

FISCAL POLICY INSTITUTE

PROJECT REPORT

LAND ACQUISITION IN KARNATAKA

**with a focus on compensation in
acquisition of land for the Companies
and Urban Layouts**

Submitted as a part of summer internship
during **1st February to 10th March, 2011**

by

Sharmendra Chaudhry
NLSIU, Bangalore.

Letter of Transmittal

March 10th 2011

Mr. P. R. Devi Prasad,
Director, Fiscal Policy Institute,
Government of Karnataka, Bangalore

Dear Sir,

I am pleased to submit the report on the topic “Land Acquisition Laws and Practices in Karnataka with a focus on the Compensation in Acquisition of Land for the Companies and Urban Layouts” in partial fulfilment of the requirements for the degree of Master of Laws (LL.M.) in Business Laws stream. I hereby declare that this is an original work done by me and the findings of this work have not been previously submitted for any publication.

Sincerely

(Sharmendra Chaudhry)
Summer Intern
NLSIU, Bangalore.

Enclosure: Final Report

Certificate

This is to certify that the project titled '**Land Acquisition Laws and Practices in Karnataka with a focus on the Compensation in Acquisition of Land for Companies and Urban Layouts**' submitted by Mr. Sharmendra Chaudhry as a part of summer internship is the result of the work done by him at Fiscal Policy Institute Bangalore, Finance Department, Government of Karnataka, from February 1st to March 10th under our guidance.

Place: Bangalore

Place: Bangalore

Date:

Date:

Mr. P. R. Devi Prasad IES

Mr. Y.C. Shivkumar

Director

Faculty

FPI, Karnataka

FPI, Karnataka

Acknowledgements

I am grateful to Shri P. R. Devi Prasad, Director, Fiscal Policy Institute, Bangalore, under whose guidance the present study was conducted. He has been giving valuable suggestions, generous help and corrections during all the phases of the project, without which the efforts could not have been completed successfully.

I would like to extend my gratefulness to Mr. Y.C. Shivkumar, Faculty, Fiscal Policy Institute, Bangalore, for his invaluable guidance and feedback provided at every stage of the project.

I am grateful to Ms. Kalpana Gopalan IAS, Secretary to the Government of Karnataka, and Doctoral Candidate, Centre for Public Policy Indian Institute of Management, Bangalore, for devoting her precious time in having a look over my research project and blessing me with her invaluable suggestions.

I am indebted to Mr. Prem Chand, Under Secretary, Urban Development, Government of Karnataka, in-charge of the BDA acquisitions. He told me that he deals with the acquisition of land for forming urban layouts in the city of Bangalore. He also told me about the procedure of payment and determination of the compensation to the land-losers.

I am also indebted to Mr. Ravindra, Deputy Secretary, Revenue Department, Government of Karnataka. He is in-charge of Land Acquisition matters. He made me aware of the various important points related to the fixation of the compensation package for the Land Acquisition.

I am equally indebted to all the Government Officers in Urban Development, Revenue Department, Commerce & Industries Department, Karnataka Industrial Area Development Board, Karnataka Udyog Mitra, for providing me useful guidance whenever I went to visit them.

I am also thankful to Smt. Anita V. Nazare, Special Officer, Fiscal Policy Institute, Bangalore, Mr. Mandar and Kum. Munawara Shaikila, Consultant, Fiscal Policy Institute, Bangalore, for their guidance and invaluable help in getting responses.

I am thankful to my fellow interns, Ms. Batool Zahoor Quazi, Ms. Khumtiya Debbarma, Mr. Mustafezur Mallick, Ms. Suvalaxmi Dash and for their enormous support, guidance and help at every juncture through exchange of idea and views on the study.

I am thankful to Officers and Staff at FPI and FPAC who have shown tremendous cooperation and support throughout the course of study.

I would like to thank Government of Karnataka for giving me an opportunity to work on this project at FPI.

I would like to thank all the respondents for giving their time and invaluable responses for this study.

The author alone is responsible for any errors and omissions.¹

Sharmendra Chaudhry
Summer Intern
NLSIU, Bangalore.

¹ It is addressed to the future researchers and readers to please feel free to revert to me with any questions and/or comments regarding this report. My email address is – sharmendrachaughry@gmail.com

Table of Contents

Letter of Transmittal	i
Certificate.....	ii
Acknowledgements.....	iii
Table of Contents.....	v
Table of cases.....	vii
Abbreviations.....	viii
1 Introduction.....	1
1.1 Scope and Objective	4
1.2 Methodology.....	5
1.4 Research Questions:.....	5
2 Legal provisions for land Acquisition in India	6
2.2 The Constitutional Framework	6
2.3 History of the Land Acquisition Act, 1894.....	8
2.4 Purpose and Powers of the Act	8
2.5 Procedure for the Land Acquisition.....	9
2.6 Evolution in Laws for Land Acquisition	12
3 Legal provisions for Land Acquisition in Karnataka.....	15
4 The Theory of Eminent Domain.....	17
4.1 Gainer versus Losers.....	17
4.2 Extent for the use of Eminent Domain	18
5 Acquisition of Land for Companies.....	21
5.1 For-profit Companies and the Public Purpose	22
6 Issue of Compensation.....	24
6.1 Provisions of Compensation under the Land Acquisition Act, 1897.....	24
6.2 Compensation under the Karnataka Industrial Development Policy 2009-2014..	28

7	Land Acquisition policy in Haryana	29
8	Gaps in the current set of Laws regarding the Compensation	32
9	Need for a fair amount of Compensation.....	35
9.1	Factors that lead to unjust Compensation	37
9.2	Compensation: Cash or Kind	37
9.3	Auction of the Land	40
9.4	Jobs as means of Compensation	41
9.5	Alternative Land as Compensation in Denmark	43
9.6	Land Acquisition in Turkey	44
10	Principles which should govern the determination of compensation	46
11	Budget 2011-2012 and Land Acquisition	50
12	Findings and Recommendations	52
12.1	Major findings.....	52
12.2	Recommendations.....	53
12.3	Scope for further research.....	55
13	Conclusion	56
14	Bibliography	58
15	Annexure.....	60
15.1	Annexure I	60
15.2	Annexure II	64
15.3	Annexure III.....	65
15.4	Annexure IV.....	67
15.5	Annexure V	70
15.6	Annexure VI.....	73
15.7	Annexure VII	75

Table of cases

1. *Anjani Molu Dessai v. State of Goa* : 2010 STPL(Web) 1083 SC 2010 STPL(Web) 1083 SC
2. *Attorney-General v. Harney* 54 L.T. Q.B. 232
3. *Executive Engineer, Karnataka Housing Board v. Land Acquisition Officer, Gadag and Others* 2011 Civil Appeal Nos. 53-54 of 2011 [@ SLP [C] Nos.27806-27807/2008]
4. *France Fenwick v. King* (1927) 1 K.B. 458
5. *H.M.T. Ltd. v. Mudappa* : 2007 Appeal (Civil) 7059-7060 of 2000
6. *Kelo v. City of New London*, 545 U.S. 469 (2005)
7. *Mohd. Asia v. State of V.P. and Others* : 2006(2) Land L.R. (Allahabad) 643
8. *Naveen Jayakumar and Others v. State of Karnataka and Others*, (1998) 4 Kar. L.J. 413 (DB)
9. *Nelson Fernandes and Others v. Special Land Acquisition Officer, South Goa and Ors* 2007 AIR 1414, 2007(3) SCR563
10. *Numaligarh Refinery Ltd v. Green View Tea & Industries and Anr.*: Appeal (Civil) 1401 of 2007
11. *National Thermal Power Corporation v. State of U.P.* (2007) 4 SC 709
12. *Ranvir Singh and Another. v. Union of India*: 2006(1) Land L.R. (Supreme Court) 416
13. *Ravindra Kumar v. State of U.P and Others*: (2005), Writ Petition No.1416 of 2005 Allahabad Law Journal, pp 34
14. *Sayyad Saheb Jada and Others v. State of Karnataka and Others*, 1987(2) Kar L.J. 108
15. *Smt. Anju and Others v. National Thermal Power Corporation*: (2006) 67 TTJ Delhi 182
16. *State of Punjab and Another. v. Gulab Kaur* : 2006(2) Land L.R. (Pb. & Hry.) 90
17. *Tehsildar Land Acquisition Officer v. T.V. Seesagiri Rao* 1990 (2) Andh WR 80
18. *Viluben Jhalejar Contractor v. State of Gujrat* : 2005 RD-SC 243 (13 April 2005)

Abbreviations

ADA	Agra Development Authority
BBMP	Bruhat Bengaluru Mahanagara Palike
BDA	Bangalore Development Authority
BTC	Baku-Tbilisi-Ceyhan
CDP	Comprehensive Development Plan
C&I	Commerce and Industry
DC	Deputy Commissioner
DDA	Delhi Development Authority
DLSWCC	District Level Single Window Clearance Committee
FAO	Food and Agricultural Organization of United Nations
GO	Government Order
GOH	Government of Haryana
GOI	Government of India
GOK	Government of Karnataka
HC	Hindustan Copper
HSI IDC	Haryana State Industrial and Infrastructure Development Corporation
HUDA	Haryana Urban Development Authority
IOC	Indian Oil Corporation
IPC	Indian Penal Code, 1860
KIADB	Karnataka Industrial Area Development Board
LA ACT	Land Acquisition Act, 1894
MFR	Minimum Floor Rates
MOIL	Manganese Ore India Ltd.
NCR	National Capital Region
PFC	Power Finance Corporation
PSU	Public Sector Undertakings
RINL	Rashtriya Ispat Nigam Limited

R&R	Resettlement and Rehabilitation
SEZ	Special Economic Zone
SHLCC	State High Level Clearance Committee
SLAOs	Special Land Acquisition Officers
SLSWCC	State Level Single Window Clearance Committee
SJVNL	Sutluj Jal Vidyut Nigam Limited
SOK	State of Karnataka
TDRs	Transfer Development Rights

Eminent Domain —

State Sovereignty:

Power of sovereign to take property for public cause without owner's consent, coupled with the obligation to make good the loss

Salus Populi Est

Supreme Lex:

Welfare of the people is the only consideration and may be said to be the corner stone of the law of Land Acquisition.²

² This is a latin maxim meaning the welfare of an individual yields to that of the community. "This phrase is based on the implied agreement of every member of society that his own individual welfare shall, in cases of necessity, yield to that of the community; and that his property, liberty and life shall, under certain circumstances, be placed in jeopardy or even sacrificed for the public good." - **Francis Bacon**

1 Introduction

Land is one of the scarce natural resources on earth. It is not possible to either increase or decrease the land. Hence, it must be ensured that it is managed judiciously and in a sustainable manner so that the common good of the people in a long run can be ensured. Creating wealth and looking after welfare of the citizens is difficult without the economic and infrastructural development. But the development at the cost of individual rights cannot be accepted as development in true sense. That means the individual rights need to be protected in economic development. In general, land is acquired for economic development resulting in displacement of the people. Hence the important thing is that large-scale displacements should be minimized to the extent possible and if the displacement cannot be stopped then there is a need to handle it with utmost care. In fact, the terms ‘minimum displacement’ and ‘non-displacing alternative’ are music to the ears, but not so easy a task to ensure. Fixation of adequate compensation to the land-losers can be one of the best ways to ensure minimum displacement in the sense that the displaced person will always be in a position to buy an alternative land for him.

There are some issues relating to the fixation and payment of compensation to the land-losers, which need to be taken care of in a comprehensive manner to ensure sustainable development. It is noticed through a study of various case laws³ that the dissatisfaction of the land-losers in terms of compensation leads them to a sense of hostility towards the government’s project of land acquisition. It is also a common understanding that if a person thinks that he is not properly compensated for the land which has been taken from him by the Government, he becomes hostile towards the his own Government. Various *bandhs* and protests witnessed in the recent past in India,⁴ along with a flood of cases in the Supreme Court⁵ are fair evidence for that. The protest in the month of April 2011 in Coimbatore district of Tamil Nadu for acquisition of over 8,500 acres of land by the Tamil Nadu Housing Board, can also be cited here as a latest example.⁶ It becomes inevitable to make sure that the land-losers are paid

³ Annexure V and VII

⁴ For some incidents of protests by people, refer to Annexure VII

⁵ For the list of cases decided by Supreme Court in the recent past, refer to Annexure I

⁶ The Times of India – 5th April, 2011; report available on http://articles.timesofindia.indiatimes.com/2011-04-05/coimbatore/29383726_1_acquisition-land-revenue-records

adequately. The fact is that these hostile activities of the people and their resultant protests and *bandhs* actually affect the development projects of the government to a great extent causing delay and increased cost of the project. Majority of the cases recently decided by the Supreme Court on land acquisition matters relate to the substantially to the issue of the amount of compensation paid by the government to the land-losers.⁷ Some of the issues related to the determination of compensation are as follows:

1. **Determining the value of land and the adequacy of compensation:** The most difficult question is to determine what should be the adequate amount of compensation. In many cases like *Numaligarh Refinery Ltd v. Green View Tea & Industries Ltd*⁸, the Courts have declared the compensation paid by the Government as inadequate.

2. **Fixation of the amount of compensation:** It has been found in many cases that the compensation paid is less than the actual market price of the land. In *Anjani Molu Dessai v. State of Goa*⁹ and *Amar Singh others Y. State of Haryana and others*¹⁰ where the Supreme Court examined that one of the main grievance raised by owners of such lands is that the compensation provided is a meagre amount as compared to the real market price.

3. **The inconsistency in awarding the amount of compensation is also one of issues to be dealt with:** In *Nelson Fernandes and Ors v. Special Land Acquisition Officer, South Goa and Ors*¹¹, the land was acquired for building a new broad gauge line of the Konkan Railways. The acquisition authorities gave Rs 4 per sq metre. The award was challenged in the District Court, which fixed the compensation at the rate of ₹ 192 per sq metre. The High Court reduced the compensation to ₹ 38. The Supreme Court while overruling the decision of the High Court and re-fixing the compensation at the rate of ₹ 250, criticised High Court's decision in these words - "In our opinion, the compensation awarded by the high court had no basis whatsoever and was not supported by cogent reason and it did not consider the future prospect of the

⁷ List of the latest cases on land-acquisition decided by the Supreme Court is given in the Annexure V

⁸ 2007 Appeal (civil) 1401 of 2007

⁹ 2010 STPL(Web) 1083 SC

¹⁰ 2006(2) Land LR. (Pb. & Hry) (DB) 654

¹¹ 2007 AIR 1414, 2007(3)SCR563

development of the land in question". In another case of *Viluben Jhalejar Contractor v. State of Gujrat*¹², compensation was awarded ranging from ₹ 35 to ₹ 60 per sq metre by the Government. The subordinate court fixed the market value of the land at ₹ 200. On appeal, the High Court awarded a compensation of ₹ 180.

4. Time-limit within which the compensation should be paid.
5. **Time taken by the Court in delivering the judgment:** The Courts while delivering the judgments in land acquisition matters take a very long time. As in the case of *H.M.T. Ltd. v. Mudappa*¹³ it has been found that the judgment took 10-12 years. In this case, the land was taken over in 1978 for establishing the watch factory of the public sector undertaking and the judgment was delivered in 2010.
6. **The manner of giving compensation:** The current mode of one-time disbursement of compensation is an issue which should be taken note of. The mode of compensation should be such as to ensure the sustainability in the sense of regular income to the land-loser. The compensation package and R&R (Resettlement and Rehabilitation) should be sustainable, and not only one-time event. It is common understanding that if a person does not have proper awareness, investment skills or ability to handle cash, one-time monetary compensation is dwindled away or diminish in extravagancy or loss by fraud, leading the land-loser to an uneasy situation.
7. **The types of others benefits that can be given to the land-losers:** Alternative types of compensation or otherwise, along with the adequate cash compensation can be taken as a measure for the proper and equitable valuation of land – for instance, allotting a part or a site of the developed land (as is currently in practice in Karnataka) or giving equity shares in commercial venture or offering jobs to the land-losers and displaced persons or offering TDRs (Transfer Development Rights). This will result not only in compensating for the loss of land but also in ensuring proper R&R.

¹² 2005 RD-SC 243 (13 April 2005)

¹³ 2007 Appeal (civil) 7059-7060 of 2000

It is argued here that if we try and decide compensation in a scientific way, litigation can be minimized to a great extent. A justifiable way of calculating compensation can avoid disputes. The case of *NTPC v. State of U.P.*¹⁴ is a case on the point. In this case, the farmers who were the land-losers questioned the procedure of arriving at the compensation by the Government. The Supreme Court put the onus of proof on the land-losers by applying the principles of contract. The land-losers won the case and were able to prove why the compensation was unjustified and not scientific.

1.1 Scope and Objective

The research is focusing over the land acquisition laws and practices in the State of Karnataka. The central issue dealt with in the research is the compensation package given by the Government to the land-losers. The paper presents and discusses the issues that even after the acquisition of land with due payment of compensation, the communities go ahead and put constraints before the Government and hinder the developmental process. Many cases like the wide protest happened in the case of Arkhavathy Layout shows that the people are hostile towards the land-acquisition policies of the Government, especially with reference to the compensation. The research is an attempt to analyse that whether the current practice of determining the compensation in Karnataka needs some review by the Government so that the problems like Arkhavathy Layout may not happen in future. Because these agitations and *bandhs* practised by the people, act as a major hindrance in the developmental projects. The following are the key objectives of the research:

1. To study the current compensation policy adopted by the State of Karnataka.
2. To compare the compensation policy practised in Karnataka with the compensation policy practised in State of Haryana, the much debated and appreciated compensation policy nowadays in India.
3. To make a comparison of the land acquisition laws in India with the laws of other countries like Denmark, Turkey, U.K. and U.S.
4. To analyse whether the current practice of fixing the compensation packages in land acquisition matters in Karnataka is a time-tested one.

