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Inclusive policy options to highway land acquisitions in India

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Abstract

Land being a social asset and available only in invariable supply this paper examines the problem of land acquisition in the context of sustainability and equity of socio-economic outcomes. As an alternative to iniquitous land acquisitions which stir spatial equilibrium, create unequal losses and gains and alter the relations of production, the proposed 'participation in windfalls' and other inclusive entitlements aim at enhancing equity and minimizing the impact of negative redistributive outcome and socio-economic exclusion of the project affected persons. In the context of ongoing spree in land acquisitions by the state such a participatory scheme shall deserve the attention of the academicians and policy makers.

Keywords: Land Acquisition, Economic Exclusion, Acquisition led Landlessness, Compensation, Shared Windfalls.

1. Introduction

Introduction

Highways and roads provide multilateral transport and communication services. They interweave different markets, raw material sources, industrial centers and social settlements into an integrated loop. They work through the mechanism of forward and backward linkages. The construction and maintenance phases also provide output, income and employment opportunities on a large scale. The link between infrastructure provision and economic growth has been the subject of extensive discussion (Banister and Berechman: 2001) and the length of paved roads is found to be highly correlated with physical and human capital (Canning and Bennathan: 2000). The total road length in India increased from 3.99 lakh kilometer as on 31 March 1951 to 46.90 lakh kilometers as on 31 March 2011ⁱ.

National Highway Development Project (NHDP) was implemented in 1998ⁱⁱ. It aimed at creating an intensive and well integrated highway network across the length and width of the nation. The project pledged itself to widen, strengthen, build and rebuild the national highways of the country. The phase I of the project was called the Golden Quadrilateral Project. Subsequently seven more phases have been launched and the project has been extended to cover all the important hubs and ports to this national highway grid.

Earlier, roads were treated as public goods. There was little connection between cost of developing the roads and revenues from the roads, with meagre endeavor at direct road pricing. Post-liberalization scenario is altogether different-'business principles' being applied to highways sector. It is in line with the emergence of a regulatory system to administer an asset-based model considered as a long-term solution to the problem of investment, maintenance and finance in the road sector.

Quantum of land acquisition for different phases of NHDP is spectacular and unprecedented. About 8,300 hectares land is required for Golden Quadrilateral. About 19,000 hectares area is required for phase II of NHDP and so on. Most highway projects require an enormous amount of land e.g. a six lane highway between Agra and New Delhi will require 43,000 hectares.

Around eight to ten hectare area of land is needed per one kilometer of highway roads, which consume about eighty to one hundred meter wide linear strip of land. Translated into individual land holdings affected per kilometer of road length the figure comes to around 81 tenure-holder family units (Khan 2013)ⁱⁱⁱ. The number of project affected people and families will amount to whopping sums if all such land acquisitions are taken into account.

The law of acquisition has squarely failed to bring down the dissatisfaction of the land-losers and there have occurred incessant peasant protests throughout the length and width of the nation, since long. S. U. Khan, the Hon'ble Justice of Allahabad High court laments that "Land Acquisition is no more a holy cow. At present it is a fallen ox. 'Everybody is a butcher when the ox falls.'" (Gajraj vs. State of U.P. 2011: 245).

Land for highways is acquired either under the National Highways Act, 1956 (NH Act)^{iv} which is an act tailor made to meet particularities of the purpose, or under the Land Acquisition Act, 1894^v now repealed by the Land Acquisition, Rehabilitation and Resettlement Act, 2013^{vi}. Though it was in existence since 1956, the use of NH Act was limited in the pre-reform era. Post liberalization, however, it has become a major instrument of land acquisition, particularly for NHDP because under this act time taken in land acquisition is much lesser; the purpose of acquisition is legally unchallengeable and the land is deemed acquired free from all encumbrances on the date of notification to this effect. It provides for an arbitration process, though wholly controlled by the same executing authorities, to address compensation related grievances.

