

## **“Determining Compensation for Repealed Land Acquisition Act, 1894 & Land Acquisition, Rehabilitation and Resettlement Act, 2013”**

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### **Abstract**

Land acquisition is one of the most critical and confronted issues in the discourses upon economic development and growth, peasant economy and legal jurisprudence. 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 and some are depended on urban properties. 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, 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. If the land is acquired by government then how the landowners and farmers will be compensated. This paper attempts to analyse the law relating to compensation under repealed act, 1894 and the present land acquisition rehabilitation and resettlement act, 2013.

**KEY WORDS:** Land acquisition, Landowners, Farmers, LARR Act, 2013.

### **Introduction**

Land acquisition in India refers to the process by which the union or a state government acquires private land for the purpose of development purposes like industrialization,

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development of infrastructural facilities or urbanization of the private land and provides compensation to the affected landowners and their rehabilitation and resettlement. In other words, land acquisition is the process by which the government forcibly acquires private property for public purpose without the consent of the landowner. It is different from a land purchase, in which the sale is made by a willing seller. But here the landowner is not a willing seller and therefore the compensation were payable is to be fair and reasonable. Land acquisition in India is governed by the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (LARR)** is also called land acquisition act 2013 and it was brought to replace the Land Acquisition Act of 1894, which was enacted during British era. However, the act was mired into controversies mainly because of lack of specific definition of public purpose. The new act seeks to establish a cohesive national law that dealt with the compensation, rehabilitation and resettlement issues arising out of process of land acquisition.

### **Historical Perspective of Land Acquisition Law:**

#### **1. COLONIAL PERIOD**

The history of land acquisition began with the Bengal Regulation 1 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 1 of 1824 was replaced by Act 1 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 **Radhy Shyam(D) Through LRs and others v. State of U.P. and others**<sup>2</sup>, 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

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<sup>2</sup> "The history of land acquisition shows that in Eighteenth century, Bengal Regulation 1 of 1824, Act 1 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 1 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. Singhvi and Ashok Kumar Ganguly **Radhy Shyam(D) Through LRs and others v. State of U.P. and others** Civil Appeal No. 3261 decided on April 15, 2011.

1894 did not provide any opportunity to the land owners/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 land owners to raise objections to the acquisition led to large scale resentment among the land owners. 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 section 5A(2), an opportunity of being heard was to be provided by the Collector to the person interest in the land. By this amendment, Audi alteram partem which is the cardinal principle of Natural Justice was incorporated into the process of acquisition under the 1894 Act.

## **2. INDEPENDENT INDIA:**

After India gained independence in 1947, it adopted the Land Acquisition Act of 1894 by the ‘‘Indian Independence (Adaptation of Central Acts and Ordinances) Order’’ in 1948<sup>3</sup>. The congress led United Progressive Alliance (UPA) Government decided to introduce a new land acquisition law. The National Advisory Council (NAC), the advisory body of the UPA Government made recommendations for the LARR Bill, 2011 by combining land acquisition with Rehabilitation & Resettlement. According to NAC, land acquisition and Rehabilitation & Resettlement had to be seen as two sides of the same coin and R&R, in each instance, must follow acquisition of land. It further said that not combining the two aspects-Rehabilitation & Resettlement and land acquisition within one law, risked the neglect of R&R<sup>4</sup>. The Bill was finally passed by Indian Parliament on September 5, 2013, with further amendments, under the name of ‘The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013’. The Act received the assent of the President on September 26, 2013. As a result of the notification issued by the Government of India on December 19, 2013, the Act came into force on January 1, 2014<sup>5</sup>. The primary objective of the Act was to provide fair compensation, through Rehabilitation and Resettlement of those

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<sup>3</sup> <https://www.legalbites.in/land-acquisition-compensation-india/>

<sup>4</sup> Draft National land acquisition and rehabilitation & resettlement bill 2011, Ministry of Rural Development

<sup>5</sup> Gazette of India notification, Ministry of Rural Development,  
<http://rural.nic.in/sites/downloads/NewReleases/Noti-Commencement-LR19dec13.pdf>

affected, adequate safeguards for their well-being and complete transparency in the process of land acquisition<sup>6</sup>. The most important features of the Act were:

- ✓ The consent of 80% of landowners concerned was needed for acquiring land for private projects and of 70% landowners for public private projects
- ✓ The term ‘public purpose’ which was left vague in the Land Acquisition Act, 1894 was restricted to land for strategic purposes, infrastructural projects, PAFs, planned development or improvement of village or urban sites or residential purpose for weaker section and persons residing in areas affected by natural calamities or displaced
- ✓ Compensation was increased to four times the market value in rural areas and twice the market value in urban areas
- ✓ Rehabilitation & Resettlement package for the affected families with additional benefits to the SC/ST families.

