

# Land Acquisition Policies – A Global Perspective

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**Abstract-** The land acquisition instead of market mechanism is acknowledged as an essential cause of disputes among affected groups namely farmers, investors, and governments. Urban land use policy analysis has grown deeper and broader in the past twenty years, and a substantial body of knowledge stands ready to be utilized by the developing nations as they enter this period of urbanization. The various types of land acquisition policies followed across various countries were discussed in this paper. It is observed that a substantial analytic and comparative contribution which can make possible kind of advance planning that may avoid the ill effects of misuse of urban land.

**Index Terms-** Land acquisition, laws and procedures, compensation, economic growth.

## I. INTRODUCTION

All developing countries have some laws and procedures for the public acquisition of privately owned land. But few have authentically comprehensive laws and procedures and still fewer have institutions and trained personnel to administer the laws they possess. Those countries that have been comparatively successful in land acquisition generally have a broad variety of compulsory and non compulsory powers at their disposal. Some countries may heavily on compulsory powers, as India does, and others, like Singapore, on voluntary purchases. Yet, each has a full range of powers to acquire land. As a practical matter, a realistic capability to acquire land compulsorily is necessary to induce citizens to negotiate in good faith. A broad range of acquisition powers, including the compulsory and non compulsory, as well as a system of incentives to encourage voluntary sales, should be sufficient. In addition to traditional legal authority, broad reasonable powers also are needed to acquire land on such, other non traditional terms and conditions as are reasonable and proper. When political power tends to acquire land by compulsion is lacking or if public sentiment is against public land acquisition, there tends to be outdated, ineffective acquisition laws. Often in developing countries, the result of citizen ambivalence or opposition is manifested in the laws themselves, resulting in laws that are equally ambivalent, weak, and bad in need of reform. Acquisition laws are tools, to be used or not used at the discretion of their owners, and should never be weak. Rapid urbanization in developing countries over the next few years will have a profound effect on attitudes toward public land acquisition. Powerful minority landholding interests now opposing government acquisition of urban land will lose influence as urban populations rise dramatically. For city officials, now is the time to enact broad and varied standby powers for public land acquisition to use when needed.

## II. INTERNATIONAL PRACTICES AND IMPLICATIONS

In Australia, the land acquisition act 1989 was amended in the year 2013. The land acquisition was carried out through agreement if it was used for the public purpose. The government can acquire land through compulsory acquisition, negotiated agreement or urgent acquisition. The compulsory acquisition process can be used to obtain the land if the owner is not willing to sell the land, when the land has no title, when an owner has difficulty in establishing the proof of title, or even if the owner cannot be found. The compulsory compensation in Australia provides additional protection to the public rights but it may take more time for the computation of compensation to the affected landowners. The government can also obtain the land through negotiated agreement. Acquisition by negotiated agreement involves the affected landowners and the compensation is provided to them based on the agreement. The acquiring authority may enter into an agreement for the acquisition if (i) a pre-acquisition declaration in relation to the acquisition has become absolute; (ii) the Minister has given certificate under section 24 in respect of the acquisition; (iii) the interest is available in the market; or (iv) the interest is owned by the government authority (Australian land acquisition act, 2013). The declaration form shows the type of authority who like to acquire the land and full description about the land. The compensation is provided to the public as soon as the land acquisition was over. Several factors are considered while computing compensation such as market value of the land, additional financial value, severance, disturbance, reasonable legal or professional costs. The net acquisition cost, in relation with interest in new land, is the amount calculated by adding the amount of cost of the land with expenses and loss occurred in that land & by deducting the present value of any real and substantial saving in the recurring costs.

The Land Management Law in Canada stipulates that as for land acquisition, the sum of land compensation fees and resettlement subsidy shall not exceed 30 times the average output value in the three years before the land is expropriated. Afterwards, decisions by the State Council on deepening the reform and intensifying the land management stipulate that if the sum of the land compensation fees and resettlement subsidy reaches the legal upper limit and it is still not enough to maintain the land-expropriated farmers original living standard, the local government could use the income from the paid use of state-owned land to grant subsidy (SHEN Jing, 2015). The compensation for land acquisition shall be carried out according to the highest compensation standard issued by the local people's government and these standards vary with places. The sum total of the land compensation fees and resettlement subsidy shall not

exceed the following limit: a) For the expropriation of cultivated land, it shall not exceed thirty times the average annual output value of the cultivated land in the three years before the expropriation; b) For the expropriation of other farmland other than the cultivated land and the construction land, it shall not exceed 25 times the average output value of the cultivated land in the previous three years in the village or town where the land is expropriated. These laws also states that with the development of economy and living conditions of the people, the standards could be adjusted according to the time. The compensation fees are provided in a timely manner with full amount and extra compensation is provided if any young crops affected during land acquisition.