The NH Act, 1956 is far stricter and draconian than all other land acquisition laws- in putting bar on the judiciary from interference into the acquisition process. This is a PPP friendly act, allowing the NHAI to follow business rules, levy toll-charges^{vii} and acquire lands and structures at replacement costs, without rehabilitation and resettlement, at a faster pace.

Economic Exclusion

Land acquisition is a compulsory land dispossession imposed over the owners, users and dependents of land. This "power of the sovereign to take private property for public use" (Law Commission 1958:1) is called 'Eminent Domain' and is based upon two maxims: "*salus populi est suprema lex* (regard for the public welfare is the highest law) and *necessitas publica major est quam privata* (public necessity is greater than private necessity)" (ibid: 1). The doctrine of *eminent domain*, however, suffers from some serious limitations:

- a. It brings in a democratic deficit;
- b. It juxtaposes public interest against public interest e.g. interest of several thousand [uprooted] families vis-à-vis project defined public interest; and
- c. Acquisition on behalf of private and PPP projects obliterates the notion of public interest;

Alternatively, land acquisition can be taken as a process whereby one set of land owners faces forced dispossession and eviction in favor of another public or private entity. Practically it means eviction of peasant community from agricultural land, livelihood, socio-economic surroundings and self-esteem resulting into a skewed change in the relations of production and thereby economically downward movement of the land-losers. Viewed this way land expropriation curtails social opportunities as an agency of what is called "capability deprivation" (Dreze and Sen 1995: 11) exerting adverse influences on economic performance.

Land acquisition is, consequently, concerned with justice-absolute, distributive and redistributive: all at a time and over the time! The gains for the gainers and losses for the losers are gigantic. This gainer-loser gap tends to widen over time with each instance of motivated land acquisition. Exactly three centuries ago, in 1714, Bernard Mandeville (1670-1733) had beautifully lamented upon the wisdom of such a play of political economy:

"That, tho' at fair Play, ne'er will own Before the losers what they've won." (Mandeville 2006: 122)

Land acquisition caused displacements in India have become reminiscence of the European spree of 'enclosure evictions' and exclusive land ownership, driven by the accumulative motive (Rider 1995). The enclosures "made farming subservient to the needs of the great markets and the merchant capital which dominated them" (Roll 1975: 55). What did the 'enclosures' do to subordinate peasantry in Britain, land acquisitions might do, as the stage is ready, in India.

Sainath (1996: 69) coined a beautiful, and heart touching, title to describe the vulnerability of tenancy rights enjoyed by the weak:

"And the Meek Shall Inherit the Earth
Until a project comes along."

The narrative goes on:

Imagine the entire population of the continent of Australia turned out of their homes ...Deprived of livelihood and income ...robbed of their history, traditions and culture. ...Oddly, it all happens in the name of development. And the victims are described as beneficiaries (ibid: 71).

Eminent domain has displaced, in *democratic* and *socialist* India, well over twenty six million, a Canada or more, people, 75 percent of them still awaiting rehabilitation, in the period between 1951-90 by large-scale projects like dams, canals, thermal plants, sanctuaries, industrial facilities, mining, highways etc. (ibid: 71). This is the 'price of development' a huge share of which is paid by the least privileged!

Land expropriation removes the main foundation, from beneath their feet, upon which people's productive systems, commercial activities and livelihood are constructed. Compulsory dispossession is the principal form of de-capitalization and pauperization for most of those who lose this way both natural and manmade capital (Cernea 1999). Dispossession from one's own means of production results in serious loss of economic security, social status and accumulated empowerment.

As of now, there is an intense dissatisfaction over the form and process of land acquisition. Violent incidents between the state and the land-losers have become frequent in many parts of the country. The spree of protests against land acquisitions for highway as experienced in Yamuna Express Way, Bareilly Bypass etc. is the apparent manifestation of peasant unrest and dissatisfaction. As to the causes of this unrest there are multiple factors. Guha (2007) has identified the occurrence of trust deficit, denial of intended purpose,

nominal compensation etc. in West Bengal decades before the incidents of Singur and Nandigram. Main causes of the intensification of conflicts seem to be accumulated distrust, paltry and irregular compensation and denial of benefits of the intended use of their land after acquisitions.

