

Issue of Land Acquisition in India

Manish Kumar

Associate Professor, Rayat College of Law, Distt. S.B.S. Nagar, Punjab (India)

ARTICLE DETAILS

Article History

Published Online: 25 May 2019

Keywords

Land Acquisition, Special Economic Zones, Displacement, Rehabilitation

*Corresponding Author

Email: manish.jarya[at]gmail.com

ABSTRACT

Widespread agitations have been witnessed across the country against the process of acquiring land for establishing SEZs. In the absence of concrete measures for rehabilitation of displaced people, the future of most of the affected, especially of small farmers and dependents, remained uncertain. SEZs in this context had been seen as symbol of growth ridden with social and economic exclusion. It was promised by the government that 'humane' displacement for development of SEZs will be accompanied by the measures of relief and rehabilitations for the affected people. However, the historical evidences were contrary in this regard. Fecundity of the new law to address the concerns is still to be ascertained.

Implementation of the policy of establishing special economic zones has roused a nation-wide debate as the economic changes are necessarily followed by some social ramification. Resultantly in several states there existed a widespread attitude of pessimism about the process of establishment of special economic zones. Since the independence very few policies were subject to such political opposition from the affected public and faced such fierce intellectual criticism from across the spectrum of commentators including those in international multilateral organisation. The Parliamentary Standing Committee on Commerce went to the extent of suggesting that no further approval should be given to new SEZs (Seminar 2008, 12, 22).

It was resented that through the policy of special economic zones, the country was going to set up 'inequalities enclaves' of development which would result in exclusive growth. Some critics were of the view that the SEZ policy could lead to a dehumanised progress 'where wealth accumulates and men decay (Vombatkere 2006). On some quarters they went as far as declaring the SEZ policy unconstitutional (Citizen Research Collective 2008). Special economic zones faced resistance across the country. From Amritsar in Punjab and Jhajjar in Haryana in the north to Kakinada in Andhra Pradesh and Nandagudi in Karnataka in the south; from Nandigram in West Bengal and Jagatsinghpur in Orissa in the East to Raigadh, Mangalore and Goa in the west coast of India. Farmers, landless workers, fishermen, and artisans had expressed their anger against the loss of source of earning and habitat due to establishment of SEZs (Seminar 2008, 14). These zones were described as an official tool used by big industrialists and real estate developers to grab land from farmers for making money (Levien 2011; Palit and Bhattachargee 2007). A Report of Expert Group of Planning Commission expressed its doubt regarding positive outcome of SEZs (Government of India 2008). It lamented that the process of acquiring land for SEZs has stirred agitations in different parts of the country. In many states huge landholdings have been acquired for this purpose. It further rued that this process has caused loss of revenue to the state exchequer in terms of tax revenue. On the other side agriculture sector would be affected negatively.

The Committee on State Agrarian Relations and Unfinished Task in Land Reforms set up in 2008 strongly recommend that the SEZs Act, 2005 should be reassessed and to imposed a restriction on acquisition of common land as well as agricultural land in this regard (Government of India 2009). The New York Times (2006) expressed its concerns about Shenzhen, a role model for SEZs all over the world. The phenomenal growth of Shenzhen has been accompanied by problems to local environment, rise in crimes and substandard living for thousands of migrant workers.

The main issue that unnerved the process of establishing SEZs in India was displacement and loss of livelihood of the people due to land acquisition. The process of acquiring land for SEZs became a serious problem. Earlier, the state governments were legally acquiring land for private zones neglecting the consent of people under Land Acquisition Act, 1894. The Act allowed the government to acquire land for 'public purpose' that was defined for an age when the government used to carry out many development activities which are now in hands of private sector (Mukhergi 2008). This triggered off protest in a number of SEZs located in India, where people refused to give up their residence and traditional sources of livelihood easily. People of Nandigram in West Bengal fought at great personal cost to retain their land (Kasturi 2008).

In the absence of concrete measures for rehabilitation and displaced people, the future of most of the affected, especially of small farmers and dependents, remained uncertain. Sensing the potential of more resentment, the Union Government put on hold the all remaining proposals to develop special economic zone (Dohrmann 2008). It was promised by the government that 'humane' displacement for development of SEZs will be accompanied by the measures of relief and rehabilitations for the affected people.