The Land Acquisition Act (LAA) has been playing a major role in Singapore's development which was passed on 2014. It has facilitated the building of roads, rail infrastructure, schools, hospitals, industrial parks and public housing for the greater public good. At the same time, however, the government recognises the impact on property owners affected by land acquisition and the government has been updating the compensation framework, and improving the land acquisition process. In 2007, the LAA was amended to provide for compensation based on market value of the acquired land. In 2012, the LAA was amended to remove the need to paste physical notices on properties when they are gazetted for land acquisition. The recent amendments to the LAA (Land Acquisition Amendment Bill, 2014) are the next step to this end. Under these amendments, landowners affected by part-lot acquisitions will now receive the full benefit of market value compensation of the acquired land, unlike before the land acquisition process has been further streamlined. When the Government acquires just a part of a land, the value of the remaining land held by the land owner can, in some instances, increase due to the use to which the acquired land will be used by them. For example, where a part-lot is acquired for the purpose of building an upcoming MRT station, the value of the remaining land is likely to increase due to its proximity to the MRT station. In such instances, the LAA required that any such increase in the value of the remaining land must be deducted from the statutory compensation payable for the acquired land. This was known as the betterment levy. With the amendments, this betterment levy has been removed. It will no longer be a requirement for such an increase in the value of the remaining land to be deducted from the compensation for the partially acquired land. There may be cases where a landowner affected by a part-lot acquisition claims additional compensation due to the impact of the acquisition on his remaining land. In such cases, the effect of the acquisition on the retained land will continue to be considered in totality when assessing the compensation.

In January 2012, the Indonesian Government issued a new law introducing an expedited land acquisition process for infrastructure projects. This new rule aims to ease and speed up the land acquisition process and to help release the grid lock preventing much needed infrastructure development in Indonesia. Difficulties encountered by Government agencies and investors in compulsorily acquiring land for infrastructure projects has been a recurring problem in Indonesia whose potential for economic development is limited by a lack of basic infrastructure such as roads, seaports, airports, power plants and

railways. The Land Acquisition for the Public Interest (Law No. 2 of 2012) and Regulation No. 71 of 2012 "Facilitating Land Acquisition for Public Project Purposes" (LAPI Laws) are planned to speed up the current lengthy land acquisition process and sets out four stages of land acquisition, being (1) Planning, (2) Preparation, (3) Implementation and (4) Transfer of Acquired Lands (Obidzinski, 2013). In the planning stage, the government entity needing land must prepare a land acquisition plan to be submitted to the relevant provincial government. At the preparation stage, the government entity together with the provincial government publishes the development plan, collects preliminary population data of the required land and its owners, and finally conducts public consultations to reach an agreement on the planned location among its landowners. In detail, the acquisition process involves the inventory and identification of possession, ownership, use, and utilization of the land; compensation appraisal; consideration to determine compensation; payment of compensation; and the release of government-owned land. They also provide details regarding land identification, compensation and dispute settlement and set out a specific timeframe for each of the acquisition stages and sub-stages, including the maximum time a court may take to resolve a dispute related to land acquisition. The LAPI Laws provide for a fast tracked dispute settlement process, by-passing the normal appeals procedure and imposing 30 day time limits for District and (in the case of an appeal) the Supreme Courts to provide their decision. The maximum time period is in theory 583 working days from the date of submission of the land acquisition plan document to issue of the certificate of registration. In the absence of objections or appeals, the process could be much shorter at 319 working days. The LAPI Laws apply only to certain infrastructure projects including public roads, power-plants, ports and low income housing. There is no provision for private developers to acquire land which is only permitted by Government and State Owned corporations. The LAPI Laws rule will however not apply to the land acquisition process for projects that commenced prior to 7 August 2012. All current land procurement projects will be completed in accordance with the previous regulations until 31 December 2014 and only thereafter will the LAPI Laws regime apply to any outstanding land acquisitions. This has caused some frustration to developers as a number of projects (including 24 toll roads) stalled due to land acquisition issues and will not be helped by the new regime until the end of 2014. The compensation to be paid is decided among the land office officials and the owners, and may be provided in the form of monetary compensation, land replacement, re-settlement, share ownership, or other forms agreed to among the parties. The final stage of land acquisition for the public interest is the hand-over of released land. The Land Office will hand over released land to the relevant government entity upon payment of the agreed compensation and the release of the land occupier's rights. The Law also provides a mechanism for filing objections related to the determination of location and compensation issues. Objections in relation to the location must be filed in the relevant State Administrative Court, while objections regarding compensation are submitted to the relevant District Court.

