



Munich Personal RePEc Archive

Development and Land Acquisition in the View of Law and Economics

Dinda, Soumyananda

Department of Economics, University of Burdwan

15 July 2015

Online at <https://mpra.ub.uni-muenchen.de/72848/>
MPRA Paper No. 72848, posted 05 Aug 2016 04:51 UTC

Development and Land Acquisition in the View of Law and Economics

Soumyananda Dinda

Department of Economics, University of Burdwan, West Bengal

Email: sdinda2000@yahoo.co.in & sdinda@gmail.com

2015

Abstract

The marginal productivity theory determines the value of a land under *ceteris paribus*. Land price depends on economic opportunity, time and technology. Recently, development policy focuses on creation of economic opportunity that increases the demand for transferring land from primary to secondary or tertiary activities. Market mechanism is sufficient argument of distributive justice for land acquisition for development activity, but some time it fails. Landowners are heterogeneous in terms of knowledge, skill, risk preferences, attitudes, perception of future development benefits, etc. Incorporating the mind set of landowners, how do we assign the value of land and compensate for land transfer for developmental activities? This paper focuses on it with possible alternative viable solutions.

There is good reason to insist on compensation of displaced landowners at market prices for distributive justice with economic efficiency. Given the heterogeneity in land valuations, the required compensation rates can be set at the market rate. But the role of income security is ignored in market mechanism. The role of complementarities of land with farming skills those are non-transferable that incorporate their concern for financial security, time preference, and pattern of skills. These concerns exhibited considerable diversity with a corresponding diversity of preferences over alternative forms of non-cash compensation. Hence a menu of alternative compensation packages ought to be offered, to cater to this diversity.

Key Words: Land Acquisition, Economic Development, Displacement, Economic efficiency, Distributive Justice, Domain Law, Compensation Policy, Income Security, Risk Preference, Valuation, Market price

JEL Classifications: O4, Q2,

.....

Address for Correspondence: Department of Economics, Golapbag Campus, University of Burdwan, Burdwan, PIN 413104, West Bengal, India. E-mai: sdinda2000@yahoo.co.in and sdinda@gmail.com

1. Introduction

Indian economy in recent years has been consistently performing well with expanded 7.3% in the year ended March, 2015, which is higher than 6.9% recorded in the previous year (2014). The Gross Domestic Product (GDP) in India expanded 7.5% in the first quarter of 2015-16. India with the growth rate of 7.5% this year is set to surpass China and for the first time is leading the World Bank's growth chart of major economies (Kaushik Basu, World Bank Chief Economist; ET: June 11, 2015). 'Slowly but surely' the ground beneath the global economy is shifting and Indian economy is ready to escalate its economic activity. Land is an essential requirement for GDP related economic activity. Land is essential input for almost all economic activities. Land is scarce natural resource and we have to manage it optimally or reallocate with social justice.

Wellbeing of a society depends on economic development with protecting the individual rights. Land is acquired for economic development resulting in displacement of the people that may violate the individual rights. Displacement may be in the form of livelihood, home and culture. Our main concern is the displacement from land only. The acquisition of land in a fast developing economy like India is continuously increasing due to rapid economic growth with several development projects, special economic zones, urban development projects, infrastructure development, etc. resulting in an increased pressure on land.

Mostly the rural lands are acquired for development projects; as a result, millions of people become displaced from their homes and livelihoods. It is observed that the land-losers are dissatisfied with the compensation package which leads them to protest¹ against the development project of land acquisition. It is true that if a person thinks that he is not properly compensated for the land which has been taken from him by the Government, he becomes hostile towards his Government. The fact that the hostile activities of the people and their resultant protests actually affect the development projects to a great extent causing delay and increased its costs. Several cases of land litigations related to the acquisition for development projects are mounting up as well as pending in the courts² and create hurdle for economic development. To continue with above said Indian high growth rate, it becomes important to address the issues related to the Land Acquisition matters and especially the issue of displacement and compensation.

¹ The protest in Coimbatore of Tamil Nadu for acquisition of land by the Tamil Nadu Housing Board in 2011, or, Tata Nano project at Singur in 2006, Nandigram in 2007 in West Bengal, etc.

² The Supreme Court settled the major cases on land acquisition matters relate to the substantially to the issue of the amount of compensation payment to the land-losers.

Last few years, we observe several incidences regarding land acquisition and related compensation in West Bengal, Odisha, UP, etc., here, one important question is: What is the compensation mechanism? What are the alternative policies for land acquisition and compensation related to development projects? This paper focuses on this issue in view of Law and Economics.

