

‘Adivasi Campaign’ demands rejection of the Land Acquisition Ordinance, 2014

www.adasirights.org

In order to address historic injustices committed against mainly indigenous peoples of India under the Land Acquisition Act of 1894, the Government of India enacted the ‘Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013’ (LARRA) on 27 September, 2013 and the Rules for the LARRA on 19 December, 2013. The present BJP led National Democratic Alliance government introduced an ordinance on 31st December 2014 to amend the LARRA. The Ordinance set aside the five major safeguards – social impact assessment, mandatory consent of the affected people, provisions to safeguard food security of the communities, punishment to the government officials and returning of unutilised land to the original land owners.

These amendments effectively reintroduced the Land Acquisition Act of 1894 and ought to be rejected for the following reasons:

1. Social Impact Assessment:

First major amendment was made to strike out the Social Impact Assessment (SIA), which is one of the most important components in the ‘Right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013. The SIA is a methodology to review the social, cultural and environmental consequences of a development project on the affected communities so that mitigation plans could be put in place in advance. The chapter – II of the principal Act has been provided to determine the social impact and public purpose of the project. The Social Impact Assessment study would assess whether the proposed acquisition serves public purpose. It would estimate affected families and the number of families among them likely to be displaced. It would estimate the rehabilitation, resentment, requirement of land the projects, cost benefit and overall impact of the project to the affected people. The Social Impact Assessment study would be completed within the period of six months from the date of its commencement. It seems that the present central government sees the social impact assessment study as one of the major obstacle for the mega projects.

Therefore, the Chapter IIIA was incorporated through the ordinance, which empowers the appropriate Government to exempt the provisions of Chapter II and III in the public interest in five major areas – national security, rural infrastructure, housing, industrial corridors and public private partnership projects. Thus, there would be no social impact assessment study and mandatory consent of the affected people, which is the assassination of the spirit of the ‘Right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013’. The displacement induced by the development projects is a major area of concern.

It has been estimated that there were about 60 million displaced persons/project affected persons (DPs/PAPs), since independence to 2000[1] and as per Government sources at least 75 percent of them have not been rehabilitated[2]. The Expert Group on Prevention of Alienation of Tribal Land and its Restoration set up by the Government of India estimated that, of the total displaced due to development projects, 47 per cent are tribal population[3]. The Constitutional provisions and protective laws – Land laws, the provisions of the Panchayats (Extension to the Scheduled Areas) Act (PESA), Forest Rights Act (FRA), etc have special safeguards for protection of tribals' individual and community right to land and forest, religious identity, cultural, tradition and self-determination.

The consequences of not complying with the social impact assessment in land acquisition for industrial development are vividly demonstrated in the cases of three mega development projects – Tata Steel Ltd (TSL), Heavy Engineering Corporation (HEC) and Bokaro Steel Ltd (BSL) in Jharkhand. The Study reveals that these projects had been established without undertaking any social impact assessment. The DPs/PAPs mostly the tribal people lost their identity, culture, tradition, language and system of self governance. As per the study report, 43,925 people of 12,550 families of 24 villages were displaced by the TSL, 40,000 people of 12,990 families of 23 villages were uprooted by the HEC and 30,095 people of 6019 families of 51 villages were displaced by BSL[4]. Presently, the DPs/PAPs of the above projects have assimilated in the crowd of daily wage labourers, rickshaw pullers and domestic servants.

The Comptroller and Auditor General (CAG) observed that rehabilitation is not up to mark in the Special Economic Zone (SEZ) projects. For instance, APIIC acquired 9287.70 acres of land (6922.29 acres of Patta land and 2365.41 acres of Government/assigned land) during 2007-08 in Atchyutapuram, Rambilli mandals of Visakhapatnam district of Andhra Pradesh for development of integrated SEZ. The rehabilitation pay out was proposed at Dibbapalem and Veduruvada villages for the Project Displaced Families (PDF) and the cost of rehabilitation package was worked out at 106.21 crore. 5079 families were affected in 29 villages (15 villages in Atchyutapuram mandal and 14 villages in Rambillimandal). It was observed that only 1487 families could be shifted to Dibbapalem till date.

