



LAND ACQUISITION ORDINANCE 2014: DISMISSING DEMOCRACY, DISPLACING SAFEGUARDS?

– Kanchi Kohli*

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (RFCLARR) was enacted in 2013 replacing the land acquisition policies prevalent in the country since 1894. A year later, the Government of India on December 31, 2014 issued an ordinance making significant changes to the Act including removal of consent clause for acquiring land for areas of industrial corridors, public private partnership (PPP) projects, rural infrastructure, affordable housing and defence. Noteworthy are the exemptions related to Social Impact Assessment (SIA) and consent of affected communities if these related to the afore-mentioned five areas. In effect, the new ordinance negates the significant gains made through the 2013 Act that would have benefited project-affected communities. Worrisome also is that the ordinance promotes land acquisition in favor of large-scale industrial, infrastructural and defence related expansion.

Since early 1990s, various governments in India have justified industrial expansion as critical to steady economic growth. This has required conversion of land (under individual, common or government ownership) for mining, power generation, manufacturing and industrial production sectors and related rail, road and port infrastructure. As a consequence, the displacement of communities due to acquisition, purchase or legal diversion, of land currently under a range of livelihood, occupational or cultural uses¹, raises serious concerns.

It is estimated that 50 million people have been displaced due to “development projects” over 50 years in India. A study in 2011 by Indian Institute of Technology, Rourkee estimated that of the 50 million people, 16.4 million were displaced by dams, 2.55 million by mines, 1.25 million by industrial development and 0.6 million by wild life sanctuaries and national parks².

A study by the Society for Promotion of Wasteland Development (SPWD) and the Rights and Resources Initiative (RRI) noted that some form of land conflict affects at least 25 percent of India’s districts³. It adds that a majority of these conflicts arise because the state takes over the lands, often on behalf of private investors. A land map based on the study shows 252 conflicts in 165 of India’s 664 districts⁴.

On the one hand there has been a growing demand by project developers for easing land acquisition procedures, and on the other, several affected people and social movements have been pushing for strengthening the legal and institutional framework to minimize instances of displacement and work towards a fair, transparent and consent driven process.

It is in this backdrop that the RFCLARR 2013 replaced the Land Acquisition Act of 1894⁵. Amidst concerns around the broadened definition of “public purpose” for which land

could be acquired by the government, the 2013 legislation laid down an elaborate process including requiring consent from project affected people. This process was mandated for each instance of land acquisition and rehabilitation be it for public, private or for projects executed through Public Private Partnership (PPP).

However, a year later, the Government of India brought in a new ordinance making significant and sweeping changes to the RFCLARR, 2013. Official sources indicate that the government felt that there is an urgent need to bring about changes to “*expedite the process of land acquisition for strategic and development activities*”⁶.

This Ordinance marks many steps backwards from the gains achieved through the 2013 Act. It undoes the applicability of clauses related to Consent⁷, Social Impact Assessment (SIA) and Food Security Safeguards related to acquisition for a range of projects including mining, SEZs, transportation and tourism. It limits applicability of the clauses related to return of unutilized land and modifies the applicability of clauses related to initiation of land acquisition proceedings under RFCLARR, 2013 if no physical possession of land or compensation has been initiated for five years. All these changes are in favour of those acquiring land rather than the project impacted communities, especially those who are poor and landless.

At a time when constitutional processes are undermined through the “Ordinance route”⁸, drawing on research and recent policy debates within civil society, Oxfam India suggests the following:

Recommendations

- ▶ The dilutions made in the RFCLARR Act 2013 through the present ordinance should be rolled back
- ▶ Exemptions to a whole range of projects on seeking consent from the affected people should be reinstated.

- ▶ Exemptions to SIA on acquisition of land for private projects including multi cropped land should be revoked.
- ▶ The provisions related to return of unutilized land should be reinstated. No further dilutions to the Act should be allowed.

Context

The discussions to bring about changes to the 2013 Act began soon after the new government took office in mid 2014. A meeting was held under the chairpersonship of the Minister of Rural Development on 27th June 2014 attended by 32 states and union territories, where 19 amendments were proposed to the law. Additional consultations were held with government officials administering this legislation on 21st October⁹.

