

Acquisition and Requisition of Immovable Properties-Enactments : **Land Acquisitions Act 1894 (1 of 1894)**



ANNAMALAI UNIVERSITY

Date : 06.03.2018

1

PARAG SHETH

FIE, FIV, MICA, MASCE, LL.B, DPM

CHARTERED ENGINEER ▪ ARBITRATOR ▪ GOVT. REGD. VALUER
INSOLVENCY PROFESSIONAL

pksheth@hotmail.com

Acquisition and Requisition of Immovable Properties-Enactments :

- Land Acquisitions Act 1894(1 of 1894)
- Land Acquisition under the Municipal Laws
- Law of Arbitration and Conciliation: Salient Features
- Rent Control Laws

Land Acquisitions Act 1894 (1 of 1894)

- Introduction
- Object of the Act
- History of Land Acquisitions Act
- State amendment to the Act
- Procedure followed in Land Acquisition under the Act
- Acquisition of land for company
- Acquisition of land under Municipal Laws

Introduction & Object of the Act

- ▶ Land Acquisition in India refers to the process of land acquisition by the central or state government of India for various infrastructure and economic growth initiatives.
 - ▶ 1. Several controversies have arisen with claims that land owners have not been adequately compensated.
 - ▶ 2. Land Acquisition has become a most vexing problem for policy makers in India.
- ▶ Given the growing controversies, chaos and confusion over the land acquisition during the past few years, the then Congress government was forced to re-examine the existing land acquisition mechanism as given under the Land Acquisition Act 1894.
- ▶ The Land Acquisition Act of 1894 allowed the government to acquire the private land for public purposes, which could be used for large developmental projects like building roads, industries, mining, Public Private Partnership (PPP) projects, etc.

History of Land Acquisitions Act

INDIA'S 200 YEARS OF STRUGGLE WITH LAND ACQUISITION LAWS

The Controversies pertaining over the land acquisition bill in India is not new. Its existence can be traced back to over 200 years now. The timeline for the same is as follows:-

- **1824:** The British government in India enacted the first land acquisition legislation that applied to the entire “Bengal province subject to the presidency of Fort William.” The law allowed the government to obtain land or other immovable property required for roads, canals or other public purposes “at a fair valuation.”
- **1839:** The Bombay presidency enacted an act similar to the Bengal Resolution I which included parts of the present-day states of Maharashtra, Gujarat, and Karnataka.
- **1850:** The British government then enforced Act XLII of 1850 in the country to acquire land for the purpose of building a rail network.

History of Land Acquisitions Act

- **1852:** The Madras presidency passed an act in order to facilitate the acquisition of land for public purposes which included the present-day states of Tamil Nadu and Andhra Pradesh, parts of Odisha, Kerala, and Karnataka, and Lakshadweep.
- **1857:** The government enacted legislation that brought the whole of British-ruled India under one uniform land acquisition law that stroke out all the previous enactments relating to land acquisition. Under this act , the collector had the power to fix compensation for the acquired land, while disputes were referred to arbitrators whose decision was final.
- **1861:** The 1857 legislation was amended owing to the “unsatisfactory settlement,” “incompetence” and “corruption.”
- **1870:** A new act was implemented that replaced arbitrators with civil courts for resolving disputes.
- **1894:** The act of 1870 was found to be unsatisfactory, therefore it lead the government to pass the Land Acquisition Act, 1894 . This act permitted the government to forcibly acquire land from private landholders for projects of public purpose. The price for the land was determined by the government.

History of Land Acquisitions Act

- **1948:** The Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948, adopted the Land Acquisition Act, 1894 after replacing the words “the whole of British India” with “all the provinces of India.” The British-era act was used in the same form for several decades.
- **1998:** The Bharatiya Janata Party proposed to amend the existing land bill.
- **2007:** The Congress party-led United Progressive Alliance (UPA) government decided to amend the land acquisition act and introduced a bill in the parliament. The bill mandated the social impact assessment and also proposed that the government, while acquiring the land, had to pay for losses or damages caused to the land and to provide compensation as per prevailing market prices. A Land Acquisition Compensation Disputes Settlement Authority was also to be constituted at the state and central levels.
- **2008:** The bill was subsequently referred to a standing committee on rural development and was cleared by the group of ministers, set up by the UPA government, in December 2008.

