The New Land Acquisition Law, Reforms and Local Self- Government: The West Bengal Scenario

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ABSTRACT: The new land acquisition law enacted in 2013 offered immense scope for the sociologists and social anthropologists to conduct assessment of this law in the context of the role of the local self-governments (Panchayat or Gram Sabha). An attempt has been made in this article to make such an assessment by taking the case of the West Bengal state in India from a historical perspective. The study revealed the shortcomings of the new law in terms of the definition of the 'Appropriate Government' and its similarity with the colonial law in treating the local self-governments.

INTRODUCTION

While in 2014 the Indian Prime Minister Narendra Modi and the huge Indian crowd expressed their jubilant mood at New York nobody either in the US or in India seemed to be concerned about the fate of the reforms in the colonial land acquisition law. Mr. Modi assured the CEOs of multinationals (whom he met) at USA of investments in India and told the enthusiastic crowd that India would be shinning. Just a few months after returning from USA, Mr. Modi's government recommended the promulgation of an Ordinance which attempted to make significant changes in the new *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act, 2013 (hereafter LARR).* This Ordinance, *inter alia* allowed the Central Government to acquire fertile agricultural land without social impact assessment and consent of the farmers for building private for-profit industrial corridors! (*The Statesman* 30 December 2014).

Objectives: Under the above background the major objective of this paper would be to narrate the role played by local self-government or panchayat in a case of land acquisition and land reform in West Bengal. The second objective of the paper is to look at the provisions for local self-government in the LARR and critically assess how far the *panchayats* have been empowered to exercise their power in the decision-making processes of the reformed land acquisition law.

LAND ACQUISITION LAW, REFORMS AND LOCAL SELF-GOVERNMENT

Like land acquisition, land reforms are basically a legal and administrative procedure. Through land reforms, the state government updated the various types of ownership rights according to the Land and Land Reforms Act, 1955 and its further amendments in 1981 and 1986. One of the major objectives of land reforms was to confiscate land beyond the limits of ceiling stipulated under section 14M of the Act held by any particular family having a specified size (W.B.L.R. Act and Rules 1984). Another objective of the Act was to distribute land to the landless by

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following certain administrative steps. Recording of the rights of sharecroppers was also a vital part of the land reforms process. Under the Land Reforms Act, 1955 the abovementioned tasks were lengthy, complicated and vulnerable to various kinds of litigation. Essentially, land reform empowered the poor landless peasants in two ways, of which one was indirect and the other direct. When the government confiscated the land from a farmer who had kept land beyond the limits of ceiling, there was likelihood that this surplus land would be distributed in future to the landless families. The confiscated land became the property of the government through an administrative procedure called vesting. So, confiscation of land beyond ceiling limits and its subsequent vesting was an essential prerequisite for the distribution of land to the landless. This definitely encouraged the landless peasants. The distribution of vest land (*patta* distribution) to the poor and landless was a direct means of empowering them. By this procedure the landless got land for the sustenance of the family. The differences between land reforms and land acquisition can be noticed quite easily.

First, by land acquisition, the government acquired legally owned private land for a public purpose. Land Acquisition Act could not be employed to confiscate land beyond the limits of ceiling. This was specifically the job of the Land and Land Reforms Act. So, one could say that while Land and Land Reforms Act empowered the poor and the landless, the Land Acquisition Act disempowered the poor and the landless.

Second, Land Acquisition and Land Reforms Acts differed at the level of execution by the government administration from which they began their operation. The land reforms process started at the district level and the major part of the lengthy procedure took place at the block level where the updated records about ownership on land were preserved. The distribution of land to the landless was a purely block level phenomenon which only required the approval of the sub-divisional officer (SDO).