### **THE AIMS AND OBJECTIVES OF THE LARR ACT, 2013**

The aims and objectives of the Act include:

- To ensure, in consultation with institutions of local self-government and Gram Sabha 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<sup>7</sup>.

### **JURISDICTION OF COURTS:**

No lower civil court, Under Section 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

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<sup>6</sup> “All you wanted to know about new land acquisition bill”, Live Mint, dated August 30, 2013  
<http://www.livemint.com/Politics/FXZ9CrJApXRowyzLd8mb2O/All-you-wanted-to-know-about-new-land-acquisition-bill.html>

<sup>7</sup> <https://www.gktoday.in/academy/article/the-land-acquisition-act-2013-and-the-recent-amendment/>

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 Section 69<sup>8</sup>.

**Appeal to High Court:** The appropriate Government or a requiring body or any person aggrieved by the Award passed by an authority U/S 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 Section 74. A period of six months is the time limit for disposal of case.

**Retrospective Operation:** The very first case on the ‘retrospective clause’ was **Pune Municipal Corporation v. Harakchand Misirimal Solanki**<sup>9</sup>, wherein eighteen appeals were filed before the Hon’ble 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 LAA, 1894 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. The impugned provision has been designed to benefit the land owners whose land has been acquired but the actual physical possession has not been taken for more than 5 years, or compensation not paid to them<sup>10</sup>. In the case of **Indore Development Authority v. Shailendra (D) Through LRS & Ors**<sup>11</sup>, It was held that this ruling in Pune Municipal Corporation was per incuriam, because it held that the landholder, cannot take advantages of his own wrong, by refusing to take the compensation under the old Act, in order to make it lapse, so that he could get the benefit of higher compensation under the 2013 Act. In the case of **M/S. G.D. Goenka Tourism**

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<sup>8</sup> Ibid

<sup>9</sup> (2014) 3 SCC 183, Shree Balaji Nagar Residential Association v. State of Tamilnadu (2015) 3 SCC 353

<sup>10</sup> Ramjas Foundation v. Union of India & Ors, 2017 (DLT SOFT) 465

<sup>11</sup> Civil Appeal No. 20982 of 2017, (Arising Out of S.L.P. (c) No. 2131 of 2016)

**Corporation Ltd and Anr v. State of Haryana & Others**<sup>12</sup>, The State had acquired land belonging to G.D. Goenka Tourism Corporation Ltd & Anr in 2003. The Punjab and Haryana High Court found that compensation was never paid to the parties and held that the land acquisition proceedings were deemed to have lapsed. In the case of **Delhi Development Authority v. Sukhbir Singh**<sup>13</sup>, The Supreme Court enumerated the essential ingredients for application of Section 24(2) of 2013 Act as under:

1. Land acquisition proceedings should have been initiated under the Land Acquisition Act;
2. An Award under Section 11 should have been made 5 years or more prior to the commencement of the 2013 Act;
3. Physical possession of the land, if not taken, or compensation, if not paid, are fatal to the land acquisition proceeding that had been initiated under the Land Acquisition Act;
4. The fatality is pronounced by stating that the said proceedings shall be deemed to have lapsed, and the appropriate Government, if it so chooses, shall, in this game of snakes and ladders, start all over again.

The Supreme Court in the case of **Aligarh Development Authority v. Megh Singh & Ors**<sup>14</sup>, Elucidated on the law relating to lapse of acquisition proceedings under section 24 of 2013 Act. The Apex Court stated that Section 24 of the 2013 Act envisages mainly two situations:

1. Where the land acquisition proceedings had already been initiated under the 1894 Act but no award was passed till the date the new Act came into force;
2. Where the award has been passed but neither the owner has been dispossessed nor has he been paid the compensation;

Under the first situation, where the award had not been passed, the acquisition proceedings could continue, but the compensation will have to be determined under the scheme of 2013 Act. Under the second situation, there is a statutory lapse of the proceedings. There is also an incidental third situation, where award under the Land Acquisition Act, 1894 Act had already been passed prior to coming into force of the 2013 Act, but payment is yet to be made and possession is yet to be taken. In that case, the further proceedings after the award could

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<sup>12</sup> CWP No. 12720 of 2016

<sup>13</sup> 2016 SCC Online SC 929

<sup>14</sup> IV (2016) SLT 153

continue under the old Act of 1894 but if either payment or possession has not taken effect in 5 years prior to the 2013 Act, then proceedings will lapse. This was followed by a spate of judgments of the Supreme Court in **Bharat Kumar v. State of Haryana**<sup>15</sup>, a similar judgment was pronounced. In the case of **Bimla Devi v. State of Haryana**<sup>16</sup>, 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**<sup>17</sup>, 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. Where no award under the Land Acquisition Act, 1894 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<sup>18</sup>.

