

*Salient Features of
THE RIGHT TO FAIR COMPENSATION
AND TRANSPARENCY IN LAND
ACQUISITION, REHABILITATION AND
RESETTLEMENT ACT, 2013*

BY

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LAND

- *“land” includes benefits to arise out of land, and things attached to the earth or permanently fastened to anything attached to the earth (L.A. Act 1894 and 2013)*
- *“immovable property” shall include land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth (the General Clauses Act)*

Characteristics of land

- *it is immovable*
- *it is indestructible*
- *it is heterogeneous – no two lands are identical, every land is unique and has its own character*
- *it is a scarce resource as the supply is fix and needs and wants are endless*

Power of 'eminent domain'

- *the Govt. can acquire any property for public purpose with due compensation,*
 - *resulting into hue and cry over land acquisition*

Land Acquisition Act (1894)

“law for acquisition of land needed for public purpose and for companies and for determining the amount of compensation to be made on account of such acquisition”

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013

“an Act to ensure, in consultation with institutions of local self-government and Gram Sabhas established under the Constitution, a humane, participative, informed and transparent process for land acquisition for industrialisation, development of essential infrastructural facilities and urbanisation with the least disturbance to the owners of the land and other affected families and provide just and fair compensation to the affected families whose land has been acquired or proposed to be acquired or are affected by such acquisition and make adequate provisions for such affected persons for their rehabilitation and resettlement and for ensuring that the cumulative outcome of compulsory acquisition should be that affected persons become partners in development leading to an improvement in their post acquisition social and economic status and for matters connected therewith or incidental thereto”

Points to ponder

- *Received the assent of the President on the 26th September, 2013*
- *Shall come into force with effect from 1st January 2014*
- *The Land Acquisition Act, 1894 is repealed*
- *Rehabilitation and Resettlement have been given priority over acquisition*
- *Solatium amount is increased to 100%*

- *If the land remains unutilised for five years after possession, it shall be returned to the original owner or shall go to land bank of Govt. by reversion*
- *If land is transferred without development after acquisition , the original owner shall get share of 40% in the appreciation*
- *Land Acquisition, Rehabilitation and Resettlement Authority will settle the disputes and an appeal shall lie to the High Court only*

Outline of the Act

(total 13 chapters, 114 sections and 4 schedules)

<i>Chapter No.</i>	<i>Title of the chapter</i>	<i>Section nos.</i>
<i>I</i>	<i>Preliminary</i>	<i>1 to 3</i>
<i>II</i>	<i>Determination of Social Impact and Public Purpose</i>	<i>4 to 9</i>
<i>III</i>	<i>Special Provision to Safeguard Food Security</i>	<i>10</i>
<i>IV</i>	<i>Notification and Acquisition</i>	<i>11 to 30</i>

<i>V</i>	<i>Rehabilitation and Resettlement Award</i>	<i>31 to 42</i>
<i>VI</i>	<i>Procedure and manner of Rehabilitation and Resettlement</i>	<i>43 to 47</i>
<i>VII</i>	<i>National Monitoring Committee for Rehabilitation and Resettlement</i>	<i>48 to 50</i>
<i>VIII</i>	<i>Establishment of Land Acquisition, Rehabilitation and Resettlement Authority</i>	<i>51 to 74</i>
<i>IX</i>	<i>Apportionment of Compensation</i>	<i>75 to 76</i>

<i>X</i>	<i>Payment</i>	<i>77 to 80</i>
<i>XI</i>	<i>Temporary Occupation of Land</i>	<i>81 to 83</i>
<i>XII</i>	<i>Offences and Penalties</i>	<i>84 to 90</i>
<i>XIII</i>	<i>Miscellaneous</i>	<i>91 to 114</i>

SCHEDULES

<i>The First Schedule</i>	<i>Compensation for Lad owners</i>
<i>The Second Schedule</i>	<i>Elements of Rehabilitation and Resettlement Entitlements for all the affected families (both land owners and the families whose livelihood is primarily dependent on and acquired) in addition to those provided in the First Schedule</i>
<i>The Third Schedule</i>	<i>Provision of Infrastructural Amenities</i>
<i>The Fourth Schedule</i>	<i>List of enactments Regulating Land Acquisition and Rehabilitation ad Resettlement</i>

