Missing the Wood for the Trees

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In the wake of unprecedented massive peoples' resistance against the acquisition of fertile agricultural land in West Bengal a discourse on land acquisition has emerged. There are many stakeholders in this discourse. The state government, the opposition, the smaller partners of the Left Front Government (LFG) and the civil society are the major players in this discourse. The issues, which are at stake, revolve round the location of industries, compensation and employment of the displaced persons and above all the relationship between agriculture and industrialisation in the state of West Bengal. While all these issues are hotly debated among the stakeholders amidst claims and counter-claims no one really seems to be serious or even knowledgeable about the nature and functioning of the colonial Land Acquisition Act of 1894 (LA Act) which is the legal instrument of acquiring land for private companies in India even after 59 years of Independence. Everybody is now busy with the Special Economic Zone Act and its various undemocratic and authoritarian characteristics but nobody demands or makes any concrete plan or suggestion to overhaul the LA Act which stipulates only monetary compensation at market rate, ignores the local self-government, shows no concern over communal property rights and the environment, gives supreme power to the government to acquire land for a 'public purpose' which remains undefined and makes no provision for resettlement and rehabilitation for the displaced persons. The government, the civil society leaders including the noted intellectuals, the opposition and the partners still remain surprisingly dumb on the pro-people changes that have to be worked out to transform the LA Act in line with the democratic and egalitarian spirit of the Indian Constitution as well as congruous with a sustainable future of the country. It is true that making of good law is not enough. There are many good laws in India! But making a good law by scrapping an old one is the first step towards social justice and it requires a strong political will which all the political parties of the country badly lack. The distant upshot of this situation is undoubtedly grave because the people of West Bengal who have now risen against the neoliberal agenda of globalization to protect their rights over natural resources and livelihood will ultimately fall victim of state repression and confusion in the absence of a long term goal of the heroic fight they have waged. Given the ensuing controversy it makes sense to make an anatomical dissection of the main culprit—the Land Acquisition Act enacted by colonial masters more than 122 years ago. After all, Indians can't make changes in the system unless they know it properly.

PAST AND PRESENT

In India, the system of keeping records of cultivable land by the state for the purpose of revenue collection originated in pre-colonial period, while a systematic legal and administrative machinery for acquiring land from private owners developed during the colonial regime. The all-embracing nature of the colonial state power found one of its successful expressions through the enactment of the Land Acquisition Act in 1894. The succession of some landmark events, which led to the enactment of this enabling piece of legislation, showed a consolidation of British colonial power in the Indian subcontinent. This consolidation of the colonial power was not only a political phenomenon, but it also ushered in a chain of technological as well as economic events which needed a well organised legal and bureaucratic structure. In 1820, coal mining in Raniganj and extensive irrigation network started in North India. The construction of the first Indian steamship, coffee and tea plantations in Mysore and Assam started by the late 1830s. Between 1850 to 1880, the first telegraph lines, railways, modern cotton and jute mills were established. This period also witnessed the first legislation, which curtailed the access of the local people to

forests and mechanized mining as well as growth of manufacturing sector of the economy. In 1893 the first Indian Petroleum Refinery was established and in the next year, that is, in 1894, the Land Acquisition Act was enacted for acquiring privately owned land by the state for public purposes. The succession of events, which led to the enactment of this Act, clearly showed that it was the need of the time. Mining, plantation, establishment of railway lines, manufacturing industries, beginning of major irrigation works, and road building, all needed land which again was already under various forms of state controlled and customary tenurial systems that existed from the pre-colonial period. This, enabling Act empowered the state to acquire any privately owned as well as common property land for public, purposes. The Act provided the legitimacy behind the acquisition which otherwise would have to be done with the application of brute force.