#### **DEFINITIONS OF IMPORTANT TERMS:**

- **“Affected families”**- Under Section 3(c) of the 2013 Act<sup>19</sup>
  - (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

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<sup>15</sup> (2014) 3 SCALE 393

<sup>16</sup> (2014) 6 SCC 583

<sup>17</sup> (2014) 6 SCC 564

<sup>18</sup> <http://www.lawyersclubindia.com/article/valuation-for-land-acquisition-5910.asp>

<sup>19</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

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.

- **“Cost of acquisition”**- Section 3(i) of the 2013 Act<sup>20</sup>

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.

- **“Market Value”**- Section 3(u) of the LARR Act, 2013

“Market Value” means the value of land determined in accordance with Section 26.

- **“Person interested in Award”** – Section 3(x) of the LARR Act, 2013

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

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<sup>20</sup> Ibid

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

### **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 Hon'ble Supreme Court in the case of **Major General Kapil Mehra and Others v. Union of India and Another**<sup>21</sup>, the first question that emerges is what would be the reasonable market value which the acquired lands are 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**<sup>22</sup>, this Court laid down the following principles for determination of market value of the acquired land: (SCC pp. 796-797, 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.

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<sup>21</sup> (2015) 2 SCC 262

<sup>22</sup> (2005) 4 SCC 789

(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-à-vis the land under acquisition by placing the two in juxta position...’

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 fulfilment 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 & Ors v. K.S. Gangadharappa and Anr**<sup>23</sup>, The 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 made within a reasonable time of the date of notification Under Section 4(1);
- ii) it should be a bona fide transaction;
- iii) it should be of the land acquired or of the land adjacent to the land acquired; and
- iv) it should possess similar advantages.

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<sup>23</sup> MANU/SC/0598/2009: (2009) 11 SCC 164

It is only when these factors are present, it can merit a consideration as a comparable this was held in case of **Special Land Acquisition Officer v. T. Adi Narayan Setty**<sup>24</sup>. 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”<sup>25</sup>. In the case of **Union of India v. Raj Kumar Baghal Singh (Dead) Through LRS. & Others**<sup>26</sup>, In the instant case, deduction towards development cost at the rate of 20% was perfectly justified considering that acquired land was situated next to municipal limits and had potential for developing it into residential or commercial area. It was held that it is well settled in determining compensation for the acquired land, price paid in a bona fide transaction of sale by a willing seller to a willing buyer is adopted subjected to such transaction being for land adjacent to acquired land, Roxy made to the date of acquisition and possessing similar advantages. Of course, there are other well-known methods of valuation like opinion of experts and yield method. In absence of any evidence of a similar transaction, it is permissible to take into account transaction of nearest land around the date of notification under section 4 of the act by making a suitable alliance. They can be no fixed criteria as to what the suitable addition or subtraction from the value of would be the relied upon transaction. 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<sup>27</sup>.

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<sup>24</sup> MANU/SC/0114/1958: AIR 1959 SC 429

<sup>25</sup> 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.

<sup>26</sup> (2014) 10 SCC 422

<sup>27</sup> International Valuation Standards Council, International Standard Framework, <http://www.ivsc.org/sites/default/files/IVS%20Framework.pdf>

**ACQUISITION AWARDS:**

The new Act stipulates that the minimum compensation is to be 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 of the 2013 Act<sup>28</sup>, the collector shall proceed to enquire into the objections which any person interested has stated pursuant to a notice given U/S 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 of the 2013 Act<sup>29</sup>, 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 same shall be notified and be uploaded on the website of the authority concerned.

**Award by Collector Under Repealed Land Acquisition Act, 1894**

Before making an award, collector shall issue a public notice<sup>30</sup>. It shall contain particulars of the land acquired by the government along with a request to all interested persons to appear before the collector on a particular date<sup>31</sup>. The notice is pasted on or near the land to be taken

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<sup>28</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013