In Nigeria, according to the Land Use Act of 1978, all lands in the state is under the Governor of the State but the Act

categorically stated that the land is to be held in trust for the citizens (Sections 34 and 36) and the means of implementing such rights are provided in sections 39 and 41. In most developing countries, problem over land use are created by the countries because they want to please their citizens through various land laws and at the same time the government wants to be pleased over the land. In certain cases some conflicts arise in the interpretation of these requirements. The valuation of payable compensation is usually a function of the provisions of the Acts, laws and other relevant statutory enactments guiding the process. This framework usually specifies the basis and methods of assessment, as well as procedures and roles of respective parties. It is influenced by the level of socio-economic development of particular nations; their cultural norms, development needs and land-use patterns. Also influential is the level of development of the appropriate national professional body (Viitanen & Kakulu, 2009). It should be noted however that valuation for compensation is not only expected to satisfy professional standards of valuation but in addition, constitutional provisions and international requirements for just, fair, adequate and equitable value must be met. Nuhu and Aliyu (2009) refers to as faulty assumption of replacement cost method of valuation is not based on the requirement of the valuation method thus; the Depreciated Replacement Cost (DRC) method is accepted as a legitimate approach for the valuation of properties for which there is no ready market due to their specialised nature. On this, all valuation standards agreed. Three elements are required for the performance of DRC calculation (a) The value of the land in its existing uses; (b) The gross replacement of the building; and (c) The appropriate deductions from gross replacement cost for all types of obsolescence. The calculation of DRC lies within the realm of the valuer (Aluko, 2012). Therefore, it is not the DRC that exclude value of the land from the calculation as noted in Nuhu and Aliyu(2009) rather, section 29(4a) of LUA no 6 of 1978 required. Apart from the requirement of the LUA no 6 of 1978, that recommend DRC approach for valuing buildings, installations and other improvement on land these kinds of scenarios could be obvious.

The Land Acquisition Act 1960 (Government of Malaysia, 1960), the State Government could acquire land for a specific public purpose. By virtue of an amendment in 1973, land could also be acquired for mining, residential, commercial or industrial purposes. For the government this is a method of land assembly. There have been many public purpose projects which have brought development and basic facilities to the rural areas. The existing law provides for a cumbersome framework for acquisition of land. Compensation is paid for all land taken. Although, where an element of betterment is present there have been instances where adequate compensation in the form of nominal sums has been paid (Government of Malaysia, 1960). Mainly, the aggrieved parties are not satisfied with the compensation received there are mechanisms for appeal to the courts. The framework allows the government to take possession of the land even though the compensation is being appealed in court. This is to ensure that public projects are not delayed. The provisions of the Act have also been used to prevent land speculation by gazetting the large areas in which the land is to be acquired under Section 4 of the Act thereby freezing all land transactions in the area. The maximum period for such a freeze is

one year and there are provisions for renewal through the publication of fresh gazettes. Such behaviour is problematic for land owners in an area who are faced with uncertainty as to whether their land is to be acquired. Article 13 of the Federal Constitution requires that adequate compensation must be paid for every land acquisition. In Malaysia, federal, state, local governments and public authorities are vested by statute with the power to acquire land. The law of land acquisition is principally concerned with the rules governing the procedure to be followed in acquiring the land by compulsory means and giving the compensation to the dispossessed landowner. Here, property is acquired by the state against the will of the landowner, but this can be done in the public interest and not in private interest (Brown, 1991). The general rule is that the measure of compensation is to be based on the market value of the acquired land. Market value is the price that would be paid by a purchaser to a willing seller in circumstances where both parties are motivated by fair business principles and there is no opposition on the part of the vendor to sell and the purchaser is not compelled by any urgent necessity to buy. When assessing the market value of the land to be acquired, it is necessary to take into account the: (i) size, shape, condition and location of the land; (ii) the use to which the land will be put; (iii) the development potential of the land; and (iv) market conditions at the material date of the valuation.