After Independence, the Government of India did not abolish this piece of colonial legislation and acquisition of private land continued with the help of the Land Acquisition Act, 1894. The first major change in the Act was introduced in 1984 through an amendment by the Central Government. The said amendment resulted in some beneficial changes for the project-affected people (PAP), which are enumerated below:

1) Payment of 12 percent per annum interest on land value to the person whose land has been acquired commencing from the date of notification to the date of declaration of the compensation award.
2) Payment of solatium (i.e. compensation for losses suffered or injured feelings) at the rate of 30 percent. Earlier it was 15 percent.
3) A provision was made to those not satisfied with the Collector's award to apply for a redetermi-nation of the compensation.
4) The amendment also tried to minimize the undue delay that characterizes land acquisition proceedings.

But along with the above beneficial changes the amendment had also conferred greater discretionary power on the Government and introduced the acquisition of land for private companies. Before the amendment, private companies procured land from the market by paying the market price. The amendment enabled the private companies to get land from Government, which meant that the latter had to acquire land beforehand on behalf of the company.

In India, every state Government has the right to amend the provisions of the Land Acquisition Act, 1894 in its application to that particular state and since Independence the different states have made several amendments. As a result, at present there exists a good deal of inter-state variation with regard to the various technical aspects of the land acquisition proceedings. Most of these inter-state variations centre around matters related with notification, survey, objections to notification, payment of compensation and the authority that is empowered to set in motion the acquisition proceedings. The LA Act however is basically a Central concern, since State Governments can make any amendments as long as the changes are not opposed to the Central Act and the Central Government has the power to modify an amendment or declare it invalid.

Development initiative by the Indian State since liberalisation in 1991 in the form of inviting foreign and Indian private investments is proceeding at a much faster rate than ever before. These private capital investments require the acquisition of huge amount of land, which are mostly agricultural for the installation of industries, building of roads and mining. The acquisition of land for various development projects for the sake of economic growth also entail loss of livelihood of the people who depend upon this vital natural resource. Depriving people from their immediate means of livelihood (land) for the sake of long term economic growth (e.g. better employment opportunity) without provisioning adequate rehabilitation and resettlement causes widespread social and political movements by the people against the State. A number of violent peasant movements in the different states of India (e.g. Orissa, West Bengal, Andhra Pradesh, Haryana, Gujarat, Rajasthan, Uttar Pradesh and in others) against the acquisition of farmland by the Government for private industries clearly reveal peoples' discontent towards the paradigm of development chosen by the policy makers of the Indian State. The recent move of the Indian Government to create Special Economic Zones (SEZs) within which the export-oriented industrialists and big business groups would be given land at a low price and all kinds of tax

reliefs has become another front of battle over land between the State and the civil society in India. While the Government was quick enough to pass the SEZ Act 2005 in the Parliament, it is equally lackadaisical to enact a law for ensuring resettlement and rehabilitation for the people who would be severely affected by development project. The democratic and independent Government in India still acquires land for private industrialists by employing a colonial Land Acquisition Act of 1894, which does not contain any mandate for rehabilitation; it only enables the land titleholders to receive monetary compensation at the market rate. This colonial law and modern liberalisation policy which is now being hurriedly pushed forward by the present 'democratic' Government is not only a mocking combination but is it also one of the greatest contradictions of globalisation and the New Economic Order in India. Besides the loss of livelihood and pauperisation of a large number of people in the stark absence of legal and social security measures, the democratic and egalitarian measures institutionalised and adopted by the Indian Government and policy makers through long struggles of nation building in the post-colonial period are also receiving severe blows by this recent offensive move towards liberalisation. Land reforms (empowering the poor by giving land to them) and Panchayati Raj (the system of local governance) are the two pro-poor institutions, which are now being severely affected by globalisation in India. All these development demands reform and change in the spheres of policy, legislation and governance. In the following sections of the paper a case study of West Bengal is presented, which is not only one of the most important states of India in terms of its post-Independence achievements in agricultural production, land reforms, local governance and political consciousness but it is also the state which, in the era of globalisation has become committed to bring in huge capital investment even at the cost of its peasantry and the state is also witnessing violent struggles between the people and the Government over the issue of land and its management.

