

Comments on the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013

THE Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement Act 2013 (hereinafter referred as the “Land Act”) is a significant step towards bringing in socio-economic balance in land acquisition which is critical to the industrial growth paradigm in India.

We would like to commend the efforts of the Ministry of Rural Development, for its efforts in making the Land Act a reality. While we welcome the legislative efforts to arrive at the compensation rates upon land acquisition, we find the valuation metrics used to reach at the compensation levels fundamentally questionable.

We would like to humbly put forth our observations as an independent research group, which we came across in the course of our recently released research study, in collaboration with GIZ, “**Fair Pricing of Land and its Compensation in an Emerging Economy: Case for India**”.

The study, which conducted an empirical analysis of price trends over a period of 30 years using about 680000 primary transactional data, finds that the proposed land valuation method based on circle rates has led to discrepancies in their application. This report is available on our website under the Report section.

Based on the research findings, we consider that using the circle rates as a basis to arrive at the compensation of land is not consistent with the economic realities of the day. This essentially creates a disharmony between the original owner of the land and one willing to buy it.

What the Land Act states?

The First Schedule of the Land Act proposes a comprehensive compensation package. Under the Act, the factors have been stipulated which go into deciding the compensation for land.

Three factors are taken into account: the circle rate according to the Stamp Act; the average of the top 50% of sale deeds registered in the vicinity in the previous three years; where higher price has been paid; or whichever is higher. The market value so calculated is multiplied by a factor, which varies from 1 in urban areas to a number between 1 and 2 in rural areas, depending upon the distance from the urban centre. To this amount, the value of any fixed assets such as buildings, trees, irrigation channels etc. is added. Finally, this figure is doubled (as solatium, i.e. compensation for the fact that the transaction was made with an unwilling seller). The justification given for the multiplier ranging from 1 to 2 is that many transactions are registered at a price significantly lower than the actual value in order to evade taxes and deciding the multiplier is left at the discretion of the land acquisition officials.

Why we question the land valuation methodology as proposed under the Act?

Our research study shows that over the past 30 years, the circle rates have barely kept in pace with inflation and hence do not reveal the economic value of land. Hence all pricing including taxation based on this basis can be potentially litigious and conflict driven. Further, there is an unequal application of these circle rates. For instance, in Mandla (Madhya Pradesh), the circle rates applicable for scheduled tribes differ from the standard rates and they are required, by law, to carry out all their transactions only within their community and cannot sell their land to any non – tribal person in Mandla. This creates a problem. First, the price that can be offered by a person from a scheduled tribe is very low owing to their overall weak economic condition. And secondly, this isolates people belonging to scheduled tribes from the thriving land market.

Although this may be a well-intentioned measure for protecting the community, it actually defeats their purpose for selling land while virtually creating a separate market for their dealings with abysmally low prices.

This provides us with the necessary evidence to bolster our assertion that the circle rate method of fixing the price of land is very far from being seen as a reasonable pricing method. While the government of India at present also uses land data to arrive at the circle rates, it uses a rather simplistic approach, of removing the outliers and arriving at a median or mean transaction value, to value something as complex as land.

Information Asymmetry and social conflicts:

There is a rampant violation of circle rates. However, this violation is not uniform and hence is symptomatic of information asymmetry affecting land sales. As evidenced, the frequency of circle rate violations was much lower in the district of Faridabad than in Mandla. This shows that people are generally more aware of the true price of their land in a more developed region like Faridabad and percolation of information is greater in such regions.

As transactions move away from urban to interior India, due to such information asymmetry between buyers and sellers arising due to an under developed land market, sellers normally sell at a lower price than the fair value only to realise the fact later that they may have been taken advantage of. This gives rise to conflict on a later date. In Mandla, a backward district such transactions are pervasively undervalued, raising a potential for future conflicts.

Hence the need for a comprehensive valuation model is needed more in rural and semi urban India for reducing pricing conflicts in face of growing industrialisation.

Does prices offered in government acquisition move in tandem with free sale pricing?

The study has also compared the actual land acquisition prices offered by the government in government-led acquisitions for power projects in Singrauli. This comparison shows that the amount offered by the government led acquisitions usually lie between the free land sale transaction value, which is grossly under-priced, and that predicted by the model in the study. In most cases less than half of what the predicted fair value. This happens as the base for pricing is circle rates, which is largely uni-dimensional and based on under reported data.

The pricing mechanism in the present bill remains the same except the inclusion of a multiplier and a social impact assessment, i.e. now a seller will be given a multiplier times the existing decided after a social impact assessment by the government. This does not solve the problem of incorrect pricing and will result in, either a person being grossly overpaid or underpaid. The error arising due to the previous circle rates will only get magnified by the multiple.

Proposed valuation methodology—

Based on our research findings, we propose that the valuation of land should neither be government mandated nor tantamount to an auction but based on an informed understanding of the price dynamics for land, responsive to the economic situation. Using economic data, based on the level of development in a region, the study establishes the most important determinants of land prices and creates a model extendable and replicable in various parts of the country.

Role of fertility factors versus location in land pricing

One of the most important findings of the study is how location of a land holding plays a far more pivotal role than the quality or fertility of land, irrespective of whether the land parcel is in a rural or urban area. The study shows how location and the level of industrialisation as a determinant of pricing gains importance over successive decades while fertility loses as a determinant factor. In case of industrialisation, location overrides all fertility factors. Although it seems obvious, this is the first time that this has been statistically validated.

This finding can have an important policy implication. The farmers engaged in agriculture on fertile land which has locational advantages get lower economic returns from agriculture than if they were to sell that land. However such depletion of fertile land implications on our food security. The question arises as the need to subsidise such farmers who forego their possible economic return from sale of land in favour of growing food grains and how the country will deal with this issue.

It makes for a stronger case for not touching fertile land for acquisition, as is also mentioned in the land bill in its present avatar. Moreover, location plays a greater role in acquisition for industrial purposes than any other factor

How locational advantages matter?

The model evaluates factors of location as a measure of distance from these factors:

- nearest large town
- Municipal limits
- railway station
- major road or highway
- airport
- city centre
- health, township facilities

The study concludes that proximity to road / highways and railway stations or future development of these facilities affect land prices across India based on the sample than other factors. The distance from municipal centre or nearest city were the next factors that drive land prices.

There is unanimous agreement on the need for having a data driven methodology for land pricing.

Many developed countries have been using land data and GIS mapping, to track the exact location of the land plots and determine their individual or unique characteristics, which in turn gets fed into the valuation method. This does seem fair and scientific. Seldom does one hear of issues pertaining to land pricing emanating from these countries which suggests that this method works well and can definitely be replicated in India.

The process of digitisation of land records is a commendable step and a very welcome move and should be leveraged to make the present system more transparent. For computerisation of land records, the encoding system is on similar lines to the NSSO sample surveys and covers a considerable breadth of factors such as location, crops, irrigation, soil type, land use, etc , most of which have been covered in the study. This has several positives. It further makes the case stronger for implementing a more robust and scientific model as shown in the study. This will also allow more efficient utilisation of land.