History of Land Acquisitions Act

- **2009:** The Lok Sabha passed the 2007 amendment bill as the Land Acquisition (Amendment) Bill, 2009 in February. The government introduces the bill in the Rajya Sabha but was unable to ensure its passage and it lapsed with the dissolution of the 14th Lok Sabha.
- **2011:** After winning the general elections in 2009 once again, the UPA government introduced the Land Acquisition Rehabilitation and Resettlement Bill, 2011—a new bill which traced its roots to the 2009 version.
- **2013:** The bill was passed.
- **Jan. 2014:** The bill comes into effect.
- **Dec. 2014:** After winning elections in May 2014, the Narendra Modi government made changes the land acquisition rules by an ordinance.

According to the amendment, the consent clause and the social impact assessment were not necessary if land was acquired for national security, defence, and rural and social infrastructure. “Such projects are vital to national security and defence of India including preparation for defence and defence production,” India’s finance minister Arun Jaitley says on Dec. 29.

History of Land Acquisitions Act

- **2015:** The lower house, where Modi holds a majority, passed the bill and the opposition parties including the Congress, the Trinamool Congress, the Samajwadi Party and the RJD walked out of the Lok Sabha.
- The Lok Sabha refers the bill to a joint parliamentary committee consisting of 30 members from both the Lok Sabha and the Rajya Sabha in May. The committee is asked to submit the report during the monsoon session of the parliament.
- The government once again promulgates the ordinance in June.
- The joint committee, in July, seek a two-week extension for the submission of report. A joint parliamentary panel, in August, suggested that the government should withdraw six key amendments, including the plan to remove the consent clause and the social impact assessment. THE LAND

THE LAND ACQUISITION BILL 2015: CURRENT SCENARIO

- ▶ The current BJP government introduced amendments to this Act which have been opposed by all political parties, including their ally Shiv Sena in the Rajya Sabha. The BJP's argument has been that the UPA's land acquisition law makes it impractical for any public purpose and endlessly delays infrastructure projects. While the amendments were passed in the lower house of the parliament where BJP enjoys the vast majority, it has been unable to pass this in the Rajya Sabha. Instead, it took recourse in an ordinance to pass the amendment to the bill in December 2014.

SUMMARY OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) BILL, 2015:

- The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 was introduced in the Lok Sabha by the Minister for Rural Development, Mr. Birender Singh on February 24, 2015. The Bill amends the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR Act, 2013).
- The Bill replaces the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Ordinance, 2014.
- The LARR Act, 2013 outlines the process to be followed when land is acquired for a public purpose. Key changes made by the Bill are:
- Provisions of other laws in consonance with the LARR 2013: The LARR Act, 2013 exempted 13 laws (such as the National Highways Act, 1956 and the Railways Act, 1989) from its purview. However, the LARR Act, 2013 required that the compensation, rehabilitation, and resettlement provisions of these 13 laws be brought in consonance with the LARR Act, 2013, within a year of its enactment (that is, by January 1, 2015), through a notification. The Bill brings the compensation, rehabilitation, and resettlement provisions of these 13 laws in consonance with the LARR Act, 2013.

SUMMARY OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) BILL, 2015:

- Exemption of five categories of land use from certain provisions: The Bill creates five special categories of land use: (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure projects including Public Private Partnership (PPP) projects where the central government owns the land.
- The LARR Act, 2013 requires that the consent of 80% of land owners is obtained for private projects and that the consent of 70% of land owners be obtained for PPP projects. The Bill exempts the five categories mentioned above from this provision of the Act.
- In addition, the Bill permits the government to exempt projects in these five categories from the following provisions, through a notification: (i) The LARR Act, 2013 requires that a Social Impact Assessment be conducted to identify affected families and calculate the social impact when land is acquired. (ii) The LARR Act, 2013 imposes certain restrictions on the acquisition of irrigated multi-cropped land and other agricultural land. For example, irrigated multicropped land cannot be acquired beyond the limit specified by the appropriate government.

SUMMARY OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) BILL, 2015:

- ▶ Return of unutilised land: The LARR Act, 2013 required land acquired under it which remained unutilised for five years, to be returned to the original owners or the land bank. The Bill states that the period after which unutilised land will need to be returned will be: (i) five years, or (ii) any period specified at the time of setting up the project, whichever is later.
- ▶ Time period for retrospective application: The LARR Act, 2013 states that the Land Acquisition Act, 1894 will continue to apply in certain cases, where an award has been made under the 1894 Act. However, if such an award was made five years or more before the enactment of the LARR Act, 2013, and the physical possession of land has not been taken or compensation has not been paid, the LARR Act, 2013 will apply.
- ▶ The Bill states that in calculating this time period, any period during which the proceedings of acquisition were held up: (i) due to a stay order of a court, or (ii) a period specified in the award of a Tribunal for taking possession, or (iii) any period where possession has been taken but the compensation is lying deposited in a court or any account, will not be counted.