LAND ACQUISITION IN WEST BENGAL

Land acquisition in West Bengal has a special significance in the context of the pro-peasant land reform policies adopted and implemented by the Left Front Government since it came to power in 1977. Almost all the studies conducted by the researchers on displacement in other states of India did not take into consideration the dampening effects of land acquisition on small peasants and sharecroppers who are the real beneficiaries of land reforms.

Agricultural land is not only a socio-cultural and economic category for the peasants in a rural setting but the rights of the people over such land depend on the functioning of a specific set of legal, administrative and policy apparatus with which a particular state power is endowed in a given period of time. The functioning of the legal, administrative and policy apparatus of the state power do not again operate in a cultural vacuum. The differing and sometimes quite opposing perspectives on issues around development form the cultural context within which the state apparatus functions.

According to the Land Acquisition Act, the state can exercise its right of eminent domain wherein it is the ultimate owner of all land, which it can acquire for public purposes after paying full compensation calculated on the basis of market value. Despite several amendments of the Act after Independence, the two basic principles of land acquisition, viz. (i) public purpose and (ii) compensation on market value, remain unchanged. The various criticisms of Land Acquisition Act in India have also centered around these two cardinal principles. One of the major criticisms of the Land Acquisition Act is that the expression "public purpose" is nowhere defined in the Act and in India the courts do not have the power to decide whether the purpose behind a particular acquisition was a public purpose. The court can only direct the Collector to hear the objections of a person whose land has been acquired, but the Collector may not always listen to the objections raised by the legal owner of the land.

The second criticism of the Land Acquisition is anthropological in nature. It says that the calculation of compensation on the basis of market value not only deprives the landowner, but it also hides the various socio-cultural dimensions of land ownership in an agrarian society. Land does not only have a market price at the time of acquisition, but it also serves various social,

political and psychological functions to its owner. The ownership of a small piece of land can empower a landless family and increase the status and prestige of that family in the local milieu. A piece of land supports a family for a number of generations, not simply its present members at the time of acquisition. But these important dimensions of land and its ownership in an agricultural society are not considered for calculation of its value while giving compensation to a land loser.

Beside these two criticisms, there are others, which grew out of the lengthy discourse and debate carried out by activists, scholars, legal experts and non-governmental organisations on the various shortcomings of this Act. The criticisms are as follows :

1. The Land Acquisition Act only deals with compensation and not rehabilitation of project affected persons whose lands have been acquired. The responsibility of the state towards the affected persons ends with the payment of compensation.
2 The Act considers the payment of compensation to individuals who have legal ownership rights over land. This means that under this Act no compensation is payable to landless labourers, forest land users and forest produce collectors, artisans and shifting hill cultivators because they do not have any legal right over land, although these groups of people are also affected when agricultural and forest lands are acquired for development projects. In West Bengal, the state Government had to make an amendment in the LA Act (it was done in 1963) in order to provide compensation to sharecroppers *(bargadars)*, who also suffered loss of livelihood because of acquisition of agricultural land.
3. The Land Acquisition Act only recognises individual property rights, but not community rights over land. As a consequence, the usefructory rights of the tribal and non-tribal communities over common land do not find any place in this law. So when village common lands are acquired, no compensation in any form is provided to the village communities who derive various types of benefits (e.g. cattle grazing, fuelwood collection etc.) from these lands. The Land Acquisition Act does not have any scope for this kind of compensation for loss of common pool resources (CPR). Interestingly, in the vast rural areas of India, privately owned agricultural lands are also used as common grazing lands by the villagers in the post-harvest season. The Land Acquisition Act has no provision to compensate the villagers who may not be the owners of a particular piece of agricultural land but enjoyed usefructory rights of cattle grazing on this land after the harvest of the crops

Amartya Sen and Jean Dreze emphasises on the “expansion of markets” as among the instruments that can help to promote human capabilities” within the framework of globalisation and liberalisation, the eminent domain of the state power continues to disempower the peasantry with all its age-old and omnipotent legal tentacles. The colonial Land Acquisition Act of 1894 is one such tentacle, which still operates as the antithesis of the land reforms and the panchayati raj institution in left-ruled West Bengal. But there are built-in contradictions between land acquisition on the one hand and land reform and panchayats on the other.