Further, out of 4300 plots developed for the major married sons of the affected people, only 3880 could be allotted. In Veduruvada too, no plots had been allotted till date[5]. It clearly shows that once the land is acquired, the developers never bother for the rehabilitation of the project affected people. Secondly, the land is also acquired more than the actual requirement for the project. For instance, 31,287.24 acres of land was acquired for the Bokaro Steel Limited, Bokaro in 1965 for establishment of a steel plant with the capacity of 6 MT per annum. However, merely 15221.92 acres of land was utilized for the actual purpose of the project and rest of the land remained unutilized for years. Later on, out of 15221.92 acres unutilized land, 2246.01 acres were diverted to other government agencies and 417.66 acres subleased illegally[6]. Therefore, the social impact study must be undertaken in all development projects.

2. Mandatory consent of the community:

Second major change was made regarding the mandatory consent. It has been provided in the section 4(1) of the Principal Act that ‘whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the affected area[7]. Further provided that ‘the appropriate Government shall ensure that adequate representation has been given to the representatives of Panchayat, Gram Sabha, Municipality or Municipal Corporation’[8].

The protection provisions provided under PESA and FRA were upheld by incorporation of Chapter IIIA. The ordinance clearly denies the mandatory consent of the community in land acquisition for the major projects. How can the land of farmers and Adivasis be acquired without their consent, when the Government actively involves the corporate sector in each and every policy formation for them? How can democracy be so selective? Is democracy one day business in every five years for the farmers, Adivasis and poor?

Indeed, it is a serious concern for the states having Fifth and Sixth Scheduled areas, where the Constitutional provisions, PESA 1996 and Land Laws prohibit the transfer of tribal land to non-tribal, and requires their consent if their land were acquired for the public purposes. These laws also recognized the identity, culture, custom, tradition and rituals of the community. Similarly, the Forest Rights Act 2006 recognized the individual and community rights of the Adivasis and other forest dwelling communities. Therefore without the mandatory consent, land cannot be acquired. For instance, two Industrial corridors, namely Koderma – Bahragora and Ranchi-Patratu-Ramgarh have been proposed in the Jharkhand Industrial Policy 2012. It proposes to acquire the land of 25 KM each side of 4 laning between Koderman and Bahragora[9]. In the proposed industrial corridor, the major part of the land belongs to the Adivasis, who are historically marginalized.

The Supreme Court of India in the case of “*Orissa Mining Corporation Ltd Vs Ministry of Environment reinforced that section 4(d) of the PESA Act 1996, which provides that every Gram Sabha shall be competent to safeguard and preserve the traditions, customs of the people, their cultural identity, community resources and community mode of dispute resolution. Therefore, Grama Sabha functioning under the Forest Rights Act read with Section 4(d) of PESA Act has legal obligation to safeguard and preserve the traditions and customs of the STs and other forest dwellers, their cultural identity, community resources etc*”[10]. Thus, the Government can’t curtail their rights in any manner, much less through an ordinance.

A High Level Committee on Socio-Economic, Health and Educational Status of Tribal community of India, constituted by the Indian Government known as ‘Xaxa Committee’ reiterates that ‘Land is the basis of their socio-cultural and religious identity, livelihood

and their very existence. Their lives are closely interlinked with forests for food, fuel, medicine, fodder and livelihood. Their God and guardian spirits reside in hills, forests, groves etc. Traditionally, ownership of land was by the community and economic activity mainly agrarian, including shifting cultivation, which fostered egalitarian values which influenced their power relations and organizational system. Forest and hills are the main source of tribal identity[11]. Therefore, merely providing compensation without considering the socio-economic conditions and consent of the community would not serve the purpose.

