

Legislative Brief

The Land Acquisition (Amendment) Bill, 2007

The Bill was introduced in the Lok Sabha on 6th December, 2007 and was referred to the Standing Committee on Rural Development (Chairperson: Shri Kalyan Singh).

The Standing Committee is scheduled to submit its report within three months.

For issues related to rehabilitation and resettlement, please see our companion Legislative Brief on the Rehabilitation and Resettlement Bill, 2007.

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Highlights of the Bill

The Land Acquisition (Amendment) Bill, 2007 amends The Land Acquisition Act, 1894.

The Bill redefines 'public purpose' as land acquired for defence purposes, infrastructure projects, or for any project useful to the general public where 70% of the land has already been purchased. The Bill bars acquisition for companies except under the 70% condition.

For acquisition resulting in large-scale displacement, a social impact assessment study must be conducted. Tribals, forest dwellers, and those with tenancy rights are also eligible for compensation.

Acquisition costs will include payment for loss or damages to land, and costs related to resettlement of displaced residents.

While determining compensation, the intended use of land and value of such land in the current market is to be considered.

The Bill establishes the Land Acquisition Compensation Disputes Settlement Authority at the state and central levels to adjudicate disputes resulting from land acquisition proceedings.

Key Issues and Analysis

The Bill bars the jurisdiction of civil courts on all matters related to land acquisition. It is unclear whether there is a mechanism by which a person may challenge the qualification of a project as 'public purpose.'

The Settlement Authority is a judicial body but could be entirely staffed by members without judicial qualifications or experience.

When acquired land is resold, the original acquirer is to distribute 80% of the capital gains to the original owners or their heirs. This implies that every acquirer must track the original owners and their heirs in perpetuity. Also, the resale price of land may be difficult to compute when it is part of a larger deal in which a company is taken over.

Companies have to offer part of compensation as shares or debentures. Unlike shares, debentures do not provide the land owner with a share of the profits of the project.

The Bill makes special provisions for compensation if land is acquired under 'urgency'. The term 'urgency' is not defined.

PART A: HIGHLIGHTS OF THE BILL¹

Context

Land acquisition refers to the process by which the government forcibly acquires private property for public purpose without the consent of the land owner, which is different from a market purchase of land. The Land Acquisition Act, 1894 addresses the process of land acquisition in India and was last amended by the Land Acquisition Amendment Act, 1984. The Act takes a broad definition of 'public purpose' permitting a diverse range of projects. A number of Supreme Court cases have highlighted concerns related to fair compensation, valuation of land, definition of 'public purpose' and other issues related to land acquisition.² Citing problems with the principal Act, the government recently introduced the Land Acquisition (Amendment) Bill, 2007.

The Land Acquisition (Amendment) Bill, 2007 amends the Land Acquisition Act, 1894. It expands the rights of those displaced by land acquisition, and limits the ability to acquire land for public purpose. The Bill also establishes the Land Acquisition Compensation Disputes Settlement Authority at the state and national levels to arbitrate all disputes resulting from land acquisition proceedings. This Bill was introduced in conjunction with the Rehabilitation and Resettlement Bill, 2007 to address land acquisition, compensation, and resettlement of displaced persons. For issues related to the Rehabilitation and Resettlement Bill, 2007 see our companion Legislative Brief.

Key Features

Public Purpose

- The principal Act permits land acquisition if the land is to be used for a 'public purpose' project. 'Acquisition' refers to forcibly obtaining land without consent of the land owner. 'Public purpose' includes land needed for village-sites, town or rural planning, land for residential purposes for poor or displaced due to natural calamities, land for planned development (including education, housing, health and slum clearance), or land needed by a state corporation. The Bill changes 'public purpose' to allow land acquisition only for (i) strategic naval, military, or air force purposes, (ii) public infrastructure projects, or (iii) for any purpose useful to the general public where 70% of the land has already been purchased from willing sellers through the free market.
- The Bill defines 'infrastructure' as any project relating to electricity, construction of roads, highways, bridges, airports, rail, mining activities, water supply, sanitation and sewerage, and any other notified public facility.
- Currently, private land may be acquired on behalf of a company for a 'public purpose' project. The Bill prohibits land acquisition for companies unless they have already purchased 70% of the land needed.