<sup>29</sup> Ibid

<sup>30</sup> See Section 9 of Land Acquisition Act, 1894

<sup>31</sup> See Section 10 of LAA, 1894

or sent by post to the interested persons. After hearing the parties, the collector shall make an award<sup>32</sup> under his hand stating the true area of the land, the compensation allowed for the land and the apportionment of the compensation among all the persons known or believed to be interested in the land either as per the terms of an agreement, if any; or otherwise, if no agreement is in existence, as provided for in the Act<sup>33</sup>. Section 11 enables the Collector to conduct an enquiry into the measurement, value and claims and to pass the award. The enquiry as regards the person interested in land should be conducted personally by the collector. Merely writing the word 'approved' in the order of award cannot be considered as valid<sup>34</sup>. In the case of **M.S. Ramiah v. Special Land Acquisition Officer**<sup>35</sup>, it was held that the award under section 11 is only an offer to the claimants and therefore unless the award is accepted by the claimants, the same is not binding. In **State of Maharashtra v. Sant Joginder Singh Kishan Singh**<sup>36</sup>, it was observed that section 11A of the LAA, 1894 is a procedural provision and does not stand on the same footing as section 23 of the Act. Procedure is a mode in which the successive steps in litigation are taken. Section 11A not only provide a period in which the land acquisition proceedings are to be completed but also provides for consequences, namely, that if no award is made within the time stipulated, the entire proceedings for the acquisition of the land shall lapse. A lapse in the acquisition of the land results in the owner of the land retaining the ownership right in the property and it is a substantive right accrued to the owner of the land; and section 11A of the Act is part of the law which creates and defines right, and not an adjective law which defines method of enforcing rights. It is a law that creates, defines and regulates the rights and powers of the party. In the case of **Damadila v. Parashram**<sup>37</sup>, Though the Act vests the government with the power of compulsory acquisition, it does not relieve the government of the payment of compensation to the land owner. The acquisition proceedings remain incomplete without the payment of compensation. Generally, there are five methods of making payment; i.e. direct payment, by order of the treasury, by money order, by cheque, and by deposit in a treasury. In the present-day society, payment by cheque is a valid way of tendering the money.

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<sup>32</sup> See Section 11 of LAA, 1894

<sup>33</sup> Ibid

<sup>34</sup> Jahangir Bomanji Wadia v. C.D. Gaikwad, AIR 1954 BOM 419.

<sup>35</sup> AIR 1974 Kant.122

<sup>36</sup> (1995) SCC Supl. (2) 475

<sup>37</sup> AIR 1976 SC 2229

**Award by the Court:**

After hearing both the parties in the Land Acquisition Reference case, the court shall pass an award under section 26 of the Act<sup>38</sup>. Thus, there are two types of award under the Act i.e. the award of the Collector Under Section 11 and the award of the Court Under Section 26. The main difference between these two is that, the award passed by the court is in accordance with section 23 and 24 of the Act. But the award passed by the Collector is based on a fair value on the basis of the market value of the property. In **State of Madhya Pradesh v. Seth Govardhan**<sup>39</sup>, it was held that the award passed by the Court is in the character of a ‘decree’ and hence appealable. On determination of compensation, the court shall pass an award Under Section 26 and in the form and manner specified therein. In **Gopalakrishnan v. Spl. Tahasildar**<sup>40</sup>, the High Court of Kerala observed that the reference court does not have any power to amend the reference application or to adjudicate enhanced compensation in respect of land not covered by a reference application.

**DETERMINING THE AMOUNT OF COMPENSATION UNDER REPEALED LAND ACQUISITION ACT, 1894 & THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013****Land Acquisition & Compensation:**

There was a lot of controversy about the payment of compensation in the cases of acquisition under Art. 31 (2) before and after IV amendment of the Constitution. The main controversy was whether the compensation should be paid for all kinds of deprivation of property or only where property was requisitioned or actually acquired? Though the controversy was not of much relevance after the 17<sup>th</sup> Amendment of Art. 31A by adding second proviso in which the word acquisition was used. In the case of **Charanjit Lai Choudhary v. Union of India**<sup>41</sup>, Justice Mukherjee gave the meaning of ‘Acquisition’ thus as follows; ‘Acquisition means and implies the acquiring of the entire title of the ex-appropriated owner, whatever the nature

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<sup>38</sup> Section 26(2) of the LAA, 1894 reads: ‘Every such award shall be deemed to be a decree and the statement of the grounds of every such award a judgment within the meaning of section 2, clause (2) and Section 2, clause (9), respectively, of the Code of Civil Procedure, 1908 (5 of 1908)’

<sup>39</sup> AIR 1993 MP 70 (F.B)

<sup>40</sup> 2000 (2) KLT 711

<sup>41</sup> AIR 1950 SC 41

and extent of that title might be. The entire bundle of rights which were vested in the original holder would pass on acquisition to the acquirer leaving nothing in the form”.