Currently, the government of India has taken initiative to formulate new land policy and related law which focuses on land acquisition, rehabilitation, and resettlement bill. In this context, the Land Bill has introduced in the parliament. This will certainly affect the pace and direction of future economic growth in India. Land bill and compensation should focus on economic principles since land is a valuable economic input. Land is required for setting up new industries, service establishments and real estate development etc. All these activities will inevitably change the land pattern and required land is acquired mostly from rural areas. Hence legal rules and government policies for the process by which land is to be acquired, and how current owners are compensated, will play a critical role. The dramatic developments in Singur and Nandigram of West Bengal drew national attention. Specially, the event at Singur of West Bengal has generated calls for adequate compensation of those displaced. Singur and related events³ have influenced to frame the draft of the Land Acquisition Bills currently placing in the Parliament. The new Bills are proposing to modify the *Eminent Domain⁴ Law⁵ of 1894* which has traditionally allowed the government to appropriate land from private owners upon paying compensation at market prices.

Given the importance of the land acquisition policy to economic growth and development, we need answers to the following questions: What light does economic analysis throw on the problem of designing a land acquisition policy? What are the major deficiencies in it? What do we learn from the Singur experience in West Bengal? What is the right direction for newly

³ Reinforcing this are accounts of how various Maoist rebellions in other parts of India have been fuelled by the displacement of various tribal populations to make way for private mining concessions.

⁴ It is a power of sovereign to take property for public cause without owner's consent, coupled with the obligation to make good the loss. Welfare of the people is the only consideration and may be said to be the corner stone of the law of Land Acquisition.

⁵ On the ground that the interest of the community is superior to the interest of an individual, it is only for projects that serve 'public purpose' the use of eminent domain can be justified. (a) *Hold-out problems* arise when some people refuse to sell their land, without which a project cannot materialize. The chances of holdouts are high when the area required is large and contiguous and holdings are small. (b) *Non-substitutable Land for Public Purpose*: it is justified when the public purpose is served only by a specific piece of land. Lands of this type are either location-specific or alignment-specific. For example, mineral extraction can take place where minerals occur naturally. Similarly, land for strategic defence initiatives, ports, and widening of roads often cannot be substituted. (c) There are widespread land-related disputes and the litigation risk tends to be very high. This risk is eliminated in the case of the eminent domain route.

evolving policy? Do they have any serious deficiencies? If so, what kinds of alternative policy approaches ought to be adopted?

This paper attempts to answer these questions and it is organised as follows: Next section is the over view and lessons from Singur of West Bengal. Section 3 provide an outline of economic value judgement, section 4 focuses on compensation issues, section 5 describes policy formation, Section 6 discusses type of compensation, and finally, section 7 concludes with recommendations.

2. Overview and Lessons from Singur of West Bengal

From the standpoint of economic theory, there are good reasons to insist on compensation of displaced landowners at the market rate, but recently, market mechanism failed in India because of the where *eminent domain clauses* are applied. Here, arguments of distributive justice or considerations of political sustainability are ignored. Land acquisition law should be designed only with economic efficiency. The strongest arguments follow from economic first principles – those who do not choose to sell land at the current market price, by definition, value their asset at more than the market price and therefore will naturally be unhappy if compensated at the market price (Ghatak and Mukherjee 2011). Truly, land market is underdeveloped. So, land markets have a low volume of transactions. In general, financial markets are not well functioning. In this context, the current price of land is unlikely to reflect the future price of land before an industrial project is set up. So, land owners raise their voice and strongly resist not to be compensated at the current market price. Ghatak and Mookherjee (2011) developed more subtle arguments in their papers.

Compensation policy affects growth and economic efficiency. (i) A stronger compensation requirement will slow down the pace of industrialisation by raising the cost of land acquisition. The governments are usually anxious to raise industrial growth rates for both political and economic reasons – government revenues, employment generation, etc., but overlook the costs imposed on farmers who stand to lose their livelihoods. Mandating compensation at least at market rates ensures that the governments internalise these costs adequately. (ii) Stronger compensation mandates reduce the likelihood that any given piece of agricultural land will be acquired in the future as the cost of acquisition is higher. This enhances security of tenure of farmers, augmenting their incentives to invest in enhancing farm productivity – such as improving soil quality or developing local irrigation facilities. The governments would also be induced to improve local infrastructure such as roads, water and electricity. There is considerable empirical evidence of the beneficial productivity effects

of enhancing security of tenure in the context of Operation Barga in West Bengal in the 1980s (Banerjee et al. 2002, Bardhan and Mookherjee 2011).

Many landowners value their land above the market rates, and view the income from land as a form of valuable security against various risks of high inflation or economic recession⁶. Others may value land as it can serve as an asset, and provides some insurance value, as well as old-age support to its owners. A recent survey of households whose lands were acquired in Singur provides evidence of the heterogeneity of land valuations to owners and the important role this played in opposition to the land acquisition (Ghatak et al 2012). The compensation offered by the West Bengal government was on average equal to the market values. Yet one third of these owners refused the compensation and opposed the land acquisition. This is because exclusion of information relevant to market values of individual plots, such as irrigation or multi-cropped status, or proximity to public transport facilities.

The economist's preferred solution to elicit private asset valuations is to use auctions. Ghatak and Ghosh (2011) advocated this approach. The true market value of a piece of land depends on many detailed characteristics such as type of soil, irrigation, elevation, and location that are very difficult for government land records to incorporate. The considerable costs imposed on landowners on registering their plots and updates of plot characteristics means that government land records are hopelessly out-of-date. This is a significant cause of under compensation of owners of multi-cropped lands relative to market values. These problems would be entirely avoided if compensations were based on bids submitted by owners in auctions.