SUMMARY OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) BILL, 2015:

- Other changes: The LARR Act, 2013 excluded the acquisition of land for private hospitals and private educational institutions from its purview. The Bill removes this restriction. While the LARR Act, 2013 was applicable for the acquisition of land for private companies, the Bill changes this to acquisition for 'private entities'. A private entity is an entity other than a government entity, and could include a proprietorship, partnership, company, corporation, non-profit organisation, or other entity under any other law.
- The LARR Act, 2013 stated that if an offence is committed by the government, the head of the department would be deemed guilty unless he could show that the offence was committed without his knowledge, or that he had exercised due diligence to prevent the commission of the offence. The Bill replaces this provision and states that if an offence is committed by a government official, he cannot be prosecuted without the prior sanction of the government.

SUMMARY OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) BILL, 2015:

This bill not only provides for land acquisition but also for rehabilitation and resettlement (R&R). The provisions of this bill shall be applicable where the government acquires land either for its own use or for the use of any private company for public purposes. The earlier Act only allowed land acquisition by government for government owned companies as well as schemes run by societies/authorities/co-operative societies while the new Bill allows acquisition for public purpose by private companies and Public Private Partnership (PPPs) apart from government controlled organizations. According to this bill the private companies are entitled to provide rehabilitation and resettlement if they acquire land through private negotiations. R&R shall be equal to or more than 100 acres in rural areas and 50 acres in urban areas.

As per this bill, the term “public purpose” includes

- National security and strategic defense purposes
- Roads, railways and ports built by government and PSEs
- Project affected people
- Planned development or improvement of villages
- Residential purposes for the poor • Government projects benefiting public.

SUMMARY OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) BILL, 2015:

- This Bill creates five special categories of land use which are exempted from certain provisions

This includes:-

- Defence
- Rural infrastructure
- Affordable housing
- Industrial corridors
- Infrastructure projects including PPP projects

However, under the LARR Act 2013 land could be acquired for all these purposes only when 80% of the project affected people give their consent. But this bill exempts the above mentioned land uses from this consent clause. This bill apart from limiting government's involvement in acquisition and required consent of affected people, it also talks about the return of the acquired land after a period of 5 years or any period specified at the time of setting up of the project, whichever is later if left unutilized. But no mechanism has been provided for this.

SUMMARY OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) BILL, 2015:

- ▶ The Bill provides the need for a Social Impact Assessment (SIA) by the gram sabha or an equivalent body in urban areas for preliminary enquiry for land acquisition. This SIA will examine the licitness of public interest involved. The SIA will be appraised by an Expert Group (EG) which will consist of two non-official social scientists, two representatives of Panchayat, Gram Sabha (GS), Municipality or Municipal Corporations as the case may be, two experts on rehabilitation and a technical expert in the subject relating to the project. After this the R&R Scheme will be formulated by a designated administrator which will again be reviewed by the Collector and Commissioner (R&R). The maximum time line for SIA is six months from its commencement and two months for EG. The process will lapse in case no land acquisition notification is brought after twelve months of the EG report. This Bill shall be applicable to sixteen existing legislations which provide for land acquisition that were excluded under the 2013 Act. These include the Atomic Energy Act 1962, the National Highways Act 1956, SEZ Act 2005, the Railways Act 1989, the Land Acquisition (mines) Act 1885.

SUMMARY OF THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (AMENDMENT) BILL, 2015:

- Moreover, to protect food security, this Bill limits any acquisition of irrigated multi-cropped land only for exceptional circumstances. In such an acquisition an equivalent area of culturable wasteland has to be deposited with the government. This Bill stipulates the appointment of an R&R committee to review R&R progress in case where land acquired is 100 acres or more for public purpose

LARR (Amendment) Bill, 2015 as passed by Lok Sabha

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 was introduced in the Lok Sabha on February 24, 2015 and passed by Lok Sabha on March 10, 2015. The Bill is pending in the Rajya Sabha. The table below compares the provisions of the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, with the Bill as: (i) introduced in Lok Sabha, and (ii) passed by Lok Sabha.

