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Policy Brief

Land Acquisition and Compensation Policy for Development Activity

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1. Introduction

“With an expected growth rate of 7.5 percent this year, India is, for the first time, leading the World Bank’s growth chart of major economies” said Kausik Basu, The Chief Economist of the World Bank (India’s growth, 2015). ‘Slowly but surely’ the ground beneath the global economy is shifting and Indian economy is ready to escalate its economic activity. Land is required for almost all economic activities. India should reallocate this scarce land optimally with social justice.

In India, the acquisition of land is rising continuously due to rapid economic growth with several development activities, special economic zones, housing complex and urbanisation programmes, industrial or commercial hubs, infrastructure creation, etc. (Chaudhry 2011). Mostly rural lands are acquired for development projects; as a result, thousands and thousands of people become homeless and displaced from their livelihoods, which may violate the individual rights. It is also observed that the land-losers are dissatisfied with the compensation package which leads them to protest against the development project of land acquisition (Ghatak, Mitra, Mookherjee and Nath 2012, Chaudhry 2011, Ghatak and Mookherjee 2011). Their resultant protests seriously affect the development programmes causing delay and raising its costs (Chaudhry 2011). Several cases of land litigations related to the acquisition for development projects are mounting up as well as pending in the courts and create hurdle for economic development. To continue with above growth rate, it is an urgent need to address this Land Acquisition issues, especially displacement and compensation. What are the alternative possible policies for land acquisition and compensation related to development projects?

Need to redefine the compensation mechanism; otherwise, economic development becomes unsustainable depriving land- losers. India has taken initiative to formulate new land policy

and related law which focuses on land acquisition, rehabilitation, and resettlement bill (Ghatak and Ghosh 2011). In this context, the Land Bill has introduced in the Parliament. Land policy should be clear about the process of land acquiring and compensation. Singur and related events 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 Domain¹ Law of 1894* which has traditionally allowed the government to acquire land from private owners upon paying compensation at market prices (Chaudhry 2011, Ghatak and Ghosh 2011).

This paper focuses on compensation issues, principles of policy formation, and also suggests different type of compensation for sustainable development.

2. Compensation issue

There are some issues regarding the amount of compensation determining criteria and payment mechanism to the land-losers.

a) Justifiable Compensation

The term ‘compensation’ is generally associated with the market price of the land or property. As per 1894 law, the compulsory Land Acquisition in India is never taken care of actual determining factors for the compensation. It does not take responsibility for providing the replacement value of the lost land, and mass displacement often affects population whose lives are not constructed around formal legal rights (Chaudhry 2011). There are several difficulties involved in the determining value to the displacement cost which has never been internalised. Cost of displacement is externalised and has not recorded or addressed but ‘scrupulously’ suppressed in the 1894 law (see, the land law 1894, Chaudhry 2011). The compensation law does not focus on any other allied or associated factors (such as breakdown of the society, increased exploitation, etc.) attached to the land acquisition. Compensation should be based on socio-economic value judgements to avoid possible disputes.

b) Issues related to its determinants

The issues associated with the determinations of compensation are as follows:

¹ It is a power of sovereign to take property for public cause without owner’s consent. On the ground that the interest of the community is superior to that 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, which is 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 (Chaudhry 2011).

- i. Determining the value of land: the main question arises what amount is adequate for compensation, and what factors should be incorporated for determining the value of land.
- ii. Amount of Compensation: In many cases it is observed that payment of compensation amount for the acquired land is far below from the actual market price. How do we value the land and decide the amount of compensation?
- iii. The manner of giving compensation: One-time payment of compensation is the current practice in India. Now, the one-time payment is an issue which should be taken care of and need search for alternative solutions. The compensation and its mode of payment should not be one-time event and it must ensure the regular income of land-loser. Resettlement and Rehabilitation (R&R) should be taken care at the time of Land Acquisition (Chaudhry 2011, Ghatak and Mookherjee 2011).
- iv. Other benefits sharing: compensation can be decomposed into two parts – cash compensation and other benefits. Other benefits along with the cash compensation might be a possible solution - for example, allotting a part of the developed land or equity shares in commercial venture or offering jobs to the land-losers and displaced persons or the transfer development rights (Chaudhry 2011). It may ensure proper Resettlement and Rehabilitation (R&R) along with compensating for the land loss.
- v. The compensation should be paid within a time-limit.

