

Public Purpose and Land Acquisition: Misuse in Haryana

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Received: 15th April, 2021

Revised: 25th May, 2021

Accepted: 28th June, 2021

Abstract: The landmark judgement of Honourable Supreme Court restored acquisition of 688 acres of land in Gurugram during 2004 to 2007 which given a knee jerk fellow to unholy nexus between the government machinery and private builders. This article examines the notorious land acquisition case of Manesar, Lakhnaula and Naurangpur villages in Gurugram district of Haryana. The article focuses on two issues; first, neo-liberal regime of misused term of ‘public purpose’ and second, alienation and plight of landholders after selling of land to private builders due to fear of land acquisition.

Keywords: Land acquisition, misuse and public purpose

1. Introduction

During past 70 years, a number of state led interventions have been initiated for developing the Indian economy. India was modelled as a traditional economy and to transform this agrarian traditional economy into a modern one with an industrial base; capital investment in the form of finances and technology or knowledge were used as the instruments. With the growth of the economy, the demand for land for non-agricultural purposes increased, and we can expect that the demand for land is rise in the future. In the matter of demand for land, India is quite similar to China, another economy that has a high rate of growth and high pressure on agricultural land. One of the key challenges facing the development of infrastructure in India is the acquisition of land. Landownership confers tangible benefits such as shelter and livelihood, as well as intangible benefits such as security and a standing in society. Landowners are thus often reluctant to part with their land unless mutually acceptable terms for compensation are agreed upon. Problems arise when land is required for “public purpose” and the state can invoke laws that allow for compulsory acquisition through “eminent domain”. Often, the land acquisition process is neither consultative nor transparent (Mahalingam, and Aditi 2011). Thus, the Government of India passed the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 and it came into force from 1 January 2014. (Sathe, 2014). The main philosophy behind this Act was the power of the State of eminent domain. The State may directly own lands through acquisition, purchase, etc., or by default. That means all lands that are not

privately owned—are owned by the State. However, even in respect of privately owned lands, the State has the power of eminent domain (Desai, 2011). The Land Acquisition Act is still employed to acquire private land for the installation of various development projects and this law has provision for monetary compensation and plot only.

1.1 Land Scam in Gurugram

Land acquisition can occur for various reasons like building of infrastructure (dams, roads), for setting up modern manufacturing/service units, for housing, etc. (Sathe, 2015). In Gurugram district on August 27, 2004, Government of Haryana led by Congress's Bhupinder Singh Hooda, the state industries department had issued a notification under Section 4 of the Land Acquisition Act, 1894 and announced the acquisition of 912 acres in Manesar, Lakhnaula and Naurangpur to set up the township project (Chaudhary Devi Lal Industrial Township). This township project was planned as an Integrated Complex for residential, recreational and other public purposes. However, appropriate notification under Section 6 of the Act was issued on August 25, 2005 only in respect of land admeasuring 688 acres after the Land Acquisition Collector recommended 224 acre land be released from acquisition. During 2004-2007, private builders struck deals with the landowners. A total of 114 sale deeds were executed. At that time, it was expected that the compensation would be around Rs. 12.5 lakh per acre, which was at par with the prevailing government rates. To persuade the landowners, the builders offered them Rs. 20-25 lakh per acre. On August 2, 2007 notices under Section 9 of the Act were issued calling upon the landholders to appear on August 26, 2007 for pronouncement of award. Soon after the notice, builders started enhancing the price and bought the lands from the landholders at a price around Rs. 80 lakh per acre. But on August 24, 2007, the state government dropped the acquisition, stating that a fresh notification would be issued. The builders then sold the landholdings at Rs. 1.2 crore to Rs. 4.5 crore per acre.

