

LAND GRAB OR LAND RIGHTS: UNDERSTANDING LAND ACQUISITION IN INDIA

Seema Mallik

The paper evaluates the policy formulation on land acquisition along with examining the politics involved in this issue.

Introduction

Today, in the era of neo-liberalization, India has emerged as one of the fastest growing economies. However, India's growth is being questioned. Despite a high GDP rate, India continues to fail in human development indices. Since the 1990s there has been a shift from its Nehruvian Socialist roots towards a neoliberal state where the State and business groups have solidified their political and economic alliance and observers have characterized India as "India incorporated" (Kohli, 2012:3). Kohli argues that it is this alliance between the State and big business set in motion by the neo-liberal policies which is responsible both for releasing economic dynamism and for limiting the spread of its resulting gains. Large sections of society feel alienated and marginalized from this developmental process.

Agriculture has taken a beating and its contribution to the GDP has gone down. Although agriculture and allied activities employ nearly 60% of the population, its contribution to India's GDP is less than 20%. It will shrink further, as there is a mass movement from rural to urban India (Corbridge, 2009:21). Large scale land acquisition for industries, Special Economic Zones (SEZs), IT sectors, real estate have further challenged agricultural growth. The poor face yet another threat, of losing their lands to business groups in the name of "development". Those who are forced dispossession of their lands do not benefit from this business transaction where a new class of those enjoying the profits are created. These areas are highly knowledge-intensive and not labour-intensive which is beyond the capabilities of the vast, poor, illiterate rural farmers of India (Levian (2011)). Therefore, the question arises on the viability of these schemes which make the poor, poorer, landless and dependent on the

government. Contrary to older forms of dispossession where land was expropriated for the natural resources it could deliver, in SEZs land is dispossessed so that it can be commodified as urban spaces (Levian, 2013a,b; 2011a). This dispossession from land or 'land grab' is now a phenomenon, particularly in the Third World countries, referred as the Global South.

Global South and "Land Grab"

Land is central to human existence particularly the rural and the urban poor. Therefore, the World Bank in its report 'Land policies for growth and Poverty' reaffirmed "the need for a careful and differentiated approach as a pre-condition for making a clear policy recommendation in case of land that can help improve both efficiency and equity" (World Bank, 2003:xvii). Since the 1980s, there has been a dramatic increase in land acquisition, particularly in the global South, in the light of globalization and liberalization of economies. There is significant literature accentuating this 'land grab' (Bernstein, 2010; White et al, 2012; Borras Jr et al, 2011; Li, 2010; Banerjee-Guha, 2013; Levian, 2013, 2012, 2011). The phrase 'global land grab' has become a catch-all to describe and analyze the current explosion of large scale (trans)national commercial land transactions (Borras Jr et al, 2011:2010; Welford, 2013; Hall et al, 2011). Around the world, there have been strong reactions from states, corporations, and civil society groups on these large scale land deals. Some see land grabs as a major threat to the lives and livelihoods of the rural poor, and so oppose such commercial land deals while others see it as an economic opportunity for the rural poor (Borras et al, 2011).

David Harvey (2003) calls it the 'accumulation by dispossession' (ABD), the new form of imperialism. He uses Marx's concept of "primitive accumulation"

which is the process by which non-capitalist social formations are transformed into capitalist ones and workers are separated from the direct access to the means of production leading to their alienation. This is marked by exploitation and accumulation of wealth by the capitalists. Thus, capitalism has created a hegemonic ideology of prosperity which has led to a close partnership with the state in neo-liberal thought. Together, they have embarked on "land accumulation" at cheap rates from the small farmers leading to greater levels of poverty and alienation of the poor in underdeveloped areas. However, ADB differs from 'primitive accumulation' in the sense that while 'primitive accumulation' was understood as a process of coercive appropriation creating the pre-conditions for capitalist accumulation, ADB is now seen as a process that allows global capital to find new outlets in advanced capitalism (Levian, 2012).

