



## THE LAND ACQUISITION (RFCTLARR) ACT, 2013- THE ANTECEDENTS AND PRECEDENTS

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**Abstract:** Land, a gift of nature, is precious, precarious, and productive property since the Rig Vedic times. The OED defined the Anglo-Saxon word 'Land' as the solid portion of the earth's surface opposed to sea and water. The Indian Constitution, Article 19, guaranteed that all citizens have the right to acquire, hold and dispose of property. The Law of Property Act (LPA) of UK, 1925, amended by the Trusts Of Land and Appointment of Trustees Act (TOLATA) of UK, 1996, the Interpretation Act of UK, 1978, the Land Registration Act of UK, 2002, state that land is the surface, buildings and other structures, covered with water, and any estate, interest, easement, servitude or right in or over land.

In India, Land Acquisition Act, (RFCTLARR), 2013, enacted by the Parliament in the Sixty-Fourth Year of the Republic of India on the 27th Day of September, 2013, and came into force with effect from 01<sup>st</sup> Jan, 2014, repealing and replacing Colonial Land Acquisition Act, 1894, ensuring a humane, participative, informed and transparent process for acquisition of land with the least disturbance to the owners and other affected for the purpose of industrialization, development of infrastructural facilities and urbanization. It's a right move in rem and in persona in the right direction at an appropriate time aimed at encouraging just, true and fair process of land acquisition. In this direction, the paper casts a light on anecdotal and objective evidences of Land Acquisition in comprehension and the judicial precedents of Hon'ble Supreme Court of India and High Court of Andhra Pradesh in concise.

Land Pooling (LP) is an addendum, an extension and compelling alternative to Land Acquisition considering operational woes and providing win-win solutions. The liveliness and distinctiveness of 'Land Pooling' lies in identifying Strengths,

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minimizing Weakness, converting Threats into Opportunities. It's not a panacea, an innovative and inclusive, utilitarian and pragmatic approach, creating an indelible impression, infusing unbounded optimism in the minds of land owners, tenants, migrant workers and displaced keeping in view their welfare, wellness and wellbeing with the inspiring features of success and sustainability.

**Key Words:** LA, LP/R, LPS, OED, PPP, RFCTLARR, R&R, SIA, TOLATA.

### **THE LAND ACQUISITION (RFCTLARR) ACT, 2013 - A PROLOGUE**

The term 'Land' is derived from the Anglo-Saxon or Middle English word 'Lendan or Lond' meaning thereby the surface portion of the earth, home region of a person or a people, and territory marked by political boundaries. The OED<sup>1</sup> defined it as the solid portion of the earth's surface opposed to sea and water and **Sec 205(1)(ix) of the Law of Property Act (LPA) of UK, 1925**, amended by the **Trusts of Land and Appointment of Trustees Act (TOLATA) of UK, 1996**, enunciated 'Land' includes any tenure, mines and minerals, whether or not held apart from the surface, buildings or parts of buildings, a manor, an advowson, and a rent and other corporeal hereditaments, an easement, right, privilege, or benefit in, over or derived from land'. The **Schedule 1 of the Interpretation Act of UK, 1978**, states that 'Land' includes buildings and other structures, land covered with water, and any estate, interest, easement, servitude or right in or over land' (**Derek Hall, 2013**)<sup>2</sup>.

As per **Sec. 132(1) of the Land Registration Act of UK, 2002**, 'Land' as (a) buildings and other structures; (b) land covered with water; and (c) mines and minerals, whether or not held with the surface. However, the 'Ownership of Land' arose from *the highest heavens down to the centre of the earth and transferred as a hereditament*. The 13<sup>th</sup> Century Latin Maxim '*cuius est solum, eius est usque ad coelum et ad inferos*' states that '*Whoever's is the soil, it is theirs*' all the way to Heaven and all the way to Hell'. This **Principle of Property** also termed as '*ad coelum doctrine*', in its legal signification, an indefinite extent, the property holders have the upwards as well as downwards rights *i.e.*, not only on the plot of land but also the air above and the ground below (**Michael Allaby, Chris Park, 2013**)<sup>3</sup>.