LAND REFORMS

Both land acquisition and land reforms are legal and administrative actions to be undertaken by the government. These again are issues, which relate to governance and allocation of power. But there are crucial differences between land acquisition and land reforms in terms of the allocation of power to the different segments in the ladder of governance. The differences are noted in the following order.

1. By land acquisition, the government acquires legally owned private land for a public purpose. Land Acquisition Act cannot be employed to confiscate land beyond the limits of ceiling. This is specifically the job of the Land and Land Reforms Act. So one can say that while Land and Land Reforms Act empowers the poor and the landless, the Land Acquisition Act disempowers the farmers for a public purpose.
2. Land Acquisition and Land Reforms Act differ at the level of the government administration from which they begin their operation. The land reforms process start at the district level and the major part of this lengthy procedure takes place at the block level where the updated records about ownership on land are preserved. The distribution of land to the landless is a purely block level phenomenon which requires the approval of the sub-divisional officer (SDO).

The land acquisition on the other hand primarily starts at the highest level of the administrative structure, i.e. at the level of the Ministerial Secretariat and sometime at the cabinet level in the state capital. The decision to acquire land comes from the highest level of the bureaucracy. From this perspective, it may be stated that land acquisition is a centralised and top-down administrative process while land reforms operate in a more decentralised manner.

Land reforms and land acquisition processes deal with elected panchayats in a markedly different manner. The Land Acquisition Act does 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 committee consisting of a member from the elected panchayat samity is formed to consider the proposals from the requiring bodies involving land acquisition. But in the screening committee majority of the members belong to the administration viz., the Collector, Additional District Magistrate and Land Acquisition Officer. Moreover, the screening committee does not have any statutory or legal backing. It is 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 holds the highest power.

The implementation of the various stages of land reforms requires not only the mere presence of panchayat members but also their active participation. One of the most vital affairs of the land reforms process is the distribution of Government land through patta to the landless families. It has certain stages that begin with the preparation of Math Khasra. Math Khasra is 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 has to be distributed among the landless families. The Land and Land Reforms Act stipulates that Math Khasra has to be done jointly by the panchayat and the government employees of the Revenue Inspector's Office at the gram panchayat level. This survey, which is a necessary step towards the distribution of land to the landless, cannot 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) is also prepared by the gram panchayat.

The above comparison between land acquisition and land reforms reveals that the former is a centralised and bureaucratic procedure through which the eminent domain of state acquires private land in India. The implications of this comparative account for the LFG in West Bengal are 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. Suffice it to say that the priorities of the LFG have changed in the wake of liberalisation.

LAND ACQUISITION AND THE PANCHAYATI RAJ

The 73rd amendment of the Indian Constitution defined Panchayats as institutions of self-government to which State legislatures are required, by law, to endow "powers and authority as are necessary to enable them to function..." In other words, the Constitution recognised the States as competent authorities, which can empower the Panchayats. But how far a particular State can go to empower the Panchayats is left to the States themselves. Under this backdrop, the general tendency among the States is that they always want to confine the powers and functions of the Panchayats to village level development works for which the latter would have to depend on the State Government. The State of West Bengal is not an exception to this general rule. Extending the Panchayats beyond their role of mere executers of State and Central Government sponsored schemes to real local self-government that can take policy decisions is not a dream but a nightmare for the ruling political parties of West Bengal. Because, a truly empowered local self-government may develop the potential to challenge the high-level and top-down development policies which are frequently imposed upon the poor villagers under various types of national and international economic and political compulsions.