However, Levian argues that the existing theoretical perspectives, whether Marx's primitive accumulation or Harvey's accumulation by dispossession, are not adequate for understanding the political economy of land dispossession under capitalism-in India or elsewhere (Levian 2015:146). This is because both theories underplay the role of the state. Therefore Levian advances the concept of "regimes of dispossession" as a better way of understanding how dispossession is politically organized in different socio-historical contexts to serve different class interests (Levian, 2013). Thus, "regimes of dispossession" is a form of coercive redistribution that states use to facilitate different forms of accumulation and class interests in different periods. It emphasises that while dispossession is an ongoing process of capitalism and changes under different historical forms of capital formation, it is ultimately a political process, mediated by the state and thus can be stopped by non-compliance of rural people. Tanya Li (2009; 2007) highlights this aspect in her analysis of large parts of rural Asia, in India and Indonesia and assigns two reasons for growing poverty. Firstly, the new round of enclosures have dispossessed large numbers of rural people from their land and secondly the low absorption of their labour, which is "surplus" to the requirements of capital accumulation (Li, 2009:67). She further adds that no one has the market incentive to keep these 700 million poor Asians who live on less than a dollar a day, alive from day to day or generation to next.

Thus 'accumulation by dispossession' opens up fertile terrain for understanding the proliferation of contemporary land grabs in India (Li, 2009; Levian, 2013, 2012, 2011; Menon and Nigam 2007; Banerjee-Guha 2008, 2010; Sampat 2008; Sarkar, 2007) and the changing role of the State.

Land Grab In India

In India, memorandums have been signed for the creation of SEZs, where forceful acquisition of land from the poor farmers by the ruling elite to attract private investors has become a part of the ongoing economic reform process resulting in increasing state-society conflicts. The SEZ Act of 2005 provides the framework for the creating these "hyper-liberalised" economic zones, by acquiring cheap land from farmers and creating privately-developed cities, industries, etc. These profit generating constructions have led to a mad land rush by private investors to grab land from the poor. Therefore, land dispossession today, is increasingly for privatized industrial, infrastructural, real estate projects which a 'corporate' state is indulging on. There is a sharp contrast to land dispossession after independence for state-led projects to land dispossession for private projects at present under a neo-liberal growth model. This has led to growing state-society conflicts across India, which has led to either their cancellation or delay as in the case of the Korean steel giant POSCO and Vedanta in Odisha¹ and Singur in West Bengal to name a few.

Further, as mentioned earlier, there is a gradual decline of the contribution of agriculture to the GDP compared to industry and services as focus of reforms, is on non-agricultural economy. When agriculture is being sidelined for industry, there is bound to be increasing poverty related to land and food insecurity. India, despite an economic robustness for two decades, still is one of the poorest countries. India has been climbing up the ladder of per capita income while slipping down the slopes of social indicators (Dreze and Sen, 2013:8). Today, the much poorer economy of Bangladesh has caught up and overtaken India in terms of many social indicators (including life expectancy, immunization of children, infant mortality rate, child undernourishment and girl schooling (ibid)²). Therefore, economic growth has to be integrated with human development. Hence, land rights remain at the centre of a rapidly changing economy across India and needs to be strengthened so

as to help the poor, rather than making them poorer.

Therefore, it becomes important to understand land grab in India, where the Land Acquisition Resettlement and Rehabilitation, Ordinance 2015 was being pushed by the new government, and was withdrawn on August 31, 2015 due to mounting resistance by farmers across the country. It is on these lines of argument that this paper examines the *Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act (RTFCAT-LARR, 2013)*, and *Ordinance 2015* and the urgent need to check 'land grabs' to bring about inclusive growth in the country. However, an understanding of land grab in India can become more clear by first tracing the *doctrine of eminent domain*, introduced by the British, and later adopted by the post-colonial 'developmentalist state' and today by a neo-liberal state (Kohli, 2012).

Doctrine of Eminent Domain

The British adopted an exploitative land and revenue policy and forcefully acquired land on a large scale particularly in tribal dominated areas. The British policy in India was based on the *doctrine of eminent domain* which was influenced by the *enclosure movement* in England in the 18th century³. The doctrine of *eminent domain* refers to the power to take private property for public use by a state, municipality, or private person or corporation authorized to exercise functions of public character, following the payment of just compensation to the owner of that property. It originated in Europe in 1625 in the works of Hugo Grotius and Samuel Pufendorf where Grotius argued that the property of subjects lay under the eminent domain of the state that may use, alienate and even destroy the property in the case of extreme necessity and for public utility (Sampat, 2013). In India, this doctrine which originated with British common law was reflected in the Indian Constitution through laws which facilitated the state to acquire land forcibly.