1.2 Farmer Went to Supreme Court

In 2011, 117 affected landowners from Manesar village filed a civil writ petition seeking action against the state government and builders for having allegedly compelled them to divest their land at throwaway prices under the threat of acquisition. They pleaded that since the acquisition proceeding was initiated and then withdrawn with mala fide intentions, all transactions, including sale deeds, be set aside. Terming the withdrawal of acquisition proceedings a “fraud” and “mala fide exercise of power”, the apex court restored acquisition of 688 acres in the three villages. The court ruled that the land should vest in Haryana Urban Development Authority (HUDA) and Haryana State Industrial & Infrastructure Development Corporation (HSIDC), free from all encumbrances. The court directed the CBI to investigate all transactions and recover all moneys, and hand it over to the state government. It also asked the agency to unearth all “unnatural gains received by the middlemen” (Indian Express). As per the judgement original owners will not get their land back and if the result of forcing land holders to enter into unnatural and unreasonable bargain was achieved by wrongful utilization of the power conferred under the Act. Credit would be given to the builders for the amounts that they had paid to the original landholders and the transferee builders who are the current proprietors of the land would have a right to seek allotment of the same from the State, consideration for which would be determined at the present days' market value or market value as on such other date as this Hon'ble Court may deem fit. If the builders not wish to purchase the land at such rate, it may be auctioned, with the amount paid for acquisition being deducted from the price secured. It was seen the lands which were purchased for a price ranging from Rs. 25 lakh per acre soon after the beginning of acquisition, whose price rose to Rs. 80 lakh per acre just previous to dropping of acquisition, were ultimately obtained by DLF Home

Developers Ltd at the rate of Rs. 4.5 crore per acre. Further, the detail that conclusion money at the rate of Rs. 3.5 crore per acre was made over to entities which apparently had done nothing in the matter is quite shocking. Buyers other than those who entered into deals between 2004 and 2007 will have remedies against their vendors. Claims of builders/private entities entitled to refund will be taken up after settling claims of third parties from whom the builders/private entities had collected money. No interest shall be payable on such amounts. The third parties from whom money has been collected by the builder will be entitled to either the refund out of and to the extent of the amount payable to the builder or will be allotted the plots at the price paid or price prevalent, whatever is higher. All third parties who had purchased or been allotted plots or apartments shall submit claims within one month from March 12, 2018. The claims shall then be verified by HUDA or HSIDC within two months from mansion date. The state government has a year to comply with the court's order.

2. Method

This article tries to address two concerns; the first issue is that how neo-liberal regime of misused term of 'public purpose' and second issue is examination alienation and plight of landholders after selling of land to private builders to scare of land acquisition. This paper looked at the period after the land was sold. After selling of land to private builders, landholders are mainly become agriculture labour, non-agriculture labour, private and governmental jobs etc. Primary data was collected from Manesar, Lakhnaula and Naurangpur villages in Gurugram district of Haryana. A set of households—who sold their land due to fear of land acquisition—was selected for this study. In this way, total 120 households were selected randomly who sold their land to private builders.

3. Discussion

3.1 Definition of Public Purpose in India

The expression "public purpose" is of very wide amplitude. It is merely illustrative and not exhaustive. The inclusive definition does not restrict its ambit and scope. Really, the expression is incapable of precise and comprehensive definition. And it is neither desirable nor advisable to attempt to define it. It is used in a generic sense of including any purpose wherein even a fraction of the community may be interested or by which it may be benefited. The concept is not static but changes with the passage of time. A "public purpose" is thus wider than a "public necessity". Purpose is more pervasive than urgency. That which one sets before him to accomplish, an end, intention, aim, object, plan or project, is purpose. In India Land Acquisition Act 1894 state may directly own lands through acquisition, purchase, etc, or by default. That means all lands which are not privately owned are owned by the State. But even in respect of privately owned lands the State has the power of eminent domain (Desai, 2011). It is not as if the Land Acquisition Act, 1894 forbade the acquisition of land for private companies. It provides a different set of procedures to be followed under Part VII of the act when the acquisition of land is on behalf of a private company. These procedures, in addition to the existing procedures for acquisition of land for public purposes were supposed to ensure that the acquisition for the private company is also, in fact, for the intended public purposes and that the government machinery is not being put to use for purely private ends. (Kumar 2016).