The land acquisition on the other hand primarily started at the highest level of the administrative structure i.e., at the level of the Ministerial Secretariat and sometimes at the Cabinet level at the state capital in Kolkata. The decision to acquire land came from the highest level of the bureaucracy. From this perspective, it may be stated that land acquisition was a centralised and top-down administrative process while land reforms operated in a more decentralised manner with a bottom-up approach. Third, land reforms and land acquisition processes dealt with elected panchayats in a markedly different manner. The Land Acquisition Acts (both 1894 and 1948) did not have any provision on the part of the administration to consult the elected panchayats in connection with any kind of land acquisition for public purpose. In West Bengal, screening committees consisting of a member from the elected panchayat samiti (the second tier of the local self-government) were used to be formed to consider the proposals from the requiring bodies involving land acquisition. But in the screening committee majority of the members belonged to the administration viz. The Collector, Additional District Magistrate and Land Acquisition Officer. Moreover, the screening committee did not have any statutory or legal backing; it was simply an administrative appendage of the office of the District Collector. In matters of hearing objections from land losers and the fixation of rates of compensation, the District Collector held the highest power which was conferred to him by the Land Acquisition Act. On the other hand, the implementation of the various steps of land reforms required not only the mere presence of panchayat members but also their active participation. One of the most vital affairs of the land reforms process was the distribution of government land through *patta* to the landless families. It had again certain stages, which began with the preparation of *Math khasra. Math khasra* was a kind of survey conducted by the Block Land and Land Reforms Officer to enquire into the actual possession of land by the cultivators which was to be distributed among the landless families. The Land and Land Reforms Act stipulated that *Math Khasra* had to be done jointly by the panchayat and the government employees of the Revenue Inspector's Office at the gram panchayat level— the lowest tier of the local self-government. This survey, which was a necessary step towards the distribution of land to the landless could not be done without involving the panchayat. In addition to this, the list of beneficiaries i.e., landless persons (to whom land would have to be distributed) was also prepared by the gram panchayat.

The foregoing comparison of land reforms and land acquisition clearly revealed crucial differences between them. It can be said that land acquisition was a centralised, bureaucratic and less democratic procedure than land reforms through which the *eminent domain* of state acquired private land in India. The implications of this comparison for the Left Front Government (LFG) in West Bengal were important. Because, when the LFG came to power in 1977, it gave top priority to land reforms, which was linked with decentralised planning through the involvement of the elected panchayats in West Bengal. In erstwhile Medinipur district, The LFG in West Bengal claimed its uniqueness among the Indian States not only in staying at office for decades through parliamentary democracy, but also for implementing a pro-people land reform programme with fair amount of success (Mukarji and Bandopadhyay 1993). The key to this success lay in involving the poor peasants of the vast rural areas in the execution of the government policies related to their empowerment. The three major planks of the land reform programme of the LFG were (i) confiscation of the agricultural land of the big landlords (*jotedars* in local parlance) beyond the limits of ceiling, (ii) distribution of land to landless labourers and (iii) the recording of the rights of the *bargadars* (sharecroppers) through an administrative action termed as "*operation barga*". Another fact of this land reform programme was the empowerment and activation of the elected panchayats through which developmental programmes were implemented. These socio-political developments undoubtedly raised the level of consciousness and aspirations among the poorer sections (landless labourers, small and marginal farmers, etc.) of the grassroot level approach of the LFG crystallized into a politico-administrative movement which was officially phrased as *village based district planning process* during 1985-86, a few years before the adoption of the economic liberalisation policy by the then Central Government (ruled by the Congress Party) in 1991. The major objective of the decentralised planning process was to unleash a movement of village based rural development programmes by the villagers and get feedback primarily from the participants for further development.

It would be relevant here to mention that the district planning committee (the first of its kind in West Bengal) of erstwhile Medinipur district visualised the whole process of development by putting the poor peasants at the centre of all kinds of planning process. The District Planning Committee published a small book entitled *Village based district planning process: an outline of methodology* in September 1985 that described and analysed in detail how relevant socio-economic information on every village could be collected by the panchayat workers for using them in this micro level planning process. Among many pro-people planning elements, the document has much importance to the (i) identification of the nature and amount of agricultural land as well as their improvement through ecologically sustainable use and (ii) exploration of the possibilities of developing industries in terms of local demand, raw material and/or skill.

To quote from the monograph: "Apart from human beings, the most important wealth of the village is its land. It is used for locating residence, for cultivation, for planting trees, for forests, for ponds, and other water bodies, for roads, for schools, markets etc. Again, it is crucially necessary to know whether, why and how much of cultivable land of your village have either been kept fallow or have not been properly cultivated. What type of families owned these lands?" (District Planning Committee 1985).

Within a few years, and particularly in the wake of liberalisation in India, the development policy of the West Bengal Government began to change. The Government which was fully committed to land reform started to invite capital intensive and technologically sophisticated heavy industrial corporations. The success in land reform in the state was cited as one of the justifications for huge industrial investment in the state by the ministers of the LFG. In a recent publication of the WBIDC, the justifications for the changes in the policy of the Government has been described in a precise manner.

Since the Left Front Government was installed in the State in 1977, it embarked on a course of reconstruction of the economy. The sectors in which the State had the powers to act under the constitution naturally received priority attention. As a matter of conscious policy, the State Government focussed on rural development, land reforms, agriculture, small scale industries and fisheries along with decentralisation through empowerment and involvement of the panchayats in all development work. The policy resulted not only in a major

breakthrough in the rural agricultural sector but also an upsurge in agricultural production, creation of a fast- expanding domestic market and a stable political environment (West Bengal: Industry News Update June 2000: 44).