The auction-based approach can be extended in various directions. The choice of location of a factory can also be decided by extending the auction to a multi-stage process. At the first stage, the industry in question or government could set a reserve price and minimum quantity of land needed. Next, different communities can be asked to bid for the factory to be located in their respective regions. These bids are set equal to the minimum price at which they can in turn procure the necessary amount of land from landowners within their areas.

The Indian government has considerable experience with conducting procurement auctions for dealing with private contractors on public projects. Hence the administrative expertise needed to conduct auctions for land acquisition is present in abundance. However, decentralising responsibility to local panchayat bodies in conducting these auctions within their jurisdictions will help minimise the sense of land acquisition being foisted on local

⁶ The severe economic crises in Russia and Indonesia in the 1990s witnessed a move of a large section of the urban population back to rural areas for precisely this reason.

communities by state or national governments in a top-down manner. In that case, bureaucrats should assist panchayat leaders to conduct such auctions. This also helps them to acquire necessary skills for panchayats to take a more active role in business development within their respective areas.

Households in Singur are concerned for their financial security, time preference, and pattern of skills. These concerns exhibited considerable diversity, with a corresponding diversity of preferences over alternative forms of non-cash compensation. Hence a menu of alternative compensation packages ought to be offered, to cater to this diversity. There is much room for consultative process, in which local communities are consulted and involved in selecting areas to be acquired, and in the design and implementation of compensations. Lastly, creating a quasi-judicial regulatory process to oversee the process would also help to reduce the politicization of the process.

3. Economic Value Judgement

Land is a scarce natural resource and an important essential factor of production. Amount of land requirement varies as per economic activity. For example, vast cultivable land is required for agricultural production whereas small land is required for industrial and service related activities. So, from the view point of economic theory, land can be optimally allocated to different sectors according to the marginal productivity theory; whereas the market system values the land according to its return which also relate to their *marginal productivity, for given situations*. For a given period of time, return per unit of land is very high in non-agricultural sectors compare to that in agriculture. In this context, how do we value the land?

(i) Economic Theoretical Explanation

For a given technology, agricultural output depends on amount of land under cultivation. So, land is a variable input in agricultural activity while it is fixed in non-agricultural activity. In this case, we can calculate marginal productivity of land. Here, marginal productivity of land in agriculture is non-negative in short run while it is zero in other sectors, but in long run, marginal productivity of land is non-negative in all sectors. Hence, the value of land should be determined in long run, not in short run. Truly, market price of a land at a time reflects the partial value of land. Since land is used for multi-purpose, it should have multi-dimensional face-value, which should be incorporated in the calculation of land value.

Consider an economy with stock of land, L . For simplicity, consider this economy consists of single economic agent, who allocates his land optimally for agriculture and other activity including resident. For resident and other activity, economy needs one part of his total land, i.e., $L_o = \theta L$, (say); where $0 < \theta < 1$; and remaining land, i.e., $L_a = (1-\theta)L$, is used for

agricultural activity. Agriculture and other production functions of this economy are X and Y, respectively. Y depends on land (L) and capital (K), i.e., $Y=f(K, L_o)$; and X depends on land, i.e., $X=h(L_a)$. Given total amount of land [$L = L_o + L_a \equiv \theta L + (1 - \theta)L$], optimal allocation of land for both sectors at any moment of time is governed by $\frac{\partial y}{\partial L_o} = q \frac{\partial x}{\partial L_a}$, where $q (\geq 1)$ is the price of agricultural land, L_a , relative to L_o . This is true under *ceteris paribus*, whereas $(1 - q\gamma)\frac{\partial y}{\partial L_o} = q \frac{\partial x}{\partial L_a}$ is true under the condition of rising demand for land for residential and other activities, where $(1-q\gamma)$ is the cost of externality due to grabbing agricultural land (i.e., γY), and $\gamma(>0)$ is the rate of pressure on agricultural land. This condition equates net marginal product values of land in both sectors. It should be noted that q depends on several factors like location, soil quality, access, infrastructure, technology, update information, opportunity, etc. Thus, marginal productivity theory can be applied for allocation and valuation of land scientifically.

(ii) Activity Intensity

For social and economic justice, value of land should be determined on the basis of *activity intensity per unit land* and *marginal returns on per activity*. Activity intensity is very low in agriculture compared to industry or service per unit land for per unit time, thus, value of agricultural land is lower than that of service and industrial land. Low/high activity intensity means low/high level of employment and economic returns. Value of one plot of land depends on (i) average value of surrounding lands, (ii) easy access to land, (iii) socio-economic condition and structure, (iv) condition for creation of activity intensity etc.

4. Compensation issue

The issue of compensation is the central focus of this research paper. Compensation is a means to make good the loss of property suffered by the land-loser because of his land being acquired by the Government for the fulfilment of a certain public purpose. There are a few issues attached with the criteria or method of determining the amount of compensation to be paid to the land-loser.