It was promised by the government that 'humane' displacement for the establishment of special economic zones would be followed by relief and rehabilitation. However, the historical evidences were contrary in that regard. According to an estimate, since 1950 nearly 40 million people (of which about 40 per cent are tribal and 25 per cent are *dalits*) lost their

land due to displacement caused by various projects for development. As far as rehabilitation is concerned at least 75 per cent of them were still awaiting competition (Citizen Research Collective 2008).

Though farmers were given price value or compensation for their land but the procedure of fixing value, based on current use of the land (which did not recognize the converted use) was denounced as completely colonial and most unfair (Ranganathan 2007). Market price roughly reflected the discounted sum of the expected value of output produced by land in future, net of material and labour cost. To an owner-farmer, however, ownership of land gives an opportunity to work, given widespread unemployment in the rural sector. If the farmer did not have land of his own, probably he would have remained unemployed for a longer period of year than he was then. This particular advantage that land gives him would not be reflected in the market price. The value of land for small farmer is even higher than what is determined by the market. A farmer with small landholding sells a very small portion of his grain production and retains larger part for self-consumption. Now if farmer sells the land, he will have to procure food grains for his self-consumption from the market at higher market price. The market price of food-grain is significantly higher than price at which farmer sells his produce. Thus the market price cannot properly compensate that probable loss of the owner-farmer. Questions were also raised about the practice of evaluating land on the basis of what land could earn in future, if put to an alternative use. Evidently, land's value would be higher if it was used for industry, compared to its present value when it was engaged in agriculture sector. Social justice requires that the existing land owner must also get share of that increased valuation (Sarkar 2007).

Millions of jobs would be created but one could not expect much rise in opportunities for the non-skilled displaced persons. It was contended that losers of livelihoods were not gainers of employment (Asher 2007). There might be some jobs for labourers during construction of infrastructure but that too would be for limited period only. After that, jobs available would require expertise and experience and hence could not be offered to farmers who knew nothing other than farming. Thus, one could not expect that the SEZs, which would create plenty of jobs, would benefit those agriculturists and dependent people, who parted with their resources of livelihood and future security. The necessity of integrating the issue of rehabilitation and resettlement with development process needed to be recognised. Affected persons must be involved in the policy making mechanism. The Parliamentary Committee on SEZs recommended a freeze on special economic zones. It recommended that (Government of India 2007):

- a) The maximum size of a multi-product SEZ should be 5000 hectares of fallow land or 2000 hectares of one crop land. There should be no SEZs on multi-crop land.
- b) Land should be taken on lease from farmers and farmers should be paid periodic rentals.
- c) That the state government should set a benchmark price for land and farmers should be paid a price higher than that price.

- d) Processing area in a zone should be raised from 35 % to 50 % of area.
- e) The committee pointed out the lack of representation from the Ministry of Agriculture in the process of implementation of SEZs Act.

The government resorted to form an Empowered Group of Ministers to devise a way out for resuming the policy. Though various measures were initiated during that period, those were mostly technical in nature. The government was aware that there was no law for provision of rehabilitation and resettlement and compensation for loss of livelihoods. The Ministry of Rural Development initiated work on policy of Relief and Rehabilitation to address the heightened public concern on issue of land acquisition

The National Rehabilitation and Resettlement Policy 2007 called for a broader concerted effort on the part of policy makers to address issue of exclusion of indirectly affected people from process framework for displacement, rehabilitation and resettlement. The aim was to reduce displacement. It also provided that projects should be established on wasteland, degraded land, or un-irrigated land. While acquiring the land, government should try to minimize the displacement of the people and at the same time minimum agricultural land should be acquired for non-agricultural purpose.

Though multiple amendments had been made to the Land Acquisition Act, 1894, the principal law continued to be the same. The new Fair Compensation, Rehabilitation and Resettlement Act, 2013 seeks to reduce the problems of displaced persons, farmers as well as those who whose livelihood is lost due to their dependence on the land being acquired. At the same time it facilitates availability of land for industrialisation, infrastructure and urbanisation. A welcome change is that it recognises the intrinsic relationship between land acquisition and rehabilitation and resettlement. It provides that in a case where the government is involved in the process of land acquisition including partial acquisition for public purpose, the process must be accompanied by rehabilitation and resettlement.