In another important publication, entitled *Destination West Bengal* the *agricultural growth* rather than the *empowerment of the poor peasants* was highlighted to show the advantage of industrial investment in West Bengal. In the said publication it was argued that since West Bengal registered the highest growth in food grain production and yield during1985-90 it has helped to "increase the overall purchasing power in the rural areas" (*Destination West Bengal* 1999). Contrary to what has been said in the recent Government report which reflected the policy changes of the state Government, an earlier report of the Government devoted to the evaluation of the panchayats in West Bengal observed quite emphatically that land reforms is still an incomplete programme. In the words of the authors of the report: "*Land reform is not yet a complete programme….in the nearly eleven years till 30 September 1992, only 94 thousand acres were distributed. At this rate the remaining 2.6 lakh acres will take almost 30 years to be distributed*" (Mukarji and Bandopadhyay 1993).

The authors further stated:

> *There is no sustained effort to help small and marginal farmers by converging rural development schemes on their households. Patta holders are, more or less, left to fend for themselves, once land is allotted to them. So far this has been an area of neglect. (ibid).*

The above observations made by Mukarji and Bandopadhyay seem to be very much pertinent to the field level situation at the Kalaikunda gram panchayat area within which land acquisition for Tata Metaliks and Century Textiles had taken place during the 1990s. The Annual Report of the Kalaikunda gram panchayat for the year 1994-95 contains statistics on the distribution of land to the landless families during the period 1993-95. The figures revealed that from 1993 to June 1995, at about 300 acres of land was distributed to 1500 landless families inhabiting within the Kalaikunda gram panchayat (*Smaranika*, Kalaikunda Gram Panchayat 1994-95). Interestingly, the Annual Report of the Kalaikunda gram panchayat for the year 1992-93 also gave statistics on land reform in its last page which published figures of land distribution during the period 1978-1992. The figures show the same number of families (i.e., 1500) who had been given land which simply means that during the period 1992-1995 no landless family in the Kalaikunda gram Panchayat area has been given land (*Smaranika* Kalaikunda, Gram Panchayat 1992-93). The rate of land distribution in this area during 1978-1992 (i.e., 15 years) turns out to be 20 acres per year. Now if only the amount of land acquired, during 1986-2000 (i.e., 15 years) for Tata Metaliks and Century Textiles is considered then the speed of land acquisition vis-à-vis land distribution can be compared. Roughly, at about 759 acres (233 acres for Tata Metaliks and 526 acres for Century Textiles) of land has been acquired for the two aforementioned industries under the Kalaikunda gram panchayat during 1986-2000. The rate of land acquisition comes out to be 50.6 acres per year i.e., more than 2½ times the rate of land distributed by the Government. It should be remembered in this connection that a major portion of this land which was acquired for Century Textiles has remained unutilised for more than four years.

In the light of the above comparison, the case of Kalaikunda gram panchayat brings out an important implication for the developmental programmes in the state. The distribution of land to the landless families in this area, which operated through the involvement of the elected panchayat was a much slower process than land acquisition for large industries.

Moreover, land acquisition caused dispossession of small and marginal farmers and disempowered the *bargadars* and *pattaholders* who despite all their efforts and resistances ultimately failed to achieve empowerment. During field work, when the elected panchayat members as well as employees of the Kalaikunda gram panchayat were asked whether the panchayat had any rehabilitation plan for the dispossessed farmers in the area, the only answer was: "It is not the business of the panchayat. It is the duty of the Government". The panchayat members were not even interested to conduct any household level survey to find out the number of families (including scheduled tribes) who had lost all of their land, and the number of *bargadars* and *pattaholders* who had lost their rights over land owing to acquisition for the two big industries, within their

jurisdiction. The empowerment of small peasants achieved through land reforms in the Kalaikunda area was reversed owing to the acquisition of huge chunks of farmland for large industries (Guha 2007).

THE NEW LAND ACQUISITION LAW AND THE LOCAL SELF-GOVERNMENT

A Critical Reading

In accordance with the second objective of this paper, I will now look at the local self-government under the new Land Acquisition, Resettlement and Rehabilitation Act 2013.