### “Compensation” Before and After IV Amendment:

The expression “compensation” according to the Supreme Court in **Bela Banerjee v. State of West Bengal**<sup>42</sup>, it meant a just equivalent or full indemnification of the ex-appropriated owner, and the expression “deprived” had the same connotation as taking possession of or acquisition. In this case property was acquired in the City of Calcutta for the settlement of refugees from East Bengal and was handed over to a Co-operative Credit Society to develop. In accordance with Section 8 of the West Bengal Planning and Development Act, 1948 the Society paid compensation. The Section 8 laid down that compensation can be fixed with reference to the market value on an anterior date i.e., December 31, 1946. The Chief Justice Pathanjali Shastri delivered the judgment of the Court and observed:

“No matter when the land is acquired, considering that the impugned Act is a permanent enactment and land may be acquired under it many years after it came into force, the fixing of the market value on 31<sup>st</sup> December, 1946, as the ceiling on compensation without reference to the value of the land at the time of acquisition is arbitrary and cannot be regarded as due compliance in letter spirit with the requirement of Article 31 (2) of the Indian Constitution. Any principle for determining compensation which denies to the owner this increment in value cannot result in the ascertainment of the true equivalent of the land appropriated”<sup>43</sup>. According to the **State of West Bengal v. Subodh Gopal Bose**<sup>44</sup>, the law providing for acquisition or extension of interest of private owners in properties not governed by Article 31A & 31B of the Indian Constitution read with IX Schedule was liable to be struck down unless the law provided for payment to the ex-appropriated owner compensation which was just an equivalent. As a result of these two decisions, the IV amendment of the Constitution<sup>45</sup> was passed which came into force on April 27, 1955. Clause (2) of Art. 31 was substituted by new clause (2) & (2A). Article 31A was amended with retrospective effect; seven more Acts were added to the IX Schedule and certain consequential provisions were made by substitution of an amended Article 305 in place of the original Article 305. The true effect of

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<sup>42</sup> AIR 1954 SC 170

<sup>43</sup> Ibid. p.8

<sup>44</sup> AIR 1954 SC 92

<sup>45</sup> Inserted by Section 1 of the Fourth Amendment Act, 1955

the amended Article 31(2) came for consideration for the first time before the Hon'ble Supreme Court in **P. Vajravelu Mudaliar v. Spl. Deputy Collector, Madras**<sup>46</sup>, In this case lands belonging to a person were notified for acquisition for the purpose of housing schemes and proceedings in respect of compensation payable to him in accordance with the provisions of the Land Acquisition (Madras Amendment) Act, 1961 were pending. The owner challenged the vires of the Madras Amendment Act, 1961 on the ground that the Act infringed the fundamental rights under Article 14, 19 & 31 (2) of the Indian Constitution. The Amended Act made provisions which departed from the Land Acquisition Act, 1894 in determining compensation in three aspects;

1. Compensation was to be determined on the basis of the average market value of the land during five years immediately preceding the date of the notification U/S. 4 (1) of the Land Acquisition Act or the market value on the date of notification whichever was less;
2. The solatium payable to the owner for compulsory acquisition was to be 5% of the market value; and
3. That the owner was not to get any compensation for the suitability of the land for use other than the use which it was put on the date of publication of the notification i.e., potentiality of the land was to be discarded.

In **Bank Nationalisation Case**<sup>47</sup>, which was decided on February 2, 1970. First the Banking Companies (Acquisition & Transfer of Undertakings) Ordinance 1969 was promulgated on July 19, 1969 and by an Act 22 of 1969 which was given retrospective effect from July 19, 1969 replaced the ordinance. Under the Act 14 Indian scheduled Banks, with deposits exceeding Rs. 50 crores were nationalised. The Act laid down principles for determining compensation to be paid for the acquisition of the Banks. The case came up for hearing before 11 Judges and two Judgments were delivered. By a leading majority judgment 10:1 Justice Shah declared that the impugned Act is void and by a dissenting judgment Justice Ray held the act as valid.

1. The following principles emerge from the Bank Nationalisation case: The Constitution guarantees a right to compensation an equivalent in money of the

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<sup>46</sup> AIR 1965 SC 1017

<sup>47</sup> R.C. Cooper v. Union of India AIR 1970 SC 564

property compulsorily acquired. That is the basic guarantee. The law must therefore provide compensation, and for determining compensation relevant principles must be specified; if the principles are not relevant the ultimate value determined is not compensation<sup>48</sup>.