While the 2013 law had a number of loopholes that needed to be addressed, the current Ordinance proves to be much more regressive. The key changes brought about by the 2014 Ordinance are:

▶ Undoing SIA and Food Security Safeguards

The Ordinance adds a new section to the 2013 Act, which includes a range of projects for which the provisions of SIA and food security safeguards will not apply. This includes acquisition of land for defence or national security projects, infrastructure projects (including tourism, mining, and transportation), industrial corridors (like Special Economic Zones) and affordable housing for low income groups.

▶ Undoing Consent

The ordinance exempts the above-mentioned projects (defence, infrastructure, industrial corridors etc.) from going through the process of seeking consent from communities losing their land (70 per cent in case of PPPs and 80 per cent in case of private sector projects).

▶ Relief for applicability of RFCLARR provisions (including compensation rates) in cases of court disputes

The applicability of retrospective clauses of the 2013 Act has been modified. The ordinance gives relief to a project proponent in instances where no physical possession of land or payment of compensation has been “held up” due to a court proceeding or injunction. In all such cases, the years during which the taking possession of land or payment of compensation were held up because of a court intervention or order would

be counted while computing the five year period for the land to be returned.

▶ Relief for project proponents towards returning land unutilized for five years

The provision for return of unutilized land to original owner / legal heirs or government land bank has been modified. According to the 2013 Act, it was to apply to all land unutilized for five years. The ordinance now indicates that if the land is unutilized for a project where “a period specified for setting up of any project” is more than five years, then the land does not need to be returned even if unutilized for five years.

▶ RFCLARR provisions to apply to all land acquisition processes

The RFCLARR was not to apply to the thirteen laws, which have their own provisions, related to land acquisition, for instance, the Railways Act, 1989, the Coal Bearing Areas Acquisition and Development Act, 1957 or the Atomic Energy Act, 1962. However, the 2013 Act directed that the provisions for determining compensation and Rehabilitation and Resettlement (R&R), which are “beneficial to the affected families”, could be made applicable to these laws through the issuance of a notification within one year. The 2014 Ordinance, now directs that all provisions of the RFCLARR related to compensation, R&R and provision of amenities would now be applicable to all other laws, irrespective of any changes to the provisions under these laws.

▶ Making RFCLARR applicable to certain projects

The RFCLARR Ordinance now allows for the inclusion of private hospitals and private educational institutions as projects for which the government can acquire land and hand it over to the private sector.

▶ Cognizance of Offences by Government Officials

The 2014 Ordinance ensures that there is no cognizance of offence made by government employees in any court without it being first sanctioned by the government. The 2013 Act had put the liability of any offence committed under the Act, directly on the head of a government department. For any offence under the Act, action could be taken against the government department. This crucial provision that provided for some checks to unlawful / forced land acquisition no longer holds due to the proposed ordinance.

The RFCLARR ordinance might be the first of the many changes that this government seeks to bring to the land

acquisition processes. The nineteen changes initially proposed in June 2014 include changing the definition of affected people not to include those whose livelihoods are impacted while deciding compensation. There is also a proposal to review the provision of determining compensation based on the market value of land as well as completely doing away with the clause dealing with return of unutilized land. Suggestions for expansion of the scope of 'urgency clause' under which land can be acquired by the government also have been made in the ordinance.

The six-week validity of this Ordinance will kick off on the day Parliament resumes in February 2014. The provisions will need to be debated and amendments approved. In keeping with Oxfam India's continued engagement with this critical strand of public policy, we recommend the following:

► **The dilutions made in the RFCLARR Act 2013 through the present ordinance should be rolled back**

By undoing the applicability of the RFCLARR law on critical sectors where the largest amount of land acquisition is taking place, like industrial corridors or mines, the 2014 ordinance reduces the law to a compensation granting mechanism alone. Processes such as SIA and inclusion of retrospective clause in the 2013 Act were significant gains and welcomed by affected people and social movements. Therefore, these changes should be immediately rolled back allowing for effective implementation of the RFCLARR, 2013.

► **Exemptions to a whole range of projects on seeking consent from the affected people should be reinstated.**

The law introduced a provision of seeking consent from owners of land in case land is being acquired for private sector projects or projects under PPP. The ordinance undoes the provisions of seeking consent from landowners prior to acquisition of land for many projects including mining, SEZs, transportation, tourism. The present changes should be immediately undone and no further dilutions should be allowed.