¹⁴ (2007) 4 SC 709

5. To see whether there is a need to have a re-look at the policy.

1.2 Methodology

The methodology of research has been both descriptive and analytical. The researcher has used both primary and secondary source of data. As a part of the primary research, the data has been collected by interviewing various Government officials in the departments like BDA, BBMP, KIADB, Urban Development Department, Revenue Department, etc. As part of the secondary research, the data has been collected from books, articles, websites, etc. This project attempts to find answers to the following data, analysis and research questions:

1.4 Research Questions:

1. Whether compensation given only on the basis of market value of the land is sufficient or not?
2. Whether the other factors like – absence of any other source of income apart from land, income from affected business, commercial value of the land, income from tree or perennial crops, etc. should also be taken into consideration while determining the compensation?
3. In case of acquisition done for companies where profit is the motive, whether the public purpose is being served or not?
4. Should the litigation expenses regarding fair compensation be borne by the State or the Land Acquisition Authority?
5. Whether the compensation policy of State of Haryana (continuous annuity for 33 years) is workable in State of Karnataka or not?
6. Whether the alternate land can be given as compensation for the acquisition of agricultural land in Karnataka?
7. Should the principles of equity and equivalence in Economics be adopted while determining the compensation?
8. Can the compensation be determined in Karnataka through the process of negotiation?

2 Legal provisions for land Acquisition in India

“What one takes must be paid for, is the basis on which the initiation of the law of acquisition commenced.”¹⁵ In *Attorney-General v. Harney*¹⁶ and *France Fenwick v. King*¹⁷, the observation was placed succinctly in the following words:

“The rule has long been accepted in the interpretation of Statutes that they are not to be held to deprive owners of their property without adequate compensation unless the intention to do so is made quite clear. Where property has been compulsorily acquired by the Government or a public body and possession taken by it, it must pay not only compensation but also interest on the amount awarded as compensation from the date of taking possession”.

2.2 The Constitutional Framework

The Constitution as stood originally had Article 19(f) declaring Right to Property as a fundamental right to every citizen of India as a part of the broad Right to Freedom under Article 19. It further had Article 31 providing some other provisions related to the Right to Property. Consequent to the court’s interpretations given to these Articles, particularly while reading Article 14, 19 and 31 in a tandem, many problems arose in the way of the government in the form of various hindrances to its development projects. A lot of infrastructure development projects involving the land acquisition were struck down by the Courts being *ultra vires*, as a result the infrastructural development was hampered to the greatest extent. For meeting with all these difficulties, the Constitution 1st (Amendment) Act, 1951 was brought into force to partly do away with the Right to Property as a fundamental right. Article 31A was inserted in the Constitution with the retrospective effect stating that no law which provides for acquisition by the state of an estate can be held void as being *ultra vires* Article 14 or 19. It also provided for payment of compensation at a rate not less than market value of property.

The laws on the matter of Acquisition and Requisition of property can be enacted by the both Central and the State government, as this subject is included in the concurrent list of the Seventh Schedule under the Indian Constitution. The basic law or legislation under which the

¹⁵ H. Beverley, *Commentary on The Land Acquisition Act, 1894*, (9th Edn. 2007), at p. 4

¹⁶ 54 L.T. Q.B. 232

¹⁷ (1927) 1 K.B. 458

land is acquired in India is the Land Acquisition Act, 1894 (Central Act), though there might be a number of other enactments passed by the respective State Legislatures. The Act was the effort of the British Government, which was adopted by the Indian Independence (Adaptation of Central Acts and Ordinances) Order, 1948. The law of Land Acquisition has gone through a lot of amendments and new enactments have been done by both the Central and the State governments to meet the changing needs of the time.

Both the State Government and the Central Government can acquire land for the various purposes mentioned under the List I and II of the Seventh Schedule of the Indian Constitution. The term “appropriate government” in the LA Act, 1894 would refer to both the Central and State governments, depending on which of them issues a notification under Section 4 for the acquisition of land.

Under Article 31(2) of the Constitution, State can acquire land only for the ‘Public Purpose’. Generally speaking - public purpose means any objective where the general interest of the public is supposed to be fulfilled, though it may jeopardise with the individual interest of some person or group of persons. It does not matter that how much general interest of the public is going to be fulfilled, but even a fraction the community interest would well be included with the expression public purpose. In other words, it may be understood to be a purpose for which the general public at large would be benefitted. Though the term ‘public purpose’ has been defined under Section 3(f) of the Land Acquisition Act, 1894, yet it cannot be taken as complete definition in itself. The meaning of the term ‘public purpose’ cannot be construed in a strict sense within the definition under Section 3(f) of the LA Act. Section 3(f) provides an inclusive and not the exclusive definition of the term ‘public purpose’. It is not possible to formulate a complete definition of the term public purpose. ‘Public Purpose’ includes the following aims:

1. *In which general interest of the community, or a section of the community, as opposed to the particular interests of the individuals, is directly or vitally concerned;*
2. *Which would preserve or promote public health, comfort or safety of the public, or a section of it, whether or not the individual members of public may make use of the property acquired;*
3. *Which would promote public interest, or tend to develop the natural resources of the State;*

4. *Which would enable department of the government to carry on its governmental functions;*
5. *Which would serve the public, or a section of it, with some necessity or convenience of life, which may be required by the public as such, provided that the public may enjoy such service as of right; or*
6. *Which would enable individuals to carry on a business, in a manner in which it could not otherwise be done, if their success will indirectly enhance public welfare, even if the acquisition is made by a private individual, and the public has no right to any service from him, or to enjoy the property acquired; or*
7. *If the use to which the property would be put, is one for the widespread general public benefit not involving any right on the part of general public itself, to use the property;*

Government has been declared to be the best judge by the courts in many cases so as to determine the public purpose. The decision of the government in determining the public purpose is final except in case of the colourable exercise of power. The court cannot intervene in the decision of the government as to select the lands for acquisition in furtherance of the public purpose.

2.3 History of the Land Acquisition Act, 1894

The British Government first outlined the Regulation 1 of the Act in 1824 which was then applied throughout the Bengal provinces. This Act enabled the government to acquire immovable property or land at a 'fair and reasonable' price for any public purpose like construction of roads, canals, etc. In Act I of 1850, some of the provisions of the regulation were extended to Calcutta. This was necessitated by the requirement of land for the purpose of building a railway network. In 1839 and 1852, Act XXVII and XX were introduced in Bombay and Madras to facilitate construction of public buildings. The first Act to be applied to entire British India was Act VI of 1857 and it repealed all of the previous acts pertaining to land acquisition. Finally the complete Land Acquisition Act of 1894 was enacted and it replaced the previous Act X of 1870. This Act, with timely amendments, has governed acquisitions of land by the government after India's independence in 1947.

2.4 Purpose and Powers of the Act

The Act of 1894 was created with the purpose of facilitating purchase of privately held land, by the government, for public purposes. This means the government can acquire land for

setting up housing, health facilities, educational institutions, rural planning, etc. Land can be acquired by the central government if the purpose is for the Union, and by the State Government for all other purposes. Local authorities, companies, registered societies and registered co-operative societies can also seek acquisition of land through the government for development activities. The latest amendment in the Land Acquisition Act was through the Land Acquisition (Amendment) Act, 1984 with the following objectives:

1. To amend the law for the acquisition of land for *public purposes* and for *companies*, and
2. To determine the amount of compensation to be paid on account of such acquisition.

The Act thus declares the right of the Government to acquire land and the (right of the) owner of the land to have a judicial determination of compensation payable to him by the Land Acquisition Courts.¹⁸

2.5 Procedure for the Land Acquisition

The Act outlines the following steps for land acquisition:

1. **Investigation:** After the proper papers have been filed for acquisition of land, and the government is satisfied about the purpose, area and other rules, the Govt. issues a preliminary notification under Section 4(1), followed by the hearing of objections under Section 5A. The revenue officers are appointed for holding an inquiry. After this is cleared, the owner of the land is prohibited from selling or making any other modifications to the land.
2. **Objections and Confirmation:** If any person has objection to the proposed acquisition of his land, he can file objection within thirty days from the date of notification. Such objections will be heard by the Collector. The Collector has to submit a report to the government who will declare the land for acquisition after which the Collector proceeds with the claim.
3. **Claim and Reward:** The Collector, without being involved in the proceedings, offers a fair price to the land-loser based on the market price of the land. After declaring the award, it has to be paid by the collector under Section 11 within a period of the two years.

¹⁸ Om Prakash Aggarwala, *Commentary on the Land Acquisition Act*, (8th Edn. 2008), at p. 2.

4. **Final notification:** The final notification is issued by the Government under Section 6 of the LA Act within the period of three years from the date of preliminary notification under Section 4(1) of the LA Act. It was held in *Sayyad Sheb*¹⁹, it was held that as far as the three years period is concerned, the date of the declaration is concerned *viz.*, the date of notification under Section 6(1) which should be looked into and not its publication in Official Gazette.
5. **Reference to Court:** If the person who receives the award is not satisfied, then he can submit a written application to court within six weeks of declaration.
6. **Apportionment:** Each of the claimants is entitled to the value of his interest, which he has lost by compulsory acquisition. Thus, a variety of interests, monetary rights and claims in the land are valued.

The whole proceedings relating to the land acquisition under the Land Acquisition Act are carried on by the Land Acquisition Collector, who is an officer appointed by the government for this purpose. The proceedings carried on by the Land Acquisition Collector under the LA Act are of administrative nature. These proceedings are neither judicial nor quasi-judicial. For the purpose of acquiring a land in any locality, a notification has to be issued by the government under Section 4 of the LA Act in the official gazette and the newspaper. The government thereby gives a public notice entitling anyone on behalf of the Government to access the land in question for setting boundaries, digging, taking level, etc. The notification serves as the declaration of the intention by the government for acquiring the land. The government officials are thereby entitled to investigate the land to assimilate whether the land is suitable for the purpose for which it is going to be acquired. It is also mandatory for any person or officer authorised by the government to issue seven days notice declaring his intention to enter into the land or the property.

Section 5-A authorises any interested person in the land to object to the land acquisition process where the land has been notified by the government under Section 4 of the LA Act. An interested person in land is a person who is entitled to get compensation for the acquired land. He can raise an objection by way of writing or in person or both. In case of such objection by the interested party, the collector makes due inquiry to such an objection. After such inquiry, the Collector forwards the report to the government. The decision of the government in such a case would be deemed final. The government, within one year of such a

¹⁹ *Sayyad Saheb Jada and Others v. State of Karnataka and Others*, 1987(2) Kar L.J. 108

report from the Collector under Section 5-A of the LA Act, may issue a declaration under Section 6 for acquiring the land.

After making the declaration under Section 6, an order for acquisition of land under Section 7 has to be taken by the collector. The next step in the process of acquisition is that collector has to cause land to be marked out, measured and appropriate plan to be made, unless it is already done. Requirement of this deals only with approximation and does not require exact measurement. An important process that takes place under this section is demarcation, which consists of either marking out boundaries of land to be acquired or by cutting trenches or fixing marks as posts. The object is not only to facilitate measurement and preparation of acquisition plan, but also to let the private persons know what land is being taken. It is to be done by land-acquiring body, that is, the government department or company, whichever may be the case. Section 48 of the LA Act makes it a criminal offence if any person creates an obstruction to the action taken by an authorised person under Section 8 or Section 4.

Section 9 requires that collector to cause a public notice at convenient places expressing government's intention to take possession of land and requiring all persons interested in the land to appear before him personally and make claims for compensation before him. In effect, this section requires collector to issue two notices one to the locality of acquisition and other to occupants or people interested in lands to be acquired, and it is a mandatory requirement.

Next step in the process of acquisition requires a person to reveal the names or information regarding any other person possessing interest in the land to be acquired and the profits out of the land for the last 3 years. Failure to reveal such information to the public officer makes him liable under Sections 175 and 176 of the IPC. The object of this step is to enable the collector to ascertain the compensation to be given to the proper persons.

The final set of collector's proceedings involve an enquiry by the collector into the objections made by the interested persons regarding the proceedings under Section 8 and 9 and making an award to persons claiming compensation as to the value of land on the date of notification under Section 4. The enquiry involves hearing parties who appear with respect to notices, investigate their claims, consider the objections and take all the information necessary to ascertain the value of the land, and such an enquiry can be adjourned from time to time as the collector thinks fit and award is to be made at the end of the enquiry.

The Collector is bound under Section 11 to ensure that the interests of all persons interested in land are duly safeguarded, even if they do not appear before him personally. While awarding compensation, the Collector has to take into consideration various factors like the approximate value of land and other specific factors. Value of the neighbourhood property can be used as criteria to determine the value of the property in question. The minimum period within which award should be made is 2 years.

2.6 Evolution in Laws for Land Acquisition

India being the second amongst the most populated countries in the world after China and with varied use of land, the challenges in the process of Land Acquisition are mounting. This can be evidenced from the fact that quiet a number of fundamental issues in the last decade have been related to the Land Acquisition matters including the '*Narmada Bachao Andolan*' and the '*Nandigram*' incident, the recent incident being the *Greater Noida* incident. Apart from the issues related to the land acquisition, more and more lands are required for various government projects including the Special Economic Zones. There has been quiet an evolution of the Land Acquisition Laws currently in existence in India in the last decade. Initially, no relevance was given to the wishes of land-losers, but now, the law is trying to make provisions for objections and alternative remedies if the land-loser finds the compensation to be inadequate.

Private rights in a land or property are expropriated through the compulsory acquisition. Compulsory acquisition acts as a restraint on the right of individual where they cannot sell-off their property as per their wishes. The Law of Land Acquisition is aimed at legalising the acquisition of land for public purposes, which is actually owned by the private individuals for the payment of an equitable compensation.

The law of land acquisition is now in an evolutionary mode more emphasising towards the protection of individual rights, which can be evidenced with the pending Land Acquisition Amendment Bill 2007 to the Land Acquisition Act, 1894. Some important features of the Land Acquisition Act Amendment Bill, 2007 can be cited as below:

1. Under the original LA Act, 1894, 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 that have lost any traditional rights as well as individuals with tenancy rights under the State law²⁰.

2. In addition, if any damages are incurred on land excluded from acquisition proceedings, the appropriate owner must be compensated within six months.
3. 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.
4. 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.
5. Land owners whose property has been acquired under urgency shall be compensated an additional 75% of the market value of the land.
6. 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.
7. Market value of the land to be computed by Percentage of Sale Deeds: Three criteria are prescribed by the Bill for determining the market value of land, the highest value among which should be adopted by the Collector for the purpose of fixing the actual value of land. The criteria refers to the sale prices of recently done sales of similar lands, computed from "not less than 50%" of the total transactions, "where the price has been higher".
8. The Bill requires the company to offer shares or debentures. By accepting shares, the land owner may be benefitted by way of appreciation in the market value of the shares, regular dividend and bonus shares, etc. But at the same time, equity is a risk bearing investment and if the company incurs losses then the land-loser can lose substantive amount in terms of reduction in the market value of shares. Similarly, 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.²¹

²⁰ http://www.prsindia.org/uploads/media/Land%20Acquisition/1197003952_Land_20Acq.pdf, visited on 10th Feb. 2011

²¹ <http://www.indiatogether.org/2008/may/law-land.htm>, visited on 6th Feb. 2011

All the provisions discussed above regarding the fixation or determination of compensation proves that it is not so easy to formulate a fool-proof policy for compensation in land acquisition. Any sort of policy adopted by the Government is subject to criticism and dissatisfaction of the land-losers. All we can do is first to highlight the various points of dissatisfaction of the land-losers and then to address which policy should be best suited for the time.

3 Legal provisions for Land Acquisition in Karnataka

The land acquisition Act, 1894 was amended by the Parliament of India in the year 1984, substituting the words “the State of Jammu & Kashmir” for the words “the territories which, immediately before the 1st November, 1956 were comprised in Part B States” in Section 1(1) of the LA Act. Hence the LA Act, 1894 was extended to the State of Karnataka. Because of this the Karnataka Land Acquisition Act, 1961 (State Act) dealing with land acquisition is impliedly repealed with effect from 24th September, 1984, when the Central Act (LA Act) was extended to whole of India excepting State of Jammu & Kashmir.²² Even if State Act is not held repealed, it cannot be operative after 24th September, 1984, and has to give way to Central Act of 1894. Acquisition proceedings initiated, conducted and concluded under the State Act which is no longer operative and is deemed to have been repealed, is without jurisdiction and is liable to be quashed.

It was held by the Supreme Court in *Naveen Jayakumar and Others v. State of Karnataka and Others (1998)*²³, that the GOK (Government of Karnataka) and the State Legislature themselves are shown to be aware, conscious and convinced that the State Land Acquisition Act, 1961 was not operative. In the absence of a legislation, which stood impliedly repealed with the extension of the Central Act, the respondents were not justified in initiating action under the aforesaid statute. The acquisition proceedings initiated, conducted and concluded under the aforesaid Act, therefore, being without jurisdiction, are liable to be quashed.

The following are the different laws governing land acquisition in the State of Karnataka:

1. Acquisition of land for Grant of House Sites Act, 1972 (Karnataka Act 18 of 1973).
2. Acquisition of Land for Grant of House Sites Rules, 1973.
3. Petroleum and Minerals Pipelines (Acquisition of Right of User in Land) Act, 1962 (Central Act of 50/1962).
4. Requisitioning and Acquisition of Immovable Property Act, 1952 (Central Act 30/1952).
5. State Acquisition of Lands for Union Purposes Validation Act, 1954 (Central Act 23 of 1954).