Table 1: Key changes made by the LARR (Amendment) Bill, 2015 as passed by Lok Sabha to LARR Act, 2013

LARR Act, 2013	Ordinance/LARR (Amendment) Bill, 2015 (as introduced)	Bill as passed by Lok Sabha
Consent (Proviso to Section 2(2))*		
The consent of 80% land owners required for private projects. The consent of 70% land owners required for Public-Private Partnership projects. No consent is required for government projects.	The Bill exempts five types of projects from this provision. These categories are: (i) defence, (ii) rural infrastructure, (iii) affordable housing, (iv) industrial corridors, and (v) infrastructure and social infrastructure including PPP projects where the government owns the land.	Removes social infrastructure from the 5 exempted projects. Specifies the definition of industrial corridors as those set up by the government/government undertakings, up to 1 km on either side of the road/railway of the corridor.
Social Impact Assessment (Chapter II)		
SIA is mandatory for all projects except: (i) in cases of urgency as outlined in Section 40 or (ii) for irrigation projects where an Environmental Impact Assessment is required.	The Bill allows the government to exempt projects falling under the five categories mentioned above from this provision, through a notification. Therefore, an SIA need not be conducted if the government issues a notification stating this (on a project to project basis).	Adds that before issuing the notification, the government must ensure that the extent of land being acquired is in keeping with the minimum land required.
Irrigated multi-cropped land (Chapter III)		
Irrigated multi-cropped land cannot be acquired beyond a limit specified by the government. The acquisition of agricultural land for all projects in a district/state must not exceed the total net sown area of the district/state.	The Bill allows the government to exempt projects falling under the five categories mentioned above from this provision, through a notification. Therefore, this limit need not be adhered to if the government issues a notification stating this (on a project to project basis).	Adds that before issuing the notification, the government must ensure that the extent of land being acquired is in keeping with the minimum land required.
Compensation & rehabilitation and resettlement (R&R) provisions of 13 other laws which govern land acquisition (Fourth Schedule)		
The Act exempted 13 laws (such as the National Highways Act, 1956 and the Railways Act, 1989) from its ambit. These laws also govern the process of acquisition of land for specific sectors. However, the Act required that compensation and R&R provisions of these laws be brought in consonance with it by January 1, 2015.	The Bill seeks to do this, that is, to bring the compensation and R&R provisions of 13 other laws in consonance with the Act.	No change.
Return of unutilised land (Section 101)		
If land acquired under the Act remains unutilised for five years from taking possession, it must be returned to the original owners or a land bank.	The Bill changes this to state that the period after which unutilised land will need to be returned to the later of: (i) five years, or (ii) any period specified at the time of setting up the project.	No change.
Retrospective application (Section 24(2))		
The Land Acquisition Act, 1894 will continue to apply in certain cases, when an award has been made under it. The LARR Act, 2013 will apply in case an award has been	The Bill states that in calculating the time period for retrospective application, any period during which the proceedings were held up: (i) due to a stay order of a court, or (ii) for a period specified in the award of	Changes 'account' to 'designated account'.

LARR (Amendment) Bill, 2015 as passed by Lok Sabha

LARR Act, 2013	Ordinance/LARR (Amendment) Bill, 2015 (as introduced)	Bill as passed by Lok Sabha
made five years or more prior to the commencement of the LARR Act, 2013 but the physical possession of the land has not been taken or compensation has not been paid.	a Tribunal, or (iii) for any period where possession was taken but the compensation is lying deposited in a court or any account, will not be counted.	
R&R award (Section 31, Second Schedule)		
The Act provides the option of employment to one member of an affected family as part of the R&R award.	No change.	Adds that employment to 'one member of such affected family of farm labour' must be given.
Change from private 'company' to private 'entity' (Section 3(j))		
The provisions of the Act are also applicable when land is acquired for public purpose for private companies. A company was one included in the Companies Act, 1956, or under the Societies Registration Act, 1860.	The Bill changes the term 'private company' to 'private entity'. A 'private entity' is an entity other than a government entity, and includes a proprietorship, partnership, company, corporation, non-profit organisation, or other entity. The Bill changes the Companies Act, 1956 to the Companies Act, 2013.	No change.
Change to hearing by Land Acquisition, Rehabilitation and Resettlement Authority (Chapter VIII)		
The Act provides for the establishment of a Land Acquisition, Rehabilitation and Resettlement (LARR) Authority which may be approached in case a person is not satisfied with an award under the Act.	No change.	Adds that the LARR Authority must hold its hearing in the district where the land acquisition is taking place, after receiving a reference from the Collector and giving notice of this reference to all concerned parties.
Offences by the government (Section 87)		
If an offence is committed by a government department, the head of the department will be deemed guilty unless he can show that he had exercised due diligence to prevent the commission of the offence.	The Bill deletes this provision.	No change.
	The Bill adds a provision to state that if an offence is committed by a government employee he cannot be prosecuted without the prior sanction of the government, as provided under Section 197 of the Code of Criminal Procedure, 1973.	Replaces this to state that a government employee can be prosecuted as provided for in Section 197 of the Code of Criminal Procedure, 1973.
Survey of wasteland (No provision)		
No provision.	No change.	Adds a provision that the government must conduct a survey of its wasteland including arid land, and maintain a record with details of this land, as may be prescribed by the government.
Acquisition of land for private hospitals and private educational institutions (Section 2(1)(b)(i))		
Excluded the acquisition of land for private hospitals and private educational institutions.	The Bill allows the acquisition of land for private hospitals and educational institutions.	Removes this provision. Thus, the acquisition of land for private hospitals & private educational institutions is excluded.