The acquisition of hundreds of acres of legally owned private agricultural land for the establishment of capital intensive industries, big dams, multi-lane highways and car racing arenas is one such high-handed game which the LFG is now playing with the Panchayats in its recent

honeymoon with foreign multinational corporations and big Indian capitalists. The legal instrument which the communists in West Bengal are using to dispossess the small and marginal farmers as well as bargadars and patta-holders (whose numbers serve the LFG in every election propaganda) from their major means of production is the colonial L A Act of 1894 which does not care a fig for the 73rd amendment and the West Bengal Panchayat Act, Thanks to former British rulers. So, the acquisition of agricultural land for big development projects launched by the capitalists in a left-ruled state by the application of an anti-poor legislation that totally ignores the Panchayats is another form of red terror, which is silent and legitimised by the State power.

The West Bengal Panchayat Act, 1973 does not mention anything about self-governance. The powers and duties of the Panchayats as elaborated in the various chapters of the said Act are largely development oriented. Two eminent experts, Nirmal Mukarji and Debabrata Bandopa-dhyay, in their famous report "New Horizons for West Bengal Pancha-yats" published by the Government of West Bengal in 1993, recommended : ''...there must be a comprehensive overhaul of the Panchayat law, not simply to bring it in line with the 73rd amendment, but more importantly to give centrality to the principle of self-government." Suffice it to say that like many other recommendations of the Mukarji and Bandopadhyay report, this aforementioned recommendation has also been kept in cold store by the LFG. Of course, a Government carrying the people's mandate has the right to do this! In this connection, it may be quite interesting to recall the comments once made by EMS Namboodiripad, the late CPI(M) national heavyweight in his dissenting note to the Asoke Mehta report of 1978 on Panchayati Raj system. Namboodiripad's comments were quoted by Mukarji and Bandopa-dhyay : "...I am afraid that the ghost of the earlier idea that Panchayati Raj Institutions should be completely divorced from all regulatory functions and made to confine themselves only to developmental functions is haunting my colleagues." The Marxist guru further stated : "What is required is that, while certain definite fields of administration like defence, foreign affairs, currency, communication, etc. should rest with the Centre, all the rest should be transferred to the States and from there to the district and lower levels of elected administrative bodies." It may be intriguring to examine what powers the Namboodiripad's West Bengal comrades have bestowed to the ''lower levels of elected administrative bodies" while crying for more power to the State in connection to the acquisition of land which is a State subject.

The legal manual published by the Department of Panchayats of the Government of West Bengal in 1994 has a section on land acquisition which states : "If the Gram Panchayat needs any land for its own work within the purview of the Panchayat Act, then the Panchayat can initiate a negotiation with the owner of the land for its takeover. If such negotiation fails, then the Panchayat can apply to the District Magistrate for the acquisition of the said land and the District Magistrate would acquire the land for the Panchayat (clause 44). The Panchayat, however has to take prior written permission from the State Government before taking possession of any land or corporate property."

The above paragraph of the legal manual clearly reveals the legal and administrative superiority of the left-ruled West Bengal Government over the Panchayats in matters related to the acquisition of land even when it is required for the Gram Panchayat. Quite obviously, if the State Government needs legally held private land for any development project then there is nothing in the West Bengal Panchayat Act by which the Panchayats may advance any legal objection to the acquisition. On the other hand, the LFG in West Bengal has not yet shown any interest to curtail the powers of the L A Act by introducing a clause in the Act so that it becomes obligatory for the State Government to take the permission of the Gram Panchayat whenever the former wants to acquire land for big projects that would displace hundreds of peasants from their homes and/or legally owned farmland. Colonial legislation is still more preferable to the capitalist-friendly communists than the 73 rd amendment of the Constitution. A question may be raised here on this issue. If the *Panchayati Raj* is nothing more than the *Party Raj* in present West Bengal, then will it make any difference even after the Panchayats are legally empowered to pass on the final judgment on each and every case of land acquisition within its jurisdiction? The answer to this question is, 'Yes, any legislation empowering the Panchayats on land acquisition will make a difference and that is why the party mandarins do not want it.' Because the party

bosses know it very well that if the people at the grassroots are legally empowered to raise objections to land acquisition then there will be a fair chance that the Government may have to fight many stiff legal battles in order to proceed with development projects which would displace the poor and the marginalized from their hearth and homes. □□□