²² Satpal Puliani, *The Land Acquisition Manual*, (2nd Edn. 2008), at p. 6.

²³ *Naveen Jayakumar and others v. State of Karnataka and Others*, (1998) 4 Kar. L.J. 413 (DB).

6. The Karnataka Industries (Facilitation) Act, 2002.
7. The Karnataka Industries (Facilitation) Rules, 2002.
8. The Karnataka Land Reforms Act, 1961 (Karnataka Act No. 10 of 1962)
9. The Karnataka Urban Development Authorities Act, 1987
10. The Land Acquisition Act, 1894 (Central Act 1 of 1894) – adopted by the SOK with certain amendments.
11. The Land Acquisition (Karnataka) Rules, 1965.
12. The Land Acquisition (Companies) (Karnataka) Rules, 1973.
13. The Land Acquisition Mines Act, 1885 (Central Act 18 of 1885).

4 The Theory of Eminent Domain

The power of the sovereign to take private property for public use (called in America Eminent Domain – an expression believe to have been first used by Grotius) and the consequent rights of the owner to compensation are well-established.²⁴ Eminent domain may be understood as the power of the State as to appropriate any land from a private person for a public purpose. The nature of this appropriation is changed from take-over to acquisition by virtue of the compensation paid by the State to the private land-owner for such an acquisition. In justification of the power, two maxims are often cited: *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).²⁵ The Land Acquisition Act, 1894, is actually based on the doctrine of eminent domain. The application of this doctrine in India gives immense power to the State for acquiring the land without almost giving an opportunity to the land-owner to legally question the acquisition.

Neither the extinction of colonial rule nor the enactment of the Constitution could actually alter the situation to affect the existence of this power. In the 50's and 60's, the power of eminent domain was used against zamindars and feudal landholders, which actually gave validation to it and caused its consolidation.

In Britain, the concept of land acquisition is termed as the concept of Compulsory Purchase. Under this law, the State is empowered (as an exception to the general rule) to compel a land-owner to surrender the land to the State for a particular public purpose. The law can be said to be based on the concept of Utilitarianism according to which the social interest prevails over the individual interest in matters of holding the property or land.

4.1 Gainer versus Losers

Government authorities control the use of any given piece of land, particularly its change of use from agriculture use to other uses such as industry, residential or infrastructure, which can tremendously increase land value. Since under the framework for land acquisition by the government, compensation to the landholders is based on the current use, the farmers who lose land feel aggrieved about the low compensation they get. On the other hand, the land

²⁴ 10th Report of Law Commission of India, *Law of Acquisition and Requisitioning of Land*, at p. 1

²⁵ *Ibid*

acquirers and those owning land in the surrounding area stand to gain – because the project itself adds value to the land where it is situated and its adjoining areas and hence support the acquisition. Since the government is generally perceived to align itself with the interests of the land acquirers, the ire of the protestors is directed towards the government.

4.2 Extent for the use of Eminent Domain

On the ground that the interest of the community is superior to the interest of an individual, it is only for projects that serve ‘public purpose’ the use of eminent domain (equivalently the undermining of private property rights) can be justified. But even land for projects meant for ‘public purpose’ should be acquired by the market route, if it is possible, because the voluntary transactions are socially more desirable and acceptable than the involuntary ones. Thus, there is a case for use of eminent domain only under the overarching framework of public purpose and only when the market fails. Three situations can be thought of:

- 1. Hold-out Problem:** Hold-out problems arise when some people refuse to sell their land, without which a project cannot materialize. The chances of holdouts are high when the area required is large and contiguous and holdings are small, as in the case of India. In such cases, market solutions are not possible and coercive powers of the government become necessary. If, however, a majority of land holders of an area sought to be purchased holds out, it may reflect unwillingness of the buyer to offer a price high enough to induce voluntary sales rather than rent-seeking behaviour or emotional attachment to land on the part of land holders. Eminent domain is thus justified, if only a small fraction of land-owners hold out and their land constitutes a relatively small fraction of the total land.
- 2. Non-substitutable Land for Public Purpose:** The use of eminent domain for land acquisition is also justified when the public purpose in question is served only by a specific piece of land, which has no substitute. Lands of this type are either location-specific or alignment-specific. For example, mineral extraction can take place only where minerals occur naturally. Similarly, land for strategic defence initiatives, ports, and widening of roads often cannot be substituted. In these cases, it may make sense to invoke eminent domain powers even when all the land holders involved refuse to sell their land.

3. Outdated cases: While the above two cases constitute the rationale for eminent domain the world over, there is an additional attraction for use of eminent domain in India, which relates to land records. Since land records in India are generally inaccurate, there are widespread land-related disputes and litigation. Further, as the land holdings here are typically small, direct land acquisition (that is, market route) by projects generally requires each project promoter to deal with a large number of landowners, and therefore the litigation risk tends to be very high. This risk is eliminated in the case of the eminent domain route under which land vests completely free of all encumbrances in the government, which then transfers it to the projects. Similarly, it is easier to deal with squatters with the use of eminent domain than the usual recourse.

The legal view on ‘public purpose’ in India is quite liberal and the government enjoys enormous powers in determining what constitutes ‘public purpose’. It is pertinent to note that this phenomenon is not confined to India alone. The eminent domain powers are abused not only to favour enterprises – public or private – but also to advance the objectives of the government, which may simply be interested in raising tax revenue. Even in the United States, which champions the cause of private property rights, the abuse of eminent domain powers is not uncommon. Subsequent to the Court’s decision²⁶ on the *Kelo*²⁷ case, there was widespread outrage across the USA and a multitude of states introduced laws restricting the use of eminent domain.²⁸

The Land Acquisition (Amendment) Bill, 2007 has been introduced in the Parliament, so as to provide a stricter definition of ‘public purpose’. The scope of ‘public purpose’ has been restricted. It provides acquisition of land for:

- (a) Strategic purposes relating to naval, military, and air force works or any other work which is vital to the state;
- (b) Government’s own infrastructure projects which provide benefits to the general public; and
- (c) Acquisition of land for a ‘Person’ (which includes any company or association or body of individuals), if the person requires land for a purpose which is useful to the public

²⁶ <http://caselaw.lp.findlaw.com/scripts/gatecase.pl?court=US>, visited on 25th Feb. 2011

²⁷ *Kelo v. City of New London*, 545 U.S. 469 (2005)

²⁸ http://en.wikipedia.org/wiki/kelo_v._New_London, visited on 3rd Feb. 2011

and has already lawfully acquired up to a minimum of 70% of the total land required for the project.

- (d) The aim of public policy should be to minimize the scope of eminent domain and make it less attractive *vis-a-vis* market transactions.

The acquisition of land by the government in a fast developing country like India is continuously increasing due to rapid economic development, development projects, SEZs, urban development projects, infrastructure development, etc. resulting in an increased pressure on land. Hundreds of villages are acquired by the Indian Government under doctrine of “Eminent Domain” for greater good and development purposes, as a result of which, millions of people become displaced from their homes.²⁹

²⁹ According to available reports, more than 21 million people have been displaced due to development projects in India. *See* the report on India by Internal Displacement Monitoring Centre of U.N. Office of High Commissioner on Human Rights at <http://www.ohchr.org/EN/Pages/WelcomePage.aspx>, last visited on 15th February, 2011.

5 Acquisition of Land for Companies

The public perception on land acquisition is generally negative when land is acquired by the government for the Companies, whose sole objective is seen to be profit maximization. In contrast, people are more tolerant of acquisition by the government either for itself or its enterprises, as the projects promoted by the public sector are perceived to enhance the welfare of the society at large and not that of any private person or group. Traditionally, bulk of the land acquisition was by the government (defence, railways, etc.) or public sector undertakings. With liberalization, more and more disinvestment and privatization is happening in India in infrastructure as well as industries, resulting in higher private demand for land. Currently, public sector units account for over one third of the market capitalisation.³⁰ In the Budget for the year 2011-12, the GOI (Government of India) has proposed an ambitious disinvestment target of ₹ 95,000 crore from sale of shares in public sector companies over next three fiscals, including ₹ 40,000 crore in 2011-12.³¹ In the Budget for the year 2010-11, the GOI targeted to raise ₹ 40,000 crore through disinvestment. However, it mopped up only around ₹ 22,144 crore by diluting its stake in six companies – SJVNL (Sutluj Jal Vidyut Nigam Limited), Engineers India, Coal India, Power Grid, MOIL (Manganese Ore India Ltd.) and Shipping Corporation. In 2011-12, the government is likely to dilute its stake in IOC (Indian Oil Corporation), PFC (Power Finance Corporation), HC (Hindustan Copper), RINL (Rashtriya Ispat Nigam Limited), among others.³²

While these cases of growing conflict are difficult to resolve, it may be possible to reduce tension by addressing the policy and regulatory issues relating to eminent domain principle, which is classified as follows:

- a. Issues related to purposes for which the principle of eminent domain can be used; and
- b. Compensation that needs to be given to those affected by this action.

³⁰ <http://in.finance.yahoo.com/news/Rs-40K-cr-PSUs-disinvestment-pti-2830397331.html?x=0>, visited on 10th March, 2011

³¹ The Times of India – 28th February, 2011

³² <http://profit.ndtv.com/news/show/govts-ambitious-rs-95-000-cr-target-from-disinvestment-142965>, visited on 10th March, 2011

5.1 For-profit Companies and the Public Purpose

Company means a company formed and registered under the Companies Act, 1956.³³ The motive behind incorporating a company is to earn money or to maximize profit. It is hard to believe that any project or venture started or carried-on by a company is not aimed at maximizing its profit, or is aimed to serve only a public purpose useful for the welfare of the society. Even if we talk about a Government Company or a Public Sector Undertaking (PSU), we cannot say definitely that the company's project is going to serve the public welfare. The reason behind this is that a Joint Stock Company, either private limited company or a public company, is a result of the joint money contribution of the people or the shareholders. It is called a joint stock company because its stocks are held by various persons in their individual capacity who are called as the shareholders of the company. People buy the stocks of a company only in anticipation of earning profit. The 'will' of the investors in a company is to earn profit or to get some return over their investments. The 'will' of its shareholders is the will of the Company. Hence, it is very difficult to assume that the first priority of a company while starting a new venture or a project would be the welfare of the society and not the profit-making. Though it may be argued that a particular venture undertaken by a Company may indirectly benefit the society as a whole:

1. by creating job opportunities,
2. by inducing the infrastructural development,
3. by inducing the economic development of the country as a whole,
4. by contributing into the increased GDP growth of the country,
5. by increasing the supply of consumer products in the market on a reasonable price.

Hence, it is an area where the law needs to be very much clear and certain as to how to ensure that a particular venture of a company for which the land is being acquired, is going to serve the public purpose or the welfare of the society.

Further, for-profit companies could engage in two broad categories of projects: infrastructure service projects and project for other private purposes (such as manufacturing cars). There is always a question mark as to whether these two types of companies should be treated at par or differently. It is suggested that these two types of companies should not be treated at par, because a company engaged in infrastructure service projects is connected with the direct

³³ Section 3 of the Indian Companies Act, 1956

service to the general public as a whole, while a car manufacturing company is supposed to serve only a few class of citizens, especially who can afford to own a car.

To qualify for access to eminent domain, it is often enough for the company to engage in public purpose, even if the project in question may not be for a public purpose. This is an area which should be given a special focus, because the land should be acquired only where a public purpose is attached with the project, and not merely for a company's individual welfare and profit-making. The purpose of the project in question should be taken due consideration while acquiring land. It should be ensured that the power of eminent domain is not abused so as to damage the very rights of an individual.

6 Issue of Compensation

The issue of compensation is the central focus of this research paper. Compensation is a means to make good the loss of property suffered by the land-loser because of his land being acquired by the Government for the fulfilment of a certain public purpose. There are a few issues attached with the criteria or method of determining the amount of compensation to be paid to the land-loser. However, before going to discuss those issues, it is inevitable to understand some basic legal provisions related to the fixation of compensation.

6.1 Provisions of Compensation under the Land Acquisition Act, 1897

Sections 23 and 24 of the LA Act, 1894 specifically deals with the computation of the amount of compensation. Section 23 lays down the matters to be taken into consideration while determining the amount of compensation for the land to be acquired, while saying that the market value of the land at the date of publication of notification under Section 4 (1) of the Act should be kept in mind. It is well settled that the Land Acquisition Officer is competent to collect evidence during the inquiry of the market-value of three years preceding the notification and then fix the market value. The market-value so fixed, however, is not binding on the claimant, neither fixation of market-value by the Collector is conclusive nor final.³⁴ It has been held in *Tehsildar Land Acquisition Officer v. T.V. Seesagiri Rao*³⁵, that the absence of rebuttal or corroborative evidence in proof of the offer of the Government in the award, will not absolve the Court of its judicial function of appreciation of evidence. Under Section 23 while determining the amount of compensation, the Court is required to take into consideration the market-value of the land on the date of notification under Section 4, thereof.

It has been held by the Supreme Court in *State of Madras v. P. Seetharamathal*³⁶, that the market rate must be determined by reference to the price which a willing purchaser or vendor is intended to agree. The Court can rely upon such transaction which would afford a guide to fix the price. The damages, if any, sustained by the persons interested shall also be acquired. The rent, which an owner was actually receiving at the relevant time, or the rent, which the neighbouring land of similar nature is fetching, can be taken into consideration.

³⁴ B.L. Bansal, *Law of Acquisition of Land in India*, (1st Edn. 2004), at p. 543.

³⁵ 1990 (2) Andh WR 80

³⁶ AIR 1972 Mad 170

In *Mohinder Singh v. State of Punjab and others*³⁷, the question before the Supreme Court was whether the Land Acquisition Collector has the power or jurisdiction to modify the award made by him under Section II of the Act by reducing the amount of compensation awarded by making a fresh/supplementary award after the period of two years prescribed under Section II A of the Act. The answer was – ‘no’. Modification or revision in the final Award, which was made by the Land Acquisition Collector after making the award under Section II of Act is not permissible in exercise of the power conferred under Section 13-A. Once the award is made after the approval, the same becomes final and the said award cannot be touched by the Collector or even by the appropriate Government. After making the Award, the Land Acquisition Collector became *functus officio*.

Determination of market value of land is still a big concern. Factors which should be taken into consideration while determining the market value of land are still not certain. In *Ranvir Singh and anr. v. Union of India*³⁸, the question was that whether the factors like (a) notifications issued by the Union of India (b) brochure issued by the Delhi Development Authority (DDA), taken by the High Court while awarding compensation, can form basis for determining the market value of the acquired lands. The answer given by the Supreme Court was ‘no’. It was held that the market value of fully developed land cannot be compared with wholly underdeveloped land, although they may be adjacent or situated at a little distance. Nature of land plays an important role. Sale deed is most relevant factor and important piece of evidence. Market conditions prevalent on the date of notification are relevant. An isolated sale deed showing a very high price cannot be the sole basis for determining market value. It was held further that there cannot be any fixed criteria for determining the increase in the value of land at a fixed rate. Hence the fixation of market value of land still remains in the hands of the Land Acquisition Collector. Even the State Government cannot challenge the amount of compensation awarded by the Land Acquisition Collector.³⁹

The legal position of fixing the compensation according to the market price of the land was put forth by Justice Ravindran in the case of *Anjani Molu Dessai Vs. State of Goa*⁴⁰, in following words:

³⁷ 2006(2) Land L.R. (Pb. & Hry.) 111

³⁸ 2006(1) Land L.R. (Supreme Court) 416

³⁹ *State Of Punjab & Anr. v. Gulab Kaur* : 2006(2) Land L.R. (Pb. & Hry.) 90

⁴⁰ 2010 STPL(Web) 1083 SC

“The legal position is that even where there are several exemplars with reference to similar lands, usually the highest of the exemplars, which is a bona fide transaction, will be considered. Where, however, there are several sales of similar lands whose prices range in a narrow bandwidth, the average thereof can be taken, as representing the market price. But where the values disclosed in respect of two sales are markedly different, it can only lead to an inference that they are with reference to dissimilar lands or that the lower value sale is on account of under-valuation or other price depressing reasons. Consequently averaging cannot be resorted to. We may refer to two decisions of this Court in this behalf.”⁴¹

The market value of the land acquired at the time of the first notification is taken into consideration while computing the compensation. This has become a widely accepted formula for calculating or determining the value of land according to the current market value. But if we go through the latest controversy happened in Arkavathy layout of Karnataka, then we will find that in Karnataka, the guidance value of land is not fixed based on the current market price. Hence, it actually gives way to a widespread protest from the villagers and farmers.⁴²

There is always a question mark in assuming that a farmer has been properly compensated, even if he is paid the value of his land even at the current market price.

Here, it is interesting to note that in the State of Karnataka, a different practice to pay compensation is followed. The land-owner is given choice either to accept the guidance value of his land fixed by the revenue department or to accept few sites in the developed land. This is known as an alternative compensation instead of the monetary compensation. This applies in case of acquisition for the residential purpose. For example, if one acre of land is acquired by the government, then 45% of this acquired land goes to the purpose of civic amenities (such as construction of roads, parks, government schools, play grounds, etc.); the remaining 55% of the total land meant for the residential houses is divided into 60:40 ratio per acre among the Government and the land-loser.⁴³ Government is free to use its portion of land for the project, and the land-loser gets his portion of land as compensation for the whole land acquired by the Government. This 55% of the total land is actually called as the developed land. Forty percent (40%) of this developed land i.e., 9583 sq. ft/per acre is allotted to the

⁴¹ *Ibid*

⁴² The Times of India, 12th February, 2011

⁴³ For details, refer to Annexure I and VI

land-loser as a matter of compensation. Finally, roughly 22% of the total land acquired from the land-loser left with him as compensation. (1 acre = 43,560 square feet. 55% of 43,560 = 23,958 square feet i.e. the total developed land. 40% of 23,958 = 9583.2 square feet i.e. the total land to be given as compensation to the land loser. Now, 9583.2 square feet constitutes 22% of 43,560 i.e. the compensation land in percentage to the total land acquired;⁴⁴ or simply put as 40% of 55% of 1 = 22).