The word "public purpose", as defined in the Land Acquisition Act, 2013, refers to the acquisition of land for:- (i) the provision of village-sites or the extension, planned development or improvement of existing village-sites; (ii) the provision of land for town or rural planning; (iii) the provision of land for planned development of land from public funds in pursuance of any policy or scheme of Government and subsequent disposal thereof in whole or in part by lease, assignment or outright sale with the

object of securing further development as planned; (iv) the provision of land for a corporation owned or controlled by the State; (v) the provision of land for residential purposes to the poor or landless or to persons residing in areas affected by natural calamities or to persons displaced or affected by reason of the implementation of any scheme undertaken by Government, any local authority or a corporation owned or controlled by the State; (vi) the provision of land for carrying out any educational, housing, health, slum clearance or any other scheme sponsored by Government or by any authority established by Government for carrying out any such scheme; (vii) the provision of any premises or building for locating a public office, but does not include acquisition of land for companies. The word "Government" refers to the Central Government if the purpose for acquisition is for the Union and for all other purposes it refers to the State Government. It is not necessary that all the acquisitions have to be initiated by the Government alone. (Mahalingam and Vyas, 2011).

3.2 Misuse of term “Public Purpose” in India

The Bhakra Nangal project in Punjab and Himachal Pradesh, the Hirakud Dam in Odisha, and the Damodar Valley project in West Bengal and Jharkhand were all started in 1948 and completed between 1953 and 1963. The steel plants in Bhilai (Chhattisgarh), Rourkela (Odisha), and Durgapur (West Bengal) were all commissioned by 1961. The only way to acquire such large quantities of fragmented land quickly was by using the public purpose provision in the LAA. The act also allowed the state to pay what it claimed was market price (plus a 30 percent ‘solatium’ or solace for sufferings created). In the case of the Hirakud Dam the highest payment was about Rs. 1,500-6,000 per acre and lowest payment was about Rs. 50-200 per acre. But by the early 1960s the courts had become more critical of what was beginning to look like state over reach in defining public purpose and underpayment for the land taken. For instance in the 1962 Supreme Court judgment in the R.L. Arora vs. State of UP, the judiciary asserted its right to review the public purpose of land acquisitions and clearly rejected broad interpretation of the public purpose requirement for companies in favour of the narrow direct use or access-by-the-public interpretation (Chakoroborty, 2013). Some projects of land acquisition had completed and some of them were scraped by Centre and the State Government. There are many reasons behind of the uncompleted project; such as farmer movement, State and Supreme Court’s judgment in favour of landholders. A case of Punjab Government acquired 376 acre land to farmers from the three villages of Sanghrera, Fatehgarh Chhana and Dhaura in Barnala District for the trident group in order to establish a sugar mill. No project has been initiated on the acquired land in Barnala after 10 years. In 7 March 2006 farmers protest against land acquisition with Bharatiya Kisan Union and 5,000 farmer activists in three affected villages such as 71 farmers were injured, and three lost their lives. As the result of farmer protest and their legal battle land acquisition should be cancelled by the Supreme Court. Therefore acquired land return to farmers (Sharma 2018). An another case of Government of Maharashtra has been forced to withdraw Diu as a Special Economic Zone – initially hailed significant due to its proximity to the financial city of Mumbai. But after a vociferous campaign opposing the development of their land, during which the deadline for acquiring the land lapsed, the state government finally de notified it. Only about 3,700 acres out of a potential 20,000 could be acquired by the authorities in the end. If the development had come into being, it would have been spread over 20,000 acres and bordered about 45 villages. Now the villagers are free to use it as they wish: they can cultivate it, sell it or mortgage it for loans. In 2009 Government of Tamil Nadu alienating 1127 acres of Poramboke land in support of The State Industries Promotion Corporation of Tamil Nadu (SIPCOT) to build a new Industrial Complex in Thervoy Kandigai village in Gummidipoondi taluk of Thiruvallur district. While the project went public in 2007, the villagers have been holding regular protests, meeting district officials and human rights organisations in a proposal to

end the unruly obliteration of their lives and farmers have been spearheading the opposition against the land acquisition, were illegally detained and charged with various sections of the IPC and jailed therefore at last Government of Tamil Nadu withdrawal of the SIPCOT project. But in case of Gurugram situation was different firstly state government dropped the acquisition before two day pronouncement award of land. Secondly there was no farmers protest against land acquisition. There was one resemblance in case of Punjab land acquisition for sugar mill, Maharashtra land acquisition SEZ case, Thervoy Kandigai Industrial Complex in Tamil Nadu and Gurugram Manesar land scam State has misused of public purpose and power of eminent domain.