Application of the Act

[S. 2]

2 (1) Public Purpose

- *strategic purposes – naval, military, air force, armed forces, national security, state police, safety of people*
- *infrastructure projects (excluding private hospitals, private educational institutions and private hotels):*
 - *agro-processing*
 - *industrial corridors*
 - *water harvesting*

- *Govt. administered, Govt. aided educational and research schemes or institutions*
- *sports, health care, tourism, transportation, space programme*
- *project for project affected families*
- *project for housing for specified income group*
- *project for planned development of village sites, residents for weaker section of the society*
- *project for poor or landless persons, persons affected by natural calamities, displaced persons due to Govt. schemes*

- *2(2)(a): public private partnership projects*
- *2(2)(b): for private companies for public purpose, provided that;*
 - *for private companies, the prior consent of at least eighty percent of those affected families shall be obtained*
 - *for public private partnership projects, the prior consent of at least seventy percent of those affected families shall be obtained*
- *(3) Rehabilitation and Resettlement provisions shall apply if a private company purchases land equal to or more than prescribed area or a private company requests the appropriate Govt. for acquisition of a part of an area so prescribed for a public purpose*

Procedure

S.(4)

Preparation of Social Impact Assessment Study



S.(5)

Public hearing for Social Impact Assessment Study



S.(6)

Publication of Social Impact Assessment Study



S.(7)

Appraisal of Social Impact Assessment Report
by an Expert Group

S.(8)
Examinations of proposals for land acquisition
and Social Impact Assessment Report by
appropriate Government



S.(9)
Urgency provisions exempted from
Social Impact Assessment study



S.(10)
Special provision to safeguard food security
- no irrigated multi-cropped land
shall be acquired under this Act

S.(11)
Publication of preliminary notification



S.(12)
Preliminary survey of land



S.(13)
Payment for damage



S.(14)
Lapse of Social Impact Assessment Report
Preliminary notification to be issued **within 12 months**
from the date of appraisal of Social Impact Assessment Report

S.(15)
Hearing of objections



S.(16)
Preparation of Rehabilitation and Resettlement
Scheme by the Administrator



S.(17)
Review of the Rehabilitation and Resettlement
Scheme by the Collector



S.(18)
Publication of the Rehabilitation and Resettlement
Scheme

S.(19)

Publication of declaration and summary of
Rehabilitation and Resettlement Scheme

- declaration to be the conclusive evidence that the land is needed for public purpose
- declaration to be published within 12 months from the date of preliminary notification



S.(20)

Land to be marked out, measured and planned



S.(21)

Notice to interested persons

S.(22)

Collector's power to require and enforce the making of statements as to names and interests of every other person possessing any interest in the land



S.(23)

Enquiry and Award



S.(24)

Lapse of process under L.A. Act 1894

- where no award u/s 11 of the said has been made
- where an award has been made five years prior to the commencement of the new Act but the possession of the land has not been taken or the compensation has not been paid

S.(25)

Collector shall make an award within twelve months from date of publication of declaration u/s 19, otherwise entire proceedings shall lapse



S.(26)

Determination of market value of land by Collector



S.(27)

Determination of amount of compensation by Collector



S.(28)

Parameters to be considered by Collector in determination of award

S.(29)
Determination of value of other immovable
properties which are to be acquired
– building, trees and plants, standing crops



S.(30)
Award of solatium



S.(31)
Rehabilitation and Resettlement award for affected
families by Collector



S.(32)
Provision of infrastructural amenities in resettlement
area as per the Third Schedule

S.(33)

Corrections to award by the Collector

- within six months from the date of award
- before the reference to authority has been made



S.(34)

Adjournment of inquiry by the Collector



S.(35) and (36)

Collector's powers to summon, production of witness, documents, records etc.