3. Food Security:

Third major amendment was done to strike out the special provision to safeguard food security provided in the chapter – III of the principal Act. The section 10(1) states, “*No irrigated multi-cropped land shall be acquired under this Act*”[12]. Provided that in case of inevitability, (3) ‘whenever multi-crop irrigated land is acquired under sub-section (2), an equivalent area of cultivable wasteland shall be developed for agricultural purposes or an amount equivalent to the value of the land acquired shall be deposited with the appropriate Government for investment in agriculture for enhancing food-security’[13]. However, the above provisions have been struck out by the ordinance, which would create severe food insecurity in the country precisely because its 55 percent population[14] depends on agriculture for their food security. The experience of last two decades indicates the decline in both food production and yields. It has been observed that during the period 1996-2008 as compared to the years 1986-97, the growth rate in food grain production declined very sharply from nearly 3 percent to around 0.93 percent and the growth rate of yields in food grain also declined from 3.21 percent to 1.04 percent[15]. Therefore, the food security cannot be compromised in any case also because there is rapid population growth in the country.

4. Liability of government officials:

Fourth significant change made was related to liability of the government officials committing offence under the principal Act. In the principal Act, Section-87(i), it was provided that “*Wherever an offence under this Act has been committed by any department of the Government, the head of the department shall be deemed guilty of the offence and shall be liable to be proceeded against and punished accordingly*”. Further Section-87(ii) states that “where any offence under this Act has been committed by a Department of the Government and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of any officer, other than the head of the department, such officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly”. This has been substituted by “where an offence under this Act has been committed by any person who is or was employed in the Central Government or the state Government, as the case may be, at the time of commission of such alleged offence, no court shall take cognizance of such an offence except with the previous sanction of the appropriate Government, in the manner provided in section 197 of the Code of Criminal Procedure”. Thus the ordinance protects the officials who commit offence in land acquisition, rehabilitation and resettlement.

The studies and government sources confirm that at least 75 percent of displaced people have not been rehabilitated[16] in last 5 decades. Similarly, the CAG observed that the rehabilitation is not up to mark in the SEZs[17], which is serious concern. It is obvious, that the Government officials do not focus on rehabilitation and resettlement precisely because they are neither held accountable nor punished for the non-performance. Hence, the accountability needs to be fixed for the achievement of the objectives of principal Act. Therefore, the provision for punishment needs to be reinforced.

5. Returning of unutilized land:

Fifth major amendment was done regarding the return of unutilized land by incorporation of “substitution of period” in the section 101 of the Act, which is again the denial of the rights to original land owners with the clear intention to protect the corporate interest. The section - 101 in the principal Act provides, “When any land acquired under this Act remains unutilized for the period of five years from the date of taking over the possession, the same shall be returned to the original land owner or owners or their legal heirs[18]. There are many cases, where the land was acquired under the provisions of ‘public purpose’ but remained unutilized for years and later on some part of land was diverted against main purpose it was acquired for. For instance, 12,708.59[19] acres of land was acquired for the Tata Steel, Jamshedpur (Jharkhand) in 1907 but only 2163.1 acres land was used for the actual purpose till 2005 and rest of the land remained unutilized. Out of this, 4031.075 acres of land was illegally sub-leased[20]. 7,199.71 acres of land was acquired for the Heavy Engineering Corporation, Ranchi in 1958 but 4,008.35 acres of land was used for the actual purpose and rest 2,910 acres of land remained unutilized[21]. Out of it 793.68 acres of land subleased illegally.

It seems that the ordinance was brought with the clear intention to protect the corporate interests. Those corporate will harvest the benefit, who have acquired huge chunk of land under the purview of ‘public purpose’ but unable to utilize for many years and later diverted the land for pure commercial purposes. It was proved in the CAG report on the performance of Special Economic Zone (SEZ) 2012-13, tabled during the winter session of the Parliament. The report reveals that the land acquired by invoking the ‘public purpose’ under the section 6 of Land Acquisition Act 1894 didn’t serve the objectives of the SEZ Act[22].

As per the CAG report, since the enactment of SEZ Act, 576 formal approvals of SEZ covering 60374.76 hectares was granted in the country, out of which 392 SEZs covering 45,635.63 hectares have been notified till March, 2014[23]. Out of 392 notified zones, only 152 have become operational (28488.49 hectares). The land allotted to the remaining 424 SEZs (3188.6.27 hectares, which is 52.81% of total approved) was not put to use, even though the approvals and notifications in 54 cases date back to 2006[24].

