cases, the landowners can refuse to part with their lands by refusing to give the appropriate percentage of 'prior consent.' But when the land is acquired by the government for its own use, hold and control, including for PSUs and for public purpose under Section 2(1), 'prior consent' of the affected families is not required to be taken. That is, when the government acquires land for its own use, prior consent of the affected families is not required. It is a forcible acquisition by the government in which the landowners have no say at all and they cannot refuse to part with their land.
4. The State governments have objected to the Chapter III of the 2013 Act dealing with acquisition of agricultural land that since 'transfer and alienation of agricultural land' comes under the purview of the State List, Entry 18, it is only the State Legislatures who have a right to legislate on this matter.
5. The 2013 Act exempts the application of the provisions of the Act to certain enactments dealing with land acquisition like the Railways Act, 1989, The Electricity Act, 2003, The National Highways Act, 1956 (all the 13 enactments specified under the Fourth Schedule).

6. Conclusion

Land is a precious resource for the farmers and not anything less to any landowner. It is the most important source of livelihood for the farmers who constitute almost half the labour force in India. None of them wants to part with their land. The government has to carry out development work for which land is the basic requirement. The British brought the 1894 Act which was in its own right a draconian, unjust, archaic legislation. This legislation provided for compulsory acquisition of land without the consent of the landowners, it only provided for monetary compensation (determination of which was not satisfactory), there was no provision for rehabilitation and resettlement of the displaced people. This legislation generated a lot of conflicts as large business groups pressed for land acquisition for their mega projects and the landowners protested and the protests grew louder with events like *Singur* and *Nandigram*. Finally, the Government enacted the 2013 Act with provisions of just and fair compensation, rehabilitation and resettlement to the affected families. The effect of land acquisition on the affected families was to be gauged by a Social Impact assessment before resorting to land acquisition. It also provided for the return of land to the owners if it remained unutilised for a period of 5 years. The determination of compensation was to be done under the method provided under the Act, further enhanced by 100% *Solatium*. There are many more provisions which are landowner's friendly. But there are certain flaws which if removed can make the Act more just and acceptable.

The need of the hour is that a balance should be created between the needs of the corporate sector which requires land for their projects and the landowners and farmers. The Government should shelve the idea that development of the country can take place only through industrialization and creation of more jobs. Agriculture and farming is a very essential part of our economy which cannot be neglected for the sake of development. Both the sectors should go hand in hand. Development is of course essential, but at what cost? Not at the cost of our farmers who have been feeding us, at least. Food security and development, both are the need of the hour today.