It is assumed that the value of this developed land would shoot-up to such an extent so that land-loser would be able to get money by selling his portion of developed land in excess to the value of total land prior to the development. Some of the officials and various people are of the view that this practice has proved to be successful, so far, and the land-losers are really happy with the practice. But here a question arises whether a farmer whose land is acquired and whose only means of livelihood was the agricultural activities over his land, can be said to be properly compensated under the current scheme. It is all right with a person having some land lying in a village area, and along with the having some business or some source of income in the city. He will be very well in a position to retain his portion of land as a compensation for a longer term until the value of his land increases, but what about the farmer who had his agricultural land as the only source of income. Now, there is question mark in assuming a farmer to retain his portion of land received as compensation, for a longer term and wait for its value to increase. Here is the biggest flaw in the current practice. Currently, a practice is being followed by the Tata group of companies in various parts of the country whereby the company recruits the land-losers according to their respective qualifications, with a view to provide them a source of regular income. One may argue here that the Government should provide jobs to the land-losers in compensation for the land acquired. Obviously, the Government cannot provide the government jobs to the land-losers because it may contravene Article 16 of the Constitution of India. But, the government can make it obligatory for the Company for whom the land is acquired, to recruit the land-losers according to their qualifications. This can simply be done by inserting a clause to that effect in the agreement signed between the government and the company, at the time when the land is transferred to the Company under the Karnataka Land Acquisition (Companies) Rules, 1973.

If the above solution is proved not to be feasible for the Company, then there can be another way to tackle the problem and make sure that a source of regular income is ensured to the

⁴⁴ $9,538.2/43,560*100$

land-losers. After the acquisition of land, the land or any part thereof can be transferred to the company by sale, gift, and lease or otherwise. If the land is transferred to the Company by the Government by way of lease on a fixed rent yearly, in such a situation, the Government starts getting a regular fixed income from the Company in terms of the rent, while the land-loser gets the compensation only once. Particularly, in terms of State of Karnataka, there is no provision for the fixed income to the land-loser. It is suggested here that the land-loser should be made a beneficiary to the agreement entered into by the Government with the company for a fixed remuneration. The regular rent paid by the company can be shared by the government and the land-loser in a specified ratio.

The values of land have to be determined according to the location of the land. If the land is situated nearby to, a district, has to be valued differently from a land situated far away from a district.

6.2 Compensation under the Karnataka Industrial Development Policy 2009-2014

The exemption of stamp duty and Concessional Registration Charges – This incentive will be applicable for the land transferred by KIADB to land owners as compensation for the acquired land.

The policy will also have a provision to take the land owners as partner in the project by offering certain equity to them. Alternatively land owners will be offered adequate compensation based on the set guidelines.⁴⁵

The land owners except in case of acquisition for Single Unit Complex and infrastructural projects will have an option to get part of the developed and developing land on the location by KIADB in lieu of specified compensation. Land owners are free to use this portion of land for residential / commercial / industrial purposes subject to the prior approval of KIADB. Further, plan for building construction requires approval by the KIADB. Appropriate clause will be in place in the policy to ensure that the land is developed within the stipulated time frame and the project is implemented as per the declared schedule.⁴⁶

⁴⁵ Page 14 of the Karnataka Industrial Policy 2009-2014

⁴⁶ Available at <http://www.kiadb.in/>, lasted visited on 3rd March, 2011

7 Land Acquisition policy in Haryana

GOH (Government of Haryana) gives the benefits of annuity and oustee to the land-losers. Apart from handsome compensation, the policy provides allotment of residential or commercial plots to the oustees. A unique feature of the policy is the provision of payment of an annual annuity of ₹ 21,000 per acre to the owner for 33 years, which will be increased at the rate of ₹ 750 every year. In case the land is acquired for private developers, or for setting up a SEZ, technology city and Technology Park, they would have to pay ₹ 30,000 as annuity for 33 years and the annual increment would be 1,000. One aspect of the path breaking policy is that each co-sharer is entitled to a plot. The first oustee policy came up in 1987. In 1992 there came one oustee policy of HUDA wherein each co-sharer was made entitled to a plot but the same was modified in 1993 only to restrict the entitlement of all co-sharers to one plot. The State Government introduced a new Rehabilitation and Resettlement Policy for Oustee, which is applicable to all those land where award of compensation was announced on or after 5th March, 2005.

Silver lining of the policy is that the allotment is made to each co-sharer depending upon his share in the land acquired for Haryana Urban Development Authority and Haryana State Industrial Infrastructure Development Corporation Limited as per scale mentioned in the entitlement whereas since the inception of the Oustee Policy in 1987, all the co-sharers were entitled to one plot. This is very important aspect and is one of the major highlights of the acquisition policy in Haryana.

Minimum floor rates (MFRs) are laid down under the policy, below which land cannot be acquired. It varies from place to place. The State has now been divided into five zonal brackets for the purpose of computing the MFR. For land situated within the notified limits of Gurgaon Municipal Corporation, the new MFR has been fixed at ₹ 72 lakh per acre, including ₹ 8 lakh as no litigation incentive. A farmer in Gurgaon will now get up to ₹ 72 lakh for an acre of his land. The rate of ₹ 15 lakh per acre, fixed for land acquisition in urban areas falling under the Gurgaon Development Plan, has now been enhanced to ₹ 20 lakh per acre. In the suburban areas of Haryana under the National Capital Region (NCR), Panchkula and on the periphery of Chandigarh, the floor rate of 12.5 lakh per acre has been raised to ₹

16 lakh. In the other parts of the state, the rate of ₹ 8 lakh per acre has been fixed against the average price of ₹ 2.5 lakh to ₹ 3 lakh per acre.

As a result, factoring in other charges and variables, a farmer selling an acre of land in Gurgaon today gets close to ₹ 32 lakh. This offers him enough cash to get the money lender off his back, clear his bank dues buy cheaper land elsewhere and start dabbling in some other ventures. At a time when several parts of the country are rocked by violent agitation by irate farmers protesting acquisition of their lands for SEZ, Haryana's land acquisition policy has attracted the attention of many prospective entrepreneurs.⁴⁷

According to a latest announcement made by Haryana Chief Minister, Bhupinder Singh Hooda, it has been decided to introduce by way of additional benefit, a new concept of "no litigation incentive".⁴⁸ Working out to about 20 per cent higher price than the MFR, it will be payable over and above the MFR to such land owners who undertake not to go in for litigation. The new policy is implemented retrospectively from September 7, 2010.

For land situated within the notified limits of Faridabad and Panchkula Municipal Corporations; areas forming part of the Development Plans of Gurgaon-Manesar Urban Complex (excluding the areas falling within the limits of Municipal Corporation Gurgaon) Sohna, and Sonapat-Kundli Urban Complex, the MFR has been fixed at ₹ 54 lakh per acre, including ₹ 6 lakh as no litigation incentive. The areas situated within the Development Plans of Bahadurgarh, Rohtak, Rewari, Dharuhera, Bawal, and Panipat towns at ₹ 45 lakh per acre, including ₹ 5 lakh as no litigation incentive.

Exemption from paying stamp duty is given to the land-loser if he goes on buying a new land for himself after his land is acquired by the Government.

If the government acquires a residential plot of an individual, he is provided with an alternative commercial plot.

⁴⁷ <http://www.financialexpress.com/news/new-land-acquisition-policy-a-boon-for-haryana-farmers/452678/0>, visited on 14th Feb. 2011

⁴⁸ *Ibid*

In response to the demand for providing a job to a member of the family whose agricultural land has been acquired, the Government of Haryana has also decided to reserve 25 per cent jobs for villagers whose land will be acquired.⁴⁹

⁴⁹ <http://www.indianexpress.com/news/land-acquisition-relief-package-has-haryana/212814/>

8 Gaps in the current set of Laws regarding the Compensation

Compensation tones down the coercion implicit in the taking over of land under the LA Act, 1894, and represents what transpires under it as a transaction. It is also the only aspect of the process of taking over that can be taken to court, and this allows for an impression of justiciability. Yet what quickly springs into view is the limiting of judicial challenge to the quantum of compensation. The statute does not provide any help in acknowledging mass displacement, or in working out policies of rehabilitation, or in considering impoverishment as a cause for judgment, just as it does not assist in taming the sweeping use of eminent domain powers, or in acknowledging that conflicting claims of ‘public purpose’ may arise demanding the services of a disinterested judicial umpire.

The gaps in current land acquisition policy in terms of compensation may be numbered as follows:

1. Compensation policy, as set out in the statute, is confined to money compensation.
2. Determination of market value of land is still a big concern. Factors which should be taken into consideration while determining the market value of land are still not certain. In *Ranvir Singh and anr. v. Union of India*⁵⁰, the question was that whether the factors like (a) notifications issued by the Union of India (b) brochure issued by the Delhi Development Authority (DDA), taken by the High Court while awarding compensation, can form basis for determining the market value of the acquired lands. The answer given by the Supreme Court was ‘no’. It was held that the market value of fully developed land cannot be compared with wholly underdeveloped land, although they may be adjacent or situated at a little distance. Nature of land plays an important role. Sale deed is most relevant factor and important piece of evidence. Market conditions prevalent on the date of notification are relevant. An isolated sale deed showing a very high price cannot be the sale basis for determining market value. It was held further that there cannot be any fixed criteria for determining the increase in the value of land at a fixed rate. Hence the fixation of market value of land still remains in the hands of the Deputy Commissioner.

⁵⁰ 2006(1)Land L.R. (Supreme Court) 416

3. Resistance to project displacement has given rise to promises and policies by the Companies and the government, which again gives rise to the controversies when not fulfilled.

4. It is observed that many a time, land requirements indicated by the entrepreneurs for projects are far in excess of the actual requirements in terms of total built up area, investment proposed in the venture, etc. and entrepreneurs seek to justify the needs citing various reasons like open space, future expansion needs etc.⁵¹ The availability of land especially around major urban centres has very limited and acquisition procedure becomes complex. Hence it is felt needed to examine in-depth land requirements of a specific project through its various components, future expansion needs, etc. with a view to judiciously use the available land resources to support maximum number of projects and investments and to minimize the hardship to farmers in acquisition for Single Unit Complexes. Accordingly it is felt desirable to set up “Land Audit Committee” to examine the land requirements of various components of individual industrial project and arrive at a just minimum requirement of land to be provided through KIADB in an existing industrial area or for the purpose of initiation of fresh acquisition as “Single Unit Complex”.⁵²

5. A case of Bellary district in Karnataka can be discussed here. The Government of Karnataka acquired certain piece of land and was transferred to the company. But no proper care was taken of the land by the officers of the company who had shifted to different parts of Bangalore. The people in nearby localities started cultivating on the land in question. 12 years lapsed like this. One fine day, the company decided to start its project over the land. But the cultivators there were not ready to evict the land. The cultivators of the land filed a suit against the company. An argument forwarded by the company was that the people had encroached over the land. The counter-argument was that the people have got an adverse possession. And the enjoyment of land was done against the world at large in an undisturbed manner for last more than 12 years. The complainants won the case. Hence, it should be kept in mind that if the land is not

⁵¹ Circular/order no. CI 332 SPI 2004, Bangalore, dated 29th Aug. 2005, passed by the Government of Karnataka, available at <http://www.kiadb.in/images/set1.pdf>, visited on 10th February, 2011

⁵² <http://www.kiadb.in/images/set1.pdf>, visited on 10th February, 2011

administered properly, situations like these may arise because a company is not a government but a separate legal entity different from the government.

9 Need for a fair amount of Compensation

Compensation is meant for softening the blow of dispossessing a person from his land or property. Hence, it is inevitable to have a proper understanding of the concept of compensation.

The term ‘compensation’ is generally understood by its equation with the market price of the land or property, or the notional value of the land or property in the market. The displaced person or the land-loser is treated a willing seller of his property to the Government. The element of coercion that plays its part in compulsory acquisition of land is never taken care of when determining the compensation. Compulsion is tempered by a solatium, which, being a percentage (now fixed at thirty percent) of the compensation is also dependent on the market value. The option of compensating land for land merits a mere mention in the law; it is not, in any event, a binding obligation of the State.

With its defective vision distorting displacement, there are significant absences in the law for computing compensation. For one, it does not take responsibility for providing for the replacement value of the land, or rights, lost. For another, mass displacement often affects population whose lives are not constructed around formal legal rights, making market value an irrelevant criterion. The various difficulties involved in determining the value to the displacement cost have been externalised; the law has never addressed them. The displacement costs have been scrupulously suppressed. The law of compensation does not focus over any of the allied factors attached to the land acquisition apart from the individual satisfaction, as the indigence caused in the displaced population, the breakdown of the society, increased exploitation, etc.

Multiple displacements – and none can deny that it extracts an unconscionable cost. Neither the decision to acquire, nor the computing of compensation, takes responsibility for this disproportionate burden on the displaced. Particularly where they reorder hierarchies of legal concern, changes in the law are a response to pressures that cannot be ignored. This is reflected in the gradual, even if reluctant, introduction of the recognition of displacement into the law. Yet, the law being essentially conservative, it will take unrelenting determination to build the gravity of displacement into the law.

Any Act on land acquisition needs to be simple and it needs to begin with the people who are losing their lands. There should be a grievance redressal mechanism built into the acquiring process.

Therefore, if the economy of the country has to grow steadily, the bulk of that growth has to come from other areas, such as manufacturing, services, etc. In recent years, the need for land acquisition has increased, particularly after the Special Economic Zones (SEZs) and mining and large development projects started coming up in a big way. A number of land acquisition attempts have led to protests by those affected. Very often, these protests have turned violent.

Agriculture itself depends for its growth on infrastructure, as also on industry, to quite an extent and therefore the need of land for non-agricultural use.

If land/property is acquired from someone for reasons of industry or state, the owner should be paid the prevailing market rate. After all, the constitutional rights of every citizen include his/her right to own land. Whichever tract of land is acquired, and whatever the legal reason, there must be no distinction in the fact that the land must be bought/acquired at the prevalent market rate. It could be for a school, hospital, dam, or railways, highways, metros.

The modalities of how this market price is to be arrived at must be worked out. Whatever reasonable percentage of the project cost is involved, the government should be able to afford it. After all, the government and the nation are going to benefit for a long time.

On completion, some projects such as railways, highways, water from dam, metro will also generate an earning capacity. But even more important is that the infrastructural development of the country would lead to all-time economic growth in addition to generation of employment.

If adequate market price is paid to the owners of the land acquired, there will be no question of rehabilitation, etc. The person can then, with the money in his hand, have the resources to take his own decisions as to what his next step should be. Moreover, if a tract of land is required to be acquired, and it is owned by many people, the will of the majority must be taken. The minority landowners who do not agree with it should not be allowed to block development and render the land worthless.

I think the issue of land-acquisition should be sorted out in a way that makes humanitarian, constitutional and economic sense. And we could then concentrate on taking the onward paths towards progress and development.⁵³

9.1 Factors that lead to unjust Compensation

The land-losers often lack power to negotiate with the acquiring body of the Government, along with lack of experience and skills in matters of land. Most of the time, they are unaware of their rights attached to their land. It is easy for a rich person to have recourse to a professional advice on assimilating the value of land and determination of the compensation, but the same cannot be expected from a poor fellow. Factors that lead to unjust compensation are as follows:

1. Determining the accurate value is a difficult and time-consuming process because each land parcel has to be inspected and valued separately.
2. When the land sales are informal or the markets are developing or do not exist, the reliable factors are difficult to be formulated for the purpose of valuing the land.
3. It is difficult to calculate the monetary value of non-economic losses, e.g. business opportunity, religious, cultural or ancestral claims to the land.
4. The market price of the land may shoot-up at the very day of announcement of the project on the land in question.
5. The costs attached to the appeal processes are expensive and difficult to be used by the land-losers. In case the compensation fixed by the Government is not satisfactory to the land-loser, then the appeal process is not so easily accessible to the poor. He doesn't have any option but to accept the compensation offered by the Government.

9.2 Compensation: Cash or Kind

9.2.1 Cash-for-land: The Land Acquisition law in India is based on this basic principle of compensation, i.e. cash-for-land principle. One particular dimension of deprivation, i.e. dispossession of land is identified under this principle; for which the proceeds or price is fixed according to the market price. In fact, it is the most narrow interpretation given to loss. The calculation of the price of land is done according to the prevalent market-price of the similar-

⁵³ http://www.dnaindia.com/money/comment_ensure-fair-compensation-for-land-acquisition_1455205, visited on 3rd March, 2011

quality land under similar use or in the adjacent or the land situated in the nearest area. Under this approach, an assumption is made that the land is a commodity.

Whether the project-affected are able to replace their livelihoods on sustainable basis, as envisaged by the cash-for-land principle, depends upon their use of the money. More specifically, it depends on whether the money is used for investment in land and other productive assets, or used for house construction and consumption purposes.⁵⁴ In reality, the fixation of compensation under this principle has resulted in discrimination, inadequacy and hostility amongst the people. The other biggest problem related to this type of compensation is the threat to the agricultural land. The government pays cash for agricultural land and uses it for development and industrial purposes, resulting in reduction of agricultural land in the country. Reduction in agricultural land is directly a factor for inducing the reduction in food supply to the people in the country and fodder to the cattle. The Government has to ensure that any development work undertaken by it does not result in reduction of food supply, especially in a country like India where the population is continuously on rise.