The market value of the land acquired at the time of the first notification is taken into consideration while computing the compensation. This has become a widely accepted formula for calculating or determining the value of land according to the current market value. There is always a question mark in assuming that a farmer has been properly compensated, even if he is paid the value of his land even at the current market price. Actually, the values of land have to be determined according to the location of the land. If the

land, is situated nearby to a district head-quarter, has to be valued differently from a land situated far away from a district head- quarter.

There are some issues relating to the fixation and payment of compensation to the land-losers, which need to be taken care of in a comprehensive manner to ensure sustainable development in true sense. We have observed that the land-losers are dissatisfied with the terms of compensation of land acquisition for the development projects.

(i) *Need for a fair amount of Compensation:*

Compensation is meant for softening the blow of dispossessing a person from his land. Hence, it is inevitable to have a proper understanding of the concept of compensation. The term ‘compensation’ is generally understood by its equation with the market price of the land or property, or the notional value of the land or property in the market. The displaced person or the land-loser is treated a willing seller of his property to the Government. So, compulsory acquisition of land is never taken care of actual determining the compensation. There is no law for computing compensation. For one, it does not take responsibility for providing for the replacement value of the land, or rights, lost. For another, mass displacement often affects population whose lives are not constructed around formal legal rights, making market value and irrelevant criterion. The various difficulties involved in determining the value to the displacement cost have been externalised; the 1894 law has never addressed them. The displacement costs have been scrupulously suppressed. The law of compensation does not focus over any of the allied factors attached to the land acquisition apart from the individual satisfaction, as the indigence caused in the displaced population, the breakdown of the society, increased exploitation, etc.

(ii) *Issues related to its determinants:*

Some of the issues related to the determination of compensation are as follows:

- a). *Determining the value of land and the adequacy of compensation:* The most difficult question is to determine what should be the adequate amount of compensation.
- b). *Fixation of the amount of compensation:* It has been found in many cases that the compensation paid is less than the actual market price of the land⁷.
- c). *The manner of giving compensation:* The current mode of one-time disbursement of compensation is an issue which should be taken care of and need search for alternative solutions. The mode of compensation should be such as to ensure the sustainability in the sense of regular income to the land-loser. The compensation package and, Resettlement and

⁷ The Supreme Court examined that one of the main grievance raised by owners of such lands is that the compensation provided is a meagre amount as compared to the real market price.

Rehabilitation (R&R) should be sustainable, and not only one-time event. It is common understanding that if a person does not have proper awareness, investment skills or ability to handle cash, one-time monetary compensation is dwindled away or diminish in extravagancy or loss by fraud, leading the land-loser to an uneasy situation.

d). *The types of others benefits that can be given to the land-losers:* Alternative types of compensation or otherwise, along with the adequate cash compensation can be taken as a measure for the proper and equitable valuation of land – for instance, allotting a part or a site of the developed land or giving equity shares in commercial venture or offering jobs to the land-losers and displaced persons or offering the *Transfer Development Rights* (TDRs). This will result not only in compensating for the loss of land but also in ensuring proper *Resettlement and Rehabilitation* (R&R).

It is argued here that if we try and decide compensation in a scientific way, litigation can be minimized to a great extent. A justifiable way of calculating compensation can avoid disputes.

e). *Time-limit* within which the compensation should be paid.

f). *Time taken by the Court in delivering the judgment:* The Courts while delivering the judgments in land acquisition matters take a very long time. For example, the case of *H.M.T. Ltd.*, in this case, the land was taken over in 1978 for establishing the watch factory of the public sector undertaking and the judgment was delivered in 2010.

g). *Inconsistency in awarding the amount of compensation is also one of issues to be dealt with:* Consider the case of the Konkan Railways. The land was acquired for building a new broad gauge line of the Konkan Railways. The acquisition authorities gave Rs. 4 per sq metre. The award was challenged in the District Court, which fixed the compensation at the rate of Rs.192 per sq metre. The High Court reduced the compensation to Rs. 38. The Supreme Court while overruling the decision of the High Court and re-fixing the compensation at the rate of Rs. 250.

(iii) *Gaps in the current set of Laws regarding the Compensation*

Compensation for taking over of land under the LA Act, 1894, is simply a transaction. The statute does not provide any help in acknowledging mass displacement, or in working out policies of rehabilitation, or in considering impoverishment as a cause for judgment, just as it does not assist in taming the sweeping use of eminent domain powers, or in acknowledging that conflicting claims of ‘public purpose’ may arise demanding the services of a disinterested judicial umpire.