The British passed the *Land Reforms and Land Acquisition Act (LAA) 1894* which saw the application of doctrine of *eminent domain*. The British and the land-owning elites consolidated their positions while "depeasantising" the tribals and lower caste peasants (Mohanty, 2001). This led to resentment and tribal rebellions across the country⁴. Therefore, after independence, land reforms became crucial for national planning and attainment of socio-

economic emancipation of the deprived groups. Land reform laws were enacted from the 1950s to break the concentration of land with the zamindars and to strengthen the rights of the landless (Sampat, 2013: 42). As land is a state subject, this led a large number of legislative measures for the protection of the deprived groups by individual states. These legislations imposed ceilings on large holdings and attempted to redistribute land among the landless. However, the land reforms to attain redistributive justice and check land alienation of the tribals and small farmers was opposed by the landed. These land reforms were ineffective in preventing loss of land from the poor. The Supreme Court of India from 1950-1970 adopted several protective measures for the weaker sections of the society including the tribals under the Fifth and Sixth Schedules⁵. According to Article 342(1) of the Constitution, the President of India, may with respect to any state or Union Territory and where it is a state, in consultation with the governor thereof by public notification specify the tribes or tribal communities which shall for the purpose of this constitution be deemed to be Scheduled Tribe.

The Supreme Court however in the early phase struck down several land legislations on the ground that they violated the right to property which was a fundamental right under Article 19(1) of the Constitution. This led to protests from Parliament and as a result land reform laws related to takeover by the state were moved to Ninth Schedule by the First Constitutional Amendment, where they were beyond judicial review. Finally, right to property was removed from being a fundamental right by the 44th Constitutional Amendment Act, 1978. This strengthened the power of eminent domain of the state. The colonial statute LAA, 1894 continued with slight amendments, providing for compulsory acquisition of land for "public purpose".

The *Coal Bearing Areas (Acquisition and Development) Act (CBAA), 1957* was enacted specially for coal mining (CBA, 1957). This directly and drastically affected the tribal population as most of the coal reserves are located in forest areas inhabited by tribals. This along with LAA, 1894 empowered the central government to acquire mining rights with ease thus displacing and threatening the livelihood of the poor and landless farmers. Thus the existing land reforms have encouraged more inequalities and conflicts in society while overstretching the power of

the state over economically, socially and politically marginalized population. Under both these Acts the government can acquire land for "public purpose". This was also reflected in the *RTFCT-LARR Act, 2013* which replaced the LAA 1894 only in 2013. has stressed the need for land for industrialization, infrastructure expansion and "public purposes".

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RTFCT-LARR) Act, 2013

The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RTFCT-LARR) Act, was passed in 2013, by the UPA (United Progressive Alliance) government. The euphoria generated at the time gave the impression that the injustices of archaic LAA, 1894 was finally undone. This was a pro-farmer legislation with noble intentions making the legal entitlements to compensation, rehabilitation and resettlement. The National Democratic Alliance (NDA) government, on coming to power in 2014, made amendments to the Act and three ordinances were passed; first in December 2014, then in the in April 2015 and the last in May 2015. These were met with countrywide protests and the Ordinance was finally withdrawn in August 2015.

The present protests against the Ordinance, has created the impression that the goodness of 2013 is being washed down. However, none are pro-farmer but both are mechanisms to dispose farmers, particularly small farmers off their land, through material compensation in a neo-liberal state. The objective is to work out a compromise to end land wars across the country. As reported in the Times of India (March 31, 2015), an estimated projects valued at Rs 6 lakh crore are stalled due to land acquisition issues. A study by the Society for the Promotion of Wasteland Development (SPWD) and Rights and Resources Initiative (RRI) have highlighted that a quarter of India's districts are witnessing mass protests over land acquisition issues. It has identified 252 land conflicts spread over 165 districts spanning over 165 districts in practically all states. This is an increase of over 40% over 2012 when an earlier study had recorded 177 disputes in 130 districts. (refer www.timesofindia.com).