c) Gaps in the present Laws regarding the compensation

The major gaps in present land acquisition laws regarding the compensation are as follows:

- Market value of land is not defined scientifically.
- Land administration is poor or absent (Deininger and Feder 1998).
- Social Land Audit Committee is essential to set up. It should be noted that the entrepreneurs indicate land requirements for their projects which are more than their actual requirements. The industrialists or business house justify providing reasons such as future expansion, open space, etc. (Chaudhry 2011). Now, there is a need to re-examine and investigate actual requirement of land for each project and its components, and assess the land use of social justice. So, it is needed to form the *Social Land Audit Committee* who audits and evaluates the judicial use of land for the society. After auditing the requirement of land for each project the committee may suggest appropriate amount of land for new development activity. So, available scarce land resources should be distributed among different development projects and

could support large number of projects allowing the maximum amount of investments.

3. Policy formation principles

Compensation for land acquisition should be based on the following principles:

- a) Land should be valued at a clearly defined date. Land value may change quickly as soon as project information spread out in the spotted area.
- b) Law of acquisition defines equivalent compensation measuring at market price. It is a *just compensation* (Chaudhry 2011). Compensation is given to the land- losers for acquiring their land but cannot ignore the loss of legal occupants' livelihoods attached to that acquired land.
- c) Compensation or/and Resettlement and Rehabilitation (R&R) assessment must be based on free negotiation among land owners, livelihoods-losers and concern authority requiring land. Negotiation must be consensual (Chaudhry 2011). This is a democratic process of land acquisition, and offers individuals the power to determine a realistic value of their land. Such process includes land-losers and makes them willing to participate in the development agenda.
- d) Provision to share profits of the industrial activities may be given to the land-losers as a part of the compensation payment.
- e) One part of industrial or commercial developed plot may be allotted to the land-losers, if they are interested. This will ensure regular income from either doing own business or rent (Chaudhry 2011).
- f) Land-looser should not be deprived in the cost of public interest. Their survival should be ensured providing alternatives.
- g) The compensation is calculated considering the value of land costs and its rights.
- h) The determination of equivalent compensation can be difficult, when land markets are weak, or market does not exit, or individual has only rights to use the land like the Pattaholders in the Barga law of West Bengal.

4. Types of Compensation

Now we discuss few practical and applicable different types of compensation for heterogeneous land-losers having various choices and preferences:

(i) CASH FOR LAND

Indian Land Acquisition law of 1894 follows the cash-for-land principle. Cash compensation can provide opportunities for opening family businesses and attempts to reduce agriculture-

dependence. Amount of compensation is determined at current market price considering quality of land, location, access etc. Cash compensation disproportionately benefits some interest groups but not small and marginal farmers, or the landless workers (Chaudhry 2011). In the displacement, landless labourers are the most sufferer group because they have no ownership rights or/and lack of entitlement to land. It should be noted that the big landlords are the maximum gainers from the displacement or relocation because much of their land is either sharecropped or remains uncultivated. Cash compensation is more attractive to rich farmers, who then re-invest it in the non-agricultural sector (Chaudhry 2011). It should be mentioned that sustainable development is possible only when food supply will be ensured. The Government has to ensure food security for growing population in India.

It should be noted that cash compensation is not viable in tribal area because of the non-existence of monetised system. The project-affected people should be replaced in such a way that they are able to survive with their livelihoods.