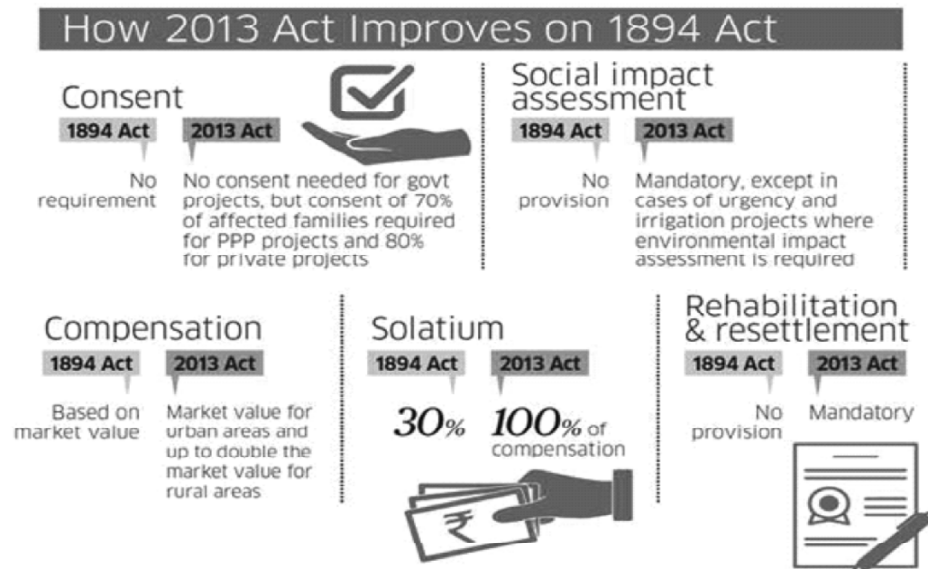
In India, the **Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013**, enacted by the Parliament in the Sixty-Fourth Year of the Republic of India on the 27<sup>th</sup> Day of September, 2013 / Asvina 5, 1935 (Saka) repealing and replacing the **Colonial-Era Land Acquisition Law of UK, 1894**, defined 'Land' as it includes the benefits arising out of land and things attached to the earth or permanently fastened to anything attached to the earth. The Act extends to the whole of India except the State of Jammu and Kashmir.

The words ‘except to the State of Jammu and Kashmir’ is omitted by the Jammu and Kashmir Reorganisation Act, 2019, came into force with effect from 31<sup>st</sup> Oct, 2019 (RFCTLARR Bare Act, 2020)<sup>4</sup>.

**The Land Acquisition Act, (RFCTLARR), 2013**, ensures a humane, participative, informed and transparent process for acquisition of land with the least disturbance to the owners and other affected for the purpose of industrialization, development of infrastructural facilities and urbanization by the Local Self-Government and Gram Sabhas established under the Constitution with the prior assent and consent of owners of the land and other affected families. It also specifies the *provisos* for just and fair compensation to the landowners and other affected families whose land has been acquired or proposed to be acquired or/are affected by such acquisition. The Land Acquisition Act, 2013, shall also provide guidelines for rehabilitation and resettlement of affected families and the matters connected therewith or incidental thereto ensuring the cumulative outcome of compulsory acquisition should be that affected persons become partners in the process of development and ensuing an improvement in their socio-economic status (Act 30 of 2013)<sup>5</sup>.

The Land Acquisition Act, 1894 and RFCTLARR Act, 2013.

*The Mutatis and Mutandis*



Source: G. Seetharaman (2018)., Five years on, has Land Acquisition Act fulfilled its aim?, Economic Times, 01<sup>st</sup> Sep, 2018.

## OBJECTIVES OF THE STUDY

The present anecdotal and objective evidence research paper entitled '**Land Acquisition Act, (RFCTLARR), 2013**' is of purely empirical, explanatory and evaluating the critical insights of Land Acquisition Act, (RFCTLARR), 2013. The other objectives *inter alia* include:

- to evaluate the antecedents of Land Acquisition Act, 1894, LARR Bill, 2011, and the RFCTLARR Act, 2013;
- to examine the judicial precedents of RFCTLARR, 2013, for acquisition of land, keeping in view rehabilitation and resettlement of migrated and displaced; and
- to suggest all-inclusive and an alternative mechanism to Land Acquisition Act, (RFCTLARR), 2013, *i.e.*, Land Pooling Scheme (LPS) for the sustainable development of land resources.

## THE LAND ACQUISITION (RFCTLARR) ACT, 2013 - THE ANTECEDENTS

The **Land Acquisition Act, 1894**, was enacted during the Colonial Era, aimed at acquisition of private property by the Government for a *public purpose* **Sec. 3(F) (Hamabai Framjee Petit Vs Secretary of State)**<sup>6</sup> and also stated provisions relating to specific purposes such as construction of highways, railways, and tramways *etc.*, and except in any other case be *ultra vires* under **Article 31 of the Constitution**. Fairness demands that the Act should contain provisions that all lands acquired under the Act must be utilised for the said purpose for which they are acquired and the grave lacuna of the Act was acquisition of land by the State for a non-public purpose, non-existent or fictitious public purpose and utilizing it for illegitimate purpose. The Act does not contain any such provisions in relating to the State may acquire land though it is not really needed at the time, a change of policy or circumstances leading to the abandonment or indefinite postponement of the project for which the land was acquired and the Rehabilitation and Resettlement (R&R) of the affected.