In India, the land acquisition law provides for prompt and adequate monetary compensation for persons who lose their land and property.⁵⁵ However, cash compensation has many negative consequences, particularly for tribal and other marginal populations. Tribal economies are in large part non-monetized, based on reciprocal exchange of goods and services; therefore, people are not well accustomed to managing cash. There is popular saying: “Land is like diamonds but money is like ice”.

The sudden cash in their hands gives many the false impression of wealthiness. They change their life style. Gambling and drinking increases to a great level.

Exclusive cash compensation is least useful to the resettlers in the long run; instead, land-based resettlement contributes to cultural security. The land-for-land approach is essential for resettlement despite criticisms that it denies the settlers the right to choose for themselves and that cash compensation could provide opportunities for opening family businesses.

For the purpose of implementing the land-for-land compensation, several relocation sites have to be identified, so that the displaced ones could get those alternate sites. It should be made

⁵⁴ Economic and Political Weekly, *“Economic Perspectives on Resettlement and Rehabilitation”* by Sangeeta goyal, June 15, 1996.

⁵⁵ For details, refer to Chapter 5 at page 29 of this project.

compulsory that the new relocation sites are better compared to the previous sites in terms of their soil quality, productivity, irrigation facilities, availability of water, etc. Or if not better, at least it should be comparable to the previous sites. Furthermore, if there is possible off-farm income (e.g. forestry, seasonal labour opportunities, cattle rearing, fishing, etc.) from the new site selected for giving as a compensation to the land-loser, then the land-loser will be more than happy and satisfied, and will never resort to any protests or agitations whenever the government is acquiring the land for public purpose.

In most countries, calculation of compensation for the acquired land is done on the basis of its market rate. It may not be so easy for the land-loser to buy a land comparable to his own land acquired by the Government with the compensation money because of the limited land market or the high cost of the land in the area of relocation.

Delay in the payment of compensation is also a severe problem, which reduces the value of the compensation awarded by the Government.

Finally, cash compensation disproportionately benefits some interest groups (i.e. big landlords) but not poor and small-scale farmers, the landless, and women. Big landlords profit more from relocation because much of their land is either sharecropped or remains uncultivated, making the cash compensation more attractive to rich farmers, who then re-invest it in the non-agricultural sector. Landless labourers are often the hardest hit group in the relocation process due to their lack of ownership and entitlement to land. In many countries such as Bangladesh, India and Pakistan, landless people constitute 50% of the total population.

9.2.2 Land-for-land: The principle of land-for-land has been evolved as the major focus of current compensation policies. This is the principle followed in almost all the developed countries like U.K., U.S., Denmark, etc.⁵⁶ The principle is called the land consolidation. This is important because in this policy, an alternative land is given to the land-owner as compensation. In this method, the agricultural land will not be reduced; as a result, the food-supply will remain intact.

Even the land-loser or the farmer will be happy to have alternative land so as to carry-on his agricultural activities. Land is a life-long source of income for a farmer. Land is also

⁵⁶ FAO, *Compulsory Acquisition of Land and Compensation*, (2008), available at <ftp://ftp.fao.org/docrep/fao/011/i0506e/i0506e00.pdf>, visited on 25th February, 2011.

inheritable asset at the same time. These features of the land make it as an asset not comparable with any other cash-compensation.

In this way, it can be ensured that the resettlement or compensation awarded is sustainable. This is also a solution to the problem of calculating market price of the land. The other problem is related to the rights over the land and the person who should be eligible for the compensation.

However, all is not good with the land-for-land principle of compensation, as many other practical difficulties are attached to it. These difficulties may be cited as below:

- 1. Determining the amount or the area of land to be given as compensation for the acquisition of land.** Generally, a comparable amount or area of land is provided as compensation, subject to the land ceiling laws.
- 2. Determining the quality of land to be given as alternative land in compensation.** Though the comparable area of land is sought to be provided as compensation, yet there may be possibility that the land available to be provided as compensation is not of the same quality or productivity. It may require a lot of investment and hard-work to make such a land of equitable productivity.
- 3. Merely giving the alternative land without infrastructure and other facilities may not be useful to the farmer to whom it is given as compensation.**

9.3 Auction of the Land

The question of adequate and proper compensation will never be resolved unless and until a proper and generally accepted formula for determining the value of the land is computed. Till then the problems attached to the improper compensation will keep mounting. The fact is that the amount mentioned in the land deals for acquisition is the white money upto the extent of merely 30% of the total land value, which the actual compensation fixed by the LAC. As a result, there is no chance for the farmer/owner to get actual value of his land or the real market price. If a provision is created for the auctioning of the land to be acquired as is mostly practised by DDA, GDA, NOIDA, JDA etc., then there is a possibility that the actual market price emerges. The government should be assigned a role to organise and manage such an auctioning and tender price system in a transparent manner. In this way the State Government will also earn much money as stamp duty as a means to finance its development costs.

In the recent case of *Executive Engineer, Karnataka Housing Board v. Land Acquisition Officer, Gadag and Others*.⁵⁷, Supreme Court held that the compensation for land acquired should be based on the fair market value received for similar land in the neighbourhood, but not sold in auction. This, said the court, was because auction sales stood on a different footing. In auction, there is an element of competition, triggered by “human ego, and desire to do better than other competitors.” This leads to high prices. On the other hand, when the auction is by banks, financial institutions or courts, “there is an element of distress, a cloud regarding title, and a chance of litigation.” These factors depress the price. Therefore, auction price should not be the criterion for calculating compensation for acquired land, the court said.

9.4 Jobs as means of Compensation

In the case of *Ravindra Kumar v. District Magistrate*⁵⁸ the Allahabad Court posed three questions along with the proposed solutions:

1. Whether the order/circular passed by the government providing for a permanent job to one member of a land-losing family in addition to the monetary compensation, be held valid or not?
2. Whether the entity, company or the body on whose behalf the land is acquired by the Government, can be held bound by such an order/circular passed the government, providing for the employment, or not?
3. Whether the entity, company or the body on whose behalf the land is acquired by the Government, can be directed by way of issuing a writ petition to act according to the Government order/circular?

The question was related to the validity of a GO passed by the State Government in the year 1974 making it obligatory for the entity acquiring land to provide job to at least one member of the land-loser family in addition to the monetary compensation. The argument from the Agra Development Authority (ADA) was that the GO was not binding to it because there is no provision in the Central LA Act, 1894, for providing job to a land-loser.

The court held, owing to the already surplus employees in all the government departments it is not possible to give further jobs to the members of the land-loser families; as it would be an

⁵⁷ 2011 Civil Appeal Nos. 53-54 of 2011 [@ SLP [C] Nos.27806-27807/2008]

⁵⁸ (2005), *Allahabad Law Journal*, at page 34

extra burden over the pockets of tax-payers. In addition to this, providing government jobs to the land-loser would be in violation of Article 16 of the Constitution, which guarantees equal opportunities for government jobs to all the citizens in India. Had there been any intention of the legislature to provide job in addition to the compensation, they would have simply inserted a clause to that effect in the LA Act. Honourable court's rule is well accepted but it should be understood that this present LA Act was a product during the British period. British were the rulers and mere exploiters. They were not concerned with the human rights or the welfare of the people. Compensation is the price paid to the land-loser as a consequence of compulsory acquisition of his land by the Government. Under the compulsory acquisition, land-loser has no choice but to accept the compensation. The amount of compensation so calculated never takes into account the other losses incurred by the land-loser, e.g. loss to his business, loss of livelihood, loss related to dislocation, etc. The distinction drawn by the court between the 'compassionate appointment' and the provision of jobs in situations created by the matters like land acquisition does not seem to be healthy. The equality of opportunity in government jobs is never an inflexible rule, and is always flexible for special cases like provisions for social and education backward classes. 'Interest of justice', 'equity', 'social interest' and 'protection from destitution', can be good reasons for the government to carve an exception to the general rule of law.

Along with this, it should be noted that it's not only the land-owner who actually suffers loss because of the compulsory land acquisition, but there are many other landless people who lose their means of livelihood attached to the land which is acquired, e.g. weavers, barbers, landless labour, potters, carpenters, etc. They face loss due to the acquisition of land as well as due to the breaking up of the community.

The case of *Smt. Anju and Others v. National Thermal Power Corporation*⁵⁹ may also be cited here as relevant for the topic. In this the land-losers brought a case against NTPC which had failed to provide jobs to the land-losers as promised during acquisition of land for its power plant. NTPC had promised to provide permanent job to at least one member of each land-loser family. In this case also the court rejected the contention by invoking Article 14 and 16. The court held that merely a chance of choosing of somebody's land by the government for acquisition cannot give him a preferential treatment in terms of employment.

⁵⁹ (2006) 67 TTJ Delhi 182

9.5 *Alternative Land as Compensation in Denmark*

The lands are acquired by the Government often in large chunks for various projects including public purpose and for the companies. These land acquisitions often disrupt the agricultural and farming traits of the farmers. The techniques of land consolidation are used in Denmark for facing such challenges and to provide assistance to the farmers affected by such acquisitions. The specialists of Land consolidation meet with the land loser farmers to express their wishes, e.g. it may be possible that a farmer from whom land has been acquired may be willing to carry-on with his agricultural activities only, in such cases, land equivalent to his acquired land is given to him elsewhere. The Land Consolidation specialists are supposed to help in identifying proper land to be given as compensation to the land loser farmer, e.g. through negotiation with farmers established in the neighbourhood, or from the state land bank which buys land for later use in such projects.⁶⁰ The basis of the land acquisitions is the negotiated agreements of sale and exchange. There are various plus points of having such negotiated deals, e.g., the appeals and suits are reduced. The compensation supposed to be provided can also be reduced through the time devoted by the specialists for finding the solution. For example, a farmer may have land sufficient to cater a herd of 100 cows. Suppose, due to the land acquisition he is left with the land in which he can cater only 20 cows, the government is supposed to compensate the farmer for his loss in business and the loss of land. Through the land consolidation process, the government can provide an alternative land to the farmer; in this way, government will be obliged to compensate only for the loss of land and not for the loss suffered to his business.⁶¹

⁶⁰ Eric Stubkjaer, Carsten Jahn Hasen & Others, *Acquiring Land for Urban Purposes – A Sino-Danish Dialogue*, available at http://people.plan.aau.dk/~est/ChinaLandAdministration/VisitNov1_2010/AcquiringLandForUrbanPurposes.pdf, visited on 15th February, 2011.

⁶¹ The laws which govern the land acquisition and consolidation process in Denmark are: Danish Constitution of 1849, last revised on 5th June 1953, the law on small holdings of 1899 – to avoid immigration to the cities, October laws of 1999, Land Acquisition Act of 1921, National Land Consolidation Act of 1941 – aimed at reducing the fragmentation of agricultural land.

9.6 Land Acquisition in Turkey

The land acquisition officers hold meetings with each affected land owner personally during the visits to the village. The method to be used in evaluation of the land to be acquired is explained to the land-owner and a particular price is offered to the land-owner at which the land shall be expropriated. The meetings are held in such a way that in every such meeting, the land owner has an equal opportunity to question the process of evaluation of land and the offer-price fixed by the land acquisition officer.⁶² The price or the amount of compensation proposed for the acquisition of land in the negotiation meeting may be accepted or rejected by the landowner. In case of acceptance of proposal by the land-owner, an agreement is duly entered into during the meeting itself. Every time, the land-owner is at liberty to negotiate for his land in his best possible interests.

In case, the land-owner rejects the proposed price for the acquisition of his land, then the land acquisition authorities will approach the courts for the determination of a fair value of land for the purpose of its expropriation. The Courts after due hearings, comes up with a decision of a certain amount of money as a fair compensation for the land. The land-owner has a right to either accept or reject the amount of compensation proposed by the court.

After that the court publishes a notice in a local Turkish newspaper. In case, the land-owner gives response to the notice, the court will ask the two sides to reach an agreement. In case an agreement is reached, the agreed amount of compensation is duly paid. In case no agreement is reached, a panel of experts is appointed by the court for the purpose of re-evaluating the land. The final decision of the Court comes on the basis of the evaluation made by the panel of experts. The court fees and other litigation charges are borne by the land acquisition authorities without any obligation on the part of the landowner.⁶³

While in India, the situation is just reverse. The land is acquired from the land-owner by the land acquisition authorities as a matter of right and a nominal amount of compensation is paid. In case the land-owner is not satisfied by the evaluation of land and the compensation paid, then he will have to go to the court for challenging the compensation packages. As usual, the courts in India take their own sweet time; sometimes 20 years, after which everything is changed for the land-owner, including his age, his income opportunities from his

⁶² [http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/Tur+-+AnX+7.1/\\$FILE/RAP+-+Annex+7.1+-+Guide+to+Land+Acquis.pdf](http://www.ifc.org/ifcext/btc.nsf/AttachmentsByTitle/Tur+-+AnX+7.1/$FILE/RAP+-+Annex+7.1+-+Guide+to+Land+Acquis.pdf), visited on 16th Feb. 2011

⁶³ BTC (Baku-Tbilisi-Ceyhan) Project: *Resettlement Action Plan*, Turkey, Final Report

land, the inflation, the market value of the land, etc. In so many cases it is noticed that by the time the compensation money is given, the original land owner would have died and dispute arises among his heirs. Along with that the court fees and other litigation charges are borne by the land-owner himself. Imagine the situation from the side of a farmer who has lost his land and his only source of income, and again he is bound to incur litigation expenses. A practice like Turkey is required to be followed in whole of India also, where the land-owners rights are fully protected.

10 Principles which should govern the determination of compensation

“Each person possesses an inviolability founded on justice that even the welfare of society as a whole cannot override” – **John Rawls**.⁶⁴ “If you are to suffer, you should suffer in the interest of the country” – **Jawaharlal Nehru**.⁶⁵ These two statements should always be borne in mind while formulating any sort policy by the Government.

Compensation whether in financial form or as replacement land or structures, is at the heart of compulsory acquisition. As a direct result of government action, people lose their homes, their land, and at times their means of livelihood. Compensation is to repay them for these losses, and should be based on the following principles:

1. Legislation should enable the clear definition of the date at which the land should be valued as values can change rapidly as a result of awareness of the project. The most equitable approach is to have a valuation date that sets the value of the land as if the proposed project did not exist. For this reason, it is common for legislation to require that the value of a land parcel is linked to the date of the publication of notice. If legislation does not specifically link the date of valuation to such an event, the acquiring agency should specify dates appropriate to the nature of the project.
2. Losses of Customary Rights that may require compensation: Most laws on compulsory acquisition broadly define equivalent compensation with reference to market value or “just compensation”. In general, compensation should be for loss of any land acquired; for buildings and other improvements to the land acquired; for the reduction in value of any land retained as a result of the acquisition; and for any disturbances or other losses to the livelihoods of the owners or occupants caused by the acquisition and dispossession. The Asian Development Bank’s Summary of the Handbook on Resettlement: *A Guide to Good Practice* (1998) identifies the following losses for which compensation may be required: agricultural land, business premises (owned or occupied), access to forest land, traditional use rights, access to fishponds

⁶⁴ John Rawls, *A Theory of Justice*, (1971), pp. 3.

⁶⁵ Speaking to villagers who were to be displaced by Hirakud Dam in 1948, quoted from the Article – “Displacement due to land acquisition for development projects in India” by Kelly A. Dhru, Research foundation for Governance in India.

and fishing places, structures used in commercial/industrial activity, displacement from rented or occupied commercial premises, income from standing crops, income from rent or sharecropping, income from affected business, income from forest products, income from fishponds and fishing places, subsistence from any of these sources, schools, community centres, markets, health centres, shrines, religious sites, places of worship and sacred grounds, access to food, medicines and natural resources.

3. Assessment of compensation should be Consensual, based on free negotiation: Once the land acquisition for a project is approved by the government, the primary and default mode of compensation and R&R assessment should be consensual, based on free negotiation between the concerned land owners and the private entity requiring land. This will make the acquisition process democratic and also offer individuals the power to determine a realistic value of their land which will make them willing participants of development rather than sacrificial lambs for the developmental agenda of the state or private projects. However, a completely market-based approach is partially skewed due to imbalance in negotiation power and information asymmetry. Not only do the small and fragmented land owners have to face large corporate with superior bargaining power and open to strong-arm tactics, but also suffer from limited skills and expertise in valuation. The government needs to be involved here – to ensure equity by monitoring against potential abuses of the process and provide the displaced owners assistance in valuation of the land. Where negotiation fails due to instances of holding-out with a few owners refusing to sell their land, which can jeopardize the entire project, the State may be permitted to resolve the issue by employing the power of eminent domain if the public interest is served. A meaningful threshold for negotiated land acquisition has to be set. This must be met having regard to both the number of owners whose land is required and overall land required for the government to step in. In cases of state-sponsored development, compulsory acquisition should be permitted only when the “public purpose” is clearly demonstrated and after a *bona fide* attempt at consensual negotiation, both of which should be approved by a court of law.