It is strange that more than often the land acquired by the state is used clandestinely and put to unintentional purposes, as a game of the rich and greedy in association with the executive. Even the projects for development of infrastructure have wide ranging repercussions and dimensions of the following types:

- i. Disproportionate profit to construction firms, and undue gratification by the concessionaire and construction firms of local administrative machinery in case of land acquisition for, and construction, of national highways;
- ii. Indirect encouragement and enlargement of opportunities for land grabbing by land mafia along with various government agencies;
- iii. Large scale transformation of agricultural land into non-agricultural and non-sustainable uses, compromising food security;
- iv. Large scale displacement of peasant folks; the resultant crowd of landless or untenable tenants being pushed to the margins of insecurity, unemployment, beggary, even to the devastating crisis of survival.

With the ideological change land reforms have become a thing of the past. Instead a series of 'inverse land reforms' is conspicuous in the form of say, for example, de-activation of urban land ceilings, freeze on agricultural land ceiling programs, massive land acquisition for special economic zones (SEZs), infrastructure projects, roads and highways, Public Private Partnership (PPP) projects and/or acquisition for transfer of the land so acquired on bureaucratic premium to private actors.

The contemporary model for development and construction of highways rests upon PPP paradigm. The concept envisages a fair rate of return not only over the cost of development, construction and maintenance but also well over the cost of land acquisition by means of imposition of toll-charge levy and other monopoly rights vested in the developers for a relatively long period of time. The private partners may also get control over large stretches of land nearby the highways developed by them e.g. Yamuna Expressway and Development Authority is in the process of taking control over deep lengths on both sides of the highway. The private interest going hand in hand, as is perceptible now, the principles underlying the doctrine of *eminent domain* seem to be compromised and the land-losers become subjected to state sponsored and orchestrated skewed outcomes.

SECTION 'B'

Inclusive Options for Compensation

The National Highway Authority of India (NHAI) follows commercial principles and PPP mode in highways which envisage monopoly profits via toll-charge levy for the concessionaire and the NHAI, while the land-losers get nothing out of this windfall. There is a strong case in the interests of justice that the land-losers be made to avail

themselves of 'sharing in toll proceeds' and 'entitlements' under corporate social responsibility of NHAI and their concessionaire. Moreover, there is a dire need for the evolution of a land acquisition mechanism that does not result into landlessness and pauperization of the peasantry, especially, in the context of limited availability and skewed ownership of land coupled with compromised motivation and mixed outcome of land reforms in India.

The pecuniary valuation and payment thereof is the only basis of compensatory justice in case of land acquisition, as practiced in India, since the days of colonial rulers. However it has got only a limiting utility. The very rationale of pecuniary compensation does not promote economic inclusion, equity or justice. It excludes multiple consequences of forced acquisition and dispossession of land from its purview and perusal, for example, provision of alternate sources of sustenance, survival and employment; restrictions on the exercise of self-determination and freedom of consent; social-psychological disintegration; temporal deprivation, marginalization and exclusion of project affected persons (PAPs); attitudinal disposition of state and non-state actors; secondary waves of dispossession etc.

Moreover, the productive quality of the use of compensation amount by the land-losers makes the claims of compensatory justice a fiction. It is observed that most of the small and marginal tenure-holders waste away the money on emergent consumption needs, repayment of loan and other dues, construction of house, purchase of personal vehicle, marriage etc. Amounts kept in fixed and saving accounts of banks also dissipate very soon and mostly in the same way. A very tiny section, especially the big or well-off farmers, opt for alternate land purchase, capital formation or productive use of the compensation amount. The time lags coming with the process of determination of the rates, making of award and actual payment to the beneficiaries are usually so long that the real value of the money so received becomes significantly lowered due to inflation and other market led price variations. Gender dimensions are also pathetic. Often the money is spent on luxuries availed in country casinos and bear shops by the males. And the burden of this extravagance is left to the female and weaker members in the already wretched household.