The Urgency Clause

Let me first point out that despite all the good flavour which comes out of the RFCTLARR, 2013 Act it contains an "Urgency Clause" entitled "Special powers in case of urgency to acquire land in certain cases" in Chapter V section 40 subsection (1) wherein it is stated:

In cases of urgency, whenever the appropriate Government so directs, the Collector, though no such award has been made, may, on the expiration of thirty days from the publication of the notice mentioned in section 21, take possession of any land needed for a public purpose and such land shall thereupon vest absolutely in the Government, free from all encumbrances.

The section 40(1) on "Urgency Clause" should be read with Section 9 in Chapter II of the law titled "Exemption from Social Impact Assessment" which reads:

Where land is proposed to be acquired invoking the urgency provisions under section 40, the appropriate Government may exempt undertaking of the Social Impact Assessment study.

One may of course argue that there are sufficient checks under the urgency clause under section 40 of the LARR. For example, under sub- section (2) it is stated:

The powers of the appropriate Government under sub-section (1) shall be restricted to the minimum area required for the defense of India or national security or for any emergencies arising out of natural calamities or any other emergency with the approval of Parliament:

Provided that the Collector shall not take possession of any building or part of a building under this sub-section without giving to the occupier thereof at least forty-eight hours notice of his intention to do so, or such longer notice as may be reasonably sufficient to enable such occupier to remove his movable property from such building without unnecessary inconvenience.

But do all these ensure that the urgency clause will not be invoked for the public purposes mentioned under section 40(1) since it is ultimately the "Appropriate Government" which will decide upon the need for a public purpose? Let us now see how "public purpose" is defined in RFCTLARR, 2013. The new law made an attempt to define and enumerate "public purpose" for which land may be acquired under its section 2*(1)(a)* & *(b)* into four major classes, viz. (i) land for strategic purposes relating to the security of the nation,(ii) land for industrialization, urbanization and infrastructure development undertaken by the government, (iii) land for resettlement and rehabilitation of project affected people, residential sites for the poor, educational institutions, and health related schemes and (iv) land for private companies(LARR 2013:6-7). In this connection, it may be recalled that in the 1894 law (as modified up to Ist September 1985) "Public Purpose" included eight items wherein land for strategic purpose and for private companies were not included (LA 1894:2-3). The implications of the above itemization in the RFCTLARR, 2013 Act are crucial because the "Appropriate Government" may invoke the "Urgency Clause" under any of the four types of "Public Purpose" and skip social impact assessment study of a development project.

We should again recall that in the 1894 law there was also a provision for invoking urgency clause under its subsection 17(1) which is unerringly similar to the subsection 40(1) of the new law. There are however, two major differences between the 1894 law and the RFCTLARR, 2013 Act which are: (i) a provision for social impact assessment is incorporated in LARR and (ii) inclusion of restrictive clauses regarding the application of the urgency clause in LARR.

Let us now look into the urgency clause of the LARR from another perspective. Any government can bypass the restrictive clauses and there is no mandatory provision in the LARR Act that the "Appropriate Government" shall not be able to employ

the urgency clause without consulting the legislative bodies. The case of the state of West Bengal which I have studied in some detail may be briefly narrated here.

Restrictive Provisions of the Urgency Clause and the Case of West Bengal

Since independence, besides the colonial Land Acquisition Act of 1894, there existed another State Act entitled West Bengal Land (Requisition and Acquisition) Act, 1948. The latter Act is no more applicable in West Bengal since 31 March 1993 by a decision of the West Bengal Legislative Assembly. In fact, when this particular piece of legislation was first enacted in the State Assembly it was stipulated that the Act has to be renewed in the Assembly by a majority decision every five years since this is a very powerful and coercive law. The Government opinion was that the State of West Bengal, which had to receive millions of refugees from erstwhile East Pakistan just after Independence, needed huge amount of land for various developmental purposes. For this reason, the Government was in need of an Act, which was more powerful than the colonial Act in acquiring land from the private owners. By West Bengal Land (Requisition and Acquisition) Act the Government could first requisition a particular piece of land for which the payment of compensation may not be made before the land take-over while in the earlier LA Act of 1894 the Government could not take possession of any land without payment of compensation. The long period (1948-1993), that is nearly 45 years, during which the West Bengal Government has kept this powerful Act alive is itself evidence of its frequent application. In terms of political composition, it should be noted that during this long period both Congress and Left ruled Governments, who were in power, continuously renewed the Requisition and Acquisition Act of 1948 in the State assembly and applied it to acquire land for "Public Purposes" not only for the rehabilitation of refugees coming from West Bengal but also for other purposes, like the establishment of industries owned by private companies (Guha 2007: 58-72).