S.(37)

Collector's award to be final

S.(38)

Power to take possession of land to be acquired after ensuring that

- compensation is paid within a period of three months from the date of award
- monetary cost of rehabilitation and resettlement entitlements is paid within a period of six months from the date of award (Second Schedule)
- infrastructural entitlements shall be provided within a period of eighteen months from the date of award (Third Schedule)
- Collector responsible for completing rehabilitation and resettlement process before displacing the affected families



S.(39)

Additional compensation for multiple displacement

Determination of amount of compensation

[S.26 to S.30 and the First Schedule]

26(1) criteria for assessing and determining the market value of the land:

- *market value for registration of sale deeds (value as per ASR or ready reckoner); or*
- *average sale price for similar type of land in the nearest village or vicinity area; or*
- *Consented amount for compensation as agreed upon;*

whichever is higher

S. 28 - Parameters to be considered (similar to S. 23 of the old Act)

- 1. market value of land as on publication of preliminary notification u/s 11*
- 2. damage due to taking of standing crops and trees*
- 3. severance*
- 4. injurious affection to the other property*
- 5. reasonable expenses if any for change of residence or place of business*
- 6. damage due to diminution of profits of the land between declaration and possession period*
- 7. any other ground of equity, justice and beneficial to the affected family*

S. 29 - Value of things attached to land or building

- for immovable property or assets attached to the land or building, Collector to take services of 'competent engineer' or any other specialist in the relevant field*
- for trees and plans - experienced persons in the field of agriculture, forestry, horticulture, sericulture or any other field*
- for standing crops - experienced persons in the field of agriculture*

S.30 - Award of Solatium

- *'Solatium' amount shall be equivalent to 100% of the compensation amount (this is in addition to the compensation amount)*
- *additional amount at the rate of 12% per annum on market value of land for the period from date of publication of notification of Social Impact Assessment study u/s 4(2) till the date of award or the date of taking possession, whichever is earlier*

The First Schedule

Final award of compensation (in rural areas)

1. *market value of land as per S. 26*

x

2. *multiplying factor 1.00 to 2.00 depending on distance of
the project from urban area, as notified by the appropriate Govt.*

+

3. *value of assets attached to land or building*

+

4. *Solatium (it is 100% of the total of 1 to 3 above)*

*Final award of compensation
(in urban areas)*

1. market value of and as per S. 26

\times

2. multiplying factor 1.00

+

3. value of assets attached to land or building

+

4. Solatium (it is 100% of the total of 1 to 3 above)

other component if any to be included

Example

Details:

- *area of land to be acquired for irrigation purpose in rural area: 5,000 s.mt. out of total 12,000 s.mt.*
- *date of publication of Social Impact Assessment study: 15 Jan. 2014*
- *date of publication of preliminary notification u/s 11: 1 Feb. 2014*
- *date of publication of declaration u/s 19: 1 Oct. 2014*
- *date of award: 1 Aug. 2015*
- *date of taking possession by the Collector: 1 Sept. 2015*

- rate of land in the vicinity as per stamp duty A.S.R.: ` 200/s.mt.
- average rate of top 50% transactions in the last three years: ` 410/s.mt.
- rate of remaining land reduces to ` 300/s.mt. due to reduced size and changed shape

Working of Compensation amount

Market value of land as on 1 Feb. 2014: 5,000 x 40/-

= ` 20,50,000.00

2. Multiplied by the factor (say, 1.5) = ` 30,75,000.00 ..(a)

3. Solatium @ 100% = ` 30,75,000.00 ..(b)

4. Interest on M.V. (for 19.5 months) between 15 Jan. 2014 and 1 Aug. 2015 @ 12% p.a. = ` 3,99,750.00 ..(c)

5. Severance: 7,000 s.mt. @ ` 110/s.mt. = ` 7,70,000.00 ..(d)

Total amount of compensation (a+b+c+d) = ` 73,19,750.00

Say, ` 73,20,000.00

Conclusions

- *Drastic changes are found in the new Land Acquisition Act with respect to the old Act*
- *Land owners (losers) are attempted to be made partners in the development projects*
- *Land Acquisition process is likely to be lengthier, more time consuming and more land owners friendly*
- *Recently recorded transactions will have a great effect on compensation amount*
- *Valuers will have to play role in assessing compensation for buildings and other immovable properties*
- *'Competent engineer or any other specialist in the relevant field' – is not elaborated*