2. Compensation may be provided under a statute, otherwise than in the form of money: it may be given as equivalent of money e.g., a bond. But in judging whether the law provides for compensation, the money value at the date of expropriation of what is given as compensation, must be considered. If the rate of interest compared with the ruling commercial rate is low, it will reduce the present value of the bond. The Constitution guarantees a right to compensation an equivalent of the property expropriated and the right to compensation cannot be converted into a loan on terms which did not fairly compare with the prevailing commercial terms. If the Statute in providing for compensation devises a scheme for payment of compensation by giving it in the form of bonds, and the present value of what is determined to be given is thereby substantially reduced, the Statute impairs the guarantee of compensation<sup>49</sup>.
3. If the principles specified by the Parliament for determining compensation of the property to be acquired is conclusive, the Parliament would be invested with a charter of arbitrariness and by abuse of legislative process the Constitutional guarantee of the right to compensation may be severely impaired<sup>50</sup>. Justice Shah went further and gave an independent reasoning basing Art. 19 (1)(g) because the companies, whose undertakings were acquired, were not left in a position to undertake other business, if they so liked and held that this virtual prohibition of non-banking business, was an unreasonable restriction upon the Company share holders rights under Art. 19(1)(g), which the impugned statute could not impose, while acquiring the banking business and undertakings of the Companies specified in the Statute. “If the compensation paid is in such a form that it is not immediately available for restarting any business, declaration of the right to carry on business other than banking becomes an empty formality, when the entire undertaking of the named banks is transferred to and vests in the new banks together with the

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<sup>48</sup> Supra note 48

<sup>49</sup> Ibid p.564

<sup>50</sup> Ibid p.609

premises and the names of the banks, and the named banks are deprived of the services of its administrative and other staff<sup>51</sup>. The judgment in the Bank Nationalisation case evidently lead to 25<sup>th</sup> Amendment of the Constitution of India and by which Article 31 (2) was amended by substituting the expression “Amount” for the expression “Compensation” which has been subjected to conflicting interpretations by the Supreme Court in different case since 1951.

### **Interpretation of Article 300 A:**

Article 31 of the Indian Constitution deals with the eminent domain power and clauses (1) & (2) of the article 31 lay down three limitations subjected to which state may exercise its eminent power. Article 31 guarantees that a person cannot be deprived of his property by an executive order (property right can be deprived only through legislation). Secondly, such deprivations can only be for public purpose and thirdly, compensation for deprived property must be equivalent to the market value of the property acquired. After 44<sup>th</sup> Amendment Supreme Court has very clearly stated that the executive cannot deprive a person from his property without the authority of law and ‘Law’ in this context “an Act of parliament or state legislature rule, or statutory order, having force of law, that is positive or state made law”, in the view of interpretation given to the word ‘Law’ under Article 21 of the Indian Constitution in **Maneka Gandhi v. Union of India**<sup>52</sup> case. Bombay High Court invalidated some provisions of the Maharashtra Housing and Area Development Act, 1976 U/A 300A, accordingly the law was not just and fair in so far as it provided less compensation for the acquisition of property than provided under the Land Acquisition Act, 1894<sup>53</sup>. According to the Bombay High Court, adequate compensation was an essential ingredient of ‘Law’ in Article 300A and the law relating to the acquisition of property must satisfy Article 21 of Indian Constitution. The decision of the High Court was reversed by the Supreme Court and also been held that the state’s power of eminent domain or to acquire property is subject to common law requirement (Doctrine eminent domain) of ‘Public purpose’ and ‘adequate compensation’ but not subjected to the right to livelihood U/A 21 of the Indian Constitution. Hence, state may acquire property notwithstanding the impact of acquisition on the owner’s

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<sup>51</sup> Supra note 48 p.602

<sup>52</sup> AIR 1978 SC 597

<sup>53</sup> Basanti Bai v. State of Maharashtra, AIR 1984 Bom.366

livelihood<sup>54</sup>. In **Gilubhai Nanbhai khachar v. State of Gujarat**<sup>55</sup>, The Hon'ble Supreme Court has however held that because of controversial aspects of Article 31, it was deleted from the Constitution and it should not be brought back by judicial interpretation. The Court admitted the exercise of power of eminent domain recognized U/A 300A requires existence of public purpose and payment of money for the property acquired, amount need not to be just equivalent to the property acquired but at the same time it must not be illusory if, in any case law fails to satisfy the requirements of 'public purpose' and 'adequate compensation' it may held to be invalid U/A 300A. In this regard legislative decision shall be final, however, requisition, and acquisition of property may still be challenged on the ground whether a piece of property acquired for public purpose or whether compensation paid is adequate or not<sup>56</sup>.