In case of Gurugram on August 27, 2004, Government of Haryana announcing the acquisition of 912 acres in to set up Chaudhary Devi Lal Industrial Township to be planned as an Integrated Complex for residential. But 2007 farmers were selling of land to private builders to scare of land acquisition during 2004 to 2007 Rs 20-25 lakh per acre; because two days before the date of announcement for compensation on August 26, 2007 the government dropped land acquisition proceedings. The Supreme Court's Judgement to return land to HUDA/HSIDC as may be directed by the State of Haryana. However Government misuse term public purpose and state emanate domain in Haryana. In other case of misuse of public purpose in Haryana Dadupur-Nalvi Irrigation Scheme was visualized in 1985 to recharge groundwater and take canal irrigation to the districts of Yamunanagar, Kurukshetra and Ambala. 190 acres were acquired under Devi Lal's government in 1987-90, but work on the scheme was not taken up until 2003. At the far end of his term, in November 2004, Chief Minister Om Prakash Chautala laid the foundation stone of the project, whose cost was then estimated at Rs 167.62 crore. In October 2005, the Bhupinder Singh Hooda government gave fresh approval to the project, which was now estimated to cost Rs 267.27 crore. On September 27, 2017, 32 years after the project was conceived, and after Rs 304 crore had been spent on it, Chief Minister Manohar Lal Khattar's cabinet decided to scrap it, and denitrify and return to farmers 1,019 acres of land that had been acquired.

3.3 Descriptive analysis

Out of total sample, 50.3 percent landholders are of general caste and 39.7 percent are from backward caste B and 5.7 percent are from backward caste A 4.3 and 6.7 percent are from Schedule Cast.

In our sample, majority of land ownership (28.1 percent) lies in the age group of 40-50 and 50-60 years followed by 60-70 and above 70 years which having land ownership of 15.6. Only 12.5 percent land ownership has in range of 30-40 years age group. Above sixty years age of farmers had ownership of 18 percent. In typical culture of Haryana, with the increase in age of landowner generally land ownership rights are transferred to their sons. Over all 48.4 percent land ownership are vested with persons in range of above 30 years and below seventy years.

In Gurgaon 53.3 percent landholders are agriculturist, 3.3 percent landholders are agriculture labourer labour and 3.3 percent are seeking in work. None of landholders are in non-agriculture labourer 4.2 percent and percent landholders are non-farm labour. None of landholders are in government job or private job. In this sample 13.3 percent and 16.7 percent of landholders are in government job and private job respectively. In this sample 6.7 percent and 3.3 percent of landholders are in non worker or student and household respectively. After selling of land to private builders landholders are mainly dependent upon agriculture labour and non-agriculture labour private and governmental jobs etc.

In sample less than 3.5 up to percent have graduate degrees. 10 percent landholders are illiterate or have not engaged with formal education, 10 percent are less than primary pass, 13.3 percent up to primary and 10 percent passed up to middle. In overall sample 30 percent have qualification up to secondary education and 23.3 percent up to up to matric.

In our sample farmers have total land ownership was 233 acres of in Manesar, Lakhnaula and Naurangpur villages in Gurugram district of Haryana. Average size of owned land before sold of land was 3.88 acres. In this sample total land sold 172.50 acre in Manesar, Lakhnaula and Naurangpur villages. After selling of land to private builders by the landholders and were purchased land 68 acres. Average size of purchased land in three villages was 1.13. Average size of owned land after acquisition was decreasing after selling of land and purchased land outside the villages and Haryana.

4. Conclusion

Land acquisition as a process interacts with the social, political and economic structure of the landholders. However, all people are not equal in terms of social, political and economic dimensions, the impact can be expected to be differential. The attentiveness and growth of crowd bases does not solve the problem of insurgency or conflict. The problem is solved by winning the hearts and minds of the people. The purpose of the any programme through Land Acquisition is to win the “hearts and minds” of people, then this would require basic withdrawal of forces from tourist places, agricultural lands, forests areas, and of course from private buildings, stop human rights violations in the region, and ultimately, find a solution to the political problem through a political process rather than seeing it as a governance issue.

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