The **Land Acquisition, Rehabilitation and Resettlement (LARR) Bill, 2011**, was an updated legal enactment to reinvent the outdated Colonial Land Acquisition Act, 1894, specifies provisions for 'Land Acquisition as well as Rehabilitation and Resettlement (R&R)'. It is aimed at balancing the need of land for economic development projects with the needs of consequently displaced populations (**Rasheed and Parambath, 2015**)<sup>7</sup>. The **Clause 3(za) (i) to (vii)** defines the 'Public Purpose and acquisition for Private Companies and PPPs' and further states that 'Public Purpose' includes:

- a) provision of land for public interest and use by the Government for defence and national security; roads, railways, highways, and ports built by government and Public Sector Enterprises (PSEs'), land for the project affected people (migrated, displaced); planned development and improvement of village or urban sites and residential purposes for the poor and landless; and
- b) use by Public-Private-Partnerships and Private Companies for production of public goods and services (**LARR Bill, 2011**)<sup>8</sup>. The Social Impact Assessment (SIA), Social Cost Minimisation, Resettlement and Rehabilitation of peasants, tribal and other collectives of toilers are some of the unaddressed and unresolved issues and the LARR Bill, 2011, does not supersede other legislations governing acquisition and resettlement (**Nihal Joseph & Shrinidhi Rao, 2012**)<sup>9</sup>.

### **THE RIGHT TO FAIR COMPENSATION AND TRANSPARENCY IN LAND ACQUISITION, REHABILITATION AND RESETTLEMENT (RFCTLARR) ACT, 2013**

In pursuant to the LARR Bill, 2011, the Parliament of India enacted the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation, and Resettlement Act (RFCTLARR), also termed as Land Acquisition Act, 2013, and came into force with effect from 01<sup>st</sup> Jan, 2014, which repealed and replaced the Land Acquisition Act, 1894. **The Land Acquisition Act, 2013**, ensures providing just, true and fair compensation to owners whose land is taken over by free consent (**Sec. 16**), bring transparency and authenticity to the process and lays down measures for rehabilitation of those displaced. It aims to provide *bona fide* solatium based on market value of sale with a multiplier of 1 for urban and 2 for rural areas **Sec. 30 (2)** and thereby mandated rehabilitation and resettlement of land losers.

Further, LARR Act, 2013, introduced requirements of assent and consent of land owners in case of acquisitions for Companies (80%), and Public Private Partnerships (PPPs) (70%) **Sec.2 (2) (a) (b)** and specified the procedures for Social Impact Assessment (SIA) (**Sec.4**) in order to ascertain the social consequences of land acquisitions. Moreover, **Sec.10** provides special provisions to safeguard food security and put conditions in respect of irrigated and multi-cropped land. In case land remains unused after acquisition, the Act empowers States to return the land either landowner or to the State Land Bank exempting Income-Tax and Stamp Duty shall be levied on an individual.

## THE LAND ACQUISITION ACT, 1894 & RFCTLARR ACT, 2013 - THE JUDICIAL PRECEDENTS

A judicial precedent is a source of law (**Roman Law**)<sup>10</sup> and the decision of the court used as a source for future decision making (*stare decisis*), and are authoritative must be binding and followed. Some of the judicial precedents on Land Acquisition in India are:

### a) **State Govt., of Maharashtra Vs Prashram Jagannath Aute on 19<sup>th</sup> July, 2007**<sup>11</sup>

The **Hon'ble Bombay High Court Justice** asserted that the binding precedent *de hors* the facts in **Vithal Rodbaji Shinde's** case shall be applicable in Land Acquisition *i.e.*, no absolute universal and legal principle applicable or capable of being applied as panacea for payment of compensation. The Court has to determine the amount of compensation as per market value of the land at the date of publication of the notification under Sec.4 in consonance with the statutory provisions of Sec.23 and Sec.24 of the Land Acquisition Act, 1894, and it is neither permissible nor proper for the Court to lay down any strait-jacket formula universally applicable to all land acquisition cases.