The Act requires that if government involves itself in acquisition of land for corporate houses for stated public purpose, the 80 per cent of project affected families must be willing to give their land. Rehabilitation and resettlement provisions will also apply when a private company buys more than 100 acres of land in a rural area and more than 50 acres of land in urban area for a project. Along with land owners, the Act also extends benefit of rehabilitation and resettlement to livelihood losers who are without any ownership of land. Only those families shall be considered in this context, which are dependent on land for their source of earning therein for last three years. Thus, agricultural labourers, tenants or sharecroppers, forest gatherers, hunters, fisher folk, boatmen etc. are also brought under the umbrella of benefits. Similar condition will apply to non-owners who are associated with the land being acquired in the urban areas.

The Act defines land as "benefits to arise out of land, and things attached to earth or permanently fastened to anything

attached to the earth." It prohibits the taking over of multi-crop irrigated land but in demonstrably last resort. In that case too, the acquisition should not be more than 5 per cent of the total multi-crop irrigated area in a district. It further provides that if a private company wants to purchase land for a project more than the area limit stipulated in the Act, it can pursue only after the Collector pass individual awards covering rehabilitation and resettlement entitlements. The Act devises some safeguards against indiscriminate acquisition:

- Mandatory social impact assessment.
- Approval of 'public purpose' and social impact assessment report by Chief Secretary Committee/Delegated Committee.
- Summary of rehabilitation and resettlement package to be included in draft Declaration.
- The purposes specified in the land use plan submitted at the time of land acquisition cannot be changed afterward.
- No change of ownership is allowed without due permission.
- Land shall be transferred to state government's land bank if it is not used in accordance with the specified purpose within 10 years.

- The 20 per cent of the increased value of land shall be compulsorily given to the previous owner whose land has been acquired upon every transfer of land.

Several measures have been adopted to bring in transparency in the process such as Gram Sabha is to be consulted for social impact assessment and the report and other documents should come in public domain for scrutiny. In addition to these, timeframe has also been stipulated; compensation will be given before the expiry of 3 months from the date of award; monetary rehabilitation and resettlement entitlements will be ensured within a period of 6 months from the date of award; infrastructure entitlements will be made available within a period of 18 months from the date of award; no involuntary displacement shall take place without completion of rehabilitation and resettlement. On the whole, this Act intends to bring the interests of land owners in tune with process of infrastructural and industrial development. Besides resettlement, displacement causes various other difficulties such as problem of social cohesion at new place, no knowledge of new area, cooperation, and problems related to education of children and health facilities. Fecundity of the new law to address these concerns is still to be ascertained.

References

1. Asher, Manshi and Patrik Oskarsson. "Se(i)zing the coast and the countryside." *Seminar*, February 2008.
2. Citizen Research Collective. "SEZs and Land Acquisition: Factsheet for an Unconstitutional Economic Policy." *Seminar*, 2008: 15-19.
3. Dohrmann, Jona Arvind. "Special Economic Zones in India- An Introduction." August 26-September 2, 2008. http://www.asienkunde.de/articles/a106_asien_aktuell_dohrmann.pdf (accessed January 3, 2013).
4. Government of India. *Development Challenges in Extremist Affected Areas*. Report of an Expert Group, New Delhi: Planning Commission, 2008.
5. Government of India. *Draft Report of the Committee on State Agrarian Relations and Unfinished Task in Land Reforms*. New Delhi: Ministry of Rural Development, 2009.
6. Government of India. "Parliamentary Standing Committee Report." Parliamentary Report, 2007: cited in Mukhergi 2008.
7. Jones, Jonathan. "India's democracy has a heartbeat." *Seminar*, February 2008: 65-68.
8. Kasturi, Kannan. "Of public purpose and private profit." *Seminar*, February 2008: 32-35
9. Levien, Michael. "Rationalising Dispossession: the Land Acquisition and Resettlement Bills." *Economic and Political Weekly* 46, no. 11 (March 2011): 66-71.
10. Mukhergi, Rahul. "Special Economic Zones in India: Recent Developments and Future Prospects." Working Paper, Institute of South Asian Studies, National University of Singapore, Singapore, 2008.
11. Palit, A., and S. Bhattachargee. *Special Economic Zones in India- Myths and Realities*. Delhi: Anthem Press, 2007.
12. Ranganathan, V. "Special Economic Zones: Rationale and Prospects." *The Hindu Survey of Indian Industry*, 2007: 24-26.
13. Sarkar, Abhirup. "Development and Displacement." *Economic and Political Weekly* 42, no. 16 (April 2007): 1435-1442.
14. Seminar. February 2008.
15. *The New York Times*. December 19, 2006.
16. Vombatkere, S.G. "Neo-zmidari Zones." *Mainstream* 44, no. 51 (December 2006): 9-10.