There is a characteristic difference between the pre-independence and post-independence land acquisitions; earlier land was abundant and owned by *zamindars*, now it has become scarce and is largely owned by subsistence farmers. It calls for monetary compensation complemented by some sort of long term socio-economic entitlements. The judicial viewpoint also correlates that "if on the acquired land profit earning activity is carried out then the person whose land has been acquired has got full right to have something like a share in the profit" (Gajraj vs. State of U.P. 2011: 247)

The conventional wisdom of land acquisition is plagued by the pitfalls of inequity and exclusion oriented outcomes. It fails to satisfy the land-losers and does not provide amicable solution to the conflict of interests in land acquisition process. Nor does it provide economic security to the farmers who have to forgo their only source of survival. The process of land acquisition increases the incident of land-less-ness

and augments marginalization of agricultural holdings on a comprehensive scale. Both way the farmers are pauperized and pushed out.

There is an immense need for a paradigm of land acquisition which can simultaneously be helpful to avoid the incident of landlessness, exclusion and other conflicts involved and to promote equity and inclusion of the land-losers in the process of development. It can possibly be attained, inter alia, through the mechanism of:-

- i. Distributing the pain of dispossession over a larger section on a shared basis;
- ii. Causing 'zero incident of landlessness' for acquisition affected tenant population;
- iii. Windfall sharing or participation in the stream of benefits from the profit oriented or profit yielding projects with the land-losers; and
- iv. Adequately equivalent monetary compensation and consolation.

Propositions A and B have an iota of land reforms while C and D ensure inclusion and a reasonable price mechanism. There is a need to look ahead of the conventional wisdom of land acquisition and compensation inherent in the philosophy of the Act of 1894, the NH Act, 1956 and the recently enacted Land Acquisition, Rehabilitation and Resettlement Act, 2013.

Extended Participation in Windfalls

There may be a long term solution to the problem of land acquisition for highway road projects, based upon the experience that land acquisition makes many farmers landless and many holdings untenable on the one hand, while on the other, highways and big roads bring locational advantage and value addition to neighboring assets and property, remaining there. Within a couple of years monetary value and economic utility of road side land escalate by multiples. The resultant difference of future land value realization among affected, partially affected and non-affected land owners becomes manifest to the multiple ratios of hundreds and thousands. The farmers, whose total land was lost due to acquisition, bear the highest real and psychological damage of economic value and self-esteem. Partially affected farmers may have some consolation, depending upon the proportion of the remaining land. While the third category, of non-affected farmers, reaps all such benefits at zero sacrifice.

This issues of landlessness and the inequity related to distribution of sacrifice of dispossession and value appreciation benefits, amongst the farmers, can be amicably solved by increasing the scale of land acquisition, in the first instance, and then returning excess land on pro rata basis, to all neighborhood society of farmers, participating in the process.

The proposed scheme utilizes three resultant outcomes of any land acquisition for highway construction e.g. **status differential, locational value differential and marginal utility differential.**

The proposed scheme has potential to provide the following positive results:

- a. An important feature of the proposed hypothesis is the fact that it does not drag the objective value and aspects of land reforms in reverse direction.
- b. It proposes to spread the physical burden of land acquisition thinly over a larger section of land owners;
- c. It leaves no farmer land-less as a result of land acquisition;
- d. It is substantially helpful to minimize the impact of 'exclusion' and promote 'inclusion' of the project affected persons.

The approach is based upon the principle, procedure and process of reorganization and restructuring of land, land-use and land ownership within a targeted area. It aims at building the road and redistributing the acquisition costs and benefits comparatively on a larger multitude. It borrows from and has resemblance with land consolidation (*chakbandi*) aspect of land reforms.

Despite limitations it may have, the proposed hypothesis has the basic value of conflict-resolution on a larger scale. It may encounter various problems during the stage of implementation. But the problems could be solved as per situational conditions.

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