Social Impact Assessment Study

- If land acquisition results in the displacement of 400 families in the plains or 200 families in the hills or tribal areas, the government must conduct a social impact assessment. The study will include the effects of displacement, a Tribal Development Plan, and provisions for infrastructure development in resettlement areas.

Process for Land Acquisition

- 'Appropriate government' is determined by the location of the acquired land and the intended project. The principal Act gives jurisdiction over land acquired for Union purposes to the central government and for any other projects to the state government. This Bill includes multi-state land acquisition projects as central government jurisdiction.
- To identify land needed for a public project, the government must issue a notification. The notification must be published in the Official Gazette and in two daily newspapers circulating in that locality. After a notification is published, the government is authorised to conduct work on the land to determine its suitability for an intended project. Any objections must be registered with the Collector's office.
- If the land is suitable, the government must issue a declaration stating the land will be used for public purpose. The declaration must be issued within one year of notification; otherwise a fresh notification cannot be made for an additional year. If this time expires again, notification cannot be issued for five years. No individual shall make transactions or encumbrances on notified land until the final declaration is made or compensation is paid.
- The Bill states acquisition costs will include suffering or loss, payment for damages to the land during acquisition, cost of land needed for displaced residents, cost of infrastructure development at resettlement sites, and administrative costs of acquisition and resettlement. These costs must be borne by the entity acquiring the land.
- The Collector must make details of the land acquisition process, including compensation amounts, publicly available.

Assessing Market Value of the Land

- In the principal Act, the Collector only needs to determine the current price value of the land for compensation amounts. The Bill requires the Collector to take the highest value of: (i) the minimum land value for the area as specified in the Indian Stamp Act, 1899; (ii) the average sale price of at least 50% of the higher priced sales of similar land in the village or vicinity; or (iii) the average sale price of at least 50% of the higher priced land purchased for the project. The value of trees, plants, or standing crops damaged must also be included.
- In the event that a price is not available or the land is in an area where land sales have been previously restricted, the state government shall set the floor price per unit of land. This price will be determined by average prices of at least 50% of the higher priced land in the vicinity.
- While determining compensation, the Collector must also factor in the intended use of the land and the value of such land in the current market.

Compensation

- In the principal Act, the term 'person interested' includes those who are claiming land compensation and those interested in an easement (limited right of use of the land) on the land. The Bill proposes to expand the definition to include tribal and other traditional forest dwellers who have lost any traditional rights as well as individuals with tenancy rights under state law.
- In addition, if any damages are incurred on land excluded from acquisition proceedings, the appropriate owner must be compensated within six months.
- Payment for acquired land must be made within one year from the date of the declaration. The Collector can extend this time limit by six months with a penalty of 5% per month. If payment has not been made within one year nor has the Collector granted an extension, the land acquisition proceedings shall lapse.
- After the compensation amount is determined, the Collector must ensure that payment occurs within 60 days. Possession of land shall not be taken unless full compensation is paid or tendered to the land owner.
- Land owners whose property has been acquired under urgency shall be compensated an additional 75% of the market value of the land.
- If the acquisition is for a company, shares or debentures of 20-50% of the compensation amount must be offered through these options. The interested person may either accept this offer or opt for a full cash settlement.

Restrictions on Acquired Land

- Land acquired can be transferred only for a public purpose and with prior approval from the appropriate government.
- Acquired land that is unused for 5 years from the date of possession shall be returned to the appropriate government.
- Whenever acquired land is transferred to another individual, 80% of the difference between the consideration received and the original acquisition cost shall be shared among the original land owners and their heirs.