The gaps in current land acquisition policy in terms of compensation may be numbered as follows:

- a) Compensation policy, as set out in the statute, is confined to money compensation.
- b) Determination of market value of land is still a big concern. Factors which should be taken into consideration while determining the market value of land are still not certain.
- c) Resistance to project displacement has given rise to promises and policies by the Companies and the government, which again gives rise to the controversies when not fulfilled.
- d) Land should be administered properly
- e) *Land Audit Committee is essential to set up:* It should be noted that land requirements indicated by the entrepreneurs for projects are far in excess of the actual requirements in terms of total built up area, investment proposed in the venture, etc. and entrepreneurs seek to justify the needs citing various reasons like open space, future expansion needs etc. The availability of land especially around major urban centres has very limited and acquisition procedure becomes complex. Hence it is felt needed to examine in-depth land requirements of a specific project through its various components, future expansion needs, etc. with a view to judiciously use the available land resources to support maximum number of projects and investments and to minimize the hardship to farmers in acquisition for Single Unit Complexes. Accordingly it is felt desirable to set up “Land Audit Committee” to examine the land requirements of various components of individual industrial project and arrive at a just minimum requirement of land to be provided through appropriate development agency in an existing industrial area or for the purpose of initiation of fresh acquisition.

5. Policy formation

Compensation whether in financial form or as replacement land or structures, is at the heart of compulsory acquisition. As a direct result of government action, people lose their homes, their land, and at times their means of livelihood.

(i) Principles of Compensations

Compensation is to repay them for these losses, and should be based on the following principles:

- a) Legislation should enable the clear definition of the date at which the land should be valued as values can change rapidly as a result of awareness of the project. The most

equitable approach is to have a valuation date that sets the value of the land as if the proposed project did not exist. For this reason, it is common for legislation to require that the value of a land parcel is linked to the date of the publication of notice. If legislation does not specifically link the date of valuation to such an event, the acquiring agency should specify dates appropriate to the nature of the project.

- b) Losses of Customary Rights that may require compensation: Most laws on compulsory acquisition broadly define equivalent compensation with reference to market value or “just compensation”. In general, compensation should be for loss of any land acquired; for buildings and other improvements to the land acquired; for the reduction in value of any land retained as a result of the acquisition; and for any disturbances or other losses to the livelihoods of the owners or occupants caused by the acquisition and dispossession.
- c) Assessment of compensation should be Consensual, based on free negotiation: Once the land acquisition for a project is approved by the government, the primary and default mode of compensation and R&R assessment should be consensual, based on free negotiation between the concerned land owners and the private entity requiring land. This will make the acquisition process democratic and also offer individuals the power to determine a realistic value of their land which will make them willing participants of development rather than sacrificial lambs for the developmental agenda of the state or private projects. However, a completely market-based approach is partially skewed due to imbalance in negotiation power and information asymmetry. Not only do the small and fragmented land owners have to face large corporate with superior bargaining power and open to strong-arm tactics, but also suffer from limited skills and expertise in valuation. The government needs to be involved here – to ensure equity by monitoring against potential abuses of the process and provide the displaced owners assistance in valuation of the land. Where negotiation fails due to instances of holding-out with a few owners refusing to sell their land, which can jeopardize the entire project, the State may be permitted to resolve the issue by employing the power of eminent domain if the public interest is served. A meaningful threshold for negotiated land acquisition has to be set. This must be met having regard to both the number of owners whose land is required and overall land required for the government to step in. In cases of state-sponsored development, compulsory acquisition should be permitted only when the “public

purpose” is clearly demonstrated and after a *bona fide* attempt at consensual negotiation, both of which should be approved by a court of law.

- d) Uniform policy for the land acquisition and compensation: That is to say, the acquisition policy applicable to the acquisition done for any State Government scheme should also be applicable to acquisition done for any central government scheme.
- e) Provision for the land-losers to share profits of the industrial projects being set up on lands acquired from them can be taken as one of the measures to pay compensation.
- f) The land-loser should be given market rates instead of floor rates and they too should be allotted industrial plots with the provision that they could rent them out. It should be noted here that the MFRs are fixed by the Government of Haryana for the land acquisition in Haryana. The compensation is fixed according to those MFRs, and not the market price in Haryana.
- g) Principle of Equity and Equivalence: The principle of equivalence is crucial to determining compensation: affected owners and occupants should be neither enriched nor impoverished as a result of the compulsory acquisition. Financial compensation on the basis of equivalence of only the loss of land rarely achieves the aim of putting those affected in the same position as they were before the acquisition; the money paid cannot fully replace what is lost. In some countries, there is legal provision recognizing this in the form of additional compensation to reflect the compulsory nature of the acquisition. In practice, given that the aim of the acquisition is to support development, there are strong arguments for compensation to improve the position of those affected wherever possible.

The calculation of compensation is based on the value of the land rights and improvements to the land, and on any related costs. The determination of equivalent compensation can be difficult, particularly when land markets are weak or do not exist, when land is held communally, or when people have only rights to use the land.

While the public interest in keeping costs as low as possible is important, this concern should not deprive people of the equivalent compensation they need in order re-establish their lives after the loss of their land.