The socialist Land Law in Vietnam was passed in 1988. The second Land Law was passed in 1993 - a fuller version that expanded upon the 1988 law. The 1993 Land Law has been amended three times: in 1998, 2001, and 2003 (Nguyen, "Land Law Reform"). Land is an extremely important resource in Vietnam, the ownership over which remains central to the Party's control over the direction of Vietnam's development. As Nguyen asserts, if the state owns the land, it then has decisive power and essential rights over the vital question of how land is to be managed, used, by whom, and for whose benefit, accordingly, this policy ensures that the state holds a decisive role in decision-making, distribution, and possession of key rights to land (Contending Views and Conflicts). Because the state owns and controls the land, it alone assigns the purpose - agricultural, forestry, or residential - to a plot of land and decides who has the right to use the land and for how long. Land rights in Vietnam are divided into three categories: land ownership, land management, and land use rights. In the 1993 Land Law, ownership rights were defined as land that belongs to the entire people is managed by the state, and that the state allocates or rents land use rights to users. The meaning of ownership rights was more clearly defined in the 2003 Land Law amendment, which states that land belongs to the entire people; the state represents the owner of the land (Nguyen). Ownership, management and land use have three different meanings, giving the entity to which each belongs to different rights and responsibilities. Management of land gives the state rights over the control and administration of land, while land use rights give individuals, family households, and organizations the right to directly control, use the land, enjoy the product of land use, and to dispose of the land use rights (Nguyen, "Contending Views and Conflicts"). Although the process of agricultural decollectivization started in the early 1980s, land use rights were only officially allocated to individuals, family households, and

organizations in the 1988 Land Law (Nguyen). Since 1988, the meaning and rights associated with “land use” have changed greatly. For example, The 2003 Land Law amendment greatly expanded what one (i.e. an individual, household, or organization) can do with land when in possession of a land use right certificate, allowing one to not only use the land, but also exchange, sell, lease, mortgage, inherit, and give land as a gift. Focusing on agricultural land use rights, it was synthesized that major changes from the period 1988-2003. Along with the gradual expansion of rights afforded to those with a land use right certificate came for the initial valuation and eventual marketization of the price of land. Land was not considered to have a value until the 1993 Land Law; prior to 1993, land still operated under a exchange system, as these were still the early years of Doi Moi. The 2003 Land Law absorbed ideas relating to Doi Moi in several of its provisions, recognizing a price-frame for land. Land is still to this day regulated by the state with accordance to the market price.

The provisions of land acquisition are mentioned in Article 42 of the constitution of the People’s Republic of Bangladesh. The Government of Bangladesh (GOB) is allowed to acquire land in two ways. First, under Article 42 of the constitution: (1) “Subject to any constraint imposed by law, every citizen shall have the right to acquire, hold, transfer or dispose of property and no property compulsorily acquired, nationalized or requisitioned save by authority of law.” (2) “A law made under clause (1) shall provide for the acquisition, nationalization or requisition with compensation and shall either fix the amount of compensation or specify the principles on which and the manner in which, the compensation is to be assessed and paid; no such law shall be called in question in any court on the ground any provision in respect of such compensation is not adequate” (Syed Al Atahar, 2013). These constitutional provisions exhibit that the GOB constitution gives citizens the fundamental right to own, hold, acquire, transfer, or otherwise dispose of property, but the Article also admits the absolute power of the state to acquire any piece of land by providing compensation, if the land is needed for a public purpose. Secondly, through the Land Acquisition Law, the well-recognized earliest legislation known as the Act of 1894. Over the years, a series of revisions and alterations have been made to this act to establish special laws relating to land acquisition for an exacting situation. The main issues concern the land acquisition law, the process of providing compensation, and the amount of compensation presented against land loss. It is clear that major flaws exist in the land acquisition laws, which were passed first in the land acquisition Act of 1894 under the British rule. Consequent laws on land acquisition were passed and implemented both in East Pakistan (present Bangladesh) but unluckily, these laws have had a very limited scope in terms of compensating affected landowners. The earliest law related to land acquisition was passed for the present territory of Bangladesh in 1824. Subsequent additions were Act I of 1850, Act XLII of 1850, Act VI of 1857, Act XXII of 1863, and Act X of 1870, and all of these acts were revoked and replaced by the Act of 1894 (Banglapedia , 2006 ). According to the provisions of land acquisition law, land acquisition is achieved through administrative instructions. In order to certify the best use of the most valuable property of the country, in 1976 the GOB established the District Land Allocation Committee (DLAC) and