### **The Land Acquisition Act, 1894 & Compensation:**

The power of the sovereign is to take private property for public use and the consequent rights of the owner to compensation are well established. In justification of the power, two maxims are often cited "Salus Populi Est Supreme Lex" (Public welfare is the highest law) and "Necessities Publica major Est Quam Privata" (public necessity is greater than private necessity). The Land Acquisition Act, 1894 provides for the acquisition of land for a public purpose, and also for companies. The Land Acquisition Act was an existing law when the Government of India Act, 1935 was enacted and also when the Constitution came into force, and so, the provisions of the Land Acquisition Act were protected under the umbrella of Article 31 (5)(a) of the Indian Constitution. The effect of Art. 31(5)(a) is that, if any law provided for the acquisition and requisition of property without a public purpose, or did not provide for payment for compensation, such a law if validly enacted, would not be open to challenge on the ground that it violated Art. 31 (2) of the Indian Constitution<sup>57</sup>. The matters to be considered for determining the amount of compensation are deals with the Section 23 & 24 of the Act<sup>58</sup>. The market-value of the land at the date of the publication of the notification U/S 4(1), the damage sustained by the person interested, the damage sustained due to taking of any standing crops trees on the land, the severing of such land from his other land, the loss

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<sup>54</sup> V.N. Shukla's 'Constitutional Law of India', (Mahendra P. Singh, rev'd. Eastern Book Company, 12<sup>th</sup> ed. (2008) pp. at 908 & 909

<sup>55</sup> 1995 Supp (1) SCC 596, AIR 1995 SC 142

<sup>56</sup> V.N. Shukla's 'Constitutional Law of India', (Mahendra P. Singh, rev'd. Eastern Book Company, 12<sup>th</sup> ed. (2008) pp.910

<sup>57</sup> <http://www.ebc-india.com/lawyer/articles/97v3a2.htm>

<sup>58</sup> The Land Acquisition Act, 1894

of earnings etc. are the factors to be taken into account in determining the amount of compensation to be awarded for land acquired. Though the Land Acquisition Amendment Act, 1984 came into force on 30 April 1982, land owners could not claim additional benefits provided U/S 23 (1A) of the Amended Act, for awards passed before 30<sup>th</sup> April 1982<sup>59</sup>. In **Vithal Rao & Anr. Etc. v. The Special Land Acquisition Officer**<sup>60</sup>, The Hon'ble Supreme Court made a landmark observation that can act as a precedent for future determination of land value in a land acquisition process and how a value can be arrived at for such acquisition in the absence of previous large land sales in the area. Arriving at a price point has remained a tricky proposition in all land acquisitions either by governments or other wings/departments of governments. With no standard to go by, this has often led to large scale protests/agitations that have stymied developments in the past, especially in areas where there has been little or no precedent to fall back on. Also, when land is not developed, it would be necessary to deduct a certain percentage for the development process from the overall value. The Supreme Court was dealing with appeals filed by land owners against the order passed by the High Court of Karnataka, whereby the High court allowed appeals in part and modified an award dated of August 24, 2012 passed by the Court of Senior Civil Judge, Mudhol. The High Court had re-determined compensation at Rs. 13,93,920 per acre as against Rs. 6,75,000 per acre with all statutory benefits as envisaged U/S 23 of Land Acquisition Act, 1894. The court in several cases laid down that, 'while determining true market value of acquired land and especially when acquired land is a large chunk of undeveloped land, it is just and reasonable to make appropriate deduction towards expenses for development of acquired land. It has also been consistently held that, at what percentage deduction should be made vary from 10 percent to 86 percent land, area under acquisition, whether land is developed or not and, if so, to what extent, purpose of acquisition, etc. It has also been held that, while determining market value of a large chunk of land, value of smaller pieces of land can be taken into consideration after making proper deduction in the value of lands and when sale deeds of larger parcel of land are not available.' The Judgment further says: "This Court has also laid down that, a court should also have taken into consideration potentiality of acquired land apart from other relevant considerations. This court has also recognized that courts can always apply reasonable amount of guesswork to balance equities in order to fix a just and fair market value in terms of parameters specified U/S 23 of the Act".

<sup>59</sup> Union of India v. Giani, AIR 2011 SC 977

<sup>60</sup> July 7, 2017 Civil Appeal Nos. 1645-1647 of 2016

**Apportionment of Compensation:**

It is a basic principle of justice that if there are several persons interested in the same property and if they agree amongst themselves as to the manner of apportionment of the compensation, then the agreement shall be conclusive evidence of the correctness of the apportionment of award<sup>61</sup>. In **Purna Chandra v. Fakir Mohammed**<sup>62</sup>, It was held that a covenant in the lease deed directing the lessee and not to claim any portion of the compensation which may be awarded if the property leased out, be compulsory acquired, is valid in law and enforceable. But in the case of a dispute with respect to the apportionment of award, the Collector shall refer the matter to a Civil Court<sup>63</sup>. In **State of Madras v. Subramania Iyer**<sup>64</sup>, The Madras High Court Observed that, ‘‘It is obvious that when the Government exercises its power of eminent domain and acquires property, public funds have to be utilized for the payment of compensation to the true owner, and not merely to any claimants who cares to appear on the scene’’. The Collector can even make a reference without an application from the party. If a property has been jointly inherited by brothers and sisters, then brothers together had no right to sell the entire property<sup>65</sup>.