- (ii) **Guiding principles for ensuring equity and equivalence include**

- *Equivalence*: people should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land. Appropriate measures should ensure that those affected, and particularly the vulnerable, are not disadvantaged.
- *Balance of interests*: the process should safeguard the rights of people who lose ownership or use rights of their land while ensuring that the public interest is not jeopardized.
- *Flexibility*: the law should be specific enough to provide clear guidelines, but flexible enough to allow for the determination of appropriate equivalent compensation in special cases. Legislators cannot foresee all possible scenarios, and a rigid application of detailed provisions may result in people not being compensated for losses.

Compensation should address both de facto and de jure rights in an equitable manner following the principle of equivalence. Where occupants have no recognizable legal right or claim to the land occupied, they may be entitled to resettlement assistance and to compensation for assets other than land.

- *Fairness and transparency*: the negotiating powers of the acquiring agency and affected people should be as equal as possible. Reasonable costs of affected people, including support to the poor and illiterate in negotiations, should be paid as part of the compensation. Negotiations should be based on an open exchange of information.

Factors that lead to unjust Compensation: The land-losers often lack power to negotiate with the acquiring body of the Government, along with lack of experience and skills in matters of land. Most of the time, they are unaware of their rights attached to their land. It is easy for a rich person to have recourse to a professional advice on assimilating the value of land and determination of the compensation, but the same cannot be expected from a poor fellow. Factors that lead to unjust compensation are as follows: (a) Determining the accurate value is a difficult and time-consuming process because each land has to be inspected and valued separately. (b) When the land sales are informal or the markets are developing or do not exist, the reliable factors are difficult to be formulated for the purpose of valuing the land. (c) It is difficult to calculate the monetary value of non-economic losses, e.g. business opportunity, cultural or ancestral claims to the land. (d) The market price of the land may shoot-up at the very day of announcement of the project on the land in question. (e) The costs attached to the appeal processes are expensive and difficult to be used by the land-losers. In case the compensation fixed by the Government is not satisfactory to the land-loser, then the appeal process is not so easily accessible to the poor. He doesn't have any option but to accept the compensation offered by the Government.

6. Types of Compensation

Here we discuss few practical and applicable types of compensation:

(i) Cash – for- land

Cash-for-land: The Land Acquisition law in India is based on this basic principle of compensation, i.e. cash-for-land principle. One particular dimension of deprivation, i.e. dispossession of land is identified under this principle; for which the proceeds or price is fixed according to the market price. In fact, it is true that cash compensation could provide opportunities for opening family businesses and cash compensation could provide opportunities for opening family businesses and attempts to reduce agriculture-dependence. The calculation of the price of land is done according to the prevalent market-price of the similar- quality land under similar use or in the adjacent or the land situated in the nearest area. Under this approach, an assumption is made that the land is a commodity. Most of the countries calculate the amount of compensation for the acquired land on the basis of its market price.

Cash compensation disproportionately benefits some interest groups but not poor and small-scale farmers, the landless, and women. Landless labourers are often the hardest hit group in the relocation process due to their lack of ownership and entitlement to land. Big landlords profit more from relocation because much of their land is either sharecropped or remains uncultivated, making the cash compensation more attractive to rich farmers, who then re-invest it in the non-agricultural sector.

The project-affected are able to replace their livelihoods on sustainable basis. It may not be so easy for the land-loser to buy a land comparable to his own land acquired by the Government with the compensation money because of the limited land market or the high cost of the land in the area of relocation. It is a big question and it depends on whether the money is used for investment in land and other productive assets, or used for house construction and consumption purposes.

The biggest problem related to this type of compensation is the threat to the agricultural land. The government pays cash for agricultural land and uses it for development and industrial purposes, resulting in reduction of agricultural land in the country. Reduction in agricultural land is directly a factor for inducing the reduction in food supply to the people in the country and fodder to the cattle. The Government has to ensure that any development work undertaken by it does not result in reduction of food supply, especially in a country like India where the population is continuously on rise.

In India, the land acquisition law provides for prompt and adequate monetary compensation for persons who lose their land and property. However, cash compensation has many

negative consequences, particularly for tribal and other marginal populations. Tribal economies are in large part non-monetized, based on reciprocal exchange of goods and services; therefore, people are not well accustomed to managing cash. There is popular saying: *'Land is like diamonds but money is like ice'*. The sudden cash in their hands gives many the false impression of richness. They may change their life style - gambling and drinking increases to a great level. Exclusive cash compensation is least useful to the resettlers in the long run; and land-based resettlement contributes to cultural security. Thus, the land-for-land approach is essential for resettlement.

(ii) Land – for - land

Land-for-land: The principle of land-for-land has been evolved as the major focus of current compensation policies. This is the principle followed in almost all the developed countries like U.K., U.S., Denmark, etc. The principle is called the land consolidation. This is important because in this policy, an alternative land is given to the land-owner as compensation. In this method, the agricultural land will not be reduced; as a result, the food-supply will remain intact. Even the land-loser or the farmer will be happy to have alternative land so as to carry-on his agricultural activities. Land is a life-long source of income for a farmer. Land is also inheritable asset at the same time. These features of the land make it as an asset not comparable with any other cash-compensation. In this way, it can be ensured that the resettlement or compensation awarded is sustainable. This is also a solution to the problem of calculating market price of the land⁸.