a Central Land Allocation Committee (CLAC). DLAC is responsible for land allocation at the district level and CLAC deals with land allocation in Dhaka City (DC). Though, CLAC has the authority to check all land acquisition cases before the final decision is made at the different levels. In fact, two bodies have worked together to acquire land: the Requiring Body (RB) and the Acquiring Body (AB), which provide legal and technical assistance, respectively. At last, the DC acquires the land, and compensation is paid by the DC’s office. According to the law, there is no definitive method of payment of compensation. Once compensation is paid, the ownership transfers to the RB. Now days, cash compensation is given for compulsory land acquisition under the 1982 ordinance or within the scope of the law. Under this law, the following are the main considerations regarding compensation: Market value (termed the full market value) of the property that is described in Section 8 of the Acquisition and Requisition of Immovable Property Ordinance, 1982, reads as follows: “Similar description and with similar advantages in the locality during the twelve months proceedings the date of publication of the notice under Section-3;” (i) An increase of 20% in such market value (now 50% in some cases); (ii) Compensation must be paid before the authorities take possession of the property; (iii) Compensation must be paid or deposited within a period of one year, starting from the date of the decision of actuation; Based on the common purpose of acquiring land for the government, the land acquisition laws of Bangladesh were revised over the time, but only the 1870 Act focused obviously on compensation for the taking of lands. Previous to that act, if the landowner and the collector failed to come to an agreement in calculating the value of the land to be acquired, then only arbitrators could determine the compensation for the acquired land, and no appeal against the decision was allowed. The subsequent Acts of 1894 and 1948 attempted to make the awarding of the compensation faster, but the calculation of the compensation or the valuation of the acquired land was done without any logical or mathematical calculation. At last, the Acquisition and Requisition of Immovable Property Ordinance, 1982 (Ordinance II of 1982) focused on compensation issues, and this law has continued to exist as the sole instrument of land acquisition in Bangladesh. Some additional payments were added to the prescribed amount of compensation, but this would do very little for those whose livelihoods are substantially affected by land acquisition.

### III. THE INDIAN LAND ACQUISITION IMPLICATIONS

The old land acquisition act had been in place since 1894 passed by the British government and it was replaced by the new Act on 26 September 2013 after seven to eight years of consultations. The 1894 land acquisition act was characterized by a total absence of approval which allowed for forced acquisitions, no real grievance mechanism, no safeguards, no mentioning of resettlement and rehabilitation of displaced and low rates of compensation. Research into displacement in India showed estimations of around 65 million Internally Displaced People (IDPs) by development projects in the period between 1950 and 2005. Only 33 per cent of the IDPs were resettled in a well planned manner. Some consequences of this include armed clashes, violent opposition and political instability. These various

problems made the need for a new, more comprehensive Act particularly constant. The new land Act of 2013 Land Acquisition, Rehabilitation and Resettlement Act (LARR) aimed to take these issues into account and provided for acquisition for "Public Purpose" only, in which public purpose was defined more specifically than before. Also, the urgency clause was made more stringent, only applicable now in cases of national defence and security or following natural calamities. The acquisition of multi-cropped land is only allowed under exceptional circumstances. In the case of government-led land acquisition, approval of 70 per cent of landowners is required; in the case of acquisition by private entities, 80 per cent is needed. In addition to landowners, also livelihood losers (including labourers, tenants and sharecroppers) can now claim compensation (Land Acquisition, Rehabilitation and Resettlement Bill, 2011). These elaborations are in addition accompanied by an extensive package of Resettlement and Rehabilitation requirements, including a long-term subsistence allowance and a one-time off resettlement allowances. The LARR is controversial, both among industry representatives as well social activists. Some main deficiencies include: prices are based on average sale prices in the vicinity, which are often disgustingly understated and regularly represent distress sales; huge power and information unevenness between buyers and sellers; industry feels that the cost of acquisition will rise to impractical levels; restrictions on multi-cropped land may lead to major reduction in the available land; and large delays in acquisition process due to required Social Impact Assessments. So the land acquisition policies in India should be framed in an efficient manner on favour of both the affected landowners and government.

#### IV. CONCLUSION

To promote social and economic growth, government should review and revise the laws & regulations that govern the compulsion acquisition of lands. The policy makers should make a substantial analytic and comparative contribution which can make possible kind of advanced planning that avoids ill effects of misuse of the urban lands. Regulations and legal frameworks should be specific enough to provide clear guidelines which will allow a room to determine equivalent compensation in all situations.

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