Both the Act and Ordinance, elaborate in details this expanded scope of land acquisition and state's power of eminent domain. It attempts to rectify the

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archaic LAA, 1894 but it continues to elaborate on the "public purposes" clause. The Act has expanded the scope of "public purpose" to include the scope of private sector also. The Act required that 80% of affected landowners give approval to land acquisition for private projects and 70% approval for PPP projects. The land acquired by the state can be allocated to private companies under this act. This provision has however been exempted from applying to five types of projects in the Ordinance. This is a very important change that the Ordinance has made. These categories are national security, rural infrastructure including rural electrification, affordable housing for the poor, industrial corridors, infrastructure projects under public private partnership (PPP). For these categories no consent and no social impact assessment (SIA) would be required

This opens up new doors for the state to favour private companies and also multinational corporations to acquire land cheaply. Thus, while obtaining consent from farmers was the rationale of the Act, in reality it has hardly paid attention to the genuine needs of farmers. This has become the main casualty in the Ordinance which has eliminated the need to acquire consent of farmers in five types of projects. Secondly the compensation and rehabilitation provisions have become more and more diluted. Despite early suggestions of fixing compensations at six times the government fixed values, the final bill finally reduced this to four times the rate in rural areas and two times in urban areas. Thus, both the Act and the Ordinance have expanded the scope of government acquisition of land for public purpose, where under the Ordinance it is even more. Further, the compensation is decided by the collector based on the market value of the land (Section 26). However, as the land markets in India is not well developed and poorly defined, the possibility of arriving at the genuine market value is very remote. The Act mentions that two times the market value in urban areas and four times the market value in rural areas be paid as compensation. However due to erroneous procedures, the farmers are not receiving the appropriate compensation.

Further, as the Act stands today, any land acquisition and compensation process is a bureaucratic nightmare which only benefits those who occupy the seats of power. This is because from the time of social impact assessment (SIA) to the time of payment of compensation and acquisition of land, different

levels of bureaucracy and assessment committees are involved which are centres of confusion and hassle to the farmers. The farmers face double disaster of losing land and not receiving necessary compensation in time. Here I would like to mention that farmers displaced for the Hirakud Dam in Odisha in 1957 have not yet received compensation for their lands. This is just one example amongst many in the country. Thus the Act(2013) and Ordinance 201, and 2015 have little to offer to farmers

Conclusion

Thus in conclusion, it can be said that the present neo-liberal growth model in India based on brute force by the state to acquire land will result in more land wars. This development has in fact, increased poverty of certain sections of the society while creating new elites (Kohli, 2012; Drez and Sen, 2013). This has increased the rich-poor divide. While under the Nehruvian model dispossession of land was for public purposes (eg. irrigation, industrialization by public sector) where the farmers could feel included, the present neo-liberal regime has created an exclusionary process of growth that has further marginalized the marginalized. Land laws in India have so far protected the rich farmers and landlords. The RTFCT-LARR, 2013 despite several laudable provisions has failed to check land wars across the country. This has got a push with the LARR Amendments in 2014 and 2015. The doctrine of eminent domain continues to haunt the poor and weaker sections of the society. Section 69 of the Act permits the states to change the purpose for which land has been acquired under "public purpose" clause. Section 70 permits the states to transfer land to private companies and individuals. These empower the states to acquire land under "public purpose". The scope of this clause needs to be reduced.

Instead of building self-sufficiency among the poor and land for food, the government is creating more dependents by depriving people of their lands and means of livelihood. It is ironical that the government on one hand is acquiring land, including agricultural land for industries and SEZs, and on the other hand making the obligation of the state towards feeding the poor and hungry ie the poor are first created with a begging bowl and then food is put in that bowl. The marginalized are deprived of their land and forests, and livelihoods in the name of development. But the very people who are supposed to be the beneficiaries of development are protesting

against the process, then development is questionable. Industrialization is necessary but not at the cost of grabbing land from the weaker sections of the society. It needs to be balanced with agriculture. Only when it is inclusive and participatory, involving the poor and tribals, while protecting their land rights, culture and traditional beliefs can there be genuine development. Land to the landless instead of providing employment by creating industrial corridors and SEZs which involves dispossession of land will help bring about equitable growth in an agriculture dominant society. Kerala has shown that focus on health and education is central to economic and social development. Through investment in social sectors, along with land reforms which provided deeds to agricultural labourers, Kerala has successfully lowered poverty. Thus building up the capabilities of the poor rather than grabbing their lands, and threatening their livelihoods that equitable growth can be achieved. Therefore, a non-exploitative and inclusive Land Act must be worked out to provide support rather than stress to the poor.