For the purpose of implementing the land-for-land compensation, several relocation sites have to be identified, so that the displaced ones could get those alternate sites. It should be made compulsory that the new relocation sites are better compared to the previous sites in terms of their soil quality, productivity, irrigation facilities, availability of water, etc. Furthermore, if there is possible off-farm income (e.g. forestry, seasonal labour opportunities, cattle rearing, fishing, etc.) from the new site selected for giving as a compensation to the

⁸ The other problem is related to the rights over the land and the person who should be eligible for the compensation. However, all is not good with the land-for-land principle of compensation, as many other practical difficulties are attached to it. These difficulties may be cited as below: **(1) Determining the amount or the area of land to be given as compensation for the acquisition of land.** Generally, a comparable amount or area of land is provided as compensation, subject to the land ceiling laws. **(2) Determining the quality of land to be given as alternative land in compensation.** Though the comparable area of land is sought to be provided as compensation, yet there may be possibility that the land available to be provided as compensation is not of the same quality or productivity. It may require a lot of investment and hard-work to make such a land of equitable productivity. **(3) Merely giving the alternative land without infrastructure and other facilities may not be useful to the farmer to whom it is given as compensation.**

land-loser, then the land-loser will be more than happy and satisfied, and will never resort to any protests or agitations whenever the government is acquiring the land for public purpose.

(iii) Job – for - land

Jobs as means of Compensation: Compensation is the price paid to the land-loser as a consequence of compulsory acquisition of his land by the Government. Under the compulsory acquisition, land-loser has no choice but to accept the compensation. The amount of compensation so calculated never takes into account the other losses incurred by the land-loser, e.g. loss to his business, loss of livelihood, loss related to dislocation, etc.

Along with this, it should be noted that it's not only the land-owner who actually suffers loss because of the compulsory land acquisition, but there are many other landless people who lose their means of livelihood attached to the land which is acquired, e.g. weavers, barbers, landless labour, potters, carpenters, etc. They face loss due to the acquisition of land as well as due to the breaking up of the community.

(iv) Alternative Mechanism for Compensation

Now, a different practice to pay compensation is followed:

- a) *Compensate as a part of Developed Land:* The land-owner is given choice either to accept the guidance value of his land fixed by the revenue department or to accept few sites in the developed land. This is known as an alternative compensation instead of the monetary compensation. This applies in case of acquisition for the residential purpose. For example, if one acre of land is acquired by the government, then 45% of this acquired land goes to the purpose of civic amenities (such as construction of roads, parks, government schools, play grounds, etc.); the remaining 55% of the total land meant for the residential houses is divided into 3:2 ratio per acre among the Government and the land-loser. Government is free to use its portion of land for the project, and the land-loser gets his portion of land as compensation for the whole land acquired by the Government. This 55% of the total land is actually called as the developed land. Forty percent (40%) of this developed land is allotted to the land-loser as a matter of compensation. Finally, roughly 22% of the total land acquired from the land-loser left with him as compensation⁹. It is all right with a person having some land lying in a village area, and along with the having some business or some source of income in the city. He will be very well in a position to retain his portion of

⁹ It is assumed that the value of this developed land would shoot-up to such an extent so that land-loser would be able to get money by selling his portion of developed land in excess to the value of total land prior to the development. Some of the officials and various people are of the view that this practice has proved to be successful, so far, and the land-losers are really happy with the practice.

land as a compensation for a longer term until the value of his land increases, but what about the farmer who had his agricultural land as the only source of income.

- b) ***Share of regular rent payment:*** After the acquisition of land, the land or any part thereof can be transferred to the company by sale and lease or otherwise. If the land is transferred to the Company by the Government by way of lease on a fixed rent yearly, in such a situation, the Government starts getting a regular fixed income from the Company in terms of the rent, while the land-loser gets the compensation only once. Now, it is suggested here that the land-loser should be made a beneficiary to the agreement entered into by the Government with the company for a fixed remuneration. The regular rent paid by the company can be shared by the government and the land-loser in a specified ratio.
- c) ***Auction of the Land:*** The question of adequate and proper compensation will never be resolved unless and until a proper and generally accepted formula for determining the value of the land is computed. Till then the problems attached to the improper compensation will keep mounting. The fact is that the amount mentioned in the land deals for acquisition is the white money upto the extent of merely 30% of the total land value, which is the actual compensation fixed by the LAC. As a result, there is no chance for the farmer/owner to get actual value of his land or the real market price. If a provision is created for the auctioning of the land to be acquired, then there is a possibility that the actual market price emerges. The government should be assigned a role to organise and manage such an auctioning and tender price system in a transparent manner. In this way the State Government will also earn much money as stamp duty as a means to finance its development costs.