Land Acquisition Compensation Disputes Settlement Authorities

- Currently, all land acquisition cases are referred to civil courts for a decision. The Bill establishes the Land Acquisition Compensation Disputes Settlement Authority at both the state and national levels to adjudicate all land acquisition disputes within six months. The Bill gives these Authorities the same powers as a civil court and deems all proceedings of the Authorities as judicial proceedings. The government may form more Authorities or benches.
- In the event of a dispute, the land owner must file a written complaint with the Collector. The Collector shall refer any dispute cases to the Authority within 15 days from the receipt of the complaint. If the Collector fails to act, the land owner may petition the Authority directly to request the Collector to file the reference within 30 days.
- If the Authority decides in favour of the land owner, they shall award compensation for (i) market value of the land, (ii) property damages, (iii) damages to the land owner, (iv) damages to the land owner's salary, movable, or immovable property, (v) expenses incurred by the owner for change or residence or business, and (vi) any damages resulting in a loss of profits from the time of declaration to possession of the land. In the Act, the Authority awards a sum of 12% of market value from the publication of notification to the date of possession or compensation paid. Furthermore, the land owner receives an additional sum of 30% of the market value. The Bill increases this sum to 60% of market value.

PART B: KEY ISSUES AND ANALYSIS

Public Purpose

The Bill changes the definition of public purpose to include projects for strategic defence, infrastructure, and contiguity purposes. Table 1 shows how other countries define public purpose in cases of land acquisition.

Table 1: Definition of Public Purpose in Other Countries

Country	Act & Year	Definition/ Some Circumstances
China	Land Administration Law, Article 21 (1988)	Economic, cultural, national defence construction projects, public works projects
Brazil	The Constitution, Article 5, 182 & 184 (1988)	Public use, social interest, or for purposes of agrarian reform of rural property which is not performing its social function
Mexico	The Expropriations Law (1936)	Infrastructure development, conservation of history or culture, national security, public benefit, equitable distribution of wealth preservation ecological balance and natural resources
South Africa	Expropriation Act, No 63, Definitions Article 2 (1975)	Public purpose and certain other purposes if the purpose is connected with the administration of the provisions of any law by an organ of State
US	The Constitution, 5 th Amendment, existing case law including <i>Kelo v City of New London</i> , 2005	Private property can be taken for public use; has been interpreted to include property development
UK	Town and Country Planning Act (1990)	Planning and public purposes if it is suitable for and required for development, redevelopment or improvement; or is required for a purpose which it is necessary to achieve in the interest of proper planning of an area
Singapore	The Land Acquisition Act, Section 5 (1966)	Public purpose, by any person, corporation, or statutory board for public benefit or public interest projects, or for any residential, commercial or industrial purposes

Sources: Land Administration Law of the People's Republic of China, Article 21; The Constitution of Brazil, Articles 5, 182, 184; The Expropriations Law of Mexico; South Africa Expropriation Act, No 63, Definitions & Article 2; The US Constitution, Amendment 5; *Kelo v. City of New London, Connecticut*, No. 04-108, US Supreme Court; The UK Town and Country Planning Act, Part IX, 226; Singapore Land Acquisition Act, Section 5.

SEZ Standing Committee Recommendations

The Standing Committee on Commerce submitted its report on “The Functioning of Special Economic Zones in June 2007.”³ The report includes recommendations related to both land acquisition and compensation.

Table 2: Comparison of Standing Committee Recommendations and the Land Acquisition (Amendment) Bill, 2007