**DETERMINING THE AMOUNT OF COMPENSATION UNDER RIGHT TO FAIR COMPENSATION & TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT ACT, 2013**

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 enacted by Parliament to provide just and fair compensation to those whose land is taken away for constructing roads, buildings, or factories, had come into force from January 1, replacing the 120-year-old legislation, after a thorough perusal of The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013, on compensation and valuation of property there is detailed provision to ensure justice and fair calculation as following:

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<sup>61</sup> See Section 29 of the Land Acquisition Act, 1894

<sup>62</sup> AIR 1955 NOC 1541

<sup>63</sup> See Section 30 of the Land Acquisition Act, 1894

<sup>64</sup> AIR 1962 Mad. 313

<sup>65</sup> Shanmugha Sundaram v. Diravia Nadar, AIR 2005 SC 1841

**Determination of Market Value of Land by Collector:**

As per Section 26 (1) the collector shall adopt the following criteria in assessing and determining the market value of the land namely-

- i) As specified in The Indian Stamp Act, 1899 for the registration of the sale deeds or agreement to sell of particular area.
- ii) Average sale price for similar type of land situated in the nearest village.
- iii) Consented amount for compensation as agreed upon under subsection (2) of section 2 in case of acquisition of lands for private companies or for the public-private partnership projects<sup>66</sup>.

Whichever is higher provided date of determination of market value shall be the date on which notification has been issued. Further four explanations are there, according to first explanation, the average sale price shall be determined taking into account, the sale deeds or the agreements to sell registered for similar type of area in the near village of near vicinity area during immediately preceding three years of the year in which such acquisition of land is proposed to be made. Second explanation is for, determining the average sale price referred to in explanation-1, one half of the total number of sale deeds or the agreement to sell shall be taken into account. Third explanation is, while determining the market value under section 26 and the average sale price referred in Explanation 1 and 2, any price paid as compensation for land acquired under the provisions of this Act or an earlier occasion in the district shall be taken into consideration. As per explanation four, while determining the market value U/S 26 and the average sale price referred to in Explanation 1 or 2 any price paid, which in the opinion of the collector is not indicative of actual prevailing market value may be discounted for the purpose of calculating market value<sup>67</sup>. The market as calculated U/S 26 (1) shall be multiplied by a factor to be specified in the first schedule<sup>68</sup>. Where the market value under sub. Sec. (1) & (2)<sup>69</sup> cannot be determined for reason, land is situated in such an area where the transaction in land are restricted by or under any law for the time being in force in that area; or the registered sale deed or agreement to sell as mentioned in clause (a) of Sub.Sec.(1)

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<sup>66</sup> See Section 26 of the LARR Act, 2013

<sup>67</sup> The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation & Resettlement Act, 2013

<sup>68</sup> Section 26(2) of the LARR Act, 2013

<sup>69</sup> Ibid

for similar land are not available for immediately preceding three years; or the market value has not been specified under the Indian Stamp act, 1899 by the appropriate authority<sup>70</sup>.

### **Determination of value of Thing Attached to Land Building:**

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 engineers, or any other specialist in the relevant field, as may be considered necessary by him<sup>71</sup>. The collector for the purposes 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<sup>72</sup>. 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 person in field of agriculture as may be considered necessary by him<sup>73</sup>.

### **Award of Solatium:**

The collector having determined the total compensation to be paid, shall to arrive at the final award, impose a ‘solatium’ amount equivalent to one hundred percent of the compensation amount<sup>74</sup>. For the removal of doubts, it is hereby declared that solatium amount shall be in addition to the compensation payable to any specified in first schedule<sup>75</sup>. In addition to the market value of the land provided U/S 26, the collector shall, in every case, award an amount calculated at the rate of 12% per annum on such market value for the period commencing on and from the date of the publication of the notification of the Social Impact Assessment study under sub. Sec (2) of section 4 in respect of such land till the date of award of the collector or the date of taking into possession of the land, whichever is earlier.

### **Conclusion**

Land is a precious resource for the farmers and not anything less to any land owner. 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

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<sup>70</sup> See Section 26(3) of the LARR Act, 2013

<sup>71</sup> See Section 29(1) of the LARR Act, 2013

<sup>72</sup> Ibid Sec.29(2)

<sup>73</sup> Ibid Sec.29(3)

<sup>74</sup> See Section 29 of the LARR Act, 2013

<sup>75</sup> Ibid

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 Nandi gram. Finally, the Government enacted the 2013 Act with provisions of just and fair compensation, rehabilitation and resettlement to the affected families. 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 land owners friendly. But there are certain flaws which if removed can make the Act more just and acceptable.