7. Conclusion with Policy Recommendations

To conclude, there is a strong need that the legal thought be put into the issues concerned with the land acquisition so that the imbalances in our system can be removed. Large-scale displacements should be minimized to the extent possible and if the displacement cannot be stopped then there is a need to handle it with utmost care. Fixation of adequate compensation to the land-losers can be one of the best ways to ensure minimum displacement in the sense that the displaced person will always be in a position to buy an alternative land for him/her. There are some issues relating to the fixation and payment of compensation to the land-losers, which need to be taken care of in a comprehensive manner to ensure sustainable development in true sense.

Laws of land acquisition and R&R are needed to modify in such a way that it can create the pace for economic development in India. Few recommendations for compensation policy are given below:

- a) ***Need for an independent body to review the amount of compensation:*** The compensation is determined by the Collector. The Collector and Government act as the Quasi-Adjudicatory Body. As a result, even the monetary compensation is not fairly calculated. Hence, there is a need for an independent judicial body to review the amount of compensation calculated and hear the objections.
- b) ***Panel of Experts Decision:*** This is a good and fair land acquisition practice in Turkey. The land acquisition officers hold meetings with each affected land owner personally during the visits to the village. The method to be used in evaluation of the land to be acquired is explained to the land-owner and a particular price is offered to the land-owner at which the land shall be expropriated. The meetings are held in such a way that in every such meeting, the land owner has an equal opportunity to question the process of evaluation of land and the offer-price fixed by the land acquisition officer. The price or the amount of compensation proposed for the acquisition of land in the negotiation meeting may be accepted or rejected by the landowner. In case of acceptance of proposal by the land-owner, an agreement is duly entered into during the meeting itself. Every time, the land-owner is at liberty to negotiate for his land in his best possible interests. In case, the land-owner rejects the proposed price for the acquisition of his land, then the land acquisition authorities will approach the courts for the determination of a fair value of land for the purpose of its expropriation. The Courts after due hearings, comes up with a decision of a certain amount of money as a fair compensation for the land. The land-owner has a right to either accept or reject the amount of compensation proposed by the court. After that the court publishes a notice in a local newspapers or any other form of local media. In case, the land-owner gives response to the notice, the court will ask the two sides to reach an agreement. In case an agreement is reached, the agreed amount of compensation is duly paid. In case no agreement is reached, a panel of experts is appointed by the court for the purpose of re-evaluating the land. The final decision of the Court comes on the basis of the evaluation made by the panel of experts. The court fees and other litigation charges are borne by the land acquisition authorities without any obligation on the part of the landowner.

- c) **Allotment of commercial site:** In the practice of paying compensation, the government may provide the developed land to the land-loser in major residential or commercial sites. The policy can be said to be based on the principle of land-for-land compensation. The policy may provide an alternative regular source of income of the land-loser, if they adopt with new conditions. Land for a farmer is his regular source of income or his source of livelihood. While the land is acquired from a farmer, it should be ensured that he gets an alternative means of livelihood or source of income as a compensation for acquisition of his land¹⁰.
- d) **Regular annuity system:** Another way to ensure regular income may be through the policy adopted by the State of Haryana, where a regular annuity is paid to the land-loser for a maximum period of 33 years.

The researcher thinks that there is a lot of scope for further research in the land-acquisition matters with relation to the following topics:

- (a) The issue of adverse possession also requires to be addressed.
- (b) The determination of public purpose.
- (c) The issue of non-use of land by the company also requires to be addressed properly.

References:

- Banerjee, A., Gertler, P. and Ghatak, M., (2002), Empowerment and Efficiency: Tenancy Reform in West Bengal, *Journal of Political Economy*, 110(2), 239-280.
- Bardhan, P. and Mookherjee, D. (2011), Subsidized Farm Input Programs and Agricultural Performance: A Farm-Level Analysis of West Bengal's Green Revolution, *American Economic Journal: Applied Economics*, 3, 186-214.
- Ghatak, M., Mitra, S., Mookherjee, D. and Nath, A. (2012), Land Acquisition and Compensation in Singur: What Really Happened? Working Paper, March 2012, Institute for Economic Development, Boston University.
- Ghatak, M. and Ghosh, P., (2011), The Land Acquisition Bill: A Critique and a Proposal, *Economic and Political Weekly*, October 8, Vol XLVI (41), 65-72.
- Ghatak, M. and Mookherjee, D., (2011), Land Acquisition for Industrialization and Compensation for Displaced Farmers, Working Paper, October 2011, Institute for

¹⁰ While the land is acquired for urban development or residential purpose, the colony is established along with a certain market area and certain shops, shops-complexes, etc. It may be worth suggesting here that instead of giving four residential sites to the land-loser compulsorily, he should be given a choice to choose among the two schemes. In the first scheme, four residential sites should be given. In the second scheme, instead of giving four residential sites in compensation, two residential sites and one commercial site or a shop should be given to the land-loser in compensation. In this way, if a farmer, who loses his regular source of income due to the acquisition of his land, will have an alternative source of income by way of the commercial site or the shop..

Economic Development, Boston University.
<http://people.bu.edu/dilipm/wkpap/land%20acquisitionJDEmscrpt.pdf>