Sources: The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013; the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015; the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (Amendment) Bill, 2015 as passed by Lok Sabha; PRS.

Note: * Indicates the relevant Section/Schedule/Chapter in the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Procedure followed in Land Acquisition under the Act

- Under this part, acquisition process involves the following steps:-

1. NOTIFICATION

The land acquisition process starts with issuing of a preliminary notification in the Official Gazette in two locally circulated newspapers. Also the collector is to ensure the “public notice of substance of such notification” to be given at a convenient place in the locality.

This notice:

- Makes it lawful for an authorized officer to enter and inspect the land specified in the notice without the owner’s permission
- Alerts the owner not to invest any money or labour on any improvements to his land without the Collector’s consent and
- Informs the public not to acquire any interest in such land.

Procedure followed in Land Acquisition under the Act

2. FILING OF OBJECTIONS

Owners and the people who have interest in the land are then required to file their objections (if any) within 30 days of the issuing of the notice. These objections are to be submitted to the collector and the collector shall give opportunity of being heard to all those people who raise objections. After hearing these objections the collector submits a report to the government which contains all his recommendations and all the records of the proceedings. Then the government takes a decision of acquisition based on the collector's report. The right to file objections is regarded a substantial right when a person's property is threatened against acquisition.

3. DECLARATION

After the government takes the decision, a declaration is issued under Sec 6(1) and this declaration must be given equal publicity as the preliminary notification. According to this Act, this declaration shall be issued within one year from the date of issuing of preliminary notification.

Procedure followed in Land Acquisition under the Act

4. NOTICE TO INTERESTED PARTIES

After the declaration the notified land is planned and measured as per Sections 7 and 8 of the Act. A notice is issued by the collector to all the land owners and the parties having interest in that land to inform about government's intention to acquire their land and also to call for claims for compensation.

5. ENQUIRY AND AWARD

After the notice is issued, collector conducts an enquiry on the objection raised and accordingly an award is given. The award contains area of the notified land, compensation payable and the share of all the interested persons in the compensation. This award should be made within two years from the date of declaration or else under Sec 6 the acquisition proceedings will lapse. Any appeal against the award can be made by filing an application to the collector who shall then refer the matter to the court. The interested parties cannot file a suit in the ordinary civil courts to establish their claims. The award must be made within the stipulated time period of 2 years under Section 11A. The period of stay if any to be excluded from time fixed for passing the award.

Procedure followed in Land Acquisition under the Act

6. ACQUISITION

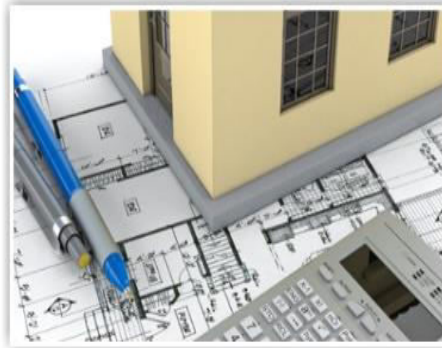
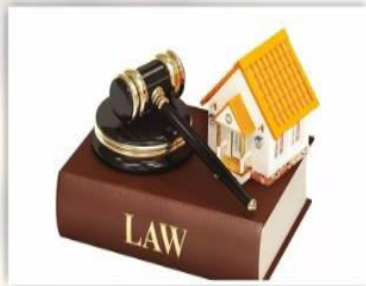
After the award is made the government acquires the land and immediately takes the possession of the land after paying appropriate compensation.

7. COMPENSATION

The compensation should be based on the market value of the land. If the payment of compensation is delayed even after acquisition of the land then an interest of 12% per annum shall also be given. In addition to that, a solatium equivalent to 30% of the market value shall also be given. The recent judicial trends have also seen refund of compensation at specific interest rate if the acquired land is not used for the desired purposes

25

THANK YOU



PARAG SHETH

FIE, FIV, MICA, MASCE, LL.B, DPM

CHARTERED ENGINEER ■ ARBITRATOR ■ GOVT. REGD. VALUER
INSOLVENCY PROFESSIONAL

E : parag@paragsheth.com

M : 0-98250 25953