The West Bengal case shows that even with mandatory restrictive stipulations, the West Bengal Land (Requisition and Acquisition) Act, 1948 was employed for purposes other than rehabilitation of displaced refugees and the Assembly proceedings revealed that such a coercive law was renewed by ruling political parties irrespective of ideology for 45 years in a state predominated by small farmers and sharecroppers. So, what is the guarantee that in a vast and politically diverse country like India the governments will not invoke the urgency clause of the LARR to bypass the social impact assessment study stipulated in the new law?

Appropriate Government

I will now come to the definition of the, "Appropriate Government" as enunciated in the Land Acquisition Act 1894 and RFCTLARR, 2013 Act. Under subsection 3(e) of the LAA 1894 and subsection 3(e) of RFCTLARR, 2013 Act, the expression "Appropriate Government" means only the Central and State Governments. Ironically, both laws did not take into consideration the 73rd & 74th Amendment Act of the Constitution which empowered the local self-governments to function as independent government. The issue of "Appropriate Government" is vital to any discussion on social impact assessment as enunciated in the RFCTLARR, 2013 Act. In Chapter II under Section 4 and subsection 1 of the Act entitled "DETERMINATION OF SOCIAL IMPACT AND PUBLIC PURPOSE" we read:

> *Whenever the appropriate Government intends to acquire land for a public purpose, it shall consult the concerned Panchayat, Municipality or Municipal Corporation, as the case may be, at village level or ward level, in the affected area and carry out a Social Impact Assessment study in consultation with them, in such manner and from such date as may be specified by such Government by notification (RFCTLARR Act:11).*

In this context it should be noted that the Lok Sabha by adopting the 73rd Amendment Act in 1992 inserted Part IX in the Constitution which contains Articles 243 to 243-0. These Articles empower the state legislatures to confer on the panchayats such authority as may be necessary to enable them to function as institutions of self-government. These are empowered by the Constitution with the responsibility of preparing plans for economic development and social justice and in regard to matters listed in the 11th Schedule (inserted by the

73rd Amendment). The list contains 29 items, such as land improvement, minor irrigation, animal husbandry, fisheries, education, women and child development, social forestry, etc. It follows that acquisition of land for industries or for that matter any development work within the jurisdiction of a panchayat should first be cleared by the respective panchayats.

In the RFCTLARR, 2013 Act the expression "Appropriate Government" under subsections 3(e) (i)-(v) means, (i) in relation to acquisition of land for the purposes of the Union, the Central Government; (ii) in relation to acquisition of land for the purposes of any infrastructure project in more than one state, the Central Government; and (iii) in relation to acquisition of land for any other purpose, the state government;(iv) in relation to Rehabilitation and Resettlement, the State Government(RFCTLARR Act:8). Curiously, the new law of 2013 like the LAA 1894 and, does not have any place for the local self-governments under the "Appropriate Government". In order to place the new law in line with the 73rd & 74th amendments of the Constitution the expression "Appropriate Government" should also include the local self-governments, otherwise mere "consultation with the *Gram Sabha* at habitation level or equivalent in urban areas" would be a mere formality.

A Basic Question

Now given these alarming lacunae in the RFCTLARR, 2013 Act let us raise a basic question. The question is: Why are the political parties and their think-tanks not raising the issue of the non-recognition of the local self-government in the new law? The answer is not very difficult to explore. No political party in India wants to decentralise power at the lowest level of the government. On the other hand, in every case of land acquisition, the protests are invariably organised at the local level and the land losers may sometimes go against their political masters at the higher level. The protest by farmers in Nandigram in West Bengal once a solid base of the Left parties was one of the best examples of this political process. If the panchayats are empowered to have the final say on land acquisition for private companies, it will only embolden the locals and the under-privileged classes to protect their source of livelihood. This may endanger corporate interest in land acquisition. Incidentally, in Nandigram, the panchayats have been won over by the Trinamool Congress. But they have not been empowered to act legally against future acquisition. Now the Trinamool Congress is at power in the West Bengal state and if a major corporate wants land in Nandigram, the state government may allow the company to buy 100 per cent of the land for their project. The panchayats will have no legal role to play and the bargain between the poor farmers and the corporate will take place at the individual level. The constitutional body, which is empowered to prepare plans for economic development and social justice, will have no role under the RFCTLARR, 2013 Act.

CONCLUSION

A critical reading of the RFCTLARR, 2013 Act reveals its serious shortcomings as regards the urgency clause and failure to include the Constitutional local self-governments in decision making on land acquisition. It is high time that the anthropologists and sociologists of the country come out of their academic shells of "pure and theoretical research" and converge their research inputs in unison to convince the government to revise and redraft this law, which is no less important than space and atomic research for the greater interest of the citizens of our country.

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