### b) **Pune Municipal Corp.& Anr Vs Harakchand Misirimal Solanki & Ors on 24<sup>th</sup> January, 2014.**<sup>12</sup>

The **Constitution Bench of Supreme Court** over ruled the previous precedents in at least 999 Cases, of 29 from Supreme Court and of 970 from various High Courts of the Country and declared that if proceedings lapse under Land Acquisition Act, 1894, the acquisition process would be initiated again under the LARR Act, 2013, allowing the owner to get higher compensation and as per *doctrine of res judicata* bars reopening of same issue by the same parties.

### c) **Land Acquisition for Housing - The Directions of Andhra Pradesh High Court**<sup>13, 14</sup>

In pursuant to the 200 petitions filled contending the decision of the Govt., of Andhra Pradesh to acquire various lands include assigned lands, village poramboku lands and other lands to allot house sites to the landless poor and evict people from assigned lands.

The Andhra Pradesh High Court issued an *interim order* instructing the Govt., of Andhra Pradesh to maintain *status quo* until further orders passed. The Andhra Pradesh High Court objected the Govt., of Andhra Pradesh to acquire land at inflated cost per acre (Rs. 45 lakhs) as against market rate of

(Rs.7.20 lakhs) for social housing in Torredu and Korukonda Mandals of West Godavari District and directed Govt., of Andhra Pradesh to stop payment for lands acquired with immediate effect.

### **LAND POOLING - AN INNOVATIVE AND ALL-INCLUSIVE APPROACH OF LAND ACQUISITION**

'Land Pooling', a compelling alternative to 'Land Acquisition' in securing land for development (**Ramakrishna Rao Ravi et al., 2018**)<sup>15</sup>. In the State of Andhra Pradesh, the then Government, initiated the innovative and inclusive Land Pooling Scheme (LPS) under APCRDA Act, 2014, and AP Capital City LPS Rules, 2015, with the intent of making 'The People's Capital Amaravati'. The Land Pooling Scheme (LPS) came into existence from 01<sup>st</sup> January, 2015, and in a span of 60 days the then Govt., of Andhra Pradesh persuaded 25,000 farmers and pooling up 38,581 acres of land and also dissuaded the ailments of 'Land Acquisition' which has never been accomplished anywhere in the world.

Amaravati Voluntary Land Pooling Scheme emerged as an acceptable alternative and viable and inclusive alternative to Land Acquisition Act, 2013. This is based on 'Libertarian Approach' considering the voice of peasants and people which is an ideal of democratic policy. It's an internationally acclaimed and proclaimed unique case of Urban Land Transformation by the then and present Govt., of Andhra Pradesh For Thy People.

Financial Compensation plays a pivotal role for the success of LPS in Amaravati as well as in Gannavaram Airport Extension. The property rights promote the positive investment incentive effect in LPS and there is a significant positive impact on the lifestyle and living conditions of the communities, financial independency, waiver of loans, improved credit facilities, and increase in land prices resulting in Andhrapreneurship and anchoring Indian Infrastructural Economy (**Cherukuri Sreedhar, 2018**).<sup>16</sup>

### **THE LAND ACQUISITION (RFCTLARR) ACT, 2013 - AN EPILOGUE**

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013, aimed at encouraging just, true and fair process of land acquisition by addressing the conflicting interests of Colonial Land Acquisition Act, 1894, viz., compensation, Rehabilitation and Resettlement, SIA, cost etc., under **Sec. 105 (3)**. It's a right move *in rem* and *in persona* in the right direction at an appropriate time.

Land Pooling (LP) is an addendum and an extension to Land Acquisition Act, 2013, emerged as an innovative and all-inclusive approach that removes subjectivity and improves objectivity by identifying good practices and indicators that are needed to assess the strengths and weaknesses of the Land Pooling Process (LPP). LP/R is not a panacea, it's only a solution to Land Acquisition (LA) woes. Land Pooling Scheme (LPS) is a distinctive, lively and lovable, utilitarian and elite pragmatic approach creating an indelible impression, infusing unbounded optimism in the minds of land owners, tenants, migrant workers and displaced for their welfare, wellness and wellbeing with inspiring features of success and sustainability.

### *Notes*

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3. Michael Allaby, Chris Park (2013), A Dictionary of Environment and Conservation, p. 239.
4. The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013, Bare Act, Commercial Law Publishers Pvt., Ltd., (India), Delhi, 2020.
5. The Right To Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RFCTLARR) Act, 2013, Bare Act, Commercial Law Publishers Pvt., Ltd., (India), Delhi, Act 30 of 2013, Dt. 27-09-2013, p.1.
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