Issue	SEZ Standing Committee Recommendations	Land Acquisition Bill
Verification of land	State government and gram panchayat should verify type of land and hold a public notice for objections to the stated type of land to prevent manipulation of land records	No specific public process stated; Collector is responsible for 'updating of land records, classification of land and its tenure, survey and standardization of land and property values'
Type of land	Use only waste and barren lands for SEZs; only in unavoidable situations use single-crop, rain-fed land; ban use of double or multi-crop irrigated land	No mention
Limitations on land	Prevent developers from acquiring more land than necessary by prescribing maximum area for various types of SEZs and 50% of area should be used as "processing area"	No specific limitations stated; land unused for 5 years shall return to the appropriate government
Consent of landholders	With the exception of land acquisition for national security, the affected parties should give their consent	Owners of notified land may file an objection with the Collector within 30 days of notification; the appropriate government shall decide on all objections; rehabilitation plans shall be discussed in the gram sabhas
Inform affected persons	Land acquisition law should inform affected persons of the purpose for acquisition, its implications, and resettlement provisions	Land acquisition proceedings and compensation details shall be available publicly; rehabilitation plan shall be created in consultation with affected families and circulated publicly
Unused land or failed projects	Lease the land so land owners receive a lump sum and periodic rent. If SEZ fails or dissolves, land goes back to the original owner	No provision for leasing of land; land unused for 5 years shall return to the appropriate government
Land ownership	Land should be leased to the developer, even if the state government acquires the land	If 70% of land is already purchased, company can acquire 30% if project is for 'public purpose'
Calculation of compensation	Compensation should be calculated on prevailing market rates	Compensation based on market rates, intended use of the land, standing crops, and the higher average of either neighbouring property, land purchased for the project, or minimum value from sale deeds
Market rates	State governments should devise a system of periodic market surveys to determine periodic market rates	Collector to determine market value based on minimum land value in the Indian Stamp Act, average sale price for similar type of land in the vicinity, and any land acquired for the same project
Shares in company	Offer equity shares in the developers company	Acquiring companies can offer land owners 20-50% of compensation amount in shares or debentures

Sources: 'Functioning of Special Economic Zones', Standing Committee on Commerce, June 2007; The Land Acquisition Act and Amendment Bill.

Land Acquisition Compensation Disputes Settlement Authority

Civil Jurisdiction

Clauses
17A-17M

The Bill grants the Land Acquisition Compensation Disputes Settlement Authority the powers of a civil court. The Authority consists of 2-3 persons with the qualification of either a district court judge, an officer of at least District Collector rank, or an officer of at least Director rank in the state government's law department. Three issues arise from this composition. First, this Authority is a judicial body but could be entirely staffed by members without judicial qualifications or experience. Second, this could also lead to a situation where a state government official decides on a case in which the state government (as acquirer) is the defendant. Third, this provision may be unconstitutional as the Constitution separates the executive and the judiciary. The Competition Commission of India was formed in 2002 but not operationalised due to a writ petition filed in the Supreme Court. The petition challenged the Commission's powers, which were both judicial and regulatory. In response to the writ petition, the central government introduced an amendment to the Competition Act, 2002 establishing separate regulatory and adjudicatory bodies.⁴

Civil courts are barred from entertaining any disputes or issuing any injunctions relating to land acquisition. With the barring of civil jurisdiction, it is unclear whether there is a mechanism by which a party may challenge the qualification of a project as 'public purpose.'

Compensation

Percentage of Sale Deeds used to compute market value

Clause 13

The Bill prescribes three criteria to determine the market value of the land and requires the Collector to adopt the highest of the three computed values. The criteria refer to recently concluded sale prices for similar land, ascertained from "not less than 50%" of the transactions, "where higher price has been paid". This clause is ambiguous. If the intention is that the average should be taken from the highest priced 50% transactions, taking a larger proportion of transactions would include lower priced ones, and would reduce the average value.

Compensation as shares or debentures

Clause 13

The Bill requires the company to offer shares "or debentures*." By accepting shares, the land owner may be able to participate in any significant benefit to the company from the project. However, if the land owner accepts debentures, he receives only a fixed return; he is effectively lending money to the company to purchase his own land.

Land Resold by Acquiring Body

Clause 22

Under the Bill, if the acquired land is resold, the acquiring entity must calculate the difference between the new sale price and the original acquiring price. The entity is required to distribute 80% of this difference to the original land owners or their heirs. There could be three distinct issues while implementing this clause. First, the Bill does not set a specific time limit for the application of this clause after the original acquisition. Therefore, the acquirer must keep track of the original owners and their heirs in perpetuity so that they can be paid in case of a future sale. Second, the new sale price of the land may be difficult to calculate if it is part of a larger deal. For example, if the original purchase was for a project undertaken by a corporate entity and this entire corporate is taken over by new owners, it may not be feasible to calculate the price paid for this particular piece of land. Third, in cases in which the company has invested in developing the land it is not clear whether the original acquisition price would be adjusted upwards for the cost of development.

