

Righting wrongs in land acquisition

In July 2011, the United Progressive Alliance (UPA) government embarked on an ambitious project to [rewrite the law on land acquisition](#). How the government acquired land from private parties had long been the subject of heated dispute, often resulting in violent conflict.

Several previous governments had made attempts to amend the Land Acquisition Act, 1894, but none had met with much success and the Act continued as an instrument of state oppression and forced displacement.

It was a milestone achievement of the UPA government when the historic Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act was passed in September 2013 with the full support of all political parties, including the Bharatiya Janata Party. In fact, amendments suggested by the then Leader of the Opposition in the Lok Sabha, Sushma Swaraj, were readily accepted and made part of the law. The opening speaker in the debate was Rajnath Singh who welcomed the new law. The law provided for greatly enhanced compensation, consent of those whose land was sought to be acquired, and detailed rehabilitation and resettlement provisions (including employment, land for land, and other beneficial schemes). In other words, it changed the relationship between the state and the individual by empowering the latter against the former.

It also included a retrospective clause. Section 24 of the new Act provided that under certain circumstances, acquired land could be returned to affected families. Data are being compiled, but it would be correct to say that thousands of families who had previously given up all hope had their acquisition proceedings set aside and their land returned under Section 24. This Section was upheld and imbued with substance by several judges of the Supreme Court and various High Courts. But in a stunning volte-face, the Narendra Modi government brought in a draconian ordinance on January 1, 2015 to render this Section inoperative along with many other progressive and pro-farmer provisions in the 2013 law. However, in the face of overwhelming nationwide protests led by the Congress and other like-minded parties, on August 30, 2016 Mr. Modi announced in a 'Mann ki Baat' speech the withdrawal of the amendments proposed by his government.

Now, the Supreme Court, in *Indore Development Authority v. Shailendra* (February 2018), has effectively implemented the provisions of the lapsed ordinance with regard to the retrospective clause. Given that it is at variance with other Benches on the issue, this has now led to the constitution of a five-judge Bench of the Supreme Court to decide whether the Section has to be interpreted expansively or in a narrow sense.

As the Supreme Court gets ready to decide on the fate of this Section in a law that has positively impacted the lives of several farmers/ land owners, it would be appropriate to revisit the legislative intention that existed at the time of its drafting.

It was clear at the draft stage itself that a new law on land acquisition would necessarily have to address the cases of those who had suffered (and continued to suffer) due to the unacceptable provisions of the 1894 law. There were still conflicts surrounding acquisitions that had been initiated decades earlier and where the acquired land was lying unused, bringing no benefit to the state or the former owner.

A test had to be laid down to determine in which cases land could be returned to the original owners. After much deliberation, including with leaders of the then opposition, a formula was arrived at. There would be three categories. The first category would comprise of those for whom

the land acquisition award had been made less than five years prior to the coming into force of the new law (before January 1, 2014 and after January 1, 2009). In such cases, the new law would not apply; the proceedings would continue under the old law. The second would be where the award had not been made (on the date of the new law coming into force) but the acquisition proceedings had been initiated. In such cases, the land owners would be entitled to enhanced compensation and all other rehabilitation and resettlement benefits as provided under the new law, but the acquisition process would continue under the 1894 Act. The third category would comprise of the cases of those for whom the land acquisition award had been made five years (or more) prior to the new law coming into force and where either compensation had not been paid or there had been no physical possession of the land. It was reasoned that five years was enough time for the acquiring authority to resolve all disputes, failing which it made no sense to hold on to the land.

The Supreme Court decision in the Indore case does two things: one, it relaxes the existing definition of compensation paid from the active requirement of offering the compensation and depositing the same in court (laid down by a three-judge Bench of the Supreme Court in a historic 2014 decision). Now, an offer followed by deposit in the government's own treasury is sufficient to qualify as compensation paid. Two, on the subject of physical possession, it lays down that the period where the government is prevented from taking possession of the land due to the operation of a stay order or injunction shall not be counted towards the stipulated five-year requirement. The 2013 Act had no such caveats or qualifications because (i) the compensation would have to be offered in a meaningful fashion rather than the passive act of mere deposit in the treasury where it anyway resides; and (ii) stay or no stay, five years was sufficient time for a government to resolve any pending litigation on the subject. Having studied the ground reality for over three years, we can safely say that these new requirements (laid down by the Bench in the Indore case) will likely render the Section inoperable.

This interpretation stands in contrast to a majority of the Supreme Court's earlier judgments that upheld the Section and applied it expansively in favour of the land owner. In those judgments, the Section was correctly, in our opinion) interpreted in favour of securing the land owners' interests over those of the state. This was in sync with the foundational premise of the 2013 Act that it was never meant to help the state hold on to its land banks or to deny return of land on the basis of narrow technicalities. The question is simple: If a land owner has refused compensation, should that land be forcibly acquired by the government in the name of 'development'?

The Supreme Court of India has often been at the forefront in the fight for the rights of the individual vis-à-vis the state. It has on several occasions secured far-reaching protections for the individual and made legislative safeguards stronger. We hope that the new five-judge Bench will continue in this fine tradition.

Jairam Ramesh is an MP, and Muhammad Khan is an advocate and National Media Panelist of the Congress. Both were intimately associated with the drafting and passage of the 2013 land acquisition law

Receive the best of The Hindu delivered to your inbox everyday!

Please enter a valid email address.

Positive developments are taking place with regard to female genital mutilation

END

Downloaded from crackIAS.com

© Zuccess App by crackIAS.com