► **Exemptions to SIA on acquisition of land for private projects including multi cropped land should be revoked:**

The 2013 Act provided for a detailed provision for carrying out SIA, along with a public hearing to ascertain the project affected people and determine the terms of compensation. It also introduced a separate section indicating that no multi cropped land will be acquired

(except in the case of linear projects) unless cases of "exceptional circumstances, as a demonstrable last resort". The Ordinance adds a new section, which includes a range of projects for which the provisions of SIA and food security safeguards discussed in the previous sections will not apply. These retrograde changes in the ordinance should be immediately revoked.

► **The provisions related to return of unutilized land should be reinstated**

There have been several instances where land has been acquired by project developers and have not been utilized for a range of reasons. The 2013 Act had a clause, which allowed for the land unutilized for five years to be returned to the owners. This clause was important to check several instances of land grab and forced acquisition without any definite use of the land. The changes and exemptions introduced in the retrospective clauses related to lapse of land acquisition proceedings and return of land should be recalled with immediate effect.

► **No further dilutions to the Act should be allowed**

The list of possible nineteen amendments floated by the MoRD in its meeting with state governments also includes adversely modifying the rates of compensation. Reportedly, there is also a proposal to modify the urgency clause of the law to include "any other emergency" to be determined by state governments can take possession of land even if a land acquisition award has not been issued.¹⁰ Currently the urgency clause is limited to only natural disasters and defence purposes. It has to be ensured that no further dilutions are allowed along the lines already being discussed by the MoRD.

The RFCLARR Ordinance, 2014 is a conscious and retrograde step, which aims to bring about long-term changes targeted primarily towards speedy land acquisition for project developers are likely to create more social and environmental conflicts rather than resolve them. It is essential to roll back these regressive provisions of the law to ensure a socially and environmentally-just process that empowers communities in the decision-making related to land use change and acquisition.

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Endnotes

- 1 These include agriculture, grazing, salt production, access to forest produce or support activities related to fishing.
- 2 Negi, Nalin Singh and Ganguly, Sujata (2011), CO Development Projects vs. Internally Displaced Populations in India: A Literature Based Appraisal, MCAD Arbeitspapiere - Working Paper Series, University of Bielefeld, Bielefeld.
- 3 IANS. 2014. *Most land conflicts in India due to acquisition by state: Study*, Business Standard, 27th November, 2014
- 4 <http://in.reuters.com/article/2014/11/26/india-land-rights-idINKCNOJA1RZ20141126>; <http://www.downtoearth.org.in/content/changing-landscape>
- 5 A more elaborate exposition of Oxfam's position on the content and significant features of the Act can be accessed at Dubochet, Lucy (2012), *The proposed Land Acquisition Bill: Putting Livelihoods First*, Oxfam India Policy Brief, No.2, Oxfam India, New Delhi.
- 6 Department of Land Resources (*undated*) Information Note on Ordinance to amend the RFCTLARR Act, 2013, Ministry of Rural Development, Government of India, New Delhi, accessed on 15th January 2015 on [http://www.dolr.nic.in/dolr/downloads/pdfs/RFCTLARR%20Act%20\(Amendment\)%20Ordinance,%202014%20-%20Information%20Note.pdf](http://www.dolr.nic.in/dolr/downloads/pdfs/RFCTLARR%20Act%20(Amendment)%20Ordinance,%202014%20-%20Information%20Note.pdf)
- 7 Under the RFCLARR, consent clauses were only applicable to affected people defined in Clause 3 (c) (i) and 3 (c) (v) related to owners of land and to whom the government has assigned land under a particular scheme. It does not include people whose livelihoods were dependent on the land or holders of forest rights..
- 8 The RFCLARR Ordinance, 2014 has been issued under Article 123 of the Indian Constitution, which gives powers to the President of India to promulgate such ordinances when parliament is in recess. The ordinance is only valid for only for six weeks after the reassembling of the Parliament. The President can also withdraw it at any time.
- 9 Department of Land Resources (*undated*) and Kohli, Kanchi (2014), *All set to lose out on the gains?* www.indiatogether.org, Bangalore.
- 10 Kohli, Kanchi (2014), *All set to lose out on the gains?*, www.indiatogether.org, Bangalore

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