Urgency

Section 17
of Act &
Clause 16
of Bill

The Bill makes special provisions for land taken in the case of 'urgency.' However, neither the Bill nor the principal Act defines the term 'urgency.' A Karnataka government circular in 1967 noted, 'Government have observed that, of late, there is a steady increase in the number of proposals that are being received from the Deputy Commissioners recommending for invoking the urgency clause for land acquisition, on the ground that a particular irrigation project, formation of a road, construction of tank etc., has to be executed according to the time schedule fixed. In this connection, it may be stressed that the power of dispensing with the provisions of Section 5A of the L.A. Act cannot be arbitrarily exercised.'⁵ Similarly, a ruling in a case at the High Court of Mysore noted, "Provision of [the urgency clause] can be issued only in exceptional cases in which the case is so urgent that the time that is likely to be spent for the hearing directed by [the urgency clause] would produce such harm or public mischief, that a direction dispensing that hearing is imperative."⁵ The lack of a clear definition for 'urgency' could lead to confusion and misuse of this provision.

*Debentures are financial instruments issued by companies when they borrow money for a fixed amount of time. They promise a fixed rate of interest at regular intervals (quarterly, semi-annually, annually etc.) and repayment of the principal at maturity. They are similar to fixed deposits, except that they may be secured by assets owned by the company.

Unused Land

- Clause 22 Acquired land that is unused for 5 years shall be returned to the appropriate government. This clause helps deter acquisition of land unless it is required in the immediate term. However, it may not provide such disincentive for cases in which the land is being acquired for a government project.

Easement

- Clause 5(i) Both the principal Act and the Bill state that a 'person interested in an easement affecting the land' shall be considered a 'person interested.' The term 'easement' is not defined in this Bill or in the Act. It is defined in the Indian Easement Act, 1882 and the Limitation Act, 1963 but the definitions are significantly different in these two Acts. This could lead to ambiguity during implementation.⁶

Financial Estimates

Estimate of Expenditures

- Financial Memo The Bill requires the establishment of authorities at the central and state levels to settle compensation disputes. The financial memorandum does not provide estimates of the funding requirement for these authorities.

Notes

1. This Brief has been written on the basis of the Land Acquisition (Amendment), 2007, which was introduced in the Lok Sabha on December 6, 2007 and referred to the Standing Committee on Rural Development (Chairperson: Shri Kalyan Singh). The Standing Committee is scheduled to submit its report within three months.
2. Civil Appeal No. 1137 of 2007, Nelson Fernandes vs. Special Land Acquisition Officer, Goa (2007), Viluben Jhalejar Contractor vs. State of Gujarat (2007), Numaligarh Refinery Ltd vs. Green View Tea & Industries Ltd (2007), and Pratibha Nema vs. State of Madhya Pradesh (2007).
- 3 "Functioning of Special Economic Zones", Department Related Parliamentary Standing Committee on Commerce, June 20, 2007.
4. Writ Petition (civil) No 409 of 2003, Brahm Dutt vs. Union of India.
5. 'Subject: Acquisition of lands under the urgency clause of the Land Acquisition Act - Instructions regarding.' See <http://revdept.kar.nic.in/rev/Circular.nsf/0/CD99FDD6D9AC398DE52567F000254702?opendocument>.
6. The Indian Easement Act defines easement as "a right which the owner or occupier of certain land possesses, as such, for the beneficial enjoyment of that land, to do and continue to do something, or to prevent and continue to prevent something being done, in or upon, or in respect of, certain other land not his own." The Limitation Act states: "'Easement' includes a right not arising from contract, by which one person is entitled to remove and appropriate for his own profit any part of the soil belonging to another or anything growing in, or attached to, or subsisting upon, the land of another."

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