(ii) **LAND FOR LAND**

The principle of land-for-land should be focused on compensation policies, especially for the Tribal area. All the developed countries like the USA, UK, Denmark, etc. follow this principle. This principle is known or termed as the 'land consolidation'. In this method, land is given to the land-losers and they can carry on agricultural activities which definitely ensure food security of the country. Land is also inheritable asset which provide income for generations and also ensures sustainability². Need to identify few relocation sites for the purpose of implementing land –for –land compensation. New relocation sites may be better compared to the previous sites in terms of their soil quality, productivity, irrigation facilities, availability of water, etc. In addition to these, if possible, there are off-farm income sources such as forestry, cattle rearing, fishing, seasonal job opportunities, etc. from the new selected sites. Then land-loser will be happy and accept these relocation gladly as compensation (Chaudhry 2011). Having satisfied with new sites they will never resort to any protests or agitations against acquiring land for public purpose.

² 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* (Chaudhry 2011).

(iii) JOB FOR LAND

The amount of compensation is generally calculated on the basis of land area but does not take into account of land-loser's loss, for example, loss of livelihood or loss related to dislocation etc. Apart from cash compensation for land, according to the requirement if any, appropriate jobs can be offered to the skilled or semi-skilled land-losers as an alternative choice of compensation. It should be mentioned that it's not only the land-owner who actually suffers loss because of the 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 (Chaudhry 2011). How do we ensure their livelihood for sustainable development?

(iv) PARTIAL SHARE HOLDING

Land, in general, is transferred to company for industrial activity after the acquisition of land. The land-losers get the compensation immediately and one part of the share of the company should be distributed among the land-losers. In such cases, the land-losers hold a partial ownership rights and participate in the decision making process, and also receive one part of profit of the company.

(v) COMPENSATE AS A PART OF DEVELOPED LAND

The choice options should be given to the land-owner that they must select and accept either the fixed amount of compensation for their land or a part of developed land, which is an alternative replacing monetary compensation. This is one kind of forced participation in development activity and visualise the development prospects. Mechanism of compensation as a part of developed land is simple. For example, the Government acquires land for the residential purpose. Following Haryana model (Chaudhry 2011) it can be discussed for our understanding. Suppose 40% of the acquired land is used for civic amenities (i.e., construction of roads, parks, schools, play grounds, etc.), and remaining 60% of the total land is divided into 3:2 ratio between the Government and the land-losers. Now, the Government is free to use its 36% land for the project, and the land-loser gets their 24% land as compensation for the whole land acquired by the Government. So, total land is divided into two parts – one is civic amenities and another is 'developed land'. 40% of developed land is allotted to the land-loser as compensation. So, 24% of total acquired land is used for

compensation³. It is exactly Haryana model except land allocation for civic amenity, which requires 45% instead of 40% of acquired land.

(vi) **REGULAR RENT PAYMENT**

Generally, the government acquires land from owners. After acquiring land, the government sales or leases out the whole or part of the acquired land to the company. The government receives the rent or fixed income from the acquired land since it is transferred to company on lease on fixed rent yearly, while land-losers get one-time compensation. In such cases, part of regular income of the government from that acquired land can be shared with the land-losers as a part of compensation (Chaudhry 2011). Another way to ensure regular income is the annuity for a certain period.

(vii) **AUCTION OF LAND**

The question of adequate or appropriate compensation remains unsolved. It will be resolved either accept the agreed formula of determining value of land for compensation or auction of land. The actual market price of land will be emerged as soon as the government creates the provision for auctioning of land to be acquired. The government should organise and manage such an auctioning and tender price system in a transparent manner (Chaudhry 2011, Ghatak and Mookherjee 2011, Ghatak and Ghosh 2011).

5. Conclusion

Land price can be determined on the basis of opportunity cost which is ignored in the market system. Compensation based on market mechanism is insufficient to satisfy all the heterogeneous land owners having different preferences based on their occupations and skills while acquiring land from them. This study suggests possible alternative viable solutions which internalise the heterogeneity among the land owners. Here is a need of the legal inputs into the issues associated with the land acquisition and/or relating to the compensation package to the land-losers. There is a need to ensure inclusive and sustainable development in true sense. Laws of land acquisition and *Resettlement and Rehabilitation* are needed to modify in such a way that minimise deprivation and can create the pace for economic development in India.

³ 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, and the land-losers are really happy with the practice (Chaudhry 2011).

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