4. Uniform policy for the land acquisition and compensation: That is to say, the acquisition policy applicable to the acquisition done for any State Government scheme should also be applicable to acquisition done for any central government scheme.
5. Provision for the land-losers to share profits of the industrial projects being set up on lands acquired from them can be taken as one of the measures to pay compensation.
6. The land-loser should be given market rates instead of floor rates and they too should be allotted industrial plots with the provision that they could rent them out. It should be noted here that the MFRs are fixed by the Government of Haryana for the land acquisition in Haryana. The compensation is fixed according to those MFRs, and not the market price in Haryana.
7. Principle of Equity and Equivalence: The principle of equivalence is crucial to determining compensation: affected owners and occupants should be neither enriched nor impoverished as a result of the compulsory acquisition. Financial compensation on the basis of equivalence of only the loss of land rarely achieves the aim of putting those affected in the same position as they were before the acquisition; the money paid cannot fully replace what is lost. In some countries, there is legal provision recognizing this in the form of additional compensation to reflect the compulsory nature of the acquisition. In practice, given that the aim of the acquisition is to support development, there are strong arguments for compensation to improve the position of those affected wherever possible.

The calculation of compensation is based on the value of the land rights and improvements to the land, and on any related costs. The determination of equivalent compensation can be difficult, particularly when land markets are weak or do not exist, when land is held communally, or when people have only rights to use the land.

While the public interest in keeping costs as low as possible is important, this concern should not deprive people of the equivalent compensation they need in order re-establish their lives after the loss of their land.

Guiding principles for ensuring equity and equivalence include:

- Equivalence: people should receive compensation that is no more or no less than the loss resulting from the compulsory acquisition of their land. Appropriate measures should ensure that those affected, and particularly the vulnerable, are not disadvantaged.
- Balance of interests: the process should safeguard the rights of people who lose ownership or use rights of their land while ensuring that the public interest is not jeopardized.
- Flexibility: the law should be specific enough to provide clear guidelines, but flexible enough to allow for the determination of appropriate equivalent compensation in special cases. Legislators cannot foresee all possible scenarios, and a rigid application of detailed provisions may result in people not being compensated for losses that are not identified in the legislation.
- Compensation should address both de facto and de jure rights in an equitable manner following the principle of equivalence. Where occupants have no recognizable legal right or claim to the land occupied, they may be entitled to resettlement assistance and to compensation for assets other than land. Some form of fair payment for squatters is important, particularly where they are poor, are driven to informality out of necessity, and especially where government has condoned or encouraged the settlement in the first place.
- Fairness and transparency: the negotiating powers of the acquiring agency and affected people should be as equal as possible. Reasonable costs of affected people, including support to the poor and illiterate in negotiations, should be paid as part of the compensation. Negotiations should be based on an open exchange of information.⁶⁶

⁶⁶ FAO, *Compulsory Acquisition of Land and Compensation*, (2008), at page 23, available at <http://www.fao.org/docrep/011/i0506e/i0506e00.htm>, visited on 25th February, 2011.

11 Budget 2011-2012 and Land Acquisition

In this current year's budget, development of housing layouts in Bangalore city and other urban areas are given priority. The land acquisition process is cumbersome and also results in hardships to the farmers of the State. In order to expedite the acquisition process and also to give a fair compensation to the farmer, land acquiring authorities like the BDA, KHB and other city development authorities would follow the 60:40 ratio and give 40% of the developed land to the land owner/farmer as compensation for the acquired land. This will provide higher income to the farmers and a share in developed areas.⁶⁷

Citizens face various difficulties to update their land records from time to time. However, these problems have been addressed to some extent after implementation of *Bhoomi* scheme. However, problems persist. In order to ensure easy availability and updating of land records, it is proposed to take up the following steps⁶⁸:

1. To expedite the process of computerization of land records.
2. To ensure that records pertaining to land acquisition, land grants, land reforms and *inam* abolition, and disputed mutation entries etc.; are easily available. It is proposed to scan all such records and index them. This work is likely to be completed by December 2011.
3. It is proposed to develop a necessary system for automatic change of *khata* after land acquisition under *Bhoomi*.
4. Software required for online capture of land transactions would be developed which would establish convergence among *Bhoomi*, *Kaveri* and *Mojani* schemes.

The existing regulations on land availability, sale, conversion and other processes are complex, leading to scope for middlemen's menace. For making more land available to the public and simplifying the regulations, it is proposed to bring suitable amendments to Sections 79A, 79B and 109 of the Land Reforms Act, 1961. It is also proposed to amend the Land Revenue Act, 1964 to make land easily available for all purposes. It will then be possible to convert land for various purposes within 3 months.

⁶⁷ 2011-2012 Budget Speech, page no. 37

⁶⁸ *Ibid*

Government lands are valuable assets. Several steps have been taken through the task force to identify encroachment of these lands, by taking up measurements and to remove encroachments. It is important to protect these lands to maintain the natural drainage patterns, and for other public purposes. Such lands are denoted as *phot kharab* in Revenue Records. All these lands will be identified, measured and protected. Such lands would be released only in special cases.

Natural water bodies like ponds, lakes etc. help in storage of water and flood control. In order to protect these water-bodies, survey measurement will be done, and wherever required rejuvenation work will be taken up.

Government of Karnataka has decided to take bold steps for resolving such related disputes. Efforts will be made to dispose all pending *phodi* cases in rural areas within the next 3 years.

12 Findings and Recommendations

The major findings and recommendations have been made hereby by the researcher wholly on the basis of his research done during his internship at the Fiscal Policy Institute.

12.1 Major findings

The major findings in relation to the laws and practices of land acquisition in SOK can be numbered as follows:

1. Mainly, the Land Acquisition Act, 1894 (Central Act, 1894) as amended in the year 1984 is applicable in the SOK for all land acquisition matters. Karnataka Land Acquisition Act, 1961 (State Act) dealing with land acquisition is impliedly repealed with effect from 24th September, 1984, when the Central Act was extended to whole of India excepting State of Jammu and Kashmir.
2. Till early 2008, the basis of fixing compensation in SOK (State of Karnataka) was the principle of Cash-for land. The amount of compensation was to be fixed by the DC in consistency with the market value of the land.
3. Principle of land-for-land, for fixing the compensation, was extended in SOK first time in the year 2008 when the compensation was given to the land-losers of village Kempe Gowda in the form of developed land instead of cash.
4. The above-mentioned land-for-land principle of fixing compensation is applied only when the land is acquired for the purpose of Urban layout or for the Urban development. In other cases, the principle of cash-for-land is applied for fixing compensation, i.e. the land-loser is paid cash compensation according to the value of his land fixed by the DC.
5. Along with the original compensation paid to the land-losers, some other benefits are also provided by the GOK under the Karnataka Industrial Policy 2009-14, and by BDA in the form of TDRs (Transfer Development Rights) and under the CDP (Comprehensive Development Plan).
6. The regular source of income to the land-loser has not been given focus in the current compensation policy of the Government.
7. The time consumed in the process of litigation is an important issue. Government of Haryana under its current land-acquisition policy is paying 'no litigation incentives'

to the land-losers, in addition to the regular compensation.⁶⁹ There is no such scheme adopted by the Government of Karnataka to get away with the onerous litigations.

8. A procedure which is equitable to the landowners should be adopted.⁷⁰

12.2 Recommendations

Based on the research done in FPI, following recommendations are made with respect to the fixation of compensation for land acquisition in SOK:

1. **Allotment of commercial site:** In the current practice of paying compensation in Karnataka, the government is providing the developed land to the land-loser in four residential sites of 40X60 or 30X40 dimensions.⁷¹ The practice is appreciable till the problem of valuing land and the payment monetary compensation was concerned. The policy can be said to be based on the principle of land-for-land compensation. But, the only gap remains here is that the policy does not address regular source of income of the land-loser. Land for a farmer is his regular source of income or his source of livelihood. While the land is acquired from a farmer, it should be ensured that he gets an alternative means of livelihood or source of income as a compensation for acquisition of his land.

While the land is acquired for urban development or residential purpose, the colony is established along with a certain market area and certain shops, shops-complexes, etc. It may be worth suggesting here that instead of giving four residential sites to the land-loser compulsorily, he should be given a choice to choose among the two schemes. In the first scheme, four residential sites should be given. In the second scheme, instead of giving four residential sites in compensation, two residential sites and one commercial site or a shop should be given to the land-loser in compensation. In this way, if a farmer, who loses his regular source of income due to the acquisition of his land, will have an alternative source of income by way of the commercial site or the shop.

⁶⁹ For details, refer to Chapter 7, at page 28

⁷⁰ *Brij Gopaland others v; State of Haryana*: 2006(2) Land L.R. (Pb. & Hry.) (DB) 313

⁷¹ Appendix I

2. **Regular annuity system:** Another way to ensure regular income may be through the policy adopted by the State of Haryana, where a regular annuity is paid to the land-loser for a maximum period of 33 years.

3. **Equal share with the government:** After the acquisition of land, the land or any part thereof can be transferred to the company by sale, gift, and lease or otherwise. Suppose, the land is transferred to the Company by the Government by way of lease on a fixed rent yearly, in such a situation, the Government starts getting a regular fixed income from the Company in terms of the rent while the land-loser gets the compensation only once. Particularly, under the land acquisition terms of State of Karnataka, there is no provision for the fixed income to the land-loser. It is suggested that the land-loser should be made a beneficiary to the agreement entered into by the Government with the company for a fixed remuneration. The regular rent paid by the company can be shared by the government and the land-loser in a specified ratio.

4. **Amendment to Section 34⁷² of the Land Acquisition Act, 1894:** Section 34 provides for a situation where the payment of compensation is not made to the land-loser immediately after the Government takes possession over his land. According to the provisions, the Collector is made liable to pay an interest at the rate of nine per cent per annum to the land-loser for the period between the possession of land and the payment of compensation. This interest under this section is paid as a *solatium* to the land-loser for delay in payment of compensation money. In *Mohd. Asia. Y. State of V.P. and others*,⁷³ the question was that whether provisions for solatium or making the reference under Section 18 of the Act are attracted on agreed terms? It was held by the Supreme Court that the person interested cannot claim such benefits. Now the issue here is that whether the delay in payment of compensation to the land-loser is a case of *solatium* or a case of damages to the land-loser. For instance, if the land-loser gets amount of compensation well within time, he can invest that money in any productive activity to further earn his livelihood. A farmer can buy a new land for himself and start his agricultural activities. A person can make some fruitful investment in capital

⁷² When the amount of such compensation is not paid or deposited on or before taking possession of the land, the Collector shall pay the amount awarded with interest thereon at the rate of [nine per centum] per annum from the time of so taking possession until it shall have been so paid or deposited.

⁷³ 2006(2) Land L.R. (Allahabad) 643

market or the money-market to earn his livelihood. There may be many other ways where the land-loser can use his compensation money in a fruitful manner so as to earn much more money than the interest paid by the Collector to him. It means that the delay in payment of compensation money is an opportunity loss to him, and the violation of his rights for using the money well within time. Hence, it is a case of damages suffered by the land-loser. It is suggested to amend Section 34 and struck down the clause of interest payment and insert the clause for the payment of damages.

- 5. Need for an independent body to review the amount of compensation:** The compensation is determined by the Collector. For any objection under Section 5 and Section 9 of the Act, the Collector and Government act as the Quasi-Adjudicatory Body, and the suits to a civil court are specifically barred. As a result, even the monetary compensation is not fairly calculated. Hence, there is a need for an independent judicial body to review the amount of compensation calculated and hear the objections.

12.3 Scope for further research

The researcher thinks that there is a lot of scope for further research in the land-acquisition matters with relation to the following topics:

1. The issue of adverse possession also requires to be addressed.
2. The determination of public purpose.
3. The issue of 'de-notification' of the land already acquired by the Government, the public purpose for which the land was acquired does not remain workable.
4. The issue of non-use of land by the company also requires to be addressed properly.

13 Conclusion

The law of Land Acquisition is in conflict with the preservation of private interest of an individual for public interest and consequently, it is a denial of the right to property to the citizens. It has an overriding effect over the individual's right to own a property; hence the law of land acquisition should be interpreted narrowly and strictly. No bargaining power is available to the land-owner against the State. Nor there is a say available to the owner of the property fixing the compensation. This makes it mandatory to construe law in the strictest sense and the mechanism of various checks and balances to be complied with strictly. If we talk about the established law then we will find that the purpose for which the land has been acquired is not a public purpose. Apparently, on the face of it, it means that the act of the government is *ultra vires*.

The enquiry done by the Land Acquisition Collector is merely an administrative act. It is neither a quasi-judicial nor a judicial act; though the power to summon and enforce attendance is given to the Land Acquisition Collector under Section 14 of the CPC. In the exercise of this power, he can compel production of documents from any person related to the acquisition of land. The Government not the interested parties is bound by the offer made by the Land Acquisition Officer. There is no need for further proceedings in relation to compensation if an agreement is entered into between the collector and the interested parties; otherwise, provisions of Section 18 as to the judicial settlement are invoked.

For the purpose of modern growth, development projects and resultant land acquisitions have become inevitable practice. However, the land is equally important in the economic and socio-cultural development of the individuals, as it is inherently related to their rights, poverty and development. So it is extremely crucial to have a carefully drafted policy for land acquisition. The beginning should be made with a meaningful change in compensation and R&R policy so that the incidents like *Nandigram* and *Greater Noida* may be avoided.

Indian economy in recent years has been consistently performing with flying colors, escalating 9.2% in 2007 and 9.6% in 2006.⁷⁴ The Gross Domestic Product (GDP) in India expanded 8.20 percent in the fourth quarter of 2010 over the same quarter, previous year.⁷⁵

⁷⁴ <http://business.mapsofindia.com/india-gdp/growth-rate.html>, visited on 6th March, 2011

⁷⁵ <http://www.tradingeconomics.com/Economics/GDP-Growth.aspx?Symbol=INR>, visited on 6th March, 2011

To continue with such a rate of growth, it becomes important to address the issues related to the Land Acquisition matters. The State cannot expect to get away with the current land acquisition policy. The issue of displacement and compensation are the examples of how law has to be consistent with socio-economic and political circumstances, and appears to have failed in doing so.

If one has to find the conscience of the law of acquisition, he can find it in its provision of compensation. Compensation is understood as the measure for reducing the negative impact on the land-losers inherent in acquisition. While fixing the compensation, various principles like equity and equivalence, negotiation, loss of customary rights, adequate remedy in case of dissatisfaction with the compensation, should be kept in mind. More and more emphasis should be given to alternative non-monetary compensation instead of monetary compensation, e.g. alternative land, commercial plots, etc. It should also be ensured that the agricultural land is avoided for acquisition as the project is related to non-agricultural purposes like industrial projects, urban development, residential projects, etc.

“If the felling of trees and interference with wildlife and nature in general require statutory clearances, should not the displacement of people be subject to a similar requirement?” If the answer is yes, then the most suitable way to ensure resettlement of the displaced people is to ensure that they are adequately compensated. Through adequate compensation only, they will be in a position to buy another residence or land for themselves. The approach adopted by State of Karnataka of giving developed site of the land as compensation for the land acquisition deserves appreciation; but at the same time it should be ensured that the farmer, whose source of income was his agricultural activities, gets a regular source of income after his land is acquired by the Government.

To conclude, there is a strong need that the legal thought be put into the issues concerned with the land acquisition so that the imbalances in our system can be removed.

14 Bibliography

1. 10th Report of Law Commission of India, *Law of Acquisition and Requisitioning of Land*, 26th September, 1958, New Delhi
2. 2011-2012 Budget Speech
3. Agarwal Om Prakash, *Commentary on the Land Acquisition*, (8th Edn. 2008) Universal Law Publication, Delhi.
4. Bansal B.L., *Law of Acquisition of Land in India*, (1st Edn. 2004) Capital Law House, Delhi.
5. Barthakur Arun Kumar, *Justice according to law or expediency? - Need for instilling realism and sensitivity to justice delivery paradigm in land acquisition matters*, All India Reporter (Vol. 07, 3003)
6. Beverly H, *Commentary on the Land Acquisition Act no. 1 of 1894*, (9th Edn. Vol. 1, 2007) Delhi Law House, Delhi.
7. Chawla Jagjit Singh, *Digest of Land Acquisition and compensation cases*
8. FAO, *Compulsory Acquisition of Land and Compensation*, (2008) Rome, available at http://www.fao.org/nr/iten/iten_en.htm
9. Haryana Industrial Development Policy, 2005 by Department of C&I, Government of Haryana
10. <http://business.mapsofindia.com/india-gdp/growth-rate.html>
11. <http://dams.org/>
12. <http://in.finance.yahoo.com/news/Rs-40K-cr-PSUs-disinvestment-pti-2830397331.html?x=0>
13. <http://profit.ndtv.com/news/show/govts-ambitious-rs-95-000-cr-target-from-disinvestment-142965>
14. <http://ssa.nic.in>
15. <http://www.bdabangalore.org/>
16. http://www.austlii.edu.au/au/legis/vic/consol_act/laaca1986322/
17. http://www.conversion-metric.org/area_conversion/acre_to_square_meter_conversion.php
18. <http://www.kiadb.in/>
19. <http://www.kiadb.in/images/stories/RFP-KIADB-PMC.pdf>
20. <http://dpal.kar.nic.in/.%5C18%20of%201966%20%28E%29.pdf>

