

Land Acquisition in India

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Land Acquisition in India: Disputes and Litigation

- Litigation against acquisition per-se is endemic
- Litigation over compensation is a nation wide phenomenon in India
- There is suggestive evidence that relatively high value property owners litigate more frequently
- Litigation over compensation is common in other countries as well

Issues/Questions

- Why the deviations b/w compensation and the market value are especially large, for the very low and very high value properties?
- Why there is rampant litigation over compensation amount?
- Can the new land acquisition bill reduce litigation?

Main Arguments

- Even impartial Courts produce regressive outcomes - in favour of high-value property owners
- The main factors behind the observed outcomes are:
 - The incentive structure for the award makers and government lawyers
 - The incentive structure for the owners
- The Land Acquisition (Amendment) Act (1984) was inherently prone to misuse of eminent domain power and litigation over compensation.
- The LARR 2013 restricts scope of misuse of land acquisition law
- However, LARR 2013 can further intensify the litigation over compensation.

LACs and Govt Lawyers I

LACs:

- do not put-in enough efforts to assess market value
- want to play it safe, to avoid remarks/objection from seniors or auditors
- Instead of sale-deeds of similar properties, use circle-rates/registry rates to award initial compensation

Govt Lawyers

LACs and Govt Lawyers II

- Smt. Poonam v. State of Haryana and another (R.F.A. No. 3008 of 2008), the HC of P and H observed

“This court is constrained to comment upon the conduct of the State as well as HUDA ...

even though they had notice of the fact that the land owners had produced on record various sale deeds showing the consideration paid therein ranging from Rs. 12,00,000/- to Rs. 80,00,000/- per acre, no documentary evidence was led by the State or HUDA to rebut this evidence. ...

What is generally seen is that practically no evidence is led by HUDA in any of the cases before the Reference Court and similar is the position with regard to addressing arguments before the higher courts...”

LACs and Govt Lawyers III

- State of Haryana and another Vs. Gram Panchayat of village Jharsa and another (R.F.A. No. 2125 of 2010), the HC of P and H observed

“ What has been experienced in number of cases, which came before this court is that in none of the case(s), wherever HUDA was represented by a counsel, anything was done by him except getting his presence marked.

The position is not different even in the proceedings before the court below.”

Do Gains from Litigation Increase with Property Value?

Consider two parcels of land;

- Land A with area 100 sq-meters, and Land B with area 200 sq-meters
- circle-rate of say Rs 1000 per-sq-meter.
- But there is a sale-deed of rate Rs 1300.

Incentive to litigate: Since multiplier is 1.3,

- For property A, gains from litigation are Rs 39,000.
- For property B, the gains would be Rs. 78,000!

Under-compensation by LACs or Over-compensation by Courts?

Sale-deeds Versus Registry Rates

- Sale-deeds rates higher than Registry Rates
- Sale-deeds also under-represent market value
- Sale-deeds better proxy for market value

Controversial Changes

Under Land Acquisition Act, 1894:

- Land could be acquired for public as well as private projects, without consent of property owners
- No provisions for Social Impact Assessment (SIA) and Resettlement and Rehabilitation (R & R)
- The compensation is 1.3 times the 'market value'; 'market value' *plus* solatium (30 percent of market value)

LARR 2013:

- Land can be acquired for private projects, only if 80 percent of affected owners give consent
- Provisions for SIA and R&R
- The compensation will be 2-4 times of 'market value':

LARR 2013: Costlier Land?

In India, 'Market Value' is determined on the basis of

- Circle-Rates/ Registry-rates
 - Not updated regularly
 - Generally Below Market-Rates
- Sale-deed rates
 - Less than market;
 - 30-60 percent of actual transaction price

However, total Costs of Acquisition:

- Compensation paid at the time of acquisition
- Compensation paid after litigation
- Interest payments
- Litigation costs

Can higher Compensation reduce Litigation over Compensation?

Consider an agriculture land;

- 100 sq-meters,
- circle-rate of say Rs 1000 per-sq-meter.
- But there is a sale-deed of rate Rs 1300.

Incentive to litigate:

- Under the existing law (multiplier is 1.3), gains from litigation are Rs 39,000.
- Under the proposed law (multiplier 4), the gains would be Rs. 1,20,000!

Policy Implications

- Initial Compensation should be determined on the basis of all relevant sale-deeds
- No-litigation agreements
- Allocation of litigation costs

The 80 percent Rule: Less Land for Urbanization?

Presumed Obstacles:

- Hold-outs

Some Counter-Examples:

Developer have been able to buy large tracks of land directly from the owners:

- Gurgaon SEZ - several pockets of hundreds of acres of contiguous agricultural land
- Kakinada Special Economic Zone in Andhra Pradesh - 4800 acre
- The Navi Mumbai SEZ - several thousand acres
- Chhattisgarh project of GMR group - 428 acres that it needed directly from the villagers.

Real Impediments

- Poor Land Records
- Change in Land Use Rules
- Construction permits
- Official Delays in Land Acquisition
- Regulatory Clearances

Policy Implications

- Clear and Transparent Land Titles
- No CLU or other discretionary regulations
- Instead Use Zoning Regulations
- Make PAFs stake holders - SPV, developed land, etc

Thank You