References

1. Ben White, Saturnino M. Borras Jr., Ruth Hall, Ian Scoones & Wendy Wolford
2. (2012): "The new enclosures: critical perspectives on corporate land deals", *Journal of Peasant Studies*, 39:3-4, 619-647
3. Borras Jr., Saturnino M., Hall, Ruth, Scoones, Ian, White, Ben and Wolford, Wendy (2011) "Towards a better understanding of global land grabbing: an editorial introduction", *Journal of Peasant Studies*, 38: 2, 209 — 216
4. Corbridge, Stuart (2009) "The Political Economy of Development in India since Independence" *Development Studies Institute, London School Of Economics, London*
5. Dreze, Jean and Amartya Sen, ed., (1997). *Indian Development: Selected Regional Perspectives*. Oxford University Press, New Delhi.
6. Dreze, Jean and Amartya Sen (2002). *India: Development and Participation*. Oxford University Press, New Delhi.
7. Dreze, Jean and Amartya Sen (2013). *An Uncertain Glory: India and its Contradictions*. Allen Lane (penguin), London
8. GoI (2011) *Census, 2011*, Ministry of Home Affairs, New Delhi
9. GoI (2013), *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RCFCT-LARR,) Act, 2013*.
10. ----(2015) *The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (RCFCT-LARR,) Act, 2013 (Amendment)*
11. Government of India, Ministry of Commerce and Industries, n.d. *Special Economic Zones in India*, <http://sezindia.nic.in/>

- (accessed 1 March 2014).
12. Harvey, David (2003). *The New Imperialism*, Oxford University Press, Oxford.
 13. Harvey, David (2005), *A Brief History of Neo-liberalism*, Oxford University Press, New York.
 14. Kohli, Atul (2004), *State-directed Development: Political Power and Industrialization in the Global Periphery*, Cambridge University, Cambridge.
 15. Kohli, Atul (2012). *Poverty amid Plenty in the New India*, Cambridge University, Cambridge.
 16. Levian, M (2013a) . " Regimes of Dispossession: From Steel Towns to Special Economic Zones". *Development and Change* 44(2): 381-407
 17. Levian, M (2012a). "The Politics of Dispossession: Theorizing India's 'Land Wars'. *Politics and Society* 41:351
 18. Levian, M (2012b) "The land question: special economic zones and the political economy of dispossession in India", *The Journal of Peasant Studies*, 39:3-4, 933-969,
 19. Levian, M (2011) "Special Economic Zones and accumulation by dispossession in India". *Journal of Agrarian Change*, Vol. 11 No. 4: pp. 454-483.
 20. Li, Tanya Murray(2007). *The Will to Improve: Governmentality, Development, and the Practice of Politics*.Duke University Press,Durham and London.
 21. Li, Tanya Murray(2009). " To Make Live or Let Die? Rural Dispossession and the Protection of Surplus Populations". *Antipode*. vol. 41, Issue Supplement S1 January:66-93.
 22. Mohanty, Manoranjan (2014). "'Persisting Dominance: Crisis of Democracy in a Resource-rich Region". *EPW*,vol XLIX, April 5:39-45.
 23. Satapathy, Rajaram (2013). 'Mines Multiply as Farmland Shrinks', *The Times of India*, Bhubaneswar, 22 February:2
 24. Sampat, Preeti (2013) , *Limits to Absolute Power: Eminent Domain and the Right to Land in India*, *EPW*, VolXLVIII, No.19, May 11, pp.40-52.
 25. Swapna Banerjee-Guha (2013) "Accumulation and Dispossession: Contradictions of Growth and Development in Contemporary India, South Asia." *Journal of South Asian Studies*,36:2, 165-179
 26. UNDP, (2008), *Status Report, Land Rights and Ownership in Orissa*, UNDP, India.
 27. UNDP Human Development Reports (different Issues)
 28. WendyWolford, Saturnino M. Borras Jr.,Ruth Hall, Ian Scoones and Ben White (2013), *Governing Global Land Deals: The Role of the State in the Rush for Land*. *Development and Change* 44(2): 189-210.
 29. World Bank(2003). *Land Policies for Growth and Poverty*. Oxford University Press, Oxford and others.