The CAG further observed that out of the total 392 notified SEZs, in 30 SEZs (1858.17 hectares) in Andhra Pradesh, Maharashtra, Odisha and Gujarat, the Developers had not commenced

investments in the projects and the land had been idle in their custody for 2 to 7 years[25]. The report also reveals that only a fraction of the land so acquired was notified for SEZ and later de-notification was also resorted to within a few years to benefit from price appreciation[26]. In terms of area of the land, out of 39245.56 hectares of land notified in the six states, 5402.22 hectares (14%) of land was de-notified and diverted for commercial purposes in several cases[27]. The CAG has criticized developers, including Reliance, DLF and Essar, for acquiring land for SEZs but using only a fraction of it and most part of the land remained unutilized. It is a clear denial of rights to the communities.

Conclusion and Recommendation:

The Land Acquisition Ordinance defeats the prime objectives of the 'Right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013' The provisions under chapter – II & III i.e. social impact assessment, mandatory consent of the affected people and provisions to safeguard food security of the communities constitute soul of the principal Act. Making the provisions under section – 87 regarding offence & punishment to the government officials and section – 101 regarding the returning of unutilized land to the original land owners, non-applicable has shattered the confidence of the land owners and project affected persons, whose moral was otherwise boosted up by the provisions of the principal Act.

There seems to be pressure of the corporate business lobby, real estate developers and political class. A very important point needs serious attention is that the principal Act has been implemented for a year and there is no difficulties or negative consequences reported by the government while land acquisition but the provisions were trucked out merely on the basis of assumption not empirical data. The empirical evidence of the earlier period does not support government view[28].

Indeed, the land acquisition ordinance assassinates the spirit and denounced the prime objectives of the principal Act, which was brought to ensure the right to fair compensation to the project affected people and maintain transparency in land acquisition, rehabilitation and resettlement. The Principal Act intends to right the historic wrong done on the projects affected people in the name of economic growth, development and national interest in the country for last several decades. Therefore, the government must withdraw the above stated five major amendments from the Ordinance for protection of the rights of the land owners and project affected communities especially the Adivasis/Scheduled Tribes of India.

[1] Report of the High Level Committee on Socio-Economic, Health and Educational Status of Tribal community of India published by the Ministry of Tribal Affairs, May, 2014.

[2] Ibid.

- [3] Ibid.
- [4] Minj, Sunil & Ddung, Gladson. 2013. Vikas Ke Kabargah. Bihar-Jharkhand: Desaj Prakashan.
- [5] CAG Report on the performance of SEZ for the year 2012-13
- [6] The documents provided by the Bokaro Steel Limited under the Rights to Information Act.
- [7] Right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.
- [8] Ibid.
- [9] Jharkhand Industrial Policy, 2012.
- [10] WRIT PETITION (CIVIL) NO. 180 OF 2011 Orissa Mining Corporation Ltd versus Ministry of Environment & Forest & Others.
- [11] Report of the High Level Committee on Socio-Economic, Health and Educational Status of Tribal community of India published by the Ministry of Tribal Affairs, May, 2014.
- [12] Right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013.
- [13] Ibid.
- [14] Iterah, Anil Chandy. 2013. Food Security in India-Issues and suggestions for effectiveness. New Delhi: Indian Institute of Public Administration.
- [15] Ibid.
- [16] Report of the High Level Committee on Socio-Economic, Health and Educational Status of Tribal community of India published by the Ministry of Tribal Affairs, May, 2014.
- [17] CAG Report on the performance of SEZ for the year 2012-13
- [18] Right to fair compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013
- [19] The documents provided by the Deputy Commissioner of Jamshedpur under the Rights to Information Act.
- [20] Ibid.
- [21] The documents provided by the Department of Revenue and Land Reform, Govt. of Jharkhand under the Rights to Information Act.
- [22] CAG Report on the performance of SEZ for the year 2012-13
- [23] Ibid.
- [24] Ibid.
- [25] Ibid.
- [26] Ibid.
- [27] Ibid.
- [28] Gill, Sucha Singh. 2015. Land ordinance not fair, transparent. Chandigarh:The Tribune, February 2.