21. http://www.dnaindia.com/money/comment_ensure-fair-compensation-for-land-acquisition_1455205
22. <http://www.indiatogether.org/2008/may/law-land.htm>
23. <http://www.indianews.org.in/better-compensation-in-land-acquisition/archives/2986>
24. <http://www.kiadb.in/images/set1.pdf>
25. <http://www.bbmp.gov.in/>
26. http://www.prsindia.org/uploads/media/Land%20Acquisition/1197003952_Land_20A_cq.pdf
27. <http://www.tradingeconomics.com/Economics/GDP-Growth.aspx?Symbol=INR>
28. Jain M.P., *Indian Constitutional Law*, (6th Edn. Vol. 1, 2010) Lexis Nexis Butterworths Wadhwa, Nagpur.
29. Karnataka Industrial Development Policy, 2009-2014 by Department of C&I, Government of Karnataka
30. Khera Aarti Paul, Aparna Purohit, Saanjh Neha Patel N. Bimal, *Again whose law is it anyways?*, Lawyers Collective (Vol. 18, 2003)
31. Puliani Sathpal, *The Land Acquisition Manual*, (2nd Edn. 2008) KLJ Publications, Bangalore.
32. Ramchandran V.G., *The Law of Land Acquisition and Compensation*
33. Rawls John, *A Theory of Justice*, (1971) Harvard University Press, USA.
34. Setalvad MC, *Tenth Report: Land Acquisition and Requisition of Land*
35. Singh Randhir, *Land Acquisition Act 1894: as amended by Act no. 68 of 1984*
36. Stubkjaer Erik, Carsten Jahn Hansen & Others, *Acquiring Land for Urban Purposes – A Sino-Danish Dialogue*, (2010) Publication Series, Department of Development and Planning, Aalborg University, Aalborg, available on http://people.plan.aau.dk/~est/ChinaLandAdministration/VisitNov1_2010/AcquiringLandForUrbanPurposes.pdf
37. www.jstor.org
38. www.springerlink.com

15 Annexure

15.1 Annexure I

Field Visits:

As per the proposed time-line, I started visiting various government departments situated in Bangalore from 15th February to 20th February, 2011. I visited various departments like the Bangalore Development Authority (BDA), Karnataka Industrial Area Development Board (KIADB), Urban Development, Revenue Department, Commerce and Industry, etc. I must admit here that almost all the officers whom I approached were available well within time. They welcomed me and devoted their precious time for the cause of my research. The discussion process has been very informative and useful for my research. A small gist of the discussions is presented below as per the names of various officials I met:

- 1. Under Secretary, Urban Development (GOK):** He is in-charge of the BDA acquisition matters. He told me that he deals with the acquisition of land for the purpose of forming urban layouts in the city of Bangalore. He told me about the procedure of payment and determination of the compensation to the land-losers. ‘Guidance value’ of every land acquired is fixed by the Revenue Department, which is actually paid as compensation to the land-loser. Compensation is never paid on the basis of market value of the land, but only the guidance value of land is paid. A new scheme for compensation was first started with the land acquisition done in the Kempe Gowda layout. Mr. Premchand provided me a sample of the Government Order mentioning the compensation to be paid to the land-loser, which I have annexed along with this project report. According to the new scheme, 45% of the total land acquired is allotted for the purpose of civic amenities (including construction of roads, parks, government schools), and the remaining 55% is left for the residential Houses. Now this remaining 55% of the total land is considered as the developed land. Out of this developed land, 40% is allotted to the land-loser as compensation. This allotment of land is done by way of four sites of either 40x60 dimensions or 30x40 dimensions, as per the discretion of BDA. Here, the land-loser is given a choice either to accept cash compensation according to the previous scheme and get the guidance value of his land, or to accept the compensation in terms of the developed sites under the new

scheme, or to have partially the guidance value and partially developed sites. The corner sites of the developed land are never given as compensation, but they are always auctioned by the BDA. After a wide protest due to the land acquisition in Arkavathy layout recently, the aforesaid new scheme of compensation has been announced by the State government. It should be noted that in the budget, i.e., the budget for the year 2010-2011 for the State of Karnataka, the total planned expenditure for the Urban Development is ₹ 5883 Crore.

- 2. Deputy Secretary, Revenue Department (GOK):** He is the in-charge of Land Acquisition matters. He made me aware of the various important points related to the fixation of the compensation package for the Land Acquisition. The Revenue Department has not collected information on land acquisition, compensation paid or rehabilitation and resettlement provided etc. The information has to be obtained by writing to individual Land Acquisition Officers throughout the State. All the sub-divisional Assistant Commissioners (there are 49 in number) are recognised as Land Acquisition Officers who acquire land for purely Government purpose. There are umpteen numbers of Special LAOs who are nominated for specified projects, like irrigation projects, power projects etc. There are few officers on deputation to different departments of the State Government like KIADB, BDA, NHAI, KBJNL, etc. who act as Special LAOs. It should be noted that in the budget for the year 2010-2011, for the State of Karnataka, the total planned expenditure for the Revenue is ₹ 2764 Crore.
- 3. Assistant Secretary, Commerce & Industries Department (Government of Karnataka):** He is the Assistant Secretary to C&I (Commerce & Industries) Department to the Government of Karnataka. The discussions with him were very much informative. According to him, Commerce & Industry department is the acquisition body to the government. Deputy Commissioner (DC) in the Revenue Department fixes the guidance value of the land acquired by the Government. The compensation is paid according to that guidance value only. If the acquisition to be done is only upto 1 acre, the application can be made directly to the KIADB for acquisition. But if the investment to be done is above 1 acre, then the application has to be made firstly to the Karnataka Udyog Mitra along with the project report. If the investment to be done is not more than ₹ 3 Crore, the process is monitored by the DLSWCC (under Section 9 of the Karnataka Industries (Facilitation) Act, 2002),

chaired by the DC of the district concerned. If the investment is between ₹ 3 crore to ₹ 50 crore, the acquisition process is approved by the State Level Single Window Clearance Committee (under Section 6 of the Karnataka Industries (Facilitation) Act, 2002), chaired by Industries Minister. If the investment to be done is more than ₹ 50 crore, the matter has to be placed before the SHLCC (under Section 3 of the Karnataka Industries (Facilitation) Act, 2002), chaired by the Chief Minister of the State of Karnataka. In this way, Department of Commerce & Industry becomes a processing body. The land is actually acquired by the KIADB. Mr. N. Kumar advised me to visit the Karnataka Udyog Mitra also.

4. Assistant Secretary, Karnataka Industrial Area Development Board (Head-Office): Due to lack of time he advised me to meet his Manager Mr. Ravindra. Mr. Ravindra told me about the actual process of land acquisition which the KIADB follows. He told me that when the KIADB has to acquire some land, then first it fixes the tentative value of land to be acquired. The tentative value of the land is fixed by KIADB while considering various factors like the guidance value fixed by the Stamps & Registration Department, the Current Market value of the land, etc. After that the following procedure is followed:

- a. 40% of the total tentative value of the land is charged from the Company.
- b. After the Company pays 40% of the total tentative value, preliminary notice is issued by the KIADB declaring for the proposed land acquisition.
- c. After the preliminary notice, the case is referred to the Special Land Acquisition Officers (SLAOs) of the KIADB.
- d. Notice is issued to the land owner and JMC under Section 28(2) of the KIADB Act, 1966, to know the actual measurement of the land.
- e. Orders are passed under Section 28 (3) of the KIADB Act, 1966.
- f. Remaining 60% of the tentative cost of the land is called from the Company.
- g. After the remaining 60% of the tentative cost is paid by the Company to the KIADB, a draft notification is prepared by the SLAOs under Section 28(4) of the KIADB Act, 1966.
- h. The notification for the land acquisition is published in the official gazette.
- i. A letter is sent to the DC for fixing the actual value of the land.
- j. After the value is fixed by the DC, a Board meeting is called by the KIADB for considering the rate fixed by the DC.

- k.** If the value fixed is higher to the tentative cost earlier called from the company, then the remaining amount is called by KIADB through a demand letter.
 - l.** After the remaining amount called from the company is received, an address is made to the SLAOs to acquire the land and get possession of the land.
 - m.** After the acquisition is done, the SLAOs are directed to disburse the amount of compensation among the land-owners.
 - n.** The land is allotted to the Company.
- 5. Assistant Director, Karnataka Udyog Mitra:** He told me that Karnataka Udyog Mitra is a single window agency which facilitates investment for the industries. This is actually a processing unit of the State Government. He provided me two booklets over the Karnataka Industries (Facilitation) Act, 2002 and Rules, and the Karnataka Industrial Policy, 2009-2014. The Department is actually aimed for the promotion of industrial development and facilitation of new investments to simplify the regulatory framework by reducing procedural requirements and rationalising documents and to provide for an investor friendly environment in the State of Karnataka. Whereas, it is expedient to provide for speedy implementation of Industrial and other projects in the State by providing single point guidance and assistance to promoters, reducing the procedural requirements rationalising documents and to ensure smooth operation.

15.2 Annexure II

The Percentage of Tribal Population displaced due to large dams in India:

No.	Name of the Project	State	Population facing displacement	Percentage of tribal population
1.	Karjan	Gujarat	11,600	100
2.	Sardar Sarovar	Gujarat	2,00,000	57.6
3.	Maheshwar	M.P.	20,000	60
4.	Bodhghat	M.P.	12,700	73.91
5.	Icha	Bihar	30,800	80
6.	Chandil	Bihar	37,600	87.92
7.	Koel Karo	Bihar	66,000	88
8.	Mahi Bajaj Sagar	Rajasthan	38,400	76.28
9.	Polavaram	Andhra Pradesh	1,50,000	52.90
10.	Maithon & Panchet	Bihar	93,874	56.46
11.	Upper Indravati	Orissa	18,500	89.20
12.	Pong	Himachal Pradesh	80,000	56.25
13.	Ichampalli	A.P. – Maharashtra	38,100	76.28
14.	Tultuli	Maharashtra	13,600	51.61
15.	Daman Ganga	Gujarat	8,700	48.70
16.	Bhakra	Himachal Pradesh	36,000	34.76
17.	Masan Reservoir	Bihar	3,700	31
18.	Ukai Reservoir	Gujarat	52,000	18.92

Source: Satyajit Singh, *Taming the Waters*, (Oxford University Press, 1997) and Government Figures⁷⁶

⁷⁶ As quoted in Harsh Mandar, Ravi Hemadri and Others, *Dams, Displacement, Policy and Law in India*, Contributing paper to World Commission on dams, available at <http://dams.org/>, last visited on 5th March, 2011.

15.3 Annexure III

Sample of notification issued by KIADB for land acquisition

Acquisition of Lands by Karnataka Industrial Areas Development Board of Boganahalli Village •The KIADB has proposed for acquisition of lands in following Survey Number of Boganahalli Village in favour of M/s. Sai Srusti Developers (P) Limited for its proposed project •

KARNATAKA INDUSTRIAL AREAS DEVELOPMENT BOARD

Office of the Special Land Acquisition Officer,

No. 3, 1st Cross, Kheni Building, 3rd Floor, Gandhinagar,

Bangalore – 560 009. Phone No.: 080-22371884.

No.: KIADB/LAQ/1243/2007-08

Date: 24.08.2007.

It is hereby published for the information of those concerned that the **KARNATAKA INDUSTRIAL AREAS DEVELOPMENT BOARD**, Bangalore has proposed for **acquisition of lands** in the following Survey Numbers of **Boganahalli Village in Varthoor Hobli in Bangalore District** in favour of **M/s. Sai Srusti Developers (P) Limited** for its proposed project. The preliminary Notification Under Section 28(1) in this behalf issued vide Notification No. CI 45 SPQ 2007 Bangalore dated 18.08.2007 and the same has already been published in the Karnataka Gazette dated 20.08.2007 in Part-III Page No. 1 to 7.

Taluk: Bangalore East

Hobli: Varthoor

District: Bangalore

Village: Boganahalli

Sy.No. 133/2- 2.00 Acres.

All the persons who are interested in the land specified above shall file their **OBJECTIONS STATEMENTS** to the undersigned within **THIRTY DAYS** of publication of this Public Notice.

Notice to that effect is hereby given to all whom it may concern in accordance with the provisions of Section 28(2) of KIADB Act.

Any person having interest in these lands may also prefer their objection with relevant revenue records to prove their title over the land within **30 days** from the date of publication of this notice.

Any contracts for the disposal of the said lands by Sale, Mortgage, Assignment, Exchange or otherwise or any layout of improvements made therein without prior permission of the competent authority, after the date of publication of this notification under the Provisions of the KIADB Act 1966 will be disregarded while assessing compensation for such parts of the said lands as may be finally acquired.

The map of the area comprised therein and the notification specifying the lands which is proposed to be acquired may be seen in the Office of the Special Land Acquisition Officer, KIADB, Bangalore during the office hours on all working days. Enquiry is fixed on **26.09.2007** at **11.00 a.m.**, at the Office of the Special Land Acquisition Officer, KIADB Zonal Office, No. 3, 1st Cross, Kheni Building, 3rd Floor, Gandhinagar, Bangalore. Interested Persons are hereby requested to be present with relevant documents.

Sd/-

Special Land Acquisition Officer,

Karnataka Industrial Areas Development Board,

Bangalore

Source: Collected from Assistant Secretary, KIADB, during the field visit.

15.4 Annexure IV

Glossary

Acre	An acre is the name of a unit of area in a number of different systems, including Imperial units and United States customary units. The most commonly used acres today are the international acre and, in the United States, the survey acre. One acre comprises 4,840 square yards or 43,560 square feet. ⁷⁷
Act	Include a series of acts, and words which refer to acts done extended also to illegal omissions. ⁷⁸
Alternative Compensation	Compensation other than cash compensation, e.g., alternative land, stamp duty concessions, etc.
Bandh	Strike, a work stoppage undertaken in support of a bargaining position or in protest of some aspect of a previous agreement or proposed agreement between labour and management.
Bibliography	List of references to books, journal articles and other information sources. They are usually placed at the end of a publication or piece of coursework.
Bigha	Bigha is three fourth of an acre or 30 guntas.
Central Act	An Act of Parliament, and shall include- An Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution, and Act made before such commencement by the Governor General in Council or the Governor General, acting in a legislature capacity. ⁷⁹
Collector	"Collector" shall mean, in a Presidency-town, the Collector of Calcutta, Madras or Bombay, as the case may be, and elsewhere the chief officer-incharge of the revenue administration of a district. ⁸⁰

⁷⁷ http://www.conversion-metric.org/area_conversion/acre_to_square_meter_conversion.php, visited on 10th March, 2011

⁷⁸ Section 3 of the General Clauses Act, 1897

⁷⁹ Section 3 of the General Clauses Act, 1897

⁸⁰ *Ibid*

Compensation	That which constitutes, or is regarded as, an equivalent; that which makes good the lack or variation of something else; that which compensates for loss or privation; amends; remuneration; recompense.
Concurrent List	Third List given in the Seventh Schedule of the Constitution of India, under which both the State and Centre can legislate.
Constitution	The Constitution of India.
Developed Land	The portion of land left after the development activities like roads, parks, schools, etc. Under the current policy practised in Karnataka, it is 55% of the total land acquired.
Disinvestment	The action of an organization or government selling or liquidating an asset or subsidiary. Also known as "divestiture". ⁸¹
Displacement	The position where the land-loser is made to vacate his own land or property due to acquisition of his land done by the Government.
Financial Year	Year commencing from 1 st day of April and ending on the 31 st day of March.
Guntas	Gunta is a measure of area. This unit is typically used to measure the size of a piece of land. In India, 1 Gunta = 121 square yards = 101.17 square metres = 2.5 cents. 40 Guntas = 1 acre ⁸²
Handbook	A manual or a small reference book generally published by a library, institute or an enterprise to inform readers about the publisher <i>i.e.</i> Library or institute or enterprise.
Land-acquisition	The act of acquiring land for the public purpose by the Government.
Land-loser	The owner of the land from whom the land has been acquired by the Government.

⁸¹ <http://www.investopedia.com/terms/d/disinvestment.asp>, visited on 10th March, 2011

⁸² <http://en.wikipedia.org/wiki/Gunta>, visited on 10th March, 2011

Monetary Compensation	Compensation paid by the Government in terms of money or cash compensation.
Ordinance	An authoritative command or order
Phodi	Sub-divided fields.
Phot-Kharab	Means a piece or pieces of land classed as unarable and included in a survey number.
Presidency Town	The local limits for the time being of the ordinary, original civil jurisdiction of the High Court of Judicature at Calcutta, Madras or Bombay, as the case may be. ⁸³
Province	A Presidency, a Governor's Province, a Lieutenant Governor's Province or a Chief Commissioner's Province.
Solatium	Compensation for injured feelings as distinct from financial loss or physical suffering.
State Act	Legislation passed by the State Legislature

⁸³ Section 3 of the General Clauses Act, 1897

15.5 Annexure V

List of the some cases on land-acquisition decided by the Supreme Court

These cases involve the substantial question of the fixation of compensation by the Government.

1. *Abdul Kuddus Mandai and Others v. State of Assam and Another*; 2000(4) ALL INDIA LAND LAWS REPORTER (Supreme Court) 67
2. *Administration of Daman and Diu and Another v. Mohan Lal Lalbhai Desai*; 2000(1) ALL INDIA LAND LAWS REPORTER (Supreme Court) 13
3. *Amar Singh others v. State of Haryana and Others*: 2006(2) Land LR. (Pb. & Hry) (DB) 654
4. *Anjani Molu Dessai v. State of Goa* : 2010 STPL(Web) 1083 SC 2010 STPL(Web) 1083 SC
5. *Banta Singh v. State of Punjab and Another*: 2006(2) Land L.R. (Pb. & Hry.) 456
6. *Brij Gopal and others v. State of Haryana*: 2006(2) Land L.R. (Pb. & Hry.) (DB) 313
7. *Collector of Pune v. I.B. Gokhale (Dead)through Executors & Another.*; 2000(3) ALL INDIA LAND LAWS REPORTER (Supreme Court) 41
8. *Collector, Land Acquisition, HPPWD, Kangra v. Kehar Singh and others*: 2006(2) Land L.R. (Himachal Pradesh) 205
9. *Delhi Administration v. Gurdip Singh Urban and Others. etc.*; 2001(1) ALL INDIA LAND LAWS REPORTER' (Supreme Court) 3
10. *Executive Engineer, Karnataka Housing Board v. Land Acquisition Officer, Gadag & Others*. 2011 Civil Appeal Nos. 53-54 of 2011 [@ SLP [C] Nos.27806-27807/2008]
11. *G. Rajendra & others. v. Special Tahsildar, Tamil Nadu*; 2000(1) ALL INDIA LAND LAWS REPORTER (Supreme Court) 1
12. *Gujarat Industrial Development Corporation v. Narottambhai Morarbhay & Another.*; 2000(2) ALL INDIA LAND LAWS REPORTER (Supreme Court) 534
13. *Hindustan Petroleum Corpn. Ltd. v. Darius Shapur Chenai and Others* : 2006(1) Land L.R. (Supreme Court) 700

14. *Hissar Improvement Trust v. President, Tribunal Improvement Trust, Hissar and Others*: 2006(2) Land L.R. (Pb. & Hry) 616
15. *H.M.T. Ltd. v. Mudappa* : 2007 Appeal (civil) 7059-7060 of 2000
16. *Hoshiarpur v. Satya Narain and another*: 2006(2) Land L.R. (Pb. & Hry.) 108.
17. *Kapur Chand Jain (Dead) and Others v. State Govt. of H.P. and Others*; 2000(2) ALL INDIA LAND LAWS REPORTER (Supreme Court) 410
18. *Kurukshetra Development Board, Kurukshetra through its Secretary v. Jagtar Singh and Others*: 2006(2) Land L.R. (Pb. & Hry.) 293
19. *L. Srinivasa Reddy and ors. v. The Mandai Revenue Officer-cum-Land Acquisition Officer*; 2001(1) ALL INDIA LAND LAWS REPORTER (Supreme Court) 550
20. *Manjit Singh and others v. Punjab State and Others*: 2006(2) Land L.R. (Pb. & Hry.) 326
21. *Mohd. Aslam v. State of U.P. and Others*: 2006(2) Land L.R. (Allahabad) 643
22. *Nuclear Power Corpn. Ltd. v. Hodal Singh*; 2000(4) ALL INDIA LAND LAWS REPORTER (Supreme Court) 602
23. *Swasthya Raksha Samiti Rati Chowk v. Chaudhary Ram Harakh Chand (D) by Lrs. & Others*. : 2006(1) Land L.R. (Supreme Court) 402
24. *Mandir Shree Sitaramji alias Shree Sitaram Bhandar v. Land Acquisition Collector and Others*. : 2006(1) Land L.R. (Supreme Court) 692
25. *Govt. of A.P. and Others. v. Kollutla OBI Reddy and Others*. : 2006(1) Land L.R. (Supreme Court) 698
26. *Har Kiran Commar v. Delhi Admn. & Others*: 2001(1) ALL INDIA LAND LAWS REPORTER (Supreme Court) 1.
27. *Kehar Singh v. Nishan Singh and others* : 2006(2) Land L.R. (Pb. & Hry.) 476
28. *Mohinder Singh v. State or Punjab and others*: 2006(2) Land L.R. (Pb. & Hry.) 111
29. *Punjab Water Supply & Sewerage Board, Hoshiarpurv. Satya Naraiio and Another*: 2006(2) Land L.R. (Pb. & Hry.) 108
30. *Kurukshetra Development Board, Kurukshetra v. Jagtar Singh and others* : 2006(2) Land L.R. (Pb. & Hry) 728
31. *The Executive Director v. Sarat Chandra Bisoi & Another. etc.*: 2001(1) ALL INDIA LAND LAWS REPORTER (Supreme Court), 235
32. *Harbax Singh (Since Deceased) Through rs. v. Depinder Singh*: 2006(2) Land L.R. (Pb. & Hry.) 359

33. *Mohinder Singh v. State or Punjab and Others*: 2006(2) Land L.R. (Pb. & Hry.) 111
34. *Nelson Fernandes and Others v. Special Land Acquisition Officer, South Goa and Others* 2007 AIR 1414, 2007(3) SCR 563
35. *Numaligarh Refinery Ltd v. Green View Tea & Industries and Another*: Appeal (civil) 1401 of 2007
36. *Rishi Pal Singh and Others v. Meerut Development Authority and Another*: 2006(2) Land L.R. (SC) 724
37. *Special Deputy Collector and Another etc. v. Kurra Sambasiva Rao and Others etc.*: 2000(2) ALL INDIA LAND LAWS REPORTER (Supreme Court) 267
38. *Special Land Acquisition Officer, Dharward (The) v. Smt. Tajar Hanifabi*: 2000(2) ALL INDIA LAND LAWS REPORTER (Supreme Court) 535
39. *Special Land Acquisition Officer, B.R. Project, Davangere etc. v. Krishna Naik (Dead) by LRs.*; 2000(3) ALL INDIA LAND LAWS REPORTER (Supreme Court) 499
40. *Spl. Tahsildar, T.N. Magnesite Ltd. and Another. v. Vaiyapuri and Others*: 2001(1) ALL INDIA LAND LAWS REPORTER (Supreme Court) 20
41. *Sri Prasada Rao Mikkilineni & Others. v. State of A.P. and Others*: 2001(1) ALL INDIA LAND LAWS REPORTER (Supreme Court) 51
42. *State of Punjab and Another v. Gulab Kaur* : 2006(2) Land L.R. (Pb. & Hry.) 90
43. *Sukhbir Singh and Others v. State of Haryana and Others* : 2006(2) Land L.R. (Pb. & Hry.) 551
44. *The Land Acquisition Officer v. Govindhasamy* : 2010 Appeal Suit Nos.45 to 52 of 2010
45. *The Municipal Council, Ahmadnagar and Another v. Shah Hyder Beig & Co*: 2000(3) ALL INDIA LAND LAWS REPORTER (Supreme Court) 218
46. *Union, of India v. The Special Land Acquisition Officer*: 2000(2) ALL INDIA LAND LAWS REPORTER (Supreme Court) 413
47. *U.P. Parents association and others v. S.K. Bhargava and others*: 2006(2) Land L.R.(Supreme Court) 29
48. *Viluben Jhalejar Contractor v. State of Gujrat* : 2005 RD-SC 243 (13 April 2005)

15.6 Annexure VI

Sample of Government Order for land acquisition

GOVERNMENT OF KARNATAKA PROCEEDINGS

Sub: For approval and Preliminary Official Memorandum from the Government of Karnataka for the Land Acquisition by BDA and also name of Layout “Sri Nadaprabhu Kempe Gowda Layout”.

Read: Commissioner, BDA, Bangalore letter No. BDA/Comissioner/79/2007-08 Dated: 18.09.2007.

PREAMBLE:

Land Acquisition by the Bangalore Development Authority, Kengeri Hobli, Kommaghatta, Krishna Sagar, Bhimanakuppe, Ramsagar, Soolikere, Kenchanapura, Ramasandra, Chellaghatta and Shigehalli, Kannahalli, Kodigehalli & Manganahalli village under Yashawanthapur Hobli. Different total survey No. 4814 Acre 15 Guntas land, expected cost is ₹ 2639/- crore.

For this Layout Land Acquisition by Bangalore Development Authority named as “Sri Nadaprabhu Kempe Gowda Layout”. For Civil facilities it is 45% and remaining 55% land for residential Houses are divided into 60:40 ratio per acre. Development of sites for land-owners or to give subsidy and BDA Act of 1976 para 17 for approval and Preliminary Official Memorandum from the Government of Karnataka.

GOVERNMENT ORDER NO. UD BLA 2007 BANGALORE Dated: 02.04.2008

Government ordered and decided to examine the Preamble by the BDA as follows:

1. Land Acquisition by the Bangalore Development Authority, Kengeri Hobli, Kommaghatta, Krishna Sagar, Bhimanakuppe, Ramsagar, Soolikere, Kenchanaupura, Ramasandra, Chellaghatta and Shigehalli, Kannahalli, Kodigehalli & Manganahalli village under Yashawanthapur Hobli. Different total survey No. 4814 acre 15 Guntas land, expected cost is ₹ 2639/- crores;

2. For this Layout Land Acquisition by Bangalore Development Authority and also name of the layout “Sri Nadaprabhu Kempe Gowda Layout”;
3. For the construction of Layout, to use the service from the experienced Urban Engineers and Architectures;
4. For Civil facilities it is 45% and remaining 55% land for residential Houses are divided into 60:40 ratio per acre. Development of sites for Land Owners or to give subsidy for the land-owners it will be 40% of the remaining 55% land i.e., 9583 sq. ft. /per acre. And to give developed sites or subsidy. (As requisition from the Land owner, they are eligible to get some percentage from subsidt and also developed sites).
5. BDA as authority to distribute/reserve 6X9 mts of sites to SC/ST & OBC classes of 20%, again to construct new buildings/houses for the backward classes. Apart from this to reserved and civil facilities basic needs from BBMP, BWSSB, KPTCL, drainage, BMTC and other organisations.
6. BWSSB has to provide clean and filter water pipes should be installed from the time of constructing of Layout.
7. For the approval, they have to give full information regarding re-establishment and.....planning from the running policies/rules to elaborate to the Secretariat/administrative committee.
8. Approved and Preliminary Official Memorandum issued from the Government of Karnataka under Bangalore Development Authority Act of 1976 para 17.

By the Order in the name of:

(M.S. Premachandra)

Under Secretary to Government

Urban Development Department

Source: Collected from Under Secretary, Urban Development Department, during the field visit. Original copy in Kannada, translated in English.

15.7 Annexure VII

List of some incidents of protests for land acquisition in the recent past

1. The Times of India, Apr 5, 2011, 04.46am IST
COIMBATORE: City residents protesting acquisition of over 8,500 acres of their land by the Tamil Nadu Housing Board have appealed to political parties to help them retrieve the land. The aggrieved residents held a meeting with the candidates of political parties to push their demand....⁸⁴

2. The Times of India, Jan 19, 2011, 01.41pm IST
RAIPUR: Seventy-eight farmers protesting against forcible acquisition of their land were arrested and several others lathicharged in Chhattisgarh's Janjgir Champa district late on Monday. The farmers are agitating against the state government forcibly acquiring their land for a 3600 mw power plant by Hyderabad-based firm KSK Energy Ventures Ltd.⁸⁵

3. Report by Mangaloremithr News Network, Friday, April 01, 2011
MANGALORE: The Tulunada Rakshana Vedike(TRV) has organised a protest rally to oppose the proposal of acquiring 60 metres of land from Nanthur and Talapady for National Highway widening on Friday 31st March. Veteran litterateur Amruth Someshwar inaugurated the rally, which was taken out from Adka in Kolya to Thokkottu Junction. TRV founder president Yogish Shetty Jeppu presided over the protest meet while Mangalore MLA U T Khader was chief guest.⁸⁶

4. The Hindu, Wednesday February 23rd, 2011
MADURAI: Scores of farmers and cadres of Communist Party of India (Marxist), including the party MLA K. Bala Bharathi, laid siege to the Tirumangalam taluk

⁸⁴ http://articles.timesofindia.indiatimes.com/2011-04-05/coimbatore/29383726_1_acquisition-land-revenue-records, visited on 6th April, 2011

⁸⁵ http://articles.timesofindia.indiatimes.com/2011-01-19/india/28376565_1_farmers-protest-land-acquisition-acres, visited on 6th April, 2011

⁸⁶ <http://www.mangaloremithr.com/news/story.aspx?News-ID=10758>, visited on 6th April, 2011

office protesting against acquisition of “fertile farm” land for setting up the SIPCOT industrial estate.⁸⁷

5. Business Standard, January 22, 2011, 0:20 IST

ALLAHABAD: Farmers and land owners today went on a rampage damaging police vehicles to protest land acquisition at Karchhna near Allahabad where the Jaypee Group proposes to set up a coal-fired thermal power plant. The agitators also alleged one farmer was killed in police firing, a charge denied by the Uttar Pradesh government. The deceased had been identified as Gulab Vishwakarma. Police said the death had nothing to do with the agitation.⁸⁸

6. Business Standard, November 23, 2010

MUMBAI: Investments worth ₹ 100 crore in silica sand mining and beneficiation in Nellore district of Andhra Pradesh are in jeopardy due to the state government’s insistence on acquiring the mineral-bearing land for developing a Special Economic Zone (SEZ), protests the Federation of Indian Mineral Industries (Fimi).⁸⁹

7. The Times of India, Wednesday, Dec 9, 2009, 17:29 IST

AHMEDABAD: More than 2,000 farmers are set to lose their fertile land in Sanand where the Gujarat government has initiated process to acquire more than 5,000 acres land for industrial purpose. The land to be acquired is near Tata's Nano plant which was shifted from Singur in West Bengal to Chharodi village near Sanand in Ahmedabad district. The Nano plant is under construction and likely to be commissioned in March-April next year.⁹⁰

8. Zee News Article, 26th August, 2010

⁸⁷ <http://www.hindu.com/2011/02/23/stories/2011022352890700.htm>, visited on 6th April, 2011

⁸⁸ <http://www.business-standard.com/india/news/farmers-protest-land-acquisition-for-power-plant-near-allahabad/422593/>, visited on 6th April, 2011

⁸⁹ <http://www.business-standard.com/india/news/andhra-silica-mining-units-protest-land-acquisition-for-sez/415788/>, visited on 6th April, 2011

⁹⁰ http://www.dnaindia.com/india/report_farmers-to-launch-protest-against-land-acquisition-in-gujarat_1321908, visited on 6th April, 2011

NEW DELHI: Thousands of disgruntled farmers led by Rashtriya Lok Dal (RLD) Thursday held a massive rally in the national capital to protest against the acquisition of their land for the Yamuna Expressway. The farmers are pressing for higher compensation for their lands acquired for the Yamuna Expressway and want the Centre to amend the Land Acquisition Act.⁹¹

9. The Hindustan Times, 29th January, 2011

LUCKNOW: A farmer in Uttar Pradesh's Mahoba district set himself on fire, protesting the acquisition of his agricultural land for an irrigation project and demanding higher compensation for the same, officials said on Saturday.⁹²

10. The Himalayan Beacon, 29th October, 2009

SILIGURI: A section of landowners at Kawakhali near Siliguri today organised a protest rally opposing the state-owned Siliguri Jalpaiguri Development Authority's (SJDA) ongoing land acquisition there. The protestors were also joined by some individuals, who have already given up their land but are now aggrieved with the rehabilitation, as is being offered by the SJDA. The protest rally at Kawakhali was organised this afternoon by the Thinikata Kawakhali Landowner Welfare Association, a landowners' body close to the Trinamul Congress.⁹³

11. The Hindu, Thursday, January 8th, 2004

THIRUVANANTHAPURAM: The Joint Action Council of the residents of Attipra village, near Kazhakoottam, has protested against the move to acquire more land from the area in the name of Technopark development.⁹⁴

12. Online Punjab Newspaper, Thursday, October 21, 2010

JALANDHAR: Residents of four local localities on Wednesday staged a dharna in front of the **Jalandhar Improvement Trust office in protest** against acquisition of their land for the construction of a road.⁹⁵

⁹¹ <http://www.zeenews.com/news650761.html>, visited on 6th April, 2011

⁹² <http://www.hindustantimes.com/UP-farmer-immolates-self-to-protest-land-acquisition/Article1-655983.aspx>, visited on 6th April, 2011

⁹³ <http://beacononline.wordpress.com/2009/10/29/siliguri-landowners-protest-against-sjda%E2%80%99s-land-acquisition/>, visited on 6th April, 2011

⁹⁴ <http://www.hinduonnet.com/2004/01/08/stories/2004010812910300.htm>, visited on 6th April, 2011

13. Business Standard, November 20, 2010, 0:02 IST

CHENNAI/MYSORE: While the Yeddyurappa-led BJP government in Karnataka is embroiled in a land scam, farmers are up in arms against the acquisition of their lands for industrial use in Mysore district. They have alleged that the government was acquiring 25,000 acres of land. Dismissing their allegation, authorities have come out with a statement saying that they were acquiring 8,520 acres in the district as a mutual consent of farmers. The clarification has come in the wake of protests by farmers that the Karnataka Industrial Area Development Board (KIADB) was acquiring huge stretches of land, including fertile lands, in the taluks to create a 'land bank'.⁹⁶

14. **SINGUR** incident⁹⁷

15. The Times of India, April 1, 2011, 03:34 IST

ROHTAK: Stepping up the antiland acquisition agitation in Haryana chief minister Bhupinder Singh Hooda's home district " Rohtak, famers have started courting arrest to protest against the government's move to acquire their land for extension of Industrial Modern Township (IMT) in Rohtak. Led by "bhoomi bachao sangharsh samiti", about 64 farmers of about six villages in Rohtak and Jhajjar districts have courted their arrest in the last two days by deliberately violating the prohibitory orders imposed by the district administration. Another group of farmers from Meham have declared to get themselves arrested by police on Friday.⁹⁸

⁹⁵ <http://punjabnews.org/jalandhar-news-residents-protest-against-land-acquisition-by-trust.html/>, visited on 6th April, 2011

⁹⁶ <http://www.business-standard.com/india/news/farmers-in-mysore-protest-land-acquisition/415529/>, visited on 6th April, 2011

⁹⁷ Full status report compiled by SAMU K., Indian Social Institute, available on http://www.isidelhi.org.in/hrnews/HR_THEMATIC_ISSUES/Landacq/Land%20Acq-2007.pdf, visited on 6th April, 2011

⁹⁸ http://articles.timesofindia.indiatimes.com/2011-04-01/india/29369929_1_prohibitory-orders-acres-of-agricultural-land-land-acquisition, visited on 6th April, 2011